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CONTENTS

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PUBLIC ADMINISTRATION

GOVERNANCE, TRIPLE-HELIX AND COVID-19 MANAGEMENT IN NIGERIA

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Abstract: *The study investigates how governance has impacted on "triple-helix model" for managing the Covid-19 pandemic in Nigeria. The study relied on the researcher's observation of the issues and matters arisen in the continuing Covid-19 pandemic, and secondary data on the subject matter. The study revealed that Covid-19 has led to the death of many Nigerians, while those who are still living are in fear,and that as at the time Nigeria recorded its first case of Covid-19, there was virtually no facility on the ground to combat the infectious disease. The study further showed that the triple-helix model of cooperation among the University-Industry-Government that could have helped in curtailing the pandemic is not well harnessed. The study also revealed that the lockdown that follows the outbreak of Covid-19 shattered the means of livelihood of many Nigerians, while many sectors of the economy are badly affected; the lockdown imposed was not successful as many Nigerians have no home to stay, while others who lived on the income they earn daily defied the orders for fear of been killed by hunger; the palliative offered by the government was marred with irregularities, as there is no reliable or accurate statistics and demography data that could have aided the judicious distribution of the palliative. The study concluded, that thecontinued rise in the number of Covid-19 cases, with limited health capacity to mitigate it is not only a threat to the lives of the citizenry but also has the tendency of escalatingbeyond control. The study, therefore, recommended, that the country's leadership should go back to the drawing board to re-assess the pandemic in other to strategize a formidable approach to halt the noxious disease, while attempt should also be made to provide quality governance in Nigeria.*
Keywords: *Governance, Triple-Helix, Covid-19, University, and Industry*

INTRODUCTION

The eruption of an unfamiliar respiratory disease known as "Severe Acute Respiratory Syndrome Coronavirus 2" (SARS-CoV-2) toward the end of the year 2019 in Wuhan China, caused unprecedented pandemonium in the health sectors across the world. Thedisease whose symptoms included fever, tiredness, dry cough, aches, pains, nasal congestion, runny nose, and sore throat or diarrhea aptly fitted to a family of viruses known as - 'coronaviruses'. The case of coronaviruswas officially reported to the World Health Organisation on December 31, 2019; and by January 30, 2020, the disease was declared a global health emergency. The coronavirus disease wastermed COVID-19 by the World Health Organisation on February 11, 2020,who also on March 11, 2020, declared the

disease a global pandemic (WHO, 2020 cited in Cennimo, 2020; Paudel, 2020). COVID-19 did not only triggered an unparalleled ddisruption to the world economy but also damaged the means of sustenance and livelihood of many people across the world. The first patient infected with the 2019 novel Coronavirus (COVID-19) was detected on December 1, 2019, and as of June 1, 2020, the figure of infected people have risen to six million, three hundred and three thousand, nine hundred and twenty, while three hundred and seventy-four thousand, five hundred and sixty-four fatalities have been recorded (Worldometers, 2020).

The World leaders in conjunction with the World Health Organisation are striving to curtail the pandemic. Similarly, governments of the affected countries are also making every effort to nip in the bud the Covid-19 pandemics from causing a further global health and economic damages.The capability and ability of any government to curtail the pandemic, however, depend largely on the quality of governance put in place, specifically in the area of accident and disaster management prior to the pandemic, as well as overall governance processes of the country. Governance in this context means, a system or process through which 'power is exercised in the management of a country's political, economic, and social resources for development' (World Bank, 1993). Put differently, governance is all about managing and harnessing the state resources for the state's development. The question is how well are the country's resources being managed by those in public offices? To what extent has the nation's resources being used for development? What aspect of development has the country focused on before the Covid-19 outbreak?

Since the government cannot handle all its activities by itself, there is a need to use institutions.In essence, the level of the effectiveness of institutions determines the quality of governance.Suffice to ask again, how are the institutions within the country(especially those institutions that have roles to play in curtailing Covid-19), faring before the pandemic? Some of the basic institutions that are necessary at this period of the Covid-19 pandemic can be categorized into two. They are educational institutions (Universities)and economic institutions (Industries), while the government remains a core actor in the tripartite relations.The tripartite relation among the university, the industry, and the government is referred to as "Triple-Helix".Triple-Helix simply implies the model of the university-industry-government relation "for understanding entrepreneurship, the changing dynamics of universities, innovation, and socio-economic development" (Etzkowitz, 2008). The trio relation is recognized across the globe in view of the fact that it has to do with the socio-economic development of countries that made judicious use of the tripartite relations.

Nigeria has a fair share of the effects of the Covid-19 pandemic. Apart from the fact that the pandemic has been having adverse effects on the country's economy, its citizens have fallen under an excruciating economy. The poor masses, most of them who live by the income they earn daily were hard hit by the country's economic situation. Besides, the country as of June 1, 2020, became the third African country to record more than 10,000 cases of Covid-19, as the current number of people infected by Covid-19 has risen to ten thousand, one hundred and sixty-two, while two hundred and eighty-seven death have been recorded.

To effectively combat a pandemic disease like Covid-19, there is a dire need for triangular cooperation among the University-Industry-Government. The universities through their Teaching Hospitals across the country are needed to direct all their actions

and activities toward curbing the pandemic.The Colleges of Medical Sciences of the Nigerian universities are needed to conduct researches to curtail the diseases, while the services of health personnel of the Universities' Teaching Hospital are needed in the area ofcaring for those that are infected byCovid-19. In a similar vein, the services of Scientists in the related disciplines across the Departments and Faculties of the universities are needed to reinforce the researches of those in Medical Sciences. The economic institutions (the industries) within the country are to provide synergy in terms of financing the universities in effectively carrying out researches, as well as to support the government in the area of funding to acquire necessary equipment into the hospitals and isolation centres across the country.

There is a need to state here that, a government that will serve as a unifying force for the University-Industry-Government Relations for combatingCovid-19 management must be a government that offers quality governance. The quality of governance should have reflected in the area of making quality policy-decisions. For instance, industries, need a friendly economic policy, and a secure environment to thrive. To what extent is the government offering this to industries in Nigeria? Are the industries in Nigeria secured? Is Nigeria's environment friendly for investments? Are the necessary facilities (especially stable electricity) available? With regards to the educational institution, proper funding or financing would have gone a long way to boost quality research, stabilize the university, and make Nigerian universities to be able to compete favourably with their counterparts across the world. Conversely, Nigerian universities have continued to suffer from inadequate financing. It is no longer surprising that the Nigerian universities whose services are essential as a core partner in triple-helix relations are on strike even asCovid-19 ravages on. The academia under the auspices of the Academic Staff Union of Universities (ASUU) was on strike for about three months now on the issue that bothers mainly on the funding of the universities in Nigeria. The strike notwithstanding, some of the staff of universities, especially those in the Medical Sciences still put their lives on the line to assist in treating those infected by the Covid-19, however the efforts that supposed to assist greatly in combating the Covid-19 pandemic are not well-harnessed, it is to this extent that the study investigates, how governance has impacted on triple-helix for managing Covid-19 in Nigeria.

UNIVERSITIES, INDUSTRIES AND COVID-19 MANAGEMENT IN NIGERIA

Like any other institution, the coronavirus outbreak has caused a major disruption to educational institutions including universities across the world. The pandemic has thus caused an alteration to many aspects of the university's life. The universities since, the outbreak of Covid-19 have been striving to contribute their quotas toward curtailing the pandemic from further damaging the university activities.

Universities can be seen as complex institutions, with the capacity of rendering various services to various people, organizations, associations, and countries across the world. Universities from the time immemorial have been disseminating new knowledge and innovative thinking, producing skilled personnel and credible credentials, attracting international talent and business investment into countries, serving as agents of social justice, as well as contributing to social and cultural vitality (Lucas cited in Peterson, 2020). Given these various services that universities render, "there is no doubt that universities,

through their intellectual knowledge base, can add (and they do) enormously to the science of Covid-19" (Peterson, 2020). From the knowledge, universities have been developing new vaccines to treat the disease, they have as well been engaging and researching to understand the nature and pattern of spreading of the disease across the country. Universities apart from rendering academic services of teaching-learning, researching, and community servicing, are as well motivate and bring together various external educational stakeholders together. In other words, the universities have been championing and uniting such stakeholders such as alumni, industry, donor agencies, philanthropists, the private sector, and government together to fight the Covid-19. Apart from this, universities trained medical doctors, and other healthcare personnel in various university's teaching hospitals are leading the war against the Covid-19 pandemic.

On the other hand, the captain of industries, as well as industries in Nigeria are well involved in the combat against Covid-19. The industries and other corporate organizations that came under the auspices of Nigerian Private Sector Coalition Against COVID-19 (CACOVID) donated funds to support the efforts of the government at combating the Covid-19 diseases. To this extent, the fund donated was about N15.325 billion (Nnanna, 2020). Apart from this are the industrialists who rose to the challenges through their monetary contributions toward finding a solution to the Covid-19 pandemic. The industrialists and businessmen in collaboration with the Central Bank of Nigeria mobilized private-sector leadership to support the government in providing funds as well as medical facilities for the hospitals and centres for caring for the victims of coronavirus. According to the Central Bank of Nigeria's Director, Corporate Communications, the total sum of N19.48 billion was contributed to the account of the Private Sector Coalition Against COVID-19 as of April 3, 2020, to support the government effort against Covid-19. The donors include captain of industries, banks, and other corporate organizations, have redeemed their pledges, while the apex Bank awaits an outstanding N3.4 billion from four others, as of April 3, 2020 (Odutola, 2020).

In the same vein, in April 2020, the Private sector-led Coalition Against COVID-19 is believed to have ordered for about 250,000 supplies for tests kits, and 150,000 extraction kits for testing people for the coronavirus infection. The coalition is also believed to have given food relief package to about 1.7 million households across the nation to alleviate the effects of the restrictions order given by the government to curtail the spreading of the Covid-19 pandemic. The coalition has equally set up isolation centers in some states in Nigeria which include Lagos, Kano, Rivers, Borno and Enugu, and Abuja, in addition to the renovations of some hospitals as well as supplied medical equipment to some of these hospitals (Dangote Group, 2020).

It must be noted that apart from separate involvement of the universities and industries in the management of the Covid-19 pandemic, there has being a measure of joints efforts of the duo at halting the spread of the diseases. For instance, there was some collaboration of the Olabisi Onabanjo University with industries such as – Anjola Herbal Company Limited who partnered with the university in producingAnti-COVID-19 herbal syrup, the samples of which had been submitted to the National Agency for Food and Drugs Administration and Control (NAFDAC) for approval. TheOlabisi Onabanjo University also teamed up with Ebelola Bioenergetic Solutions and StarkHouse Nigeria – Lifecenta to produce face mask and face shield to combat the spread of the coronavirus. However, the core partner in the triple-helix relations is found wanting to complement the effort of

the university and industry in the spirit of the triple-helix, the development which was as a result of the poor governance system is a major setback to effort at exterminating Covid-19 from the country in particular and contribution to the global effort toward halting Covid-19 pandemic.

GOVERNMENT'S EFFORTS AT MANAGING COVID-19 IN NIGERIA

As the Covid-19 pandemic continues to constitute a great challenge to people's health and with destructive effects on world economies, the government of many countries has accordingly instigated varying degrees of lockdown to restrain the disease from being spreading on. The Nigerian governmentto this extent enacted the Covid-19 Regulation 2020, which was signed and dated 30th of March 2020. The President through the regulations directed that movements in Lagos, Ogun, and Federal Capital Territory for an initial period of 14 days with effect from 11 pm on Monday 30 March 2020 should cease.People are to stay in their various homes, businesses and offices are to be closed, whileinter-states travel is put on hold. However, the restriction does not apply to:

- hospitals and related medical establishments;
- health care related manufacturers and distributors; food processing,
- distribution and retails companies;
- petroleum distribution and retail entities;
- power generation, transmission and distributions companies;
- private security companies;
- urgent court matters as may be directed by the Chief Justice of Nigeria;
- financial system and money markets; and
- workers in telecom companies, broadcasters, print, and electronic media staff who can prove they are unable to work from home (The Federal Government of Nigeria, 2020).

Apart from the restriction order by the Federal Government, the state governments equallyimposeddifferent restrictions orders on the movement of people within their various states, gathering of a large number of people was discouraged, while people are asked to maintain social distancing and to wear a face mask in public places among other restrictions. The restriction order by the government has unprecedented effects on businesses and the economy. To cushion these effects the government introduced fiscal and economic stimulatory measures to salvage businesses and economy from total collapse.

The government through the Central Bank of Nigeria (CBN) announced a credit relief of $136.6M to various businesses that were affected by the restriction to curtail coronavirus pandemic. According to the Central Bank of Nigeria's Governor, households, small and medium-scaled businesses, hotels, health care merchants, and airline service providers, among other businesses are expected to benefit from the funds. The apex bank also announced a reduction in the interest rates on loans from 9% to 5% and backdated to March 1, 2020 (Olarewaju, 2020). There are other fiscal stimuli and other interventions planned in response to the Covid-19 pandemic. According to the Minister of Finance, Budget and National Planning:

The government has planned to inject the N500 billion Covid-19 Crisis Intervention Fund for the upgrading of healthcare facilities and funding of the Special Public Works Programme for the purpose of generating employment.

The government of Nigeria has further requested for US$100 million to meet the Covid-19 emergency, as well as to expand HealthCare capacity across the countryin addition to the current US$90 million Regional Disease Surveillance Systems ('REDISSE') facility from the World Bank. The Federal Governmentalso takes steps to augment the States' Allocations & Moratorium on States' Debts and Withdraw US$150 million from the Nigeria Sovereign Investment Authority ('NSIA') Stabilization Fund to support Federal Account Allocation Committee (FAAC) disbursements. The 2020 Appropriation Act is to be amended to accommodate the downward review of initial revenue estimates(See Deloitte Nigeria, 2020).

From the above discussion, it appears that government efforts are geared mainly at nation's economy and giving palliates to the states and few individuals with little effort at promoting researches that can further save the lives of the people infected with coronavirus, at the same time help in the growth of the country's economy.

COVID-19: ISSUES AND MATTERS ARISING

There is no disputing the fact that a lot of issues and matters arose in the ongoing Covid-19 pandemic. For instance, the disease has continued to takes tolls on all sectors of the economy in Nigeria which include – education, health, aviation, transportation, banking, oil and gas, agriculture, artisans, and religion. The disease and the lockdown have made many people lose their means of livelihood, especially those who deal in perishable products. The poor masses who lives on daily earning, people working in the informal sector of the economy, the artisans, hawkers, and local traders, were deeply affected by the coronavirus induced lockdown. The fact that the prices of common commodities include food rises during the lockdown compounded their problem. The government reacted by lockdown most of the economic activities in the country, as well as restricted the movement of the people. The government has equally announced economic assistance to lessen the effect of the Covid-19 pandemic. These steps by the government have exposed a lot of inadequacies in Nigeria.

In the course of lockdown, for instance, several millions of Nigerians did not have access to the basic necessity of life such as food, water, and housing, while many did not have the income to survive with their families. The fundamental question is how can people without the basic necessity of life be told to stay at home? For those people that have no home, and live on the street, (for instance, the *Almajiris*) where will they stay?The *Almajiris* are children or minors that are not well taken care of, and left to vend for themselves. Most of these children live on the street and survive through begging for alms. Apart from the fact that these children have no permanent place to call their home, the lockdown period compounded their problem, as they were further exposed to starvation, and being infected with the coronavirus. While the Almajiri needed to be assisted, the state governments, especially in the northern parts of the country embarked on their mass deportation from their state of residence, to that of origin. The northern state governments under the auspices the Northern Governors' Forum (NGF) later stated that the deportation of the *Almajiris*was necessary because they are susceptible to contracting coronavirus, as

a result,they were deported to be able to receive care from their parents (The Guardian, 2020).

The federal government also came up with the idea of giving palliatives to the poor which they referred to as the "poorest of the poor". However, one issue that came up with this idea was how to determine the poorest of the poor. The reason is not far-fetched from the fact that the country lacks reliable or accurate statistics and data on the demographical pattern of the country. This is not only seen as an inhibiting factor to effective planning but also an impediment for the judicious distribution of the palliative materials. Beyond this is the lack of accurate population figures of Nigeria, as the country continues to rely on an estimated figure. On different occasions, Nigeria's population is put at between 180 and 200 million, depending on who is quoting the figure and for what purpose. Another pertinent question to ask is, if an accurate figure of Nigeria's population is not known, how then would the country determine the number of children, adults, and aged population? How will the country know the number of the unemployed population and the population of those with a special need? All these data and information are needed for purposes of planning and budgeting, apart from the issue of giving out palliative materials. Thus, the Covid-19 pandemic further exposes the politics attached to the population census in Nigeria, as a tool for manipulating elections, and for accruing more revenue from the federation account among other parochial political attachments.

Another issue that arose during the Covid-19 is that it revealed the unpreparedness of the country with respect to the adequate provision of the health care facilities. Even though the infectious disease which started from China has given them a bit opportunity to prepare, and put in place necessary facilities to tackle the pandemic in case it will reach Nigeria, the country leadership, as usual, continue to play politics with the issue, claiming that all necessary facilities have been put in place. It was after the disease has reached the country that the so-called leaders were running helter-skelter; and put in place some makeshift facilities. Even the makeshift or improvised facilities put in place was because the Nigerian political leaders, highly place technocrats and other who is who in the country who used to travel out of the country especially to Europe for medical attention cannot do so because of ravaging pandemic, and the lockdown of the international entry ports. Had it been possible for these categories of people to travel out, they would have left the poor masses in Nigeria to face the coronavirus scourge, while they stay away with their family in Europe and America. The government thus put in place some health care facilities in some of Nigeria's hospitals, because they no longer have the option and opportunity to travel out for medical attention as usual.Therefore, the setting up of emergency test centres, isolation centres and refurbishment of the hospitals by both the States and Federal government is a matter and issues arose from the Covid-19 pandemic. It is not surprising that during the ongoing pandemic, the Medical Doctors under the auspices of the National Association of Resident Doctors (NARD) have embarked on an indefinite nationwide strike. While all resident doctors, medical officers below the rank of Principal Medical Officer (PMO), and House Officers across all the Federal and State Hospitals in Nigeria have already joined the strike action as of Monday, June 15, 2020, others members working in Covid-19 isolation centres across the country are exempted from the strike for the first 2 weeks, after which they will join if the government fail to accede to their demands.

At this junction, it is pertinent to ask again why would the government delay taking care of its health sector till a time like this? The answer to this is simply a leadership

problem, which has been identified as a major governance challenge in developing countries. Thus, the inability of the government to develop the health sector is a direct result or consequence of poor governance systemthat has been offered by successive political leaders to Nigerians. There is no doubt that political leaders of many developing countries are well exposed to the way things are being done in the developed countries where they always travel to for shopping and medical trips, they have, however, failed to replicate this good development into their respective countries. Thus, these set of leaders are poor when it comes to practicing good governance, in terms of caring for the citizens by providing essential social and welfare services to the citizenry. It is surprising to note, that since most of the political class, the highly placed technocrats and "who is who" were prevented from seeking medical attentionabroad due to the international border closure many of them are still surviving. Therefore,it can be inferred that there is more to their traveling abroad than seeking medical attention. Besides, some of these categories of people who were abroad when Covid-19 broke out were even returning to Nigeria. Many of them perhaps must have returned home because the hospitals in Europe and America must have been filled up by victims of coronavirus pandemic, and as such, they cannot be given "special treatment again".

Another issue and matter of interesting is the distribution of exotic cars to the member of the National Assembly amidst Covid-19 pandemic. It would be recalled that, as of March 26, 2020, three hundred and sixty (360) members of the House of Representatives started taking delivery of Toyota Camry 2020 model cars, which was said to have been purchased for and by them as their official cars. Although it has been planned to getofficial cars for the lawmakers prior to coronavirus pandemic, the cars were, however, delivered at a wrong time when people they are representing are being tormented by the infectious coronavirus, while the country economy is going down.

Another related issue to the National Assembly is the huge sum of N37 billion budgeted for the renovation of the National Assembly Complex. This can be seen as an ill-timed exercise given the state of the economy of the country.To this extent, the Socio-Economic Rights and Accountability Project (SERAP) has appealed to the National Assembly to set aside the money meant for the renovation of the National Assembly Complex to alleviate the problems faced by the States and the Federal Capital Territory (FCT) at combating the effects of the Covid-19 pandemic on the vulnerable persons and poor masses in these respective domains. Thus, SERAP in its letter dated April 11, 2020, to both the Senate President and Speaker of the House of Representatives appealed to them on the need to use the N37 billion to help the 36 States and the Federal Capital Territory.

The distribution of palliatives through the Ministry of Humanitarian Affairs and Disaster Management is also an issue that generates a lot of controversies. The Federal Government of Nigeria in its bid to cushion the effect of the lockdown on the poor and the vulnerable made provision for the disbursement of N20, 000 Conditional Cash Transfer (CCT) to each person. According to the Minister of Humanitarian Affairs and Disaster Management, over 2.6million households have benefited from the palliative, while over 11 million vulnerable been identified in 35 states are yet to benefit from the palliative measure. However, the yardsticks used for the distribution of palliative materials have been questioned since. There were allegations that the sharing of the palliatives were discriminatory and highly politicized. The leadership of the National Assembly also faulted the pattern used by the Federal Government in the implementation of the Social Investment

Programme. The leadership of the National Assembly is not only questioningthe lack of backing the programme with relevant legislation, but they are also not satisfied with the method of handling the programme, and thereby doubted the ability of the Ministry of Humanitarian Affairs and Disaster Management to handle the proper sharing of the palliative. The NASS leadership equally wondered why the effect of palliatives has not been felt in many parts of the country despite the claim that over N700 billion have been shared with people (see Business Hallmark (2020).

Another matter of concern is that of non-trial, or non-testing of some of the Covid-19 medicines that have been developed locally in Nigeria. To date, researchers across the universities in Nigeria came out with different medicine which they believed can cure the coronaviruses disease. The list of the universities involved includes – the Obafemi Awolowo University, Ile-Ife, University of Ibadan, Olabisi Onabanjo University among other universities, none of these medicines have been approved by the National Agency for Food and Drug Administration and Control (NAFDAC).

It is hoped that issues and matters that arose during the Covid-19 pandemic and lesson learned will reshape the governance system and propel quality governance in Nigeria. The government will be expected to take steps to once and for all fix the health and education sectors by appropriating the large percentage of its yearly budget to the sectors. Besides, the government will be expected to institute a social scheme for the purpose of ameliorating the predicaments of the masses, especially those that have to do with their basic needs.

SUMMARY, CONCLUSION, AND RECOMMENDATIONS

The eruption of Covid-19 is no doubt a topical issue amongcountries across the globe in the last few months. Therefore, the affected countries, including Nigeria have continued to look for ways of halting the disease that has snuffed out lives out of many people and smotheredtheglobal economy. Nigeria has taken many steps toward combating the plague. However, the poor governance system in Nigeria, where state resources have not been judiciously managed for the state's development made the country's leadership be running helter-skelter when the first case of Covid-19 was recorded. The medical facilities that ordinarily should have been put in place if good governance had been practiced were not on the ground. This resulted in putting in place a makeshift medical facilities and isolation centres for accommodating people who are infected by the coronavirus. The governance system has equally impeded the university-industry-government mutual relations for combating the disease, instead each of these groups thus engaged in individual effort. The pattern adopted in the distribution of palliate materials to the poor and vulnerable was also faulty, resulting from the lack of accurate records, information, and statistics of the country's population. That the legislative arms of the government continue to take delivery of exotic cars during pandemic testifies to ineptitude in the governance system of Nigeria. Thus Covid-19 exposes the quality of governance in Nigeria and served as a litmus test about poor governance systems being operated in Nigeria. The study concluded that thecontinued rise in the number of Covid-19 cases, with limited health capacity to mitigate it is not only a threat to the lives of the citizenry but also has a tendency of escalating the disease beyond control. The study, therefore, recommended, that the country's leadership should go back to the drawing board to re-assess the pandemic in other

tostrategize a formidable approach to halt the noxious disease, while attempt should also be made to provide quality governance in Nigeria.

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PUBLIC POLICY DISCONTINUITY AND POVERTY IN NIGERIA'S FOURTH REPUBLIC: IMPLICATIONS FOR DEVELOPMENT

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Abstract: *This paper examined the effects of public policy discontinuity on the well-being of the citizens. To a very large extent, public policy discontinuity has a great potential to lead to poverty amongst the citizenry which invariably undermines development. Development can hardly be achieved in the midst of acute poverty in the country. The citizens are more likely disposed to contribute to national development when they live above the poverty line and the reverse would be the case when they live below the poverty line. Secondary method of data collection was adopted in this paper in the sense that data for the paper were sourced from documented and archival materials and data gathered were analyzed with the use of historical method. The paper found out that the high level of poverty and low level of citizens well-being is partly as a result of public policy discontinuity and this condition has also greatly undermined national development. The theoretical framework adopted in this paper is the systems theory. The paper recommended among other things that proper planning and analysis should precede public policy-making and implementation to ensure that government make policies they have the capacity in all its ramification to implement so that the citizens can derive the benefits of such policies in order for their well-being to be assured and guaranteed.*
Keywords: *Public policy, Development, Poverty, Citizens, Government.*

INTRODUCTION

The rate of poverty with its concomitant effect on development no doubt has reached an alarming and unprecedented level in Nigeria in recent times. According to Akinnaso citing The World Poverty Clock, "Nigeria not only has a very large number of poor people, it also has the largest number of extreme poor people in a single country in the world. Specifically, about 70percent of the population is said to be poor, the majority of them being categorized as extremely poor". No wonder Nigeria has been said to be the extreme poverty capital of the world. This situation has necessitated the need to interrogate public policy-making and implementation in Nigeria. This becomes necessary because public policy based on the nature of its implementation has the capacity to extricate Nigeria from the yoke of poverty and underdevelopment. The government has serious responsibility to provide the citizens with essential services. This no doubt is the reasons for the existence of government. Section 14 (2)(b) of the 1999 Constitution of the Federal Republic Nigeria (as amended) states that the security and the welfare needs of the citizens is the primary responsibility of the government.

In order to do this, the government formulates policies and these policies are expected to address the needs of the citizens. When the needs of the citizens are addressed and attended to, it will improve the state of their being thereby making them to be extricated from the yoke of poverty. It is apt to state that no citizen would desire to be poor and as such cannot ask government to make policies that would impoverish them. The political

system theory of Easton made us to understand that there is input and output in the policy-making process. The input consists of demand and support. Demand has to do with the request of the citizens to the government in terms of their needs, wants and desires and these are expected to guide the government in making policies that are meant to address the citizens' desires, wants and needs.

When the policies are made and implemented to address the demand of the citizens, government is most likely to receive the support of the citizens in form of payment of taxes, obedience to law and order and performance of other civic responsibilities. This will in turn provide the government with necessary wherewithal to be able to further provide necessary and essential services to the citizens. The above scenario is what is needed to banish poverty and underdevelopment.

A situation where government discontinues a policy or makes policies that do not have bearing on the well-being of the citizens because they are not carried along in the public policy-making process engenders poverty and where there is mass poverty in a country that country can hardly develop. This can be said to be the situation in Nigeria. Mass poverty in Nigeria gave rise to a situation where many citizens refused to comply with the lockdown order of the government and the resultant effect is the community transmission of Covid-19 Virus. There is little or no connection between the citizens and the government in Nigeria and this explains why most government policies are elitist in the sense that government officials make policies that benefit them to the detriment of the masses. This explains the wide gap between the rich and the poor in Nigeria. For example both federal and state governments in Nigeria have been steadily and gradually increasing tuition fees in tertiary institutions and this explains why the Academic Staff Union of Universities (ASUU) has been fighting the government to ensure that governments stop making tertiary education to be only for the rich because in the long run it will have negative effect on the entire country. Politicians take advantage of mass poverty in Nigeria by giving stipends to the poor to buy their votes and recruit some with a token to serve as thugs during elections.

The high level of poverty in Nigeria is manifesting in the form of banditry, robbery, kidnapping, terrorism, oil bunkering, prostitution, thuggery, vote buying and selling, etc. These conditions no doubt cannot contribute to the development of the country and the lack of development of Nigeria is also worsening the already bad situation.

CONCEPTUAL CLARIFICATION

At this juncture, major concepts in this paper are to be lucidly clarified. This is important and necessary for ease of understanding of the paper. The concepts to be so clarified are: Public Policy, Public Policy Discontinuity, Poverty, and Development. The centrality of the concept of public policy in governmental affairs has made it to attract a plethora of definitions by scholars across the globe. Public policy is prevalent and predominant in the public sector. This explains why Dye (1981:1) put it in relation to governments when he said "a policy is whatever governments choose to do or not to do". In governmental domain, policies are made to respond to citizens' demand. Public policy can be said to be a guide to governmental actions and activities. It is a compass that shows the focus and direction of government and obviously, it is meant to solve societal problems and ensure development. Public policy can be said to be a statement by the government

based on what it wants to do and what it decides not to do. Public policy enables us to know the direction and focus of government.

Ikelegbe (1996:4) is of the view that "public policy is simply governmental actions or course of actions, or proposed actions or course of proposed actions directed at achieving certain goals. In a similar vein, Carl Friedrich defines it as the proposed course of action of the government or one of its divisions. Mlekwa cited in Ikelegbe (1996:4) defines public policy as "official statements determining the plan of action or what the governments want to do". Barret and Fudge (1981:5) opined that we talk of 'public policy' when a policy:

Emanates from the 'public sector' including both institutions of central and local government and state created agencies such as water or health authorities, commissions and corporations – it may be implemented through and directed at a wide variety of individuals and organizations which may or may not be part of the state apparatus, and which may be to a greater or lesser degree independent of state influence or control.

Lineberry cited in Sapru (2006:5) says that public policy is "what governments do and fail to do- to and for their citizens". Public policy made can only achieve its intended result when they are effectively implemented and monitored. This brings us to the concept of "follow-up and follow-through" which means that public policies made should not only be implemented but must be seen to be effectively and efficiently implemented. There must be constant and consistent monitoring to the end because it is the only way to make public policies to achieve their intended goals. When public policies are abandoned or discontinued, they cannot achieve their intended goals. This brings us to public policy discontinuity. What is public policy discontinuity? Public policy discontinuity can be said to be a condition where public policy made are abandoned or stopped midway without achieving their intended goals. Public policies are useful and meaningful when they are made, implemented, evaluated and supported to the end. This condition is what makes public policies to achieve their goals. But the reverse is the case when they are discontinued. According to Essien-Udo cited in Eminue (2009:304):

Policies and priorities are changed at whim and dizzying frequency. Ministries have been split and merged and then split again only to be merged next time around. Projects have been cancelled, varied, then cancelled only to be re-varied and cancelled again. Institutions have been created higgledy-piggledy. All these have occurred not so much for efficiency reasons but largely for political and personal reasons. The whole approach to government business has been a stoppage approach, or a circular approach, or else one of progress through retrogression, that is, one step forward, and two steps backward.

The above statement shows clearly that public policies discontinuity leads to retrogression, poverty and underdevelopment. The next concept to be clarified is poverty. Issues of poverty have dominated not only national discourse but that of the world. This stems from the negative effects poverty has in the life of men, nations and the world at large. This explains why countries and international organizations have been so much interested in looking for ways to tackle poverty. Poverty is a multi-dimensional concept and as such does not have a definite definition. It has been defined in several ways by different scholars and organizations. This explains why Danaan (2018:20) opines that "poverty is complex, multidimensional and multifaceted with manifestations in the economic, social, political, environmental and every realm of human existence. The conceptualization of poverty over the years is changing with emerging perspectives in different contexts". According to Naanen (2015:49) poverty is "a state of abject want, the absence of the basic needs of life. Manifestation of poverty includes lack of money, hunger and malnutrition, illiteracy and ignorance, lack of decent clothing and housing". This view was corroborated by Townsend cited in Thomas (2000:12-13) when he asserted that

"individuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the types of diets, participate in the activities and have the living conditions and amenities which are customary or at least widely accepted and approved in the societies to which they belong. Their resources are so seriously below those commanded by the average individual or family that they are, in effect, excluded from ordinary living patterns, customs and activities". The United Nations Development Programme (UNDP) 2002 describes the poor as those who live on less than $1 per day. The issues of income inequalities, gender imbalance and rural-urban divide where those who produce wealth are deprived from reaping its benefits have attracted the attention of the international community. Women, rural dwellers and other vulnerable groups who produce the bulk of the world's food get incommensurable rewards for their labour (Abimuku, 2006).

According to Reinert (2006:3-5), there are five dimensions and measures of poverty and they are income, health, education, empowerment and working conditions.

- Income: According to Reinert, the most common measure of poverty is known as income poverty. To him, poverty is viewed as a lack of goods consumption due to a lack of necessary income. There is no gainsaying the fact that the level of goods consumption as well as the quality of goods consumed is dependent on the level of income.
- Health: Apart from income poverty, poor health is now recognized as perhaps the most central aspect of poverty. According to Reinert, health deprivation characterizing poverty can be assessed in terms of life expectances, infant and child mortality, and a number of other health-related measures.
- Education: This dimension of poverty can be assessed in terms of literacy rates, average years of schooling, or enrollment rates.
- Empowerment: Lack of what is sometimes called "empowerment" is a fourth important dimension of poverty.
- Working Conditions: This is another dimension of poverty. It reveals the condition in which people work especially in consideration to forced labour, health and safety. It is important to add that the dimensions and measures of poverty identified above are interrelated and interconnected in the sense that one dimension can lead as well as affect the others.

Development is another concept that is multi-dimensional and multi-faceted and as such has been given different definitions by different scholars as well as some international organizations. Development as a concept has defied definite definition particularly because of its multi-faceted and multi-dimensional nature. We have different aspects of development which include: economic development, political development, social and cultural development, technological development, etc. This explains why Todaro (1982) said that development should be perceived as a multi-dimensional process involving the re-organization and re-orientation of entire economic and social systems. Besides, improvement in incomes and outputs, development topically involves radical changes in institutional, social, and administrative structures as well as popular attitude and even in customs and beliefs. Rodney categorized development levels into individual, social and economic. At the individual level, development implies increased skills and capacity, greater freedom, creativity, self-discipline, responsibility and material well-being. In terms of social groups, the concept is expressive of increasing capacity to regulate both internal

and external relationships. The tools with which men work and the manner in which they organize their labour are important indices of social development. At the level of economic development, a society is said to develop economically when its members increase jointly their capacity for dealing with the environment.

According to Egonmwan (2014:207), development is "a dialectical phenomenon which, far from being static, is dynamic and therefore assumes a continuous transformation process and movement towards better and improved conditions, locally and in relation to the international economic order". Development can be said to be a condition of progress and improvement in all aspects of human and national life which ultimately leads to the improvement in the standard of living of the citizens. Every citizen as well as country desires development. This explains why Sen cited in Todaro and 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 any 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. And capabilities referring to the freedom the person have in terms of the choice of functions given his personal features and command over commodities.

THEORETICAL FRAMEWORK

The theoretical framework adopted in this paper is systems theory. David Easton is the proponent of the systems theory. Easton (1965) opines that a political system is "that system of interaction in any society through which binding and authoritative allocations are made". In this vein, Irhue (2016:71) asserted that "public policy is the response of the political system to forces brought to bear on it from the environment". The systems theory shows and exposes not only the processes and institutions involved in public policy-making and implementation but also highlights the relationship between the political system and the environment in the policy process. Demand inputs which the political system is to work on is generated from the environment and the political system also needs the support input from the environment to be in a stable and better position to perform the functions it is meant to perform. According to Irhue (2016:71), "certain key concepts are central to the understanding of public policy from the systems theoretical framework. First is the concept of system which implies an identifiable set of institutions and activities in society that functions to transform demands into authoritative decisions requiring the support of the whole society. A crucial property of a system is the interrelatedness of its parts or elements. Second, is the concept of inputs, which refers to the forces generated from the environment that affect the political system".

According to the systems theory, there are inputs and outputs. Inputs consist of demands and supports. Demands are the claims for action that individuals and groups make to satisfy their interests and values. Support is rendered when groups and individuals abide by election-results, pay taxes, obey laws, and otherwise accept the decisions and actions undertaken by the political system in response to demands. Outputs of the political system include laws, judicial decisions. Good public policies made and effectively and efficiently implemented have the capacity to lift the citizens and the country out of poverty and

engender development but the reverse would be the case when public policies made are abandoned or discontinued.

CAUSES OF PUBLIC POLICY DISCONTINUITY IN NIGERIA

Many public policies have been discontinued in Nigeria overtime. A discontinued policy cannot achieve its intended goals. Many factors account for public policy discontinuity in Nigeria and they include but not limited to following:

- Change of Government: Nigeria practices constitutional democracy whereby there is a constitutionally backed-up change of terms of office for democratically elected leaders. Each government in power comes with its own policy. Experience has shown that not all policies of a particular government are continued by successive administrations. Nigeria's fourth republic commenced since May 29, 1999 and since then the country has had four presidents namely; Chief Olusegun Obasanjo, Umar Musa Yar'adua, Dr. Goodluck Ebele Jonathan, and General Mohammadu Buhari (rtd.), and some of the policies initiated by them had been discontinued by successive administrations.
- Lack of Proper Planning and Analysis: According to Dimock et al (1983:141), Planning is "thinking before acting, establishing goals before setting-out and appreciating the limitations of planning as well as the essential need for it". Some government policies failed because of lack of planning and analysis before they are initiated and as such necessary ingredients for its success were absent. Lack of ingredients for the success of a policy leads to its failure.
- Lack of Finance: The place of finance in the success of public policy cannot be over-emphasized. Finance is needed for the formulation and implementation of public policies. Some public policies failed to achieve its intended goals because of lack of finance. In the absence of inadequate finance; public policies are discontinued.
- Corruption: Nigeria is a country that is faced with the problem of corruption. The establishment of anti-corruption agencies like the EFCC and ICPC has not really contributed significantly to the reduction of corruption in Nigeria. There have been reported cases of embezzlement of public fund earmarked for the implementation of certain policies of government.
- Resistance and Protests by the Citizens: Some policies that do not go down well with the people are resisted by them. And most of those policies never emanated from the people but rather imposed on them by the government. The subsidy removal protest in January 2012 is a typical example of citizens' resistance to government policy. The protest led the Jonathan's Administration to discontinue the subsidy removal policy.
- Lack of Skilled Manpower: There is no gainsaying the fact that most policies require skilled manpower to bring about their effective implementation and as such those policies would not achieve their intended goals when there is absence of skilled manpower and hence may be discontinued. This view was corroborated by Nnamdi (2001) when he notes that: "development policies has, in contemporary times, assumed complex and sophisticated dimension that require highly skilled and experienced bureaucrats for their effective implementation".

EFFECTS OF PUBLIC POLICY DISCONTINUITY ON POVERTY AND DEVELOPMENT IN NIGERIA

The high level of poverty and underdevelopment in Nigeria has reached an alarming and disturbing dimension to the extent that government is under intense pressure to seek effective public policies to reverse the ugly situation and trend. Public policies have the capacity to lift the country out of poverty and underdevelopment that can only be possible if the policies are diligently and effectively formulated and implemented. But when public policies are discontinued, it would have adverse effect on poverty and development. In fact, the discontinuity of public policies would worsen the poverty situation of the country as well as its development. This explains why Ikechukwu and Chukwuemeka (2013) observed that "over the years in Nigeria, numerous brilliant public policies have been formulated and implemented. Yet, there is no apparent and significant development as evidenced by the fact that Nigeria has continued to remain in the category of the least developed countries of the world". The National Council on Development Planning (NCDP) recognized the lack of stability and continuity in programmes by succeeding governments as the bane of Nigeria's development.

Government policies discontinuity, no doubt, adversely affects foreign direct investment because of the uncertainty it engenders. When there is inconsistency and discontinuity in policies, investors would not have the confidence to invest in such country. Lack of investment in a country contributes to poverty and underdevelopment. It brings about shortage of job opportunities as well as revenue for the citizens and government.
Public policies discontinuity leads to waste of the countries resources particularly in financial terms. This is because money is involved in making and implementing public policies. After formulating and implementing policies half-way the money involved is automatically wasted. This situation worsens the situation of poverty as well as the country's development. The Ajaokuta steel factory after many years of establishment has failed to produce any steel after about $8billion has been spent on it.

Public policies are also meant to improve on the human resources of the society. Human resources on the other hand are needed in formulating and implementing policies as well as other useful economic activities needed to extricate the individuals and the state from the yoke of poverty. A discontinued public policy cannot bring about human capital development with its attendant consequences.

When policies are discontinued it makes citizens to be disenchanted and disillusioned thereby killing patriotic zeal in them. When the citizens are not happy with the government due to policy discontinuity there is the tendency that they would not see any reason to support government. This situation has often led to increased crime rate such as robbery, kidnapping, prostitution, tax evasion and so on and so forth. A country where these incidences are the order of the day can hardly develop and this further worsens the poor condition.

Public policy discontinuity no doubt engenders underdevelopment. This is because not only would it lead to waste of the country's resources. The country would not be taken seriously by the comity of nations. Underdevelopment of a country adversely affects the citizen because there would be lack of job opportunities.

CONCLUSION AND RECOMMENDATIONS

Public policy can bring about poverty reduction and development in any country if properly conceived and implemented. A discontinued policy apart from not being able to achieve its intended goals also is an avenue for the wastage of the country's resources. This explains why government should not just rush into making policies without considering the availability of the factors that can make policies to achieve their desired and intended results.

Government should try as much as possible to involve the masses in the process of policy formulation and implementation. Involving the citizens means that when they are carried along in the process they are likely to support the policies and therefore help in the actualization of its intentions.

Public policies require some ingredients that would enable it to work. In making public policies, government should consider the availability of the ingredients that would make the policies to work. Ingredients such as manpower and finance are very important for the success of policies. Government should also strengthen the anti-corruption agencies to tackle corruption more effectively. When resources or money meant for the implementation of policies are embezzled it would lead to the discontinuity of such policies with its attendant consequences.

There must be constant monitoring and evaluation of public policies to ensure they achieve the desired results. It is not enough to make policies; there is the need to follow-up and follow-through policies from the beginning to the end. Proper training should be given to those government officials saddled with the responsibility of implementing government policies. This would enable them to be in a better position to effectively implement the policies.

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ETHNICITY, RELIGION, POLITICS AND THE CHALLENGES OF NATIONAL DEVELOPMENT IN NIGERIA

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Abstract: *The concepts ethnicity, religion and politics are problematic even at the level of conceptualization. However, the interdependence of ethnicity, religion and politics as social dynamics in fostering the development of a nation has become imperative across the globe. Nigeria is multi-ethnic with cultural differences between its component ethnic groups has been crippled by series of political unrest, ethnic chauvinism, youth restiveness, corruption, religious bigotry and extremism, and other social vices that undermine national development. Therefore, it is against this backdrop that this study examines the effects of ethnicity, religion and politics on national development in Nigeria. A descriptive method was adopted and cross-sectional data were collected across the twenty five Local Government Areas in Delta State with the aid of a structured questionnaire. Non-probabilistic sampling techniques comprising of purposeful and convenience techniques were used to elicit information via questionnaire from 400 respondents. Data collected were analyzed using correlation and regression analysis. The findings of the study showed that ethnicity, religion and politics negatively and significantly impacts national development in Nigeria. On the basis of these findings, the study recommends among others that the nation needs a purposeful leadership that has a vision of how to place its citizens at the centre of political project without recourse to ethnic chauvinism and sees acquisition of political power as not an end in itself but a means for serving the collective welfare of its people regardless of their ethnic origin.*
Keywords: *Ethnicity, Religion, Politics, National Development, Nigeria.*

INTRODUCTION

Nigeria at the age 58 is still searching for a new political order. The full realization of this objective has been made impossible because of the dominance of the factors of ethnicism, religions and politics, these factors which has affected the survival of democratic rule and national development in Nigeria. Federalism is arguably the suitable framework for addressing ethnic, cultural and religious pluralism in a complex society like Nigeria. In such system, each region or state is allowed to control its resources and develop at its own pace. However, Nigeria who claims to run a federal system of government operates the opposite and does not recognize the identities, interest and needs of the people especially the minorities. The nation's constitution does not reflect the wishes of the people; most government policies are anti-people and does not engender national integration and cohesion (Ilesanmi, 2014). The Nigerian government remains distant from serving the interest of its people. Politics at the federal, state and local levels of the Nigerian

federation are dominated by the powerful mandarin who built vast patronage networks during the military days and who now use political office to expand these networks and their personal fortunes. Moreover, many of these so called 'godfathers' have been cultivating, prompting a local arm race in some regions even though several governors are under indictment for money laundering abroad and others are being investigated at home, the bonanza continues at public coffers for these power holders, while basic infrastructure in many parts of the country remains as dilapidated as it was under military rule (Kew, 2006 cited in Fagbadebo, 2007).

Politics today in Nigeria is a 'do or die' affair. The struggle for political power and control at the centre has over-heated the nation's polity and created unnecessary tension which has resulted to bigotry between and among regions. Political thugs are recruited and armed by these same politicians who at the end of the day loose grip of these thugs and these arms are used on defenseless citizens (Ilesanmi, 2014). The current democratic dispensation since inception has been besieged with unprecedented vice disturbance and social insecurity resulting in massive destruction of property and loss of lives. The religious and ethnic dimension to these upheavals makes them a serious threat to national security. The tension and uncertainties in the country today is not conducive for democratic process and national development. Nigeria in recent times has witnessed a lot of violence eruption and general insecurity in nearly all the states of the federation. Prominent among such is the Boko Haram which has been attributed to the political rivalry between the north and the south towards controlling the political power in the country. It must be realized that, the sudden and apparent emergence of the Boko Haram sect at this period in the history of the country is meant to destabilize the Jonathan's Administration as well as the equilibrium the country has been brought to by the government (Ogoloma, 2012). In addition, kidnapping and all forms of maladies, militia groups exist in all geopolitical zones. This has resulted in a lot of bloodsheds, senseless killings, destruction of property, social and economic dislocation and its attendant poverty, insecurity and unemployment (Ilesanmi, 2014).

This is why Ogbulafor (2000) argued that the number of people in Nigeria bitten by poverty is over 70%. It is only in Nigeria you find political leaders, military chiefs who are clueless, visionless and lack the necessary ingredients to stirring a good socio-economic and political environment, some of them and their cohorts have become sponsors to most crises and conflicts rather than seeing themselves as apostles of peace and national development. Worse still, in all political activities in Nigeria, the factor of ethnicity is reflected. It is particularly obvious in area like voting, distribution of political offices, employment and government general patronage of the citizens (Salawu & Hassan, 2011). Also, when national development is mentioned, it is suicidal to ignore the contributions of religious adherents such as Christians, Muslims, African Traditional adherents and other secular ideologists (Awoniyi, 2015). Today, religion has been used, abused, abused and misused by political elites, and unfortunately the so-called clerics of Christianity and Islam, so much that it has continued to cause conflagrations all over the world. Nigerian experience is one among many of the countries witnessing Islamic extremists' senseless killings and maiming of innocent lives (Gbadegesin & Adeyemi-Adejolu, 2016). Therefore, a discussion of the effects of ethnicity, religion and politics on national development in Nigeria is or seems to be highly desirable. It even becomes necessary given

that today we still talk about under developed Nigeria as a result of the challenges posed by the indices of pluralism (ethnicity, religion and politics).

CONCEPTUAL CLARIFICATIONS

It is important to understand and have the conception of these operational terms ethnicity, religion, politics and national development for the purpose of clarity.

Ethnicity

Like any other terminology employed by social scientists, the concept of ethnicism is a term that does not lend itself to easy definition (Salawu & Hassan, 2011). Though, there are general agreement on a few points which germane to understanding the phenomenon. It is agreed that though ethnicity is a derivative of the ethnic group, it only occurs in situations involving more than one ethnic group or identity and to fully understand the meaning of ethnicity, a related concept like ethnic group need to be defined. This is particularly important because of the systemic differences in the definition of ethnicity across societies. Osaghae (1994) affirms that ethnicity is problematic phenomenon whose character is conflictual rather than consensual. Having enumerated the features of ethnicity on which scholars agreed. Cohen (1974) defined ethnic group as an informal interest group whose members are distinct from the members of other ethnic groups within the larger society because they share kinship, religious and linguistics ties. Similarly, Thompson (2004) defines ethnic group as a community of people who believe that they possess a common identity based on issues of origin, kinship ties, historical experiences, traditions and cultures, and perhaps share a common language. This means that ethnic groups are social formations, which are distinguished by the communal character of their boundaries (Nnoli, 1978). It is this social formations that affect the performance and functioning of the Nigerian leaders as they may be influenced in their actions and decisions due to their ethnic inclinations and parochial mentality. The inter-ethnic struggle for social and economic dominance also inevitably leads to nepotism and its attendant consequences, mostly hostility in the form of inter-ethnic violence (Ogoloma, 2012).

Ethnicity according to Osaghae (1994), is a social formation predicated on culturally specific practices and unique symbols. What this means is that ethnicity is a situation in which individuals in a particular ethnic group consider themselves or are considered by others to have common affinity which distinct them from other groups in the society. Also, distinct cultural behaviours are usually developed; all groups can be identifiable through religion, politics, occupation or language (Ilesanmi, 2014). In political terms, ethnicity refers to the ethnic-identity based behaviour which seeks, in a competitive setting, to capture political power at the micro level and state, power at the macro level (Osimen, Balogun & Adenegan, 2013). Achebe (1981) sees ethnicity as discrimination against a citizen because of his place of birth. Today, ethnicity has become a population subject of intellectual exploration to scholars in different fields both in developed and developing countries particularly of Africa, as it is often considered a prominent factor in the governance and development processes of many countries. Ajayi and Owumi (2013) affirm that it would not be easy to identify a country that is not affected by issues triggered by ethnicity but some countries' situations are particularly striking because of the lessons

they provide regarding the impact of ethnicity on national development. Jiboku and Jiboku (2018) also observe that the inter- ethnic relations in Nigeria has been one of conflict largely caused by ethnic chauvinism, which manifested in the form of ethnic nationalism. There is no doubt that this has implications for the survival of democracy and national development in Nigeria.

Religion

Religion as the oldest discipline in human society is the most difficult term or word to define. There is no clear consensus on the conception of religion by theologians and social scientists. This is not merely because scholars grapple with the element of subjectivity, but largely because of the inherent difficulty in understanding the 'inner essences' of religion (Egwu, 2001). Different people understand religion differently or have different perspectives according to their disciplines. For example, sociologists regard religion as being of social rather than political significance while anthropologists view religion as a component of the cultural aspect of life (Barrett, 2003). To the Theologians, religion is the essence and centre of civilization and the sublime aesthetic expression and root of all decision, actions and ultimate explanation of civilization with its invention and artifacts; its social, political and economic system, its past and future, promises and history (Muazam, 2006 cited in Cinjel & Chujor, 2017). Durkheim (1965) defined religion as a collective representation that made things sacred. Religion can be termed by reference to what is known as extent of purity and impurity (Shabi & Awe, 2001). Yesufu (2016) sees religion as the service and worship of God or gods. Mbati (1999) cited in Ilesanmi (2014) emphasized that religion is a strong element in the traditional backgrounds and exerts the greatest influence upon the thinking and feelings of the people concerned. Obilor (1998) avers that religion is a capacity or a power which enable man to observe the laws of his nature, the natural law and/or of the divine law. Durrant (1920) interprets religion as a barrier to human self-actualization. There is no doubt that religion can be seen in this light when it has been turned into an ideological tool or else, why did Karl Marx see it as the opium of the people. A palliative used by the leaders to hold the masses in check. In the hand of a villain, religion can be a cog in the wheel of progress and massaging of the ego and dehumanization of the people while in the hand of a saint it becomes an instrument for humanization (Ogugua & Ogugua, 2015).

It has been argued that one's religion is what makes one a complete whole, this assertion may not be correct because not all people practicing a religion would agreed that they depend on their religion to complete them as a whole. Basically, the two major religious practices in Nigeria are Islam and Christianity. While the Muslims believe in Allah, the Christians believe in one God, yet we have African Traditional religion. These differences in beliefs have given rise to the religious conflict we are experiencing worldwide (Ilesanmi, 2014). Today, based on the increasing rise of religious bigots and extremists, one may be tempted to suggest that religion is not relevant to societal development and hence should be extricated from human social life (Gbadegesin & Adeyemi- Adejolu, 2016). Religious extremism is commonly known in Nigeria as religious fundamentalism and fanaticism. Hornby (2000) Defined fanaticism as extreme beliefs or behaviour, especially in connection with religion or politics. Balogun (1988) defined religious fanaticism as violent and unreasoning religious enthusiasm as well as the inability

of religious adherents to harmonize between those theories and the practical aspects of religion.

Politics

Politics is derived from the Greek word "polis" meaning city state. Implicitly is the idea of governance in the word "polis". The term politics has been defined differently by different authors and these definitions reflect the philosophical, social and political background of the authors. This has made it impossible to have a universally accepted definition of politics. Ejizu (1988) defined politics as a dynamic process whereby human and other human resources are managed, directed after due mobilization to ensure the enforcement of public policy and decision in the bid to regulate social order. Hornby (2000) sees politics as the science and art of government. It is the science dealing with terms, organization and administration of state or part of one and with the regulation of its relation with other state. For Onyekpe (2003) cited in Ogugua and Ogugua (2015) politics is about the control and exercise of power. Politics can also be view as the process of deciding who gets what, when and how. Dyke (1960) views politics as a struggle among actors pursuing conflicting desires on public issues. In the Marxian sense, politics is a class struggle, that is, the struggle between antagonistic classes in the society for the control of the state- the state being an 'organ of class rule' (Oluwatusin & Daisi, 2018). In the words of Leshe (1970) cited in Ngele (2008), politics is a sphere of purposeful behaviour through which we seek to live better than we do now. Ake (1995) sees politics as mainly about the control of power; this is well known. What is not so well know is the extent to which the nature of the state, including its power, determines politics. Politics according to Ikelegbe (2005) is a persistent pattern of human relationships that involves to a significant extent control, influence or authority.

Despite the divergent conceptions of politics, there is a common ground in the centrality of the state and power to the political process. Thus, politics is concentrated as revolving round the state, its agencies, activities and overall impact on the society; and also an analysis of government and its responsibilities (Appadorai, 2003). It is instructive to note that the leadership problem in the Nigerian polity was a manifestation of the dysfunctional pattern of the years of military interregnum (Omo-Bare, 1996; Omodia, 2009; Ighodalo, 2012; Ijere, 2015). The leadership pattern in Nigeria lacks the necessary focus capable of instilling national development and promotes political stability. Rather, Nigerian leaders are preoccupied with their desires for the appropriation and privatization of the Nigeria state (Ake, 1995); Sklar, Onwudiwe & Kew, 2006). The fall of the First and Second Republic, for instance, was precipitated by the pervasive corruption and the attendant political violence that greeted electoral manipulations, in a bid to stick to power (Ayeni, 1988). Consequently, development performance was slowed down, and political instability continued to pervade the polity, as focus was shifted to combat the looming forces of insecurity and internal regime instability. In the Nigerian state today, the democratic process no doubt has been bedeviled with poor party politics as a result of lack of internal democracy, party indiscipline, lack of clear cut party ideologies, ethnicization of party politics, poor political leadership, excessive westernization of the concept 'democracy,' the politicization of the higher echelon of the military profession among others (Ntalaja, 2000). These factors, no doubt snowballed in the abortion of democratic

republics in Nigeria and have persistently threatened the survival of the Nigeria Fourth Republic.

National Development

Development means different things to different people. Development could be seen as a process of economic and social transformation that is based on complex cultural and environmental interactions (Ajaebu, 2012). Development is also equated with progress and modernity (Willis, 2005). According to Walter Rodney as cited in Ajaegbu (2012) development is the process that includes: physical development which include man made goods produced by use of technology, cultural development which comprises of the values, norms and traditions of society, and personal development which includes the psychological directions of individuals. According to Martinussen (1997), the various conceptions of development include economic growth, increased welfare and human development, modernization, elimination of dependency, dialectical transformation and capacity building. Similarly, Seers (1979) affirmed that the purpose of development in the society is to reduce poverty, inequality and unemployment. For Sen (1999), development involves reducing deprivation or broadening choice. Deprivation represents a multidimensional view of poverty that include hunger, illiteracy, illness and poor health, powerlessness, voicelessness, insecurity, humiliation and a lack of access to basic infrastructure.

The growth rate of a country's per capital income compared to those of other countries can be used to describe its level of national development (Lucas, 1988). This increase in per capital income must however be accompanied by an unprecedented shift of the society from a condition considered to be unacceptable to a more acceptable one in terms of poverty level, employment, creativity, efficiency, productivity and equality. National development is the ability of a country or countries to improve the social welfare of the people by providing security and social amenities which include quality education, portable water, transportation infrastructure, medical care, employment among others (Ajaegbu, 2012). In Nigeria, faulty development policies pursued since independence till day have left the people pauperized and decimated. These are manifested in increasing poverty, diseases, unemployment, poor medical care, poor housing facilities, lack of portable water, epileptic power supply, lack of access to power and resources by minority groups and their exclusion from policy making (Ighodalo, 2012). The challenges of national development in Nigeria include intolerance, misconceptions, inadequate grasp of religious matters, fanaticism, extremisim, violence, bloodshed, suicide, insecurity, injustice, corruption, immoral acts, ignorance and bad leadership and governance, which are inimical to the progress of a country. When these are added to several instances of youth misinformation, misorientation and other forms of misguided exposures and experiences, the challenges of national development in Nigeria assume such an awful proportion that seems to defy any kind of antidote (Oladosu, 2015).

The challenge of ethnicity in national development in Nigeria

Ethnicity is a politically neutral concept and does not pose any danger to democracy or national development but rather could positively engender national development where interactions and interrelationships are healthy. It is the politicization and manipulation of ethnicity that poses a problem (Adetiba & Rahim, 2012). Also, Iyanga

(2018) affirms that multi-ethnic states are often prone to conflictual and competitive relationships as different communities struggle to control political power and other economic resources of the state and this constitutes an impediment to political and socio-economic development. Therefore, ethnicity provides the platform whereby different individuals mobilize primarily to actualize economic goals. This explanation is relevant in the African context and Nigeria in particular where different groups cry about marginalization with regards to the distribution of national resources (Ebegbulem, 2011). The Nigerian state has been weak in acting as an impartial actor in protecting the interests of its diverse population as equal citizens; ensuring equitable distribution of national resources; promoting national integration and unity and actualizing national development goals. Its inability to act as an independent force standing above society and effectively mediating between competing interests in society creates a gap which is then bridged by the diverse ethnic groups and their organizations to mobilize for equal distribution of economic resources (Iyanga, 2018).

Since Nigeria attained independence, several problems experienced in the state include those concerned with state creation; revenue allocation; lack of trust among constituent units; election rigging, restiveness/militancy, Boko Haram insurgency, ethno-religious violence, inter-ethnic violence, inability of some ethnic groups to attain certain political offices and political instability (Jiboku & Jiboku, 2018), these constitute an impediment to national development. Moreso, multi-party democracy which has been adopted in Nigeria at different periods in its history instead of alleviating its ethnic problems, have further fuelled the political challenges of the state. The country's democratic experiments has thus far, not translated into its political development and improved standard of living for the citizenry (Vande, 2012). Ethnicity has been found to be the most powerful force shaping the political and social relations in Nigeria. It brings about conflict and distrust among the three main ethnic groups in Nigeria the Yoruba, Hausa/Fulani and Igbo and has led to equation of the Nigerian nation by the ethnic groups as a national cake to be share among them (Iyanga, 2018). Ethnicity has had a lot of negative consequences for the nation's movement towards democratization to the extent that it remains an enduring threat to institutionalization of democracy and national development in Nigeria. Among its resultant negative consequences as observed by Babangida, 2002 cited in Salawu and Hassan(2011), are wastage of enormous human and material resources in ethnically inspired violence, encounters, clashes and even battles, heightening of fragility of the economy and political process, threat to security of life and property and disinvestments of local and foreign components with continuous capital flight and loss of confidence in the economy, and increasing gaps in social relations among ethnic nationalities.

The challenges of religion in national development in Nigeria

Religion is fundamental to humans' life and living, thinking pattern, attitudes and relationships. Religion is considered critical for any meaningful, total and sustainable national development in any human society (Obiefuna & Uzoigwe, 2012). Moreso, Kant (1960) asserts that it is only religious community (a social force) that can supply a support structure for morality; the moral law, which is the key to attaining the highest good. In an atmosphere where sound morality prevails, there is no doubt that peace, unity and stable political dispensation which in turn will positively, affect national development shall not

be lacking. If religion is the basis of sound morality, it must attack the materialism of our culture and the misdistribution of the nation's wealth and services that are being managed by the corrupt elements of the society (Gbadegesin & Adeyemi-Adejolu, 2016). However, religion in Nigeria functions as a means for the perpetration of violence, fuelling ethnic consciences and solidarity, acquisition of power and socio- economic gains, massive killings and the wanton destruction of lives and vandalizing of property of those considered infidels or who pay allegiance to other religions. This is traced to the acrimony between the two dominant religious-Islam and Christianity which had often resulted in the struggle for power and supremacy, bitter feud and wanton destruction of lives and properties (Ngele, 2008).

Some religious activities have deterred the spare of political and national development in Nigeria. This supports the assertion of Ajaegbu (2012) who posits that religious terrorism in Nigeria posses a significant threat to national development as it is evident in Northern Nigeria where economic and social activities in some of the highly volatile states (Yobe and Borno) have almost been grounded by the stream of killings, destruction of basic means of livelihood of the people and truncating of foreign and local investments; thereby becoming a cock on the wheel of development of the states and Nigeria at large. The emergence of Boko Haram in Northern Nigeria has affected negatively the political, economic, social and environmental situation of the region and Nigerian economy at large. Since 2011, there were many cases of terrorist attacks which include but not limited to the bombing of UN office in Abuja, Edet House of Force Headquarters in Abuja, Madala attacks, Gwagwalada Park bombing, abduction of the Chibok gils, among so many numerous attacks especially in the North-Eastern Nigeria (Iwuoha, 2014). Religion therefore is a source not only of intolerance, human rights violations and extremist violence but also of non-violent conflict transformation, the defence of human rights, integrity in government and reconciliations and stability in divided societies (Appleby, 1996).

The challenges of politics in national development in Nigeria

Politics no matter how good, will not deliver better and improved public goods in a polity with weak institutions, neo-patrimonial networks, client-patron politics and near absence of political will (Ijere, 2015). This supports the assertion of Achebe (1981) who posits that Nigeria did not have a strong institution that could enable the political system to face challenge of governance in a systematic way. The success of democratic experiment in a country can be attributed to a political party that has a strong mass support and leaders that have interest of the nation at heart. Nigeria had political parties built along religious and leaders that were naïve and selfish. The client-patron commonly known in Nigeria as 'godfather' politics have take the primacy over the formal aspects of politics such as the rule of law, well functioning political parties and a credible electoral system (Oluwatusin & Daisi, 2018). Party politics in Nigeria impede national development and promote political instability. The Nigerian government remains distant from serving the interest of its people. It is instructive to note that the leadership problem in the Nigerian polity was a manifestation of the dysfunctional pattern of the years of military interregnum. The electoral violence has been a culture par excellence from the post- independence era to the present day new democratic experience, which commenced with president Obasanjo's administration till the present administration of Muhammadu Buhari. Apart from using

violence, there is also an absence of existence of free and fair electoral body. All the electoral umpire set up by the leadership of this nation had not been able to conduct a free and fair election. Two forces could be said to be responsible for this ineptitude. Firstly, the appointment of electoral commission chairman had been the prerogative of the president. This therefore leads credence to the charade Nigeria has had all this years, as he (the president) who pays the piper (NEC/FEDECO/NECON/INEC chairman) detects the tune. Secondly, ethnicity factor is another cog in the wheel of progress in terms of the nation achieving a free and fair election where the electorates exercise their constitutional right through the ballot (Ngele, 2008). These arguments are forceable today in Nigeria polity.

The return of multi-party democracy raised hope as to the arrival of the solution of Nigeria's crises of governance- good governance, the rule of law, freedom as well as institutional, infrastructural and national development. However, since 1999 till date, the rule of law remains jeopardize, institutional weakness is still a concern and good governance is still far from reach with impunity and corruption a challenge, and a good number of Nigerians still living below the poverty line. Successive policy focus of the successive democratic regimes; Obasanjo's National Economic Empowerment and Development Strategy (NEEDS), Yaradua's Seven Point Agenda, Jonathan's Transformation Agenda and Buhari's Fight Against Corruption, Insecurity and Poverty Agenda have delivered little in terms of improving infrastructural development, reducing poverty and unemployment and improving Nigeria's potential of economic growth (Ijere, 2015). Nigeria's enormous human and material resources in an enabling environment that democratic institutions and the rule of law provide, would have yielded more dividends for the country and her citizenry in the last twenty years save for the 'politics of the belly'. It is instructive to note that politics is central to the design and maintenance of institutions and strong institutions essentially explains state formation and state capacity which are important factors in dictating development and poverty reduction in developmental states (Leftwich, 1996). Nigeria today still lacks the necessary focus capable of instilling national development and promotes political stability due to leadership problem in Nigerian polity and weak institutions as well as the pervasive corruption and the attendant political violence that greeted electoral manipulations in a bid to stick to power. In addition, Omodia (2010), Igbodalo (2012); Ogugua and Ogugua (2015) alludes to lack of political will and indecisive pressure and assistance from the global community, corruption, political unrest and spate of insecurity, cross-carpeting by politicians, electoral rigging, politics of intolerance, mobilization of religious sentiments, political assassination and youth restiveness, failure to play by the rules of the game of party politics, impunity, weak measures against accountability, ethnicity of party politics, lack of internal party democracy, lack of clear cut party ideologies, high premium on political power and the attendant intense struggle for political power and marginalized national development for the promotion of the personal interest of the political leaders as the major challenges of national development in Nigeria's Fourth Republic.

THEORETICAL FRAMEWORK

While there are several theories which might prove appropriate for a discourse of this nature, the classical model theory and the deprivation theory present us with a heuristic tool for interrogating the central issues of this study. The classical model theory

propounded in 1975 by Clifford Gerrtz offers an explanation for the difficulties in nation-building in the new states and on the other hand, how the problem can be overcome. Following Geertz distinguishes between 'primordial ties' which are affinities based on the given of life which seem to flow more than natural or rational choice (blood and kinship ties, tribe, region, religion) and 'Civil ties' which are affinities based on socio-economic grouping (Class, status, part, professional group). Primordial ties by their nature (and especially because being territorial defined, they can be based for asserting the right to national self-determination) tend to be highly resistant to civil order. Civil ties, on the other hand, are usually cross-cutting cleavages with crises- crossing memberships and are therefore, more amenable to civil order. If the nation- state is to survive which presupposes the resolution or a process by which primordial ties will be supplanted by civil ties and ultimately subjected to civil order (Osimen *et al.,* 2013). Applied to Nigeria, the crises for national identity and ethnicity are explained by the prevalence of primordial sentiments. Contrary to the expectations of adherents of the detribalization thesis, increasing modernization has heightened the important of these sentiments. This is the paradox of African development which exacerbates the crises of national identity. In the words of Crawford Young, 1979 cited in Osimen *et al.* (2013), in dialectic symbiosis with the apparent triumph of the nation-state model has been the emergence, reinforcement or diversification of social and political expressions of cultural pluralism (group identities founded upon affinities of ethnicity, religion, language, race and region).

Also, the deprivation theory was propounded in 1969 by Ted Gurr and a lot of analysts on the relationship between religion and violence conflicts in Nigeria has opinioned that religion also become an instrument to protest forms of deprivation, exclusion, alienation, poverty and marginalization, failed development, public corruption, and has been used for a variety of purpose by the powerful elites to advance interests that are necessarily religious. In Nigeria, Muslims believe the required Islamic sharia in all its ratification as a right, in order to practice the dictate of their faith well and fully. On the other hand, the Christians push for a secular constitution amounting to deprivation of their religious right and Christians opine that the adaptation of sharia law within any legal instrument is also tantamount to a violation of their right as non-Muslims (Usman, 1987). Forx (2004) symbolizes the letter position aptly to aggravate the situation is the active involvement of the government in religious affairs. This thus goes contrary to the Nigerian constitution. The contestation between the secular and the religious alternatives is a situation which the state is caught in the middle, generates so much acrimony that can lead to in violence as feed into it. The relationship between state, religion and the management of that relationship is one of the few areas which Nigerian Christians and Muslims actually, believe they have a score to settle (Cinjel & Chujor, 2017). If there must be development in Africa generally and in Nigeria in particular, finding common ground between Muslims and Christians is not simply a matter for polite ecumenical dialogue between selected religious leaders, this because if Muslims and Christians are not at peace as we are presently witnessing there cannot be any meaningful development. Therefore, development in Africa in general and Nigeria in particular is at stake if these two major world religious refuse to cooperate with one another. The above theories are to help understand better the effects of ethnicity, religion and politics on national development.

In line with the literature review, the following objectives and hypotheses were formulated for the study:

- To examine the effect of ethnicity on national development in Nigeria.
- To evaluate the effect of religion on national development in Nigeria.
- To examine the effect of politics on national development in Nigeria.

Hypotheses of the Study:

- H_1: Ethnicity does not have a significant effect on national development in Nigeria.
- H_2: Religions does not have a significant effect on national development in Nigeria.
- H_3: Politics does not have a significant effect on national development in Nigeria.

METHODOLOGY

This study assessed the effects of ethnicity, religion and politics on national development in Nigeria. The study adopted cross-sectional research design, hence the choice of data collection across the twenty five (25) Local Government Areas in the state. Non-probabilistic sampling techniques comprising of the purposeful and convenience techniques were used in reaching respondents. The target population was the electorates in the state. According to Independence National Electoral Commission (INEC), the total number of voting population in Delta State was 2470264 in the fourth quarter of 2018 (INEC, 2018). The selection of the sample numbering 400 was determined from the population of 2470264 using the Taro Yamane's formula as shown below:

$$n = \frac{N}{1 + Ne^2}$$

Where N = The population size,

n= Sample size

e = Sampling error

$$n = \frac{2470264}{1+2470264\ (0.05)^2}$$

n = 399.93

n = 400 Appr.

Consequently, a sample size of 400 was used. Electorates in each of the Local Government Areas were randomly selected to ensure fair representative from each Local Government Area that make up the sample size. Collected data was analysed using correlation and regression analysis.

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

This study examined the effects of ethnicity, religion and politics on national development in Nigeria. To achieve this, four hundred (400) questionnaire were distributed across the twenty five (25) Local Government Areas in Delta State. Out of the 400 copies of the questionnaire distributed, 347 were retrieved, giving us a response rate of 86.75% as shown in the table below.

Table 1 Distribution of Questionnaire and Response Rate

S/N	Local Government Areas	Questionnaire Distribution	Questionnaire Retrieved	Percentage (%)
1	Aniocha North	16	14	3.5
2	Aniocha South	16	14	3.5
3	Bomadi	16	13	3.3
4	Burutu	16	14	3.5
5	Ethiope East	16	14	3.5
6	Ethiope West	16	13	3.3
7	Ika North East	16	14	3.5
8	Ika South	16	14	3.5
9	Isoko North	16	13	3.3
10	Isoko South	16	14	3.5
11	Ndokwa East	16	14	3.3
12	Ndokwa West	16	13	3.8
13	Okpe	16	13	3.3
14	Oshimili North	16	13	3.3
15	Oshimili South	16	14	3.5
16	Patani	16	13	3.3
17	Sapele	16	14	3.5
18	Udu	16	14	3.5
19	Ughelli North	16	15	3.5
20	Ughelli South	16	13	3.3
21	Ukwuani	16	13	3.3
22	Uvwie	16	14	3.5
23	Warri North	16	14	3.5
24	Warri South	16	15	3.8
25	Warri South-West	17	15	3.8
	Total	400	347	86.75

Source: Researchers' fieldwork, 2018.

Table 2 Moderated Regression Analysis Showing the Effects of the Independent Variables on the Dependent Variable

Dependent variable	Independent variables	F	R	R^2	Adj- R^2	Beta	T-Value
National Development	Ethnicity	154.233	.358	.109	.098	-.314	-4.66.3
National Development	Religion	183.064	.514	.088	.082	-.307	-4.310
National Development	Politics	196.137	.563	.043	.037	-.283	-2.985

Source: Field Survey, 2018

In relation to the first hypothesis which states that ethnicity does not have a significant effect on national development in Nigeria, the result showed that the correlation coefficient (0.358) indicates a positive and statistically significant relationship between the predictor (ethnicity) and the response variable (national development). The R-squared statistic as explained by the fitted model implies that 10.9% of the total variation in measure of national development is explained by the variations in ethnicity. The ANOVA results for ethnicity as predictor of national development is statistically significant with F-value of 154.233 and p-value of 0.000. When coefficient of determination was adjusted for the degree of freedom it yielded .098 or approximately 9.8%. This indicated that ethnicity

account approximately 9.8% of systematic (change) in national development in Nigeria after adjustment to degree of freedom. The *Beta* coefficient of -.314 indicated that one percent increase in ethnicity result in 31.4(%) percent decrease in national development in Nigeria. The t-statistics of -.4.663 at p-value (sig) of 0.000 obtained in the model for ethnicity which is less than 5% level of significant also indicated that there is significant relationship between ethnicity and national development in Nigeria. Therefore, the null hypothesis is rejected.

In relation to the second hypothesis which states that religion does not have a significant effect on national development in Nigeria, the results revealed the correlation coefficient (0.514 indicates a positive and statistically significant relationship between religion and national development in Nigeria. The R-squared statistics as explained by the fitted model implies that about 8.8% of the total variation in measure of national development in Nigeria is explained by the variations in religion. The ANOVA results for religion as predictor of national development in Nigeria is statistically significant with F-value of 183.064 and p-value of 0.000. When coefficient of determination was adjusted for the degree of freedom it yielded .082 or approximately 8.2%. This indicated that religion accounted approximately 8.2% of systematic (change) in national development in Nigeria after adjustment to degree of freedom. The *Beta* coefficient of -.307 indicated that one percent increase in religion result in 30.7(%) percent decrease in national development in Nigeria. The t-statistics of -.4.310 at p-value (sig) of 0.000 obtained in the model for religion which is less that 5% level of significant also indicated that there is significant relationship between religion and national development in Nigeria. Therefore, the null hypothesis is rejected.

In relation to the third hypothesis which states that politics does not have a significant effect on national development in Nigeria, the results showed that the correlation coefficient (0.563) indicates a positive and statistically significant relationship between the predictor (politics) and the response variable (national development). The R-squared statistics as explained by the fitted model implies that about 4.3% of the total variation in measure of national development in Nigeria is explained by the variations in politics. The ANOVA results for politics as predictor of national development in Nigeria is statistically significant with F-value of 196.137 and p-value of 0.000. When coefficient of determination was adjusted for the degree of freedom it yielded .037 or approximately 3.7%. This indicated that politics account approximately 3.7% of systematic (change) in national development in Nigeria after adjustment to degree of freedom. The *Beta* coefficient of -.283 indicated that one percent increase in politics result in 28.3%) percent decrease in national development in Nigeria. The t-statistics of -.2.985 at p-value (sig) of 0.00 obtained in the model for politics which is less than 5% level of significant also indicated that there is significant relationship between politics and national development in Nigeria. Therefore, the null hypothesis is rejected.

DISCUSSION OF FINDINGS

With respect to the first objective of this study, it was found that ethnicity has a significant and negative effect on national development in Nigeria. The findings is in agreement with Ebegbulem (2011); Salawu and Hassan (2011); Vande (2012); Iyanga's (2018); Jiboku and Jiboku (2018) that ethnicity has a strong negative effect on national

development in Nigeria. This is because multi-ethnic states are often prone to conflictual and competitive relationships as different communities struggle to control political power and other economic resources of the state.

Secondly, the results showed that religion do have a significant and negative effect on national development in Nigeria. This supports Ngele (2008) and Ajaegbu (2012), that religion in Nigeria functions as a means for the perpetration of violence, fuelling ethnic consciousness and solidarity, acquisition of political power and socio-economic gains, massive killings and the wanton destruction of lives and vandalizing of property of those considered infidels or who pay allegiance to other religions. Also, religious terrorism in Nigeria posses a significant threat to national development as it is evident in Northern Nigeria where economic and social activities in some of the highly volatile states (Yobe and Borno) have almost been grounded by the stream of killings, destruction of basic means of livelihood of the people and truncating of foreign and local investment.

Thirdly, the results showed that politics do have a significant and negative effect on national development in Nigeria. This findings is in agreement with Ngele (2008); Omodia (2010); Ighodolo (2012); Ijere (2015) that politics has a strong negative effective on national development in Nigeria.

CONCLUSION AND RECOMMENDATIONS

This study advanced the argument that ethnicity, religion and politics, as operated in Nigeria has retarded the integration of the country and has continued to impede the attainment of national unity and development, as centrifugal tensions, resource control and self-determination, ethnicity based identity politics and religious cleavages have enveloped national development process of national development in Nigeria has faced challenges from ethnicity, religion and politics. These social dynamics have weakened and hampered the development of institutions necessary for nation building. The study has revealed through its perceived findings that ethnicity, religion and politics have a negative effect on national development in Nigeria. This is sequel to the growth of ethnic chauvinism, ethnic politics, political disorientation, ethnic consciousness, ethnic sentiment, religious bigotry and religious fanaticism in Nigeria. Therefore, if there must be national development in our country, Nigeria must develop a supra-national consciousness and Nigerians must shift their loyalties from their ethnic and regional cum religious groups to a new Nigerian nation. This does not in any way imply a strategy that denies the socio-cultural or ethnic roots of Nigerians, but taking advantage of our multiculturalism, multi-religiosity and multiple identities, all Nigerian must contribute to create one nation which all nationalities (majorities, minorities and sub-minorities alike), can identify with Obasanjo, 2006). Based on the theoretical and empirical findings of this study, the following recommendations were made:

If we must exist as a nation, due regard must be given to the plurality of our ethnic nationalities in which case, principles of true federalism must be adhered to. Political power has to be shared satisfactorily among the component ethno-cultural communities and resources for development distributed equitably. The nation needs a purposeful leadership that has a vision of how to place its citizens at the centre of political project without recourse to ethnic chauvinism and sees acquisition of political power as not an end in itself but a means for serving the collective welfare of its people regardless of their ethnic origin.

The leaders of the various religious groups and their membership are urged to embrace dialogue, tolerance and respect for each other and also embrace the tenets of their religion which advocates peaceful co-existence, love and brotherhood of all mankind. The content and dictates of Nigerian constitution should be strictly applied, practiced and utilized as provide. This will go a long way to strengthen and empower the potency of government in the act of governance in Nigeria.

Nigerian should learn how to put the interests of the country first before their parochial, tribal, ethnic or religious interests because the country is for all of us. The leadership of Nigeria headed by Muhammadu Buhari should as a matter of fairness keep to their electoral promise by putting in place electoral reforms that would enable Nigerians have free and fair election that had eluded the country for decades.

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CIVIL SERVANT - EXCEEDING THE DUTIES OF SERVICE - ACTIVE OR NON ACTIVE SUBJECT OF THE CRIME OF BRIBERY

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Abstract: *An essential condition to be met for the retention of the crime of bribery is that the active subject has the necessary competence to perform the promised act in exchange for receiving undue benefits. Starting from a practical case, we will highlight the fact that in the situation of a control exercised by an inspector of the National Authority for Consumer Protection over a commercial space, it is necessary for the civil servant to have the necessary delegation to perform this activity. In the situation in which the civil servant acts outside the attributions of service, it will not be possible to retain the crime of bribery because there is no effective control carried out by the inspector of the National Authority for Consumer Protection. By exceeding the service attributions, the civil servant will not be an active subject of the crime of bribery but will be possible to establish administrative sanctions. In this situation, the civil servant will be responsible for influence peddling in the situation in which he promised that he will intervene next to a person who has the competence to fulfill the promised act. If the civil servant has promised to perform that act himself, but does not have the necessary competence to perform the act, the official will be liable for the crime of deception. We consider that the employed inspector of the National Authority for Consumer Protection who, although having as service attributions the finding of contraventions and the application of sanctions under the law, in the absence of an express delegation to carry out a control over a commercial space will not be active subject to the crime of taking bribery even in the event of receiving undue benefits.*
Keywords: *bribery, delegation, public servant, competence*
JEL Classification: *K12, K42*

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OPINIONS ACCORDING TO WHICH A CIVIL SERVANT OUTSIDE HIS / HER DUTIES MAY BE AN ACTIVE SUBJECT OF THE CRIME OF BRIBERY

By Decision no.884/2019 of the Iasi Tribunal, it was ordered the acquittal of Mrs.X, commissar within the National Authority for Consumer Protection under the aspect of committing the crime of bribery. Through the indictment registered on the roll of the Iasi Tribunal, it was ordered to send Mrs.X to trial for committing the crime of bribery provided by art.7 lit.c of Law 78/2000 and of art.289 para.(1) Penal Code.

It was alleged by the prosecution that Ms. X, a commissar within the National Authority for Consumer Protection in connection with the non-fulfillment of the control attributions, claimed and received from the employee of a company a good in exchange for

the non-fulfillment of the service attributions. Mrs.X, together with Mr.Y, performed a thematic control at a company, and although they did not identify themselves or register in the single Control Register that exists at a unit that they control. However, a witness recognized them as commissars from the County Commissariat for consumer protection Iasi.

The prosecutor claimed that the civil servant did not ask what price a product had, intending to appropriate that product without paying it in view of the non-fulfillment of the service attributions. In the opinion of the prosecution, Mrs.X allegedly noticed that there were irregularities regarding the products found in the commercial space, and according to her duties, she could and should have found them and possibly applied a sanction. He retained the accusation that precisely because he did not do so, he would have appropriated his property.

It is claimed by the representative of the Public Ministry that Mrs.X is in the exercise of her duties because she had the competence to carry out a control at the company. The control action falls within the general competence of Mrs.X according to the job description prepared in accordance with the legislation regulating the activity in the field of consumer protection, respectively the Regulation on the organization and functioning of the central and subordinated structures of the National Authority for Consumer Protection. The act for which the fulfillment, non-fulfillment, delay is claimed, received, accepted or not rejected money or other improper benefits - as an essential condition for the existence of the crime - must be part of the scope of the official's duties, ie be an act relating to his duties or an act contrary to those duties. The act means any activity that must be performed by the civil servant in accordance with his duties, attributions, service competences.

In the opinion of the prosecution, it is an act regarding the official duties of the civil servant, the one that falls within the limits of his competence, the one that falls under his charge in accordance with the norms that regulate the respective service or is inherent to his nature. It is stated by the representative of the Public Ministry that according to the framework procedure regarding the supervision and control activity, the possibility is extended of the control by the control team with the approval of the Deputy Chief Commissar / Head of Office, on the products found to be non-compliant. thematic control actions, at distributors or at producers. Therefore, even in the situation where a thematic control is performed, there is the possibility to exceed the imposed limits, and this situation cannot be justified only in terms of the general competence of the control bodies.

At the same time, the prosecutor's reasoning was based on the fact that the claim action can be performed in any way: by words, gestures, in writing or by any other means of communication and that the claim can be not only express but also allusive but at the same time unequivocal, likely to be understood by the recipient. Thus, the prosecution concluded that Mrs.X committed the crime of bribery during the exercise of her duties.

OPINIONS ACCORDING TO WHICH A CIVIL SERVANT OUTSIDE HIS / HER DUTIES CANNOT BE AN ACTIVE SUBJECT OF THE CRIME OF BRIBERY

The court by Decision no.884/2019 of the Iasi Tribunal ordered the acquittal of Ms.X in relation to the fact that she did not have the competence to apply sanctions to the commercial unit. In order to pronounce this solution, the court motivated the fact that regarding the competence of Mrs.X to carry out a control at the company, the County

Commissariat for Consumer Protection communicated the fact that the control activities carried out at the institution in the month in which the control was performed were established by the subject matter ordered by the address of the National Authority for Consumer Protection which was submitted to the case file.

According to this address, the civil servant had the competence to carry out controls only at the commercial units such as kiosks located inside the educational units. Thus, it is beyond any doubt that Mrs.X did not have the competence to ascertain contraventions in stores such as the one where she is supposed to have carried out a control. It is necessary that the act for the performance of which, the non-fulfillment, the official claims, receives money or benefits to be part of the scope of his duties, ie to be an act regarding his duties. This requirement is of decisive importance for the existence of the offense of bribery, since it is an offense of duty, it can be retained in the charge of an official only in the event of breach of an obligation falling within his duties.

Consequently, considering that, on the one hand, it was not possible to prove the activity of Mrs.X for claiming the property, and on the other hand, that the civil servant did not have the competence to fulfill the act in connection with which non-fulfillment is claimed would have claimed the good, the elements of objective typicality of the crime of bribery are not met, so that the court ordered the acquittal. We appreciate the solution of the court as being legal and thorough in the conditions in which the civil servant is not during the exercise of his service attributions, so that the crime of bribery cannot be retained.

Mrs.X was charged with committing the crime of bribery, consisting in the fact that, on 15.03.2016, in connection with the non-fulfillment of the control attributions, she claimed and received from a company a good in exchange for not applying a contravention fine. According to art.100 para.(1) C.pr.pen. During the criminal investigation, the criminal investigation body collects and administers evidence both in favor and against the suspect or defendant, ex officio or upon request.

In relation to the constitutive elements of the crime of bribery, in the alternative variant of not fulfilling the service attributions, we appreciate that they are not fulfilled because the civil servant is not at that moment in the exercise of the service attributions. The condition regarding the objective side of the crime implies that the deed is related to the service attributions of the active subject. The service attributions and their exercise are a concrete and obligatory condition in order to be able to retain the crime under the aspect of the alternative variant of the non-fulfillment of an act.

Or, considering that at the moment of entering the commercial space, the civil servant is not in the exercise of his duties, not exercising any act in this regard, we appreciate that the deed charged to Mrs.X does not meet the constitutive content of the bribery offense. The proof of the fact that Mrs.X is not in the exercise of her duties in the commercial space is also confirmed by the General Commissariat for Consumer Protection. The institution confirms that the control theme considered only the public catering units (restaurants, fast food units, terraces, breweries, confectioneries etc.) and the kiosks inside the schools.

Considering the official point of view of the Regional Commissariat for Consumer Protection, it is obvious that at the date of the control, the civil servant did not have the attributions to carry out controls on products from other units than those mentioned in the topic, being excluded from this category. Therefore, we consider that since Mrs.X did not

have the task of carrying out the control in the commercial unit, she did not fulfill any act regarding the service attributions.

ARGUMENTS FOR WHICH THE HYPOTHESIS SUPPORTED BY THE PROSECUTOR IN THE INDICTMENT CANNOT BE ACCEPTED

Regarding the commission of the crime of bribery under the manner of the claim: The prosecution could not prove that Mrs.X had claimed the property in exchange for failure to perform her duties. Given that the demand for money or other benefits must be clear and unequivocal, it can be seen that this condition is not met in the case of unclear, equivocal and ambiguous expressions. Another interpretation would lead to an extensive and therefore abusive application of the text of the law (C. Rotaru, A-R Trandafir, V. Cioclei, 2018, p.225.)

The civil servant must be in the exercise of his duties. We appreciate the fact that one of the conditions that must be fulfilled within the constitutive content on the objective side of the material element is that the act whose fulfillment, non-fulfillment, urgency, delay is claimed or received benefits to be part of the service duties of the civil servant. . Specifically, to be an act regarding his duties or an act contrary to these duties (V. Dobrinoiu, I. Pascu, MA Hotca, I. Chis, M. Gorunescu, C. Paun, M. Dobrinoiu, N. Neagu, MC Sinescu, 2016 pp.517-520). Due to the lack of meeting this condition, the deed retained in the charge of Mrs.X cannot be included in the crime of bribery, as the objective typicality of the deed is missing.

Moreover, it has been appreciated in the specialized works that this requirement has a decisive importance for the existence of the crime of bribery, because, being a crime of corruption, it can be retained in the charge of an official only in case of violation. an obligation that falls within its competence. (Al. Boroi, 2014, pp.434-435). Regarding the need for the existence of an equivalent between the promised benefits in order to be able to retain the crime of bribery, we notice that in the description of the prosecutor this condition cannot be retained.

An additional argument to justify the lack of meeting of the constitutive elements of the crime of bribery is the derisory value of the good supposed to be handed over to the civil servant. The prosecution claimed that Mrs.X had received a good worth 21 lei in order not to apply a contravention sanction to the commercial space. The value of the good is derisory given that the amount of a fine applied for non-compliance with Government Ordinance no. 2/1992 on consumer protection is from 3,000 to 50,000 lei. According to the literature, it is essential that the money or benefits remitted represent a consideration for the activity required of the civil servant in connection with the fulfillment, non-fulfillment, delay of fulfillment or performance of an act contrary to official duties. It is not the essence of the crime of bribery to whom the money or benefits are actually remitted, but the civil servant must know their retributive nature and the purpose for which they were given or promised (Vasile Dobrinoiu, Norel Neagu, 2014, p. 485). Compared to the derisory value of the good supposed to be received by the civil servant, a correlation cannot be retained between the non-fulfillment of the service attributions and the benefit received.

We consider that the deed retained in the charge of Mrs.X, commissar within the National Authority for Consumer Protection does not meet the constitutive elements of the crime of bribery. In similar cases, the Romanian courts have concluded that to receive

something means to take over, to take possession of something. In this case, the initiative belongs to the bribe-taker, and the receipt is not conceivable without an act of remission performed by him.

To claim something means to ask for something, to make a claim. In this way of committing the crime, the initiative belongs to the perpetrator. It is not necessary for his claim to be satisfied. In the case brought before the court, the evidence administered does not converge either to the option of claiming or receiving by the defendant A the amount of 5000 euros in order to issue the urbanism certificate for the land in street x (amount submitted to Deputy Mayor B.) or to the option of claiming or receiving by the same defendant of a sum of money in order to issue an urbanism certificate for the land from street x (Decision of the High Court of Cassation and Justice no. 865/2018). The deed charged to Ms.X cannot be classified as receiving undue benefits, as the bribe-giver did not offer the good to the civil servant, nor as claiming because there was no request from Ms.X.

CONCLUSIONS

In order to be able to be retained the crime of bribery, it is necessary and obligatory to ascertain that the deed retained in charge of the active subject is circumscribed to its service attributions. These attributions must be expressly provided in the sphere of activity or competence of the active subject, which gives him the capacity to perform acts or activities regarding the finding or sanctioning of contraventions. We appreciate that in the absence of an express delegation in the sense of performing a control, the civil servant cannot be an active subject of the crime of bribery because he is not in the exercise of his duties, thus lacking the objective typicality of the crime.

The prosecution could not prove that the civil servant had expressly claimed undue benefits and even more so the fact that he was in the exercise of his duties. The presumption of innocence can be overturned only by certain evidence of guilt. If there is no such evidence, the doubt as to guilt cannot be removed, any doubt being interpreted in favor of the defendant. Thus, the crime of bribery cannot be retained in the charge of an official who did not have the attribution of fulfilling or not fulfilling the act for which sums of money or other undue benefits were received. We consider that this requirement is applicable to all corruption offenses, which cannot be retained in the charge of an official except in case of violation of an obligation that falls within his competence.

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YOUNG PEOPLE'S PERCEPTION OF THE EUROPEAN UNION. VISIONS AND PERSPECTIVES

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Abstract: *In today's society, young people's perception of the European Union is very important, especially in the context in which it faces various crises. In this context, the perception of young people and how they trust the European Union is a very important basis for the future of the EU. In this sense, the methods used to find out the young people's perception of the European Union were the online questionnaire and the focus group, finding out the young people's confidence in the EU, but also their visions and perceptions about the EU and its future. What is certain is that the way young people perceive the European Union is vital for its harmonious development and the perpetuation of European values by the young generation.*
Keywords: *European Union, young people, perception, visions, confidence, future, European citizen*

INTRODUCTION

The European Union is probably the most important project that has taken place on the European continent. The moment of the appearance of this European project was not easy, and the vicissitudes did not stop appearing but the European Union "survived and adapted". We cannot fail to state that the existence of the European Union has many beneficial, positive aspects for the young people in our country, and this project "has influenced and deeply influences the current Romanian society". In this sense, the perception of young people on the European project is vital, especially if it has direct implications on them, if they know the possibilities offered by the European project involving "areas with great potential, opportunities" to be exploited by young people. There were many moments in history, when certain dates were significant for the achievement and achievement of the European Union, and "in many respects, 1945 can be called the year of Europe." History shows us that the European Union went through difficult times, and "the political history of Europe after 1945 began with the realization of this decline of the continent and the understanding that there was a need to" reinvent the future. " Thus, the European Union's mission is not an easy one, especially since it is constantly being tested, and in 1957 the six ECSC member states signed the Treaty of Rome, extending their mission to include the creation of a new European Economic Communities ". The European Union also places greater emphasis on the main issues of interest to European citizens, and "the new European agenda expands the idea of universal rights", which gives the European Union a great image. At the same time, for the proper functioning and perpetuation, in order to "prepare the future, the Union understood that it must relate to its achievements, to continue to promote fundamental values such as solidarity and justice". The European Union cannot function effectively without focusing on fundamental values. It is also true that although the European Union is undergoing new and increasingly

difficult changes and trials, it must constantly adapt, making an eloquent comparison, because "political institutions like the European Union are not static," they are constantly changing and adapting ”.

At the same time, membership of the European Union is a privilege for most states, and "the convergence criteria for accession to the Euro-are set out in the Maastricht Treaty and will not be changed any time soon." That is why, for an optimal functioning, the European Union needs a coherence and constancy that will help to perpetuate this project, and “today it is an excuse that the European Union needs a strong leadership and endowed with an internal negotiation capacity and global ”. The European project is not a simple one, but on the contrary, very complex and very difficult because it also involves the consultation part, and "the consultation process of the European groups has both advantages and disadvantages". Therefore, the need to perpetuate the European project is an absolutely necessary one, especially since "we cannot ensure the economic development of Europe without its political union". Due to certain reasoning, the project may need a change to a certain extent, in order to be able to adapt to the requirements of the future and "this important change of perspective is very clear" being a necessary one in the future. It is true that the European Union is not perfect, pursuing its goals, but "not only Member States but also regions, public institutions, European companies seek to achieve their interests", it being understood that the European project does not it is a perfect one, but it is intended to be a well-done project, regardless of interests and objectives. At the same time, "at European level, the criticism has multiplied", which should draw the attention of the representatives of the European Union on certain issues. But even so, even if the European project is not a perfect one, it still remains an absolutely necessary one because "the two world wars in the first half of the last century convinced European citizens and leaders to support a construction of Europe". At the same time, within the European Union, the economic part is of vital importance because "the Union has important means to allocate economic resources", and this makes the Union responsible for the economic establishment of the Member States. It is obvious that for a good cooperation and collaboration between the member states at the level of the European Union, a harmony and a political balance is needed, and “a series of politico-military and diplomatic events imposed, after a century of confrontations between the main states. Western, a new principle in European interstate relations - the principle of political balance ”.

That is why, within the European Union, balance remains an essential factor for the good perpetuation of the European project. Throughout its existence, the European Union has faced many difficult situations that have called into question the resistance of the European Union, and "the consolidation of the Union takes into account precisely this fact, the possibilities to pose and solve problems of European magnitude." The Union's mission is not to keep the states within it united, but "Europe under the sign of 'unity in diversity' is a concept that assumes more and more valences and dilemmas". Therefore, the desire of states to continue the European project must be much stronger than the problems or vicissitudes that arise along the way because as a member of the European Union have also won the citizens of the Member States because "the notion of European citizenship is therefore a status granted to persons who are part of the "community". In this context, the perception of young people about the European Union, the advantages of being a European citizen, but also all the possibilities that young people have on the occasion of the existence

of the European project is essential. In this sense, everyone's opinion on the European Union is fundamental

Their opinion on the future of the European Union is vital because young people are the ones most affected by European Union decisions, especially if they want to study in Europe, work in the Member States of the European Union or benefit from all the projects put in place. available to it. In this sense, the perception of young people about the European Union is crucial, but also their ideas and visions regarding the European project. At the same time, a major role that influences the perception of young people on the European Union is education, and "the adequacy of educational programs to this major goal of European integration" is absolutely fundamental, education remaining one of the most important pillars to help young people shape the perception of the Union. European. In this sense, the European Union has a major role to play in the harmonious development of society, and the way in which young people perceive this very important project is of major importance, especially since the European Union, although started under the clear auspices of economic cooperation. , manifests itself today as a multidimensional, dynamic reality, with strong effects in political, social, cultural terms ", a fact that must bring among young people a higher degree of awareness of the importance of the European project.

Another important component is given by the European identity, which "in the last decades two concepts have been and are being conveyed, especially as the EU is in the process of expanding to the east of the continent: European values and European identity". which also highlights the importance of identifying how young people relate to European identity, and "European identity is rather an ongoing process, contextualised and with different dynamics depending on the reporting angle", in this context, European identity being very important for finding out how young people relate to the European Union.

INTERPRETATION OF DATA. QUESTIONNAIRE

The main objective of this research is to highlight and identify how students perceive the European Union. The literature indicates that young people, for the most part, appreciate the European Union, only that the various challenges it has gone through have led young people to lose confidence in the future of the European Union, a fact confirmed by application of questionnaires. When asked about the direction in which the European Union is currently going, the respondents answered that the European Union is going in a "good" direction in the proportion of 36.3%, and in the proportion of 40.3% they answered that it is going in a "good" direction. direction "neither good nor bad". This fact highlights the way in which young people look in the direction of the European Union, which certifies us of the results of the questionnaire. The perception of the direction in which the European Union is heading is not very optimistic in their view, but it is still a realistic perspective.

Asked about how important in their opinion, the role that the European Union has in the future of young people in Romania, the respondents answered in a proportion of 37.8% as very important. 34.3% of the respondents answered that in their opinion, the decisions of the European Union greatly influence the daily life of young people. When asked if they consider themselves European citizens, 90.5% answered yes. Asked about the degree of trust they have in the European Union, 54.2% of the respondents chose the answer "a lot" of confidence. Ask if they consider it a beneficial thing that Romania is part of the European Union, in proportion of 88.1% they answered "yes". Ask how beneficial

they think it was that Romania joined the European Union, in proportion of 48.8% they answered "very much". Asked if they consider that Romania should leave the European Union, the respondents answered negatively in a proportion of 90.5%. Asked if they consider that the European funds are beneficial for Romania, in proportion of 91.5% they answered "yes". Asked if they consider that Romania has had more advantages since it is a member of the European Union, the respondents answered "yes" in proportion of 87.1%. Ask if they consider that young people in Romania have more advantages by the fact that Romania is a member of the European Union, in proportion of 92.5% have answer "yes". Asked if they consider that young people in Romania are aware of the advantages they have by the fact that Romania is a member of the European Union, 56.7% answered "no", 26.9% answered "no". Yes". When asked how often they watch news with the European Union as their main topic, respondents answered "every day" in a proportion of 8.9%, in a proportion of 21.4% they answered "several times a week", in 31.3% answered “several times a month”, 12.9% answered “once a month”, 15.4% answered “several times a year” ", In proportion of 8% answered" not at all ". Asked how much they think their lives would change if Romania were no longer part of the European Union, 44.8% answered "a lot", 27.4% answered "a lot" ”, And in proportion of 16.9% consider that it would not change much. Asked if they are interested in the future of the European Union, the respondents answered "yes" in the proportion of 87.6%. Asked to what extent they are interested in the future of the European Union, the respondents answered “a lot” in proportion of 45.3%, in proportion of 22.4% they answered “very much”, and in proportion of 22.4% they answered answer "neither much nor little." Asked if they talk to family, friends about the European Union, respondents answered "yes" in the proportion of 59.7% and 35.8% answered "no". Ask how often he talks to friends, family about the European Union, 27.9% answered “quite often”, 38.8% answered “rarely”, and 19.9% answered “very rarely”. When asked if they consider that the decisions of the European Union influence their life in a major way, 64.2% answered "yes". Asked if they think that in the future the European Union will face more problems, 72.1% answered "yes". When asked if they participated in European Union projects, 37.8% answered "yes". Asked if they read articles, magazines about the European Union, the respondents answered "yes" in a proportion of 62.7%. When asked about the evolution of the European Union in the next 5 years, 51.2% answered “good”, 19.9% as “not very good” and 8.5% as, ,very good". Asked where they get their information about the European Union, respondents said that from TV, internet, websites or radio. When asked how informed they are about the European Union, they answered 53.7% that they are "quite informed", 34.8% that they are "little informed". When asked what image they have of the European Union, 64.5% of the respondents answered that they have a good image.

Interpretation of data. Focus group The focus group was applied on 5 students, aged between 20-25 years, from bachelor and master level, from Babeș-Bolyai University. Following the application of this method, a much clearer image was created related to the perception of young people on the European Union, by identifying the answers that confirmed and the results obtained from the application of the online questionnaire. Asked what they think about the European Union, what they think about the European Union, the participants provided answers that offered similarities to the answers collected following the application of the online questionnaire. Following this question, the participants' perception proved to be a positive one, in that the answers have the variant "The European

Union is a functional mechanism of member countries", which surprised the functionality of the European project and also surprised the phrase "economic power of Europe ”which also captures the economic aspects of the European project. Another answer emphasized the importance of the European Union as "the security of functional democracies", which also captures the element of democracy in question, and was also mentioned as "the guarantee of sustainable economic development". In this sense, a good image of the European Union was identified, "I have a good opinion about the European Union", a fact proved by the statement "Romania has many benefits as a member of the European Union".

Also another answer that highlights the advantages of the European Union is "I think it is a very good mechanism for international cooperation." At the same time, the importance of unity is given by the following answer "actor focusing on the common denominator of the Member States" and a first concern is mentioned, namely "in the coming years, the European Union will have to raise the issue of maintaining this Union. she set off. "

The next question was about the advantage of making pate in the European Union. The answers further strengthened the results obtained by applying the online questionnaire, the first participant saying "yes, of course, it is an advantage and the benefits are felt especially by us, as students, who have more developed educational programs", which confirms and the results of the application of the questionnaire, which highlight the positive perception of young people, especially in the area of education and youth benefit programs. Another answer that confirms this idea is "Romania, as part of the European Union, benefits from a series of financial aid in the form of European funds, which contribute to the development of Romania", which confirms the results obtained from the questionnaire. Also, the advantages that Romania has in their perception are given by the following answer “Romania has advantages, being in the European Union, we are talking about the European funds to which we have access and especially now with the Covid-19 pandemic we benefit from a aid mechanism ”. It is noteworthy that the common element of the benefits is given by European funds, which is accentuated by the following answer, the first thing that comes to mind are European funds, which contribute a lot, although they are not accessed enough. There are benefits for young people, for students, which we do not necessarily notice ”. The next participant answered "the major importance that the European Union has in consolidating democracy in Romania".

The next question was about their opinion on the advantages and disadvantages that young people have by the fact that Romania is a member of the European Union. In this sense, the answers are very similar to those resulting from the application of the questionnaire, as evidenced by the application of the focus group, the answer being "Romania manages to gradually capture this Western influence, and among young people this aspect is felt because it has succeeded in receiving this positive influence, both in the collective mentality of young people and through these programs for students. ”Another answer underlines that“ at the same time, a disadvantage and at the same time an advantage, would be the free movement of people, given the fact that, in Romania, most of the time, young people choose to go abroad, in aa better place ”, which further highlights the importance of the financial component when it comes to the European Union. that “the Erasmus + program can be an advantage for students and of course economic benefits.” Another answer that outlines the benefits for students is “the Erasmus + program, solidarity projects th rough which you can participate as an exchange of experience and support for

young people that the European Union provides to young people who want to open certain businesses, startups ". Another advantage is represented by "those internships that we find in the institutions of the European Union and disadvantages, depending on who is watching".

The next question is related to trust in European institutions and in Romanian institutions, and this fact shows that the degree of trust differs, in that a participant states that "at the level of trust, the perception of young people, students, is to have confidence in what other states offer us, but it is important to have confidence in the mechanisms in our country, trust is on both sides ". Another common element is given by the following answer, "national interests are very important, at the level of the European Union the interests of all states are taken into account". Another answer tells us that "at the moment I have more confidence in the European institutions than in Romania". Another answer is "I have more confidence in the European institutions than in Romania". "I could say that I have more confidence in the institutions of the European Union."

The next question concerned their opinion on how the lives of young Romanians would change if Romania were no longer part of the European Union. ,, we feel certain aspects, advantages or disadvantages, from the accession to the European Union, the life of young people is indirectly influenced by the European Union, and if Romania were no longer part of the EU many things would change, and if it is in good or bad, it depends on the mentality ". ,, beyond the economic benefits, the European Union can be considered a security structure, even if we had a functional and economic democracy we would be very well, the security issue arises, or the European Union is a guarantee including security, at least for Romania being the geopolitical and geostrategic position ". "Yes, I think young people would have a lot to lose, starting with free movement, access to jobs abroad" "would have lost benefits" "We, unlike the UK, which said it wants to leave the European Union, and we cannot compare ourselves from any point of view and such initiatives would have existed, so we would clearly have to lose ".

The next question was about their perception of the problems that the European Union will face in the future, and in this sense, we find out what would be in the view of the participants the most pressing problems that the European Union could face in the future. In this sense, a first answer is "I think that things in general will improve." ,, I think the main threat to the European Union is the hybrid war of the Russian Federation, which goes beyond what we know, the hybrid war comes on discursive narratives, including religion, which, at least in Romania are very dangerous and the rise of speeches populist ". "A problem could be Euroscepticism, which could increase at European level in the coming years", the rise of populist and Eurosceptic discourse or the desire of some states to leave the EU, terrorism "" Euroscepticism, the problem of climate change "

The next question is about how participants consider themselves European citizens, "personally, yes, I consider myself a European citizen, especially through my involvement, I am informed about the European Union" which highlights the significant role it plays. involvement and information of young people about the European Union. ,, yes ",, yes" ,, yes, by the fact that I participated in European projects, I follow on social media different EU institutions "" yes ". The last question was how they consider young people to be disinterested in what is happening in the European Union, as evidenced by the answer "unfortunately yes, we have this lack of interest" which highlights our critical tendency to addressing young people about their lack of information. However, the lack of interest is

seen through the prism of a participant as being present at the level of national information, but also information about the European Union, unfortunately, in my opinion, young people in Romania are not even interested in what is happening in their neighborhood , from their own impressions and discussions with colleagues, friends, young people in Romania live in a bubble and then nothing else matters, I do not think that young people in Romania are enough information about the EU "which certifies how the discussions with friends contribute to shaping this image of young Romanians who have a strong disinterest in information about the European Union. "I think young people are not aware that young people are aware of the importance of the EU" "I think the vast majority are not interested in what is happening in the European Union" "in their minds are very abstract notions".

CONCLUSIONS

The results of this research have shown how young people perceive the European Union and how they perceive its future. Following the application of the questionnaire, it was found the degree of trust that young people have in the European Union, which is quite high, but with some reluctance, due to the challenges faced by the European Union during its existence. However, despite all the challenges faced by the European Union, it is burdened with high confidence among Romanian students, which confirms their desire to perpetuate this European project. Also, following the application of the questionnaire, the way in which the students perceive the direction towards the European Union, as a good one, but the perspective being quite reserved in their vision, which conforms the confidence they have in The European Union, but this is at a medium level, due to uncertainties regarding the European Union. What is certain is that, despite all the challenges facing the European Union, students are aware of its importance and role in the daily lives of young people, while confirming the major role that the European Union has in their lives.

In this sense, young people are aware of the major influence of the European Union and how decisions taken at European level influence young people's lives. Another very important aspect that strengthens young people's confidence in the European Union is the fact that following the application of the questionnaire it was validated that young people consider themselves in a major proportion as European citizens, which increases the degree of trust in the European Union. The results of the research also highlight the way in which young people appreciate Romania's membership in the European Union as very beneficial, which proves that there is a positive perspective and perception among young people about the European Union and Romania's membership. to this European project. The positive trend regarding the existence of the European Union and Romania's membership in the European Union is materialized after the application of the questionnaire, which confirmed that students do not want and do not appreciate as positive that Romania leaves the European Union. Another very important aspect in the way of appreciation of young people regarding the European Union is also due to the existence of European funds, as being considered by young people as being beneficial for Romania. In this case, with this advantage of European funds for Romania's development, the degree of trust is high and the perception of young people about the European Union is very positive, these European funds contributing to shaping an optimistic perception among young Romanians

Another component of shaping a positive perception of students regarding the European Union and their high degree of trust is generated by the advantages that Romania

has had since joining the European Union in 2007. In this sense, the advantages of benefits Romania contributes to increasing the confidence of young people in the European Union and shaping a positive perception of it. Automatically and implicitly, by the fact that Romania benefits from different advantages, in the vision of young people, young people are the ones who benefit from different advantages, which contributes to developing a positive perception of the European Union and shaping a beneficial and positive image of the EU. In this context, in which respondents have a positive perception of the advantages that Romania has after joining the European Union, they consider in a high percentage that young people in general are not aware of the advantages they have by Romania's membership in European Union. It is very important to mention that the respondents appreciate and are aware of the advantages that young people have by the fact that Romania is part of the European Union, but following the answers, they consider that young people are not actually aware of the advantages they have by belonging to Romania. to the European Union. At the same time, if the respondents of the questionnaire read / watch news about the European Union, following the application of the questionnaire it was found that they watch / read once or several times a month, according to the answers, which indicates a trend of informing young people about news. related to the European Union, as they are not informed on a daily basis, but are connected to the realities and news and information about the European Union. At the same time, the respondents believe that their lives would change a lot if Romania were no longer part of the European Union, which shows their confidence and awareness of the major role that the European Union has but also of the advantages that Romania has. from joining the European Union, which strengthens their confidence and strengthens the positive image of the European Union.

Following the application of the questionnaire, it is highlighted that young people are interested in the future of the European Union, a fact attested by the fact that they are aware of the advantages that the European Union brings but also by the fact that they are informed about the European Union. a large proportion of respondents are interested in the future of the European Union. Also, following the application of the questionnaire, the respondents stated that they talk to friends or family about the European Union, but not in a very high percentage, which indicates a certain restraint on the discussions on this topic, which can often be sensitive or may request certain specialized information. At the same time, respondents believe that the European Union influences their lives in a major way, which highlights their awareness, but also a recognition that in their opinion, the European Union will face more problems in the future. . Also, another very important element in shaping the perception of young people about the European Union is given by their participation in conferences, projects whose main theme is the European Union because this active participation contributes to increasing young people's confidence in the European Union. At the same time, following the focus group, the results obtained confirmed the results obtained after applying the online questionnaire. It is identified that young people have a positive perception of the European Union and that they are aware of the advantages that Romania has by belonging to the European Union.

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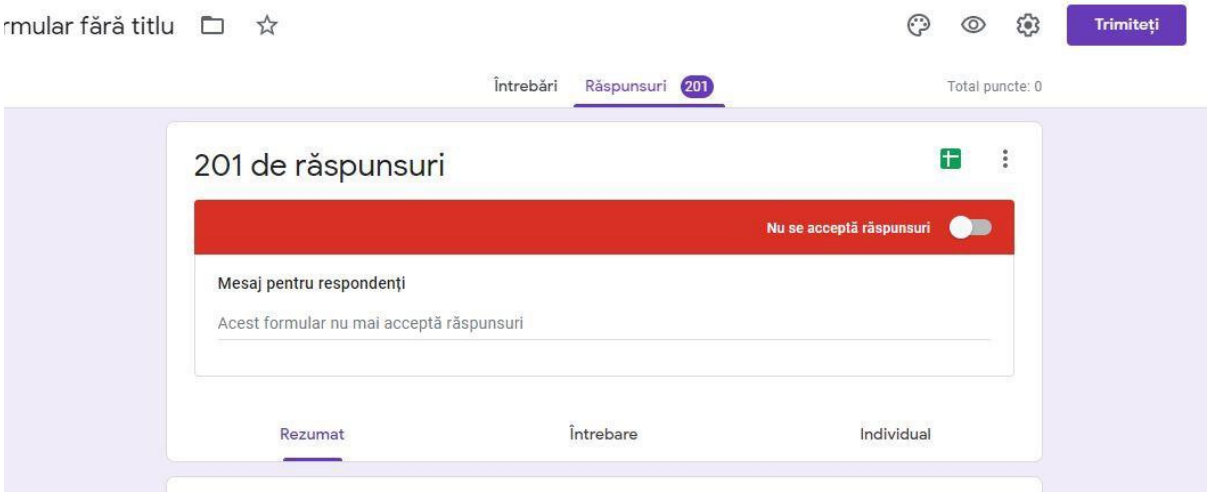
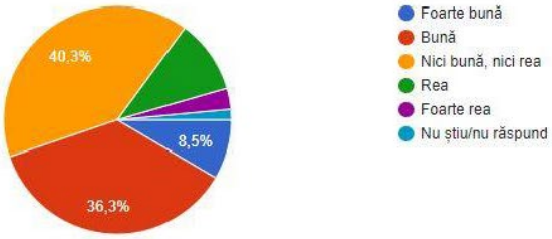
Anexă chestionar online



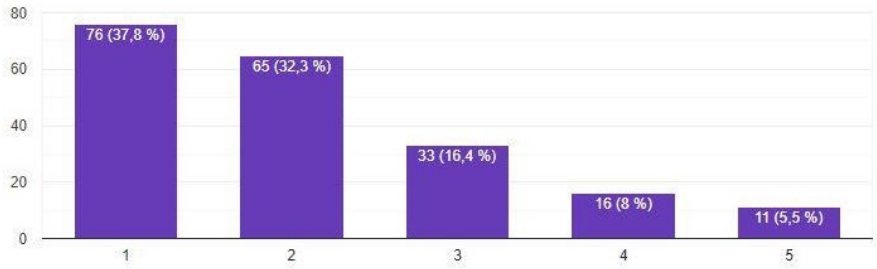
În ce direcție crezi că merge Uniunea Europeană în prezent?

201 de răspunsuri



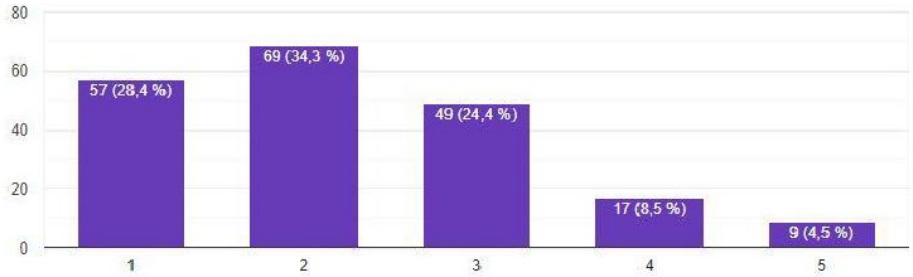
Pe o scară de la 1 la 5 (unde 1=foarte important, 2=important, 3=nu foarte important 4=puțin important,5= deloc important) cât de important crezi că este rolul pe care îl are Uniunea Europeană în viitorul tinerilor din România?

201 de răspunsuri



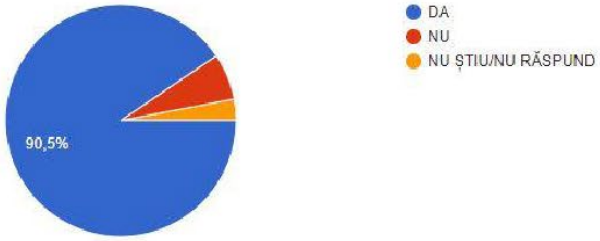
Pe o scară de la 1 la 5 (unde 1=foarte mult, 2=mult, 3=puțin, 4=foarte puțin, 5=deloc) cât de mult crezi că deciziile Uniunii Europene influențează viața de zi cu zi a tinerilor?

201 de răspunsuri



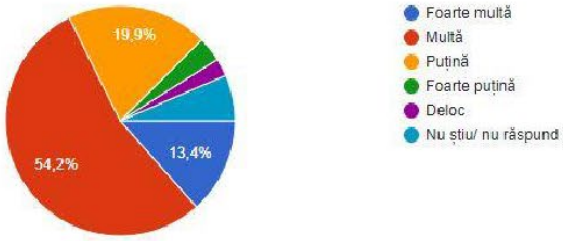
Te consideri un cetățean european?

201 de răspunsuri



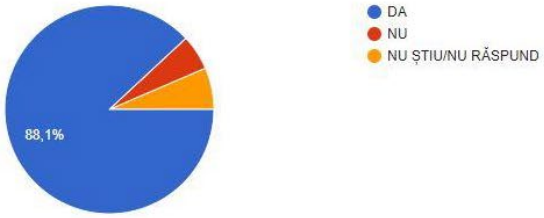
Câtă încredere ai în Uniunea Europeană?

201 de răspunsuri



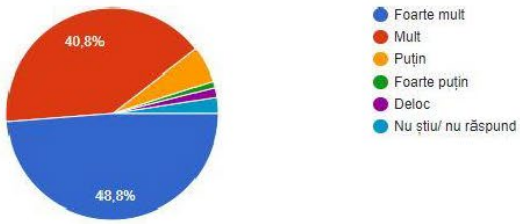
Crezi că este un lucru benefic faptul că România face parte din Uniunea Europeană?

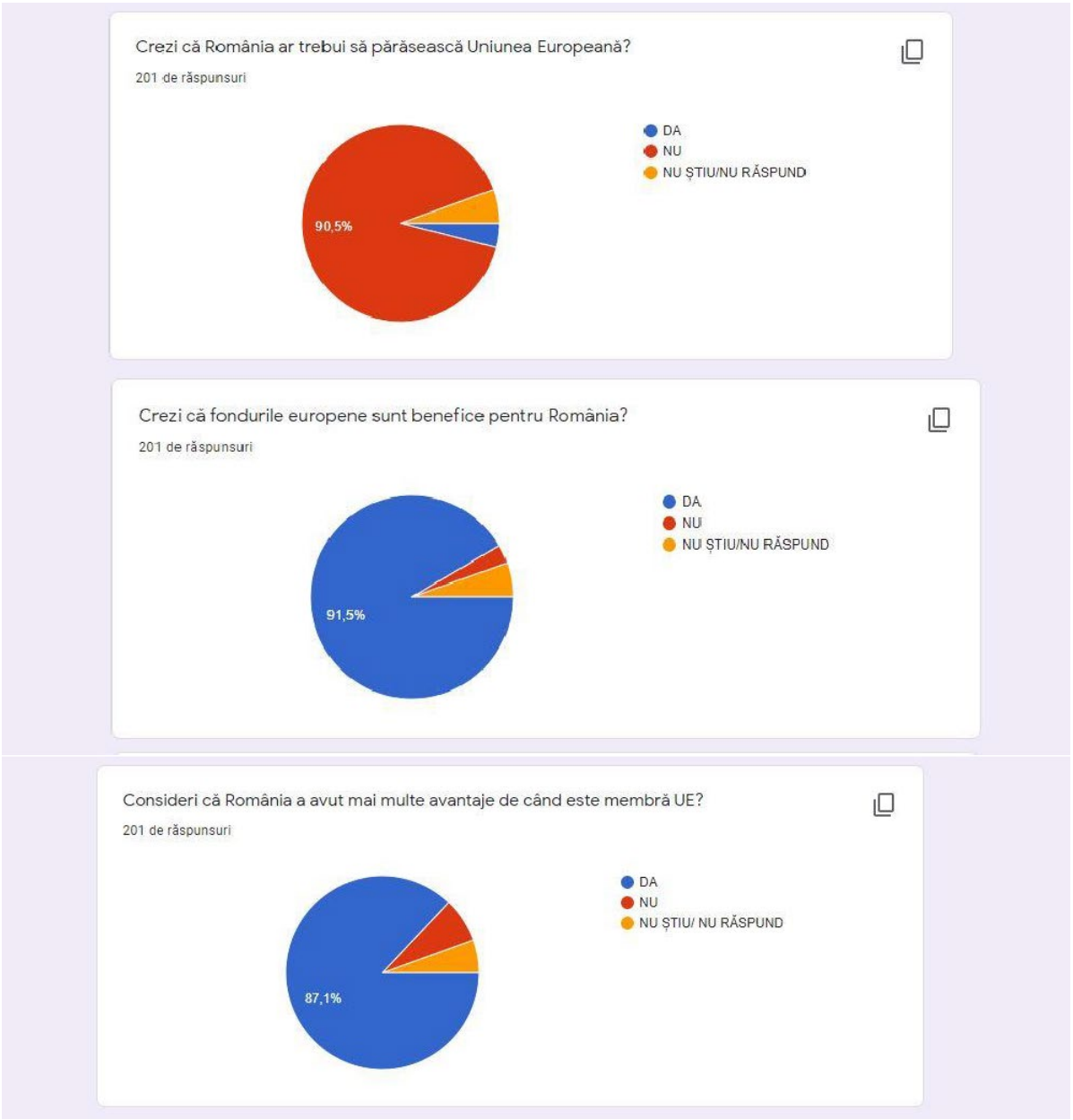
201 de răspunsuri

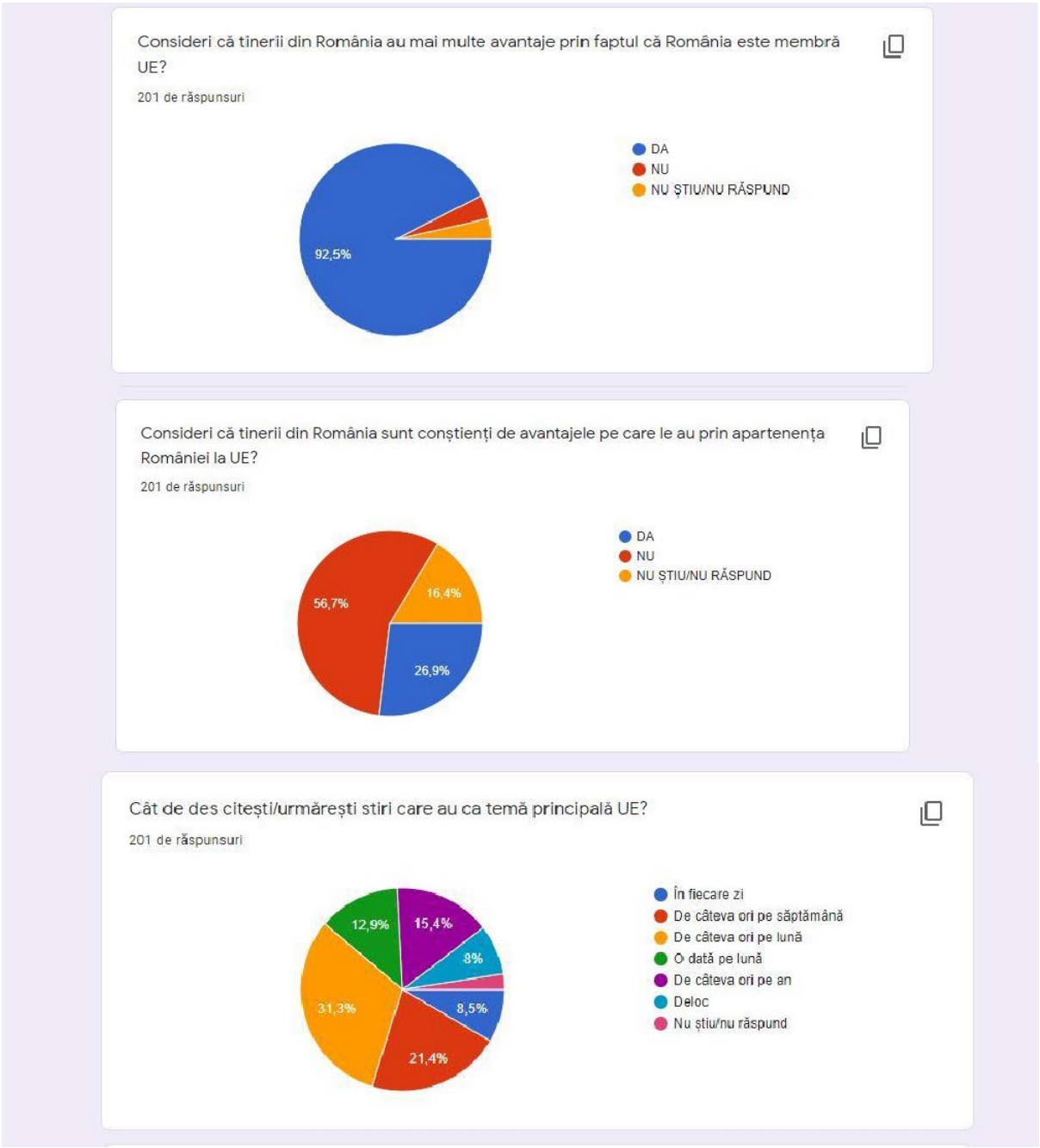


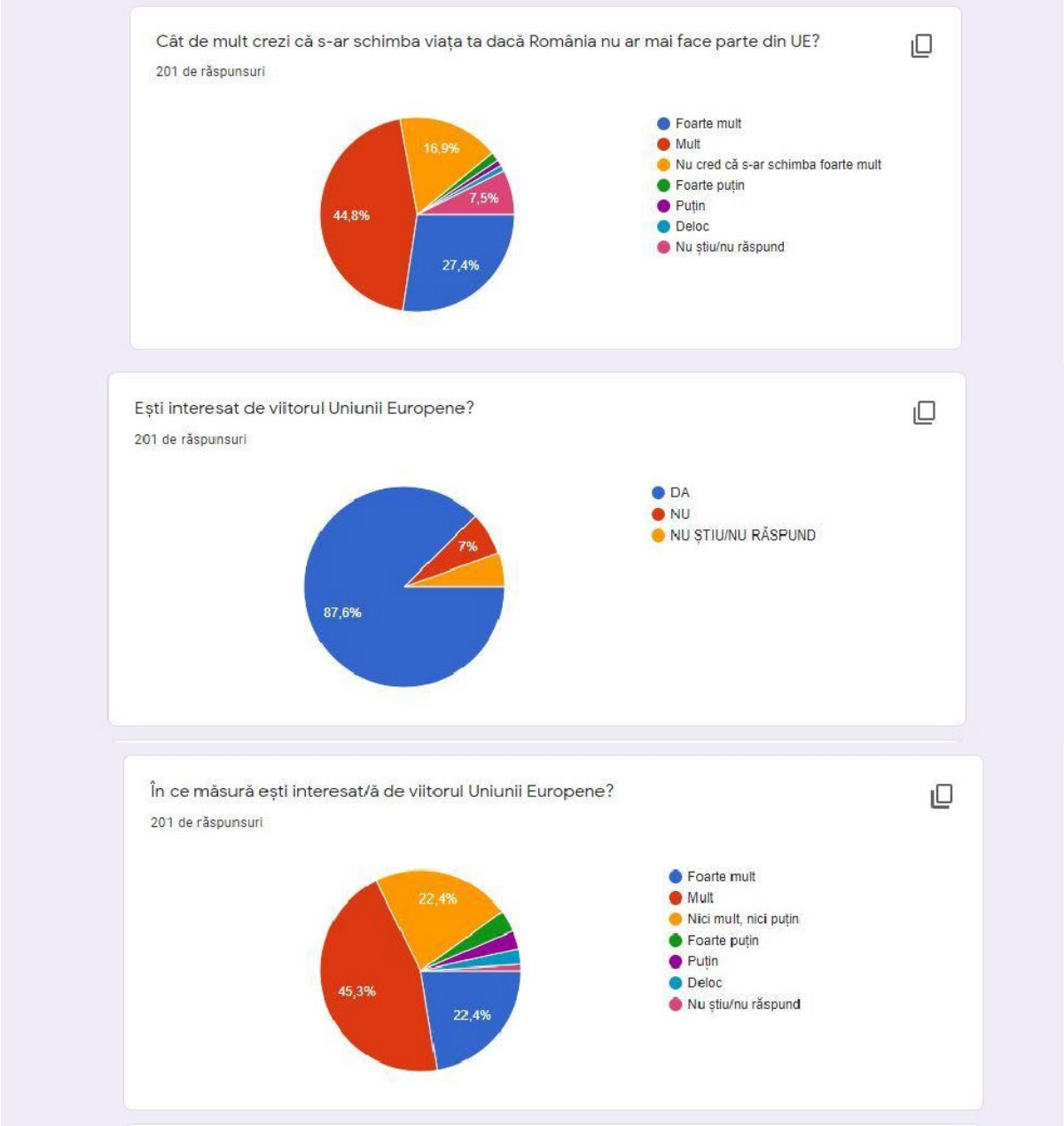
Cât de benefic crezi că a fost faptul că România a aderat la Uniunea Europeană?

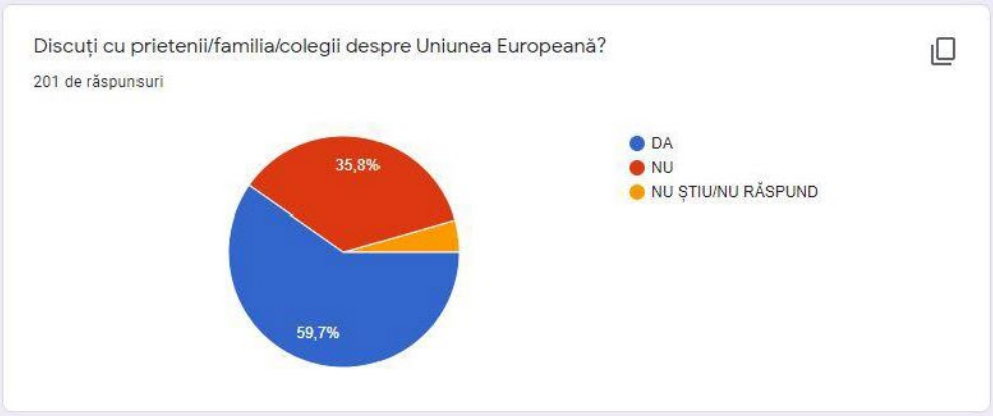
201 de răspunsuri




Crezi că România ar trebui să părăsească Uniunea Europeană?
201 de răspunsuri
DA
NU
NU ȘTIU/NU RĂSPUND
90,5%
Crezi că fondurile europene sunt benefice pentru România?
201 de răspunsuri
DA
NU
NU ȘTIU/NU RĂSPUND
91,5%
Consideri că România a avut mai multe avantaje de când este membră UE?
201 de răspunsuri
DA
NU
NU ȘTIU/ NU RĂSPUND
87,1%


Consideri că tinerii din România au mai multe avantaje prin faptul că România este membră UE?
201 de răspunsuri
DA
NU
NU ȘTIU/NU RĂSPUND
92,5%
Consideri că tinerii din România sunt conștienți de avantajele pe care le au prin apartenența României la UE?
201 de răspunsuri
DA
NU
NU ȘTIU/NU RĂSPUND
56,7%
16,4%
26,9%
Cât de des citești/urmărești stiri care au ca temă principală UE?
201 de răspunsuri
În fiecare zi
De câteva ori pe săptămână
De câteva ori pe lună
O dată pe lună
De câteva ori pe an
Deloc
Nu știu/nu răspund
12,9%
15,4%
8%
31,3%
8,5%
21,4%


Cât de mult crezi că s-ar schimba viața ta dacă România nu ar mai face parte din UE?
201 de răspunsuri
16,9%
7,5%
44,8%
27,4%
Foarte mult
Mult
Nu cred că s-ar schimba foarte mult
Foarte puțin
Puțin
Deloc
Nu știu/nu răspund
Ești interesat de viitorul Uniunii Europene?
201 de răspunsuri
7%
87,6%
DA
NU
NU ȘTIU/NU RĂSPUND
În ce măsură ești interesat/ă de viitorul Uniunii Europene?
201 de răspunsuri
22,4%
45,3%
22,4%
Foarte mult
Mult
Nici mult, nici puțin
Foarte puțin
Puțin
Deloc
Nu știu/nu răspund


Discuți cu prietenii/familia/colegii despre Uniunea Europeană?
201 de răspunsuri
35,8%
59,7%
DA
NU
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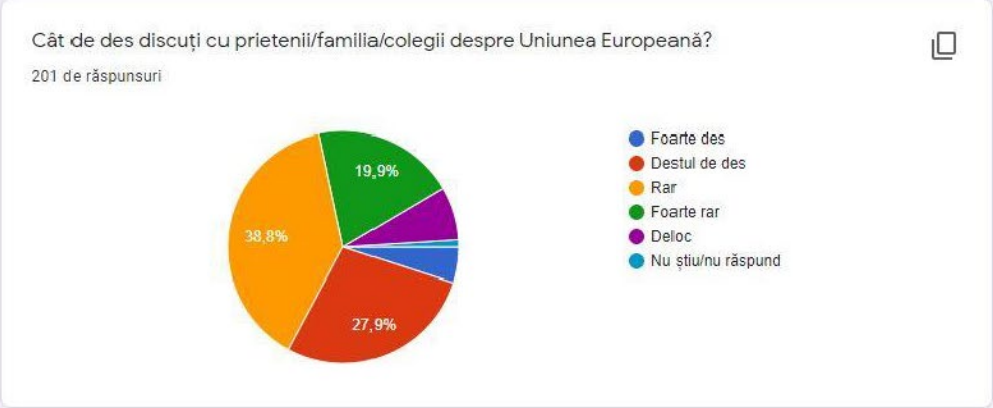
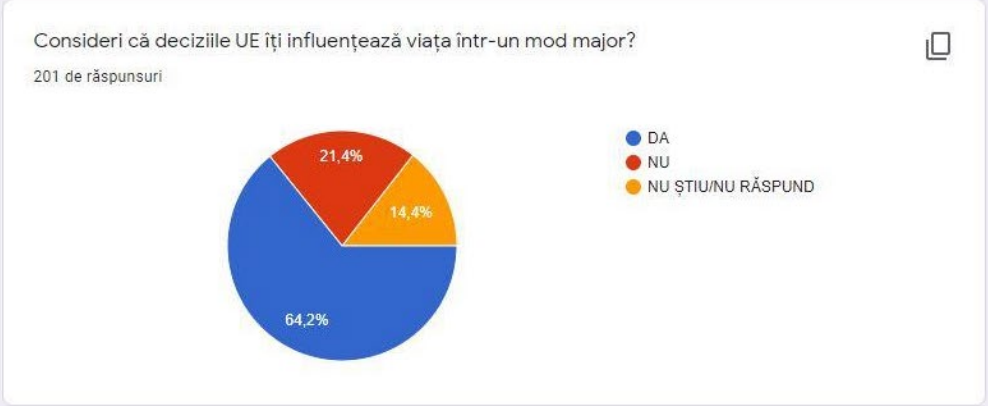
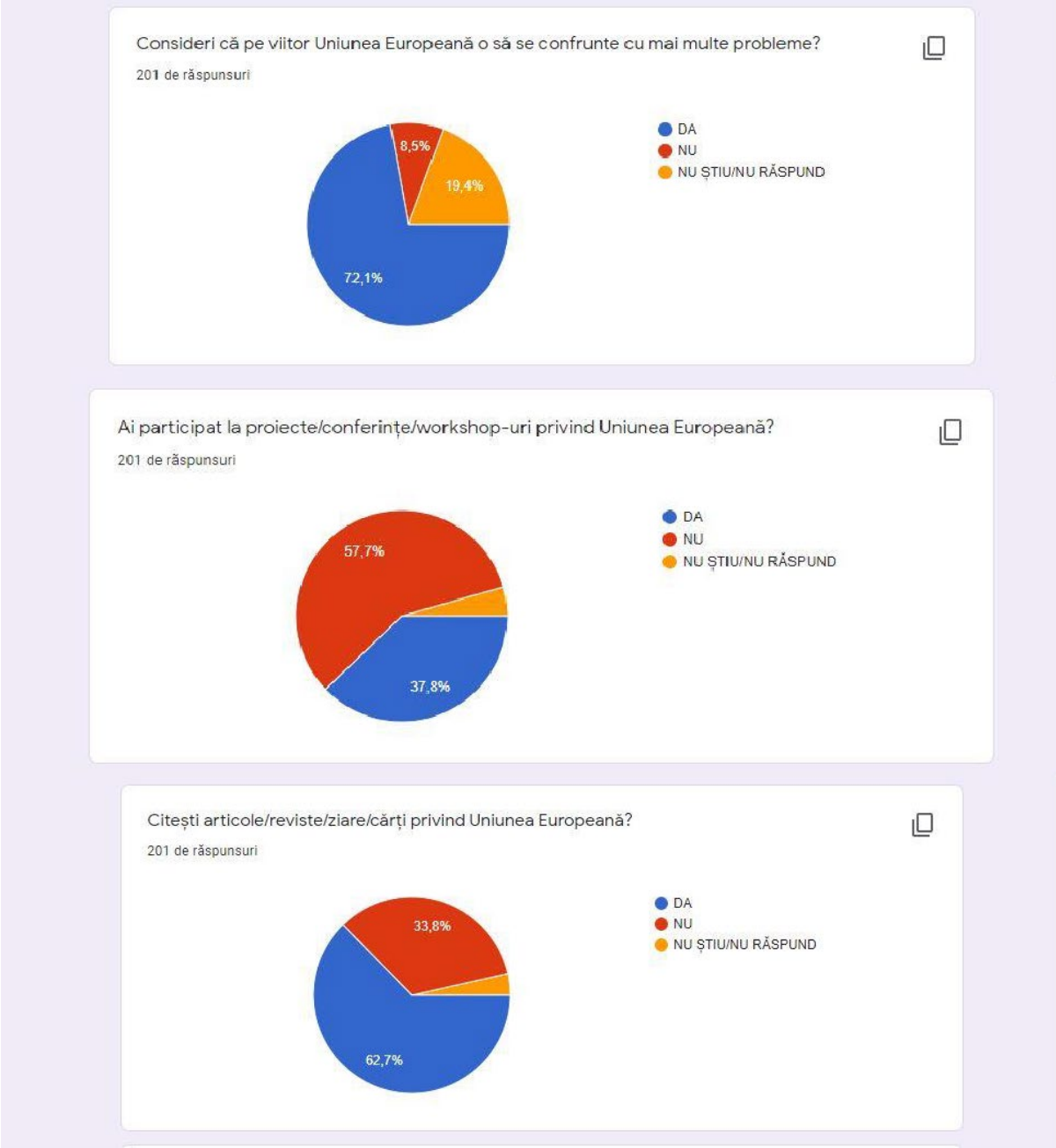
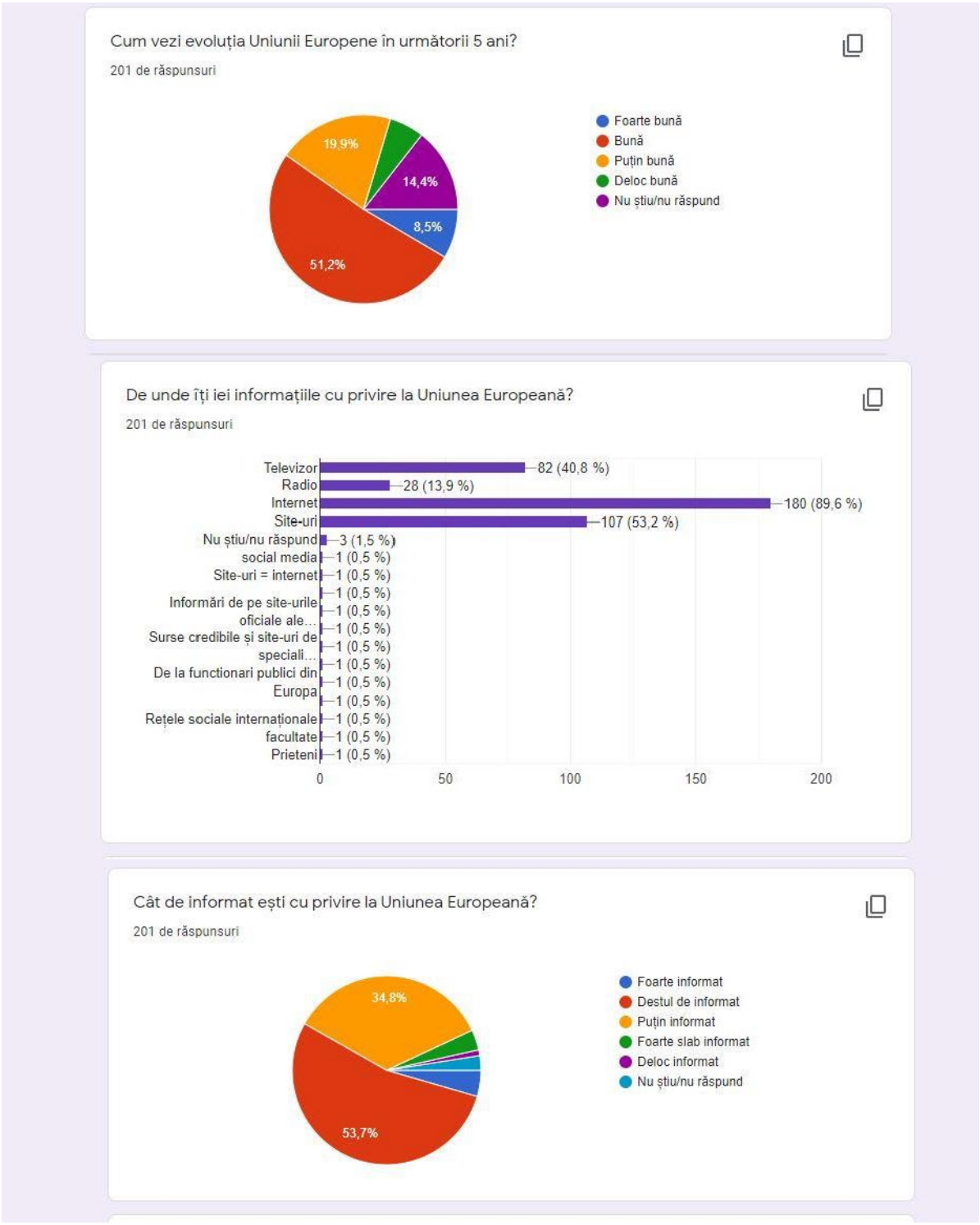
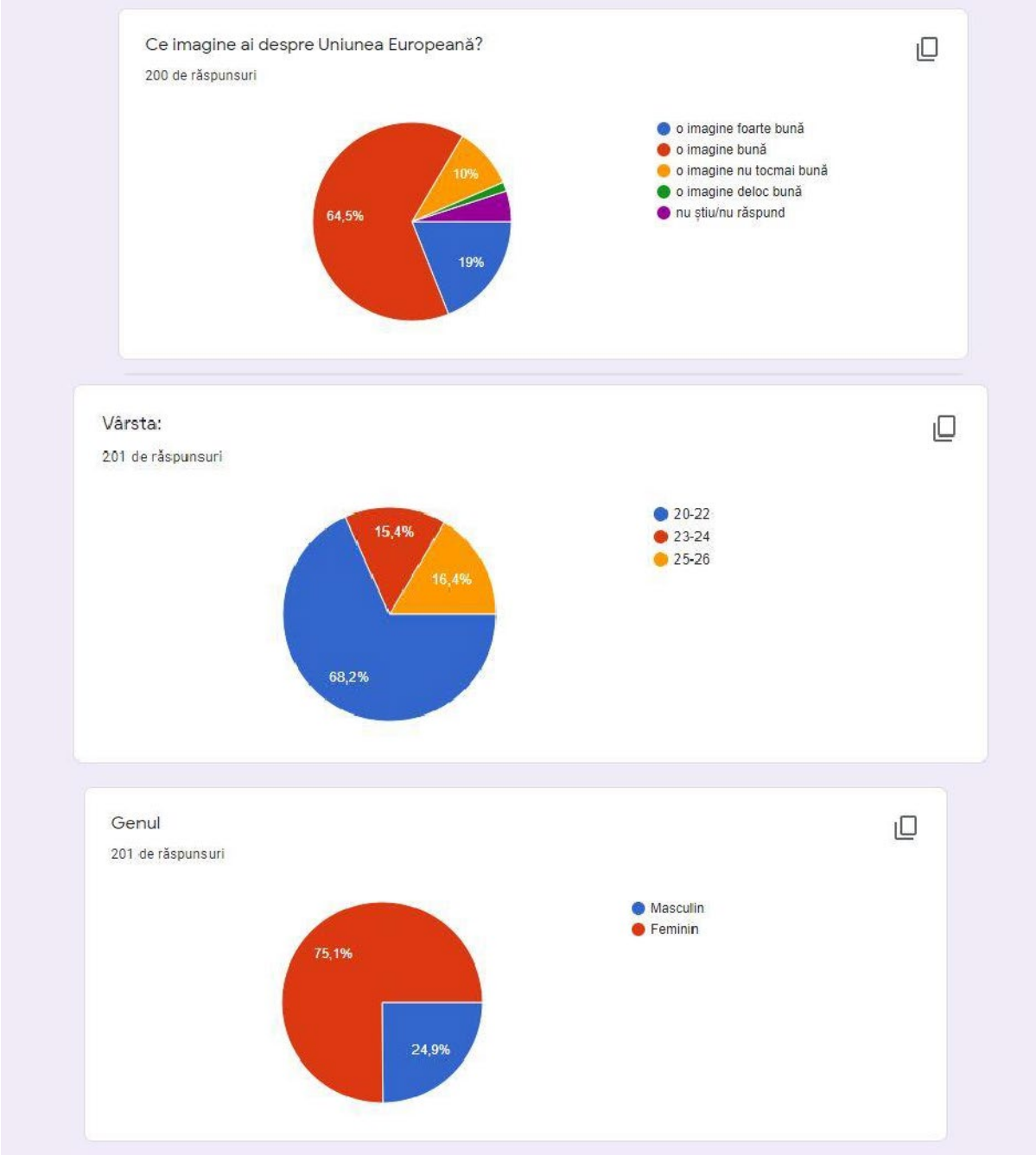
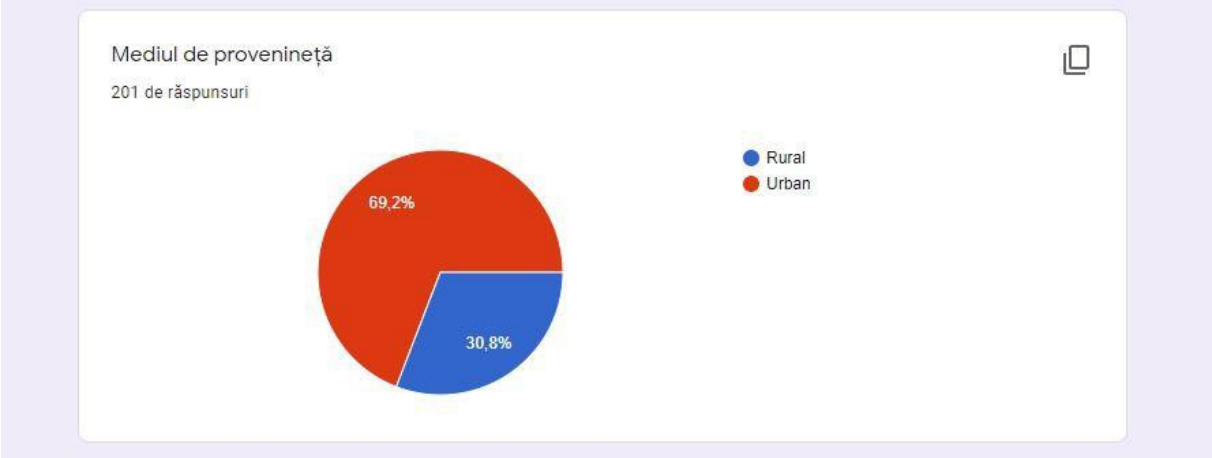

Cât de des discuți cu prietenii/familia/colegii despre Uniunea Europeană?
201 de răspunsuri
19,9%
38,8%
27,9%
Foarte des
Destul de des
Rar
Foarte rar
Deloc
Nu știu/nu răspund


Consideri că deciziile UE îți influențează viața într-un mod major?
201 de răspunsuri
21,4%
14,4%
64,2%
DA
NU
NU ȘTIU/NU RĂSPUND


Consideri că pe viitor Uniunea Europeană o să se confrunte cu mai multe probleme?
201 de răspunsuri
8,5%
19,4%
72,1%
DA
NU
NU ȘTIU/NU RĂSPUND
Ai participat la proiecte/conferințe/workshop-uri privind Uniunea Europeană?
201 de răspunsuri
57,7%
37,8%
DA
NU
NU ȘTIU/NU RĂSPUND
Citești articole/reviste/ziare/cărți privind Uniunea Europeană?
201 de răspunsuri
33,8%
62,7%
DA
NU
NU ȘTIU/NU RĂSPUND


Cum vezi evoluția Uniunii Europene în următorii 5 ani?
201 de răspunsuri
19,9%
14,4%
8,5%
51,2%
Foarte bună
Bună
Puțin bună
Deloc bună
Nu știu/nu răspund
De unde îți iei informațiile cu privire la Uniunea Europeană?
201 de răspunsuri
Televizor
Radio
Internet
Site-uri
Nu știu/nu răspund
social media
Site-uri = internet
Informări de pe site-urile oficiale ale...
Surse credibile și site-uri de speciali...
De la functionari publici din Europa
Rețele sociale internaționale
facultate
Prieteni
82 (40,8 %)
28 (13,9 %)
180 (89,6 %)
107 (53,2 %)
3 (1,5 %)
1 (0,5 %)
0
50
100
150
200
Cât de informat ești cu privire la Uniunea Europeană?
201 de răspunsuri
34,8%
53,7%
Foarte informat
Destul de informat
Puțin informat
Foarte slab informat
Deloc informat
Nu știu/nu răspund


Ce imagine ai despre Uniunea Europeană?
200 de răspunsuri
64,5%
10%
19%
o imagine foarte bună
o imagine bună
o imagine nu tocmai bună
o imagine deloc bună
nu știu/nu răspund
Vârsta:
201 de răspunsuri
15,4%
16,4%
68,2%
20-22
23-24
25-26
Genul
201 de răspunsuri
75,1%
24,9%
Masculin
Feminin



Anexă. Întrebări focus-grup

Ce credeți despre Uniunea Europeană? Ce părere aveți despre Uniunea Europeană?
Considerați că e un avantaj faptul că facem parte din Uniunea Europeană? Dacă da, de ce. Dacă nu, de ce.
Ce avantaje și dezavantaje credeți că are România pentru tineri prin faptul că este membră a Uniunii Europene
Aveți mai multă încredere în instituțiile Uniunii Euopene decât în instituțiile din România? Dacă da, de ce. Dacă nu, de ce.
Credeți că s-ar schimba viața tinerilor dacă România nu ar mai face parte din Uniunea Europeană?
Credeți că pe viitor Uniunea Europeană o să se confrunte cu mai multe probleme pe viitor? Care ar fi acestea?
Te consideri un cetățean european?
Credeți că, în general, tinerii români sunt neinteresați de ceea ce se întâmplă în Uniunea Europeană? Dacă da, de ce. Dacă nu, de ce.

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COMMUNITY-BASED HOME HOSPITALIZATION IN THE ISRAELI PUBLIC HEALTH SYSTEM: A QUALITATIVE STUDY OF THE VIEWS OF HEALTH SYSTEM MANAGERS

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Abstract: *Community-based home hospitalization (CBHH) is a relatively new approach to hospitalization in the Israeli health system. We conducted a qualitative study using semi-structured questionnaires to investigate the views on this issue of managers in different management positions in the Israeli public health system. Eighteen managers participated in the study and their interviews were transcribed and analysed using qualitative methods. The conducted analysis resulted in the following categories: CBHH as an alternative to inpatient care, its value for patients, setting success measures for CBHH, motivation and responsibility of the Ministry of Health, organizational change, the economic feasibility of this approach, and the general wellbeing of the patient within this model. The results of the study show that CBHH is perceived by managers in the Israeli public health system as a good alternative to inpatient care and as a service that must be further developed, especially given the growing shortage of beds, hospitalization complications, the patient's desire to stay at home and the increasing public health costs. At the same time, the participants expressed different opinions regarding the economic viability of the existing model in terms of the Israeli health plans that operate CBHH, and the suitability of the service for all potential patients.*
Keywords: *home hospitalization, health system, policy, management, patients*

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INTRODUCTION

The health systems over the last 2 decades in the West has been under pressure due to growing needs of population. The sharp rise in national expenditures on health in most countries is approaching or even exceeding the ability to cope with this task, particularly in the light of financial hardships. These combined challenges lead to the unequivocal and inevitable conclusion that the current model of medical practice fails to provide a suitable response to these challenges and has not been sustainable (Biterman, 2015). Current multipronged aims of health systems work on finding methods improving patient care experience and population's health, while also reducing the per capita cost of healthcare through delivery of appropriate care to the right patient at the right time (Adams, 2019).

The COVID-19 outbreak in the early 2020 has added to the many challenges faced by the health systems and has contributed to the understanding that the traditional structure of medical service provision must be adapted to the needs of the period (Mizrachi Reuveni et al., 2020).

As a result of the demographic and financial pressures applied to health systems around the world, there has been a global trend of transition from medical care provided only within formal settings (hospitals, medical facilities, clinics, etc.) to medical care in informal settings, such as patients' homes (Landers et al., 2016). Home hospitalization is defined as hospitalization or active treatment of a patient at home for a predefined period in order to shorten an existing hospital stay, or avoid it in defined facilitating conditions. Notably, home care that does not replace hospital care is not included under the definition of home hospitalization (Iecovich, 2011). There are numerous publications that describe home hospitalization in various countries (Corwin, 2005, Davies et al., 2000, Dowell Moss & Odedra, 2018, Federman et al., 2018, Hernández at el., 2018, Iecovich, 2011, Levine et al., 2018, Lewis et al.,2012, Ram et al., 2004, Shepperd et al., 2016).

In Israel, the first operating model of home hospitalization was established about two and a half years ago. The model, named Community-Based Home Hospitalization (CBHH), was adapted to the needs of the Israeli public health system based on existing models in other Western countries to match the different structure of Israel's public healthcare system, and also as a method of health insurance and health budgeting. CBHH is a dramatic change to the traditional concept of acute hospitalization expected to reduce hospital overload and financial burden, while also providing best personal care to patients requiring hospitalization.

As CBHH is a relatively new approach to hospitalization in the Israeli public health system, its benefits and disadvantages have not yet been evaluated. We conducted a qualitative study to investigate the views of managers in various positions in the Israeli public health system and identify the components included into the CBHH management concept.

2. METHODOLOGY AND DATA

2.1 Study design

This was a qualitative study in which semi-structured interviews were conducted with managers from different levels within the Israeli public healthcare system, with the aim of exploring their views on CBHH as a new approach in the Israeli health system.

2.2 Study population

The study population included 18 managers in various management positions in the Israeli health system that were considered stakeholders with regards to CBHH. These included a chief executive officer (CEO), two deputy CEOs, the head nurse, medical managers, administrative managers, financial managers, care managers, all involved with CBHH within their health maintenance organization (HMO); three senior managers from a major hospital in Northern Israel that collaborates with the HMOs in discharging patients to CBHH; a general director of a privately-owned medical services company that provides CBHH services as a supplier of the HMOs; two senior advisors to the Israeli Ministry of Health, the HMOs, and the hospitals.

2.3 Sampling and sample size

Purposive sampling was used for the study population. This sampling strategy was based on choosing a sample that according to the researcher's estimate can represent the entire population investigated without defining the number of necessary participants (Creswell & Creswell, 2018). In most studies with a qualitative design, the sample size normally follows the concept of saturation, where gathering new data does not serve to further illuminate the investigated topic (Ritchie, Lewis and Elam, 2003). In this study the planned sample size comprised 20 respondents, and the final sample size included 18 interviewees, as saturation was reached when the participants repeated themselves in the interviews and no further knowledge or insights were obtained.

2.4 Research tools and data collection

A semi-structured questionnaire was constructed specifically for this study based on several public reports on the history and development of community services and home-based medical response in Israel (Rosen, Waitzberg & Merkur, 2015, Biterman, 2015,Chernichovski & Kfir, 2019). The interviewer used the semi-structured questionnaire as an interview guide, adding questions during the interview (Sabar-Ben Yehoshua, 2016). The questions in the interview guide were intended to explore the personal perception of the interviewees regarding the value of CBHH, the quality of care in CBHH, and of the entire health system, and the value for the patient. The interviews were held from October 2019 to January 2020, and all were conducted in person by the researcher.

2.5 Data analysis

The collected data were analysed using content analysis, which is a spiral process that includes description, classification, and linking of information items (Sabar Ben-Yehoshua, 2016). The purpose of qualitative content analysis is to systematically transform a large amount of text into an organized and concise summary. Creating categories is the basis for data analysis, being based on linking pieces of information belonging to the same phenomenon. Qualitative data analysis reaches its conclusion when the categories are defined, their relationships are based on significant data, and they are integrated in a meaningful and established description, story or theory (Shkedi, 2003).

Our research contains layers of interpretation. All interviews were recorded and then transcribed into written texts, their data being divided into main categories. Data analysis was then conducted in two stages: in the first stage, initial mapping was carried out by organizing and reducing the data. The materials that arose from the interviews were examined and recurring themes were located as initial categories. As data were added from additional interviews held, the suitability of the initial categories was explored. In the second stage, the data were restructured, and the categories were more accurately defined by a process of encoding. At this stage, we continued the detection of recurring themes that arose from the data collection, and performed an enhancement of the already identified themes. At the end of this stage, categories with defined criteria were defined. Content analysis conducted in this research was observed and validated based on expert validation by experts of CBHH and qualitative data analysis.

FINDINGS

Content analysis of the interviews generated 7 categories: CBHH as an alternative to inpatient care, CBHH value for patients, setting measures for success, motivation and responsibility of the Ministry of Health, organizational change, economic feasibility, CBHH for patients' general well-being.

3.1 CBHH as an alternative to inpatient care

The interviewees perceive CBHH as an alternative for inpatient care and as a service that must be developed in Israel's health system in the light of the growing shortage of beds, complications of inpatient care, patient desire to remain at home, and rising expenditures in the health system. Notably, two interviewees stressed that current CBHH in Israel is still too limited at this stage to be considered significant. HAH, a senior nurse and manager of a CBHH program in Israel, said: *"This is the future, the world is proceeding at present in the direction of the home [hospitalization]"* (2). RS, the HMO's CEO, further expanded: *"Everything is becoming much more complex from a medical perspective. People live longer, costs are gradually rising, hospitals are contaminated. In addition, people are becoming gradually more inclined to be at home, in childbirth, at death and throughout life people want to be cared for at home and Israel has a strong community and I think that it is possible to perform a great deal of medical activity at home"* (5). Professor MS, former Director General of the Ministry of Health and Director of a large hospital in central Israel and currently a senior official in Israel's health system, added: "*In Israel the ratio of beds to the number of people is the lowest in the West, so there is certainly a need to develop home hospitalization. This is a paradigm change that will be lengthy and slow, but it is essential*" (6). Further support for this outlook was provided by Dr PB, deputy manager of an internal care department at a large hospital in Northern Israel, who said that he "*is a big believer in home-based medicine rather than hospital-based one. I believe that most medical care can be provided in the patient's home or in the vicinity of the home rather than in a hospital"* (16).

3.2 CBHH - value for patients

In response to a question on the value of CBHH services for patients, the interviewees raised biopsychosocial issues. This was evident in the words of NS, a nurse engaged in leading a CBHH program at the HMO's head office, who stated: *"Care provision is much more personal, the patient is in its natural environment, with its own food and bed, not getting infected, not falling, not being confused, with less complications"* (2). This was reinforced by ZK, a head nurse who works in a hospital's internal care department: "*First of all, the natural environment is good for the patient. It helps maintain its functioning skills. When a patient is at home, it is easier for the family to pay visits and provide care"* (14). Statements like *"unquestionably less cross-infections, improved quality of life"* (6) and *"I don't see any advantage to the hospital in clinical cases that can be treated in the community"* (10), express the perception of various managers in the health system that if hospitalization can be avoided, patients should preferably be at home. In addition to the patient, his/her family may benefit from home hospitalization, as outlined by the words of HAH: "*The value here comes from two aspects. One is the medical aspect - 4,000 to 6,000 people die each year in Israel from acquired infections and from complications of dementia, and the added value is social, for the young people, from a social perspective. A person is in its own home, in its own bed, with its own shower, food, and family can visit at any given moment, so the value is tremendous"* (1). Another

perspective was provided by a manager of an internal care department at a hospital, who said: "*A possible disadvantage is the [lack of] availability of medical staff and tests that exist on-site at the hospital but not in case of home hospitalization."* (16), as well as in the words of Prof NA: "*Medically, beginning from the matter of contracting illnesses and various complications, among older adults remaining in a familiar environment is very helpful for avoiding states of confusion. At the same time, it is a burden on the family that must be capable and willing to accept the burden. I think that this will be one of the barriers, it is not suitable for all families"* (7). Yet another interviewee (ZK) agreed: *"Along with the advantages, it is necessary to remember that it is not suitable for everyone and for every family. At the hospital, there is always someone who will care for the patient, at home the family must chip in"* (14). The words of these three interviewees indicate another perspective on CBHH that concerns the availability of medical staff, where they attest that immediate availability is possible only at the hospital, and which does not exist in CBHH. Hence, even if CBHH is appropriate according to the patient's diagnosis and clinical state, from an overall perspective it is not necessarily suitable for all patients. The interviewees regard CBHH as a very valuable service for patients from several major aspects: medically, socially, psychologically and in terms of preventing complications. At the same time, there is ambivalence regarding whether all patients, whose medical condition is suitable for CBHH, can indeed enjoy its benefits. It is apparent that the answer is associated with patient's environment and the level of stress of a patient and its family.

3.3 Setting measures for success

When introducing a new service, particularly in large public systems such as national health systems, it is important to define the expected positive outcomes. According to one of the interviewees, the success of a CBHH service is: "*The patient's well-being, good clinical results, shortening the duration of recovery at home versus the hospital, and preventing the next hospital stay"* (15). This was reinforced by NA who said: *"If we achieve as good care at home as in the hospital at reduced costs, in addition to what I see as obvious, which is that the service provided to the patient is better, then in my opinion that is the key to success"* (7). HK, a senior finance manager, spoke about the meaning of the scope of the service: "*If in five years, ten percent of all hospitalizations in the country will be at home, that will be an indication of success"* (11). AB, the medical manager of a service that provides CBHH at patients' homes, also spoke about success being subject to the scope of the service: "*Success will be in the numbers. When at least 1,000 people in Israel will be in CBHH at any given moment, that will generate a strategic change"* (17). AN reinforced their words and said that "*Success of home hospitalization, as I see it, will be if we manage to divert, at least, 15% of inpatients from the hospital to the community in the short term over the next 3-4 years"* (4). PB further added to the topic of the aim of service and said: *"In my vision, the hospital will serve for extreme cases, and CBHH will care for all the rest"* (15). SM continued this thought and noted: *"The success of home hospitalization will be in reducing the number of hospital beds needed in Israel"* (7). In summary, there was a consensus among the interviewees that clinical quality and patient satisfaction are indeed essential for maintaining the service, but the success of the service depends on the large scope which will have a positive impact on the cost of hospital care. This was supported by NS: *"In my opinion, finance will have the strongest effect on defining the program as successful. Even if the program will be proven excellent for*

patients from a clinical perspective, and satisfaction will be very high, if it is not economical, it will not develop" (2).

3.4 Motivation and responsibility of the Ministry of Health

Another identified is category the Ministry of Health's motivation and responsibility in developing CBHH services in Israel. This has been underlined by GK: *"The reason is that it is much cheaper and the service is of better quality. The Ministry of Health is responsible for generating an incentive for the hospitals and for the community to develop CBHH services"* (10). HAH reinforced her words with regard to the aspect of the financial motive and responsibility and said: *"The government's interest is financial. The government is incapable of establishing hospitals that will provide the necessary [number of] beds*" (1), and AA said: "*The Ministry of Health must make sure that hospitals have an incentive to discharge the patient to the community just like the HMOs. It must include home hospitalization in the government-funded healthcare services basket, similar to any service currently provided by hospitals"* (4). HAH further added that he sees the Ministry of Health's responsibility as reaching beyond financial aspects: *"The responsibility is also for setting service standards"* (1). He was supported by other interviewees who regard the responsibility of the Ministry of Health in developing professional standards for service, as evident from the words of SN: *"They are responsible for defining standards, procedures and quality measures that will ensure the safety of patients in home hospitalization"* (3) AZ, deputy CEO and operations manager at the HMO, was doubtful of the Ministry of Health's ability to develop the service at present and said: "*This is a project that no one knows how to build, it is trial and error. In the world at large things are different. Elsewhere, there is no shortage of nurses, no shortage of physicians. Even when the country allocates more responsibility to home hospitalization, the hospitals and the HMOs must desire it"* (12). Based on these statements, we could understand that the shortage of medical personnel in Israel, alongside with the budgeting method of the Israeli health system, have been obstacles to the Ministry of Health's ability to develop the service in such a way that it would be sufficiently extensive to affect the entire health system. From all of the above, it is evident that most of the interviewees believe that the Ministry of Health has many reasons and a great responsibility for developing CBHH services in Israel. It appears that beyond the clear reasons for developing the service, there is need for higher involvement of the regulator in CBHH, so that it would be a meaningful service within the health system. Possibly the operation of CBHH services by Israel's community-based health services is perceived as being motivated by financial considerations and under the responsibility of the Ministry of Health. Now, many new services are constantly being introduced into Israel's public health system, with the aim of providing a response to the shortage of resources/personnel, and with the rising increase in morbidity. The question of what transforms a new service from a transient (episodic) service into a meaningful service with a wide value for the health system leads to the following category.

3.5 Organizational change

The interviewees disagreed about the impact of CBHH on Israel's health system. While some contended that the change will be considerable and significant to such a degree that it is not even possible to anticipate, others doubted about the significance of the effect, if any. GK said enthusiastically: *[CBHH] significantly saves costs, creates collaborations*

between hospitals and the community, dramatically improves the level of service and medical care, prevents infections and unnecessary morbidity" (10). NS believes that CBHH will create a significant change in the health system: *"This service will have spheres of influence that we can't even grasp yet, I see it as a type of butterfly effect"* (2). TA's words indicate her faith in the impact of CBHH: *"When home hospitalization will include large numbers, it will reduce the national expenditure on health, diminish unnecessary infections and mortality, improve patients' quality of life, and change the structure of Israel's health system"* (18). Additional opinions supporting the opinion that CBHH would affect the entire health system were given by HK*: "When we begin to provide service at the hospital only to those who need hospital service, then the system will be more efficient, more effective and productive"* (11), SM: "*It will strengthen it! The more power we give to the community, the stronger Israel's public system, rather than the privately-owned one, will be,"* (6). In contrast, three interviewees did not think that CBHH would have a meaningful change on the health system in the near future: *"It is too early to say what will be the influence of the service on the system"* (AP, 9). "*In order for it [CBHH] to have an effect, there must be 100,000 home hospitalizations a year, unrealistic considering the current personnel shortage"* (AZ, 12). *Systems work slowly, change happens slowly, and there is need for a large volume to affect the health system. We are still far from there"* (ZK, 14). "*If we the numbers are small, there will be no effect"* (HAH, 1).

3.6 Economic feasibility

This category is divided into 2 subcategories: economic feasibility for the government (health system) and service financial feasibility for the HMOs operating it.

Economic feasibility for the government

Economic aspects of health services are explored through various costs, including: current and anticipated direct costs of patients, anticipated costs resulting from a rise in patients' age, morbidity and complications, costs of staff, and costs of establishing and developing services, technologies and medications. Content analysis showed that interviewees disagreed about the economic impact of CBHH on the health system. Most interviewed managers strongly believe that CBHH would save money for the entire health system. HAH's tone of speech and body language expressed a clear-cut view on the anticipated economic benefits of CBHH services in Israel: *"The cost of hospitalization in the community is 2/3 of the cost of inpatient care, meaning that the health system would save 25% of its overall expenditures on inpatient care"* (1). GK also had a decisive view: *"It would save the system the significant costs of establishing hospitals and less beds would be needed"* (10). This view was strengthened by AP: *"There is enough global research showing that it is worthwhile. It [CBHH] would save money by providing an alternative to adding inpatient hospital beds, because now Israel needs to almost double the number of beds in the country. It would be much cheaper than building facilities and buildings. So it's an economic certainty on the national level"* (8). Notably, two interviewees expressed a different opinion. SM claimed that: *"At present, the number of beds in the community is too small and the model would not be economical unless the Finance [Ministry] changes its attitude"*, (6) and HK said: *"Supply leads to demand. In the long run, it may be economical but I think that, on short-term, it would cost more"* (11).

Financial feasibility for HMOs

Analysis of opinions on financial feasibility of CBHH for the HMOs operating them showed contrasting opinions: 45% believed that home hospitalization would be financially feasible for the HMOs in the existing service model, while 55% thought that the service is not economical for the HMOs in the current model, and that the model and budgeting method must be changed to make it achieve financial feasibility. AA said: *"I'm not sure that it would save the HMOs money at this stage. When there will be a change of policy and CBHH will be introduced as part of the [healthcare services] basket and both the hospitals and the community will receive incentives to discharge to the home, then I think it would indeed significantly reduce HMO costs" (4).* AP was also doubtful regarding the financial viability of CBHH for the HMOs: *"It's certainly economical on the national level, not necessarily economical for the HMOs"* (8). TA supported their words and added justifications for this opinion: *"There is significant complexity here due to the HMOs' compensation model. As long as the Ministry of Health does not financially support the HMOs for home hospitalization, I can lose money. The current budgeting mechanisms are not built to contain the home hospitalization model. For it to be feasible for the HMOs, the Ministry of Health must produce a different financial mechanism"* (18). AZ enthusiastically presented his opinion: *"It is not feasible. The model of home hospitalization is expensive"* (12). In contrast, HAH believes that CBHH would significantly reduce HMO expenditures: *"It is viable for the HMOs as well. Daily costs of home hospitalization are cheaper for the HMO than the daily cost of inpatient care"* (1). NS also expressed her belief in CBHH feasibility for the HMOs: *"Today I think that yes, we're constantly vigilant and obviously take measurements and see the money saved"* (2). SN added another perspective to the HMO's financial aspect: *"I think that the HMO will save by preventing complications, namely in the overall cost of the patient rather than in hospital costs"* (3). AP (9) and GK (10) also believe that CBHH would reduce HMO costs: *"Yes, I believe in reduced costs for the HMOs, whether hospitalization costs or preventing complications, these cost us a great deal of money"* (9) and *"Unequivocally yes, it saves the HMOs money"* (10).

3.7 CBHH as general well-being for the patient

Another category identified by content analysis is the issue of psychological value of CBHH for patients, in terms of their perceived general well-being, as they remain in their natural environment. CBHH is perceived as providing a high sense of general well-being and health to patients because most interviewees believe that patients' natural place is at home, so, physically and mentally, it is better at home. This view was apparent from the words of AP: "*People prefer to be at home at all health levels, at all illness levels. As long as they are in contact with the people surrounding them, people will intuitively feel better at home, and accordingly, their perception of their general well-being and health would be better. I have no doubt"* (8). Support for this view was given by HK: "*Most patients would be happy to be at home. The patient's quality of life is higher at home than in the hospital with the hospital pyjamas and hospital food, and the hospital environment and the other people in the room with him, so he would obviously perceive his general well-being as much better"* (8). According to AA: "*It is clear to me that a patient who chooses to be hospitalized at home would have a better perception of personal well-being"* (4). SN also emphasized the psychological aspect of patients' health perception: "*Better*

[well-being]. Because from the moment he's at home, although he's sick, he isn't in a hospital bed, especially for older adults who are active, you see their deterioration in hospital, there is no doubt that at home, it is better" (3). Notably, one interviewee (AN) was more reserved because, in her opinion, the support (care giver, family), if any, available for the home-hospitalized patient may affect the patient's perceived general well-being: *"Yes, it must be taken into account that, as we said, there are advantages to hospitalization, having someone preparing food for you and serving it. The disadvantage of being hospitalized at home may be that you must have someone at home to prepare food for you and be available to care for you. If a patient has no primary caregiver, or no one who can provide these, home hospitalization fails to give a solution helping families to leave their patient at home, then, it could impair patient's sense of personal well-being"* (4).

DISCUSSION

Organizational change normally occurs in response to external or internal pressures and the need to adapt to the changing environment (Israeli Ministry of Education, Director of Science and Technology, 2019). In the last two and a half years, the discourse on CBHH within the Israeli public health system has gained momentum, with Israeli policy-makers expecting all HMOs to develop it as part of a new community-based health strategy and as a therapeutic alternative to traditional hospitalization. This is a result of the growing experience with CBHH in many Western countries in the last two decades, Israeli health policy makers' view that patients should be treated in the community, as well as the public health system's inability to meet the growing demand for hospitalization, especially in internal medicine departments. The views of managers working in the health system on home hospitalization affects decision-making and resource allocation.

Our analysis shows that given the growing shortage of beds, inpatient care complications, patients' desire to stay at home, and the increasing costs to the health system, CBHH has been perceived by managers working in the Israeli health system as a viable alternative to inpatient care. At the same time, ambivalent views were voiced on several issues related to CBHH. These include the issue of who would provide patient support (such as help with food preparation) to home-hospitalized patients. Another significant aspect is the economic viability of developing home hospitalization services. While respondents agreed that clinical quality and patient satisfaction are indeed essential to maintaining the service, many respondents believe that its financial success depends on its scale (i.e., how many patients would be hospitalized) for it to have a positive impact compared to inpatient hospitalization cost. Regarding future development of CBHH, most interviewees expressed a firm opinion for the need of greater involvement of the regulator (Ministry of Health) in this area as to develop it as a significant service that would affect the entire Israeli public health system. Although the matter of home hospitalization is complex due to the current situation of the Israeli public health system, and despite the disagreements among interviewees on several issues presented, the study showed that the interviewees - as managers leading the Israeli public health system - believe that the service must be further developed.

Study Limitations

The qualitative nature of the study limits its ability to predict, generalize, or find an objective truth. Rather, its value lies in the provision of a way to understand and create meaning, and interpret processes, and as such, its value is beyond its researched subjects (Sabar-Ben Yehoshua, 2016). The study was conducted among managers involved in Israel's public health system who are considered stakeholders in the issue of CBBH. These managers represent several different health organizations, professions, management roles, levels of seniority and geographical areas across Israel, all with academic degrees and at least two years in management roles. The purpose of choosing a wide manager population was to form a wide view for understanding the CBHH setting in Israel, thus creating value by investigating this subject-matter in its place of occurrence. The qualitative research examined the significant factors that affect the study phenomenon and its future evolvement. To complement this study, the next part of the research will comprise a quantitative research that will provide further insight and complete the picture with regard to other aspects influencing this aspect.

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AN ASSESSMENT OF THE JUDICIARY ON ADMINISTRATION OF JUSTICE AND GOVERNANCE IN NIGERIA

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Abstract: *The Judiciary plays dominant role in the administration of justice. A country can hardly develop without good governance and a perfect judicial system revered by the people. Attributes of democracy are good governance, rule of law anchored separation of powers and independence of Judiciary. Independence of judiciary inter-alia includes appointments, salaries, allowances, discipline and retirement benefits, which made it distinct from other arms of government. The Nigerian Judiciary however has come to Public domain lately with crisis that tends to question their integrity and independence. The October 2016 incident and the 2019 removal of the Chief Justice of Nigeria paint a picture of Nigerian Judiciary in Public view that tends to undermine the so much referred institution. The actions that followed leave so much to be desired of the sacred arm of the government. This work x-rays the Nigerian Judiciary, the constitutional provisions for its duties and independence in a global democratic arena. The paper examined relevant international and regional instruments and other local statutes. The method of the paper is qualitative and exploratory in nature. By way of descriptive analysis of secondary sources, the paper draws insights from scholarly exegesis and empirical historical evidences and cases. The paper concludes by recommendations that could restore the dignity of the Judiciary and respect for Nigerian democracy.*

INTRODUCTION

The judiciary is not just the hope of the common man but hope of everybody and the country as a sovereign nation. The judicial powers of a nation are given to its judiciary. It is the arm of Government enthroned in the temple of justice to dispense justice as provided by the constitution. Its functions can only be realized when there is independence of the judiciary as noted in the dictum of Winston Churchill that the principle of complete judicial independence from the executive is the foundation of a lot of things in life. Shokefun J.A. (1999), This will go a long way for a nation to achieve proper implementation of the rule of law, separation of power and fundamental human right regimes. The rule of law is very important to every nation. It is fundamental to the sustainability of economic development of a nation. The advancement of the rule of law is essential globally and within a nation so as to inter alia achieve economic growth, development, and for poverty and hunger eradication. Maximum guarantee of human rights is a prerequisite for freedom which invariably assists development.

Development can be achieved through the protection of citizens and rights given to the people to own personal properties; equality and fairness in enforcement of human rights; formation and implementation of equitable labour laws and extension of equal opportunity to women, the poor, the illiterates and those marginalized. Pole Alliance (2016): A Nation can attract investors when it protects right to hold private properties with existence of good legal system that is strong enough to enforce contracts and control corruption among Public officers. Rule of law is effective when there is honesty in keeping agreed contract terms and enforcing it without reneging. If this culture can be built in a nation, it will attract investors locally and internationally. Martin O.N. (2008)

STATEMENT OF THE PROBLEM

For Democracy to be practiced and protected there must always be an application of fairness and due process at all levels. The rule of law determines the stability of an economy. It has a lot to do with the equality of people in the eyes of the law in a nation. It is a situation whereby law rules and not rule pronounced by discretion of men. This has made Andrew S. Natsios to conclude that:

- Without good governance and a strong commitment to the rule of law and a genuine will to control corruption, all of which are essential for accountable government, development would be difficult if not impossible.
- The foundation of Strong economies has been constructed to accommodate strict adherence to the rules at the beginning of its nationhood. Martin O.N. (2008)

LITERATURE REVIEW

Ameh S.A 2012 maintains that independence of the judiciary is an arm of Government in which the courts in modern era should have freedom to adjudicate without any person interfering. He excludes financial independence because the judiciary relies on fund appropriated annually by the legislature.

Yakubu J.A (2003) maintains that a country is governed through law hence each government should respect rights of every individual through the rule of law. Besides, effective instruments should be provided to enforce the law. He adds that judges need proper guidance of the rule of law which they are to use to insulate and enforce fearlessly and without any encroachment by party politics or any government that intervenes. The contrary, according to him must be resisted. Lawyers globally protect the independence attached to their profession and uphold protection of rights of the people embedded in the rule of law while ensuring that application of fair hearing is sacrosanct because every individual is entitled to it. With reference to declaration of Delhi of January 1959 which affirmed Act of Athens, the author adds educational and cultural framework to civil and political right.

A. Akintola (2010) maintains that separation of powers is an attribute of the rule of law. When adjudicating, law should be separated from government, politics and religion. This will give room for the purpose of law to be achieved as regulator of powers of the government.

Rout, S.K. and Morthy, P (2017) argue that good governance survives when the rate of corruption is infinitesimal. He points out that in history of the world, corruption is

manifested in every state of civilization. Relying on Kantiliya's Arthasastra and Aristotle's postulations that corruption adversely affects a nation and every poor person. It is much pervasive in every society. It is manifested in the rate of employment and affects the poor severely. He maintains that good governance needs fair legal regimes that are enforced without partiality. Besides, there should be independent judiciary and the police force that is impartial and incorruptible which are dreams of most societies.

Jibuze, J (2 016) writing on corruption in the judiciary maintains that there is no other ugly thing or dangerous thing than corruption by a Judge. It is a sacred duty to be dispensed with trust. Corruption in dispensation of justice affects people's confidence and it is dangerous in maintenance of peace and stability of a nation. For a judge to be Corrupt after taking oath against favouritism and justice and even fearlessly, it is a shame and disgrace to the builders of the legal profession.

RELEVANT LEGAL FRAMEWORK

Right to Fair Hearing is an international legal framework to protect the people from arbitrary and illegal restriction or prevention from being properly heard or defended. It is also the important features of democracy which imbibes rule of law. The political system in Nigeria whereby the ruling parties want to be in total control and perpetuate themselves in office has resulted to despotic rule which affects people's liberty. Democracy needs good legal framework to succeed. The effect of politics in the rule of law has made many people to believe that western judicial system has failed in Nigeria. The police and the Economic and Financial Crimes Commission handling trial of former office holders proves that there is existence of deliberate abandonment of the application of fair hearing and disobedience in the judiciary.

Section 36(1) of the 1999 constitution provides that there should be fair hearing of every person when determining civil rights and obligations which include any question or determination by or against government or authority within a reasonable time by a court or tribunal so as to ensure independence and impartiality.

In *Isiyaku Mohammed V Kano Native Authority* (1968) necessary guideline for fair hearing is that:

- The true test of fair hearing is the impression of the reasonable man who was present at the trial whether from his observation; justice has been done in that case.
- Section 35 of the 1999 constitution is on Right to Personal liberty and it strongly prohibits unlawful arrest.
- Article 7(b) of the African Charter on Human and People's Rights provides that every person is presumed innocent until the contrary is proved. Article 5 provides that every person is entitled to the dignity inherent in every human being and to the recognition of his legal status. It is provided under Article 26 of the African charter on human and People's rights that state party shall guarantee the independence of the Courts.
- Article 9 of International Covenant on Human and Political Rights provides for liberty and security of persons. It prohibits arbitrary arrest and detention. Arrest is to be done only on grounds and in accordance with the procedure established by the law.

- Article 9 of Universal Declaration of Human Right provides that no one shall be arbitrarily arrested, detained or send on exile. Article 10 provides for full equality of fair hearing by an independent and impartial tribunal when criminal charge(s) are brought against him.

THE JUDICIARY

Appointment of Judges

Section 6(1) of the 1999 constitution of Nigeria gives the courts power to administer justice in every state in Nigeria. The Chief Justice of Nigeria is appointed by the President of Nigeria on the recommendation of the National Judicial Council and subject to the confirmation of the Senate. This is done in conformity with the provision of Section 231(1) of the constitution. Section 238(1) provides that the appointment of the President of the Court of Appeal of Nigeria shall be done by the President on the recommendation of the National Judicial Council and subject to the confirmation of the Senate. Section 238(2) also provides that appointment of Justices of the Court of Appeal shall be done by the President on the recommendation of the President of the Federal Republic of Nigeria subject to the confirmation by the Senate.

The Chief Judge of The Federal High Court is appointed by the President on the recommendation of the National Judicial council and subject to the confirmation of the Senate as provided by Section 250(1) of the 1999 constitution. Section 250(2) provides for the appointment of other Justices of the Federal High Court. It shall be done by the President on the recommendation of National Judicial Council subject to the confirmation by the Senate. The Chief Judge of the Federal High Court of the Federal Capital Territory Abuja shall be appointed by the President on the recommendation of the National judicial Council and subject to the confirmation by the senate as provided by Section 256(1) of the constitution. Section 256(2) provides for the appointment of other Judges of the Federal High Court of the Federal Capital Territory Abuja to be done by the President on the recommendation of the National Judicial Council.

Section 261 (1) provides for the appointment of Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and it shall be done by the President on the recommendation of the National Judicial Council subject to the confirmation by the Senate. Other Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja shall be done by the president on the recommendation of the National Judicial Council as provided by Section 262(2) of the Constitution. The President of the Customary Court of Appeal of the Federal Capital Territory Abuja shall be appointed by the President on the recommendation of the National Judicial Council subject to the confirmation of the Senate as provided by Section 266(1) while by provision of Section 266(2) of the Constitution, the appointment of Judges of the Customary Court of Appeal shall be made by the President on the recommendation of the National Judicial Council.

On the appointment of the Chief Judges of the states in Nigeria, Section 271(1) of the 1999 constitution provides that the appointment shall be done by the Governor on the recommendation of the National Judicial Council but subject to the confirmation of the House of Assembly of the State. Section 271(2) provides for the appointment of the High Court judges of the States to be done by the Governor on the recommendation of the National judicial Council. The appointment of the Grand Kadi of Sharia Court of Appeal

of states is to be done on the recommendation of the National Judicial Council and is subject to the confirmation by the House of Assembly of the State as stipulated in Section 276(1). Section 276(2) provides that the Kadis of the Sharia Court of Appeal shall be appointed by the Governor of the State on recommendation of the National Judicial Council. Section 281(1) provides that The President of the Customary Court of Appeal shall be appointed by the Governor of the State on the recommendation of the National Judicial Council and subject to the confirmation by the House of Assembly of the states. Section 281(2) stipulates that other Judges of the Customary Court of Appeal shall be appointed by the Governor of the State on the recommendation of the National Judicial Council.

Funding of the Judiciary Nigeria

The judiciary may be subjected to abuse and lack of required dignity when it financially depended. It has constitutionally been taken care of with the provisions of sections 84(7), 81(3) and 162(9) of the 1999 amended constitution on provision for recurrent expenditure, funding through consolidated revenue and payment of amount standing to the credit of the Judiciary to the National Judicial Council respectively. (Nwakwo O, 2019)

This is seriously impairing the judiciary in the states. Despite the constitutional provisions that the states are to receive fund from the consolidated revenue fund, the Executive arm usually breach this without any stringent measure. They are often starved of funds. Inadequate funding affects efficiency of the courts in every state. It is provided in Section 81(3) and 81(4) of the 1999 amended constitution that the judiciaries in the states are to present two budgets. The salaries and allowances of superior courts in the states and recurrent expenditure should be submitted to the Federal government through the National Judicial Council. The Federal Government is to provide the funding. The second is on Capital budget for the judges and recurrent expenditure and capital budgets for Magistrates, Judges of lower courts and support staff which should be submitted to the State Government in conformity with Section 121(3) of the constitution. When the Judges of superior courts gets their salaries and allowances regularly, the salaries of support staff delays and makes them go on strike often. This affects the performance of the judiciary. Textbooks, computers, generating set and other important things needed for good performance are not provided for them. Chief Judges do go to State Governors for fund. These dent the office of state judiciaries. (Abdulrahman S.2019)

Discipline and Removal of Judges

Paragraph 21(b) Part 1 of the Third Schedule provides that the National Judicial Council shall be exercising disciplinary control and shall have power to recommend to the President, the removal of the Chief Justice of Nigeria, Justices of the Supreme Court, The President of the Court of Appeal, Justices of the Court of Appeal, the Chief Judge of the Federal High Court and Judges of the Federal High Court. Paragraph 21 (d) Part 1 of the Third Schedule stipulates that the National Judicial Council shall have power to exercise disciplinary control and to recommend to the Governor, the removal of Chief Judges of the States and other High Court Judges of the States, the Grand Kadis and kadis of Sharia Courts of Appeal of the States and President and Judges of Customary Courts of Appeal of the States.

On October 14th 2016, around 1:00 am, some Judges including two Supreme Court Judges were arrested in their houses. They were arrested and detained with huge sums of money including both local and foreign currencies. They were later granted bail on self recognition. The Judges are not above the law of the land but there are laid down procedures for them to be disciplined. The import of granting them bail by the DSS meant that the Judges' position is significant to the law which means that they cannot run away from being disciplined. Since they could be granted the bail why then going to their homes at midnight contrary to the stipulation of the law that arrest should be done between 6am and 6pm. Besides, the DSS does not have jurisdiction to arrest and prosecute in this case. Vanguard, (2017)

Charges of fraudulent non-declaration of asset were taken to court against the Chief Justice of Nigeria, Justice Walter Onnoghen on the 10th January 2019. It was claimed that the charges were brought within 14 hours of receipt of petition. Another account revealed that it was within three days. It was believed that the prosecution was hurriedly commenced because it would take time to investigate allegation since the investigation would have to commence from 2005 when the CJN was still a justice of the Supreme Court. A petition for the CJN to set aside while an acting CJN is sworn in pending the outcome of the case was opposed by the defence Counsel on the ground that the tribunal has no jurisdiction to try the Chief Justice until the National Judicial Council (NJC) authorized by Law on discipline judges has performed its duty. The case was adjourned to 22nd January 2019 while the CJN which had not been served should be properly served and should appear in court. On the 22nd January the argument of lack of jurisdiction persisted with disclosure that a High court in Abuja, the Federal High Court Abuja and the National Industrial Court Abuja had issued an interim order to the Code of Conduct Tribunal in a hearing notice that the chairman should stay proceedings. It was further disclosed that there was a pending ruling in the Court of Appeal Abuja on jurisdiction of the CCT on the case.

The Code of Conduct Tribunal refused to grant the application for indefinite adjournment of the proceedings as ordered by the three courts because it was maintained that they were not superior to the Code of Conduct Tribunal. It further maintained that the Code of Conduct Tribunal was established by the 1999 constitution to adjudicate on matters of assets declaration by public officers. The tribunal allowed the CJN's motion challenging the jurisdiction of the tribunal but argument on it was postponed till January 28. On the 23rd January the motion ex-parte dated 9th January was moved and it was granted by the CCT. The Court of Appeal on 24th January also finally issued stay of proceedings to the CCT till 30th January when it will decide on the appeal to stay proceeding and on jurisdiction.

On the 25th of January, the President suspended the CJN claiming to have acted on the order of the CCT. He therefore swore in the most senior Judge, Justice Tanko Mohamed as acting CJN. It was claimed that the order was for the Chief Justice to step aside as the Chief Justice and Chairman of NJC pending determination of motion on notice dated 10th January. (Odugbemi G, 2019). The CJN's suspension contrary to stepping aside order granted in the ex-parte generated a lot of arguments. Diego Garcia- Sayan , the United Nations Special Rapporteur on the independence of judges and lawyers reported that the International human rights standards is that Judges may be dismissed only when there is serious misconduct or incompetence. If there is any decision to suspend or remove a judge

from office such should be fair and it should be a decision of an independent authority such as judicial Council or a court. UN news, (2019)

In *Nganjiwa V FRN* (2018) There was an action against Justice Hyeladxira Ngajiwa of the Federal High court in December 2017. The provision of section 158 of the constitution was considered and the court held that only the National Judicial Council (and not the E.F.C.C. or Code of Conduct Bureau) is empowered by the constitution to adjudicate on corruption charges against a serving judge. The court added that a judge in active service cannot be investigated or tried in a court of law unless such judge is first removed from the Bench.

In *Justice Okwuchukwu Opene V National Judicial Council & ors*, (2011) Judges including the Appellant were petitioned when handling an election petition. They were alleged to have obtained bribe. A panel of enquiry by the National Judicial Council recommended dismissal of the judges for misconduct and they were dismissed after approval of it by the President.

In National Judicial Council v Hon justice Iyabo Yerima & Anor. (2014) Relying and referring to the interpretation of Section 158(1) of the Constitution by Okoro J.C.A (as he then was) in *Manuwa V National Judicial Council* (2013) that the National Judicial Council should be independent and should not be subjected to interference, directive, control or influence or authority when it is exercising its constitutional powers.

Countries need mechanism for removal of judges in the world. The legal framework should ensure a framework is not applied to castigate or threaten judges. The Common Wealth Latimer House Principles is that judges should be removed only when there is incapacity or misbehavior which can impede them from carrying out their duties. The common legal administration of justice principles require that there should be presumption of innocence, sufficient time to prepare for defence, legal representation, cross examination among others. There are different approaches in Common Wealth countries for removal of judges. In some common wealth jurisdictions an ad hoc tribunal is formed to determine issues arising from investigation which can result to removal. There is permanent disciplinary council for the purpose of discipline of judges in some nations. Some jurisdictions have parliamentary removal mechanism. In few countries there is parliamentary process for removal of some judges while other judges are removed by a council. Common Wealth Bingham Center for Rule of Law, (2015)

FACTORS INHIBITING RULE OF LAW AND GOOD GOVERNANCE IN NIGERIA

There are many challenges affecting rule of law and good governance in Nigeria. The Attorney General gives legal advice to the President at the Federal level. He represents the Government in some cases. He is to ensure that the administration of Justice is done in conformity with the Law. The Minister of Justice is under the Executive arm and he assists in developing policy for the Government. Akpedeye D, (2017). Contrary to the notion of Separation of Powers, the office of the Anthony General of the Federation and that of the state is not separated from that of Minister of Justice. The same position is applicable to the Commissioner for Justice in the states.

The judiciary is the third arm of government to interpret the law and not to perform the duty of other arm of government. This can be expressed as jus dicere non jus dare.

Which is to declare the law and not to make the law which means Judicis est jus dicere non dare in Latin. It was confirmed by Bairamin F in the Supreme Court case of Okumagba V Egbe (1965) that the Chief Magistrate felt that the appellant should be punished. He therefore replaced "another candidate" "by any other candidate" which enabled him to punish the appellant. Consequently, he amended the regulation meanwhile amendment is the duty of the legislature and not the judiciary. He succeeded in amending the regulation to be in the way he thought it should be. The judge made reference to Lord Bacon's essay on judicature that the office of a judge is not to give the law but jus dicere non dare which is to state the law. (Abdulahi I, 2014)

There are judicial officers who have abused their judicial oath of office by engaging themselves in activities that are inconformity with the standard expected of their prestigious office. They engage in corruption and contradictory interlocutory injunctions. The atrocities of corrupt judges are detrimental to the image of the judiciary. (Lawal I.B, 2005)

The Chief Justice of the Federation and the Chief Judge of the State are still being appointed by the President and Governor of the States respectively on the recommendation of the National Judicial Council. This can give opportunity for political influence in the appointment of Judges whereas the most senior judges can be directly appointed by the National Judicial Council. The Constitution has stipulated that the National Judicial Council is to exercise disciplinary control on the Judges at both Federal and State levels. The Council is also empowered to recommend removal of the President and that of the Judges of the High Court of the State to the Governor. Judges are still being subjected to arrest and trial contrary to the stipulation of the law.

CONCLUSION

The country which is well blessed with enough human and natural resources lacks respect for due process and the rule of law. When there is independent judiciary, the rule of law will be properly implemented. When this is done, people will respect the law and the rights of everybody will be properly protected. The country will enjoy peaceful coexistence. Besides, the rate at which swindlers operate in the country will reduce because of fear of facing the wrath of the law. Besides, local and international investors will be attracted to invest in the country. This will give room for the nation to enjoy the benefit of good governance which will assist it to economically develop.

RECOMMENDATIONS

The Attorney General of the Federation should be different from the Minister of Justice while the Commissioner for Justice of the State should be different from the Attorney General of the state. This will give room for Judicial Independence and application of rule of law. Besides, it will also give room for proper separation of power whereby the Judiciary will be separated from the Executive.

Appointment of Judges should not be done by the Governor but the National Judicial Council should appoint the most senior Judge subject to the confirmation by the Senate and Houses of Assembly of the States for Chief Judges of the Federation and Chief

Judges of the States respectively. This should also be done when appointing Judges for the states.

The judges should not be subjected to any influence of the Executive. All fund of the state judiciary should be promptly paid through the NJC. The Judges should have nothing to do with the Executive on salaries, recurrent and capital fund. Judges are not above the law of the land, the National Judicial Council should continue to handle discipline of Judges and the law should ensure retrieval of any corruptly earned wealth from the Judges.

The law should be expressly stated on suspension pending investigation and removal. The President should act to suspend pending investigation by the National judicial Council on an address supported by simple majority in the senate while the status quo should remain removal of a serving Chief Judge. Continuous training through workshop, Seminars and Conferences should be sponsored locally and internationally for Nigerian Judges.

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CORRUPTION AND THE LINGERING OF INSECURITY CHALLENGES IN NIGERIA

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Abstract: *Corruption has been a persistent theme in the culture and history of mankind. In both emerging and developed democracies, it is seen in every forms and in various political system. It has always existed in one form or the other in human culture. The "agent provocatua" of Nigeria's lingering instability is corruption. The rising influence of Nigeria's twin concepts of corruption and insecurity presents major challenges to governance and has thus become a matter of public concern. The aim of this study, however, is to examine how corruption has affected and contributed to the lingering challenges of insecurity in Nigeria. Nevertheless, the study will be able to extend the frontiers of awareness towards the reconceptualization of the definitions of corruption as the core "actor provocatua" of socially, economically and politically retarding Nigeria. This study revealed that corruption and instability have done more harm than any other phenomena to the reputation of the nation globally. The study therefore, advises the need for Nigeria's urgent eradication of corruption and insecurity in order for the country to play its position effectively as Africa's giant and a force to be reckoned with globally.*
Keywords: Corruption, Lingering Insecurity, Security, Governance, Nigeria.

INTRODUCTION

Corruption has been a persistent theme in the culture and history of mankind. In both emerging and developed democracies, it is seen in every political system and in various forms. Although, the effects of corruption varies, in the destructive effects of corruption are disproportionately apparent from one political system to another in developing countries, where the economic base is often poor, political institutions are fragile and there are insufficient control mechanisms (Igiebor, 2019, p. 493). According to Transparency International (TI) (2018) cited in Igiebor, (2019, p. 494) in partner with the Afrobarometer survey was conducted between March 2014 and September 2015 in 28 sub-Saharan African nations. Over 43,000 participants given their views on government corruption in their respective countries during this study. In their attempts to stop corruption in their nations, many governments have been negatively ranked by these respondents. For example, in Zimbabwe, South Africa and Nigeria, about three out of four respondents rated their governments' anti-corruption efforts to be very low. This is as a result of corruption in the political space. This has endangered national security and has contributed to a large allocation of the national budget to the security sector (Krishnan, 2020). Despite all economic and social policies that have been implemented by various

government since Nigeria returned to democratic rule, the country has remained laggard in economic, political and social developments (Adagbabiri & Okolie, 2016, p. 107). Subsequently, the main characteristics of Nigeria's political economy were political turmoil, abject poverty, acute youth unemployment, poor health opportunities, elevated crime rate and widespread malnutrition (Ogundiya, 2010) cited in (Adagbabiri & Okolie, 2016, p. 107). Corruption is one of the most dangerous ills in Nigeria and it's seen in the high rate of poverty, disease, unemployment, hunger, infrastructural decay, insecurity and deficit all over Nigeria (Agbekaku, Hakpe & Okoye, 2016, p. 291). Painting the evils of corruption in Nigeria, Ngwube & Okoli (2013, p. 92) espoused that: Corruption is a plague that has eaten deeply into the structure of the political system in Nigeria. The global political understanding of corruption in Nigeria is that corrupt practices are widely accepted to be prevalent and systematic in both Nigeria's public and private sectors. It is apparent from the foregoing that corruption threatens Nigeria's security and integrity. It's also an obstacle to development which is responsible for the poverty of the citizens."
In combating corruption, successive administration have introduced agencies, such agencies includes: Allied Commission (ICPC), Expenditure Monitoring , Independent Corrupt Practices and Price Intelligence Unit concerned with a new contract award process, otherwise referred to as due process, Code of Conduct for Public Officers, the Economic and Financial Crimes Commission (EFCC), which sets guidelines for public servants conduct (FGN, 2007). Be as it may, all the policies mentioned above did not achieve the answers needed, because such remedies alone can hardly cure the malady of corruption in Nigeria.

A massive feature of government failure that can be traced to political and systemic corruption is the current state of insecurity in the country. In Nigeria, human protection is highly endangered by a variety of factors, including corruption. Corruption in Nigeria has a negative effect on safety, impacting everyone because of their interconnections (Agbekaku, et al., 2016, p. 292). According to Mustapha (2015, p. 19) "no state is free from the scourge of insecurity.'' Corruption has contributed immensely to the lingering insecurity in Nigeria as a result of its frequent occurrence. The rampant of the concepts of corruption and the lingering insecurity in Nigeria poses a serious challenge to leadership and have thus; made headlines in news media, making it a public focus. It is on this note that this study seeks to address the effects of corruption on the lingering insecurity in Nigeria.

THE CONCEPT OF CORRUPTION

Different scholars have conceptualized corruption from various points of view. The concept of corruption much like other ideas in the Social Sciences and Humanities is not free from controversy as to what really constitutes corruption. However, Yelwa (2011) cited in Ibrahim (2014, p. 2) defined corruption as: "A muti-dimensional phenomenon and has thus been conceptualized in many respects. Corruption in the public sector is usually simply the misuse by public officials of power to make personal profits in the performance of their official duties. This covers practices ranging from fraud, bribery, embezzlement, favouritism, extortion, dishonesty to unethical or unethical actions in pursuit of personal goals."

While Onwuka & Eme (2019, p. 117) defined corruption as thus: 'A departure from the formal obligations of a public position in relation to private (close kin, personal, private clique) pecuniary exercise of certain forms of private power. This involves actions such as bribery, nepotism (appointment on the basis of an abstractive relationship rather than merit) and misappropriation (illegal use of public resources for private uses). The definition of corruption by Onwuka & Eme as seen above appears fumbling for evaluation, mainly by the choice of syntax or phrases. Nevertheless, its utility lies in the attempt to define corruption as deviation from the standard, intent, bribery, nepotism, financial and misappropriation of public resources in order to obtain personal benefits. Another way for corruption to be conceptualized is to view it as: "An art performed in order to provide some advantage in compliance with the official duty and rights of others, the act of an official or fiduciary person who unlawfully and unlawfully uses his station or character to gain some advantage for himself or for another person contrary to the duty and rights of others" (Agbakor, 2010, p. 52).

From the definition above, it shows that failing to do what is correct or pure is corrupt. Corruption is the benefit of employment, contract, status, power, money, financial/material resources, or physiological satisfaction through immoral or illegal application such as robbery, fraud, abuse of office, bribery and so on (Adababiri & Okolie, 2018, p. 43). Contributing to the concept of corruption Ijiwere & Dunmade (cited) in Alimi & Isiramen (2016, p. 300) defines corruption as depending on the arena it takes place namely: economic, bureaucratic, political, moral and judicial." Political corruption can take place during elections, leading to electorate bribery to hold on to office or power.'" Degradation of virtues, beliefs, moral and a shift or pervasion of the general rules for selfish gain." Corroborating this Ibietan (2013, p. 43) viewed "Corruption in politics to be the use of legislative powers by those in government for personal gains or illegitimate personal gains. It has stigmatized the government's reputation, undermined its legitimacy and reduced the efficacy of policies, development programs, and also weakens the economy (Ibrahim, 2014). While corruption in respect to the economy can take place in the form of circumventing procedures to get unmerited advantage. Corruption at the Bureaucratic level is far from mere pecuniary gains. It encompass nepotism, cronyism, favouritism and associated ills that leads the slaughter of merit on the altar of mediocrity in the recruitment, encouragement and promotion of staff as necessary planks on which the management of staff rests and offers cardinal reasons for inefficiency, poor delivery of services in the public sector and low productivity. On the other hand, judicial corruption connotes compromising attitudinal disposition of law enforcement agencies/agents, perversion of justice, avoidable human errors in the administration of justice and sundry ills. Moral corruption is a crucial issue. Corruption in Nigeria crosses across organizations in the private and public sectors, managers of these organizations are not to be blamed. This is so as corruption in Nigeria is an environmental issue. Citizens of Nigeria are used to governments who criticize corruption but who themselves partake in corrupt activities. Corroborating this, Adagbabiri & Okolie (2016, p. 114) concluded that the implementation of the anti-corruption programme by Obasanjo while in power was a witch hurting of political opponents who were threat to his third term agenda and leadership style. Even the present administration of President Buhari anti-corruption war which is in its top most agenda, has been termed to be selective and therefore seen by citizens as witch hurting of political opponents. According to Bishop Simeon Okah; “the ongoing anti-corruption war

of the president Mohammadu Buhari would not be taken seriously if all his cabinet members alleged to have looted billions of Naira belonging to their states for the 2015 and 2019 general elections were not being tried'' (Punch March 4th, 2017) cited in Adagbabiri & Okolie, (2018, p. 44).

Corruption in Nigeria is characterized by the looting and secrecy of public funds and money, i.e. misappropriation, flight of capital and mismanagement of public assets; drug and child trafficking; money laundering (earn money through dishonest); illegal arms deals; physical or material favour as a prerequisite for performing an oath of office and nepotism that gives underserved favour to one's relationships, is officially suppressed and breached (Kwasau, 2013, p. 187). "Events in Nigeria since 1999 have shown that the tidal waves of reversal have been contending with the political project of Nigeria," according to Ogundiya (2010, p. 235).' The enormity of corruption in Nigeria is depressing and worrying. Corruption infiltrates and is found among the educated and uneducated in all sectors of the Nigerian economy, between the poor and the rich (Ajodo-Adebanjoko & Okorie, 2014). Corruption remains a crucial reason for the lingering insecurity witnessed in Nigeria despite over twenty years of democratic rule.

CAUSES OF CORRUPTION IN NIGERIA

Different reasons abound to be responsible for corrupt practices in Nigeria. These reasons cut across ethno-linguistic differences, socio-cultural and political variables. Some of these reasons are responsible for why corruption has remained endemic in Nigeria.
According to Ajie & Wokekoro (2012) cited in Adagbabiri & Okolie (2018, p. 45) outlined the following reasons as promoting corruption in the country: the prevalence of soft state and unaccountable leadership, weak institutions of government and informal structure, incursion of politics into the administration, dysfunctional legal system, the lack of a clear sense of national commitment and national attention, lack of probity, openness, and accountability, the failure of social and governmental compliance mechanisms, the great disparity in the distribution of resources, low wages and poor working conditions, with little incentives and rewards for efficient results, widespread poverty and culture and weird value. Ngwube & Okoli (2013, p. 97-98) noted that "the reasons for corruption, in Nigeria varies from non-conformity to religious beliefs, ideals imparted to our society, concepts and ideas foreign to our society, ethnicity that facilitates favouritism and nepotism, a poor legal structure that is honoured in breech rather than observance. Other causes of corruption are: poverty, illiteracy, get-richmania, statism, and incorrect attitude to public property, lack of a welfare system that cushions the impact of unemployment, retirement, large families, and quest for double standards of power and low level of patriotism." It is significant in itself; it seems that poverty is the single most important factor that encourages the broad distribution of the country's illicit financial inducements to give and take bribes. Okolie (2013, p. 99) posited that "Nigeria must be one of the very few countries in the world where the source of wealth of a man does not affect his neighbour, the public, or the state. Communities, religious bodies, social clubs and other private entities routinely court and reward rich individuals who are considered to be corrupt. In Nigeria, while traditional values of gist giving and tributes to leaders often lead to what Brows Berger (1983) defines as polite corruption, the scale of such corruption is relatively small. This means that people who profit from the greatness of these corrupt people seldom ask questions. Jimo (2001, p.

83) attributed " corruption within the public administration of the African regions to over-centralization of power, lack of freedom of the media to reveal scandals, the impunity of well-connected officials, and lack of transparency in the management of public funds, clients, and low wages."

Another cause of corruption in Nigeria is bad compliance on the part of mechanisms for government regulation. According to Igiebor (2019, p. 499), "Nigeria 's various anti-corruption agencies and government corruption prevention programs have been ineffective and the country continues to rate as very corrupt on the world corruption index, ranking 144th out of 180 countries in the Transparency International (TI) index in 2018." According to Krishnan (2020, p. 98) in Nigeria, the 'Electoral Act' (2010) stipulates the ceiling of expenses for specific elective positions by candidates and political parties. The overall limits are set at: 1 billion for presidential candidates, and 40 million Naira and 20 million for Senate and House of Representative candidates, respectively. As one of the reasons responsible for corruption in the political system, Igiebor (2019, p. 500-501)' went on to state the high cost of securing party nomination forms for political offices in Nigeria. "For example, the presidential forms of the People's Democratic Party (PDP) in the 2015 general election cost 22 million Naira, Senate seat forms cost 2.5 million and 1.2 million Naira, respectively, while the governor-ship was 11 million Naira (Abu & Staniewski, 2019).

The citizens in Nigeria do not participate actively in government decision making. When citizens take part in the political system it ensures political influence is used to favour most people, protect vulnerable people, and add equality to socio-economic growth (Okolie, 2013). The poor attitude of people towards government involvement after voting during elections is a major obstacle to controlling corruption in Nigeria. However, it is difficult for the masses to monitor leadership efficiently and maintain openness and accountability in policy making and policy execution (Okolie, 2013, p. 99). In Nigeria, the rapid growth in population has contributed to the issue. The campaigns on family planning is yet to fully succeed. Those who earn little having no other source of recreation take part in sex increasing the population of families. When this happens, parents would not want their children to suffer in abject poverty and helplessness, leading them to get involved in corrupt practices.

THE CONCEPT OF SECURITY AND INSECURITY

Different views have been postulated by various scholars on the concept of security and insecurity. According to Adagbabiri & Okolie (2018, p. 48) security is seen as "Freeing a person or a country from danger or threats. It is the ability, of a nation or a person, to protect and defend itself, its cherished values and legitimate interests and the improvement of well-being". There are different forms of security. We have national security, human security, food security and so on. Protecting people from poverty, hunger, unemployment, disease, natural disasters and so on is part of human security. Although national security, on the other hand, means the deployment of coercive-force state apparatus to deal with crisis situations, globally or nationally. However, both of these can only occur when there is harmony and stability in the political system. (Ighodalo, 2012, p. 169). According to Ewetan (2014, p. 43) identify insecurity as "the absence of safety; danger; hazard; uncertainty; lack of defence and lack of security." While Achumba, Ighomereho & Akpan-

Robaro (2013, p. 82) viewed insecurity from two perspective. First of all, "vulnerability is the state of being exposed or prone to danger of danger, where danger is the situation of being vulnerable to injury or harm. Secondly, insecurity is the state of risk or anxiety, where anxiety is a vague uncomfortable emotion encountered in anticipation of any misfortune. "This definition of insecurity illustrates a significant point because when they arise, those impacted by insecurity are not only unsure or unaware of what will happen, but often susceptible to the threats and hazards.

Human security could be described as "protection from secret and hurtful disturbance in daily activities, at home, office or in communities, according to the United Nations Development Programme (1994) cited in Adagbabiri & Okolie (2018, p. 48) "security is the secure and safe vulnerability state, it may also be safety from persistent dangers such as poverty , disease and repression". "Insecurity is a threat or danger state of being. On the other hand, insecurity is the antithesis of stability. However, in accordance with the different ways in which it affects people, because of the many ways in which insecurity has been identified. Some of the common definitions of insecurity include: desire for security, risk, uncertainty; desire for trust; questionable; inadequately secured or secured; lack of stability; troubled; lack of safety and unsafe etc.… According to Oghuvbu & Chidozie (2018, p. 294) they argue that ‘’security is the alleviation of danger to the survival of persons or groups who are generally associated with it. Security may therefore, be equated with freedom from present and future risk, harm or distress for them." Ajodo-Adebanjoko & Okorie (2014, p. 2) regard 'insecurity as a situation of fear or something that causes fear, harm or the potential to trigger a person’s fear or harm. These may be politico-strategic, socio-economic or environmental problems, such as political turmoil, poverty, and environmental degradation, lack of access to education, gender-based inequality, disease and unemployment.

The security situation in Nigeria has come under threat more than ever before in the administration of President Buhari. In Nigeria politics of impunity pervades. Never before has the security of the country been so stretched, and this challenge to national security is not unrelated to the prevalence of corruption and injustice ruling the body's politics. It is as a result of this, that the Nigerian youths have come out into the streets to protest insecurity melted on them by security agents who are met to protect them. All these are triggered because of corruption which has prompted insecurity in Nigeria. Since independence, flawed development policies followed have left individuals pauperized and decimated. Failure to abide by the rules of the party's political game, however, takes the nation back to the state of nature (Ighodalo, 2012, p. 169). These are demonstrated by the rise in poverty, inadequate medical care, unemployment, illnesses, inadequate housing services, lack of mobile water, and lack of access to electricity, the supply of epileptic power and energy by minority groups and their exclusion from policy making (Ake, 2000, p. 32). However, having protection means being safe, stable, secured and enjoying the peace of life. That is, the secure state of feeling, freedom from fear , doubt, threat, and anxiety, which gives or guarantees stability, tranquillity, certainty, safety and protection.

CAUSES OF THE LINGERING INSECURITY IN NIGERIA

Several reasons have been advanced regarding the causes of insecurity in Nigeria. The factors responsible for incidences of insecurity as discussed below are not peculiar to

Nigeria alone but may apply to other parts of the world. According to Otto & Ukpere (2012, p. 6762), "insecurity is a product of a malignant world governed by the insensitivity of man to man. In order to push down policies that impoverish the masses, many people in power take advantage of their positions as much as it benefits them and a few others. High handedness is also another problem with the entity called Nigeria, Nigerians see themselves as adventures and so are primarily concerned with how much enters their pockets no matter how that happens. Ethnicity and corruption are also causes of insecurity". Furthermore, the framework for the administration of justice does not promote the battle against insecurity. Offenders in grievous cases, where they are not absolutely let go, can obtain very light sentences. In Nigeria, poverty and the proliferation of small arms have also been blamed. In Nigeria about about 70 percent of the population lives in abject poverty. This predisposes the poor to violence, fuelled by the ease of access to small arms. Developing countries' imports of weapons have increased dramatically (Otto & Ukpere, 2012:6763).

For Ewetan & Urhie (2014, p. 46) espoused that insecurity problems can be traced to the early years of military rule when, during and after the Nigerian civil war, vast quantities of firearms were smuggled into the country for the use of the military, some of which came into the hands of civilians. Soon after the civil war, civilians and ex-military men used these guns for mischievous reasons, such as armed robbery and kidnapping. The army of unemployed young people, some of whom lost their jobs during the civil war, was also present (Eme & Onyishi, 2011). In the prolonged years of military rule starting from 1970, during which citizens procure arms and light weapons for personal protection, the degree of insecurity assumed dangerous dimensions, some of these weapons and light weapons came into the hands of unemployed young people who used them for deviant purposes (Eme & Onyishi, 2011). While some researchers attributes youth violence to peer group control and other growing-related psychological factors, others highlighted the effect of political and economic factors such as ethnic agitation, political agitation, unemployment, the Structural Adjustment Program (SAP) as triggers of youth violence. Eme & Onyishi (2011:176) identified the causes of insecurity to the culture of militarism that has precedents in military rule includes the collapse of the state and its institution, economic disempowerment, the nature of the state and federalism of Nigeria, non-separation of state and religion, politics of exclusion, ignorance of the culture of hegemony and gerontocracy and weak political consciousness. Albert (2012) sees the following as some of the real and imagined causes of the crisis of insecurity:

a. Resources

(i) Lack of adequate resources for all.

(ii) There are questions regarding the allocation of the little that are available.

(iii) Our leaders steal the nation's resources and promote horizontal inequality.

b. Leaders' competition for powers in a disorganized manner.

c. Values:

The elites promote ethnicity and idle religiosity.

Lack of positive leadership values makes the society to be conflict genic.

d. Communication processes.

Lack of open access to information fuels rumour-mongering and misinformation

The media commoditize "bad news".

Ogah (nd) identified the variables that cause possible threats to national security to include acute food shortages, population explosions, low productivity and capital income levels,

low technology, insufficient and inadequate public utilities, and persistent unemployment problems.

According to Bina, Mbaya & Dlakwa (2020, p. 33) views the cause of insecurity in Nigeria ‘’as the fanaticism due mainly to elite manipulation and greater deprivation and discontent within society, among the various ethno-cultural and religious groups in the country. This has consequently led to an increase in inter-tribal and communal clashes and violence’’. On the other hand Ali (2013) identify the causes of lingering insecurity in Nigeria, as the product of illegal financing of the police and other security forces, non-payment of allowances and salaries of the security agencies. Labour market monetization that has forced many unemployed graduates to go through a lot of mental torment in the security job process: gross party indiscipline and internal struggle among political gladiators, weak police welfare, military and paramilitary personnel, lack of adequate working instruments, and inadequate workers.

THEORETICAL FRAMEWORK

“This study adopts the Prebendal and Frustration-Aggression theory which would give a better understanding on the issues of corruption and insecurity. The Prebendal theory was popularized by Joseph, A. Richard (1996). The Prebendal theory refers to primitive acquisition of monumental wealth which stifles political, technological and socio-economic development of a country. Joseph depicts corruption in Nigerian politics where members or cronies of when a member from the party comes into power or where an ethnic party is compensated;' State officers are considered to be prebends that can be appropriated by office holders who use them to generate material benefits for themselves and their constituents and relatives (Joseph, 1996). This patron-client or identification policy has facilitated corruption in the nation to the degree that appointments, admissions, contract awards, promotions, among others, are made with regard to one's group, ethnic or religion affiliations” (Alimi & Isiramen, 2016, p. 300-301).

The Frustration-Aggression theory popularized in 1939, and later founded by Neal Miller in 1941 and Leonard Berkowitz in 1969, by John Dollard, Leonard Doob, Neal Miller, Orval Mowrer and Robert Sears. The theory suggests that, as a result frustration leads to violence which is an offshoot of the inability of an individual to attain their goals. In other words, insecurity in Nigeria is due to aggressive behaviour which results from challenges like unemployment, poverty (Ajodo-Adebanjoko & Okorie, 2014). Relating this to the study, corruption in Nigeria is as a result of unemployment, injustice, degradation of the environment, ethnic conflicts, abject poverty, and absence of infrastructure, militancy, terrorism which in turn has resulted to lingering insecurity in Nigeria.

CORRUPTION AND THE LINGERING INSECURITY CHALLENGES IN NIGERIA

The issue of insecurity and corruption in Nigeria are ‘’twin Evils’’ and hydra-headed monsters that has held the nation state hostage. These have brought about the collapse of governments and the breakdown of institutional infrastructures. The lingering insecurity issue in Nigeria is due to government failure, linked to political and systematic corruption. The issue of corruption is a great threat to Nigeria’s development because it

undermines good governance and democratic processes (Agbekaku et al., 2016, p. 295). For those in the legislature and executive, corruption makes transparency, accountability and representation, which are good ingredients for good governance in the policy making process, are almost unlikely. It erodes governance's institutional ability because processes are overlooked, resources are siphoned, and official promotion without regard to performance (Adagbabiri & Okolie, 2018, p. 52).

It is imperative to note that greed recreates corruption and replicates rewards for power and wealth to compete unregulated. It also undermines Nigeria's ability to mitigate normal social tensions and create avenues to address inequality, as with Boko Haram (Agbekaku et al., 2016, p. 180). The activities of traditional rulers, vigilante groups and politicians, electoral fraud, poor management of the economy, the challenge posed by poverty, dilapidated infrastructures, bad roads especially on the high ways, the underperformance of the law enforcement and criminal justice system, the insecurity caused by security agents and most recently, the insurgency of Boko Haram sect (Adagbabiri & Okolie, 2018, p. 53).

Albert (2012) views security challenges in Nigeria as:

- Poor inter-agency collaboration
- Lack of well-defined early warning system;
- There is little coordination between the lack of consistency in the government's handling of security issues using conflict and traditional problem solving techniques.
- Low civil society participation in security management.

According to Shehu (2011) cited in Adagbabiri & Okolie (2016, p. 53) "the Niger Delta offers a graphic image of how corruption in Nigeria, as the cause of youth resilience in the country, intensifies desperate socio-economic exclusion." The security sector in Nigeria has been diminished by corruption, the Nigerian police was rated among the most corrupt public institution in the country. According to Odia (2016, p. 330) ''security agencies are faced with challenges that have made them not to be able to discharge their duties and responsibilities towards ensuring national security." Some of the challenges includes: inadequate man power i.e. both quality and quantity, obsolete equipment, lack of political will, leadership problems and corruption.

Ladan-Baki (2014, p. 296) his of the opinion that the security threats of a nation can include low-level civil disorder, large-scale conflict, armed insurrection or terrorism. These threats to security can be directed toward residents or the state's organs and infrastructure. Via either committing or sponsoring terrorism or rebellion without actually declaring war, foreign powers can also act as a threat to the security of a nation. Some of the lingering security issues in Nigeria include: herds men attacks, terrorism, kidnapping, armed robbery, youth unemployment, illegal bunkering, climate change, porous borders and corruption. Hence, the populous nation is bedevilled with insecurity and conflict. Without good leadership, there would be no development; without development, there will be no security in Nigeria. Corruption remains one of the greatest challenge to the lingering of security issues in Nigeria. The relationship between insecurity and corruption is not farfetched. Corruption forms the embers of poverty, crime and by extension insecurity. For example, acute youth unemployment, terrorism, diseases, armed robbery, poor health sector, wide spread malnourishment and abject poverty which lead to the lingering security issues in Nigeria are directly or indirectly related to corruption.

CONCLUSION AND RECOMMENDATIONS

From the forgoing on corruption and the lingering insecurity in Nigeria, it is clear that insecurity continues to pose a serious challenge to Nigeria sixty years after independence. Corruption is the source of instability in Nigeria. This ''evil'' called corruption has generated unimaginable level of poverty, crime and by extension insecurity. Socially, corruption and instability have done more harm than any other phenomena to Nigeria's reputation globally. Therefore, corruption and insecurity are twin development problems in Nigeria and need to be eliminated in order for the nation to be able to effectively play its role as the giant of Africa. Eradicating insecurity and corruption should therefore not be left in the hands of government alone, rather every citizen of Nigeria should cooperate with government to get rid of this evil destroying the country. However, the Nigerian government must tackle the problem of hunger, unemployment, poverty, and social injustice to reduce the high rate of insecurity.

For the above issues to be addressed from the country the study recommends the following:

- The fight against corruption must be value oriented as well as passion-driven and should not be driven by selective judgement and political vendetta. Besides, the anti-corruption agencies (EFCC and ICPC) alone can hardly cure the malady of corruption. They are mere mechanical devices to eradicate corruption. They may be considered short-term devices. A long-term proposal may also be envisaged. The existing order must change and yield a place to the new. Attitudes of politicians in Nigeria must undergo a change. Values of life must also change. Private property should cease to be the symbol of status and power. The socialist society that should believe in equal distribution of income, equity and fairness must replace acquisitive society. If the social attitudes towards the organization of private property attempt such a reform, widespread corruption is apt to be abolished.
- Collaboration with the government and non-government agencies. That is, the Nigerian police should collaborate with other security agencies such as the Armed Forces, State Security Service (SSS), Immigration and Customs Services, The National Drug Law Enforcement Agency (NDLEA), the Commission for Economic and Financial Crimes (EFCC), the National Intelligence Agency (NIA), the Federal Road Safety Commission (FRSC), and several others.
- Governance institutions, once established, take their own lives. Therefore, it is important to make concerted attempts to ensure that these organizations are founded on strong ethical principles and orientations, that their operators are made to go through and imbibe lasting moral training and virtues that can be passed on to future generations in order to ensure fairness, openness and public service accountability. This can remedy the decadence of government agencies and bodies, especially watchdog institutions such as the judiciary, police, and anti-graft bodies.
- A crucial step designed to enhance the readiness of the nation to fight all types of insecurity is the preparation and procurement for threats that are likely but have not yet materialized.
- Exchange of information and community policing. Security should be every person's business. Thus, individuals and groups should work collaboratively to ensure that lives and properties are secured.

- Sustained surveillance. This refers to proactive measure, integrated surveillance operations, and the deployment of highly trained and responsible security operatives.
- Embracing a government method in improving security in the country. In other words, all the levels of government (Local, State and Federal levels) must support the national security establishment in combating insecurity.
- Provision of proper conditions of service, viz., healthy home and office environments, adequate salaries and alluring pension benefits, better promotion facilities, periodical raise in dearness allowance to neutralize the rising price index, opportunities for mobility, adequate regards for integrity and conscientious work can go a long way in the eradication of corruption on economic grounds.

Corruption can be weeded out at the political level, which is actually the root cause of corruption among civil servants if citizens are diligent, if opposition parties are strong and successful, and if the crooked politicians in the country can be turned to the search light of impartial press. An improved effort is required to track the movement of commodities and individuals within the federation.

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THE ROLE OF SUSTAINABLE PUBLIC PROCUREMENTS IN THE TRANSITION PROCESS FROM THE LINEAR ECONOMY MODEL TO THE CIRCULAR ECONOMY MODEL

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Abstract: *Sustainability issues are addressed extensively in current researches. Nonetheless, the authors consider it necessary to deepen studies on the role of public procurement in the transition from the linear economy model to the circular economy model. The authors also consider that there is a close link between sustainable acquisitions and the development of the sustainable financial market. This is demonstrated by the evolution of exponential growth in both the volume of sustainable debt securities and investments in sustainable assets. For the elaboration of this study, the authors applied the monographic method to establish value judgments regarding the approached concepts, the comparative method to highlight particularities of the different approaches of the concept of public procurement in terms of sustainability aspects. To determine the trend in 2012-2019 of sustainable debt securities, the authors applied the time series adjustment method according to the power function and the average growth rate method.*
Keywords: *Public Procurement; Circular procurements; Circular Economy; Sustainable Investments; Sustainable Debt.*
JEL classification: *H57, Q01*

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INTRODUCTION

In the last three decades, the Republic of Moldova has faced important environmental and social challenges: degrading of agricultural land, water pollution,

irrational waste storage, mass migration of young people in the country, aging population, etc. These challenges are also inherent in other states, with a developing economy and, as well as, with a developed economy.

Awareness of the dimensions of social, economic and environmental sustainability has increased in the last two decades. In order to promote economic and societal sustainability, the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (S&D Group) launched in January 2018 the Progressive Society Initiative (Progresive Society, 2018), which is based on the UN Sustainable Development Goals for 2030, adopted in 2015 at the Summit of 25-27 September 2015 (European Commission, 2015) The 17 Global Sustainable Development Goals and 169 specific objectives address three dimensions of this development: social, economic and environmental (eradicating poverty, combating inequality and injustice; protecting the environment), (United Nation, 2020). Through its initiative, the S&D Group set out to adopt a set of measures „…to change the course of Europe", so that „…a very different society can be born - a society of sustainable equality, wellbeing for all, economic balance, social and ecological and peace - which leaves no one and no region behind". To ensure „sustainable equality" in the EU, the S&D Group comes with a series of recommendations, which also refer to „changing production and consumption patterns to make them widely sustainable" (Progressive Society, 2018: 171).

„Sustainable development is the only way forward" (UNDP Moldova, 2017: 41). In this context, the Republic of Moldova, along with 192 other UN member states, has committed itself to aligning with the 17 objectives of the 2030 Agenda by „integrating the objectives into the process of planning and developing public policy documents at all levels, in order to make the operational agenda" (UNDP Moldova, 2017: 9).

The path of sustainable development can be followed by:

- integration of sustainable principles into the public procurement system,
- sustainable investments,
- promoting the circular economy model, etc.

The integration of the principles of sustainability in the public procurement system is addressed extensively in both national, European (European Commission, 2017, Farid Y., 2019) and international public policy documents, as well as in studies conducted by numerous scientists (Farid Y., 2017; Heshmati, A., 2017; Adjei A.B., 2010). There is a consensus on the role of sustainable public procurement in future generations. However, there are some divergences that relate to the terminology used. These issues will be addressed in more depth in the following.

CONCEPTUAL APPROACHES TO PUBLIC PRIVATE PROCUREMENTS IN TERMS OF THE SUSTAINABILITY COMPONENT

The research that was carried out highlights several concepts: green procurement, economic procurement, durable procurement, sustainable procurement, circular procurement. A summary of their definition is presented in Table 1. The implementation of sustainable public procurement in the Republic of Moldova began in 2017. However, the Guide on Sustainable Public Procurement of the Public Procurement Agency of the Ministry of Finance of the Republic of Moldova (Public Procurement Agency, 2017)

contains mostly references to green procurement, while the social and economic aspects of sustainable purchases are not properly reflected.

Currently, the criteria most often invoked by contracting authorities is the "lowest price", but in the conditions of implementing sustainable procurement the priority will be given to the criteria "lowest lifecycle cost" of the product (Adjei A.B., 2010).

Table 1. Definitions of the concepts of public procurement approached through the prism of sustainability components

Concept	Definition
Green procurement	These are a process by which economic entities and / or public authorities procure goods, services and works with a low impact on the environment during their life cycle compared to goods, services and works with the same primary function, which would be otherwise purchased. (COM, 2008) Green procurement is adopting environmentally responsible practices in business used to meet the needs for materials, goods, facilities and services. (European Union, 2016: 4)
Sustainable (durable) procurement	Sustainable procurement is a process by which economic entities and / or public authorities meet their needs for goods, services, works and utilities in a way that achieves „value for money for life" in terms of generating benefits not only for organization, but also for society and the economy, while minimizing and avoiding, environmental damage. (Public Procurement Agency, 2017)
Circular procurement	Circular procurement integrates an approach to green public procurement, which pays special attention to „the procurement of works, goods or services that tend to contribute to closing the loop in supply chains with energy and material resources, while reducing and at best case, avoiding the negative impact on the environment and the formation of waste during the whole life cycle". (European Commission, 2017)

Source: developed by authors

The costs of using products purchased at a lower price, but without ESG considerations (ESG - environmental, social and governance) are higher than the costs of capitalization on an organic product (Fig. 1).

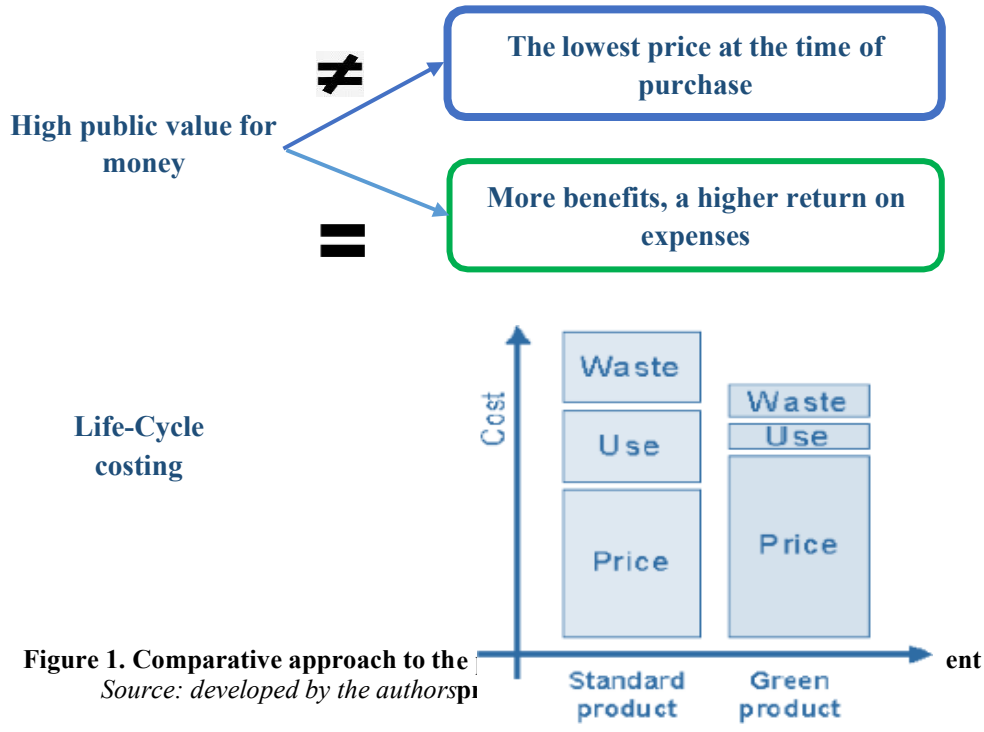

Figure 1. Comparative approach to the **ent**
Source: developed by the authors

The integration of sustainability principles into the public procurement system must be achieved gradually. A prioritization model of the action set would be the European model of the public procurement hierarchy is presented by the authors in Table 2, which is based on sustainable waste management, in the following sequence: (Figure 2):

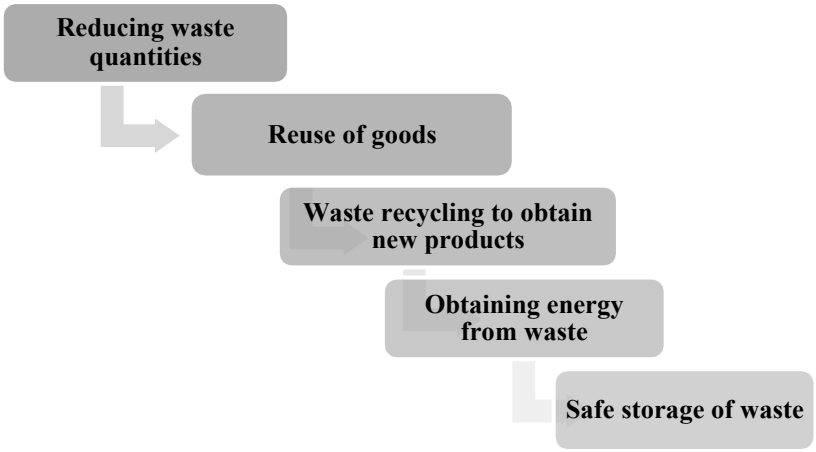

Figure 2. Waste hierarchy.
Source: (Cole, C. et all., 2014).

Table 2. Transition to a public procurement system based on the European model of the waste hierarchy

Stage	Specification
Stage I. ***Quantitative reduction of waste.***	A first step in this direction is possible by promoting sustainable consumption, the purchases made must be necessary, so as not to generate much waste. For example, procurement contracts may contain restrictions on the packaging of products, so that packaging is minimal.
Stage II. ***Reuse.***	More and more companies have adopted sustainability policies, so more and more products are designed to be reused. This can be a condition when designing the offer. Such practices have already become common in the purchase of ICT equipment (laptops, desktops and others can be reused by other organizations and institutions.)
Stage III. ***Recycling.***	Some products cannot be reused, therefore, they must be designed in such a way that there will be a possibility to recycle them. These products include those that are made from recyclable materials or they contain material that can be easily and efficiently recycled into another good.
Stage IV. ***Recovery.***	Waste recovery involves the recovery and capitalization of waste for various purposes. For example, obtaining organic fertilizers by composting food waste or converting used alimentary oil or animal fats into biodiesel.

Source: Elaborated by the authors based on the source (EU Waste Framework Directive, 2008).

Of course, circular purchases can be considered the most environmentally friendly. Public authorities can contribute to the promotion of circular procurement by formulating specifications and contract award criteria. Since October 2017, the European Commission has developed GPP criteria for about 20 groups of goods. An increased emphasis on circularity is placed on buildings, computers, textiles and furniture (European Commission, 2017: 4-7). If for computers, furniture, there are put forward the requirements for reuse, in case of textiles - for recycling, then for buildings there are put forward energy performance requirements, the emphasis being on reducing energy consumption or use of energy

resources from local renewable sources. The national energy targets of the Republic of Moldova for 2020 set in relation to the obligations assumed by accession to the Energy Community Treaty and the energy acquis of the European Union (Energy Strategy of Moldova until 2030, 2013) focus on two aspects: energy security and energy efficiency (Figure 3).

The main objective of the Republic of Moldova for the next 10 years (2030) will be to reduce greenhouse gas emissions, which will contribute to a new energy mix and improve energy efficiency.

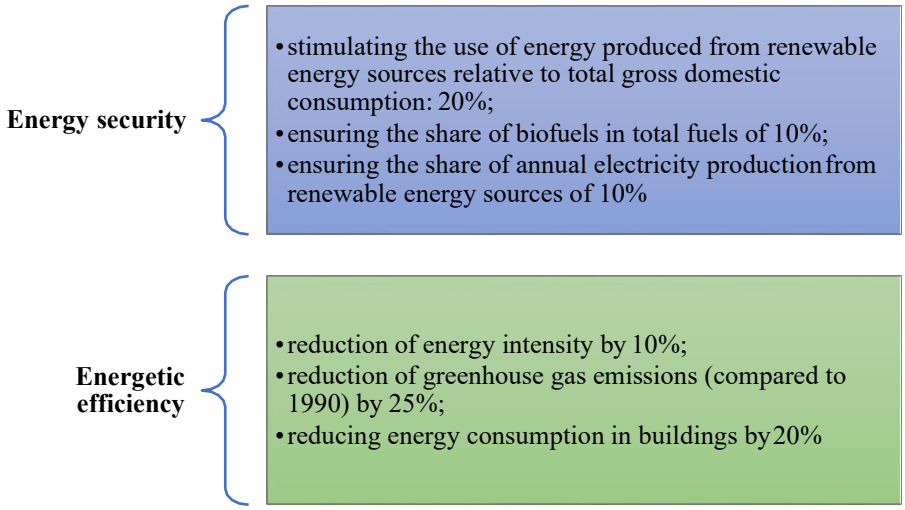

Figure 3. Sustainable targets on energy security and efficiency of the Republic of Moldova for 2020
Source: Elaborated by the authors based on the Energy Strategy of the Republic of Moldova until 2030 (Energy Strategy of Moldova until 2030, 2013)

SUSTAINABLE PROCUREMENT - A DETERMINING FACTOR IN THE PROCESS OF TRANSITION TO THE CIRCULAR ECONOMY MODEL

At the heart of the concept of sustainable procurement and circular procurement is the model of the circular economy - a concept that is under continuous debate. Concerns about a new approach to production and consumption patterns have been emerging since the 1970s. China is one of the first countries to integrate the principles of the circular economy into national law. In the 1976 Report „The Potential for Substituting Manpower for Energy", researchers at Battelle Instituite Geneva Walter Stahel and Genevieve Reday brought to the attention of the European Commission the concept of the circular economy, on its impact on job creation, economic competitiveness, resource saving and waste prevention. In addition to the concept of circular economy, they promote another concept: "functional services economy" or „performance economy" (Geneviève R.-M. and Walter R. S., 1977). It should be noted, therefore, that the circular economy ultimately defines a waste management model that began with efficiency goals and is moving towards a new horizon – Zero Waste. The concept of the circular economy was also used by Pearce and Turner in the book Economics of Natural Resources and the Environment published in 1990 (Pearce, D.W. and Turner, R.K., 1991). A study by a group of researchers (Kirchherr,

J. et al.,2017: 221-232) found that "circular economy" is a concept approached in different ways, a study that allowed the authors to identify 114 definitions from 100 scientific articles published in 2016 and about 30 published in 2014. The Ellen MacArthur Foundation defines the circular economy as „a generic term used for an industrial economy" (Ellen MacArthur Foundation., 2013**)**, which is created for the purpose of being restorative and in which the material cycle consists of:

1) the *biological cycle*, where the processes act in such a way that the components re-enter the biosphere without negative effects;
2) the *technical cycle*, where the components are used very efficiently and do not enter the biosphere.

The circular economy is based on the 3R principles in waste management: reduction, reuse and recycling. The stated principles represent a circular system in which all waste is recycled, all energy is derived from renewable sources; activities support and rebuild the ecosystem and support human health; healthy resources are used to generate high lasting value (Sadhan K. G., 2017).

In 2015, the European Commission launched the implementation of the circular economy model and declared "Closing the loop" - an EU action plan for the circular economy. The Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions set out the action plan "which will play a key role in achieving the Sustainable Development Goals (SDGs).) by 2030, in particular Objective 12 - to ensure sustainable consumption and production patterns" (Brussels, 2.12.2015). This action plan mentions the essential role of public procurement in the circular economy, giving them a significant share in European consumption, accounting for about 1/5 of EU GDP. The process of transition to the circular economy is taking place gradually. As an intermediate step is the economy of reuse.

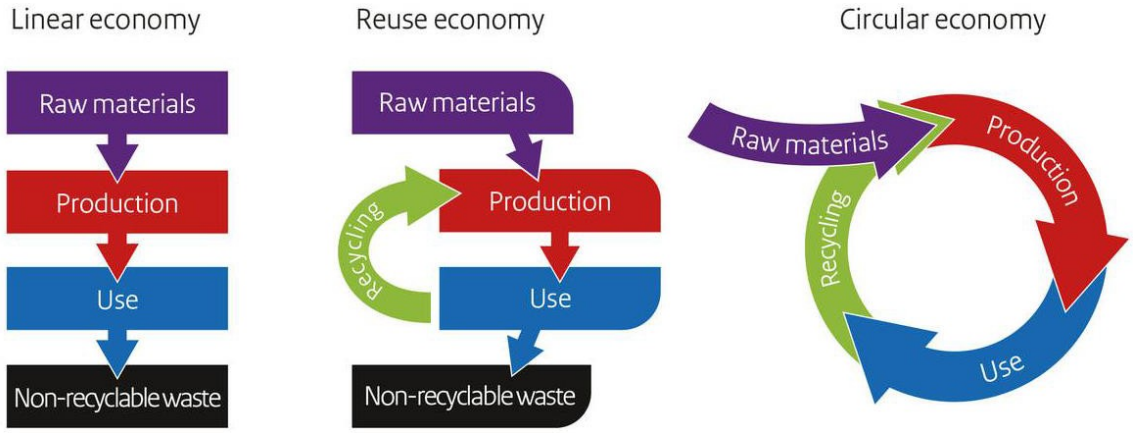

Figure 4. From linear to a circular economy.
Source: (Government of the Netherlands, 2017)

The circular approach to procurement offers multiple benefits. In addition to enabling buyers to focus on meeting needs and taking into account life-cycle costs with potential savings, circular procurement also provides a frame of reference for a more comprehensive analysis of environmental impact and waste generation. during the entire

life cycle of goods and services, which includes a series of stages. These stages are different in the case of the circular economy from those followed in the linear economy model. From fig. 4 shows that the linear economy model ends with waste storage, which seriously pollutes the environment, and circular business models aim to reduce this impact by capitalizing on them.

The Gartner report of September 26, 2019 Gartner Predicts Circular Economies Will Replace Linear Economies in 10 Years states that by 2029, the circular economy will replace the wasteful linear economy (Hippold, S., 2019). With the reorientation of consumer and shareholder preferences towards sustainable activities and products, CSCOs managing supply chain officers (CSCOs) must anticipate non-waste procurement strategies (Zero Waste).

The circular economy model is closely linked to sustainable investment. Also called responsible investments, they involve the incorporation of environmental, social and responsible governance factors when making investment decisions, rather than relying solely on financial considerations. The European Commission is negotiating with the management of the European Investment Bank on the subject of transforming the latter into the European Climate Bank. It is intended to make massive investments in circular economy and biodiversity projects. „Organic products will become the norm for citizens, but we will have to start with public authorities: ecological criteria for public procurement will become essential, so that public demand for similar products and services grows exponentially." (Ecopresa, 2020). Accomplishing these goals can be achieved by increasing the impact of public investment through sustainable procurement. In this context, in October 2017 The European Commission launched the initiative to „make procurement more efficient and sustainable" (European Commission, 2017).

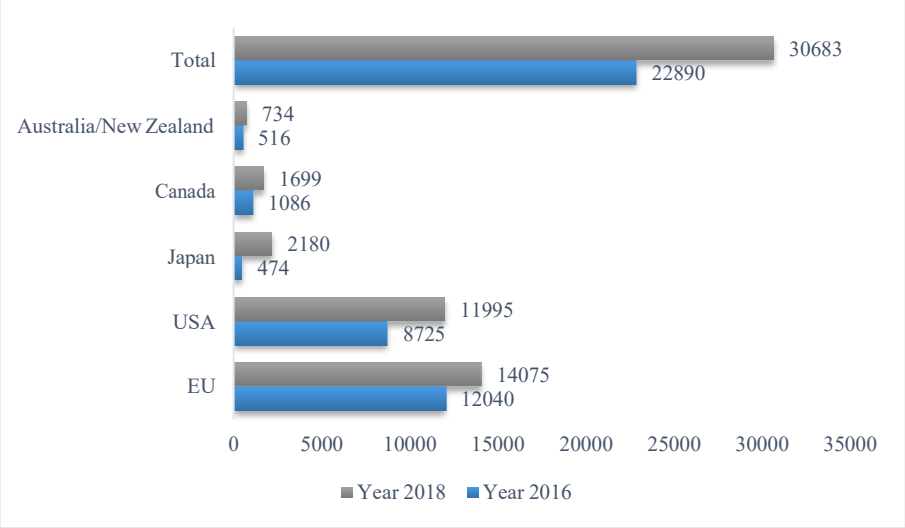

Figure 5. The value of investments in sustainable assets in regional and total aspect, 2016, 2018, billion. US dollars.

Source: developed by authors based on data taken from the source (Uzsoki D., 2020: 3)

Financial market participants are already aware of the extent of incorporating environmental, social and governance (ESG) considerations into investments. This is seen through the evolution of the amounts allocated in investment projects on ESG considerations in the regional aspect during three years (2016 - 2018). The largest increase

is in Japan, where the volume of investments in sustainable assets increased in 5.6 times. A modest increase (16.9%) was recorded during this period in the EU countries. In total, on the analyzed regions, the value of sustainable investments increased by about 34%. Along with the increasing trend of circular investments, there is also an increase in funding sources attracted by sustainable instruments. According to the Report presented by BloombergNEF experts at the Sustainable Bonds Forum in Washington in October 2019, the volume of sustainable debts issued at the end of 2019 was one trillion USD (Henze, V., 2019). About 77% (USD 788 billion) were made up of green bonds. The United States and China are at the forefront of sustainable financing through green bonds.

One of the recommendations of the S&D Group set out in the Progressive Society initiative (Progresive Society, 2018) also refers to public entities: „European financial institutions should lead by example both through a public issuance of green bonds and social bonds, aimed at financing new projects, and through providing initial guarantees to support concrete projects to reach a critical mass". In order to carry out these actions, the S&D Group recommends that the European Investment Bank support the 2030 Sustainable Development Goals and the activities for the implementation of the Paris Agreement on climate change.

At the same time, developing countries, such as the Republic of Moldova, have not put into circulation sustainable debt instruments issued by public authorities or corporate entities, despite the trend of increasing their volume in developed financial markets.

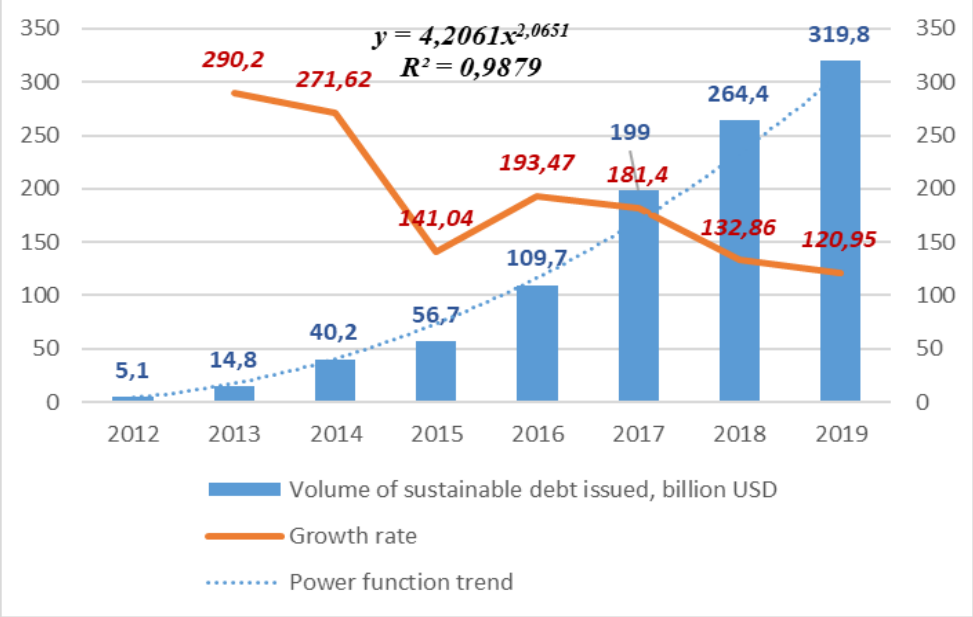

Figure 6. The evolution in dynamics and the evolution trend of the volume of sustainable debt securities issued worldwide during 2012-2019.

Source: Developed by authors based on BloombergNEF data (Henze, V., 2019)

The data presented in Figure 6 indicate an upward trend in the volume of sustainable debt securities issued between 2012 and 2019 worldwide. The calculation of the annual growth rates of the volume of issued titles allowed the authors to establish an average annual growth rate in the analyzed period of about 80.6%. The evolution trajectory

described by the power function ($y=4,2061x^{2,0651}$) shows an exponential increase in the volume of sustainable debt securities issued, and the determination coefficient R^2 (98.8%) confirms the hypothesis that the model can be used to predict the evolution for the next 2-3 years. Thus, the market for sustainable debt financial securities is constantly growing. Extensive investment projects in sustainable assets will be financed from these resources, which will have a social, economic and ecological benefit.

CONCLUSIONS

1. Public procurement is considered a tool and a catalyst for the transition to the circular economy model, given that the principles of sustainability are integrated into the process of organizing and conducting them.
2. The promotion and implementation of the circular economy model, along with sustainable and circular acquisitions to the detriment of the linear economic model, also implies investments in sustainable projects. In turn, sustainable investment requires specific financing instruments. In this context, the financial market comes with various sustainable debt securities, as evidenced by the trajectory of the evolution of the volume of securities issued in the last decade. Thus, in the period 2012-2019 the volume of sustainable debt increased 63 times. In the conditions of exponential growth, sustainable investments become quite attractive for potential investors. It should be noted that large companies have already integrated sustainable components into its financial structure, and investment companies (funds) have planned sustainable components in their portfolios.
3. Simultaneously with the allocation of resources in investment projects with a sustainable component by the corporate sector, it is necessary to develop the sustainable public investment sector and sustainable financing instruments. This can be achieved through public-private partnerships, as well as through the system of sustainable public procurement. Those stated by the authors, demonstrate once again the role of sustainable public procurement in driving the processes of integrating the principles of sustainability in various economic and financial fields.

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FINANCE

BEYOND THE DREAM; WHAT ARE THE REAL CHALLENGES OF FINANCING GAS-FIRED POWER PLANTS IN NIGERIA?

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Abstract: *The giant of Africa is a name that is unique to one country – Nigeria. The size of its population, abundance of mineral reserves and its strategic location presumably sets it apart as a haven for investors. However, one cloudy side which continually casts a shadow on it is the state of its electricity industry. A solution to this growling issue would be the provision of adequate infrastructure to ameliorate the solution. Consequently, government has taken the decision to install gas-fired power plants, to take advantage of its rich gas reserves. However, it remains to be proven whether its vast market potential and abundance resource would be enough to attract investors towards eradicating its electricity power poverty and thereby impact positively on the development of its whole economy. Therefore, this paper does not venture into the different financing options available to the power sector, but focuses on 'Project Finance', a unique form of financing which mechanism lends against the cash flow generated from the project being financed with limited recourse to the assets of the project sponsors. It concludes that with the right detail, success is possible.*
Keyterms: *Project finance, Electricity industry, Project vehicle and Host state*

INTRODUCTION

In the traditional setting, it was usual for power projects to be funded either directly from the government accounts or through loan grants from the international banking market, multilateral institutions, amongst others, (Yescombe, E.R., Principles of Project Finance (USA; Academic Press, 2002) p.1), which consequently increases the government's debt ratio, considering that this process was repeated for other sectors of the economy that also required huge financial commitments (Barger, T.C., *Financial Fiasco in the Pacific Rim: Making Sense of the Mess*. Impact, Vol 2 No. 2 , 1998 http://www.ifc.org/ifcext/publications.nsf/AttachmentsByTitle/IMPACT_Spring1998/$FILE/Impact+Spring+1998.pdf last visited 2nd June 2020).

There is an on-going reform in the Nigerian Power sector, as the government seeks to beef up its local electricity capacity to meet the thresh-hold for contemporary economic development. This reform prompted a drive by the government, which was principally targeted at reducing the inefficiencies in the system and building new capacity by the introduction of competition. As such has, opened up the power sector to funds other, than public funds in the coffers of government (Okoro, O.I., and Chikuni, E., *Power Sector*

Reforms in Nigeria: Opportunities and Challenges, Journal of Energy in Southern Africa. Vol. 18 No. 3. P 55). The vertically integrated monopoly has hitherto, transmuted into unbundled units which are expected to provide more ease in terms of management and in attracting private sector finance.

Financiers are however faced with a dilemma of choice in terms of the means of raising the needed capital. Project finance (PF) presents an attractive and logical option, being a limited recourse type loan, which gives it its distinctive feature as that loan which can be granted to a borrower with little or no recourse to the balance sheet of the project sponsor. As such debt service lies basically with the project company (Buljevich, E.C. and Park, Y.S., Project Financing and the International Financial Markets (Mass. U.S.A.: Kluwer Academic Publishers, 1999). The lenders in a PF structure are unwilling to bear risks since they do not partake in the upside benefits of the project. Their interest is basically the repayment of the principal loan as well as the predetermined interests. Achieving this goal is the basis for the determination of success in lending and debt service in any given circumstance.

This paper explores a few of the possible challenges that may be encountered in using PF as a means of funding gas-fired power plants in Nigeria. It considers the general principles that are applicable, matching them with the peculiarities that exist in Nigeria. It concludes that since the mitigation of risk by proper allocation lies in the heart of the success in PF, the actual successes lie in the details of the implementation arrangement and if well articulated will leave all parties satisfied.

LIMITATION

The constraint in data, which was encountered in this research, was as a result of inadequate precedents and data in the field of PF in the Nigeria power sector. The constraint notwithstanding, this research addresses the key issues inherent in project financing gas-fired power plants in Nigeria.

PROJECT FINANCE VIS-À-VIS FINANCING PROJECTS: THE CORE DIFFERENCE

Fundamentally, PF is a mechanism which lends against the future cash flows of the project which is to be undertaken. It is different from the general concept of financing projects which incorporate risks and benefits accruing from the transaction. These popular financing arrangements usually comprise parties aiming to participate in the risks that may arise from a project thereby allowing full recourse to the assets of all parties involved in the event of failure; unless some form of limitation or security had been placed from the onset (Clifford Chance, UK, London; IFR Publishing, 1991). Project finance on the other hand describes the ‘financing of a particular economic unit in which the lender is satisfied to look *initially* to the cash flows and earning of that economic unit from which a loan will be repaid and [*then*] to the assets of the economic unit as collateral for the loan’ (Nevitt, P.K., and Fabozzi, F.J., Project Finance, UK, London; Euromoney Books, 2004).

The striking features immediately apparent from this definition are first that, what is being considered as the subject matter of the transaction is a ‘particular economic unit’ suggesting that it is a ring-fenced project; a debt would be involved, since a ‘lender’ forms

a part of the matrix; the said lender bases his lending decision first on the predicted cash flows which though not yet in existence, would begin to accrue on completion; and the assets that belong to the economic unit (not that of its owners). In this regard, the question that easily comes to mind is that if this economic unit is yet to execute the project, what valuable assets can it possibly posses? There would usually be a reason or set of directives that gave rise to the unit and this comes in form of contracts, licences and ownership rights in a natural resource.

Balance sheet finance envisages the use by a company of its retained earnings or short-term debt to fund a project and extends to equity sales in the event that the project requires permanent financing (Hoffman, S.L. The Law and Business of International Project Finance (2nd ed.)(The Hague, Netherlands; Kluwer Law International, 2001, 10). This presupposes the idea that the credit decision is usually dependent on the entire company profile and the overall effect that would follow its implementation. It is hardly the first option for a company as sponsor, owing mainly to the effect that it may have on its credit rating, in the event of default. Asset-based finance on the other hand is hinged upon the existence of valuable assets which form the basis against which a lending decision takes place since the assets would serve as collateral against default.

The underlying distinction between PF and other types of financing arrangements lies in the source for the repayment of the debt and the extent to which reliance will be placed on the 'owners' of the project. While the other forms are basically concerned with what the 'borrower' can bring to the table in terms of assets and guarantees, FP looks to what the 'borrower' can yield in terms of cash flows.

Project Finance: The Players

The structure of a project financing arrangement is unique and has different players, all with distinct roles and objectives within the project matrix (Vinter, G.D., Project Finance (3rd ed)(UK, London; Sweet & Maxwell, 2006, 3). It is based on some differing objectives that negotiations are successfully concluded. They major ones include:

The Host Government

The host government (HG) has the objective of staying in power, and providing for the citizens, the necessary utilities to carry-on with their personal and business lives. The competing interests for available funds cause it to 'partner' with unequal partners in a way that it can derive the benefits available from PF. It provides licences and issues contracts. In other words, the HG is the party, which has the power to provide the enabling environment for a PF arrangement between the lender and the borrower. A way the HG can do this is that it could also be a sponsor party in a PF structure, though without assuming the title.

The Project Sponsors (PS)

The Project Sponsors (PS) are the will behind the financing decision and so must monitor the project, ensuring that all the needed documentation like consents and licenses are issued in a timely manner. They aim to make profits for their companies and so are involved in the risks that can arise, and thereby seek ways to minimise the risk exposure.

The Lenders

They are not shareholders and cannot be rightly called investors, but they simply provide loans to the project company, which is to be repaid with a pre-agreed interest and no share in the upside of the project profits. They comprise either one bank or a syndicate of banks working together to achieve the set goals. They could be local commercial banks in the country of the borrower, or international financial institution like the World Bank, amongst others.

The Project Company

PF is usually referred to as off-balance sheet financing; it is however the Project Company (PC) that then has its balance sheet reflecting the debt transaction, hence the question, 'Off whose balance sheet?' It is the Special Purpose Vehicle (SPV), which is set up by the sponsors for the execution of the project.

WHY USE PROJECT FINANCE FOR GAS-FIRED POWER PLANTS?

PF is useful for infrastructural developments in which an assignable cash flow can be secured. Most of these projects while possessing the potential to yield enormous income on the long run, largely because they provide a needed service, are capital intensive and yet do not, at the time of construction have a whole lot of valuable assets at their disposal. Large corporations who recognise the potential that can accrue from funding these projects are wary of tainting their credit rating and have an added mandate to fulfil the dictates of the company philosophy by meeting laid down criteria (Hoffman, *Supra,* note 11 at 11). Power projects are generally capital intensive. The possibility of completing the cycle of construction for a gas-fired power plant from start to finish within twenty-four months - depending on the particular country situation, makes it an attractive option for building quick capacity. This differs from the duration for completing some other power plants like hydro that can take as long as six years. The fact that these equipments produce energy, which is required for various uses and at different levels, means that there is a demand for it. This qualifies it as having assignable cash flows from the sale of the needed commodity and within a short time, all things being equal.

These plants are usually built in remote locations that are close to the source of gas but far from urban areas. This has the effect of rendering most of the equipment 'valueless', particularly since most are built to specification and cannot be easily sold in the event of a default. Again, this means that the surest collateral it possesses is the predicted cash flows and this will not meet the criteria of most lending options which operators do not run as charities but must secure the investments of its shareholders. The existence of contracts and licences give the reasons behind embarking on the projects in the first place.

The obvious qualities that distinguish PF as a most likely option for power projects do not mean that all is easy sailing. There are special conditions that must be met to make the project viable and therefore bankable. These conditions differ from country to country. The HG's ability to support the project is one of the most important variables in the financing equation.

Another important point is because gas has become the new bride of environmentalists as it is being promoted as an environmentally friendly energy source. In addition, along with the equator principles in the international finance market, it could be argued that use of gas power plants will offer international lenders and parties in the oil

and gas sector the opportunity to show case their commitment to the principle and thereby boost their public image (See The Equator Principles, http://www.equator-principles.com/index.shtml, Last visited 6th June 2020).

THE NIGERIA POWER SECTOR

Power in Nigeria is characterised by incessant blackouts which has led to the decision by government to liberalise the sector (Adetoro, S.H., *Liberalisation in the Energy Industry - Is it Reserved for Countries with Overcapacity*? (2009) 18 EEELR, 186.) While liberalisation will require new players, the issue of setting up a financing structure that will attract the needed investment is rife. In Nigeria, with enormous commercial activity, arising from its ports, oil and gas transactions amongst others, it was and still is a priority of government to increase the available capacity in the power sector. Private sector funds were required to augment government spending.

Reforms

The reforms in the sector took the approach of unbundling the vertically integrated monopoly into generation, transmission, distribution and supply companies and introducing competition and choice and then privatisation. An independent regulator, National Electricity Regulatory Commission (NERC) was put in place with the Federal Ministry of Power having the function of giving directives of a general nature. (Electric Power Sector Regulatory Act (EPSRA, 2005). Since the inability of supply to meet demand was the main motivation for reform, it was only natural for the government to device means to build the needed capacity. The Nigerian power sector was predominantly fuelled by hydroelectric power and with the hydro plants aging and incapable of meeting projected needs, it was important to find an alternative within the shortest time possible. Tackling the capacity needs has seen investing in gas-fired power plants as one of the fastest means of bridging the demand gap. This is premised on the assumption that the country is blessed with an abundance of gas reserves and bearing in mind that installing the gas plants relatively takes a shorter time than the other options like hydro plants.

The Opportunities

In almost every business chain, the opportunities that exist in the Nigerian market are almost unrivalled. Besides its population of over 140 million, The Nigerian population is commercially alert as it has business hubs across the country. The geography of Nigeria and its place as the seat of gas in Africa makes is also significant. Nigeria has the 7th largest gas reserve in the world. (Country analysis and briefs, at http://www.eia.doe.gov /emeu/cabs/Nigeria/Full.html last visited 4th June 2020).) As such, investment in gas infrastructure will be a business opportunity for investors. These opportunities notwithstanding, the issues of funding and business climate as mentioned above is an Achilles heel that requires swift action by the HG. That aside, it is almost impossible to transact business in Nigeria and operate at a loss though challenges exist.

THE RISKS AND CHALLENGES

Using PF as a means of financing gas-fired plants requires a careful consideration of the factors that work together to deliver the power. Like most means of generating electricity, a plant, which is not completed, and running is useless. The usefulness of a plant lies in its ability to deliver the power to the consumers at the flick of a switch. While this is the aim, it is not as easy as it seems and therefore requires careful consideration of some the risks that may arise in effectively executing the project. Business in every country is met with some form of risk or another. In most circumstances, these risks are generally applicable. However, some are specific to particular countries and must be dealt with in a manner that takes into consideration, the existing peculiarities and circumstances. A discussion of some of the risks that affect the effective financing of these projects in Nigeria, under a PF structure, forms the basis for this paper.

Where is the Gas?

The decision to rely on gas powered plants was based on Nigeria's rich gas deposits. The environmental concerns associated with the flaring of gas that has continued in the oil and gas rich region – the Niger Delta, also led to a consideration of the most effective and sustainable ways of developing the gas for useful purposes. These plants obviously require a fuel source, which is gas. The oil industry in Nigeria has been the major source of attention but in the past few years, gas has taken centre stage with estimated reserves of about 182 trillion cubic feet (tcf). (See 'Shell in Nigeria: Harnessing the Nigerian Gas' Published at http://www.shell.com/static/nigeria/downloads/pdfs/briefing_notes/harnessing_gas.pdf. Last visited 7th June 2020). This should be the dream of any country basing its power generating source on gas. However, does reserve connote availability?

Most of Nigeria's 'available' gas is 'Associated Gas', which is the gas that comes as a bi-product of extracted oil. As such, it is incidental to the exploration of oil and so forms part of the exports for the International Oil Companies (IOC)s. The new directive of government that the IOCs meet certain Domestic Gas Obligations (DGO) (Igbikiowubo, H., *Domestic Gas: Industry Operators Fault FG's Directive*, Vanguard, September 2008) is principally targeted at these new power plants. They are expected to supply the gas at a regulated price, which is lower than the world price for gas. Without the needed gas, the plants are completely useless and may as well be discarded. The IOCs are reluctant to sell the gas at prices lower than the international price for gas.

Access to Gas Fields

Cash flow can only arise because of supplying electricity and receiving the pay for it. This can only be possible where there is access to gas. A gas plant, which is not in use, means nothing to the lender, and so, is not bankable and therefore cannot be financed. In Nigeria, the concern over access to the gas fields is rife. This is due to the incessant conflicts in the Niger Delta Region; the gas hub of Nigeria. This situation makes it increasingly difficult for companies to continue working in the area. With a wave of kidnappings and fatal attacks on oil fields, many of the oil companies are unable to continue effective operations. This has heightened the cost of political risk and transaction cost generally in this area, an issue that has become the albatross of both the government and

the oil companies involved. Closely related to this is the dearth of the necessary pipelines to evacuate the gas in the event that it becomes available. The gas pipelines have not envisaged the extent of domestic gas use and so are not in place. The obvious question is, how will the plants be fuelled? This leads to the issue of supply risk. The risk of supply and completion are imminent and without these, there is in fact no project to finance.

What Is the Project?

It had been stated that PF envisages a clearly identifiable economic unit. The urgency is not tomorrow or in a year time, but today, and NOW! Are the unbundled structures truly separate and able to identify a cash flow if financed? Assuming for a minute that the project is to be implemented on a Build-Operate and Transfer BOT) basis, is there an access to the lines or an obvious off-taker who is committed to take and pay for the generated power? The question of being truly unbundled also raises issues of control. Are the unbundled units under the real authority of the Chief Executive Officers (CEO)s and are they able to make the commitments necessary to move the projects forward and allow for the bankability of the project. This is an important issue which creates a challenge for the assurances of cash flow. A sponsor will not get involved with a project which it cannot lay hold of, and obviously the lender would not even touch it with a long stick.

Will The Project Ever Take Off?

A project that will not come into being will never yield any income and will therefore not qualify for PF. The power plants are proposed to be located near the source of gas, which again is the volatile Niger Delta region. Attempts at installing some power plants under the National Integrated Power Plants (NIPP) have failed to materialise. The projects are being carried out under EPC style contracts and though engineering and procurement are 100% complete, the construction of the platforms and other site-related activities have remained undone. The reasons are mainly connected to site access some of which have led to court cases that have remained unresolved. Cost overruns are inevitable but worse still is the fact the plants may never be completed. The original equipment manufacturer (OEM), General Electric, have supplied the equipment subject to certain warrantees and testing procedures that are time-limited and which can only happen after installation. The plants are built to strict specification with pre-determined gas composition. What will be the fate of the plants when the warrantee period expires without installation and thereby testing? The storage conditions are very strict and if not adhered to, immediately vacate the warranty. Imagine this scenario if the source of funding had been PF and had not envisaged this as a force majure event. Connected to the implementation of the projects is government's recent directive for the review of licences. (See 'Power Minister wants review of IPP Licences' The NERC Press Release, 2009). About 29 licences have been issued to independent Power Producers (IPP)s and are at different levels of implementation. The outcome of this directive can only be imagined. It is however likely to lead to panic among contractors arising from uncertainties of what further directives could arise.

In What Currency?

One issue which is also of great concern is that of currency as it pertains particularly to foreign exchange. The local currency, the naira, is constantly fluctuating. While it may

be usual that currency fluctuations occur, the extents to which these changes occur are unprecedented. (Within the last six months for example, GBP has moved back and forth between 190 and 280 of the Naira, and the dollar between 98 and 150) It becomes worrisome to then determine the currency in which the project will be denominated bearing in mind that most of the funds emanate from foreign lenders. The extent to which this affects inflation in the country is beyond the imagination of a party who bases a decision on normal principles of economics and business transactions, and this creates problems with converting and transferring foreign exchange from the place of performance to the offshore beneficiaries. The problem of currency differences and fluctuations is more pronounced by the length of time it takes to complete most of the projects and the exposure that can arise. (Hoffman, *Supra* note 11 at 58)

Selling the Generated Power; For How Much?

The issue of pricing for local consumption is very worrisome, especially where the project funds are in hard currency. It is hard to imagine that selling power in the Nigerian currency can easily generate the cash flow that would service debt in hard currency. This is a problem associated generally with developing countries. (Dunkerley, J., Financing the Energy Sector in Developing Countries, Energy Policy1995, Vol.23 No. 11)

ADDRESSING THE RISKS

First amongst the issues raised in chapter four is identifying the risks prevalent in financing the gas-fired power plants and like any other set of challenges, does not indicate that the problems are insurmountable. It's not an exercise targeted at excluding Project Finance as an available option, but challenges the commercial managers to consider possible options that would not exclude them from benefiting from the vast opportunities existing in Nigeria.

Let There Be Gas; and There Was Gas

The gas availability issues must be dealt with if any meaningful progress is to be achieved in the in financing the power plants. While the IOCs have shown only reluctance in meeting the set targets, (Kalu, C., Domestic Gas Obligations and The Gas Masterplan, Business World) expressing their grievances over failure by the NNPC, to fulfil certain counterpart obligations in their partnership with them, government is not taking the their reactions lying-low. The good news is that the Nigeria Petroleum Development Company (NPDC) has made a firm commitment to meet its share of the gas supply obligations. What remains is for government to ensure that the necessary infrastructure will be in place. It is also essential to extract this level of commitments from other companies to ensure that the volumes will be adequate. It is also my opinion that the construction of the power plants be tied directly to the gas suppliers who would realise that these obligations is not necessarily to government and that default would be two way – government and the power plant along with its operators who are fellow businessmen and would take corresponding legal action in the event of failure to deliver. The government should be able to firmly say ''there is adequate gas for the power plants.''

Defining the Extent and Bounds of the Project

The autonomy and independence of the regulator as well as the unbundled units is necessary for effective project management and which will incentivise project sponsors. Though this does not preclude the need for Licences and guarantees, it gives a sense of wholeness to the economic unit to be financed. This is particularly important since the lending decision is based on cash flows and must thereby be identifiable. The issue of independence is a crucial requirement in liberalised economy and a reputation for licence reviews is not a good one to be identified with it is important that government ensures that roles are well defined and adhered to. An effective tool for dealing with the project bounds may require identifying the exact unit to be financed along with its selling machinery and breaking them into lots. This will give a clear picture to the lender, what investment is required and what expectations to have, generally injecting the reasons for bankability to the identified unit.

Ensuring Completion

The answer to the issue of completion lies in forces that are beyond academic opinions or literature debates. Nigeria's gas production characterises disruptions even to economic disastrous levels. The Niger Delta crisis has till date defiled all solutions. It is tempting to say that a 'miracle' is required. But in seeking to demystify the problem, the author suggests that the principle of good governance on the platform of public participation in environmental decision making, strategic and aggressive community infrastructure development, amongst others can salvage the situation in the region. Attempts may have been made, but an absolute commitment to this end seems lacking on the part of the government. Until this is solved, investment will be discouraged and this can grind the economy to a halt. Solving this problem will keep the completion times for the plants within the projected limits and in fact ensure that projects come to a successful close so as to start providing the required power and the expected cash flows.

The safety of the lives of persons within its territory is one of the crucial roles of government and must be able to take responsibility for the impracticability of a project located in a volatile region in which case it will be compelled to take charge of the unrest and its attendant issues, or loose most investors.

The Money Issue

Foreign currency risk is not an uncommon sight in trans-national transactions. (*Supra* note 11 at 58) Its effects are more profound where devaluation is so common and is hardly a trend that the project team can influence. Indexing payments to the inflation trends is an alternative that can be considered. Lessons can only be learnt from more developed economies who being affected by this trend can proffer suggestions. It is important that this point is well negotiated and agreed upon, to avoid frustration of the project. The Nigerian government desiring to get the projects going must be able to give some guarantees in this regard, or agreement may never be reached.

Subsidies, Government Must Keep Its Promises

It is not a problem that the government decides to subsidise the cost of power to make it affordable to its citizenry and to score a political goal enabling it retain political power. What becomes bothersome is if the subsidy and obligation of government is either not paid or it is delayed. Cash flows being the basis of PF is affected by this and it is only

fair that the promise is honoured and in good time. This acts as an incentive to other companies planning to do business in the country and allows the PF structure to be well maintained. Without this, the cost of the business will increase and ultimately fail. It lies on the Nigerian government to keep up its promise, but this cannot be left to chance

CONCLUSION

The opportunities available for investment and the consequent developmental effects these will have on the Nigerian economy remain a lofty dream and at best will attract second best suitors (investors/international lenders) who might not optimally deliver sustainable and optimal results. All these could change with the provision or determination to guarantee conducive working environment, development of the necessary intrastate and clear competitive regulatory agenda. Then the Nigerian power sector would be a bright shining bride that will give illumination to the desires of all well and able parties ready to compete for her untapped potentials.

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TEACHING BUSINESS ENGLISH IN A PANDEMIC-RIDDEN WORLD: A LOOK AT THE ACADEMIA

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Abstract: *E-learning has been around for quite some time, but it has never been as important or as wide-spread as it is these days. After the initial switch to online education in March 2020, the changes to both teaching and learning are about to become more permanent than expected. This paper aims to discuss the implications for the academic world of the new online reality in light of the SARS-CoV-2 pandemic, focusing on how it affects communication in general and the teaching of Business English in particular. It is based on my personal experience at the oldest university in Romania and will highlight my thoughts on what the near future might look like in terms of the online education process.*
Keywords: *Online teaching, Business English, COVID crisis, academia.*

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INTRODUCTION

Teaching ESP (English for Special Purposes) has always been more focused on learner needs. Up until very recently, for our Business English students those needs were centred around face-to-face business communication. But the year 2020 will probably be remembered as a somewhat online revolution. Now that the initial shock of the global pandemic has subsided, people have started to realise that most of the changes that we were forced to adopt in record time may actually become permanent and our new reality. In the academia, the switch to online teaching, learning and assessment had been a long time coming, but it was marked, nevertheless, by a steep learning curve. The hope had always been for things to return to normal come fall, but it is now obvious that the new academic year will start somewhat differently than in the past. So, where does that leave professors and students and what is the future of Business English teaching?

Unsurprisingly, the challenges following the switch to emergency online teaching are being shared by university professors all over the world. As part of their #StayHome programme, the British Council has organised a series of Higher Education dialogues which enables education specialists and academia from around the world to connect and share their own experience with the new teaching during a pandemic reality. The results of a three-question poll they devised for the *How can universities support their academic staff*? webinar, which took place on June 24th, accurately reflect the situation at our university as well. For the first question in the poll, about the biggest challenge faced since

the start of the pandemic, the results were, in the order of importance: having to work longer hours, utilising technology effectively, not feeling so connected to students, dealing with the challenges of working from home, insufficient support from my institution and feeling isolated from my colleagues. However, the results for the second question, about whether people wanted to go back to how things were a year ago, seem to contradict the first. The results were, in order of importance: 'I want to use some of the ways we are working now combined with how we worked in the past,' 'Yes, it was a much better way' and 'No, I like how things are now.' To this end, the third question was about the area in which staff would like more support from their institution. The results were the following (in order of importance): much clearer policy and expectation regarding student engagement, more structured interaction with colleagues to be able to share best practice and insure knowledge transfer, better technology, better equipment and more accessible counselling (Etherton, 2020)

Clearly, both distance learning and e-learning are not new concepts, but the key part is that they have never been used on such a large scale before. Even distance learning students at our Faculty would attend a set of face-to-face classes a couple of times per semester, followed by an in-person exam. So, while both teachers and students are familiar enough with using the Internet for communicating, teaching and learning, a full online experience has never been attempted. Clearly, the main advantage of distance learning is flexibility, since it does not require teachers and students to be at the same place at the same time and it allows the latter more freedom on what and how to learn. This flexibility leads, in turn, to lower costs, since online courses are typically less expensive and there are also significant savings with accommodation and travel. But the main question remains: is distance learning as effective as its face-to-face counterpart?

Taking all this into account, and since going back to normal for the fall 2020 semester is probably unrealistic at this point, some sort of blended learning situation is likely to be implemented. The Romanian Ministry of Education (in line with what is happening in other countries) is currently considering three scenarios: the first one would be reverting back to pre-pandemic, face-to-face courses, the second is the complete opposite and involves a full online experience, while the third is a mixed approach, which would be the most difficult to implement, but it would address the issue of complete lack of social interaction that has been proved difficult to cope with among students (and teachers). The third scenario would mean that students take turns in attending offline and online classes, so that the number of people in the classroom is reduced. Out of the three, this solution might be more feasible long term, but both the curriculum and lesson plans would have to be adapted. The class activities involving direct physical interaction would be reserved for the offline slot, while those requiring students to work independently can be done online, with appropriate supervision and feedback. In terms of summative and formative assessment, both can be done online with good results as we have seen recently, so a combination of the two should be accurate enough.

The 2020 spring semester seems to have ended partially due to inertia, since university teachers had at least a full month of direct interaction with their students before lockdown. It was enough for them to establish rapport and set the scene for the activities to follow. The first one to two weeks after March 13th (when our university suspended face-to-face teaching) were somewhat confusing, as everyone was trying to find the best way to handle the abrupt severance of educational activities, while also maintaining a sense of

normalcy and adapting the teaching process to the new reality. After the basics were settled and it became clear that the initial lockdown period would be extended, plans were made to ensure that summative evaluation and assessment (which takes place at the beginning of June) would be satisfactorily fulfilled under the circumstances.

Starting with October 1st, however, there would have to be clearer guidelines on how courses will take place, what platforms for videoconferencing and assessment should be used at the institutional level, the records that need keeping etc. My expectations for the (near) future are as follows:

a) Both students and teachers will want to continue to implement part of what has been experimented with during lockdown in terms of online communication, activities, teaching and assessment methods. This will lead to more online interaction – possibly outside common working hours – even after things go back to normal and it will require more support for teachers on an institutional level and constant feedback from everyone involved in the educational process.

b) Online admissions will probably replace the offline process entirely. The Faculty of Economics and Business Administration, where I teach Business English, has already been implementing an online pre-admission process for a few years, so the transition should be relatively straightforward.

c) Distance learning will be performed exclusively online. Given the relatively small number of distance learning students, this is realistic as well.

d) Part of formative and summative assessment will be done exclusively online. As long as the platforms used are reliable and given the success of our spring experiment, I think there is no reason why part of the assessment process shouldn't be moved online.

e) The number of students will probably increase rather than decrease, as remote learning will start to be accessible to more people all over the world.

Regarding the teaching of Business English, some changes are to be expected, too:

a) More online-based communication, content and class-materials.

b) A lot more focus on the topic of virtual business communication.

c) More foreign students will bring more diversity to the classroom but also some challenges in term of mixed-level and mixed-ability groups.

d) There will be an immediate need for teacher training regarding online course delivery and assessment.

One of the issues that was raised time and time again both during the British Council webinar series and the staff meetings at our university was quality assurance. So much so that the British Council dedicated an entire webinar to this issue titled *How can universities ensure quality teaching online?* The registered participants were asked to take a poll before the event and the top five elements that the audience considered should be addressed from a quality assurance perspective were the following (in order of importance): the teaching and learning environment, curriculum and teaching materials, assessment, delivery of online lessons and access to resources (IT related) (Güven, 2020). These apply in the case of our university as well and below is a short account of how we handled each one so far:

a) The teaching and learning environment

Given the nature of the pandemic, we did not get much say in terms of the teaching and learning environment. We have tried to keep the delivery of online lessons as similar as possible to our previous face-to-face interactions and assessment was adapted as well.

Keeping in contact with students was traditionally done via email, but we have since tried to expand our communication channels to Facebook™ and WhatsApp™ groups, Moodle™, Zoom™ and Skype™ chats so that all students would be kept informed, no matter where they were quarantining.

b) Curriculum and teaching materials

Fortunately, we provide students with the material for our Business English seminar and course at the beginning of each semester, so when lockdown started, most of them already had access to it. For those who didn't for various reasons, we posted it on Moodle™ so that it could be referenced when accessing their seminar assignments or course-based assessment.

c) Assessment

Online assessment was a major concern from the beginning, since it had never been attempted. Formative assessment was transferred online with some modifications, in keeping with the rules established by each teacher and agreed on with the students at the beginning of the semester. Personally, I was to grade each first- and second-year undergraduate at the end of each seminar, based on their contribution. In addition to that, second year students would have had to be graded on a group presentation, which would represent fifty percent of their seminar grade. Under the circumstances, I decided to keep the grade per seminar system, but adapt it as following: after a short online session in which we discussed the new topic and the students were offered the opportunity to ask questions, they would have limited timed access to an assignment on Moodle™ based on what had been discussed. It was usually a short quiz with some multiple choice and true/false items, an essay-type task (with a maximum of 250 words) on the lesson topic or a combination of the two. Each student would be then graded based on their individual answers to the assignment. In addition, second-year students delivered their presentations via Zoom™ videoconferences, using the Share Screen option and were graded accordingly.

In terms of summative assessment, Business English students would traditionally sit for a one-hour pen and paper quiz based on their course material. This year, the quiz was administered online, using Moodle™. A second session was held for those who were unable, due to technical issues, to take the quiz.

For those students who were approaching graduation, the decision was made to use the Microsoft Teams™ videoconference system for the bachelor's and master's theses defense, which provided a stable environment and the opportunity to record the session for future safekeeping. After running a few tests with the students and with the constant supervision and support from our IT department, this crucial activity for final year students ran smoothly.

d) Delivery of online lessons

When the decision was made to officially transfer all teaching activities online at our university, teachers were given the freedom to use whatever method and platform they, and their students, had access to and were comfortable with for their online classes. But after a while it became clear that a unified system needed to be adopted for the sake of coherence. Most professors started by using Zoom™ and Skype™ as their preferred videoconferencing platform, while some experimented with Microsoft Teams™. In the end, Zoom™ remained the most popular platform because it seemed to work better for everyone in terms of accessibility, video quality and ease of use. Nevertheless, it did not provide the opportunity to share documents, create assignments or evaluate students. For

this, we needed another platform. Moodle™ had already been used for providing long-distance students with the necessary education materials, so it was decided that it could be extended for everyone. This ensured that students could find the necessary materials for all their courses in one place, could complete assignments and be assessed in an organised way using their secure institutional accounts.

f) Access to resources (IT related)

Fortunately, all of my students were able to access, at least in part, the assignments on Moodle™ and most of them attended the online seminars, which meant that they could all be graded accordingly. The fact that both Moodle™ and Zoom™ could be accessed via mobile phone as well was a big plus, so besides the occasional technical difficulties, everything ran smoothly.

Moving forward, there are five fundamental elements which need to be considered by both education institutions and individual teachers so that a reliable system can be established. Based on the experience at our university and the thoughts shared by the professors from very diverse backgrounds who attended the British Council webinar on quality assurance, these principles are applicable to educational institutions worldwide:

1) Setting clear guidelines for a digital future

Learning from our past mistakes is crucial, so that when the new academic year starts, we are ready to further implement online teaching and learning with as few mishaps as possible. A set of clear rules is necessary so that everyone knows exactly what they have to do, what methods and platforms need to be used so that quality assurance is guaranteed.

2) Providing functional, secure technology access and constant technical support

It is clear that the education process will rely more and more on technology from now on, so it is crucial that everyone involved has access to both the infrastructure and the technical support needed in order to carry out their work.

3) Implementing blended learning

If, come fall, the situation does not allow for the mixed approach of both online and face-to-face courses, some form of synchronous and (active) asynchronous learning should be implemented. Teachers would have to spend much more time designing the lessons and activities, but this will result in more efficient independent work for students. Keeping video lectures short and allowing students more time to interact with each other (be it virtually) will set the tone for a new approach to teaching which will hopefully become, in time, as efficient as the traditional one.

4) Investing in staff development

In order to implement the above-mentioned methods, countries and institutions need to invest massively in staff training, so that the transition to online education is as seamless as possible. If and when the situation reverts back to normal, the investment in staff development will not be lost, given the digitalised future we are all heading towards. The switch might have been abrupt, but big changes usually occur this way, so we must learn to adapt rather than reject them.

5) Being proactive and improving on constant feedback

The global pandemic has presented us with huge challenges but also with some opportunities for improvement. The process of transitioning to a new reality will take some time and effort, so it is essential for institutions to anticipate problems and rely heavily on feedback from all parties involved.

As a later edit to what has been discussed in this article regarding the new 2020-2021 academic year, the decision was made at the University level to continue with full online activities, as opposed to the hybrid system that was adopted in schools starting with September 14th. However, due to a dramatic increase in COVID-19 cases, they too will switch to online learning starting from Monday, November 9th. At our Faculty, Microsoft Teams™ is the official platform for course and seminar activity, while Moodle™ is to be used for assessment purposes. Consequently, since the future of face-to-face interaction is uncertain and absolutely no one can predict at this point when normal activities will be resumed on a regular basis, the issues presented throughout this paper remain valid and require further consideration.

To conclude, educational institutions need to act swiftly and decisively in order to be prepared in time for the new academic year and also make long-term plans regarding the fundamental transition to virtual education. The year 2020 may not have started on the right foot, but education professionals worldwide recognise the pandemic as both a challenge and an opportunity to implement what has been discussed for a while in terms of e-learning possibilities. It is now time to set the foundation and establish the ground rules for the future of education, which will model the generations to come.

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WHAT ARE THE MAIN FEARS OF ROMANIAN ENTREPRENEURS REGARDING THE CORONAVIRUS CRISIS?

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Abstract: *The purpose of this research was to analyze the main fears of Romanian entrepreneurs regarding the Coronavirus crisis. We used a qualitative research method, in which we opted for the structured interview for data collection, and for data processing we used content analysis through conceptual analysis. Out of the total number of items 114, 40 subcategories emerged regarding the fears of Romanian entrepreneurs regarding the Coronavirus crisis. Following the analysis, we found in the top of entrepreneurs' fears are the financial part, the intrapersonal relations part and the development part. The research undertaken aims to be a starting point in studying these fears for future research.*
Keywords: *coronavirus, fears, entrepreneurs, Romania, crisis.*

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INTRODUCTION

Coronavirus has certainly led to a change in the thinking paradigms of entrepreneurs (Ratten, 2020). So in addition to the negative side that Coronavirus brings (infections and deaths), it also brings a number of positive changes in the organizational environment. The positive part is the change in the mentality of entrepreneurs, in which they can exercise their leadership qualities (Ratten, 2020). This is also the real test that entrepreneurs are subjected to, namely the test of being a leader (Czarniawska-Joerges and Wolff, 1991, González-Rodríguez et al., 2015). Which means that this pandemic has taken some of the entrepreneurs out of the comfort zone (Olimov and Khotamov, 2020). Even if in the short term they feel some discomfort, in the long run they will see positive results in entrepreneurial organizations.

LITERATURE REVIEW

The Coronavirus crisis has created opportunities, so some entrepreneurs' organizations have learned to become more innovative than they were before (Buheji and Ahmed, 2020). Thus, some of the entrepreneurs, this crisis took them out of the routine and out of the comfort zone, looking for creative solutions in solving problems (Ratten, 2020). For example, in Romania there were cosmetics manufacturers who changed their production lines in which they made disinfectants.

Restaurants that delivered food at home through specialized platforms such as: FoodPanda, Glovo, UberEats, etc. Beauty salons that sold home care kits (consisting of products and consultancy), while others rented different equipment to customers (for example: hair clippers). Manufacturers of clothing that have refocused on the production of protective equipment (masks, coveralls, etc.). Fitness rooms that have moved their activity online offering courses using Zoom or Facebook Live applications. Approach who opened online stores delivering fresh vegetables and fruits directly to customers' door. Florists who continued their activity and developed online stores for flower orders and gifts with home delivery. The cafes that sold the product and consulting kit to make the best coffee that customers used to enjoy in their restaurant. And the list of examples can go on.

Regarding the agreed payment systems, these were: SMS payment, bank transfer: bank transfer payment or Revolut and POS payment.

The crisis has also helped entrepreneurs consolidation, build or regain their reputation (in case some of them have lost it). The crisis was a good time for entrepreneurs to run CSR campaigns (social responsibility campaigns), by making donations to hospitals and people in need of food, medicine and other special needs. These CSR campaigns were conducted to remind clients of their actions when things return to normal (González-Rodríguez et al., 2015). Specifically for people to trust the brand. In addition to enhancing the reputation of entrepreneurs' organizations, such campaigns help attract talent as well as build a loyal workforce (Story, et al., 2016).

These are happy cases, where entrepreneurs have been able to adapt quickly. Thus, there were solutions to the problems caused by the pandemic (Buheji and Ahmed, 2020, Ratten, 2020).

However, there are also entrepreneurs who have not been able to overcome their fears. They felt overwhelmed with fear and lacked the creativity and motivation to move on (Politis and Gabrielsson, 2009). The most affected category was people over the age of 40 who usually do not feel comfortable working online and do not like technology. That is why they are not even optimistic about technological developments, being even very afraid and reluctant to adopt new technologies because they are afraid of change and feel much more comfortable with what they have learned to a certain extent point and they do not want to learn new things (Hsiao, 2003, Politis and Gabrielsson, 2009, Ucbasaran, et al. 2013). Therefore, starting from these considerations, we intend to analyze the main fears of Romanian entrepreneurs regarding the Coronavirus crisis.

RESEARCH METHODOLOGY

The purpose of this research was to analyze the main fears of Romanian entrepreneurs regarding the Coronavirus crisis.

We used a qualitative research method, in which we opted for the structured interview for data collection, and for data processing we used content analysis through conceptual analysis. Thus, 7 interviews with entrepreneurs from various fields of activity in the Romanian press were selected, from March 14 to June 15, 2020. The analyzed fields of activity referred to: furniture sales (2 entrepreneurs), retail through convenience stores (1 entrepreneur), education (1 entrepreneur), tourism (2 entrepreneurs), real estate development and investments (1 entrepreneur).

RESULTS AND ANALYSIS

In table 1 Categories and subcategories regarding the main fears of Romanian entrepreneurs regarding the Coronavirus crisis, we identified eight categories. For each category, we assigned a series of subcategories. These were distributed according to connotations and classification. Regarding the coding of both categories and subcategories, we assigned either the initial or initials corresponding to the corresponding term (for example for the category Process - coding is P, for the simplification subcategory - coding is S), or we chose the identification prefix (for example for the category Interpersonal relations - the coding is R INTER). For the final coding of the subcategories the identification form proposed after the following procedure: Each subcategory reflects the initial chosen for the category to which it belongs followed by the initials specific to each subcategory.

Table 1. Categories and subcategories regarding the main fears of Romanian entrepreneurs regarding the Coronavirus crisis

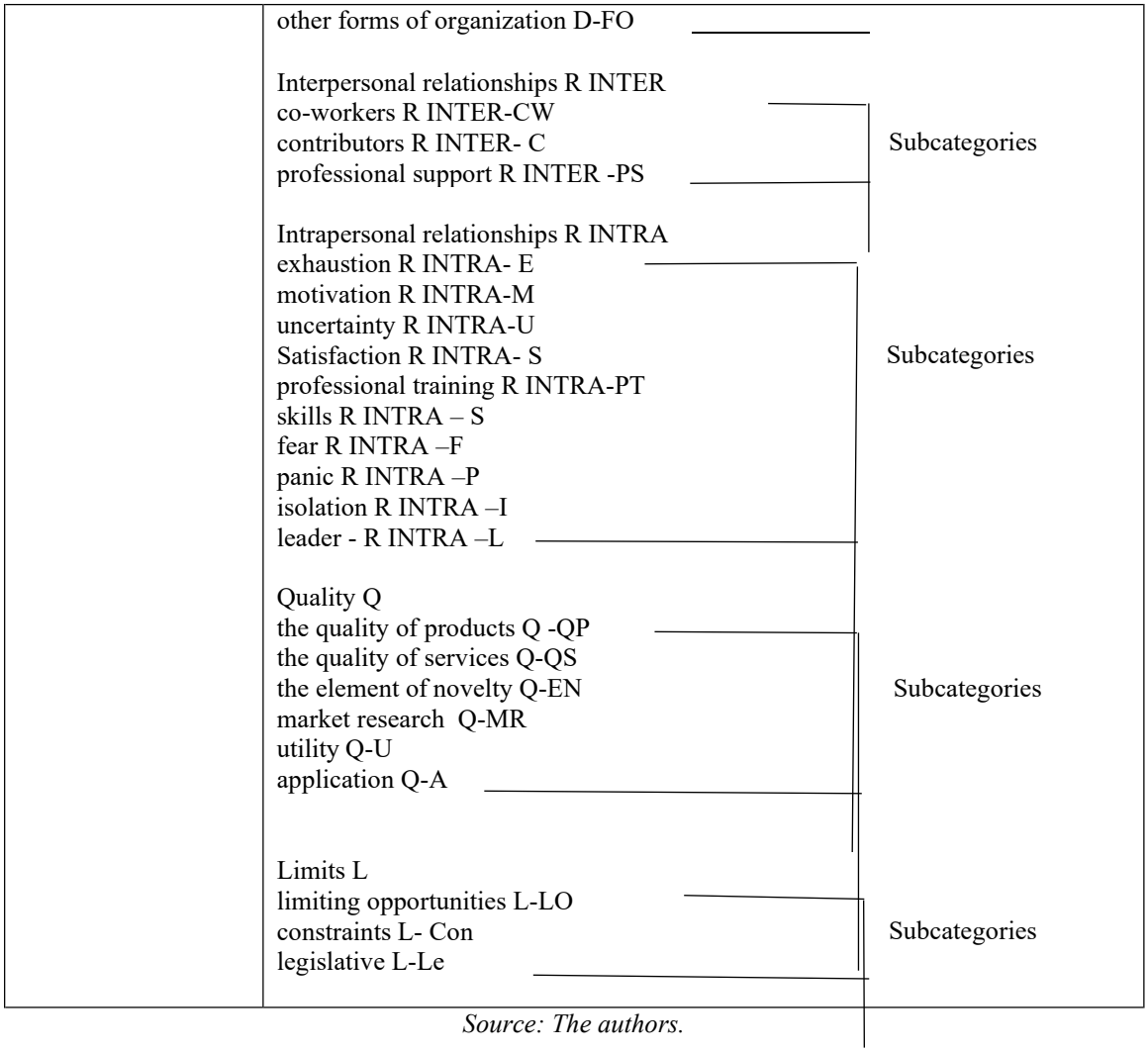
Question	Categories
What are the main fears of Romanian entrepreneurs regarding the Coronavirus crisis?	Processes (P) simplification P -S optimization P-O delivery P-D deadline P-D reducing bureaucratic flows P-BF Informations (I) insufficient information I-II the relevance of the information I-RI access to information I-AI Financial F loans F-Lo liquidity F-Li bankruptcy F-B Develop digitalization D-D development of new business lines D-DB utility D-U value creation D-VC reinvention D -R adaptation D-A

Subcategories

Subcategories

Subcategories

Subcategories



Source: The authors.

Out of the total number of items 114, 40 subcategories emerged regarding the fears of Romanian entrepreneurs regarding the Coronavirus crisis.

Table 2 Fears of Romanian entrepreneurs regarding the Coronavirus crisis

Code	Name	Coding
1	simplification	S
2	optimization	O
3	delivery	L
4	deadline	D
5	reducing bureaucratic flows	BF
6	insufficient information	II
7	the relevance of the information	RI
8	access to information	AI
9	loans	Lo
10	liquidity	Li

11	bankruptcy	B
12	digitization	D
13	development of new business lines	DB
14	utility	U
15	value creation	VC
16	reinvention	R
17	adaptation	A
18	other forms of organization	FO
19	co-workers	CW
20	contributors	C
21	professional support	SP
22	exhaustion	E
23	motivation	M
24	uncertainty	U
25	satisfaction	S
26	professional training	PT
27	skills	S
28	fear	F
29	panic	P
30	isolation	I
31	constraints	Con
32	leader	L
33	the quality of products	QP
34	quality of services	QS
35	the element of novelty	EN
36	market research	MR
37	utility	U
38	application	A
39	limiting opportunities	LO
40	legislative	Le

Source: The authors.

Regarding the category and frequency part, we obtained the following results:

Table no.3 The main fears of Romanian entrepreneurs regarding the Coronavirus crisis

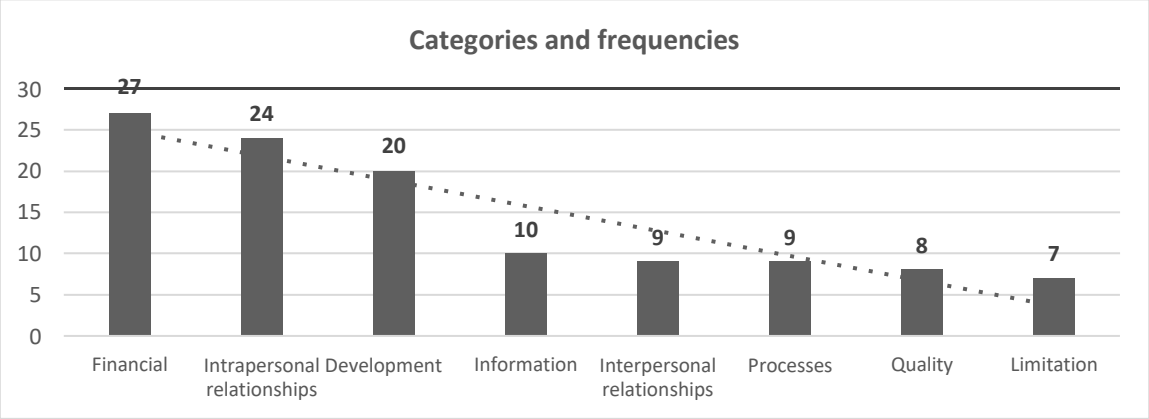
Categories	Frequency
Financial	27
Intrapersonal relationships	24
Development	20
Information	10
Interpersonal relationships	9
Processes	9

Quality	8
Limitation	7
Total	114

Source: The authors.

Thus we obtained the following graphical representation:

Chart no.1 The main fears of Romanian entrepreneurs regarding the Coronavirus crisis by categories and frequencies



Source: The authors.

From chart no.1 The main entrepreneurs in Romania regarding the Coronavirus crisis by categories and frequencies, it can be seen that the financial part is in the top of entrepreneurs' fears. Regarding the financial category, we can appreciate that some of the entrepreneurs do not have enough liquidity, which is why they need an infusion of cash flow from the state in order to be able to sustain themselves and not to create the domino effect. Although, entrepreneurs' organizations had to create their own cash flow for unforeseen situations. For the intrapersonal relationships category, entrepreneurs have fears about exhaustion, motivation, feel insecure because of the coronavirus context, face fear, panic attacks and feel isolated. Regarding the development category, entrepreneurs need to focus on the digital side (online), innovate and develop new lines of business, create market value, adapt and reinvent themselves.

The last two places refer to the categories: quality and limits. For the quality part, entrepreneurs need to do market research to discover the needs of customers, which motivates them to buy a product or service. This way they will find out if the product or service they want to sell is applicable in this context or not. Regarding the limits part, this period seems to have constrained the entrepreneurs. So they had to follow the advice of the leading specialists in the government. This period of coronavirus limited some opportunities, but opened new ones.

DISCUSSIONS AND SOLUTIONS

Bankruptcy of companies happens due to poor and chaotic management, in which the leading entrepreneur gets lost in decisions, acting emotionally, after feeling and is impulsive (Grabinsk, 2004). Organizations do not go bankrupt because of a virus, but

because they were affected before the virus came, lacking clear goals, strategies for management, marketing, sales, financial projections, and short-, medium-, and long-term performance indicators (Pauchant and Mitroff, 1990). The problem is that it is not the Coronavirus that will lead organizations to collapse or bankruptcy, but the reactions and actions of entrepreneurs to difficult situations, as we have seen in the number of delisting companies (Ucbasaran, et al., 2013).

In such crisis situations, the "fight or flight" system is activated in people's minds, more precisely the survival instinct, in which some entrepreneurs may lose control and begin to project dangers around them (D'Intino et al., 2007). From an anatomical point of view, the cerebral amygdala is activated, which leads to the blockage of certain areas both in the brain and in the body (Ashwin, et al. 2007). But there is a need to reconnect certain areas of the brain that deal with the part of creativity and reason, in which entrepreneurs look for the benefits and opportunities that this crisis brings (Hadjikhani and de Gelder, 2003).

For this, entrepreneurs need coaching sessions to find their direction, which will take them out of their comfort zone and activate their level of creativity. They can also brainstorm sessions with their partners to find various solutions to problems (Matlay, et al., 2012). We propose that entrepreneurs focus on the value creation part in terms of products, services, customer relations, the relationship with employees, respectively with the internal processes part of the organization (Fayolle, 2007). During this period of Coronavirus there were examples of entrepreneurs who adapted quite quickly. Thus, for the time being, they changed their field of activity and reoriented themselves to the fields where the demand was extremely high. A large part of them increase their profit considerably (Buheji and Ahmed, 2020).

While other entrepreneurs were satisfied that they had money to run in order to pay the company's employees and did not send them into technical unemployment. Other categories of entrepreneurs did not take advantage of this opportunity, did not adapt on the fly, although they could have made home deliveries, offered specialized advice, educated the consumer, etc. In this way it would have created added value for customers (Fayolle, 2007).

CONCLUSIONS

As we could see from the data analysis, the main problem of entrepreneurs in the Covid-19 pandemic is related to the financial side, more precisely to the liquidity side. It is necessary for entrepreneurs to look for quick solutions to problems, to find quick ways to develop because otherwise they risk bankruptcy (Azoulay and Shane, 2001).

In addition, the business of entrepreneurs must focus on value creation. Those who are not already online, entrepreneurs need to adapt to new market conditions and digitize their business, provide customer service experiences and develop new business lines (Ucbasaran, et al., 2013). Coronavirus will change the paradigm of the free economy to some extent. Firms that were clinically dead, without working capital, or that were afloat will disappear (Ratten, 2020). However, there will still be inefficient companies that will be financed in order not to fail, because it would lead to unemployment. And unemployment will lead to a decrease in purchasing power, due to a decrease in

discretionary income, therefore prices would fall, and deflation would occur, being a rather delicate situation for the state (Zacharakis and Meyer, 1999).

Originality/value: The research undertaken aims to be a starting point in studying these fears for future research.

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THE INCLUSIVE FINANCE FACTOR OF HAPPINESS

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Abstract: *Inclusive finance is an emerging field that is considered crucial in promoting sustainable development and wellbeing. It is well known that financial flows are the backbone of economic growth, hence promoting equity and inclusiveness is important to intensify access to financial intermediation, either via traditional channels or by using modern, mobile means. It is undeniably important to solve gender inequality in closing the gap in funding, as well as the inclusiveness of disadvantaged area to support sustainable development. The question posed by the study is whether inclusive finance enhances happiness hence supporting durable development. The case of selected high, middle income and low-income countries are considered in determining the impact of the GDP/capita, human development and financial inclusiveness on the happiness index during 2012-2018.*
Keywords: *inclusive finance, sustainable development, positive externalities, social change*

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INTRODUCTION

Since the 2008 crises, the financial sector went through profound change, both from a practical and academic perspective. Before the crises, most financial intermediaries did not regard low-income individuals and small enterprises as an important source of profit, hence many being excluded as potential clients. In this regard, asymmetric information, moral hazard and adverse selection played an important part. In addition, lack of extended financial education (or even financial literacy in emerging economies), lack of adequate personal identification, no personal financial history, expensive financial products have excluded a large group of potential businesses from funding and prevented individuals to economically and financially evolve. According to Ernst and Young (EY, 2017) more than 200 million individuals have no access to bank funding, 40% from the lowest income countries, 30 % in middle income and 15% from the high-income countries. Thus, an important effect of the financial flow multiplier is disregarded, with a negative impact on GDP growth.

It is though, nowadays, perceptible that technological advances, the availability of connectivity and mobile banking are about to change trends by supporting inclusive finance as a prerequisite of sustainable economic growth. As inclusive finance is yet at an early stage, there is no straightforward or generally accepted definition. Nevertheless, it can be safely argued that it regards the relationship between microfinance, lasting economic growth and social wellbeing and ultimately happiness.

Academics and practitioners, as well, endeavour to clearly define a set of indicators that best illustrate the essence of financial inclusion. However, given the complexity of the issue and the multitude of determinants (economic, financial, social and technological) that channel the positive externalities of inclusion, it is rather difficult to encompass all in one aggregate index. Though there are still few empirical studies on the determinants and effects of financial inclusion at the micro-level, most of the analyses stress the relationship between such an approach and the alleviation of poverty and individual welfare. Although the literature agrees to some extent on the necessity to promote financial inclusion and on the underlying factors, it should also be recognized that there are personal obstacles, i.e. decision not to use bank services, lack of willingness to seek appropriate funding, biased perceptions related to financial issues, lack of financial education, inappropriate information etc. that prevent individuals and small enterprises to access funding.

The paper starts from the question of whether inclusive finance can complement sustainability-related indicators, such as the GDP/capita, Human Development Index (HDI), ICT and bank intermediation in enhancing the happiness index. The data is provided by The Global Findex database and applied for Finland, Poland, Saudi Arabia, Kenya, Romania during a timeframe of relatively stable economic evolution, i.e. 2012-2018. These countries, located on different continents and with different historical and cultural background, that endeavour to promote inclusive finance, were selected based on the average income (High, medium and low). The method applied is a linear regression (stepwise forward) build in R Studio software.

The paper contributes to the empirical analysis in the field. It concludes that sustainability-related factors are the main source of happiness as a manifest of the subjective perception of wellbeing. The paper is structured as follows: Literature review, Prerequisites of financial inclusion, Methodology and data, Results. The remainder of the paper is dedicated to Conclusions and policy lessons.

LITERATURE REVIEW

Literature has a broad view of financial inclusion, generally relating the topic to its impact on economic growth. From this perspective, it is a continuation of mainstream financial theory that, over the 20th century, analysed the financial phenomena either by stressing macroeconomic development, demand (or supply) related growth, innovation. Frequent financial and economic crises that have become even more worrying in the last two decades raised the question whether the structure of modern financial systems can further support growth unless other issues like poverty, income inequality, education, equitable access to funding are addressed. (Hathroubi S., 2019, p.79).

Once sustainable development came to the attention of academic and decision-makers and became a topic of general interest, the question of how could the financial sector adapt to the new economic, social and environmental requirements was raised. In its

early stages, inclusive finance particularly addressed the possibilities to find the appropriate channels to fund low-income individuals and thus including them in the cohort accepted by banks and other financial institutions as potential beneficiaries of funding. The approach stemmed from the reality that poverty induced a vicious circle, preventing millions of individuals and small enterprises to develop and thus hindering economic development. Later, Mirakhor and Zamir (2012, p.34-65) expended the meaning of financial inclusion by identifying four dimensions: access to finance for all households and enterprises, sound financial institutions that are subject to financial regulation and supervision, the sustainability of financial institutions, alternative financial services that boost competition on the financial market.

Inclusive finance is often assimilated to microfinance, mainly as its integration in the established financial systems to ensure the accessibility of categories of individuals to funding (Schmidt et al., 2016). Corrado and Corrado (2017) further emphasise the role of microfinance as well as the role of governments in promoting financial inclusion policies. Starting from this point, further debates could argue that, given its positive spill over on the welfare of communities, and relying on the non-rivalry and non-excludability fundamentals, financial inclusion could be assimilated, to some extent, to public goods.

Demirguc-Kunt et al. (2017), discuss the financial channels that support financial inclusion as well as the disadvantages related to approaching it. The financial inclusion - economic development nexus has also posed challenges, economists identifying several obstacles (i.e. lack of adequate personal identification, no personal financial history, expensive financial products) that prevent its completion. Kempson et al. (2004) have already put forward a set of reasons that, generally, prevent financial inclusion, but which vary from country to country: bank terms and conditions, fees, distance to the bank in remote areas, and also behaviours, cultural or psychological influences.

Nevertheless, by finding solutions to these obstacles, the poverty issue could be extensively solved as a prerequisite of sustainable development (Beck et al., 2007). Authors (Datta and Singh, 2019, p.346) emphasise the importance of education and financial literacy can contribute to a better understanding of financial products, positively impacting on inclusion by introducing the HDI in the analysis. In line with this approach, Birochi and Pozzebon (2015) demonstrate the positive instrumental and transformative impact of financial education and ICT as essential determinants in promoting financial inclusion.

An increasing part of literature discusses financial inclusion from the perspective of social inclusion, mainly in rural or remote areas in emerging economies that have been extensively ignored by banks in the past. Vashisht and Wadhwa, (2015) provide analysis on financial inclusion in India, concluding that addressing the impact of financial inclusion on social change and consequently on bank effectiveness. Further on, as a continuation of the aforementioned literature trend, Le et al. (2019) attempt to identify some patterns in Asian countries find that there is a strong correlation between financial inclusion and financial stability, but the strength of the correlation varies among countries. On the other hand, the authors argue that by intensifying the participation in the financial market would only lead to costlier information and transaction and eventually to asymmetric information with all its embedded components.

As inclusive finance is mostly preoccupying in emerging economies that are challenged with deeper inequalities in accessing funding, a considerable strand of literature is dedicated to these countries. In this respect, one would consider that the Chinese case

could be considered as the flagship in promoting the topic, mainly in the regional economy. Zhou et al. (2018) argue that the principles of financial inclusion are consistent with sustainable development (supporting growth by promoting social equity without endangering the environment), hence narrowing the development gap between regions.

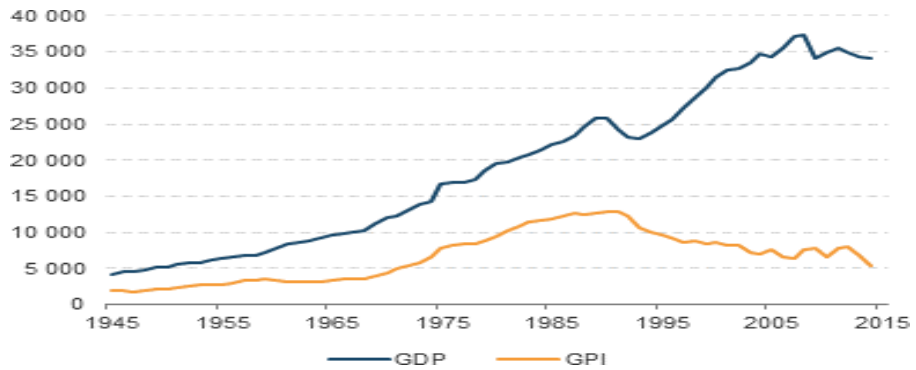
Authors have also endeavoured to identify the most appropriate indicators that best encompass financial inclusion. The indicators are meant to demonstrate that enlarging the group of people that participate in the economic and financial flow positively impacts sustainable growth (Gupte et al., 2012). Honohan (2007) consider the proportion of households that have access to financial institutions, corroborated with poverty and the Gini coefficient. Further, on Sarma (2008) relates the index to HDI when constructing an index based on access to banks. Starting from these considerations, Arora (2010) adds the geographical penetration of banks and factors that may ease access as well as the cost of transactions. Kumar (2017) argues that the GDP does not entirely capture the wealth, lacking direct reference to inclusion, green economy and wealth, proposing the Inclusive Wealth Index (IWI) that would provide policy-makers with an instrument to measure progress without endangering the environment.

The World Bank has developed a set of indicators, referring to formal and informal financial services considered in constructing the Global Findex (Demerguc – Kunt et al., 2017).

THE PREREQUISITES OF INCLUSIVE FINANCE

When measuring the need and impact of inclusive finance some prerequisites are to be set. When assessing economic development, the GDP/capita stands out as the most widely used indicator. However, considering the requirements of sustainable development and financial inclusion, other indicators are developed to encompass the welfare of society. Hence, The Genuine Progress Indicator (GPI) is a composite indicator, aggregating the three pillars of sustainable development (economy, society and environment). It is locally used in the USA to measure real progress in the constituting states and randomly, more on an experimental basis in other countries such as New Zeeland, Finland, China. (UNCTAD, 2016). To illustrate, Figure 1 shows the widening GDP-GPI (that includes income distribution, volunteering, resource depletion, crime, higher education, among others) gap in Finland, showing that economic growth does not necessarily translate in sustained wellbeing.

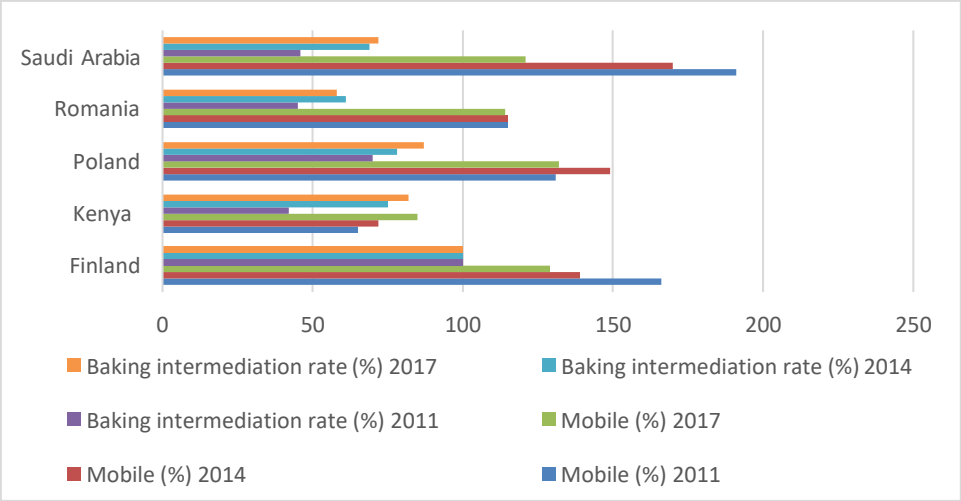
Figure 1. GDP- GPI gap in Finland



Source: UNCTAD (2016) citing Hoffrén J (2011)

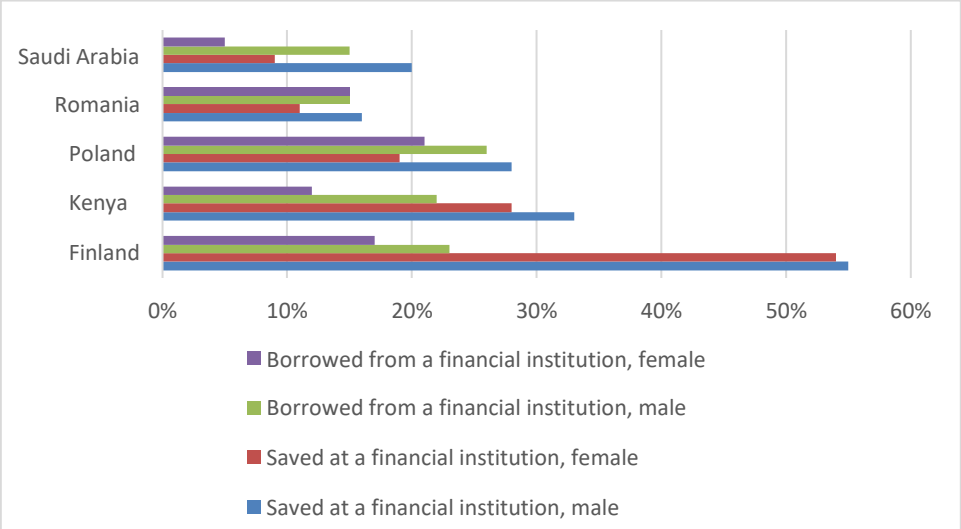
To ensure durable development, one should also look to what extent the financial system of a country is inclusive enough. Measuring financial inclusion is not an easy task since it's complexity stems from the numerous indicators that are considered. It includes the possibility to saving and borrowing, gender equality in accessing funding, the extent to which financial transactions are made using the internet or mobile phones, online shopping, rural area access to funding, etc. Therefore, literature does not cite one size fits all index, it being adapted to countries specificities and the aspects authors want to highlight.
For the purpose of the paper, access to bank intermediation, mobile banking, savings/borrowing, debit card and digital payments are illustrated below for the selected countries.

Figure 2. Bank intermediation and mobile banking



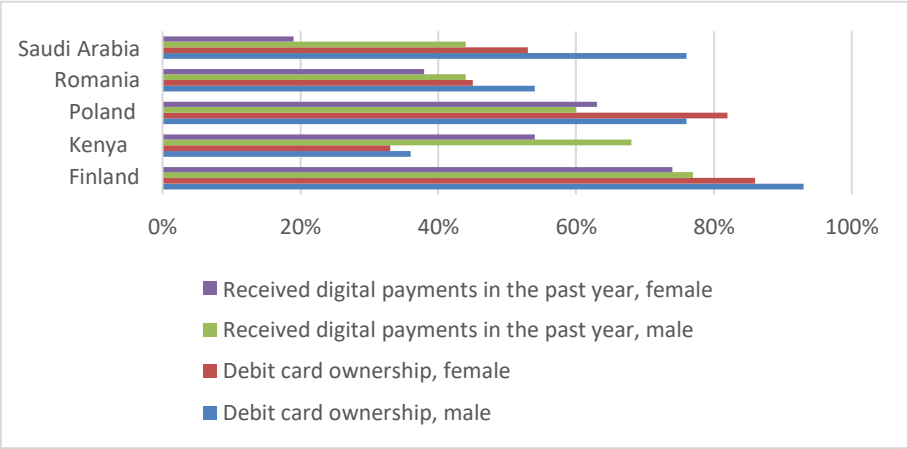
Source: Global Findex

Figure 3. Borrowed and saved funds (male and female % age +15)



Source: Global Findex

Figure 4. Received digital payments and debit card ownership (% +15)



Source: Global Findex

As figures show, the inclusive finance stance is different for the selected countries. Finland and Saudi Arabia top in mobile bank intermediation, followed by Poland (that is quite fast in catching up mobile banking), and Romania, but Kenya still lagging. Concerning gender equality in saving, all countries, except Finland, show discrepancies, but when it comes to borrowing, in Romania females equal males. Concerning digital payments and debit card ownership, Poland and Finland are most advanced in inclusiveness, but Saudi Arabia shows the largest gap. The differences between these countries concerning inclusive finance are rooted in their economic development, illustrated by the GDP/capita, in the cultural and historical financial behaviour.

METHODOLOGY AND DATA

The question of the study is whether financial inclusion impacts wellbeing alongside other sustainable development-related variables. For the purpose of the paper, the happiness index is used as a proxy for the perceived wellbeing and ICT stands for financial inclusion.

The multiple linear regression (forward stepwise) method was used in R studio program to estimate the variance of selected variables in time perspective. The methodology consists in analysing the interdependence between the human development index (HDI), ICT and GDP per capita (GDP) as independent variables, and World Happiness Index (WHI), as a dependent variable.

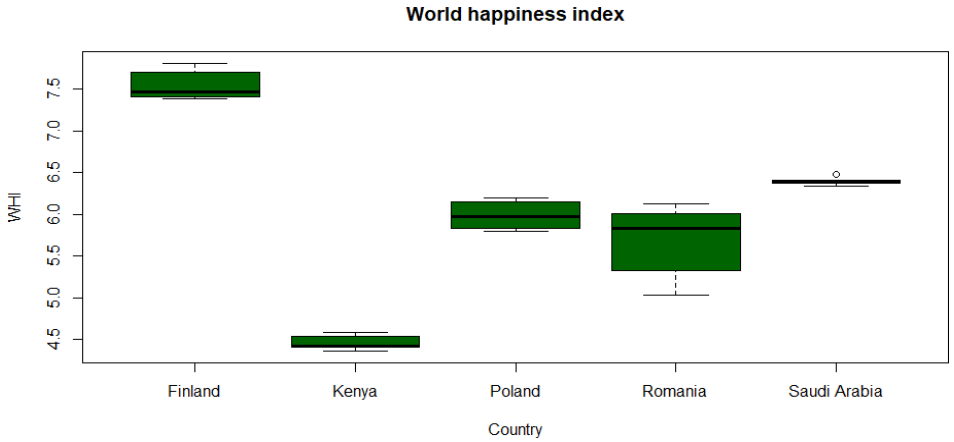
The equation is:

$$WHI=\beta 0HDI + + \beta 1ICT + \beta 2GDP + \varepsilon \ (1)$$

Where: WHI – world happiness index (annual index for each country); HDI – human development index (annual index for each country); ICT - Mobile banking subscriptions (per 100 people), GDP – GDP/capita

The Happiness Index is given in Figure 5, with Finland at the top of the chart, Poland, Romania and Saudi Arabia at the middle and Kenya at the lowest level, among the considered countries.

Figure 5. World Happiness Index



Source Global Findex produced in R studio

World Happiness Index is used as a proxy for subjective wellbeing given that the latter is strongly correlated with sustainable development indicators. Another important indicator is Human development index (HDI) that was selected given that it is a composite index that measures key dimensions of human development and it is considered as being a significant contribution to the growing body of research on how to understand wellbeing, development and progress. ICT stands for financial inclusion. It is measured based on the percentage of the population with access to an account via a financial institution or mobile-money-service provider and was considered for the research as being an important determinant of financial inclusion. In the absence of relevant data concerning the Genuine Progress Indicator (GPI), economic prosperity is measured using the GDP/ capita. The sample of countries - Finland, Poland, Romania, Kenya and Saudi Arabia were chosen based on their average income. The data covers the 2012-2018 time frame. The data source is the Global Findex Database.

According to the results, there is a significant correlation between the world happiness index and the other variables, 0.87% of the variance being explained by independent variables.

R Studio results:

```
Call:
lm(formula = WHI ~ HDI + ICT + GDP, data = Test)

Residuals:
    Min      1Q  Median      3Q     Max
-0.7495 -0.1593 -0.0614  0.2272  0.9055

Coefficients:
             Estimate Std. Error t value Pr(>|t|)
(Intercept)  1.825e+00  6.277e-01   2.907 0.006684 **
HDI          5.799e+00  1.037e+00   5.591 3.94e-06 ***
ICT         -1.146e+00  4.215e-01  -2.718 0.010653 *
GDP          3.339e-05  8.159e-06   4.092 0.000282 ***
---
Signif. codes:
0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.3832 on 31 degrees of freedom
Multiple R-squared:  0.877,     Adjusted R-squared:  0.8651
F-statistic: 73.66 on 3 and 31 DF,  p-value: 3.361e-14
```

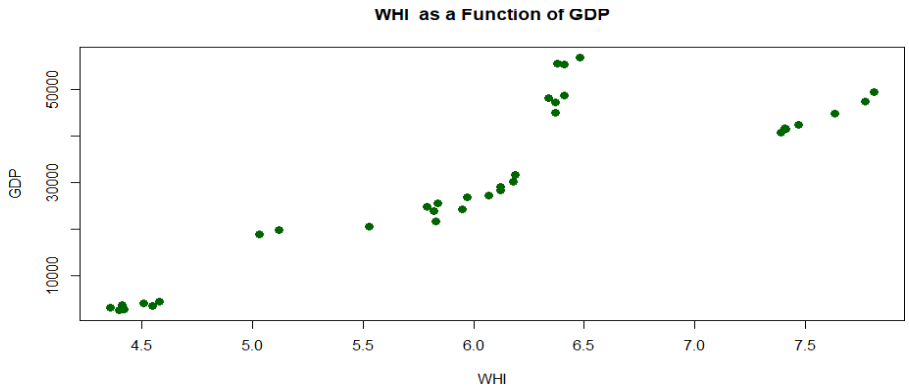
Source: authors 'calculations in R Studio using data from the Global Findex database

Above results show that WHI variation has a positive correlation with HDI and GDP growth, but a negative correlation with ICT growth.

RESULTS

Financial inclusion is a key element in the fight against poverty and the pursuit of inclusive development (as a prerequisite of wellbeing and happiness), hence stimulating an increasing focus on financial inclusion policies and initiatives. Data covering the major components of sustainable development and financial inclusion is critical in formulating policies and monitoring the effect of initiatives (GPFI, 2016). Nevertheless, economics, more than any other field, traditionally assumes that indicators like a high GDP/capita, a long life expectancy, or a low unemployment rate are the keys to human contentment. But, economic growth does not always guarantee rising happiness. While per capita output is indeed correlated with other variables (wealthier countries can provide more social services, for example), the differences in factors other than GDP seem to explain much of the variance in happiness for countries at the top of the list. Though the GDP/capita is high in Saudi Arabia and Finland, the happiness index is higher in Finland.

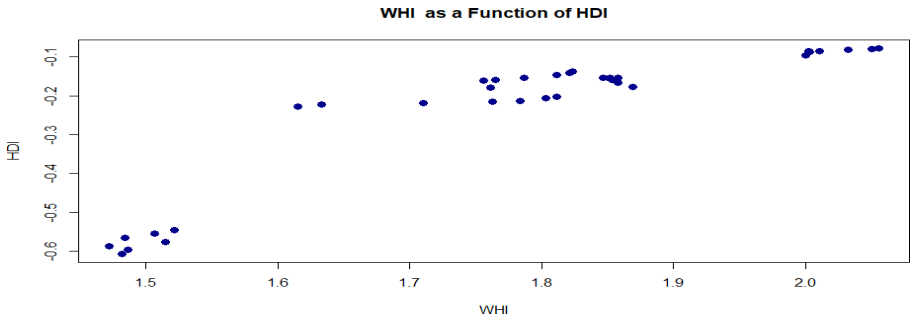
Figure 6. WHI as a function of GDP



Source: Global Findex produced in R studio

Many theories have been put forth to explain the high level of Nordic countries happiness, from successful durable development, social and economic inclusiveness, the ability to support the vulnerable groups and, last but not least enhanced social capital (World Happiness Report, 2020). From a mainstream approach, the Nordic countries are characterized by a virtuous cycle in which various key institutional and cultural indicators of an inclusive society are interwoven, including good governance, generous and effective social welfare benefits, low levels of crime and corruption and trust. The upper-middle-income and middle-income countries (Poland, Romania) also experience lower levels of the happiness indicator (comparable with Saudi Arabia which has a higher GDP/capita). Kenya with the lowest GDP/capita, among the considered countries, also shows the lowest value of the happiness index. Correlation between happiness and HDI can also be identified, which is hardly surprising since cultures are sometimes defined in terms of the social norms they embody (Hall, J. & Helliwell, J., 2014).

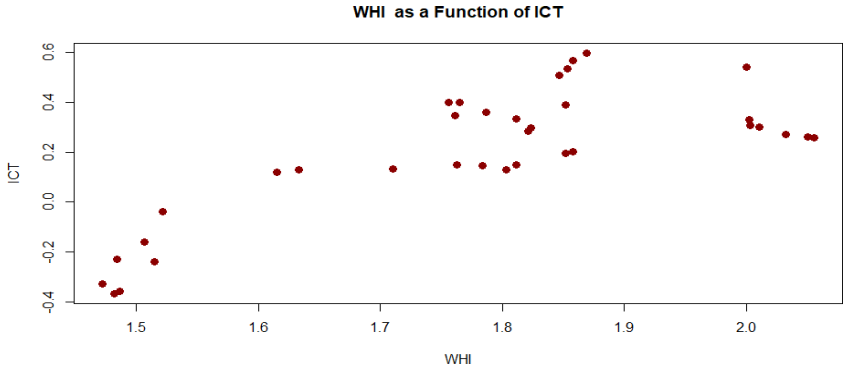
Figure 7. WHI as a function of HDI



Source: Global Findex produced in R studio

In terms of bank intermediation, ICT, measured by mobile banking subscription, all the considered countries have made progress, with Finland and Saudi Arabia at the top of the chart.

Figure 8. WHI as a function of ICT



Source: Global Findex produced in R studio

Despite battling extreme poverty, Kenya endeavoured to extend mobile bank intermediation, promoting higher financial inclusion. In 2017, more than seven in 10 adults were financially included (73%); and of these financial account holders, 98% held mobile money accounts (FII, 2018). In 2017, the digital financial services (DFS) market in Kenya continued to develop beyond basic transfers as active mobile money users continued their rapid uptake of new and existing products and services for merchant and bill payments, government payments and transfers, and credit, savings, investment and insurance. In addition to mobile money, financial services are available through a diverse group of institutions, including banks, nonbank financial institutions and informal financial groups. Nevertheless, on an average, there is a negative correlation between the happiness and ICT for the sample countries, no clear cut conclusion being observable, meaning that, either ICT is not necessarily correlated with happiness or individual analysis of each country is needed, under particular circumstances, including the obstacles that might prevent the large acceptance of ICT, i.e. decision not to use mobile bank services, biased perceptions related to financial issues, lack of financial education, inappropriate information etc.

CONCLUSIONS

The Group of Twenty (G20) recognizes the key role of financial inclusion as a key element in the fight against poverty and the pursuit of economic development and wellbeing. All countries (high, medium and low income) are making steps towards financial inclusion, knowing that it will contribute to their long term growth, positively impacting on the economy, society and environment. As the paper shows, happiness, as subjective wellbeing, is strongly related to the GDP/capita as a measure of economic growth, the HDI as an index of social capital. Nevertheless, there is a negative correlation between happiness and ICT, as a proxy for financial inclusion, showing that further investigation is needed concerning the impact of mobile bank intermediation and the perception of its influence on enhanced wellbeing (and ultimately happiness) in each of the considered countries. The obstacles (either economic or behavioural) that prevent financial inclusion will be further researched.

Nevertheless, it seems that in less developed countries it is a large understanding of the fact that customers across all income levels are increasingly empowered by using modern means of financial transactions. They expect to bank on their terms, anytime and anywhere, and to be in control of their banking experience (World Happiness Report, 2020), but it will be the test of time that will show whether ICT will become a leading determinant of happiness.

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HUMAN RESOURCE TRAINING AND DEVELOPMENT: AN INVESTIGATION INTO RELATIONSHIP BETWEEN IN-SERVICE TRAINING AND QUALITY TEACHING PRACTICES IN SECONDARY SCHOOLS

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Abstract: *This study was conducted to examine the relationship between administrative interventions and quality of teaching practices. The study used qualitative and quantitative approach. Quantitative data was collected using questionnaire from 145 respondents while qualitative data was collected using interviews conducted with fourteen respondents. Using Pearson correlation, the study revealed that there was a strong relationship between refresher courses (r=1.00, p=.000), seminar/workshop (r=1.00, p=0.068), coaching/mentoring (r=1.00, p=.000) and teacher teaching quality practices. On the other hand, majority 97.5% respondents interviewed revealed that seminars, workshops, refresher courses, coaching and mentoring were critical in sharpening knowledge and skills of Teachers to improve their quality teaching practices. The conclusion is that administrative interventions were necessary for improving quality teaching practices of teachers in secondary schools to ensure their effectiveness teaching. Therefore, it is strongly recommended that teachers should regularly participate in refresher courses, seminars/workshops, and coaching/mentoring to improve their quality teaching practices in Schools.*
Keywords: *Refresher course, Seminars/Workshop, Quality Teaching Practices, Teachers' performance*

INTRODUCTION

Globally, one of the fundamental role many organisations administrators have is to meticulously increase effectiveness and efficiency of their human resource in the organisations they serve. This is usually done either through on-job skilling (in-service training) where employee are provided with learning opportunity without being sent on study leave but rather are exposed various professional development opportunities or off-job training where employees are granted study leave to further their studies to sharpen their knowledge and skills to grasp aspects of the job. In that regard, organisations place value and importance of human resource training and development as an important aspect for their success. In-service training is a planned process whereby the effectiveness of teachers collectively or individually is enhanced in response to new knowledge, new ideas and changing circumstances in order to improve, directly or indirectly the quality of students' education. Through in-service training, teachers can identify and evaluate critically the culture of the school which can bring changes to the working culture as well

as improving knowledge of the subject, classroom management, teaching method and evaluation of students.

According to Ngirwa (2009) In-service Training (INSET) is a learning process facilitated by experts for a short period of time to help employees to improve and acquire knowledge, skills, experience, competence and attitudes that they need in order to perform their job better for the achievements of their organizational goals. To Sedega et.al. (2018), in-service training is the totality of educational and personal experiences that contribute toward an individual being more competent and satisfied in an assigned professional role. Human resource such as teachers who are provided in-service training improve their knowledge, sharpens their attitude which motivates them to perform effectively (Celen et.al. 2016). Relatedly, in-service training upgrades professional knowledge, skills and competence of human resource in an organisation (Khan, 2017).

In that regard, in Tanzania mainland, INSET is given priority for teachers as apublic administration policy to empower teachers. In 2016/17 the Ministry of Education, Science and Technology offered teachers' training on curriculum to 32,015for standard three and four teachers in all 26 regions and also 519 teachers who teach deaf students in standards one and two. The ministry has also provided INSET to 260 trainers of trainees (ToTs) in all 26 regions on vocational education. They were trained so that they could provide training to secondary school teachers who teach vocational skills in secondary schools (Ministry of Education, 2019). The Ministry of Education Science and Technology has a special department for INSET teachers training. In Zanzibar, INSET for teachers are organized by Teacher Education Department which was established in 2006 from the Department of Curriculum and Examination and Teacher Education. The major role of this department is to coordinate, provide and promote professional services to both pre- and on-service teachers. The director is assisted by three head of divisions, two of them head of division for teacher education and national teacher resource centre are based in Unguja and the head of division for Pemba office coordination is the department leader in Pemba (MoEVTZ, 2019).

According to MoEVTZ (2019), the department of INSET has the responsibilities of supervising the development and sustainability of teacher training and other related fields in Teacher Training Centres, develop in-service training programs and supervise the delivery of the training, coordinate and deliver teacher development programs on current teacher education issues, coordinate and supervise the development of Teachers' Centres (TCs), advise the MoEVT on the changes in teachers training due to policy of education reforms, inform and advise the Ministry of Education on teacher education standards and cooperate and network with other Ministry of Education Departments for the purpose of promoting education in Zanzibar. Despite all the initiatives by the ministry to ensure professional development of teachers through INSET, there has been an increasing rate of poor performance in schools especially in national examination results. Thus, the need to understand the relationship of in-service training in improving quality of teaching in secondary schools of central district of Zanzibar is of paramount importance.

Zanzibar Education and Training Policy (2016) states that, "teacher's development must be viewed as a continuous or nonstop process that should include in-service training". It further shows that, in-service training of teachers shall be regular, well planned and part of teachers' professional development (SAQMEC, 2016). According to the Ministry of Education Zanzibar (2019), there are number of initiatives to provide in-service training to

teachers in Zanzibar as evidenced that, the total of 392 teachers of secondary schools were given training on different areas of teaching and different subjects including Geography, History, English and Mathematics. The training based on methods and techniques of answering national examination questions. A total of 639 science and mathematics teachers, form one and two are still in training of Methods of Teaching, Contents of Teaching and English language skills in Unguja and Pemba. Also, 600 science and mathematics teachers in standards five and six took training on teaching methods in Unguja and Pemba. A total of 55 teacher trainers on science and mathematics subjects were trained on teaching methods in these subjects. These figures show that, the Ministry of Education (Zanzibar)through its department of in-service training, put serous efforts in in-service training to the teachers in order to enhancing quality teaching and upgrade the knowledge and skills to the teachers on the situation of teaching and learning process.

The Ministry of Education expects high students' performance as a result of these trainings. But owing to the efforts and interventions made, there were poor tendencies of performance of students in Certificate of Secondary Education Examination (CSEE) results to the Central District Schools. The evidence of poor performance seen in Certificate of Secondary Education Examination (CSEE) result in 2017, the total of 1050 students who sat for CSEE national examination only 61 students, which is only 5.8% continued to form five level only 24 and other students had qualifications for FTC. In 2018, of the total 1019 who set for CSEE national examination only 72 (7.0%) continued to form five level (MOEVT-Z). The objective of this study is three-fold: to examine relationship between teachers' refreshers course trainings and quality of teaching practices; relationship between teachers seminars and quality of teaching practices and; relationship between coaching and mentoring and quality of teaching practices in secondary schools of Central District of Zanzibar. Therefore, our study provides contribution to the existing literature on understanding administrative practical interventions to sharpen the knowledge and skills of Teachers to improve their quality teaching practices. It also highlights the relevance of in-service training as a government administrative public policy intervention to improve teachers' performance.

LITERATURE REVIEW

There are many and several studies that have been conducted to establish the link between INSET and improvement of employee performance output. Thornton (2003) carried out a study of Teacher refresher course and Teacher Profession Development in Newziland and found that in-service professional training of teachers creates change in their knowledge and skills desirable for efficiency of their profession. Relatedly, Musau and Abere (2015) conducted study on Teacher improvement of their training and Students' performance in science, subjects in Kenya and their findings revealed that, majority of the teachers who undertook in-service training or refresher courses improved their teaching practices which led improvement in the students' performance. Similarly, using Ex-post factor research design, Essien et.al. (2016) examined the influence of in-service training, seminar and workshop attendance by social studies teachers on students' academic performance in Cross River State, Nigeria and his findings revealed that there was a positive relationship between of teachers' attendance at in-service training and quality of their duties.

Furthermore, Masehela, and Mabika, (2017) examined the impact of mentoring on teacher teaching quality practices and student performance and their finding was that there was improvement in the teachers' knowledge and skills handling students which enables them to perform better in their studies. In addition, Hamid and Rahman (2011) conducted a study of effectiveness of training and development program of UPSTDC, in India found that in-service training is important in providing skill development to human resource. Ekpoh, et.al (2013); Jahangir, et.al. (2012) in their study found that, teachers who attend in-service training do their work effectively and efficiently.

Junejo et.al (2017); Karia et.al. (2016) too, in their study noted that in-service training enables employees such as teachers to be more systematic and logical in their teaching style as they update their knowledge and skills to advance their career. For instance, Uyar and Karakuş (2017) revealed that social studies teachers in Turkey needed an in-service training that includes basic features of project based learning approach and context-based practices to significantly contribute to their increase in productivity. In addition, Omar (2014) found that in-service training in schools helps teachers to face new challenges in their profession. Udoh (2012) in his study revealed that in Nigeria there has not been any systematic attention to update regularly the knowledge and skills of teachers in the light of curriculum changes and wide society. In Uganda, Nzarirwehi & Atuhumuze (2019) study, revealed that there are significant differences in status of in-service training by number of years of teachers in services. This implies that in-service training can improve teaching and learning. Day (2002) insist that, School-Based INSET is an efficient way of Teachers delivery methods. It is stressed by Bassi et.al. (2019) that institutions that permits their employees to participate in in-service training perform better as they use improved teaching practices. Also the studies of SACMEQ by Mwinyi, Wazir and Salim (2016) and Dominic et.al. (2010) found that, there was significant changes in teachers' services when they participate in INSET.

THEORETICAL FRAMEWORK

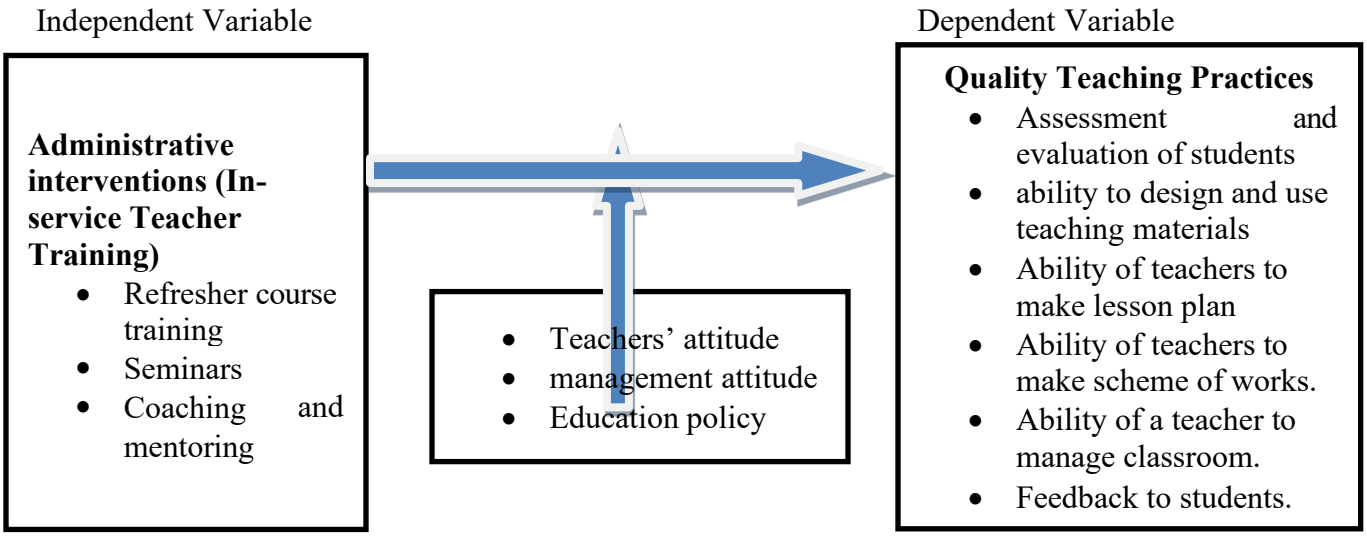
Based on the literature reviewed, the theoretical and conceptual framework adopted in this study is within Human Capital Theory perspective. This theory rests on the assumption that, formal education is highly instrumental and necessary to improve the productive capacity of a population. It emphasizes, education increases the productivity and efficiency of workers by increasing the level of cognitive stock of economically productive human capability, which is a product of innate abilities and investment in human beings. Thus, supporters of this argue that provision of training to employees in an organisation is an investment in human capital and that it is even more worthwhile than investing in physical capital. The theory further empathises that, in-service human resource training is a fundamental aspect that enhances teachers' professionalism. Babalola (2003), argues that rationality behind investment in human capital is based on three arguments: the new generation must be given the appropriate parts of the knowledge which has already been accumulated by previous generations; the new generation should be taught how existing knowledge should be used to develop new products, to introduce new processes and production methods and social services; and People must be encouraged to develop entirely new ideas, products, processes, and methods through creative approaches. Also, human capital theory stresses on the significance of education and training as the key to

participation in the new global economy. The success of any nation in terms of human development is largely dependent upon the physical and human capital stock. Human Capital Theory concludes that investment in human capital leads to greater quality services and high performance in organization. Therefore if the Ministry of Education invests in INSET to improve the quality teaching practices of Teacher, can result into high performance of students.

The implication of this theory to this study is that, it assumes that more efforts given to improve teachers' capacity to deliver high quality services the more high quality product in terms of schools and students performance are likely to occur. Therefore, provision of INSET for teachers is seen as a productive investment in human capital. This imply that, teachers to perform well in schools, they must get adequate and relevant INSET. According to Omar (2014) effectiveness of in-service training are: the roles of administrator: administrators as leaders, establish an atmosphere of support and trust, offer incentives and rewards for participation and provide sustained moral and material support.

Conceptual Frame Work

Conceptual Frame Work is a diagrammatical description of the relationship between Independent and Dependent Variable. It covers the general framework of the Study. Figure 1 below, show the Conceptual Framework of the study.



Source: conceptualised by the Researchers, 2020.

Figure: 1 the Conceptual Framework.

The Intermediate Variable were used in this study to demonstrate the sense that, the Independent Variable (INSET) to have relationship with Quality Teaching Practices (Dependent Variable) depends on Teachers' attitude and perception to the INSET which implies teachers' readiness and willingness to attend and learn new and put in to useful practices. Also it depends on the positive attitude of the school management to the INSET and teachers' ability to perform their duties. Likewise for INSET to relate to Quality

Teaching Practices can be influenced by Education Policy which guides priority areas for Teachers.

METHODOLOGY

Data was obtained from secondary and primary sources. Primary data were teachers head teachers, teacher training subject advisers, DEO, director of INSET while secondary sources were published literature which included textbooks, journals, and documents from education department such as education policy. Descriptive research design was used, hence the mixed method research approach applied. In analyzing qualitative data the researcher used content analysis method while in analyzing quantitative data researcher was used a Descriptive statistics method and correlation method. A correlation method was used to establish the relationship between INSET and Quality Teaching Practices. A correlation is a statistical test to determine the tendency or pattern for two (or more) variables or two sets of data to vary consistently (Creswell, 2012). The reason for using correlation data analysis method was to provide an opportunity to predict scores and explain the relationship among variables. In correlation method, investigators use the correlation statistical test to describe and measure the degree of association (or relationship) between two or more variables or sets of scores. Creswell (Ibid) argued that, correlation method is used when a researcher seeks to relate two or more variables to see if they influence each other. This design allows you to predict an outcome. It is important to know that this study was conducted in Central District, Zanzibar which is located in South Region of Zanzibar, because of poor performance of students in Certificate of Secondary Education Examinations (CSEE). According to National Census Report (2012), the District has 76,346 people. The choice of Central District due to the fact that, it has reasonable number of trained teachers who underwent INSET (MOEZ 2019). Census Sample Technique was used to this study. Census is a sampling technique where the members of all the population are studied when the population is small and it is reasonable entire population (Lavrakas, 2008). This was due to the fact that, study population identified was small and it was reasonable to select the entire population.

Table 1 Sample and Sample Size by Schools and other categories

Schools and categories of respondents	Population	Sample size	Sample Technique
School A Teachers	31	31	Census
School B Teachers	30	30	Census
School C Teachers	10	10	Census
School D Teachers	34	34	Census
School E Teachers	21	21	Census
Head-teachers and Assistant	05	05	Census
Teacher Training Coordinator	1	1	Census
Teacher Training Subject Advisor	11	11	Census
Director of Teacher Training Department	1	1	Census
District Education Officer	1	1	Census
Total	145	145	

Source: Researcher, (2019)

Both quantitative and qualitative data was collected using closed and open ended questionnaire and semi structured interview respectively. A face-to-face interviews were done with the Head of schools and the District Educational Officer, (DEO), Teacher Training Coordinator, Director Teacher Training Department from Ministry of Education. During interview process, recording was done using Mobile Telephone on the consent of the respondent and notes written in note book. Using triangulation to collect data was instrumental in cross checking the authenticity of the data collected (Kothari, 2005).

RESULTS OF THE STUDY

Demographic Information of Respondents

Table 2 Summary of Demographic Distribution of the Respondents.

Age	Frequency	Percent
20-30	46	35
31-40	62	47
41-50	13	10
51-60	11	8
Gender		
Male	35	26.5
Female	97	73.5
Marital Status		
Single	22	16.7
Married	110	83.3
Education		
Diploma	36	27.2
Advanced Diploma	7	5.3
Degree	88	66.7
Masters and above	1	0.8

Source: Field data, (2020)

The findings from Table 2 show that, most teachers range the age of 20-40 which are 108 (81.8%) respondents which indicating that, the human resource are youths which are located in the field of teaching. This was followed by the respondents who were in the range of 41-50 while 13 (8.3%) of the respondents were teachers range in 51-60 which who were nearing retirement age from public service. This implies that, the ministry should be aware to this circumstances by giving them proper training and care to these teachers and take the measures to employ another main powers in order to fill the gap after retired. It was noted from the data majority of the respondents were female (73.5%) compared to male. This could mean that, women are interested in teaching profession in Secondary Schools of Central District. It was observed from the finding that most of the teachers (83.3%) were married compared to 16.7%e who were single. Majority (66.7%) of the respondents were Degree holder while 27.2% and 0.8% were Diploma and Maters degree holder respectively.

Refresher Course Training in secondary schools of Central District

Respondents were asked if they had benefited from any refresher course training to improve their knowledge and skills so as to effectively deliver to their students. Table 3 presents the summary of the responses.

Table 3: Respondents View on the on Refresher Course Training

Statement	Strong Agree	Agree	Neutral	Disagree	Strong Disagree	Total
Participation In Refresher Courses Training At Least Once A Year	100(75.8%)	13(9.8%)	3(2.3%)	14 (10.6%)	2(1.5)	132(100%)
Refresher Courses Training Improves My Ability to Assessment and evaluation Of Students	90(68.1%)	28(21.2%)	2(1.6%)	9(6.8%)	3(2.3%)	132(100%)
Refresher courses Training Improves My Ability To Design And Use Teaching Materials	88 (66.7%)	30(22.7%)	1 (.8%)	11(8.3%)	2 (1.5%)	132 (100%)
Refresher courses training Improves my Ability To Make Lesson Plan	90 (68.2%)	27 (20.4%)	1 (.8%)	13(9.8. %)	1 (.8%)	132 (100%)
Refresher Courses Improves My Ability To Make Scheme of works	92 (69.7%)	30 (22.7%)	1 (.8%)	8(6 %)	1 (.8%)	132 (100%)
Refresher courses Training Improves My Ability To Manage Classroom	90(68.2%)	30(22.7%)	1(.8%)	8(6 %)	3(2.3%)	132(100%)
Refresher Courses Improve My Attitude And Perception Toward Teaching Profession	91(69%)	29(22%)	2(1.5%)	8(6%)	2(1.5%)	132(100%)
Refresher Courses Training Improves My Ability To Use Participatory Teaching Methods in My Subjects	94(71.2%)	28(21.2%)	-	9(6.8%)	1(.8%)	132(100%)

Source: Data field (2020

As the first research objectives sought to examine the relationship of Refresher Course Training and quality teaching practices in secondary schools to teachers basing on different types of teaching activities. Respondents were exposed to a five point scale indicating several issues and were asked to indicate the extent to which each of the proposed issue which encouraged them to participate in school-based INSET activities that were offered through Refresher Course and to what extent those contributed to quality teaching practices. Generally, Table 3 shows that, the INSET to teachers are conducted and most teachers in the Schools are benefited. The findings also shows that, few among the teachers are not getting training as shown in the findings that 2.2% of the respondents replied neutral in the factor of participate in refresher course training which means that they are not even aware of the existence of refresher courses. These teachers who selected neutral it means that they do not have knowledge concerning with the Refresher Course Training. On other hand, from the findings it was found that trainings does have benefits to the attendants, although few of the respondents which is 1.5% responded strong disagree

hence claimed that the training does improve teachers' abilities including the ability of conducting and making assessment and evaluation in their teaching duties.

Also findings revealed that, Refresher Course Training does have positive impact to the teachers as most of the respondents 64% in this study replied AGREE that Refresher Course Training improve teachers' ability in design and use teaching materials at school compared to minority as 1.5% responded strong disagree, this mean that, the training helped the teachers while others are attending these courses and achieve nothing. contributed to their way of teaching but not much as expected .The Refresher Courses Training are expected to be the source of high performance to the teachers as these trainings provide a number of important issues concerning with the day to day teaching practices. In addition, the findings revealed that the perception and attitude of teachers towards INSET based on Refresher Course are good as (61%) of the respondents agreed. This means that teachers are willingly ready to improve their knowledge and exchange views with other teachers. This is because of the teachers' intrinsic motivation for performance starting from them in delivering subjects' contents to the academic performance of the students. This is supported by the study of Komba and Nkumbi; Celen et.al. 2016 (2008) found that, teachers who participated in professional development activities relied to a greater extent on interactive activities than those who do not in such activities. Also Klassen and Tze (2014) found that, psychological factors like teachers' sense of self-efficacy and internalization of school goals into personal goals than the current factors had strong effects on teachers' participation in the professional development learning activities. Park and So (2014) argued that unlike current findings, teachers wanted to participate in professional development so as to improve their subject-matter knowledge, enjoy and make fun, enhance their career, while not demanding too much time and effort. Teachers reported a preference for professional development when other teachers in their school were participating and when their principal encouraged them to participate. It was logical to argue that teacher professional development in this study relates to all of these professional development characteristics

Relationship between Teachers' Refreshers Course Training and Quality Teaching Practices

H_1. There is no relationship between teachers' refresher course and quality of teaching practices in secondary schools of Central District, Zanzibar.

		Teacher Refreshers Courses Training	Improvement of quality teaching practices
Teacher Refreshers Courses Training	Pearson Correlation	1	1.00
	Sig. (2-tailed)		.000
	N	132	132
Improvement Of Quality Teaching Practices	Pearson Correlation	1.00	1
	Sig. (2-tailed)	.000	
	N	132	132

Source: Field data (2020).

From analysis done using Pearson correlation reveals that method that since Pearson r varies between +1to -1 and Pearson correlation result shows that R is 1, this implies that there is a strong relationship between teacher refresher courses(r=1.00, p=.000) and the quality teaching practices. Therefore, it can be concluded that that INSET for teachers is important in providing with modern teaching practices as they are subjected to refresher courses in their subject discipline. This makes them productive in their academic performance. This finding corroborates with Musau & Abere (2015) study findings, that majority of the teachers of SMT subjects who were graduates and attended in-service or refresher courses improved on their teaching practices which led improvement in the students' performance in SMT subjects; he also further indicated that more regular in-service refresher training of SMT subject teachers enabled them embrace and conform to the new emerging technologies in pedagogy.

During interview with the respondents, they were asked whether refresher course training was necessary for teachers in secondary schools. The responses obtained were that; For example, DO 1 replied;

Refresher Course Training is very important as it enables teachers to share experience, makes teachers dynamic with the changing technological world and enhances creativity on the part of teachers.

Also Heads of schools were interviewed concerning the Refresher Course Training and after careful data analysis the following findings were revealed;

For example, B3 revealed that;

Refresher Course Training is very useful in preparation of teaching materials, it exposes teachers to share experience with other teachers especially on laboratory chemical preparation, learning and teaching activities. Also Refresher Course Training adds values to teachers who attended compared to those who do not, which consequently improves performance. It also leads to improved teaching methodology and strategies.

Also B4 added another comment as follow concerning Refresher Course Training;

Refresher Course Training motivates teachers to do better as they strive to show the difference in their teaching compared to that before attending Refresher Course programmes. During Refresher Course Training programmes, difficult topics are discussed, experience shared through discussion to those attending teachers to master their areas of specialization which lead better performance to the students.

This means that, refresher Course Training are necessary to teachers in developing their profession in teaching and learning process. Through refresher courses teachers get chance to meet with their fellow teachers hence exchanging ideas and skills which are very important for the academic development of students and this country in general.

Also apart from the head teacher also the interview was conducted to DO1 was interviewed hence he responded that;

Refresher Course Training are one among the primary duty (role) to my department and each year we provide numbers of trainings to teachers concerning the refresher Course to different subjects and different Classes of Secondary Schools through Teacher Training Centre (TC). The Refresher Course Trainings that my department is conducting enable teachers to cope in their teaching and learning process. Also enable teachers to have confidence in teaching process and mastered the subject content due to have enough knowledge, skills and experiences after training.

Therefore, this means that INSET to teachers particularly Refresher Course Training is unavoidable and sustainable process to the teachers to the purpose of updating their knowledge and enhancing performance to the Students results in Schools. This was supported to the study done by Thornton (2003), Teacher Refresher Course improved professional development of teachers in teaching and learning process.

Opinion on Teachers' Seminars to Improve Quality Teaching Practices

Respondents were probed on whether their engagement in teacher seminars improved their quality teaching practices. Table 4 presents the summary of the responses.

Table 4: Opinion on Teachers' Seminars to Improve Quality Teaching Practices

Statement	Agree	Strong Agree	Neutral	Disagree	Strong Disagree	Total
I Attend Seminars at least Once a Year.	74 (56%)	8(6%)	10 (8%)	32(24%)	8 (6%)	132 (100%)
I Learn Pedagogical Issues in Seminars	84 (63.6%)	9(6.8%)	6 (4.6%)	23 (17.4%)	10(7.6%)	132 (100%)
Seminars Improves my Teaching Style	80 (60.6%)	16 (12.1%)	3 (2.3%)	22 (17%)	11(8%)	132 (100%)
Seminars Help me to Select and Design Issues that Students Regard as Important in a Subject	84 (63.6%)	14 (10.6%)	4 (3%)	20(15.2%)	10 (7.6%)	132(100%)
Seminars Improves my Ability to Apply Questioning Skills During Teaching Process	81 (61%)	16 (12%)	5 (4%)	21 (16%)	9(7%)	132(100%)
Seminars Improves my Ability to Design, Administer and Asses Group Work to Students	85 (64%)	11 (8%)	6 (5%)	21(16%)	9(7%)	132 (100%)
Seminars Improves my Ability to Apply Effective Motivation Techniques to Students During Teaching	80 (61%)	15 (11%)	5 (4%)	21 (16%)	11 (8%)	132 (100%)
Seminars Improves my Subject Knowledge	78 (59.0%)	16(12%)	5 (4%)	25 (19%)	8 (6%)	132 (100%)

Source: Field data (2020).

The second research objective sought to examine the relationship of Seminars and quality teaching practices secondary schools to teachers in different type of teaching

activities. Generally, the findings revealed out that, basing on the school INSET on Seminars, the majority of teachers are attending, participating in seminars programs and the seminars provides helpful different activities required by the teachers in their teaching profession like questioning skills, designing teaching learning materials, effective motivation techniques, pedagogical issues and others related to the quality teaching process. Most teachers in the Schools are benefited from these seminars as 61.2% of the respondents agreed. Also, the findings revealed that, the seminars provided to the teachers tends to improve the teaching practices as majority of the responded in which 56.2% of the respondents revealed their views by responded AGREE option. This means that, Seminars are necessary for improvement of teachers' profession.

Furthermore, findings revealed that, some teachers are not getting training as 8.3% of the respondents replied NEUTRAL which means that they do not attend seminars even once in a year, this also means that teachers that do not have even knowledge concerning with the existence of Seminars. For the respondents who responded DISAGREE from the findings it means that, the trainings are not helpful to teachers and they are not contributing in their teaching practices which is the same as those who responded strong disagree which also means that the Seminars are not helpful to the teachers.

4.3.1 Relationship between Teachers' Seminars and Quality Teaching Practices

H_2. There is no relationship between teachers' seminars and quality of teaching practices in secondary schools of Central District of Zanzibar.

		Teacher Seminars	Quality Teaching Practices
Teachers Seminars	Pearson Correlation	1	1.00
	Sig. (2-tailed)		.068
	N	132	132
Quality Teaching Practices	Pearson Correlation	1.00	1
	Sig. (2-tailed)	.068	
	N	132	132

Source: Field data, (2020)

The Pearson Correlation the findings revealed that there is strong relationship between teachers' seminars(r=1.00, p=0.068) and quality teaching practices since Pearson r varies between +1to -1 and Pearson correlation result shows that R is 1, this implies that there is a strong relationship between seminars/workshops and the quality teaching practices. This means that teachers benefited from attending various seminars/workshop aimed at improving their quality teaching skills provided by schools or other authorities. This strongly suggests that INSET for teachers is important in providing modern teaching practices as teachers were subjected to seminars in their subject discipline. This seems to make them productive in their academic performance. This finding corroborate with Obot (2016)The result revealed that there exist a positive relationship between the teachers' attendance at in-service training, seminars and workshop on teaching practices which led students' academic performance in social studies.

During interview with the respondents, they were asked whether seminars course training was necessary for teachers in secondary schools. The responses obtained were that; For example, DO2 replied concerning the relationship by saying that;

"Seminars are conducted when there are major changes in the areas of teaching process such as the new syllabus, Curriculums change, new content and new topics are established in the subject's matters in Secondary education. Most of the time these seminars is conducted through my TC which is found in Dunga.

This means that seminars are conducted by the authority responsible with the provision of education whenever something new in the education systems occurs. When there is curriculum changes the need for seminars existence occurs which means that the teacher must be assembled together in order to learn techniques, hence it is proved that the seminars are conducted in most of the time to teachers.

Also DO 2 added that;

The seminars helps teachers to be able to do their work efficiently as they are given various techniques of teaching including how to design teaching materials, using new syllabus and mastering of the content which are very helpful for the teaching development.

This means that teachers are given opportunity to attend the seminars in order to be able learn new experience which help them on improving education quality and this is because the formulation and structural changes of education curriculum is because of the improving the quality of teaching in secondary schools.

Coaching and Mentoring Teachers in Secondary Schools

Table 5 presents a summary of the responses of the respondents on coaching and mentoring of Teachers in Secondary schools in Central District Zanzibar.

Table 5: Coaching and Mentoring Teachers in Secondary Schools

Statement	Agree	Strong Agree	Neutral	Disagree	Strong Disagree	Total
I have been assigned a Senior Teacher as my Coach and Mentor in my Teaching Subject.	74(56.0 %)	12(9.0%	4 (3.0%)	37 (28.0%)	5 (4%)	132 (100%)
I get full Support from my Mentor.	72 (54.5%)	12 (9%)	7 (5%)	35(27%	6 (4.5%)	132 (100%)
I learn about Lesson preparation, Lesson Plan, Scheme of work and Assessment Techniques from mentor.	69 (52%)	18 (14%)	8(6%)	28 (21%)	9 (.7%)	132 (100%)
School Management Support mentoring and Coaching activities in Schools	80(61%)	21(16%)	11(8%)	17(13%)	3(2.0%)	132(100%)

Source: Field data (2020).

From the findings which were obtained from last objective which is relationship between coaching and mentoring and quality teaching practices in Secondary Schools of Central District of Zanzibar revealed that, Coaching and Mentoring is taking place in Secondary Schools as 52.9% of the respondents agree that, they have been assigned as Coach and Mentor in teaching subject. This means, the Schools support Coaching and Mentoring System. Also it was found that Coaching and Mentoring is helping teachers to learn about working experiences such as Lesson preparation, Lesson Plan, Scheme of work and Assessment Techniques from mentor as 51.2% of respondents agreed during data collection process.

Relationship between Coaching and Mentoring and Quality of Teaching Practices

H_3There is no relationship between coaching and mentoring and quality of teaching practices in secondary schools of Central District of Zanzibar.

		Coaching and mentoring	Quality of Teaching Practices
Coaching and Mentoring	Pearson Correlation	1	1.00
	Sig. (2-tailed)		.000
	N	132	132
Quality of Teaching Practices	Pearson Correlation	1.00	1
	Sig. (2-tailed)	.000	
	N	132	132

Source: Field data, (2020)

From Pearson correlation results, there was a strong relationship between coaching/mentoring (r=1.00, p=.000) and quality teaching practices. This means that at the time mentors in various schools do coaching and mentoring to teachers during their day to day duties to improve their quality of teaching practices. This also indicates that INSET for teachers is important in providing with modern teaching practices as they are subjected to coaching and mentoring courses in their subject discipline. This makes them productive in their academic performance. This finding collaborate with Smith and Lynch (2014), findings which indicated that the improvement in the beginning teachers' AIMS scores from fall to spring was greater for the experimental group than for the comparison group of teachers.

During interview with the respondents, they were asked whether coaching and mentoring was necessary for teachers in secondary schools. The responses obtained were that;

DO1

''In my opinion and from my experience coaching and mentoring help in the improvement of quality and teaching practices in the secondary school, as you see the new and fresh from college teachers does not know how to work and prepare teaching materials as the curriculum says but when you implement mentoring it become helpful as they get to know how to conduct the work properly''

This means that coaching and mentoring does have relationship with the quality of teaching practices in the secondary schools level as the teachers spread their experience from one another in order to make sure that everyone is doing the work as supposed to be done.

CONCLUSION AND RECOMMENDATIONS

Generally, the findings revealed that; school-based INSET is effective towards improving teachers on teaching and learning activities. The INSET based on Refreshers Course Trainings has relationship with quality teaching practices in Secondary Schools in Central District of Zanzibar. Also, the findings revealed that, there is strong correlation which is (1.00) which means positive correlation to INSET and the same findings were found in Quality Teaching Practices which is (1.00)which means positive correlation. Findings also revealed that, there is correlation between Refreshers Course Trainings and quality teaching practices in secondary schools, the INSET are very important and sustainable to teachers in their teaching process and their professions. Most Teachers in the findings emphases, the needs and values of Training particularly Refreshers Course in their activities of teaching process in improvement of teaching practices in a day to day activities. Lastly, the findings revealed that INSET based on Refreshers Course improve teachers' ability to performance in the teaching practices, hence achieving high performance in delivering content knowledge, participatory methods, involvement of students to the lesson, sharing and exchanging views with others and other issues related to the teaching. Based on this conclusion, the study recommends that Secondary Schools Administrators together with Ministry of Education should give opportunity to every teacher to attend the refresher course program intended to sharpen their knowledge and skills to improve their quality teaching practices to make their students perform better. Second, the department of in-service training should organize regular seminars and workshops for teachers aimed at empowering teachers to acquire required quality teaching practices to improve academic performance of students in secondary schools. Furthermore, School management should in collaboration with Ministry of Education should make these seminars more attractive by ensuring that there is conducive climate that exist in their schools for teacher to effectively attend. The employer, Ministry of Education through INSET department should also create a situation whereby teachers can get Refreshers Courses, seminars or workshops in their working areas which could empower them to perform their teaching job well. When teachers are re-educated they can manage to deliver the relevant materials to their learners, hence increase performance. Third, The Ministry of Education and Vocational Training Zanzibar (MoEVT) should strengthen coaching and mentoring in secondary schools as an in-service training strategy to continue solving inadequacies between/among teachers teaching practices.

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COVID-19 PANDEMIC - A FACTOR OF GLOBALIZATION IN AGRICULTURE, FOOD AND ENVIRONMENTAL PROTECTION

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Abstract: *Pandemics are disrupting the global food supply chain. The 21st century has seen the frequent emergence of natural and human disasters, including droughts and pandemics. Together their impacts can be exacerbated, leading to severe economic stress and malnutrition, especially in developing countries. Understanding how agricultural risks interact in identifying appropriate policies to address them together and separately is important for maintaining a strong global food supply. Here we assess the impact of disasters such as the Covid-19 pandemic in the context of food and agriculture and environment. The poorest countries with the least responsibility for climate change are also the ones that will be hardest hit, but they also need funding to help them make the transition to a sustainable economy. This requires a degree of cooperation that countries around the world seem reluctant to offer. For example, in the Covid-19 crisis, we saw that the poorest were the most affected.*
Keywords: *COVID-19, Policy, Trade.*

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INTRODUCTION

Globalization has a long history, starting with the Silk Roads (1st century BC - 5th century AD and in the 13th-14th centuries). The first Silk Road marked the introduction of long-distance trade, when Chinese products first arrived in Rome. The present period has been called globalization 4.0, in which markets are dominated by China and the USA. The main features are e-commerce and digital services. However, the negative aspects of globalization are becoming more frequent, of which deforestation and pollution are two of the main environmental concerns Barry (2020).

Major epidemics and pandemics can occur spontaneously and have a high degree of uncertainty, which presents many urgent challenges. The first challenge is to identify the causes behind the pandemic and to find ways to monitor and prevent it. In general, research is required to determine the cause of the disease, the factors that influence its spread, the victim identification test method, and medical care to cure victims and prevent their spread. The second obstacle is the execution of the solution. Developing and manufacturing successful samples, developing protocols for monitoring, tracing, isolating and treating infectious persons, and creating and distributing vaccines, once available, is time-consuming (Fernandes, 2020). Meanwhile, halting or stopping the spread involves the

introduction of social isolation procedures, including the closing of restaurants, bars and theaters, which may cause disturbances to food consumption, processing and transportation.

The Covid-19 crisis that erupted in early 2020 took many people by surprise, both because few initially expected such a situation, but also because few could have anticipated that such drastic policy responses would be necessary or even possible. At the time of writing, various bottlenecks around the world have already had significant implications not only for economic growth, but also for global supply chains, international cooperation, government policy, agriculture and the environment. In this paper we discuss some of the lessons we can allready learn from the Covid-19 pandemic and what they suggest about how we might want to redirect some of our future research in environmental economics, agriculture or the food sector (Fernandes, 2020).

The World Trade Organization (WTO) published its annual trade prospects in April 2020, not long after the outbreak of the Covid-19 virus. Director-General Azevêdo said that "the numbers are ugly" (WTO, 2020). In its updated global economic outlook (IMF, 2020), the IMF estimates that world GDP could fall by 4.9% in 2020. Alarming figures on international trade are also found by Barry (2020). The pandemic is estimated to lead to a reduction in world trade of between 13 and 32%, a decline that exceeds that caused by the global financial crisis of 2008-2009 (Rizou et al., 2020). In order to achieve a so-called V-shaped recovery and against the background of an increasingly crowded trade war between two major world powers, the United States and China, it is important that post-pandemic governments do not return to further rounds of protectionist, but with new solutions that increase the prospects for a beneficial trade.

AGRICULTURE AND FOOD SECTOR

Most of the economic impact of a pandemic could emerge during a time of constrained operation until finding a cure or extinguishing the virus. Constraint practices may be due to exclusion measures, self-policing, or economic crisis. According to Guan et al. (2020), most countries were trying to avoid the spread of COVID-19 by limiting business activities and movement with travel bans, lock-downs and other bans on companies. Countries that have acted sooner and introduced more drastic policies have been able to shorten the length of the restrictions and minimize economic harm. The dynamics of disease spread through countries suggest mutual dependence, and the reduction of economic activity and disease control in one state benefits others.

Restrictions on commerce and slower travel across borders have limited supplies. The transition from food purchases from restaurants and other institutions to home requires adaptation by food processors and retailers, including packaging changes (Hsiang et al., 2020). Farmers have been forced to adapt to changing labor conditions and market changes. Restaurants, producers and other food supply chain connections that have been reluctant or unable to adjust to evolving demand or meet social distance criteria would incur major losses. On the other hand, food distribution systems have been extended so that some areas of the food industry will benefit from these reforms. Increased concentration in the food industry is a potential outcome of the COVID-19 pandemic. At the same time, unemployment among employees in the food industry has risen significantly. As many

informal workers around the world are, their ability to benefit from the compensation systems implemented in response to COVID-19 is minimal (Kerr, 2020).

Table 1 The influence of globalization on agriculture and food

The consequences of globalization in agriculture and the food sector	Countries that are deficient in some products will be able to meet their needs by importing from other countries.
	Reducing the volatility of agricultural product prices.
	Small farmers with low labor productivity will disappear.
	The countries that produce agricultural and food products, the more they trade, the better their standard of living will be.
	Increased global income and barriers to reduced investment will lead to growth of foreign direct investment, which thus accelerates economic growth in many countries.
	People with a low standard of living would benefit from the globalization of agriculture.
	Globalization will increase the efficiency of food production, thus lowering prices and being accessible to any social category.
	The globalization of agriculture leads to an increase in production and an improvement in the economic situation of farmers around the world.
	The economies of the cooperating countries well with the international economy will grows steadily much faster than those countries that are trying to protect.

Source: made by the author after http://www.preservearticles.com

Although the COVID-19 pandemic is still continuing, it has already given some generalizable lessons about how pandemics can impact the agri-food sector. For example, constraints about travel across regions and social distances (shelter-in-place) policies affect performance of the food supply chain through short-term supply and demand shocks in the agricultural and food industries (Espitia et al., 2020). Social distancing has contributed to panic purchasing, storing and increasing consumption of essential foods such as eggs and flour. Galanakis (2020) indicates that the pandemic may also raise demand for food items that are assumed to strengthen the immune system. Around the same time, there have been major improvements in availability. Some regions may experience a reduction in migrant farm labor, which may have an effect on harvesting and decrease the demand of fruit and vegetables (Kerr, 2020).

Overall, the longer the social distance persists, it is predicted that many companies in the food sector will incur losses which will raise the risk of defaults and bankruptcies, resulting in more unemployment. Hobbs (2020) found that food prices in Canada have not improved much as a result of COVID-19 and the subsequent policies. Food insecurity in the U.S. A. has risen, partially due to difficulties in obtaining food from the National School Lunch Program due to school closures. Mahajan and Tomar (2020) say that the availability of vegetables, fruit and oil in India has decreased by 10% but has a marginal effect on prices. The further the origin of the commodity from the consumer, the lower the accessibility. Overall, evidence shows that private supply chains have been able to respond to most of the COVID-19 impact. The fall in demand resulting from a decrease in economic activity is likely to affect the agricultural sector. In addition to supply, pandemics, unlike natural disasters, may have an effect on food demand, placing added pressure on the food supply chain (Laborde et al., 2020).

The pandemic is causing drastic improvements to food production practices to protect against the spread of the virus and potential diseases. Technology and the use of real-time data will minimize disturbances in the food supply chain by eliminating delays and enhancing shelf life (Reardon et al., 2020). Use of information technology for distribution of food has grown and improved and is likely to increase in the future, especially with the growth of delivery services, which will remain a key element of the food supply chain. Concern for future potential pandemics could result in increased automation in harvesting, processing and distribution, leading to a shorter and more diversified supply chain and an expanded plant-based meat market. Innovation and disaster-driven technical progress will increase the sustainability of food production, creating environmental benefits (Rowan and Galanakis, 2020).

Achieving a balance of trade and domestic production in food systems is an ongoing challenge driven by economic efficiency, consumer choices and social and political preferences (Mahajan and Tomar, 2020). Conditions that create increased fear or uncertainty about food availability trigger new debates about how best to achieve society's goals and meet food needs. Especially family farms will suffer along with others from disease and loss of productivity due to the COVID-19 pandemic (Siche, 2020). More importantly, it is concerned about the ability of capital to flow smoothly to farmers and support businesses along the supply chain.

From the pandemic period are essential lessons to learn for climate change policy and agricultural sustainability. Minimal initial expenditure in mitigation measures involves expensive changes, resulting in substantial loss of life and economic well-being. The World Food Organization and other relief agencies through provide emergency food aid, but they need financial resources and access to food supplies. The resolution of regional hunger problems could be subject to concerns about the spread of infection during pandemics. Robust emergency relief services are critical for alleviating the economic and public health implications (Hsiang et al., 2020).

Closing trade borders makes it more difficult for any nation to buffer the shocks of a pandemic. The intensity of food supply during this pandemic indicates that, amid isolation policies, global supply chains continue to work. Even if the increase in short-term demand but also the increase in challenges to ensure the safety of workers, the availability of food is expected to be stable over the next 8 months. However, temporary food supply shortfalls and increased prices for certain food categories are likely to continue (Kerr, 2020). This cannot be determined by the unprecedented nature of this global tragedy. What we do know is that the extent of the COVID-19 pandemic requires that it be studied in detail in terms of the variables that have an impact on food security and how favorable policy interventions are.

The Covid-19 epidemic should make us reconsider the principles of globalization in relation to supply chains. She emphasizes that globalization has taken place in a world of global monopolies and without sufficient regulation to undermine vital sectors such as the food sector (Siche, 2020).

ENVIRONMENT

There are important lessons to be learned from Covid-19 for environmental economists. Decreased incomes and production and the possible large-scale shift in global

production will have significant effects on the environment. Economists have been aware of these potential environmental issues that influence trade (Allan et al., 2020).
The well-known book by Copeland and Taylor (2013) on trade and the environment provides a beautiful account of the worries that have existed since the early 1990s. The key questions they address are: (1) How the growth of economic activity induced by international trade affects the environment; and (2) How does environmental policy affect a nation's business model? They discuss the paradise of pollution versus the hypothesis of endowment of factors (Barbier, 2020). Since then, numerous studies have investigated these issues. As usual in economics, the answer is that opening up to trade in the absence of externalities tends to be beneficial, but that "correct" economic policy is needed to achieve positive welfare gains in the case of externalities (Burns and Tobin, 2020). However, to explain the effects of the Covid-19 pandemic, we need models in which the interconnection of production chains is visibly present. Moreover, the current Covid-19 crisis is mainly characterized by reduced human mobility, with consequences for the tourism and transport sectors. Less tourists may lead to less damage to global biodiversity, but it could also show that less eco-tourism will mean that it is no longer "profitable" to continue to protect previously protected areas, which are important for biodiversity. A clear benefit of lower tourism is that there will be less CO2 emissions as a result of reduced air travel (Cole et al., 2020b).

Reducing trade also means that less road, sea and air travel is needed to transport goods and services. A crucial question is whether these specific effects will be long-lasting, or only temporary. A related issue is the huge subsidies going to the aviation sector. Should these subsidies be combined with greening the business and, as France demands from AirFrance / KLM, should domestic flights be reduced in favor of high-speed trains? Research is extremely necessary to estimate the costs and benefits of such a policy. Probably one of the biggest lessons we could learn from the comprehensive blockade and cessation of large areas of economic activity is how small the reduction in greenhouse gases has been.

The International Energy Agency expects a 6% reduction in global carbon emissions in 2020. This is equivalent to the annual carbon budget of countries such as India. However, although this decrease is unprecedented as such, in order to maintain climate change at 1.5 of warming by the end of the century, we would need at least an equivalent decrease in carbon emissions each year from now on until 2050.

To date, stimulus plans in developed countries have been large and costly, but have mainly focused on supporting local economies, which are small and have very limited global ambition when it comes to issues such as climate change or community support international (Dergiades et al., 2020). Some countries are already in the process of directing their post-pandemic stimulus program towards a green transition and focusing their spending more strongly on sustainable investment. These proposed incentive packages have been called the New Green Deal (Elkerbout et al., 2020).

The broader macroeconomic debate is whether the stimulus of any color, green or brown, is inflationary or whether the crisis will cause a period of deflationary pressure when governments will be able to continue the process of monetizing low-impact debt (Goodman-Bacon and Marcus, 2020). We could imagine that the fiscal multiplier, with interest rates at historic lows, is positive, so that additional spending will lead to further growth (Gruszynski, 2020). The question is what kind of technologies are favored by these

low interest rates, traditional, dirty or green and clean technologies? Many green technologies are still considered to be developing, which means that infrastructure or market depths may be lacking for rapid and widespread deployment. While the additional debt taken to deal with the current Covid-19 crisis has been used in countries with a social security system to minimize rising unemployment, and countries with a more market-based approach, such as the US, have seen an increase in unemployment to an all-time high of 14.7% in April 2020 (Fernandes, 2020). This again raises questions about the distribution aspects of a policy to stimulate a new green agreement, such as the one proposed by the EU (Schumacher et al., 2020). An analysis of how the New Green Deal will have an impact on employment and the various aspects of the distribution of these new jobs between skilled and unskilled, high wages and low and clean or dirty wages, would be useful (Elkerbout et al., 2020).

As Goodman-Bacon and Marcus (2020) point out, given the differences in the timing and locations of different policies, a difference-from-differences (DD) approach seems to be the most appropriate research concept to estimate the causal effects of interventions (such as blockages and social distancing). The same argument applies to studies that want to estimate the potential environmental impact of Covid-19. The Goodman-Bacon and Marcus (2020) summarized briefly here:

- Combined policies - when other policies are introduced at the same time or during the lock-in, such as the reduction of environmental enforcement activities, even if the lock-in was instigated at different times;
- Reverse causation - the timing of any blockage may depend on previous rates of infection;
- Voluntary precautions - people see what happened in other cities of the countries and have changed their behavior preventively. For example, people may drive less in the face of a blockage because they self-isolate or are generally cautious and therefore reduce emissions below normal levels before the blockade is introduced;
- Anticipation - when governments announce that a blockade will take place before the effective date. In the context of a story of air pollution and, as opposed to voluntary concern, it is possible for people to increase how often they drove before the blockade as a way to stock up or make final visits to relatives, worsening. thus - blocking emission levels, so that the blockage seems to have a stronger emission reduction effect;
- Spillovers - neither the virus nor the emissions respect national and state borders. As such, pollution in a city can be affected by neighboring cities, regardless of their state of blockade.

Global economic growth projected in 2020 would be significantly lower if governments around the world did not unconsciously increase their debt levels as a means of financing social security measures. As a result, in advanced economies, general government loans rose to 10.6% of GDP. According to the spring 2020 version of the EU's economic forecast, the EU's aggregate government deficit is projected to increase from 0.6% of GDP in 2019 to 8.5% in 2020, with a similar number for the rest of the world (IMF, 2020). The money borrowed now, at some point, must be repaid. Indeed, it may also be possible that those who borrow the money are not the ones who pay it.

CONCLUSIONS

In the end, modern farming is a testament to the power of science. The advent of fertilizer, modern breeding, land management and irrigation has provided for an increase in human population and a longer life expectancy, with a smaller proportion of the population employed in agriculture. Pandemics, however, show human weakness and the weaknesses of our awareness. While these phenomena show the limitations of science, they also reflect the need for more scientific study and the importance of adhering to expert data. Science needs to help build risk governance strategies to better respond to such crises, including organizations, rules and skills that balance central and regional obligations in order to achieve socially positive results.

We have seen that a global crisis is easily disrupting international supply chains, which, among other effects, have already led to reductions in both trade flows and people in the world. What is the implication of this for both economic development and the quality of the environment? In particular, will we see an increase in pollution paradises or a return of dirty industry in developed countries? Will we see increased migration to developed countries that are better able to cope with many types of crises? Will this increase in migration increase the presence of the environment in the developed world?

There is a willingness to finance a green post-crisis stimulus, but there are problems with high levels of public debt and what determines what is really a greener or browner investment that deserves to be part of the stimulus. Moreover, it is not clear whether it is possible to design incentives in such a way as to reduce inequality, which was not taken into account following the 2008 financial crisis.

As a final, more personal note, we consider that one of the main lessons of the Covid-19 crisis is that it offers society the opportunity to promote a green transition faster than could have happened in other circumstances.

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DO MACROECONOMIC DETERMINANTS SUBSTANTIALLY AFFECT UNEMPLOYMENT?

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Abstract: *Bangladesh is a developing country that wants support for economic growth from other countries. This is would accomplish by receiving a large amount of foreign direct investment (FDI) that leads to a higher rate of jobs. Higher jobs contribute to better Bangladeshi life while rising its gross domestic product (GDP). However, unemployment remains one of the major problems facing the world today. The research analyzed the long-run and short-run relationships between unemployment and its macroeconomic determinants over the period 1991-2018/19, including industry value-added, inflation rate, foreign direct investment (FDI), urban population growth, and real gross domestic product (RGDP). This research employed the Johansen co-integration, Vector Auto Regression (VAR) testing method, the Augmented Dickey-Fuller (ADF) to unit root. The outcome of the regression indicates that the long-run unemployment rate explained by foreign debt, inflation, FDI, population growth, and RGDP. Therefore, we propose some economic proposals that the outcome of this study.*
Keywords: *ADF, Economic Growth, FDI, GDP, Inflation, Unemployment.*
JEL: *B22, B23, E24, E26, E31, J24, R23*

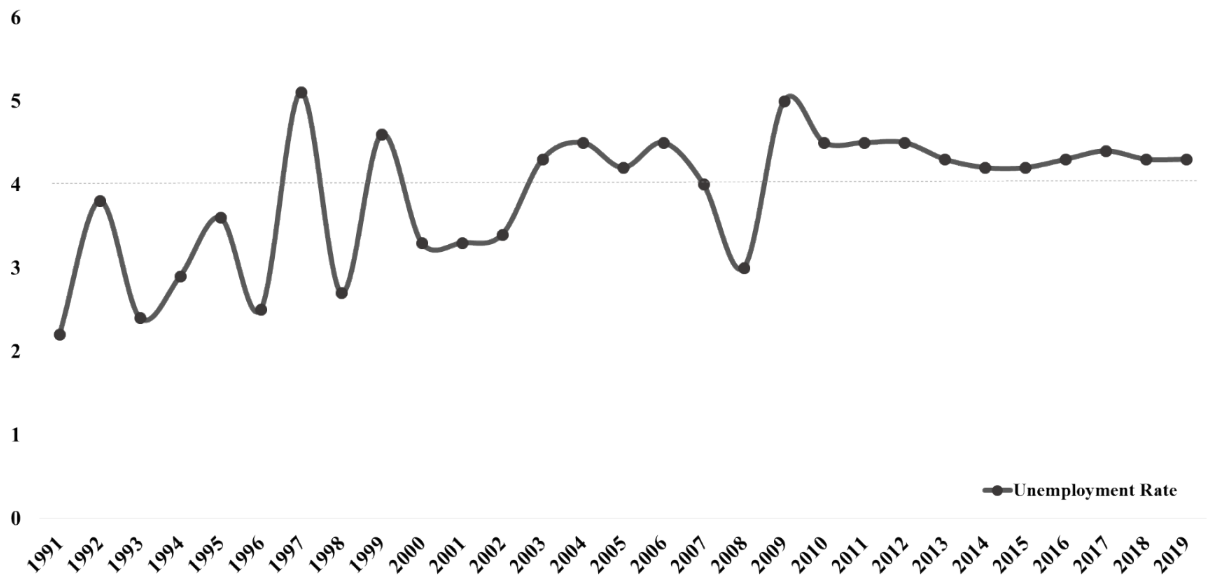
INTRODUCTION

Unemployment remains one of the world's greatest issues. It is the most persistent challenge affecting all countries that are technologically advanced and weak. 5.7 percent of the global population is unemployed, according to the International Labor Organization (ILO) survey (2017). Nonetheless, Bangladesh faces an austere problem. The unemployment rate measures the number of inactive citizens in Bangladesh, but it is the work force rate that effectively searches into it. 4.18 percent of the country's population is reportedly unemployed, according to the 13th Quarterly Labor Force Survey (QLFS) reported by the Bangladesh Bureau of Statistics in March 2017. The youth unemployment crisis is critical for the economic development of Bangladesh. Over the years, the youth unemployment rate has risen. The World Bank data shows that in 2017, the youth unemployment labor force aged (15-24) was 11.4%. Unemployed graduates in Bangladesh are - in a surprising way.

A big challenge in Bangladesh has been the unemployment situation for university graduates. In some cases, male graduates get more incentives than female graduates. According to the 2015-2016 Quarterly Labor Force Survey of the Bangladesh Bureau of Statistics, the unemployment rate for female graduates is 16.8 percent, almost 2.5 times greater than that for male graduates (QLFS). Growth in the economy helps alleviate unemployment. In 2016, Bangladesh achieved an economic growth rate of 7.11 percent (WDI revised 4-19-2018), according to the Bangladesh Bureau of Statistics (BBS), which

beats all previous milestones in the country's economic history. However, despite economic development in Bangladesh, the unemployment crisis has not been resolved. In Bangladesh, the evolution of unemployment is seen by the following figure.

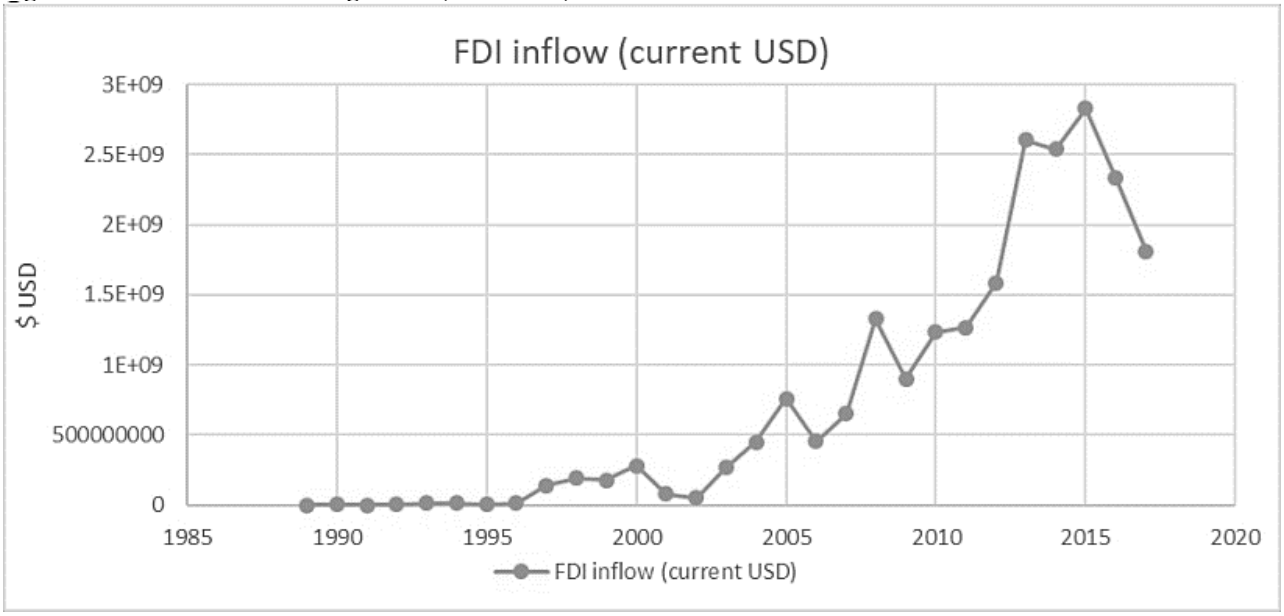
Figure 1. Trend of Unemployment



Source: World Development Indicator

Figure 1, shows that the unemployment rate oscillated frequently between 1991 and 2000 and reached an all-time high of 5.1% in 1997; due to political chaos and a newly formed government. It then shows an upward trend until 2004 and fluctuations from 2004 to 2006. After 2006, the unemployment rate started to decrease until 2008 and was 5% in 2009. It was the second level the higher. The unemployment rate remained constant at 4.5% between 2010 and 2012. After that, consequent years of 2018 and 2019, it's unchanged and touched 4.3% in 2019. A country's total production measurement scale GDP is one of the recognized parameter recording the state of an economy. In this research, GDP growth (annual %) coined as economic growth. From the time of its liberation in 1971, Bangladesh economy has experienced notable progresses. However, the country's growth has been hampered by political uncertainty and dangerous natural disasters. The following figure shows the trend of economic growth in Bangladesh over the period 1991 to 2019.

Figure 2. FDI inflows into Bangladesh (1989-2018)



Source: World Bank (2018)

After the policy reforms to encourage new investment and reward schemes in 1990 and 1995, foreign direct investment inflows have risen dramatically. The lifting of limits on capital and benefit tunnels in the country of origin and the opening up of almost all manufacturing industries to potential foreign buyers was another possible factor. The authorities formed an Investment Board in 1989 (BOI). The primary aim is to construct tunnels and encourage international investment (Mondal 2003). A linear point of view is that foreign direct investment (FDI) immensely significant for economic growth. Economic activity and development expedite by the foreign capital. Developing countries have had experience with foreign direct investment and see it as one of the fastest forms of economic change (Makki and Somwaru, 2004). Neoclassical and endogenous growth models establish the most empirical work on the growth parity of FDI. In certain economic state macroeconomic study implies a positive relations with FDI and economic state. Though, both are arguable factors in various cases. (Lean and Tan, 2011; Alshehry, 2015; Adhikary, 2015; Gandelman, N., & Hernández-Murillo, R. 2009).

Unemployment is a problem of considerable importance to leaders in developed and affluent countries both. About 34 million people have lost their jobs globally due to the global recession of 2007. After the economic recession, the number of unemployed young people has grown from 73.5 million in 2007 to 77.7 million in 2010, from 73.5 million in 2007 (ILO, 2011). Inflation and unemployment, socially and economically annexed, usually sought to establish a relationship between them that is inversely linked when unemployment is toe to tip while inflation is down. If the money supply changes, it indicates to inflation. If the money supply increases, this has a multiplier effect on the prices of goods and services in the economy, which also leads to increase. Goods and services become changes due to inflation of prices. The classic economist indicated that the long-term Phillips curve shaped the natural unemployment rate in the economy. It is

said that inflation and unemployment should have no relationship in the long run (Phillips, 1958) & (Friedman, 1968).

The inflow of foreign direct investment into Bangladesh started in 1994 to interrupt the steady influx of previous years, rising from $11 million to $231 million almost twenty times in 1995 and 1996. So this rise in Swift is the product of a set of rewards for hedging. Buyers of foreign direct investment have been granted financial sovereignty for innumerable years, consisting of tax exemptions for innumerable years, a non-binding facility for the import of machinery, 100% goods to abroad and a 100% income return facility, reinvestment of income or dividends as foreign direct investment, some visas, work allows executives abroad, permanent residence or even citizenship to invest a single post, export processing area (EPZ) facility and hassle-free, easy exit facility (Abedin, M. J. 2015).

OBJECTIVE OF THE STUDY

The study will explore the short and long-term relationships between macroeconomic factors and unemployment in Bangladesh. The macroeconomic variables taken into account are GDP, inflation and foreign direct investment. The following hypothesis is made

H1: The long-term relationship between unemployment and macroeconomic factors is at a significant level in Bangladesh.
H2: In Bangladesh, there is a major long-term association between unemployment and GDP.
H3: The short-term relationship between unemployment and inflation in Bangladesh persists at a substantial level.
H4: In Bangladesh, there is a major short-term association between unemployment and GDP.
H5: In Bangladesh, there is a substantial degree of short-term linkage between unemployment and FDI supply.

SIGNIFICANCE OF THE RESEARCH

There has been no major analysis in Bangladesh that logically illustrates the challenges of unemployment. Previous studies is not adequate. This study projected that it would include those policy elements to alleviate a large portion of the population's jobs. In addition, in order to undertake research in this field, the researcher of the future would have a clear and developed concept.

LITERATURE REVIEW

The Samiyah and Sakib (2018), Bangladesh case study focuses on foreign direct investment, trade transparency, and economic development. Data for the introduction of detailed Dickey Fuller (ADF), Granger causal checks and trade ties (TRD), foreign direct investment, Phillips-Perron (PP), inflation (INF) and GDP in Bangladesh were seen by the author between 1980 and 2015. At this point, GDP, trade flexibility by volume of trade as

a percentage of GDP, Calculated inflation by the consumer price index and foreign direct investment (net flows) are shown on the basis of data from the balance of payments. This article examines the correlation and direction of causality between foreign direct investment, trade and growth in Bangladesh, taking into account macroeconomic stability. The results show that there is a unidirectional causality ranging from trade openness to GDP, trade openness to inflation and a mutual causal relationship between foreign direct investment and GDP in Bangladesh. The above results do not suggest a causal link between inflation and foreign direct investment, trade and foreign direct investment, inflation and GDP. In this study, the assumption turned out to be partially true because the Granger's causal relationship of the guidelines was found between foreign direct investment and GDP. Though, no causal link between openness to trade and foreign direct investment or inflation was found. Meanwhile, foreign direct investment and trade are two key reasons for economic growth in Bangladesh which is based on the results of this experiment, a favorable investment and trade policy is recommended. Dey .S and Awal .H (2017) study implied the effects of foreign direct investment on GDP growth in Bangladesh using OLS (Ordinary Least Square). In this study various diagnostic tests performed such as normality, residual tests, heteroskedasticity and autocorrelation tests.

Main hypothesis of the multiple regression analysis. GDP considered as dependent variable, in this study detected as a negative relationship with foreign direct investment and economic growth. There implied a unidirectional or bidirectional causality between the dependent and independent variables (foreign direct investment inflows, total exports and imports, public development expenditure, gross domestic investment, gross fixed capital formation, human capital, national bank loans) or no Granger causality test was used. The result shows that foreign direct investment in Bangladesh is an ambiguous factor for economic growth.

Noor, Ali, Nirob and Islam (2016) study suggest that unemployment has a positive magnitude on the wage rate, but inflation has no positive effect on the wage rate. Jaradat (2013) examine that GDP influenced by unemployment and inflation on Jordanian economy. The researcher collected World Bank data set and applied time series data from 2000-10, to evaluate the relationship between the dependent and independent variables. Its results shows that if we increase inflation by 0.906%, GDP will increase by 1%, but if unemployment decreases by 0.697%, GDP will increase by 1%. The overall results suggest that GDP and unemployment have a significant negative relationship, while GDP and inflation have a strong, significant positive relationship.

Table 1. Several Authors Study and Results

Authors & years	Topics	Results
Adamu, J., Idi, A., & Hajara, B. (2015)	Remittance, Aid, Foreign Direct Investment, Financial Development and Economic Growth in Nigeria: A Time Series Analysis	An effective and excellent relationship between foreign direct investment and real GDP, an indicator of Nigeria's economic development. The existence of this positive link therefore requires a commitment to implement strategies that attract foreign direct investment, particularly in Nigeria's non-oil sectors.

Adhikary, 2015; Ghatak and Halicioglu, 2007; Lean and Tan, 2011; Alshehry, 2015	Dynamic Effects of FDI, Trade Openness, Capital Formation and Human Capital on the Economic Growth Rate in the Least Developed Economies: Evidence from Nepal	An empirical enquiry suggests that economic growth influence by FDI.
Bibhuti (2020); Abdullahi et al. (2012); Nwaogu, U. G., & Ryan, M. J. (2015); Makun, K., & Azu, N. P. (2015).	Nexus between foreign direct investment and economic growth in Bangladesh: an augmented autoregressive distributed lag bounds testing approach; The impact of FDI on economic growth in South Asia and Fiji	The experiment has suggested that foreign direct investment as well as other variables for instance- human capital, economic infrastructure and capital formation have positive and important effects on economic growth. Also, commended more open economies, more investments in economic infrastructure and more political engagement in the fight against corruption.
Borensztein et al. (1998)	How does foreign direct investment affect economic growth?	Measured of foreign direct investment in 69 developing countries during the period 1970-1989 in developed nations. This demonstrations that foreign direct investment is an important route for technology transfer and that it contributes extraordinarily much more to growth than domestic investment. However, FDI only promotes economic growth if the host country can properly absorb the technology.
Authors & years	Topics	Results
Wu Jyun-Yi and Hsu Chih-Chiang (2008)	Does foreign direct investment promote economic growth? Evidence from a threshold regression analysis	The record of 1975-2000 for 62 countries shows the effects of foreign direct investment on economic growth according to different absorption capacities. It's implies that FDI influenced by the initial GDP and human capital factors.
Kornecki and Borodulin, 2011	State-Based Determinants of Inward FDI Flow in the US Economy	The study shows that, based on FDI and its importance in the IP, the significant factors are: real income per capita, real spending per capita on education, employment, research and development in foreign direct investment and investment having a significant positive impact on foreign direct investment.
Mohammed Ershad Hussain and Mahfuzul Haque (2016); Tang, D. (2018).	Foreign Direct Investment, Trade, and Economic Growth: An Empirical Analysis of Bangladesh	Applied VECM, in this enquiry shows that the variables of trade and foreign investment have a major impact on the growth of GDP per capita. Because foreign direct investment and trade are the two essential tools for economic growth in 2006 Bangladesh.

Umar and Razaullah (2013) and Thayaparan, A. (2014) examine that the effect of Gross Domestic Product and inflation on Pakistan and applied time series data since 2000 to 2010 and calculated regression analysis through SPSS. The results point toward that the F-test value which is very low and below the value of 4.00. The R-squared has a limited variation of 0.70% & 22.8% in GDP inflation and unemployment. The experiment shows a negative effect on GDP and negative correlation with unemployment. Khan, Khattak and Hussain (2012) have examined the correlation between growth in gross domestic product

and unemployment in Pakistan. According to their results, if an increase of 1% reduces unemployment by 0.63%. However, a 1% drop in unemployment will increase GDP growth by 7.25%. The results suggest that long-term GDP growth has a negative impact on unemployment.

RESEARCH METHODOLOGY

This study purposes to observe the relationship with unemployment and macroeconomic parameters in the distinctive economic operation of Bangladesh from 1991 to 2018 by using the following model which are impacting on unemployment rate in Bangladesh. The annual data depending on the unemployment rate and other independent variables such as inflation, economic growth and foreign direct investment, measured in terms of GDP and the GDP deflator, come from the annual reports of the Bank of Bangladesh and the World Bank (1991-2019).

The primary model showing the relationship among Unemployment, Growth, Inflation, FDI. As follows:

$$UNEMP = f\ (GROWTH, INF, FDI, IND, PREMIT, AGEDR, URP,)$$
$$UNEMPt = \beta o + \beta 1\ GROWTHt + \beta 2\ INFt + \beta 3\ FDIt + \beta 4\ INDt + \beta 5\ PREMITt + \beta 6\ AGEDEPt + €t$$

Where, GROWTH = GDP growth (annual %) as a proxy economic growth
UNEMP = Unemployment rate, FDIt = Foreign Direct Investment
INF = Inflation Rate, IND = Industry value added (annual % growth)
PREMIT= PERSONAL REMITTANCES RECEIVED
AGEDEP = Age dependency ratio (% of working age population)
β0 = Intercept term, β1, β2, β3, β4, β5, β6 = Partial regression coefficient
t = Time period (1991-2019), € = Error term

The empirical research reveals that most time series aren't stationary. In fact, visual inspection of all the variables considered for use in this study at their level suggests that they are trending and therefore not stationary. In other words, their mean and their variances depend on time. From the econometric theory displays, ordinary least squares (OLS) cannot be used if there are non-stationary variables because there may be an incorrect regression that affects the performance of predictions. As an illustration, econometric theory shows that ordinary least squares cannot be used when the variables are not stationary, as there may be an incorrect regression that affects the performance of predictions. Therefore, we must use a time series regression model. Because our data are multivariate time series, the visible regression analysis method is a vector automatic regression (VAR) or vector error correction (VECM) model. Follow the steps below to do this:

METHOD OF ANALYSIS

In this study the method of analysis considering in below test. There are-
Lag selection of Variables

2. Stationarity Check
3. Test for Co-integration
4. If Co-integration is not present

We use vector auto-regression (VAR) and if there is co-integration present, we use the vector error correction model (VECM), 5. Diagnostic tests and forecasting. The ordinary least squares (OLS) regression model is considered a weak statistical test and, based on variables and data, an automated vector regression (VAR) model should be used. This co-integration analysis model is created in conjunction with the Augmented Dickey-Fullertest, Johansen co-integration tests, co-integration equations and Johansen normalization constraints.

RESULTS AND DISCUSSIONS

Lag Selection Of Variables

The yearly data set shows data set max optimal lag level 2. We have used four parameters to find the optimal lag. Those are- Final Prediction Error (FPE), Akaike Information Criterion (AIC), Hannan Quinn Information Parameters (HQIC) and Schwartz Information Parameters (SBIC). Varsoc Unemployment GDP_GR FDI Infl, maxlag (2)
Endogenous: Unemployment GDP_GR FDI Infl
Exogenous: _cons
Selection-order criteria
Sample: 1993-2018
Number of observation=26

Table 2. Lag selection of Variables

lag	LL	LR	df	P	FPE	AIC	HQIC	SBIC
0	-688.968				1.70E+18	53.3052	53.361	53.4988
1	-645.056	87.823*	16	0.000	2.0e+17*	51.1582	51.4369*	52.126*
2	-633.998	22.118	16	0.139	3.20E+17	51.5383	51.5383	53.2803

In this table we can find that all four parameters are indicating that lag 1 is the optimal lag with the sign '*'. So we are putting 1 as our optimal lag.

2. Stationarity Check

The data on time series is generally non-stationary. However, in order to run a successful regression test for time series data, these must be configured as stationary, since time series cannot have a standard mean value and no standard variance. Augmented Dickey Fuller's test aids to examine the stationarity of time series data. An important assumption for this test is that the error term is not correlated. Therefore, Augmented Dickey Fuller (ADF) test is performed in our study. It checks the correlation of errors by adding lags.

To test the stationarity of data we have the following hypothesis

H0: The data is non-stationary.
H1: The data is not non-stationary

A significance level of 1%, 5% or 10% is included in the analysis when making a decision. If the absolute value of the test state is greater than the critical value, we can reject

the null hypothesis. However, if the absolute value of the test statistics is less than the critical value, we cannot reject the null hypothesis.

Table 3. Lag selection of Variables

Differentials	Level Form		1st Differentials		2nd Differentials		3rd Differentials		4th Differentials		Integrated Level
Variables	Cal. Value	95% C.I. (P-Value)	Cal. Value	95% C.I. (P-Value)	Cal. Value	95% C.I. (P-Value)	Cal. Value	95% C.I. (P-Value)	Cal. Value	95% C.I. (P-Value)	
Unemployment	-2.29	-3.6 (0.4374)	-6.02	-3.600 (0.000)							I (1)
GDP	-2.886	-3.600 (0.1672)	-3.174	-3.600 (0.0897)	-3.607	-3.600 (0.0293)					I (2)
Inflation	-3.833	-3.600 (0.0150)									I (0)
FDI	-2.076	-3.600 (0.5597)	-2.753	-3.600 (0.2149)	-3.244	-3.600 (0.0759)	-3.247	-3.600 (0.0754)	-4.000	-3.600 (0.0088)	I (4)

In this chart we see that in the level data on unemployment, GDP, inflation and foreign direct investment, the absolute value of the test statistics is smaller than the critical value. We therefore do not reject the null hypothesis that the data are not available. To place them, we first transformed these variables to differentiate them. Once the data has been converted into the first one, the ADF test shows that the absolute value of the test statistic is greater than the critical value. We can then reject the null hypothesis according to which the data are not available. In the case of INFLATION and GDP, it can be seen that in the level data, the absolute value of the test statistic is greater than the critical value. We therefore reject the null hypothesis that data are not available.

3. Test for Co-integration

The Johansen co-integration test is often used to test co-integration. The test offers an integration scale. The order of integration a series is provide the number of time series, the set has to be separated in order to create a stationary series. The series generated by the first difference is integrated in order 1, designated I (1). So if a time series is I (0), it is stationary; if it is I (1), its change is stationary and its level is not stationary. Johansen's co-integration test is based on the maximum likelihood method which provides two main statistics, they are- Trace statistics and maximum statistics. If the rank is zero, it means that there is no co-integration relation, and if the rank is one (1), it means that there is a co-integration equation and so on. The null and alternative hypotheses are as follows:
H0: There is no co-integration.
H1: There is co-integration.

Trend: Constant
Number of obs. =26
Lags=2
Sample: 1993-2019

Table 4. Johansen Tests

Maximum Rank	Parms	eigenvalue	Trace Statistics	Critical Value	Max Statistics	Critical Value
0	20	-	36.5436*	47.21	20.8236	27.07
1	27	0.55108	15.72	29.68	12.4673	20.97
2	32	0.38091	3.2527	15.41	3.1645	14.07
3	35	0.1146	0.0881	3.76	0.881	3.76
4	36	0.00338	-	-	-	-

**denotes the rejection of null hypothesis at 5% significance level.*
No co-integration. Going for VAR.

4. Vector Auto Regression (VAR)

Vector auto regression
Sample: 1993-2018 No. of obs. =26
Log likelihood=-633.9976 AIC=51.53828
FPE= 3.20e+17 HQIC=52.03991
Det (sigma_ml) =1.78e+16 SBIC=53.28026

Table 5. Vector Auto Regression (VAR) Test

Equation	Parms	RMSE	R-Sq.	chi2	P>chi2
Unemployment	9	0.424981	0.7820	36.14632	0.0000
GDP_GR	9	0.587846	0.8000	29.08123	0.0003
Infl	9	3.79148	0.0672	1.871623	0.9847
FDI	9	3.50E+08	0.9139	276.1061	0.0000

The table above illustrates the regression equations using "unemployment" as dependent and lagged values of GDP, inflation and foreign direct investment as independent variables. The interpretation is as follows: "L1" means co-integration equations. To determine the long-term causality between "unemployment" and GDP, inflation and foreign direct investment, the "L1" must have a negative coefficient and a significant p-value.

Table 6. Vector Auto Regression (VAR) Test

	Coef.	Std. Err.	z	P>IzI	[95% Conf. Interval]	
Unemployment L1	0.5409495	0.1759018	3.08	0.002	0.1961884	0.8857106
GDP_GR L1.	0.0159349	0.1091217	0.15	0.884	-0.1979397	0.2298094
Infl L1.	-0.0038424	0.0219717	-0.17	0.861	-0.046906	0.0392213
FDI L1.	4.92E-10	2.35E-10	2.09	0.037	3.07E-11	9.52E-10
_cons	0.278891	0.6503582	0.43	0.668	-0.9957877	1.55357

We can see there is a long term relation between the variables in equation 'L1' as it has a negative coefficient and a significant p-value. In equation 'L1' though the p-value is significant but the coefficient is non negative, thus does not show any long-term relationship among the variables. Furthermore, to ascertain the short-term causality between variables, the individual lag coefficients need to be negative with significant p-Values for each independent variable. As per this criterion we can see that lagged value of SCALE has short term causality with Unemployment at 10% significant level.

VECTOR AUTOREGRESSIVE ANALYSIS

Slope Coefficient: The slop coefficient of about .0159349 suggests that if the GDP goes up by 1%, the Unemployment goes up, on about by 1.59349 %. The slop coefficient of about -.0038424 suggests that if the Inflation goes down by 1%, the Unemployment decrease, on about by -0.38424 %. The slop coefficient of about 4.92e-10 suggests that if the FDI goes up by $1, the Unemployment goes up, on about by 4.92e-8 unit.

Significant Test: GDP is important since the p-value is 0.2 percent smaller than 5 percent, which means that unemployment is clarified by GDP as a meaningful variable. Since the p value is 86.1 percent higher than 5 percent, inflation is not important. To describe unemployment, it is not a major variable. Due to its P importance, direct investment is essential. Direct investment is important since its p value is 3.7 percent smaller than 5 percent, which means that an important element in explaining unemployment is direct investment. There is unavailable research on the effects of unemployment on economic growth, foreign direct investment and inflation in Bangladesh. This study shows the recent situation of the effect of unemployment on economic growth, foreign direct investment and inflation in Bangladesh. In this reason this research is so noteworthy. This study found that alternative hypothesis applies to GDP and inflation, which is true. The null hypothesis applies to foreign direct investment, which is also true.

R Squared: The desired square R value is 0.80. But I find R squared = 0.7820 in the regression analysis, which is very similar to the target amount. The square R value of about 0.782 means that our three independent variables, such as GDP, inflation and foreign direct investment, will collectively justify the 78 percent fluctuation in unemployment. Other factors that are not triggered by GDP, inflation and foreign direct investment will explain the remaining 22 per cent of unemployment fluctuations. This model is built beautifully. Well calibrated are the data or variables.

Regression Model is Good Fit: The probability value is 0.002, which is smaller than 0.05. So we say it is significant for GDP, inflation and foreign direct investment which work

together to affect the unemployment. Still according to the value R squared, we must say that this model fits well, and therefore we can reject the null hypothesis.

RECOMMENDATIONS

The implications of this study have shown that economic growth, foreign direct investment and the inflation sector have a significant impact on unemployment, but only GDP and foreign direct investment should be linked to unemployment. The study offers some recommendations, which are given below:

The study explained a positive and insignificant link between unemployment and economic growth, which is unwelcome in the case of Bangladesh. Economic growth will not affect the unemployment rate despite its gradual increase. The government of Bangladesh should therefore pursue a policy, so that economic growth can affect the unemployment rate.

Development of labor-intensive projects and consolidate with new entrepreneurial entrants of current entrepreneurship operations to build more opportunities and absorb a wide pool of unemployed people. Due to tradeoff between inflation and unemployment, the government should increase aggregate supply.

Inflation turns out to be harmful to unemployment according to the results of this study. However, this is statistically non-significant. Fiscal and monetary policy makers need to formulate policies to achieve the required inflation, which can affect the unemployment rate.

The study indicates that economic growth is not sufficient enough to draw more unemployed people, so the government can discuss the appropriateness of each economic sector to attract unemployed people. Through implementing the joint venture scheme, the government must monitor the penetration of foreign investment into the local economy. To give local farmers the ability to learn new technology and innovations, as well as to share the profits they receive.

Foreign direct investment generates employment, more socio-economic growth sectors such as agriculture, education, IT, pharmaceuticals, fisheries, cattle farming, ready-made clothes, electricity, gig economy, entrepreneurship, etc should be funded by the government of Bangladesh, and private investors should also be allowed to spend more in the economy.

It is important to prioritize foreign direct investment and domestic investment to reinvigorate our economy. To some point, where we are less concentrated on it, our neighboring country relies more on FDI. We should apply policies to develop our economy in order to keep pace with the global trade pace. We have seen a vast influx of economic growth in Bangladesh in recent years. Expecting potential researchers to improve FDI and the form of policies or interventions that can raise FDI flows.

CONCLUSION

Unemployment is one of the key problems of globalization, particularly in less developed countries. In certain nations, it has become a very stable topic and remains difficult to deal with. Unemployment can be viewed from different perspectives, but the determinants of unemployment are highlighted in this article. Unemployment factors that

are statistically important. The negative association with unemployment was shown by foreign direct investment and inflation, while the work force had a positive effect on unemployment. This research explores the determinants of Bangladesh's unemployment, using annual data for the period from 1991 to 2019. Unemployment is influenced by economic growth, inflation and foreign direct investment, according to the report. The regression results show that economic growth has only a negligible and positive impact on unemployment, which shows an undesirable situation for Bangladesh. The findings of the regression reveal that economic development has only a marginal and optimistic effect on unemployment, which suggests that Bangladesh has an unfavorable situation. Although unemployment is inversely connected to inflation, it is not a substantial predictor. The Phillips curve in Bangladesh was however, confirmed by the negative correlation. GDP is an important component in the study of unemployment. Inflation is a non-significant vector in this analysis that describes unemployment. International direct investment in jobs is an important variable in the explanation. By having reasonably good results, the R-squared value is moderate, making this model a good model. The global model, as shown by Statistics F, is significant.

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DO NOT SHOOT THE PIANIST! PROTECTION FOR INTERIM FINANCING OF DISTRESSED COMPANIES

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Abstract: *The increasing use of alternative methods of resolving insolvency disputes has been associated with the need to reduce the number of insolvency cases and ensure stability in the business market. In the last decade the reform of the insolvency legislation enacted the evolution of the concept of insolvency from bankruptcy to that of "Corporate Rescue Culture". To overcome the difficulties it faces, a distressed company needs additional financing. The success of reorganization is related to the possibility of financing the business, but once the business meets difficulties, the access to money becomes critical. In order to encourage creditors to finance distressed companies, in many states the legislation offers different possibilities to protect or even to give super-priority in repaying loans to creditors who, in good faith, help troubled companies to continue their business.*
Keywords: *Pre-insolvency, interim money, protection.*

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INTRODUCTION

In 2020, global corporate insolvencies are forecast to increase by 26% because of the Coronavirus pandemic (Atradius). Insolvency litigation has long been limited to the courts. This ensures equal creditors' claims (*pari passu*), the fair collection and distribution of the debtor's assets and the prompt liquidation of the bankrupt company. In recent decades, this perception has changed, with many insolvency disputes being resolved not only through enforcement, but also through alternative methods. In general, the legislator chooses a pro-debtor or pro-creditor insolvency regime (Lechne, 2002). Alternative

methods encourage the parties to reach an agreement through negotiations and avoid enforcement.

The increasing use of alternative methods of resolving insolvency disputes has been associated with the need to reduce the number of insolvency cases and ensure stability in the business market. Insolvency law is one of the key elements for a functioning civil and corporate law system and has a significant impact on the entire economic structure (Wessels, et al., 2009).

In the last decade the reform of the insolvency legislation enacted the evolution of the concept of insolvency from bankruptcy to that of "Corporate Rescue Culture". It is important to understand the purpose of legislative reform. What is pursued through "Corporate Rescue Culture"? It seems that the reform only aims to encourage the maintenance of activity in viable companies facing financial difficulties. On the other hand there are voices arguing against these trends. The essence of capitalism is business dynamics: "Businesses and competitive advantage are in general temporary and changed, failed and dissolved businesses are the essence of capitalism, reasons not to interfere and to facilitate business rescue" (Verdoes and Verweij, 2015). " The failure rate of organization may not be an indication of system failure but of system success – just as an abundance of refutations may be a sign of rapid scientific progress" (Loasby,1986).

INTERIM FINANCING

To overcome the difficulties it faces, a distressed company needs additional financing. The success of reorganization is closely related to the possibility of financing the business. The problem is, that once the business meets difficulties, the access to money becomes more critical (Vriesendorp and Gramatikov, 2010).

The new EU Directive 2019/1023 contains some provisions for facilitating distressed companies accessing funds. The directive defines the concept of financing from the outset. It distinguishes from the beginning, between new financing on the one hand and interim financing on the other[1]. New financing refers to funds attracted on the basis of the restructuring plan. Title I, art.2, alin.1, point 8 states that "interim financing means any new financial assistance, provided by an existing or a new creditor, that includes, as a minimum, financial assistance during the stay of individual enforcement actions, and that is reasonable and immediately necessary for the debtor's business to continue operating, or to preserve or enhance the value of that business".

In order to help distressed companies with a real chance of surviving, the directive provides that Member States should adopt regulations allowing companies in difficulty to benefit, under certain conditions, from an infusion of money during the stage of the development of the reorganization plan.

To make infusion of new money possible, the Directive recommends that each state may adopt: i) protective measures for creditors that provide interim financing as well as ii) rules of priority for loans repayment in the event of the insolvency of distressed company. In this respect, paragraph 68 states that "Member States shall not limit the protection of funding to cases where the plan is adopted by creditors or confirmed by the administrative or judicial authority".

The Directive also sets out the conditions under which such financing may be granted, namely: a company in difficulty may receive interim financing when the

reorganization plan is confirmed but also when the financing has been approved (*ex ante* control*)* by either a practitioner in insolvency, either by the creditors' committee or by an administrative or judicial authority.

The Directive provides the cases in which the protection of interim financing creditors is ensured[2]:

- the payment of fees and costs for negotiating, adopting or confirming a restructuring plan;
- the payment of fees and costs for of seeking professional advice closely connected with the restructuring;
- the payment of workers' wages for work already carried out without prejudice to other protection provided in Union or national law;
- any payments and disbursements made in the ordinary course of business other than those referred to in points (a) to (c).

The protective measures provided for in the Directive cover the cases where the debtor subsequently becomes insolvent. In the case of subsequent insolvency, Member States shall ensure that the interim financing will not be ”declared void, voidable or unenforceable on the ground that such transactions are detrimental to the general body of creditors, unless other additional grounds laid down by national law are present.” Also, the Article 17 pt. 3 exclude from the application of paragraph 1 interim financing which is granted after the debtor has become unable to pay its debts as they fall due.

Related to the priority for the loans repayment the Directive recommends that Member States should provide for the priority of the payment of new or interim financing grantors in relation to other creditors, in the context of subsequent insolvency procedures[3]. In France, a significant innovation of the Law issued in 2005[4] gives super-priority to creditors who have injected funds into the troubled company or continued to provide goods or services during the conciliation process. This priority entitles the aforementioned creditors to rank above all debts incurred before the opening of conciliation. Similarly, the same priority will be given to those creditors in the context of any formal insolvency proceedings opened, following the non-approval of the conciliation agreement[5].

The new cash contribution to the debtor to ensure the continuation of the company's activity and its sustainability, is refunded, before all other receivables, according to the rank provided in paragraph II of Article L. 622-17 and paragraph II of Article L. 641-13[6]. Unless there are flagrant frauds, creditors who make funds available to continue the business in difficulty cannot subsequently be held liable for the offer made to the debtor ("inadequate support"). The doctrine imposes on the creditor the responsibility for knowingly expanding the debtor's financial incapacity, contributing to the aggravation of the company's dangerous situation and leading to its subsequent insolvency. As mentioned above, the French Safeguard Law 2005-845 of 26 July 2005 restricts the creditor's liability for improper support. This proved necessary to protect creditors who, in the context of the conciliation process or a rescue plan, offered after the start of the pre-insolvency proceedings.

In Belgium, creditors were not involved in negotiations regarding interim financing because they feared possible claw back actions if the reorganization had not been successful and the company it was going to go bankrupt. As a result, the Act of 31 January 2009 on the Continuity of Companies (Loi relative à la continuité des enterprises/Wet

betreffende de continuïteit van de ondernemingen, the "Act") entered into force on 1 April 2009.

Provides legal protection for such amicable agreements under specific conditions. In cases where the insolvency proceedings are opened within six months of the amicable settlement, the liquidator will not be entitled to take claw-back action under Articles 17, no. 2 or Article 18 of the Belgian Bankruptcy Code. This means that the liquidator will not be able to challenge the agreement on the grounds that the payment to one creditor was made before the maturity of the claim, thus preferring one creditor to the others (Article 17, paragraph 2). Also, the liquidator will not have the right to challenge the agreement on the ground that the payment was received by a single creditor, who was clearly aware of the company's difficulties, to the detriment of other creditors who did not receive the payment (Article 18). The condition for obtaining this legal protection is that the agreement expressly states that it is intended to improve the financial health of the company, subject to control by the court. The amicable settlement must be submitted to the court.

In Germany, lending to a company that is in financial distress can be risky (Weijs, et al., 2012), as the lender who makes the loan can be held liable by other creditors for delaying the entrance in the insolvency proceeding if the company failed to reorganize. For this reason, the infusion of funds during the out-of-court reorganization is chosen only if there is a third authorized opinion (*Sanierungsgutachten*) which officially confirms before the infusion of funds that the business has a chance to be reorganized. But here, too, measures have recently been introduced to facilitate much-needed funds in the pre-insolvency period[7]. If the company has entered the formal procedure and wants to restructure, then the new credit can be accessed by the administrator only after the court approval. The credit thus obtained becomes a privileged credit.

Outside the space of European Union, similar measures were enacted in order to guarantee the interim financing. In the USA, Chapter 11 from the American Bankruptcy Code - which serves as a model for the European Directive (Inacio, 2019; Becker, 2019) - should be seen as a formal insolvency procedure allowing for reorganization, although cannot be qualified as a preventive process (Weijs and Baltjes, 2018) There was developed a debtor in possession financing system that comprises four types of DIP[8] finance: the first one which allows the debtor to obtain finance in the normal course of business, the second one is a short-term credit for salary payments, the third type refers to a credit that obtained while a security right is granted on unencumbered assets, and finally the fourth type provides a security right that is higher in rank than an existing security right in the same asset. The last three types need the court approval (Weijs and Baltjes, 2018). It can be concluded that when a Chapter 11 debtor needs working capital, he may be able to obtain it from a creditor by giving the creditor a “super-priority” approved by the court over other unsecured creditors or a right of ownership over the company's assets[9].

In Argentina, injection of new money to save companies that are in financial difficulty is usually done after the judicial approval of extrajudicial restructuring, and at the same time, the Argentine Bankruptcy Law does not give any super priority to new money, whether they are injected in a reorganization procedure or out-of-court restructuring (Tutzer, 2019).

In Brazil, the Bankruptcy and Reorganization Law issued in 2005 provides that the infusion of new money is an option to save struggling businesses. During the restructuring process new money can be injected in a variety of ways (e.g. loan agreements, bond

issuance, etc.). If the debtor has been deprived of the right to run the company, then it is the responsibility of the Creditors' Committee to borrow new money necessary for the continuation of activities during the period prior to the approval of the reorganization plan. It should be noted that the lending of new money can only be done with the approval of the court. The main purpose of the financing must be to compensate for the lack of cash to cover operating expenses such as: payment of suppliers, salaries, administrative expenses, etc. Due to its characteristics, this type of financing should take precedence over the payment of other loans.

In order to encourage creditors to finance distressed companies, in many states, the legislation offers different possibilities to protect creditors who in good faith help troubled companies to continue their business. In some states it has been necessary to approve the financing by the court (USA, Belgium), in other states the opinion of a third specialist in the field (Germany) is required, other states have gone further and given super-priority in repaying these loans (USA, France).

CONCLUSION

The recommendations of the new European Directive 2019/1023 aim to harmonize the legislation on interim financing of companies in difficulty and provides for the facilitation and protection of interim financing. In order to encourage creditors to finance distressed companies, in many states the legislation offers different possibilities to protect creditors who, in good faith, help troubled companies to continue their business. In some states have been granted super-priority in repaying these loans while in others, the court approval or of a third specialist in the field is required for the validity of interim financing.

Notes:
1. Directive (Eu) 2019/1023 of the European Parliament and of the Council of 20 June 2019, Official Journal of the European Union Title I, art.2, alin. 1, point 7 and 8.
2. Directive (Eu) 2019/1023 of the European Parliament and of the Council of 20 June 2019, Official Journal of the European Union: Chapter 4, Article 18, paragraph 4.
3. Directive (Eu) 2019/1023 of the European Parliament and of the Council of 20 June 2019, Official Journal of the European Union: Article 17, paragraph 4.
4. French Safeguard Law 2005-845 of 26 July 2005.
5. Article L. 611–12 of the French Commercial Code.
6. Articles of the French Commercial Code, amended by Ordinance n°2014-326 din 12 martie 2014.
7. The European Law Institute: Rescue of Business in Insolvency Law, p.217. Available at: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf [Accesssed 1 October 2020].
8. Debtor in possesion.
9. Chapter 11, Art. 364 American Bankruptcy Code.

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AN EARLY EVIDENCE ON CSR REPORTING IN THE CONTEXT OF COVID-19

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Abstract: *This study has investigated whether companies listed on Bucharest Stock Exchange have been prepared for Covid-19 risk and what are the measures and initiatives taken by them in terms of sustainability. Using a sample of seven listed companies that meet the criteria required by the Directive EU/95/2014 for disclosing non-financial information, the present paper has found that companies have mostly not been prepared for such a risk, but they immediately responded and have taken measures in order to protect their employees. In terms of social initiatives, only one company in the sample disclosed such information which is most related to supporting medical institution to combat and treat Covid-19.*
Keywords: *CSR reporting, Covid-19, employees, social initiatives*

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INTRODUCTION

Non-financial reporting is likely to provide a better picture of a firm's performance (Wang and Sarkis, 2017) in comparison with financial reporting only. In the past few years, investors and other stakeholders which are interested in corporate information about firm's business model, long-term strategy and value creation have started to give an increasingly attention on this type of reports. The new European regulation aids companies to move from merely complying with legal requirements to a responsible behaviour for building a sustainable future.

Covid-19 gives important challenges to companies and organizations with respect to CSR by offering them great opportunities to actively engage in such initiatives during the crisis. Also, it potentially accelerates a new era of CSR development on long-term (He and Harris, 2020). However, during the crisis EY (2020) has found that most companies and governments were not prepared for such a risk although the infectious diseases are situated in the top ten risks at a global level in terms of impact. Although many companies shew compliance with the Directive EU/95/2014 as previous studies found Farcas (2020), this is not enough for them to be prepared for serious problems that can have an impact on their operations and on society.

Therefore, the main objective of this study is to identify whether listed Romanian companies have been prepared for this risk and whether they have fulfilled their strategies, especially with respect to social and employee matters, written in their non-financial

reports previous the crisis. Moreover, this study seeks to investigate what are the initiatives taken by companies during Covid-19 pandemic crisis in terms of sustainability.

Using an archival research and a sample of seven companies listed on Bucharest Stock exchange, this study has found that companies have mostly not been prepared for such a risk, but they immediately responded and have taken many measures in order to protect their employees. Also, the results of the study show that there have been taken social initiatives during the Covid-19 such as supporting different medical institutions in terms of money to fight against the virus.

The present paper is structured as follows. The first section gives some theoretical backgrounds about mandatory CSR reporting and Covid-19 and CSR reporting. The second section is given by the methodology and a description of the used sample. In the third section, the main results of the study are described. Last, the study gives the main conclusions and directions for future research.

LITERATURE REVIEW

1.1. Mandatory CSR reporting

Over the last few years, non-financial information reporting and more specifically CSR reporting has gained increasingly more attention from investors and many other interested stakeholders. One of the most important changes in this area across Europe is represented by the implementation of the Directive EU/95/2014. Under this regulation, companies are mandated to make disclosure on information such as social, environmental and employee matters, respect to human rights and anti-corruption and bribery matters. The non-financial statement disclosed should describe the company policy, the business model and the related risks and outcomes for each of the mentioned topics (Art. 1 Directive 2014/95/EU).

The Directive represents an essential step for increasing the importance of corporate social responsibility reporting, particularly in those member states where these requirements were missing. Moreover, the European Directive is an act of policy which contributes to the legitimization of non-financial reporting based on two theories: improving the comparability of this type of reporting and enhancing corporate accountability (Torre et al., 2018).

Directive EU/95/2014 topic has been debated at a national and European level both before and after the regulation became mandatory. A study conducted by Dumitru et al. (2017) prior the adoption of the Directive found that in Romanian companies there is a low quality of CSR reporting. Another conclusion of this study shows that most of the companies in the sample have a lack of experience in reporting information required by European Regulation. However, in the European countries, such as Romania, in that non-financial reporting is less developed, the Directive impact has been stronger than in countries where companies used to already report on non-financial information proposed by the Directive (Venturelli et al., 2019; Tiron-Tudor et al., 2019). Also, in consistence with the real effects of the European Directive, Fiechter et al. (2018) found that European companies meaningfully increased the CSR activities, especially those in that the level of CSR reporting have been previously lower.

A study conducted by Farcas (2020), concluded that, after the implementation of the European Directive, Romanian companies listed on Bucharest Stock Exchange shew

compliance. The study results point out that companies met the legal criteria starting with 2017. Also, most of the companies disclose more information than those required by the European regulation and the evolution of the non-financial reports has been increased year by year.

1.2. Covid-19 and CSR reporting

Covid-19 represents one of the biggest events that impacts global economy after 1930s Great Depression (Euronews, 2020). Thus, Covid-19 is one of the most important environmental changes in the nowadays marketing history, which could probably have a significant impact on CSR reporting. Moreover, coronavirus will likely give a different meaning to CSR placing it in front of all boards and offering visibility to companies that have a strong leadership on this matter who show a strong, real commitment towards it.

With Covid-19 outbreak some issues such as employee health, wellbeing and safety or labour practices have moved from a moderate risk to more and more important issues as companies adapted measures to protect their employees and ensure business continuity in a very short period of time. According to Eco Business (2020) companies should disclose in their sustainability reports social factors that have a high importance during Covid-19 and should provide updates to their investors and stakeholders about their measures at least quarterly. Thus, as described earlier, the people element of business such as employees, customers, suppliers and community are considered of particularly interest during the crisis.

As provided in CSR Europe (2020) article the potential impact of the virus on CSR reporting includes many items such as evolution of materiality assessment for a better identification of the dynamic economic, social and corporate governance (ESG) issues that could become material in the future; increased pressure on companies from ESG data providers of Artificial Intelligence and Machine Learning for improving materiality assessment if they would like to obtain a competitive advantage; increased investors' capacity to rely on real-time ESG information providers in order to observe inaccurate reporting and assess the company's profile; social issues like employee safety and labour practices that should be prioritized by companies in terms of materiality assessment due to their relevance across industry.

Sustainability reporting could be improved by companies in different ways after the Covid-19 crisis. Firstly, they should make a re-examination of the materiality assessment and integrate it into enterprise risk management. Secondly, companies should determine what are the information considered important by stakeholders for judging the effectiveness of its response to Covid-19. Thirdly, they should significantly increase the connectivity between financial reports and sustainability. Fourth, it is needed to take inspiration from climate disclosure in order to report on company resilience. Last, companies should collaborate with their industry peers for ensuring comparable Covid-19 disclosures (CSR.dk, 2020).

METHODOLOGY AND SETTING

As previous stated, this study seeks to give an answer for the following two research questions:

RQ1. Have Romanian listed companies been prepared for such a risk as Covid-19 and have they taken measures to protect their employees?
RQ2. What are the initiatives taken by the Romanian listed companies during the crisis in terms of sustainability?

In order to come up with an answer for our first research question, initially, it is important to highlight what are the most significant risks that could impact a Romanian company. First and the most important risk is market risk. There is a degree of uncertainty regarding the evolution of domestic and foreign economic policy. A company's management is not able to forecast any changes in the economic conditions in Romania and the effect they could have on a company's financial situation. In addition, the current global health and economic crisis caused by Covid-19 has resulted, among others, in a substantial reduction of the economic activity and a low level of capital market financing, low level of liquidity and very high stock market volatility.

The second one is exchange rate risk. In Romania there is a high level of uncertainty regarding exchange rate, especially for EUR and USD. The most important factors influencing the exchange rate are inflation and the evolution of the current, capital and financial account of the external balance of payments. Depending on their condition, a series of financial-economic categories had on the exchange rate, by influencing the demand in relation to the value supply. In addition to these factors, there is the state of the economy, the economic policies approached by the authorities, the expectations of economic agents regarding the evolution of the exchange rate and the economy as a whole, as well as developments in the political and social environment.

The third one is credit risk. This is the risk that a third party, part of a business relationship will not fulfil an obligation, which will cause the other party to incur a financial loss. Receivables from the basic activity are presented in the financial statements at net value, respectively less the adjustment for depreciation for customer receivables. The credit risk related to receivables is limited due to the large number of clients in the company's client portfolio.

The fourth one is liquidity risk. This one, also called financing risk, is the risk that a company will have difficulties in accumulating funds to meet the commitments associated with financial instruments. Liquidity risk may arise due to the inability to quickly sell a financial asset at a value close to fair value. In the context of the Covid-19 pandemic, the volume of financing in the economy has recently decreased significantly. This may affect a company's ability to obtain new loans and / or refinance existing loans on terms and conditions similar with previous financing. Thus, a company's management cannot reliably estimate the effects on the its financial position of further declining financial market liquidity and increasing the volatility of the national currency exchange rate and capital market.

Given that, it could be concluded that Covid-19 could have a significant impact on most of the risks encountered within a company. Therefore, it is important to see whether companies have presented the risks for each component of CSR report and whether they have set strategies to fight against these risks before Covid-19. After doing that, it is important to see whether companies have fulfilled their strategies using the reports disclosed during the crisis.

Even if companies had already put in place strategies to fight against risks related to Covid-19 or not, it is important to see what measures and initiatives they took during the

crisis to overcome this period well in terms of sustainability. In doing this, we will try to come up with an answer to our second research question.

Consequently, we have analysed the annual reports for seven Romanian companies listed on Bucharest Stock Exchange during the period 2017-2020 (for 2020 we have analysed the half-yearly report). The companies have been chosen taking into account the three criteria required by the European Directive with regards to non-financial information disclosure. Under this Directive companies that are mandated to disclose non-financial information are the companies that meet the following three criteria:

- Are considered large enterprises if they exceed two of the three criteria:

Total assets value exceeds EUR 20 million;

Net turnover value exceeds EUR 40 million;

Average employee number exceeds 250.

- Are public interest entities;
- Employee number exceeds 500.

Having that companies in our sample are listed on Bucharest Stock Exchange (BVB), it is already considered that they are large enterprises and public interest entities. As such, the selection has been made depending on employee number as at 31st of December 2017. The sample is shown in Table 2.1. below:

Table 2.1. ***Sample***

Ref. no	BVB Symbol	Company name	Sector	Covid-19 impact	Employee number
1	DIGI	Digi Communications N.V.	Services (telecommunication)	Low	13,796
2	ALR	ALRO S.A.	Industrial (aluminium)	Low	2,501
3	TEL	C.N.T.E.E. TRANSELECTRICA	Utilities (energy)	Low	2,063
4	SNP	OMV PETROM S.A.	Utilities (natural gases and energy)	Low	13,322
5	SNG	S.N.G.N. ROMGAZ S.A.	Utilities (natural gases)	Medium	6,046
6	VNC	VRANCART S.A.	Industrial (toilet paper, cardboard)	Medium	1,072
7	ARS	AEROSTAR S.A.	Industrial (aircraft and spacecraft)	High	1,834

Covid-19 impact have been calculated through the difference between the operational revenue amount as at 30th of June 2019 and the amount as at 30th of June 2020. Thus, for companies where the decrease difference have been above 10% we give the score "Low", for companies where the decrease difference have been between 10% and 30% we gave the score "Medium", and for companies where the decrease difference have been below 30% we gave the score "High". Although, for Aerostar S.A. in terms of operating revenue, there has been no significant difference, we gave it the score "High" having that this sector has been one of the most affected by the Covid-19 crisis. The calculation could be seen in the Appendix 1.

STUDY RESULTS

As stated in the methodology section, the first objective of the study was to analyse whether companies in the given sample have presented the risks for each component of the CSR reporting and whether they presented strategies for these risks. Thus, in concordance with the 2017/C 215/01 EU Guideline we have analysed the disclosure of each component (environmental matters, social and employee matters, respect for human rights and anticorruption and bribery matters) in companies' annual reports, the risks and strategies for each component during the period 2017-2019. Where such information has not been presented in the annual report, we have looked on the companies' website for sustainability report. For each of them we marked with "yes" if we found information in the reports and with "no" if such information has not been found. The results are shown in the Table 3.1.

Table 3.1. CSR elements disclosure in companies reports

Company	DIGI			ALR			TEL			SNP		
CSR elements	2017	2018	2019	2017	2018	2019	2017	2018	2019	2017	2018	2019
1.Environmental												
- Disclosure	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- Risks	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- Strategies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. Social and employee												
- Disclosure	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- Risks	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- Strategies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3. Respect to human rights												
- Disclosure	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes
- Risks	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes
- Strategies	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes
4.Anticorruption and bribery												
- Disclosure	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes
- Risks	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes
- Strategies	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes

Company	SNG			VNC			ARS		
CSR elements	2017	2018	2019	2017	2018	2019	2017	2018	2019
1.Environmental									
- Disclosure	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- Risks	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- Strategies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. Social and employee									
- Disclosure	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- Risks	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes
- Strategies	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes
3. Respect to human rights									

- Disclosure	No	Yes	Yes	No	No	No	Yes	Yes	Yes
- Risks	No	Yes	Yes	No	No	No	Yes	Yes	Yes
- Strategies	No	Yes	Yes	No	No	No	Yes	Yes	Yes
4.Anticorruptio n and bribery									
- Disclosure	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes
- Risks	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes
- Strategies	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes

Table 3.1. shows part of the results for the objective one. More specifically, Table 3.1. gives a centralization of CSR information disclosure, risks and strategies defined by companies in the sample during the period 2017-2019.

Digi Communications N.V. discloses information about environmental, social and employee matters, anticorruption and bribery matters and the related risks and strategies every year, but we did not find a specific section in the reports where this company discloses information about respect to human rights.

ALRO S.A. reports on environmental and social and employee matters in 2017 and the related risks and strategies, but it does not report on respect to human rights and anticorruption and bribery matters. The same results could be seen in 2018 and 2019 annual reports.

C.N.T.E.E. TRANSELECTRICA as well as ALRO S.A. only discloses information with regards to environmental and social and employee matters and the related risks and strategies in all the analysed reports.

OMV PETROM S.A gives information about all the CSR components and the related risks and strategies every year.

S.N.G.N. ROMGAZ S.A. did not report on respect to human rights only in 2017, but it discloses such information and the related risks and strategies in the following two years. Also, with regards to the other components of CSR reporting, this company has fulfilled its obligation in terms of disclosure.

VRANCART S.A. discloses very few information with respect to CSR reporting. In the analysed reports, we have only found information about environmental and the related risks and strategies. With respect to social and employee matters this company did not define any risks and strategies. Also, regarding respect to human rights and anticorruption and bribery matters we find no information in the annual reports.

AEROSTAR S.A. as well as OMV PETROM S.A. has fulfilled its obligation to report on every component of CSR report and the related risks and strategies for each of them every year.

As described in the literature review section, one of the most important issues for a company is related to employee matters such as health, wellbeing and safety labour practices. If we look at the results in Table 3.1. it looks like all the companies disclosed on social and employee matters and the related risks and strategies excepting VRANCART S.A., which did not describe the risks and strategies related to employee matters. As such, by moving forward, we have tried to verify in 2019 annual report and 2020 half-yearly reports whether companies in our sample have fulfilled their strategies in terms of sustainability reporting, and more specifically with respect to social and employee matters, in order to fight against Covid-19, although there is not a legal obligation to disclose on non-financial information for the half-year period.

Table 3.2. Measures taken by companies for their employees

DIGI	ALR	TEL	SNP	SNG	VNC	ARS
- Remotely working; - Social distancing and hygiene protocols; -Upgrading and developing the business continuity plans; - Split-team shift work; - Staff segregation and flexible working hours procedures; - Employee travels postponed or cancelled.	-Remotely working; - Social distancing; -Implement work shifts by rotation; - All areas inside and outside the production sections are disinfected; - Access to the production units and offices is rigorously monitored.	- Remotely working; - Ensuring proper hygiene and ensuring increased sanitary protection for employees; - Covid-19-food benefit for essential personnel during isolation on the job.	- Remotely working; - Flexible working hours; -Implement a set of safety measures.	-Remotely working; - Flexible working hours; -Implement a set of safety measures.	-Constantly monitoring the situation and taking necessary measures regarding the employee protection.	- Social distancing and hygiene protocols; - General plan of measures regarding specific regulations; - Giving employees COVID-19 protective materials.

Table 3.2. centralizes the measures taken by the companies in the sample for protecting their employees by using 2019 annual report and 2020 half-yearly report. As we can see, all the companies in the sample have described such measures. While analysing the reports, we found that some companies described in details the measures, whereas other companies just gave one or two sentences by telling that they are taking the necessary measures for employee protection without going into details. It could be observed that five out of seven companies have put in place remotely work and for out of seven companies give employees the possibility for flexible working hours or work shifts by rotation. Also, social distancing, hygiene protocols are key element for most of the companies. Next to that, some companies have taken other measures such as giving employees food during isolation on the job (TEL) or giving employees protective materials (ARS).

Having the above results, it is still difficult to give an answer for our first research question by using the information disclosed by companies. Although companies report CSR information and most of them are compliance with the EU regulation, we still do not know many details that will remain at an internal level. However, majority of the companies have prioritized the health and well-being of their employees by implementing new procedures. Even though most of the companies have put in place such procedures during Covid-19 crisis, we cannot say that they have been prepared for this risk because things like work remotely or flexible working hours could have been implemented before this period.

In addition to the results centralized in Table 3.2., we find in one half-yearly annual report a couple of specific sentences with regards to the preparation for Covid-19 risk. More specifically, ALROSTAR S.A. company states that they did not foresee the effects

of a global economic crisis such as the one caused by the Covid-19 pandemic and the economic crisis has hit the aviation industry to unprecedented proportions. More than that, they claim that in a short period of time all the short and medium term forecasts in the aeronautical field have been shattered by the associated realities of Covid-19 which are already taking the form of a predictable recession: the cancellation and reduction of important orders for aircraft manufacturing, stopping production in multiple facilities. from around the world, almost the disappearance of air passenger traffic. Also, air connectivity is critical for sustainable economic development and these data on stabilizing the situation are critical for planning economic recovery and recovery following Covid-19. Aviation is one of the most affected areas of activity due to quarantine, travel restrictions and social distancing. Predictability is further reduced to an unprecedented level.

With regards to social initiatives we only found in 2020 S.N.G.N. ROMGAZ S.A. half-yearly report the following:

- supports the Romanian Red Cross with the amount of 1,250,000 lei for the information campaign and Coronavirus prevention;
- gives a grant of 1,500,000 lei to the Sibiu County Emergency Clinical Hospital for the extension and endowment of the Anesthesia-Intensive Care Clinical Section in view preparation for the treatment of patients with Covid-19 in case of need;
- supports the Mediaş Municipal Hospital with the amount of 1,500,000 lei for the endowment of the ATI Section with specific medical equipment;
- grants the amount of 1,500,000 lei to the Alba County Emergency Hospital for the limitation and prevention of possible diseases with Covid-19 and for the efficient management of cases suspected / confirmed by Covid-19;
- supports the County Emergency Hospital from Slatina by allocating the amount of 1,500,000 lei for combating and treating Covid-19.

It is indeed possible that the other companies in the sample have taken social initiatives, but they have not been already disclosed this information.

CONCLUSIONS

This paper has made an analysis on whether listed Romanian companies have been prepared for Covid-19 pandemic risk and what are the measures and initiatives taken by them in terms of the sustainability. CSR reporting received notable attention in the last few years, being considered a very important topic nowadays. One of the most important initiative in terms of CSR reporting is the implementation of Directive EU/95/2014 that became mandatory starting with 2017 annual reports. Covid-19 has the potential to give important challenges for companies to engage in such initiatives during the crisis.

In order to give an answer for our first research question, we firstly described the most important risks at a company level and the relation with Covid-19. After doing that, we tried to see whether listed Romanian companies have been prepared for this risk by analysing 2017, 2018 and 2019 annual reports. In 2017, all the companies in the sample have disclosed information about environmental, social and employee matters. Also, companies are aware about the risks of this matters and have put strategies in place, excepting VRANCART S.A. (only with regards to social and employee matters). Regarding the respect for human rights matters, only two out of seven companies have made disclosure. Information about anticorruption and bribery matters have been found in

four out of seven companies reports. In 2018 and 2019 the situation looks the same excepting the company S.N.G.N. ROMGAZ S.A. that started to disclose on anticorruption and bribery matters in 2018 and kipping it in 2019.

After analysing the compliance with the Directive EU/95/2014 in terms of disclosure, risks and strategies for each element of CSR reporting, we tried to find out the measures taken by the companies during the crisis using 2019 annual report and 2020 half-yearly report. All the companies in the sample have taken measures for their employees such as social distancing, hygiene protocols, work remotely, flexible working hours. Having that, it could be concluded that companies have most not been prepared for this risk because flexible working hours and work remotely could have been implemented before Covid-19. Also, in AEROSTAR S.A. 2020 half-yearly report, it is already written that they have not been prepared for such a risk and the predictability is further reduced to an unprecedented level. The results of this study could be taken in line with the results of the study conducted by EY (2020) which found that companies have not been prepared for this risk.

For answering the second research question, we have looked in 2019 annual report and 2020 half-yearly annual report in order to find out what social initiatives are taken by the companies during the crisis. Only one company in the sample disclosed on such initiatives that are mostly related to supporting medical institution in terms of money to combat and treat Covid-19. Future studies could find out whether such initiatives will be disclosed in 2020 annual report.

The present study has some limitations that are mostly related to the sample size and the amount of the information given by the companies. Future studies could increase the sample or ask the management of the companies for additional information by using qualitative research based on interviews or quantitative research based on surveys.

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Appendices

Appendix 1 – Score calculation of Covid-19 impact

Company	Operating revenues (lei)			Score
	30.06.2019	30.06.2020	Difference (%)	
Digi Communications N.V.	3,016,752,900.00	2,785,290,960.00	92%	Low
ALRO S.A.	1,506,218,000.00	1,360,942,000.00	90%	Low
C.N.T.E.E. TRANSELECTRICA	1,089,961,267.00	1,183,977,772.00	109%	Low
OMV PETROM S.A.	9,322,930,000.00	8,917,760,000.00	96%	Low
S.N.G.N. ROMGAZ S.A.	2,874,800,000.00	2,193,400,000.00	76%	Medium
VRANCART S.A.	189,601,125.00	164,408,239.00	87%	Medium
AEROSTAR S.A.	176,779,000.00	161,863,000.00	92%	High

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THE CORPORATE GOVERNANCE OF ROMANIAN STATE-OWNED ENTERPRISES: THE MANDATE CONTRACT

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Abstract: *Using the O.E.C.D. Guidelines, Romania introduced the corporate governance for state-owned enterprises through the Government Emergency Ordinance no.109/2011, which, with its subsequent amendment provided by the Law no.111/2016, has modernized their management and administration system, ensuring greater transparency and increased control over the operations of public enterprises. One of the main challenges of these entities is given by the mandate issues, that occur with their administration and management. The relationship between the tutelary public authority or the General Assembly of Shareholders and the administrative/management team is very sensitive, considering that it is based on trust and expectations that the designated agents would act in the best and sole interest of the enterprise and they would execute their mission in a manner that is legal, correct and transparent, as well as efficient and profitable. In our study, we shall analyse the content and of the mandate agreement on which the relationship between the public enterprise and its administration/management agents is based, with its mandatory clauses, provided by the incidental regulations from Romanian legislation.*
Keywords: *corporate governance, state-owned enterprise, autonomous enterprise, joint-stock company, mandate*

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INTRODUCTION: THE LEGAL FRAMEWORK OF CORPORATE GOVERNANCE IN ROMANIA

Following the fall of the Communist regime, the economies of Eastern European states entered a difficult and long transition period towards free market economy. In order to ensure the introduction of corporate governance in these countries, the OECD, together with the World Bank, organized a global forum related to corporate governance.

In Romania, the introduction of the principles of corporate governance in order to increase the economic performance of enterprises proved to be an absolute necessity. The legal regulation of state-owned enterprises after the anti-communist revolution of December 1989 was precarious, causing them to remain at the mercy of political decision makers, since there were no clear criteria for selecting the legal structures of these entities. The GEO no.109/2011 introduced a private management of these public enterprises, whose full privatization was rejected by the Romanian legislator, on grounds of national security that required state ownership over common goods. Thus, under the provision of the GEO no.109/2011, the members of the Board of Administrators and the General Manager can

be recruited in a transparent manner, according to professional criteria, at the advice of experts.

According to the regulations that the Romanian legislator adopted in the process of transitioning from socialist economy to a free market system, all Romanian public enterprises were governed in the one-tier system.

In 1990, the Law no.15 introduced the autonomous Government-owned enterprises, that were derived from the reorganization of the former socialist state economic enterprises. The law only comprised brief regulations concerning the legal structure of these entities, the most of their organization and functioning being established by administrative acts of the Government and the local public authorities. The members of the Board of Administrators were appointed by order of the competent minister, or the decision of the head of local public administration authority; the General Manager was appointed by the Board, but only with the approval of the competent minister/local public administration authority (art.12 par.2, art.15).

In 1993, the Government Ordinance no.15 regulated certain measures which aimed to restructure the activity of the autonomous enterprises. The same year, the legislator passed the Law no.66 regarding the management contract, which set the basis for a contractual relationship between the state-owned enterprise and its managers. It applied to commercial companies in which the state owned over 50% of the shares and it entrusted the managers' selection to the State Property Fund, which owned 70% of the state share capital in the enterprises that were reorganized as trading companies by the Law no.15/1990.

In 1997, the Government Emergency Ordinance no.30 introduced the reorganisation of autonomous enterprises into companies, with the aim to submit them to a privatisation process. It transfered the autonomous Government owned enterprises under the authority of different public administration bodies. It didn't establish any new regulations concerning their corporate governance though, nor did the subsequent GEO no.88/1997, whose provisions concerned the privatisation process.

In 2001, the Organisation for Economic Cooperation and Development drafted a specific program to improve corporate governance in Romania, according to its Principles of Corporate Governance (2000). The major improvements on corporate governance legislation were driven by Romania‘s effort to join the European Union. The Romanian Ministry of Justice encouraged the reform of the companies legislation, in order to incorporate the OECD corporate governance principles. It submitted to public discussion a series of legislative changes, in order to adapt the Companies Law no. 31/1990 to the OECD principles of corporate governance and to the European Union regulations on the matter.

The state-owned joint-stock companies had been functioning under the provisions of the general companies legislation, namely the Companies Law no.31/1990, as amended, with few attempts to adapt this legislation to the specificity of state-owned companies. The Companies Law sets the framework for all legal company forms and contains provisions regarding the management of the company, the appointment and dismissal of administrators and directors, the composition and functioning of the management bodies, the remuneration of their members, their responsibility, revocation and liability towards the company. The obligation to comply with the European Commission's recommendations

on corporate governance materialized in the revision from 2004, 2006 and 2007 of the Companies Law no.31/1990.

The corporate governance principles proposed by the OECD were introduced in the ordinary companies legislation by the Law no.441/2006, which represented an important reform of the Law no.31/1990. The most important changes for joint-stock companies regarded the ordinary and extraordinary General Meetings of Shareholders and the Board. This legal act introduced two alternative corporate management systems: the one-tier system, in which the company is managed by a sole Administrator/Board of Administrators, and the two-tier system, under which the company is managed by the Board of Directors and the Supervisory Board. The Law no.441/2006 also brought significant changes to the rights, duties, attributions and powers granted to the members of the management bodies of the companies.

The main amendments of 2006 and 2007 of the Companies Law aimed at enhancing corporate governance rules, regard the following: the independence of one/more members of the Board of Administrators, the requirement for the managers to inform the Board of Administrators of their actions on a regular basis, the clear separation between executive and non-executive administrators, the right that any administrator of the company has to ask the directors for information on the daily management of the company, the requirement that at least one member of the Board committees should be a non-executive independent administrator, the obligation of the Board members to act in good faith, prudently and with the diligence of a good administrator, the posibility of the Board to create consultative audit, nomination and remuneration committees, the duty of loyalty for both administrators and directors. In 2007, the GEO no.58 regulated the posibility to revoke the members of the Board of Administrators in autonomous enterprises, as well as their right to ask for compensation in the case of revocation without righteous cause.

As for the companies listed on the regulated capital market or a recognized alternative trading system, they are acting under the Capital Market Law no.297/2004 (as amended by the GEO no.32/2012 and the subsequent Law no.24/2017 regarding the issuers of financial instruments and market operations and Law no.158/2020). The main provisions of the Law no.297/2004 on Capital Market refer to the fact that the listed issuers should ensure equal treatment for all shareholders holding the same position. In addition, companies whose securities are traded on the Bucharest Stock Exchange can adopt the Corporate Governance Code of this market, which provides regulations that ensure an administration that is more transparent towards investors and a better functioning relationship between the bodies of the joint-stock company. This was the first Code of Corporate Governance in Romania, adopted in 2001. In the following years, the Bucharest Stock Exchange created the Corporate Governance Institute, which was an active participant in identifying the best corporate governance practices, which contributed to the adoption of the White Paper of Corporate Governance in Soth-Eastern European countries. In 2008, the Bucharest Stock Exchange drafted a new Corporate Governance Code, which was harmonized with the European legislation applicable to listed companies, following Romania's accession to the European Union in 2007. The 2008 version of the Code created a flexible corporate governance framework, in line with the EU recommendations, as well as the OECD Principles of Corporate Governance. The main principle was that the issuers should adopt a clear and transparent corporate governance framework, adequately disclosed to the general public. Since 2016, the listed companies have been applying the

new Corporate Governance Code of the Bucharest Stock Exchange, which aims to create in Romania an internationally atttractive capital market, based on the best practices, on transparency and trust. The new Code encourages companies to build a strong relationship with their shareholders and stakeholders, to efficiently and transparently communicate and show interest in all potential investors. This new Code replaces the initial one, issued in 2001 and amended in 2008 and it attempts to make the listed issuers more trust-worthy, by promoting improved corporate governance standards, considering the lessons learnt from applying the previous versions of the Code and according to the latest changes in Romanian and European legislation. The main elements of this Code are the investors' access to information and the shareholders' rights protection.

In December 2011, the Romanian Government Emergency Ordinance no.109 reformed the corporate governance of state-owned enterprises, which were granted with corporate governance mechanisms founded on the OECD Guidelines (2005). These regard the managers' status and the structure of the Board, the remuneration and appointment of the executive directors, the audit and the shareholders' rights.

The basis for the legislative reforms on state-owned enterprises were mainly regarding the increase of their economic efficiency, the reduction of political interference in their administration and the increase of the transparency, as corporate governance standards had never been integrated in the organisation of state-owned enterprises, despite the guidelines drafted by the OECD. Thus, for the autonomous enterprises, there weren't any statutory provisions or any code of good practices, while the state-owned companies were acting under the inadequate corporate governance regulations of private companies, with no concern or adaptation for the particularities of public ownership of these entities. The declared purpose of this regulation was to introduce a particular corporate governance system, adapted to state-owned enterprises, leading to an increase in the efficiency of these economic operators. It introduced the posibility of the shareholders of the joint-stock companies owning at least 5% of the registered capital to submit an initiative for the company to choose a two-tier administration system, which makes their governance similar to that of the privately owned companies, as regulated by the provisions of the Companies Law no.31/1990. On the other hand, the GEO no. 109/2011 does not allow the autonomous enterprises to choose the two-tier governance system, art.5 par.(1) clearly stating that these entities are administrated by a Board of Administrators.

We can conclude that Romania has made significant progress in including in its legislation regulations that ensure the corporate governance of both private and state-owned companies. Amendments to the commercial legislation were made, as well as substantial reforms of the legal framework applicable to investments, which led to an improved business climate, more favourable to investors.

2. THE MANDATE CONTRACT BETWEEN THE STATE-OWNED ENTERPRISE AND ITS AGENTS: THE MANDATORY CLAUSES

The Government Emergency Ordinance (GEO) no.109/2011 regulates the framework of corporate governance in two types of Romanian state-owned entities: autonomous enterprises, created by the decision of central or local administrative government authorities and national trading companies and enterprises (joint-stock companies), in which eather the state or an administrative-territorial unit or an autonomous

enterprise or another national trading company/enterprise is the sole, majority shareholder or in which it holds control. In both cases, the regulation (art.2 par.11) clearly states that the relationship between the tutelary public authority and the bodies that exercise the administration and management of the public enterprise is based on a mandate contract, as defined and regulated by the Romanian Civil Code and, in addition, for the national trading companies and enterprises, by the Companies Law no.31/1990, since these entities are organised as joint stock companies. We believe it is also essential to underline the fact that, since there is an incompatibility between the corporate mandate and the employment relationship, there is no posibility for the administrators/directors to find themselves in a relation specific to the labor law with the enterprise.

The autonomous enterprises are organised as a one-tier system, with a Board of Administrators governing the enterprise and having the option to delegate executive powers to one or more directors. The mandate will be regulated by the special provisions of the GEO no.109/2011, as amended by the Law no.111/2016, and, in addition, by the general norms of the Civil Code (art. 2009-2038). The agency contract will be an annex of the administrative act appointing the administrators (art.12 par.1) and will be governed by the regulations of the GEO no.109/2011 and by those of the Civil Code.

The state-owned commercial companies may be managed in a one tier or a two tier system, since they are regulated by the Companies Law no.31/1990, as amended. The choice of the governance system of the company belongs to the tutelary public authority or to the public enterprise that holds control, through its representatives in the General Assembly of Shareholders. Subsequently, the change of the administration system may also be asked for by the shareholders who own 5% of the share capital; this is more likely to happen when a strategic investor holds a minority stake against the state as majority shareholder (Catană, 2012b: 83). In the one tier system, the General Assembly of Shareholders appoints the members of the Board of Administrators, by concluding mandate contracts with them. The Board is compelled to delegate the management powers to one or more executive directors, who will also execute their mission according to a mandate contract. In the two tier system, the administrative responsibilities belong to the members of the Supervisory Board, who will appoint the members of the Board of Directors. The mandate contract will be executed according to the GEO no.109/2011, as amended by the Law no.111/2016, as specialized norm, and, in addition, by the Civil Code regulations and the Companies Law no.31/1990.

The mandate is defined by art.2009 of the Romanian Civil Code as *"the contract by which one party, called the agent, undertakes to conclude one or more legal acts on behalf of the other party, named the principal."*

The mandate contract will be concluded on the date of the administrators'/directors' appointment. In the case of the autonomous enterprises, GEO no.109/2011, art.12 par.(5) states that the form and the clauses of the mandate contract that is concluded between the tutelary public authority and the members of the Board of Administrators will be established by the tutelary public authority, with the agreement of the Ministry of Public Finances. As one author (Catană, 2012b: 100) has pointed out, for these public enterprises, the administrative character of the mandate is predominant to the civil one, the mandate contract being formally an appendix to the administrative act issued by the head of the tutelary public authority for appointing the administrators. As for the joint-stock

companies, art.29 par.(11) establishes that the form of the administrators' mandate contract will be aproved by the General Assembly of Shareholders.

The mandate contract will be completed by an additional act, establishing the variable component of the remuneration, the cuantificabile objectives and the financial and non-financial performance indicators established by the tutelary public authority (in the case of the autonomous enterprises) or the General Assembly of Shareholders (in the case of the joint-stock companies).

The variable component of the remuneration will be set accordingly to the performance indicators that had been negociated with and approved by the tutelary public authority/the General Assembly of Shareholders and will be subjected to annual revision, depending on the achievement of the objectives set in the Administration Plan and on the fulfillment of the performance indicators. According to art.22 of the GEO no.109/2011 Norm of Enforcement, the general principles for establishing the administrators' remuneration policies are the following: a) attracting, retaining and motivating the best administrators; b) ensuring long-term sustainability of the profit of public enterprises and generating durable value c) rewarding the achievement of the set objectives; d) maintaining competitiveness on the remuneration market; e) aligning remuneration with the recommendations on good governance; f) promoting transparency regarding the remuneration and the criteria for establishing it; g) maintaining a correct balance between the fixed remuneration and its variable component.

The additional act to the mandate contract will also necessarily establish quantifiable objectives regarding the reduction of outstanding obligations, the management of receivables and their recovery, the implementation of the investment plan and the cash-flow for the activities carried out.

The performance indicators, that are also mandatory in the additional act, are derived from the performances required in the Letter of Expectations. According to the GEO no.109/2011 Norm of Enforcement, they represent instruments of quantitative and qualitative measurement of the financial and non-financial performance, that indicate the achievement of quantifiable objectives related to specific performance targets. The corporate governance structures in every tutelary public authority suggest to its management appropriate financial and non-financial performance indicators, in accordance with the interests of the public enterprise. The selected indicators will be submitted to the approvement of the tutelary public authority or of the General Assembly of Shareholders, as the case may be. The approved performance indicators will be mandatory clauses of the mandate contract additional act and the basis for determining the variable component of the remuneration. The tutelary public authority can be assisted in determining the performance indicators and the variable component of remuneration by independent experts, specialized in measuring performance, as well as by the nomination/remuneration committees or by the Board of Administrators/Board of Directors as a whole.

The GEO no.109/2011 Norm of Enforcement from 2016, Annex 1b establishes the mandatory clauses of the mandate contract that the public enterprise concludes with its administrators/directors. We shall analyse these clauses, insisting on the specific elements imposed by the legislator as obligatory stipulations of the agreement.

2.1 The contracting parties

In the case of the autonomous enterprise, the principal is the tutelary public authority, and the agent is the administrator (member of the Board of Administrators). Should the Board delegate management powers to one or more directors, they will also conclude mandate contracts with the autonomous enterprise, through the Board of Administrators.

In the case of the joint-stock company, the mandate contract is concluded by the General Assembly of Shareholders, through its designated representative, with the members of the Board of Administrators and the executive directors (in the one-tier system), respectively with the members of the Supervisory Board and the Board of Directors (in the two-tier system).

2.2. The term of office

The contract will mention the date the contract will begin to produce its effects, as well as the term of office, which is set in accordance with the Articles of Incorporation of the public enterprise and may not exceed 4 years, with the exception of the administrator selected following the vacancy position of a member of the Board, who will perform only for the remaining term of office of their predecessor. In the case of temporary administrators, the duration of their mandate shall also be specified, in accordance with the law.

2.3. The object of the mandate

The administrator participates in the adoption by the Board, as a whole, of the decisions regarding the administration of the public enterprise, in accordance with the law, the Articles of Incorporation/the Statute of the public enterprise and with the mandate contract, within the limits of the object of activity of the public enterprise. They must also respect the exclusive competencies provided by the legislation in force, as well as the recommendations of the applicable corporate governance guidelines and codes. The executive administrator will perform any necessary and useful acts in order to achieve the object of activity of the public enterprise, exercising the powers and fulfilling the obligations conferred by the mandate contract and by the applicable legal regulations.

2.4. The administrator's rights and obligations

The administrator's rights mainly regard the following:

a) the payment of a remuneration consisting of a fixed indemnity and a variable component, according to the mandate contract and the legislation in force;

b) the monthly payment of the fixed indemnity, and of the variable component, according to the contract;

c) reimbursement of the justified expenses that were made in the interest of fulfilling the mandate;

d) the administrator's right to benefit, toghether with the other administrators, from specialized assistance for substantiating the decisions taken witin the Board;

e) the benefit of professional liability insurance;

f) the payment of damages established according to the mandate contract, in case of revocation without just cause.

The administrator's obligations are also mentioned in mandatory contractual clauses, as they have particular importance, and refer mainly to the following:
a) exercising the mandate with the loyalty, prudence and diligence of a good administrator, in the exclusive interest of the public enterprise;

The GEO no.109/2011, art.14, states that the members of the Board of Administrators of the autonomous enterprise shall exercise their mandate with the prudence and diligence of a good administrator, specifying that the administrator does not violate this obligation, if at the moment they make the business decision, they are reasonably entitled to think that they act in the best interest of the enterprise and on the basis of adequate information. According to art.24, the same obligation falls on the directors of the enterprise, as well. For the state-owned trading companies, the corresponding provisions of the Companies Law will apply, namely art.144[1], which states that the members of the Board of Administration will exercise their mandate with the prudence and diligence of a good administrator. Art.144[1] par. (2) of the Companies Law introduces the same business judgement rule, setting a liability exemption for the administrators, if they were acting in good faith and did not have a conflict of interest with the company and if their decision was based upon adequate information.

The duty of loyalty means that the administrators/directors should act in honesty when executing their mandate, promoting exclusively the interests of the enterprise and avoiding any conflicts of interests. The agents have the duty to inform the company about any existing conflicts of interests and in such cases, to refrain from making decisions in the exercise of their duties.
b) the duty to participate in a professional training program with a minimum duration of one week/year, in which to have training sessions in the field of corporate governance, legal, as well as in other fields chosen by the shareholders;
c) the rigorous preparation of the Board meetings, with the dedication of at least 3 working days per month for this purpose, the participation in the Board meetings , as well as in the specialized committees;
d) participation in one or more advisory committees set up at Board level;
e) declaring, according to the internal regulations and the legislation in force, any existing conflicts of interest and, in situations of conflicts of interests, abstaining from decisions within the Board/the advisory committees/in exercising the attributions of executive administrator;

The obligation to inform the enterprise about any conflicts of interests applies to all those who exercise administration/management functions in state-owned enterprises, and it also entails an obligation to report: the annual/half-yearly reports of the Board of Administrators/Board of Directors will mention, in a special chapter, the legal acts concluded in such conditions, specifying the following elements: the parties to the act, the date the act was concluded and its nature, the description of its object, its total value, the reciprocal claims, the guarantees, terms and conditions of payment, as well as other essential and significant aspects in connection with these legal acts.

The fraud on the interests of the public enterprise committed by the members of its administration/management, by concluding acts in which they are in a conflict of interests with the enterprise, is sanctioned with their annulment. As to the liability of the fraudulous managers, their sanction is the obligation to pay damages, in order to cover all the losses that the public enterprise suffered from that operation. Criminal liability may also be

pursued, if the breach of confidence was in bad faith, according to art.272 of the Companies Law no.31/1990.

f) exercising the attributions provided by the legislation in force and by the statute of the public enterprise;

g) the adoption of control policies and systems provided by their attributions;

h) approving the budget of the public enterprise;

i) achievement of the objectives and performance indicators provided in the Annex to the contract;

The performance indicators are set for a period of maximum 4 years and are financial and non-financial.

The financial performance indicators measure the efficiency of resource use in order to generate revenue, cover costs and make a profit; they respond to expectations regarding the reduction of expenses, fiscal and budget stability and prudence, dividend policy and net profit payments, the investment policy and the general capital expenses.

The non-financial performance indicators are instruments of measuring performance that determine how well the public enterprise uses its resources, mainly for the efficiency of the internal activity, providing external services for customers and fulfilling legal requirements. They are usually derived from the policy of the enterprise, clients' satisfaction level, the market share of the public enterprise. They are operational performance indicators, as well as corporate governance indicators and will be set so that the incentives given do not distort the objectives of the public enterprise, nor do they negatively affect the financial operations.

j) elaboration, together with the other administrators, and the half-yearly transmission of the reports regarding the activity of the public enterprise and the stage of the achievement of the performance objectives, as well as, as the case may be, of the information regarding the directors' mandate contracts;

The GEO no.109/2011 dedicates Chapter V to the duties of report and the transparency of the corporate governance of public enterprises. In applying the *„comply or explain"* principle, the Board of Administrators/Board of Directors have the obligation to prepare annual reports, in which they present the manner and the extent to which the principles and recommendations of corporate governance are accomplished, as well as the measures taken to comply with the reccomendations that are not fully met. The obligation to inform the tutelary public authority or the General Assembly of Shareholders on the activity of the corporate governance structures is a continuous one. Failure to comply with the obligation of complete, fair and timely reporting, shall bring disciplinary, civil, contraventional or criminal liability, in accordance with the law, as well as the revocation of the mandate of the liable ones.

k) approving the development strategy of the public enterprise;

l) the selection, appointment and revocation of the directors/members of the Board of Directors, the evaluation of their activity and the approval of their remuneration;

m) approving the recruitment and revocation of the head of the internal audit and receiving from him, whenever the administrator requests, reports regarding the activity of the public enterprise;

n) participation in continuous professional development programs, in order to carry out an optimal activity within the Board;

o) elaboration of the Management Plan in collaboration with the directors;

The fulfillment of the mandate duties will be done accordingly to a Management Plan, which, according to art.2 par.(8) of the GEO no.109/2011, is a working tool of the administrators and directors, embodied in a document drawn up to determine the progress of the public enterprise during their term of office. It is structured in two components: an administration plan, which is prepared by the Board of Administrators/Supervisory Board, and a management plan, prepared by the directors/members of the Board of Directors. It is linked to the Letter of Expectations, by which the tutelary public authority, in consultation with any shareholders representing, individually or together, 5% of the share capital of the public enterprise, establishes the expected performances from the administration and management bodies of the public enterprise, as well as the policy of the tutelary public authority, for a period of at least 4 years. The Management Plan sets out the mission, objectives, actions, resources and financial/non-financial performance indicators for carrying out a specific activity over a future period which may not exceed 4 years.

p) checking the functioning of the internal and managerial control system;

r) negociation of financial and non-financial performance indicators with the tutelary public authority or the shareholders of the company, as the case may be;

After the approval of the Management Plan by the Board of Administrators/Supervisory Board, the performance indicators that it proposes will be transmited to the tutelary public authority (in the autonomous enterprises) or the General Assembly of Shareholders (in joint-stock companies) for negociation and approval; subsequently, they will become an annex to the mandate contract.

s) monitoring and managing potential conflicts of interests at the level of the administration and management bodies;

In order for the administrators to comply with this obligation, the enterprise shall establish a policy regarding the conflicts of interests and the systems for its implementation. The Board of Administrators shall adopt a Code of Ethics, annually reviewed, if necessary, with the prior approval of the internal auditor.

t) other obligations provided by law and the internal regulations adopted at the level of the public enterprise.

2.5. The rights and obligations of the public enterprise

The mandate contract includes obligations regarding the payment of the administrator's remuneration, ensuring the conditions for the administrator to carry out his activity through his full freedom in exercising the mandate, but also rights regarding the request for information from the administrators related to the exercise of the mandate and the evaluation of their activity.

2.6. Liability of the parties

The mandate contract will include provisions regarding the contractual civil liability of the parties. Failure to comply with the contractual obligations shall bring disciplinary, civil, contraventional or even criminal liability of the members of the administration/management bodies. Also, the revocation of the mandate entrusted to them by the tutelary public authority /the trading company will occur, as a natural consequence of the loss of trust in the agent.

Should the administrator/director breach his duty to exercise the mandate with the loyalty, prudence and diligence of a good administrator, in the exclusive interst of the

public enterprise, the extent of their civil liability is objectively determined, depending only on the damage suffered by the public enterprise, which will have to be fully remedied, as long as a direct causal link is established between the agent's wrongdoing and the damage suffered by the enterprise. The administrators' liability will be incurred both for the damages caused to the enterprise as a result of their own decisions, as well as for the prejudicial acts of the directors, if the damage did not occur should they have exercised the due supervision required by their position (art. 16 par. 2 of the GEO no. 109/2011). The members of the Board of Administrators also have a joint responsibility for the acts of their immediate predecessors, if, having knowledge of the irregularities committed by the latter, they do not communicate them to the internal auditors, the financial auditor, nor to the tutelary public authority (art. 16 par. 3).

The decision to bring an action for damages against the administrators/directors is the equivalent to the termination *de jure*, *ex officio* of their mandate. Their term of office shall cease the date that decision is made and in consequence, they will be replaced from office immediately.

2.7. The attributions of the Board and of its members in the administration of the public enterprise

The mandate contract will provide attributions related to the following:

a) the administration of the public enterprise, by supervising the functioning of prudent and effective control systems, which allow the assessment and management of risks;

b) approving the development strategy of the public enterprise, by ensuring the existence of the necessary financial and human resources for achieving the strategic objectives and supervising the executive management of the public enterprise;

c) ensuring that the public enterprise fulfills its legal obligations towards the stakeholders as well;

d) monitoring the performance of the executive management;

e) ensuring that the financial information produced by the public enterprise is correct and that the financial control and risk management systems are effective;

f) establishing and approving the remuneration of the directors/members of the Board of Directors and fulfilling the obligations provided by law regarding the recruitment, appointment, evaluation and, as the case may be, the revocation of the other directors of the public enterprise, with whom it has concluded mandate contracts;

g) elaboration of annual reports and other reports, in accordance with the law.

2.8. The conditions for termination, revision or extension of the mandate

a) the conditions for termination of the mandate, in case of non-fulfillment of the financial and non-financial performance indicators included in the mandate contract, for reasons imputable to the administrator or due to violation of the integrity criteria stipulated in the mandate, including avoiding and not denouncing conflicts of interest or the breach of the Code of Ethics of the public enterprise;

GEO no.109/2011, art.30, par.(9), states that the administrators' revocation in joint-stock companies will occur when, for imputable reasons, the administrators do not meet the performance indicators established in the mandate contracts; the dismissed administrators can no longer run for office for 5 years from the date of the decision in

Boards of Administrators of other public enterprises. The same reasons justify the revocation of directors, according to art.36 par.(7).

An aspect that we think is very important to underline is the fact that the revocation of the mandate of the enterprise's agents can be done without necessarily involving culpable acts. The provisions of the Romanian Civil Code (art. 2031 par. 1) allow for the revocation of all mandate contracts to be made discretionarily: *„the principal may at any given time revoke the mandate, whether it is express or tacit, regardless of the form in which the contract was concluded and even if it was declared irrevocable."* The revocation is *ad nutum*, which means that it is not subject to any conditions or notice period; it may be done even against the agreement of the contracting parties, in those cases in which they have declared the contrract *„irrevocable"*.

The administrators/directors of Romanian state-owned enterprises can only ask for damages if the revocation of their mandate was abusive or without righteous cause, but under no circumstance could they claim reinstatement to continue the terms of their office. Although discretionary, the revocation cannot be arbitrary or abusive, because in case of unjustified or untimely revocation, the principal will be compelled to pay the agent the remuneration, as well as the reparation of the damages caused as a result of the revocation itself. However, the GEO no.109/2011 establishes two situations in which the revocation does not give the right to compensation: when the revised Management Plan submitted by the Board is not approved, which implies that the administrators' mandate is terminated *ex officio,* and when the members of the Board of Administrators/Supervisory Board of joint-stock companies are not reconfirmed in office by applying the method of cumulative voting.

b) the conditions for modifying the mandate contract, as well as the agreement of the parties or the legislative changes likely to affect the contractual provisions in force;

c) the mandate can be extended, following an evaluation process carried out by the tutelary public authority or the shareholders, as the case may be, at the end of the mandate term of maximum 4 years.

2.9. Quantifiable performance objectives and financial and non-financial performance indicators, including those for determining the variable component of the remuneration

The targets and the performance indicators are mentioned in the Additional Act to the mandate contract, as well as the conditions for their revision.

2.10. Integrity and ethics criteria

The agreement of the parties shall mention matters relating to the following:

a) compliance with the Code of Ethics of the public enterprise, applicable not only to its employees, but also to the members of the Board;

b) denunciation of conflicts of interest, defined according to the legislation in force and according to the internal regulations of the public enterprises;

c) the behaviour necessary to be exercised within the Board in case of situations that could put the administrator in a situation of conflict of interests;

d) obligations related to the treatment of confidential and sensitive information with due discretion and in accordance with the provisions of the mandate contract, but also to the possession and maintenance of an excellent professional reputation;

e) the conditions for suspending the mandate in case of starting a criminal investigation for the offenses provided in the art. 6 of the Companies Law no. 31/1990, as amended.

2.11. The remuneration of Board members with a fixed allowance and a variable component

a) the amount of the fixed monthly allowance, different depending on the number of committtees in which the administrator participates and on other attributions specified in the mandate contract

b) the method of calculating and granting the variable component of the remuneration, based on the selection by the tutelary public authority of the most appropriate financial and non-financial performance indicators for determining this component, in accordance with the methodology for establishing financial and non-financial performance indicators and the variable component of remuneration.

The GEO no.109/2011 provides similar criteria for establishing the remuneration of administrators/directors in autonomous enterprises and joint-stock companies. They regard the number of meetings that the executives attend, their attributions as members of consultative committees, other prerogatives, as well as the performance objectives agreed upon in the mandate contract. As an author (Catană, 2012b: 117) has pointed out, the tutelary public authority/the General Assembly of Shareholders dispose of a significant evaluation margin when deciding on the performance criteria upon which the remuneration will be determined.

However, given the fact that the transparency and efficiency of public money use must be ensured, the GEO no.109/2011 provides clear criteria and limits for establishing it. The remuneration and benefits given to the executives will also have to be recorded in the annual financial statements and on the webpage of the public enterprise. The main issue when establishing the remuneration is adapting its level and components in order to attract qualified individuals from the private sector to public enterprises, considering the fact that wages are usually lower in the public sector, since most states in Central and Eastern Europe, including Romania, have imposed maximal remuneration levels for the members of the administrative bodies.

The remuneration of the members of the Board of Administrators/Supervisory Board is established by the tutelary public authority (in autonomous enterprises), respectively by the General Assembly of Shareholders (in joint-stock companies), through the mandate contract, in the structure and limits provided by the GEO no.109/2011, art.8, respectively art.37. The remuneration shall consist of a fixed monthly allowance and a variable component. The composition of the remuneration and the amount will be decided by direct negociation with the members of the Board and will be included in the mandate contract.

The fixed allowance is established in correlation with the the average monthly gross salary received for the last 12 months for the activity carried out according to the main object of activity registered by the enterprise at class level, according to the classification of activities in the national economy, communicated by the National Institute of Statistics prior to their appointment. It is bigger for the executive members of the Boards (a maximum of 6 times the average monthly gross salary) than for the non-executive members (a maximum of 2 times the average monthly gross salary). The fixed monthly allowance of the members of the Boards may be differentiated according to the number of

meetings in which they participate, the attributions in advisory committees and other specific attributions established by the mandate contract.

The variable component is set on the basis of financial and non-financial performance indicators negociated and approved by the tutelary public authority/the General Assembly of Shareholders, which aim at the long-term sustainability of the autonomous enterprise and at ensuring compliance with the principles of good governance. These performance indicators are different for the executive members of the Board, as opposed to the non-executive ones; for the non-executive members, the amount of the variable component may not exceed a maximum of 12 fixed monthly allowances, whereas for the executive members the legislator does not impose such a limitation. The variable component of the remuneration ir reviewed annually, depending on the level of achievement of the objectives included in the Management Plan and the degree of fulfillment of the financial and non-financial performance indicators approved by the tutelary public authority/General Assembly of Shareholders, annexed to the mandate contract.

The remuneration of the directors/members of the Board of Directors is set by the Board of Administrators (in the one-tier system) or by the Supervisory Board (in the two-tier system). The fixed allowance will be set within the limits established for the executive administrators. As for the variable component, it may consist of a share of the net profit of the enterprise, of shares, stock-options, a pension plan or another form of remuneration, based on the fulfillment of the performance indicators. The total amount of the directors' remuneration may not exceed the one set for the executive members of the Board of Administrators.

2.12. Recovery of the variable component of the remuneration

a) If situations arise that may significantly change the results and sustainability in the medium or long term or if the payment of the variable component of the remuneration jeopardizes the capitalization of the public enterprise, it is entitled not to pay the part calculated for previous years.

b) If all or part of the variable component is provided on the basis of data which subsequently proves to be incorrect, public enterprises shall be required to request that part of the variable component be returned.

2.13. Confidentiality clauses, during and after the exercise of the mandate

The mandate contract shall specify clauses regarding the waiting period after the term of office ended, before obtaining an administrative or a management position in a public enterprise in direct competition with the public enterprise in which the mandate had been exercised, as well as the obligation to respect, after the end of the mandate, confidentiality accessed information.

Art.14 of the GEO no.109/2011 states that the members of the Board of Administrators, who have the duty to exercise their mandate loyally, in the interest of the autonomous enterprise, shall not disclose the confidential information and the trade secrets of the enterprise, to which they have access as administrators. This obligation will continue after the termination of their mandate, too. The precise content and the duration of the confidentiality obligation will be detailed in the mandate contract. According to art. 24, the directors of the autonomous enterprise also have a similar obligation.

2.14. Administrators' evaluation method

References are made to two types of evaluations that are made on Board members:
a) the internal self-assessment of the Board, of its committees and of each member of the Board. The purpose of this evaluation is to enable the Board to identify the strenghts and potential for collective and individual development, in order to fulfill the functions of the Board, as well as the auxiliary conditions, but also the processes and competencies necessary for these functions;
b) the evaluation of the collective performances of the Board as a whole compared to the matrix of the Board profile performed by the tutelary public authority. The results of this evaluation provide information on the variable component part of the remuneration in the mandate contract, the key performance indicators used, as well as on the development activities that will inform the future compositions of the Board and the criteria used for this purpose.

The Board will have to transmit to the tutelary public authority/the General Assembly of Shareholders, on yearly basis, a corporate governance compliance statement, specifying which of the recommendations were actually implemented and in what manner. If the principles and recommendations contain provisions related to the companies, administrators, auditors, shareholders or other corporate bodies, each company has to provide accurate, correct, precise and easy to understand information on the manner in which these recommendations were practically implemented during the period to which the report refers. Should the enterprises fail to implement, totally or partially, one or more of the recommendations, they have to provide adequate information regarding the grounds for the partial compliance or the non-compliance with these recommendations.

The periodic evaluation of the administrators'/directors' activity in public enterprises has special importance, since its results determine the calculation of the variable component of their remuneration and, in case they fail to meet the performance indicators negotiated in the management plan, the revocation of their mandate, or even the decision of the tutelary public authority/of the General Assembly of Shareholders to pursue legal action against the agents, should they be guilty of fraudoulous acts against the enterprise. The Guide for Good Practices in Corporate Governance published by the Romanian Ministry of Public Finances provides with examples of evaluation indicators for the assessment of the members of the Boards of Administrators in state-owned trading companies. This includes indicators on financial-accounting skills, on risk management or on ethics and integrity.

2.15. Expectations regarding the initiation and participation in tthe specialized advisory committees, set up at Board level

Requirements include the establishment, where they do not exist, of audit committees and nomination and remuneration committees at Board level, as well as other committees, depending on the specifics of the public enterprise.

2.16. Conflict of interests clauses

This section of the mandate contract refers to the applicable legal provisions on conflicts of interests and the procedure to be followed by the administrator in order to inform the public enterprise of the existence of a potential conflict of interests. It specifies in detail how the administrator refrains from making those decisions within the Board,

which put him in a conflict of interests. Other obligations of the administrator shall also be provided, in order to ensure compliance/monitoring/management of legal provisions on the prevention of conflicts of interests.

Art.15 of the GEO no.109/2011 states that the administrator who has in a certain operation, directly or indirectly, interests contrary to those of the enterprise, must inform the other administrators and the internal auditors about it and not take part in any deliberation regarding that operation. The administrator has the same obligation if his spouse or relatives up to the fourth degree have interests in a certain transaction. Art. 24 states that the same obligation falls on the directors of the autonomous enterprise. In the case of breaching this obligation, the transactions can be declared null and void, and the administrators/directors will be liable for the loss caused to the autonomous enterprise.

2.17. Clauses regarding the independence and qualification of the administrator as independent or not

The contract shall specify whether the administrator is independent or not, based on the provisions of the Companies Law no.31/1990. Thus, art.138² of the Law no.31/1990 states that when appointing the independent administrator, the General Assembly of Shareholders will take into account the following criteria:

a) not to be a director of the company or of a company controlled by it and not to have fulfilled such a function for the last 5 years;

b) not to have been an employee of the company or of a company controlled by it or to have had such an employment relationship for the last 5 years;

c) not to receive or to have received from the company or from a company controlled by it an additional remuneration or other advantages, other than those corresponding to his quality of non-executive administrator;

d) not to be a significant shareholder of the company;

e) not to have or have had in the last year business relations with the company or with a company controlled by it, either personally or as an associate, shareholder, administrator, director or employee of a company that has such relations with the company, if, by their substantial character, they are such as to affect their objectivity;

f) not to have been in the last 3 years financial auditor or employee associate of the current financial audittor of the company or of a company controlled by it;

g) to be a director in another company in which a director of the company is a non-executive administrator;

h) not to have been a non-executive administrator of the company for more than 3 terms of office;

i) not to have family relations with a person in one of the situations previously provided.

2.18. Conditions for contracting assistence at Board level

It specifies the possibility for the Board to ask the public enterprise to conttract specialized assistance to substantiate its decisions, for example, but not limited to: audits, anti-fraud investigations, market analysis and others.

2.19. Force majeure

It specifies the rights and obligations of the parties in case of an event or circumstance that can be qualified as force majeure.

2.20. How to solve disputes

Clarifications are made regarding the way of resolving disputes amicably or by submitting them to the competent Romanian courts of justice.

2.21. Other clauses

The legislator recommends to insert the following clauses in the contract:

a) the method of contracting and paying a professional liability insurance, including the maximum insured amount;

b) benefits granted to the administrator, such as: coverage of expenses for representation, transportation, meals and accomodation and others;

c) non-compete obligations.

The non-compete obligation, which derives from the agent's duty of loyalty, means that the administrator/director is restricted from concluding operations in his own interest, in direct competition with the managed enterprise, thus endangering its interests. According to the Norm of Enforcement from 2016, Annex 1b, par. (21), of the GEO no. 109/2011, the non-compete obligations are only recommended clauses of the mandate contracts of the administrators of public enterprises, without being mandatory. However, we believe that the duty of loyalty and the duty of confidentiality necessarily imply the administrator's abstention from acts of unfair competition.

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LAW

COUNTERTERRORISM IN INDONESIA'S POSITIVE LAW

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Abstract: *Countering terrorism literally means combating terrorism. In general countering terrorism can defined as an attempt of prevention and controlling the terrorism. Related to Sandler's opinion stating that there are two main categories in anti-terror policy namely proactive and defensive, then countering terrorism contextually is all efforts done by the state to overcome for example prevention, law enforcement, and others as a form of solutions in controlling terrorism formulated in policy (positive law). As the increase of terrorism crime in Indonesia it makes the government to further revise Law Number 15 of 2003 with new politics of law. Law Number 5 of 2018 on Amendment of Law Number 15 of 2003 on Establishment of Perppu Number 1 of 2002 on Eradication of Terorism Act to be Law (UU No.5 of 2018 on Eradication of Terorism Act) not only mandate repressive efforts, but also obligate the government to do the prevention. Terrorism is not extraordinary crime anymore but it is a serious crime that should be handled using serious measures. This study uses juridical normative method; study of law to find rules of law, principles of law, or doctrines of law to answer problems of law that are going to be investigated, including the study of principles of law, systematics of law, vertical and horizontal synchronization of law, comparison of law, and histories of law. The aim that wants to be achieved is finding comprehensive counterterrorism of terrorism crime in Indonesia.*
Keywords: *counterterrorism, positive law, serious crime.*

INTRODUCTION

Terminology of terrorism is firstly popular in the late of 18th centuries. This term is used to show the act of violence done by the state to its people in order to make the people obedient to the government or state. After French Revolution, in France it establishes "Republik de la terreur" under the leader Robes Piere that is aimed to control system of thoughts and feelings of its people. As the time goes by, in 1950 definition of terrorism shifts that is started from Aljazair. National Liberation Front (FLN) popularizes terrorism as "random attack" to civil society that is innocent. Inversion of term by Aljazair is done to combat the use of term "terrorism" in Algerian Natonalist that defines murder is

done to obtain justice. Term of terrorism in its development until now becomes a term that is stated to explain violence act as a form of resisstence of unsatisfied group to the world order and wants to change according to perspective of their group's version. Averment of term "terrorism" begins with the tragedy of the destroyed World Trade Center (WTC) building in New York, Pentagon building and attack trial in White House, United States on September 11 2001. It also happened in the use of terrorism term in Indonesia. Term of terrorism appears when Bali bombing happened; October 12 2002 that is stated as the second biggest in the world after the tragedy in United States previously. President Megawati Soekarno Putri responds the tragedy of Bali bombing as threat to the peace and national or international securities by establishing Perppu Number 1 of 2002 on Eradication of Terrorism criminal act). Term of terrorism in Indonesia is defined as criminal act that is formulated into the criminal provision as violence act or violence threat that make terror atmosphere, fear widely and cause the large number of victims. This Perppu is institutionalized into Law Number 15 of 2003 on Establishment of Perppu No.1 of 2002 on Eradication of Terrorism criminal act to become Law. This Law prioritizes the eradication effort or called repressive for the applied 15 years. Then terrorism in 2018 has a definition based on Article 1 paragraph 2 UU No.5 of 2018: *"act that use violence or violence threat that make terror atmosphere or fear widely, that can cause victims, and/or cause destruction or demolition of strategic vital object, natural environment, public facilities or international facility by using ideology, politics, or security disturbance motives."*

LEGAL MATERIALS AND METHOD

This study uses Juridical Normative method (Marzuki, 2011), which is study of law to find rules of law, principles of law, or doctrines of law to answer problems of law that are going to be investigated . In study of law that is normative includes type of study on principles of law, systematics of law, vertical and horizontal synchronization of law, comparison of law, and histories of law . Study of law that is juridical normative is supported by using statue approach. Statue approach is used because the focus of the study is regulating deradicalization in Indonesia's Positive Law. Thus, it will investigate materials of positive law on regulating deradicalization in Indonesia comprehensively.

RESULTS AND DISCUSSION

Regulation of Terrorism and Terrorism Criminal Act

Indonesia's positive law at this time differentiates between the definition of terrorism and definition of terrorism criminal act. Terrorism has formal meaning based on law Article 1 paragraph 2 Law No.5 of 2018. In contrast, definition of terrorism criminal act is all acts that fulfill the elements in stipulation of criminal as stated in Law No.15 of 2003 or Law No.5 of 2018.

Law No.5 of 2018 is amendment of law in terrorism field including new criminalization of any new mode of terrorism criminal act such as type of explosive material, following military training/paramilitary training/other trainings, either in domestic or in abroad. Other amendment also aggravate criminal penalties to the perpetrator Terrorism criminal act, such as conspiracy, preparation, trial, and help to do

Terrorism criminal act that is enlarged until founder, leader, organizer or people that guide the corporate. Even according to the writer, the establishment of Law No. 5 of 2018 beside strengthen law enforcement it also strengthens the position of apparatur *"Peace Maintenance".*

The definition of Terrorism in Article 1 paragraph 2 of Law No. 5 of 2018 has its own intention and purpose, terrorism is enlarged not only as criminal act but also as other activity in the field of prevention of terrorism criminal act. The definition of terrorism is as follow:

"act that use violence or violence threat that makes terror atmosphere or fear widely, that can make large number of victims, and/or cause destruction or demolition of strategic vital object, natural environment, public facility, or international facility with motives of ideology, politics, or security disturbance."

Elements of terrorism definition are:

- Act that uses violence or violence threat
  - Causing terror atmosphere or fear widely, that can cause large number of victims, and/or cause destruction or demolition of strategic vital object, natural environment, public facility, or international facility
  - Using motives ideology, politics, or security disturbance

In Law No.5 of 2018, this crime is described as crime that has special characteristics that starts from the radical ideology of Terrorism that needs to be supervised earlier as a part of effort of countering terrorism in general. The legislators try to depict the activity that is not included in the field of Terrorism criminal act. Special characteristics that want to be delivered in terrorism criminal act is that by the establishment of definition of Terrorism word in Law to explain an activity, a belief, and an act, such as development activity of review that is academic scientific, activity of mapping susceptible area of radical ideology of Terrorism, belief - radical ideology of Terrorism and Terrorism act, that all are separated from the context of Terorisme criminal act.

Law No.5 of 2018 regulates from a condition before terrorism crime happened, from the tragedy of terrorism to post-terrorism (criminal act and terrorism act). Condition before terrorism happened, Law No.5 of 2018 mandates to do prevention done through: national preparedness, countering radicalization, and deradicalization. The word "prevention'' in this case is defined as Prevention of Terrorism Criminal Act seen from Implementing Regulation PP No.77 of 2019 entitle Prevention of Terrorism Criminal Act and Protection of investigators, prosecutors, judges and correctional officers.

For condition when terrorism happened, Law No.5 Tahun 2018 regulates to do law enforcement through apparatur of police and also military action by Indonesian Soldiers. On the contrary, the condition when terrorism happened, Law No.5 of 2018 regulates the activity of victim recovery, either psychological, medical, or form of compensation in other material form including recovery of facility and infrastructure. The Law at this time shows concrete form of responsible countries from the aspect of security to the victim, explicitly based on Article 35A paragraph (3) Law No.5 of 2018, the aimed victim is the victim of Terrorism criminal act.

From the definition of deradicalization Article 43D paragraph (1) Law No.5 of 2018, overcoming terrorism is done such as belief or ideology. In deradicalization activity that eliminate, reduce and invert radical ideology of Terrorism it is done through a program.

Each program of deradicalization is done step by step and continuously that is differentiated based on subject of target.

Based on Government Regulation No.77 of 2019, all stages of deradicalization are initially identified and assessed. The step to do deradicalization that is done to people or group of people that has an exposure of radical ideology of Terrorism and deradicalization of former convict is equalized through step of assessment of exposure level of radical ideology of Terrorism. Specifically for subject that has an exposure of radical ideology of Terrorism it needs to know things that become the basis of assessment that having the ideology is basically still in the form of belief that has not been realized in the form of certain act, in explanation of Article 43D paragraph (3) letter f it is stated "it is potential to do terrorism criminal act". At this time the indicator of assessment stated in AKURAD (Sub-Directorate of Society, Directorate of Deradicalization of BNPT, 2020) is applied for convicted person and former convict that in fact there is a realization of criminal act (*actus reus*) *in casu* it is legally proven to have a relation to (*mens rea*) belief of understanding radical terrorism.

Starting from the argumentation of Pancasila as the center of argumentation, then the ideology existing in the people that has an exposure of radical ideology of terrorism ideally faces *de*-ideology of Pancasila and the increase of other ideology. Dichotomy of ideology that is known that there are terms "extreme right and extreme left so it is possibly not enough to assess exposure with the condition of *de*-ideology of Pancasila but it should also be related to have an ideology/other understanding, such as religion. In line with the statement of Amirsyah in Golose (2010), radicalism in the context of terrorism due to the variety of radicalism that contains element of insufficient understanding of religiosity. Therefore, radical ideology of terrorism does not stand alone but it is followed by other understanding that contains element of certain religiosity that is considered insufficient.

The element of religion in this case becomes the differentiator from understanding of other general ideology. Insufficient religiosity is a characteristics of terrorism criminal act so it becomes the differentiator from the understanding of ideology such as Liberal and Communist (usually called extreme left), the *de*-ideology of Pancasila in the context of radical ideology of Terrorism should be followed by understanding the contrary or extreme right. The President, Joko Widodo, at this time calls it "manipulator of religion". Term that is used by President Joko Widodo according to teh writer is also in accordance with the statement of Daniel Kohler by naming *"cults and New Religion Movement".*

Insufficient understanding of religion by manipulator of religion prioritizes its belief based on holy book. As its crutch, for the case of movement "extremism of islam" spreads in almost all over muslim areas (including Indonesia) it also uses Islamic text (Al-Quran, hadits, and *classical source-(kitab kuning*) as the basis of legitimation of theology, textually considered to support exclusivism and extremism (Alqurtuby, 2009):

Fight those who do not believe in Allah and not (also) in Last Day, and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture – [fight] until they give the jizyah willingly while they are humbled. (Q.S. Attaubah: 29).

The phrase radical followed by terminology of law "Terrorism" that has definition namely the element of violence act or violence threat that actually makes the definition obscure (*obscuur*). However, if it is related to the moslem typology in Indonesia, the overview of characreristics that believe the context of the understanding legality of

violence to be clear. Contextually the radical ideology of Terrorism that is meant is same with the extreme right column called *Religious-Oriented* that in 2018 it is considered to have 18.10% existence. It is depicted that there are three characteristics as follows:

- Violence is needed to enforce amar *ma'ruf nahi mungkar*;
- The headman until the President should be from moslem;
- It tends to agree with the concept of *khilafah*.

Formulation of terrorism in Article 1 paragraph 2 Law No. 5 of 2018 is considered to be not characterizing insufficient understanding of religiosity. Motivation that is mentioned is only in the form of: ideology, politics, or security disturbance. Different from UK in its regulation, United Kingdom *Terrorisme Act* 2000 defines terrorism that there is an element of religiosity as the purpose or motivation:

Part I Introductory

"1.—(1) In this Act "terrorism" means the use or threat of action where—
(a) the action falls within subsection (2),
(b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
(c) the use or ***threat is made for the purpose of advancing a political, religious or ideological cause****. "*

The translated by Shodiq (2018) is as follows:

- Act that involve serious violence to someone, serious losses in term of material, threatening someone's life, not people's life that perform an act, making a serious risk for health or public safety or certain part of public or designed seriously to interfere or disturb electronic system;
- The use of threat or designed to influence the government or intimidate public or certain part of public;
- The use or threat made by purpose of politics, religion, or ideology;
- The use or threat included in the activity that involve the usage of weapon or explosive material.

Based on the previous explanation, radical ideology of Terrorism can be described as not an ideology or belief that stands itself. Pancasila as a central argumentation is also new to give answer of Non-Pancasila, which can have definition of communist or liberal ideologies. Radical ideology of Terrorism that become an object of deradicalization is still considered as a counter of Islam in general, which is frequently suspected by the society until disagreement of deradicalization itself, but if this is understood properly actually Islam is strengthened as religion of *rahamatan lil alamin* or the religion that is full of peace without issuing Pancasila in contradiction to the teaching of Islam.

At this time Law No.5 of 2018 is criminal policy in terrorism field that contain activities of countering terrorism either prevention and criminal law enforcement or victim recovery of terrorism criminal act as a form of the presence of state in giving protection in the realization of social defense. The use of penal and non penal efforts as the solution stated in the form of Law use all elements of society and stake holder of the state to be more aware of terrorism danger.

Law No.5 of 2018 has described three efforts in eradicating terrorism as stated by G. P Hoefnagels namely (Arief, 2010):

- *Criminal law application*;
- *Prevention without punishment*

- *Influencing views of society on crime and punishment/mass media*.

Criminal law application in Law No.5 of 2018 is done by strengthening either material or formal law. Strengthening material is done by adding criminal act such as inserting, bringing chemical weapon, biological weapon, radiology, microorganism, nuclear, radioactive or its component. Strengthening the formal law by adding the policy of apparatur of law enforcer in arresting and doing detention in terrorism criminal act.

The effort of *prevention without punishment* contained in Law No.5 of 2018 is started from preparing facility and infrastructure and the ability of apparatur, improvement of the society's preventing ability, mapping susceptible area of terrorism, deradicalization, and others. All of counterterrorism is divided into 3 activities of prevention based on Article 43A Law No.5 of 2018 through 3 activities namely:

- National preparedness;
- Counter-radicalization; and
- deradicalization

If it compares between prevention activity regulated in Presidential Regulation No.46 of 2010 and Law No.5 of 2018, there is a significant difference. The obligation of prevention of terrorism criminal act is not as a duty of function of BNPT in term of institution, but it requires the government (Article 43A of Law No.5 of 2018) and society as the form of developing *extra-legal system* for doing collectively the coordinated prevention by BNPT. The institution of BNPT is placed into institution of coordinator, regulator, and executor in the field of eradicating terrorism.

Article 43A paragraph (1) of Law No.5 of2018 states that the government should do prevention according to the writer is that the form of strengthening *Peace Maintenance* (Usman, 2014). BNPT is as government institution does not independently have an obligation to do prevention, all government institutions are required to do prevention. In a wider meaning law enforcement in this case includes not only them (institution) law enforcement (*criminal justice system*) but also the institutions beyond them including BNPT and all ministries (at this time there are 38 K/L) that are also required to do peace maintenance as prevention act of terrorism.

The effort of eradicating third crime, *influencing views of society on crime and punishment/mass media* is not explicitly being the norm in Law No.5 of 2018. Activity of using mass media to influence society's view is done in the form of institution partnership. Based on the collected data of the writer, BNPT makes a partnership with National Pers Council on February 9 2019. The partnership is written in *Memorandum of Understanding* including the scope to maintain pers in order to be careful in broadcasting the news of terrorism especially circumspection of terminology usage and does not expose widely identity of apparatur of law enforcer that solve the case for security.

Countering terrorism in the field of terrorism criminal act regulated in Law No.5 of 2018 is implementatively done by referring to Government Regulation No.77 of 2019 on Prevention of Terrorism Criminal Act and Protection of investigators, prosecutors, Judges and correctional officers. Specifically counterterrorism is regulated to be able to do prevention more operational in order to reach politics of policy in achieving *social defense* and *social welfare*.

DERADICALIZATION IN CRIMINAL POLICY

Basically, deradicalization held through this program is to re-educate that is psychological or in other words the inversion of knowledge/ideology to have the ideal ideology (Pancasila). In contrast, program of re-socialization (knowledge of social field) is the form of disengagement activity/subject dissolution from the network or group and admitting into new and condusive social environment.

The subject that becomes target of program of deradicalization can be found in the function of Directorate of Deradicalization of BNPT based on Article 76 of Regulation of Head of BNPT No. Per-01/K.BNPT/I/ 2017 on Organization of system of BNPT, namely convicted terrorist, former convicted terrorist, former terrorist, family and its network done either in prison or beyond prison. Comprehensively, it contains as follows:

- monitoring, analysis and evaluation regarding the activity of guidance of convicted terrorist, former convicted terrorist, former terrorist, family and its network;
- preparing arrangement of draft of policy, strategy and national program of guidance in prison, guidance in society and guidance in prison for Terrorist;
- preparing the coordination of implementation of eradicating terrorism in the field of deradicalization;
- implementation of activity guidance to convicted terrorist, former convicted terrorist, former terrorist, family and its network; and
- monitoring and evaluation and controlling the material of guidance program in prison, guidance in society and guidance in prison for Terrorist.

After the implementation of Law No.5 of 2018, subject of deradicalization faces significant changes. At first deradicalization is aimed to: convicted person, former convicted terrorist, former terrorist, family and its network while at this time based on Article 43D paragraph (2) deradicalization is aimed to: suspect, defendant, convicted person, convict, former convicted terrorist, and to people or group of people that has an exposure of radical ideology of Terrorism.

If it compares, the norm that shows subject of deradicalization before and after the implementation of Law No.5 of 2018, efforts of penal and non penal are also done before Law No.5 of 2018. For non penal it is only limited to subject of convict that show activity of deradicalization as *double track system* that is performed in and for the perpetrator as inmate. For non penal activity, deradicalization is done to the perpetrator that has status of former convicted terrorist and also former terrorist. Therefore, it is also explicitly seen that deradicalization is as a tool of intervention.

Based on the norm of Article 43D of Law No.5 of 2018, deradicalization is not only as *double track system* but also to be able to be done during the process of interrogation of the case to the suspect, defendant, convicted, and convict. For non penal deradicalization beside it is aimed to ex convicted terrorist, it is also aimed to the people or group of people that has an exposure of radical ideology of Terrorism. For subject of ex terrorist it is not regulated anymore as the subject of deradicalization.

SUBJECT OF PERSON THAT HAS AN EXPOSURE OF RADICAL IDEOLOGY OF TERRORISM

Beside Law No.5 of 2018, Subject of person that has an exposure of radical ideology of Terrorism is also regulated in PP No.77 of 2019 on Prevention of Terrorism Criminal Act and Protection of investigators, prosecutors, Judges and correctional officers (PP No. 77 of 2019) that further specifies the intended subjects that have an exposure of radical ideology of Terrorism. Explanation of Article 30 PP No.77 of 2019 is as follow: *"husband/ wife/ child, family, individual or group involved in organization of Terrorism in foreign country or people/group of people that is decided as suspected terrorist based on court decision."*

Referring to the typology of architecture of counterterrorism, Kohler (2017) places deradicalization as a tool of intervention implemented in the level of micro/smallest social environment such as family. *Consequentially, micro-social intervention tools work with individuals and aim to assist them with leaving their radical milieus and/or ideologies behind*. The family either husband, wife or child in deradicalization is positioned as a supporting partner to reach the success of deradicalization program and *disengagement* especially the stage of social re-integration of convict and ex convict. The family that becomes target or subject of counterterrorism is done through *family counseling* and not deradicalization program done in the level of micro but in the level of social Meso/ social environment is wider than family environment (area of regency/city) with the wide target in order to leave radical understanding.

Based on Article 47 PP No.77 of 2019, deradicalization that is done to people or group of people that has an exposure of radical ideology of Terrorism can be seen in the following:

- guidance of nationalism knowledge;
- guidance of religiosity knowledge; and/or
- entrepreneurship.

CONCLUSION

In Indonesia the policy of prevention that is regulated in the level of Law is recently done in 2018. Indonesia's positive law namely UU No.5 of 2018 specifically regulates prevention activity by combining all activities of prevention and eradication. According to that regulation, activity of prevention is done through National preparedness, Counter Radicalization, and Deradicalization.

These three preventions then further regulated operationally in Government Regulation No.77 of 2019. Based on PP No.77 of 2019 activity of prevention is differentiated based on subject of target. Activity of prevention in countering radicalization and deradicalization specifically differentiates subject of target based on measurement of exposure of radical ideology of Terrorism. For the activity of prevention through national preparedness, it does not mention specifically its subject of target but this activity prioritizes more on the improvement of ability and awareness of apparatur and society and also improvement of facility and infrastructure.

National preparedness is done through society empowerment, the ability upgrading of apparatus, protection, and improvement of facility and infrastructure, development of

terrorism review, and mapping susceptible area of radical ideology of Terrorism is done in order to improve ability of state apparatur in combating terrorism, build awareness of society in general, and geospatial activity, that the entire is readiness activity in facing a terrorism threat.

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RELEVANCE OF VILLAGE BORDER DISPUTES WITH THE AUTHORITY OF THE GOVERNMENT

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Abstract: *The object of this research is the issue of the relevance of village government authority to the occurrence of village boundary disputes between Pakan Dalam and Paramaian villages in Daha Utara sub-district, Hulu Sungai Selatan district, South Kalimantan province, Indonesia. Under the authority of the village government. The method used in this research is the Empirical Legal Research Method, by digging field data into the research location with technical data collection by in-depth interviews with related respondents, then analysing using related legal regulations and applying the legal theories relevant. The results showed that there was a dispute process that occurred and lasted a long time from 2008 to 2020, which experienced a long process in its resolution. The government took an important role in its resolution. The cause of the dispute is that it begins with the existence of oil palm plantations in the area, the existence of this oil palm plantation has led to the birth of various interests, including the interest in land ownership for community members in these villages because it is closely related to the acquisition of company land for the land of the community members who are in the Company's HGU area. This has the potential to increase the economic value of the residents' lands, besides that it is also relevant to the administrative authority of the village government between the two villages in dispute.*
Keywords: *Village Boundary Disputes, Authority, Village Government.*

INTRODUCTION

The existence of oil palm plantations that have begun to be developed in several districts in South Kalimantan is part of the government's efforts to increase investment in the agro-business sector. Some oil palm plantations are developed on wetlands or also on peatlands. Oil palm plantations are developed in addition to the interests of increasing investment and improving the economy, they seek to utilize idle land or land that has not been used for agriculture.

In several districts in South Kalimantan, many oil palm plantations have been developed, including the Tanah Bumbu District, Tanah Laut District, and Hulu Sungai Selatan District. In the Hulu Sungai Selatan district, which part of the area is classified as wetland, for example in the Nagara area which includes 3 (three) districts, and the village is the village of the Banjar tribe, 70 percent of the land is land or wetlands which are swamps and rivers. One of the sub-districts in the region is Daha Utara sub-district. Geographically, Daha Utara Subdistrict is watery land or wetland, the community depends more on agricultural and plantation products. Daha Utara Subdistrict, which is located in Hulu Sungai Selatan District, has 19 villages, including Pakan Dalam and Paramaian

villages. Pakan Dalam Village and Paramaian Village are villages with a lot of wetlands. Wetland area which is one of the land specifications along the Barito river which is a characteristic of South Kalimantan land which should not be the right land for oil palm plantations.

The growth of investment in the plantation sector, especially oil palm plantations, including in the Hulu Sungai Selatan District area as well as several other districts. The development of investment in this sector has various impacts on the social life of the community, including impacts on issues of plantation land ownership and issues of land boundaries and certain territorial boundaries.

Disputes over land boundaries are either between individuals or certain groups, there can even be disputes between certain village alliances with other villages due to interests or disputes over rights to the oil palm plantation. This also happened in Hulu Sungai Selatan District, Daha Utara Subdistrict, due to the rampant development of investment in oil palm plantations which led to disputes over the boundaries of village territories in the sub-district, namely between the village of Paramaian and the village of Pakan Dalam. Directly or indirectly impact on the social and economic unrest of the local community. So it is necessary to think about overcoming these various problems in order to provide benefits to the community and legal certainty on the administrative issues of community land ownership in the village. Administrative authority in a village is the authority of the village government led by the village head. In accordance with the Law on Villages, namely Law No.6 of 2014, the village head lead which outlines that village government,, and the village head is the government representative to carry out government administration in the region village.

The dispute problems that occurred between Pakan Dalam Village and Paramaian Village can be reconstructed by analyzing several problems related to the dispute, namely: How is the relevance of the implementation of village government authority to the dispute over the boundaries of Pakan Dalam Village and Paramaian Village, Daha Utara Subdistrict? What are the dispute resolution steps that have been taken by the Pakan Dalam Village Government and Paramaian Village, Daha Utara Subdistrict? What is the role of the Regional Government in resolving this village boundary dispute?

RESEARCH METHOD

Type of Research

In legal research methodology, there are two types of legal research, namely normative legal research and empirical legal research. Normative Law Research refers to the concept of law as a rule with its doctrinal-nomological methods, which start from the teaching principles that rule behavior (Erliyani, 2020). According to Carey, S.S in the book Rules of Scientific Methods Guidelines for Research and Critical Thinking, 2015, that in its development legal research is correlated with the influence of social research, because in the macro realm legal research is social science. So, from analyzing the study of this methodology, this type of research is classified as an empirical research that examines behavior with legal analysis studies. In addition, of course using a qualitative approach by prioritizing the characteristics of legal research as scientific research that is based on the characteristics of legal science that is generic (Rahardjo, 2009). Therefore, this type of research is sociological research or socio legal research, by conducting a qualitative

analytical study by analyzing behavior based on on empirical data or field data. The nature of the analysis of the problems in this study is descriptive and perceptive, the problems are described simply and analyzed qualitatively and analyzed based on the applicable legal regulations regarding the problem boundaries in this study.

Description of Research Location

The location of this research is in Daha Utara Subdistrict, Hulu Sungai Selatan District, and South Kalimantan Province, Indonesia. Geographically, Daha Utara Subdistrict is a wet and watery land area, with the community as the Banjar people who generally occupy settlements on the banks of large rivers in the area. And the majority of the population lives farming in wetlands. Daha Utara District consists of 19 villages with their respective areas and boundaries.

Purpose and Use of Research

The purpose of this research is to examine in depth with a qualitative analysis of the causal factors, forms and models used in the settlement of disputes over the boundaries of Pakan Dalam Village and Paramaian Village and to find out and analyze the role of the local government in resolving the dispute between these two villages. The intended use of this research is to provide a clear picture of the village boundary disputes that occurred in Daha Utara Subdistrict, Hulu Sungai Selatan District with respect to the disputing Pakan Dalam and Paramaian villages. In addition, this study also aims to find out what models have been used in resolving these disputes.

Type of Data and Data Collection Techniques

This empirical legal research uses field data as an instrument for material to be presented in the research results, which are then analyzed in depth from the view of legal aspects. The technique of collecting data by means of in-depth interviews with parties related to the object of this research (Marzuki, 2008).

Population and Sampling Technique

The population or universe in this study are certain characteristics of the research object. One of its characteristics is regarding the collection of subjects in the population which is a unit in the research location as the object of research, namely the Daha Utara Subdistrict government which includes government apparatus as the executor of government and the community in the District as part of the government structure, namely as the part that receives the implementation of government or entitled to receive services from government executives.

The sampling technique in this case will be carried out according to the research methodology, namely as a sampling procedure related to the state of the population and related to the data to be extracted in the field empirically so that the sampling technique in this study is a non-probability sampling design technique, and the type of sampling is purposive sampling is a sampling technique by directly determining which party is related to the problem to be analyzed and that party is the party categorized as the most suitable party in extracting information and data because it is considered to be an expert or most knowledgeable of the problems to be analyzed. And these parties are also needed as a sample because they are considered part of the object under study. Related to the theme of

the dispute settlement model for the boundaries of the village of feed in and the village of Paramaian in Daha Utara sub-district, a purposive sample was determined:

- Village Head of each village in dispute.
- Former head of village from disputed village.
- Community leaders in 2 (two) disputing villages
- Hulu Sungai Selatan District Regional People's Consultative Council (DPRD)
- Head of Daha Utara Subdistrict
- The former Daha Utara sub-district head who knows the history of the village boundary dispute.
- Regional Government of Hulu Sungai Selatan District cq Governance Division

The data were obtained from the research location in Daha Utara Subdistrict, Hulu Sungai Selatan Regency (HSS). Data collection techniques were by means of in-depth interviews with parties related to this village boundary dispute. The data processing technique is done by coding the data that has been collected, that is, compiling the data according to the category and the attachment to the object to be examined and analyzed. Furthermore, the data that has been arranged will be presented using tabulation and graphical instruments which are then analyzed using a qualitative approach.

RESULTS AND DISCUSSION

Problems with village boundaries have indeed often occurred in several areas, especially where the village government has been divided. One of the things that happened was a dispute over the village boundaries between Pakan Dalam Village and Paramaian Village, Daha Utara Subdistrict, Hulu Sungai Selatan District. As previously explained, this form of village boundary dispute occurred due to the issuance of PT Subur Agro Makmur's Oil Palm Plantation Business Permit in the area around Pakan Dalam Village and Paramaian Village so that these business actors really needed land for their plantation activities. This plantation business permit which has implications for the issuance of a Business Use Rights Certificate as one of the absolute conditions held by the plantation business permit holder.

As for the data obtained, the data can be described in the description in this study. One of the data obtained is about the factors causing the accidental village boundaries and their correlation with the authority of the Village Government.

We can find out the factors causing the dispute between Pakan Dalam Village and Paramaian Village, Daha Utara Subdistrict, Hulu Sungai Selatan District (HSS) by paying attention to the characteristics of the dispute that occurred, can be seen in the table below:

Tabel 1. Characteristics of the Dispute Boundary Disputes in the Pakan Dalam and Paramaian Village, Daha Utara Subdistrict, HSS District

No	Chronological Description Of Disputes	Form Of Work	Causative Factor	Information
1.	The Government of Paramaian Village issued a Certificate of Land Condition (SKKT) for land in the area of Pakan Dalam Village. A total of 600	Actions of village government administrative authority	There is an interest in government administration in terms of compensation for land located in the	

	certificates of land ownership for land in the Cultivation Rights (HGU) area of the Palm Oil Company were only opened in 2007		Company's HGU locations.	
2	The Pakan Dalam Village Government questioned this but it was not responded to by the Paramaian Village Government	Objection/Subpoena	A sense of injustice in the implementation of local village governance.	
3	The oil palm plantation company located in the location of the two villages always coordinates with the village government of Paramaian Village without involving Pakan Dalam Village	Coordination and cooperation	Feelings of being sidelined by the Company	
4	In 2009 and 2010 there was a change in the statistical data of Hulu Sungai Selatan Regency regarding the map of the Daha Utara sub-district, whose area and boundaries changed from the previous map which was in 1979	Changing the area data and village boundaries	There is an interest in legal certainty regarding village boundaries in sub-districts in the South Kalimantan Legal area	
5	The Pakan Dalam village government has objections and sticks to the previous map	Ask for clarification from the Central Bureau of Statistics (BPS) of HSS District	There is uncertainty about the boundaries of the area and the area of the village	
6	The Pakan Dalam Village Government is trying to ask for the assistance of the HSS District DPRD to be able to facilitate the area boundaries of this village	The feed village government asked the DPRD to help with the settlement		DPRD Commission I held a Working Meeting on this matter
7	The HSS District Government (Regent) ordered the Daha tara Sub-District Head who was only in charge in 2019-2020 to immediately resolve the dispute	The Regent's verbal order to the Head of Daha Utara District		The regent ordered the Daha Utara sub-district head who was just in charge of resolving this dispute

Source: the results of the author's analysis

From the table above, we can observe the factors that cause disputes which are closely related to the existence of oil palm plantations in the area, besides that it is also caused by uncertainty regarding the boundaries of a village. In this case, the boundaries of Pakan Dalam Village experienced a reduction in line with the treatment of the Head of Paramaian Village (a neighboring village next to the Pakan Dalam village) who took over the authority of the Head of Pakan Dalam Village, regarding the issuance of a certificate

of land ownership and signature in a letter related to land ownership of residents in Pakan Dalam Village area according to the map from 1979. Changes in the area and boundaries of the Pakan Dalam village have resulted in a continuous dispute because the local government has not paid attention to provide certainty regarding the changed village boundaries in the HSS District statistical data which was also accompanied by the actions of the village head of Paramaian who took over the authority of the Pakan Dalam village government.

The image of the village area map in 1979 in Daha Utara sub-district, after the division of Pakan Dalam Village, can be seen in the image below:

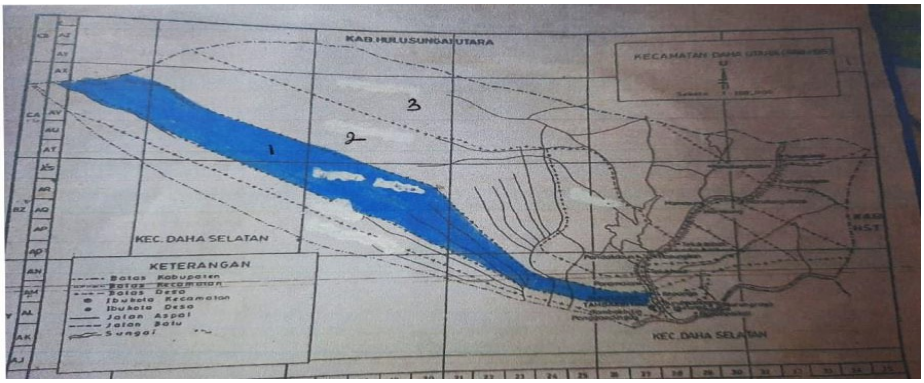

Figure 1. Map of Pakan Dalam Village after the Village Expansion in 1979

The map image shows 1. Pakan Dalam Village, 2 Paramaian Village, 3 Pandak Daun Village. From the chronology of the dispute and from the results of data collection in the field, we can find a close correlation between this village boundary dispute and the implementation of village government authority by the two villages in dispute. In this case there was a seizure of the authority of the village government of Pakan Dalam by the Village Government of Paramaian. So that we can say this is a village boundary dispute that is correlated with a dispute over administrative authority, namely the authority of the village government. In accordance with Law No.6 of 2014 concerning Villages, the village head is said to be a state Administration (TUN) official who carries out governmental duties in the village. The concept of the law emphasizes that the village is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, community interests, rights of origin, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia (Article 1 number 1 of the Law No.6 of 2014).

Village government is led by the Village Head or by other names. And the position of the Village Head is as a representative of the central government to carry out government affairs. In administrative law, the village head is said to be an administrative officer (TUN official). For all the duties and authorities of the village head are administrative duties. This is confirmed in Article 1 number 3 of Law Number 6 of 2014 concerning Villages ("Village Law") which states: Village Government is the Village Head or what is referred to by any other name assisted by village officials as an element of Village Government administrators.

Because the village head is an official who carries out the functions of village government, the Village Head can be categorized as a TUN official who has the authority to make a decision or *beschiking* which contains concrete, individual and final legal actions.

One of the duties of the village head is to serve the community of his village residents in various interests including the need for administrative correspondence for the connection with community land ownership. In accordance with the administrative area of the village, the village head is obliged and authorized to provide servants to residents who own land in the village area. this is related to the certificate of land ownership of the residents' land. Likewise, in the community in Daha Utara District, there are villages with their respective areas according to the village area map. So that administratively every village government has the authority to regulate the interests of the residents and to regulate and maintain the village's territory according to the village boundaries. However, sometimes there can be disputes about village boundaries, apart from the uncertainty about the village boundaries, it is also added to the homogenity of the state of the village area and the large number of villages in this country.According to Article 1 number 9 Regulation of the Minister of Home Affairs Number 45 of 2016 concerning Guidelines for the Establishment and Confirmation of Village Boundaries, it is explained that Village Boundaries are the boundaries of government administrative areas between villages which are a series of coordinate points on the surface of the earth which can be natural signs such as igir/ridge/mountains (watershed), river median and/or artificial elements in the field as outlined in the form of a map.

There are several terms regarding village boundaries according to the Minister of Home Affairs Regulation 45/2016, namely;

- Boundary is a sign of separation between adjoining Villages in the form of both natural and artificial boundaries.
- Natural boundaries are natural elements such as mountains, rivers, beaches, lakes and so on, which are declared or designated as beaches, lakes and so on, which are declared or designated as Village boundaries.

Artificial boundaries are man-made elements such as boundary pillars, roads, railroad tracks, irrigation canals and so on which are declared or designated as Village boundaries.

Village boundaries are boundaries of administrative areas between villages which are a series of coordinate points located on the surface of the earth which can take the form of natural signs such as ridges/mountains (watershed), river median and/or artificial elements in the field as outlined in the form of a map.

As previously explained, the dispute that occurred between Pakan Dalam Village and Paramaian Village, Daha Utara Subdistrict, Hulu Sungai Selatan District is about village boundaries that include PT Subur Agro Makmur's Business Use Rights and at the northern end of the western side of the area which does not belong to the area use right of PT Subur Agro Makmur.

From the results of this study, it shows that in addition to boundary disputes, it begins with a dispute over the authority of the village government, namely the taking of part of the authority of the Pakan Dalam Village government by the Village Government of Paramaian in terms of making or giving certificates related to the ownership of the residents' land, and the lands where the location is in the administrative area of the Pakan

Dalam Village Government, but the letter is administratively drawn up by the Paramaian Village Government. This has led to a dispute between the Pakan Dalam Village Government and the Paramaian Village. The Head of the Pakan Dalam Village along with the ranks of the Village government objected to the actions of the Head of Paramaian Village.

This abuse of authority is closely related to the existence of illegality (legal flaw) of a decision and or action by the government/state administrator. Legal defects in decisions and or actions of the government/state administrators generally involve three main elements, namely the element of authority, the element of procedure and the element of substance. These three things are the essence of the abuse of authority. Then the basis for testing the presence or absence of this abuse is the basic rule (legality) as a written positive law which provides the background for the presence or absence of authority when issuing a decision, meaning that the measure or criteria for whether or not there is an element of "abusing authority" must be based on the basic rules regarding duties position, function, organizational structure and work procedures.

The dispute between the two villages escalated and when the village government of Paramaian did not heed the objections of the village head and the Pakan Dalam Village government officials.

A dispute should be resolved properly, because a dispute is a conflict or conflict that occurs in the life of the community (the Social Population) which forms opposition/conflict between people, groups or organizations against an object of the problem (Witanto, 2011). Disputes in a broad sense can be divided into two, namely: Social Dispute

It is a conflict or dispute that does not cause legal consequences, for example, two boys who fight over a woman to be their boyfriend. In that case, disputes, competition and contradictions do arise, but only limited to social consequences. Social disputes are usually related to ethics, karma or morals that live and develop in certain societal interactions (Kusuma, 2009). Violation of customary rules is included in the category of social disputes because customary law is not part of the positive legal system so that the sanctions applied are only internal (Internal sanction).

LAW DISPUTE

Is a dispute that has legal consequences either because of a violation of positive legal rules or because of a conflict with a person's rights and obligations which are regulated by positive legal provisions. A distinctive feature of legal disputes is that their fulfillment (settlement) can be prosecuted before a state legal institution (court/other law enforcement institution). Legal disputes can be broadly divided into several groups, namely (Ratomi, 2013):

- criminal law disputes;
- civil law disputes;
- state administrative law disputes;
- international legal disputes.

In theory, this form of dispute resolution can be done in the form of litigation (court channels) or non-litigation (out of court). The use of non-litigation dispute resolution, especially civil disputes, is formally regulated in Law Number 30 of 1999 concerning

Arbitration and Alternative Dispute Resolution. In practice, non-litigation dispute resolution is an implementation of the cultural values, habits or customs of the Indonesian people and this is in line with the ideals of the Indonesian people as stated in the 1945 Constitution. The method of resolution is by deliberation and consensus to take decision. Settlement efforts carried out by the Pakan Dalam Village government, led by the Village Head, tried to convey this objection to the Paramaian village government, but did not get a response, finally the Pakan Dalam village head along with the Village apparatus conveyed this problem to the Head of Daha Utara Sub-district at that time, in 2009, however there has also been no settlement from the sub-district government.

Along with the settlement of disputes over the authority of the village administration, in 2009 and 2010 a new map was published in the Statistical Data of the Central Bureau of Statistics (hereinafter abbreviated as BPS) Hulu Sungai Selatan District (hereinafter abbreviated as HSS), which showed changes in area and boundaries. Pakan Dalam village is in the northern part of the Pakan Dalam village map, where the village boundaries have shifted so that the area in the northern part of this village becomes part area of the Paramaian Village. This adds to the objection of the Pakan Dalam Village Government.

Then armed with evidence of previous maps before any changes in statistical data. The Head of Pakan DalamVillage In trying to ask this question from the Head of BPS HSS, but he did not get a meaningful explanation, according to the head of BPS HSS the map in the Daha Utara Subdistrict Book in Figures, which depicts a map of the Daha Utara Subdistrict area with a map of village boundaries in the sub-district said that, it is not a legal product that can determine the boundaries of the village territory in the Daha Utara sub-district. If you try to analyze the statement of the Head of the HSS District BPS, indeed if it is examined from the aspect of legal products, the map of the area that is in the BPS Data Book for the Daha Utara Subdistrict, is indeed not a legal product as is the legal regulations and court decisions or appointments. However, from the legal aspect of proof, the map of the area in the BPS Book issued by the BPS agency is written evidence. As stipulated in the law of evidence that written evidence contains information about an event, situation, or certain matter. Written evidence can be distinguished in the form of written evidence or an ordinary letter not a deed, there is also written evidence in the form of deeds (Erliyani, 2019).

The existence of the map of the Pakan Dalam village area which was reduced in the BPS HSS District map, is different from the map of the Daha Utara Subdistrict area before the map in the BPS book. This has created uncertainty regarding written evidence regarding the areas of Pakan Dalam and Paramaian Villages, thus sharpening the dispute over the boundaries of these two villages. In the end, the Head of Pakan Dalam Village and the ranks of the village apparatus went to Commission I of the HSS District DPRD to ask for protection and complain about this dispute.

The efforts of the Pakan Dalam Village government in facing the DPRD were responded`by the commission I and they immediately held a working meeting of the commission to discuss this by requesting information from various relevant parties. So that in 2017 Commission I DPRD HSS District directed the settlement to the form of dispute resolution through mediation, Commission I DPRD HSS District facilitated and assisted in the implementation of mediation regarding this dispute, but has not succeeded in reconciling. In the end the HSS Regency DPRD asked the Regional Government to

immediately resolve this dispute and immediately issue a policy regarding the boundary map between the two disputing villages, so that there was legal certainty to reduce and resolve the village boundary dispute. (The results of the Work Meeting of Commission I DPRD HSS District are contained in the note of the Conclusion of the Work Meeting of Commission I DPRD HSS District which can be seen in the attachment to this study).

In line with the dispute resolution being attempted by the Hulu Sungai Selatan District DPRD, Commission I of the DPRD questioned this matter to the District Government about the efforts made by the local government so far. So that with the effort to facilitate this settlement, the DPRD and the Regional Government agree to give more attention to the problem of this village boundary dispute. And the Regional Government seeks to make visits to villages with disputes over boundaries and the administrative division of the HSS District in collaboration with the HSS District Land Agency to immediately carry out measurements and re-mapping of the boundaries for the two villages in dispute. However, this activity was hindered when the governance apparatus and the BPN of HSS District made a field visit to the object of the dispute because it was blocked by the Pakan Dalam village community who did not agree with the activity because they were provoked by suspicion of the purpose of the activity. Finally, measurement and data collection as well as field surveys for mapping purposes again encountered obstacles because the conflict between the Pakan Dalam village administration and the Paramaian Village government was still not resolved.

In 2020 the head of the Daha Utara sub-district experienced a replacement for a new official, and then the HSS District Head instructed the new Daha Utara sub-district head to immediately resolve the dispute between the two village administrations.

Based on the instructions of the Regent as the head of the regional government of the HSS district, the Head of the Daha Utara sub-district immediately made efforts to resolve the dispute for the two villages which had been in dispute since 2008. The sub-district head with his wisdom approached local community leaders in each village by actively approaching the community leaders. In this case the sub-district head plays a very active role in striving for peace between the conflicting village administrations by placing himself not as the superior official of the conflicting village heads, but rather the sub-district head as a more wise and prudent peacemaker by promoting a persuasive approach and promoting The settlement pattern is in accordance with the customary habits of the Banjar people who really value the village leaders (local community leaders) and use a pattern of approaches with respect and protection for the community, instead of placing themselves as their leader. So that with this approach, the sub-district head finally succeeded in persuading the head of Pakan Dalam village and Paramaian Village to be able to make peace with the agreement that was helped by the sub-district head as outlined in a peace agreement signed by the parties, namely the agreement on Village Boundaries between the two villages in this dispute.

If we analyze what model the local government has used, to be precise the Head of Daha Utara sub-district in resolving disputes over the boundaries of Pakan Dalam Village and Paramaian Village, by referring to the provisions of legal arrangements regarding dispute resolution, we can be based on Law No. 30 of 1999, the non-litigation dispute resolution model is in the form of:

ARBITRATION

According to Article 1 number 1 Law no.30 of 1999 explained that Arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties. Arbitration is used to anticipate disputes that may occur or are currently experiencing disputes that cannot be resolved by negotiation or consultation or through third parties and to avoid dispute resolution through judicial institutions which have been felt to take a long time.

Looking at the General Elucidation of Law no.30 of 1999 states that in general arbitration institutions have advantages compared to judicial institutions. These advantages include:

- Confidentiality of disputes of the parties is guaranteed so that the image that has been built is not affected due to the private nature of dispute resolution;
- Delays caused by procedural and administrative matters can be avoided, because the trial can be held immediately when the requirements have been met by the parties;
- The parties may select an arbitrator who, according to their belief, has sufficient knowledge, experience and background regarding the matter in dispute, is honest and fair;
- The parties can determine the choice of law to resolve the problem as well as the process and venue for the arbitration; and
- An arbitration award is an award that binds the parties and through simple or direct procedures can be implemented, because the arbitration award is final and binding.

CONSULTATION

In the Black's Law Dictionary it is said that what is meant by consultation is "*act of consulting or conferring; e.g. patient with doctor, client with lawyer. Deliberation of persons on some subject*". Based on this formulation, in principle, consultation is a personal action between one particular party called a client with another party who is a consultant who gives his opinion to the client to meet the needs and needs of his client. The client can use the opinion that has been given or choose not to use it is free, because there is no formula that states the nature of "engagement" or "obligation" in conducting consultations (Hajati and Winarsi, 2018). Thus, the position of the consultant is limited to providing a (legal) opinion as requested by the client. Furthermore, the dispute resolution decisions will be made by the disputing parties, although sometimes the consultant is also given the opportunity to formulate the forms of dispute resolution desired by the parties to the dispute.

NEGOTIATION

Negotiation is a process of talking or negotiating on a certain matter to reach a compromise or agreement between the parties conducting the negotiation. Negotiation, which is a way to find solutions to problems through direct discussion (deliberation) between the disputing parties whose results are accepted by the parties. So negotiation appears to be an art of reaching agreement and not a science that can be learned.

According to Howard Raiffia in Margono (2000), there are several stages of negotiation, namely:

- The preparation stage, in preparing for negotiations, the first thing to prepare is what is needed/desired. In other words, first identify your own interests before recognizing the interests of others. This stage is often termed know yourself. In the preparation stage, it is also necessary to explore various other alternatives if the best or maximum alternative is not achieved or it is called BATNA (*best alternative to a negotiated agreement*);
- Initial Bid Stage (*Opening Gambit*), in this stage negotiators usually prepare a strategy on matters relating to the question of who must first submit the bid. If the first party submits the initial offer and the second party is not prepared (*ill prepared*), there is a possibility that the opening offer will affect the perception of the reservation price from the opposing negotiator.
- The Negotiated Dance Stage, the concession that must be put forward depends on the context of the negotiation and the concession given by the opposing negotiator. At this stage a negotiator must accurately calculate the aggressiveness and must be manipulative.
- End Play, the final stage of the game is making commitments or canceling commitments that have been stated previously.

MEDIATION

According to Article 1 number 1 of the Supreme Court Regulation No.1 of 2016 concerning Mediation Procedures in Courts, mediation is a method of dispute resolution through a negotiation process to obtain an agreement between the Parties assisted by a Mediator. Mediation is a negotiation process to solve problems through an impartial and neutral outside party who will work with the disputing parties to help find a solution in resolving the dispute satisfactorily for both parties. A third party who helps resolve the dispute with a mediator. The mediator does not have the authority to make a decision on the dispute, but only functions to assist and find a solution to the parties to the dispute. The experience, ability and integrity of the mediator are expected to streamline the negotiation process between the disputing parties (Fuadi, 2000).

Looking at some of the alternative forms of dispute resolution outside the court, the model for dispute resolution at the boundaries of Pakan Dalam Village and Paramaian Village, according to the researcher, is more of a conciliation model in which the Head of Daha Utara Subdistrict is the conciliator. Based on Government Regulation Number 19 of 2008 concerning Sub-Districts, apart from carrying out its role as a supervisor and supervisor of village government, the Sub-district head also carries out various population administration and licensing matters, as well as basic sectoral services ranging from order and security, education, health, poverty alleviation, community empowerment and concrete efforts for the welfare of society. Which then makes the Sub-Ditrict head in a strategic position in the delivery of public services after the regency/city, while at the same time exercising the control function over public services carried out by the village government.

The sub-district head has a very important role in the framework of fostering and supervising village government. As the spearhead of service to the community, the sub-

district head has the duties and responsibilities that must be carried out in the context of implementing government, service and development tasks.

CONCLUSION

From the research results and from the legal analysis, it can be concluded that:

There is a relevance between the implementation of village government authority and the dispute over the boundaries of the Pakan Dalam Village and the Paramaian Village, Daha Utara Sub-District. This happened because the Paramaian Village administration took part of the authority of the Pakan Dalam Village Government regarding administrative duties and authority in making a certificate of the condition of the land of the residents who were administratively located in the area of Pakan Dalam Village.

Some of the efforts and steps that have been taken by the Pakan Dalam Village Government to settle boundary disputes and village government authority disputes that have occurred between Pakan Dalam Village and Paramaian Village. Both efforts to make complaints to regional government agencies in stages and efforts to request classifications from the BPS and BPN of Hulu Sungai Selatan district regarding the boundaries and maps of Pakan Dalam Village, Daha Utara Sub-District.

The Regional Government of Hulu Sungai Selatan District plays an important role in efforts to resolve this village boundary dispute by assigning the Head of Daha Utara Sub-District to give an active role in resolving disputes between two villages, namely Pakan Dalam Village and Paramaian Village by using the Non-Litigation Dispute Resolution route.

SUGGESTION

Based on the conclusions of this study, it is recommended to the Regional government of Hulu Sungai Selatan District to immediately order the Governance Section to immediately realize the map of the Daha Utara Sub-District area according to the agreed village boundaries, so that the settlement of boundary disputes between Pakan Dalam Village and Paramaian Village can achieved well in its implementation which will certainly have a positive impact in order to facilitate the implementation of village government and can provide legal certainty for the village border points in the village of Daha Utara Sub-District.

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THE PENALTY OF TAX AMNESTY IN INDONESIA (FROM THE PERSPECTIVE OF TAX EXPIRY)

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Abstract: *The increase of transparency in global financial sector and automatic exchange of information makes many countries around the world establish tax amnesty program, including United States, Australia, Russia, and Indonesia. On July 1, 2016 the Indonesian government issued Law number 11 of 2016 concerning Tax Amnesty. In the context of tax amnesty, a state discharges its right in collecting liability taxes and discharges the taxpayers from their administration penalty and prosecution. The law also regulates tax penalty on tax-payers joining the tax amnesty program for their unreported incomes. The law regulation also consists of General Provisions and Taxation Procedures Law controlling tax expiry. Issued on January 1, 1985, it still exists when the tax amnesty is issued. In fact, now it still exists. Tax Amnesty law has no regulation on tax expiry and has no explicit details on retroactive tax penalty. Law also maintains the non-retroactive principle, the importance of legal certainty and legal justice. Hence, it is important to analyze further whether the regulation of tax penalty in accordance with Tax Amnesty Law is retroactive and contradictory with tax expiry regulated in General Provisions and Taxation Procedures Law. An analysis was done on the concept of tax expiry, the commonness of tax billing process in tax amnesty program in other countries, retroactive principle, law theories on tax, legal certainty and justice. If an inconsistency occurs, it is important to analyze its implication on tax payers. Eventually, it needs to find a solution which fulfills legal certainty and justice principles.*
Keywords: *Retroactive, Tax expiry, Tax amnesty, Tax penalty.*

INTRODUCTION

Before 2018, many countries around the world such as United States, Russia, Australia and Indonesia carried out tax amnesty program due to the increase of global financial sector and an automatic exchange of information. Tax amnesty program is able to boost state revenue in a short term and it is expected to increase tax revenue in the future. Tax payers who join the program disclose their incomplete or unreported incomes to tax

authority and the data will be added to the tax information system. The tax authority will monitor these newly reported incomes after the period of tax amnesty ends.

The state revenue target from the program is IDR165 trillion (Rappler, 2017). In the end of the tax amnesty program, the realization is IDR 135 trillion. The General Secretary of OECD (Organization for Economic Co-operation and Development) Angel Grurria considered the tax amnesty policy in Indonesia was properly implemented (Zatnika, 2016). During Indonesian tax amnesty program, the tax payers pay the redemption fee with set certain percentage multiplied by Redemption Penalty Basis. It is an object of tax amnesty including all of tax payers' unreported assets in the 2015 tax report reduced with 50% for enterprises and 75 % for individuals from tax liability on December 3, 2015 related with reported income). The following is the amount of redemption fee.

Table 1. The Amount of Redemption Fee

Note	**Redemption Fee**		
	Period 1	**Period 2**	**Period 3**
Repatriation/ Domestic declaration	2%	3%	5%
Foreign declaration	4%	6%	10%
MSMEs* with asset declaration up to 10 billions	0.50%	0.50%	0.50%
MSMEs with asset declaration above 10 billions	2%	2%	2%

Source: MSMEs (Micro, Small and Medium Enterprises) in the taxation regulations are taxpayers with a maximum business circulation of up to IDR 4,800,000,000, - a year in the last year (SPT PPh 2015 Tax Year).

The penalty will be given for tax amnesty participants, when in the future the tax authority reveals unreported assets until December 31, 2015 disregarding the time these assets purchased. The tax amnesty law has no clear description the time limit of the penalty. For those who do not join the program, for assets purchased from January 1, 1985 to December 31, 2015 and are not yet reported in the last tax report when the tax authority found this in the period April 1, 2017 to June 30, 2019, will be given penalty in accordance with General Provisions and Taxation Procedures Law.

The penalty regulation in tax amnesty law for tax amnesty participants who have not reported all of their assets on December 31, 2015 disregarding the time of the assets purchased and the penalty for tax payers who do not join the tax amnesty program for their unreported asset purchased before 1985 in 2015 income tax report are the factors lead the researcher to study the topic.

The research aims to analyze whether the penalty of tax amnesty in Tax Amnesty Law is a retroactive one. What is the legal implication of the retroactive penalty? The researcher also tries to offer solution to achieve the penalty which fulfills legal certainty and legal justice for the society particularly tax payers.

Based on the discussion, the researcher will study legal problems namely: First, has the penalty regulation in Tax Amnesty Law given legal certainty and legal justice philosophically? Second, How does the penalty regulation of tax amnesty give a legal certainty and legal justice for tax payers? The research writing consists of introduction, discussion on tax amnesty in Indonesia, tax expiry in the General Provisions and Taxation Procedures Law, the implementation of tax amnesty in other countries such as United

States, Australia, and Russia, retroactive principle, law theories as analysis tools, the analysis of legal implication of penalty on tax payers and the last is conclusion and suggestion.

RESULTS AND DISCUSSION

Indonesia Tax Amnesty

Indonesia is a country that rarely provides Tax Amnesty programs. Since independence era, Indonesia has only provided Tax Amnesty programs several times. The first time was in 1964, the second one was in 1984 in the context of changing the tax collection system from official assessment to self-assessment and the third one was carried out in 2008 in the form of a sunset policy, where only the exemption from the imposition of administrative penalty in the form of interest while for the principal, the tax must still be paid by the taxpayer. The last time, it was carried out in 2016 which started on July 1st, 2016 to March 31st, 2017.

The 2016 Tax Amnesty is an amnesty program provided by the government to taxpayers by eliminating tax obligations that must be paid by taxpayers in the past until December 31st, 2015 and exempting taxpayers from the imposition of tax administration penalty and exempting taxpayers from criminal sanctions in taxation sector, by means of the taxpayer disclosing assets that have not been reported in 2015 Annual Income Tax Return, hereinafter, referred to as the latest return tax in income tax then the taxpayer pays the ransom as in the calculation in the Asset Declaration, hereinafter, referred to as the Statement Letter (Law of the Republic of Indonesia Number 11 of 2016 concerning Tax Amnesty). The tax Amnesty Policy is implemented in the form of a state releasing its right to collect taxes that should be owed.

In principle, all taxpayers have the opportunity to participate in Tax Amnesty program and it becomes the right for taxpayers to choose whether to raise their right to join Tax Amnesty program or not to participate in it.

Based on Article 11, 15, and 21 of Tax Amnesty Law, there are six advantages offered by Tax Amnesty Law for taxpayers who raise their rights to participate in the program and to be described as follows:

- Elimination of taxes that should be payable;
- Not to subject administrative sanctions and tax criminal sanction;
- No examination, preliminary evidence examination and investigation are not carried out;
- Termination of the examination process, preliminary evidence examination, or investigation;
- The guarantee of Tax Amnesty data confidentiality cannot be the basis for any criminal investigation and any criminal act;
- Exemption from income tax from transferring additional assets.

Furthermore, in Article 18 of Tax Amnesty Law regulates the imposition of sanctions. The essence of Article 18 of Tax Amnesty Law is to regulate the imposition in two groups, namely as follows:

For Taxpayers Participating in the Tax Amnesty Program:

For taxpayers who have participated in the Tax Amnesty program and have obtained a "certificate" (Certificate is a letter issued by the Minister of Finance as evidence of granting Tax Amnesty), if in the future after the Tax Amnesty program ends on March 31st, 2017 and the tax authorities find that there are assets that have not been disclosed in the Declaration Letter, then the assets are considered as additional income received or obtained by the taxpayer in data finding and / or information regarding the assets.
The tax imposed above will be added with tax administration penalty in the form of the unpaid or underpaid Income Tax (Article 18 Paragraph (3) of Law of the Republic of Indonesia Number 11 of 2016 concerning Tax Amnesty).

The imposition of sanctions in letter (b) above does not state the time limit for imposing sanctions, in the sense that whenever the tax authorities find assets that have not been reported in the tax Amnesty program, sanctions can be imposed on the taxpayer.

For Taxpayers who do not Participate in Tax Amnesty Programs:

For taxpayer who do not participate in the tax Amnesty program, the tax authorities are authorized by the Tax Amnesty Law to impose sanctions on taxpayers' assets acquired from January 1st, 1985 to December 31st, 2015 and have not been reposted in the Annual Income Tax Return. This authority is the effect from April 1st, 2017 to June 30th, 2019.
Taxes and tax penalty imposed according to the rates of Article 4 Paragraph (1) of Government Regulation Number 36 Year 2017, which is 25% for corporate taxpayers and 30% for individual taxpayers and 12.5% for certain taxpayers, plus interest penalties and is added by 48% according to Law Article 13 Paragraph (2) Taxation General Provision and Procedure Law *(KUP)*.

Tax Expiration in Procedure Law

Before Tax Amnesty Law was enacted in Indonesia, there was a law regulating tax expiration. It is Law Number 6 Year 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 Year 2009 concerning Stipulation of Regulations of The Government in Lieu of Law Number 5 Year 2008 concerning the Fourth Amendment of Law Number 6 Year 1983 concerning General Provisions and Tax procedures into Law, hereinafter referred to as Taxation General Provision and Procedure Law *(KUP)*. It was promulgated on January 1st, 1985 and is still in effect until the time of Tax Amnesty Law was enacted on July 1st, 2016 which also has still the effect today.

Based on Article 13, 15, 22 and 40 of Taxation General Provision and Procedure Law *(KUP*, it has regulated tax expiration. This tax expiration is calculated from the period of time when tax becomes due or the end of tax period, part of tax year or tax year. The forms of tax expiration are as follows:

- The expiration of official tax determination by the tax authorities is 5 years after the tax period becomes due or the end of it, part of tax year or tax year. For simplicity, it is 5 years from the time when the transaction took place;
- The expiration of the tax payable is 5 years after the tax debt arose; and
- The expiration of an investigation into a criminal act in the field of taxation is 10 years after the time of tax becomes due or the end of tax period, part of tax year or tax year.

The legislative ratio for tax expiration, from Taxation General Provision and Procedure Law *(KUP)* can be traced below:

- To provide a legal certainty for taxpayers, tax authorities and law enforcers.
- Tax collection is carried out by means of self-assessment; and
- The retention period for tax documents is 10 years;

Furthermore, Gunadi (2017) gave an opinion about expiration in taxation. He states that the expiration in taxation is a form of law that provides protection for the interests of the public in the form of loss or elimination of the right of the state or government to correct tax that should be owed, collect and exempt taxpayers from their tax obligations in the past after passing a certain period as regulated in the Law.

Rochmat Soemitro (1998) in his book entitled Principles and Basis of Taxation 2, argues "… once expires, it expires" and it is impossible for a right that has expired to come back. If the law has declared the expiration of an event or income that is due tax in the tax year or period in the past, then the provisions of the expiration should be obeyed and the taxpayer's tax obligations expire. So, the state has no right to collect back, even criminalize it, if the prosecution of tax penalty has expired. The philosophy of tax expiration is to end an uncertain situation to certain one by providing legal certainty (Soemitro, 1991).

TAX AMNESTY IN THE UNITED STATES, AUSTRALIA, AND RUSSIA

The program of tax amnesty in United States, Australia, and Russia is explained in the following.

Tax Amnesty **Program in United States** at the federal level provided to taxpayers in in the form of the "*Offshore Voluntary Disclosure Program"* abbreviated as "OVDP", which is a Tax Amnesty program provided to American taxpayers so that non-compliant American taxpayers are asked to disclose in a transparent manner for income and assets outside America that have not been reported to the federal tax office (Withersworldwide, 2018). The US federal tax office is known as the "Internal Revenue Service or abbreviated as "IRS".

OVDP program has been going on for almost a decade and ended on September 28th, 2018. There are four important messages from the IRS about OVDP before the program ends, such as:

- IRS has less tolerance for non-compliant taxpayers;
- IRS prioritizes American taxpayers to report assets held overseas that have not been reported to IRS;
- IRS considers to end OVDP program;
- Substitute OVDP program which provides more severe punishment."

OVDP participants in 2017 were only 600 participants, down a lot compared to 2011 which were 18,000 participants. The replacement for OVDP program will be made in a simpler form, but with severe punishment, and this is to make a room for taxpayers who accidentally commit violations because they do not report assets abroad.

Based on tax laws that are valid in the United States, taxes that must be paid in the last six years were never reported before (Xue, 2016). Those above six years have passed the "*statute of limitation"*. As for tax debt, according to the United States tax regulations, in general, IRS is authorized to collect tax debts for ten years

(https://landmarktaxgroup.com/irs-back-taxes/what-taxpayers-must-know-about-the-irs-10-year-statute-of-limitations). If it has already passed ten years from the date, the taxpayer reports the tax to IRS, then IRS will no longer have the right to collect again from taxpayer. This case is also known as *"the 10 Year Statute of Limitations"*. In "*Internal Revenue Manual Section 5.1.19*" it regulates *Collection Statute Expiration (*https://www.irs.gov/irm/part5/irm_05-001-019).

Tax Amnesty program in Australia. The Australian government on March 27th, 2014 announced the granting of a tax amnesty program to Australian taxpayers whom they called as "Offshore Voluntary Disclosure Initiative / OVDI" which also mentioned as "Project DO IT" (https://parlinfo.aph.gov.au/parlInfo/search/display /display.w3p;query =Id:%22media/pressrel/3075551%22). The implementation of the Project DO IT Tax Amnesty program ended on December 19th, 2014 (https://www.pwc.com/gx/en/hr-management-services/newsletters/global-watch/assets/pwc-australia-announces-tax-amnesty-offshore-income.pdf). Through this Project DO IT program, taxpayers are asked to voluntarily disclose their income and assets on abroad that have not been reported to the ATO (*Australian Taxation Office*). Taxpayers who take part in the Project DO IT program will avoid severe tax penalties and criminal prosecution in the field of taxation (Parliament of Australia, 2014). ATO commissioner Chris Jordan also stated to media release 2013/08, which in the last few years, there has been a lot of improvement in the automatic exchange of information between countries in the world and towards global tax transparency. In the Project DO IT Program, the Australian government provides an offer to Australian taxpayers as follows:

- "Taxes are imposed for periods that are still open which are generally only the last four years;
- It is subject to a light fine, for example from no penalty to a maximum of 10%;
- It is charged interest on underpaid taxes;
- It is not entitled to fiscal losses for the year which is not assessed;
- It obtains a legal certainty over ATO tax on overseas assets transferred to Australia;
- A deed of settlement can be made to get additional a legal certainty if the taxpayers needs it; and
- When the assets disclosed, there will be no criminal investigation into the taxation field."

ATO increases the focus on international tax avoidance by Australian taxpayers by increasing cooperation in automatic data exchange with other countries (Seymour, 2014). Switzerland and Cayman Islands have also opened up and collaborated with tax authorities in the world to increase financial transparency (Harris Gomez Group, 2014).

One of the advantages for taxpayers who take a part in Project DO IT program is that they are subject to a light tax penalty, a maximum of 10%, in which in normal regulations the fines can reach up to 75%. Another advantage for taxpayers is its simple process because there is no need to have meetings with ATO officers (https://www.pwc.com.au/private-clients/assets/pwc_projectdoit.pdf,). For foreign income that is disclosed a maximum of up to AUD 20,000, it is exempted from the imposition of fines. For the obligation to disclose foreign income and excess claim for income tax deduction limited to four years, it means that ATO only imposes additional taxes and penalties in the last four years that must be voluntarily disclosed. ATO cannot backward more than four years (King & Mallesons, 2014). In Australian Law, the so-called

"Subsection (4) of Section 290-55 of the Taxation Administration Act 1953", it is stipulated that ATO may only impose penalties for the last four years (Taxation Administration Act 1953, Section290-55, Subsection (4)).

Tax Amnesty program in Russia. Alm., James; Vanquez, Jorge Martinez; Wallace, Sally (2009); in their Tax Amnesty journal in Russia describes the taxation system of the Russian federation. It is very complex in Russia and burdensome to business and individuals, resulting in low taxpayer's compliance, decreased taxpayers' trust and a severe tax burden on workers and capital. Russia launched its first Tax Amnesty program in 1993 against the backdrop of reforming taxation. This program failed because it only lasted one month (PPID Sekretariat Jenderal DPR RI).

In 1997, Russia re-implemented Tax Amnesty program, in which taxpayers were given the opportunity to participate in it by paying taxes that should have been owed along with an interest penalty of 30% per year for several tax years up to five tax years. This Tax Amnesty program also failed due to high interest penalty. In March 2007, Russia re-provided a Tax Amnesty program to tax payers by reporting unreported assets including those abroad with a tax rate up to 13% and exempting taxpayers from prosecution (Smolenskaya, 2007).

In 2016, Russia introduces a Tax Amnesty program ended on June 30th, 2016 and attended by less than 7,000 taxpayers submitting property declarations (https://www.pwc.com/m1/en/tax/documents/2018/russian-tax-amnesty.pdf). This program is for individual taxpayers with the following programs:

- Individual taxpayers disclose their assets that have not been reported both in Russia and abroad for their assets until December 31st, 2017.
- Individual taxpayers will not be asked by the authorities regarding sources of funds to acquire assets. Tax Amnesty is given free of charge except for profits from abroad companies (known as Controlled Foreign companies/ "CFC) are not subject to tax penalties.

Taxpayers who have participated in the first phase of the Tax Amnesty in 2016 may still participate in this second phase of Tax Amnesty program. However, there are fines that will be imposed.

In 2019, Russia re-granted the third Tax Amnesty program starting on May 1st, 2019 (https://www.pwc.ru/en/tax-consulting-services/assets/legislation/tax-flash-report-2019-11-eng.pdf).

NON-RETROACTIVE PRINCIPLES

The basis of law is the core of all legal norms and the basis of thinking of a law (ratio legis) (Rumokoy and Maramis, 2016). The basis of law is generally stated in the law as the basis of law, but it is sometimes implied in one or a combination of several articles. The practicality of a foundation is to provide legal certainty, so that in solving a problem, there should be no doubt to use the foundation as a solution (Ali, et al., 2012). The non-retroactive principle has been identified in Roman law (Corpus Iuris Civis) which governs "*Leges et constitutiones futuris certum est dare formam negotiis, non ad facta praeterita revocari*" (Apeldoorn in Rumokoy and Maramis, 2016). It means "the king's laws and regulations apply to legal events that are done later, and do not apply to past legal events"(Rumokoy and Maramis, 2016).

Longman (1998) states “retroactive or retrospective is having effect on the past as well as on the future or concerned with thinking about the past”. “Retroactive or retrospective has the meaning of receding or having an effect on the past as it does in the future or related to thinking about the past”. From the discussion of non-retroactive principles, then the arrangement of the imposition of tax penalty in the Tax Amnesty Act which can impose penalty on property acquired at any time and see the rules in the Taxation General Provision and Procedures Law that have set the expiration of tax stipulations and penalties, according to researchers in this study, the regulation of the imposition of tax penalty in the Tax Amnesty Act explicitly is a form of law enforcement that is retroactive and contrary to non-retroactive principles.

THEORY OF LAW

For legal theory about taxes, Heru Ratno Hadi and Sudarsono (2019) in their book entitled Tax Disputes (A Thought about Reformulation of Tax Dispute Arrangements in Indonesia) state that "considerations made in tax collection in principle should pay attention to fairness and legality in its implementation”.

"In his book entitled *Wealth of Nation, Adam Smith* provides guidelines in the framework of drafting a tax law, so that it meets the requirements of justice and humanity. A statutory regulation must meet four conditions known as “*The four cannons of Adam Smith* or *The four maxims*” as follows: *Equality and Equity*; *Certainty*; *Convenience of Payment*; *Economic of Collection Efficiency*" (Adam Smith in Negara, 2017).

The following part will discuss the theory of legal certainty. In legality, conceptually contains characteristics that must be fulfilled for a legal certainty, law enforcement, legism and social contract theory, as well as political ideas and power, as described by Michael Jefferson in Michael Jefferson in E. Manullang (2016) below, regarding a number of conditions and consequences in the principle and legality methods, that:

“*laws must not be vague; the legislature must not create offences to cover wrongdoings retrospectively; the judiciary must not create new offences; and perhaps criminal statutes should be strictly construed*”

Based on the previous principles and methods of legality, Michael Jefferson states that for the sake of legal certainty, the law must not be formulated vaguely and must be clear, the legislature is limited in power, so it cannot apply the law retroactively, also the judiciary is limited in its power to create new offenses and make interpretations in criminal law in a limited manner. If the four principles are fulfilled, legal certainty can be achieved. There are two points of view related to legal certainty, namely certainty in the law, and certainty due to law (Swantoro, 2017). “Certainty in law" means that every legal norm in a law must be formulated in clear sentences and no multiple interpretations.

The principle of legal certainty is also known as the legality principle (Ali, et al., 2012). The principle of legality was created by a criminal expert from Germany named *Paul Johan Anslem von Feurbach* (1775-1833) in his book entitled *Lehrburch des penlichen recht* in 1801 (Bambang Purnomo in Hiariej, 2002). The principle of legality was first regulated in American Constitution 1776, then regulated in Article 8 of *Declaration de droits de I’’homme et du citoyen* 1789 (Widayana, 2010) which is in Latin read: *nulla poena sine lege; nulla poena sine crimine; nullum crimen sine poena legali* which is popular with adagium *nullum delictum, nulla peona sine praevia legi poenali*

*(*Bambang Purnomo in Hiariej, 2002*)*. The principle of legality is that no act can be punished, except on the basis of the strength of the criminal provisions according to a predetermined law (Hiariej, 2002). There is an adage "*non obligat lex nisi promulgate*" which means a law is not binding unless it has been enforced in law before the event occurred.

According to Hiariej (2002), the principle of legality in criminal law can be grouped into material criminal law and formal criminal law, so that it has two functions, namely a protective function and an instrumentation function. The function of protecting in criminal law is to protect the people against the unlimited power of government. Meanwhile, the function of the instrumentation of government power is that the government can employ the powers that have been confirmed in law.

The Declaration of Human Rights in Hiariej (2002), in Article 11 is expressly regulated as follows:

"*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial which he has had all the guarantees necessary for his defense. No one shall be had guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed*."

Article 1946 of the Civil Code regulates expiration, which is a means of obtaining something or being freed from the engagement with the passing of time and with conditions determined by law (Subekti & Tjitrosudibio, 2009). Furthermore, there are two types of time passage in the expiration date according to Article 1946 of the Civil Code, namely (Muhammad, 2014):

"Acquisitieve verjaring, which is the passage of time to acquire property rights over an object;

Exticntieve Verjaring, namely the expiration of time, so that it is exempted from an engagement or exempted from prosecution."

The following part will describe the theory of justice. Justice according to Socrates is when a good understanding is created between the government and the people (Gie, 1982). Where the Government has obeyed and practiced the provisions of the law properly, then the leaders of the country will act wisely and provide good role models for their lives. Strictly speaking, justice is created when every member of the community feels that all government officials have carried out their duties properly.

For Plato justice is an absolute matter (Kusumohamidjojo, 2017). The essence of Plato's justice is a justice that is associated with benefit in accordance with goodness, because goodness is the substance of justice (Salim and Nurbani, 2014). As for Plato's opinion as follows:

"Justice has a good and fair relationship which is determined by the statement that the latter becomes useful only if previously used; that states that the notion of justice produces the only value of the idea of justice."

According to Plato, perfect justice in a country will be realized if the country is led by an aristocrat (philosopher), that is, someone who is clever and wise (Ali, 2013). Through a leader who is an aristocrat, justice for society is still created even though the country is lawless. However, if the country is led by non-aristocrats, justice can only be realized if the country is regulated by law.

For Aristotle, legal justice must be understood as equality for everyone and the law binds everyone (Bernad, et al., 2013). Aristotle's formulation of justice is based on the main principles of justice in three essence of natural law, namely *honeste vivera, alterum non laedere, suum quique tribuere* (Live respectfully, do not disturb others, and give to everyone who is due).

Positive law gets the strength of law because it is defined as law, while natural law gets the power of law from the same human nature anywhere and anytime (Soetiksno, 2013). Aristotle also defines law as a set of regulations that bind officials and the people, namely "Law is different from the provisions governing and expressing the form of the constitution, is the role of law to guide the behavior of officials in carrying out their duties and to punish offenders" (Prasetyo and Barkatullah, 2016).

Cicero teaches the concept of "*a true law*" which is adjusted to "*right reason*" (correct reasoning) and in accordance with nature; and those that spread among humanity and are "*immutable*" and "*eternal" (Ali, 2015)*. All laws must be sourced from "*true law*". Cicero also stated that humans are born for justice, law is not based on opinion, but on "*man's very nature*". Cicero stated that if there is a law that is not good, then it is not a law (Atmadja, 2013). To prove that a law is good is if the law is made in accordance with the laws of nature (*nature*).

Conclusion of analysis. From the discussion of legal theory, the researchers conclude:

Tax expiry rights owned by taxpayers under the Taxation General Provision and Procedures Law need a legal protection. The Tax Amnesty Law which can impose tax penalty on past income which is more than 10 years based on the Taxation General Provision and Procedures Law has expired, in which the income has changed its form into assets that have not been reported in the tax amnesty program, surely it is contrary to the legal theory of tax, namely principle of certainty conveyed by Adam Smith.

The principle of legality applies in national law and international law. Moreover, Michael Jefferson has also emphasized that it is not justified to enforce laws retroactively. Furthermore, Article 1946 of the Civil Code has also stipulated that expiration is a means of obtaining something. Therefore, the Tax Amnesty Law which can impose tax penalty on assets obtained from any time without paying attention to the expiration of taxes in the Taxation General Provision and Procedures Law which is still valid is contrary to the theory of legal certainty.

The regulation of Tax Amnesty Law penalty that ignores expiration based on the Taxation General Provision and Procedures Law is surely: Not a good legal practice according to Socrates; Not according to justice which is an absurd element according to Plato; not in accordance with one of the formulations of justice according to Aristotle, where the government should provide expiry rights that taxpayers already have under the Taxation General Provision and Procedures Law; which according to Cicero, a bad law is not a law.

Therefore, according to researchers in this scientific research, the regulation of the imposition of tax penalty in the Tax Amnesty Law on assets obtained at any time, which ignores the tax expiry rights owned by taxpayers under the Taxation General Provision and Procedures Law has created legal uncertainty and philosophically created legal injustice.

Implication for Taxpayer

The regulation of Tax penalty based on the Tax Amnesty Law which can impose tax penalty on assets obtained at any time and ignore the expiration of taxes under the Taxation General Provision and Procedures Law, will have implications for taxpayers who have previously been exempted from tax obligations in the previous tax year because they have expired under the Taxation General Provision and Procedures Law, must bear the burden of tax penalty based on the Tax Amnesty Law. This is surely contrary to the principle of non-retroactivity, legal certainty, and legal justice.

Imposition of Tax Amnesty Penalty that are Just and Lawful

From the previous analysis, the researcher states, that in the tax amnesty program, the United States only collects taxes for the last 6 (six) years that have not been reported, Australia collects for the last 4 (four) years that have not been reported. Indonesia imposes a ransom on assets obtained at any time.

Regulations for the imposition of tax amnesty penalty should still pay attention to the provisions of tax expiration in the Taxation General Provision and Procedures Law; this is to provide legal justice and legal certainty. Legal certainty is very important to gain the trust of the public and investors. Guaranteed tax law certainty will attract investors to choose Indonesia as an investment destination country; beside that, it will also encourage increased voluntary compliance from taxpayers. Legal uncertainty will reduce public and investor confidence in the government. This will be very detrimental to the government in the long term, especially as it can cause investors to avoid Indonesia from its investment destination country.

CONCLUSION

From the previous discussion and analysis, the researchers in this study conclude that:

- The regulation of the imposition of penalty in the Tax Amnesty Law on assets obtained at any time, regardless of the expiry rights held by taxpayers under the Taxation General Provision and Procedures Law, is a form of retroactive imposition of tax penalty. The imposition of tax penalty that is retroactive in nature is contrary to the non-retroactive principle upheld by national and international law. It has created legal uncertainty and philosophically has created legal injustice. Legal uncertainty will be very detrimental to the government in the long term, because it can cause investors to avoid Indonesia as an investment destination country.
- It is necessary to regulate the imposition of tax penalty in the Tax Amnesty Law which is in sync with the Taxation General Provision and Procedures Law.

From those conclusions, the researchers provide suggestions to the government as follows:

- The government needs to respect the tax expiry rights that taxpayers have by recognizing the expiration of tax obligations that have been given by the Taxation General Provision and Procedures Law to taxpayers in order to ensure legal justice and legal certainty; and

- The government needs to increase legal certainty by harmonizing the imposition of tax penalty in the Tax Amnesty Law in the future which is in sync with the Taxation General Provision and Procedures Law.

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CRIMINAL REGULATION URGENCY AND LIABILITY REGULATION OF STATE-OWNED ENTERPRISES FOR LOSSES IN CONTROLLING BUSINESS DECISIONS

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Abstract: *One of the crimes than can be committed by corporates is corruption. This is done to get greater convenience, profit, and benefits. So, it can make the costs and capital efficient for the labor, time, place, and funds. The ultimate goal is the corporates, groups or individuals will bet more income than those without committing the criminal act of corruption. Certainly, this will harm the country, the environment and society. This should not be allowed to happen so that it is appropriate that criminal acts should be given to the corporation that have committed these violations. Article 20 paragraph (1) of Corruption Crime Law states that in the case of criminal act of corruption by or on behalf of a corporation, the charges and convictions can be made against the corporation and/ or its management. Meanwhile, Article 20 Paragraph (2) states that a criminal act of corruption is committed by a corporation if the criminal act is committed by people, either on the basis of a work relationship or on the basis of other relationships, acting within the corporate environment either individually or collectively. This research is legal research, discussing on doctrines and principles in legal science. The main problem examined is the legal settlement and legal sanctions for corporate actions in committing corporate crimes, especially in state-owned enterprises. The purpose of this research is to analyse the laws and regulations on the settlement of criminal cases in the criminal justice system in Indonesia.*
Keywords: *corporate crime, corruption, state-owned enterprises.*

INTRODUCTION

Corruption act in Indonesia recently still becomes one of the causes of bad economy system which occurs systematically and extensively so that it is not only detrimental to the state's financial condition or the country's economy. However, it has also violated economic and social rights to large extent (Kristian and Gunawan, 2015). It is a fact that law enforcement in the context of enforcing criminal acts of corruption that has been

carried out conventionally has experienced many cases. So, special method is needed in the enforcement of criminal acts of corruption, which is usually carried out by a special institution to fight against criminal acts of corruption, namely the Corruption Eradication Commission, as in Article 2 of the Republic of Indonesia's People Consultative Assembly Decree Number VIII / MPR /2021 regarding the Recommendations for Policy Management and Prevention of Corruption, Collusion and Nepotism.

The acts of corruptions in this research focus on the assessment of the criminal acts of corruption which are stated in Law No. 31 year 1999 as a result of being amended into Law No. 20 year 2001 regarding the enforcement of criminal acts of corruption. Then, it is analyzed and related to the Criminal code (KUHP) because the cases studied are cases of criminal acts corruption that have been carried out on the similar level and continuing corruption.

In practice, we recognize two forms of corruption: a. Administrative Corruption, where everything carried out is in accordance with applicable laws / regulations. However, certain individuals enrich themselves, b. Against the rule corruption, which means that the corruption carried out is completely contrary to the law. For example, bribery, misuse of position to enrich oneself or another person or a corporate. During the old era, the problem of corruption was fought with the War Rulers Regulation Number 25 Prt / Perpu / 013 / 1958, announced on April 16, 1958 and broadcasted in state newsletter Number 40 year 1958 (Wijaya, 2008). Furthermore, the state issued three legal products concerning the eradication of corruption acts namely Law Now. 31 / 1999 on Corruption Eradication, Law No. 20/ 2021 on Amendments to Law No. 31 Year 1999 regarding the Eradication of Corruption Crime and Law No. 28 Year 1999 concerning the administration of a country that is clean and free from Corruption, collusion and nepotism. The substances contained include (Erlangga, 2014):

- Enriching oneself / others against the law (Article 2 paragraph (1) of Law No. 31 Year 1999. So, the perpetrator of the criminal act of corruption is any person who is either a civil servant or non-civil servant as well as a corporate that can take the form of a legal entity or association.
- Doing actions that enrich yourself or corporate.
- May be detrimental to the State's finances or the country's economy.
- There is an abuse of authority, opportunity or means (Article 3 of Law Number 31 year 1999).
- Bribing civil servants or state officials (Article 5 of Law Number 20 Year 2011).
- Fraudulent acts (Article 7 of Law No, pr 20 of 2001).
- Embezzlement in office (Article 6 of Law No. 20 of 2001).

Article 20 Paragraph (1) of the Corruption Acts states that in the case of a criminal act of corruption by or on behalf of a corruption, prosecution and criminal conviction can be made against the corporation and / or its management. Meanwhile, Article 20 Paragraph (2) states that a criminal act of corruption is committed by a corporate if the criminal act is committed by people, either on the basis of a work relationship or on the basis of other relationships, acting within the corporate environment either individually or collectively. One of criminal acts that can be committed by corporates is corruption. This is done to get greater convenience, profit and benefit. So, it can make the costs and capital efficient for the labour, time, place, and funds. The ultimate goal is the corporates, groups or individuals, will bet more income than those without committing the criminal act of

corruption. Certainly, this will harm the country, the environment and society. This should not be allowed to happen so that it is appropriate that criminal acts should be given to corporate that have committed these violations. Talking about corporate criminal liability cannot be separated from criminal matters and convictions, because if a criminal act can be accounted for the perpetrator, then the further consequence of it is criminal imposition.

LEGAL MATERIALS AND METHOD

This legal research will discuss on: research on legal principles and norms in the laws and regulations related to corruption and corporates, by using a statute approach, conceptual approach, and comparative approach. This legal research aims at finding solutions to legal issues existing in this research, such as departing from the emptiness of legal norms in providing or seeking the truth to answer formulations. The main problem that will be examined in this research is the urgency of regulating criminalization and legal liability for state-owned enterprises for losses in carrying out business decisions.

RESULTS AND DISCUSSION

The Purpose and Essence of State-Owned enterprises in National Development

State-owned enterprises are an extension of the state's arm in the business sector having vital role in supporting the improvement of Indonesia's economy. As a representative of the state, State-owned enterprises have the responsibility to help the government realize the noble ideals of the establishment of the state, the so-called welfare of the people. Therefore, in running their business, it is not only oriented in looking for profits but also distributing welfare to the community. In accordance with it, Law Number 19 Article 66, the state-owned enterprises can be assigned by the government to carry out public benefit functions, in this case infrastructure.

State-owned enterprises have the meaning as a business entity, where the capital is owned by the government and originates from state assets. This is in accordance with Law no.19 Year 2003. In the economic system, the role of state-owned as an economic actor applies nationally. The purpose of establishing state-owned enterprises is to create community welfare, as well as meet the needs of community in various existing sectors such as agriculture, fisheries, transportation, telecommunications, trade, electricity, and finance to construction. State-owned enterprises are state institution that is directly protected by the government. Therefore, state-owned enterprises have a big role, which is not only for the community welfare but also state revenues. Some functions of state-owned enterprises are:

- State-owned enterprises have a function as a provider of products that have economic value and are not provided by private-owned enterprises;
- State-owned enterprises has a function as an instrument of the Indonesian government in managing and organizing community economic policies;
- State-owned enterprises have a function as business entity that provides services to the community in providing goods and services to meet the needs of many people;
- State-owned enterprises have a function as a pioneer for many economic sectors that are not yet in demand by the private sector;

- State-owned enterprises do not provide high employment opportunities but they can increase state revenues;
- State-owned enterprises assist the development of small cooperative and micro enterprises;
- State-owned enterprises have a function to help increase and encourage community activities in various types of business.
- The establishment of state-owned enterprises is not only aimed at seeking profits but also has social goals as mandated by Article 33 of the 1945 Constitution.

Accountability of State-Owned Enterprises in Corporate Crime

Regarding the responsibility of state-owned enterprises in corporate criminal acts, if the responsible party is the corporate management in the sense of an individual human being, then we will quote Chidir Ali, in his book Legal Entities, the so-called "a legal entity is basically an entity or association that can have rights and committing acts like a human being and having his own wealth, can be sued and sues before a judge." From this definition, a corporate is a legal subject that is an artificial person of a human being who can have legal rights and obligations. What distinguishes it from humans is that corporates as legal subjects, of course, cannot be subject to punishment in the form of as crime that deprives the body of freedom. Given the nature of the corporation as a legal subject in the form of an artificial person Article 5 of Supreme Court Regulation 13/2016 has stipulated that in the event that one or more Corporate Managers stop or death comes; it does not result in the loss of responsibility of the Corporates. Therefore, Article 23 of the Supreme Court Regulation 13/2016 also stipulates that judges can impose crimes against corporates or managers, or corporates and administrators; either alternatively or cumulatively. Corporates are made the subject of criminal law the same as natural humans, nut it should be remembered that not all criminal acts can be committed by corporates and not all criminal sanctions as formulated in Article 10 of the Criminal Code can be imposed on corporates. What may be imposed on the corporates is a criminal fine. In addition to criminal fines, actions can also be taken to restore conditions such as before there was damage by a company. In accordance with development, compensation can also be imposed on corporates as new type of crime. This compensation can be on the form of compensation for the victim. In addition to it, corporates can also be subject to additional penalties, such as in the form of closing all or part of company for a maximum of 1 (one) year as regulated in Article 18 paragraph (1) letter C of Law Number 31 year 1999 concerning Eradication of Corruption Crime.

Subsequently, various special criminal provisions were born, regulating corporates as legal subjects, by formulating various criminal sanctions for corporates, namely some formulating cumulative-alternatives, alternatives and formulating singularly. A corporate as a legal entity cannot be subject to the same responsibilities as an individual person. In theory, corporates can commit any offense but there are limitations. Based on this, corporates cannot be held accountable for all kinds of offenses but there must be restrictions, such as personal offenses which by nature are committed by humans, so they cannot be accounted for the corporation. In relation to this, corporates that commit criminal acts are provided with additional fines and penalties as well as a number of actions. Although corporates can be accounted for personally, there are some exceptions, including:

- In cases which by nature cannot be committed against a corporate, for example bigamy, rape, perjury;
- In cases where the only punishment can be imposed on the corporation, for example, imprisonment or death penalty.
- The complete or partial closure of the company for a certain period of time;
- Revocation of all part of the facilities that have been or can be obtained from the government by the company for a certain period of time;
- Placement of the company under interdiction for a certain time.

Especially regarding witness of closure or termination of company activities, it is necessary to consider the consequences that may arise in relation to the roles of the company or corporate as an employer. Because, if this sanction is imposed on a corporate, the more affected will be the employees or workers of the company itself than the employers or company owners. The Supreme Court issued Supreme Court Regulation No.13 of 2016 concerning Procedures for Handling Crime by Corporates. This regulation was signed (legalized) by the Chief Justice of the Supreme Court M. Hatta Ali on December 21st, 2016 and only promulgated on December 29th, 2016. This regulation serves as a guideline for law enforcement officers and fills legal gaps related to procedures for handling certain crimes committed by corporates and / or their management. So far, certain laws (hereinafter referred to as UU) have placed corporates as legal subjects than can be punished for causing losses to the state and / or society. However, it is minimal to proceed to court because there is no procedural law for investigation, prosecution and court proceedings, especially in formulating indictments for corporate entities. This regulation on the Corporates Criminal Court contains the formulation of criteria for corporate wrongdoing which can be called a criminal act; anyone who can be held responsible for corporate crime; procedures for examination (prosecution) of corporates and or corporate management; procedures for corporate proceedings; types of corporate punishment; decision; and implementation of decisions.

In terms of error criteria, there are several things that need to be considered. First, the corporates gain of benefits from certain crimes or the crime is committed for the benefits of the corporates. Second, corporates allow criminal acts to occur. Third, the corporates do not take preventive steps or prevent bigger impacts and ensure compliance with applicable legal provisions in order to avoid criminal acts. Article 5 of the Corporates Criminal Regulations states that “in the event that one or more Corporate Managers quit, or die, it does not result in loss of liability (criminal) for the corporates.”

This Supreme Court regulation does not only regulate criminal liability by a corporate on the basis of a work relationship or other relationship, but also ensnare corporate and corporate groups in mergers, acquisitions, separation and dissolution processes. However, a corporate that has disbanded after a criminal act cannot be convicted. In contrast, the assets belonging to the corporates (which was dissolved) are suspected of being used to commit crimes and / or constitute the proceeds of crime, so law enforcement is carried out in accordance with examination of corporates and / or their management as suspects in the investigation and prosecution process either individually or collectively after a summons (letter) process is carried out. This summons (letter) contains: name of the corporates; place of domicile; corporate nationality; corporate status in a criminal case (witness / suspect / defendant); time and place of examination; and a summary of the alleged criminal events.

For the handling of a case, the first thing that must be done is the examination of a corporate and / or its management as a suspect in the investigation and proc=section process either alone or jointly after the summoning process is carried out. Items contained in the summons: name of corporate; place of domicile; corporate nationality; corporate status in a criminal case (detention / suspect / defendant); time and place of examination; and a summary of the alleged criminal events. The formulation of the contents of the indictment refers to Law no.8 Year 1991 concerning the Criminal Procedure Code (KUHAP), including the following:

"Name of the corporation, place, date of establishment and / or article of association number / deed of establishment / regulation / document / agreement as well as recent changes, domicile, nationality of corporate, type of corporate, form of activity and representative identity; and an accurate, clear, and complete description of the criminal offense charged by stating the time and place where the crimes was committed."

In its proof system, Supreme Court regulation still refers to the proof system that is in the Criminal Code and special procedural law forms regulated in other laws. This Supreme Court also provides a guidelines for judges in deciding and imposing sentences on corporates or management or both directly, such as to the managements and their cooperatives. On the hand, regarding the abolition of authority to prosecute crimes and carry out crimes against corporates, the elimination of expiration occurs as stipulated in the Criminal Code. As stated in Article 22 the Supreme Court regulation Number 13/2016 states "the authority to prosecute crimes and carry out crimes against the corporates is abolished due to expiration as stipulated in the Criminal Code." So, based on the provisions of the authority to sue above, it remains valid until the case has entered the expiration period of a case.

In Supreme Court Number 13/2016 also regulates the mechanism for restitution or compensation regulated according to the provisions of the applicable laws or through civil suit. This is explained in Article 20 which is clear that "Losses suffered by a victim as a result of a criminal act committed by a corporate can be requested for compensation through a restitution mechanism according to the provisions of the applicable laws or through a civil lawsuit. For your information, there are still laws that regulate corporate criminal liability, but they are minimally processes and decided in court. Due to the existing fact, it proves that all company actions are carried out by the management, but the corporation as a legal entity is also inseparable from its role, so it is important to determine all forms of loss and criminal liability so that it is feasible to carry out completely with the presence of Supreme Court regulation Number 13/2016.

Article 12 Supreme Court regulates the form of indictment which partly refers to Article 143 paragraph (2) of the Criminal Code with adjustments to the contents of the indictment containing: name of the corporation, place, date of establishment and/ or number of articles of association/ deed of establishment/ regulation/ document / agreement as well as recent amendments, domicile, corporate nationality, types of corporate, form of activity business and identity of the representative management. Besides, it contains an accurate, clear, complete, description of the criminal offense charged by stating the time and place where the crime was committed. The evidence system for handling corporate crime still refers to the Criminal Code and procedural law provisions which are specifically regulated in other laws. Like the testimony of the defendant, the statement from the corporation is valid evidence in court. Meanwhile, the imposition of corporate crimes such

as the main crimes in the form of fines and additional crimes are in accordance with the applicable laws for instance the replacement money, compensation and restitution. If they cannot be paid, the assets of the corporation are confiscated and auctioned off by the prosecutor to cover the amount of the criminal fine, substitute money, compensation and / or restitution (civil suit by the victim) which is decided by the court. This fine can be converted into imprisonment proportionally after the management has finished serving the main sentence. To note, there are about 70 laws that ensnare corporate criminal liability but they are minimally processed and decided to court such as crimes of illegal fishing, illegal logging, forest burning, corruption, environmental destruction and money laundering by corporates. This is because the provisions in the Criminal Code itself have not yet determined the technical instruction for drafting and indictment when the legal subject is the perpetrator of a corporate. The urgency of setting up criminalization and legal liability for state-owned enterprises for losses in carrying out business decisions is to provide legal certainty as one of the objectives of establishing law.

Concepts and Models of Regulating Error Element of State-Owned Enterprises (BUMN) in Corruption Criminal Act that Harm State Finances

Corruption criminal act regulates criminal liability for corporates if the corporation and/ or its administrators commit corruption criminal act for the benefit of the corporation (Sjawie, 2015). Stipulation of Article 20 paragraph (1) gives confirmation that if corruption criminal act committed by or those who are corporates, the prosecutor and imposition of criminal charge are done to the administrators, corporation, or administrators and corporation. Admitting corporation to the one of subject of law of corruption criminal act in Law of Eradication of Corruption Criminal Act stating that beside the people as subject of law is natural, corporation or legal agency are also called as subject of law as people that has rights and obligations and responsibility in every act done.

Definition of corporation according to the stipulation of Law of Eradication of Corruption Criminal Act is some people and or wealth that are organized either by legal agency or non legal agency. In contrast, the corporation according to Satjipto Raharjo is the created institution consisting of corpus that is physical structure and admitting element of animus in law that make institution which have personality. Because legal agency is the creation of law, then its winding-up is determined by the law (Rahardjo, 2000). Admitting corporation as the subject of law of corruption criminal act that could get sanction in Law of corruption of criminal act is new development that is not regulated in Criminal Code which until now still adheres to subject of criminal law in general is the people as regulated in the stipulation of Article 59 KUHP. According to the stipulation of Article 20 paragraph (1) Law of Eradication of Corruption Criminal Act it is stated that in corruption criminal act which is done by or upon the name of a corporation, prosecution and imposition of criminal charge could be done to the corporation and or administrator. The stipulation of paragraph (2) states that corruption criminal act is done by corporation if that criminal act is done by many people either based on the working relation or based on other relation, in the environment of corporation either individual or collective. Stipulation of paragraph (3) it is affirmed in term of prosecution to the corporation, then the corporation is represented by the administrator. In addition, paragraph (4) it is declared that administrator who represents corporation as stated in paragraph (3) could be represented by other people. Lastly, paragraph (7) it is stated that principal penalties which could be imposed to the

corporation is only fines, with the stipulation of maximum criminal charges that is added by 1/3 (one per three).

Referring to the stipulation of Article 17 of Law of Eradication of Corruption Criminal Act beside the imposition of criminal charges as the stipulation of Article 2, Article 3, Article 5 and Article 14, defendant could be imposed additional sanction as the stipulation of Article 18 of Law of Eradication of Corruption Criminal Act. In contrast, imposition of additional sanction that is regulated in Article 18 Law of Eradication of Corruption Criminal Act in the form of confiscation of movable assets either tangible or intangible, confiscation of fixed assets obtained from corruption criminal act, payment of compensation, the winding-up of a company or part of company/corporation for a certain time/or revocation of business permits and revocation of all or some of certain permits.

Initially, the only subject that could be accounted for in criminal law is people. Corporate problem as the subject of criminal law could not be separated from the aspect of civil law. In civil law individual is not the only subject of law. It is because there is still subject of law that has rights and could do criminal act such an individual. Such this perspective is different from the Criminal Code that only recognizes individual as subject of law. In the situation of bad national economy as it is today, the public demands in order to eradicate immediately any forms of Corporate as Subject of fraud act such as corruption, colution and nepotism that are getting more vicious. Any forms of leakage and waste of budgets should be avoided and overcome. Therefore, administrator of development should be careful in using the state budget in order to avoid leakage in the form of corruption. Newest effort that is done in the government to eradicte the corruption is by the establishment of Law Number 31 of 1999 on Eradication of Corruption Criminal Act. New development regulated in Law Number 31 of 1999 is the corporates as subject of corruption criminal act that could be imposed sanction.

Imposing criminal sanction/act to the corporation as Subject of corporate criminal act in the case of corruption is quite reasonable and in accordance with some recommendation of congress of UN on The Prevention of rime and the Treatment of -fenders, the recommendations are explained in the following:

- In the recommendation of 8th Congress of UN/ 1990 it is affirmed, that there should be an act to “involved companies in the case of corruption”.
- In the document of 9th Congress of UN /1995 in Cairo, it is explained as follows: “Corporate, criminal association or individu probably be involved in bribing officials for any reasons that not all are economical. However, in many cases there is still bribery used to reach economical profit. The purpose is that to persuade the officials to give any forms of special treatment such as:
- Giving contract;
- Speeding up/expediting permit/license;
- making exception – exception or ignoring the violation – violation of regulation.

As the development existed in that community, legal agency could also be convicted by determination as an act and in certain law the penalty that is given is in the form of wealth. Even in Article 59 and 169 Criminal Code there is a stipulation that determines an association as subject of law that could be imposed penalties, but of that Article is apparently aimed at the people, who is the ones who are involved in the association aimed to be convicted.

In its arrangement of Law No.31 of 1999 that is changed by Law No.20 of 2001 is used in the formulation of element of Article as subject of law that "every people" (there is no word of corporate in it) as regulated in Article 2 paragraph (1): "every people who violates the law that is enriching itself or other people or a corporate that could harm state finance or state economy, imposed by life sentence or imprisonment for at least 4 (four) years and 20 (twenty) years and fines at least Rp. 200.000.000,00 (two hundred million rupiahs) and maximally Rp. 1.000.000.000,00 (one billion rupiahs)", but in Article 1 number 3 it is stated that what is meant by every people is the individual or corporate". The definition of "corporate" is explained in Article 1 number 1 that association of people and or wealth that are organized appropriately that is legal agency or not legal agency.

Becoming subject of law "every people" as formulated in Law Number 31 of 1999 which has changed by Law Number 20 of 2001 not only human or individual but also including corporate. Mentioning the corporation as subject of law of corruption criminal act as subject of law of corruption criminal act and treated equally with the other subject of law, that people (naturally) will give hopes and optimism for the attempt of investigation of corruption completely and effective. By believing that the corporate is as the subject of criminal act, it means that corporation either is as legal agency or non legal agency is considered to enable for criminal act and could be accounted for in criminal law (corporate criminal responsibility). The implementation of liability of corporation, the sanction or law that could be imposed to the corporation according to the guidance stated in Article 25 paragraph (1) Perma No. 13 of 2016 is the principal penalty and/or additional penalty. Principal penalty that could be imposed to the Corporate is fines. In contrast, the imposed additional penalty for the Corporation as regulated in other laws and regulations, namely Article 10 KUHP and stipulation of type of other sentence, which are spread in other Law as lex specialis from Criminal Code as legi generali.

Imposition of criminal charge to the corporation should consider some criteria, if imposition of criminal charge to the corporation is not fulfilled, it is better to use civil sanction that is used because if it is applied carelessly it will cause innocent victim for example affecting the manpowers, shareholders, working partner and other parties (Kristian, 2018). Criteria of imposition of criminal charge to the corporation that commit criminal act is level of loss to the public, level of involvement of board of corporation manager, the duration of violation, the frequence of violation done by the corporation, evidence that is aimed to do the violtion, evidence of racketeering in the case of bribery, level of public knowledge on negative things caused by news of media, jurisprudence, history of serious violation that is ever done by corporation, the possibility of prevention that could be done, and partnership level is shown by the corporation.

In term of imposition of criminal charge to the corporation that commit corruption criminal act, since the enactment of Law Number 31 of 1999 as amended by Law Number 20 of 2001 on Amendment of Law Number 31 of 1999 on Eradication of Corruption Criminal Act, Commision of Eradication of Corruption Criminal Act as it is today only enable to make one corporation for doing prosecution in the court. The prosecution of corporation beside the manager to the court is not separated from the establishment of Supreme Court Regulation Number 13 of 2016 on Procedures for Handling the Case of Corporation Criminal Act as procedure of law because in Law of Eradication of Corruption Criminal Act it does not regulate the application of its procedure of law completely. In Supreme Court Regulation Article 25 it is stated that could be imposed by the judge to the

corporation is principal penalties and/or additional penalties by referring to the laws and regulations.

CONCLUSION

Urgency of criminal regulation and responsibility of law of State-owned Enterprises for this financial loss in making a business decision is to give certainty of law as one of purposes of the arrangement of law. Certainty of law could be achieved by arranging the new regulation of law especially regarding the technical guidelines of arranging indictment letter when subject of law of perpetrator is the corporation. Arranging this new regulation of law beside as the reference in arranging indictment letter is also aimed to fill existing vacum of law related to the indictment letter.

Imposition of criminal sanction to the corporation that commit criminal crime of corruption, since Law Number 31 of 1999 is enacted as it is has changed by Law Number 20 of 2001 on Amendment of Law Number 31 of 1999 on Eradication of Corruption Criminal Act, Commission of Eradication of Corruption Criminal Act as it is today only makes a corporation to get the prosecution in the court. The prosecuted corporation beside the administrator to the court could not be separated from the established Supreme Court Regulation Number 13 of 2016 on Procedures for Handling the Case of Corporation Crimes as procedures of law because in Law of Eradication of Corruption Criminal Act it is not regulated completely on the application of its procedure of law. In Supreme Court Regulation Article 25 it is affirmed that could be imposed by the judge to the corporation is principal penalties and/or additional penalties by referring to the other applied laws and regulations in Indonesia.

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THE COMPLETION OF MINOR OFFENCES BY APPLYING RESTORATIVE JUSTICE

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Abstract: *The settlement of minor offences can be pursued by penal mediation called restorative justice approach. Restorative Justice focuses on the direct participation of perpetrators, victims and the community by interpreting criminal acts as essentially attacks on individuals and communities as well as public relations. Justice is interpreted as the process of finding solutions to problems that occur on a minor criminal case with the involvement of victims, communities and perpetrators to be important in efforts to improve, reconcile and guarantee the continuity of the improvement efforts. In handling criminal cases, penal mediation prioritizes the interests of the perpetrators of crimes and at the same time the interests of victims, so that a win-win solution is achieved that benefits the perpetrators of crimes and their victims. In mediation penal victims are met directly with the perpetrators of crimes and can bring charges so that the peace of the parties is produced. Through mediation penal case handling process is done transparently. This research is normative juridical law research intended to review the settlement arrangements of minor crimes by applying restorative justice.*
Keywords: *minor offences, penal mediation, restorative justice.*

INTRODUCTION

Criminal mediation according to Martin Wright in Groenhuijsen (1999) is "a process in which victim(s) and offender(s) communicate with the help of an impartial third party, either directly (face-to-face) or indirectly via the third party, enabling victim(s) to express their needs and feelings and offender(s) to accept and act on their responsibilities." Criminal mediation in the Explanatory Memorandum to the Council of Europe Recommendation on Mediation in Penal Matters as stated in Mediation in Penal Matters, Recommendation No. R (99) 19 adopted by the Committee of Ministers of the Council of Erope on September 1999, define criminal mediation as a process in which victims and perpetrators of crimes are allowed voluntarily, to actively participate in the resolution of

their problems resulting from criminal acts committed by perpetrators of crimes involving third parties or mediators.

Criminal mediation has been of widespread concern as in the recommendations presented by the United Nations Congress on The Prevention of Crime And The Tretment of Offenders and the International conference, supporting documents of the 9th United Nations Congress of the Year 1995 relating to the management of criminal justice. Member states of the United Nations need to consider privatizing some law enforcement and justice functions and alternative dispute resolutions. This advice is put forward to address the problem of overload or the accumulation of cases in court.

The Vienna Declaration produced by the 10th United Nations Congress in 2000 specifically on protection efforts for victims of crime, resulting in the regulation of mediation procedures and restorative justice. Ecosoc received resolution 2002/12 on the Basic Principles on the Use Restorative Justice Programmes in Criminal Matters on 24 July 2002, which also covers mediation issues (Hadisuprapto, 2007). The Committee of Ministers of The Council of Europe, received Recommendation No. R (99) 19 on Mediation in Penal Matters, on 15 September 1999 which was subsequently issued by The EU Council Framework Decision on the position of victims in criminal proceedings, EU 2001/220/JBZ, which also regulates mediation, on 15 March 2001. The International Penal Reform Conference held at Royal Holloway Collage, University of London, on 13-17 April 1999 presented one of the keys to the new agenda of criminal law reform is the need to enrich the formal justice system with an informal system or mechanism in dispute resolution in accordance with Human Rights standards.

In general, in the life of society, sometimes between individuals there is conflict, which causes harm both to one individual and to the two individuals in conflict. There are several forms of conflict. There are individual conflicts known in psychological science because what occurs is psychiatric conflict, there are also sociological conflicts such as conflict groups, conflict management and conflict systems, there are also conflicts with legal nuances. Conflicts with legal nuances can be distinguished into conflicts of a civil nature, state administration, state, and criminal.

In a criminal case, a conflict occurs between the perpetrator of the crime and the victim of the crime. Conflict in criminal cases because the perpetrators of crimes have committed deviant acts (Sudarto, 1986), that is contrary to the laws and regulations (Reksodiputro, 1997), resulting in a victim of the crime being harmed or may make it a cause was not pleased of victims of crime or family victims of crime.

Mediation as one form of restorative justice should be suitable to be applied in Indonesia because the culture of Indonesian law i.e. customary law strongly emphasized that the handling of the conflict (civil, criminal) directed at peace and in harmony with the power of the value of the morality of Pancasila which emphasizes the principle of deliberation and consensus. Minor offences are very appropriate settlement through mediation, low cost, fast, simple and can determine for themselves the best form of settlement between the parties.

The dimension of local wisdom of customary law based on the nature of cosmic, magical and religious thought is correlated with the sociological aspect of the perspective and culture of Indonesian society. In social practice in Indonesian society, penal mediation institutions have long been known and have become a tradition among others in the People of Papua, Aceh, Bali, West Sumatra and Lampung customary law. In Papuan society, for

example, it is known as "stone burning culture", as a symbol of local culture, which is used to resolve disputes or cases, including criminal cases, through peaceful efforts to maintain social harmony. Thus, criminal proceedings against perpetrators of crimes by the state apparatus are considered no longer necessary, because it is considered to damage the social harmony that has been achieved. In addition, in nanggroe Aceh Darussalam community as law No. 11 of 2006 on Aceh Government is applied and known for the settlement of cases done first through gampong or peaceful justice. In addition, in Qanun Aceh Number 9 Year 2008 dated December 30, 2008 concerning the Development of Indigenous Life and Customs especially Article 13 determines, the settlement of disputes / disputes of customs and customs is resolved gradually", then it is also mentioned, that "law enforcement officials provide an opportunity for disputes to be resolved first in custom or other names". Similarly, in Bali, through pakraman traditional village applied the existence of awig-awig which is another dimension identical to the settlement of cases outside the court through penal mediation (Mulyadi, 2015).

In the context of criminal procedures, the application of mediation is related to the principle of restorative justice in criminal matters. Referring to ECOSOC Resolution 2002/12 on "Basic principles on the use of restorative justice programs in criminal matters", the term restorative justice refers to two aspects, namely restorative process and restorative outcomes. Restorative justice can be used at any stage of the criminal justice system and is subject to national law. The outcome of an agreement arising from restorative justice must be, where appropriate, legally supervised or incorporated into judicial decisions or judgments. If that happens, the result must have the same status as other court decisions or decisions and should prevent prosecution with respect to the same facts. If no agreement is reached between the parties, the case should be referred back to the established criminal justice process and a decision on how to proceed should be taken without delay.

RESEARCH METHOD

This research was conducted using normative juridical approach. The approaches used in this legal research are: 1) Statute approach; 2) Historical approach; 3) Comparative approach Marzuki, 2007). In this statute approach, the law is seen as a system that has the following characteristics: a. Comprehensive means that the legal norms contained there are logically related to each other; B. All inclusive that the set of legal norms is sufficiently able to accommodate existing legal problems so that there will be no shortage of laws; c. Systematic that in addition to linking with each other, the legal norms are also infiltrated hierarchically and systematically (Ibrahim, 2006). Historical approach is used considering that in indigenous peoples the law has been regulated for a long time and has even been regulated since before the time of the Dutch East Indies. Comparative approach is used to discuss the concept of penal mediation in other countries, as well as the implementation of penal mediation in the criminal justice system in other countries.

RESULTS AND DISCUSSION

Restorative Justice Theory

The lack of criminal settlement through repressive approaches as implemented by the Criminal Justice System, has given birth to Retributif justice, which is oriented towards

retaliation in the form of criminalization and imprisonment of perpetrators. Ironic in the current Criminal Justice System, although the perpetrators have already served narnun sentences have not provided satisfaction for the victims. Against the perpetrator, his presence has not been able to be integrated or glued into his social environment, thus causing a prolonged sense of resentment, and can give rise to new criminal behavior. This is because the settlement has not been reached completely between the perpetrator and the victim and the environment, because they (perpetrators and victims) are not involved in the decision-making process. In fact, the settlement of a case must contribute justice to those who litigate (Kartayasa, 2012). Mudzakir (2001) considers that the criminal law and the Criminal Justice System do not provide justice for the community because the justice that is enforced is still retaliation (Retributif). The concept of justice in criminal policy in the future must shift from Retributive justice to Restorative justice.

Looking at the development of criminalization theory that initially focused on the position of the perpetrator, continued to an important role for the victim. In the development of criminalization thinking was born a new Philosophy of Criminalization oriented towards the settlement of criminal cases that benefit all parties both victims, perpetrators and society. In resolving a criminal case it is not fair to solve a criminal problem only considering one of the interests, both the perpetrator and the victim. Therefore, a theory of criminalization that represents all aspects in the settlement of a case both victims, perpetrators and society therefore required a combination of one theory and another theory. The same thing was also expressed by Muladi in Zulfa (2011) who stated that the problem of criminalization becomes very complex as a result of efforts to pay attention to factors related to human rights, as well as make criminal is operational and functional. Therefore, a multidimensional approach is needed that is fundamental to the impact of criminalization, both concerning individual impacts and the necessity to choose integrative theories about the purpose of criminalization that can affect its function in order to overcome the damage caused by a criminal act.

Restorative Justice is a new legal philosophy that is a combination of existing criminalization theories. Restorative Justice is a solution-oriented one that focuses attention on perpetrators, victims, and the community. Here Restorative justice contains the value of classic criminalization theory focused on victim recovery efforts contained in the theory of deterrence, rehabilitation, resocialization. In addition to focusing on the recovery of perpetrators, restorative justice also pays attention to the interests of victims (restitution theory, compensation, and reparation) and society (Incapacitation).

Restorative Justice as the concept of criminalization is not only limited to the provisions of criminal law (formal and material). Restorative Justice should also be observed in terms of criminology and correctional systems (Manan, 2008). Restorative Justice contains 2 (two) meanings, namely (Walgraye, 2004):

- Understanding justice in an ethical perspective, i.e. referring to the concept of moral balance of truth and error, the advantages and burdens of the parties. In Retributif justice, this balance is actualized in the form of suffering inflicted on the perpetrator as retaliation while in Restorative justice, the balance is realized by efforts to repair through a number of compensation or other compensation in an effort to heal or repair the losses incurred by the crime committed. The purpose of Restorative justice is to encourage the creation of a fair trial and encourage the parties involved in it.

- The understanding of justice in a juridical perspective, namely legal justice is usually aligned with legal guarantees or certainty. Restorative Justice in its implementation must still respect the applicable law. Including it is the result of the existing process and its implementation. The approach to justice cannot be implemented as long as it is contrary to the prevailing legal system and laws and regulations. This becomes important because the legitimacy of the results of the process and the guarantee of its implementation will depend heavily on a rule that becomes the basis of the existence of guarantees and legal certainty. Therefore Restorative justice must be concentrated in the rule of law and integrated in the Criminal Justice System when it will be implemented.

Restorative justice can be used at any stage of the criminal justice system and is subject to national law. The outcome of an agreement arising from restorative justice must be, where appropriate, legally supervised or incorporated into judicial decisions or judgments. If that happens, the result must have the same status as other court decisions or decisions and should prevent prosecution with respect to the same facts. If no agreement is reached between the parties, the case should be referred back to the established criminal justice process and a decision on how to proceed should be taken without delay.

According to the description above, it is clear that mediation is used in criminal matters related to the principle of restorative justice. In the context of the Indonesian criminal justice system, there are several regulations that apply mediation on criminal matters or criminal mediation. The regulations are:

- National Police Letter No.B / 3022 / XXI / 2009 / SDEOPS on Case Handling through Alternative Dispute Resolution (ADR). The letter states that the pattern of settlement of social disputes through ADR or non-litigation among others by agreement, especially in criminal cases with very little damage / loss.
- Deliberation in the form of a minor crime or an offence punishable by a fine. Subject to article 82 of the Criminal Code, the authority to impose penalties will be removed when the defendant pays the maximum fine for related cases.
- Crimes by children under 8 years old. Article 5 of the Children's Court Act No. 3/1997 regulates that for children under the age of 8, the police/prosecutor may hand the child over to his parents.
- The Human Rights Court Act 1999 stipulates that the Human Rights Commission has the authority to conduct mediation procedures in cases of human rights violations.

The criminal mediation regulation indicates that mediation procedures can be applied as an Alternative Dispute Resolution (ADR) in some criminal cases. Mediation procedures are used to apply restorative justice with the aim of reaching an agreement so as to meet the individual and collective needs and responsibilities of the parties and achieve the reintegration of victims and perpetrators.

Criminal Law Policy Theory

The policy of tackling crime or can also be called criminal politics has the ultimate goal or main goal that is "the protection of society to achieve the welfare of the community". The criminal policy itself is part of the law enforcement policy. Law enforcement policy is part of social policy and also included in legislative policy. Criminal politics is also essentially an integral part of social policy, namely policies or efforts to

achieve social welfare (Arief, 2008). Efforts to combat crime can also be interpreted as criminal politics as the rational arrangement or preparation of efforts to control crimes by the community and inseparable from the broader policy, namely social policy (Arief, 1996).

Tackling crime is eliminating the causative factors or conditions that cause crime. Crime prevention or commonly referred to as political criminal can cover a considerable scope. According to Sudarto (1986) there are several definitions of political criminal or criminal policy:

- In a narrow sense is the whole principle and method that becomes the basis and reaction to violations of the law in the form of criminal.
- In a broad sense is the overall functioning of the law enforcement apparatus, including the workings of the courts and police.
- In the broadest sense is the overall policy, carried out through legislation and official bodies, which aims to uphold the central norms of society.

The definition of criminal politics according to Sudarto is a rational effort of the community in tackling crime. According to G. P. Hoefnagels in Arief (2008), efforts to combat crime can be achieved by:

- Application of criminal law application;
- Prevention without punishment;
- Influencing views of society on crime and punishment.

The crime prevention that has been disclosed by G.P Hoefnagels can be broadly grouped into two parts, namely penal crime prevention and non-penal crime prevention. Penal policy is a form of crime prevention that emphasizes on repressive actions after the occurrence of a criminal act, while non penal policy emphasizes preventive measures before the occurrence of a criminal act.

According to the political view of non-penal crime policy is the most strategic crime prevention policy. Because it is preventive before the occurrence of criminal acts. Non penal means is to handle and eliminate conducive factors that cause a criminal act.

Considering that efforts to combat crime through non-penal lines are more preventive measures for the occurrence of crime, the main goal is to deal with factors conducive to the cause of crime. Conducive factors include, among others, centered on social problems or conditions that directly or indirectly can cause crime. Thus, viewed from a macro and global criminal political point of view, nonpenal efforts occupy the key and strategic position of the overall criminal political effort.

Settlement of Minor Offences with Restorative Justice

Settlement through restorative justice in a case, especially minor crimes can be done in 3 (three) ways as follows:

- Restorative Justice in the Context of Investigation

The police are the gatekeepers of the criminal justice system. As Donald Black put it, his role as an investigator and criminal investigator, puts the police in touch with most ordinary or common crimes. Most police officers work reactively rather than proactively, relying heavily on citizens to complain or report suspected crimes (Anleu, 2010). With sufficient evidence, based on the criminal proceedings law (KUHAP), the police as investigators delegated the case to the Prosecutor's Office for prosecution. An important question in this case, is is it possible for the police as investigators to implement restorative

justice processes? This is primarily related to the investigator's authority to seek information, make arrests and other necessary actions, detain or stop investigations. As stipulated in Article 7 paragraph (1) of the Criminal Code (Law No. 8 of 1981 concerning the Criminal Code) jo. Polri Law (Law Number 2 Year 2002 concerning the National Police of the Republic of Indonesia), the investigator's authority includes :

- receive reports or complaints about criminal acts;
- perform the first action at the scene;
- to stop the suspect and check the suspect's id;
- making arrests, arrests, searches and seizures;
- conducting examination and confiscation of letters;
- take fingerprints and photograph someone;
- call someone to be heard and examined as a suspect or witness;
- bring in the necessary experts in relation to the examination of the case;
- conducting a halt to the investigation;

Take other actions under responsible law.

As stated above, in normative-positivistic way of thinking, in Indonesia there is no specific legislation or special provisions governing restorative justice in the investigation process, such as juvenile delinquency, as in the country mentioned above.

The change in the investigative model from merely punitive to restorative (the recovery of perpetrators and victims) is more than just a technique, but a culture of investigation. Therefore, it requires a process for adaptation, which must be done. For example, a scheme involving victims' participation scheme in the process of investigation or investigation is not easy because it demands a change from the usual patterns of "closed" to more "open". Victims' participation must be defined, giving restorative care, especially the recovery and rehabilitation of victims.

Restorative Justice in the Context of Prosecution

Prosecution as a subsystem of the criminal justice system, has a strategic position also in realizing the concept of restorative justice. In general, restorative justice is related to each stage of the implementation of the prosecutor's authority to carry out detention, pre-prosecution, preparation of indictments and criminal charges, as well as legal efforts. The most extreme condition of the role that can be played by the prosecutor in the implementation of restorative justice, namely diverting (to divert) the prosecution to reach a settlement of the case out of court in certain cases. The diversion of prosecution itself has become a broad trend in criminal justice reform in the criminal justice system in various countries. Diversions can be conditional discharge, simplified procedure, and decriminalization of certain conduct. These matters are not explicitly regulated in the Criminal Code, except for the termination of prosecution.

The implementation of restorative justice certainly requires the creativity of prosecutors to develop restorative programs, so as to minimize the resolution of cases in court. In that context, prosecutors are required to use or build problem-oriented approaches or strategies. Prosecutors have so far tended to continue the settlement of cases through formal criminal proceedings to obtain court rulings of permanent legal force rather than resolve with restorative models.

With restorative justice, such traditional patterns should be seen as alternatives to solving social problems, which arise as crimes or crimes that come into contact with the interests of the victim, his family or the affected community. So, when the judicial process in the frame of prosecution, can not meet the interests of victims, families and communities affected by the crime, then creativity towards the application of the restorative justice model becomes inevitability, although from the telescope of criminal proceedings law has not obtained justification.

As quoted by Luhut M.P. Pangaribuan, in Scotland the prosecution can end with "prosecutor fine", i.e. "the victim and the person responsible for the crime are brought together and, if the mediation is successful, the public prosecutor's office can decide not to pursue prosecution". Even then expanded with the use of mediation. Similarly, in France, since 1993, chaterine Elliot and Catherine Vernon have said that "public prosecutors are often in practice seeking to apply intermediatery solutions." The reason used, as Davies, Croall and Tyrer put it, is "the role of prosecutor is not to seek a conviction at all costs: they should prosecute not persecute (Pangaribuan, 2009)."

In addition to the traditional issue of the criminal justice system; institutional obstacles of prosecutors become variables of success or failure of restorative justice implementation at the level of prosecution when as stated by Yudi Kristiana (2009) that the implementation of the duties and authorities of the prosecutor is carried out with a bureaucratic, centralistic approach and the command system and hierarchical accountability. The decision of the head of the prosecutor as a form of control of the prosecution stage, at the level of bureaucracy that has a long distance with the reality of the case can distort the resolution of the case in the context of restorative justice, such as the implementation or diversion of prosecution in cases of child delinccilence or domestic violence. Especially when the diversion criteria is not specified in the legislation or prosecutorial policy in general. Therefore, the change from within through the attorney general's policy becomes an important factor in the functionalization of restorative justice, until the Criminal Proceedings Act (KUHAP) provides an explicit basis.

Restorative Justice in the Context of Examination of Court Hearings

Examination of court hearings in criminal cases in Indonesia based on the Criminal Code of Law (KUHAP) or special criminal proceedings is not designed to resolve cases interpersonally. The design built in the criminal justice system in Indonesia, namely the court serves to determine whether the criminal law has been violated and if violated, then the perpetrator is sentenced; or if it is not violated, then the defendant is released or released from all charges. The role of such traditional courts is clearly different, even at the opposite of the concept of restorative justice which intends to restore balance in social relations in addition to the outcome of the judicial process, namely mutually acceptable compromises between victims, society and perpetrators of crimes or crimes. In other words, traditionally "adjudicative", restorative concepts offer a "negotiation" model. On that basis, the question that needs to be asked, namely whether the role of courts and judges in developing and implementing the initiation of restorative justice? Before discussing the role of the judge, it takes a change into the paradigm that the criminal procedural law that governs examination procedures at the court level, can be kept for the benefit of restorative justice. This paradigm clearly shows the exemption from the criminal proceedings law that has been the limit of examination of court hearings.

Restorative justice, which adheres to different principles from court hearings, is the clearest issue at this level. In the context of the Indonesian criminal justice system, the provisions on "openness" are very firmly and clearly regulated in the Criminal Code of Law (KUHAP), which is based on the principle of "examination of open court hearings to the public". Meanwhile, the conference, meeting model of restorative justice is usually arranged privately, so the issue is how judges and legal advisers judge that the interests of each party are respected.

More broadly, this relates to the ability of judges to design a model of meeting between the parties in a forum that is not "examination of court hearings for criminal cases. In the Indonesian context, it is also related to the activities that judges may be able to do to design a model of meeting outside the regularity as stipulated in the Criminal Code of Law (KUHAP). Indonesia's experience of mediation integrated with court connected mediation in civil cases has not yet shown satisfactory results. Therefore; the introduction of restorative justice at the court level without the basis of clear legal criteria is certainly an issue itself in addition to the main issues above. The restorative justice model at the level of court examination essentially gives the parties the opportunity to resolve through harmonious "conference" models for victims, perpetrators and society. Thus, judges are required to use strategies or manage the settlement of criminal cases by selecting and offering an appropriate alternative model.

The settlement of criminal cases using repressive approaches as implemented in the criminal justice system, has given birth to retributive justice, which is oriented towards retaliation in the form of criminalization and imprisonment. In its development, there is a discourse on the orientation of criminalization that accuses the victim as an important part of the purpose of criminalization. Thus offered a criminal case resolution system that is oriented to benefit all parties, namely Restorative justice. In the concept of restorative justice contained the concept of rehabilitation, socialization, restitution, reparation, and compensation in resolving a criminal case (Zulfa, 2011).

The need for restorative justice in efforts to renew criminalization is very important. According to Adrianus Meliala, this is because the current criminalization system brings further problems for the families of criminals. Criminalization of perpetrators does not relieve or heal the victim, the formal process of criminal justice that takes a long time, expensive, and uncertain, especially the community as a continuation of criminalization also does not make a meaningful contribution to the future for the inmate and his relationship with the victim.

In some developed countries restorative justice is not just a discourse by criminal law academics or criminology. In North America, Australia, and some countries in Europe restorative justice has been applied in the conventional stages of criminal justice process, starting from the stage of investigation, prosecution, adjudication and execution stage (Wahid, 2009).

CONCLUSION

Restorative Justice has brought new views in the criminal law and criminal justice system:

- Justice in criminal law is oriented to the interests or suffering of victims and the accountability of perpetrators of crimes against the actions and their consequences on the victim.
- crimes or violations of criminal law are in violation of the public interest and the interests of the victim are a major part of this public interest.
- the victim is the one who is harmed by the crime, especially the direct victim, the community, the state and indeed the perpetrator himself.
- implementation of criminal justice aimed at resolving conflicts.
- and the type of criminal to be inflicted on the perpetrator is part of the conflict resolution by emphasizing the responsibility of the perpetrator for the act and its consequences.
- victims, communities, countries and perpetrators in the criminal justice process play an active role.

Thus, restorative criminalization is a new way to look at criminal justice that focuses on healing wounds suffered and relationships instead of punishing perpetrators. The purpose of the restorative model in the criminal justice system is comprehensive justice by paying attention to all interested parties, namely victims, perpetrators of crimes, society and the state. The purpose of criminalization is to pay greater attention to the interests of all parties, because the occurrence of crimes not only harm and bring repercussions to the victims alone, but also society, the state, even the perpetrators of the crime itself.

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LEGAL IMPLICATIONS OF THE PEOPLE'S CONSULTATIVE ASSEMBLY PROVISIONS IN THE HIERARCHY OF LEGISLATION REGULATORY INDONESIA

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Abstract: *The People's Consultative Assembly (MPR) is a representative institution which is one of the highest state institutions in the Indonesian constitutional system. MPR Decrees are MPR Decrees to determine the exercise of MPR powers, namely to determine policies on State Policy Guidelines (GBHN). The MPR decree is one of the types of laws and regulations in force in Indonesia. The existence of the MPR Decree in the hierarchy of laws and regulations in force in Indonesia almost always experiences dynamics and ambivalence. Whether it is due to changes in the Indonesian constitutional system, as well as the development of knowledge and knowledge regarding the legislation itself. This raises several problems, both physiologically, juridical and theoretically. The purpose of this study was to determine the legal implications of the existence of MPR decrees in the hierarchy of laws and regulations in Indonesia. This research is a normative juridical research with a statutory approach, a historical approach, a conceptual approach, and a philosophical approach. The legal materials used are primary, secondary, and tertiary law materials with perspective analysis techniques with deductive-inductive reasoning. The results showed that the re-entry of the MPR Decree in Law no.12 of 2011 as a type of Legislation and its hierarchy is placed after the 1945 Constitution as regulated in MPR Decree No. III/MPR/2000, making the implications of the MPR Decree very large and significant. MPR decrees have again become a source of formal and material law.*
Keywords: *MPR, MPR Decree, Legal Implications, Legislation, Indonesia.*

INTRODUCTION

In the framework of developing national law, the formation of laws and regulations is one of the important requirements (Ministry of Law and Human Rights, 2019). According to Law Number 12 Year 2011 concerning the Formation of Legislative Regulations (hereinafter referred to as Law 12/2011), the Decrees issued by the People's Consultative Assembly (hereinafter referred to as “MPR”) are known as MPR Decrees (hereinafter referred to as “Tap MPR ”) is one of the laws and regulations in force in Indonesia. The position of the MPR Decree in the hierarchy of laws and regulations cannot be separated from the position and authority of the MPR in the constitutional system in Indonesia.

Historically, the Indonesian constitution has never explicitly stipulated or stated a MPR Decree as a type of statutory regulation. However, in essence, the existence of the MPR Decree is based on 2 (two) things, namely (Handoyo, 2008): the interpretation of Article 3 paragraph (1) of the 1945 Constitution and the convention of constitutions which

have been practiced since around 1960. The 1945 Constitution also does not regulate the hierarchy or order of the laws and regulations in force in Indonesia. Therefore, since the New Order era, Indonesia has begun to discipline its laws and regulations in an order through MPR/S Decree Number XX/MPRS/1966 concerning the Memorandum of the Mutual Cooperation Council (DPRGR) regarding the Sources of Order of Law and Order Laws and regulations. In the MPR/S Decree Number XX/MPRS/1966, the forms of legislation in force in Indonesia include the 1945 Constitution, the MPR Decree, Laws (UU)/Government Regulations in Lieu of Laws (Perpu), Government Regulations, Presidential Decrees, and other implementing regulations, such as Ministerial Regulations, Ministerial Instruction, and others.

In practice, the order based on the MPR/S Decree Number XX/MPRS/1966 actually created confusion, which led to criticism from some experts in constitutional law. One of them is Mahfud MD (2010) who argues that the placement of the MPR Decree as a statutory regulation in second place, right under the 1945 Constitution, is actually just an interpretation of the MPRS, because the 1945 Constitution itself does not state that the MPR Decree must contain regulations (regeling). And in the form of statutory regulations (Huda, 2005). Continuing during the reform period, the MPR succeeded in compiling a new legal order through MPR Decree No. III/MPR/2000 concerning Legal Sources and Order of Legislation. When you look at the material contained in this MPR Decree, it seems as if it aims to limit the power of the President. Unfortunately, the desire to limit executive power was carried out excessively and was counterproductive, resulting in the enactment of MPR Decree No. III/MPR/2000 is not correct.

Judging from the theory of the level of norms, the MPR Decree should not be enforceable as a statutory regulation with a higher level than the Law, instead it should be given legitimacy or be recognized based on a lower level Law. This proves that the re-enactment of the MPR Decree through the Act, not only creates a dilemma in the practice of constitutional law in Indonesia, but also violates scientific theory about legislation itself.

Table 1. Comparison of the Hierarchy of Legislation

MPR/S Decree No. XX/MPRS/1966	**MPR Decree No. III/MPR/2000**	**Law 10/2004**	**Law 12/2011**
The 1945 Constitution; MPR Decree; Law/Perpu; PP; Presidential Decree; Other implementing regulations, such as Ministerial Regulations, Ministerial Instruction, and others.	The 1945 Constitution; MPR Decree; Law Perpu; PP; Presidential Decree; Regional Regulation.	The 1945 Constitution; Law/Perpu; PP; Presidential Decree; Regional Regulation, such Provincial regulations are made by the Provincial Regional Representative Council (DPRD) together with the Governor, Village regulations/regulations at the same level, are made by the village representative body.	The 1945 Constitution; MPR Decree; Law/Perpu; PP; Presidential Decree; Provincial regulations; and distrct and city regional regulations.

Source: compiled by the author.

The re-insertion of the MPR Decree in the order of laws and regulations according to Law 12/2011 raises problems in juridical, theoretical, and sociological aspects which

ultimately result in legal uncertainty. This uncertainty indicates a philosophical problem in the epistemological aspect which indicates the absence of standard standards in the formation of a good legal product. This of course has implications for the vulnerability of protection of human rights which may be violated due to the enactment of a legal product. There is not even a single applicable statutory regulation, including Law 12/2011, which contains a mechanism for examining the MPR Decree against the 1945 Constitution of the Republic of Indonesia as well as laws and regulations under the Law on the MPR Decree. Such conditions further perpetuate a series of problems regarding the status and position of the MPR Decree itself in the hierarchy of the prevailing laws and regulations in Indonesia. Description of the existence/existence of the MPR Decree in the order of the Indonesian laws and regulations in accordance with Art. 7 Paragraph (1) Point b of Law no. 12/2011 above has philosophical, juridical, theoretical, and sociological problems.

Physiologically, the existence of the MPR Decree in the hierarchy indicates that the legislators do not have standard standards in drafting laws and regulations. There is legal uncertainty over human rights guarantees because there is no single institution that oversees the content or material of the provisions of the MPR Decree, There is uncertainty in preparation of laws and regulations in Indonesia using a hierarchical system (Widarto, 2016). Juridically, the absence of regulations regarding the content of the MPR Decree in Law 12/2011 makes the content of the MPR Decree unclear and the absence of norms in Law No.12 of 2011 regarding which institution is authorized to examine the material for the MPR Decree. Theoretically, the consequence of the principle of constitutional supremacy, as Hans Kelsen's opinion, is that there should be a special court to ensure the conformity of lower legal rules with the rule of law above it. The juridical problem, according to Matthias Klatt (2008), is that it cannot be determined about the proper "what is the law" or legal indeterminacy. The cause of this juridical problem, could be due to vagueness, ambiguous meaning or ambiguousness, inconsistency or inconsistency, or various fundamental concepts indicating contradiction. This is named after Gallie as concepts that are still open to evaluation (evaluative openness). UU no. 12/2011 (Articles 10 to 14) does not regulate the content of the MPR Tap. So, it only regulates the contents of the Law, Perpu, PP, Perpres, and Perda. This creates a juridical problem due to inconsistency when regulating the existence of the MPR Decree in the "Types, Hierarchy, and Material of Legislation" as referred to in Chapter III of Law no. 12/2011. Based on this, this research was conducted to determine the legal implications of the existence of the People's Consultative Assembly Decree in the order of the laws and regulations in Indonesia?

LEGAL MATERIALS AND METHOD

This type of research is juridical normative, which seeks to take a qualitative approach by looking at and analyzing legal norms in Indonesian laws and regulations, as well as doctrines, expert legal opinions, and court decisions related to statutory science (Soekanto & Mamudji, 1994). This research focuses on examining the MPR Decree in the legal system in Indonesia. The approaches used include the statutory approach, historical approach, conceptual approach, and philosophical approach. This study uses secondary data obtained from legal materials (Soekanto, 2008). These legal materials are primary legal materials consisting of basic norms or rules, basic regulations, statutory regulations

and court decisions that have permanent legal force, and jurisprudence. Secondary legal materials consist of books, journal articles, and other literature covering the legal system and the statutory system in Indonesia. Tertiary legal materials, namely materials that provide instructions or explanations for primary and secondary legal materials, such as dictionaries.

The collection of legal materials in this study is carried out through library research and internet searching. Even these laws are then analyzed through a logical, systemic and sequential legal reasoning process. The analysis of legal materials uses a prescriptive normative method, namely a method of analysis in research that is intended to obtain suggestions on how concepts and solutions for the formation of legislation after the inclusion of the MPR Decree in the hierarchy of laws and regulations. The explanations that are used in this prescriptive research are deductive-inductive explanations to produce the concept as answers to questions or research findings (Sunggono, 2015). The meaning of which is from various sources of laws related to the administration of the formation of statutory rules, specifically the rules that are formed based on authority (attributive) which are positive theories described in theory are based on theory.

RESULTS AND DISCUSSION

The Decree of the People's Consultative Assembly as the Prevailing Laws

With the inclusion of a source of law into the hierarchy of statutory regulations, the rules that are under it in its formation must be based on a higher rule, and a lower rule must not conflict with a higher rule. When Law 10/2004 came into effect, which did not include the MPR Decree in the hierarchy of statutory regulations, the MPR Decrees based on the MPR Decree I/2003 were declared still valid, in fact they were still valid. The position of the MPR Decree which is not included in the hierarchy does not affect the validity of the MPR Decree which is based on the MPR Decree I/2003 is still valid. Even though in the preparation of Law 12/2011, one of the things that was taken into consideration was the re-insertion of the MPR Decree into the hierarchy because the MPR Decree which was still in effect was not used as a legal basis in any lower regulation formation, even though the MPR Decree referred to was the MPR Decree which is of a basic legal nature, so that in order to provide certainty about the existence of the MPR Decree which is still valid, it is deemed necessary to re-enter the MPR Decree into the hierarchy of laws and regulations. According to the author, this decree will take a long time to realize so that the material is accommodated in the Law. What is happening now is that the agrarian reform is running sectorally. BPN has drafted a Bill on Agrarian Principles, the Ministry of Forestry has also made its own regulations. The MPR Decree should be used as a reference for evaluating sectoral legislation. However, after 12 years of this decree coming into effect, and 10 years of being mandated to make a law to accommodate this decree, it seems that agrarian reform is still in place. Specifically for this Tap, according to the author, it is a tough job to unite all sectors so that they can integrally realize the agrarian reform mandated by this Tap. However, it is not impossible if the government can create a special team regarding agrarian reform, which comprehensively makes efforts, especially efforts to formulate integral legislation regarding agrarian reform, then the dream of realizing agrarian reform into an integrated, realizable, and mandated law Tap IX/2001 this can be run.

According to the author, all Taps in Article 4 of Tap I/2003 must be re-inventoried and reviewed, any matters that are deemed not yet accommodated are provisions that are scattered in various laws. Subsequently, a law that regulates it was immediately drawn up. Because it is clear that the placement of the Tap in Article 4 has limited the effectiveness of the MPR Decrees in this article until the existence of a Law. For this reason, the homework for legislators is to complete the Law related to the content of each Tap in Article 4 of this Tap I/2003.

Relationship and Influence of the Position of the Decree of the People's Consultative Assembly on the Position of the People's Consultative Assembly

Although legally formally, the MPR after the amendment of the 1945 Constitution has the position of a state institution, but in constitutional practice, the MPR still has the highest authority compared to other state institutions. It is as explained above that the MPR has the authority to be able to amend and stipulate the 1945 Constitution (MPR, 2017). The position of the MPR is not properly aligned with state institutions because of the MPR's authority to dismiss the president/or vice president, after a legally guilty verdict by the Constitutional Court. Because in this case, the MPR is then in control to determine whether the President can be impeached or not, even though it goes through the first constitutional stage. Therefore, although the MPR is said to be legally formal with other state institutions, in practice, however, the MPR's authority is still above the average for State institutions, that is, it has the authority to stipulate and amend the 1945 Constitution. Another authority that is considered higher, namely the MPR can dismiss the president and/or representatives according to the provisions of the 1945 Constitution of the Republic of Indonesia.

The strengthening of the MPR institution is one of the reasons for placing the MPR Decree into the hierarchy of statutory regulations in Law 12/2011. However, the question is, are there possible implications for the position of the MPR institution, after the MPR Decree is placed in the hierarchy of laws and regulations? Based on Article 1 paragraph 2 of the 1945 Constitution, that the position of the MPR, which was previously the holder of people's sovereignty, the incarnation of the people who hold state sovereignty (Asshidiqie, 2006), even as the highest state administrator, with the amendment of the 1945 Constitution, this provision was removed and replaced with the principle of supremacy of constitution by appointing the constitution as the implementer of the people's sovereignty. With this fact, sovereignty is not only in the hands of one state institution, but is divided among the same and equal state institutions. There are no longer the highest state institutions, all are the same, state institutions, which are under one constitutional umbrella, namely the 1945 Constitution.

The consequence is that the MPR's position is no longer higher than that of other state institutions. The main reason for the elimination of the MPR's authority was to strengthen the presidential system, in which the President and Vice President were no longer the mandate of the MPR and did not have a line of accountability to the MPR in exercising government power. The line of responsibility of the President and Vice President is now direct to the people based on the provisions stipulated in the 1945 Constitution. The decline in the position of the MPR was followed by the elimination of the authority to make GBHN, so that the legal products produced by the MPR were only changes to the 1945 Constitution, and other decisions of an administrative nature. , or if it

is regulating, it will only organize internally into institutions. Thus, the MPR does not have the authority to make general regulations (regeling) (Yuliandri, 2012).

The elimination of the authority to form the MPR Decree is regulated in Article 3 of the third amendment of the 1945 Constitution. In Article 3 of the third amendment of the 1945 Constitution, there is no mention of the authority to form an MPR Decree. The current authority of the MPR is based on Article 3 of the third amendment of the 1945 Constitution:

- Amend and enact the Basic Law;
- Inaugurate the President and/or Vice President; and
- May dismiss the President and/or Vice President during their term of office according to the Constitution.

Another fact that must be realized is that even so, the MPR still has the authority to amend the constitution, and to stipulate the constitution, where this fact is actually sufficient to place the MPR in a high enough position, considering that the constitution replaces the MPR's position as the implementer of the people's sovereignty. At least from the entire hierarchy of laws and regulations, the MPR's legal product is the highest product. According to the author, the placement of the MPR Decree in the hierarchy of laws and regulations does not make a difference to the position of the MPR institution. In contrast to the Ministry's institutions, in the PPP Bill Special Committee Work Meeting, the discussion of Ministerial Regulations in the hierarchy of statutory regulations was very long. The goal is clear, namely to strengthen the existence of the Ministry or Minister concerned, because so far Regional Regulations that are included in the hierarchy of statutory regulations are more powerful than Ministerial Regulations.

In regards to the placement of the MPR in the hierarchy of laws and regulations, according to the author, its placement is determined by the position of the MPR itself. When the existence of norms in Tap I/2003 is to be strengthened, then placed into a hierarchy, then its placement in the hierarchy among other laws and regulations is determined by the position of the MPR. Due to the position of the MPR as the maker of the Constitution, and also on the consideration that the substance of the MPR Decree which is still valid is still basic law, the position of the MPR Decree is placed above the Law. This is consistent with Hans Kelsen's dynamic norm theory, that state organs that have the authority to form laws can be traced to their validity through a hierarchical institutional relationship (Asshidiqie, 2006). This concept can be understood as a consequence of the character of hierarchical legal norm formation. From this theory it can be concluded that the norm system is strongly influenced by the institutional structure in a country.

Although the change in the hierarchy of the MPR Decree in Law 10/2004 into the hierarchy in Law 12/2011 was not accompanied by a shift in the institutional system, Law 12/2011 attempts to place the legal product of an institution that is still valid in the hierarchy in accordance with the position of the institution concerned, and in accordance with the content of the laws and regulations. So that when viewed from the position of the Institution, the MPR Decree made by the MPR is the same as the Constitution which was also made by the MPR, but when viewed from the content, the MPR Decree cannot be equated with the Constitution, because it is not a basic law, but is an outline of the direction country.

Furthermore, after the placement of the MPR Decree in the hierarchy, there are some people who think that with the inclusion of the MPR Decree into the hierarchy of

statutory regulations, it seems that there is no longer any prohibition to make legal products that regulate general (*regeling*). This is because all statutory regulations that enter the hierarchy are of an exit nature, as is the definition of statutory regulations stipulated in Law 12/2011, namely

"written regulations containing legally binding norms and established or stipulated by state institutions or authorized officials through the procedures stipulated in the Legislation."

The assumption of this group is that all MPR Decrees are regulatory, and the MPR can form MPR Decrees. Even though not all MPR decrees are regulatory. This assumption is clearly untrue, because in the Elucidation of Article 7 paragraph (1) letter b of Law 12/2011 it is clearly stated that what is meant by "Decree of the People's Consultative Assembly" is the Decree of the Provisional People's Consultative Assembly and the still-in force of the People's Consultative Assembly as referred to in Article 2 and Article 4 of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: I/MPR/2003 concerning Review of the Material and Legal Status of the Provisional People's Consultative Assembly Stipulations and the Decrees of the People's Consultative Assembly of 1960 to 2002, August 7, 2003. So that the boundaries are clear, that there is no other MPR Decree that can qualify into the hierarchy of laws and regulations other than those that are limitatively regulated in Article 2 and Article 4 of Tap I/2003.

Legal Politics of the Establishment of MPR Decrees

The policy of forming the MPR Decree as a legal product as a result of the political agreement of all the representatives of the Indonesian people who are in the MPR is also often influenced by political conditions. In the course of the following state history, the direction of post-reform legal politics requires the MPR Decree to no longer be formed because it has ended with the MPR Decree Number I/MPR/2003 as a result of an effort to review 139 MPR decrees that have existed since 1960 which are mandated by the Constitution. NRI 1945. The manifestation of the political will to strengthen the presidential system is also seen in the amendment to Article 3 of the 1945 Constitution where the MPR's authority to form the GBHN is removed and the abolition of the MPR concept as the highest institution becomes the equality of all state institutions by applying the concept of checks and balances. The MPR no longer has the authority to form an MPR Decree as a regulation (*regeling*), the MPR only has the authority to form an MPR Decree as a stipulation (*beschikking*), such as the Decree on the Decree of the Vice President to become President if the President is permanently unable. In addition, based on Article 8 of Law No.12 of 2011 the MPR is also authorized to form MPR Regulations as statutory regulations which have binding power as regulations (Kuntari, 2017).

In the field of legislation, the Provisional People's Consultative Assembly Decree Number XX/MPRS/1966 concerning Legal Sources and the Order of Legislation is a fundamental decree for the first time determining the forms of regulations in an order, namely consisting of:

- Constitution.
- MPR Decree.
- Law/Perpu.
- Government regulations.
- Presidential Decree and/or Presidential Instruction.

- Other implementing regulations, such as: Ministerial Regulations, Ministerial Instruction, and others.

As stated by Bagir Manan, there are several shortcomings of TAP MPRS Number XX/MPRS/1966177 that require improvement, including:

- This provision only regulates the composition of laws and regulations at the central level. Regional regulations as laws at the regional level are not included. Possible consideration, since autonomous regions that make regional regulations, do not legally have a hierarchical relationship with the center. An autonomous region is a legal subject environment that stands alone not a hierarchical part of the central government. There is some truth in this view, but there is a confusion between the statutory system and the system of government organization. As statutory regulations, regional regulations are a subsystem of an orderly system of statutory regulations, therefore they must comply with and follow an orderly system of laws and regulations. In the order of statutory regulations, this provision also includes decisions that are not classified as statutory regulations, such as "Presidential Instruction".

In practice, MPR decrees do not always take the form of statutory regulations. So far, there are provisions on the appointment of the president and provisions on the appointment of the vice president. This kind of provision is not a statutory regulation, because it regulates something concrete and individual in nature.

Presidential decree. There are presidential decrees that are not statutory regulations such as decisions regarding appointments in a position. Decisions of this kind are "*beschikking*" not statutory regulations.

In its later journey, as an effort to renew the MPRS Decree, the People's Consultative Assembly issued MPR RI Decree Number III/MPR/2000, which regulates the Source of Law and Order of Legislation. It also mentions several forms of statutory regulations, as well as emphasizing Pancasila as the source of all laws.

Legal implications for the existence of the People's Consultative Assembly Decree in the order of the laws and regulations in Indonesia

If the remaining MPR/S Decree is deemed to be equivalent to the law, then what can be seen as having the authority to discuss it is a state institution that is given the authority to discuss laws. Therefore, the legal status of the remaining MPR/S Decree must be ascertained. Based on the provisions of the Fourth Amendment of the 1945 Constitution, the MPR is no longer authorized to evaluate and even make these decrees the object of discussion in court. In short, the MPR can no longer discuss decisions that it has made itself in the past outside of its four powers. After the Fourth Amendment to the 1945 Constitution, the MPR Session can only schedule discussions on one of the four powers, namely (i) amendments to the constitution, (ii) dismissal of the president and/or vice president, (iii) presidential and/or vice presidential elections to fill vacancies, or (iv) the inauguration of the president and/or vice president. Apart from the four agendas, constitutionally, there is no other MPR session (Asshidiqie, 2006).

In Decree Number I/MPR/2003, the MPR itself also determines the existence of 11 MPR/S decrees which remain in effect until the law that regulates the material of these decrees is formed. This means that the 11 MPR/S decrees are subordinated by the MPR itself, so that they can be changed by or by law. Therefore, it can be said that the MPR

itself has subordinated the legal status of the decrees that it has made to the level of the law, so that the remaining decrees must be viewed as equal to the law. If this is the case, then there are four state institutions authorized to discuss laws, namely (i) DPR, (i) President, (iii) DPD, and (iv) Constitutional Court (MK), in accordance with their respective constitutional authorities..

Forms of Indonesian Legal Products If the eight MPR/S Decrees are to be reviewed, a legislative review can be carried out by forming laws that amend or revoke those decrees. State institutions that can take the initiative are the President or the DPR as appropriate. In the event that the MPR/S Decree relates to the area of authority of the DPD (Regional Representative Council), the DPD can also be involved or involved in the process of drafting or discussing the draft law concerned. However, if before a legislative review is carried out, the MPR/S Decree causes a loss of the constitutional rights of certain parties, then by expanding the meaning of a law that can be reviewed by the Constitutional Court, the parties concerned can only propose it as a constitutional review case in the Court. Constitution. In this case, the mechanism adopted is the judicial review mechanism which is regulated according to the provisions of Law Number 24 of 2003 concerning the Constitutional Court.

The initial spirit of the formation of the Constitutional Court was to protect the constitutional rights of citizens from the enactment of laws that contradict the 1945 Constitution. The formation of the Constitutional Court was based on the premise that the 1945 Constitution which is the basis of the state (*stategroundgesetz*) must be consistently maintained and guarded. The existence of the Constitutional Court in the structure of the Indonesian military is to function as the guardian of the 1945 Constitution (the quardian of the constitution) and the interpreter of the constitution. In addition, the existence of the Constitutional Court is also intended to guarantee a check and balance system that places all state institutions equal and balanced (Ramadhani, 2013).

Looking back at the authority of the Court in the 1945 Constitution, which is based on Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution that the Constitutional Court only has four powers and one constitutional obligation, namely, the Constitutional Court has the authority to judge at the first and last levels whose decisions are final for examining laws against the Constitution, resolving disputes over the authority of state institutions whose authority is granted by the Constitution, deciding the dissolution of political parties, and resolving disputes over the results of general elections, and the Constitutional Court is obliged to give decisions on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Basic Law (Kelsen, 2007).

The concept of hierarchical norms taught by Kelsen does state that a norm belongs to a certain norm system that can be tested only by ensuring that the norm derives its validity from the basic norms that make up the legal system. So the reason for the validity of a norm is a proposition that there is a valid final norm, namely the basic norm. The explanation of the reasons for the validity of this norm is not an endless explanation, but ends at the highest norm which becomes the final reason for validity in the normative system. With Kelsen's teachings, it is true that the basis is the highest basic norm. However, there is a gap between the norms, the lowest norms refer to and cannot conflict with the norms above, the norms above must refer to and must not conflict with the norms that are more above it, continue to do so, until the highest point is the basic norm. If based on

Kelsen's teachings, indeed the MPR Decree which is placed under the Constitution, should be able to be tested against the Constitution. However, the institution that tested it was clearly not the Constitutional Court.

If the Constitutional Court does not have the authority to examine the MPR Decree against the Constitution, which institution is authorized? In theory regarding the right to test, testing can be carried out by a judicial institution that is appointed to have the authority to do so (judicial review), examination by a political body (political review), and examination by an official or state administrative body (administrative review). The right to test is given to a parliamentary institution as a legislator, so the testing process is called a legislative review. If the right to test is granted to the government, it is called an executive review.

Of the three possibilities, judicial review is a difficult thing to do, because of the limited authority of the judiciary, both the Constitutional Court and the Supreme Court, which is regulated by the Constitution. Meanwhile, the examination by the official or state administrative agency is something that is impossible to do with the MPR decree which is regulating as stated in Article 2 and Article 4 of the Decree I/2003. Testing by administrative bodies is carried out on legal products that are administrative in nature. Therefore, what is still possible is a political review. Political reviews are often identified with legislative reviews conducted by the DPR on their own products, namely laws. However, in the context of testing the MPR Decree, according to the author, political review can be interpreted as a constitutional review by the MPR on its own products. Before the amendment to the 1945 Constitution, the MPR became an institution that was given the authority to examine laws both against the UUD and against the MPR Decree, and in Article I of the Additional Rules of the 1945 Constitution after the amendment, the MPR was also given the task of reviewing the material and legal status of MPR decrees from 1960-2002, and the review is carried out based on the 1945 Constitution after the amendment. So that the review conducted by the MPR is not new.

However, it becomes a question if the MPR reviews it again, because Article I of the Additional Rules of the 1945 Constitution has also assigned the MPR to conduct a review, the results of which are contained in Decree I/2003. If the MPR Decree I/2003 is considered to be a review process, then is it possible to have a test on the same basis of testing, namely the 1945 Constitution, take place after the amendment? There is a legal principle of ne bis in idem, that is, legal action may not be taken a second time in the same case. In criminal law a person may not be prosecuted a second time for the same case (Article 76 paragraph (1) of the Criminal Code), in Civil law (Article 1917 of the Civil Code), even in cases of Judicial Review in the Constitutional Court also known as the principle of ne bis in idem. , whereas the material contained in paragraphs, articles, and/or parts of the Law that has been tested, cannot be applied for re-examination, unless the material contained in the 1945 Constitution which is used as a basis for testing is different (Article 60 of the Constitutional Court Law).

The next possibility is to provide an interpretation of the MPR Decree, this can be done by the Supreme Court. According to Yusril Ihza Mahendra, MA can provide legal opinion on the sharp differences in views between the executive and the legislature. Yusril's statement was conveyed in 2001, at that time, Decree I/2003 had not yet been published, the statutory order at that time was still based on Tap III/2000, in which the MPR Decree had the same position as stipulated in Law 12/2011. It turned out that at that time it was

also in debate, who had the authority to test the MPR Decree. Despite rejecting the idea that the Supreme Court could test the MPR Decree, Yusril stated that the Supreme Court could provide a legal opinion, but the Supreme Court's legal opinion was only a direction or a fatwa and was not binding.

The re-issuance of MPRS Decrees and MPR RI Decrees as one of the types of legislation in the hierarchy of laws as stipulated in Law No.12 of 2011 is based on the premise that the law on the Formation of Legislative Regulations is an implementation of the order of Article 22 A The 1945 Constitution of the Republic of Indonesia which states that "Further provisions regarding the procedure for the formation of laws shall be further regulated by law". However, the scope of the material content of this law is expanded not only to laws but also to other laws and regulations, apart from the 1945 Constitution of the Republic of Indonesia and the Decrees of the People's Consultative Assembly. (Agustian, 2016).

It must be admitted that many pearls of thought by our statesmen in their respective ages are contained in the MPR and MPRS Decrees, which should not be discarded from the aspect of constitutional law and are not worthy of being reduced to law because most of the rules contained in the MPR Decree contain material content of the Constitution or the 1945 Constitution (Thaib, 2009).

Placement of MPRS/MPR Decrees below the 1945 Constitution in the order of laws and regulations has the consequence that the MPR Decrees must be in line with the 1945 Constitution. . In the event that the material content of the MPRS and MPR contradicts the 1945 Constitution of the Republic of Indonesia, of course these provisions can be tested against the 1945 Constitution (constitutional test). On the other hand, the MPRS and MPR decrees are the basic sources for the formation of existing laws and regulations.

In order to maintain the unity of the legal system within the state, it is necessary to examine whether one rule of law is not contradicting another rule of law, and especially whether a rule of law does not deviate from or has the character of setting aside a more important and higher degree legal rule (Huda, 2014).

The position of the MPRS and MPR decrees, with their juridical consequences, actually becomes a problem because of the ambiguity and inconsistency of regulations in Law no. 12 of 2011 itself. There is no mechanism for testing the MPRS and MPR Decrees and this creates a regulatory vacuum. Whereas in Article 9 of Law no. 12 of 2011 there are regulations for the examination of statutory regulations, but only to the extent of laws against the 1945 Constitution carried out by the Constitutional Court and statutory regulations under laws against laws carried out by the Supreme Court.

It is indeed difficult to regulate the authority to examine the MPR Decree which is placed in the hierarchy, which is why some experts prior to the formation of Law 12/2011 suggested that regulating the MPR Decree not in the hierarchy, but regulated in separate rules, that the formation of laws and regulations must pay attention to The MPR Decree which is still valid according to the MPR Decree I/2003 which is related to the material of the legislation to be discussed. Because Law 12/2011 has stipulated that the MPR Decree is included in the hierarchy of statutory regulations, among the possibilities described above, according to the author the most likely is a review by the MPR itself, Law 12/2011 can be revised again, if it is. In order to place the MPR Decree into the hierarchy, rules are made regarding the authority to test it, namely through a review by the MPR itself, the revision of Law 12/2011 must also be followed by a revision of the MPR, DPR, DPD and

DPRD Laws. Examining the MPR Decree against the Constitution, is not the authority of the MPR, so it should not be placed on provisions regarding authority. However, additional rules were made regarding the MPR Decree testing process by the MPR.

CONCLUSION

The position of the MPR Decree which is in charge of Law/PERPU has an implication that the regulated material must not conflict with the legal products above. In addition, lower legal products must refer to the above provisions. However, there are still issues that become a debate related to if there are legal products under the MPR Decree contradicting the MPR Decree, where to test? The Supreme Court and the Constitutional Court as legal product examiners are not normatively given the authority to conduct examinations on the content of the MPR Decree. The re-entry of the MPR Decree in Law no. 12 of 2011 as a type of Legislation and its hierarchy is placed after the 1945 Constitution as regulated in MPR Decree No. III/MPR/2000, making the implications of the MPR Decree very large and significant. MPR decrees have again become a source of formal and material law. The MPR Decree must again become a reference or one of the references other than the 1945 Constitution, not only in the formation of laws in this country, but also in the formation of other public policies. The DPR and the Government (President) absolutely must pay attention to the MPR Decrees which are still valid, even referring to them in the formation of laws and statutory regulations under them. Likewise with the formation of Government Regulations (PP), Presidential Regulations (Perpres), and Regional Regulations (Perda) absolutely must formally and materially base the MPR Decree.

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TRAFFIC POLICY TOWARDS THE CURRENT OF REFUGEES AND SUBSCRIBERS MOVEMENT IN REFORMING STATE SOVEREIGNTY

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Abstract: *Countries like Indonesia that have immigration routes. will look at every foreigner's problem from an immigration point of view. Foreigners who enter Indonesia without travel documents are considered illegal. When referring to concrete cases, generally refugees or asylum seekers may not have complete travel documents. Because it is impossible for them to be forced to leave their country, by first obtaining a visa, passport, or other correspondence. In most cases that occur, refugees or asylum seekers do not have complete travel documents. So in order to maintain sovereignty in the authority of immigration supervision, it is very important to research related Immigration traffic. The problem raised in this paper is how the monitoring mechanism of immigration traffic, in order to reinforce the concept of sovereignty. In writing this journal the author uses a statutory approach, a case approach, and a sociological approach. The method used in this paper is a normative juridical method so that answers will be found in the form of a descriptive perspective. The conclusion in this paper is that the policy on the flow of refugee movements into Indonesia is not in accordance with the concept of sovereignty, where the regulation of the flow of refugee movements is very vulnerable to the aspects of crime (trafficking in persons, narcotics, prostitution, etc.), in fact the sovereignty of the state. become a protector for refugees who come to Indonesia, from international and national crime systems, and that is often misunderstood. So the suggestion from this research is that immigration should be given space in the framework of supervision for Refugees and Asylum Seekers, which have been under the authority of the Immigration Detention Center (RUDENIM).*
Keywords: *Refugees, Asylum Seekers, Immigration Control, State Sovereignty.*

INTRODUCTION

In Mochtar Kusumaatmadja's writing (1982), he states that sovereignty is an essential characteristic of a state, where the state is sovereign, but has its boundaries, namely the space for the highest power to be exercised and limited by the boundaries of the country's territory, outside of its territory the state no longer has such power. In this regard, sovereignty is not seen as something that is unanimous and intact, but in certain limits it has been subject to restrictions in the form of international law and the sovereignty of each other (Hadiwijoyo, 2008).

A sovereign state must still comply with international law, and may not prejudice the sovereignty of other countries, so it can be said that at present state sovereignty is the remainder of the power that is owned within the boundaries set by international law, although it tends to be every country the sovereign has distinctive sovereignty which is reflected in the national policy of the country. Indonesia has the context of sovereignty, namely, internal sovereignty where this sovereignty can be demonstrated in the form and structure of the Indonesian state, as a unitary state characterized by the archipelago, as stated in article 25A of the 1945 Constitution, this is basically a manifestation of the geopolitical aspects of the State. Indonesia is an archipelago insight that we know about internal sovereignty, where sovereignty into Indonesia is manifested through the insight of the archipelago. The role of the archipelago's insight is as a manifestation of protecting the entire Indonesian nation and all Indonesian bloodshed. As a sovereign country, Indonesia cannot be separated from participating in solving international problems. Indonesia's position at the 1951 Protocol 1967 convention on the status of refugees is a country that is not a party to the convention. However, Indonesia continues to carry out its obligations as a country that prioritizes human rights, so that Indonesia's position.

In this Convention it is a transit country, and it is imperative for Indonesia to harmonize the National Law with the 1951 Protocol 1967 Convention, but in accordance with the aspects of state sovereignty and human rights as regulated in the 1945 Constitution of the Republic of Indonesia.

The presence of "refugees" and "asylum seekers" is a social phenomenon in international relations, which has a significant impact on the policies of the host country. This also happens in Indonesia, which seeks to provide protection for refugees and asylum seekers who come to Indonesia. In this case, the State's obligation to respect, protect and enforce Human Rights is not only aimed at Indonesian citizens, but also includes citizens from other countries who are in the territory of Indonesia, whether they are legally or illegally (Primawardani, 2018). Refugees have a different meaning from foreigners, the arrival of refugees and asylum seekers to Indonesian territory, have a different immigration administration flow from foreigners, given the flow of foreigners arriving through the Airport and Seaport routes, and with complete official documents (legal) , if in the sense of illegal, are foreigners who enter the illegal route and do not have official documents (immigration), in this category foreigners who violate immigration laws can be given immigration sanctions until deportation (Interview with Pria Wibawa, Director of Supervision and Action of the Indonesian Directorate General of Immigration, 2 September 2020).

A strategy is needed to deal with this large flow. For many industrialized countries, migration is an advantage. State policies regarding migration flows and their consequences can be divided into at least three things, namely border control and management, citizenship and integration policies, and policies on diapora (Adamson, 2007). The state has an interest in controlling its border territorials for reasons such as maintaining control over the population, restricting access to labor markets and public goods, and for maintaining domestic security.

RESEARCH PROBLEM

The problem raised in this paper is how the monitoring mechanism of immigration traffic, in order to reinforce the concept of sovereignty. In writing this journal the author uses a statutory approach, a case approach, and a sociological approach. Seeing the condition of the State of Indonesia in the territorial element, where the state carries out jurisdiction over its citizens and all objects and all activities that occur within the territory. Such state sovereignty is also known as territorial sovereignty (Survey and Mapping Center - TNI Headquarters, Indonesian Territory, 2018).

The flow of movement of refugees and like seekers is of concern, because refugees and asylum seekers are vulnerable objects in cases of human trafficking, smuggling and trafficking. Human cross-border mobility is now a business venture and various types of criminal offenses. Although the hidden nature of the phenomenon is not easy to investigate, uncertain and prone to controversy, the evidence is also increasing. Usually, said Pocoud and Guchteneire, strict border controls are thought to contribute to fighting human trafficking. It is also clear that the more difficult it is to enter a country, the more it requires dependence on smugglers and the more profitable it is from the business aspect. Meanwhile, for the third challenge, related to the cost of migration costs for migrants themselves, the most tragic and clear illustration is the cost of lying to a number of people who die while heading to their destination country, or in transit.

For example at least one migrant dies every day on the border between America and Mexico, most of them hypothermia, dehydration, sunburn or drowning. In Europe in 2016 nearly 3,000 migrants died trying to reach Europe, most of them trying to cross the Gilbraltar Strait (https://www.voaindonesia.com/a/hampir-3000-migran-meninggal-di-laut-pada-2016/3430506.html). The figures may be underestimated because no one really knows how many bodies were not found. In general, the vulnerability of undocumented migrants and their exposure to abuse and to exploitation stems largely from policies that fail to prevent illegal migration, leaving many legal loopholes.

Thus, border policy has become a big ethical challenge, at least according to Peceound and Guchteneire and Iman Santoso (2014) "There are four observations that can be made in this regard. First, the tension between security and human rights covers the response to this phenomenon, since the end. the cold war, migration has increasingly been understood as a security threat and with the growth of migration escalating and the asylum crisis of the 1990s was perceived as a potential source of destabilization of countries. That leaves little room for human rights. Other than that, the idea of security itself is ambiguous. Although a comprehensive understanding of security must include national and human security. Second, different phenomena will attract different levels of attention and are needed in different ways. For example trafficking in persons is clearly recognized as a violation of human rights and fighting it has become a priority for many governments.

RESULTS AND DISCUSSION

In the scope of the Indonesian state's authority in handling and supervising refugees, it is important in relation to the position of its laws and regulations, so that Indonesia can know the position and involvement of Indonesia's obligations to refugees.

The 1924 International Conference on Emigration and Immigration in Rome, defines immigration as: "Human mobility to enter a country with its purpose to make a living for residence", which means seeing from a classic perspective, that migration only means moving people. entering a country with the intention to have the meaning of moving and settling there. There are 2 (two) patterns of migration flows by people to migrate from one country to another, namely the legal scheme migratory flows and the illegal scheme migratory flows (Syahrin, 2019). Legal schema migratory flows use stages according to official regulations. Migration of population with a pattern of using valid and valid travel documents and through the border. regulated in the provisions of a country. Meanwhile, illegal scheme migratory flows use stages that violate official regulations. This migration of population uses a forged travel document mode and does not pass through border places regulated in the provisions of a country. This migration of population uses fake travel document mode and does not pass through border places regulated in the provisions of a country.

The flow of global population migration from countries of origin to other countries has caused various problems including illegal immigrants, human trafficking, people smuggling, and cases of refugees. This problem is very important to be traced or researched, because seeing from the point of view of changes in global human movement, by utilizing humanitarian issues, for example the issue of refugees, the state must uphold its sovereignty, place a problem in regulations and policies.

With regard to population migration between countries, the Government of Indonesia regulates this in Law Number 6 of 2011 concerning Immigration. Immigration is a matter of the traffic of people entering or leaving the territory of Indonesia and their guardians in the framework of maintaining the upholding of state sovereignty. In immigration regulations, every person who enters or leaves the territory of Indonesia is required to have a valid and valid travel document, except for other matters stipulated by the Immigration Law.

Based on Indonesian immigration regulations, a visa for foreigners which is a certificate of approval for foreigners to enter Indonesian territory is issued by an authorized official at the Representative Office of the Republic of Indonesia. Visas consist of, diplomatic visas, service visas, visit visas and limited stay visas, visas have a function as the basis for granting residence permits granted to foreigners in accordance with their visa. residence permit consists of, diplomatic residence permit, official residence permit, visit residence permit, limited stay permit, permanent residence permit. A wide variety of destinations for foreigners at Indonesia includes tourism, official activities, diplomatic, business, family, journalism, clergy, experts, investors and workers (Syahrin, 2015).

The various activities and purposes carried out by foreigners while in Indonesia cause problems caused by violations of not complying with the law. In the immigration regulations in Indonesia it regulates immigration administration and immigration crimes and other general criminal acts for foreigners. Immigration administrative action is an administrative sanction imposed by immigration officials against foreigners outside the judicial process and immigration crime is an activity carried out by every person in certain circumstances and situations violating immigration regulations as referred to in Article 113-136 of Law Number 6 Year 2011 about Immigration. Meanwhile, general criminal acts for foreigners who commit criminal offenses in accordance with the actions committed while in Indonesia (Syahrin & Saputra, 2016).

For foreigners who have committed criminal acts in Indonesian territory, deportation may be carried out. This is based on Indonesian immigration regulations, namely Immigration Officers are authorized to carry out immigration administrative actions against foreigners who are in Indonesian territory who carry out dangerous activities and are reasonably suspected of endangering security and public order or not respecting or not complying with statutory regulations.

However, in the case study efforts to deportation could not be carried out because it was hampered by the status of Ali Reza Khodadad Sharq bin Mojtaba, in this case he committed a criminal act, namely narcotics using Narcotics Group I for himself in accordance with Article 113 paragraph (1) subside Article 111 paragraph (1) more subsidiary to Article 127 paragraph (1) letter (a) of Law Number 35 of 2009 concerning Narcotics. on January 11, 2017, the Tangerang District Court sentenced a criminal sentence with imprisonment of 1 (one) year and 8 (months) imprisonment at the Class II A Correctional Institution (LAPAS) Tangerang youth. After serving his sentence, at this writing the status of Ali Reza Khodadad was placed in the Detention Room at the Directorate General of Immigration to wait for a decision on immigration action. However, the person concerned is still the subject of a refugee card holder established by the United Nations High Commissioner for Refugees (UNHCR) (Interview with Pria Wibawa, Director of Supervision and Action of the Indonesian Directorate General of Immigration, 2 September 2020). The card stipulates that deportation cannot be carried out for each refugee card holder because there is a non-refoulement principle which is the principle of prohibiting repatriation to the country of origin.

From the case above, it seems that it limits the authority of immigration control regulated in Presidential Decree No. 125 of 2016, giving the impression that immigration control has limitations and categories in handling and monitoring of foreigners, in terms of legal or illegal foreigners.

In this matter, law enforcement in immigration violations violated by foreigners is the domain of the Directorate General of Immigration, and if a foreigner violates a criminal act, the sanctions received are from court decisions to deportation. However, when refugees who are found to have violated a criminal act have a different mechanism, a judicial mechanism in accordance with the Criminal Law that is violated, after that, the refugees are returned to the holding center to be given a decision from UNHCR.

The concept of immigration control in Presidential Decree 125 of 2016 and the Immigration Law Number 6 of 2011 is very different, seeing the position of refugees and foreigners in the statutory regulations is clearly different, so the handling is different. In the same sentence from the nomenclature "Immigration Control" but has a different meaning and meaning, it can be seen in the handlers and their supervisors, if we examine the implications that arise, in acts that violate the laws of RI, between refugees and foreigners, the treatment differentiated, so that the enforcement of immigration law and Indonesian law cannot be carried out equally between refugees and foreigners.

The category of law enforcement must reflect certainty, justice and benefit (Radbruch, 2012). Sajtipto Raharjo identifies the nature of law in its basic values and implications in the meaning of essence or philosophy, in terms of sociological and juridical values. In fact, law must reflect the values that can be accepted in society, in its implementation which is reflected in the applicable regulations. In regulating refugees, it appears that both national and international legal aspects are involved.

CONCLUSION

The policy on the flow of refugee movements into Indonesia is not in accordance with the concept of sovereignty, where the regulation of the flow of refugee movements becomes very vulnerable to the aspects of crime (trafficking in persons, narcotics, prostitution, etc.). Indonesia, from the international and national criminal systems, and that is often misunderstood. So the suggestion from this research is that immigration should be given space in the framework of supervision for Refugees and Asylum Seekers, which have been under the authority of the Immigration Detention Center (RUDENIM).

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HUMAN RESOURCES AND PERSONAL DATA PROTECTION: AN INDISSOLUBLE RELATIONSHIP

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Abstract: *Starting from the application file, payroll information, medical file and getting to employees' internet behaviour or the images taken through the surveillance camera, these personal data are processed by employers all around the world. As the essence of the human resources is dealing with various types of information on the individuals working within an organization, it is of great importance to have a clear outline on how this data is to be processed. The EU's General Data Protection Regulation (GDPR) provides a comprehensive framework that helps smoothing the unfolding of the indissoluble relationship between HR activities and data protection methods.*
Keywords: *human resources; data protection; GDPR; employee data; HR data;*

INTRODUCTION

Human resources (HR) is an umbrella term that has evolved throughout the years and has gone beyond the "hire-and-fire" meaning. It now encompasses a variety of functions such as recruitment, training, employee satisfaction, employment law compliance etc. Starting from their role in the organization, we can generally say that human resources represent a *sine qua non* condition in the production process, a factor that can directly influence the level of performance of the organization. By managing the most important asset - people - the HR department in any company is a vital part that ensures the smooth running of the business, the engagement of the workforce and the lack of detrimental lawsuits regarding labour matters. Without the effective presence of people who know what, when and how to do it, it would be impossible for organizations to achieve their goals.

Moreover, the organizations face a multitude of challenges, ranging from a constantly changing workforce to ever-present government regulations and an unexpected shift of approach caused by the coronavirus pandemic that forced employers to re-think the way they manage the human resources.

The concept of human resources designates - in a utilitarian and economic way - the people who work within an organization. Thus, we consider that the processing of personal data is the essence of human resources activities, all of which involve information on individuals.

The emergence of new regulations in the field of personal data protection (Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, further mentioned as GDPR) determined organizations, through their HR departments, to pay more attention to the way they process the data of candidates, employees and former employees. HR departments act as the custodians of significant volumes of often sensitive or confidential personal data within any organization, and must therefore take center stage as this demanding law bites (Mintern T. & Rayner S., 2018).

Every individual has a set of personal data that they can either share or hide, but when it comes to working, there is an obligation to provide this kind of data. Everything starting from the resumes sent by applicants to employment contracts contains personal data. By the nature of their work, HR departments collect and process an immense amount of personal data not only from their employees, but also from job applicants and former employees. The information they possess includes sensitive data such as health information, medical records, etc. Hence, it is of utmost importance that HR professionals are aware of the requirements of the new data protection regulation and process personal data accordingly.

THE PROCESSING OF PERSONAL DATA IN HR ACTIVITIES

In labour relations as well as in HR activities, the parties involved are the employer and the natural person who has the quality of candidate, employee or former employee. According to the GDPR, the latter has the quality of Data Subject and the employer is the Controller of personal data, this being the one who, according to art.4 para.(7), *"alone or jointly with others, determines the purposes and means of the processing of personal data"*. Personal data are defined in art.4 para.(1) of the regulation as *"any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person"*.

The processing of personal data represents, according to art.4 para.(2), *"any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction"*.

The types of data, the purposes of the processing and the legal basis must be analysed according to three stages present in the HR activities: a) recruitment; b) hiring and performance of the contract; and c) subsequent to the termination of employment.

1. Recruitment

According to Edwin B. Flippo, recruitment is *"a process of searching for prospective employees and stimulating and encouraging them to apply for jobs in an organisation"*. Essentially, it is the process of finding the most qualified candidate for a

job opening, in a timely and cost-effective manner. The company may then select those applicants with qualifications that are closely related to job descriptions.

Frequently, recruitment begins when a manager initiates an employee requisition (a document that specifies job title, department, the date the employee is needed for work, and other details). With this information, managers can refer to the appropriate job description to determine the qualifications the recruited person needs. The next step in the recruitment process is to determine whether qualified employees are available within the organization (the internal source) or if it is necessary to look to external sources, such as colleges, universities, and other platforms (Mondy, R. & Martocchio J. J., 2016).

When done internally, the access to personal data comes in handy. Human resource databases are a valuable recruitment device that allows organizations to determine whether current employees possess the qualifications for filling open positions (Mondy, R. & Martocchio J. J., 2016).

Candidates are the data subjects because they can be identified through the personal data they give to companies when they apply for a job. As aforementioned, their resumes may include their names, addresses, or phone numbers. The question that naturally arises is which are the mandatory elements of a resume or what personal data one must provide when applying for a job. This varies from country to country, but generally the main elements remain the same: personal information (name, address and contact information), employment history, and education. In some countries, during the application process, there is a requirement to disclose any military service.

Some companies prefer to use standardized application forms rather than to receive resumes from applicants. The reason can be to avoid receiving unnecessary information or intentional omission of information that it is disadvantageous for the applicant.

Although, in a standardized job application form, potentially discriminatory questions inquiring about factors such as gender, race, age, convictions, national origin, citizenship, birthplace, dependents, disabilities, religion, colour, and marital status should be avoided (Mondy, R. & Martocchio J. J., 2016).

For example, the UK government prohibits recruiters from asking the applicants about their marital status or whether they have children or plan to have children. Moreover, questions about health or disability are allowed only *a)* if there are necessary requirements of the job that cannot be met with reasonable adjustments, *b)* for finding out if someone needs help to take part in a selection test or interview or *c)* in the case of a 'positive action' taken to recruit a disabled person.

There is a great debate on whether to add a photo to a resume or not. In countries such as Ireland, United Kingdom and United States of America, strict anti-discrimination and labour laws do not allow the use of photos in resumes. Therefore companies, out of precaution, prefer not to see candidate photos accompanying job applications.

We consider that photography is not a mandatory element in the recruitment stage, except for those jobs for which the appearance and physical condition of the employee are particularly relevant (*e.g.* news anchors, TV hosts, models, and so on). In other cases, the processing of the candidate's image is unjustified and may be considered, as the case may be, abusive or discriminatory.

Additionally, specifying your age is a two-edged sword. It can be problematic for the job applicant that could be subjected to ageism (being discriminated against for being

too old or too young for a certain job) or, on the other hand, it can be beneficial in the context of the organization's diversity and inclusion practices.

According to art.10 of the GDPR, the employer must not process personal data relating to criminal offenses or convictions of the candidate, unless this is a condition of employment provided by national or European law. For example, in Romania, the processing of criminal records is legal only for employment as a legal advisor (Law no.514 of November 28, 2003 on the organization and exercise of the profession of legal advisor), manager (Law no.22/1969 on hiring managers, establishment of guarantees and liability in connection with the management of the assets of economic operators, authorities or public institutions), security guard (Law no.333 of 8 July 2003 on the protection of objectives, property, values and protection of persons), or civil servant (GD no.611 of 4 June 2008 for the approval of the norms regarding the organization and career development of civil servants).

Diversity and the free access to the labour market

Given the ever-growing globalization and free movement of people across the European Union, diversity and inclusion have become major focus points for businesses. Migration - voluntary or forced - increased the demand of jobs. While the forced migrants came looking for refuge and safety as well as for means of subsistence, the skilled workers with higher education were urged by "pull-factors" such as higher living standards, better education institutions and better paid jobs (Tataru, G.F., 2019).

Diversity in the workplace has become important because it is historically unprecedented. Diversity goes beyond demographic characteristics like age, race or gender and can be defined as understanding, accepting, and valuing differences between people of different races, ethnicities, genders, ages, religions, disabilities and sexual orientations, as well as differences in personalities, skill sets, and education.

Moreover, employers may process sensitive data such as ethnicity, age, sexual orientation, spiritual beliefs, or disability as part of their equal opportunities monitoring programmes.

During the recruitment phase, the employer processes various types of personal data, such as: identity data (name, surname), contact details (home address, email address, telephone number), data on physical characteristics and / or physiological (gender, age, image, voice), data on education (educational background, studies, specializations, certifications), data on professional experience (previous jobs, seniority), other data that were included by the candidate in the resume and / or the documentation sent for the application on the job (letter of recommendation / letter of intent).

The processing of the aforementioned data aims at going through the process of recruitment and employment of human resources within the controller's organization and will be carried out based on art.6 lit.b) GDPR, "*processing is necessary [...] in order to take steps at the request of the data subject prior to entering into a contract*" (conclusion of an employment contract).

Last but not least, at the stage of the interviews, the candidate may disclose new personal data that have not been previously mentioned in the documents sent for selection. The controller must provide for safeguards for this new information, even though it is transmitted orally and it is not stored.

If the employer has outsourced the recruitment and selection of staff, he must ensure that the authorized person (the company providing the recruitment services) has guarantees regarding compliance with personal data protection regulations. If the employer uses outsourced recruitment services from another non-EU state, the employer must ensure that there are adequacy decisions that guarantee an adequate level of protection of personal data (according to Article 45 GDPR).

A particular situation, specific to the recruitment stage, is represented by the processing of personal data of candidates who have not been selected for employment, data that further remains with the controller. The latter has the obligation either to delete the data of the candidates who have not been selected or to obtain their consent for the storage of the data in order to contact the persons concerned in the event of a vacancy.

2. Employment and the performance of the employment contract

In carrying out labour relations, the employer - as the controller, processes a large and varied volume of personal data belonging to employees. In addition to the data collected in the previous stage, that of recruitment and employment, during the execution of the individual employment contract, the employer may process the following information: unique identifiers (national identification number, identity card`s number and series), work card series, banking data (bank account), amount of salary, position and job, periods of leave, health data (information obtained from compulsory medical examinations, information resulting from sick leave), image (processed through internal supervisory systems), trade union membership, religious beliefs (depending on which the employer grants the employee some days off) and other data. Depending on the object of activity of the organization and the position held by the employee, different categories of personal data will be processed.

Most of the processing of personal data carried out during labour relations is based on either the provisions of art.6 lit.b) of the GDPR, the processing being necessary for the performance of a contract to which the data subject is party (*e.g.* payment of the salary in the bank account); either on the provisions of art.6 lit.c) of the GDPR - the processing being necessary for compliance with a legal obligation to which the controller is subject (*e.g.* payment of social health insurance contributions). There are also situations in which the processing of personal data is necessary for the purpose of legitimate interests pursued by the controller (art.6 para.1, f)), such as processing the image of employees through the installed video surveillance system, in order to ensure security and protection of property and persons.

In carrying out labour relations, the employer processes personal data for multiple purposes, such as: a) the purpose of fulfilling obligations and exercising specific rights in the field of employment, social security and social protection, in the context of concluding, performing and terminating the employment contract; b) the purpose of fulfilling the fiscal obligations - taxes, duties and contributions - of the employer or, as the case may be, of the employee; c) purposes related to preventive medicine or occupational medicine, the assessment of the employee's work capacity or compliance with occupational safety and health legislation; d) the purpose of the payment of salaries and other benefits offered by the employer.

According to the provisions of art.13 para.(1) of the GDPR, for the processing of personal data analysed above, the employer has the obligation to inform the employee

about: (a) the identity and contact details of the controller; (b) the contact details of the Data Protection Officer; (c) the purposes for which the personal data are processed and the legal basis for the processing; (d) where the processing is carried out pursuant to Article 6 (1) (f), the legitimate interests pursued by the controller [...]; (e) the recipients or categories of recipients of personal data; (f) where applicable, the intention of the controller to transfer personal data to a third country or an international organisation [...]. In addition to this information, when the personal data are obtained, the controller shall provide the data subject with the following additional information necessary to ensure fair and transparent processing: (a) the period for which the personal data will be stored [...]; (b) information on the data subject's rights (in the case of analysis - the employee) and how they can be exercised; (c) the existence of an automated decision-making process including profiling.

Data processing that exceeds labour relations

If the employer intends to process personal data belonging to employees for purposes other than those determined by the performance of the employment contract or the legal obligations incumbent on him, he will have to obtain the consent of the employees concerned by the processing. For example, in order to create an anniversary calendar with photos of the employees, the employer will have to obtain the consent of the employees for the processing of their image, prior to the processing and in compliance with the conditions imposed by art.7 GDPR.

We believe that the principles of transparency and accountability, both provided for in the GDPR Regulation (Iftimiei A., 2018), should apply bidirectionally in labour relations - the employer and the employee should show both transparency in the processing of personal data, and responsibility in the way in which it protects and ensures the confidentiality of personal data. Thus, the employer must create the general framework for the protection of all personal data processed by the organization and in turn, the employee must maintain the confidentiality of the data which he comes into contact with in the performance of his duties.

A relevant example of non-compliance with the GDPR's fundamental principles and the sanctioning of the employer for his interference with the privacy of employees is the case of the monitoring of several hundred employees of the H&M Service Center in Nuremberg by the company's management team (European Data Protection Board, 2020). The multinational company H&M was fined 35.3 million EUR by the Hamburg Personal Data Supervisory Authority for the illegal processing of personal data belonging to employees. In the present case, H&M processed a large amount of sensitive data regarding its own employees (health data consisting in medical leaves and diagnostics, information on employee`s holidays, information on religious beliefs and family matters) without complying with the provisions imposed by the GDPR. Some of this data was recorded, digitally stored and analysed by approximately 50 managers throughout the company. Data collection was carried out with a high level of detail and over longer periods of time, documenting aspects of the employee's private life. In addition to the in-depth assessment of individual work performance, the data collected were also used for profiling the employees and were subsequently used in taking measures and decisions on employment relationships (employment/dismissal/promotion) (European Data Protection Board, 2020).

3. After the termination of employment

Obviously, with the termination of employment, the processing of personal data of employees is reduced to the minimum necessary, generally limited to the storage of existing data in the personnel file. The employer, on his own account or at the request of the former employee, may delete personal data from the personnel file, except for the data for which the employer has a legal obligation to keep (*e.g.,* in Romania, the payroll must be kept for 50 years to guarantee the possibility of proper calculation and recalculation of pensions).

One aspect worth mentioning is the fact that employers must instruct employees on how to process personal data in the performance of work activities, but also on the obligation of confidentiality they have regarding data and information to which they have or have had access in the execution of the employment contract. Thus, the obligation of confidentiality incubates the employee both during the period of employment and for a period of time determined after their termination / after he no longer has the quality of employee.

THE RIGHTS OF DATA SUBJECTS

The GDPR establishes minimum data protection obligations and standards for Controllers in the context of personal data processing operations and, at the same time, establishes rights for the data subject. Thus, according to Chapter III of the GDPR, the data subject has the following rights: the right to be informed, the right to access data, the right to rectify data, the right to restrict processing, the right to object, the right to data portability and the right to be forgotten, the right to withdraw consent, the right to file a complaint or grievance (Tataru Ș.R. & Nica I.T., 2020).

In the case of the labour relations analysed in this study, the rights conferred by the GDPR to the persons subject to the processing of personal data may be exercised by candidates from the recruitment and selection stage, by employees (during the employment contract) and by former employees.

The right to be informed consists in the correlative obligation of the Controller to disclose to the data subject information on: the identity and contact details of the Controller, personal data to be collected and processed or, if they are already held by the Controller, the source of the data, the purposes and means in which they are processed, the period for which they will be stored and others.

The right of access to data, regulated by art. 15 of the GDPR, provides the right of the data subject to obtain confirmation from the Controller that he or she processes personal data concerning him or her and, in the event of an affirmative answer, access to that data. The right to rectify data is the right of the data subject to request the Controller and to obtain from him, without undue delay, the rectification of inaccurate personal data concerning him. In order to meet the needs of employees, the employer should carry out regular campaigns to update their personal data.

According to art. 18 of the GDPR, the data subject shall have the right to obtain from the controller the restriction of the processing of its personal data. Where processing has been restricted, such personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of

legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

The right of opposition consists in the data subject's right to object at any time to the processing of data, the Controller having the obligation to cease the processing of data, unless he demonstrates the existence of legitimate and compelling reasons justifying the processing.

Art.20 of the GDPR provides the right to data portability and the conditions under which the data subject may exercise this right. Thus, the data subject has the right to receive the data he has provided to the controller, in a structured, commonly used and automatically readable format, and has the right to transmit those data to another controller, without obstacles from the controller.

According to art.17 of the GDPR, the right to be forgotten or the right to delete data establishes the possibility for the data subject to request the deletion of data. The controller has the obligation to delete personal data, without undue delay, if they are no longer necessary to fulfil the purposes for which they were collected or if the data subject has withdrawn his consent to their processing (Șerban A., 2017). The deletion of the data will also be performed in the situation where the data subject opposes the processing, the data have been processed illegally or the controller has a legal obligation to delete the data in question.

If the processing of data by the controller is based on the consent of the data subject - of the employee - the latter has the right to withdraw his consent at any time. Once the consent has been withdrawn, the controller must ensure that the data is deleted, unless there is another legal basis for the processing. For example, if the employer uses the image of employees to promote campaigns or events (based on their consent and in accordance with the provisions of Article 7 of the GDPR), if those employees withdraw their consent, the employer will no longer be able to use their image in set purpose and will have to delete those data.

According to the provisions of art. 77 of the GDPR, any data subject has the right to lodge a complaint with a supervisory authority, in particular in the Member State in which he or she has his or her habitual residence, place of employment or alleged infringement, if he or she considers that the processing of personal data concerning it violates the legislation in the field of personal data protection (Ungureanu C.T., 2019; Șerban A., 2018, p. 163). Before addressing the supervisory authority, the data subject whose rights have been infringed has the possibility to address directly to the controller, this being in some cases a more efficient method of remedying the non-compliant way in which the data are processed (Tataru Ș.R. & Nica I.T., 2020).

CONCLUSIONS

The General Data Protection Regulation has led to significant changes in the way organizations process the personal data of employees, customers, consumers and other categories of data subjects. Human resources activities need to be redesigned to comply with data protection regulations.

In labour relations, regulations in the field of personal data protection contribute to the legal mechanism of protection of the employee against abuses that could be committed by the employer. Thus, the employer has the obligation to maintain the confidentiality of

any personal information about the employee, regardless of whether it was provided directly by the employee or acquired by the employer during the performance of the employment contract, except for the processing of data for which the employee gave his consent or was previously and explicitly informed about.

The impact of the new data protection regulations has been strongly felt in human resources activities but, in the current context, the effect produced by GDPR reminds operators that people, human resources, like data, are not an easy "commodity" to exploit, but involve responsibility, transparency and respect for human rights.

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