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Проблемы регулирования прав частной жизни в Сводном законе об устойчивости семьи в Индонезии

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Аннотация. Сводный закон об устойчивости семьи (Omnibus Law) был разработан для решения проблем дублирования и дисгармонии законодательства в Индонезии. Авторы настоящей статьи использовали нормативные методы исследования, такие как статутный подход (Statute Approach) и концептуальный подход (Conceptual Approach). Выявлено, что разработка Сводного закона об устойчивости семьи была направлена на формирование более совершенного общественного порядка и защиты семьи, улучшение жизни людей и окружающего мира и воспитание успешного поколения. Основная цель настоящей работы – проанализировать Сводный закон об устойчивости семьи, который создаёт правовую неопределённость и хаос в обществе. В результате было обнаружено несколько вытекающих проблем: отсутствие достоверных данных о необходимости его разработки; применимость законопроекта, который противоречит ряду нормативных актов, особенно касающихся прав частной жизни. Для решения этих проблем необходим детальный анализ закона.

Ключевые слова: Индонезия, Сводный закон об устойчивости семьи, права частной жизни.

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Problems in Regulating Private Rights in the Omnibus Law on Family Resilience in Indonesia

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Abstract. As a new legal product, Omnibus Law was designed as a breakthrough to answer the overlapping and disharmony issues of law in Indonesia. This study used a normative research method, namely statutory approach (*Statute Approach*) and conceptual approach (*Conceptual Approach*). The results of the study indicated that the establishment of the Omnibus Bill on Family Resilience was intended to contribute to creation of a better order, protect families and build a harmonious and successful society, raising a better generation. The main purpose of this study was to analyze the Omnibus Law on Family Resilience which presages the existence of private rights and also creates legal uncertainty in the society, causing legal chaos. The study identified several problems that emerged from this bill. Firstly, there is no valid data related to the reasons for its necessity. Secondly, the bill contradicts the above regulations, especially related to private rights. To address these two problems, there is a need for a reconsideration of this law.

Keywords: Indonesia, Omnibus Law on Family Resilience, private rights.

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Introduction

When a country declares itself a law state (referred to Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia¹), it creates several consequences that cannot be avoided. They are the law enforcement existence, the guarantees of the independence of law enforcement agencies and the proper quality of the legislation products. These three things are important components in building a law state, which is based on the nation's objectives (*rechtsidee*) [Rusdi 2019: 62]. Indonesia's presence as a law state must be proven by the existence of its political institutions [Luhukay 2019: 136].

¹ The 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, UUD NRI 1945 – in Indonesian). URL: <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf> (accessed: 31.05.2023).

The 1945 Constitution is the highest legal basis in the Republic of Indonesia. At the normative level, it is considered the supreme law in the hierarchical system of the legal norms in Indonesia. Therefore, every element of the state is able to commit to the constitution itself, even though he/she is not a lawmaker. Later on, this commitment will produce a constitutional culture and the emergence of constitutional principles. As a result, constitutional norms become guidelines in state policy at all levels². This commitment is aimed to create legal harmony, or in other words, to avoid a legal conflict between higher statutory regulations and lower ones. And if there appears a contradiction, it may be minimized or even eliminated.

The Omnibus Law³ is a new legal product designed as a breakthrough to replace existing regulations [Luhukay 2020: 38]. It remains a polemic up to this day as it is considered violating the principles of constitutionalism. The Omnibus Bill on Family Resilience⁴ violates “the legal harmony spirit” and contradicts international human rights and a legal principle *Lex Superior derogat legi inferior* (trans. from latin – Higher regulations override lower regulations).

In the development of international human rights law, private rights protection is regulated in Article 12 of the Universal Declaration of Human Rights, which states: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”⁵.

The principles of private rights protection are clearly formulated in the International Covenant on Civil and Political Rights, particularly in Article 17, which states: 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks⁶.

In the context of the Indonesian law, private rights protection has been recognized as one of citizen’s constitutional rights, after the 1945 Constitution was amended. Paragraph 1, Article 28G of the 1945 Constitution states: “Every person shall have the right to protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure and receive protection from the threat of fear to do or not do something that is a human right”⁷.

The contradiction in private rights regulation in Indonesia can be seen in the Family Resilience Bill, which conflicts with other regulations. This conflict occurred due to some errors in the formulation process that was carried out intentionally or unintentionally by the state. Further,

² Article 1, paragraph 2 of the 1945 Constitution states that “Sovereignty is in the hands of the people and is implemented according to the Constitution”. According to Hamdan Zoelva, the first part of this phrase shows the country’s adherence to democratic principles, while the second demonstrates the adherence to the principles of the rule of law and constitution. See: Hamdan Zoelva, Orasi Ilmiah pada Wisuda Pascasarjana, Sarjana, dan Diploma, Universitas Islam As-Syafi’iyah, Jakarta, 26 Maret 2014.

³ The Omnibus Law in Indonesia is aimed at creating jobs, attracting investment, and developing the economy. It also includes optimizing licensing and synchronizing various laws and regulations, as well as improving political decision-making (*Editorial note*).

⁴ The Omnibus Bill on Family Resilience implies that gays, lesbians, bisexuals and transgender people undergo rehabilitation in a number of religious treatment centers (*Editorial note*).

⁵ Universal Declaration of Human Rights. URL: <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> (accessed: 31.05.2023).

⁶ International Covenant on Civil and Political Rights. URL: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_2200A\(XI\)_civil.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_2200A(XI)_civil.pdf) (accessed: 31.05.2023).

⁷ The 1945 Constitution of the Republic of Indonesia. URL: <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf> (accessed: 31.05.2023).

the state deliberately established the Omnibus Law on Family Resilience because it had interest in it. There are some dilemmas and debate in understanding the rule of law that are not just conceptual but also political.

The lex superior derogat legi inferior principle states that any higher legislation overrides the lower one. This principle is also mentioned in the explanation of Law No. 12 of 2011 concerning the Formation of Laws and Regulation, which states: “In this provision what is meant by “hierarchy” is the level of each type of Rules based on the principle that lower Regulations must not conflict with higher Regulations”⁸.

Reflecting on legislation may create a conflict with the Constitution of Republic of Indonesia due to its hierarchical principle. Yet, this principle is ignored by the Family Resilience Bill, as private rights regulation arranged by the state contradicts it because of the provisions of Article 28G, Paragraph 1 of the Constitution.

The legal rights are distinguished from rights arising from other norms. According to Paton, rights based on law are usually defined as rights that are protected by law. According to Jeremy Bentham, human rights arise from law. It means that real rights arise from real law. On the contrary, imaginary rights arise from natural law. Before Bentham stated his notion, David Hume also argued that natural laws and natural rights are metaphysical and unreal. Therefore, Bentham argues that real laws are the ones that are made by legislature, not by natural law [Marzuki 2016: 142].

Paton states that the theory of interest or benefit was first found in Bentham's work and was later adopted by Rudolf von Campbell and others. According to Ihering, the purpose of the law is not to protect the individual's will, but to protect certain interests. Therefore, he defines rights as interests that are protected by the law. They are not created by the state because they already exist in social life, and the state only chooses which ones to protect [Marzuki 2016: 142].

In examining those two theories, Paton argues that the rights' essence is not the power which is guaranteed by the law; but the power which is guaranteed by the law to manifest an interest. He asserts that interests are objects of human desire [Marzuki 2016: 142]. Rights can be viewed from several aspects. There are original and derivative rights, basic rights, political rights, private rights, and constitutional rights.

Conceptually, according to Jeffrey Reiman, private rights are defined as the privacy value that covers the protection of freedom, moral personality, and various and critical inner life. In this case, there are several articles in the Family Resilience Bill that regulate private matters, including the following: in carrying out family life, the husband and wife have obligations which are regulated in Article 25. In Paragraph 2, it is stated that there are four husband's obligations, namely:

- as the head of the family he is responsible for maintaining the family's integrity and welfare, providing the household needs according to his abilities, and for the legality of the family status;
- protect the family from discrimination, cruelty, crime, persecution, exploitation, sexual abuse and neglect;
- protect himself and his family from gambling, pornography, promiscuity and free sex, as well as abuse of narcotics, alcohol, psychotropic substances and other addictive substances;

⁸ Elucidation of Law of the Republic of Indonesia No. 12 of 2011. URL: http://www.flevin.com/id/Igso/translations/JICA%20Mirror/english/4778_UU_12_2011_e_Eluc.html (accessed: 31.05.2023).

- hold deliberations with all family members in dealing with family problems.

Meanwhile, the wife's obligations are regulated in Paragraph 3, namely:

- the wife is obliged to manage household affairs as good as possible;
- maintain the integrity of the family;
- treat her husband and children well, and fulfill the needs of her husband and children according to norms, social ethics, and regulations⁹.

In the Omnibus Bill, the Family Resilience is one of the articles that are regulated by the government, concerning the regulation of private rights among many other articles. Warren and Brandeis argue that in these articles the privacy right is “the right to be let alone”. This idea is then justified and acknowledged by the presence of several lawsuits which justify the need for private rights protection. In this case, the state interferes too much with its citizens' private rights and gives many limitations which are aligned with the nature of colonialism.

The government is given the mandate to use its power to protect citizens' rights. Moreover, the concept of *a welfare state* as a modern state has given more power to the government. This power is solely used for advancing and achieving human rights fulfillment. The government must be able to fulfill all these rights and no longer just ensure that someone does not violate other's rights or protect someone from violations of his/her rights. Besides, it becomes the government's obligation to fulfill the rights of the family's welfare [Muis 2019: 32].

The government's role in the state welfare is very broad, so it requires controlled mechanisms to limit government's actions within the scope of the state's objectives in the constitution. Therefore, the concept of the state welfare is better understood as an influence on the citizens' welfare source as a part of social capital [Tjitrawati 2013]. The rational principle is used to prevent “legal obesity”. The ratification of the Omnibus Bill on Family Resilience creates uncertainty and causes chaos in people's lives and arbitrary actions [Luhukay 2009: 26].

The Omnibus Bill on Family Resilience potentially creates intrastate war. Intrastate war is a conflict between governmental and nongovernmental actors. It can be seen from protests and demonstrations that occurred in relation with the Omnibus Bill on Family Resilience¹⁰. That shows that the existence of this law has the potential to curb private rights and create legal ambiguity and chaos in the society.

Methods. During the research, the authors used a normative legal method. According to Philipus M. Hadjon and Tatiek Sri Djatmiati, the normative legal research departs from the nature of legal science [Hadjon and Djatmiati 2016: 3]. In line with them Peter Mahmud Marzuki stated that *Legal Research* is a research that uses the statutory approach (*Statute Approach*) and the conceptual approach (*Conceptual Approach*) [Ibrahim 2010: 93].

Firstly, the authors explain the Statutory Approach, which implies understanding hierarchies and principles in statutory regulation. According to Article 1 of Law No. 12 of 2011, laws and regulations are written regulations that contain legally binding norms and are formed or set by the state or authorized officials. From this explanation, it can be briefly said that the statute means some

⁹ Family Security Bill (RUU Ketahanan Keluarga). URL: <https://www.dpr.go.id/dokakd/dokumen/RJ2-20200214-122745-3039.pdf> (accessed: 31.05.2023).

¹⁰ Newman generalizes the New Wars in six characteristics: less interstate war and more intrastate war, failure in transformation process of both the state and society, increasing ethnic and religious conflicts, increasing civilian casualties, the appearance of intentional victims and a blur between the perpetrator and the victim.

form of the legislation and regulation. So, the statutory approach is the approach using the legislation and regulations.

Secondly, the authors use the Conceptual Approach. The concept of law emerges from the views and doctrines in the science of law. The analysis of legal materials is carried out by making an inventory of all legal materials used both primary and secondary. After that, identification will be carried out based on groups in accordance with the provisions of the Law No. 12 of 2011, concerning the Formation of Laws and Regulations. Other legal materials will be reviewed in accordance with legal issues. Primary and secondary legal materials will be adjusted with this legal research purpose in order to draw conclusions and suggestions.

The Urgency of the Private Rights Arrangements in the Omnibus Bill on Family Resilience

The urgency of the private rights arrangements in the Family Resilience Bill is a revolutionary step, considering the high number of divorces and the enormous impact on these people and their children. There are various important reasons for strengthening family resilience. First, to prevent the deviant behavior, namely the behavior pattern that is contrary to society's morality. Second, to fulfill the obligation in taking various steps to ensure the *de jure* and *de facto* rights as a form of respect for human rights universalism. This is an integral part of the humanity and justice principles as outlined in the Preassemble to the 1945 Constitution of the Republic of Indonesia and cannot be separated from Indonesia's intention and efforts to participate in implementing world order. Third, the world of education introduces positive disciplines that teach life values, friendly and assertive character development, at the same time encouraging children to find their strengths in the family. Fourth, one of the most important reasons is the assumption that the state can guarantee and maintain the compliance level. Besides that, it is also able to prioritize the presence of the country's capabilities collision. This means that the state has a very central position as the one who is responsible for its citizens' protection and welfare¹¹. The family resilience is a family dynamic condition that contains physical, psychological, mental, and spiritual abilities, which are useful to live independently, develop oneself and family in achieving harmony. According to Chapman, there are five characteristics of a proper functioning family:

- A serving attitude as a sign of glory;
- Harmony between husband and wife toward a good marriage quality;
- Parents who teach and train their children with creative challenges, consistent training and skills development;
- Husband and wife who become leaders with love;
- Children who obey and respect their parents [Chapman 1997].

The first reason for the urgency of implementing the Omnibus Bill on Family Resilience is to contribute to the creation of a better order and improve the quality of people's lives. After reviewing the previous concept, it can be analyzed that the established Omnibus Bill potentially violates the freedom of people in a private area and the state order concepts. The urge to create a better life order has caused arbitrary actions. This is because not all citizens' behavior must be legally regulated. Certain behavior should be regulated on the level of individual or community morality. Due to this reason, the state presents in protecting private rights instead of regulating

¹¹ Indonesian Criminal Code. URL: <http://lad.correct.go.th/main/wp-content/uploads/2016/11/Indonesian-Penal-Code.pdf> (accessed: 31.05.2023).

private life. The state does not have the authority to regulate the citizens' morality, especially the behavior in private spaces which does not harm others. The rights that should be regulated by the state are private rights that harm others or the rights that violate other's rights¹².

The second reason is to provide family protection, as many household problems are not covered by Law No. 1 of 1974 concerning marriage. Every legal product contains moral values. However, it must be added that the moral values contained in the law should be universal and uphold human dignity. It means that the state can determine legislation that regulates the society's morality on the condition that it makes human beings more civilized and their dignity more respected¹³.

The third reason is to create a harmonious and successful family to raise a better generation. A family is considered the smallest institution in the social, national and state life. When this institution is efficient, we will succeed in creating a better generation. On a practical level, this Bill is also expected to reduce the divorce rate in Indonesia¹⁴. However, this reason is rather irrelevant because divorce is often caused not only by the problems which are regulated in the Omnibus Bill. Sometimes partners have to divorce as their personalities do not match. This legislation will not give any impact on the creation of a harmonious family. Family disharmony cannot be used as a measure of success in raising a generation that has a good integrity. Thus, these 'urgent' reasons can be considered irrelevant and are contrary to universal private rights that should be respected and protected by not interfering. That is, the state must guarantee the fulfillment of rights and not regulate these rights into obligations.

Problems in Regulating Private Rights in the Omnibus Bill on Family Resilience in Indonesia

This problem arose related to the presence of this Bill that regulates all private matters contrary to the 1945 Constitution of the Republic of Indonesia (Article 28G, Paragraph 1) and Article 7, Paragraph 1 of Law No. 12 of 2011 concerning the Establishment of Legislation (P3). It regulates the hierarchy of legislation in Indonesia, in which the legislation has a lower position than the 1945 Constitution (UUD 1945). The legal system in Indonesia adheres to the principle of *lex superior derogat legi inferior*, which means that lower legislation can be overridden by higher legislation. The rules should follow legal principles, which means that they must comply with the humans' physical and existential aspects; as well as legal principles must be made both in positive law and customary law. If there is a conflict between the principles, the ones that must be referred to are the legal principles [Marzuki 2016].

Based on Hans Nawiasky's thought, Pancasila occupies the highest position in the statutory system as a *state's fundamental one*, while in Hans Kelsen's theory of *Stufenbau des Rechts*, Pancasila is presented as a *ground norm*. The 1945 Constitution of the Republic of Indonesia is the

¹² The state can regulate the morality of its citizens even stipulating it in law, like about same sex marriage. However, that authority is not unlimited. Therefore, controlling the private life by any reason must be rejected. See: Why a postwar legal debate over the impact of private sex still matters today. URL: <https://theconversation.com/why-a-postwar-legal-debate-over-the-impact-of-private-sex-still-matters-today-79703> (accessed: 31.05.2023).

¹³ Ibid.

¹⁴ See: Ida Royani. Pentingnya UU Ketahanan Keluarga [The Importance of the Family Resilience Law]. (In Indonesian). URL: <https://www.moeslimchoice.com/read/2020/02/24/33293/> (accessed: 31.05.2023).

basic law in statutory regulation [Hoesein 2013: 57]. In 2011, the type and hierarchy of statutory regulations were:

- The 1945 Constitution of the Republic of Indonesia;
- The Decree of the Peoples' Consultative Assembly;
- The Law/Government Regulations in Lieu of Laws;
- The Government Regulation;
- The Presidential Decree;
- The Provincial Regulations;
- The district/local regulations.

This hierarchical arrangement has implications for its law strength: the higher level has the stronger implication. Moreover, this system also implies that the lower regulations must not deviate from the regulations above¹⁵. The impact will be felt during the making of the Omnibus Bill on Family Resilience, in which the lawmakers do not see the higher or related regulations and do not harmonize them. Hence, the substance of one regulation contradicts other regulations¹⁶.

Article 28G, Paragraph 1 of the 1945 Constitution of the Republic of Indonesia states that: "Every person shall have the right to protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right".

Furthermore, Article 28B, Paragraph 1 of the 1945 Constitution of the Republic of Indonesia mandates this notion to protect family and marriage as citizens' constitutional right. In this context, it is a form of protection that is inseparable from family resilience concept which is ended in national strength. This article of the constitution is used as the source for arranging regulations about family resilience.

The Omnibus Bill on Family Resilience creates a lot of controversies. The outline explains that this article can threaten the citizens' private space, limit the women's role systemically, and has the potential to violate human rights in general. As a result, the Omnibus Bill on Family Resilience has created a legal setback. Article 16, Paragraph 1 of the Omnibus Bill on Family Resilience states that one of the family members' obligations is to obey religious orders and stay away from religious prohibitions based on their religion. If analyzed, this article is very contradictory to Article 28E, Paragraph 1 of the 1945 Constitution. This is because the state does not have the authority to oblige a person to carry out his religious orders, but only guarantees the protection of a person's right.

Privacy is someone's right that must be protected so that their life will not be disturbed [Latumahina 2014: 16-17]. Private rights are important aspects that must be adjusted to the state. Everyone has the right to privacy, which is regulated in Article 28G, Paragraph 1.

¹⁵ See: Lotulung and Hamidi. The progress of a tiered theory (stufentheorie) cannot be separated from three jurists, namely Adolf Merkl (1836–1896), Hans Kelsen and Hans Nawiasky. Various sources say that Adolf Merkl sparked a tiered theory or at least wrote first about it. Kelsen's tiered legal theory was influenced by Adolf Merkl's theory, namely legal stages theory (die Lehre vom Stufenbau der Rechtsordnung). Adolf Merkl explains that law is a hierarchical system of rules. Also see: Jazim Hamidi (2006), Indonesian Legal Revolution: Meaning, Position, and Legal Implications of the Proclamation of 17 August 1945 in the Indonesian Constitutional System. Konpress, Jakarta, p. 55–57.

¹⁶ Sandi A.T.T. Refleksi Terhadap Pembatalan Produk Hukum Daerah, Makalah Lecture on Law and Judicial Review: The Constitutionality of the Authority of the Ministry of Home Affairs in Canceling Perdadi in the Era of Regional Autonomy, Organized by the Families of Magister of Law Students at the Faculty of Law, Gadjah Mada University in Yogyakarta, 28 September 2016.

State's position in regulating private rights is very clear, especially when it refers to their fulfillment according to human rights-based development approach. This approach implements that when we are talking about the rights, there are parties that have the obligation to fulfill them. The right holder has the power to ask its fulfillment from the rights bearer, which in practice is always the state [Kasivisiwanathan 2014: 1]. So even in the legal regulation, the state is not supposed to regulate or control private rights, but rather has to fulfill them.

The analyzed defects in the Omnibus Law on Family Resilience cause a number of new problems that push Indonesia towards a legal setback. Indonesia is quite behind in the discourse of protecting private rights, especially at the legislative framework, both in terms of time and protection variety. Privacy protection has actually been known for a long time in Indonesia as regulated by Law No. 19 of 2016 concerning Electronic Information and Transaction. Article 3 of this law states: "People access computers and/or Electronic Systems owned by other people in any way (against the law) whether intentionally or unintentionally".

Husband and wife or even children and parents often use each other's protection/password on their phones. Even if they belong to one family, actually privacy is their respective right, but the fact is that much domestic violence arises from this¹⁷. Rynaldo's research states that the problem of domestic violence is the victim's dilemma. They always withdraw their reports on the case of domestic violence. This is related to the wife's reason as a victim that is afraid of a direct impact, namely divorce. The next impact is that if the husband goes to prison or file the divorce, the wife will automatically lose her living expenses for herself and/or her children. This view is similar to Chung's opinion who regards family violence from a social positivist perspective. Domestic violence is spreading, and both women and men can be victims. Therefore, the position of women and men is considered equal as victims and perpetrators [Chung 1997: 84-85]. However, according to the author, the victims are mostly women due to patriarchal ideology in Indonesia.

Private rights regulation arranges relations between human beings. This regulation emphasizes the individual interest that should not be regulated by the state but is protected by it. The implementation of the private space that is regulated by the state will create inconsistency, disharmony and overregulation. According to Richard Susskind's theory, the hyper regulations or the "legal obesity" and overregulation [Anggono 2016] destroy government order. Richard A. Posner argues that the rational principle is put forward in regulation [Posner 1993: 6-7]. According to the rational principle, the Omnibus Bill on Family Resilience should not enter the sphere of private morality. Lawrence Kohlberg views human morality as a universal system. He believes that only certain people have this kind of morality. These people have reached the highest level of development, which is the post conventional stage.

Morality or immorality of people is not based on the standards of others or the authorities' provisions. Moral people are internally able to think and understand the good and bad behavior. According to Kohlberg, those people have "the universal ethical principle" [Kohlberg 1981]. This is aligned with Bertens's (2005) notion about morality. Morality must be universal, so we can not characterize any culture as moral or immoral. So, if a culture degrades women, it can not be blamed. Bertens (2005) argues that the moral relativity does not stand because there are behaviors that could not be universally accepted.

¹⁷ District Court Decision Bengkalis, nomor 662/Pid.B/2015/PN.Bls on January, 29, 2016, husband abuses wife because she is not allowed to know the cellphone password.

Private rights have a basic idea that places humans as autonomous subjects. Private rights give an individual the right to isolate from others, get out of public space or stay there and develop themselves according to their hopes and desires. These rights also protect individual's actions as long as they do not interfere with or endanger others. At this point it is the absolute vision of privacy. So, private rights protect the individual autonomous space for self-existence and action as long as other's freedom is not disturbed. The protection is a special space for individual existence that does not have any contact with other people's freedom¹⁸.

Private rights have several scopes. The first scope is identity that protects privileges, including someone's name, appearance, style, feelings, thoughts and beliefs. The second scope is integrity that protects people from inhuman treatment or punishment like arbitrary body search. The third one is intimacy, which includes public confidentiality of someone's personality traits, actions or data. The fourth scope is autonomy that enables an individual to manifest his/her purposes as long as they do not interfere with other's privacy. The fifth scope is private rights protected by the state. The state intervention is certainly allowed when it is necessary to protect others from their losses. Therefore, states should develop and apply legislation in this field extremely carefully, otherwise it may lead to arbitrary intervention in private rights.

The rights stated above are not absolute and can be limited by the privacy of others. Thus, per definition, they are not restricted as long as they do not violate the rights of others. However, this often conflicts with state prohibitions, especially if private rights are considered deviating from religious, moral or social norms.

Once again, private rights relate to autonomous and most private space of a person. The restriction to religious, social or moral norms is indeed legal. The Vienna Declaration and Human Rights Program, which was the result of the World Conference on Human Rights in 1993, clearly stated that "all human rights are universal, indivisible, interdependent and interrelated".

It is important to consider national or regional particularity, as well as various historical, cultural and religious backgrounds. The state has to continue developing and protecting all kinds of human rights and their freedom in regard to any political, social and cultural system. The particularity is then recognized and must be taken into consideration. The important thing is in what situation the particularity can be used legally to limit private rights and not violate the International Covenant on Civil and Political Rights.

The European Court of Human Rights, The Inter American Court of Human Rights and The Rights Committee from the United Nations are used as references to answer this question. This is based on the idea that every society has a room to solve a conflict between individual rights and national interests according to its moral standards. Hence, this doctrine may be used to interpret the extent to which the particularism can limit human rights.

We can learn from the process of establishing human rights conventions in several European countries, where they have the opportunity to maintain a balance between common interests and individual rights. The basic principle is that the state is seen as more understanding than an international judge in assessing how to apply convention in each context. This idea places protection based on the European Convention of Human Rights as secondary or subsidiary, if compared with conventions provided by each country¹⁹.

¹⁸ Ibid.

¹⁹ The Decision of the European Court of Human Rights (The European Court of Human Rights). URL: https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2_en.asp (accessed: 31.05.2023). The Inter

However, we must remember that the state's restrictions to limit private rights are based on general principles as follows: first, all of them must be prescribed by law which can be controlled to avoid arbitrary implementation of rights restrictions. Second, they must be based on legitimate objectives and only when it is necessary for a democratic society (*necessary in a democratic society*). Then they must be completed in accordance with important reasons. Hence, in this case a state is allowed to use *margin of appreciation*.

Yet, a phrase assessment is necessary for a democratic state to enter the most fundamental principle in limiting private rights, namely "the principal of proportionality". It questions "the recipient's reasonableness" of the limitation, whether the limitation is *reasonable* or not? Even though a state has a discretion with the doctrine of marginal appreciation, unnecessary restrictions should not be enforced. The contradiction between individual rights and government interests first arose in America. The *Griswold v. Connecticut* case happened in 1965. The case is the community resistance toward the state policy, which prohibited the use of contraceptive tools to control family life, stating that contraceptive devices are allowed for soldiers only. This case spread out to other private rights, like abortion and same-sex marriage. Until this day, the *Griswold v. Connecticut* case is still in debate. The human rights and liberties are used as a reference to make a court decision, if the state regulation contradicts individual rights. The law is always evolving and changing. Will the right to sexuality and family continue to be guaranteed?

Furthermore, Article 25, Paragraph 2 and Paragraph 3 state that a wife is charged to take care of the household, and a husband is the head of the family who is obliged to earn a living. The determination of the roles of husband and wife will have a negative impact that will put the wife in a position of a family servant. It can make a woman vulnerable to violence due to an unequal position. On the other side, the determination of the husband's role as the family leader has the potential to increase an excessive patriarchal culture. As usual, in some societies when women are bound in marriage, there are certain rules which often disadvantage women.

Moreover, the ratification of the Omnibus Bill on Family Resilience will create many conflicts. In patriarchal hegemony, there are stereotypes regarding gender, namely "the man as provider, the woman as caregiver". Many conflicts occur due to the partner's failure to fulfill their spouse's expectations [Bacerra, Serra 2019: 2-16]. There is a binary position on gender that can be detrimental for both men and women. This is the asymmetrical position when one of them is a subordinate. In this condition, it must be treated through ways that avoid abuse of power.

This regulation is the state's obligation to find a possibility and appropriateness of its implementation, according to women's economic rights that guarantee the equal fulfillment of rights between men and women. The state must adopt the rights, modify and eliminate regulations that discriminate men and women in both public and private spheres. Women have the right to work which entitles them with the possibility to earn their living through freely chosen job and the working conditions that are safe, healthy and not demeaning the human dignity. Restricting women to carry out domestic functions only is a form of violation of women's rights, which also impacts women's poverty. The feasibility and appropriateness of the implementation of this regulation are related to the inevitable modernization and globalization processes.

American Court of Human Rights. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_28_eng.pdf (accessed: 31.05.2023).

The function of law as an instrument for creating social justice will be stronger if the law is following continual change, including being open to or merging with new perspectives. When the rule of law is not implemented evenly and fairly, there occurs anomy. Merton argues that there is a clear connection between the anomy and cultural and structural dynamics in the society. If there is a cultural shift from traditional to modern and a change in the society structure that becomes more wage-based, the rule of law has to adjust, otherwise there will be the anomy.

Conclusion

There are three reasons that explain the urgent implementation of the Omnibus Bill on Family Resilience. The first reason is to contribute to creating a better order, a qualified system to regulate people's live. The second reason is to provide family protection, as many household problems are not covered by Law No. 1 of 1974 concerning marriage. The third reason is to create a harmonious and successful family, raising a better generation. This is the moral and philosophical spirit of its regulation. In practical terms, this bill is also expected to reduce the divorce rate in Indonesia.

Sociologically, family has a very important position in educating and instilling values. It emerges as "meso" or the middle level of society. The international law recognizes this important institution as an intermediary body in one's life. Furthermore, family is considered the main channel for the values of the society and children. Language, cultural, moral and religious values and other traditions are effectively absorbed by the children in a family.

Based on the results of this study, the authors concluded that if the Omnibus Bill on Family Resilience is to be ratified, it is important to re-write or re-arrange it. First, it is necessary to conduct in-depth research and review about the reasons and background behind this bill. Second, to ensure that its substance does not conflict with higher legislation regulating private rights, such as the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 concerning Human Rights, Law No. 12 of 2005 concerning The Ratification of International Covenant on Civil and Political Rights. Private rights are based on the idea that puts human as autonomous subject. They give an individual the right to isolate from others, get out of public life, and self-develop according to their hopes and desires. These rights also protect individual actions as long as those actions do not interfere with or harm others.

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