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Dosen Pengampu

Al. Andang L. Binawan

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PENGANTAR SINGKAT

Diktat ini adalah lebih sebagai kesimpulan suatu diskusi terkait beberapa permasalahan dalam tugas pelayanan seorang imam Katolik. Sebelum diskusi, mahasiswa wajib membaca dokumen *Pastores Dabo Vobis* agar pemahaman hukum-hukum ini bisa lebih mendalam. Selain itu, sebagai sebuah diskusi, akan ada semacam *case study* yang disodorkan.

Sebagian diktat ini ditulis dalam bahasa Inggris supaya mahasiswa program magister STF Driyarkara bisa lebih 'akrab' dengan bacaan berbahasa Inggris.

DAFTAR ISI

KULIAH 1-2

PELAYANAN AWAM DI RANAH ROHANI
(Beberapa Pedoman Dasar menurut KHK 1983)

Pertanyaan tentang sejauh mana dalam Gereja Katolik seorang awam bisa memberi pelayanan rohani sering muncul, karena cukup banyak umat ingin berpartisipasi lebih aktif dalam Gereja. Hal ini pun seiring dengan perkembangan sosial, yang makin menjunjung tinggi harkat dan martabat seorang pribadi dengan kesamaan hak dan kewajiban. Hal itu pun diakui dalam dalam Gereja Katolik, seperti misalnya tampak dalam dokumen Konsili Vatikan II *Gaudium et Spes*. Hanya saja, supaya ada keteraturan dalam pelayanan dan juga pengambilan keputusan dalam konteks hidup bersama sebagai Gereja, perlulah aturan yang jelas.

Makalah singkat ini mau memaparkan beberapa pedoman yang terkait dengan pelayanan rohani yang bisa dilakukan oleh awam. Untuk itu, lebih dahulu ditegaskan makna perbedaan dan pembedaan antara awam dan klerus. Sesudah itu, mengingat bahwa pelayanan rohani lebih diprioritaskan bagi para klerus, pelayanan mereka, baik dalam sakramen maupun sakramentali, ditekankan. Kaum awam berpartisipasi di dalamnya.

1. Awam-Klerus

Perbedaan bidang pelayanan kaum awam dengan bidang pelayanan kaum tertahbis bisa dilihat dengan mencermati rumusan pengertian tentang keduanya. Dalam Hukum Gereja, atau biasa disebut dengan KHK (Kitab Hukum Kanonik) tahun 1983, disebutkan dalam kanon 207 §1 bahwa

> ”Oleh penetapan ilahi, di antara kaum beriman kristiani dalam Gereja ada pelayan-pelayan suci, yang dalam hukum juga disebut para klerikus; sedangkan lain-lainnya juga disebut awam.”

Kanon di atas diperkuat oleh kanon 1008.[1] Kemudian, tentang kanon atau pasal itu, ada dua hal penting yang perlu lebih dahulu dipahami. Pertama, yang dimaksud dengan klerikus, atau juga biasa disebut sebagai klerus, dalam kanon itu adalah kaum tertahbis, yang kongkretnya terdiri dari diakon (tetapi bukan pro-diakon, karena pro-diakon hanya diangkat sementara, tidak ditahbiskan[2]), imam dan uskup.[3] Kedua, kata 'pelayan suci' sebagai sebutan untuk para klerus tidak dimaksudkan bahwa mereka ini suci, melainkan bahwa mereka itu mempunyai tugas melayani perkara-perkara yang suci atau rohani. Perkara suci yang dimaksud itu antara lain adalah pelayanan sakramen dan pelayanan dalam Gereja, baik itu sebagai pejabat dalam struktur hirarkhi Gereja maupun pelayanan pastoral yang lain.

Dengan kata lain, para tertahbis atau para klerus itu mempunyai ruang lingkup pelayanan yang spesifik (dan pokok), yaitu di dalam Gereja. Hal itu tidak berarti bahwa klerus sama sekali dilarang memberi pelayanan di luar Gereja. Ada beberapa pelayanan di luar Gereja yang jelas-jelas terlarang bagi para klerus, misalnya, menjadi pemimpin organisasi buruh[4] atau menjadi pejabat publik.[5] Selain itu, agar perhatian para klerus bagi pelayanan 'suci' tidak terganggu, para klerus juga dilarang berdagang.[6]

Jika pelayanan para klerus diprioritaskan dalam Gereja, pelayanan para awam lalu ada di luar Gereja, atau 'di dunia.' Hal itu pun dikatakan dengan cukup jelas dalam kanon 225,

> § 1. Seperti semua orang beriman kristiani yang ber-dasarkan baptis dan penguatan ditugaskan Allah untuk kerasulan, kaum awam terikat kewajiban umum dan mempunyai hak, baik secara perseorangan maupun tergabung dalam perserikatan, untuk mengusahakan, agar warta ilahi keselamatan dikenal dan diterima oleh semua orang di seluruh dunia; kewajiban itu semakin mendesak dalam keadaan-keadaan dimana Injil tidak dapat didengarkan dan Kristus tidak dapat dikenal orang selain lewat mereka.
>
> § 2. Mereka, setiap orang menurut kedudukan masing-masing, juga terikat

[1] "Dengan sakramen tahbisan menurut ketetapan ilahi sejumlah orang dari kaum beriman kristiani diangkat menjadi pelayan-pelayan suci, dengan ditandai oleh meterai yang tak terhapuskan, yakni dikuduskan dan ditugaskan untuk menggembalakan umat Allah, dengan melaksanakan dalam pribadi Kristus Kepala, masing-masing menurut tingkatannya, tugas-tugas mengajar, menguduskan dan memimpin." Karena kriteria pokoknya adalah tahbisan, bruder dan suster, meski berkaul, pada dasarnya tetaplah awam!
[2] Lihat Kanon 230 § 2.
[3] Lihat Kanon 1009 § 1.
[4] Lihat Kanon 287 § 2.
[5] Lihat Kanon 285 § 3.
[6] Lihat Kanon 286.

> kewajiban khusus untuk meresapi dan menyempurnakan tata dunia dengan semangat injili, dan dengan demikian khususnya dalam menangani masalah-masalah itu dan dalam memenuhi tugas-tugas keduniaan memberi kesaksian tentang Kristus.

Cukup jelas dikatakan dalam kanon itu bahwa meresapi dunia dengan nilai-nilai Injili atau nilai-nilai kristiani adalah ’panggilan’ para awam. Tentu, hal ini tidak dimaksud bahwa awam dilarang berperan dalam Gereja. Banyak peran dalam Gereja dimungkinkan juga bagi awam, termasuk perempuan, baik dalam jabatan-jabatan dalam Gereja[7] maupun dalam liturgi,[8] seperti dijamin dalam kanon 228,

> § 1. Orang-orang awam yang diketahui cakap berkemampuan untuk diangkat oleh Gembala suci untuk mengemban jabatan-jabatan dan tugas-tugas gerejawi, yang menurut ketentuan-ketentuan hukum dapat mereka emban.
>
> § 2. Orang-orang awam yang unggul dalam pengetahuan, kearifan dan integritas hidup, dapat berperan sebagai ahli-ahli atau penasihat, juga dalam dewan-dewan menurut norma hukum, untuk membantu para Gembala Gereja.

Tentu, mengingat makna ’dunia’ itu begitu luas, perlulah penjabaran lebih lanjut. Sebelum itu, KHK 1983 juga mengingatkan bahwa kaum awam, meski tidak diwajibkan menikah dan membentuk keluarga, khususnya untuk mereka yang menjalaninya, perlu tetap memperhatikan kehidupan keluarga itu sebagai salah satu prioritas panggilan hidup. Kanon 226 mengatakan,

> § 1. Mereka yang hidup dalam status perkawinan, sesuai dengan panggilan khasnya, terikat kewajiban khusus untuk berusaha membangun umat Allah melalui perkawinan dan keluarga.
>
> § 2. Orangtua, karena telah memberi hidup kepada anak-anaknya, terikat kewajiban yang sangat berat dan mempunyai hak untuk mendidik mereka; maka dari itu adalah pertama-tama tugas orangtua kristiani untuk mengusahakan pendidikan kristiani anak-anak menurut ajaran yang diwariskan Gereja.

Dengan kata lain, yang mau ditekankan adalah bahwa panggilan awam itu menggarami dunia tidak boleh melupakan dan mengorbankan panggilannya untuk memberikan kesejahteraan pada pasangan hidupnya serta membesarkan dan mendidik anak-anaknya.

[7] Contohnya: dewan pastoral keuskupan (k. 511) dan dewan keuangan keuskupan (k. 492)
[8] Contohnya: bisa mimpin ibadat umum dan berkotbah atau memberi renungan (kk. 759, 766)

2. Pelayanan Sakramental Para Klerus

Salah satu tugas pokok para klerus adalah memberi pelayanan sakramen pada umat Katolik. Tentu saja tugasnya berbeda-beda. Ada sakramen yang hanya bisa diterimakan oleh uskup, misalnya sakramen imamat, atau juga sakramen khrisma (meski dalam situasi tertentu bisa diterimakan oleh seorang imam). Ada pula sakramen yang hanya boleh diterimakan oleh imam (termasuk uskup), seperti misalnya ekaristi (dibedakan dari 'menerimakan komuni'), pengampunan dan perminyakan. Ada juga yang boleh diterimakan oleh diakon, yaitu permandian. Selain itu, ada juga yang dalam penerimaan sakramen klerus hanya berfungsi sebagai 'saksi' yaitu perkawinan. Seorang awam bisa juga menjadi saksi 'resmi' perkawinan hanya dalam keadaan darurat, seperti halnya dalam penerimaan sakramen baptis.

Yang penting diingat dari sakramen itu adalah bahwa sakramen, sebagai tanda dan sarana cinta dan penebusan Tuhan, membutuhkan ritus (urutan tindakan dan kata-kata) dan tanda (baik berupa benda maupun tindakan) tertentu. Ritus dan tanda ini pada dasarnya adalah tindakan Gereja yang bersifat publik, maka perlulah aturan supaya selain ada keseragaman juga ada kepastian. Kepastian ini penting agar tidak membingungkan umat.

Sehubungan dengan benda, yang biasanya dipakai, selain roti dan anggur dalam ekaristi, adalah air (permandian) dan minyak (katekumen, khrisma dan perminyakan). Tentang kedua hal ini, ada beberapa patokan. Untuk air, air yang boleh dipakai adalah air sungguh (H20) dan relatif murni.[9] Sementara itu, minyak yang boleh dipakai adalah minyak zaitun, atau jika tidak mungkin, minyak dari tumbuhan.[10]

Terkait dengan hal itu, penting diperhatikan kanon 1171 yang mengatakan bahwa

> Hendaknya benda-benda suci yang diperuntukkan bagi ibadat ilahi karena dipersembahkan atau diberkati diperlakukan dengan hormat dan jangan dipergunakan untuk pemakaian profan atau yang asing baginya, juga jika benda-benda suci itu milik privat.

[9] Lihat kanon 853.
[10] Lihat kanon 847 § 1.

Seperti sudah disebut di atas, pelayanan sakramen adalah ‘prerogatif’ para klerus. Satu-satunya sakramen yang diterimakan oleh (bahkan hanya oleh) awam dalam keadaan biasa hanyalah perkawinan! Untuk penerimaan sakramen baptis, hanya dalam keadaan darurat seorang awam diperbolehkan menerimakannya. Dengan kata lain, partisipasi awam dalam sakramen adalah menerimanya dengan sepenuh hati.

Terkait dengan hal ini, para klerus pun mendapat batasan-batasan supaya tidak menyalahgunakan wewenangnya itu.[11] Salah satu hal yang sangat mungkin dilakukan adalah ‘membisniskan’ pelayanannya tadi. Untuk itu, kanon 848 KHK 1983 menegaskan

> Pelayan sakramen tidak boleh menuntut apa-apa bagi pelayanannya selain persembahan (*oblationes*) yang telah ditetapkan oleh otoritas yang berwenang, tetapi selalu harus dijaga agar orang yang miskin jangan sampai tidak mendapat bantuan sakramen-sakramen karena kemiskinannya.

3. Pelayanan Sakramentali

Di luar ketujuh sakramen, ada pula yang disebut dengan sakramentali, yaitu benda atau tindakan yang bisa menjadi penanda atau pengingat akan cinta dan penebusan Tuhan, atau dalam kanon 1166 dikatakan bahwa

> Sakramentali ialah tanda suci yang dengan cara yang mirip sakramen menandakan hasil-hasil, terlebih yang rohani, yang diperoleh berkat doa permohonan Gereja.

Yang masuk dalam kategori sakramentali antara lain adalah gambar suci, salib, relikwi, juga beberapa upacara suci, seperti penguburan, pemberkatan rumah, dan sebagainya. Dalam hal ini, yang perlu diingat adalah bahwa sakramentali bukanlah jimat! Maksudnya, sakramentali itu bukanlah sebuah benda yang mempunyai kekuatan pada dirinya, lepas dari konteks iman kita. Benda-benda sakramentali memang selayaknya dihormati, tetapi tidak boleh disembah-sembah sebagai hal yang suci pada dirinya dan bahkan melebihi Tuhan. Sakramentali, bagaimana pun, hanyalah sarana untuk mengarahkan dan menumbuhkan iman.

[11] Ada ’ancaman’ cukup berat bagi para klerus jika menyalahgunakan wewenang, yang antara lain tampak dalam kanon-kanon 1378-1389 dan 1392-1396.

Sehubungan dengan hal itu pun, yang pertama-tama mempunyai ‘hak’ pelayanan adalah para klerus, terutama yang diberi kuasa khusus untuk itu. Dalam hal ini, awam pun bisa memberikannya, sesuai dengan ketentuan kanon 1168

> Pelayan sakramentali ialah klerikus yang dibekali dengan kuasa yang perlu untuk itu; beberapa sakramentali, sesuai norma buku-buku liturgi, menurut penilaian Ordinaris wilayah, dapat juga dilayani oleh orang awam yang memiliki kualitas yang sesuai.

Sehubungan dengan awam, seperti telah dikatakan, hanya mereka yang dinilai ‘pantas’ oleh Ordinaris wilayah saja yang berhak memberikan pelayanan sakramentali, misalnya pro-diakon yang melayani doa pemberkatan rumah atau juga penguburan jenasah, dengan memakai air suci yang sudah diberkati oleh imam. Dalam hal ini, yang berhak memberkati hanyalah imam. Bahkan, diakon pun hanya diperbolehkan dalam perkara tertentu. [12]

Selain sakramentali, ada juga eksorsisme atau pengusiran setan. Tentang hal ini, KHK 1983 kanon 1172 mengatakan:

> § 1. Tak seorang pun dapat dengan legitim melakukan eksorsisme terhadap orang yang kerasukan, kecuali telah memperoleh izin khusus dan jelas dari Ordinaris wilayah.
>
> § 2. Izin itu oleh Ordinaris wilayah hendaknya diberikan hanya kepada imam yang unggul dalam kesalehan, pengetahuan, kebijak-sanaan dan integritas hidup.

4. Beberapa Kesimpulan

Jika mencermati beberapa hal di atas, ada beberapa butir kesimpulan yang bisa diambil

a. pelayanan rohani (yang paling pokok adalah pelayanan sakramen dan sakramentali) adalah pelayanan Gereja, dan ini menjadi pelayanan khas para klerus, karena para klerus mewakili Gereja
b. (para klerus tetap diberi ruang untuk berkarya di ranah ‘profan,’ meski terbatas)
c. untuk kedua pelayanan itu, sebagai wakil Gereja, para klerus harus mendapatkan otoritasnya dari Gereja

[12] Lihat kanon 1169 § 2 dan 3.

d. selain itu, supaya tidak ada penyalahgunaan, ada beberapa pembatasan, dan salah satu batas yang paling jelas adalah prinsip ‘gratuitas’ dalam pelayanan rohani
e. awam punya pelayanan yang khas, yang ‘menggarami’ dunia, atau prioritas di ranah profan
f. meski begitu, awam tetap diberi kesempatan untuk ikut berpartisipasi dalam pelayanan rohani, meski relatif sangat terbatas, terlebih jika ‘mewakili’ Gereja, dengan mengacu pada beberapa aturan yang telah disampaikan
g. awam bisa punya keleluasaan lebih banyak jika melayani di luar wilayah sakramen dan sakramentali dan tidak bertindak atas nama Gereja.***

KULIAH 3-4

BATAS PELAYANAN IMAM DI RANAH SEKULAR:
A. Politik dan Sosial
(berdasar KHK 1983 kanon 285.3)

In the new code, as in the old code, the clergy are prohibited from assuming public office. The prohibition is stated in canon 285.3 which should be read in relation to the other paragraphs of canon 285. Canon 285 states that

> 1. In accord with the prescriptions of a particular law, clerics are to refrain completely from all those things which are unbecoming of their state.
>
> 2. Clerics are to avoid those things which, although not unbecoming, are nevertheless alien to the clerical state.
>
> 3. Clerics are forbidden to assume public offices which entail participation in the exercise of civil power.
>
> 4. Without the permission of their ordinary clerics are neither to become agents for goods belonging to laypersons nor assume secular offices which entail an obligation to render accounts; they are forbidden to act as surety, even on behalf of their own goods, without consultation with their proper ordinary; they are likewise to refrain from signing promissory notes whereby they underake the obligation to pay an amount of money without any determined reason.

However, since Canon 288 explicitly states that, "Permanent deacons are not bound by the prescriptions of cann. 284, 285.3 and 4, 287.2, unless particular law determines otherwise," only priests and bishops are prohibited.

It is important to notice that in the above prohibition, the code uses the word *vetantur* instead of *ne assumant* as of the old code or as of the 1982 schema. The word *vetantur* is more severe than the word *ne assumant*. It seems that the prohibition in canon 285.3 is absolute. Moreover, there is no explicit clause in this canon that allows asking permission. Does it mean

that the new code is more strict than the old code in prohibiting clergy from assuming public office? To understand the notion of the prohibition, it is necessary to read paragraph 3 of canon 285 in its context, following canon 17.

1. The Prohibition in Its Context

1.1. The Structural Context

The context of the prohibition includes the other paragraphs of canon 285, so the prohibition must be read in relation to the other paragraphs of canon 285. Canon 285 is divided into four paragraphs and distinguishes unbecoming things (paragraph 1) from alien things (paragraph 2). The words "although" (*licet*) and "alien" (*aliena*) indicate that paragraph 2 has a close relation to paragraph 1; but paragraph 2, which is under the category of "alien" has a lesser degree of unsuitability toward the clerical state than that the category of "unbecoming" (*indecora*) in paragraph 1. However, both paragraphs use the subjunctive form for prohibiting. The former uses the word *abstineant* and the latter uses the word *vitent*. The subjunctive form is in accord with the relativity of unbecoming activities, because Canon 285.1 states that such unbecoming activities are related to the phrase "in accord with the prescriptions of particular law." This means that the categories of unbecoming activities depend on the cultural and temporal context. Hence, since alien activities are defined as less unsuitable to the clerical state than unbecoming ones, it is understandable that the provision "in accord with the prescriptions of particular law" should be applied to Canon 285.2. Moreover, this paragraph does not specify what activities are considered to be alien activities which imply that those kinds of activities are relative to the temporal and spatial dimension of each diocese.

Paragraph 4 of Canon 285 also uses the subjunctive form for prohibiting, and it leaves room for permission by stating "without the permission of their ordinary." From the subjunctive form used for them, the degree of prohibition of paragraph 4 is similar to that of paragraphs 1 and 2. But, since it is assumed that the permission of the ordinary is more flexible than the prescriptions of a particular law, we can say that the prohibition in paragraph 4 is more lenient than that of paragraphs 1 and 2 of canon 285.

Because of those above notions, the order in Canon 285 indicates the hierarchy of prohibitions. The first one is the gravest while the last one is the most lenient. Some commentators even say so. Besides this, canon 288 says so implicitly. These canons allow permanent deacons to get involved in several activities stated in paragraphs 3 and 4 of Canon 285. This means that what is stated in paragraphs 3 and 4 of Canon 285 has lesser degrees of unsuitability than that of paragraphs 1 and 2 of Canon 285. Accordingly, we can place the prohibition in paragraph 3 of canon 285 in the third degree of prohibitions.

1.2 The Broader Structural Context

The prohibition is situated in Book II (*Liber II*) regarding the People of God (*de Populo Dei*), part I (*pars I*) about the Christian Faithful (*de Christifideles*), Title III (*titulus III*) regarding Sacred Ministers or Clerics (*de Ministris Sacris seu de Clericis*). Within Title III of Book II, canon 285 is in Chapter III regarding the obligations and rights of clerics. This context gives a new tone to the prohibitions. The structure of Book II reflects this new understanding. It was stated earlier that canons 285 and 287 are placed in part I of Book II. This part is divided into five titles. What is interesting from this division is that the clergy are placed in Title III. Title I is about the obligations and rights of all the Christian faithful and Title II is about the obligations and rights of the lay Christian faithful. This is a major shift from the former code because, in the former code, the clergy was placed in first place in the structure of Book II, while the laity was in third place after the religious. Since the old code expressed the ecclesiology of that time in which the clergy was understood as first-class Catholics, we can say that the new code expresses the new ecclesiology in which the hierarchy's role is a service therefore the clergy are understood as the minister of the faithful. Besides this, this division expresses the importance of baptism as well. Within the conciliar perspective, the mission is related to baptism, not only to orders, and because of this there is equality and reciprocity within the Church (see also canon 204). It means that though they are different in the state, the clergy are no longer superior to the laity.

There are several other expressions which show those above notions. First, the canons concerning the hierarchy are no longer placed in part I of book I as part of *de clericis.* Instead, they are placed in part II of book II, right after part I concerning the Christian faithful. It shows

that the importance of hierarchy is related to the service for the faithful rather than to a special status and its offices. Second, title III of Book II uses "sacred ministers or clerics" (*De ministris sacris seu de clericis*) instead of *De clericis* only as of the old code. By adding such new words, it shows that the new code has an idea that the clergy is sacred ministers of the faithful. The word "minister" here emphasizes the serving aspect of the nature of clergy rather than office and personal rights. The old code had a sense of service, but it was not emphasized. The emphasis was on status so it said nothing after the word *De clericis* for the title. The title *De ministris sacris seu de clericis* is in accord with what is said in canon 207 that "there exist in the Church sacred ministers, who are also called clerics in law...." Canon 107 of the old code did not state that the clergy was a sacred ministry. Canon 276, which is based on canon 124 of the old code, brings the same emphasis on ministry by the addition of a new phrase, "in the service of His people (*in servitium Eius populi*). This new phrase emphasizing ministry did not exist in the old canon on clerical holiness.

1.3. The Theological Context

From the context of Canon 285, the prohibition in paragraph 3 is still implicitly related to the clerical state. However, different from the prohibition in paragraph 3 of Canon 139 of the old code, the clerical state in the new code should be understood differently. The new code is based on the teaching of Vatican II which has a new understanding concerning the clergy and their ecclesiological context. Based on the understanding that mission is the *raison d'etre* of the Church, the Church puts more emphasis on ministry than on the minister. This notion is indicated by the use of the word *presbyter* rather than *sacerdos* in the title of the proposed decree on the priesthood in Vatican II. The word *presbyter* has a broader meaning than that of *sacerdos* which had a sacral or cultic meaning. Besides this, the Council tried to no longer use the separate words *potestas ordinis* and *potestas iurisdictionis*. It means that the Council emphasizes the integral relation between both *potestates* and the close relation between the clergy, especially priests, and their ministry.

It is clear from the above notions that the clerical state is related to the concept of ministry which should be understood in the broad sense, not in its cultic meaning only.

Therefore, since ministry depends on its context, i.e., the particular church in which it is carried out, the clerical state would depend on the particular law as stated in paragraph 1 of canon 285.

1.4. The Historical Context

If this interpretation still raises doubt, based on Canon 6.2, we can recall canons 139.2 and 139.4 of the old code. The prohibitions in those two canons were not absolute. They mentioned the relativity of such prohibitions by giving room for asking permission either from the Holy See (CIC 17, c. 139.2) or from the ordinary (CIC 17, c. 139.4). This canonical tradition gives an additional basis for the view that the prohibition in canon 285.3 is not absolute.

Furthermore, canon 285 as the final text is different from that of the 1982 schema. There are three important changes in Canon 285.3 compared with Canon 289.2 of the 1982 schema. First, this canon places two kinds of activities, viz., the unbecoming and the alien activities, in one canon. Second, it drops the reference to permission which should be obtained by bishops and priests to participate in public office. Third, it uses a more severe expression for prohibiting by using the word *vetantur*, instead of using the subjunctive verb *assumant* as used by the last schema. There is no explanation for these changes.

2. What is Prohibited

It is stated in paragraph 3 of canon 285 that the clergy is prohibited from assuming public offices which entail participation in the exercise of civil power. Public offices in this context mean services of a public institution, which is established by those who make provision for public order and which is part of the public organization of society. The notion of public office in Canon 285 paragraph 3 is narrowed by the following phrase "which entails a participation in the exercise of civil power." The words "civil power" in this canon are important. Since the word *civilis* is contrasted to *ecclesiasticis*, the words "public offices" should be contrasted with "ecclesiastical offices." In Canon 145 paragraph 1 it is stated

> An ecclesiastical office is any function constituted in a stable manner by divine or ecclesiastical law to be exercised for a spiritual purpose.

In contrast with this notion, what is meant by the public office is any function constituted in a stable manner by civil law to be exercised for a secular purpose. The notions of stability and secular purpose, based on secular law, are important.

What is meant by "secular purpose" is related to the meaning of "public." The code itself uses the word *publicus* forty-one times and tends to contrast the word "public" with "private" (e.g., canon 826.3). According to Webster, "public" means "of, or pertaining to, or affecting the people as a whole or the community, state, or nation." Accordingly, the word "public" refers to the interest of the people as a whole, and includes the faithful as members of society or citizens of a nation. This means that it does not include "private functions for which the public authority gives permission or approval, but for which the individual is not publicly accountable except for abuses or crimes" such as "lawyers, teachers, certified public accountants or a clergyman performing a marriage." Besides this, it is important to note that, since it is understood within the context of "which entail a participation in the exercise of civil power," the authoritative character of those public offices would determine which activities are prohibited. Accordingly, advisory positions are not prohibited.

Besides this, the meaning can be drawn as well from the fact that canon 285.3 makes more concise canon 139.2-4 of the old code and separates the administration concerning temporal goods in canon 285.4. It seems to be a broader provision that indicates all civil power so this term includes legislative, executive, and judicial power. This view was underlined by the code commission. In other words, it is a power or authority over people. Membership of zoning boards, school boards, and similar bodies are included within this category, but not of Catholic School Boards. Perez gives examples such as members of parliament, minister, and judges.

Though the meaning of public offices and civil power can be specified, the wording of canon 285.3 does not state explicitly whether the words "public offices" in this case include all public offices at different levels. According to Provost, those offices include any office in city, county, state or federal government or congress. As we know, there are many levels of public office, from the national level, and provincial levels to the county level. It seems that Canon

285.3 prohibits the clergy from assuming those offices generally, though actually, those different levels of public office have a different impact on the faithful.

In Madonna Kolbenschlag's division, the above-prohibited activities are on the first level of political activities. She divides people's political involvement into four categories. The first is political in the strictest sense. It is understood as those kinds of activity that are aimed at gaining political power and exercising it through socially constituted forms of government and participation. The second level is often described as "non-partisan," which is overtly political, that is intended to influence the exercise of power, public policy or the electoral process, but outside the constituted political structures, such as strikes, demonstrations against public policy, etc. The third is generally similar but less focused on specific issues and actions. It can be done by presenting proposals and criticisms which reflect an overall philosophy of socio-political life or a moral vision. The fourth one is such political activities which are both implicit and comprehensive, which involve participation in the socio-political reality as a total system. If we use these categories, it is clear that the last three categories of political involvement are not prohibited by the code.

3. The Reasons for the Prohibition

On January 25, 1983, ten months before the promulgation of the new code, Pope John Paul II stated that the new code should be "a great effort to translate this same conciliar doctrine and ecclesiology into canonical language." Based on this statement, to understand the reasons for the prohibition, it is necessary to recall what Vatican II stated. It stated that the proper mission of the Church is religious, and that secular duties and activity belong properly, though not exclusively, to the laity, while the duty of priests is building up a community of Christians, to the spiritual growth of the Body of Christ. These notions are emphazised by the 1971 Synod of Bishops which stated that priests are not allowed to get involved in politics. What is important to note in this context is that the basis of the reasons is the spiritual mission of the Church. As stated above, it is mission which is the *raison d'etre* of the Church so that the Church puts emphasis more on their relation to the ministry rather than to the person of the minister, and this emphasis gives a different tone to the prohibition.

From the above notions, we can say that there are four main reasons. First, though the Church is in the world, it is not of the world; it has a specific mission, viz., the religious one. Since the clergy, especially priests, based on their ordination, are both men of God and men of Church, who have to carry on the mission of the Church, the involvement of priests in politics can cause confusion concerning the religious mission of the Church. Second, these religious values are regarded as absolute so that they are beyond all political ideologies and could not be asscociated with one of political systems. In other words, politics is understood as contingent. Third, it is the special duty of the laity to involve themselves in secular activities, including politics. Therefore, the clergy should respect the laity in this specific mission. Moreover, the clergy are regarded as not necessarily competent in these secular matters. Fourth, it is the duty of clergy, especially priests, to foster unity within the Church so their involvement in politics which is associated with specific ideologies would hinder this duty. Related to these reasons, it is important to note that the Church, based on the understanding of hierarchy as service, puts great emphasis on ministry and regards the clergy as ministers rather than primarily as holy men.

Paragraph 3 of canon 285 is still implicitly related to the clerical state which is mentioned explicitly in the first two previous paragraphs, but the clerical state should be understood in the context of ministry. It means that the reasons would be more practical than theological. Canon 288, which mentions that permanent deacons are not bound by paragraphs 3 and 4 of canons 285 and paragaph 2 of canon 287, underlines these practical reasons. The Council states that priests and deacons receive the same sacramental ordination, though different in degrees in hierarchy, and because of this they have the same indelible character of holy orders. The fact that deacons are not prohibited from getting involved in political activities means that such activities would not touch the character.

4. Exception: Dispensation by Diocesan Bishops

It is clear that the prohibition in canon 285.3 is not as absolute and r is not so severe as the wording would seem to indicate, and it falls under the third degree of prohibitions. This means that this canon should be related also to the phrase "in accord with the prescriptions of particular law" as well. Besides this, the process in the three schemas showed that this

prohibition left room for exceptions, since until the last schema (the 1982 schema) the conditional phrase still existed. It seems that the omission of this conditional phrase is related to the placement of this canon in the same canon with the prohibition concerning unbecoming activities, which *nota bene* has the possibility of exceptions. The omitted phrase might be regarded as superfluous.

Based on the above interpretation, dispensation from this law is required for clergy to assume public offices. Manzanares interprets it in this way as well. Diocesan bishops can give dispensation from particular law within the limit of their competency. Dispensation means "the relaxation of a merely ecclesiastical law in a particular case" (c. 85), provided it "will contribute to the spiritual good of the faithful" (c. 87.1). Furthermore, the new code abrogates the papal reservation regarding any dispensation from the prohibition upon clerics "to assume public offices which involve the exercise of lay jurisdiction or administration" as stated in the motu proprio *De Episcorum Muneribus* by Pope Paul VI.

However, since the above political activities can be carried out in other dioceses, they need dispensation from the diocesan bishop of the place where the activities take place. In granting dispensation, the diocesan bishop needs to consider the causes, as stated in canon 90.1. In this case, the mission of the Church, which is not limited to the Eucharist only, should be the criterion. Besides this, it would be important to note that, since the weight of the prohibition in canon 285.3 is not so grave as it appears from its wording, the dispensation from it should be easier to grant than that of the unbecoming activities or of the alien activities. Moreover, since there are different levels of public offices, the weight of authority of each public office should be considered as well.

5. Conclusion and Summary

As stated earlier, the revised code continues to prohibit clergy from assuming public offices though the prohibitions are modified in accord with the *novus habitus mentis* based on the conciliar teachings. It means that the reasons of the prohibition are more related to the

ministry of priests rather than to their special status and its character. Indeed, the code uses the absolute word *vetantur* in prohibiting in canon 285 paragraph 3. Moreover, there is no explicit reference which gives room for asking permission. It seems to be more severe than what is stated in the old code and in the conciliar and post-conciliar documents. However, if this prescription is examined carefully, through its structural and thelogical context, it is clear that the prohibition would not be as severe as the meaning of the word *vetantur* suggests. Besides this, the developments in the previous schemas which were based on the old canon show that the prohibition should be interpreted conditionally, related to canon 285 paragraph 1 which states that the prohibition is related to the particular law.

Priests still have the possibility of assuming public offices provided they have a dispensation from the diocesan bishop. The diocesan bishop has authority to give dispensation from disciplinary laws since the prohibitions are disciplinary laws and those are no longer reserved to the Holy See. Moreover, it is the diocesan bishops who know their own dioceses.

KULIAH 5-6

BATAS PELAYANAN IMAM DI RANAH SEKULAR:
B. Ekonomi
(berdasar KHK 1983 kanon 672)

Pernah minum bir Westmalle dari Belgia? Bir ini cukup mengejutkan untuk lidah Indonesia, karena tidak ‘sepahit’ bir buatan Indonesia. Meski rasa bir-nya tetap kuat, rasanya cukup manis untuk lidah Indonesia. Enak pokoknya. Ternyata, yang lebih mengejutkan, bir ini diproduksi oleh sebuah biara Trapis! Yang mengejutkan bukan hanya bahwa sebuah biara memproduksi bir. Yang mengejutkan adalah bahwa biara ini tidak dilarang berdagang. Kok bisa? Itu pertanyaannya. Perlu dicatat lebih dahulu, ternyata biara ini bukan satu-satunya produsen bir di Belgia. Justru kebanyakan bir ‘papan atas’ (dari sekitar 170-an merk bir disana) adalah produksi biara.

Pertanyaan itu tidak tanpa alasan. Dalam tradisi, Gereja Katolik cukup mengharamkan biarawan dan klerus berdagang. Perhatikan saja kanon 672 dari KHK (Kitab Hukum Kanonik) 1983 yang mengatakan demikian, “Para religius terikat ketentuan-ketentuan kan. 277, 285, 286, 287, dan 289; dan religius klerikal disamping itu juga terikat ketentuan kan. 279, § 2, dalam tarekat laikal bertingkat kepausan, izin dimaksud dalam kan 285, § 4, dapat diberikan oleh Pemimpin tingginya sendiri.” Dalam hal ini, kanon 286 mengatakan bahwa “Para klerikus dilarang berbisnis atau berdagang, dilakukan sendiri atau lewat orang lain, untuk keuntungan baik diri sendiri maupun orang lain, kecuali dengan izin otoritas gerejawi yang legitim.”

Larangan itu bukan main-main. Sanksinya keras. Tidak percaya? Lihat saja kanon 1392, “Klerikus atau religius yang berdagang atau berbisnis melawan ketentuan-ketentuan kanon, hendaknya dihukum sesuai dengan beratnya tindak pidana.“ Para rahib Trapis yang memproduksi bir itu jelas biarawan atau religius. Mereka berkaul, yang menjadikan mereka biarawan, seperti tercantum dalam kanon 607 dan 654. Selain itu, mereka memulai usaha sudah puluhan tahun, padahal KHK 1917 juga tak kalah ‘galak’ dalam perkara ini, dan bahkan lebih keras. Kanon 142 KHK 1917 bahkan tidak memberi kemungkinan adanya ijin. Selain itu, ancaman hukumannya jauh lebih keras. Selain kanon 2380 yang

memberi ancaman hukuman, pada tahun 1950, Paus Pius XII, melalui Kongregasi Suci untuk Konsili (*Council*), yang kemudian menjadi Kongregasi Suci untuk Para Imam, memberi ancaman ekskomunikasi latae sententiae, atau setidak-tidaknya hukum degradasi, bagi pelanggar hukuman ini. Lalu, bagaimana mereka, para biarawan Trapis Westmalle itu, bisa 'mengelak' dari larangan berdagang tadi?

Alasan Larangan

Sebelum sampai ke jawaban pertanyaan itu, baik diketahui bahwa larangan berdagang untuk kaum religius dan juga klerus terkait dengan status mereka. Perlu diingat bahwa kaum religius adalah orang-orang yang, sesuai kanon 607 tadi, bisa dikatakan sebagai 'makhluk rohani,' yaitu orang yang menarik diri, atau setidaknya mengambil jarak, dari dunia untuk mempersembahkan diri seutuhnya kepada Tuhan. Hal yang sama ada pada klerus, sesuai dengan kanon 207, § 1, yang juga bisa disebut sebagai 'makhluk rohani' karena kaum ini melayani hal-hal yang bersifat rohani. Dunia bisnis atau dunia perdagangan yang terkesan sangat duniawi tentu saja tidak gampang didamaikan dengan status ini.

Yang kedua, larangan itu pun terkait, lebih-lebih, dengan kaul kemiskinan yang diucapkan oleh para religius dan dijanjikan oleh para klerus. Dunia bisnis yang ber-esensikan pencarian untung tentu saja bertolak-belakang dengan kaul kemiskinan itu. Disinilah masalahnya. Benar, keasyikan mencari keuntungan bisa mengganggu jadual doa dan pelayanan para religius dan para klerus, tetapi hal ini bukan pokok perkaranya.

Alasan ini menjadi lebih kelihatan bila dibandingkan dengan yang berlaku untuk para anggota tarekat sekular (kanon 710 dan seterusnya) serta serikat hidup kerasulan (kanon 731 dan selanjutnya). Tidak ada larangan berdagang atau larangan yang serupa tercantum dalam aturan bagi anggota dari kedua kelompok ini Harap diingat bahwa anggota dua kelompok ini punya ciri 'di dunia' dibanding dengan anggota tarekat religius yang pada dasarnya 'menarik diri dari dunia.' Karena itu, cukup jelas bahwa larangan itu memang berkaitan dengan status 'rohani' seorang religius. Hal ini pun tampak dari larangan-larangan lain dalam kanon-kanon sebelumnya yang memang mau menekankan status mengambil jarak dari dunia tadi.

Hanya saja, karena larangan itu ditetapkan dalam hukum, yang *nota bene* tertulis, prinsip yuridis tentang larangan perlu juga diterapkan. KHK 1983 juga memuat prinsip ini dalam kanon 18 yang

mengatakan bahwa, “Undang-undang yang menentukan hukum atau yang mempersempit penggunaan bebas hak-hak atau yang memuat pengecualian dari undang-undang, ditafsirkan secara sempit.” Pada prinsipnya, kanon ini mau mengatakan bahwa suatu kalimat larangan harus ditafsirkan secara sempit. Ini berarti bahwa kata-kata dalam kanon yang berisi larangan, perlu dicermati maknanya dan kemudian dilihat mana arti luas dan mana arti sempitnya.

Makna ‘berdagang’

Dalam kaitan dengan larangan itu dan juga untuk menjawab pertanyaan tadi, bagaimana para Trapis Wesmalle, bisa tetap berdagang bir, pemahaman tentang makna berdagang dan distingsi-distingsinya menjadi penting, supaya tidak semua hal yang ‘berbau’ dagang dilarang atau bahkan dikenai hukuman. Diperlukanlah untuk ini suatu pemahaman semantik berdasar lacakan makna historis, karena arti semantik itu berkembang mengikuti jaman.

Dalam tradisi Gereja Katolik, setidaknya tradisi yang dikenal para yuris, seperti tampak dalam komentar-komentar para kanonis (antara lain ditulis kembali oleh John E. Lynch, C. S. P. dalam James A. Coriden, Thomas J. Green, Donald E. Heintschel, *The Code of Canon Law, A Text and Commentary* (New York/Mahwah:Paulits Press, 1985) halaman 226-227, dikenal beberapa jenis usaha yang berkaitan dengan keuntungan.

Yang pertama adalah *negotiatio lucrativa* atau biasa disebut *mercatura.* Ini adalah suatu jenis usaha yang biasanya dilakukan dengan membeli suatu barang lalu menjualnya kembali, tanpa mengubah bentuknya sama sekali, untuk mencari untung. Inilah berdagang dalam arti yang paling inti. Usaha jual-beli mobil sebagai usaha, bukan sekedar menjual mobil lama sesekali saja, masuk dalam kategori ini. Jaul beli beras, yang dilakukan dengan membeli beras dari petani di desa lalu menjualnya ke kota untuk mendapatkan keuntungan jelas masuk di dalamnya.

Yang masih dekat dengan jenis itu ada dalam kategori *negotiatio industrialis* atau *artificialis*. Jenis ini dilakukan sebagai usaha mencari untung dengan menjual barang yang sudah berbeda bentuknya dari barang yang dibeli. Dalam hal ini, yang menjadikannya terlarang pertama-tama adalah motivasi melulu mencari untungnya. Yang kedua adalah bahwa jenis usaha yang kedua ini dikelola dengan mempekerjakan orang lain, sehingga memang menjadi semacam perusahaan. Membeli beras, lalu dijual sebagai nasi, bisa masuk dalam kategori ini, terlebih jika melibatkan orang lain.

Karena dua kriteria larangan, yaitu melulu cari untung dan mempekerjakan orang lain itu, suatu aksi jual-beli yang dilakukan oleh seorang klerus atau religius yang mengelola sebuah sekolah ketrampilan tentunya ada di luar kriteria larangan itu, meski toh ada untungnya. Demikian juga suatu usaha penerbitan, terlebih bila menerbitkan buku-buku rohani, bisa 'mengelak' dari larangan itu, karena untung hanyalah sampingan. Meski begitu, jika keuntungan yang dicari ada di luar kewajaran dan tampak membelokkan maksud semula, kriteria larangan itu bisa mengenainya.

Jenis usaha lain –yang ketiga- yang lebih lunak adalah *negotiatio oeconomica*. Dalam hal ini, ada jual beli barang yang memang menyangkut keuntungan, tetapi bukan demi keuntungan itu sendiri melainkan lebih untuk kelangsungan hidup. Selain itu, hal ini biasanya dilakukan dengan menjual hasil dari tanah atau pekarangan sendiri. Menjual padi dari sawah sendiri atau menjual buah dari kebun sendiri adalah contohnya, tetapi menjadi lain jika yang dijual adalah padi hasil dari per-sawah-an atau buah dari perkebunan yang memang dikelola untuk mencari untung. Demikian pun, religius yang membuat rosario atau jenang dodol lalu menjualnya untuk kelangsungan hidupnya saja tentulah tidak akan terkena larangan. Pun, andai seorang imam menjual mobil bekasnya agar bisa membeli mobil baru, tentulah masuk dalam kategori ini, kecuali bila kegiatan jual-beli mobil bekas itu dilakukan sebagai profesi.

Negotiatio politica atau *publica* adalah istilah untuk menyebut jenis usaha jual-beli yang lain lagi. Yang masuk kategori ini adalah menjual barang-barang ke komunitas atau kelompok tertentu. Motivasinya adalah demi 'pelayanan' kepada komunitas atau kelompok itu, meski sedikit untung juga diperoleh. Untung diambil bukan untuk nilai keuntungan itu sendiri, melainkan lebih untuk mengganti, misalnya, ongkos transport yang diperlukan untuk membawa barang itu. Contohnya adalah menjual buku-buku di toko paroki. Bisa juga seorang klerus atau religius yang menjadi dosen lalu menjual buku untuk para mahasiswanya dijadikan contoh.

Kegiatan jual-beli jenis yang terakhir atau kelima biasa disebut sebagai *negotiatio argentaria*, atau biasa dikenal sebagai *foreign exchange* atau jual-beli valuta asing, atau juga jual-beli saham. Dalam hal saham, ada dua jenis yang berbeda. Jenis pertama adalah jual-beli saham yang lebih sejajar dengan jual-beli hasil bumi. Artinya, aksi jual-beli itu lebih dimaksudkan untuk menunjang kelangsungan hidup, bukan pertama-tama mencari untung. Jenis kedua adalah jual-beli saham dengan model spekulasi yang lebih menjurus ke pencarian keuntungan semata.

Dari pembedaan berbagai makna berdagang di atas, cukup jelas bahwa tidak semua aktivitas yang 'berbau' jual-beli, bahkan yang memberi keuntungan, masuk dalam kategori berdagang yang dilarang. Bisa disimpulkan bahwa yang masuk dalam larangan kanon 286 hanyalah kegiatan jual-beli yang setidaknya memenuhi dua kriteria utama. Yang pertama adalah bahwa kegiatan itu dilakukan hanya untuk mencari keuntungan. Dengan kata lain, keuntungan menjadi motivasi yang utama. Kedua, kegiatan yang dilakukan secara berkesinambungan atau dilakukan sebagai 'profesi.'

Ijin dan Hukuman

Seperti telah dikatakan di atas, larangan dalam KHK 1983 lebih lunak daripada larangan dalam KHK 1917 dalam dua hal, yaitu dalam adanya kemungkinan ijin dan dalam sanksi yang dikenakan. Sehubungan dengan ijin, dalam kanon 286 KHK 1983 ada klausul "kecuali dengan izin otoritas gerejawi yang legitim," yang tidak tercantum dalam kanon 142 KHK 1917. Lebih lunaknya larangan berdagang dalam KHK 1983 itu kiranya berkaitan dengan perubahan pandangan tentang dunia yang terasa lebih positif seperti tampak dalam pandangan-pandangan Konsili Vatikan II. Memang, dalam hal ini, perlu tetap diingat bahwa KHK 1983 adalah terjemahan yuridis ajaran dan semangat Konsili Vatikan II. Dengan kata lain, ajaran dan semangat Konsili Vatikan II-lah yang seharusnya menjadi jiwa dalam pembacaan kalimat-kalimat hukum KHK 1983.

Selanjutnya, yang dimaksud dengan 'otoritas gerejawi yang legitim' yang bisa memberi ijin kiranya harus dilihat kasus per kasus, tergantung kegiatan berbisnis dan berdagang seperti apa. Yang cukup jelas adalah bahwa otoritas gerejawi yang legitim itu tidak perlu sampai ke Paus. Dalam skala yang relatif ringan, provinsial ordo/tarekat (sebagai ordinaris dari ordo/tarekat itu, sesuai kanon 134, § 1) kiranya cukup, dengan hak dari ordinaris wilayah (uskup, vikjen dan vikep, sesuai kanon 134, § 2) untuk meninjaunya.

Pentingnya pencermatan kasus per kasus itu juga secara jelas dicantumkan dalam ancaman hukuman dalam kanon 1392 seperti telah dikutip di atas. Yang berhak menjatuhkan hukuman kiranya juga sejajar dengan mereka yang berhak memberi ijin. Hanya saja, dalam menjatuhkan hukuman, prosedur menjatuhkan hukuman seperti yang tercantum dalam kanon 1341-1353 perlu sungguh diperhatikan, karena ancaman hukumannya tidak lagi bersifat *latae sententiae* ('otomatis') seperti dalam hukum lama, yang memang tidak membutuhkan prosedur. Selain itu, jenis hukumannya tentu juga perlu diperhatikan sesuai berat-ringannya pelanggaran.

Kesimpulan

Setelah mencermati paparan di atas, jika Anda seorang religius, berminat untuk mengikuti jejak biara Trapis Westmalle untuk membuat bir dan menjualnya untuk umum? Tentu saja sangat dimungkinkan, tetapi paparan di atas tidak dimaksudkan untuk sekedar memberi legitimasi atas minat dan hobby Anda. Paparan hukum tadi mau memberi koridor yang jelas tentang kemungkinan-kemungkinan yang bisa dilakukan, terutama dengan kegiatan yang berbau jual-beli dan keuntungan. Bahkan, bila mau, bisa saja memproduksi barang yang 'halal' sebanyak-banyaknya, dijual untuk umum, asal keuntungannya bukan untuk diri atau lembaganya. Biara Trapis Wesmalle melakukan ini dengan menjual bir sebanyak-banyaknya. Hal ini berbeda dengan beberapa biara lain yang hanya memproduksi dan menjual bir secukupnya, sejauh sudah memenuhi kebutuhan hidup biara, seperti misalnya biara Rochefort dan Orval. Keuntungan dari penjualan bir Westmalle tidak dipakai hanya untuk menghidupi biara, tetapi selebihnya untuk membiayai banyak kegiatan gereja, khususnya kegiatan kaum muda. Ini pun ternyata dimungkinkan, dan masih ada dalam koridor hukum Gereja. Anda mau mengikutinya? Kalau toh tidak membuat dan menjual bir, bisa saja membuat dan menjual tempe atau cendol, atau bisa juga sekoteng dan bandrek, misalnya.

KULIAH 7-8

KEWAJIBAN SELIBAT DAN LATAR-BELAKANGNYA

Since its earliest days Christianity has appreciated celibacy. Saint Paul, for example, said that celibacy had a 'higher' value than marriage. This teaching was developed by many Fathers of the Church both in the West and in the East.

From the early days of the Church, celibacy has been connected with the clergy. The obligation of celibacy for the clergy was established by the synod of Elvira in canon 33:

> Bishops, presbyters, and deacons and all other clerics having a position in the ministry are ordered to abstain completely from their wives and not to have children. Whoever, in fact, does this, shall be expelled from the dignity of the clerical state.

This is the first canon to explicitly prohibit the clergy from having intercourse with their wifes, and from having children.

However, about twenty years later, in the council of Nicaea, this strict rule was not accepted by the fathers of the council. The council's norms regarding sexual discipline for the clergy were very moderate compared to canon 33 of the synod of Elvira. Canon 3 of the council of Nicaea said:

> The great Synod absolutely forbids a bishop, presbyter, deacon, or any of the clergy to keep a woman who has been brought in to live with him, with the exception of course of his mother or sister or aunt, or of any person who is above suspicion.

Since the council of Nicaea is the first ecumenical council, a comparison of canon 3 of the council of Nicaea with canon 33 of the synod of Elvira shows an interesting development in the sexual discipline required of the clergy. It is reasonable to question why the council of Nicaea did not issue a canon like the synod of Elvira. Why was the sexual discipline suggested in the council of Nicaea milder than that of the synod of Elvira?

Several external and internal factors influenced this development. Externally, the council was influenced by the opinion of the well-known Bishop Paphnutius which rejected the suggestion of Ousius of Cordova in the synod of Elvira to oblige celibacy for the clergy. Moreover, the council was heavily

influenced by the fact that most of the fathers of the council were from the Eastern Church (some of whose bishops had married) which had no strict obligation for celibacy as did the Western Church.

Internally, there were different opinions and motivations on the issue of sexual discipline among the fathers of the council. This can be seen by comparing some related-canons to understand better what they meant by the canons. In this short paper we will trace the 'inner' development on the issue of sexual discipline for the clergy from Elvira to Nicaea.

01. **Sexual discpline in the synod of Elvira**

Until recently, there were many opinions regarding when the synod of Elvira was held. Some said that it was held during the persecution of Diocletian (arround 303), while some said it was held after the persecution. The time is not certain because the documents said nothing about the exact year the synod was held. What is clear is that the synod produced a large number of canons concerning sexual problems and community discipline. There were 37 canons which say about sexual problem and 60 canons which concern about 'communion'. Also, there were 8 canons about sacrifice.

From this fact, we can say that the canons of the synod of Elvira were 'the border-line rules' for the community. It required a strict discipline for the faithful, especially in sexual matters, in order to maintain a specific identity among other communities. By these canons they wanted to maintain the purity of their 'communion.' Within this context we can understand canon 33 of the synod of Elvira. In order to see the motivation of sexual discipline within canon 33, we need to connect the sexual problem with three other areas, i.e., the clergy, communion, and sacrifice.

There are two other canons which deal with the relation of the clergy and sexual discipline, i.e., canons 27 which said:

> A bishop or any other cleric may have living with him only a sister or a virgin daughter dedicated to God; by no means shall he keep any woman unrelated to him.

And canon 30 which said:

> "Those who in their youth have sinned sexually are not to be ordained subdeacons inasmuch as they might afterwards be promoted by deception to a higher order. Furthermore, if any have been ordained in the past, they are to be removed".

From these two canons it can be seen that sexual sin was regarded as an obstacle to ordination. Sexual sin makes someone not suitable for ordaination as a cleric and was not proper for any cleric as well. Because of this, canon 27 sought to prevent the cleric from having improper sexual relations. But, this leaves the question of why sexual relations were viewed as improper.

The answer lies in a number of other canons (i.e., canons 18, 55, and 65) which relate communion and sacrifice. Canon 18 said:

> Bishop, presbyter, and deacons, if -once placed in the ministry- they are discovered to be sexual offenders, shall not receive communion, not even at the end because of the scandal and the heinousness of the crime.

And canon 55 said:

> Priests who simply wear the wreath and who neither sacrifice nor offer any of their income to idols shall receive communion after two years.

Besides this, canon 65 said:

> If the wife of a cleric has committed adultery, and her husband knew of it but did not immediately throw her out, he shall not receive communion even at the end, lest it appear as though instruction in crime is coming from those who should be the model of a good life.

From these three canons we notice how harsh the punishment for sinful clerics was! It was more severe than that for the laity because clerics should be the model of a good life for the whole community. Besides this, we can see that sexual transgression prohibited the sinner from receiving communion. In other words, because communion is holy, it is just for the pure people and sin makes people unfit to receive communion, especially clerics who should be the model of a good life.

We can conclude that the obligation of celibacy for the clergy in canon 33 had two motivations. The first one has to do with communal purity which besides would make them has an specific identity, also make them proper to receive holy communion. The second one has to do with individual purity. The synod wanted the cleric to be 'perfect' as the model of a good life, especially in his sexual life. The ideal of sexual life is virginity, as appears in canon 13, and celibacy is parallel with virginity. This is why their

punishment for sexual sins was more severe than that of the laity. Sexual sin, or impurity, according to the synod of Elvira, would make the person and the entire community impure.

Some years later, the synod of Arles in Gaul repeated some of the canons of the synod of Elvira, especially those concerned with sexual discipline. For example, canon 29 of Arles repeated canon 33 of Elvira with some modifications. That shows that a strict opinion regarding celibacy was accepted in the West.

2. Sexual Discipline in the Council of Nicaea and Its Preceding Synods

Compared with the synod of Elvira, the council of Nicaea had a very different background. It was held in 325 AD, when Christia-nity had been accepted as an imperial religion under the initiative of Constantine, the emperor. Besides discussing Arianism and producing the Nicaean creed, the council issued 20 canons.

Unlike the synod of Elvira, the canons of the council of Nicaea can be regarded as 'inward rules', rather than 'border-line' restrictions. The council had little to say about sexual discipline, sacrifice, and punishment. On the other hand, the council dealt extensively with the clergy (17 canons). The only canon related to sexual discipline was canon 3 (cited above).

Because the council was held in the East and most of those present were Eastern bishops, it is instructive to connect canon 3 of the council with other canons from prior Eastern synods, i.e., the synods of Ancyra and Neocaesarea. The synod of Ancyra was held at 314 AD and the synod of Necaesarea was between 314 and 325 AD.

The canons of the synod of Ancyra were similar to those of Elvira because they could be seen as 'border-line rules.' Ancyra had much to say about lapsi, sacrifice, clergy, and communion, and some descision about sexual discipline. However, the only canon which related the clergy to sexual discipline was canon 10, which said:

> They who have been made deacons, declaring when they were ordained that they must marry, because they were not able to abide so, and who afterwards have married, shall continue in their ministry, because it was conceded to them by the

> bishop. But if any were silent on this matter, undertaking at their ordination to abide as they were, and afterwards proceed to marriage, these shall cease from the diaconate.

What appears from this canon is that the bishops appreciated celibacy, but they did not require it. Celibacy was thought of as an individual choice, but it would be sinful to break from a declared choice.

Since the bishops who assisted at the council of Neocaesarea were the same as those at the Council of Ancyra and, was held only a little later, the canons of Neocaesarea reiterated what was said at Ancyra, including the discipline of clergy.

Canon 1 said:

> If presbyter marry, let him be removed from his order; but if he commit fornication or adultery, let him be altogether cast out (i.e., communion) and put to penance.

We can understand the prohibition for a priest to marry in canon 1 by connecting it with canon 3 of the Council of Ancyra. Moreover, since it was sinful for the priest to commit adultery, it was improper for them to offer the holy sacrifice. As canon 9 said:

> A presbyter who has been promoted after having commited carnal sin, and who shall confess that he had sinned before his ordination, shall not make the oblation, though he may remain in his other functions on account of his zeal in other respects; for the majority have affirmed that ordination blots out other kinds of sins. But if he does not confess and cannot be openly convicted, the decision shall depend upon himself.

In addition, canon 10 said:

> Likewise, if a deacon has fallen into the same sin, let him have the rank of a minister.

What appears from these two canons is that the council distingusihed the sacrifice function of a priest from his other functions. The sacrifice functions required the purity of a priest (and deacon).

We can conclude, then, that the sole motivation of canon 3 of the Council of Neocaesarea was to prevent the clergy from committing sexual sin which would make them impure to offer holy sacrifice. The council appreciated celibacy but left it as an individual choice by separating the sacrificial function of the priest from other functions.

3. Conclusion

After tracing some canons of Elvira and Arles, and then comparing them with canons of Ancyra, Neacaesarea, and Nicaea, we can see that there is a similarity. The concern of all the councils with sexual discipline was related to attitudes about purity since sex outside of marriage was unlawful and sinful. Sexual discipline was required of the clergy because of their sacrificial function within the community.

The difference between Elvira and Arles, which took place in the West, and Ancyra, Neocaesarea, and Nicaea, which took place in the East, was that the former required celibacy while the latter required only continence. There were two reasons for this difference. The first one was that the Western Church did not distinguish clearly some of the functions of the clergy, while the Eastern Church distinguished the sacrificial function from other functions. Since marriage was irreconcilable with ministry, the West required celibacy while the East only saw that sexual-intercourse before offering sacrifice was improper. In other words, in the East marriage was tolerated because it was not irreconcilable with the other functions of the priest.

The second reason was that the West saw a strong relation between the clergy and the community; the clergy must be celibate in order to set an example for the community in looking for holiness. The purity of the clergy would influence the purity of the community. On the other hand, the East did not see such a connection. They distinguished the purity of the community from the purity of the individual clergy and because of this, they left celibacy to the clergy's own free-choice.

KULIAH 9-12

TUGAS IMAM MENGAJAR
(berdasar KHK 1983 kanon 747-754)

The structure of canons 747-754 of the new code indicates four levels of teaching authority which are stated respectively in canons 749-750, 752, 753 and 754. Within this structure, the authority of the Supreme Pontiff is mentioned twice; viz., on the first two levels. The difference between papal authority on the first level and that on the second one is that the former is employed in statements made by the pope *ex cathedra* while the latter is employed by the pope as ordinary magisterium.

Each of those four levels of teaching authority obliges the faithful to believe the authoritative teachings, but in different manners depending on its level. Those obligations are stated within each canons, except the first one. For the first one, the obligation of the faithful to believe the first level of teaching with divine and catholic faith is mentioned in canon 750, and then in canon 751 the code mentions three categories of refusal of this kind of teaching.

These three categories of refusal refer to the first category of teaching only, since it is stated right after canon 750 and before canon 752. Canon 750 states an obligation related to canon 749 while canon 752 mentions another category of teaching which is parallel with canon 749. Because of this, canon 751 should be related to canons 749 and 750. Moreover, the final text of the code makes a change concerning the placement of canon 751. In the previous schema (the *Schema Novissimum* or the 1982 schema) this canon was placed in canon 755, right after the fourth category of teaching. This change means that this canon concerning three categories of refusal related to the first category of teaching only, not to the three others.

Accordingly, answering Bishop Perplexus' questions: **(1)** the nature of the document *Ordinatio sacerdotalis* is based on its form; viz., apostolic letter. Apostolic letters are papal acts in the form of letters to give counsel or to shed greater light on points of doctrine which must be

made more precise, and to be sent to particular categories of persons. It belongs to ordinary magisterium. [See Francis G. Morrisey, "Papal and Curial Pronouncements: Their Canonical Significance in Light of The 1983 Code of Canon Law," in *The Jurist* 50 (1990) 105-106.] From these notions, though the above apostolic letter is not sent to a particular category of persons, but to the universal Church, its authoritative weight is below that of an encyclical letter. Besides this, there is no clear indication that it is neither declared *ex cathedra* (c. 749.1 and 749.3) nor declared by ordinary and universal magisterium (c. 750) so that it falls under the second category of teaching (c. 752). Then, the response of the Congregation of the Doctrine of the Faith is a circular letter which requires definitive assent of the faithful to the pope apostolic letter. This letter falls under the fourth level of teaching (c. 754) since the CDF is under the Roman Pontiff.

2. Accordingly, the pope's statement in his apostolic letter that his "judgement is to be definitively held by all the Church's faithful" canonically means that the faithful must give a religious submission (*obsequium*) of intellect and will, not an assent of faith. Related to it, in the lesser degree, the statement of CDF must be observed by the faithful.

3. Based on these above understandings, someone could not be declared a heretic for not assenting to the pope's teaching in *Ordinatio sacerdotalis*. As stated above, the three categories of refusal, in which heresy is included, are related to the first level of teaching authority only. Therefore, the sanctions of refusal would be based on canon 1371,1 rather than on canon 1364.1.

Moreover, the statement of CDF that the teaching of the pope is infallible could be regarded as *contradictio in terminis*. According to canon 749, the CDF has no competence to do so. In other words, what is stated by the CDF as infallible is fallible! The sanction of refusal of this kind of teaching is based on canon 1371,2. (In addition, even if the pope's teaching is on the first level, it needs a long process of challenge and dialogue over time to declare someone a heretic, since there is the word "obstinate" in canon 751.)

Canons 747-754 of the revised code indicate four categories of the form of Church's teaching. The first category is stated in canon 749. This is an infallible teaching whose authority is possesed either by the Supreme Pontiff ex cathedra, by the college of bishops in an ecumenical

council and by universal bishops in union with the successor of Peter. This category of teaching is contained in the written word of God or in the one deposit of faith entrusted to the Church. This kind of teaching must be believed by the faithful with divine and catholic faith (c. 750). There are three degrees denial to this kind of teaching: heresy, apostasy and schism (c. 751).

1. Preaching

Canon law allows the possibility to preach in other parishes based on (a) canon 766 which states that the laity may be allowed to preach provided there is necessity or in particular cases it would be advantageous, according to the provisions of the Bishops' Conference, (b) canon 772 implicitly allows it if the diocesan bishop lays down norms concerning this matter, (c) canon 759 gives the laity a possiblity to cooperate with the bishop and presbyters in the exercise of the ministry of the word, and (d) if the necessity warrants it and the ministers are lacking, canon 230.3 gives a room for the laity to exercise the ministry of the word.

These four canons indicate that the laity is not absolutely prohibited from preaching in the church or oratory, since "preaching" is to be understood broadly. According to canon 767.1, there are several forms of preaching, among which the homily is preeminent. This means that preaching is the genus, while homily is one of its species.

There are three other notions in canon 767.1: (a) the homily is part of the liturgy itself, (b) it is reserved to a priest or a deacon, and (c) in it the mysteries of faith and the norms of Christian living are to be expounded from the sacred text throughout the course of the liturgical year. The provision that the homily is reserved to a priest or a deacon should be understood within the role of a priest or a deacon as the presider of a liturgy, which means that only priests and deacons can give the homily. Within this context, canon 767.2 obliges the presider of the Sunday Eucharist to give the homily, except for a grave reason. This obligation could be related to canon 213 which mentions the right of the faithful to be assisted by their pastors out of the spiritual riches of the Church, especially by the word of God and the sacraments. Because of this, the importance of the homily is enhanced and the pastor should observe the above provision (c. 767.4). Therefore, in case of necessity, preaching by a lay-person would be preferrable to omitting the homily. As stated above, the laity are prohibited from giving homilies, but not from preaching.

As stated in canon 766, the team of St. Barbara should investigate whether the Bishops' Conference issued norms concerning this matter or not. The fact that "lay persons are preaching in some places around the country" might indicate that these norms are available. If these norms are available, they should follow them. If these norms are not available, they should follow canon 772.1 concerning the norms of the diocesan bishop. If these norms are not available either, they should ask permission from the diocesan bishop. However, even if the diocesan bishop does not give permission, in grave necessity in particular cases, when the utility urges, the pastor, in accord with canons 767.4 and 528.1, could grant approval for lay persons to preach.

It is necessary to consider that, following canon 766, one of the team could be permitted to preach during the Sunday Eucharist occasionally. They could preach if there is necessity, as far as such the considered situation exist, e.g., when the fatigue of the pastor because of his travel from St. Athanasius parish would morally impede him in giving the homily, or if there is usefulness, based on canon 213 above. Besides this, based on canon 767.1 which states that the homily is reserved to priests and deacons, the team should understand the difference between homily and preaching. In other words, if they preach during the Eucharist, it will not be the homily; though they should prepare it well.

2. Cathechism

The responsibility to provide catechesis in the Church applies to all the members of the Church, and within it parents have a special role (cc. 774, 226.2). However, it is necessary to distinguish the official catechesis from the unofficial catechesis. The former has an institutional character and is related to the ecclesial authority, while the latter has no institutional character. It is stated in canon 773 that it is the duty of the pastors of the souls to provide for the catechesis of the Christian people and in canon 774.1 that the (formal) catechesis should be under the supervision of legitimate ecclesiastical authority. For the universal Church, it is the Apostolic See which makes the prescriptions regarding cathecesis, and based on them the diocesan bishops should issue specific norms for their own dioceses (c. 775.1). These diocesan norms should be specified in particular provisions by pastors, especially regarding suitable catechesis for the celebration of sacraments, cathecesis for children before and after the reception of First Communion, catechesis for the handicapped and catechesis for young people and adult (c. 777).

Concerning the authority of catechesis, *the Catechism of the Catholic Church* states that it does not intend to replace local catechisms duly approved by ecclesiastical authorities. It is the responsibility of the bishops and the bishops' conference to provide catechesis, even by preparing a local catechism (c. 775.1) and other materials which are in keeping with it. *The Catechism of the Catholic Church* is just an assistance for such responsibilities; so that there is no absolute obligation to use it.

The above provision means that for the whole diocese the diocesan bishop is responsible to determine materials to use in religious education programs. The diocesan bishop can act through another person whom he chooses and delegates. In this matter he could delegate his authority to the director of the diocesan religious education department. The delegated authority of the director or the diocesan religious education department can be seen in the job descriptions. Because of this delegation the diocesan director of religious education, after consulting with the diocesan bishop, could issue norms concerning catechesis in the diocese, could make provision for suitable instruments for these catechetical endeavors, should foster and coordinate catechetical works (c. 775.1) and should see to it that catechists are duly prepared (c. 780).

With the above authorities he could prohibit another priest, let say Fr. Smith, from imposing the Notre Dame materials, especially if he judges that Fr. Smith's intention to impose the Notre Dame materials is not in accord with the diocesan norms. From the text, it is not clear yet what the diocesan norms are, since it is stated merely that the Notre Dame materials are not on the approved list from the diocesan office.

Besides this, it is important to note that Fr. Smith's responsibility in catechesis should be placed in the proper context of his authority. He is the pastor of Holy Innocents parish, but in cathechizing he should involve other people as stated in canon 776, so that he could not decide any provision arbitrarily. Furthermore, he should have regard to the diocesan norms concerning the procedure to follow for making decisions concerning the parish's policies (c. 538) and also, if it is available, he should respect the job descriptions of the parish director of religious education.

3. Teaching Students

It is not a simple matter to declare that Dr. Logos does not have a mandate to teach theology as required by canon 812, since it would mean to prohibit her from teaching in the

college. Indeed, canon 812 states that those who teach theological disciplines in any institute of higher studies should have a mandate from the competent ecclesiastical authority. To this thing, it is necessary to clarify the problem. There are two distinct problems in this case. The first problem concerns her teaching and the second one concerns her status in the college.

Before examining the problems, we should clarify several other things. First, though it is assumed that Dr. Logos is Catholic because she teaches in a Catholic College, it still needs clarification whether she is Catholic since this law is only for Catholics. Second, the bishop should clarify what the mandate is in his diocese, how he gives this mandate and what he means by "to declare that Dr. Logos does not have a mandate." Does it mean that he consider her as a heretic? Third, in several countries, a pontifical degree would imply a mandate to teach so that it is necessary to know from where Dr. Logos got her degree. Fourth, since the law is not retroactive, we should know whether she had begun to teach in Chrisholm College before the new code was promulagated.

Since the code does not give a certain procedure to give mandate and does not state a certain form of mandate, it is necessary to know how the bishop knows that Dr. Logos has no mandate. In other words, it would be useful in this case to know the common practice of the diocese concerning mandate. If up to the present there is no procedure for giving mandate in the diocese, it might be that most teachers have no mandate as well. If this is the case, it would be not wise to declare that Dr. Logos does not have a mandate.

Concerning the first problem, we should regard the requirement of mandate to teach sacred disciplines in higher education as stated in canon 812 and also canon 229.3 for laypersons. We should also consider other related canons. Canon 218 states the right of those who are engaged in sacred disciplines to have lawful freedom of inquiry and of prudently expressing their opinions. In this matter they should observe due respect for the magisterium of the Church. Moreover, canon 220 states the right to have lawful protection of his or her good reputation.

Based on the above canons, the bishop could not declare arbitrarily that Dr. Logos does not have a mandate. He should follow the procedures. In such cases she has a right to vindicate and to defend her rights and to be judged in accord with the prescriptions of the law (c. 221.1-2). Therefore, the bishop should investigate carefully whether the report made by the national paper

is true (prior investigation, c. 1717.1) and then should ask Dr. Logos herself concerning this matter and gives her a chance to defend herself. In other words, he should examine both sides. If it should be clear that her teaching is not orthodox, the bishop could give her a warning, and if after being warned she would still hold her teaching, the bishop could declare that she has no mandate to teach.

Concerning the second problem, to declare that Dr. Logos does not have a mandate would mean to prohibit her from teaching and it would mean to fire her from the college. Since the code canonizes the statutes of the institution (c. 810), to do so it needs to follow the statutes of the college and it would depend on her status in the college, whether she is a full-time teacher or just a part-timer. In other words, the bishop and Dr. Peritus should regard her rights and obligations in the college according its statutes. Besides this, in this case, if it would mean to fire her from the college, the civil law should be considered as well.

4. Parish's School

It is stated in canon 226.2 that parents have the right and responsibility to educate their children. This responsibility is asserted in canon 796.1 which states that it is the school which is the principal assistance to parents to educate their children. It is assumed that the school has a structured educational program for the children. Therefore, parents are obliged to entrust their children to those schools in which Catholic education is provided (c. 798) and to cooperate closely with the school teachers (c. 796.2). They have the right to be heard (c. 796.2). However, concerning Catholic education, these rights and obligations are understood in the broad sense since their rights are limited by the statutes of the school as a juridic person (c. cc. 114, 116). It is the statutes of the school which determine the rights of parents in the school and the way in which the teachers and parents could collaborate and in which parents could be heard.

The same statutes would determine the rights of the school administrators (cfr. c. 806.1). The code only gives a general guideline concerning the obligations of the school administrator. Canon 796 implicitly states that the school administrator should regard the involvement of parents in light of the statutes. Besides this, he or she is to see to the quality of the teachers based on the principles of Catholic doctrine (c. 803.2) and to the instruction given in the school (c. 806.2). The statutes would specify further these responsibilities.

Since there is no explicit provision in the code for the role of the pastor, it would be the statutes which determine the pastor's role in the parish school. However, he could be delegated by the diocesan bishop to carry out the diocese's responsibilities concerning education in this particular school, especially because the diocesan bishop is competent to issue prescriptions dealing with the general regulation of Catholic schools (c. 806.1). Since these prescriptions should be operative for all Catholic schools in his territory, the statutes of each Catholic school should be in accord with these prescriptions.

The role of the diocese is to recognize schools which are considered to be Catholic school, to give consent to the schools which bear the title "Catholic school" and then to supervise them (c. 803). In line with this role, the diocesan bishop has the duties to regulate Catholic religious education and to be vigilant over it (c. 804.1), and has rights of visitation of the Catholic schools located in his territory (c. 806.1). Furthermore, it is the responsibility of the local ordinary to be concerned that Catholic religion teachers in schools be outstanding for their correct doctrine, their witness of Christian living and their pedagogical skill (c. 804.2). Besides this, the local ordinary has the right to name or to approve teachers of religion and to remove them for religious or morals reasons (c. 805).

Having examined the above competence of each party, concerning the petition to fire Sister Jane and to restore the traditional religious teaching, the bishop and Father Vianney should see the prescriptions of the diocesan bishop and the statutes of the school, especially concerning the role of parents in such a situation. However, it is important to note that the responsibility to examine whether the religious instruction in the school is correct in doctrine or not is of the local ordinary, not of parents (cc. 803.2, 804.2, 806.2). Besides this, it is the right of the local ordinary as well to remove teachers of religion (c. 805) though he should consider the prescription of the diocesan bishop (c. 806.1) and should respect the statutes of the school. In other words, the bishop should distinguish the rights of parents in educating their children in the broad sense from the rights of the school in providing the curriculum; and also, the bishop should distinguish the case concerning the religious education from the case concerning the discharge of Sr. Jane.

5. Imprimatur

The bishop's questions whether Fr. Halcyon's book needs an *imprimatur* concern two distinct problems. The first is the nature of the *imprimatur* and the second is the nature of the book. Concerning the first, the new code does not say what the *imprimatur* means. In the new code, the words *licentia* and *approbatio* (c. 824.1, and also c. 829) are used. It seems that those two words are used interchangeably, but the problem is why the code uses those two words for one issue? Because of this, it would mean that both words refer to *imprimatur* but in different degrees of affirmation. Permission (*licentia*) implies no preference concerning the content of the work. It judges that the work is not harmful to the faith or morals of the faithful although it may contain a variety of opinions and views in addition to official church teaching. On the other hand, approval (*approbatio*) implies a judgment which expresses the official position of the Catholic Church. It affirms that the content of the work is what the Church wishes people to understand the Catholic Church to teach.

What is clear from the context is that prior censorship is needed for several kinds of Catholic publications especially those which touch upon faith and morals (c. 823.1). There are five categories of publication which are subject to prior censorship. Those are (a) books of the Sacred Scriptures (c. 825.1), (b) liturgical books and books of private prayer (c. 826.3), (c) catechisms and catechetical writings (c. 827.1), (d) textbooks on Scripture, theology, canon law, Church history and religious or moral disciplines, which are used in elementary, middle or higher schools (c. 827.2), (e) books treating of religion or morals which are displayed, sold, or distributed in churches or oratories (c. 827.4). These five categories of writings need an *imprimatur* which would mean either approval (for a, c and d) or permission (for b and e). The *imprimatur* for the fourth and fifth categories could be given subsequently (c. 827. 2 and 4). In addition, there is another kind of official judgment for the reprinting in whole or in part of liturgical books as well as their vernacular translation, vis., the attestation of the ordinary of the place or the publisher (c. 826.2). From the context and based on the phrase *de concordantia cum editione approbata*, the attestation of such a book would be expressed in *the imprimatur* as well, either permission or approval.

Besides this, there is a different category of writings which needs something other than the *imprimatur*. It is recommended that books which deal with matters mentioned in c. 827.2, though they are not employed as textbooks, be submitted to the judgment of the local ordinary.

However, the code does not specify the official expression for such a judgment. What is clear from the context (since it is not textbooks) is that it would be less than *imprimatur*.

Concerning the nature of Fr. Halcyon's book, it is said that his book is a tool for adults to prepare and conduct celebrations of the Word for children and would be available for religious education programs. It means that the book is not a prayer book in the strict sense nor would it be a textbook or an official catechism. Therefore, it does not fall under the above categories of books which need an *imprimatur*. However, since the book reprints various texts from the Lectionary, it could be attested by the ordinary of the place in which the book is published (c. 826.2) and then the ordinary could give an *imprimatur,* either permission or approval.

There is another option open to the bishop. Since the book would deal with Sacred Scripture and concern to religion for children, it could fall under the category stated in canon 827.3. It means that the book could be submitted to the judgment of the local ordinary who would express his judgment in some form other than an *imprimatur*. This expression could be *imprimi potest,* based on the old code's practice, or a letter of introduction which indicates that the local ordinary has reviewed the book. However, in this case, the bishop should examine carefully whether the request for an *imprimatur* is a commercial matter only.

Kuliah 13-14

PELANGGARAN DAN SANKSI
(Berdasar KHK 1983 kanon 1395.2)

Canon 1395 paragraph 2 states that a cleric who has committed an offense against the sixth commandment of the Decalogue is to be punished with just penalties (*iusta poena*). The indeterminate penalty in this canon is different from the determinate one in the previous paragraph (c. 1395.1), which mentions suspension as the penalty for a cleric who lives in concubinage or who remains in another external sin against the sixth commandment of the Decalogue. It is stated in canon 1395 paragraph 2 that just penalties would include dismissal from the clerical state. Though it is clear from this canon that the dismissal from the clerical state is the last resort, it is necessary to determine the other penalties, which *nota bene* should be just, besides the dismissal from the clerical state.

To determine what the just penalty is, we should examine the meaning of the word "just." There are several meanings, such as "guided by truth, reason, justice, and fairness," "agreeable to fact" and also "based on right."[13] Based on such understandings, in the first place we should regard that the nature of the offense in canon 1395 paragrah 2 is in fact a delict. Then, in the second place, we should consider the notions of "just penalty" in this canon and the other related factors, vis., the rights of the involved parties.

1. The Substantive Law

Canon 1395 pargaraph 2 should be understood in its relation to canon 277 paragraph 1 as its substantive law. Though it is not explicitly stated, canon 1395 is re related to the obligation in canon 277, especially paragraph one. It is stated that the clergy are obliged to observe perfect

[13]*Webster's New Universal Unabridged Dictionary* (New York: Barnes and Noble Books, 1992), 775.

and perpetual continence and to observe celibacy. This canon distinguishes continence and celibacy. The notion of continence is not having sex with anyone while the notion of celibacy is not to be married. It is important to note that both continence and celibacy are distinguished from chastity. Chastity means "the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being."[14] It means that chastity has a broader understanding than that of continence. Moreover, all baptized are called to chastity. Therefore, since clerics include permanent, married deacons, canon 277.1 includes the obligation to observe chastity for permanent, married deacons. Based on these notions, the offense stated in paragraph 1 of canon 1395 is related to the obligation to observe both continence (and chastity) and celibacy while the offense in paragraph 2 of canon 1395 is related to the obligation to observe continence (and chastity). The former tends to be habitual, while the latter is incidental. Because of this, the gravity of offenses is different. The latter is less grave than the former, and so should its penalty be.

The above notion could be understood from the structural context as well, viz. the whole canon 1395. As stated above, canon 1395 paragraph 1 mentions offense against the sixth commandment of the Decalogue by concubinage or another external sin which produces scandal. This canon sets the minimum and the maximum penalty. The minimum is suspension, while the maximum is dismissal from the clerical state. The placement of paragraph 2 below paragraph 1 in canon 1395 shows that the offense which is stated in paragraph 2 is lighter than that of the previous one. It is assumed that what is stated later is less important or less grave than what is stated prior. Because of this, the just penalties in paragraph 2 of canon 1395 should be lighter than the punishment as stated in paragraph 1 of canon 1395. However, this notion would not exclude the possibility of a severe penalty since canon 1395 paragraph 2 includes the dismissal from clerical state as the last resort.

2. Two Factors of the Offense

[14]*The Cathechism of the Catholic Church* (Mahwah, NJ: Paulist Press, 1994), 561.

It is stated explicitly that the offense in canon 1395 paragraph 2 is a delict (*delictum*). However, there is no explicit statement concerning what the delict is in the new code. The new code says, concerning the delict in canon 1321.1 "No one is punished unless the external violation of a law or a precept committed by the person is seriously imputable to that person by reason of malice or culpability." This canon is based on canon 2195.1 of the old code which explicitly defined what a delict is.[15] This means that in order to determine the penalty, we should consider the objective and the subjective factors. The former concerns the gravity of the offense, and the latter concerns the gravity of the imputability.

2.1. The objective factors

The objective factor of the delict in canon 1395.2 is stated explicitly in the canon itself, namely, "an offense against the sixth commandment of the Decalogue with force or threats or publicly or with a minor below the age of sixteen." This offense includes many forms. The canon itself makes four distictions of the offense: with force, with threat, done publicly, and with a minor. Therefore it would be necessary to clarify those distinctions since the specific kind of offense would determine the severity of the penalty.

According to *The Catechism of the Catholic Church*, the sixth commandment of the Decalogue is "you shall not commit adultery." The offenses against this commandment are divided into two forms, i.e., offenses against chastity and offenses against the dignity of marriage. For the former, there are six forms, i.e., lust, masturbation, fornication, pornography, prostitution, rape and homosexual practices. For the latter, there are five forms as well, i.e., adultery, divorce, polygamy, incest, and free union.

Since canon 1395.2 mentions only the offenses against the obligation of continence and chastity which involve other person(s), the offense against the sixth commandment of the Decalogue in canon 1395.2 would mean fornication, rape, homosexual practice, adultery and

[15]Canon 2195.1, "Nomine delicti, iure ecclesiastico, intelligitur externa et moraliter imputabilis legis violatio cui addita sit sanctio saltem indeterminata." *Codex Iuris Canonici: Pii X Pontificis Maximi Iussu Digestus, Benedicti Papae XV Auctoritate Promulgatus* (Rome: Typis Polyglottis Vaticanis, 1910).

incest. Fornication is "carnal union between an unmarried man and unmarried woman." Rape is "the forcible violation of the sexual intimacy of another person." Homosexual practice is a "relation between men or between women who experience an exclusive or predominant sexual attraction toward persons of the same sex." Adultery means "a marital infidelity, when two partners, of whom at least one is married to another party, have sexual relations, even transient ones." Incest designates "intimate relations between relatives or in-laws within a degree that prohibits marriage between them."[16]

As stated above, canon 1395 paragraph 2 does not specify the meaning of "offense against the sixth commandment of the Decalogue" so that it is not so clear whether non-penetrative sexual offense could be included in this category. There are several forms of such an offense such as fondling, fotteurism (rubbing against another person for sexual release), somnophilia (engaging in sex with someone who is asleep) and another forms of touching (not active penetration),[17] and also of necking and of petting. Concerning this matter, NCCB notices that the sexual offense in canon 1395.2 needs not be a complete act of intercourse.[18]

Canon 1395.2 only makes a general statement concerning the sexual offense, namely, "against the sixth commandment of the Decalogue." It indicates that the code does not make a hierarchy of the above forms of offense. The gravity of offenses would depend on how those are committed, namely, whether committed with force or threat or publicly or with a minor. Since force is understood as more severe than threat, it seems that the list here means a hierarchy of gravity, which means that an offense with force is the most grave, then an offense with threat is the second grave, while an offense which is committed publicly is assumed as involving a consenting act so that it falls under the third category. However, an offense "with a minor"

[16]The above definitions are cited from *The Cathechism of the Catholic Church*, 564-574.

[17]L.M. Lothstein, "Can A Sexually Addicted Priest Return to Ministry after Treatment? : Psychological Issues and Possible Forensic Solutions," *The Catholic Lawyer* 34 (1991) 96.

[18]NCCB,*Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State* (Washington, D.C.: USCC, 1995), 6. This assessment is in accord with canon 277.3 which gives the competence to the diocesan bishop to issue more specific norms concerning this matter.

should be treated differently because it is a different category. It seems that the code assumes two kinds of offense, viz., the offense which involves an adult and which involves a minor.[19]

[19]According to the *Rescript from Audience of His Holiness*, April 25, 1994, in this country minors are those who are below eighteen years of age.

The above objective factors are qualitative in nature. Besides this, there are objective factors which are quantitative in nature. There are three degrees of quantitative factors. The first, which is the most trivial, is unsuccessful attempted offense (c. 1328). The second category is a single, successful offense; and the third is an offense which is done more than once, especially after condemnation with a penalty (c. 1326,1).

2.2. The Subjective Factors

Then, as the second factor, the subjective factor should be considered. What should be examined in this matter is the subjective condition of the offender or the accused which might influence him in breaking the law. This factor is related to the degree of imputability so that canons 1321-1329 should be applied. From these canons we can distinguish many forms of offense, such as very serious offenses in the case of abuse of office (c. 1326.1,2), deliberate offense, light offense in case of imperfect use of reason (c. 1324.1,1), non-offense in case of those habitually lacking the use of reason (c. 1322), etc. Besides this, there are other forms of offense which could not be called full offense. They are incomplete offense (c. 1328) and collaborative offense (c. 1329).

There are two important factors which should be considered in determining the subjective factor. They are malice (*dolus*) and culpability (*culpa*). Though the new code does not explicitly say so, since canon 1321 is based on canon 2195, malice could be defined as intention to violate the law while culpability is negligence. It is malice which is necessary for penal imputability while culpability is usually not a basis for such imputability unless a law or precept states otherwise (c. 1321.2).[20]

In order to determine the gravity of the subjective factor of sexual offense the examination of mental health is necessary as well. Psychologists and psychiatrists would

[20]Thomas J. Green, "Book VI: Sanctions in The Church," in James Coriden, et all., *The Code of Canon Law: A Text and Commentary* (New York/Mahwah: Paulist Press,1985), 901.

have important roles in this case so it would be necessary to understand their distinctions. Their distinctions are based on the assumption that "persons differ from one another sexually in at least four ways: (1) in terms of the kind of *partners* they find to be sexually appealing, (2) in terms of the kinds of *behaviors* they find to be erotically arousing, (3) in *intensity* of sexual desire (and conversely perhaps in the difficulty they may experience in resisting sexual temptations), and (4) in their *attitudes* about whether or not they should try to resist."[21] The notion of this assumption is that sexual desires are not just a consequence of a voluntary decision. In other words, there is a certain "chemistry" involved so that the gravity of offense would depend on this inner influence as well. The examination of psychologist and of psychiatrist would be more important in the child abuse case since persons sexually attracted to children are disodered or abnormal persons.

Based on the above understanding, concerning sexual disorder which involves minors, psychologists classify paraphilia as genus and pedophilia as its species. According to DSM III, "the paraphilias are characterized by arousal in response to sexual objects or situations that are not part of normative arousal-activity patterns and that in varying degrees may interfere with the capacity for reciprocal affectionate sexual activity. The essential feature of disorders in this subclass is that unusual or bizarre imagery or acts are necessary for sexual excitement. Such imagery or acts tend to be insistently and involuntarily repetitive and generally involve either (1) preference for use of a nonhuman object for sexual arousal, (2) repetitive sexual activity with humans involving real or simulated suffering or humiliation, or (3) repetitive sexual activity with nonconsenting partners. The term Paraphilia is preferable because it correctly emphasizes that the deviation (*para*) is in that to which the individual is attracted (*philia*)."[22] To this genus belongs pedophilia as species.

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[21]F. Berlin, "Issues in the Exploration of Biological Factors Contributing to the Etiology of the 'Sex Offender' Plus Some Ethical Considerations," as cited by Jerome E. Paulson, "The Clinical and Canonical Considerations in Cases of Pedophilia: The Bishop's Role," in *Studia Canonica* 22 (1988) 80.

[22]DSM III Classification, as cited by Paulson, 111.

Pedophilia is "disorder in which the individual has recurring urges or sexual activity with a prepubescent child." It is different from hebophilia or ephebophilia which "is characterized by recurring sexual urges or activity committed by the adult upon a postpubescent juvenile."[23] Furthermore, there two groups of pedophiles, based on their exclusive sexual interest in children, namely, *fixated* pedophiles and *regressed* pedophiles. The former have an exclusive interest in children, with no interest in adults, while the latter have a sexual interest in both adults and children. Besides this, there are other distinctions, such as homosexual pedhophilia, heterosexual pedophilia, and bisexual pedophilia.[24]

3. The Other Considerations to be Just

Indeed, to determine the penalty for the offense in canon 1395 paragraph 2 we should consider the objective and the subjective factors of the offense. However, such a consideration is not sufficient. There are other factors to consider in determining the penalty. It is important to examine what the law says from its text and context, and then to respect the rights of the involved parties.

3.1. The Rights of All the Parties

Besides the above notions, it is important to consider that the "just penalty" in canon 1395.2 indicates that the penalty should be just for all the parties involved in the case, i.e., the community, the victim and especially the offender. In this context "community" means the universal Church, the local church in which the offender is incardinated and possibly the parish where he is assigned. Therefore, being just for the universal Church means that the penalty should be for the good of the discipline of the community (cc. 1317, 1341) while being just for the local church and for the parish would concern the spiritual welfare of the faithful and the temporal goods of the Church. Then, being just for the victim means that the penalty should restore the damage (possibly cc. 1729-1731).

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[23]The definitions of pedophilia and hebophilia or ephebophilia are cited from Peter Cimbolic "A Psychologist Looks at Sexual Misconduct," in *The Jurist* 52 (1992) 599.

[24]Keller, "Sexual Abuse of Minors," as cited by Paulson, 112.

Being just for the offender means to respect his rights before and during preliminary investigation, during and after the process. Before and during preliminary investigation we should protect his good reputation (cc. 220, 1717.2), which means that he should not be punished without due process (c. 221). During this process, we should respect his right of defense (cc. 221.1, 1481, 1491, 1598, 1720, 1723, 1725) and then respect his right to make a recourse (cc. 1734-1738) or an appeal (c. 1727). After the decision, if the penalty must be imposed, he still has a right to get decent support (cc. 281, 384, 1350.1). In other words, the process of deciding the imputability of the offender and of determining the penalty itself is part of respecting the rights of the parties.

3.2 Other Canonical Considerations

In order to have a clearer understanding concerning just penalty, we should consider the general norms concerning penalty. Canon 1399 mentions the "just penalty" which could be imposed when the particular seriousness of the violation demands punishment and there is an urgent need to preclude or repair scandal. Its notion is the restoration of the violated ecclesial order, which means that the penalty is expiatory.[25] Besides this, it presupposes that all the conditions specified in the canon have been verified.[26]

Having examined the notion of just penalty, based on canons 1318 and 1349 we can conclude that in an offense against the sixth commandment of the Decalogue as stated in canon 1395.2, expiatory penalties are preferable to censure. It is stated that the legislator should not establish censures and the judges should not impose censures unless the case warrants. Besides this, canon 1347.1 says that censures could not be imposed validly unless the accused has been warned at least once in advance. However, we should consider canon 1341 which says that penalties should be the last resort of all the efforts in repairing scandal, restoring justice and reforming the accused. This notion has to be understood in the pastoral character of penalties. It means that the competent authority should provide other ways for

[25]Green, 931

[26]Thomas J. Green, "Penal Law: A Review of Selected Themes," *The Jurist* 50 (1990) 246.

those finalities prior to imposing penalties. Those other ways could be fraternal correction, rebuke, other non-penal procedures (cc. 1341) and penal remedies (c. 1339). In this case prudent judgment on the part of the judge is necessary (cc. 1343-1346).

4. The Types of Legal-Pastoral Measures, Penal or Otherwise

Having considered that the just penalty in canon 1395.2 should be less grave than that of canon 1395.1, we could proceed to examine the meaning of "just penalty." In the strict sense, penalty in the code includes only censures and expiatory penalties (c. 1312.1); while penal remedies and penances are ancillary in character (c. 1312.3). In this sense, an offense against the sixth commandment of the Decalogue would be punished with either censure or expiatory penalties. However, to impose a censure a prior warning is needed (c. 1347.1), which is almost impossible in the case of a single offense. Moreover, canon 1349 states that "if the penalty is indeterminate and the law does not provide otherwise, the judge is not to impose heavier penalties, especially censures, unless the seriousness of the case clearly demands it; he cannot, however, impose perpetual penalties." Because of this, it seems that censure could be imposed only in more than one offenses by a single cleric.

Based on the above consideration, common remedies and penalties for sexual offense range from fraternal correction of the cleric to dismissal from clerical state. They could be divided into five types. The first option, which is the most lenient, is penal remedies (c. 1339). The second is non-penal administrative actions such as dispensation from celibacy (cc. 290-293) and declaration of an impediment to exercise of orders (c. 1044). The third is expiatory penalties (cc. 1336-1338) except the dismissal from clerical state. The fourth is medicinal penalties such as administrative penal process (decree without a trial, cc. 1342, 1720) and censures (cc. 1331-1335) if the gravity of the offense warrants. The last type of penalty which is the most severe is -as stated in canon 1395.2- the dismissal from clerical state.[27]

[27]For comparison of such types, see NCCB, 12-21.

the "just penalties" in c. 1395.2

- basic substantive law: c. 277.1

---> obligation to observe continence and celibacy (and chastity)

---> c. 1395.1 : celibacy and continence

c. 1395.2: continence

B. The subjective factors:

related to the degree of imputability

- different types of offense (c. 1321.1)
  a. abuse of office (c. 1326.1,2)
  b. deliberate offense
  c. light offense in the case of imperfect use or reason (c. 1324.1,1)
    - alcoholism
    - drug addiction
      ---> but see c. 1325
    - paraphilia: - pedophilia
      - fixated
      - regressed
    - hebophilia/epebophilia

A. The objective factors:

"against the sixth commandment of theDecalogue"

a. qualitatively

- (according to *the Catechism of the Catholic Church*):(1) fornication,
  (2) rape,
  (3) homosexuality practice, (4) adultery,
  (5) incest.
- NCCB: need not be a complete act of intercourse:
  ----> fondling, rubbing/fotteurism, touching, somnophilia, necking, petting, etc.

types of legal-pastoral measures, penal or otherwise

a. penal remedies (c. 1339)

b. - non penal administrative actions (cc. 290-293)
- includes 'leave of absence' for therapy/ treatment, medication, surgery
- declaration of an impediment to exercise of orders (c. 1044)

c. expiatory penalties other than dismissal from the clerical state (cc. 1336-1338)

d. medicinal penalties without trial (cc. 1342, 1720)
censures (cc. 1331-1335)

C. Based on the rights

1. of the universal community: for the good of the discipline (cc. 1317, 1341)
2. of the real community (parish, diocese)
3. of the victim: restoring the damage (possibly cc. 1729-1731)
4. of the offender:
   - before the process: good reputation (cc. 220, 1717.2),
     to be processed (c.221)
   - during the process: rights of defense (cc. 221.1, 1481, 1491,1598, 1720, 1723, 1725

C and D:

'how to be just'

D. Other canonical considerations

- expiatory penalties are preferable to censures (cc. 1312.1, 1318, 1347.1)
- penal remedies and penances are ancillary (c. 1312.3)
- penalties are the last resort (c. 1341)
- it needs the prudent judgment of the judge (1343-1346)
- heavier penalty not to be imposed (c. 1349)
- should consider the seriousness of the violation (c. 1399)

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