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The Ineffectiveness of Criminal Sanctions in Corruption Cases of COVID-19 Handling Funds in Indonesia

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Abstract
This research examines the effectiveness of criminal consequences for corruption offences in COVID-19 handling funds in Indonesia. The research analyses laws and regulations related to disaster management and social assistance funds. The research reveals legal uncertainty due to normative tensions in the legal framework, such as the absence of the death penalty in Government Regulation in Lieu of Law (Perpu) No. 1 of 2020. This research is a descriptive, employing a normative legal research type that utilizes secondary data comprising primary, secondary, and tertiary legal sources. The approach adopted is a legislative approach, with data collection techniques conducted through a literature study. Subsequently, the collected data is analyzed qualitatively. The case study of former Minister of Social Affairs, Juliari Batubara, highlights shortcomings in law enforcement. The study suggests a constitutional review of laws for non-natural disasters to ensure efforts to combat corruption. Furthermore, it recommends the implementation of more robust regulatory mechanisms and stringent punitive measures to strengthen institutional integrity and preserve public trust in judicial processes.

Keywords:
Corruption; Covid-19; and Legal Framework.

A. INTRODUCTION

The spread of the coronavirus (Covid-19) that began in late 2019 has created global health challenges, including in Indonesia. On 11 March 2020, the World Health Organization (WHO) declared Covid-19 a global pandemic, with more than 121,000 cases worldwide.[1] Indonesia recorded its first case on 21 March 2020, which was then responded to with various government policies. President Joko Widodo declared

[1] World Health Organization, "WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 - 11 March 2020," WHO Director-General's, 2020, https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020, accessed 5 January 2024.

a public health emergency based on Law Number 6 of 2018, followed by Presidential Decree (Keppres) Number 12 of 2020 which designated the spread of Covid-19 as a national disaster.[2]

To suppress the spread, the government issued Government Regulation No. 21/2020 on Large-Scale Social Restrictions (PSBB),[3] which significantly impacted the economic slowdown. Various economic recovery programs, such as the Family Hope Program (PKH) and Direct Cash Transfer (BLT), were launched with a total budget of IDR 695.2 trillion.[4] However, the biggest challenge arises from corrupt practices in managing these non-natural disaster funds. As an extraordinary crimes, corruption violates humanitarian principles and threatens the welfare of the people, which is the state's based on the 1945 Constitution. Corruption undermines the foundations of national life and necessitates systematic efforts from the rule of law to prevent and eradicate it. Developed countries treat corruption as a major adversary that must be confronted with firm and measurable policies.[5]

The government allocated a significant budget for Covid-19 management, and the emergency procurement mechanism is vulnerable to fraud and large-scale corruption.[6] Corruption has a detrimental impact on the country, causing financial losses and weakening various economic sectors, thereby hindering the achievement of national goals.[7]

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2 Deti Mega Purnamasari, "Kebijakan Presiden Terkait Penanganan Covid-19 Disebut Bisa Berubah," Kompas.com, 2020, https://nasional.kompas.com/read/2020/04/26/19130971/kebijakan-presiden-terkait-penanganan-covid-19-disebut-bisa-berubah, accessed 5 January 2024.

3 Muh. Hasrul, "Aspek Hukum Pemberlakuan Pembatasan Sosial Berskala Besar (PSBB) Dalam Rangka Penanganan Corona Virus Disease 2019 (Covid-19)," *Jurnal Legislatif* 3, No. 2 (2020): 385-398, http://journal.unhas.ac.id/index.php/jhl/article/view/10477, p. 387.

4 Muhammad Rizki, "Dampak Program Perlindungan Sosial Dalam Mengatasi Kemiskinan Di Tengah Pandemi Covid-19," *Jurnal Good Governance* 17, No. 2 (2021): 125-135, https://doi.org/10.32834/gg.v17i2.335, p. 127.

5 Dahyul Daipon, "Hukuman Mati Bagi Koruptor Pada Saat Keadaan Tertentu (Pandemi COVID-19) Perspektif Hukum Nasional Dan Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, No. 1 (2021): 137-50, https://doi.org/10.24090/mnh.v15i1.4579, p. 138.

6 Jamila Lestyowati, "Pelaksanaan Anggaran Covid-19: Upaya Pelayanan Publik Dan Pemberantasan Korupsi Pada Masa Pandemi," *Jurnal Transformasi Administrasi* 12, No. 01 (2022): 15-35, https://doi.org/10.56196/jta.v12i01.198, p. 30; Muhamad Reza Humaidi, "Rasionalisasi Laporan Bantuan Sosial Bulan Mei 2020 Kepada Masyarakat Terdampak Covid-19 Provinsi Kalimantan Tengah," *Journal Riset Akuntansi Politala* 4, No. 1 (2021): 34-50, https://jra.politala.ac.id/index.php/JRA/article/download/71/40/469, p. 40.

7 Ristania Salsabila Putri, Yonathan Willion Wiryajaya, and Naja Nurizkya, "Wabah Korupsi Di Kala Pandemi : Pemidanaan Tindak Pidana Korupsi Selama Pandemi Sebagai Refleksi Pemberantasan Korupsi Di Indonesia," *Jurnal Anti Korupsi* 3, No. 1 (2021): 113-138, https://doi.org/10.19184/jak.v3i1.27135. p. 120.

Corruption committed by state officials can erode public trust in government bodies and institutions in carrying out their duties. Notably, corruption remains a challenge in government fund management, as evidenced by the case of corruption involving the Minister of Social Affairs, Juliari Peter Batubara. Juliari received a total of IDR 17 billion from two implementers of social assistance packages for Covid-19 handling in 2020. The corruption involved a fee of IDR 10,000 per food package from the total value of IDR 300,000 per social assistance package. The money was used for personal purposes and enjoyment.[8]

Corruption, as an extraordinary crime, requires special attention even in normal circumstances. This is especially true during the critical period of the current COVID-19 pandemic. Referring to Article 2(2) of Law Number 31 of 1999, as amended of Law Number 20 Year 2001 on the Eradication of the Criminal Act of Corruption (hereinafter referred to as the Corruption Law),

Corruption, as an extraordinary crime, requires special attention even in normal circumstances. This is especially true during the critical period of the current Covid-19 pandemic. Referring to Article 2(2) of Law Number 31 of 1999, as amanded by Law Number 20 of 2001 on the Eradication of the Criminal Act of Corruption (hereinafter referred to as the Corruption Law), the legal case involving Minister Juliari Batubara meets the elements specified in that article for a death penalty. This is reinforced by the statement of Firli Bahuri, the Chairman of the Corruption Eradication Commission (KPK), who threatened severe penalties, including the death penalty, for those committing corruption during the Covid-19 pandemic.[9] If a judge imposes a death penalty on the defendant, it is not an error on the part of the judge, as the decision is in accordance with applicable laws.[10] However, the sentence pronounced in the Central Jakarta District Court on August 23, 2021, regarding the corruption case involving the former Minister of Social Affairs, deviated from expectations. In that decision, the judge sentenced Juliari to 12 years in prison, not the maximum penalty under Article 12(b) of the Corruption Law.

[8] Deni Setiyawan, "Analisis Yuridis Terhadap Hukuman Mati Bagi Koruptor Pada Masa Pandemi," *Jurnal As-Said* 1, No. 1 (2021): 5-9, https://e-journal.institutabdullahsaid.ac.id/index.php/AS-SAID/article/view/19, p. 6 .

[9] CNN Indonesia, "Ketua KPK Ancam Hukum Mati Pelaku Korupsi Dana Covid-19," Trans Media, 2020, https://www.cnnindonesia.com/nasional/20200729144658-12-530230/ketua-kpk-ancam-hukum-mati-pelaku-korupsi-dana-covid-19, accessed 5 January 2024.

[10] I Made Gede Kariana, "Penjatuhan Pidana Nihil Dalam Tindak Pidana Korupsi Dan Pencucian Uang," *Lex LATA: Jurnal Ilmiah Ilmu Hukum* 6, No. 2 (2024): 141-159, https://doi.org/10.28946/lexl.v6i2.3193, p. 147.

Considering the heinous and inhumane nature of corruption during the Covid-19 pandemic, a suboptimal sentence would undermine the public's sense of justice. The gap between is evident in the handling of corruption during the Covid-19 pandemic. While the law provides for severe penalties, including the death penalty for corruption committed under extraordinary circumstances, the reality has been different, as seen in the sentencing of Juliari Batubara. This discrepancy undermines public confidence in the justice system and the government's ability to combat corruption effectively.[11]

Corruption is a complex and chronic problem in Indonesia, especially in emergency situations such as the Covid-19 pandemic. Many previous studies have addressed corruption during the pandemic, but there is still room for more specific and current research. Some previous studies such as:

Darul Fitriadi's research in his thesis entitled Reformulation Policy of the National Non-Natural Disaster Element in the Death Penalty for Corruption in Indonesia has significant advantages and disadvantages. The advantage lies in its specific focus on criminal law reformulation policies related to the death penalty for corruption of non-natural disaster funds, especially during the Covid-19 pandemic. This research uses a normative legal approach with a structured analysis, referring to various relevant primary and secondary legal sources. This thesis is also contextually relevant as it addresses pressing issues related to the management of public funds in times of crisis. However, its shortcomings are seen in the need for strengthening literature and empirical studies to support the argument, such as the lack of more diverse case data or comparative analyses with other countries implementing similar policies. In addition, this thesis lacks concrete practical recommendations in the implementation of policy reformulation, which is important to bridge the theoretical analysis and its application in the field.[12]

Furthermore, research conducted by Muhammad Rosikhu and Johan Rahmatulloh in the Legality journal regarding the regulation of death penalty sanctions for perpetrators of corruption during natural disasters has several advantages and disadvantages. The advantage lies in the in-depth analysis of the provisions of Article 2 paragraph 2 of the Corruption Law which regulates the

[11] Min Setiadhi (Panitera Pengganti), "Putusan PN Jakarta Pusat-Tanggal 23 Agustus 2021 —Juliari P. Batubara" (Jakarta, 2021), p. 3.

[12] Darul Fitriadi, *Kebijakan Reformulasi Unsur Bencana Non Alam Nasional Dalam Ancaman Pidana Mati Pada Tindak Pidana Korupsi Di Indonesia*. Tesis pada Program Magister Ilmu Hukum Program Pascasarjana Universitas Islam Riau (Pekanbaru: UIR, 2023), p. 120.

death penalty as an alternative sanction, especially in certain circumstances such as national natural disasters. This research uses a systematic normative approach and identifies legal gaps, such as the unclear definition of 'national natural disaster' in the legislation. In addition, this research provides concrete recommendations, such as the need for a nominal limit for the imposition of death penalty sanctions. On the downside, this research lacks empirical data and comparative analysis with similar practices in other countries, making its applicability in the field difficult to ascertain. In addition, this study highlights that the inconsistency between the content of the article and its explanation makes this regulation potentially a 'barren' article, but the solution to this problem is not thoroughly elaborated.[13]

Further contributing to this discourse, research by Ni Komang Sri Herawati Octa, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani has the advantage of using an in-depth normative approach, including the study of legislation and concepts related to the criminal act of corruption of social assistance funds. This approach strengthens the analysis of legal regulations and enforcement efforts to recover state losses. The research also highlights the weaknesses of existing law enforcement, and provides concrete recommendations to improve supervision and provide firmer sanctions. However, the shortcoming of this research lies in the lack of empirical data or recent case studies that can provide a real picture of the implementation of these recommendations, thus not highlighting the practical challenges in law enforcement in the field.[14]

This research has significant differences compared to the three previous studies. This research provides a special focus on analysing criminal sanctions in corruption of non-natural disaster funds during the Covid-19 pandemic by highlighting the gap between the policies stipulated in the Corruption Law and their implementation in the field, such as in the Juliari Batubara case. Compared to Darul Fitriadi's research, which is more oriented towards the reformulation of criminal law related to the death penalty, this research emphasises the impact of legal implementation on public trust. Meanwhile, when compared to the research of Muhammad Rosikhu and Johan Rahmatulloh, who criticised the

[13] Muhammad Rosikhu and Johan Rahmatulloh, "Pengaturan Sanksi Pidana Mati Bagi Pelaku Tindak Pidana Korupsi Di Waktu Bencana Alam," *Jurnal Legalitas* 14, No. 1 (2021): 41-52, https://doi.org/https://doi.org/10.33756/jelta.v14i01.10286, p. 50.

[14] Ni Komang Sri Herawati Octa, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani, "Penegakan Hukum Terhadap Tindak Pidana Korupsi Dana Bantuan Sosial Pandemi Covid-19 Yang Dilakukan Oleh Pejabat Negara," *Jurnal Preferensi Hukum* 3, No. 2 (2022): 424-429, https://doi.org/10.55637/jph.3.2.4956.424-429, p. 428.

definition of national natural disasters, this research focuses on the complexity of the application of punishment in extraordinary conditions. Also different from Ni Komang Sri Herawati Octa et al.'s research, which emphasises regulation and supervision, this research pays more attention to the practical aspects of the ineffectiveness of punishment during the pandemic and its impact on people's sense of justice.

This research aims to analyse the root causes of the ineffective application of criminal sanctions against perpetrators of corruption of non-natural disaster funds during the Covid-19 pandemic in Indonesia. This analysis is conducted to understand how the discrepancy between existing legal policies and their implementation in the field impacts public trust in the legal system. In addition, this research aims to offer recommendations for more stringent and effective legal policies in addressing corruption of non-natural disaster funds. The main emphasis is on ensuring that the penalties imposed reflect the principles of justice, legal certainty, and expediency, so as to strengthen public trust in law enforcement.

B. RESEARCH METHODS

This research is descriptive, which aims to provide a systematic and detailed description of the ineffectiveness of the application of criminal sanctions against corruption of non-natural disaster funds during the Covid-19 pandemic in Indonesia. The research method used is normative research, focusing on normative legal studies through analysis of relevant laws and regulations. The approach used in this research is a statutory approach, by examining various regulations such as Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption and Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999, as well as government regulations and ministerial regulations related to disaster management and management of social assistance funds. The data used in this research is secondary data, which includes primary, secondary, and tertiary legal materials. The data is obtained through a literature study, including analysis of legal documents, previous research, and laws and regulations relevant to the research topic. The data that has been collected is then analysed using a qualitative analysis method, which involves a systematic process of interpreting the data to produce conclusions that are relevant to the legal issues discussed.

C. RESULTS AND DISCUSSIONS

The concept of the Rule of Law is the manifestation of the fundamental role of law as the central point in the life of the state and society, leading towards a just and prosperous existence. Therefore, the essential components of the legal system need to be strengthened as the main

pillars in law enforcement.[15] The term "negara hukum" is equivalent to the Rule of Law and "rechtsstaat" in foreign languages. The term "rechtsstaat" became popular in Europe since the 19th century, while the term "Rule of Law" gained popularity with the publication of Albert Venn Dicey's book in 1885 titled "Introduction to the Study of the Law of the Constitution." The concept of "rechtsstaat" is based on the Continental legal system known as civil law or modern Roman law, while the concept of the "Rule of Law" is based on the legal system known as common law. [16]

The legal system is an abstract representation of law as a whole, consisting of interconnected components: the legal nation's soul, structural legal components, substantive legal components, and legal cultural components. These components mechanically and functionally relate to each other to achieve the goals set within the legal system.[17] In a Rule of Law state, law holds the position of the main rule in the organization of national life with the aim of structuring a peaceful, just, and meaningful society. The objective of a Rule of Law state is the realization of governmental, administrative, and societal activities based on justice, peace, and utility, as well as meaning. In a Rule of Law state, the existence of law serves as an instrument in organizing national life, governance, and society.[18]

Indonesia, theoretically speaking, is not only a Rule of Law state but can also be argued to share the same goal as all nations: to provide welfare for its citizens. The goal of the Republic of Indonesia, as stated in the preamble of the 1945 Constitution, is to promote the general welfare, educate the nation's life, or in other words, to achieve social justice for all the people of Indonesia. This formulation emphasizes that constitutionally, the Republic of Indonesia adheres to the welfare state paradigm.[19] Indonesia adopts the concept

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15 Sumiaty Adelina Hutabarat *et al*., *Dasar Ilmu Hukum: Teori Komprehensif & Implementasi Hukum Di Indonesia* (Yogyakarta: Green Pustaka Indonesia, 2024), p. 15.

16 Ahmad Zaini, "Negara Hukum, Demokrasi, dan Ham," *Al Qisthas: Jurnal Hukum Dan Politik* 11, No. 1 (2020): 13-48, https://doi.org/10.37035/alqisthas.v11i1.3312, p. 16.

17 Muhammad Yasir, *Rekonstruksi Regulasi Pemeriksaan Tersangka yang Berbasis Nilai Keadilan Pancasila*, Disertasi pada Program Doktor Hukum Program Pascasarjana Fakultas Hukum Universitas Islam Sultan Agung, (Semarang: UNNISULA, 2024), p. 34.

18 Vicky Zaynul Firmansyah and Firdaus Syam, "Penguatan Hukum Administrasi Negara Pencegah Praktik Korupsi Dalam Diri Pemerintahan Indonesia," *Integritas : Jurnal Antikorupsi* 7, No. 2 (2021): 325-344, https://doi.org/10.32697/integritas.v7i2.817, p. 326.; Made Subawa danBagus Hermanto, *Aktualisasi Filsafat Ilmu Hukum Pancasila Dalam Penguatan Dan Pembenahan Pembentukan Undang-Undang Di Indonesia* (Ponorogo: Uwais Inspirasi Indonesia, 2023), p. 46-47.

19 Murthada and Seri Mughni Sulubara, "Implementasi Hak Asasi Manusia Di Indonesia Berdasarkan Undang-Undang Dasar 1945," *Dewantara : Jurnal Pendidikan Sosial Humaniora* 1, No. 4 (2022): 111-121, https://doi.org/10.30640/dewantara.v1i4.426, p. 118.

of a welfare state, where the state can use the law to regulate, organize, and ensure the welfare of the people.[20] As a consequence of being a welfare state, the state must intervene in the lives of the people. [21]

One form of state intervention in promoting the welfare of its people can be seen in the commitment to national development. Long-term national development aims to reform the legal system and state apparatus, eliminating the opportunities for corruption and enhancing the ability to address and conclusively handle issues such as collusion, corruption, and nepotism (KKN).[22] Law plays a crucial role in national development as part of the body of knowledge, serving as a tool to achieve prosperity, maintain order, and uphold justice.[23] In realizing order and justice, the law is required to tackle new challenges, find appropriate solutions, and evaluate ideas that cannot be addressed by another knowledge. Law also serves as a means of social control for the government, as without law, social life would descend into anarchy. Therefore, one of the goals of law is to act as a tool for social control, with a particular focus on combating corruption as one of the highest priorities for social control.[24]

1. The Ineffectiveness of Criminal Sanctions in Addressing Corruption of Non-Natural Disaster Funds During the COVID-19 Pandemic

Corruption in Indonesia is considered an extraordinary crime due to its increasing cases and widespread impact on society. [25] Corruption not only erodes the state structure gradually but also destroys essential elements within the country, stemming from the

[20] Lismanto Lismanto and Yos Johan Utama, "Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial Dalam Perspektif Negara Demokrasi," *Jurnal Pembangunan Hukum Indonesia* 2, No. 3 (2020): 416-433, https://doi.org/10.14710/jphi.v2i3.416-433, p. 420.

[21] Muh. Ali Masnun, Eny Sulistyowati, and Irfa Ronaboyd, "Perlindungan Hukum Atas Vaksin Covid-19 dan Tanggungjawab Negara Pemenuhan Vaksin Dalam Mewujudkan Negara Kesejahteraan," *DIH: Jurnal Ilmu Hukum* 17, No. 1 (2021): 35-47, https://doi.org/https://doi.org/10.30996/dih.v17i1.4325, p. 45.

[22] Mohammad Muqorobin Khairul and Barda Nawawi Arief, "Kebijakan Formulasi Pidana Mati Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi Pada Masa Pandemi Corona Virus Disease 2019 (COVID-19) Berdasarkan Perspektif Pembaharuan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 2, No. 3 (2020): 387-398, https://doi.org/10.14710/jphi.v2i3.387-398, p. 388.

[23] Adnan Mahmutovic and Abdulaziz Alhamoudi, "Understanding The Relationship Between The Rule of Law and Sustainable Development," *AJEE: Access to Justice in Eastern Europe* 1, No. 22 (2024), https://doi.org/https://doi.org/10.33327/AJEE-18-7.1-a000102, p. 23.

[24] Ridwan Syaidi Tarigan, *Menuju Negara Hukum Yang Berkeadilan* (Kalimantan Selatan: Ruang Karya Bersama, 2024), p. 68.

[25] Johari and Teuku Yudi Afrizal, "The Criminal Acts of Corruption as Extraordinary Crimes in Indonesia," *International Journal of Law, Social Science and Humanities (IJLSH)* 1, No. 1 (2024): 17-27, https://journal.lps2h.com/ijlsh/article/view/141, p. 20-21.

bureaucratic structure where corruption takes place.[26]

Indonesia's identity as a rule of law state implies that the country must be based on law, meaning all actions by state authorities and the people are regulated by law.[27] In administrative law, officials are granted authority that must not contradict the purpose for which it is given, known as the Principle of Specificity. Therefore, any misuse of authority, such as the case of former Minister of Social Affairs Juliari P. Batubara demanding Rp. 10,000 (ten thousand rupiahs) per package from COVID-19 social assistance (Bansos) providers, constitutes a betrayal of the people's trust and defiance of the law, qualifying as a criminal act.

Criminal acts can be understood as the fundamental basis for imposing penalties on individuals who have committed criminal acts.[28] According to Edwin Sutherland, crime is behaviour that breaks the law and harms others. Sutherland also argued that crime is not just limited to street violence, but can also be committed by people of honour and high social status.[29] However, before addressing the prohibition and punishment of an act, the principle of legality (*Nullum Delictum Nulla Poena Sine Praevia Lege Poenali*) dictates that an act must be found in legislation before it can be considered prohibited and punishable.[30]

Regarding corruption, the state has established criminal sanctions for perpetrators through the People's Consultative Assembly Decree (MPR) Number XI/MPR/1998 concerning a Clean and Free from Corruption, Collusion, and Nepotism State Administration. This decree was followed by the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes. However, the application of criminal sanctions for perpetrators of corruption in the COVID-19 mitigation funds is not entirely

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[26] Fabio Roque Sbardellotto, "Corruption, a Historical Phenomenon That Destabilizes Society and The State," *Caderno De ANAIS HOME* III (2023), https://doi.org/10.56238/seveniiimulti2023-040, p. 11.

[27] Herlambang P. Wiratraman, "Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?," *Journal of Southeast Asian Human Rights* 4, No. 1 (2020): 306-334, https://doi.org/10.19184/jseahr.v4i1.18244, p. 311.

[28] Andre Yosua M and Tegar Mulia, "Juridical Analysis Of Proof Elements Harm State Finance In Criminal Actions Corruption In Indonesia," *International Journal of Sociology and Law* 1, No. 3 (2024): 1-19, https://doi.org/https://doi.org/10.62951/ijsl.v1i3.95, p. 1.

[29] Nurwinardi Nurwinardi, Pujiyono Suwadi, and Hartiwiningsih Hartiwiningsih, "Eliminating Corruption Through A Criminological Perspective On Corruption Crime Strategies," in *Proceedings of the International Conference on Law, Economic & Good Governance (IC-LAW 2023)* (Atlantis Press SARL, 2024), 115-123, https://doi.org/10.2991/978-2-38476-218-7_18, p. 117.

[30] Beni Puspito and Ali Masyhar, "Dynamics of Legality Principles in Indonesian National Criminal Law Reform," *Journal of Law and Legal Reform* 4, No. 1 (2023): 109-122, https://doi.org/https://doi.org/10.15294/jllr.v4i1.64078, p. 113.

clear. Ambiguities exist, especially in the "Specific Circumstances" element of Article 2 paragraph (2) of Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, particularly after the issuance of Government Regulation in Lieu of Law (Perppu) Number 1 of 2020 concerning Financial Policies and Financial System Stability for Handling the COVID-19 Pandemic, especially in Article 27 paragraphs (1), (2), and (3).

The question arises regarding the limitation of the costs mentioned in paragraph (1). If there are costs that are deemed unreasonable according to common sense (*redelijkheid*), are these costs still not considered state losses and, therefore, not classified as corruption? This also relates to paragraph (2), stating that the implementation of this Perppu cannot be criminally prosecuted or sued in a civil court if carried out in good faith and in accordance with statutory provisions. The question is, what is the measure of good faith (Goede Trouw) referred to?

These matters will be left to the discretion of law enforcement agencies, including investigators, public prosecutors, and judges, as they are not explicitly addressed in the Government Regulation in Lieu of Law (Perppu). However, it is essential to regulate these issues, considering many local governments use their Regional Budgets (APBD) for COVID-19 handling or even provide assistance to citizens, violating budgetary principles (APBD is determined by Regional Regulations agreed upon with the Regional Representative Council) and constituting elements of corruption crimes under Article 2 and Article 3 of the Corruption Law. Consequently, indirectly excluding these actions could eliminate one essential element of corruption crimes: "state losses," as regulated in Article 2 paragraph (1) and Article 3. This provision is also feared to be susceptible to abuse by state officials involved in handling the COVID-19 pandemic.

Article 27 of Law Number 2 of 2020 has caused a normative conflict with the Corruption Law. The wording of this article creates the impression of providing immunity to the Financial System Stability Committee and officials involved in the implementation of social assistance who misuse their authority in managing COVID-19 funds, exempting them from the death penalty under Article 2 paragraph (2) of the Corruption Law. This normative conflict has resulted in legal uncertainty, rendering the law ineffective in achieving justice.

2. Analysis of Legal Ambiguities in the Regulation of Corruption in COVID-19 Mitigation Funds

In the verdict of the Central Jakarta District Court Case Number: 29/Pid. Sus-TPK/2021/PN.JKT.PST, the primary focus of the application of Article 12 letter (b) of the Corruption Law lies in points one and two. In the first point of this verdict, the judge has appropriately engaged in legal finding (*rechtsvinding*),

as one of the reasons for the necessity of legal interpretation by the judge has been fulfilled—namely, the absence or lack of clarity in the regulation governing corruption crimes related to the Covid-19 pandemic funds. This lack of clarity is particularly evident in the implications with Article 27 of Government Regulation in Lieu of Law (Perppu) Number 1 of 2020. Even without these reasons, when a judge finds a match between the purpose or wording of the legislation and the qualifications of a specific event or case, legal interpretation is warranted.

The judge explicitly stated in the legal considerations that the defendant was proven to have committed corruption crimes, as per the Alternative Indictment one of the Public Prosecutor. The judge's legal interpretation in this case was grammatical interpretation. However, the appropriateness of this legal interpretation needs to be evaluated based on the method used by the judge, the accuracy of the chosen method, and the legal arguments built by the judge in the legal considerations, leading to the conclusion to accept or reject the Public Prosecutor's demands.

The second point in this verdict differs slightly from the public prosecutor's requisitory, where the public prosecutor sought an 11-year prison sentence for the defendant, but the panel of judges decided on a 12-year prison sentence. Normatively, there is no provision in the Indonesian Criminal Procedure Code (KUHAP) that requires judges to sentence according to the public prosecutor's requisitory. However, judges have the freedom to determine sentencing based on legal considerations and their conscience. It means that a judge's decision that exceeds the public prosecutor's demand is not prohibited by law, especially KUHAP. Conversely, what is prohibited by law is if a judge imposes a higher sentence than the maximum penalty specified by law. For example, if the maximum penalty under Article 12 letter b of the Corruption Law is life imprisonment, and a judge sentences the defendant to death, it would be considered *ultra petita*. Several Supreme Court decisions, such as Decision Number: 339K/Sip/1969 dated February 1, 1970, Decision Number: 1001K/Sip/1972, and Decision Number: 77K/Sip/1973, explain that the purpose of the prohibition of *ultra petita* is to prevent judges from acting arbitrarily by judging according to their own desires, as the limits in civil cases are set by the lawsuit, and in criminal cases, they are limited by the indictment.

The principle of "ultra petita" refers to a situation where a judge rules beyond what was requested by the parties involved in the case. In a strict application of the ultra petita principle, the judge would make a decision that goes beyond the scope of the claims or demands made by the parties, potentially causing the decision to deviate from the core principles of justice and utility. Such an approach would prioritize the legal certainty (*rechtsicherheit*) over other considerations, which may undermine

the broader goals of justice (*gerechtigkeit*) and utility (*zweckmassigkeit*). However, according to Gustav and as supported by Bambang Sutiyoso, a judge's decision should not be confined strictly to legal certainty alone. Instead, it should ideally encompass a more balanced approach that integrates the three key principles: legal certainty (*rechtsicherheit*), justice (*gerechtigkeit*), and utility (*zweckmassigkeit*). This holistic approach ensures that the decision is not only legally sound but also fair and aligned with the public interest, thus achieving a more comprehensive and equitable outcome in line with the ideals of Recht (law). [31]

Although incorporating the principles of legal certainty, justice, and utility into the essence of a decision is challenging, as legal certainty often clashes with justice, the principles that should prevail in a decision are justice. If legal certainty conflicts with utility, then legal certainty should be set aside, and utility should be incorporated into the essence of the decision. Justice and utility must be prioritized because a judge, in rendering a decision, must adhere to the fundamental principle: "IN THE NAME OF JUSTICE BASED ON THE SUPREME GOD." Thus, a judge must prioritize justice, as their decision is accountable to the Almighty. This also applies to the application of the ultra petita principle; if its application contradicts justice, justice should prevail.

Therefore, the conclusion is that even if the panel of judges imposes a higher sentence based on their considerations, the decision does not violate the law, as long as it does not exceed the maximum penalty specified in the indictment by the public prosecutor.[32] Because, as we know, it is the judge's freedom to impose a sentence (judicial discretion in sentencing). However, what violates the law is if the judge's decision contains *ultra petita*. For example, if a judge imposes a death sentence on a defendant, such as the penalty under Article 2 paragraph (2) of the Corruption Law, which was not charged or joined by the public prosecutor, it would not be allowed. Unless the judge makes a legal breakthrough or legal interpretation using hermeneutics, interpreting the text holistically within the framework of the interconnection between the text, context, and contextualization. In this case, it involves the interpretation of the Covid-19 pandemic regarding

[31] Muhammad Randhy Martadinata and Faisal Ahmadi, "Asas Keadilan Hukum Putusan Peradilan," *Jurnal Wasatiyah: Jurnal Hukum* 1, No. 2 (2020): 12-23, https://jurnal.iim-jambi.ac.id/index.php/Wasatiyah/article/view/60, p. 19.

[32] Dhea Aulia M Purba, Hendri Jayadi Pandiangan, and Djernih Sitanggang, "Analisis Yuridis Pengurangan Pemidanaan Bagi Terdakwa Perempuan Pada Kasus Korupsi Di Setiap Tingkatan Pengadilan," *Jurnal Cahaya Mandalika (JCM)* 3, No. 3 (2024): 1345-1369, https://ojs.cahayamandalika.com/index.php/jcm/article/view/2764, 1361.

the "specific circumstances" element in Article 2 paragraph (2) of the Corruption Law. The judge also makes a breakthrough as a form of progressive legal development, where the judge is not just a mouthpiece for the law but a mouthpiece for justice capable of delivering quality decisions by determining the right legal sources. The justice referred to is the justice felt by the community, as the funds that should have been used for the best possible handling of the Covid-19 pandemic when society is in a crisis and needs assistance were corrupt.

Based on the verdict of the Central Jakarta District Court Case Number: 29/Pid.Sus-TPK/2021/PN.JKT.PST, it can be concluded that the act of corruption in handling Covid-19 funds can be punished under Article 12 letter (b) of the Corruption Law as a corruption crime.

3. Judicial Interpretation of Article 12 Letter (b) of the Corruption Law in COVID-19-Related Corruption

The disappointment of the public towards officials involved in the corruption of Covid-19 handling funds has reached its peak. Consequently, there is a widespread desire among the public for severe punishment to be imposed on the corrupt individuals to serve as a deterrent and a reminder for other officials not to engage in such heinous acts. The discourse on imposing the death penalty for those involved in the corruption of Covid-19 handling funds is frequently raised, with various perspectives from the public. Former Chairman of the Corruption Eradication Commission (KPK), Abraham Samad, has also expressed his views on the matter. Abraham believes that the death penalty should be applied in cases of alleged bribery in the Ministry of Social Affairs in 2020, as the bribery occurred during the Covid-19 pandemic. The conditions for applying the death penalty, as regulated in Article 2 Paragraph 2 of the Anti-Corruption Law, have been met in this situation. Furthermore, opinions from fellow ministers have been voiced, such as Deputy Minister of Law and Human Rights (Wamenkumham) Edward Omar Sharif Hiariej, who stated that former Minister of Social Affairs Juliari Peter Batubara could be sentenced to death for corruption. Edward's argument is based on the aggravation of the maximum penalty of life imprisonment stipulated in Article 2 of the Corruption Law, and the death penalty for corruption cases is regulated in Article 2 Paragraph (2).

Despite the strong advocacy for the application of Article 2 Paragraph (2) of the Corruption Law, the KPK prosecutors, in their indictment, opted for Article 12 letter (b) or Article 11 of the Corruption Law. The reason provided by the KPK prosecutors is that the case involving Juliari originated from a Sting Operation (Operasi Tangkap Tangan or OTT) or a closed investigation. Consequently, the findings of the closed investigation revealed the application of gifts or promises by a state official to induce someone to do or not do something

contrary to their duty (bribery under Article 12 letter (b) of the Corruption Law). To apply Article 2 of the Anti-Corruption Law, an open investigation would be required to uncover unlawful actions that enrich oneself or others or harm the state's finances. The indictment is a critical focus in criminal proceedings as it delineates the charges. The defendant cannot be charged or found guilty and sentenced for actions not specified in the indictment. The indictment, among other things, serves as the basis for the public prosecutor's demand (requisitoir). The public prosecutor has the authority to submit the requisitoir after the trial is declared complete by the presiding judge or the head of the panel, as stipulated in Article 182 Paragraph (1) letter (a) of the Indonesian Criminal Procedure Code (KUHAP).[33] Thus, it can be concluded that the indictment is a document containing the formulation of criminal acts charged against the defendant, drawn from the results of the investigation, and serves as the basis for the judge in the trial proceedings. This aligns with the KPK's reasons, as expressed by Acting KPK Spokesperson Ali Fikri, for not applying Article 2 Paragraph (2) of the Corruption Law to Juliari's case. KPK's decision is based on facts, analysis, and legal considerations from the investigation results. Law enforcement must be carried out correctly to avoid counterproductivity in legal enforcement. The KPK also emphasizes that in prosecuting the defendant, it is based on the facts revealed during the trial, not influenced by opinions, desires, or pressures from any party.

Expressis verbis, the KPK, as a public prosecutor in corruption cases, has the authority, according to Article 140 Paragraph (1) of KUHAP, to create an indictment without interference from other institutions. The public prosecutor stands alone and is complete (*volwaardig*) in preparing the indictment. Starting from the provisions in Article 1 point 7 and Articles 137 and 140 Paragraph (1) of KUHAP, the position of the public prosecutor in preparing the indictment can be explained. The public prosecutor must be able to formulate the elements of the charged offense and combine them with a description of the material act (facts) committed by the defendant in the indictment. Complete means that the indictment contains all the elements of the charged criminal act. These elements are described and detailed in the factual description/incident outlined in the indictment (*delik omschrijving*).[34] Hence, the KPK cannot charge the defendant under Article 2 Paragraph (2) of the Corruption Law as long as the results of the investigation state that

[33] Leden Marpaung, *Proses Penanganan Perkara Pidana Bagian Ke-2* (Jakarta: Sinar Grafika, 1992), p. 401.
[34] Bambang Waluyo, *Pidana dan Pemidanaan* (Jakarta: Sinar Grafika, 2000), p. 66.

the defendant's actions do not fulfill the elements of that article.

Based on these reasons, the author suggests that there may be doubt on the part of the KPK in applying Article 2 Paragraph (2) of the Corruption Law to cases related to Covid-19, as it remains a subject of debate. As mentioned earlier, Indonesia has entered a Public Health Emergency as regulated by the Health Quarantine Law. Then, with the existence of the Covid-19 pandemic, do the conditions for a State of Emergency (with civil emergency status already fulfilled according to the current Emergency Law) also apply? It should be remembered that the criteria for a State of Emergency in positive law in Indonesia, as stipulated in Article 1 of the Emergency Law, include: a. the occurrence of rebellion; riots; and natural disasters. Of course, the conditions of rebellion and riots that threaten Indonesia's territory are not currently met. So, what about natural disasters? It is essential to recall that based on the Head of BNPB's Decision No. 9A of 2020, which designates Covid-19 as an "Infectious Disease Outbreak," it must comply with Article 1 letter a of the Infectious Disease Law and Article 1 number 2 of the Health Quarantine Law, as well as in accordance with Article 1 number 3 of the Disaster Management Law, categorized as a non-natural disaster. This is also reinforced by Presidential Decree No. 12 of 2020 Regarding the Determination of the Spread of Covid-19 as a National Non-Natural Disaster, stating that the spread of the Covid-19 pandemic is a non-natural disaster. Therefore, the Covid-19 pandemic does not fulfill the criteria for a state of emergency according to Government Regulation No. 23 of 1959 Regarding the State of Emergency.

In conclusion, the author posits that de facto the country has indeed operated in a state of emergency, as indicated by the restrictions on civil rights stipulated in Government Regulation No. 21 of 2020. According to Jimly Assidiqie, the limitation of civil rights can only be done if the country is in a state of emergency. However, in the context of the Covid-19 pandemic, de jure the country is not in a state of emergency.[35]

Furthermore, the author argues that corruption crimes related to the Covid-19 pandemic funds do not meet one of the elements in Article 2 Paragraph (2) of the Corruption Law. Therefore, this article cannot be applied to cases of corruption in the handling of pandemic funds. However, if there is an effort to apply this article to prosecute corrupt individuals involved in the

[35] Ja'far Shodiq, "Implikasi Kepres Nomor 11 Tahun 2020 Tentang Penetapan Kedaruratan Kesehatan Masyarakat Corona Virus Disease 2019 (Covid-19) Dalam Hukum Tata Negara Darurat," *VOICE JUSTISIA (Jurnal Hukum dan Keadilan* 4, No. 1 (2020): 58-81, https://journal.uim.ac.id/index.php/justisia/article/view/989, p. 79.

mismanagement of Covid-19 funds, a constitutional review or judicial review can be pursued before the Constitutional Court regarding the provisions in Article 1 of Law No. 23 of 1959 to be amended or added to include clauses related to Non-Natural Disasters. This way, the Covid-19 pandemic, as a non-natural disaster, can meet the criteria for being declared a State of Emergency with Civil Emergency status. Consequently, the "Specific Circumstances" element in Article 2 Paragraph (2) of the Corruption Law can be fulfilled and applied to corruption crimes related to the handling of Covid-19 pandemic funds.

D. CONCLUSIONS

Corruption of COVID-19 funds has highlighted significant legal uncertainty, particularly due to the conflict between the Corruption Eradication Law and Government Regulation in Lieu of Law (Perpu) No. 1/2020, which limits the severity of sanctions for officials involved in the crime. The lack of clarity regarding state losses and the definition of 'good faith' further complicates law enforcement efforts and reduces the effectiveness of the legal framework in addressing corruption. The Central Jakarta District Court's decision reflects an attempt to strike a balance between legal certainty and justice by applying Article 12 letter b of the Corruption Eradication Law despite the lack of clarity in the Government Regulation in Lieu of Law (Perpu). Public pressure for harsher penalties under Article 2 Paragraph (2) was not met due to the absence of a state of emergency under Indonesian law, underscoring the need for legal reforms, including revision of the Emergency Law, to better address non-natural disasters such as the pandemic.

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