

# Death Penalty for Corruptors in the Pandemic Time Covid 19 in a Positive Legal Perspective

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## ABSTRACT

Former Minister of Social Affairs, Juliari Batubara, who managed 1.6 million packages out of a total of 1.9 million social assistance packages. The procurement package is for handling the Covid-19 Social Assistance Handling at the Ministry of Social Affairs for Fiscal Year 2020 in the form of the procurement of Basic Food Social Assistance in June and July 2020. Commitment Maker (PPK) for the procurement of Covid-19 basic food assistance at the Directorate of Social Protection for Social Disaster Victims of the Ministry of Social Affairs, former The social minister is targeting to receive Rp 35 billion from the procurement of the Covid-19 social assistance package or social assistance at the Ministry of Social Affairs. The purpose of this study is to solve legal issues regarding criminal responsibility for social assistance corruption actors during the Covid-19 pandemic. The method used in this study uses a normative juridical approach with a statute approach and a case approach. The research results are Juridically, the elements of "certain circumstances" as referred to in Article 2 paragraph 2 of the Anti-Corruption Law have met the requirements, so that the judge should implement the article in the decision of the case that dragged the former Minister of Social Affairs Juliari Batubara to sentence him to death as the *ultimum remedium*.

**Keywords:** Death Penalty, Corrupt, Covid 19 pandemic, certain circumstances.

## 1. INTRODUCTION

The covid pandemic that has hit the world since the last 2 years, Indonesia has also been hit by a pandemic that shows signs of not ending. Even in Indonesia, there will be a significant increase in 2021. The first positive case of the Corona virus or Covid-19 in Indonesia was detected on Monday (2/3/2020). First announced by President Joko Widodo. Since that day, the number of positive cases of Corona has been increasing day by day. There are patients who died, many also tested negative and eventually recovered. Until June 2021, the Covid-19 pandemic in Indonesia had lasted more than a year.

The Covid-19 pandemic doesn't seem to show any signs of getting better. This can be seen from the various media that continue to report the increasing number of positive COVID-19 patients in Indonesia. However, we must also be optimistic about the increase in the number of recovered patients. The existence of this pandemic, both the community and the government are required to work together to resolve this disaster. The public and the government are obliged to comply with the health protocol rules that have been regulated in Presidential Decree No. 11 of 2020 concerning the determination of the Covid-19 public health

emergency and Government Regulation no. 21 of 2020 concerning Large-Scale Social Restrictions in the context of accelerating the handling of COVID-19[1]. With the hope that Covid-19 will be resolved soon and return to normal life. Even though on the other hand, Indonesia, which is an archipelagic country, has volcanoes, slabs in the ocean which then have the potential for natural disasters to occur, ranging from tsunamis, landslides, volcanic eruptions, floods and in the condition of the covid pandemic, it is increasingly making Indonesian people from all aspects of life stronger. Life has decreased, namely the economic impact that is felt by the majority of the Indonesian population.

According to data from the Ministry of Manpower, as of May 12, 2020, the number of workers who were laid off or laid off reached 1,722,958 people. It consists of 1,032,960 formal workers who have been laid off and 375,165 people have been laid off. Meanwhile, the number of companies that have laid off and laid off reached 80,000 companies spread throughout Indonesia (kompas.com). The Institute for Development of Economic and Finance (Indef) predicts a large wave of layoffs due to economic pressures as a result of the Covid-19 pandemic to occur in June 2020[2].

In recent years, natural disasters have become routine in Indonesia, be it earthquakes, landslides, floods, volcanic eruptions, forest fires and droughts. Although the disaster is not wanted, it occurs almost evenly throughout Indonesia. Even this Covid-19 has become a disaster that has resulted in the cessation of economic activities, teaching and learning and limited public access to interact. In various records over the past 10 years, disaster management funds have often been misused by stakeholders, ranging from government officials, legislators to private parties who have received tenders for disaster management projects. As if it is still clear in our memories regarding the operation to arrest the Minister of Social Affairs who corrupted the Bansos Covid 19 funds through Game 1[3].

There have been several cases of corruption in disaster funds and social assistance funds in Indonesia. This unlawful act also occurred during the Covid-19 period in Indonesia this year. This shows that there is something that does not provide a deterrent effect to convicts of corruption so that it will happen again[4]. This is what causes problems, corruption cases continue to occur when people experience disasters and the country is in trouble, but on the other hand there are unscrupulous officials who take advantage of disaster or pandemic situations to corrupt funds that should be used for affected/victimized people.

## 2. METHODOLOGY

This research is a legal research that aims to solve legal issues, namely regarding the criminal responsibility of social assistance corruption actors during the covid-19 pandemic. the type of research used is normative juridical, namely by reviewing or observing the applicable laws and regulations that have relevance in this research in order to obtain coherent truth.[1].

This study uses 2 (two) approaches, namely:

- a. The statute approach is carried out by reviewing all laws and regulations related to the research being handled.
- b. The case approach is carried out by examining cases related to the writing of the law at hand [5].

The technique of collecting legal materials is carried out through library research to obtain theoretical or doctrinal conceptions, conceptual and previous opinions or thoughts related to the object of study, which can be in the form of laws and regulations, books, scientific writings and other scientific works. At the initial stage of data collection, an inventory of all data and documents relevant to the topic of discussion is carried out. Furthermore, the categorization of the data is based on the formulation of the problem that has been determined[6].

## 3. RESULTS AND DISCUSSIONS

Studies on state emergencies, whether in the form of war emergencies to health emergencies, will always refer to emergency constitutional law as a theoretical basis. The doctrine of emergency constitutional law teaches about circumstances where legal norms cannot be applied normally (Greene, 2020). According to Dullemen (Dullemen, 1947), there are four legal requirements for a valid emergency constitutional state, namely: (a) It must be evident that the highest interests of the state are at stake, the existence of the state depends on carrying out the emergency action; (b) The action is indispensable. and cannot be substituted for other actions; (c) The action is temporary (applicable once or for a short time to simply normalize); and (d) When action is taken, Parliament cannot actually convene. Therefore, under normal circumstances, legal norms can be enforced regularly, but sometimes, it is unimaginable that there will be other circumstances that are abnormal, cannot be expected to be effective in realizing the objectives of the law itself[7].

According to Akmal Malik, the central government has prepared management guidelines and their impacts for local governments. In the context of the general korbinwas, the steps taken by the center have been informed to local governments through written documents (guidelines). The goal, of course, is for local governments to gain understanding regarding COVID-19. According to him. This is not an ordinary pandemic but a war on COVID-19. Therefore, the Ministry of Home Affairs has prepared five strategies, namely (a) a strategy to prevent the spread of COVID-19; (b) enhancement of the immune system; (c) health capacity building; (d) increasing food security and the medical device industry; and (e) strengthening the social safety net. Meanwhile, to build a pattern of central and regional relations, the Ministry of Home Affairs has the following principles: namely (1) protecting public health from disease and/or public health risk factors is the responsibility of the central and local governments (concurrent affairs); (2) determining the implementation of affairs based on the criteria of externality (perceived impact), effectiveness and accountability; (3) collaboration between central and local governments; and (4) the President as the supreme commander of all executive affairs. For this reason, a task force has now been created to deal with the COVID-19 pandemic[8].

If they are not trustworthy, there will be a threat of punishment that will be given to the person in the form of the death penalty, in accordance with the Anti-Corruption Law in article 2 paragraphs (1) and (2). Paragraph (1) stipulates that: "Everyone who unlawfully commits an act of enriching himself or another person or a corporation that is detrimental to state finances or the state economy, shall be

sentenced to imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)." Paragraph (2) states, "In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed[9].

From the explanation above in paragraph (2), under certain circumstances, a person who commits a criminal act of corruption can be sentenced to death in accordance with the provisions. Therefore, the misuse of the Covid-19 fund allocation can be categorized under certain circumstances and the perpetrator can be sentenced to death[9]. KPK chairman Firlil Bahuri (bbc.com, 2020) said, "The Covid-19 pandemic condition entered or met the elements "under certain circumstances" in accordance with paragraph 2 article 2 of Law Number 20 of 2001 concerning Eradication of Corruption Crimes. Thus, the death penalty deserves to be a punishment for the perpetrators of social assistance corruptors"[1]. The imposition of the death penalty as regulated in Article 2 paragraph 2 of the Anti-Corruption Law, does not apply to corruption crimes in general, but applies to non-corruption crimes committed in "certain circumstances". This means that the application of the death penalty is specific to corruption with certain requirements. This is as happened in the corruption case carried out by the Minister of Social Affairs Juliari Batubara who committed an act of corruption when the State was in a state of natural disaster, namely Covid-19, the social assistance provided to people in need was misused to enrich themselves, in a criminal manner. and the legal facts of the actions carried out by Minister Juliari Batubara have met the requirements for imposing a death penalty, which when viewed from the elements as follows:[5]. Judging from the elements of the offense above, it can be said that the case that befell Minister Juliari Coal can indeed be classified as a criminal act that can be sentenced to death.

The results of previous research stated that the imposition of the death penalty on perpetrators of criminal acts of corruption based on Article 2 paragraph 2 of the UUTPK is difficult to apply, especially to the element of "emergency conditions". This is because in imposing a criminal the element of "emergency condition" must be fulfilled as stated in the formulation of the law. If the actions of the perpetrators cannot concretely fulfill the elements listed in the abstract formulation of the law, they cannot be punished. The formulation of the word "can be sentenced to death provides an opportunity for judges to impose other harshest criminal alternatives that are not in the form of eliminating the opportunity to live. So the formulation should be a definite sentence. it is necessary to revise Article 2

paragraph (1) UUTPK. Revisions are made to the formulation of the elements of corruption which can be sentenced to death. The word ".. can.." in the formulation of Article 2 paragraph (1) UUTPK is changed to "...must..." or "...must...". Avoid alternative sanctions that constitute a criminal threat other than the death penalty. This is because the threat of capital punishment for the crime of corruption does not conflict with national and international provisions and it is hoped that a deterrence effect can be achieved[5].

According to Barda Nawawi Arief: "If the notion of punishment is defined broadly as a process of giving or imposing a crime by a judge, then it can be said that the criminal system includes all of the statutory provisions that regulate how the criminal law is enforced or operationalized in a concrete manner so that a person is sanctioned. criminal law). This means that all laws and regulations regarding substantive criminal law, formal criminal law and criminal law enforcement can be seen as a unified criminal system[10].

The inclusion of the word or element "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it is clear that the legislators do not require the occurrence/completion of the consequences of "harming the state's finances or the country's economy". The word "can" means that "harming the state's finances or the state's economy" does not have to have actually happened, the important thing is that the actions of the perpetrators have the opportunity to cause consequences "to harm the state finances or the state economy". This interpretation is strengthened by the authentic interpretation of the makers of the Law on the Eradication of Corruption Crimes which states ".....that a criminal act of corruption is a formal offense, namely that the existence of a criminal act of corruption is sufficient to fulfill the elements of the act that are formulated, not by the emergence of consequences". Regarding formal offenses in corruption, the Constitutional Court Decision Number 003/PUU-IV/2006, dated July 24, 2006, has decided that the word "can" Article 2 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001, which reads "everyone who opposes" the law of committing acts of enriching oneself or another person or a corporation that can harm the state's finances or the state's economy, being punished... etc.", does not contradict Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia as long as it is interpreted in accordance with the interpretation of the Court. (conditionally constitutional), namely the Constitutional Court is of the opinion that the element of state losses must be proven and must be calculated. The issue of the word "can" in Article 2 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001 is more a matter

of implementation in practice by law enforcement officers, and not concerning the constitutionality of norms, so the explanation of Article 2 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001 which reads[11].

There have been several cases of corruption in disaster funds and social assistance funds in Indonesia. This unlawful act also occurred during the Covid-19 period in Indonesia this year. This shows that there is something that does not provide a deterrent effect to corruption convicts so that it happens again. The threat of punishment in cases of criminal acts of corruption has been regulated in Law Number 31 of 1999 concerning Corruption Crimes in conjunction with Law 20 of 2001 concerning the Eradication of Corruption Crimes. The category of corruption crimes includes 7 types of criminal acts, namely state financial losses, bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement and gratuities. In article 2 paragraph (1) of Law Number 39 of 1999 concerning the Crime of Corruption, it is stated that: Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy, shall be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years. ) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah)l. Furthermore, Article 2 paragraph (2) states that: "In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty can be imposed". The purpose of paragraph (2) of the article is explained in the explanation of Law Number 31 of 1999 concerning the Crime of Corruption. The phrase "certain circumstances" in the paragraph is a form of weighting for perpetrators of criminal acts of corruption if the crime of corruption is carried out at a time when the country is in a state of danger in accordance with applicable laws, during a national natural disaster, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis. From this explanation, there are things that are still unclear, for example the incomplete definition of a hazard situation which is still multi-interpreted. If it is associated with the current situation, Indonesia is experiencing a non-natural disaster, namely the COVID-19 pandemic which has been designated a national disaster when a national natural disaster occurs, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis. From this explanation, there are things that are still unclear, for example the incomplete definition of a hazard situation which is still multi-interpreted. If it is associated with the current situation, Indonesia is

experiencing a non-natural disaster, namely the COVID-19 pandemic which has been designated a national disaster in the event of a national natural disaster, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis. From this explanation, there are things that are still unclear, for example the incomplete definition of a hazard situation which is still multi-interpreted. If it is associated with the current situation, Indonesia is experiencing a non-natural disaster, namely the COVID-19 pandemic which has been designated a national disaster[4].

If we look at the various regulations that have been issued by the Government of Indonesia, it is certain that corruption is a major threat in development and is very detrimental to society in general. Thus the death penalty is considered very logical to give fear to the corrupt. This means that life imprisonment, let alone 20 years, even a minimum of only 4 years, is not something that can prevent and deter corruptors from committing their crimes systematically[12].

Satjipto Rahardjo stated that it was time for Indonesia to declare the dangers of corruption as a state of emergency. Because the situation is an emergency, it must also be handled with an emergency way of thinking, an emergency way of acting and with legal officials who are able to make emergency breakthroughs[6].

#### 4. CONCLUSION

That corruption is still rampant in the Republic of Indonesia and even carried out by state officials by utilizing disaster funds during the pandemic. So far, the sentences imposed have not provided a deterrent effect to corruption convicts and have not significantly reduced the number of corruption in Indonesia. Implementing the death penalty for corruptors under certain conditions as referred to in Article 2 of the Anti-Corruption Law is very clear and can be applied as an ultimum remedium so that the law can function more in creating order and justice in society in accordance with the ideals of the law.

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