JILPR Vol. 6, No. 1 October 2024
Journal of Indonesia Law & Policy Review 2715-498X

LEGAL CERTAINTY ON THE MISUSE OF COVID-19 SOCIAL FUNDS AS A BASIS FOR CRIMINAL AGGRAVATION

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Abstract

The existence of the Covid 19 Pandemic in Indonesia some time ago can be categorized as a non-natural disaster that has been determined nationally. To anticipate and help the community, the government has disbursed social funds for the poor and affected by the policy of Enforcing Community Activity Restrictions (PPKM). There are four potential corruptions in social assistance funds in the midst of a pandemic, including: First, corruption related to the procurement of goods/services. Second, the vulnerability to recording receipts, distribution of aid and misappropriation of aid or grants from the public or private sector given to the Task Force and all ministries/institutions/local governments. Third, on the allocation of sources of funds and spending as well as the utilization of the budget in the process of refocusing and reallocating the Covid-19 budget in the APBN and APBD. Fourth, on the implementation of social assistance (social safety net) by the central and regional governments. The various cases above validate the existence of an "epidemic of corruption" amid the COVID-19 outbreak. Corruption is like a virus that spreads to fellow human beings and is dangerous. The fertility of rasuah has damaged government institutions, faded integrity, and brought about the destruction of the nation. The imperfection of the country's system, which is currently in flux after the pandemic, is the biggest weakness that opens up wider opportunities for corruption. Furthermore, people often have a logical fallacy, where they think that the more corruption cases, the better. In fact, the rampant cases of corruption being handled indicate that the function of preventing corruption has not been implemented. Therefore, the massive expansion of corruption during the pandemic is a sad portrait of the nation that should be addressed immediately. Misuse of COVID 19 funds during the pandemic through corruption by the authorities deserves to be categorized as a criminal offense, one of which is the corruption case committed by the Minister of Social Affairs as decided in Decision Number 29/PID.SUS-TPK/2021PN JKT.PST.

Keywords: Misuse of COViD-19 Funds, Corruption, Criminal Aggravation

INTRODUCTION

Since the beginning of March 2020, there has been an outbreak of COVID-19 (coronavirus disease) originating from Wuhan, China. The new type of coronavirus, SARS-CoV-2, has infected more than 200,000 people in 152 countries in less than three months. The transmission of the disease spreads very quickly through droplets from coughs and sneezes, personal contact such as touching and shaking hands, and touching objects or surfaces with the virus on them before touching the mouth, nose, or eyes without washing hands. Therefore, social distancing is believed to be one of the effective ways to reduce the spread, although it cannot eliminate the virus. Social distancing means keeping distance by avoiding crowds, public gatherings, and not attending large group meetings. This means there is enough space between individuals to eliminate the route of virus transmission.

In implementing social distancing, which has now evolved into physical distancing according to the recommendations of the World Health Organization (WHO). WHO has also advised several countries affected by the COVID-19 pandemic to implement lockdowns. Recently, WHO also sent a letter urging Indonesia to apply this lockdown system. However, President Joko Widodo refused to impose a lockdown and instead implemented Large-Scale Social Restrictions (PSBB). According to the Regulation of the Minister of Health (Permenkes) Number 9 of 2020, which regulates the Guidelines for PSBB in handling the Coronavirus (COVID-19), PSBB is described as the restriction of certain activities. These activity restrictions are intended for residents in an area suspected of being affected or infected by the coronavirus. The goal is to block and prevent the spread of the coronavirus on a larger scale than what has already been recorded. The PSBB has impacted many people as they cannot carry out their livelihoods, thus affecting their income. Similarly, banking activities have been affected, particularly regarding issues related to loan payments.

Since January 11, 2021, the Implementation of Community Activity Restrictions (PPKM) has been in effect. The PPKM will be evaluated and monitored daily. The term PPKM is used by the government according to the Instruction of the Minister of Home Affairs Number 1 of 2021 to all regional heads in several areas of Java and Bali. Meanwhile, the government has been using Large-Scale Social Restrictions since April 10, 2020, based on Government Regulation Number 21 of 2020 regarding PSBB in the context of accelerating the handling of COVID-19, referring to Law Number 6 of 2018 concerning Health Quarantine.

The impact of the COVID-19 pandemic has been significant, particularly on the nation's economy. Almost all large stores, buying and selling activities in traditional and modern markets, and other activities that bring people together have been restricted, and even offices must implement a shift system for their employees (work from home). This has greatly affected the community, with many stores having to close, companies conducting layoffs (termination of employment), restaurants selling off all their food supplies at a loss, and especially for lower-income families whose food needs for the next day depend on today's earnings, experiencing a substantial impact on their income due to the PSBB (Large-Scale Social Restrictions).

The economic downturn has brought about legal events affecting society, as some individuals are forced to commit crimes, such as theft, to meet their basic needs, along with robberies, muggings, and others. Therefore, there is a correlation between the pandemic and the emergence of street crime, stemming from new unemployment and new poverty, which may be similar to the driving factors for street crime in normal times.

Certain crimes have increased in some areas while others have decreased. The level and distribution of crime in a crime-prone area reflect the conditions and structure of the local society, regional characteristics, and local values. The crime rates reported to the police cannot be separated from the conditions of the COVID-19 pandemic; thus, COVID-19 protocols may potentially lower crime rates but could also increase other types of crime. On the other hand, some officials have exploited their positions during this pandemic to commit acts of corruption,

as occurred with Minister of Social Affairs Juliari Batubara, who was arrested and prosecuted for corruption in social funds and assistance related to the COVID-19 pandemic.

Efforts to anticipate crime during this pandemic must be handled differently than before the COVID-19 outbreak. Additionally, the establishment of a new normal in facing this pandemic will also have other effects, particularly in how to handle crime and deviant behavior. During the COVID-19 pandemic, crime continues to show its existence, which reflects the normalcy of society. In criminal law, there are certain conditions that can be categorized as justifications or excuses that serve as grounds for dismissing criminal liability. However, on the other hand, criminal law also includes aggravating circumstances, such as theft during a fire, eruption, flood, earthquake, tsunami, volcanic eruption, shipwreck, stranding, train accidents, riots, rebellions, or war dangers. In relation to the pandemic, the question arises: does stealing during a pandemic qualify as an emergency situation? While the legal facts indicate that to mitigate the economic conditions of the community, the government is providing assistance in the form of food supplies or cash assistance. Additionally, the community is coming together to provide help to those in need. Therefore, crime during the pandemic cannot yet be classified as fulfilling a need due to hunger, making it inappropriate to consider it an emergency.

It was recorded that the cost of handling COVID-19 as of August 2020, as stated by Febri Diansyah during a National Webinar by the Center for Islamic Studies and Constitution on the Aggravation of Corruption Penalties during the Pandemic, was IDR 695.20 trillion. This fund is allocated across several sectors, including Health at IDR 87.55 trillion, Social Protection at IDR 203.90 trillion, and Business Incentives at IDR 120.61 trillion.

UMKM (Micro, Small, and Medium Enterprises) received IDR 123.46 trillion, corporate financing received IDR 53.57 trillion, and sectoral funding for ministries and local governments received IDR 106.11 trillion. Based on this data, the largest budget allocation is directed toward social protection financing. Social protection programs have become an urgent point alongside public health resilience.

All these policies serve as a means to protect the state from a highly dangerous outbreak by prioritizing public health, social safety nets, and the country's economic sector. Amidst a crisis like this, the Corruption Eradication Commission (KPK) has conducted operations to catch hands (OTT) against those who exploit this moment. There are five suspects arrested by the KPK during the COVID-19 pandemic, including the East Kutai Regent, a University of Jakarta official, the Minister of Marine Affairs and Fisheries, the Cimahi Regent, and recently, officials from the Ministry of Social Affairs along with its Minister, who were declared suspects by the KPK on Sunday, December 6, 2020.

There are four potential corruption issues regarding social assistance funds during the pandemic, namely: First, corruption related to the procurement of goods/services. Second, vulnerabilities in the recording of aid receipts, distribution, and misappropriation of aid or donations from the public or private sectors given to the Task Force and all ministries/institutions/local governments. Third, issues regarding the allocation of funding sources and spending, as well as budget utilization in the process of refocusing and reallocating the COVID-19 budget in the state budget (APBN) and regional budget (APBD). Fourth, the implementation of social assistance (social safety net) by the central and local governments.

Various cases above validate the existence of a "corruption epidemic" amid the COVID-19 pandemic. Corruption is like a virus that spreads among people and is dangerous. The prevalence of corruption has damaged government institutions, eroded integrity, and brought destruction to the nation. The imperfection of the current state system, which is adrift post-pandemic, represents the biggest weakness that opens wider opportunities for corruption. Furthermore, society often has a logical fallacy, thinking that an increase in corruption cases is a good sign. In fact, a rise in corruption cases being handled indicates a failure to execute anti-

corruption prevention functions. Therefore, the massive expansion of corruption during the pandemic is a heartbreaking portrait of the nation that should be urgently addressed.

METHOD

The research method used in this paper is normative legal research with a conceptual problem approach. The legal materials used are primary legal materials and secondary legal materials. The research approach employs a conceptual approach, a legislative approach, and a case approach, while the analysis of legal materials uses qualitative descriptive analysis.

RESULT AND DISCUSSION

The COVID-19 Pandemic in the Context of Emergency Situations as Grounds for the Aggravation of Corruption Crimes

The Coronavirus Disease 2019 (COVID-19) pandemic falls under conditions of urgency as defined in the Constitutional Court Decision Number 138/PUU-VII/2009, which states that the pandemic meets the parameters that grant the President the authority to establish Government Regulations in Lieu of Law (Perppu) as stipulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, in order to provide a strong legal basis for the Government and related institutions to take policies and measures promptly, Government Regulation in Lieu of Law Number 1 of 2020 was enacted concerning State Financial Policies and Financial System Stability for Handling the COVID-19 Pandemic and/or in Facing Threats to National Economic Security and/or Financial System Stability.

Several matters are regulated in Perppu 1 of 2020, including the implementation of policies in the field of regional finance, taxation, national economic recovery programs, state financial policies, and others. Notably, Article 27 paragraph (1) regulates that the costs incurred in the implementation of these policies are part of the economic costs for saving the economy from crisis and are not considered a financial loss to the state. Additionally, Article 27 paragraph (2) provides protection for members, the Secretary, and the Secretariat of the Financial System Stability Committee (KSSK), officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority (OJK), and the Deposit Insurance Corporation who carry out their duties in good faith and in accordance with statutory regulations, so they cannot be prosecuted criminally or civilly.

Furthermore, there are other laws and regulations that align with these provisions, such as Presidential Instruction Number 4 of 2020 regarding Budget Refocusing and Procurement of Goods and Services for the Acceleration of COVID-19 Handling, Minister of Finance Regulation Number 210/PMK.02/2019 concerning the Procedures for Revising the 2020 Budget, Minister of Home Affairs Regulation Number 20 of 2020 regarding the Acceleration of COVID-19 Handling in Local Government, and other related regulations.

However, the controversy surrounding the use of COVID-19 funds is seen as potentially subject to misuse. Misappropriation of allocations for COVID-19 response can be categorized as corruption committed under certain circumstances. Government officials entrusted with managing the allocation of funds for COVID-19 response who abuse their authority may face criminal sanctions, where the perpetrators may be subject to the death penalty. This applies to both the Central and Regional Governments.

In essence, to support the government's Social Assistance (Bansos) policy, the government has established Presidential Regulation Number 82 of 2020, which states:

1. In order to accelerate the handling of Coronavirus Disease 2019 (COVID-19) and the national economy, as well as recovery efforts, the Committee for the Transformation of COVID-19 Handling and National Recovery, hereinafter referred to as the Committee, has been formed.

2. The Committee operates under and is accountable to the President. This Committee consists of three parts: the Policy Committee, the COVID-19 Handling Task Force (Satgas), and the National Economic Recovery and Transformation Task Force.

The Committee aims to develop and oversee all economic recovery programs and restore the national economy, which is expected to take a considerable amount of time. The authorities held by this committee include:

1. The Policy Committee is responsible for formulating strategic policy recommendations to the President to accelerate the handling of COVID-19 and economic recovery, as well as integrating and evaluating all policy breakthroughs in the acceleration of COVID-19 handling and economic recovery.
2. The COVID-19 Handling Task Force is tasked with resolving issues related to the implementation of strategic policies for handling COVID-19 swiftly and accurately, conducting oversight, and determining the necessary steps in policies related to COVID-19 handling.
3. The National Economic Recovery and Transformation Task Force is responsible for resolving issues related to the implementation of strategic policies, conducting oversight, and determining and implementing the necessary steps for national economic recovery.

Although the government has provided policies established for COVID-19 social assistance, there are still many irresponsible individuals who take advantage of this momentum to exploit the rights of citizens. This situation is also exacerbated by the lack of government oversight in the ongoing activities related to social assistance funds.

COVID-19 in Indonesia and the Lack of Transparent and Accountable Public Service Systems in the Process of Distributing Social Assistance Funds to the Community from Central to Regional Levels. This situation opens new opportunities for irresponsible parties to commit acts of corruption.

As stipulated in Article 2, paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption (Anti-Corruption Law) in conjunction with the Constitutional Court Decision Number 25/PUU-XIV/2016, it states: “Every person who unlawfully enriches themselves or another person or a corporation, which can harm state finances or the national economy, shall be punished with life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years of imprisonment 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).”

In Article 2, paragraph (2) of the Law, it is emphasized that in cases of corruption committed under certain circumstances, the death penalty may be imposed. The term "certain circumstances" refers to situations that can be used as reasons for increasing the penalty for perpetrators of corruption, namely if the crime is committed against funds allocated for disaster management, national natural disasters, widespread social unrest, economic and monetary crises, and the recurrence of corruption offenses.

Therefore, acts of corruption during disasters, such as the COVID-19 pandemic currently taking place, may be punishable by death. However, the enforcement of the Anti-Corruption Law is hindered by Article 27 of Government Regulation in Lieu of Law (Perppu) Number 1 of 2020. Article 27, paragraph (1) states: “The costs incurred by the Government and/or KSSK member institutions in implementing national revenue policies, including tax policies, state spending policies, regional financial policies, financing policies, financial system stability policies, and national economic recovery programs, are part of the economic costs for rescuing the economy from crisis and are not considered state losses.”

This provision in Article 27, paragraph (1) is seen as counterproductive to the Anti-Corruption Law, as it implies that law enforcement officials cannot take pro-justitia actions in the form of investigations and inquiries. In addition to Article 27, paragraph (1) of Perppu Number 1 of 2020, Article 27, paragraphs (2) and (3) also state that: “Members of KSSK, the

Secretary of KSSK, members of the KSSK secretariat, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, and Deposit Insurance Institutions, as well as other officials related to the implementation of this Government Regulation in Lieu of Law, cannot be prosecuted either civilly or criminally if in carrying out their duties they act in good faith and in accordance with the provisions of the applicable laws and regulations." Furthermore, according to Article 27, paragraph (3): "All actions, including decisions taken based on this Government Regulation in Lieu of Law, are not objects of lawsuits that can be submitted to the State Administrative Court."

From the overall perspective of Article 27 of Perppu Number 1 of 2020, it seems to eliminate legal accountability for officials involved when utilizing budget allocations, as the use of the budget is not categorized as state financial loss. Consequently, officials performing their functions cannot be criminally charged or sued civilly, and all actions or decisions in implementing Perppu Number 1 of 2020 are not considered disputes in Administrative Law.

One case example analyzed to determine whether the COVID-19 pandemic qualifies as a state of emergency that increases the penalty for corruption is the study of the Central Jakarta District Court Decision Number 29/Pid. Sus-TPK/2021/PN Jkt.Pst, where corruption involving COVID-19 funds occurred by the Indonesian Minister of Social Affairs.

On December 6, 2020, the Corruption Eradication Commission (KPK) designated former Minister of Social Affairs Juliari Batubara as a suspect in the case of alleged bribery related to social assistance for managing the COVID-19 pandemic in the Jabodetabek area in 2020. Juliari's designation as a suspect was a follow-up to a sting operation conducted by the KPK on Friday, December 5, 2020. After being named a suspect, Juliari surrendered to the KPK that evening. In addition to Juliari, the KPK also named Matheus Joko Santoso, Adi Wahyono, Ardian I M, and Harry Sidabuke as suspects for bribery. This case began with a program for the procurement of social assistance (Bansos) for handling COVID-19 in the form of basic food packages at the Ministry of Social Affairs in 2020, valued at approximately Rp 5.9 trillion with a total of 272 contracts, executed in two phases.

Juliari, as the Minister of Social Affairs at that time, appointed Matheus and Adi as Commitment Making Officials (PPK) for the implementation of the project through direct appointments of partners, allegedly agreeing to set a fee for each package of work that must be paid by the partners to the Ministry of Social Affairs through Matheus. For each social assistance package, the agreed fee by Matheus and Adi was Rp. 10,000 per package of basic food items from a total value of Rp. 300,000 per social assistance package.

From May to November 2020, Matheus and Adi made contracts with several suppliers as partners, including Ardian I M and Harry Sidabuke, as well as PT RPI, which is allegedly owned by Matheus. The appointment of PT RPI as one of the partners was allegedly known to Juliari and approved by Adi. During the first period of implementing the social assistance package, it was alleged that a fee of Rp. 12 billion was received, which was distributed in cash by Matheus to Juliari through Adi. From that amount, the total bribe received by Juliari was alleged to be Rp. 8.2 billion. This money was subsequently managed by Eko and Shelvy N, who were trusted by Juliari to pay for various personal expenses. During the second period of implementing the basic food package, a total of around Rp. 8.8 billion in fees was collected from October to December 2020. Thus, the total bribe received by Juliari, according to the KPK, amounted to Rp. 17 billion. It was alleged that all this money was used by Juliari for personal needs.

For his actions, Juliari was charged with violating Article 12(a) or Article 12(b) or Article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, in conjunction with Article 55, paragraph (1), point 1 of the Penal Code (KUHP). Juliari was sentenced to 12 years in prison and a fine of Rp. 500,000,000.00

(five hundred million rupiah) by the panel of judges of the Jakarta Corruption Court on August 23, 2021. The panel found Juliari guilty of violating Article 12(a) of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001.

Additionally, the judges imposed an additional penalty to pay replacement money amounting to Rp. 14,590,450,000 or approximately Rp. 14.59 billion. If not replaced, it could be substituted with an additional two years of imprisonment. Juliari's political rights or electoral rights were also revoked by the judges for four years. The judges considered that Juliari's actions could be classified as unfair, akin to throwing a stone and hiding one's hand. He acted boldly but was unwilling to take responsibility and even denied his actions. The judges also noted that Juliari's actions occurred during a non-natural disaster emergency, namely the COVID-19 pandemic. On the other hand, it was noted that Juliari had never been convicted before, and he had suffered enough from being scorned, insulted, and humiliated by the public. The judges also acknowledged that Juliari had been deemed guilty by society, even though legally the defendant is not necessarily guilty until a legally binding court decision is made. Essentially, the misappropriation of COVID-19 social assistance funds falls under embezzlement and fraud; embezzlement can be committed by anyone intending to unlawfully control all or part of someone else's property that is in their possession.

Indonesia is a country that prioritizes human rights, where citizens have the right to live. In realizing the death penalty, more attention should be given to balancing public interests with criminal decisions. The application of the death penalty can be imposed for crimes that have exceeded the limits of human conscience, which are said to have harmed the lives of many and disturbed the order of life, human civilization, and national economic sabotage. Such crimes include premeditated actions that result in the loss of someone's life, terrorism that threatens national security, smuggling and drug trafficking for dealers, and corruption.

The imposition of the death penalty based on the Anti-Corruption Law is part of a serious effort to combat corruption by ensuring security, justice, and legitimate interests for society. The application of the death penalty specifically for corruption involving acts committed under certain conditions, such as natural disasters, monetary crises, and others. This narrative reflects social support for those in need, as seen in the corruption case of Minister Juliari Peter Batubara, who committed corruption during a pandemic. He misappropriated funds meant for social assistance and meets the criteria for the death penalty due to the following factors: committing corruption, under certain circumstances like natural disasters and monetary crises.

Criminal liability for the corruption of social assistance funds is regulated in Law Number 20 of 2001 concerning the Eradication of Corruption, including Article 55, paragraph (1), point 1 of the Penal Code. It is explicitly stated that anyone who knowingly acts unlawfully to acquire wealth for themselves at the expense of others, which in this context means the state and harms the national economy, shall be sentenced to a minimum of 4 years and a maximum of 20 years of imprisonment, along with fines as stipulated in the law.

Article 64, paragraph (1) of the Penal Code in conjunction with Article 55, paragraph (1), point 1 of the Penal Code states that anyone whose purpose is to prioritize personal or another's benefit or business at the expense of the state, causing financial loss to the state, shall be punished with a minimum of 1 year and a maximum of 20 years of imprisonment, along with fines as regulated in the article.

In addition to the additional penalties provided under the Penal Code, the convicted individual may also face the confiscation of property owned or real estate used to commit or derived from criminal corruption activities. This includes businesses owned by individuals convicted of corruption and businesses that replace goods. Maximum conversion payments can be made with properties obtained from crime. The government may close all or part of a business for up to one year, revoke all or some specific rights granted or potentially granted by

the government to the convict, or cancel some or all specific interests. If the convict does not pay compensation within one month of the final court decision, their property will be seized by the prosecutor and auctioned off for compensation. If the prisoner does not have sufficient assets to pay compensation, then the provisions and decisions of this law are halted by court decree.

Regarding the aggravation of penalties in corruption cases under certain circumstances (COVID-19 pandemic), this can be examined from the theory of aggravated penalties. The pattern of aggravated penalties is part of the sentencing pattern. According to Barda N. Arief, "The pattern of sentencing serves as a guideline for the creation or drafting of penalties for lawmakers, distinct from the sentencing guidelines that serve as a guideline for judges in imposing penalties."

The sentencing pattern (including the pattern of aggravated penalties) is essentially an implied phenomenon of the criminal threat found in the definitions of crimes in legislation, through which the intent of the lawmakers regarding the amount and type of punishment that should be imposed on an offender can be understood. Therefore, the pattern of aggravated penalties is a guide (that has been used) by lawmakers in determining aggravated penalties, contrasting the criminal threats outlined in specific criminal laws with those found in the general provisions of the Penal Code (generic crime). This necessitates that the Pattern of Aggravated Criminal Threats in the Penal Code be presented first.

The pattern of aggravated criminal threats in the Penal Code can be categorized into two categories. First, in the general category of aggravated penalties regulated in the General Provisions of Book I of the Penal Code. In this case, the Penal Code uses a uniform "pattern," for example, aggravation due to concurrency, whether ideal concurrency, real concurrency, or voortgezette handeling (even if different techniques of aggravation are used). In this instance, the specified criminal threat (which can or may be imposed) becomes one-third heavier than the criminal threat found in the definition of the crime that contains the heaviest criminal threat. The pattern of aggravated penalties by adding prison sentences one-third heavier due to concurrency in many respects is also followed by the Draft Penal Code.

In comparison, Barda Nawawi Arief states that the "sentencing pattern" that is general and ideal should exist before criminal legislation is created, even before the Penal Code was established, so fundamentally, this pattern should be obtained "outside of statutory provisions." Therefore, I do not fundamentally use such distinctions (between pattern and sentencing guidelines) because it is almost impossible to obtain them. The sentencing pattern here is a "combination" of patterns and sentencing guidelines as referred to by Barda Nawawi Arief.

The use of this pattern is maintained as a reflection of the acceptance of utilitarianism, thus pure accumulation is used in a limited manner. This contrasts with the United States, which employs pure accumulation (zuivere cumulatie) for every form of concurrency, tending to be retributive in determining penalties. Second, in the special category of aggravated penalties regulated in the provisions concerning Crimes (Felonies and Misdemeanors) in the definitions of crimes found in Books II and III of the Penal Code. This special pattern of aggravation can also be divided into two groups. The first group consists of aggravation in a uniform special category, similar to the aggravation in the general category, namely being increased by one-third. In this case, the criminal threat is aggravated due to the recurrence (recidivism) of the crime. The criminal threat is also aggravated due to the special quality of the perpetrator (subject of the crime), such as being a public servant. Additionally, the criminal threat is increased due to the special qualification of the object of the crime, such as assault committed against the perpetrator's mother, father, wife, or child, which results in a one-third increase from the maximum penalty.

The second group consists of aggravation in a special category that is non-uniform, meaning that the aggravation of penalties can be achieved both by increasing the quality and

quantity of the criminal threats. Aggravation occurs due to a change in the type of punishment, such as changing a prison sentence into a death penalty in premeditated murder. Here, the pattern of aggravation of criminal threats in the Penal Code uses a scheme where, if the specific maximum for a particular crime is equal to the general maximum for prison sentences, the threatened penalty shifts to a heavier type (the death penalty). Aggravation regarding the number of penalties can also be done by adding a specific maximum amount. In this case, aggravation is applied due to special elements (which can be behavioral or consequential) from the strafbaar of a crime. From the description above, it is evident that there is a pattern of aggravation due to additional elements, which can be behavioral (planning) or events arising from particular behavior or consequences, with an increase in the prison sentence threat by two (2) to three (3) years heavier than compared to the definitions of crimes with more general characteristics. In this case, the aggravation does not follow a general percentage pattern, like the aggravation in the general category, but only involves a specific increase in penalties ranging from two (2) to three (3) years.

Aggravation can also occur due to the specificity of time, method, place, tools, or under certain conditions, such as in aggravated theft as referred to in Article 363 of the Penal Code. In this case, aggravation is also carried out by adding a penalty (two years) heavier than the specific maximum for the criminal threats in theft as referred to in Article 362 of the Penal Code. Generally, in Special Criminal Law, attempted crimes, complicity, and conspiracy to commit a crime face aggravated penalties when compared to similar crimes threatened in the Penal Code.

Actions that are still in the stage of attempt or complicity in the Penal Code are generally threatened with lower penalties, which are reduced by one-third (except in cases of treason), while if the act is completed (vooltoid), in the case of corruption and terrorism offenses, this is "aggravated" by threatening the same penalties as if the crime were completed or realized by the perpetrator (dader). In conspiracy to commit a crime, a heavier penalty is also threatened in Special Criminal Law, with the same penalty as when the act is actually realized. This contrasts with the general conspiracy provisions in the Penal Code; for instance, aiding an enemy during wartime is punished with imprisonment for 15 (fifteen) years, while the conspiracy to do so is only punished with imprisonment for six years.

Special Criminal Law also prescribes penalties for preparatory actions (aside from conspiracy) that are generally not punishable under the Penal Code. In the doctrine concerning the attempted crime, for example, "preparatory acts" of committing a crime that cannot yet be qualified as "the beginning of execution" that can be punished is not treated as a criminal offense.

Essentially, the aggravation of criminal threats by enhancing the quality of penalties in Special Criminal Law can be divided into two parts. First, aggravation compared to similar crimes as defined in the Penal Code. In the case of spreading terror, for example, anyone who intentionally uses violence or threats of violence to create a climate of terror or fear against individuals broadly, or causes mass casualties, or by depriving freedom or causing the loss of lives and property of others, or resulting in damage or destruction of vital strategic objects, the environment, or public or international facilities is threatened with the death penalty. This crime is essentially a specific form of crime in the Penal Code.

Second, aggravation of penalties in Special Criminal Law occurs due to the specificity of the offense. In cases of corruption, the aggravation of penalties is performed due to "certain circumstances," which according to Andi Hamzah, should be included in the definition of the offense (Article 2 paragraph (2)) and not placed in its explanation. Essentially, according to the author, "certain circumstances" here refer to the specificity of the time when a crime is committed. For example, in corruption offenses, the act of enriching oneself, others, or corporations to the detriment of state finances, which was initially punishable by 20 (twenty)

years in prison, is aggravated into a heavier type of punishment (the death penalty). This pattern is rarely found in Special Criminal Law, and therefore no such approach can be found in the Penal Code. Additionally, according to Indriyanto Seno Adji, this provision (the pattern of aggravation of penalties in this manner) contradicts the principle of legality that protects the suspect/defendant if there is a change in legislation (Article 1 paragraph (2) of the Penal Code), namely that the change must be in favor of the suspect/defendant. The aggravation of the quantity of penalties in Special Criminal Law is more frequently found when compared to general offenses in the Penal Code and specific offenses.

It is apparent that the legislators do not employ a specific "pattern" in imposing aggravated penalties. The aggravation of penalties tends to be more than the similar pattern of aggravation performed in the Penal Code, which adds a specific maximum of one-third (1/3) heavier or by adding between two (2) and three (3) years from the general offense. The Penal Code recognizes only a model of singular criminal threats or alternative criminal threats. This means that only a single principal penalty can be imposed for a single offense (single penalty). Several laws outside the Penal Code deviate from the general pattern of criminal threats in the Penal Code by employing cumulative threat models (marked by the conjunction "and" between two types of penalties threatened) or alternative-cumulative combination models marked by the conjunction "and/or" (between two types of penalties threatened).

With cumulative threats, the judge is bound to impose both types of penalties simultaneously (double penalties), which can be viewed as an aggravation of penalties. Likewise, in the case of criminal threats using the alternative-cumulative model, the judge imposes them cumulatively. Without guidelines specifying otherwise, the imposition of two penalties threatened alternately-cumulatively at maximum will lead to such aggravation of penalties. The issue is that in the case of corporate crime, the principal penalty that can be imposed is only a fine, and the type of punishment of deprivation of liberty cannot be imposed. Given this construct, difficulties will arise in imposing penalties (only) on corporations when the offenses threaten cumulative penalties of different types. Even though one of the threatened penalties in the criminal definitions is a fine, with the cumulative threat model, the judge "must" impose both. As a result, the threat of penalties against the corporation becomes "non-applicable."

In this case, it is also unclear what pattern the legislators used for imposing penalties using the models of singular criminal threats, cumulative penalties, or alternative-cumulative penalties. However, it should be noted that developments in Criminal Law, which include corporations as subjects of offenses, may be a factor underlying why various laws outside the Penal Code, including Special Criminal Law, have adopted the model of alternative-cumulative criminal threats, which can enhance the deterrent effect of criminal sanctions. Considering that the effectiveness of fines alone for corporations is viewed as low because they can be circumvented by being treated as a cost of business, and if fines become excessively burdensome, corporations can file for bankruptcy.

Some laws outside the Penal Code utilize specific minimums in criminal threats, a system not recognized in the Penal Code. This model can also be seen as an aggravation of penalties. Under this system, the law not only sets the maximum criminal threat that can be imposed by the judge but also the minimum. This is to restrict the judge's discretion, which is felt to be too free to impose penalties between the general minimum and maximum. Unfortunately, there is no general pattern for determining which offenses are assigned a specific minimum in their threats. According to Barda N. Arief, in the Draft Penal Code, establishing a specific minimum is done by considering the consequences of the relevant offense on the broader society (among other things: causing public danger/disturbance, danger to life/health/environment, or causing death) or factors related to preventing criminal offenses (recidivism).

Generally, the law places this specific minimum threat "in front" of its specific maximum threat. Thus, it is determined: "...punished with imprisonment for no less than... and no more than...". Similarly, regarding fines, it is determined: "...punished with a fine of no less than... and no more than...". However, this is not the case with Law Number 26 of 2000 concerning the Human Rights Court. Its specific minimum threat is stated later than its specific maximum threat, as mentioned in Article 36, which states: "Anyone who commits the acts as referred to in Article 8 letters a, b, c, d, and e shall be punished with the death penalty or life imprisonment or imprisonment for a maximum of 25 (twenty-five) years and a minimum of 10 (ten) years."

It is indeed noticeable that such naming is influenced by the alternative threat model. When a penalty is threatened alternately, the heaviest threat mentioned first takes precedence. The order of principal penalties specified in Article 10 of the Penal Code determines their severity (Article 69 of the Penal Code). Thus, the death penalty is mentioned before life imprisonment, and life imprisonment is mentioned before imprisonment for a specific duration. The longer specific duration of imprisonment is mentioned before the shorter specific duration. This argument also becomes invalid when considering the provisions of Articles 37, 38, 39, and 40 of Law Number 26 of 2000. Here, a singular threat of penalty (only imprisonment for a specific duration) is used, but it employs a minimum threshold. The specific minimum is stated after its specific maximum.

According to the author, if the threat of imprisonment for a specific duration uses a special minimum regime, it is inappropriate for the specific minimum to be mentioned later. Even when using a special minimum, it should still be mentioned before the specific maximum. The use of a specific minimum merely defines the range of penalties that can be imposed by the judge, and thus does not adhere to the order of mention based on severity as stipulated in Article 69 of the Penal Code. It only becomes erroneous if the mention of imprisonment for a specific duration comes before life imprisonment or the death penalty.

Returning to the issue discussed, the Corruption Eradication Commission (KPK) prosecutor has notably charged former Minister of Social Affairs Juliari P. Batubara lightly in the case of corruption related to social assistance procurement in the Ministry of Social Affairs (Kemensos). Juliari is only charged with 11 years in prison and a fine of IDR 500,000,000 (five hundred million rupiah), with a subsidiary penalty of six months, along with an additional penalty of IDR 14.5 billion in restitution. The lightness of this charge further illustrates KPK's reluctance to take decisive action against perpetrators of social assistance corruption. This KPK demand appears odd and suspicious. This is because the article serving as the basis for the charge, namely Article 12 letter b of the Corruption Eradication Law, actually accommodates a punishment of up to life imprisonment and a fine of IDR 1 billion. The demand for the additional restitution of IDR 14.5 billion is also far from satisfactory, as the amount is less than 50% of the total bribe received by Juliari P. Batubara. This low demand contradicts the spirit of combating corruption, especially since KPK leaders have boasted about imposing heavy penalties on Covid-19 social assistance corruptors.

It is important to remember that law enforcement represents the state and the victims, tasked with holding perpetrators accountable for their crimes. This is reinforced in Article 5 letter d of Law Number 19 of 2019 concerning KPK, which states that in carrying out their duties and powers, KPK prioritizes the public interest. Instead of fulfilling this mandate, KPK appears more like a representative of the perpetrators, striving as much as possible to ensure the defendant receives a light sentence. This case reveals Juliari's role in allegedly accepting bribes totaling IDR 32.4 billion. He is also said to have collected fees from 109 social assistance providers through the Budget User Authority (KPA) and Commitment Making Officials (PPK), who are also defendants in this case.

The alleged acts of corruption in the distribution of Covid-19 social assistance are believed not only to involve bribery but also to pose potential harm to state finances or the economy. This potential arises from the excessive profits taken by providers who have minimal or no experience as the main producers of the social assistance program. As is known, Juliari is suspected of coordinating or allocating procurement to specific providers, whose appointment processes ignored emergency procurement regulations. These less experienced providers were likely chosen due to certain political affiliations or connections.

The description of the actions above illustrates the defendants' intentionality in obstructing government efforts to provide social protection to citizens during the Covid-19 pandemic, a situation that should serve as an aggravating factor for the prosecutor in drafting and presenting the indictment against Juliari. However, the KPK prosecutor failed to represent the interests of the state and the victims.

The Covid-19 pandemic is classified as an emergency situation, serving as a reason for aggravating penalties for corruption offenses, as stipulated in Article 2 paragraph 2 of Law Number 31 of 1999, amended by Law Number 19 of 2019 concerning the eradication of corruption offenses, which states that in certain circumstances, the death penalty may be imposed as regulated by law. The explanation of Article 2 paragraph (2) mentions, "The term 'certain circumstances' in this provision is intended as an aggravation for perpetrators of corruption offenses when such offenses are committed during a time when the state is in a state of danger according to applicable law, during national natural disasters, as a repeat of corruption offenses, or during times of economic and monetary crises."

The formulation of this norm is lex specialis and has been explained in a limited, measurable, and objective manner. Article 2 paragraph (2) of this Corruption Law should serve as a basis for imposing heavier penalties. This regulation is expected to provide a deterrent effect for perpetrators of corruption during a time when society is experiencing difficulties due to the Covid-19 pandemic. The case against Juliari is a corruption case related to social assistance that occurred during a disaster outbreak and amidst an economy nearly paralyzed, which should be a reason for the judges to impose a heavier sentence. However, the application of aggravating penalties in this case remains the authority of the judge as law enforcers, through the verdict delivered in court.

CONCLUSION

Based on the results of the research and discussion, it can be stated that the Covid-19 pandemic is classified as an emergency situation, serving as a reason for aggravating penalties for corruption offenses, as stipulated in Article 2 paragraph 2 of Law Number 31 of 1999, as amended by Law Number 19 of 2019 concerning the eradication of corruption offenses, which states that in certain circumstances, the death penalty may be imposed as regulated by law. The explanation of Article 2 paragraph (2) mentions, “The term ‘certain circumstances’ in this provision is intended as an aggravation for perpetrators of corruption offenses when such offenses are committed during a time when the state is in a state of danger according to applicable law, during national natural disasters, as a repeat of corruption offenses, or during times of economic and monetary crises.” The formulation of this norm is lex specialis and has been explained in a limited, measurable, and objective manner. Article 2 paragraph (2) of this Corruption Law should serve as a basis for imposing heavier penalties. This regulation is expected to provide a deterrent effect for perpetrators of corruption during a time when society is experiencing difficulties due to the Covid-19 pandemic. The case against Juliari is a corruption case related to social assistance that occurred during a disaster outbreak and amidst an economy nearly paralyzed, which should be a reason for the judges to impose a heavier sentence.

Based on the conclusions, the following suggestions can be made: First, the formulation

of the death penalty in the Corruption Law during the Covid-19 pandemic is still subject to multiple interpretations, hence it requires normative renewal and reinterpretation by law enforcers in applying Article 2 paragraph (2) of the Corruption Law. Several policies issued by the Indonesian government regarding public health emergencies and national disasters in this thesis imply that the Indonesian government is paying serious attention to the Covid-19 pandemic, which affects the functioning of state activities, causing the state to be in an unstable situation or, in other words, in certain circumstances. Thus, several sequences of events and policies related to Covid-19 mitigation discussed in this article can serve as a foundation indicating that Indonesia has now entered the level of a state in certain circumstances as stipulated in the explanation of Article 2 paragraph (2) of the Corruption Law. The legal consequence of these sequences of events is that anyone committing corruption that meets the formulation in Article 2 of the Corruption Law may be prosecuted and sentenced to death by law enforcers.

Second, the role of the government is crucial in overseeing social assistance funds for Covid-19 to the public, which must be strictly monitored so that aid can be received by the public according to what is stipulated in the law. However, in its implementation on the ground, there have been several deviations committed by those providing aid to the community. Therefore, the roles of government agencies tasked with preventing and supervising corruption actions and inspecting state finances are also essential. These agencies include the Corruption Eradication Commission (KPK), the Financial Audit Agency (BPK), and the Financial and Development Supervisory Agency (BPKP). Corruption in Indonesia needs to be addressed comprehensively regarding the government's responsibility in combating corruption offenses concerning Covid-19 social assistance funds during the ongoing pandemic. The imposition of the death penalty on corruptors in Indonesia depends on the functioning of the legal system, which still has weaknesses in legal substance, legal structure, and legal culture in the effort to eradicate corruption offenses. The criminal law policy in Indonesia regarding the imposition of the death penalty on corruptors during the Covid-19 pandemic requires serious attention, as the Covid-19 pandemic has had a widespread impact on all aspects of life. Efforts to combat corruption must be carried out comprehensively, and the police, prosecutors, and judges must be truly free from interference from those committing corruption.

ACKNOWLEDGEMENT

We would like to extend our sincerest thanks to all parties who have contributed to this research. We are grateful to our colleagues who have provided suggestions, support, and inspiration throughout the research process. We also thank everyone who took the time to participate in this study. Additionally, we would like to express our gratitude to the institutions that provided support and facilities to carry out this research. All contributions and assistance provided have been invaluable to the smoothness and success of this research. Thank you for all the hard work and collaboration that has been established.

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