


# Criminal Law Policy in the Distribution of Assistance Funds for Corruption Causes

Ledyana Olipia Sidebang<sup>1\*</sup>, Yanti Amelia Lewerissa<sup>2</sup>, Judy Marria Saimima<sup>3</sup>

<sup>1,2,3</sup> Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

 : ledyanaolipia@gmail.com

Corresponding Author\*



## Abstract

**Introduction:** Indonesia's financial income and expenditure called Fiscal are obtained from three components, namely: Tax, Non-Tax State Revenue, and Grants. However, at the time of fiscal distribution as part of state expenditure in this case aid funds experienced problems that gave rise to criminal acts of Corruption.

**Purposes of the Research:** Aims to analyze criminal law policies regarding misused funds and analyze criminal law policies in corruption crimes related to misused aid funds.

**Methods of the Research:** This study uses normative juridical with legal materials used in the study are primary, secondary, and tertiary. The collection technique is carried out through literature studies in the form of books, scientific works, and other literature.

**Findings of the Research:** The results of the study show that the criminal law policy implemented by the Indonesian government is regulated in Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption. Not only in this law, when Covid-19 hit Indonesia, the Indonesian government issued Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for the handling of the Covid-19 Pandemic. However, in practice, corruption still occurs in the field, and at the time of the judge's decision does not receive a punishment commensurate according to the deed and is not fully in line with the criminal law policy in Indonesia to eradicate corruption.

**Keywords:** Criminal Law Policy; Distribution of Assistance Funds; Corruption Crimes.

Submitted: 2025-02-17

Revised: 2025-03-25

Accepted: 2025-03-27

Published: 2025-03-31

How To Cite: Ledyana Olipia Sidebang, Yanti Amelia Lewerissa, and Judy Marria Saimima. "Criminal Law Policy in the Distribution of Assistance Funds for Corruption Causes." TATOHI: Jurnal Ilmu Hukum 5 no. 1 (2025): 31 - 44. <https://doi.org/10.47268/tatohi.v5i1.2951>

Copyright ©2025 Author(s)



Creative Commons Attribution-NonCommercial 4.0 International License

## INTRODUCTION

The establishment of the Indonesian State has a noble goal, namely to encourage and create general welfare within the framework of the Unitary State of the Republic of Indonesia based on Pancasila. With the current state of Indonesia, which is a developing country in the economic sector, where good state financial management is needed to avoid the impact of deviations on the economy such as waste and inefficiency in the use of state finances or we can also call it to maintain fiscal balance in Indonesia, fiscal itself is government revenue and expenditure listed in the State Budget as the government's financial operations plan. If state funds are used entirely for the benefit of the state and the people, then the level of welfare of the nation and society will increase.

Each region is led by regional officials and is given the authority to carry out the mandate of the law in accordance with Law Number 32 of 2004 concerning Regional Autonomy.<sup>1</sup> By being given the authority to regulate and manage the interests of its community, the village

<sup>1</sup> <https://media.neliti.com/media/publications/19494-ID-kebijakan-hukum-pidana-dalam-penanggulangan-tindak-pidana-korupsi-yang-dilakukan.pdf>

has autonomy in determining policies and has the authority to formulate implementing regulations.<sup>2</sup> However, if the authority to manage state funds is misused for personal or group interests, the state's goal of improving the nation's welfare will not be achieved. This can even trigger criminal acts of corruption which cause significant state losses.

Corruption (corrupt, corruptie, corruption) can be interpreted as rottenness, badness, and depravity. This understanding is reinforced by Acham, by explaining that corruption is an act of deviation from the rules of society by obtaining personal gain while harming the public interest. In Indonesia, corruption is still the main contributor to the high number of state losses.<sup>3</sup> On the other hand, the meaning of "loss" in the sense of state financial loss according to the guidelines of the Audit Board of Indonesia is a reduction in state assets resulting from unlawful acts or negligence of a person, and in principle, the amount of state loss cannot be determined arbitrarily or based only on estimates.<sup>4</sup> This means that State Financial Losses refer to losses that can be calculated or measured in monetary units, so they must have a clear and definite value.

The use of the term combating crime or crime is a fragment that cannot be separated from policies that are oriented towards protecting society (social defense policy) and efforts to achieve social welfare (social welfare policy).<sup>5</sup> Marc Ancel stated that criminal law policy is a science and art that aims practically to enable the formulation of positive legal regulations better. Criminal law policy is one of the fields that formulates effective law enforcement steps in dealing with crimes including corruption.<sup>6</sup> The Republic of Indonesia has made regulations as governing corruption that results in state losses which are written in Articles 2 and 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Corruption Law). Misuse of state funds has the potential to cause major losses to the state, which in turn will have a negative impact on Indonesia's fiscal, limit growth, and hinder the continuity of national development that requires high efficiency. Cases such as the COVID-19 Social Assistance Fund Corruption Case that occurred in 2021 where Juliari Batubara was involved in a bribery case related to the procurement of social assistance packages (bansos) to handle the COVID-19 pandemic in the Jabodetabek area. In this case, Juliari and several Ministry of Social Affairs officials accepted bribes from colleagues or providers of goods in the procurement of basic food packages. The Corruption Eradication Commission revealed a case of alleged corruption in the distribution of rice social assistance for beneficiary families of the Family Hope Program in 2020-2021 at the Ministry of Social Affairs resulting in state financial losses of IDR 127.5 billion.

There is also a case of corruption of Covid-19 funds involving the former Head of the Manpower and Transmigration Service of Serang Regency, R. Setiawan. Department of Manpower and Transmigration received assistance of IDR 3 billion from the Covid-19 Unexpected Expenditure in 2020. This budget was allocated for handling the pandemic and recovering from the economic impact. The funds have been approved by the Regional Government Budget Team of the Banten Provincial Government and Serang Regency

---

<sup>2</sup> Harly Clifford Jonas Salmon, Judy Marria Saimima, "Tindak Pidana Korupsi dan Alokasi Dana Desa", *Mataka: Corruption Law Review*, 1 no 2 (2023), p. 110

<sup>3</sup> M. Agus Santoso, "Dampak Penjatuhan Pidana Korupsi Bagi Pegawai Negeri yang Sedang Menjalankan Tugas Administrasi Negara", *Borneo Administrator* 7 no. 2 (2011): p. 131.

<sup>4</sup> Budimana Slamet, "Metode Penghitungan Kerugian Negara Dalam Audit Investigatif", Pusdiklatwas BPKP, p. 5

<sup>5</sup> Barda Nawawi Arief, *Op.Cit*, p. 34

<sup>6</sup> [http://repository.unissula.ac.id/30815/1/20302000209\\_fullpdf.pdf](http://repository.unissula.ac.id/30815/1/20302000209_fullpdf.pdf).

Government to be used for the procurement of 112 portable sinks, 44 thousand masks, 4,000 hazmat sets, and the manufacture of face shields in 2020. However, in August 2020, the two defendants held an audience with the Goods Procurement Policy Institute regarding the use of the IDR 3 billion funds. In the meeting, it was conveyed that the assistance funds should have been used for training programs, not for procurement of goods. On August 25, 2020, the defendants sent a letter to the Regent of Serang, Tatu Chasanah, to propose a change in the use of the budget. Initially, the funds were intended for the procurement of masks and personal protective equipment, but were later diverted to a mask and PPE sewing training program for affected communities. In October 2020, the Regent of Serang issued a Decree (SK) regarding the determination of the Job Training Institute (LPK) as a place for community empowerment due to the impact of Covid-19. The selected LPKs included Wiyata Multi Karya, Gaya Busana, Mawar Melati, Karisma, Julia Jaya, and Raudhatul Athfal. As a result of R. Setiawan's actions with Sutarya, a number of parties gained personal and institutional benefits, including LPK Gaya Busana, Julia Jaya, Wiyata Multi Karya, Karisma, and the Raudhatul Athfal Community, with a total value reaching IDR 1.4 billion.

An inventory conducted by Indonesia Corruption Watch (ICW) on following up on corruption cases throughout 2020 revealed that the Police in 21 regions handled at least 107 corruption cases related to Covid-19 pandemic social assistance. This data is sufficient to show that social assistance programs are very vulnerable to misuse, especially in the aspect of emergency procurement which increasingly opens up loopholes for collusive practices between Commitment Making Officers and other parties in an agency responsible for joint procurement with providers.<sup>7</sup> Seeing this phenomenon, the research on becomes relevant and important to be studied further. Therefore, in this research, the author will analyze how criminal law policy is applied in overcoming misuse of state funds and its impact on fiscal balance in Indonesia.

## LITERATURE REVIEW

### A. Fiscal Policy in Indonesia

Fiscal policy basically refers to policies that organize state revenues and expenditures. Sources of state revenues come from taxes, non-tax revenues, and foreign loans or aid which before the reform era were categorized as part of state revenues. Thus, fiscal policy is a government strategy in managing state finances optimally to support the national economy, including in aspects of production, consumption, investment, employment opportunities, and price stability. This means that state finances not only play a role in financing routine government activities, but also function as an instrument to achieve development goals, such as economic growth, stability, and income equality.<sup>8</sup>

Fiscal policy in Indonesia is reflected in the State Budget (State Revenue and Expenditure Budget), which plays a role in controlling inflation in order to prevent a monetary crisis and encourage significant and equitable economic growth. If government spending exceeds tax revenue in a certain period, usually in one year, then the government experiences a budget deficit. Conversely, if tax revenue is greater than government spending, then there is a budget surplus. To cover the budget deficit, the government generally borrows, while in a

---

<sup>7</sup> Balebengong Bal dkk, "Bantuan Sosial di Tengah Pandemi Covid-19: Analisis Persoalan dan Rekomendasi Kebijakan", (DKI Jakarta: Indonesia Corruption Watch, 2021), p. 3

<sup>8</sup>Ayief Fathurrahman, "Kebijakan Fiskal Indonesia Dalam Perspektif Ekonomi Islam: Studi Kasus Dalam Mengentaskan Kemiskinan", *Jurnal ekonomi dan Studi Pembangunan*, 13 no 1 (2012): p. 73

surplus condition, the government's debt burden becomes lighter.<sup>9</sup> Fiscal policy embodies one aspect of state financial management that has a broad scope, in addition to monetary management and state wealth management. Fiscal management includes six main functions, namely: 1) The function of managing macroeconomic and fiscal policies; 2) Budgeting function; 3) Tax administration function; 4) Customs administration functions; 5) Treasury function; 6) Financial supervision function.<sup>10</sup>

There are two main types of fiscal policy, expansionary and contractionary, which are applied according to the economic conditions: Expansionary fiscal policy is designed to stimulate economic growth, usually implemented during recessions, when unemployment is high, or when the economic cycle is sluggish. In contrast, contractionary fiscal policy is used to slow the rate of economic growth, especially when inflation is growing too fast. In contrast to expansionary fiscal policy, this policy focuses on increasing taxes and cutting government spending to reduce inflationary pressures and stabilize the economy.<sup>11</sup> There are several instruments in fiscal policy that can be used by the government to maintain the stability of the country's economy. One of the main instruments is taxes, public bonds and government spending.

## B. Corruption Crime

Creating a law using the term *strafbaarfeit* to refer to a criminal act, but does not provide a detailed explanation of the term. In Dutch, the word *strafbaarfeit* consists of two elements, namely *strafbaar* and *feit*. The word *feit* in Dutch means "reality," while *strafbaar* means "punishable." Literally, *strafbaar* can be interpreted as "part of reality that can be punished," which refers to an event or action that meets certain elements and can be punished according to applicable law. On the other hand, corruption (*corrupt*, *corruptie*, *corruption*) can also be interpreted as rottenness, badness, and depravity.<sup>12</sup> The definition of criminal acts and the definition of corruption can be concluded that criminal acts of corruption are acts that fulfill the elements of criminal acts as regulated by law, where the perpetrator abuses the authority given for the public interest for personal gain. This action not only violates legal norms, but also contradicts social and moral norms, because it harms state finances and the public interest. Thus, corruption is a form of crime that can be subject to legal sanctions in accordance with applicable provisions. Criminal acts of corruption are included in special criminal acts of *bijzonder schuld*, where the criminal provisions are not contained in the criminal law codification but are regulated in separate laws. Criminal acts of corruption are regulated in 13 articles in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which are then formulated into 30 forms of criminal acts of corruption. The thirty forms are simplified into 7 main categories, namely: corruption that causes state financial losses, bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement, and gratification. Not all forms of corruption known in society are included in the category of criminal acts according to criminal law. Therefore, to determine acts that are included in criminal acts of corruption, it is necessary to refer to the Corruption Eradication Law.

The continuation of a criminal act of corruption will greatly affect a country, especially in this case if it is not handled properly. The impact of this crime is damaging to various aspects

---

<sup>9</sup> *Ibid*, p. 73

<sup>10</sup> *Ibid*, p. 74

<sup>11</sup> Dyah Cahyasari, "*Kebijakan Fiskal*", (Jakarta: Institut Ilmu Sosial dan Manajemen STIAMI, 2016), p. 4

<sup>12</sup> Aris Prio Agus Santoso, "*Tindak Pidana Korupsi*", (Yogyakarta: Pustaka Baru Press, 2022), p. 11



of life, especially in the economic sector which is the main factor for public welfare. According to Mauro, corruption has a negative correlation with economic progress, such as increased investment, economic growth, income, and government spending on social development programs and public welfare. Corruption causes inefficiency in development, increases the cost of goods and services, and worsens state debt. Development inefficiency occurs when the government issues many policies, but is accompanied by rampant corrupt practices. For example, the budget that should be used for assistance to the community is actually allocated for the personal interests of officials and bureaucrats. Corruption also causes a decline in the nation's competitiveness, which is reflected in the decline in Indonesia's competitiveness index ranking on the international stage.<sup>13</sup>

## METHODS OF THE RESEARCH

This study uses Normative Judicial research, conceptualized as what is written in the law as rules or standards that are the principles of human behavior that are considered appropriate. The problem approach used in this study is the case approach, the legislative approach, and the conceptual approach. Primary, secondary and tertiary legal material sources and the processing and analysis of legal materials use deductive thinking analysis.

## RESULTS AND DISCUSSION

### A. Criminal Law Policy Against Misappropriated Funds

Based on foreign terms, the term criminal law policy can be referred to as criminal law politics. In foreign literature, criminal law politics is often known by various terms, such as penal policy, criminal law policy, or strafrecht politiek. According to A. Mulder, "strafrechts politiek" is a policy direction in determining: a) The extent to which applicable criminal provisions need to be revised or updated; b) Efforts that can be made to prevent criminal acts from occurring; c) Methods of carrying out investigations, prosecutions, trials, and criminal executions.<sup>14</sup> Based on these opinions, it can be concluded that criminal law policy or criminal law politics can be defined as an effort to design and establish criminal legislation that is in line with current and future conditions. On the other hand, criminal politics is seen as a rational effort by society to deal with crime, in line with Marc Ancel's statement which emphasizes that criminal law policy should aim to control crime rationally through an organized system in society.<sup>15</sup> The process of law enforcement policy, criminal law policy is carried out through the stages of concretization or functionalization of criminal law, which include: 1) Formulation stage, namely the process of law enforcement in abstracto by lawmakers. This stage is also known as legislative policy; 2) Application stage, namely the application of criminal law by law enforcement officers, from the police to the courts. This stage is also called judicial policy; 3) Execution stage, namely the implementation of criminal law in concrete terms by law enforcement officers. This stage is known as executive or administrative policy.<sup>16</sup>

Considering the three stages above, it is expected that a series of integrated activities will be formed as a manifestation of the unity of the system. Thus, criminal law policy is closely

---

<sup>13</sup> Ola Ringan Wilhelmus, "Korupsi: Teori Faktor Penyebab Dampak Dan Penanganannya", *Jurnal Pendidikan Agama Katolik*, 1 no (2017): p. 36-39

<sup>14</sup> *Ibid*, p. 28

<sup>15</sup> Marc Ancel, "Penal Policy Should be Held to Mean the Rational Organizations of Control of Crime by Society Defience a Modern Approach to Criminal Problem", (USA: Schoellen Book Inc, 1966), p. 209.

<sup>16</sup> Muladi, "Kapita Selekta Hukum Sistem Peradilan Pidana", (Semarang: Badan Penerbit Universitas Diponegoro, 2002), p. 14

related to the entire process of criminal law enforcement. Legislative policy is the most crucial initial stage in planning the functionalization of criminal law. This formulation stage acts as a basis, foundation, and guideline for the next stages, namely the application stage and the execution stage. Efforts to combat crime, law enforcement must be supported by the criminal law process which begins with the formulation and determination of criminal law by the Legislative Body. This stage of law formation is known as the legislative or formulative policy stage. When viewed from the entire process of criminal law enforcement, this legislative policy is the most strategic stage. This is because, in order to achieve the objectives of law enforcement, errors in policy formulation can be strategic errors that have the potential to hinder the effectiveness of law enforcement. To achieve these goals, it is important to design and formulate good laws.

Misuse of funds can generally be categorized as embezzlement, fraud, or corruption, depending on the form and *modus operandi* carried out. First, embezzlement occurs when the recipient of the donation misuses social funds for personal gain, which can be categorized as a criminal act of embezzlement. This crime is regulated in Book One of the Criminal Code Chapter XXIV Articles 372-377, which explains that embezzlement is a dishonest act by hiding or taking funds or property belonging to others unlawfully. Second, fraud can also occur in the misuse of social funds by the recipient of the donation. This action is carried out by deceiving the party providing assistance so that the funds provided are not used properly. Third, corruption occurs when funds intended for the public interest, such as village funds, are misused by the authorities. This crime can harm state finances or the country's economy in general. Corruption is regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which regulates sanctions for perpetrators in order to suppress corrupt practices in the management of state finances.

In order to combat these crimes, the state has formulated criminal sanctions as a form of punishment for perpetrators of crimes. The application of sanctions for embezzlement of funds as punishment for perpetrators who are proven to have committed embezzlement of funds has been regulated in Book II Chapter XXIV of the Criminal Code (KUHP). One of the relevant provisions is Article 374 of the Criminal Code, in this provision, perpetrators who commit embezzlement in office can be subject to imprisonment with a maximum sentence of five (5) years. Sanctions for criminal acts of fraud are applied, namely in Article 378. According to R. Soesilo, the criminal act of fraud in Article 378 of the Criminal Code is a crime committed by persuading others to hand over goods, create debts, or write off receivables.<sup>17</sup> In the article above, the punishment given is imprisonment for 4 years. Sanctions that can be applied to the misuse of funds from corruption include imprisonment, fines, additional penalties, and confiscation of assets. Prison sentences are given according to the type and severity of the corruption committed. For example, for crimes committed fraudulently, the perpetrator can be sentenced to a minimum of 2 years and a maximum of 7 years in prison. Meanwhile, if the corruption is committed by a civil servant, the prison sentence given ranges from 3 years to 15 years.

Cases involving more funds are placed in corruption cases, especially during the COVID-19 pandemic, social assistance funds issued by the government have become a great opportunity for officials to take people's money, not just one case but dozens of cases as previously mentioned, the most interesting of which is the case of Juliari Batubara, an

---

<sup>17</sup> R. Soesilo, *"Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal"*. (Bogor: Politeia, 1986), p. 261

official from the Ministry of Social Affairs. The many criminal law policies or in other words the many regulations governing the protection of these funds will not guarantee their elimination or the absence of protection of these funds. This shows the need to identify the third stage of law enforcement to be effective, namely the formulation, implementation and execution stages. Criminal law policies in the formulation stage must be anticipatory and comprehensive in dealing with various forms of fund protection. Although Indonesia already has various legal instruments, from the Criminal Code to the Corruption Law, there are several fundamental weaknesses in the formulation of these policies. First, the provisions in the Criminal Code regarding embezzlement and fraud, which are still general in nature, have not fully accommodated the complexity of the modus operandi of misuse of funds in the digital era. The jurisdictional boundaries and definitions of "embezzlement" and "fraud" in the context of electronic transactions still require extensive interpretation that has the potential to create legal loopholes. Second, although the Corruption Law has undergone several revisions, there are no specific provisions that regulate in detail the misuse of social assistance funds, which have special characteristics compared to other forms of corruption. Misuse of social assistance funds has a direct impact on vulnerable communities, thus requiring a different formulation approach. The absence of these specific provisions causes the enforcement process to be less than optimal and tends to treat all forms of corruption uniformly without considering the context and specific impacts.

## **B. Forms of Misuse of Aid Funds Categorized as Criminal Acts of Corruption**

Misuse of aid funds is the cutting of funds and unequal distribution, the cutting of funds is deliberately carried out by village officials with the intention of the principle of justice for those who do not receive it (this is already known and agreed to by the recipients of aid). One of the government's programs to overcome the economic crisis during the COVID-19 pandemic is the provision of social assistance (bansos). The social assistance (bansos) program is an effort to reduce poverty levels and reduce economic inequality by distributing assistance in the form of money, goods, or services to individuals, families, and communities who are experiencing economic difficulties or are vulnerable to social risks. The distribution of aid funds is very susceptible to misappropriation because it is carried out in an emergency situation so that there is leeway to do it/implement it. One of them is corruption of aid funds distributed by the government. Forms of misuse of aid funds that are categorized as corruption are: 1) State Financial Losses: Carrying out actions that are contrary to the law to enrich oneself, others, or corporations by abusing the authority, opportunities, or facilities they have; 2) Bribery: Giving or promising something to government officials, state officials, judges, or advocates with the aim of influencing their policies or decisions in carrying out their duties; 3) Embezzlement in Office: The act of abusing authority by embezzling money, valuable documents, or manipulating administrative data for personal gain; 4) Extortion: Abuse of office by forcing someone to give money, pay more than the provisions, or do something outside of their official obligations for personal gain; 5) Fraudulent Acts: Actions carried out intentionally for personal gain that harm other parties or endanger the public interest; 6) Conflict of Interest in Procurement: When an official or civil servant, either directly or indirectly, is involved in the procurement process of goods and services that he should have supervised or managed, resulting in a conflict of interest; 7) Gratification: Acceptance of gifts, money, or facilities by civil servants or state officials related to their position and contrary to their obligations and

duties. If not reported to the Corruption Eradication Commission (KPK), then this is considered a form of disguised bribery.<sup>18</sup>

### C. Criminal Law Policy in Corruption Crimes Related to Misused Aid Funds

In handling corruption, the government has issued a law which is a criminal law policy that has been prepared according to the development of the times. The role of this criminal law policy is very important in handling corruption from the three stages of law enforcement, the first formulation stage where this formulation stage is the regulation of laws or rules that have been issued by the government in handling a crime. Misuse of funds is seen as a small expense to obtain greater benefits. In practice, the flow of money only circulates between individuals and their groups, while people outside the circle of power become the disadvantaged party.<sup>19</sup> According to Syed Hussein Alatas, corruption is an act of putting public interest second for personal gain. This practice includes violations of public norms, obligations, and assets, leading to secrecy, betrayal, fraud, and indifference to the interests of the wider community.<sup>20</sup>

Along with the development of the times, this criminal act of corruption has increasingly developed in various forms. The distribution of COVID-19 Social Assistance (Bansos) is often marred by the practice of extortion and corruption carried out by irresponsible individuals, including government officials who oversee the distribution of social assistance. This condition is evidence that internal government supervision is still weak and needs to be improved. In the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 1 of 2019 concerning the Distribution of Social Assistance Expenditures within the Ministry of Social Affairs, Article 28 Paragraph (2) has regulated a supervision system that includes achieving performance targets for the distribution of social assistance, the suitability of allocation and targets so that assistance is received by the entitled parties, transparency in the distribution of assistance, and monitoring and evaluation by the Budget User Authority (KPA) to ensure effectiveness and accountability.

To address the problems that arise, the government has taken the main step by issuing Government Regulation in Lieu of Law (Perppu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic. To prevent corruption in the distribution of Covid-19 social assistance, law enforcement officers have carried out various supervisory efforts, including in planning, budget preparation, procurement of goods or services, budget implementation and realization, distribution of social assistance, to budget reporting and accountability. In this case, the Corruption Eradication Commission (KPK) plays an important role in supervising and taking action against potential irregularities. The regulation of criminal law formulation policies in efforts to overcome corruption has undergone various changes along with the rapid development of corruption crimes. These changes were made to adapt to the dynamics and complexity of increasingly widespread corruption. The first was the formation of Law Number 31 of 1999, which was later updated with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, replacing Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption.

---

<sup>18</sup> Pusat Edukasi Antikorupsi, <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20220524-ayo-kenali-dan-hindari-30-jenis-korupsi-ini>

<sup>19</sup> Etty Indriarti, *"Pola dan Akar Korupsi Menghancurkan Lingkaran Setan Dosa Publik"*, (Jakarta: Gramedia Pustaka Utama, 2014), p. 6

<sup>20</sup> R. Totot sugiarto, *"Arti Korupsi dan cirri-ciri Korupsi : Seri Ensiklopedia Pendidikan Anti Korupsi"*, (Jakarta: Hikam Pustaka, 2021), p. 5.



The many regulations that have been prepared by the government do not guarantee that the handling of corruption will decrease, but from year to year the increase continues to occur, even in emergency situations, officials are still able to take money that is the right of the community, for example the case of Juliari Batubara, where Juliari Batubara as an official of the Ministry of Social Affairs received bribes related to funding for social assistance packages (bansos) to handle the COVID-19 pandemic in the Jabodetabek area. Juliari as Minister of Social Affairs received bribes of IDR 32.4 billion from social assistance service providers. The bribe came from a fee for each social assistance package agreed at IDR 10,000 for basic food packages from a value of IDR 300,000 per social assistance package, which was collected from vendors appointed to provide basic food assistance to the community. The Corruption Eradication Commission (KPK) estimates that Juliari Batubara used the proceeds of his crimes for personal gain. As a result, he was charged with Article 12 letter a of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption, as amended by Law of the Republic of Indonesia Number 20 of 2001. The Panel of Judges at the Corruption Court sentenced the former Minister of Social Affairs, Juliari Batubara, to 12 years in prison and a fine of Rp. 500,000,000, subsidiary to six months in prison, and Juliari Batubara also received an additional sentence of paying compensation for state financial losses of 14.5 billion.

The verdict made by the judge was actually highlighted by the public due to the legal basis used, namely Article 12 letter b of the Corruption Eradication Law, which actually allows for the application of life imprisonment and a fine of up to IDR 1 billion. In addition, the additional criminal payment in the form of compensation of 14.5 billion was also considered unsatisfactory, because the amount was less than 50% of the total bribes received by Juliari P. Batubara. The relatively light verdict is contrary to the spirit of eradicating corruption, especially considering that the previous KPK leadership had promised to try to give severe sentences to perpetrators of corruption in the Covid-19 social assistance case.<sup>21</sup> Indonesia adopts a combined theory of punishment, where this theory bases punishment on the principle of retribution and public order. In other words, these two aspects are the basis for sentencing. The combined theory itself is a combination of absolute theory and relative theory. This theory teaches that punishment is imposed not only to uphold legal order in society, but also to improve the behavior of perpetrators of crimes. Thus, this theory not only looks to the past but also considers its impact in the future.

When associated with sanctions in criminal sentences against perpetrators of corruption in the distribution of social assistance during the COVID-19 pandemic, where the perpetrators have experienced humiliation from society, this does not seem to be in accordance with the purpose of punishment as it should be. If social sanctions are used as an excuse to avoid severe criminal penalties, such as the death penalty as regulated in the Corruption Law, then in the future similar reasons can be used again. This has the potential to make criminal penalties ineffective in efforts to eradicate corruption. In principle, social sanctions should not be a reason to reduce criminal penalties, but rather function as an additional deterrent effect and new hope in upholding justice.

In addition, this also contradicts the rights of citizens who should receive legal protection. Legal protection serves as a guarantee for human rights that are harmed by the actions of others. This protection is given to the community so that they can enjoy all the rights that

---

<sup>21</sup> Rendradi Suprihandoko, "Kajian Yuridis Terhadap Penerapan Sanksi Pidana Dalam Perkara Korupsi", *Jurnal Kajian Hukum*, 7 no 1 (2022): p. 44-46.

have been guaranteed by law. In other words, legal protection includes various efforts made by law enforcement officers to ensure a sense of security, both psychologically and physically, from various threats or disturbances from any party. As is known, corruption is an extraordinary crime because it not only harms state finances but also violates the social and economic rights of the community. If the judge considers the social sanctions received by perpetrators of corruption during the Covid-19 pandemic as a basis for reducing criminal sentences, even though this is not regulated by law, then there is a possibility that similar reasons will be used again by corruptors in the future. This has the potential to threaten the rights of the community that should be protected. Based on the explanation above, the consideration of social sanctions in criminal sentences against perpetrators of corruption during the Covid-19 pandemic contradicts the principle of a welfare state of law adopted by Indonesia.

Not much different from the corruption case of Covid-19 Funds, the former Head of the Manpower and Transmigration Service (Kadisnakertrans) of Serang Regency in 2020 R. Setiawan where the prosecutor demanded a prison sentence of 7.6 years and a fine of IDR 350 million but in the verdict of judge Number 72 / Pid.Sus-TPK / 2022 / PN Srg the judge sentenced him to 1 year in prison and a fine of IDR 50 million from the prosecutor's demands, 1/2 of which was not there. This is very unjust for the community even though the defendant was legally proven to have violated Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. This is not in accordance with several theories adopted by the Indonesian state, namely the Absolute (Retributive) theory, the relative (utilitarian) theory and the combined theory. Judging from both cases, legal certainty is not only limited to the provisions in the Law, but also includes consistency in the judge's decision, where there is harmony between one decision and another decision in a similar case that has been decided previously. Legal certainty also means that every individual clearly understands their rights and obligations. Legal certainty has two main meanings. First, the existence of general regulations so that every individual can know what actions are permitted or prohibited. Second, providing legal protection for individuals from arbitrary actions by the government. With the existence of general legal regulations, individuals can understand the limitations and authority of the state in imposing or implementing an action against them.<sup>22</sup>

The third purpose of law, namely utility according to Gustav Radbruch, is the utility of law, namely assessing the good or bad of a social, political, economic, and legal policy from a moral perspective. In other words, how to assess a public policy that has an impact on many people morally. Based on this thinking, Bentham argued that the most objective basis for assessing a policy or action is to see whether the policy or action provides benefits or results that are useful for society, or actually causes harm to the affected parties. The relationship between this statement and Bentham's view in law (or policy) is that the good or bad of a law must be measured by the impact produced by its implementation. A new legal provision can be said to be good if its implementation brings the greatest goodness, happiness, and reduces suffering. Conversely, a law can be considered bad if its implementation causes injustice, loss, and actually increases the suffering of society. Therefore, it is not surprising that the theory of utility is often referred to as the economic basis in legal thought. The main principle of this theory focuses on the purpose and evaluation of law, where the purpose of law is to create the greatest possible welfare for as

---

<sup>22</sup> Peter Mahmud Marzuki, *"Pengantar Ilmu Hukum"*, (Jakarta: Kencana, 2008), p. 158

many people as possible, while legal evaluation is carried out based on the consequences of its implementation. Thus, the substance of the law must reflect provisions that support the creation of welfare in a country.<sup>23</sup>

Referring to the elements put forward by Bentham regarding the objectives and evaluation of the law, the verdict imposed on the perpetrators of corruption, in this case the corruption of social assistance funds committed by former Minister of Social Affairs Juliari Batubara and also former Head of the Serang Regency Manpower and Transmigration Office R. Setiawan, should consider its impact on efforts to eradicate corruption in the future. The verdict should not only be repressive, but also have a deterrent effect so that similar cases do not recur in the future and can be a reference in strengthening legal integrity in overcoming corruption. Analysis of the two cases above shows that the verdicts imposed are not fully in line with the criminal law policy in Indonesia which aims to eradicate corruption firmly and provide a deterrent effect for the perpetrators. The relatively light sentences in these cases can reduce public trust in the justice system and weaken efforts to prevent corruption in the future. Therefore, a review of the practice of sentencing in corruption cases is needed so that it is in accordance with the spirit of eradicating corruption and fulfilling the public's sense of justice.

#### **D. Efforts to Combat Criminal Acts of Corruption Related to Misused Aid Funds**

The law explains what must be done, what is allowed, and what is prohibited. The purpose of the law is not only directed at individuals who actually violate the law, but also at potential violations of the law that may occur, and to state officials to act in accordance with the law. These legal provisions can be realized in the form of laws and regulations or other norms that have become general principles in a legal system.<sup>24</sup> From a criminological perspective (the science of crime), the occurrence of criminal acts or crimes is not only influenced by economic and environmental factors, but also by Handling criminal acts through a legislative approach is known as a penal (repressive) effort, which is carried out by imposing sanctions on anyone proven to have committed a crime. However, in efforts to overcome criminal acts, including corruption, it does not only rely on reactive penal efforts, but also applies non-penal efforts with a preventive approach to prevent someone from committing a crime: 1) Non-Penal (Preventive) Efforts: Preventive efforts are all forms of action taken to prevent something from happening. Some examples of preventive efforts in dealing with corruption related to misused aid funds include:<sup>25</sup> a) One of the preventive measures in eradicating corruption of Covid-19 social assistance funds is to strengthen moral development through instilling spiritual awareness to avoid corrupt behavior. By providing role models and instilling anti-corruption values, such as honesty, caring, and independence, to strengthen awareness in fighting corruption;<sup>26</sup> b) Prevention of corruption in the public sector can be done by requiring public officials to report and announce the amount of wealth they own, both before and after taking office; c) Increase the effectiveness of policies and institutions, and improve regional financial management, including Covid-19 social assistance funds, with tighter supervision of government services. Transparency and accountability in the management of public funds must be improved so that they can

---

<sup>23</sup> Lili Rasjidi dan I.B Wyasa Putra, "Hukum sebagai Suatu Sistem", (Bandung: Remaja Rosdakarya, 1993), p. 79-80

<sup>24</sup> Romli Atmasasmita, "Reformasi Hukum, Hak Asasi Manusia & Penegakan Hukum", (Bandung: Mandar Maju, 2001), p. 10.

<sup>25</sup> Tim hukum online, "Perbedaan Upaya Preventif dan Represif serta Contohnya", <https://www.hukumonline.com/berita/a/upaya-preventif-lt63e0813b74769/>

<sup>26</sup> Nita Marwing, "Indonesian Political Cleptoracy and Oligarchy A Critical Review from the Perspective of Islamic Law", *Jurnal kajian Hukum dan Sosial*, 18 no 1 (2021): p. 84.

be accessed by the public;<sup>27</sup> d) From the law enforcement path, eradicating corruption in Indonesia can only be realized if the law is enforced firmly and fairly without discrimination. The solution that can be applied in this perspective is to change the paradigm of law enforcement officers, that their duties are a form of devotion in upholding justice in society;<sup>28</sup> f) To realize a clean and integrated government (good governance), the active role of the community is very necessary in overseeing the running of government;<sup>29</sup> g) Selecting officials with high integrity to occupy positions related to the distribution of Covid-19 social assistance funds is an important step in preventing irregularities.<sup>30</sup> 2) Penal (Repressive) Efforts: Repressive efforts are defined as an action in determining an act as a form of criminal act based on certain provisions. Therefore, the law aims to guarantee legal certainty. Repressive efforts in overcoming criminal acts of corruption related to misused aid funds include: a) Increasing Punishment: By imposing heavier penalties for perpetrators of corruption of Covid-19 social assistance funds, it is hoped that it will have a deterrent effect so that anyone will think twice before committing the crime;<sup>31</sup> b) Asset Confiscation: Asset confiscation is a firm step in efforts to eradicate criminal acts of corruption, especially against perpetrators who misuse Covid-19 social assistance funds;<sup>32</sup> c) Implementation of the Reverse Burden of Proof Concept: The reverse burden of proof concept is applied in corruption crimes to facilitate the legal process by requiring the accused to prove that their assets were obtained legally;<sup>33</sup> d) Publication of Corruption Cases of Covid-19 Social Assistance Funds and Their Analysis: Transparency in handling corruption cases is very important to increase public trust in the legal system. Therefore, the publication of corruption cases of Covid-19 social assistance funds and their analysis needs to be done openly;<sup>34</sup> e) Imposition of Social Work Punishment: As a form of additional punishment, perpetrators of corruption crimes can be subject to social work punishment, such as helping communities affected by the corruption they have committed.<sup>35</sup>

## CONCLUSION

Criminal law policy in Indonesia, especially related to corruption of aid funds, is a complex and multidimensional effort. This phenomenon is caused by various factors, ranging from weaknesses in the system and laws and regulations, weak supervision and law enforcement, to behavioral factors such as materialism, a consumptive lifestyle, and a lack of exemplary leaders. In an effort to enforce the law against misuse of funds, the government has made various regulations and various sanctions have been set, ranging from imprisonment, fines, to additional penalties such as revocation of rights and confiscation of assets to return state losses. The criminal law policy in corruption crimes related to misuse of aid funds has identified several forms of misuse of aid funds that are

<sup>27</sup> Tri Setia Darma Sinuraya dkk, "Strategi Pemberantasan dan Pencegahan Korupsi di Indonesia dalam Masa Pandemi Covid-19", *Jurnal Education and development*, 9 no 3 (2021): p. 129.

<sup>28</sup> *Ibid*, p. 129.

<sup>29</sup> Ridwan Mansyur, "Kompilasi Penerapan Hukum oleh Hakim dan Strategi Pemberantasan Korupsi", Biro Hukum dan Humas Badan Urusan Administrasi Republik Indonesia Mahkamah Agung Republik Indonesia, Jakarta, p. 124.

<sup>30</sup> Citranu, "Pencegahan Tindak Pidana Korupsi Bantuan Sosial Pandemi Covid-19", IAHN Tampung Penyang, (Palagkaraya : 2020), p. 20

<sup>31</sup>Yontado Parapat dkk "Upaya Penanggulangan Tindak Pidana Korupsi pada Masa Pandemi Covid-19", *Jurnal Esensi Hukum*, 2 no 2 (2020),p. 33

<sup>32</sup> Barda Nawawi Arief, "Bunga Rampai Kebijakan Hukum Pidana", *Op. Cit*, p. 87

<sup>33</sup> Romli Atmasasmita, "Perbandingan Hukum Pidana Korupsi di Indonesia dan Beberapa Negara", Gramedia Pustaka Utama, (Jakarta: 2010), p. 112

<sup>34</sup> John Hatchard, "Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa", Edward Elgar Publishing, (Cheltenham: 2014), p. 175.

<sup>35</sup>Adnan Topan Husodo, "Strategi Pemberantasan Korupsi: Evaluasi dan Tantangan ke Depan", *Indonesia Corruption Watch (ICW)*, (Jakarta: 2018), p. 98



categorized as criminal acts of corruption, such as actions that harm state finances through price markups, bribery in the procurement process, embezzlement in office, extortion of aid recipients, fraudulent acts, conflicts of interest, and gratification from vendors or providers. Indonesia has various regulations to eradicate corruption. However, the implementation of punishment is often not optimal. Court decisions that tend to be light are contrary to the spirit of eradicating corruption and do not provide an adequate deterrent effect. In efforts to combat criminal acts of corruption, a comprehensive approach is needed that includes preventive (non-penal) and repressive (penal) efforts.

## REFERENCES

- Adnan Topan Husodo, *"Strategi Pemberantasan Korupsi: Evaluasi dan Tantangan ke Depan"*, Jakarta: Indonesia Corruption Watch, 2018.
- Aris Prio Agus Santoso, *"Tindak Pidana Korupsi"*, Yogyakarta: Pustaka Baru Press, 2022.
- Ayief Fathurrahman, *"Kebijakan Fiskal Indonesia Dalam Perspektif Ekonomi Islam: Studi Kasus Dalam Mengentaskan Kemiskinan"*, *Jurnal ekonomi dan Studi Pembangunan*, 13 no 1 (2012).
- Balebengong Bal dkk, *"Bantuan Sosial di Tengah Pandemi Covid-19: Analisis Persoalan dan Rekomendasi Kebijakan"*, (DKI Jakarta: Indonesia Corruption Watch, 2021).
- Budimana Slamet, *"Metode Penghitungan Kerugian Negara Dalam Audit Investigatif"*, Pusdiklatwas BPKP.
- Citrano, *"Pencegahan Tindak Pidana Korupsi Bantuan Sosial Pandemi Covid-19"*, IAHN Tampung Penyang, Palagkaraya : 2020.
- Dyah Cahyasari, *"Kebijakan Fiskal"*, Jakarta: Institut Ilmu Sosial dan Manajemen STIAMI, 2016.
- Harly Clifford Jonas Salmon, Judy Marria Saimima, *"Tindak Pidana Korupsi dan Alokasi Dana Desa"*, *Mataka: Corruption Law Review*, 1 no 2 (2023).
- Etty Indriarti, *"Pola dan Akar Korupsi Menghancurkan Lingkaran Setan Dosa Publik"*, Jakarta: Gramedia Pustaka Utama, 2014.
- <https://media.neliti.com/media/publications/19494-ID-kebijakan-hukum-pidana-dalam-penanggulangan-tindak-pidana-korupsi-yang-dilakukan.pdf>.
- [http://repository.unissula.ac.id/30815/1/20302000209\\_fullpdf.pdf](http://repository.unissula.ac.id/30815/1/20302000209_fullpdf.pdf),
- John Hatchard, *"Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa"*, Cheltenham: Edward Elgar Publishing, 2014.
- Lili Rasjidi dan I.B Wyasa Putra, *"Hukum sebagai Suatu Sistem"*, Bandung: Remaja Rosdakarya , 1993.
- M. Agus Santoso, *"Dampak Penjatuhan Pidana Korupsi Bagi Pegawai Negeri yang Sedang Menjalankan Tugas Administrasi Negara"*, *Borneo Administrator* 7 no. 2 (2011).
- Marc Ancel, *"Penal Policy Should be Held to Mean the Rational Organisations of Control of Crime by Society Defience a Modern Approach to Criminal Problem"*, USA: Schoellen Book Inc, 1966.

- Muladi, *"Kapita Selekta Hukum Sistem Peradilan Pidana"*, Semarang: Badan Penerbit Universitas Diponegoro, 2002.
- Nita Marwing, "Indonesian Political Cleptocracy and Oligarchy A Critical Review from the Perspective of Islamic Law", *Jurnal kajian Hukum dan Sosial*, 18 no 1 (2021).
- Ola Ringan Wilhelmus, "Korupsi: Teori Faktor Penyebab Dampak Dan Penanganannya", *Jurnal Pendidikan Agama Katolik*, 1 no (2017): 36-39.
- Pusat Edukasi Antikorupsi, [https://aclc.kpk.go.id/aksi\\_informasi/Eksplorasi/20220524-ayo-kenali-dan-hindari-30-jenis-korupsi-ini](https://aclc.kpk.go.id/aksi_informasi/Eksplorasi/20220524-ayo-kenali-dan-hindari-30-jenis-korupsi-ini).
- Peter Mahmud Marzuki, *"Pengantar Ilmu Hukum"*, Jakarta: Kencana, 2008.
- R. Soesilo, *"Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal"*. Bogor: Politeia, 1986.
- R. Totot sugiarto, *"Arti Korupsi dan cirri-ciri Korupsi : Seri Ensiklopedia Pendidikan Anti Korupsi"*, Jakarta: Hikam Pustaka, 2021.
- Rendradi Suprihandoko, "Kajian Yuridis Terhadap Penerapan Sanksi Pidana Dalam Perkara Korupsi", *Jurnal Kajian Hukum*, 7 no 1 (2022): 44-46.
- Ridwan Mansyur, *"Kompilasi Penerapan Hukum oleh Hakim dan Strategi Pemberantasan Korupsi"*, Biro Hukum dan Humas Badan Urusan Administrasi Republik Indonesia Mahkamah Agung Republik Indonesia, Jakarta.
- Romli Atmasasmita, *"Reformasi Hukum, Hak Asasi Manusia & Penegakan Hukum"*, Bandung: Mandar Maju, 2001.
- Romli Atmasasmita, *"Perbandingan Hukum Pidana Korupsi di Indonesia dan Beberapa Negara"*, Jakarta: Gramedia Pustaka Utama, 2010.
- Tim hukum online, *"Perbedaan Upaya Preventif dan Represif serta Contohnya"*, <https://www.hukumonline.com/berita/a/upaya-preventif-lt63e0813b74769/>.
- Tri Setia Darma Sinuraya dkk, "Strategi Pemberantasan dan Pencegahan Korupsi di Indonesia dalam Masa Pandemi Covid-19", *Jurnal Education and development*, 9 no 3 (2021).
- Yontado Parapat dkk "Upaya Penanggulangan Tindak Pidana Korupsi pada Masa Pandemi Covid-19", *Jurnal Esensi Hukum*, 2 no 2 (2020).

Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

**Copyright:** © AUTHOR. This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. (CC-BY NC), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

**TATOHI: Jurnal Ilmu Hukum** is an open acces and peer-reviewed journal published by Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

