

Corruption During Non-Natural Disaster: Is Death Penalty Necessary?

Faisal Abdaud¹, Ming-Hsi Sung², Wahyudi Umar^{3*}

^{1,3} Faculty of Law, Universitas Muhammadiyah Kendari, Indonesia

² Department of Financial and Economic Law, Asia University, Taiwan

*Corresponding author: wahyudi.umar@umkendari.ac.id

ARTICLE INFO

Keywords:

corruption; death penalty; COVID-19

How to cite:

Abdaud, F., Sung, M., and Umar, W. (2022). Corruption During Non-Natural Disaster: Is Death Penalty Necessary?. *Jurnal Media Hukum*, 29(1), 54-64

Article History:

Received: 15-03-2022
Reviewed: 04-04-2022
Revised: 03-06-2022
Accepted: 01-07-2022

ABSTRACT

Extraordinary measures are needed to combat corruption in Indonesia which has been characterised as an extraordinary crime. This includes the application of death penalty as governed in Section 2 point (2) of the Corruption Eradication Act 1999. This paper intends to analyse the implementation of the aforementioned article on corruption case that occurs during the COVID-19 outbreak. This normative legal research relies on secondary data which are collected from various sources including books, journals, related legislation. The result of the research shows that, in regard to corruption case, the death penalty is only applicable when the corruption is committed in certain circumstances as intended in Section 2 point (2) of the Corruption Eradication Act 1999 and its amendment. These include the event of state emergency and national natural disaster. By virtue of the principle of legality, death penalty cannot be applied to the corruption cases that occurs during the national non-natural disaster like the Covid-19 pandemic. Reinterpretation of the phrase "certain circumstances" is needed for the sake of promoting justice. They should include national non-natural disasters like the Covid-19 pandemic.

DOI: <https://doi.org/10.18196/jmh.v29i1.14247>

1. Introduction

Corruption is a global phenomenon (Preamble UNCAC 2003)¹, therefore this issue is always interesting to be discussed from various perspectives including normative, theoretical, and philosophical. Corruption is a pandemic that infects almost all elements of society (Bunga et al., 2019, p. 89). Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption (The Corruption Eradication Act) highlights that corruption which occurs massively in Indonesia, does not only harm the state's finances, but also violates of the social and economic rights of the community at large (Wahyuningrum et al., 2020, p. 249). For this reason, the

¹ In Preamble UNCAC 2003 "Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential"

eradication of corruption necessitates extraordinary measures (Farahwati, 2021, p. 71)

From historical perspective, criminalizing corruption has been made since the very beginning. The early corruption law refers to the Penal Code (*Kitab Undang-undang Hukum Pidana/KUHP*). Elwi Daniel identifies various provisions of corruption in the Penal Code as follows (Daniel, 2012, p. 26) :

- a. In Chapter VIII (Crimes against General Authorities) is found two provisions, namely Article 209 and Article 210.
- b. In Chapter XXV (Fraudulent Acts) is found two provisions, namely Article 387 and Article 388.
- c. In Chapter XXVIII (Official Crimes) is found nine provisions, namely Article 415, Article 416, Article 417, Article 418, Article 419, Article 420, Article 423, Article 425, and Article 435.

In addition, corruption has also been governed in the Military Ruler Regulation Number Prt/PM/06/1957 (Pinilih, 2020, p. 15), Prt/PM/03/1957, and also Prt /PM/011/1957. By virtue of Section 60 of the Law Number 74 of 1957 on Dangerous Situation (the Dangerous Situation Act 1957), the abovementioned military regulations were replaced with the Regulation on the Eradication of Corruption by the Central War Authority Number Prt/Perpu/013/1958 dated April 16, 1958. , then the regulation was also applied to the jurisdiction of the Navy with the Decree of the Chief of Naval Staff Number Z/1/1/7, dated April 17, 1958 (Patiro, 2012, p. 137-138).

In the following, the Government enacted and continuously updated legislation to eradicate corruption namely: the Law Number 24 Prp of 1960 on Corruption Eradication (Ali, 2011, p. 19); Law Number 3 of 1971 on Corruption Eradication (Nurdjana, 2010, p. 21); and the Law Number 31 of 1999 on Corruption Eradication (the Corruption Eradication Act 1999) which later amended with the Law Number 20 of 2001 (the Corruption Eradication Act 2001). The last two mentioned Act are the main sources of the recent Anti-Corruption Law in Indonesia.

The recent Anti-Corruption Law brings about a good progress in eradicating corruption by including "conditional norms" as governed in Section 2 point (2) of the Law Number 31 of 1999 which provides that corruption which is committed under certain circumstances shall be punished with death penalty (Bustamam, 2020, p. 274). According to the explanatory part of the mentioned Section (has been reformulated in its amendment), the phrase 'certain circumstances' refer to conditions that can aggravate the punishment to death penalty for corruption against funds designated for handling dangerous situations, national natural disasters, overcoming the effects of widespread social unrest, overcoming economic and monetary crises, and for repeating corruption (CNN Indonesia, 2020).

The provision of death penalty has promoted academic debate, especially when it should be applied to corruption cases during the Covid-19 pandemic. Some people agree and some others do not. Different scholars bring about different interpretation. It is necessary to discuss the nature of the Covid-19 pandemic and the extent of corruption that occur within in order to come up with proper legal analysis.

As we know, various countries in the world have been preoccupied with handling and overcoming the covid-19 pandemic. At least 210 countries (Tribun News Jogja, 2020) have been affected by the virus including Indonesia. Huge amount of money has been

spent in response to the pandemic. The Indonesian government has allocated 801.86 trillion rupiahs in total for handling the pandemic. This come from central government budget (695.2 trillion rupiahs); local government budget (78.2 trillion rupiahs); and village funds (28.46 trillion rupiahs) (CNN Indonesia, 2020). Even until the beginning of the first quarter of 2021, the allocation of funds for the Covid-19 Response and National Economic Recovery (PC-PEN) reached 688.3 trillion rupiahs (Fatoni, 2020). The amount of funds allocated to tackle the COVID-19 outbreak and the recovery of the national economy has become the subject of public discussion and media reporting. This large fund has stimulated some public officials to corrupt it and this corruption lead to a debate on the applicability of death penalty provision as already mentioned.

Indonesia Corruption Watch noted that throughout 2020, the National Police received 107 complaints of alleged misappropriation of Social Aid Fund (*Bantuan Sosial/Bansos*). Hundreds of complaints were received by 21 Regional Police across the country (Aji & Wibowo (ed), 2021). The Corruption Eradication Commission has received 118 public complaints regarding the distribution of Social Aid Fund through the JAGA application since it was first launched on June 5, 2020. Public reports received by the KPK came from 78 local governments, consisting of 7 provinces and 71 regencies/cities (Launa & Lusianawati, 2021, p. 2).

According to Law Number 24 of 2007 on Disaster Management (Disaster Management Act , 2007), natural disasters are disasters caused by events or a series of events caused by nature, including earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides (Rosikhu & Rahmatulloh, 2021, p. 44). While non-natural disasters are disasters caused by non-natural events or series of events, which include technological failures, failed modernization, epidemics, and disease outbreaks (Leasa, 2020, p. 76-77). The classification into natural and non-natural disaster leads to debate on whether or not the provisions of Section 2 point (2) can be applied in the current pandemic condition, when the funds for handling the covid-19 pandemic are corrupted.

The debate rose especially after the issuance of the Presidential Decree No. 12 of 2020 on the Determination of Non-Natural Disasters Spreading Covid-19 as a National Disaster on April 13, 2020 (BNPB News, 2020; Presidential Decree No. 12 of 2020). The determination of "national disaster" through the Presidential Decree is an absolute requirement required by the Disaster Management Law that the determination of the status and level of disaster is regulated by presidential regulation/presidential decree (concerning Disaster Management, Law Number 24 of 2007, Articles 7, 51)). Serious and fast response to the pandemic has also been sounded through the Government Regulation in Lieu of Statute No. 1 of 2020 which later enacted as statute on May 16, 2020 (Mahardika, 2020, p. 265).

Based on the above discussion, it is interesting to study and analyse in the applicability of the death penalty provision in corruption cases during the Covid-19 pandemic".

2. Method

This normative legal research employs both statutory and conceptual approach. The researcher examined all relevant laws and regulations and also refers to the relevant doctrines and legal theories. Qualitative analysis method has been used to produce analytical-descriptive data (Muhaimin, 2020, p. 129) and to describe the applicable laws

and regulations associated with positive legal theories concerning the research problem (Sumitro, 2010, p. 105).

3. Discussion and Analysis

3.1. Corruption of COVID-19 Relief Fund According to Anti-Corruption Law

The term corruption comes from the Latin word *corruptio*. In English it is known as corruption or corrupt, while in French it is called corruption, and in Dutch it is *corruptie* (Ambarwati, 2021, p. 31). Corruption remain exists in Indonesia during the covid-19 pandemic and even the Covid-19 relief fund has also been corrupted. In fact, various aspects of the pandemic control create opportunities for corruption. Rajeev K. Goel and friends identify that the potential for out of turn delivery of vaccines and the stockpiling by unauthorized agents creates incentives for corruption, with the public or bureaucrats initiating corrupt transactions. In regard to this, an understanding of the potential avenues for corruption should guide the formulation of appropriate corruption-control policies and similar challenges that will be faced by policy makers in addressing future pandemics (Goel et al., 2021, p. 503).

The Ombudsman of the Republic of Indonesia received hundreds of reports from various elements of society regarding the misuse of Social Aid Fund which can be classified into five forms, namely: (1) inappropriate distribution in terms of time and people in the targeted areas; (2) the more deserved are not registered, or vice versa; (3) registered people do not receive the aid; (4) unable to receive aid due to the lack of valid ID card; and (5) the lack of socialization of complaint facilities to beneficiaries (Launa & Lusianawati, 2021, p. 2).

The Indonesian Forum for Budget Transparency (FITRA) has also identified potential problems with the misuse of social assistance funds at five vulnerable points: (1) careless data collection by related officers; (2) wrong target of recipients; (3) embezzlement of aid funds; (4) the amount received is less than the amount promised; (5) illegal levies carried out by unscrupulous aid distributors; (6) double budget aid financing (Launa & Lusianawati, 2021, p. 2).

The Government Regulation in Lieu of Statute Number 1 of 2020 which later enacted as Law Number 2 of 2022 become the legal basis for the government to immediately provide sufficient budget to tackle the Covid-19 pandemic down. For this purpose, the government has generated fund from various sources, including the issuance of State Debt Securities and/or State Sharia Securities, providing loans to Guarantee Institutions. In addition, some policies have also bene made. These include prioritizing the use of budget allocations for certain activities (refocusing), adjusting allocations, and/or cutting/delaying the distribution of budget transfers to the Regions and Village Funds, with certain criteria, providing grants to Regional Governments and/or simplifying the mechanism and simplification of documents in the field of State finance (Juliani, 2020, p. 342). All these financial policies were taken to adapt the emergency situation, even though Covid-19 was categorized as a national non-natural disaster according to the Presidential Decree No. 12 of 2020.

As already mentioned, corruptions that occur during the COVID-19 pandemic, especially the corruption of the relief fund have resulted in a debate on the applicability of death penalty as governed in Section 2 point 2 of the Corruption Act 1999. According

to that Section and its explanation, death penalty is applicable for corruption cases when they are committed during a "national natural disaster." The question is whether the mentioned criminal provision can also be applied to corruption cases during the occurrence of national non-natural disaster like the Covid-19 outbreak. To deal with this question, it is important to know the definition of national disaster and how it is classified.

According to Law Number 24 of 2007 concerning Disaster Management (the Disaster Management Act 2007), a disaster is an event or series of events that threatens and disrupts people's lives and livelihoods caused, both by natural factors and/or non-natural factors and human factors resulting in human casualties, environmental damage, property losses, and psychological impacts (Pahleviannur, 2019, p. 19). Based on that definition, disaster can be classified into three categories, namely natural disasters, non-natural disasters and human factors or so-called social disasters. Each of them are further defined as follows:

- a. Natural disasters are disasters caused by events or a series of events caused by nature, including earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides (Tondobala, 2011, p. 40).
- b. Non-natural disasters are disasters caused by non-natural events or series of events, which include technological failures, failed modernization, epidemics, and disease outbreaks (Fitri, 2020, p. 81).
- c. Social disaster is a disaster caused by an event or series of events caused by humans which includes social conflict between groups or between communities, and terror (Supryadi, 2018, p. 100).

According to the explanatory part of Section 2 point (2) of the Corruption Eradication Act 1999 (has been reformulated in the Corruption Eradication Act 2001), the phrase "certain circumstances" (Nugraha, 2020, p. 64) refer to the following conditions: (1) a state of danger; (2) national natural disaster; (3) overcoming the effects of widespread social unrest (not explicitly stated); (4) overcoming the economic and monetary crisis; and (5) repetition of corruption. Based on the above explanation, we can see that non-natural disaster is excluded from the list. It is probably the reason why some people reluctant to refer to death penalty provision when dealing with the corruption case involving Juliari Batubara from the Ministry of Social Affairs.

Those who support the idea of applying death penalty provision argue that the Covid-19 pandemic meets its requirement, especially when the pandemic is seen from the perspective of the Disaster Management Act 2007, although it contains some contradictions that lead to confusion. In one side, the explanatory part of the Act recognizes endemic and epidemic under the category of natural disaster, but the main body namely Section 1 number 2 says conversely. While Section 1 number 3 provides that endemics and epidemics are of the non-natural disasters category.

The confusion brings about serious legal consequence especially when it relates to the application of the principle of legality. Furthermore, the phrase "pandemic" is not explicitly mentioned either in the body or in the explanatory part. The Disaster Management Act 2007 uses the term 'endemic' and 'epidemic' instead of "pandemic." It is then necessary to understand the meaning of epidemic to know whether or not the pandemic can be understood similarly as required by the principle of legality.

An epidemic is an infectious disease that spreads quickly over a large area and causes many victims. An increase in the number of diseases above normal which usually occurs suddenly in a population in a certain geographic area. Examples of diseases that have become epidemics are the Ebola virus in the Democratic Republic of the Congo (DRC) in 2019, Avian Influenza/bird flu (H5N1) in Indonesia in 2012, and SARS in 2003 (Resti, 2020). Epidemic is an infectious disease that spreads quickly, attacking many people over a large area (such as smallpox epidemics, dysentery, cholera); epidemic (KBBI, 2021). While pandemic is an epidemic that spreads simultaneously everywhere, covering a large geographical area. A pandemic is an epidemic that spreads across almost an entire country or continent, usually affecting large numbers of people. An example of a disease that has become a pandemic is Coronavirus disease 2019 (Covid-19) (Resti, 2020).

3.2. Reformulating Section 2 point (2) of the Corruption Eradication Act 1999 to accommodate Non-Natural Disaster

“Certain circumstances” as explained in the Corruption Eradication Act 2001 are focused on 2 (two) situations, namely corruption is committed against national natural disaster management funds and widespread social unrest (social disaster) in relation to the Disaster Management Act 2007. On the other hand, on the explanatory part of the Disaster Management Act 2007 states that the potential causes of disasters in the territory of the unitary state of Indonesia are grouped into 3 (three) types of disasters, namely natural disasters, non-natural disasters, and social disasters.

Table 1.

Comparative explanation of certain circumstances in the Corruption Eradication Act 1999 and its amendment

Item	Note
Elucidation of Article 2 paragraph 2 of Law Number 31 of 1999	the purpose of the clause "certain circumstances" in this provision is intended as a burden for perpetrators of criminal acts of corruption if the crime is committed when: the country is in a state of danger in accordance with applicable laws at the time of a national natural disaster, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis (Yanto, 2017, p. 53).
Elucidation of Article 2 paragraph 2 of Law Number 20 of 2001	What is meant by "certain circumstances" in this provision is a situation that can be used as a reason for aggravation of criminal offenses for perpetrators of criminal acts of corruption, namely if the crime is committed against funds designated for the prevention of: a state of danger, National natural disaster, Overcoming the effects of widespread social unrest, overcoming the economic and monetary crisis, and, repetition of corruption (Saskarayani & Puspawati, 2021, p. 65).
Elucidation of Law Number 24 of 2007	Potential causes of disasters in the territory of the unitary state of Indonesia can be grouped into 3 (three) types of disasters, namely natural disasters, non-natural disasters, and social disasters (Gerungan, 2019, p. 79).

The existing regulations indicates that death penalty as governed the recent Anti-Corruption Law is not applicable for corruption cases during the Covid-19 pandemic since it constitutes a non-natural disaster rather than natural disaster. Even before the amendment of the Corruption Eradication Act 1999 into the Corruption Eradication Act 2001, the phrase "non-natural disaster" was excluded from the criteria of "certain circumstances." According to Section 2 point (2) of the Corruption Eradication Act 1999, death penalty is applicable for corruption committed during certain circumstances, not necessarily that of against relief funds. In its amendment, the applicability of death penalty is limited only for corruption against "countermeasures funds" in certain circumstances and corruption of funds for the response to widespread social unrest (or social disasters), meanwhile corruption in the relief fund provided for non-natural disasters is excluded.

Mohammad Khairul Muqorobin and Barda Nawawi Arief (Muqorobin & Arief, 2020, p. 392) tend to equate the substance of Section 2 point 2 of the Corruption Eradication Act 1999 with its amendment in the Corruption Eradication Act 2001, whereas according to the author, both are different.

In regard to disaster management, the government has the following authorities (Disaster Management , Law Number 24 of 2007, Article 7, para (1)):

- a. determination of disaster management policies in line with national development policies;
- b. making development plans that incorporate elements of disaster management policies;
- c. determination of the status and level of national and regional disasters;
- d. determination of cooperation policies in disaster management with other countries, agencies, or other international parties;
- e. formulation of policies regarding the use of technology that has the potential as a source of threat or disaster;
- f. the formulation of policies to prevent the control and exploitation of natural resources that exceeds the ability of nature to restore; and
- g. controlling the collection of money or goods of a national nature.

The determination of the status and level of disaster whether national or regional is further regulated in Presidential Regulation Number 17 of 2018 on the Implementation of Disaster Management in Certain Circumstances. Section Article 2 point (1) of that Regulation provides that the status of a disaster national level is determined by the President, at the provincial level by the governor, and at the district/city level by the regent/mayor. The indicators include: (a) number of victims; (b) property loss; (c) damage of the infrastructure and facilities; (d) wide coverage of disaster-affected areas; and (e) the socio-economic impact (Alfiah, 2021, p. 231).

The COVID-19 pandemic has been established as a national non-natural disaster based on the Presidential Decree No. 12 of 2020 on the Determination of Non-Natural Disasters for the Spread of Covid-19 as a National Disaster. In response to this, the Government issued relevant financial policies through the enactment of Law No. 2 of 2020 on the Stipulation of Government Regulation No. 1 Year 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19)

Pandemic and/or in Facing Threats that Endanger the National Economy and/or Financial System Stability (Ubwarin et al, 2021, p. 18). On this basis, hundreds of trillions of state funds have been disbursed, so ideally, the corruption of relief fund designated to handle national non-natural disaster should be considered as a category of corruption intended Section 2 point (2) which is punishable with death penalty. This is in line with the construction of 3 (three) potential disasters that have been formulated in the Disaster Management Act 2007 namely natural disasters, non-natural disasters, and social disasters.

4. Conclusion

Based on the above discussion, it can be concluded that first, corruption against national non-natural disaster management funds in regard to Covid-19 does not meet the criteria of certain conditions as intended in Section 2 point (2) of the Corruption Eradication Act 1999 and its explanations. As a consequence, the death penalty attached in the aforementioned article is not applicable in the given case, otherwise the principle of legality will be compromised. Reinterpretation and reformulation is necessary to promote justice. The phrase 'certain conditions' should be interpreted to cover the national non-natural disaster.

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