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APPLICATION OF CRIMINAL SANCTIONS IN CASES INVOLVING THE PROCUREMENT OF COVID-19 PERSONAL PROTECTIVE EQUIPMENT (PPE) UNDER LAW NUMBER 31 OF 1999 AS AMENDED BY LAW NUMBER 20 OF 2001

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Abstract

The COVID-19 pandemic that struck Indonesia in early 2020 created a national emergency that forced the government to make rapid decisions in procuring health facilities and distributing social assistance. This situation simultaneously opened loopholes for corrupt practices, as evidenced in the procurement case of Personal Protective Equipment (PPE) involving Ministry of Health officials, resulting in state losses of hundreds of billions of rupiah. This study aims to analyze whether the defendants' actions in the COVID-19 PPE corruption case can be qualified as corruption under Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, and to analyze the criminal sanctions imposed. The method used is normative legal research with statutory and case approaches. The results show that the defendants' actions fulfill all elements of corruption under Article 2 paragraph (1) in conjunction with Article 2 paragraph (2), namely unlawful acts, self-enrichment, and state financial loss committed under certain conditions of national disaster. The criminal sanctions imposed are assessed as not yet reflecting proportional punishment given the magnitude of state losses and social impact. This study recommends strengthening emergency procurement oversight mechanisms and consistent application of maximum criminal penalties for corruption during disasters.

Keywords: Corruption, COVID-19 PPE, Criminal Sanctions, Certain Conditions, State Financial Loss

A. Introduction

Corruption has long been identified as one of the most serious threats to the sustainability of a democratic rule of law. According to *Transparency* International's 2023 *Corruption Perceptions Index*, Indonesia remains in a position requiring serious improvement in terms of clean governance.(Valérian, 2023). This situation is exacerbated when the state faces an emergency requiring accelerated bureaucratic processes, as the procedural loopholes that arise are often exploited by certain individuals for personal gain.

The COVID-19 pandemic, which began to spread in Indonesia in early 2020, became a real test of the integrity of government administration. The government was forced to adopt emergency policies that made the procurement of goods and services more flexible in order to speed up the response. Romli Atmasasmita noted that procedural flexibility in emergency situations actually creates fertile ground for corrupt practices if not balanced by strict oversight (Atmasasmita, 2004). This reality has been proven by the emergence of a number of corruption cases related to the handling of COVID-19, ranging from the procurement of medical equipment to the distribution of social assistance.

One prominent case is *the* corruption in the procurement of Personal Protective Equipment (PPE) involving officials from the Ministry of Health, with a Provincial Board of Auditors (BPKP) audit revealing state losses ranging from Rp 319 billion to Rp 625 billion. This case serves as a clear illustration of the phenomenon described by Graham Brooks as '*opportunistic* corruption'—corruption that exploits the momentum of a crisis as an opportunity for personal enrichment (Brooks, 2016). From a legal perspective, Law No. 31 of 1999, in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Crimes has, in fact, clearly stipulated prohibitions and sanctions for perpetrators of corruption, including the threat of the death penalty for those who commit corruption under certain circumstances, such as during a national disaster, as set out in Article 2 (2). However, in practice, the imposition of such sanctions often provokes controversy amongst the public as they are deemed disproportionate to the scale of the losses incurred by the state.

This issue highlights the need for an in-depth legal study regarding the classification of the defendant's actions as a criminal act of corruption and the application of the appropriate criminal sanctions under the Criminal Code, particularly in the context of corruption committed whilst the state is in a state of national disaster.

B. Purpose of the Study

This study aims to analyse whether the defendant's actions in the COVID-19 PPE procurement corruption case can be classified as a criminal act of corruption under Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, as well as to examine how criminal sanctions should be applied to perpetrators of corruption committed during a national disaster. Furthermore, this study aims to provide normative recommendations for strengthening the emergency procurement oversight system and ensuring the enforcement of anti-corruption laws is more proportionate and just.

C. Research Method

This study employs a normative legal research method, which examines legal norms as the primary object of study, relying on literature as the primary source. Soerjono Soekanto and Sri Mamudji (2015:13-14) explain that normative legal research encompasses the study of legal principles, legal systematics, the degree of legal harmonisation, legal history, and comparative law.

The approaches used include a legislative approach, which examines Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 and related regulations, as well as a case-based approach, which analyses court rulings in cases of corruption involving COVID-19 PPE.

The legal sources consist of three types. Primary legal sources include Law No. 31 of 1999, Law No. 20 of 2001, the Criminal Code, relevant court rulings, and BPKP audit reports. Secondary legal sources include legal literature, academic journals, and relevant previous research findings. Tertiary legal materials, such as legal dictionaries and legal encyclopaedias, were used to support the understanding of concepts (Soekanto and Mamudji, 2015).

The collection of legal materials was carried out through a literature review by examining, classifying, and systematising relevant legal materials. The analysis was conducted qualitatively using a prescriptive method, namely by providing a normative assessment of the issues under study based on applicable legal principles.

D. Conceptual Framework

1. The Concept of Corruption Offences

Etymologically, the term 'corruption' derives from the Latin corruptio or corruptus, meaning damage, decay and rot. Andi Hamzah (2005:4) defines corruption as an act involving wickedness, rottenness, dishonesty, bribery and a deviation from integrity, committed for personal gain. Meanwhile, Graham Brooks (2016:23) defines corruption as an act deliberately committed on the basis of error or negligence in performing a duty known to be an obligation, such that this act refers to something that is beneficial and tends to be of a personal nature.

The Comprehensive Dictionary of the Indonesian Language defines corruption as the misappropriation or misuse of state funds for personal gain or the gain of others. Within the framework of Indonesian positive law, the criminal offence of corruption, as formulated in Article 2(1) of Law No. 31 of 1999, contains the following elements: any person who, unlawfully, commits an act of enriching themselves, another person, or a corporation, which may cause harm to state finances or the national economy.

Law No. 31 of 1999 on the Eradication of Corruption states that corruption causes significant harm to the state's finances or the national economy and hinders national development; therefore, it must be eradicated in order to realise a just and prosperous society based on Pancasila and the 1945 Constitution. This classifies corruption as an 'extraordinary crime', in the same way as drug abuse, terrorism(Titahelu *et al.*, 2024) and serious environmental destruction.

2. The Concept of Specific Circumstances

The Explanatory Notes to Article 2(2) of Law No. 20 of 2001 state that 'specific circumstances' refer to circumstances that may serve as grounds for aggravating the penalty, namely where the criminal act is committed against funds intended for the management of emergency situations, national natural disasters, the management of the consequences of widespread social unrest, the mitigation of economic and monetary crises, and the recurrence of corruption offences. Yusuf Shofie argues that the COVID-19 pandemic, which has been designated as a national non-natural disaster through Presidential

Decree No. 12 of 2020, legally meets the criteria for 'specific circumstances' that may serve as a basis for aggravated punishment (Shofie, 2020).

3. The Concept of Criminal Sanctions and Proportionality

Moeljatno explains that criminal sanctions must satisfy the principle of proportionality, namely a balance between the severity of the sanction and the seriousness of the offence committed. (Moeljatno, 2008) In the context of corruption, Marwan Effendy emphasised that a deterrent effect can only be achieved if the sanctions imposed truly reflect the extent of the losses caused by the corrupt act. Muladi and Barda Nawawi Arief (2010:21) added that the purpose of criminal punishment in the Indonesian legal system is not merely to inflict suffering on the perpetrator, but also includes the recovery of losses incurred and the prevention of similar crimes in the future.

E. Results and Discussion

1. QUALIFICATION OF THE DEFENDANT'S ACTS AS CORRUPTION OFFENCES

The classification of an act as a criminal act of corruption cannot be done arbitrarily. Criminal law adheres to the principle of legality, which requires that every punishment be based on clear written norms and an interpretation that does not exceed the literal meaning of the law. In the context of the COVID-19 PPE procurement corruption case, the assessment of the classification is carried out by mapping the facts of the trial against each element of Article 2(1) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on a cumulative basis.

a. The Element of an Unlawful Act

The first element that must be proven is the existence of an act that is unlawful. The Constitutional Court, through Decision No. 003/PUU-IV/2006, has limited the interpretation of substantive unlawfulness in its positive function; consequently, what applies in corruption cases is the interpretation of formal unlawfulness, namely an act that is manifestly contrary to the applicable written legal norms (Sopacua, Taufik and Ablamskyi, 2025). In this case, there are at least three forms of procedural irregularities which, cumulatively, satisfy the element of unlawfulness. Firstly, the PPE procurement process was carried out without the administrative documents required by Presidential Regulation No. 16 of 2018 on Government Procurement of Goods and Services, including the absence of an official purchase order and valid proof of payment (Sopacua and Titahelu, 2025). The absence of these documents is not merely a routine administrative oversight but a systemic indicator that the procurement did not follow the proper procedures. Second, the involvement of PT Energi Kita Indonesia as an intermediary without a medical device distributor licence issued by the Ministry of Health constitutes a direct violation of licensing provisions in the medical device sector. Philipus M. Hadjon (2011: 34) emphasised that deviations from the procurement procedures established by legislation constitute unlawful acts within the context of administrative law, which simultaneously fulfil the elements of criminal corruption. Thirdly, price negotiations were conducted in an irregular manner, involving the budget authority of the National Disaster Management Agency (BNPB) and private parties without going through the price reasonableness verification mechanism as required by procurement regulations.

These three deviations collectively demonstrate that the defendant's actions not only deviated from purely technical administrative procedures but were also substantively contrary to the legal norms governing the management of state financial. Thus, the elements of an unlawful act are fulfilled both formally and substantively.

b. The Element of Enriching Oneself or Others

The second element requires an unlawful increase in wealth for the perpetrator or another party benefiting from the unlawful act. In criminal law doctrine, this increase in wealth need not be of a very large amount; rather, it is sufficient if there is a flow of economic benefit lacking a valid legal basis.

Trial evidence revealed that the price of PPE, which was originally Rp 379,500 per set from PT Permana Putra Mandiri, surged to nearly Rp 1 million per set following the involvement of PT Energi Kita Indonesia as an intermediary. This price surge, which amounted to more than double the original price, was not supported by a justifiable price analysis, there was no technical justification for the price difference, and there was no transparent negotiation mechanism. The illicit profits flowing to the parties involved are estimated to amount to hundreds of billions of rupiah. The use of forged cheques in the transactions further reinforces the fact that the parties involved deliberately devised a financial engineering scheme to conceal the flow of these illicit profits. These circumstances clearly and indisputably fulfil the element of enriching other individuals or corporations.

c. The Element of Causing Financial Loss to the State

The third element is the existence of financial loss to the state or the national economy. According to the findings of the BPKP audit, the state loss resulting from this problematic PPE procurement ranges from Rp 319 billion to Rp 625 billion. The discrepancy between these two figures does not negate the fulfilment of this element, as in both scenarios the state loss is real, measurable and accountable in accounting terms.

The Supreme Court has affirmed in various rulings that state losses may be either actual or potential. In this case, the loss is actual because state funds have been disbursed and used to pay for PPE at prices far above fair value, meaning the difference constitutes a direct loss to the state's financial. Kristian and Tanuwijaya (2015: 36)state that the proof of a corruption offence must be based on the cumulative fulfilment of all elements of the offence, not alternatively, and in this case all three elements have been fulfilled simultaneously. With the fulfilment of these three elements cumulatively, there is no legal doubt that the defendants' actions can and must be classified as a criminal act of corruption under Article 2(1) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. This classification is not merely a fulfilment of formal requirements, but reflects the nature of the acts which, in substance, have deprived the state of financial rights that should have been used to protect the lives of the public in the midst of a disaster.

2. APPLICATION OF ARTICLE 2(2): CORRUPTION UNDER SPECIFIC CIRCUMSTANCES

Once the act has been classified as a criminal act of corruption, the next legal question is whether this case also meets the criteria for the application of Article 2(2), which permits the imposition of the death penalty as an aggravating factor. This provision is one of the most stringent in the Indonesian criminal law system; yet, ironically, it is the least frequently applied in judicial practice.

a. Fulfilment of the Requirements for 'Specific Circumstances'

The designation of COVID-19 as a national non-natural disaster through Presidential Decree No. 12 of 2020 provides a strong legal basis for classifying the pandemic as a 'specific circumstance' as referred to in the Explanatory Notes to Article 2(2). The funds for the procurement of PPE that were embezzled were explicitly allocated for the mitigation of this non-natural disaster. Thus, the material requirements of Article 2(2) are fully met: corruption has been committed, it has been carried out against disaster response funds, and it has occurred whilst a national emergency was in progress.

Yusuf Shofie (2020:219) argues that corruption committed whilst the state is in a state of disaster carries a far higher degree of reprehensibility compared to corruption under normal conditions. This view is highly relevant to the context of this case, where the PPE subject to corruption is vital equipment for healthcare workers fighting to save lives on the front lines of the pandemic. Corruption involving PPE does not merely cause abstract financial loss to the state, but concretely jeopardises the safety of thousands of healthcare workers and indirectly threatens the safety of millions of patients who depend on them. It is this multi-layered dimension of reprehensibility that distinguishes this case from ordinary types of corruption and makes it worthy of consideration for the most severe criminal penalty available under the Indonesian legal system.

b. Inconsistency in the Application of the Death Penalty

Although the formal and material requirements of Article 2(2) are met, in practice the death penalty is almost never applied by public prosecutors or judges in corruption cases in Indonesia. From a criminal policy perspective, the reluctance to apply the most severe sanction in circumstances that are legally eligible sends a dangerous signal to potential corruptors that the death penalty is merely a paper norm that will never be enforced.

This runs counter to the spirit of the legislators who deliberately formulated the death penalty precisely to provide an extraordinary deterrent effect in the context of catastrophic corruption. Budi Kristiadi (2021:52) notes in his research that inconsistencies in sentencing in corruption cases during the pandemic systematically undermine public confidence in the law enforcement system and create the perception that the law is negotiable.

It must be acknowledged that the application of the death penalty is always met with serious debate from the perspective of human rights and modern sentencing theory. However, in this context, such debate should not automatically prevent prosecutors from at least charging and seeking a sentence under Article 2(2) as a form of affirmation that the state recognises the gravity of the offence committed. Judges ultimately have the discretion to choose from the range of available penalties, but the most severe option must be presented in court as a reflection of the seriousness of the alleged offence.

c. The Relevance of Humanitarian Considerations and Proportionality

It must be acknowledged that the application of the death penalty is always met with serious debate from the perspective of human rights (Sopacua, 2024) and modern sentencing theory. However, in this context, such debate should not automatically prevent prosecutors (Latupeirissa and Titahelu, 2025) from at least charging and seeking a sentence under Article 2(2) as a form of affirmation that the state recognises the gravity of the offence committed. Judges ultimately have the discretion to choose from the range of available penalties, but the most severe option must be presented in court as a reflection of the seriousness of the alleged offence.

3. Proportionality of Sanctions and Substantive Justice

The issue of the proportionality of sanctions is the most hotly debated issue in large-scale corruption cases in Indonesia. When state losses amount to hundreds of billions of rupiah yet the sentences handed down are relatively lenient, fundamental questions arise regarding the consistency and seriousness of the judicial system in realising substantive justice.

a. Disparity Between State Losses and the Sentences Imposed

Under the Indonesian criminal law system, the imprisonment and fines stipulated in Article 2(1) provide judges with a sufficiently wide range to impose proportionate sanctions, namely imprisonment for a minimum of four years and a maximum of twenty years, and a fine of at least Rp 200 million and up to Rp 1 billion. This wide range actually requires more careful consideration by judges to determine the appropriate point within that range based on the gravity of the offence.

Muladi and Barda Nawawi Arief (2010:65) emphasised that unjustified disparities in sentencing undermine legal certainty and the public's sense of justice. In the context of the COVID-19 PPE case, if the penalty imposed is close to the statutory minimum whilst the state's losses are close to one trillion rupiah and the offence was committed during a national disaster, then such disparity is difficult to justify both legally and morally.

b. Additional Penalties as an Instrument for Recovering State Losses

One instrument that is often overlooked or applied suboptimally in corruption cases is the additional penalty in the form of restitution payments as stipulated in Article 18(1)(b) of Law No. 31 of 1999. Compensation serves a different function from a fine. Whilst a fine is a punitive sanction that goes into the state coffers as a punishment, compensation has a restorative function, namely to restore the state's financial losses as fully as possible to their original state. In cases involving state losses of between Rp 319 and 625 billion, the imposition of compensation commensurate with the value of those losses should be a mandatory component of the judgment.

However, in practice, the imposition of restitution often faces enforcement challenges because the defendant's assets are insufficient to cover the entire loss, or because assets have been transferred prior to seizure. Therefore, the freezing and seizure of assets from the investigation stage onwards are crucial to ensuring that the restitution mechanism can function effectively.

c. Deterrent Effect and General Preventive Dimension

From the perspective of general prevention theory, criminal sanctions that are disproportionate to the impact of the crime will fail to create a meaningful deterrent effect for potential offenders in the future. The Corruption Eradication Commission notes that 2,730 corruption cases were processed between 2020 and 2024, yet corruption figures have not shown a significant decline. This fact indicates that the existing criminal justice approach has not been sufficiently effective as a preventive instrument (Salampessy *et al.*, 2026).

In the specific context of disaster-related corruption, the deterrent effect has a far broader dimension as it concerns the courage of officials to remain honest even when facing the greatest pressure and opportunities for misconduct. If the sanctions imposed in the COVID-19 PPE case do not reflect the seriousness of the offence, this indirectly provides normative tolerance for similar corrupt practices during future crises. Therefore, the imposition of firm, consistent, and proportionate sanctions in this case is not merely a matter of justice for the specific victims, but a long-term investment in building a culture of integrity among public officials.

Conclusion

Based on the analysis conducted, the defendant's actions in the case involving the procurement of COVID-19 PPE have been proven to fulfil all the elements of the criminal offence of corruption as set out in Article 2(1) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, including the elements of an unlawful act, enriching oneself or others, and causing financial loss to the state. Furthermore, corruption committed during the COVID-19 pandemic—which has been legally designated as a national disaster—meets the criteria for 'special circumstances' as referred to in Article 2(2), meaning that the death penalty as an aggravating factor should be a serious consideration in the prosecution. The application of criminal sanctions that are disproportionate to the extent of the state's losses and the context of the national emergency reflects inconsistencies in law enforcement that undermine the deterrent function of anti-corruption legislation.

The author's recommendation is that the Corruption Eradication Commission (KPK) and the Attorney General's Office need to demonstrate greater courage in consistently charging and prosecuting under Article 2(2) in corruption cases that meet the criteria for specific circumstances, so that the maximum criminal penalty formulated by the legislature truly functions as a deterrent. Furthermore, the government needs to strengthen the oversight system for emergency procurement by involving the State Audit Agency (BPKP) and the KPK from the planning stage, not merely at the post- implementation stage. Thirdly, the mechanism for imposing additional criminal sanctions in the form of restitution must be applied consistently and without compromise as part of efforts to recover financial losses to the states.

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