

**STATE FINANCIAL LOSSES PREVENTION POLICY DUE TO
CORRUPTION IN GOODS AND SERVICE PROCUREMENT DURING THE
PANDEMIC**

**(Study of Decision Number 24/Pid.Sus-TPK/2024/PN Mdn and Decision
Number 11/Pid.Sus-TPK/2023/PN Amb)**

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ABSTRAK

Pandemi Covid-19 merupakan yang sangat riskan dan dibutuhkan pengambilan tindakan dan kebijakan dalam waktu cepat demi keselamatan bersama. Untuk itu pemerintah mengambil kebijakan khusus terkait penggunaan alokasi anggaran tertentu dengan mempermudah proses pengadaan barang dan jasa dalam upaya untuk pencegahan dan penanganan covid-19, tetapi dalam prosesnya malah banyak terjadi perbuatan yang merugikan keuangan negara. Metode yang digunakan dalam tesis ini adalah metode penelitian yuridis normatif yaitu metode yang mengacu pada norma hukum dengan sumber data yang didapat dengan meneliti bahan pustaka guna memperoleh data sekunder berupa bahan primer, sekunder dan tersier. Hasil penelitian menemukan bahwa dalam dua putusan yang diteliti, hakim dalam membuat putusan telah mempertimbangkan dengan cermat fakta-fakta hukum dalam persidangan tetapi masih memiliki perbedaan penafsiran terkait unsur “Secara Melawan Hukum” dalam Undang-Undang Tipikor. Beberapa faktor yang menyebabkan ketentuan Pasal 2 ayat 2 Undang-Undang Tipikor tidak dapat diterapkan kepada pelaku tindak pidana korupsi pada saat pandemi, yaitu dari pihak Jaksa Penuntut Umum; Majelis Hakim Pemeriksa dan dari aturan yang berlaku. Kebijakan kriminal dalam menanggulangi tindak pidana korupsi dalam hubungan antara pelaku usaha dengan pejabat pengadaan dilakukan melalui dua cara yaitu kebijakan non penal dengan meningkatkan pengawasan, sedangkan untuk kebijakan penal telah dilakukan dengan dilakukannya perubahan-perubahan dalam Undang-Undang Tindak Pidana Korupsi. Diharapkan Hakim Pemeriksa dapat memiliki keseragaman dalam menafsirkan Pasal 2 dan Pasal 3 Undang-Undang Tindak Pidana Korupsi sehingga dalam praktiknya tidak ada disparitas hukuman kepada terpidana korupsi sehingga tidak ada pihak-pihak yang merasa dikecewakan dari putusan yang dibuat.

Kata Kunci: Kebijakan Kriminal, Pengadaan Barang dan Jasa, Merugikan Keuangan Negara, Penegakan Hukum, Covid-19.

ABSTRACT

The COVID-19 pandemic is very risky and requires quick action and policy-making for the safety of all. For this reason, the government has taken a policy related to using specific budget allocations by facilitating the procurement process of goods and services to prevent and handle COVID-19. Still, in the process, many acts have occurred that are detrimental to state finances. The method used in this thesis is the normative legal research method, which refers to legal norms with data sources obtained by examining library materials to obtain secondary data in the form of primary, secondary, and tertiary materials. The study results found that in the two decisions studied, the judges had carefully considered the legal facts in the trial but still had different interpretations regarding the element of "Unlawfully" in the Corruption Law. Several factors cause the provisions of Article 2 paragraph 2 of the Corruption Law not to be applied to perpetrators of corruption during the pandemic, namely from the Public Prosecutor, Panel of Examining Judges, and the applicable regulations. Criminal policy in overcoming corruption in the relationship between business actors and procurement officials is carried out in two ways: non-penal policy by increasing supervision. In contrast, penal policy has been carried out by making changes to the Corruption Crime Law. It is hoped that the Examining Judge can have uniformity in interpreting Article 2 and Article 3 of the Corruption Crime Law so that there is no disparity in punishment for corruption convicts so that no parties feel disappointed by the decisions made.

Keywords: *Criminal Policy, Procurement of Goods and Services, Harming State Finances, Law Enforcement, Covid-19.*

A. INTRODUCTION

Corruption is a part of special criminal law and has particular specifications that differ from general criminal law, such as deviations from procedural law. Therefore, corruption is intended to minimize leakage and deviations from the country's finances and economy.¹ The Corruption Eradication Law specifically regulates its procedural law regarding law enforcement against perpetrators of corruption, generally distinguished from handling other particular crimes. This is because corruption is an extraordinary crime that must be prioritized over other crimes.² From a legal perspective, the definition of corruption has been clearly explained in 13 articles in Law No. 31 of 1999, amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Based on these articles, corruption is formulated into 30 forms/types of criminal acts of corruption. These articles also explain in detail the acts that can be subject to criminal sanctions for

¹ Mulyadi, *Tindak Pidana Korupsi di Indonesia (Normatif, Teoritis, Praktik dan Masalahnya)*, Alumni, Bandung, 2007.

² Nurdjana, *Sistem Hukum Pidana dan Bahaya Laten Korupsi (Problematisasi Sistem Hukum Pidana dan Implikasinya pada Penegakan Hukum Tindak Pidana Korupsi)*, Total Media, Yogyakarta, 2009.

corruption. The thirty forms/types of criminal acts of corruption can be grouped as follows: (1) State financial losses; (2) Bribery; (3) Embezzlement in office; (4) Extortion; (5) Fraudulent Acts; (6) Conflict of interest in procurement; and (7) Gratification.³

Indonesia, through Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Corruption Law), has grouped corruption into seven main types. The seven types are state financial losses, bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement, and gratification.⁴ This research focuses on corruption in the relationship between business actors and implementing officials in the procurement of goods and services. Procurement of goods and services has a vital role in the implementation of development as a step to improve public services and the economy, so to realize this, procurement of goods and services must be carried out by fulfilling the principles of efficiency, effectiveness, transparency, openness, competition, fairness, and accountability. However, in its implementation, there are various obstacles, especially in the potential for criminal acts of corruption. Procurement of goods and services is an activity that is considered most vulnerable to corruption, and this happens everywhere in the world.⁵

Based on existing data, the KPK found 1,462 corruption cases in 2023, 958 of which were cases of gratification in the regions and criminal acts in procuring goods and services, totalling 324 cases.⁶ Another case is that the Corruption Eradication Commission (KPK) has carried out three sting operations (OTT) in the first semester of 2023. All of these OTT activities were related to bribery cases in

³ Kenneth, *Maraknya Kasus Korupsi di Indonesia Tahun Ke Tahun*, JLEB: Journal of Law Education and Business, Vol.2, No.1 (2024).

⁴ Komisi Pemberantasan Korupsi, *Memahami Untuk Membasmi ; Buku Panduan Untuk Memahami Tindak Pidana Korupsi*, KPK, Jakarta, 2006.

⁵ Biro Hukum IPB University, *Bingkai Tindak Pidana Korupsi pada Pengadaan Barang dan Jasa Oleh Lembaga Pemerintahan*, diakses dari <https://hukum.ipb.ac.id/bingkai-tindak-pidana-korupsi-pada-pengadaan-barang-dan-jasa-oleh-lembaga-pemerintahan/>, diakses pada 19 November 2024, jam 11.06 WIB.

⁶ Narda Margaretha Sinambela, *KPK Temukan 958 Kasus Gratifikasi di Daerah*, diakses dari <https://jambi.antaranews.com/berita/556146/kpk-temukan-958-kasus-gratifikasi-di-daerah>, diakses pada 19 November 2024, jam 11.08 WIB.

the procurement of goods and services.⁷ The focus of the discussion in this study is on the criminal policy of preventing criminal acts that harm state finances related to the procurement of goods and services during the pandemic. In the research of Setiawan & Jesaja (2022), it is explained that corruption is a massive problem because it can disrupt the growth and development of the country and requires serious handling to overcome or minimize its existence. Corruption can occur because of a person's wrong perspective on wealth, greed, opportunities, needs, abuse of power, lack of integrity and nationalism values, legal indecisiveness, and views on the law. One example is the case of corruption in the misuse of social assistance funds during the coronavirus pandemic, which caused huge losses. Efforts can be made to minimize this by providing early education about anti-corruption values, strictly enforcing applicable laws, and socializing the public about the complaint and reporting mechanisms if they know of acts of corruption.⁸

One of the corruption cases during COVID-19 was the procurement of Personal Protective Equipment (PPE) at the North Sumatra Provincial Health Office in 2020. This case began with preparing the Budget Plan (RAB) signed by the defendant Alwi, which allegedly did not comply with the provisions—preparing the RAB for the Procurement of Facilities, Infrastructure, Materials and Supporting Equipment for COVID-19 in the form of PPE at the North Sumatra Provincial Health Office in 2020 needed improvement.⁹ It is known based on the State Financial Loss Calculation Results Report conducted by the Auditor of the Faculty of Economics and Business, Tadulako University Number: 03.LH/ST.13056_FEB_PKKN/III/2024 dated March 1, 2024, explaining the State Financial Loss in the corruption case of Misappropriation and Mark Up of the Procurement Program for Provision of Facilities, Infrastructure, Materials and

⁷ Andrey, Novelino, *KPK Ungkap 3 OTT Di Paruh Pertama 2023 Soal Suap Pengadaan Barang-Jasa*, diakses dari <https://www.cnnindonesia.com/nasional/20230814222217-12-986051/kpk-ungkap-3-ott-di-paruh-pertama-2023-soal-suap-pengadaan-barang-jasa>, diakses pada 19 November 2024, jam 11.09 WIB.

⁸ Irfan Setiawan dan Christin Pratami Jesaja, *Analisis Perilaku Korupsi Aparatur Pemerintah di Indonesia (Studi pada Pengelolaan Bantuan Sosial di Era Pandemi Covid-19)*, Jurnal Media Birokasi, Vol.4, No.2 (2022)

⁹ Pendidikan Anti Korupsi, *Sidang Dakwaan Dugaan Kasus Korupsi Pengadaan APD Covid-19 di Dinas Kesehatan Sumatera Utara*, diakses dari <https://pendidikanantikorupsi.org/sidang-dakwaan-dugaan-kasus-korupsi-pengadaan-apd-covid-19-di-dinas-kesehatan-sumatera-utara/>, diakses pada 19 November 2024

Supporting Equipment for Covid-19 in the form of Personal Protective Equipment (PPE) at the North Sumatra Provincial Health Office for the 2020 Fiscal Year amounting to IDR 24,007,295,676.80. With details, namely Items of goods that cannot be accounted for (IDR 9,810,000,000.00), the difference in overpayment for the realization of payments of IDR 14,197,295,676.80. Total State Financial Loss IDR 24,007,295,676.80.¹⁰

Based on the explanation above, it is interesting to study the attitudes and behaviour of business actors towards state administrators; here are procurement officials for goods and services related to the procurement process for goods and services during the Covid-19 period, where the conditions are hazardous and require quick action and policies for the sake of mutual safety. As we know, the criminal law approach through the Corruption Law, which is repressive, is only oriented towards action. There are few prevention efforts in the procurement system for goods and services, so the repressive approach can cause worry for state officials to take action and innovation to advance public services and the economy. This repressive approach also creates fear of involvement in procurement activities directly or indirectly. So, based on the phenomenon of the background of the problem, there is a formulation of the problem as follows:

1. How is the application of criminal law that harms state finances related to procuring goods and services during a pandemic?
2. Why does law enforcement against corruption crimes, one of which is detrimental to state finances, carried out during the pandemic implement Perppu Number 1 of 2020, which is contrary to Article 2 paragraph 2 of the Corruption Crime Law?
3. What is the criminal policy in dealing with corruption crimes in the relationship between business actors and procurement officials?

B. RISULTS AND DISCUSSION

a. Implementation of Criminal Law on State Financial Losses Related to Procurement of Goods and Services During the Pandemic.

¹⁰ Pendidikan Anti Korupsi, *Ibid*.

Based on the description of the case position with the defendant Robby Messa Nura, S.T., the description of the charges by the Public Prosecutor, the contents of the charges filed by the Public Prosecutor, legal facts based on the tools and evidence, and the Trial Decision, so that the Panel of Judges stated the analysis of the application of the criminal law. In this case, the Panel of Judges gave a decision which, in essence, said that the Defendant, Robby Messa Nura, S.T., was legally and convincingly proven guilty of committing a criminal act of corruption which was carried out together as in the Primary Indictment as regulated and threatened with criminal penalties in Article 2 paragraph (1) Jo. Article 18 paragraph (1), paragraph (2) and paragraph (3) of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption jo. Article 55 paragraph (1) 1 of the Criminal Code sentences the Defendant Robby Messa Nura S.T. to 10 (10) years in prison and a fine of Rp. 400,000,000.00 (four hundred million rupiah) and sentences Defendant Robby Messa Nura, S.T., to pay compensation of Rp. 15,860,223,801.80 (fifteen billion eight hundred sixty million two hundred twenty-three thousand eight hundred and one point eighty cents).

Considering that the Public Prosecutor has charged the Defendant with subsidiary charges, the Panel of Judges will first consider the primary charge in Article 2 Paragraph (1) Jo. Article 18 paragraph (1), paragraph (2) and paragraph (3) of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, the elements of which are as follows:

a. Each Person;

The panel of judges believes that to prove that a person is a legal subject who can be held responsible for his actions, it must first be proven that the person is the perpetrator of the crime. The defendant in this case is

Robby Messa Nura, S.T., who has admitted the contents of the indictment and his identity. During the trial, the facts showed that the defendant was physically and mentally healthy and could answer questions well. This indicates that he can be responsible for his actions. In addition, the defendant is also known as a provider of PPE for Medical Personnel in various health facilities in 2020. Considering the abovementioned matters, the Panel thinks everyone has met the requirements.

b. Unlawfully;

According to Article 2 Paragraph (1) of Law Number 31 of 1999, "unlawfully" is limited to violating formal law after the Constitutional Court Decision. Robby Messa Nura, ST, was charged as the controller of the provider of goods/services for the Procurement of Goods and Services (Other Medical Devices) Unexpected Expenditures of the North Sumatra Provincial Budget for the 2020 Fiscal Year for Handling COVID-19 in North Sumatra Province together with Dr. [witness name]. Alwi Mujahit Hasibuan, M.Kes., (Defendant in a separate file) served as Head of the North Sumatra Provincial Health Office in 2020 and also as Budget User based on the Decree of the Governor of North Sumatra No.188.44/821/KPTS/2019 dated December 26, 2019, with a budget of IDR.50,356,035,000.00 (Fifty billion three hundred fifty-six million thirty-five thousand rupiahs). The Covid-19 Facilities and Equipment Procurement Program in North Sumatra Province in the 2020 Fiscal Year uses Unexpected Expenditure funds. This includes Personal Protective Equipment (PPE) for medical personnel at Referral Hospitals, Emergency Hospitals, Health Centers, and Buffer stock of the Health Office. Dr will follow up on efforts to prevent the Covid-19 outbreak. XXX. Alwi Mujahit Hasibuan, M.Kes, as the Head of the Office and Budget User, appointed Ferdinand Hamzah as the Commitment Making Officer through the Decree of the Head of the North Sumatra Provincial Health Office No. Letter numbered 444.4 / 6602 / -Dinkes / V / 2020 issued on May 26, 2020. Dr. was appointed as a witness. Aris Yudhariansyah was appointed as the Technical Implementation Officer (PPTK) by the Head of the North Sumatra Provincial Health Office through Decree No. 900/6606/V/Dinkes/2020 dated

May 26, 2020. In April 2020, before the provision of Personal Protective Equipment (PPE) for medical personnel at referral hospitals, emergency hospitals, health centers, and buffer stock of the Health Office, Defendant Robby Messa Nura, ST, went to the North Sumatra Provincial Health Office and met with Dr. in his office. Aris Yudhariansyah is the secretary of the office and a doctor. Aris Yudhariansyah asked for help from Ferdinand Hamzah, SKM, as the PPK of the North Sumatra Provincial Health Office and Haryati (Provincial Health Office Technical Team) introduced defendant Robby Messa Nura, ST, as an entrepreneur who would cooperate in providing Personal Protective Equipment (PPE) using Unexpected Cost funds for handling the National disaster in the form of Covid-19.

Provision of PPE for medical personnel at Referral Hospitals, Emergency Hospitals, Health Centers, and Buffer stock Dinkes, the Head of the North Sumatra Provincial Health Office, issued Letter Number 000.027/8993/Dinkes/Covid-19/V/2020 dated May 26, 2020, to the Commitment Making Officer. The letter gave orders to Ferdinan Hamzah, as PPK, to procure goods/services to anticipate and handle the impact of the transmission of COVID-19. Payment to PT. Praktek Sadado Sejahtera Medika was made without proof of reasonable prices and violated the provisions of SE LKPP No. In 2020, a permit letter from BNPB was not attached for an order worth IDR 24,007,295,676.80. The transaction had fictitious payments and price differences, such as fake purchases of 45,000 cover. All shirts totaling IDR 9,810,000,000.00 (45,000 x IDR 218,000) cannot be accounted for. Price Inflation: The difference in payment of Rp14,197,295,676.80 consists of:

- 1) Cover All shirts: IDR 6,613,000,000.00 (minus IDR 3,197,000,000.00);
- 2) Helmet/Face Protective Shield: IDR 613,937,500.00 (minus IDR 964,562,500.00);
- 3) Booth Shoes: IDR 688,875,000.00 (minus IDR 411,125,000.00);
- 4) Long Gloves: IDR 1,941,750,000.00 (less IDR 983,250,000.00);
- 5) Handscoon: IDR 447,158,176.80 (less IDR 128,841,823.20);
- 6) N95 Mask: IDR 2,522,000,000.00 (less IDR 8,970,000,000.00);

- 7) Surgical Mask: IDR 1,342,000,000.00 (less IDR 1,058,000,000.00);
- 8) Shoe Cover: IDR 18,900,000.00 (less IDR 227,700,000.00);
- 9) Apron: IDR 9,675,000.00 (minus IDR 29,325,000.00).

Furthermore, Muhammad Suprianto only signed the document on the orders of Defendant Robby Messa Nura, ST, in the 2020 Personal Protective Equipment (PPE) Provision program for COVID-19. The judges think that Defendant Robby Messa Nura, ST is responsible as the controller of the Procurement of Goods and Services (Other Medical Devices) for Unexpected Expenditures of the North Sumatra Provincial Budget for the 2020 Fiscal Year together with Witness Dr. Alwi Mujahit Hasibuan, M.Kes as the Head of the North Sumatra Provincial Health Office has taken actions that have caused state financial losses that are contrary to the following laws and regulations; a) Law No. 17 of 2003 regulates State Finances, as stated in Article 3 paragraph (1). Article 34 paragraph (2) and b) Law No. 1 of 2004 concerning State Treasury regulates the following:

- a. Article 18 paragraph (1)
- b. Article 18 paragraph (2)
- c. Article 18 paragraph (3)

Presidential Regulation Number 16 of 2018 states the Government Procurement of Goods/Services rules. Several regulated things include Article 6, Article 7, Article 17 paragraph (1), and 91 paragraph (1). Regulation of the Minister of Home Affairs No. 20 of 2018 concerning Guidelines for the Provision of Electronic Public Services. Law Number 13 of 2006 states the rules on regional financial management. The rules were amended by Regulation of the Minister of Home Affairs Number 59 of 2007 and last amended by Regulation of the Minister of Home Affairs Number 21 of 2011 concerning Guidelines for Regional Financial Management. Article 5 and Article 10 of the law relate to the duties of the Budget User Authority. LKPP Regulation Number 13 of 2018 explains the following: LKPP Circular Letter Number 3 of 2020 determines the criteria for Providers of goods/services based on whether the Provider has ever provided similar goods/services in government agencies or is registered in the e-catalog;

Circular Letter Number 32 of 2020 from the Head of LKPP discusses the Affirmation of the Implementation of Procurement of Goods/Services during National Disasters. According to Provision 6, a reasonable price must be submitted during handover or when a post-audit is carried out. The Panel of Judges stated that the element of "unlawfully" had been fulfilled based on the above considerations.

c. Carrying out acts to enrich oneself or another person or a corporation;

The next witness is dr. Alwi Mujahit Hasibuan, M.Kes is the Head of the Service and PA. His duties and authorities include supervising PPK, disbursing funds for shopping, checking bills, and giving payment orders. Essential facts about the provision of PPE for medical personnel at the Referral Hospital were revealed when witnessed by dr. Alwi Mujahit Hasibuan, M.Kes made Letter Number 000.027/8993/Dinkes/Covid-19/V/2020 on May 26, 2020 (by evidence P 53) to Ferdinan Hamzah, who acted as PPK (Commitment Making Officer) to procure goods/services. Witness dr. Alwi Mujahit Hasibuan, M.Kes as the Head of the Service and PA and Ferdinan Hamzah as PPK for the Provision of Personal Protective Equipment (PPE) activities have paid in full, as follows:

- 1) First stage: using Payment Order No. Letter Number: 031/Dinkes/COVID-19/VI/2020.Dated June 23, 2020: Rp15,464,500,000 (fifteen billion four hundred sixty-four million five hundred thousand rupiah) has been transferred to PT Sadado Sejahtera Media's account at Bank Sumut number 101.01.04.002.4405.
- 2) Second stage: An amount of Rp24,513,500,000 (twenty-four billion five hundred thirteen million five hundred thousand rupiah) was received by PT Sadado Sejahtera Media through Payment Order Number 047/Dinkes/COVID-19/VI/2020 on June 30, 2020. The money was transferred to PT Sadado Sejahtera Media's account at Bank Sumut with account number 101.01.04.002.4405. Based on expert testimony, Dr. Muhammad Ansar, an Auditor at the Faculty of Economics and Business, Tadulako University, has found a state financial loss of Rp24,007,295,676.80 in Report Number

03.LH/ST.13056_FEB_PKKN/III/2024 issued on March 1, 2024: Alwi Mujahit Hasibuan, M.Kes in collaboration with Defendant Robby Messa Nura, with witnesses dr. Aris Yudhariansyah, MM, and other witnesses have reported that based on the Tadulako University audit, there was a state financial loss of Rp24,007,295,676.80. This loss was caused by excess payments from fake transactions and price increases that occurred under the control of Defendant Robby Messa Nura, ST. Based on the facts revealed at the trial, there was a state financial loss of Rp24,007,295,676.80, which other parties enjoyed. Although some statements were withdrawn at trial, the Panel of Judges is convinced that several parties have received money based on the confessions that have been submitted. Fauzi Nasution and M. Suprianto were charged with committing acts to enrich themselves and others. The defendants in this case received Rp. 15,820,223,801.80. The following, the element of "committing acts of enriching oneself or others or a corporation" is legally fulfilled.

d. Can harm state finances or the state economy;

To follow up on the activities of the Provision of Supporting Equipment for Covid-19 Personal Protective Equipment (PPE), then Witness Dr. Alwi Mujahit Hasibuan, M.Kes sent a letter addressed to witness Ferdinand Hamzah Siregar, SKM as PPK regarding the implementation of procurement of goods/services for PPE, namely Letter Number 000.027/8993/Dinkes/Covid-19/V/2020 dated May 26, 2020. Based on the calculation of the Auditor of the Faculty of Economics and Business, Tadulako University Number: 03.LH/ST.13056_FEB_PKKN/III/2024 dated March 1, 2024, facts were obtained regarding the Procurement of Provision of Facilities, Infrastructure, Materials and Supporting Equipment for Covid-19 in the form of Personal Protective Equipment (PPE) for North Sumatra Province in 2020 that there was a difference in payment which was a loss to the state cq the North Sumatra Provincial Government of IDR 24,007,295,676.80 (twenty-four billion seven million two hundred ninety-five thousand six hundred seventy-six rupiah and eighty cents). Based on the

description of the considerations above, the Panel of Judges thinks that the element of "can harm state finances or the state economy" has been fulfilled in the Defendant's actions.

e. The one who does it, participates in doing it and orders it to be done;

Based on the explanation above, it can be seen that Defendant, with all his actions in the process of Provision of Personal Protective Equipment (PPE) activities for the Procurement of Facilities, Infrastructure, Materials, and Supporting Equipment for COVID-19 in 2020, has committed an unlawful act. Therefore, in this study, the Panel of Judges is considered right in providing legal considerations in deciding that the Defendant was legally and convincingly proven to have violated Article 2 paragraph (1) of the Corruption Law. This is because the actions of Defendant Robby Messa Nura, ST, as the controller of the provider of goods/services for the Procurement of Goods and Services (Other Medical Devices) Unexpected Expenditures for the North Sumatra Provincial Budget for the 2020 Fiscal Year together with Witness Dr. Alwi Mujahit Hasibuan, M.Kes as the Head of the North Sumatra Provincial Health Service have committed acts that have caused state financial losses which are contrary to the legislation.

2. Law Enforcement Against Criminal Acts of Corruption, One of Which Causes State Financial Losses, Committed During the Pandemic, Implementing Perppu Number 1 of 2020, So It Contradicts Article 2 Paragraph 2 of the Corruption Crime Law

Based on the codification, it is the primary or main source of criminal law, part of public law. Criminal acts of corruption during a disaster, such as the current COVID-19 outbreak, can be threatened with the death penalty, as conveyed by the Chairman of the Corruption Eradication Commission, Firli Bahuri. This is based on the provisions of Article 2 paragraph (2) of the Corruption Law, which emphasizes that if the criminal act of corruption as referred to is carried out under certain circumstances, the death penalty can be imposed.

What is meant by certain circumstances is as stated in the Explanation of Article 2 paragraph (2) of the Corruption Law; what is meant by "certain

circumstances" in this provision are circumstances that can be used as a reason for increasing the sentence for perpetrators of corruption, namely if the crime is committed against funds allocated for dealing with dangerous situations, national natural disasters, dealing with the consequences of widespread social unrest, dealing with economic and monetary crises, and repeating criminal acts of corruption.

Thus, if based on Article 2 Paragraph 2 of the Corruption Law above and associated with the conditions of COVID-19, then criminal acts of corruption that harm state finances should be punishable by death. Still, in reality, all corruption cases committed during the COVID-19 pandemic have not been sentenced to death because they are considered to have violated the provisions of Article 2, paragraph 2. Based on research, the reason why the application of Article Paragraph 2 cannot run effectively when viewed from the decisions studied is due to many factors, including a) from the Public Prosecutor, b) from the Examining Judge's formulation of unlawful acts in Article 2, c) from the government regulation that issued Perppu Number 1 of 2020.

3. Criminal Policy in Combating Corruption in Relations Between Business Actors and Procurement Officials

Criminal Policy is part of Social Policy, which is the embodiment of Criminal Policy, which is part of Community Protection Policy and Social Welfare Policy. Criminal Policy is part of Social Policy, which is the embodiment of Criminal Policy, which is part of Community Protection Policy and Social Welfare Policy.¹¹ Criminal policy as part of legal reform based on a policy approach cannot be separated from criminal law politics. According to Mahfud MD, there is a relationship between politics and law where law is a product of politics. Law is seen as a dependent variable (affected variable), and politics is an independent variable (influential variable).¹²

In this study, research was conducted on the occurrence of criminal acts of corruption in procuring goods and services during the pandemic. During the

¹¹ Syaiful Bakhri, *Kebijakan Kriminal (Criminal Policy)*, Fakultas Hukum Universitas Muhammadiyah Jakarta, Jakarta, 2023.

¹² Mahfud MD, *Politik Hukum di Indonesia*, LP3ES, Jakarta, 1998.

COVID-19 pandemic, various cases occurred in the procurement of goods, such as errors in the specifications of the procurement of medical devices and the procurement of equipment that did not meet the standards for handling the outbreak. As happened in Nagekeo Regency, East Nusa Tenggara, November 2020. Now, investigators from the Ngada District Attorney's Office (Kejari) have increased the status of the investigation into the alleged corruption case in the procurement of health supplies in 2020 for handling COVID-19 in Nagekeo Regency 2020 from investigation to investigation.¹³

Criminal policy is needed to overcome criminal acts of corruption that often occur during the procurement of goods and services. It is a rational and organized effort by a society to overcome crime. Criminal policy, in addition to being carried out repressively through the criminal justice system (penal approach), can also be carried out non-penally through various prevention efforts without involving the criminal justice system, for example, community mental health efforts, legal counseling, civil law reform, administrative law, and so on.

Based on the explanation above, the criminal policy in overcoming corruption in the relationship between business actors and procurement officials is carried out in two ways, namely non-penal policies and penal policies, where non-penal policies are carried out by increasing supervision of the procurement of goods and services both during the planning stage, procurement stage, contract drafting and signing stage, contract implementation stage, and supervision stage, up to the reporting stage; creating and implementing systematic and modified standard operating procedures in such a way that they can adapt to the times. Meanwhile, the penal policy has been carried out by making changes to the Corruption Crime Law, including the recognition of corporations as subjects, expanding the limits of civil servants, changing the nature of material unlawfulness, changing crimes to formal crimes, expanding the boundaries of state finances/state economy, regulating extraordinary minimum threats, the existence of the death penalty and life imprisonment and recognizing trials in absentia, and recognizing electronic evidence..

¹³ Transparency International Indonesia, *Laporan/Pemantauan Pengadaan Barang dan Jasa Untuk Penanganan Pandemi Covid-19*, Transparency International Indonesia, Jakarta, 2023.

C. CONCLUSION

Regarding Decision Number 11/Pid.Sus-TPK/2023/PN Amb and Decision Number 24/Pid.Sus-TPK/2024/PN Mdn, in this study, the Panel of Judges was correct in making a decision. This means that the panel of judges was careful in considering the legal facts, which were then linked to the judge's theory, doctrine, and beliefs. This can be seen from the legal considerations used by the judge to determine the Defendant's sentence according to his actions. However, in the evidence presented by the Prosecutor, there was a difference of opinion between the Panel of Judges in Decision Number 24/Pid.Sus-TPK/2024/PN Mdn and Decision Number 11/Pid.Sus-TPK/2023/PN Amb regarding the element of "Unlawfully." This does not consider whether the defendant, as a tourism service provider, has financed or not in the procurement process. There are several reasons why the provisions of Article 2 Paragraph 2 of the Corruption Law cannot be used for perpetrators of corruption that harm state finances during the pandemic, namely: The Public Prosecutor did not use Article 2 Paragraph 2 of the Corruption Law when making the indictment.

According to the Examining Judge, the formulation of unlawful acts in Article 2 is too broad. Therefore, the Panel of Judges thinks the act falls into the category of abuse of authority as regulated in Article 3 of the Corruption Law. Regarding regulations, during the COVID-19 pandemic, Article 2 paragraph 2 only applies if the government issued Perppu Number 1 of 2020. This is because the provisions in Perppu 1/2020 can eliminate the legal responsibility of related officials when using budget allocations. Using the budget is not considered a loss to state finances; related officials cannot be punished criminally or sued civilly in carrying out their duties; and every action or decision made based on Perppu 1/2020 cannot become a state administrative dispute. Criminal policies to combat corruption between business actors and procurement officials are carried out using non-penal and penal policies. Non-penal policies include increasing supervision of the procurement of goods and services from the planning stage to the reporting stage. This consists of creating and implementing standard operating procedures that can be adjusted to the times. On the other hand, the punishment policy has been changed in the Corruption Crime Law. These changes include the recognition of corporations as

perpetrators, the expansion of the definition of civil servants, changes from violations of material law to formal, the expansion of the definition of state finances/state economy, the determination of extraordinary minimum threats, the possibility of the death penalty and life imprisonment, the recognition of trials in absentia, and the acceptance of electronic evidence..



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