

## CORRUPTION OF SOCIAL ASSISTANCE BUDGET DURING THE COVID-19 PANDEMIC

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### Abstract

*The Covid-19 pandemic that hit Indonesia became an opportunity to enrich themselves through corruption of social assistance funds. However, existing regulations do not provide a deterrent effect on the perpetrators. This research is a normative legal research (library research) using a case approach and presented in the form of descriptive analysis. The results of this study indicate that the existence of legal regulations related to corruption during the pandemic has not been fully implemented by Indonesia considering that the Corruption Law, especially Article 2 paragraph (2), is still open to multiple interpretations regarding "certain circumstances". Then the relevance of the Corruption Law to corruption during the pandemic is certainly related to its eradication to provide a deterrent effect even though the sanctions have not been applied. The government then prioritized the data management improvement program.*

*Keywords : Corruption; Social assistance; Death penalty.*

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### Abstrak

Pandemi Covid-19 yang menyerang Indonesia menjadi kesempatan memperkaya diri melalui korupsi dana bantuan sosial. Namun peraturan yang ada tidak memberikan efek jera kepada pelakunya. Penelitian ini merupakan penelitian hukum normatif (*library research*) dengan menggunakan pendekatan kasus (*case approach*) dan disajikan dalam bentuk deskriptif analisis. Hasil penelitian ini menunjukkan bahwa eskistensi pengaturan hukum terkait perbuatan korupsi di masa pandemi belum sepenuhnya mampu diterapkan oleh Indonesia mengingat UU Tipikor khususnya pasal 2 ayat (2) masih multitafsir terkait "keadaan tertentu". Kemudian relevansi undang-undang tipikor dengan perbuatan korupsi di masa pandemi tentunya ada keterkaitan dalam hal pemberantasannya untuk memberikan efek jera meskipun sanksinya belum diterapkan. Pemerintah kemudian memprioritaskan program peningkatan manajemen data.

*Kata Kunci : Korupsi, Bantuan sosial, Pidana mati.*

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## INTRODUCTION

Along with the development of the times, the increase in crime that occurs in society can be said to be higher day by day. These crimes can arise from various backgrounds, be it political, social, economic, even cultural one of the crimes that rife, and can be said to be a crime that occurs throughout the hemisphere, namely corruption. Corruption is an act to take advantage of personal interests or groups in an unauthorized manner.<sup>1</sup> The word crime in the Legal Dictionary, which is a crime that is classified as severe, more severe than just a violation; a very anti-social Act, which the state knowingly imposes punishment on the perpetrator; evil deeds; evil nature<sup>2</sup>. Crime is a deviant behavior, anyone still has the possibility to commit a crime because there are factors within and outside of a person why he committed the crime. The factors that cause criminal acts are important elements that need to be known before then determining the preventive measures and the crime in question<sup>3</sup>.

Law does not live alone in society, in an effort to be independent it is always influenced by several aspects of life that surround it, cultural, economic, political aspects and accompanied by the development of "IT" technology. Of course, vice versa, if a good law can also affect the social, cultural and economic life of the community. as once stated, "the law of social engineering Tool" Roscoe Pound. In terms of social, economic, political and cultural dominance in the state, it can affect the law or, from the law in the sense of "substantial" to the law that is "Technical" only. It happens, with the euphoria of social and economic life that materialistic tendencies and coupled with the dominant political power system in order to pursue and strengthen power, then the law will be forgotten over the economic euphoria that pursues fast-moving, as if that, changes in economic power and political strengthening, then the nation and society will advance "civilization"<sup>4</sup>.

The number of corruption crimes in our country must have created many negative impacts, both on the state and society at large. In addition to affecting the performance of government administration, corruption crimes have caused enormous damage to the survival of the nation, especially the character and integrity of the nation's next successor. So, the corruption that arises is not only shrinking the state's finances, but also is a violation of the social and economic rights of the community at large, so corruption is classified as a crime whose crackdown must be carried out with great<sup>5</sup>.

Corruption is an enemy for every country in the world, indonesia is currently arguably in a critical condition in terms of corruption, because in 76 years of independence, corruption is no longer a symptom, from central to remote areas, elites from all walks of life throughout the country have been cultivated. This situation also clearly shows how severe the impact on social humanity arising from external evil is usually. Because this crime not only harms all levels of society but can attack the morals of the next generation of the nation, damaging the balance and integrity and image of the country in an international perspective. Or it can be called a form of betrayal, namely the authorization of the people.

The problem of corruption in Indonesia has become a habit that attacks almost all parts of the life of the nation and state. Judging from the state officials who are caught corruption, is the executive, legislative, and judicial institutions. Even some of them carry out acts of self-enrichment, so the state

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<sup>1</sup> Tjhajono feri, "korupsi dan kemiskinan", (Yogyakarta : relasi inti media, 2015), h 3.

<sup>2</sup> Hamsir, Fenomena Pemahaman dan Penerapan Hakikat Makna Kata Kejahatan dan Pelanggaran Dalam, Jurnal Al-Risalah Vol.19 No.2, 2019, h 173

<sup>3</sup> Andi Rahma dan Nur Rismawati, Tinjauan Yuridis Tindak Pidana Penggelapan Jaminan Fidusia di Kota Makassar, Alauddin Law Development Journal (ALDEV) Vol.2 No.3, 2020, h.319

<sup>4</sup> . Hamsir, Fenomena Pemahaman dan Penerapan Hakikat Makna Kata Kejahatan dan Pelanggaran Dalam, Jurnal Al-Risalah Vol.19 No.2, 2019, h 175

<sup>5</sup> Lihat konsideran "UU No. 20 Tahun 2001 mengenai Perubahan atas UU No. 31 Tahun 1999 mengenai Pemberantasan Tindak Pidana Korupsi."

finds very high losses. Not only state officials, but also members of the public, academics to religious leaders were also caught in corruption cases.

This time we are shocked by the corona virus outbreak or commonly called covid-19 born in Wuhan, China. The case began in December 2019 and allegedly originated from a huanan market that sells various types of wild animal meat. The coronavirus is terrorizing the world community by taking human lives instantly. Until now there are about 200 countries in the world that have reported being affected by the corona virus. A number of efforts have been made by the government ranging from the implementation of lockdown to social distancing in countries affected by the corona virus in breaking the chain of the spread of the corona virus. The World health organization (WHO) stated that the covid-19 outbreak was an international public health emergency in January 2020 and on March 11, 2020 it was designated a global pandemic after the outbreak of this virus spread to almost all regions of the world<sup>6</sup>.

The existence of covid-19 has resulted in activities around the world being completely bent, especially the economic part, the economy is one of the staples in human life because people's daily lives are always related to economic needs. The economy can support human opportunities in meeting their needs such as food, drink, clothing, shelter, and others. The existence of a crucial economy in human life requires the state to implement regulations on the economy and ensure the economy is available in the community, citizens, especially in Indonesia who tend to prioritize themselves as a welfare state, the concept of a welfare state is that the state has the right to participate in all parts of life and the economy. Therefore, economic development is also part of the aspects that help national development in a country. The development of a good economy can maximize a national development<sup>7</sup>. So that's why as a result of Covid-19, some companies went bankrupt, stock prices plummeted, some employees were laid off, mass layoffs. This makes the increase in poverty born, while we do not know when this virus disappears<sup>8</sup>.

The condition of the Covid-19 pandemic the government has issued a government regulation in lieu of Law Number 1 of 2020 concerning State Financial Policy and financial system stability for handling the Covid-19 virus pandemic and or in order to face threats that endanger the national economy and or financial system stability, we can know that perppu is one type of government regulation (PP). PP there are 2 types, the first is to carry out the orders of the act. The second type of PP is PP in lieu of the act formed in terms of compelling interests in other words perppu is PP which is given the same authority as the act then the position of the most rational perppu in the hierarchy of legislation is in line with the act<sup>9</sup>.

From the social assistance corruption case, it can be said in the explanation of the phrase "certain circumstances" contained in the corruption law as a legal burden if corruption is committed, including in a state of national natural disaster, a state in a state of economic crisis and monoter. In certain circumstances here explained the meaning is like a national disaster, or emergency<sup>10</sup>. The death penalty sanction contained in the corruption law contained in Article 2 Paragraph (2) is the most abstract

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<sup>6</sup> Eman Supriatna, "Wabah Corona Virus Disease Covid 19 Dalam Pandangan Islam" jurnal Sosial dan Budaya Syar-I, Vol.7, Vol.6,(2020), h 556.

<sup>7</sup> Rahmat Bayu Nugroho, "Dampak Covid-19 Bagi Kegiatan Ekonomi Masyarakat", (Banjarmasin : Universitas Lambung Mangkurat, 2020), h 2.

<sup>8</sup> Mufida Anisa, "Polemik Pemberian Hukuman Mati Pelaku korupsi di Tengah Pandemi Covid 19", (Jakarta : Universitas Islam Negeri Syarif Hidayatullah, Vol.4, 2020), h 2.

<sup>9</sup> <http://lppm.unpam.ac.id/2020/04/17/tindak-pidana-korupsi-pada-saat-pandemi-covid-19/> Diakses Pada 1 Maret 2021

<sup>10</sup> <https://www.suara.com/news/2021/04/01/195321/korupsi-bansos-bupati-bandung-barat-aa-umbaradan-anaknya-raup-rp-37-m?page=all> Diakses pada 1 maret 2021.

formulation that is considered multi-interpretation in terms of the verdict handed down to the convict is still rarely handed down so that it is considered not applicable.

Based on the background above, the principal issues to be discussed are 1) How is the existence of legal arrangements related to corruption during the Covid-19 pandemic? and 2) How is the relevance of the Corruption Act to acts of corruption during the pandemic, in this case related to the Covid-19 social assistance budget and the state's legal responsibility for monitoring social assistance during the Covid-19 pandemic? This research was conducted in order to fulfill several objectives, namely to deepen knowledge about the law related to the corruption law in combating corruption during the covid-19 pandemic are to find out and analyze the quality of the law contained in the corruption law during the Covid-19 pandemic and to find out and analyze how the role of law enforcers and the relevance of the corruption law to acts of corruption during the Covid-19 pandemic.

## **METHOD**

This research uses descriptive research analysis when viewed in terms of its nature. Descriptive research analysis is research that describes a particular object and then explains things related to certain facts systematically and carefully<sup>11</sup>. Where this study describes an object that is intended to obtain a generally accepted conclusion. This research uses normative legal research or library research is to carry out research to obtain secondary data as initial material to obtain information carried out through reading books and articles, looking at legislation, and others related to this research as reference material. In this research, the author uses qualitative analysis techniques to obtain data with normative and empirical juridical approaches. Qualitative analysis is an analysis carried out by clearly describing the reality of a sentence-shaped object to display a more real and detailed reflection related to the problem so that we are easy to draw a conclusion.

## **RESULT AND DISCUSSION**

### *1. The Existence Of Legal Arrangements Related To Acts Of Corruption During The Covid-19 Pandemic*

This Covid-19 pandemic the government has issued a government regulation in lieu of Law Number 1 of 2020 which then by the House of Representatives has enacted into law Number 2 of 2020 concerning State Financial Policy and financial system stability for handling the 2019 Diasase Corona Virus pandemic (Covid-19) and/or in order to face threats that endanger the national economy and / or financial system stability State administrators who abuse their authority who commit acts of self-enrichment that can harm state finances can be prosecuted for corruption, including in the state of Disaster Management State administrators who use the Covid-19 outbreak to steal state finances<sup>12</sup>.

Government regulation in lieu of law (perpu) mentioned in Article 22 paragraph (1) of the Constitution of 1945 : "in terms of forcing a forced crisis, the president has the right to set government regulations in lieu of laws." Disaster management is a responsibility of the government because the main objective in providing care to the protection of the community from the threat of natural disasters and ensure the implementation of disaster management planned, integrated, coordinated and comprehensive. Disaster management is an activity or effort carried out in the context of prevention to

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<sup>11</sup> Mestika Zed, "Metode Penelitian Kepustakaan", (Jakarta : Yayasan Pustaka Obor Indonesia, 2014), h 1.

<sup>12</sup> Humas, "Latar Belakang Perpu Nomor 1 Tahun 2020" Situs Resmi Sekretariat Kabinet republic Indonesia <https://setkab.go.id/presiden-tinjau-vaksinasi-massal-di-terminal-kampung-rambutan/>. Diakses Pada Tanggal 10 Juni 2021

carry out preventive actions, litigation, emergency response and recovery related to disasters carried out before and after disasters<sup>13</sup>.

In the philosophy of Pancasila contained in it a thought-a thought that is critical, fundamental, rational, systematic and comprehensive (comprehensive) and this system of thought is a collection of values. In short, the value it contains can be said to be the result of consideration and judgment about the “good and bad” of something which is then used as motivation to do or not do something<sup>14</sup>.

In this position, when these values are to be realized in real life in society, nation and state, then these values are translated into a clear norm. The manifestation can be; first: legal norms, namely as a system of rules and regulations that apply (enforced) to all levels of society, and the implementation should be more pressure aimed at state officials. Because the implementation of the state cannot occur without a legal basis, the organizer should do so (norms must be established), so that the implementation of the state can go hand in hand and in line with the organizer-the state organizer is the representation of the state and thus confirms Pancasila as the source of all sources of law is not just an empty motto. Second: moral norms that semakna with, morality, character and behavior, as well as ethics. Based on this ethical norm, we want to measure good and bad, politeness and decency of Indonesian people regarding their behavior or actions. Thus, the state organizer in this position stands on two points, they are Indonesian people and at the same time (trustees) as the state organizer, or from a sociological point of view the organizer is bound to two aspects, namely individual ethics and social ethics<sup>15</sup>.

## *2. The Existence of Legal Arrangements Related to Corruption During The Pandemic*

Sanctions for corruption is one part of the Special Criminal Law in addition to having certain specifications that are different from the general criminal law, such as the violation of procedural law and when reviewed and regulated material therefore, corruption is directly or indirectly intended to suppress to a minimum the occurrence of leaks and violations of State Economic Finance. With the anticipated early and as much as possible peyangbang, it is expected that the wheel of economic and development can be implemented properly so that it will gradually bring the impact of increased development and welfare of society in general.

Meanwhile, in the Corruption Act law for state officials who take advantage of the outbreak by committing corruption as a criminal sanction is threatened with the death penalty as stated in law No. 31 of 1999 jo law No. 20 of 2001 regarding the eradication of corruption in “certain circumstances” such as during a pandemic.

The existence of the imposition of sanctions for corruption in Indonesia has been clearly regulated in Law No. 31 of 1999 and Law No. 20 of 2001 contained in Article 2 Paragraph (1) reads as follows :

“Any person who unlawfully enriches himself or another person or a corporation that can harm the state's finances or the country's economy, shall be sentenced to life imprisonment and / or imprisonment of at least 4 (four) years at the latest 20 (twenty) years and a fine of at least Rp.200,000,000.00 (Two hundred million) and at most Rp.1,000,000,000.00 (one billion rupiah).”

As for the imposition of the death penalty against perpetrators of corruption in “certain circumstances "contained in Article 2 Paragraph (2) which reads as follows :” committed in “certain circumstances”, the death penalty can be imposed”

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<sup>13</sup> Yayasan IDEP, “*Penanggulangan Bencana Berbasis Masyarakat*”, (Bali : Yayasan IDEP, 2007) h 35.

<sup>14</sup> Ashabul Kahpi, Kedudukan Pancasila Sebagai Dasar Negara Pasca TAP MPR No I/MPR/2003, *Jurnal Jurisprudentie* Vol.4 No.2, 2017, h 65.

<sup>15</sup> Ashabul Kahpi, Kedudukan Pancasila Sebagai Dasar Negara Pasca TAP MPR No I/MPR/2003, *Jurnal Jurisprudentie* Vol.4 No.2, 2017, h 65.

Article 2 Paragraph (2) states that corruption committed under “certain circumstances” is punishable by death. In the phrase “certain circumstances” according to the explanation in the discussion meeting of the special committee (special committee) of the DPR in the formation of the corruption law, it has explained what is meant by “certain circumstances”, namely national natural disasters, danger situations, moneter and economic crises. Where according to the provisions of the explanation of the Corruption Act, what is meant by “certain circumstances” in this provision is a situation that can be used as a reason for criminal weighting for perpetrators of corruption crimes, namely if the crime is committed against funds intended for the Prevention of dangerous situations, national natural disasters, the response to widespread social unrest, the response to economic and monetary crises, and the repetition of corruption.

Provisions regarding the death penalty is not contained in the main crime but formulated separately in the articles to show that the type of death penalty is really a special last resort in handling corruption. In this case, the death penalty is the toughest type of sanction that must be threatened with alternative crimes such as life imprisonment or a maximum of 20 years, so in the imposition of a toughest sanction, it requires certain conditions in order to provide limits so that multi-interpretation does not occur<sup>16</sup>.

The laws contained in various laws and regulations substantively so far are still good and feasible to realize Justice. The parties who undermine our legal order are the people involved in the enforcement process, namely: government elites, political elites, law enforcement officials (in the broadest sense) and society. All of that accumulates as a result of the format of our state whose political power goes to the power of the judiciary. The problem is systemic in nature. In the era of President Jokowi's government, this is a yellow light considering the power of the government which is so strong with the support of almost 90 % of the legislative power (DPR RI) as has happened in the era of the New Order<sup>17</sup>.

Important to realize is, first, that in the rule of Law of the Republic of Indonesia, the real supreme leader is the Constitution, namely the Constitution, according to the principle of “the rule of law, and not of man”. Secondly, the Constitution and the legal norms subordinate to it are intertwined as a single system of state rules for each citizen, which makes each citizen simultaneously his position, rights and obligations before the law and government. Third, all government actions and policies, including national development policies must be based on the rule of law that has been established first in accordance with the principle of legality. It is not necessary to cause the government process to ignore the importance of “mission driven”, because in essence the law itself is intended to function instrumental to the realization of the mission carried out<sup>18</sup>.

So it can be concluded that a natural disaster is a destruction caused by an event or series of events caused by nature, including: tsunami, earthquake, eruption, drought, flood, hurricane, and lonsor land. A disaster will be categorized as a national natural disaster if it has been clarified by the central government, as stated In Law No. 24 of 2007 on Disaster Management in Article 7 Paragraph (1) letter c which reads<sup>19</sup>.

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<sup>16</sup> Rosmaulina Munthe, “kebijakan Sanksi Pidana Mati Dalam Sistem Pemidanaan Indonesia”, (diponorogo : Universitas Diponorogo, law jurnal vol 5, 2016) h 12.

<sup>17</sup> Ahkam Jayadi, Problematika Penegakan Hukum Dan Solusinya, h 4

<sup>18</sup> Jumadi, Negara Hukum dan Pembangunan Nasional Berwawasan Hukum, Jurnal Jurisprudentie Vol.4 No.1, 2017, h 76-77

<sup>19</sup> UU No. 24 Tahun 2007, *Tentang Penanggulangan Bencana*, Pasal 7 ayat (1)



### 3. *The Relevance Of The Corruption Law To Acts Of Corruption During The Pandemic And The State's Legal Responsibility For Monitoring Social Assistance During The Pandemic*

The call of the president and vice chairman of the KPK is not without reason but because it has a clear and strong foundation, namely Article 2 Paragraph (2) of Law No. 31 of 1999 which states that corruption committed at a certain time can be punished with the death penalty. Please note that certain circumstances in question are when the country faces national disasters such as economic crises and recessions, natural disasters, and so on that can endanger the continuity and stability of the country. Not long after the statement from the Corruption Eradication Commission (KPK) on the issue of corruption in times of emergency such as the current pandemic, there has been an act of corruption involving one of the presidential aides (ministers) related to the provision of social assistance to the community which has resulted in the country experiencing major losses.

When photographing the gait of the Indonesian government in general, we can conclude that the government's efforts in fighting corruption have not reached the maximum point. This is evidenced by the still mengguritanya corruption practices in Indonesia ranging from the central level to the regional level. The repressive punishment provided has not yet had a deterrent effect. The threat of imprisonment and fines or compensation clearly stipulated in Law No. 20 of 2001 is no longer a scary thing for corruptors. Based on the corruption case that ensnared the Minister of Social Affairs, of course, this explanation can be used as a legal basis for the judge to determine the case of Juliari Peter Batubara with the death penalty for the actions he has done, looking at the aspects of position, actions and situations and conditions.

If examined in the applicable law, the government has been trying to overcome massive crimes including corruption in the legal realm. It is written in Article 2 Paragraph 2 of Law Number 20 of 2001 that corruption crimes committed during natural disasters, economic crises, and so on can be punished with the death penalty. The regulation is a progressive step from Law No. 31 of 1999 on the eradication of corruption which is still considered blunt in terms of pragmatism. Even so, most of the death row inmates recorded consisted of "blue collar" or can be referred to as non-government workers. Meanwhile, crimes involving "white collar" institutions in the state bureaucracy are often separated from the grip of applicable law. The transparency of the law itself is as if it can be bought by the parties who are at the top of the hierarchy in the economic strata. It can be concluded that the incident has deviated from the ideology of "de facto" and "de jure" that should be embedded in the minds of the Republic of Indonesia.

Seeing the amount of social assistance provided during the Corona Virus Disease 2019 (covid-19) pandemic, it is also necessary to examine the country's financial condition. State Finance is a very vital institution in a country, because this institution is closely related to the purpose of the state and how the state treasury which is filled with public money is managed to turn the wheels of government and development. If the country's finances are not managed properly, the logical consequence is that the country's goals will not be achieved. Financial management is one of the keys to the successful development and implementation of government within the framework of nation and state building. The existence of good financial management will ensure the achievement of development goals in particular, and the goals of nation and state in general. The state is a unique organization, which has coercive authority over the subjects of Personal Law who are its citizens. However, the management, management or implementation of the running of the state does not escape the accountability mechanism by the administrators, managers and administrators of the state<sup>20</sup>.

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<sup>20</sup> Holmes Sianturi, *Kedudukan Keuangan Daerah Dalam Pengelolaan Dana Hibah Dan Bantuan Sosial Berdasarkan Perspektif Keuangan Negara*, Jurnal Wawasan Yuridika, STIH Bandung, Vol. 1. No.1. Maret 2017, hlm. 87. Lihat juga Gunawan Widjaja, *Seri Keuangan Publik: Pengelolaan Kekayaan Negara Suatu Tinjauan Yuridis*, RajaGrafindo Persada, Jakarta, 2002, hlm. 2

Criminal provisions contained in law No.15 of 2004 on the examination of state financial management and accountability or abbreviated as UUP3KN, is a legal instrument that is *primum remedium*, not *ultimum remedium*. In the sense that when an act occurs in the examination of state financial management and accountability that is netted into the criminal provisions of UUP3KN, a settlement must be made based on the articles related to the act, here lies the nature of *primum remedium* compared to the nature of *ultimum remedium* because it is related to the act at the<sup>21</sup>.

The important role of supervision carried out by the community on the implementation of local government is an effort to implement good governance (good governance) in order to create a clean government from corruption, collusion and nepotism. To realize a clean and corruption-free organizer, the role of the community is important to be given wide space for community participation. Giving space to the community to participate, this is in accordance with the principle of openness in a democratic country. Therefore, in strengthening social welfare and supervision of Social Assistance Management in the midst of the 2019 Corona Virus Disease (COVID-19) global pandemic, it must continue to be increased, this is because financial management supervision is currently still vulnerable to corruption. Many cases of corruption originating from social assistance have been processed by law and this is important to be a common concern.

## CONCLUSION

The existence of the death penalty regulation still exists and maintains its truth, both in general crimes and in Special Crimes. The death penalty against special crimes such as corruption, corruption is an extraordinary crime, has a systematic and endemic nature and has a wide impact (systemic and qidespread) so that the handling carried out must cause a deterrent effect, so that the death penalty is still maintained until now, therefore the existence of legal arrangements related to corruption must really provide a deterrent effect and fear to the perpetrators of corruption.

The relevance of the Corruption Act to acts of corruption during the pandemic, which is based on Law Number 31 of 1999 jo Law Number 20 of 2001 which describes the death penalty in certain circumstances. But it seems that the application of the death penalty only focuses on actions that have occurred but does not see how to prevent it. While the responsibility of the state to supervise social assistance during a pandemic, namely by prioritizing data management improvement programs, especially data on social assistance recipients. Accurate data collection is important to run so that government data can be managed properly.

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<sup>21</sup> Muhammad Djafar Saidi, *Hukum Keuangan Negara*, (Jakarta: Rajawali Pers, 2008) hal.149-150



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