

***Rechtsvacuum* In The Conviction Of The Criminal Act Of Bribery Assistance**

Ahmad Hadi Prayitno¹
ahprayitno@unissula.ac.id

¹ Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Article Info

Received: 22 -7 - 2021
Revised: 23 - 7 - 2021
Accepted: final ready to
publish for 2021 regular
editions

Keywords:

Assistance, Conviction,
Rechtsvacuum, Bribery

Abstract

Bribery assistance perpetrators have an essential function in a series of incidents of bribery. It has juridical consequences regarding the need for a clear and definite conviction for them. The ambiguity of Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, given the position of perpetrators of bribery assistance, has had a major impact on the rechtsvacuum in the criminal justice system on bribery crimes. Based on the study of this normative method article, it was found that criminalization in bribery cases, in fact, does not only include active and passive perpetrators of bribery, but the existence of perpetrators of bribery assistance cannot be ruled out either. There is the fact that the provision for bribery assistance in Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes has resulted in a rechtsvacuum in terms of conviction in bribery cases. This situation has clearly resulted in uncertainty regarding the criminal sanction imposition for bribery assistance perpetrators.

I. Introduction

Today, law enforcement in bribery cases can still be considered less than optimal. It results from legal obstacles in law enforcement efforts in bribery cases in the country. One of the legal obstacles found was the non-operational nature of the provision regarding bribery assistance in Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. It states that "everyone who tries, assists, or conspires

evilily to commit criminal acts of corruption shall be punished with the same punishment as intended in Articles 2, 3, 5, to 14." The meaning of assistance in Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is biased. It is due to the lack of explanation regarding the meaning of assistance in Article 15 in the elucidation section of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

Assistance is essentially regulated in Article 56 of the Criminal Code, which states that: "Convicted of assisting in committing a crime:

1. Whoever intentionally assists in committing the crime;
2. Whoever intentionally provides an opportunity, effort, or information to commit the crime."

The assistance crime regulated in Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes cannot be linked to Article 103 of the Criminal Code as a bridge article. It is because Article 103 of the Criminal Code only links criminal laws outside the Criminal Code to Book I of the Criminal Code, while assistance is included in Book II of the Criminal Code. This void makes most perpetrators of bribery criminal assistance or bribery intermediaries only subject to provisions related to participation as outlined in Article 55 of the Criminal Code.

This situation can also impact the pluralism of the legal paradigm in the justice system of corruption crime in Indonesia, especially among judges as the vanguard in realizing legal justice in society. The problem of bribery and corruption initiated by bribery brokers can be seen in the regional balance fund bribery case in the 2018 Draft State Budget. In this case, the Jakarta Corruption Crime Panel of Judges found Eka Kamaluddin guilty of committing a criminal act of corruption. Together with Amin Santono as a Member of Commission XI, the House of Representatives of the Republic of Indonesia, and Yaya Purnomo as a civil servant at the Ministry of Finance, they received IDR 3.685 billion in bribes from Ahmad Ghiast, the Director of CV Iwan Binangkit, and the Regent of Central Lampung, Mustafa, through the Head of the Central Lampung Bina Marga Service, Taufik Rahman. Eka Kamaluddin was proven to have violated Article 12, point a, of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crime in conjunction with Article 55 paragraph (1), 1st, in conjunction with Article 65 paragraph (1) of the Criminal

Code. The panel of judges sentenced Eka Kamaludin to four years in prison, a fine of IDR 200 million, and subsidies for one month in prison.¹

In this case, one member of the panel of judges had a dissenting opinion in Decision Number: 76/Pid.Sus-TPK/2018/PN.Jkt.Pst regarding one of the elements in the indictment in Article 12, point a, Law on the Eradication of Corruption Act in conjunction with Article 55 paragraph (1), 1st in conjunction with Article 65 paragraph (1) of the Criminal Code. It is with the consideration that, based on the provisions in Article 12, point a, of the Law on the Eradication of Corruption Act, there are elements of civil servants and state administrators, which means that the defendant must have a position as a civil servant and state administrator. Meanwhile, Eka Kamaluddin is a consultant or private party. In the decision, considering bribery assistance, the legal subject is not a civil servant or a state administrator other than an official crime. Therefore, the element of a civil servant or state administrator for the accused, Eka Kalamuddin, was not fulfilled.² Considering that one of these elements was not fulfilled, other elements did not need to be considered. Thus, the accused should be acquitted of these charges. The same applies to the second alternative indictment, Article 11 of the Law on the Eradication of Corruption Act. In the provisions of this article, there are also elements of civil servants and state administrators as perpetrators of criminal acts.³ "The basic elements of civil servants and gifts are also applicable to civil servants, so these elements are not fulfilled; since the elements of the indictment are not fulfilled, the defendant must be acquitted of these charges."⁴ The legal vacuum related to the position of passive actors who are not state administrators in corruption crimes will result in losing the value of legal certainty, expediency, and justice.⁵

The next case is a bribery case involving the Governor of Bengkulu, Ridwan Mukti, and his wife, Lily Martini Maddari, who committed the crime of accepting

¹Case Number 76/Pid.Sus-TPK/2018/PN Jkt.Pst, accessed via <https://putusan3.mahkamahagung.go.id/direktori/putusan/534d233fce34c2effc0ce2fc2fd1c11a.html>, on May 12, 2022.

² Hisar Sitohang, Martono Anggusti, Uton Utomo, Analisis Hukum Terhadap Tindak Pidana Korupsi Dengan Penyalagunaan Jabatan Dalam Bentuk Penyuapan Aktif (Studi Putusan Nomor : 195/Pid.Sus/Tpk/2017/Pn Sby), *Patik*, Volume 07 Number 02, p. 85.

³Janpatar Simamora, Tafsir Makna Negara Hukum dalam Perspektif Undang-undang Dasar Negara Republik Indonesia Tahun 1945, *Jurnal Dinamika Hukum*, Volume 14, Number 3, September 2014, p. 558.

⁴*Loc, cit.*

⁵M Zulfikar Adhiguna, Ifahdah Pratama Haspsari, dan Dodi Jaya Wardana, Pertanggung Jawaban Pidana Suap Terhadap Tindak Pidana Yang Melibatkan Sektor Swasta, *Jurnal Justisia*, Vol. 7, No. 2, 2022, p. 366-367.

bribes from Rico Diansari, the Director of PT Rico Putra Selatan (who was prosecuted separately), caught in a Hand-Catching Operation (OTT) by the Corruption Eradication Commission (KPK) in 2017. In that event, KPK officers arrested Rico Diansari and Lily Martini Maddari shortly after Rico Diansari handed over a sum of money of IDR 1,000,000,000.- (one billion rupiah) as a commitment fee for the Implementation Project for the Development/Upgrading Activities of the Tes–Muara Aman Road (Air Dingin-Tes) and Curup–Air Dingin Road Development/Upgrade Activities to Lily Martini Maddari, the wife of Ridwan Mukti, who was governor of Bengkulu at that time. The money was handed over to them at the private home of Ridwan Mukti and Lily Martini Maddari. Furthermore, KPK officers arrested Ridwan Mukti, who was not at his house but was chairing a meeting at his office.⁶

Investigators and Prosecutors at the KPK applied Article 12, point a, an alternative to Article 11 of Law Number 31 of 1999, as amended by Law Number 20 of 2001, Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crime, in conjunction with Article 55, paragraph (1), 1st, of the Criminal Code, against Ridwan Mukti and Lily Martini Maddari, wife of Ridwan Mukti. Because the recipient of the commitment fee of IDR 1,000,000,000 (one billion rupiahs) from Rico Diansari was Lily Martini Maddari, who was not a civil servant or state administrator, as referred to in Article 12, point a, and Article 11, but had the status of the wife of Ridwan Mukti, who was then serving as the Governor of Bengkulu, Lily Martini Maddari knew or should have suspected that the money handed over by Rico Diansari was given to move Ridwan Mukti, who was then serving as the Governor of Bengkulu, to do or not do something in his position, which is contrary to its obligations, in this case, related to activities or projects carried out by the Bengkulu Provincial Government.⁷

Fundamentally, the application of conviction in cases of participation and assistance is different. While participation is regulated in Article 55 of the Criminal Code, assistance is stipulated in Article 56. It became chaotic because these two types of criminal acts are regulated as one in Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. In its development, research on bribery has been carried out by many parties, so it is necessary to know the differences

⁶ Case Number 45/Pid.Sus-TPK/2017/PN.Bgl, accessed via <https://putusan3.mahkamahagung.go.id/direktori/putusan/534d233fce34c2effc0ce2fc2fd1c11a.html>, on May 12, 2022.

⁷ Case Number 45/Pid.Sus-TPK/2017/PN.Bgl, accessed via <https://putusan3.mahkamahagung.go.id/direktori/putusan/534d233fce34c2effc0ce2fc2fd1c11a.html>, on May 12, 2022.

between bribery research conducted by other authors and the object of the author's article study. The research conducted by other parties is as follows:

1. Research by Budi Parmono, Brawijaya University, was conducted in 2011 entitled "*Abuse of Authority in Corruption Crimes in Indonesia.*" The research looked at passive bribers, or recipients of bribes and gratuities, who abuse authority as passive bribers. The author's dissertation is more related to the reformulation associated with criminal provisions regarding passive bribery corruption for legal subjects who are not civil servants or state administrators based on the value of justice.⁸
2. The research was conducted by Djamal from Sultan Agung Islamic University in 2017, entitled "*Reconstruction of Corporate Criminal Responsibility in Corruption Crimes Based on the Value of Justice.*" In this dissertation, the issue focuses on the scope of corporate responsibility in acts of corruption. However, this dissertation did not clearly discuss the corporation's position as a party involved in a criminal act of corruption. The author's dissertation is more focused on efforts to reflect on legal subjects who are not civil servants or state administrators but who take advantage of their close relationship to be actively involved and even take the initiative in realizing the crime of bribery corruption.⁹
3. Research carried out by Dina Irawati from Sultan Agung Islamic University in 2011 has the title "*Decriminalization of the Crime of Gratification into Bribery from the Perspective of Dignified Justice.*" This dissertation focuses on studies on decriminalizing criminal acts of gratification into bribery from the perspective of dignified justice. The author's dissertation is more associated with reformulation related to the criminal provisions of the criminal act of passive bribery corruption for legal subjects who are not civil servants or state administrators, which can realize justice.¹⁰

Meanwhile, the current research conducted by the author focuses more on the criminalization of bribery assistance perpetrators, which has so far experienced obstacles in its implementation.

2. Research Method

The method used in this article was doctrinal legal research. Doctrinal method is a method of legal study based on legal views or doctrines that develop and are relevant to the legal issues, where the study was related to the analysis of the

⁸<https://selma.ub.ac.id/program-doktor-ilmu-hukum-2/>, accessed on May 12, 2023.

⁹<https://pdih.unissula.ac.id/>, accessed on May 12, 2023.

¹⁰*Loc. cit.*

norms behind the text of laws and regulations, both juridically and philosophically.¹¹

3. Results and Discussion

1. Understanding the History of the Bribery Crime

Bribe (bribery) comes from the French word *briberrie*, which means 'begging' or 'vagrancy'. In Latin, it is called *bribe*, meaning a piece of given to a beggar. In its development, bribe means alms, 'blackmail', or 'extortion' concerning 'gifts received or given to influence corruptly'.¹²

It indicates that someone involved in bribery should actually be ashamed if he lives up to the meaning of the word bribe, which is disgraceful and even degrading to human dignity, especially for the bribe recipient. For Indonesia, which has been in the Reform Era since 1998, tackling corruption, which is systemic and endemic, including bribery (which former World Bank President James Wolfensohn called "the cancer of developing countries"), is one of the reform agendas to be completed. Bribery has been fundamentally criminalized through Article 209 of the Criminal Code, which regulates active bribery (*actieve omkoopng*) against civil servants. The partner of this article is Article 419 of the Criminal Code, which regulates passive bribery (*passive omkoopng*), which threatens punishment against civil servants who accept gifts or promises mentioned above. Furthermore, Article 210 of the Criminal Code stipulates the bribery of judges and advisers in court. Judges and advisers who accept bribes are subject to criminal sanctions under Article 420 of the Criminal Code. The four articles were later declared criminal acts of corruption through Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.¹³

The expansion of the criminal act of bribery in the form of retour-commission or gratuity is regulated in Article 418 of the Criminal Code. This article was later raised as a criminal act of corruption (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001). 'Gratification is a broad term for gift giving and includes giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tours, free medical treatment, and other facilities. Bribery involving the public interest (both active and passive) is criminalized through Law No. 11 of 1980.

¹¹ Sugiono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Alfabeta, Bandung, 2009, p. 29.

¹²Agustinus Edy Kristianto, http://korupsi.vivanews.com/news/read/28525-suap_korupsi_tanpa_akhir_1tgl. downloaded on Saturday, June 16, 2019, at 07.32 WIB, p.1

¹³*Loc, cit.*

Bribery is regulated by Law No. 10 of 1998 in the banking environment. Meanwhile, bribery in elections (money politics) is stipulated in Law No. 12 of 2003 and Law No. 23 of 2003. Likewise, in Law No. 32 of 2004, it is insofar as it relates to regional head elections.¹⁴

2. *Rechtsvacuum* in the Conviction of Bribery Assistance

The issue of ambiguity regarding the elements of the act of bribery assistance in Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes has resulted in a *rechtsvacuum* in the criminal justice sector for bribery assistance perpetrators. Bribery assistance perpetrators are often sentenced to Article 55 of the Criminal Code, i.e., participating in bribery. It is not true, considering that participation in the crime of bribery must place the perpetrators of participation in bribery as one of the parties with an important role in the occurrence of bribery. It is also understood that based on the provisions in Article 12, point a, of the Law on the Eradication of Corruption Crime, there are elements of civil servants and state administrators, which means that the accused subject to provisions for participating in bribery cases must have positions as civil servants and state administrators.¹⁵

Cases involving bribery assistance perpetrators, sentenced under Article 55 of the Criminal Code, occurred in various bribery cases in Indonesia. The following is a table related to several bribery cases that involved bribery assistance perpetrators other than civil servants and state officials:¹⁶

No	Case Number	Bribery Assistance Perpetrators	Chronology of the Occurrence of the Bribery Crime	Applied Sanctions	Description
1	76/Pid.Sus-TPK/2018/P N Jkt.Pst	Eka Kamaluddin	On Friday evening, May 4, 2018, at around 19.30 WIB, a meeting took place between Amin Santono, Members of Commission XI, the House of Representatives of the Republic of Indonesia, and Eka	Based on Eka Kamaluddin's actions as a bribe intermediary, he was sentenced to have committed the actions stipulated in Article 12, point a, of the Law on the Eradication of	In the bribery case between Ahmad Ghiast and Amin Santono, the position of the criminal sanction against Eka Kamaluddin as a bribe intermediary between members of the panel of judges is different. In this case,

¹⁴*Loc. cit.*

¹⁵Aidul Fitriada Azhari, Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi, *Jurnal Hukum IUS QUIA IUSTUM*, Volume 19, Number 4, October 2012, p. 490.

¹⁶Mahkamah Agung, Putusan-Putusan Terkait Pelaku Pembantuan Suap, accessed via <https://putusan3.mahkamahagung.go.id/search.html>, on April 12, 2023.

			<p>Kamaluddin, Yaya Purnomo, Directorate General of Finance, Ministry of Finance, and Ahmad Ghiast, Director of CV, Iwan Binangkit, at a restaurant in Halim Perdana Kusuma Airport. The parties scheduled the meeting to transfer money from Ahmad Ghiast to Amin Santono and Yaya Purnomo in the amount of IDR 400,000,000. The purpose of giving this money was for CV Iwan Binangkit to get projects at the Housing, Settlement Areas, and Land Services Office in Sumedang Regency worth IDR 4 billion and projects at the PUPR Service in Sumedang Regency worth IDR 21.85 billion. After carrying out a hand-catching operation by the KPK, it was found that before handing over IDR 400,000,000, Ahmad Ghiast had also transferred IDR 100,000,000 to Amin Santono.</p>	<p>Corruption Crime in conjunction with Article 55 paragraph (1) 1st in conjunction with Article 65 paragraph (1) of the Criminal Code.</p>	<p>one of the panel of judges in the decision had a different opinion. This difference is related to one of the elements in the indictment in Article 12, point a, Law on the Eradication of Corruption Crime, in conjunction with Article 55 paragraph (1) 1st in conjunction with Article 65 paragraph (1) of the Criminal Code. Based on the provisions in Article 12, point a, of the Law on the Eradication of Corruption Crime, there are elements of civil servants and state administrators, which means that the accused must have a position as a civil servant or state administrator. However, in the indictment, Eka Kamaluddin was a consultant or private party and a teacher at an Islamic boarding school. Regarding bribery assistance, the legal subject was not a civil servant or a state administrator other than an official crime. Therefore, the element of a civil servant or state administrator for the accused, Eka Kalamuddin, was not fulfilled. Considering that one of these elements was not fulfilled, other elements did not need</p>
--	--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

					to be considered. Thus, the accused should be acquitted of these charges. The same applies to the second alternative indictment, Article 11 of the Law on the Eradication of Corruption Crime.
2	45/Pid.Sus-TPK/2017/P N.Bgl.	Lily Martiani Maddari	The incident occurred on June 20, 2017, in the morning at 09.00. Jhoni Wijaya, as director of PT Statika Mitra Sarana, gave IDR 1 billion in IDR 100,000 denominations, which were packaged in A-4-sized boxes, to Rico Dian Sari, as a businessman and treasurer of the Regional Representative Council of Golkar. After that, Rico met Lily, the wife of Ridwan Mukti, the Governor of Bengkulu, at 09.30. At exactly 10:00 am, Rico was arrested by the KPK, and the KPK brought Rico back to Ridwan Mukti's house. At Ridwan Mukti's house, the KPK secured Lily and found IDR 1 billion in bribes. It was discovered that Lily was an intermediary for bribes between Jhoni Wijaya and Ridwan Mukti.	Because Lily Martiani received a commitment fee of IDR 1,000,000,000 (one billion rupiah) from Rico, she was sentenced to Article 12, point a, and Article 11 of the Law on the Eradication of Corruption Crime.	Based on Bengkulu District Court Decision No. 45/Pid.Sus-TPK/2017/ PN.Bgl, which was strengthened by High Court Decision No. 4/Pid.Sus-TPK/2018/PT.BGL, which was further strengthened by Supreme Court Decision No. 1219 K/Pid.Sus/2018, Defendant I Ridwan Mukti and Defendant II Lily Martiani Maddari were legally and convincingly proven guilty of committing the crime of corruption together, as in the indictment of Article 12, point a, Law No. 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption in conjunction with Article 55 paragraph (1) 1st of the Criminal Code. Nevertheless, the verdict against Lily is not justified because in Article 12, point a, of the Law on the Eradication of Corruption Crime, there are elements of civil servants and state administrators,

					<p>which means that the defendant must have a position as a civil servant and state administrator.</p> <p>Likewise, under Article 11 of the Law on the Eradication of Corruption, Lily was not a state administrator or civil servant.</p>
3	49/Pid.Sus-TPK/2020/P N Jkt.Pst	Andi Irfan Jaya	<p>Andi Irfan Jaya met Djoko Tjandra, Attorney Pinangki Sirna Malasari, and Advocate Anita Kolopaking on November 25, 2019. During the meeting, an action plan was produced to free Djoko Tjandra from being charged with the Bank Bali Case. Due to the action plan's results, Djoko Tjandra paid a bribe of US\$10 million. Andi Irfan Jaya became a liaison regarding the bribery transaction between Djoko Tjandra and Attorney Pinangki.</p>	<p>For his actions, Andi Irfan Jaya was sentenced to a criminal sentence as stipulated in Article 11 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.</p>	<p>Based on Court Decision Number 49/Pid.Sus-TPK/2020/PN Jkt.Pst., Andi Irfan was sentenced to sanctions as stipulated in Article 11 of the Republic of Indonesia Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. It is clearly inappropriate, considering that Article 11 has elements of actors who are civil servants or state administrators. Meanwhile, Andi Irfan was not a civil servant or a state administrator.</p>
4	97/Pid.Sus-TPK/2019/P N.Jkt.Pst	Andi Taswin Nur	<p>Andi Taswin Nur was the bribe intermediary in the bribery case against the director of PT Angkasa Pura II. As the Director of PT Industri Telekomunikasi Indonesia, Draman Mappangara, whom Andi Taswin bridged, had the intention of bribing the director of PT Angkasa Pura II so</p>	<p>For his actions, Andi Taswin was charged with Article 12, point a, Law of the Republic of Indonesia Number 20 of 2001 concerning the Eradication of Corruption in conjunction with Section 55 of the Criminal Code.</p>	<p>Based on Decision Number 97/Pid.Sus-TPK/2019/PN.Jkt.Pst , Andi Taswin was sentenced to a criminal sentence as stipulated in Article 12, point a, of the Republic of Indonesia Law Number 20 of 2001 concerning the Eradication of Corruption in conjunction with Article 55 of the Criminal Code. It is</p>

			<p>that he was willing to seek PT Industri Telekomunikasi Indonesia as a provider and worker in the semi-baggage handling procurement project. Andi Taswin is the party that lobbied and handed over money from PT Industri Telekomunikasi Indonesia to the director of PT Angkasa Pura II.</p>	<p>clearly not quite right, considering that Andi Taswin was an intermediary who was neither a directly interested party nor a civil servant; Andi Aswin was only doing his job as a liaison. It can be known that concerning Article 5 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, Andi Aswin only had the intention or mental attitude regarding efforts to offer liaison services or act as a bribe intermediary or bribe broker so that PT Industri Telekomunikasi Indonesia, as an interested party directly with the director of PT Angkasa Pura II, could be accessed more easily because of the closeness between Andi Aswin and Andra Yastrialsyah Agussalam as Director of PT Angkasa Pura II. In other words, Andi Aswin had no intention of bribing and was only an intermediary for bribes, while PT Industri Telekomunikasi Indonesia was the one to bribe.</p>
--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Assistance (*Medeplichtigheid*) is a person who intentionally provides assistance with advice, information, or opportunities to other people who commit criminal acts, where assistance is provided at the time or before the crime occurs. It is said to be assistance if there are two or more people, one as a perpetrator (*de hoofd*

dader) and the other as an assistant (*de medeplichtige*).¹⁷ The various cases above indicate that the perpetrators of bribery assistance or bribery intermediaries were mostly sentenced under the provisions of Article 55 of the Criminal Code. It is clearly not right, considering that participation and assistance have differences. In the book entitled "*The Criminal Code (KUHP) and its Complete Commentary Article by Article*," written by R. Soesilo, it is explained that what is meant by people who participate in carrying out (*medepleger*) in Article 55 of the Criminal Code are jointly carrying out. There must be at least two people, i.e., the person who committed the crime (*pleger*) and the person who participated in the crime (*medepleger*).

Meanwhile, Article 56 of the Criminal Code explains that a person "assists in committing" if he intentionally provides this assistance at the time or before (so not after) the crime is committed. If assistance is provided after the crime has been committed, the person commits an act of "conspiracy" or "resist," violating the provisions of Article 480 of the Criminal Code or the criminal act referred to in Article 221 of the Criminal Code. The explanation regarding the ambiguity of Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes has sparked a void in Criminal Law or *rechtsvacuum* in the criminalization of bribery assistance in the country.¹⁸

4. Conclusion

Criminalization in bribery cases, in reality, does not only cover active and passive perpetrators of bribery. The existence of perpetrators of bribery assistance also cannot be ruled out. Nonetheless, the provisions for bribery assistance in Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes have resulted in a *rechtsvacuum* in convictions in bribery cases. This situation has clearly resulted in uncertainty regarding the criminal sanction imposition for bribery assistance perpetrators

5. Acknowledgement

¹⁷Mahrus Ali, *Dasar-Dasar hukum pidana*, Jakarta: Sinar Grafika. 2011, p. 131.

¹⁸Muchamad Iksan, *Asas Legalitas dalam Hukum Pidana: Studi Komparatif Asas Legalitas Hukum Pidana Indonesia dan Hukum Pidana Islam (Jinayah)*, Jurnal Serambi Hukum, Volume 11, Number 1, 2017, p. 14.

The author would like to thank LPPM UNISSULA, Faculty of Law UNISSULA, Semarang, Indonesia, and all parties who have assisted during this paper's writing.

References

- Mahrus Ali, 2011, *Dasar-Dasar Hukum Pidana*, Sinar Grafika, Jakarta
- Sugiono, 2009, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Alfabeta, Bandung
- Aidul Fitriadi Azhari, Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi, *Jurnal Hukum IUS QUIA IUSTUM*, Volume 19, Number 4, October 2012
- Haposan Siallagan, "Penerapan Prinsip-Prinsip Hukum di Indonesia", *Jurnal Sosiohumaniora*, Volume 18, Number 2, July 2016
- Hisar Sitohang, Martono Anggusti, Uton Utomo, Analisis Hukum Terhadap Tindak Pidana Korupsi Dengan Penyalagunaan Jabatan Dalam Bentuk Penyuapan Aktif (Studi Putusan Nomor : 195/Pid.Sus/TPK/2017/Pn Sby), *Patik*, Volume 07 Number 02
- Janpatar Simamora, Tafsir Makna Negara Hukum dalam Perspektif Undang-undang Dasar Negara Republik Indonesia Tahun 1945, *Jurnal Dinamika Hukum*, Volume 14, Number 3, September 2014
- M Zulfikar Adhiguna, Ifahdah Pratama Haspsari, dan Dodi Jaya Wardana, Pertanggung Jawaban Pidana Suap Terhadap Tindak Pidana Yang Melibatkan Sektor Swasta, *Jurnal Justisia*, Vol. 7, No. 2, 2022
- Muchamad Iksan, Asas Legalitas dalam Hukum Pidana: Studi Komparatif Asas Legalitas Hukum Pidana Indonesia dan Hukum Pidana Islam (*Jinayah*), *Jurnal Serambi Hukum*, Volume 11, Number 1, 2017
- Case Number 76/Pid.Sus-TPK/2018/PN Jkt.Pst, accessed via <https://putusan3.mahkamahagung.go.id/direktori/putusan/534d233f34c2ef3c0ce2fc2fd1c11a.html>, on May 12, 2022.
- Case Number 45/Pid.Sus-TPK/2017/PN.Bgl, accessed via <https://putusan3.mahkamahagung.go.id/direktori/putusan/534d233f34c2ef3c0ce2fc2fd1c11a.html>, on May 12, 2022.
- Case Number 45/Pid.Sus-TPK/2017/PN.Bgl, accessed via <https://putusan3.mahkamahagung.go.id/direktori/putusan/534d233f34c2ef3c0ce2fc2fd1c11a.html>, on May 12, 2022
- Agustinus Edy Kristianto,
http://korupsi.vivanews.com/news/read/28525-suap_korupsi_tanpa_akhir_1tgl., downloaded on Saturday, June 16, 2019

Mahkamah Agung, Putusan-Putusan Terkait Pelaku Pembantuan Suap, accessed via <https://putusan3.mahkamahagung.go.id/search.html>, on April 12, 2023

<https://yurismuda.com/perbedaan-penyertaan-dan-pembantuan-dalam-tindak-pidana/>, accessed on May 12, 2023

<https://selma.ub.ac.id/program-doktor-ilmu-hukum-2/>, accessed on May 12, 2023

<https://pdih.unissula.ac.id/>, accessed on May 12, 2023