



Principles of Criminal Justice for Hoarders of Medical Devices in the Era of Pandemic Alertness

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Abstract

The complexity that arises from the balance between the motivation of the perpetrator of the crime and the situation that creates the basis for committing the crime. The emergence of scarcity due to the actions of the perpetrators of hoarding medical devices is a reality in society, so the regulation of criminal penalties must pay attention to the elements of aggravation during the emergency during the Pandemic. Thus, there are interesting legal issues to study, namely 1) What is the legal basis for the regulation of criminal penalties for perpetrators of hoarding medical devices in the era of epidemic alertness? And 2) What are the limits of hoarding medical devices in the era of epidemic alertness based on applicable positive law from the perspective of the principle of justice? The article manuscript uses a normative legal methodology with a statutory, conceptual, and case approach both in Indonesia and other countries. answering the problems contained in this article, the regulation of criminal penalties for perpetrators of hoarding medical devices in the era of epidemic alertness, both in Indonesia and the United States, aims to protect the public interest by avoiding a shortage of essential goods. Minister of Trade Regulation Number 34 of 2020, which temporarily prohibits the export of PPE during the pandemic, emphasizes that PPE is an essential item, as interpreted systematically by the Regulation. So that the Regulation becomes the legal basis for increasing criminal sanctions for perpetrators of hoarding medical devices during a crisis. The concept of criminalization of hoarding medical devices during an emergency reflects the principle of justice. Both distributive, restorative, and procedural justice. Distributive justice aims to correct the imbalance caused by the antisocial behavior of business actors who exploit emergency conditions for personal gain. Restorative justice emphasizes the restoration of losses caused by criminal acts and seeks a more humane solution by involving perpetrators, victims, and the community in the problem-solving process. And procedural justice prioritizes the rights of every individual to receive a fair and transparent legal process.

Keywords: Principles of Criminal Justice, Medical Devices, Pandemic Alertness

Introduction

Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) are the basis for calling the Republic of Indonesia a state of law. Human Rights and the guarantee of all Citizens' rights in Law and government give rise to the obligation to comply with existing Laws and Regulations ^[1]. The purpose of the Indonesian state can be understood as the realization of a prosperous, just, prosperous society, and evenly distributed both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as the implementation of firm and consistent law enforcement.

¹Rukminie Mien, Perlindungan HAM Melalui Asas Praduga Tidak Bersalah dan Asas Persamaan Kedudukan dalam Hukum pada Sistem Peradilan Pidana di Indonesia, (Bandung: Alumni, t.tp), h. 1.

According to Kansil, it is a collection of regulations in the form of orders or prohibitions with the aim of managing the rules and regulations in a society so that the community has an obligation to obey them ^[2].

Law as a part that is always in the midst of society needs to be a response to all legal problems, one of which arises at critical times, such as the epidemic alert period. The epidemic alert period by the Indonesian government is responded to with the Early Warning and Response System (hereinafter referred to as SKDR) as a monitor of the development of trends of a potential infectious disease KLB/Outbreak from time to time. Furthermore, through this system, a warning signal will be given to the program manager if the cases that occur exceed the threshold value that triggers the program to respond ^[3].

This system works by monitoring the development of trends of a potential infectious disease outbreak/KLB from time to time in a weekly period. The Early Warning and Response System was first implemented in Lampung and Bali Provinces. Then followed by South Sulawesi, West Kalimantan, South Kalimantan, Central Java and Central Sulawesi. The target is that by 2014 all provinces in Indonesia will have implemented the Early Warning and Response System ^[4].

Indonesia has a strategic geographical location and still has several potential outbreak diseases such as malaria, dengue fever, leptospirosis, diarrhea, cholera, diphtheria, anthrax, rabies, measles, pertussis, as well as the threat of new emerging and re-emerging diseases. If these diseases are not monitored and controlled, they will threaten the health of the Indonesian people and cause a larger outbreak or even spread to other neighboring countries. With this background, it is very important that the implementation of the Early Warning and Response System be improved again throughout Indonesia. Furthermore, at the end of 2019, there was a massive spread of infection known as Covid-19.

The death toll stands at 426, mostly in Wuhan and its surrounding areas, with 20,626 cases as of 4 February 2020. On 30 January 2020, the COVID-19 outbreak was declared a global health emergency by the World Health Organization (WHO). Globally, the COVID-19 situation as of 1 June 2021, at 5:06 pm CEST, had 170,426,245 confirmed cases, with 3,548,628 deaths. Vaccination against COVID-19 is one of the mitigation efforts carried out by all countries. As of 30 May 2021, 1,579,416,705 doses of vaccination had been administered globally ^[5]. In early 2020, Indonesia was faced with the Covid-19 virus outbreak until the lockdown was completely lifted in 2023 and the Covid-19 pandemic status was declared over based on Presidential Decree No. 17 of

2023 ^[6]. Since the first case was announced by President Jokowi on March 2, 2020, until April 13, 2023 there were 6,754,583 Covid-19 cases in Indonesia ^[7].

The increase in crime during the Covid-19 pandemic is one of the vertical conflicts that can be understood from two perspectives. First, the existence of the Covid-19 prevention and mitigation policy focused on limiting activities outside the home which has a significant impact on the economic stability of the community, especially the lower class community. The effect that arises from the a quo policy is the emergence of crime as a shortcut. Second, the Covid-19 prevention and mitigation policy has released more than 30,000 prisoners. Providing assimilation to prisoners who not only do not have jobs when released from prison, but are faced with the reality of the difficulty of finding work due to policies issued by the Government. The shortcut taken by these former prisoners is to return to committing crimes ^[8].

The Indonesian National Police in its data shows a significant increase in the crime rate in Week 24 of 2020 with 38.45% disruption of national order and security, namely there were 4,244 criminal cases in week 23 and an increase of 5,876 cases in week 24 which were dominated by gambling crimes, motor vehicle theft, aggravated theft, and other crimes. Head of the Public Information Bureau (Karopenmas) of the Police Public Relations Division, Brigadier General (Pol) Awi Setiyono, stated that the increase in the crime rate was due to the Covid-19 Pandemic. The increase in the crime rate was due to the exploitation of the situation by criminals ^[9].

One form of crime that is a form of exploitation of the situation by the perpetrator is hoarding of medical devices during the pandemic. The Covid-19 pandemic has had a major impact on the order of society's life, not only from the victims who fell and died, to the crimes that occurred based on human ambition, namely hoarding of medical devices during the pandemic. During the Covid-19 period, the Covid-19 Handling Task Force and the Police revealed at least 12 cases of hoarding of masks and hand sanitizers throughout Indonesia with 25 people as suspects ^[10].

The complexity of crime in the era of epidemic alertness is related to the theory of criminology by Albert J. Reiss, namely Personal and Social Control, which essentially states that the ability of individuals to reject the fulfillment of needs through methods that are contrary to the norms and rules of society. Social control is understood as the ability of groups or social institutions to create norms and rules that can be generally obeyed ^[11]. There is a causal relationship between the regulations made and the interests of individuals in fulfilling needs in line with the reality during the Covid-19 pandemic. Complexity arises from the balance between the

² C.S.T Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 1989'), h. 38.

³ Dinas Kesehatan Provinsi Gorontalo, *Apa Pengertian dari SKDR*, 2019, <https://dinkes.gorontaloprov.go.id/apa-pengertian-dari-skdr/>, diakses pada 6 Oktober 2024.

⁴ Ibid.

⁵ Tim Kerja Surveilans Direktorat Surveilans dan Kekarantinaan Kesehatan, *Pedoman Sistem Kewaspadaan Dini dan Respon (SKDR) Penyakit Potensial KLB/Wabah*, (Jakarta: Kementerian Kesehatan Republik Indonesia, 2023), hlm. 3.

⁶ JDIH Kemenko Bidang Kemaritiman dan Investasi, "Keppres 17/2023: Berakhimya Status Pandemi Covid-19 di Indonesia", 20 September 2023, <https://jdih.maritim.go.id/berita/keppres-172023-berakhimya-status-pandemi-covid-19-di-indonesia>, diakses pada 10 February 2024.

⁷ Nurul Ulya & Icha Rastika, "Update 13 April 2023: Kasus Covid-19 bertambah 990 dalam Sehari, Totalnya Jadi 6.754.583", 13 April 2023,

https://nasional.kompas.com/read/2023/04/13/17560531/update-13-april-2023-kasus-covid-19-bertambah-990-dalam-sehari-totalnya-jadi?lgn_method=google, diakses pada 10 Februari 2024.

⁸ A.M Hasan, "Asesmen dan Mitigasi Konflik di Tengah Pandemi Covid 19 di Indonesia" *The Insight*, Vol. 16, No. 4 (2020), h. 3-4.

⁹ Binus University Character Building Development Center, "Analisis Kasus Kejahatan di Indonesia berdasarkan Perspektif Sila Ke-2 Pancasila", https://nasional.kompas.com/read/2023/04/13/17560531/update-13-april-2023-kasus-covid-19-bertambah-990-dalam-sehari-totalnya-jadi?lgn_method=google, Diakses 10 Februari 2024.

¹⁰ Polri Tindak 12 Kasus penimbunan Masker dan Hand Sanitizer, Antara News, <https://www.antaranews.com/berita/1338754/polri-tindak-12-kasus-penimbunan-masker-dan-hand-sanitizer>, diakses pada 04 Maret 2024.

¹¹ T. Santoso & Z.E Achjani, *Kriminologi*, (Jakarta: Rajawali, 2003).

motivation of criminals and the situation that creates the basis for committing crimes during Covid-19.

The emergence of scarcity due to the actions of perpetrators of hoarding medical devices is a reality in society, thus the regulation of criminal penalties must pay attention to the elements of aggravation during the emergency period during the Pandemic. So the legal issues regarding the principle of justice in criminal penalties against perpetrators of hoarding medical devices in the era of epidemic alertness are as follows: 1). What is the legal basis for the regulation of criminal penalties against perpetrators of hoarding medical devices in the era of epidemic alertness? And 2). What are the limitations of hoarding medical devices in the era of epidemic alertness based on applicable positive law from the perspective of the principle of justice?

Research Method

Research is an effort to collect and explore the relationship between various facts that are the focus of research. The research process involves the application of certain methods to analyze the object of the problem being studied, and the selection of research methods is carried out through structured planning. The research method applied in this study is a legal approach, which involves an analysis of all laws and regulations relevant to the legal issues discussed^[12]. In compiling this article, three main problem approaches are used: the statute approach, the conceptual approach, and the comparative approach.

Discussion

1. Legal Basis for Criminal Regulations for Hoarders of Medical Devices in the Era of Epidemic Alertness

Article 1 paragraph (31) of Law No. 17 of 2023 concerning Health states that "Outbreak Alertness is a series of activities as a response to the possibility of an Outbreak." Outbreak alertness is a series of activities carried out as a form of response to the potential for an outbreak of disease. This activity involves prevention efforts, early detection, and preparation of the health system to respond quickly if the spread of disease occurs. In addition, outbreak alertness also includes educating the public about the early symptoms of the disease, as well as the steps that must be taken to prevent transmission. All of these efforts aim to minimize the impact caused by the outbreak and protect public health as a whole. More broadly, outbreak alertness also involves coordination between the government, health institutions, and the community to ensure readiness and effective response. The government needs to ensure that there are appropriate policies, adequate resource allocation, and training for medical personnel to handle emergency situations. The community is also expected to play an active role in maintaining cleanliness, following health protocols, and reporting symptoms so that outbreak detection can be carried out as quickly as possible. With high alertness, it is hoped that disease outbreaks can be controlled more effectively and their impacts can be minimized. This is also related to the phenomenon of the Covid-19 Pandemic several years ago.

Outbreaks and pandemics, such as COVID-19, create major challenges for health systems in various countries, including Indonesia. One of the serious impacts of this situation is the violation of business ethics committed by individuals who hoard medical devices and medicines to gain profit. The practice of hoarding medical devices during an outbreak not only creates a shortage of essential goods but can also pose a serious threat to public safety. Therefore, a strong legal basis is needed to deal with perpetrators of hoarding medical devices through criminal law^[13].

Referring to Circular Letter Number HK.02.02/I/385/2020 Concerning the Use of Masks and Provision of Hand Washing Facilities with Soap (CTPS) to Prevent Transmission of Coronavirus Disease 19 (Covid-19) issued by the Ministry of Health of the Republic of Indonesia, it states that the Ministry of Health has appealed to the Head of the Provincial Health Office and the Head of the Regency/City Health Office to implement the Everyone Wears a Mask Movement and provide CTPS Facilities by carrying out several activities, namely by compiling regulations that require people to wear masks when doing activities outside the home. These provisions can be interpreted as the basis for requiring people to wear masks as a preventive measure against Covid-19. So anyone who does not implement the regulations as stipulated is considered to have violated the law and will be subject to sanctions^[14].

The policy has triggered an increase in sales of health products such as masks and antiseptic fluids, based on data since February 2020, there has been a shortage that has resulted in an increase in the selling price of medical devices during the Covid-19 emergency. Data from the Center for Domestic Trade Studies in 2020 stated that N95 masks, which are usually sold for IDR 195,000 per box, are now IDR 1.6 million per box containing 20 pieces. Meanwhile, regular face masks priced at IDR 15,000 to IDR 20,000 per box are now IDR 350,000 per box containing 50 pieces^[15], and the price of antiseptic fluid for hands (hand sanitizer) which usually ranges from IDR 15,000 to IDR 20,000, on average has become above IDR 40,000^[16]. Not only is there a problem of scarcity, the high demand for health products related to self-protection from Covid-19 transmission has led to the emergence of several traders who sell these health products with low quality.

Based on data from the Central Statistics Agency, the realization of export volume for mask products (surgical masks and others) experienced a significant spike in January 2020, when several countries in the world had been affected by the Covid-19 virus. The realization of mask export volume in January 2020 reached 2,312 tons or increased by more than 2000% when compared to the realization of exports in the previous month (December 2020). The increase in exports occurred for mask products made of non-woven materials (other than surgical masks). In addition, for surgical masks, an increase in exports began to occur in February 2020, with the main export destination countries being China, Hong Kong and Singapore.

The realization of mask import volume began to experience

¹² Dyah Ochtorina Susanti dan A'an Efendi, Penelitian Hukum (Legal Research), (Jakarta: Sinar Grafika, 2015), h. 7.

¹³ <https://pen.kemenkeu.go.id/in/page/sosialekonomiglobal> diakses pada tanggal 19 Oktober 2024

¹⁴ Rica Ayu Puspita Sari, dkk, Akibat Hukum Penimbunan Alat Pelindung Diri pada Masa Pandemi Covid-19, SEIKAT, Vol. 2 No. 3, 2023, hlm. 330-331.

¹⁵ kompas.com, 2020

¹⁶ cnnindonesia.com, 2021

a significant increase in April 2020. In April 2020, the realization of mask imports reached 933.95 tons or increased by 556% when compared to the realization of imports in March 2020. This increase occurred due to the high demand for masks domestically. The increase in mask imports did not only occur for surgical masks, but also non-surgical masks. However, in June 2020, the realization of Puska Dagri, BPPP, Ministry of Trade 32 imports began to decline. This is possible considering the relatively increased production of non-surgical masks domestically^[17].

Increased demand for Personal Protective Equipment (Masks). The increase in demand has caused a shortage of Personal Protective Equipment (Masks) caused by the actions of business actors who hoard to seek profit for themselves. This hoarding has harmed the community, as is known during the Covid-19 pandemic, the community needs Personal Protective Equipment (Masks) to prevent the spread of Covid-19. The actions of business actors who hoard Personal Protective Equipment (Masks) and sell them at high prices have made it difficult for the community to obtain goods that are very much needed during the Covid-19 pandemic.

In the midst of the pandemic which is an outbreak alert, on March 5, 2020, the Head of the Public Information Division of the National Police, Senior Commissioner (Pol) Asep Adisaputra at the National Police Headquarters stated that there were 12 cases of mask hoarding with 25 people as suspects spread across the jurisdiction of the Metro Jaya Police, West Java, East Java, Central Java, Banten, Riau Islands, South Sulawesi, West Kalimantan, and East Kalimantan^[18].

According to the Great Dictionary of the Indonesian Language, hoarding is the process, method, act of hoarding, collecting (goods). A place to hoard wealth, collecting as much property as possible for personal needs and family life, without thinking about the fate of others. The law states that hoarding is the activity of hoarding goods on basic goods and important goods in certain amounts and times^[19]. Hoarding is the act of holding or storing goods in excessive quantities with the aim of influencing the price or supply of the goods in the market. In general, the act of hoarding aims to gain greater profits when the goods being hoarded are scarce in the market, so that their prices increase sharply.

In an economic context, hoarding is considered an unethical act because it has a negative impact on the availability of goods and causes market instability. According to Law Number 7 of 2014 concerning Trade, hoarding of goods is a prohibited act, especially if it is carried out on basic goods or important goods that concern the lives of many people. Article 29 of the Law prohibits the activity of holding goods with the aim of manipulating prices and creating scarcity. In the context of an epidemic or disaster, the act of hoarding medical devices that are urgently needed by the community can be categorized as a serious crime^[20].

Responding to the rampant practice of hoarding goods in Indonesia, the government has long issued legal products in the form of laws and regulations related to the prohibition of hoarding goods, and below the author will present several laws and regulations in force in Indonesia that regulate the prohibition of hoarding. Hoarding is further regulated in various regulations in Indonesia, including in the Regulation of the Minister of Trade Number 57 of 2020 which regulates the reference price and distribution of medical devices during a pandemic. Hoarding during a crisis, such as the COVID-19 pandemic, is considered an action that threatens the public interest, because it causes a shortage of goods that are crucial for dealing with the outbreak, such as masks, personal protective equipment (PPE), and medicines.

Legally, hoarding is often associated with monopolistic or cartel actions that influence market mechanisms. In Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, hoarding can be considered as a form of unfair market control. Hoarding carried out by large business actors can cause prices to skyrocket and goods needed by the community become unaffordable^[21]. A medical device is any instrument, machine, apparatus, material, or combination of these that is used for the prevention, diagnosis, treatment, and recovery of disease in humans. This definition includes products such as thermometers, medical masks, respirators, diagnostic test kits, and ventilators. Medical devices play a vital role in maintaining public health, especially in medical emergencies such as global pandemics or disease outbreaks^[22].

In the Regulation of the Minister of Health Number 62 of 2017, medical devices are divided into several classes based on the risk of their use, namely class I (low risk), class II (medium risk), and class III (high risk). Class I medical devices include products such as medical gloves and simple surgical equipment, while class III includes more complex equipment such as pacemakers and ventilators. Hoarding of medical devices during an outbreak can cause a major crisis for the health system. When items such as masks and PPE are not available on the market or can only be purchased at very high prices, medical personnel and the general public become vulnerable to exposure to viruses or diseases. This has a direct impact on the country's ability to control the spread of disease and protect public health.

One real example of the impact of hoarding of medical devices occurred during the COVID-19 pandemic, when medical masks and hand sanitizers became items that were difficult to find on the market because they were being hoarded by parties who wanted to sell them at a much higher price. This hoarding practice triggered a crisis of medical devices in various countries, including Indonesia, and made

¹⁷ Pusat Pengkajian Perdagangan Dalam Negeri, Analisis Pengawasan Perdagangan Produk Alat Kesehatan Terkait Pandemi Covid-19, (Jakarta: Badan Kebijakan Perdagangan Kementerian Perdagangan Republik Indonesia., 2020), hlm. 25-31.

¹⁸ Erna Ariyani, "Analisis Hukum terhadap Kasus Penimbunan Masker dan Hand Sanitizer di Tengah Wabah Covid-19 berdasarkan Undang-Undang Republik Indonesia Nomor 7 Tahun 2014 dan Peraturan Presiden Republik Indonesia Nomor 71 Tahun 2015", *Varia Hukum*, Vol. 3 No. 1 (2021), h. 9.

¹⁹ Tantri Suherli, Upaya Menanggulangi Tindak Pidana dan Penerapan Sanksi Pidana Pelaku Penimbunan Beras (Studi pada Polres Serdang Bedagai), *Jurnal Hukum Bisnis Volume: 12 Nomor 3 Mei 2023*, h.131

²⁰ Abdi, Aspek Hukum Tindak Pidana Penyimpanan/ Barang Kebutuhan Pokok Dan Barang Penting (Studi Kasus Di Jakarta), *JURISDICTIONE* Vol. 1 No.2 2019, h.4

²¹ Mohammad Faisol Soleh, Penimbunan Alat Pelindung Diri pada Masa Pandemi Covid-19: Kajian Hukum Pidana Bidang Perlindungan Konsumen, *Undang: Jurnal Hukum* Vol. 3 No. 1 (2020), h.3

²² Ririn Teguh Ardiansyah, Pencegahan Dan Pengendalian Infeksi Di Fasilitas Kesehatan Tingkat Pertama (Fktp), *Eureka Media Aksara*, Oktober 2023 Anggota Ikapi Jawa Tengah No. 225/Jte/2021, h. 34

efforts to deal with the pandemic more difficult ^[23]. Hoarding of medical devices not only hinders people's access to needed goods, but also has the potential to increase the death rate due to the scarcity of vital equipment needed in handling the outbreak. In many countries, hoarding of medical devices is considered a violation of human rights, especially the right to receive adequate health services ^[24].

Supervision of hoarding of medical devices is a top priority for the government during the health emergency. The government has issued policies that tighten supervision of the distribution of medical devices through Presidential Regulations and related ministerial regulations, such as Presidential Regulation Number 12 of 2020 concerning handling the COVID-19 Pandemic. This policy aims to ensure that medical devices are available at reasonable prices and in sufficient quantities to meet the needs of the community. Under Indonesian criminal law, perpetrators of hoarding medical devices during an emergency can be subject to severe sanctions. Article 107 of the Trade Law threatens hoarders with a maximum prison sentence of 5 years and a fine of up to IDR 50 billion. This sanction is expected to provide a deterrent effect on perpetrators who take advantage of the crisis situation to seek personal gain.

Law enforcement against perpetrators of hoarding of medical devices in Indonesia is also supported by the active role of the police and prosecutors. Several cases of hoarding that were uncovered during the COVID-19 pandemic showed that hoarders operated in an organized manner and used hidden warehouses to store the goods they hoarded. Strict law enforcement is expected to reduce hoarding rates and ensure that the distribution of medical devices runs smoothly. Hoarding not only harms society economically, but also worsens the health emergency. Therefore, various countries have established special regulations governing the distribution and pricing of medical devices during times of crisis.

For example, in the United States, the Defense Production Act was used to prevent hoarding of essential medical devices during the COVID-19 pandemic. Hoarding of medical devices during a health emergency is a serious violation of the public interest. Therefore, strict regulations and effective law enforcement are needed to protect the public from the negative impacts of hoarding. In Indonesia, the existing legal framework needs to be strengthened with tighter supervision and increased coordination between agencies to ensure that medical devices are available to all levels of society, especially during the outbreak.

2. Limitations On Hoarding Of Medical Devices In Epidemic Alert Based On Applicable Positive Law From The Perspective Of The Principle Of Justice

The increase in crime during the Covid-19 pandemic is one of the vertical conflicts in the alertness of the outbreak that can be understood from two perspectives. First, the existence

of the Covid-19 prevention and mitigation policy focused on limiting activities outside the home which has a significant impact on the economic stability of the community, especially the lower class community. The effect that arises from the quo policy is the emergence of crime as a shortcut. Second, the Covid-19 prevention and mitigation policy has released more than 30,000 prisoners. Providing assimilation to prisoners who not only do not have jobs when released from prison, but are faced with the reality of the difficulty of finding work due to policies issued by the Government. The shortcut taken by these former prisoners is to return to committing crimes ^[25].

The Indonesian National Police in its data shows a significant increase in the crime rate in Week 24 of 2020 with 38.45% disruption of national order and security, namely there were 4,244 criminal cases in week 23 and an increase of 5,876 cases in week 24 which were dominated by gambling crimes, motor vehicle theft, aggravated theft, and other crimes. Head of the Public Information Bureau (Karopenmas) of the Police Public Relations Division, Brigadier General (Pol) Awi Setiyono, stated that the increase in the crime rate was due to the Covid-19 Pandemic. The increase in the crime rate was due to the exploitation of the situation by criminals ^[26].

One form of crime that is a form of exploitation of the situation by the perpetrator is hoarding of medical devices during the pandemic. The Covid-19 pandemic has had a major impact on the order of society's life, not only from the victims who fell and died, to the crimes that occurred based on human ambition, namely hoarding of medical devices during the pandemic. During the Covid-19 period, the Covid-19 Handling Task Force and the Police revealed at least 12 cases of hoarding of masks and hand sanitizers throughout Indonesia with 25 people as suspects ^[27].

Before understanding the limitations on hoarding medical devices during the pandemic alert period, first understand the general definition. The term "hoarding" in Indonesian refers to the illegal practice of obtaining bars or bars of goods with the aim of obtaining a piece of property from another person. Another meaning of hoarding is a way, process, act of hoarding an item. Nouns or noun classes provide the meaning of hoarding, so they can be used to describe a person, place, or all objects and everything that is objectified ^[28].

Hoarding is included in the category of economic crimes because it has a negative impact on society and the state and is included in the definition of crimes that are economically motivated and by several factors, namely internal and external factors. Violations of criminal law can be in the form of hoarding goods and/or basic necessities. The basis and guidelines for a country's legal system are regulated by criminal law, which is a component of a country's overall legal system:

1. Determining which actions may not be carried out and which actions are prohibited which have the potential to provide sanctions for those who violate them.

²³ I Gede Aditya Triyana, Sanksi Pidana Terhadap Penimbunan Masker Medis Dan Hand Sanitizer Pada Masa Pandemi Covid-19, *Jurnal Interpretasi Hukum* Vol. 2, No. 2 – Agustus 2021, h. 293

²⁴ Rica Ayu Puspita Sari, Akibat Hukum Penimbunan Alat Pelindung Diri Pada Masa Pandemi Covid-19, *Seikat: Jurnal Ilmu Sosial, Politik Dan Hukum* Vol. 2 no. 3 June 2023, h. 327

²⁵ A.M Hasan, "Asesmen dan Mitigasi Konflik di Tengah Pandemi Covid 19 di Indonesia" *The Insight*, Vol. 16, No. 4 (2020), h. 3-4.

²⁶ Binus University Character Building Development Center, "Analisis Kasus Kejahatan di Indonesia berdasarkan Perspektif Sila Ke-2 Pancasila", https://nasional.kompas.com/read/2023/04/13/17560531/update-13-april-2023-kasus-covid-19-bertambah-990-dalam-sehari-totalnya-jadi?lgm_method=google, Diakses 10 Februari 2024.

²⁷ Polri Tindak 12 Kasus penimbunan Masker dan Hand Sanitizer, Antara News, <https://www.antaranews.com/berita/1338754/polri-tindak-12-kasus-penimbunan-masker-dan-hand-sanitizer>, diakses pada 04 Maret 2024.

²⁸ www.kbbi/penimbunan.go.id

2. Knowing that these restrictions can be enforced or punished in the same way as they have been threatened.
3. Discussing how someone suspected of violating the prohibition should be punished with that person.

Hoarding is the practice of collecting large amounts of money or goods for fear that they will no longer be available if there is a shortage or price increase. The act of collecting goods so that they become scarce in the market and then selling them at very high prices, making it difficult for local residents to obtain them, is known as hoarding. Especially if the goods in the warehouse meet primary or secondary needs ^[29].

Article 29 paragraph (1), (2) and (3) of Law No. 7 of 2014 concerning Trade explains that:

1. Business actors are prohibited from storing basic necessities and/or important goods in certain quantities and at certain times when there is a shortage of goods, price fluctuations, and/or obstacles to the flow of trade in goods.
2. Business actors may store basic necessities and/or important goods in certain quantities and at certain times if they are used as raw materials or auxiliary materials in the production process or as stock of goods to be distributed.
3. Further provisions regarding the storage of basic necessities and/or important goods are regulated by or based on Presidential Regulation Article 107 of Law No. 7 of 2014 concerning Trade.

In the context of the problem of hoarding of medical devices which has an impact on the scarcity of goods and soaring prices, it indicates that the failure to realize the availability of public goods is also a sign of market failure. Thus, the government has a vital role in intervening. The hoarding of masks and hand sanitizers by the police is subject to Article 107 of the Republic of Indonesia Law Number 7 of 2014 concerning Trade, with a maximum criminal penalty of 5 years and/or a maximum fine of fifty billion rupiah. The elements in the a quo article are Business Actors as legal subjects, and storing basic necessities and/or important goods in certain quantities and times when there is a shortage of goods, price fluctuations, and/or obstacles to the flow of trade in goods ^[30].

However, Presidential Decree No. 71 of 2015 actually still provides an opportunity for the expansion of basic and important goods. This is because the provisions of Article 2 paragraph (7) stipulate that the types of basic and important goods that have been set in a limited manner can be changed based on the proposal of the minister after coordinating with the minister or head of the relevant non-ministerial government agency. This change is related to the existence of PPE which is actually very possible, especially for the category of important goods. This Presidential Decree states that the determination of the type of important goods is carried out based on the strategic nature in national development, which takes into account the provisions supporting government

programs and/or high price disparities between regions. PPE during a pandemic is an item that is very much needed to maintain the health and even safety of the community and especially medical personnel, so it is only right that there be a change related to the classification of important goods. In a pandemic situation, of course, it has also become a government program to make various efforts to reduce and inhibit the spread of this virus for which there is no cure. PPE itself is clearly very much needed in efforts to reduce and inhibit its spread. This is evident from not only recommendations, but also prohibitions on being in public spaces that do not use certain PPE. Such conditions are actually worthy of being used as a basis for classifying PPE as a type of important item ^[31].

The correlation with law enforcement in prosecuting perpetrators of hoarding medical devices in the era of epidemic alert, requires a process of legal discovery and interpretation by law enforcement officers. This situation can be based on one of the Hogeraad decisions in 1919 which understands that unlawful acts as regulated in Article 1365 of the Civil Code are not only interpreted as unlawful acts in written form but also in unwritten form. In criminal decisions, this is not easy because there are several legal principles ^[32]. The principle of legality is a fundamental principle with special characteristics, namely the prohibition of the use of analogy. This means that every law enforcer in implementing the law must not make an interpretation outside the meaning given by the law maker or equate it with something that is not the same as another. Thus, legal discovery is carried out if there is an unlawful nature in the act of violation. The existence of an unlawful nature in a criminal act is interpreted by basing it on the argument that an act can be called a criminal act if the nature of the act is in line with the intent of the intended legal rule. Thus, this becomes the basis for law enforcement officers in using legal considerations through systematic interpretation as a solution, namely an interpretation that focuses on the uniformity of the provisions of laws and regulations that regulate the same thing ^[33].

This basis also seems to be the basis for the issuance of the Minister of Trade Regulation Number 34 of 2020 concerning the Second Amendment to the Minister of Trade Regulation Number 23 of 2020 concerning the Temporary Ban on the Export of Antiseptics, Mask Raw Materials, Personal Protective Equipment and Masks, which has accommodated the ban on the export of PPE due to the increasingly unstable condition of goods during the Covid-19 pandemic. This regulation indirectly confirms that the interpretation of PPE as an important item as stipulated in the Trade Law is not an analogy, but rather a systematic interpretation of the intent of the provisions of laws and regulations that regulate similar matters.

This is also in line with the intent of accommodating the provisions on the determination of important goods as stipulated in Presidential Regulation No. 71 of 2015, which explains that the determination of important goods is based on the nature of goods that are considered strategic in national development. This similarity of intent also indirectly

²⁹ Rozalinda, *Fikih Ekonomi Syariah*, (Jakarta: Rajawali Pers, 2016), h. 364

³⁰ Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan.

³¹ Mohammad Faisol Soleh, *Penimbunan Alat Pelindung Diri pada Masa Pandemi Covid-19: Kajian Hukum Pidana Bidang Perlindungan Konsumen*, *Undang: Jurnal Hukum*, Vol. 3 No. 1, 2020, hlm. 15-16.

³² Roelof H. Haveman, *The Legality of Adat Criminal Law in Modern Indonesia*, (Jakarta: Tata Nusa, 2002), hlm. 50.

³³ Alif Khadid, *Penafsiran Hukum oleh Hakim dalam Sistem Peradilan di Indonesia*, *Al-Adl*, Vol. 6 Np. 11, 2014, hlm. 17.

reaffirms that PPE is indeed worthy of being interpreted as one of the important goods during the Covid-19 pandemic^[34]. Providing clarity on the provisions of laws and regulations into systematic policies is expected to be a priority in determining medical devices as part of essential goods. The Regulation of the Minister of Trade has provided space for the prohibition of exports of PPE as a necessity by considering the interests of the community and the state regarding the existence of these goods. This is in accordance with the reality that there is turmoil that occurs due to violations of the trade in medical devices that are hoarded and misused by business actors. These provisions are harmonized by revising the types of basic and essential goods with the proposal of the minister after coordination with the minister or head of the relevant non-ministerial government agency. The Minister of Trade through his regulations can actually encourage clarity on the position of PPE as essential goods by changing the rules regarding these types of goods. Therefore, it is not without reason that the categorization of PPE as essential goods during the Covid-19 pandemic is able to complete the abstract enforcement of criminal law on consumer protection for business actors who hoard PPE as one type of essential goods. Furthermore, the problems related to the hoarding of medical devices during the outbreak alert period are also linked to the Business Competition Law or its full nomenclature is the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition. Correlation with hoarding of medical devices, then it is relevant if the hoarding action falls into monopolistic practices and unfair business competition. The Business Competition Law classifies ten agreements and six prohibited activities. In this study, the discussion was narrowed down by discussing the prohibition of agreements and actions related to the hoarding of medical devices in the era of epidemic alert.

From a criminal law perspective, the prohibition is included as a prohibition that can be subject to criminal penalties. The prohibition on oligopolies, cartels, monopolies, and market control, based on Article 48 paragraph (1) of the Business Competition Law, is subject to a fine of 25 to 100 billion rupiah, or a maximum imprisonment in lieu of a fine of six months. For the prohibition on price fixing agreements, based on Article 48 paragraph (2), it is subject to a fine of 5 to 25 billion rupiah, or a maximum imprisonment in lieu of a fine of five months.

The difference in criminal penalties for these prohibited agreements or activities seems to be distinguished between those classified as rule of reason or *per se* illegal. Oligopolies, cartels, monopolies, and market control are classified as rule of reason, while the prohibition on price fixing agreements is classified as *per se* illegal. The accountability of a person's actions is placed in the concept/basis of thinking on whether or not the elements of a crime are proven. This means that if the elements of a criminal act are proven, then the guilt is also proven and automatically punished. This means that criminal responsibility is attached to the elements of a criminal act. If someone commits a criminal act, there must be criminal law principles in their responsibility.

One of the principles of criminal law is the principle of *nullum delictum nulla poena sine praevia lege poenali* or what is often called the principle of legality. In sentencing

someone who commits a crime, the principle of legality is used as the unwritten basis "not punished if there is no fault". The principle of legality means that an act will not be categorized as a criminal act if there are no regulations in the legislation that prohibit the act. The meaning of this understanding is that a person cannot be held accountable if the regulation is issued after the criminal act has been committed.

Justice seekers certainly expect proportional law enforcement. This means that the benefits of law are not only based on laws and regulations that in reality are still imperfect and not in line with the dynamic life of society. There is even a term that laws are formed based on the wishes of the rulers alone. The absence of clear procedures in limiting a draft law to be formed in a certain period of time, all of which shows partiality to the drafter alone.

The realization of a sense of justice began with the emergence of the theory of natural law in the time of Socrates to Francois Geny which emphasized the realization of a sense of justice. Aristotle in his work entitled *Nichomachean Ethics* explains his thoughts on justice. For Aristotle, virtue, namely obedience to the law (the law of the polis at that time, written and unwritten) is justice. In other words, justice is a virtue and this is general. Theo Huijbers explains about justice according to Aristotle in addition to general virtue, also justice as a special moral virtue, which is related to human attitudes in certain fields, namely determining good relations between people, and balance between two parties. The measure of this balance is numerical and proportional equality. This is because Aristotle understands justice in the sense of equality. In numerical equality, every human being is equated in one unit. For example, everyone is equal before the law. Then proportional equality is giving everyone what is their right, according to their abilities and achievements.

The concept of a theory of justice, political liberalism, and the law of peoples by John Rawls, which has a significant influence on the discourse of justice values, views justice as the main goal of the presence of social institutions. The sense of justice possessed by each individual cannot be set aside on the basis of the goodness of the entire community, especially for those seeking justice. Thus, it is clearly implied that the law, along with its enforcement tools, has the goal of realizing the fulfillment of the sense of justice in the nature and essence of humans as social beings. The law must be present and guarantee that each individual receives the same treatment and justice (equality) without discrimination.

Legal justice for society is not merely formal-procedural justice, justice that is based on rigid normative rules that are far from morality and human values. The opposite of formal-procedural justice is substantive justice, namely justice whose measure is not quantitative as appears in formal justice, but qualitative justice that is based on public morality and human values and is able to provide satisfaction and happiness for society.

Legal certainty, utility, and justice can only be realized with good law enforcement. Without it, justice becomes partial so that there is no value of utility other than just the creation of legal certainty. Law enforcement must be in line with society, the higher the development of society, the higher the thinking and awareness of society about the urgency of law. A sign that the law can answer the demands of the dynamics of

³⁴ Mohammad Faisol Soleh, Op.cit, hlm. 18.

society is seen in its implementation. Without a connection of principles as its core, the application of law will be empty. The complexity of crime in the era of epidemic alertness is related to the theory of criminology by Albert J. Reiss, namely Personal and Social Control, which in essence states that the ability of individuals to refuse to fulfill needs through methods that are contrary to the norms or rules of society. Social control is understood as the ability of groups or social institutions to create norms or rules that can be generally obeyed.

There is a causal relationship between the regulations made and the interests of individuals in fulfilling needs in line with the reality during the Covid-19 pandemic. Complexity arises from the balance between the motivation of the perpetrators of the crime and the situation that creates the basis for committing crimes during the Covid-19 period. The emergence of scarcity due to the actions of perpetrators of hoarding medical devices is a reality in society, thus the regulation of criminal penalties must pay attention to the elements of aggravation during the emergency period during the alert period for the outbreak.

The severity of the sentence is not a measure to state whether the prisoner is conscious or not. A severe sentence is not a guarantee to make the defendant conscious, it may even be more evil. Even a light sentence can sometimes encourage prisoners to commit crimes again. Therefore, efforts to make prisoners aware must be linked to various factors, for example whether the perpetrator of the crime has a job or not. If the perpetrator of the crime does not have a job, then the problem will remain a vicious circle, meaning that once the sentence is finished there is a tendency to commit crimes again.

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In the criminal act of hoarding medical devices, if carried out in a crisis situation, it will not only disrupt economic stability, but if there is a shortage of medical devices, community activities will be disrupted. For example, because of the rules that require people to use masks & hand sanitizers when using public facilities to prevent the spread of the virus, people need masks & hand sanitizers for their daily activities, if these medical devices are scarce on the market, then people cannot do their activities. And if the scarcity continues to occur, it is possible that people will continue to do their activities without using masks & hand sanitizers, which can increase the possibility of the spread of the virus. Based on these things, there should be different criminal sanctions imposed on perpetrators of crimes during an emergency, where it is hoped that there will be an increase in criminal sanctions, considering that the crime was committed in the midst of a crisis situation.

In criminal liability, the burden of responsibility is imposed on the perpetrator of the crime related to the basis for imposing criminal sanctions. A person will have the nature of

criminal responsibility if something or an act that is done by him is against the law, but a person can lose his nature of responsibility if an element is found in him that causes the loss of a person's ability to be responsible. Chairul Huda stated that the basis for the existence of a crime is the principle of legality, while the perpetrator can be punished on the basis of error. It is further understood that this means that a person will have criminal responsibility if he has committed an act that is wrong and against the law. In essence, criminal responsibility is a form of mechanism created in providing a reaction to a violation of a certain act that has been agreed upon.

The criminal act of hoarding medical devices during the pandemic alert period has fulfilled the concept of normative error which is an error viewed from the perspective of criminal law norms, namely intentional error and negligence error. The accountability of a person's actions is placed in the concept/basis of thinking on whether or not the elements of the crime are proven. This means that if the elements of the crime are proven, then the error is also proven and automatically punished. This means that criminal responsibility is attached to the elements of the crime. If someone commits a crime, there must be criminal law principles in their responsibility.

Regulation of the Minister of Trade Number 34 of 2020 concerning the Second Amendment to Regulation of the Minister of Trade Number 23 of 2020 concerning the Temporary Ban on the Export of Antiseptics, Mask Raw Materials, Personal Protective Equipment and Masks, which has accommodated the ban on the export of PPE due to the increasingly unstable condition of goods during the Covid-19 pandemic. The regulation indirectly confirms that the interpretation of PPE as essential goods as stipulated in the Trade Law is not an analogy, but rather a systematic interpretation of the intent of the provisions of laws that regulate similar matters. The a quo Ministerial Regulation relating to the Trade Law becomes a limitation on the legal basis for the urgency of increasing criminal penalties for the criminal act of hoarding medical devices.

Criminal penalties in the Special Criminal Law, due to the specific nature of the crime. In corruption crimes, criminal penalties are increased due to "certain circumstances", which according to Andi Hamzah, "certain circumstances" should be included in the formulation of the crime (Article 2 paragraph (2) and not included in its explanation. Basically, "certain circumstances" here are specific times when a crime is committed. Associated with the crime of hoarding medical devices during the era of epidemic alert, this is a special condition that causes a domino effect that disrupts the welfare and even public health during a crisis. The perpetrator should be able to provide accountability, as Hans Kelsen said that justice has the meaning of the existence of legal regulations, so the perpetrator's accountability is based on the laws and regulations relating to hoarding medical devices during the epidemic alert period by paying attention to the aggravation of criminal sanctions.

Thus, corporations become the focus as legal subjects, especially in specific acts committed. Its correlation with economic crimes, especially in the crime of hoarding goods, a profit approach is needed to determine who needs to be held accountable for their crimes because the purpose of the corporation is to gain the greatest possible profit. If the profit is only obtained by individuals, then there is no need to hold

the corporation as a whole accountable, but if the corporation then gains profit, then the corporation should be held accountable for its actions.

The problem with the subject of criminal acts committed by corporations is that only the principal punishment can be imposed in the form of a fine, and the type of deprivation of liberty cannot be imposed. Based on this, there will be difficulties in giving punishment only to corporations that commit crimes that are carried out with cumulative threats to different types of punishment. Even though one of the criminal threats in the formulation of criminal acts is a fine, with the cumulative threat model, the judge must impose both. This results in the threat of criminal penalties on corporations becoming non-applicable.

Conclusion

Based on the results of the analysis, the conclusions obtained from the legal issues are as follows:

1. The criminalization of perpetrators of hoarding medical devices during a crisis in Indonesia has a strong legal basis through the Infectious Disease Outbreak Law, the Health Law, and the Trade Law. In the United States, this regulation is based on the Defense Production Act of 1950 which gives the government the authority to take action against perpetrators of hoarding during an emergency. Both countries have the same goal, namely to protect the public interest by ensuring the availability of medical devices for the wider community.
2. Limits on hoarding of medical devices are regulated in positive law by considering the principles of justice which include distributive, restorative, and procedural justice. Regulation of the Minister of Trade Number 34 of 2020 prohibits the export of Personal Protective Equipment (PPE) during the pandemic, and emphasizes that medical devices are essential goods that must be evenly available. This is in accordance with Hans Kelsen's theory of justice, which assesses that justice is achieved through compliance with the rule of law, so that sanctions for hoarders are not only repressive, but also protect the welfare of society fairly.

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