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The Immunity of the Administration of State Financial Policy and Financial Stability System in Emergency

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Abstract
Officials involving in the prevention and mitigation of corona virus want to be given the right of immunity or legal immunity in implementing discretion authority as a guarantee and legal certainty that any decided policy will not be tested or used as the basis for bringing criminal action. The formation of Government Regulation in Lieu of Law (Perpu) No.1 Year 2020, which is aimed to handle the corona virus pandemic (COVID-19) actually comes with noble purpose. But the authorization of immunity right or legal immunity to the officials might cause state financial loss and tend to generate abuse of power. This study aims to study the concept of state financial loss, its accountability and legal immunity on criminal responsibility over the state financial loss as the impact of decision-making by officials in handling Covid-19. This was a legal research type that applies statute approach, conceptual approach, comparative approach, and case approach. Legal immunity is a form of legal protection for parties carrying out tasks and responsibilities under a good faith.
Keywords: State Financial Loss; Legal Immunity; Criminal Responsibility.

Introduction

Corruption is still a problem that Indonesia is struggling with. This problem often draws attention from the public with regard to its prevention and eradication. There are complex problems in doing so, in consequence, it requires commitment from all elements of the state to achieve the corruption-free goal.

Corruption eradication attempts certainly intersect with the interests of the stakeholders and parties authorized to form laws and regulations. This can be proven by the large number of parties with legislative and executive authority caught in the vortex of corruption. The public assumes that corruption eradication is one of the interesting issues at the current moment because Indonesia and the whole world

are caught in the situation of corona virus emergence that has knocked down the economy of all countries because of restriction on human movement spaces, which directly impacts the economic system stagnation.

Policy making in an emergency situation like the emergence of corona virus indeed tends to be executed by putting aside some phases or processes that should actually be passed. Putting aside phases and processes of policy-making is justified. However, at the same time, this condition raises concerns about abuse of power in an emergency situation that causes state financial loss. In an emergency situation, it is not easy for peace officers to identify the acts of abuse of power in policy making to cope with the emergency situation.

Supervision on the prevention and mitigation of corona virus is important, considering the amount of funds used by the government. The government has allocated Rp695.200.000.000.000 (six hundred ninety five trillion and two hundred billion rupiah) through the Covid-19 Handling and National Economic Recovery (PC-PEN) program. The policy of massive funds allocation is not only carried out by Indonesia since the corona virus badly impacts the health and economy of all countries. Some countries like the United States of America, China, and Japan have taken special policies in preventing and mitigating corona virus. The United States of America issued an *emergency supplemental package* for US$7.8 billion in response to the corona virus. China, on the other hand, has gradual tax cut policy, an increase for quota of special bonds to local governments, and an increase in fiscal transfers from the central government to the regions infected by the virus.[1]

Weak supervision on the use of funds in a total sum of Rp. 695,200,000,000,000 (six hundred ninety-five trillion two hundred billion rupiah) will result in large state loss. This is supported by the Chairman of Audit Board of Indonesia (BPK), Agung Firman Sampurna, who believes that there is a risk of mismanagement, waste,

[1] Aprianto Cahyo Nugroho 'Ini Negara-Negara yang Gelontorkan Stimulus untuk Tangkal Dampak Covid-19', (Bisnis.com, 2020) <https://ekonomi.bisnis.com/read/20200306/9/1209956/ini-negara-negara-yang- gelontorkan-stimulus-untuk-tangkal-dampak-covid-19> accessed 30 Mei 2021.

corruption and fraud in the management of state budget in the use of PC-PEN funds. The transfer of some budgets from other activities to funds for the prevention and mitigation of the corona virus has an important position because the use of these funds applies emergency rules. There are numerous applicable special procedures having various justified deviations. Hence, the granting of legal immunity must be based on rational considerations.

The authorization of legal immunity in the management of state financial or economy can potentially be misused by authorized officials to gain benefits for themselves and their side. If legal immunity in state financial or economy management is forced to be given in controlling extraordinary circumstances, the criteria and limits must be clear and firm to avoid multiple interpretations. Clear criteria and limits should consider Laws and Regulations Number 31 Year 1999 on the Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia Year 1999 Number 140, Supplement to the State Gazette Number 3874) jo. Laws and Regulations Number 20 Year 2001 on the Amendment of Law Number 31 Year 1999 on Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia Year 2001 Number 134, and Supplement to the State Gazette of the Republic of Indonesia Number 4150) hereinafter referred to as Law of Corruption Eradication used as the basis to prosecute criminal acts related to state financial or economic losses.

Based on the background described above, the problems to be discussed are (1) the concept of state financial loss and the responsibilities; (2) legal immunity on criminal responsibility for state financial loss. This was a legal research type that applies statute approach, conceptual approach, comparative approach, and case approach.

The Concept of State Financial Loss and the Responsibilities

The corona virus (Covid-19) pandemic has caused a tremendous impact on the nation's economy and the government has spent a great budget to help businesses and community to revive the economy cycle. State finance is a science that studies

the revenues and expenditure of a state, as well as the consequences.[2] Discussion on state financial concerns sources of state revenue, actions that lead to state expenditure, as well as types of state expenditure and the consequences of state revenues and expenditures. State financial as referred to in Law Number 17 Year 2003 concerning State Financial (State Gazette Year 2003 Number 47, Supplement to the State Gazette Number 4286), hereinafter referred to as Law on State Finances, are all rights and obligations of the state that can be valued in money, as well as everything, either in the form of money or in the form of goods, that can be used as state property in connection with the implementation of rights and obligations.

Based on the understanding of state financial above, all rights and responsibilities of the state must have economic value. If rights and responsibilities do not have economic value, they cannot be categorized as state finance. Right as referred to in state financial is a right to collect and distribute money, utilize state property to produce money, and receive any kind of payment that is the right of the state.

The definition of state financial based on the Law of Corruption Eradication is the entire wealth of the country, in any form, separated or not separated, including all parts of state assets therein as well as all rights and responsibilities arising from being in the control, management and accountability of state agency officials, both at the central and national levels; are in the control, management and accountability of State-Owned Enterprises (BUMN), Regionally Owned Enterprises (BUMD), foundations, legal entities, companies that include state capital, or companies that include third party capital based on agreements with the state. The meaning of state financial in the explanation of the Law of Corruption Eradication is broad and tends to cause debate since it intersects with other laws and regulations, such as the law that governs BUMN and limited liability companies. State finances in the Law of Corruption Eradication are not only interpreted as state-managed wealth because the separated assets are also included as state finances.

[2] M Suparmoko, *Keuangan Negara Dalam Teori Dan Praktik* (BPFE 2016).[1].

State finances are a guarantee to ensure the running of the wheels of government because the source of funding in government activities comes from state finances. Efforts to protect against state financial loss have been carried out in various ways, including using the phrase 'may harm the state finances or economy' in Article 2 and Article 3 of the Law of Corruption Eradication. However, the Constitutional Court through the Decision of the Constitutional Court Number 25/PUU-XIV/2016 has abolished the phrase 'may' in Article 2 and Article 3 of the Law of Corruption Eradication. Hence, acts against the law or abuse of authority or facilities and opportunities that qualify as criminal acts of corruption must be detrimental to state finances. The formulation of Article 2 and Article 3 of Law of Corruption Eradication prior to the Decision of Constitutional Court above provides an opportunity for state finance protection from an early age because actions which potentially harm the state finances or economy have been considered as criminal acts of corruption or completed offenses. The revocation of the phrase 'may' in Article 2 and Article 3 of the Law of Corruption Eradication generates consequences; action or act can be qualified as a criminal act of corruption as referred to in Article 2 and Article 3 of the Law of Corruption Eradication when the financial or economic loss of the state can be calculated with certainty and real. If state financial or economy loss cannot be appropriately calculated, then a criminal act as referred to in Article 2 and Article 3 of the Law of Corruption Eradication is not proven.

Criminal act as referred to in Article 2 and Article 3 of the Law of Corruption Eradication is the type of criminal act of corruption that is directly related to state financial loss. This statement is based on an argument that says other criminal acts of corruption do not directly impact to state financial or economy loss. The Corruption Eradication Commission (KPK) has named several people as suspects and currently there is a decision that has permanent legal force, but, in the process, the KPK is examining whether it is possible in this case to conduct an investigation based on the criminal act of corruption as referred to in Article 2 and Article 3 of the Law of Corruption Eradication.

With regard to the case management model carried out by the Corruption Eradication Commission, actually it has the potential to hamper efforts to recover loss or state economy. The Corruption Eradication Commission is in a hurry to determine the criminal provisions used against the suspects, thereby narrowing the choice or space to use other more appropriate legal rules. If the provisions in the criminal act of bribery are used first, *nebis in idem* is possible to happen when the case is re-submitted using the criminal provisions in Article 2 and Article 3 of the Law of Corruption Eradication. *Nebis in idem* in a case of this model can arise because the value of the bribe given is also related to the origin of the state financial loss, so the bribe value will be tried twice.

Besides, another argument to be considered first in carrying out law enforcement is the model for prosecuting criminal acts of bribery or gratification; if it is proven, then it will be continued using the provisions in Article 2 and Article 3 of the Law of Corruption Eradication, whether or not it can be justified legally; because it is related to the determination of state financial loss, whether discounts or *cashback* given to organizers by goods/services providers can be considered as state financial losses. Giving *cashback* is a criminal act of bribery that is different from the concept of state financial loss. On provision of goods/services by government, criminal acts of corruption that cause state financial loss can be differentiated into two, losses in the planning stage (self-estimated price determination that is not in accordance with procedures and planning errors) and implementation of provision of goods/services by the government (goods/services do not meet technical specifications or work volume does not match). The benchmark in determining state financial loss relating the provision of goods/services by government highly relies on technical specifications and the volume of work in accordance with the scope of work or not.

Article 2 of the Law of Corruption Eradication sets an aggravated punishment for perpetrators of criminal acts of corruption that are detrimental to state finances if it is carried out under certain circumstances. Certain circumstances as referred to in Article 2 paragraph (2) of the Law of Corruption Eradication is a burden

to perpetrators of criminal acts of corruption if the crime is committed when the country is in a state of danger in accordance with applicable laws, when a national natural disaster occurs, as a repetition corruption, or when the country is in a state of economic and monetary crisis. The President through the Presidential Decree (Keppres) of the Republic of Indonesia Number 12 Year 2020 on the Enactment of Non-Natural Disaster of Corona Virus Disease Spread 2019 (Covid-19) enacted the Covid-19 pandemic as a national disaster. So, it meets the criteria of aggravated punishment for perpetrators of criminal act of corruption as referred to in Article 2 paragraph (2) of the Law of Corruption Eradication. It is different from when the case of social assistance at the Ministry of Social Affairs is required to use criminal rules in the criminal act of bribery, certain circumstances as reasons for aggravated punishment do not apply.

Article 2 paragraph (2) of the Law of Corruption Eradication has been compiled since 1999, but it has never been applied in eradicating the criminal act of corruption that is detrimental to state financial, although some cases had met the criteria of certain circumstances. Implementation of Article 2 paragraph (2) of the Law of Corruption Eradication on the perpetrators of criminal act of corruption can cause deterrent effect. The deterrent effect is expected to bring a domino effect, so there will be no actions that are detrimental to state financial in certain circumstances. State financial losses based on Law Number 1 Year 2004 concerning State Treasury (State Gazette of the Republic of Indonesia Year 2004 Number 5, Supplement to the State Gazette of the Republic of Indonesia Number 4355), hereinafter is referred to as Law of State Treasury, are shortage of money, securities as well as real and definite amount of goods as a result of unlawful acts either intentionally or negligently. The definition of state financial loss can also be found in the Law of Audit Board of Indonesia; which is shortage of money, eligible paper as well as real and definite amount of goods as the consequences of unlawful acts either intentionally or negligently. Based on the definition of state financial loss in the Law of State Treasury and the Law of Audit Board of Indonesia, it can be concluded that state financial loss is reduced state financial as the consequences

of unlawful acts. State financial that is meant in the context of state financial loss refers to state financial concept arranged in laws and regulations.

The Law of State Treasury and Law of Audit Board of Indonesia both use intentional and negligence errors that cause state financial losses. However, both laws do not provide further discussion about the understanding and concept of negligence that cause state financial loss. The absence of the definition of negligence that causes state financial loss becomes bias because it tends to be interpreted differently.

If the concept of error that causes state financial loss is linked to the formulation of Article 2 and Article 3 of the Law of Corruption Eradication, the concept of error in the form of negligence will never been known. It is based on the argument in Article 2 and Article 3 of the Law of Corruption Eradication; there is a purpose to enrich oneself or another person or a corporation so that people who have goals must be based on the intention of doing something to achieve goals. Thus, there are different concepts between actions that are detrimental to state financial in the Law of Corruption Eradication and Law of State Treasury jo. Law of State Finance jo. Law of Audit Board of Indonesia.

Concerning the violations in managing state/regional finance, the President imposes administrative sanctions by following the provisions of law on civil servants and other parties that do not complete their responsibilities as specified in this law. In addition to being responsible to the president, non-treasurer officials and civil servants who violate the law or directly or indirectly neglect their responsibilities , and which is detrimental to state finance, are required to compensate for the loss. Responsibilities on state financial loss are considered personal responsibility if the loss is the consequence of personal error. Any party that causes the loss is not only responsible for compensating state financial losses because every state/regional loss caused by unlawful acts or someone's negligence must be immediately resolved with compensation mechanisms or criminal law enforcement mechanisms.

Responsibilities for state financial losses in the legal system in Indonesia are subject to the provisions of the Law of State Treasury, Law of State Finance and other

laws in which the settlement mechanism is subject to an administrative mechanism or non-court. Besides administration mechanism, the Law of Corruption Eradication provides two responsibility alternatives for state financial losses; through a criminal or civil refund mechanism for state financial losses. The return of state financial losses is carried out through a confiscation mechanism followed by a decision on asset confiscation in criminal case decisions and confiscation mechanisms in civil cases.

Return of state financial loss is implemented based on the principle of 'give the state its right'. This principle is a justification of levy of tax which can also be used to justify the return of state financial loss by any means that fit the laws and regulations. In simple words, state finance is the right of the country; therefore. people or parties that commit detrimental actions to state finance must return the right of the country. Besides that principle, return of state financial loss principle must be based on the principle of 'perpetrators of criminal act of corruption are not justified to obtain profits or enjoy the results of actions that are detrimental to state financial'. Perpetrators of criminal act of corruption should even be given the obligation to pay fines for taking benefits from state finances. The fines can be calculated as the interest for placing state finance under his control

The return of assets obtained from committing a criminal act of corruption is the main target in eradicating corruption, so the achievement of preventing and eradicating corruption will be measured based on the amount of state finance that is managed to be saved or returned to the state treasury.[3] The return of state financial loss is crucial and must be preferred because any program interrupted by corruption must be continued once the legal process is completed. Getting the perpetrators of criminal act of corruption imprisoned is indeed crucial. But it will have less value if none of the state finance is successfully saved during the process. Prioritizing corporal punishment to perpetrators of criminal acts of corruption without refunding state financial losses solely is to satisfy the desire to punish by people who hate corruption; however this is not constructive.

[3] Badan Pembinaan Hukum Nasional, 'Laporan Lokakarya Tentang Pengembalian Aset Negara Hasil Tindak Pidana Korupsi' (2009).[53].

Issues of criminal acts of corruption are in the form of crimes committed as the evidence of the lack of morals from the perpetrators. Criminal act of corruption is one of the main causes of the interrupted economic development of Indonesia because it is carried out widely and systematically. Therefore, it generates violations of social and economic rights of the community because of the loss of state finance or economy.[4] Corruption continues to happen even when Indonesia and the world are in the midst of a prolonged pandemic that interrupts the economic stability of all countries. This condition further emphasizes that Indonesian officials or state administrators have low morals because they still commit corruption amidst the suffering people with limited movement for working. Corruption in social assistance funds aiming to ease the burden on people affected by the Covid-19 pandemic is used as a means to increase their own wealth.

In principle, corruption means being deviant from the applicable regulations in making a decision.[5] Corruption does not basically occur in public policy or state financial management when viewed from a behavioral point of view, thus behavior that deviates from the applicable regulations in the private sector is also considered as corruption. Up to this point, Indonesia limits corruption as an act that occurs in the public sphere or when it is related to public officials and state finances or the economy. Various types of corruption above can be distinguished based on the method of committing corruption and the form of giving it. Corruption is a behavior that deviates from the purpose of granting authority. That authority should be used by a person for good not to gain benefits for himself and others instead. The power inherent in a person will tempt them to commit criminal acts of corruption. The potential to get large yet short-term profits is both a temptation and a challenge for the people with the power. Each power always contains the potential to be abused or carried out arbitrarily by violating the authority because power contains rights and authority in which it gives more positions when compared to the prosecuted

[4] Departemen Hukum dan HAM Republik Indonesia, 'Penelitian Hukum Tentang Aspek Hukum Pemberantasan Korupsi Di Indonesia' (2008).[1].

[5] Vito Tanzi, 'Corruption, Governmental Activities and Markets' (1994).

subject or justice seeker.[6] Authority is a luxury good not everyone can have. There are special or certain criteria that a person must have to get a certain position in which authority is attached to it.

Potential for abuse of authority arises because some people are interested in the authority attached to certain officials. On the other hand, the authority holder can also be tempted by the luxury or wealth offered if he uses his authority as a bargaining position against people who need it. Abuse of authority can be generated and run smoothly if there is a mutualistic symbiosis relationship between the authority holders and the person who needs the authority to get something or to fulfill their interests.

Efforts to prevent and eradicate corruption are a priority in criminal law enforcement and administration because corruption has a tremendous impact in the form of obstacles in hindering national development efforts, hindering efforts to realize national goals, threatening the whole social system, destroying the development of clean and authoritative state and government apparatuses, destroying the environment quality, and the use of national resources in order to encourage national development to not run optimally.[7] Various aspects of statehood and nationhood are distracted because a criminal act of corruption, even in certain circumstances, can trigger national riots because of distrust of the government. For example, many parties do not trust the government regarding the efforts to overcome the Covid-19 pandemic because there are parties who actually take illegal profits in the provision of social assistance.

There are many reasons underlying the public distrust in government, especially with the formation of Perpu No. 1 of 2020 jo. Law No.2 Year 2020 which is considered to open even a bigger chance for traitors to commit bad intentions, which is to take maximum advantage of the Covid-19 response budget. Formation of Perpu No.1 Year 2020 jo. Law No.2 Year 2020 is considered not to reflect society's values , so there are fears that the regulation will not work properly. Whereas the

[6] *ibid*.
[7] Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Alumni 1992).[113].

important thing to note in formatting regulation is that, in its implementation, the rules will be effective in meeting the legal needs of the community and, therefore, the rules or laws must reflect the values of society.[8]

In addition, Perpu No.1 Year 2020 jo. UU no. 2 of 2020 is also considered to be contrary to the spirit of protecting state finances, especially in preventing state financial losses. Every state financial loss does not necessarily mean that a criminal act of corruption has occurred because it must also be seen whether or not the state financial loss was made based on a bad faith or malicious intent. If it is based on bad faith or malicious intent, then the legal consequence for people who cause state financial losses is to be held accountable for their actions. Responsibility for state financial losses can be carried out through administrative mechanisms or judicial mechanisms. Judicial mechanisms can be divided into two, criminal justice or civil justice. Criminal justice mechanisms will end in the use of additional criminal sanctions in the form of replacement money or the confiscation of assets and in the civil process it will end in confiscation in the context of compensation for state financial losses. Confiscation in civil justice is still interpreted as assets confiscation efforts.

Confiscation of assets is a term in criminal law especially in cases related to assets and comes from two terms; confiscation and assets. Confiscation based on the origin of the word, confiscate, can be interpreted as an act to force the transfer of something or anything. Confiscation is a process or method to perform the action of taking/acquiring/seizing by force or violence. Confiscation in the context of confiscation of assets is defined as by force or violence because, in this case, it is a justified legal act in laws and regulations. Confiscation, according to the provisions of Article 2 letter g of UNCAC, means the permanent revocation of wealth based on a court decision or other competent authority. While in the draft law on confiscation of assets, it is defined as a forced effort to take over rights to assets or profits obtained by people from criminal acts committed either in Indonesia or foreign countries. Asset is interpreted as wealth or goods that have economic value and can be valued

[8] Muchtar Kusumaatmadja dan Lili Rasjidi, *Dasar-Dasar Filsafat Hukum* (Citra Aditya Bakti 1993).[83].

with money, and those are obtained illegally or are the results of a criminal acts. Thus, the confiscation of assets can be interpreted as an act of taking assets obtained illegally or as results of criminal acts.

Specific arrangements for confiscated goods apply for several criminal acts such as forestry crimes, money laundering, abuse and illicit trafficking of narcotics, and fisheries.[9] Additional criminal rules in the form of asset confiscation may be imposed on cases in which the defendant obtains an economically appraised advantage. Confiscation is even an obligation that must be imposed by the judge if there is real wealth or assets originating from a crime but is not demanded by the Public Prosecutor to be confiscated because the court has the right or plays an important role in confiscation of assets from the proceeds of a crime and it is based on a decision which states that the defendant is proven guilty of committing a criminal act as stated by the Public Prosecutor.[10] Confiscation of assets can be applied if the defendant is proven guilty of committing a crime and the confiscated goods are proven to be the results of a criminal act. If the origin of the assets is clear and the can be proven legally, then the assets or wealth cannot be subjected to confiscation of assets.

Responsibilities for state financial losses can be carried out through civil asset forfeiture mechanism. Civil asset forfeiture uses a legal fiction that makes it appear as if the object is guilty at the time of its use or the method of obtaining is against the law.[11] Civil asset forfeiture concerning the returning of state financial losses does not depend on criminal cases, even a free or acquittal decision will not abolish the right to sue the state in a civil manner against assets suspected of being the proceeds of or related to criminal acts of corruption. The State Attorney only needs to prove that the assets come from or are related to a criminal act of corruption, then it is sufficient to become the basis for confiscation of assets.

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[9] *ibid*.

[10] Matthew P Harrington, 'Rethinking in Rem: The Supreme Court's New (and Misguided) Approach to Civil Forfeiture' [1994] 12 Yale Law & Policy Review.[334].

[11] Irving A Plainin, 'Criminal Forfeiture: Attacking the Economic Dimension of Organized Narcotics Trafficking' (1982) 32 American University Law Review 234.

The concepts of returning state financial loss as the form of responsibilities over the state financial losses is subject to applicable rule of law. Such responsibilities over must be based on an assessment of whether or not people who commit acts that are detrimental to state finances can be held accountable. Concerning the responsibilities over state financial or economic losses in law enforcement practices in Indonesia, the term 'against the law' has a negative function. It the basis or reason for releasing the defendant from criminal responsibility for the establishment of financial or economic losses to the state as in the case of Machrus Effendi as referred to in the Jurisprudence of the Supreme Court No. 42K/Kr/1965 dated January 8, 1966. The jurisprudence of Supreme Court above has also been followed in several Supreme Court Decisions, Supreme Court Decision Number: 71/K/1970 dated 27 May, 1972, and Supreme Court Decision Number: 81/K/Kr/1973 dated 30 May, 1977. The consideration of the Supreme Court in some of these decisions is that the Supreme Court believes there are three circumstances which eliminate the nature of being against the law, those are if the state is not detrimental; public interests are served; and the defendants are not benefited.

Legal Immunity on Criminal Responsibility over State Financial Loss

Legal immunity is a common term among people, but this term is actually not familiar in criminal law. If the intended law immunity is the reason to abolish the right to sue, then criminal law recognizes reasons for legal excuse and legal justification as reasons for abolishing the crime. Legal immunity is usually attached to certain positions or professions because the grant of it is not based on actions but the authority or duty in the implementation of something. However, not all people can receive legal immunity because it is considered contrary to the principle of equality in law. Legal immunity causes different positions in law, between people with legal immunity and those who do not.

Legal immunity is distinguished into functional immunity (*ratione materiae*) and personal immunity (*ratione personae*). The concept of functional immunity is the granting of legal immunity to an official because of his position, duty and

function of acting for and on behalf of a country to commit a certain act, even though the act can in fact be punished according to the law of the country where the act is committed (*locus delicti*).[12] Basically, functional immunity is attached to the position so that anyone who occupies a position and carries out the function as intended will get legal immunity. For example, the inherent immunity attached to advocates is that advocates get immunity when carrying out their duties or defending the interests of clients. Immunities attached to advocates will be legally released when committing criminal acts but not in the context of defending the interests of clients. Meanwhile, personal immunity is defined as immunity from lawsuits that is given to state officials for actions that can be criminalized regardless whether the act is carried out in the name of the state or is a personal act. The personal immunity is attached to a diplomat. As long as he holds his position as a diplomat, the destination country of the diplomat must provide legal immunity even though the diplomat is not carrying out his duties as a diplomat. This personal immunity is often misused by diplomats to carry out actions such as violations of customs rules.

As stated earlier in the criminal law literature, there is no mention of legal immunity as a reason for abolishing a crime. The criminal law literature only contains an explanation regarding the abolition of the authority to prosecute and the reasons for the abolition of the crime. Moeljatno states that, in criminal law, there are reasons for the abolition of crime and reasons for the abolition of prosecution. The reason for abolition of crime is related to reasons of legal justification and legal excuse, there is no notion about the nature of the act or the nature of the person who commits the act, while the reason for the abolition of prosecution related to the government considers that, on the basis of benefit, there is no prosecution.[13] The reasons for the abolition of crime and the abolition of authority to prosecute a criminal are two different things because the reason for the abolition of crime resulted in criminal responsibility

[12] Arsul Sani, 'Imunitas Hukum Yang Tidak Otomatis Membuat Imun Tuntutan Hukum' (*Hukum Online*, 2020) <https://www.hukumonline.com/berita/baca/lt5eaf7c85e5406/imunitas-hukum-yang-tidak-otomatis-membuat-imun-tuntutan-hukuma?page=2> accessed 30 May 2021.

[13] Moeljatno, *Asas-Asas Hukum Pidana* (Bina Aksara 1987).

that cannot be claimed, while the abolition of authority to prosecute criminal matters related to criminal responsibility can be imposed on the perpetrator but it cannot be used as a mechanism for criminal responsibility. Hiariej states that the abolition of authority to prosecute criminal cases is related to two legal postulates; no one may be punished twice for the same act and each case has a certain time limit, by which, if it passed, criminal charges cannot be filed.[14]

Purwoleksono states that the reasons for abolition of crime can be divided into two, reasons for abolition of crime based on the law and outside the law.[15] Furthermore, the reasons for the abolition of crime based on the law consist of being unable to take responsibility, coercive power and an emergency situation, forced defense and forced defense beyond the limit, carrying out statutory regulations and carrying out office orders. On the other hand, the reasons for abolishing crimes outside the law are if they do not have any fault and are not against material law.[16]

Basically, the reason of the abolition of crime can be grouped into legal excuse and legal justification. Fletcher states that the legal justification is perpetrators committed an act that complies with provisions of the prohibition in the law but it is questionable whether the act can be justified or not. While the legal excuse for forgiveness is when perpetrators commit wrong act in accordance with the law but it is questionable whether the perpetrators can be accounted for or not.[17] Legal justification emphasizes the reasons perpetrators commit the prohibited acts to be used as benchmark in abolition of crime, while legal excuse emphasizes on perpetrator condition, who does not have the ability to judge what is right or wrong and the consequences obtained if he commits a prohibited act so that the perpetrator is unable to be responsible for his actions.

Furthermore, the Academic Script of Criminal Code Bill also explains the types of legal justifications still referring to the old Criminal Code:

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[14] Eddy OS Hiariej, *Prinsip-Prinsip Hukum Pidana* (Cahaya Atma Pustaka 2016).[357].
[15] Didik Endro Purwoleksono, *Hukum Pidana* (Airlangga University Press 2014).[98].
[16] *ibid*.
[17] Hiariej (n 16).[209].

1. any person who commits prohibited acts, but it is intended to carry out the implementation of legislative provisions, is not punished.
2. any person who commits prohibited acts, but it is intended to satisfy office order, is not punished.
3. any person who commits prohibited acts due to emergency situation is not punished.
4. any person who is compelled to perform a prohibited act for defending themselves from being attacked or threatened that is against the law, himself or another person, morality respect, property of oneself or other person, shall not be penalized for implementing the law; carrying out a valid office order; state of emergency; or forced defense.[18]

The criminal code does not regulate an emergency situation because it is coercive force. In simple words, coercive force and emergency situation can be distinguished. Coercive force is related to force on the perpetrators, while emergency situation is beyond the perpetrators or conditions that require them to take action. Emergency situation is when someone faces a dilemma to choose between committing an offense or destroying a larger interest, or the offense is only justified when there is no other way and the interests protected objectively have higher value than the sacrificed interests.[19] Emergency situation is part of relative coercive force, a situation where a legal interest is threatened with danger, which, in order to avoid the threat of danger, action must be taken even though it violates other legal interests.[20]

Forced defense is related to justified defense because there is a sudden or immediate attack on the body, morality respect or property, and the attack is against the law so that the defense is a must in which the method of defense must be appropriate.[21] Acts that are considered forced defense are judgmental actions toward people who act against the law.[22] Conditions for a forced defense are:

a. It is forced;
b. It is done when the threat of attack arises or takes place;

[18] Badan Pembinaan Hukum Nasional, 'Draft Naskah Akademik Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana' (2015).
[19] Sutorius, Schaffmeister and Keijzer.[60].
[20] Adami Chazawi.[37].
[21] Sutorius, Schaffmeister and Keijzer (n 20).[57].
[22] Chazawi (n 21).[42].

c. To overcome threat of attack or attacks that are against the law;
d. It must be balanced with threatening attacks.[23]

Forced defense exceeding the limits is a defense that can be justified but the perpetrators have exceeded the limits of propriety, hence, the forced defense exceeding limits must meet the two requirements:

a. Should be a sudden or immediate attack on the body, morality respect or property, and the attack is against the law, thus that the defense is obligatory.
b. Exceeding limit from necessity of defense should be the direct results of severe mental agitation, which, in turn, is caused by the attack.[24]

Furthermore, the next are reasons for abolition of crime related to carrying out statutory orders as stipulated in Article 50 of the Criminal Code. Carrying out statutory orders that are not criminalized is related to the existence of two acts which are both obligations; one is the obligation to carry out statutory orders and the other one is the obligation not to commit criminal acts or prohibited acts but, because of statutory orders, then carrying out a criminal act or prohibited act will be justified. Carrying out statutory orders has broad meaning, which is not limited to law only but also includes laws and regulations as referred to in Law No.12 Year 2011 and its amendment.

Reasons for abolition of crime is carrying out office orders and committing illegal office orders with good faith as referred to in Article 51 of the Criminal Code. Article 51 of the Criminal Code is similar to Article 50 of the Criminal Code, both are law immunity that is not defined clearly. The implementation of an illegal office order with good faith, as referred to in Article 51 paragraph (2) of the Criminal Code, means that it emphasizes the good faith of the person carrying out the order even though it is illegal. Based on the provisions of Article 51 paragraph (2) of the Criminal Code, carrying out an illegal office order can abolish the crime if the doer is carrying it out with good faith and the order is related to the authority in his work.

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[23] *ibid*.[43].
[24] Sutorius, Schaffmeister, and Keijzer (n 20).[59-60].

The abovementioned reasons of abolition of crime are applicable regulations and internationally recognized. Some countries, such as China, Spain and the Netherlands also set the reasons of abolition of crime. Based on a comparison of the laws governing the reasons for abolition of crimes in the Criminal Code, Chinese Criminal Code, Spanish Criminal Code and Dutch Criminal Code, the following conclusions are obtained:

a. The Criminal Code, Chinese Criminal Code, Spanish Criminal Code and Dutch Criminal Code recognize and regulate the reasons of abolition of crime in certain circumstances, such as mental conditions, defense and others.
b. The setting of reasons for abolition of crime, where the doers do not commit fault in the Chinese Criminal Code can be adopted in the amendment of the Criminal Code. Regulations in the Chinese Criminal Code can also be considered as other forms of carrying out statutory orders, office orders, and illegal office orders with good faith because these actions are definitely carried out without fault.
c. The Criminal Code, Spanish Criminal Code and Dutch Criminal Code together stipulate the reasons for the abolition of criminal acts that are more of a legal immunity in nature; carrying out statutory orders, office orders and illegal office orders in good faith while the Chinese Criminal Code does not recognize it.
d. Settings of legal immunity in the form of carrying out statutory orders, office orders and illegal office orders in good faith are still needed with evidence that the Spanish Criminal Code and the Dutch Criminal Code still apply the same rules as the Criminal Code so that these rules should be maintained.

Ontologically or essentially, legal immunity or immunity in criminal cases is part or one of the reasons for abolition of crime; carrying out statutory orders or office orders and carrying out orders without authority in good faith. This is because the criminal law does not recognize law immunity as the reason for the abolition of crime. Reasons for abolition of crime known in criminal law have been regulated explicitly; carrying out statutory orders or office orders and carrying out orders without authority in good faith.

By law, legal immunity is already familiar in the Indonesian legal system because it is often used in the laws. Several laws in Indonesia regulate legal immunity, those are:

a. The Criminal Code in Article 50 and Article 51, which regulates the act of implementing the law and carrying out office orders given by the people with authority or carried out in good faith assumes that the order is given with

authority and its implementation is included in the work environment.

b. Law Number 23 Year 1999 concerning Bank Indonesia in Article 45 which stipulates that Governors, Senior Deputy Governors, Deputy Governors, and/or Bank Indonesia officials cannot be punished for having taken decisions or policies that are in line with their duties and authorities as referred to in this law, as long as it is done in good faith.
c. Law Number 37 Year 2009 concerning Indonesian Ombudsman in Article 10 that regulates that the Ombudsman cannot be caught, imprisoned, interrogated, prosecuted or sued in court if they commit it due to their duties and authorities.
d. Law Number 18 Year 2003 on Advocate jo. Decision 52/PUU-XVI/2018 in Article 16 stipulates that advocates cannot be prosecuted both civilly and criminally in carrying out their professional duties in good faith for the benefit of the defending clients inside and outside the court.
e. Law Number 9 Year 2016 concerning Prevention and Handling of Financial System Crisis in Article 48 regulates that unless there is an element of abuse of authority, members of the Financial System Stability Committee, secretary of the Financial System Stability Committee, members of the secretariat of the Financial System Stability Committee, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation cannot be prosecuted, either civilly or criminally, for the implementation of their functions, duties, and authorities.
f. Law Number 11 Year 2016 concerning Tax Amnesty in Article 22 regulates that the Minister, Deputy Minister, employees of the Ministry of Finance, and other parties related to the implementation of Tax Amnesty, cannot be reported, sued, , investigated, or prosecuted, both civilly and legally, if the task is carried out based on good faith and in accordance with the provisions of the legislation.
g. Perpu Number 1 Year 2017, defined as Law Number 9 2017 concerning Access to Financial Information for Tax Purposes in Article 6 regulates that the Minister of Finance and/or employees of the Ministry of Finance; Management and/or employees of the Financial Services Authority who fulfill the obligation to submit reports as referred to in Article 3 paragraph (1) letter a; Leaders and/or employees of financial service institutions, leaders and/or employees of other financial services institutions, and leaders and/or employees of other entities as referred to in Article 2 paragraph (1) who fulfill the obligation to submit reports as referred to in Article 2 paragraph (2), and/or providing information and/or evidence or information as referred to in Article 4 paragraph (2) in carrying out tasks related to the implementation of access and exchange of financial information for tax purposes, cannot be prosecuted criminally or civilly sued.

Some criminal rules above are a description of the rules of legal immunity attaching to positions so that they can be considered as legal immunity attaching to diplomats. However, the legal immunity contained in several laws and regulations in Indonesia is an affirmation of carrying out office orders under the understanding

that the officials mentioned in the laws and regulations above cannot be prosecuted criminally or civilly while carrying out their duties. Immunity from criminal and civil charges is still based on good faith implementation. Which means if the related officials perform his/her duties or authority in bad faith or have malicious intent, they can still be criminally prosecuted. In addition, in administrative law, officials who make policies cannot be punished because policy making is related to position liability, not personal. Position liability implies that officials are responsible for their actions through administrative mechanisms; through state administrative courts and other administrative procedures. The realm of criminal law is personal liability related to the existence of malicious intent from perpetrators.

In an emergency, granting legal immunity is a must. Because emergency situations have consequences for taking quick action, so sometimes the stages or procedures specified in the legislation are not followed. Therefore, procedural errors do not have the implication of criminal charges. It is different if there is a substantial fault (there is an intention to benefit oneself/others), so they can still be prosecuted. Thus, it is clear that the nature or ontological of legal immunity or impunity is the reason for the abolition of crime; carrying out statutory orders or office orders and carrying out orders without authority in good faith.

Epistemologically, legal immunity as part of the reason of abolition of crime is generated from the idea that not everyone who commits a crime deserves to be punished or subjected to criminal responsibility. Hence, criminal law must regulate and provide an instrument for the reason of abolition of crime, one of which is legal immunity. Legal immunity is a product that is considered contrary to the legal state even though criminal law itself provides an opportunity to regulate legal immunity for the reason of criminal abolition in the form of carrying out statutory orders, office orders, and illegal office orders in good faith.

Axiology, or the aim of regulating legal immunity, is to create legal certainty and justice for parties who carry out statutory orders or office orders without authority in good faith, especially in the context of protecting larger interests,

such as handling crimes and overcoming disturbing circumstances, the security, economic, and political stability of the country.

In Indonesian, *keadilan* (justice) is derived from the word *adil* (fair) meaning that it can be objectively accepted.[25] Fair is related to the relationship among human beings in daily life.[26] Justice is abstract and it grows within the fantasy of human beings, but everyone wants or expects to have it.[27] Justice demands people in the same situation to be treated equally. If it is associated to the law, it means the law is generally accepted and the law knows no exceptions.[28] Justice is the ability to give rights to other people and oneself.[29]

Kelsen defines justice as a certain social order under the protection of efforts to seek the truth that can thrive and, therefore, justice is justice for freedom, justice for peace, justice for democracy and justice for tolerance.[30] Thomas Aquinas divides justice into three parts:[31]

a. Distributive justice concerning common things, such as job, tax, and so on. This should be divided based on geometric similarity.
b. Commutative exchange, goods exchanged among personals. For example, trading and it is arithmetical.
c. Legal justice is associated with the overall law. Hence, it can be concluded that both justices are contained in legal justice. *Epikeia* is included into legal justice, equated with a wise view of legal matters.

Sidharta suggests that there will be no law if there is no legal certainty.[32] Legal certainty is more of juridical dimension and, in certain situations, legal certainty has clear, consistent, and *accessible* legal rules. It is issued by and

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[25] Algra and others*l*, *Mula Hukum* (Binacipta 1983).[7].

[26] James Garvey, *20 Karya Filsafat Terbesar* (Kasinus 2010).[5].

[27] Franz Magnis Suseno, *Etika Politik Prinsip-Prinsip Moral Dasar Kenegaraan Modern* (Gramedia Utama 1994).

[28] Bahder Johan Nasution, *Hukum Dan Keadilan* (Mandar Maju 2015).[174].

[29] Notonegoro, *Pancasila Sarana Ilmiah Populer* (Pancoran Tujuh Bina Aksara 1971).[98].

[30] Satjipto Rahardjo, *Negara Hukum Yang Membahagiakan Rakyatnya* (Genta Publishing 2009).[14].

[31] Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Kanisius 1986).[43].

[32] Shidarta, *Moralitas Profesi Hukum, Suatu Tawaran Kerangka Berpikir* (Refika Aditama 2006).[82].

recognized because of the state (power); government agencies apply the rules of law consistently, submissively and obediently to them; citizens in principle adapt their behavior to these rules; independent and impartial judges (courts) apply these legal rules consistently in resolving legal disputes; and concrete judicial decisions are implemented.[33] Legal certainty is much needed to ensure tranquility and order in society because the nature of legal certainty is coercive and the nature of law applies for everyone.[34] Utrecht states that legal certainty contains two understandings; general rules that make individuals understand the deeds they are allowed and not allowed to commit, and legal security for individuals from government arbitrariness because of the existence of general rules.[35] Rahardjo states the meaning of legal certainty; he says law is positive, which means it is legislation *(gesetzliches recht*); this law is based on facts *(tatsachen),* not a formulation of an assessment that will be carried out by judges, such as good faith or courtesy. These facts must be formulated in a clear manner so as to avoid mistakes in meaning, as well as being easy to implement and the positive law should not be changed frequently.[36]

Legal justice and certainty are the purpose of law that underlie legal certainty in legal immunity or impunity setting in criminal responsibility over the state financial loss in an emergency situation such as today's pandemic. Decision-making in an emergency situation indeed has greater risk compared to decision-making in a normal situation. This also underlies the reason why the authorized officials regarding the settlement of emergency situation need to be granted with law immunity as referred to in the implementation of office orders with good faith. There is a big potential of great state financial loss in the settlement of emergency situation of the Covid-19 pandemic, in which each country has to change some policies to adjust situation by virtue of controlling the spread of the Covid-19 virus.

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[33] Jan Michiel Otto, *Kepastian Hukum Di Negara Berkembang, Terjemahan Tristam Moeliono* (Komisi Hukum Nasional 2003).[5].

[34] Prayitno Iman Santosa, *Pertanggungjawaban Tindak Pidana Korupsi* (Alumni 2015).

[35] Riduan Syahrani, *Rangkuman Instisari Ilmu Hukum* (Citra Aditya Bakti 1999).[23].

[36] Rahardjo, *Hukum Dalam Jagat Ketertiban: Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro* (UKI Press 2006).[136].

This policy change will certainly have an impact on state finances, in which the costs used to support previous policies seem to be a state financial loss because their objectives are not achieved. However, it is the risk in the control of emergency situation because there is no certain policy to mitigate it.

Policy in mitigating emergency situations tend to be speculative while still considering economic calculation and its impact on the success of emergency situation mitigation. With such policy, it is certain that there is a potential for state financial losses, but it cannot be used as a benchmark for prosecuting the authorized officials in making these policies. If state financial losses are used as a benchmark in determining an official to be convicted, it is certain that there will be no official who is willing to make decisions in an emergency situation. Conditions such as the unwillingness of civil servants to become commitment-making officials are tangible evidence when state financial losses are used as the basis for criminal prosecution of an official, and this will cause problems. Good faith that is inherent in officials must be used as the main benchmark in determining responsibilities over the state financial loss in emergency situations. Good faith in the implementation of emergency situation mitigation is the form of legal immunity for state administrators and other parties involving in emergency situation mitigation as the embodiment of justice and legal certainty.

Legal immunity of criminal charge in the criminal act of corruption in the implementation of state finance and finance system ability policies during emergency situation is a legal policy that must be made by the government. Legal immunity in this case is defined as the reasons of abolition of crime as regulated in the Criminal Code, in Article 50 and Article 51. The nature of legal immunity in the responsibilities over state financial loss during emergency situation is the abolition of crimes based on three factors, which are:

a. Carrying out statutory orders as regulated in Article 50 of the Criminal Code. Carrying out statutory orders that are not criminalized in relation to the existence of two mandatory actions, which are the obligation to carry out statutory orders and the obligation not to commit criminal acts or prohibited

acts but, because of statutory orders, then carrying out a criminal act or prohibited act will be justified.

b. Carrying out statutory orders has broad meaning, which is not limited to law only but also includes laws and regulations as referred to in Law No.12 Year 2011and its amendment.

c. Carrying out office orders and committing illegal office orders with good faith as referred to in Article 51 of the Criminal Code.

In addition, the Supreme Court in the Supreme Court Circular (SEMA) No. 7/2012 point IX states that protection must be given to buyers who have good faith even if it is later found out that the seller is an unauthorized person (in this context, land purchase and sale and the original owner can only file a claim for compensation to the unauthorized seller). Based on the mindset of the Supreme Court in the SEMA above, officials or state administrators with good faith should not be prosecuted criminally or civilly for the losses incurred.

The good faith proves that the related officials or state administrators have no bad intentions, thus they cannot be prosecuted with criminal responsibilities and should be given legal protection. Legal immunity is a form of legal protection for parties carrying out tasks and responsibilities under a good faith or with no bad intentions.

Decision-making in emergency situations indeed has greater risk compared to decision-making in normal situations. This also underlies the reason why the authorized officials regarding the settlement of emergency situations need to be granted with law immunity as referred to in the implementation of office orders with good faith. There is a big potential of great state financial loss in the settlement of the emergency situation of the Covid-19 pandemic, in which each country has to change some policies to adjust the situation by virtue of controlling the spread of the Covid-19 virus. This policy change will certainly have an impact on state finances, in which the costs used to support previous policies seem to be a state financial loss because their objectives are not achieved. However, it is the risk in the control of the emergency situation because there is no certain policy to mitigate it.

Regarding the mitigation of emergency situations, policies tend to be speculative while still paying attention to economic calculations and their impact on the success in overcoming emergencies. In such policy, it is certain that there is a potential for state financial losses, but the state financial losses cannot be used as a benchmark to sue the authorized officials for making the policy. If state financial losses are used as a benchmark in determining an official to be convicted, it is certain that there will be no official who is willing to make decisions in an emergency. Conditions such as the unwillingness of civil servants to become commitment-making officials are tangible evidence when state financial losses are used as the basis for criminal prosecution of an official, and this will cause problems. Good faith that is inherent in officials must be used as the main benchmark in determining responsibilities over the state financial loss in emergency situations. Good faith in the implementation of emergency situation mitigation is the form of legal immunity for state administrators and other parties involving in emergency situation mitigation.

Conclusion

Ontologically or essentially, legal immunity or immunity in criminal cases is a part or one of the reasons for abolition of crime, for instance, carrying out statutory orders or office orders and carrying out orders without authority in good faith. Epistemologically, legal immunity as a part of the reason of abolition of crime is generated from the idea that not everyone who commits a crime deserves to be punished or subjected to criminal responsibility. Hence, criminal law must regulate and provide an instrument for the reason of abolition of crime, one of which is legal immunity. Axiology, or the aim of regulating legal immunity is to create legal certainty and justice for parties who carry out statutory orders or office orders without authority in good faith, especially in the context of protecting larger interests, such as handling crimes and overcoming disturbing circumstances, the security, economic and political stability of the country. Legal immunity is also a form of legal protection for parties carrying out tasks and responsibilities under a good faith.

Bibliography

Adami Chazawi, 'No Title' 37.

Algra, [et. al.]., *Mula Hukum* (Binacipta 1983).

Arsul Sani, 'Imunitas Hukum Yang Tidak Otomatis Membuat Imun Tuntutan Hukum' (*Hukum Online*, 2020) <https://www.hukumonline.com/berita/baca/lt5eaf7c85e5406/imunitas-hukum-yang-tidak-otomatis-membuat-imun-tuntutan-hukuma?page=2> accessed 30 May 2021.

Badan Pembinaan Hukum Nasional, 'Laporan Lokakarya Tentang Pengembalian Aset Negara Hasil Tindak Pidana Korupsi' (2009).

——, 'Draft Naskah Akademik Rancangan Undang- Undang Kitab Undang-Undang Hukum Pidana' (2015).

'Badan Pemeriksa Keuangan Ungkap Risiko Korupsi Dana APBN Di Masa Pandemi Corona' (*CNN*, 2021) <https://www.cnnindonesia.com/ekonomi/20210111112407-532-592071/Badan Pemeriksa Keuangan-ungkap-risiko-korupsi-dana-apbn-di-masa-pandemi-corona> accessed 23 May 2021.

Bahder Johan Nasution, *Hukum Dan Keadilan* (Mandar Maju 2015).

Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Alumni 1992).

Departemen Hukum dan HAM Republik Indonesia, 'Penelitian Hukum Tentang Aspek Hukum Pemberantasan Korupsi Di Indonesia' (2008).

Didik Endro Purwoleksono, *Hukum Pidana* (Airlangga University Press 2014).

Eddy O. S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Cahaya Atma Pustaka 2016).

Franz Magnis Suseno, *Etika Politik Prinsip-Prinsip Moral Dasar Kenegaraan Modern* (Gramedia Utama 1994).

Irving A. Plainin, 'Criminal Forfeiture: Attacking the Economic Dimension of Organized Narcotics Trafficking' (1982) 32 American University Law Review.

James Garvey, *20 Karya Filsafat Terbesar* (Kasinus 2010).

Jan Michiel Otto, *Kepastian Hukum Di Negara Berkembang, Terjemahan Tristam Moeliono* (Komisi Hukum Nasional 2003).

M. Suparmoko, *Keuangan Negara Dalam Teori Dan Praktik* (BPFE 2016).

Moeljatno, *Asas-Asas Hukum Pidana* (Bina Aksara 1987).

Muchtar Kusumaatmadja dan Lili Rasjidi, *Dasar-Dasar Filsafat Hukum* (Citra Aditya Bakti 1993).

Notonegoro, *Pancasila Sarana Ilmiah Populer* (Pancoran Tujuh Bina Aksara 1971).

Matthew P. Harrington, 'Rethinking in Rem: The Supreme Court's New (and Misguided) Approach to Civil Forfeiture' [1994] 12 Yale Law & Policy Review.

Prayitno Iman Santosa, *Pertanggungjawaban Tindak Pidana Korupsi* (Alumni 2015).

Riduan Syahrani, *Rangkuman Instisari Ilmu Hukum* (Citra Aditya Bakti 1999).

Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban: Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro* (UKI Press 2006).

——, *Negara Hukum Yang Membahagiakan Rakyatnya* (Genta Publishing 2009) Schaffmeister, Keijzer S.

Shidarta, *Moralitas Profesi Hukum, Suatu Tawaran Kerangka Berpikir* (Refika Aditama 2006).

Tanzi V, 'Corruption, Governmental Activities and Markets' (1994).

Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Kanisius 1986).

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