

The Reflecting the Value of Legal Certainty in the Conviction System for the Criminal Act of Bribery

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Abstract. *The perpetrator of assisting bribery in a succession of criminal acts holds a significant role, which has legal implications that necessitate thorough and conclusive investigations into those who assist in bribery. In looking at the position of perpetrators of assisting bribery, the ambiguity of Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption has had a major impact on the rechtsvacuum in the criminal conviction system in bribery criminal policies. Through a normative method, this article's investigation reveals that convictions in bribery cases extend beyond only the active and passive perpetrators. Evidently, individuals who abet on bribery cannot be disregarded. Moreover, the ambiguity of the rules regarding assisting bribery, Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, has created a rechtsvacuum in terms of convicting those involved in bribery cases. This scenario unequivocally leads to ambiguity in enforcing criminal penalties for bribery assistance perpetrators.*

Keywords: Assistance; Bribery; Crime; System.

1. Introduction

Due to legal barriers to law enforcement's efforts in Indonesian bribery cases, it is nevertheless possible to say that law enforcement in bribery matters is subpar today. The non-operational character of the bribery assistance provisions in Article 15 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 for the Eradication of Criminal Acts of Corruption was one of the legal barriers discovered. According to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, "any person who carries out an attempt, assistance, or conspiracy to commit a criminal act of corruption shall be punished with the same crime as intended by Articles 2, 3, 5 to 14." The interpretation of assistance in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999

concerning the Eradication of Corruption is biased because its elucidation section does not explain what assistance in Article 15 means.

Assistance is basically governed by Article 56 of the Criminal Code, which specifies that:

As accomplices to a crime shall be punished:

1. The persons who deliberately aid in the commission of the crime;
2. The persons who deliberately provide opportunity, means, or information for the commission of the crime.

Acts of assisting criminal offenses, as defined in Article 15 of Law Number 20 of 2001, which pertains to amendments to Law Number 31 of 1999 on Eradication of Criminal Acts of Corruption, cannot be associated with Article 103 of the Criminal Code as a Bridge Article. The reason for this is that while Article 103 of the Criminal Code specifically correlates Criminal Law outside the Criminal Code with Book I of the Criminal Code, assistance is encompassed in Book II of the Criminal Code. This vacuum implies that the majority of individuals involved in assisting bribery and bribery intermediaries are only held accountable under the provisions regarding involvement as specified under Article 55 of the Criminal Code.

The criminal justice system for corruption in Indonesia is susceptible to the effects of such circumstances on the pluralism of legal paradigms, particularly among judges who serve as the vanguard in upholding legal justice in the community. The matter concerning illicit activities such as bribery and corruption, which bribe brokers instigate, becomes evident in soliciting regional balance funds for the 2018 Fiscal Year Draft State Budget (RAPBN). As per the Jakarta Corruption Crime Panel of Judges ruling, Eka Kamaluddin was convicted of engaging in corrupt practices. Ahmad Ghiast, the Director of CV Iwan Binangkit, and the Regent of Central Lampung, Mustafa, paid bribes totaling IDR 3,685,000,000 to Yaya Purnomo, a civil servant at the Ministry of Finance, Amin Santono, who served as a Member of Commission XI in the House of Representatives of the Republic of Indonesia, and Taufik Rahman, the Head of the Central Lampung Bina Marga Service. It was established that Eka Kamaluddin had contravened Article 12, point a, of Law No. 31 of 1999, as amended by Law No. 20 of 2001, concerning the Eradication of Criminal Acts of Corruption, in conjunction with Article 65 paragraph (1) of the Criminal Code and Article 55 paragraph (1), first. Eka Kamaluddin was given a four-year prison term, a fine of

IDR 200 million, and one month of incarceration subsidies by the panel of judges.¹

In this particular instance, a dissenting opinion was expressed by one member of the panel of judges in Decision Number 76/Pid.Sus-TPK/2018/PN.Jkt.Pst. The dissenting opinion pertained to an element in the indictment specified in Article 12, point a, Law on the Eradication of Corruption Act, first, in conjunction with Article 65 paragraph (1) of the Criminal Code. Considering the provisions outlined in Article 12, point a, of the Law on the Eradication of Corruption Act, which pertain to civil servants and state administrators, the defendant is required to hold a civil service or state administrator position. In contrast, Eka Kamaluddin is a private party or consultant. Except for official crimes, the legal subject of the decision does not pertain to bribery assistance involving a state administrator or a civil servant. Thus, the criterion of being a state administrator or civil servant was not met in the case of the accused, Eka Kalamuddin.² In light of the fact that one of these elements was not satisfied, it was unnecessary to contemplate the others. The accused should, therefore, be exonerated of these allegations. The second alternative indictment, Article 11 of the Law on the Eradication of Corruption Act, is subject to the same regulations. Criminal acts committed by civil servants and state administrators are also implicated in the provisions of this article.³ "Since the fundamental requirements for civil servants and gifts also apply to civil servants, these requirements are not met. Consequently, the defendant should be acquitted of the charges, as the elements of the indictment remain unfulfilled."⁴ The absence of legal clarity concerning the involvement of passive actors, not state administrators, in corruption offenses will lead to the erosion of legal efficiency, justice, and certainty.⁵

As the next case, in 2017, the Corruption Eradication Commission (KPK) caught Governor Ridwan Mukti of Bengkulu and his wife, Lily Martini Maddari, accepting bribes from Rico Diansari, the Director of PT Rico Putra Selatan. Rico Diansari was prosecuted separately. This case involved bribery and was discovered through a Hand-Catching Operation (OTT). During the incident, KPK officials apprehended

¹ Case Number 76/Pid.Sus-TPK/2018/PN Jkt.Pst, accessed via <https://bangunan3.mahkamahagung.go.id/direktori/angkatan/534d233fce34c2effc0ce2fc2fd1c11a.html>, on May 12, 2022.

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

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

⁴*Loc. cit.*

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

Rico Diansari and Lily Martini Maddari immediately after Rico Diansari delivered a payment of IDR 1,000,000,000 (one billion rupiah) as a commitment fee for the Implementation Project for the Development/Upgrading Activities of the Tes–Muara Aman Road (Air Dingin-Tes) and Curup–Air Dingin Road Development/Upgrade Activities to Lily Martini Maddari, the spouse of Ridwan Mukti, who held the position of governor of Bengkulu at that particular time. The funds were transferred to them at the exclusive residence of Ridwan Mukti and Lily Martini Maddari. In addition, KPK officers apprehended Ridwan Mukti, who was not present at his residence but was presiding over a meeting at his office.⁶

In conjunction with using Article 55, paragraph (1), first, of the Criminal Code, investigators and prosecutors at the KPK used Article 12, point a, an alternative to Article 11 of Law Number 31 of 1999, as amended by Law Number 20 of 2001, Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crime, against Ridwan Mukti and Lily Martini Maddari, his wife. Since Lily Martini Maddari was the recipient of Rico Diansari's commitment fee of IDR 1,000,000,000 (one billion rupiahs), she was not a state administrator or civil servant as defined by Article 12, point a, and Article 11, but rather held the status of Ridwan Mukti's wife, the then-governor of Bengkulu. As such, Lily Martini Maddari knew or should have suspected that the money Rico Diansari had given was intended to influence Ridwan Mukti, the then-governor of Bengkulu, to do or not take actions that went against the obligations of the province, in this instance, about activities or projects carried out by the Bengkulu Provincial Government.⁷

The application of conviction in cases involving participation and assistance differs fundamentally. The provision governing assistance in the Criminal Code is Article 56, whereas participation is governed by Article 55. Because these two categories of criminal activity are regulated as a single entity in Article 15 of Law No. 20 of 2001, amending Law No. 31 of 1999 on the Eradication of Corruption Crimes, disorder ensued. Numerous parties have researched bribery throughout its evolution; therefore, it is essential to distinguish between bribery research conducted by other authors and the subject of the author's article study. The following describes the investigation conducted by third parties:

1. In 2011, Budi Parmono of Brawijaya University wrote a study titled "Abuse of Authority in Corruption Crimes in Indonesia." The study examined passive bribers, defined as recipients of favors and gratuities and engaging in authority

⁶ Decision No. 45/Pid.Sus-TPK/2017/PN.Bgl accessed via <https://bangunan3.mahkamahagung.go.id/direktori/angkatan/534d233fce34c2effc0ce2fc2fd1c11a.html>, on May 12, 2022.

⁷ Decision No. 45/Pid.Sus-TPK/2017/PN.Bgl accessed via <https://bangunan3.mahkamahagung.go.id/direktori/angkatan/534d233fce34c2effc0ce2fc2fd1c11a.html>, on May 12, 2022.

abuse. Under the value of justice, the author's dissertation focuses on reforming criminal provisions of passive extortion corruption involving legal subjects other than state administrators and civil servants.⁸

2. In 2017, Sultan Agung Islamic University student Djamal researched "Reconstruction of Corporate Criminal Responsibility in Corruption Crimes in accordance with the Value of Justice." The subject matter of this dissertation pertains to the extent of corporate responsibility in instances of corruption. Nevertheless, the dissertation failed to adequately address the corporation's involvement as a party in a corrupt criminal act. The central theme of the author's dissertation revolves around contemplations on legal subjects who, despite lacking official positions as civil servants or state administrators, exploit their intimate connections to actively participate in and even instigate the commission of bribery corruption.⁹

3. A 2011 study titled "Decriminalization of the Crime of Gratification into Bribery from the Perspective of Dignified Justice" was conducted by Dina Irawati of Sultan Agung Islamic University. From the standpoint of dignified justice, this dissertation focuses on research on decriminalizing criminal actions of gratification into bribery. To achieve justice, the author's dissertation focuses primarily on reformulating the criminal provisions of the criminal conduct of passive bribing corruption for legal subjects who are not state managers or civil workers.¹⁰

In contrast, the author's current research is primarily concerned with the criminalization of those who provide bribery assistance, an area that has thus far encountered challenges in terms of implementation.

2. Research Methods

This article was composed using doctrinal legal research as its methodology. The doctrinal method is a legal study approach grounded in evolving legal perspectives or doctrines pertinent to legal matters. This method involves examining the norms that underpin the texts of laws and regulations, considering both philosophical and juridical aspects.¹¹

3. Result and Discussion

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

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

¹⁰*Loc, cit.*

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

3.1. Development of Bribery Crimes in Indonesia Based on the Old Criminal Code and the New Criminal Code

The regulations regarding bribery in the old Criminal Code and Law Number 1 of 2023 have differences. Bribery in the new Criminal Code is regulated in Article 605 of Law No. 1 of 2023, which states that:

(1) Shall be sentenced with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a minimum criminal fine of category III and a maximum of category V, Any Person who:

a. Grants or promises something to civil servants or state administrators with the intention that the civil servants or state administrators in question do or do not do something in their position, which is contrary to their obligations or

b. Grants something to civil servants or state administrators due to or relating to something contrary to the obligation, which is performed or not performed in the position.

(2) Civil servants or state administrators who accept the grants or promises as referred to in paragraph (1) shall be sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years and a minimum criminal fine of category III and a maximum of category V.

Meanwhile, bribery in the old Criminal Code was regulated in Article 419, stating that:

By a maximum imprisonment of five years shall be punished any public officer:

1. Who accepts a gift or promise, knowing that it is given to him in order to move him, contrary to his duty, to do or to admit something in his service;
2. Who accepts a gift, knowing that it is given to him as a result or on account of what he has done or omitted in this service contrary to his duty.

Based on the two provisions above, sanctions against perpetrators of bribery in the new and old Criminal Code have different penalties. Sanctions in the new Criminal Code are more severe, i.e., for perpetrators of active bribery, it is in the form of imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least category III and a maximum of category V. For perpetrators of passive bribery, sanctions are in the form of imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years and a fine of at least category III and a maximum of category V. Apart from imprisonment, perpetrators of bribery in Law No. 1 of 2023 is also punished by paying a fine.

However, Law No. 1 of 2023 also does not recognize the existence of passive bribery in the private sector.

Meanwhile, the provisions for assistance in the new and old Criminal Codes also have differences. In Law No. 1 of 2023, assistance is regulated in Article 21, which states that:

(1) Any Person shall be sentenced as an accomplice to a Crime if they are intentionally:

- a. provides opportunities, facilities, or information to commit a crime or
- b. provide assistance at the time the crime is committed.

(2) The provision, as referred to in paragraph (1), does not apply for assistance in a crime that is only sentenced with a maximum criminal fine of category II.

(3) The criminal sentence for assistance in a crime shall be a maximum of 2/3 (two-thirds) of the maximum threat of the principal sentence for the relevant crime.

(4) Assistance in a crime threatened with capital punishment or life imprisonment shall be sentenced to imprisonment for a maximum of 15 (fifteen) years.

(5) An additional sentence for assistance in a crime is the same as the additional sentence for the relevant crime.

In the old Criminal Code, assistance was mentioned in Article 56, and the criminal provisions were in Article 57. Article 56 of the Criminal Code states that:

As accomplices to a crime shall be punished:

1. The persons who deliberately aid in the commission of the crime;
2. The persons who deliberately provide opportunity, means, or information for the commission of the crime.

Article 57 of the Criminal Code states that:

(1) The maximum of the basic punishments imposed upon the crime in complicity shall be mitigated by one-third.

(2) If it concerns a crime on which capital punishment or a crime on which life imprisonment is imposed, a maximum imprisonment of fifteen years shall be imposed.

(3) The additional punishment for complicity shall be the same as for the crime itself.

(4) In determining the punishment, only those acts that the accomplice has deliberately facilitated or furthered shall be considered, together with their consequences.

Based on the provisions related to the conviction of assistance perpetrators above, it can be seen that in Article 21 paragraph (3) of Law No. 1 of 2023, perpetrators of assistance are punished with "a maximum of 2/3 (two thirds) of the maximum principal penalty for the crime in question," while in the old Criminal Code, perpetrators of assistance were punished with "the maximum principal penalty for the crime, reduced by one third."

Concerning criminal liability for assisting perpetrators, Article 58 of the old Criminal Code and Article 22 of the new Criminal Code focus on the personal circumstances of the perpetrator. The personal circumstances of the perpetrator in the elucidation of Article 22 of Law No. 1 of 2023 is a situation where the perpetrator or helper is older or younger, has a certain position, has a certain profession, or experiences a mental disorder.

1. Reflecting on the Value of Legal Certainty in the Conviction System for Criminal Acts of Assistance to Bribery

The lack of clarity surrounding the components of the act of assisting bribery, as stated in Article 15 of Law Number 20 of 2001, which amends Law Number 31 of 1999 on the Eradication of Corruption Crimes, has created a legal vacuum in the criminal justice system for those who assist in bribery.¹² Individuals who assist in bribery are frequently convicted under Article 55 of the Criminal Code, which specifically addresses participation in bribery. That statement is false, as participation in the crime of bribery requires the perpetrators to have a significant role in the occurrence of bribery. According to Article 12, point a, of the Law on the Eradication of Corruption Crime, individuals accused of

¹²Haposan Siallagan, "Penerapan Prinsip-Prinsip Hukum di Indonesia", *Jurnal Sosiohumaniora*, Volume 18, Number 2, July 2016, p. 132.

participating in bribery cases must hold positions as civil servants and state administrators, as stated in the provisions.¹³

Individuals assisting bribery offenders convicted under Article 55 of the Criminal Code have been observed in multiple bribery cases in Indonesia. The table provided below pertains to several instances of bribery when individuals other than government officials and civil servants were involved in assisting the bribes:¹⁴

No	Case No.	Perpetrators of Bribery Assistance	Sequence of the Incidence of the Bribery Offense	Imposed Sanctions	Description
1	76/Pid.Sus-TPK/2018/PN Jkt.Pst	Eka Kamaluddin	A meeting occurred on the evening of Friday, May 4, 2018, at approximately 19.30 WIB. The participants included Amin Santono, a member of Commission XI in the House of Representatives of the Republic of Indonesia, Eka Kamaluddin and Yaya Purnomo from the Directorate General of Finance in the Ministry of Finance, and Ahmad Ghiast, the Director of CV, Iwan Binangkit. The meeting took place at a restaurant located at Halim Perdana Kusuma Airport. The parties arranged the meeting to facilitate the transfer of IDR 400,000,000 from Ahmad Ghiast to Amin Santono and Yaya Purnomo. The objective behind providing this monetary sum was to assist CV Iwan Binangkit	Eka Kamaluddin was convicted for acting as a bribe intermediary, which is a violation of Article 12, point a, of the Law on the Eradication of Corruption Crime, in conjunction with Article 55 paragraph (1) 1 st , in conjunction with Article 65 paragraph (1) of the Criminal Code.	The criminal sanction against Eka Kamaluddin, who acted as a bribe intermediary between members of the panel of judges, varies in the bribery case involving Ahmad Ghiast and Amin Santono. One of the judges on the panel held a dissenting view in this instance. This distinction is connected to a specific component mentioned in the indictment under Article 12, point a, of the Law on the Eradication of Corruption Crime, in connection with Article 55, paragraph (1) 1 st , in conjunction with Article 65, paragraph (1) of the Criminal Code. According to Article 12, point a, of the

¹³Aidul Fitriadi Azhari, Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi, *Jurnal Hukum IUS QUIA IUSTUM*, Volume 19, Number 4, October 2012, p. 490.

¹⁴ Supreme Court, Decisions Regarding Perpetrators of Bribery Assistance, accessed via <https://bangunan3.mahkamahagung.go.id/search.html>, on April 12, 2023.



			<p>in securing contracts at the Housing, Settlement Areas, and Land Services Office in Sumedang Regency, valued at IDR 4 billion, as well as contracts at the PUPR Service in Sumedang Regency, valued at IDR 21.85 billion. Following a hand-catching operation conducted by the KPK, it was discovered that prior to surrendering IDR 400,000,000, Ahmad Ghiast had further transferred IDR 100,000,000 to Amin Santono.</p>	<p>Law on the Eradication of Corruption Crime, civil officials and state administrators are needed. This indicates that the accused must hold a position as a civil servant or state administrator. Nevertheless, according to the indictment, Eka Kamaluddin was a consultant or private individual and served as a teacher at an Islamic boarding school.</p> <p>Concerning assisting bribery, the individual in question was neither a government employee nor a public administrator, except for being involved in an official criminal activity. Consequently, the role of a government servant or state administrator for the accused, Eka Kalamuddin, was not satisfied. Given the failure to meet one need, assessing the other requirements was unnecessary. Therefore, the defendant should be exonerated from these allegations. The principle mentioned above also pertains to the second alternative accusation, i.e., Article 11 of the Law</p>
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					on the Eradication of Corruption Crime.
2	45/Pid.Sus-TPK/2017/P.N.Bgl.	Lily Martiani Maddari	The incident took place on June 20, 2017, at 09:00 in the morning. Jhoni Wijaya, the director of PT Statika Mitra Sarana, provided Rico Dian Sari, a businessman and treasurer of the Regional Representative Council of Golkar, with IDR 1 billion in IDR 100,000 denominations. The money was neatly packaged in A-4-sized boxes. Subsequently, Rico encountered Lily, the spouse of Ridwan Mukti, the Governor of Bengkulu, precisely at 09.30. Rico was apprehended by the KPK precisely at 10:00 am and transported to Ridwan Mukti's residence afterward. The KPK apprehended Lily at Ridwan Mukti's residence and discovered a sum of IDR 1 billion in illicit payments. Lily was found to be a bribe intermediary between Jhoni Wijaya and Ridwan Mukti.	Lily Martiani was convicted under Article 12, point a, and Article 11 of the Law on the Eradication of Corruption Crime due to receiving a commitment fee of IDR 1,000,000,000 (one billion rupiah) from Rico.	According to the Bengkulu District Court Decision No. 45/Pid.Sus-TPK/2017/PN.Bgl, which was upheld by the High Court Decision No. 4/Pid.Sus-TPK/2018/PT.BGL, and further confirmed by the Supreme Court Decision No. 1219 K/Pid.Sus/2018, Defendant I Ridwan Mukti and Defendant II Lily Martiani Maddari have been legally and convincingly found guilty of committing the crime of corruption together. This is under the charges stated in Article 12, point a, Law No. 31 of 1999 as amended by Law Number 20 of 2001, which deals with eradicating corruption, in conjunction with Article 55 paragraph (1) 1st of the Criminal Code. However, the verdict against Lily lacks justification as Article 12, point a, of the Law on the Eradication of Corruption Crime specifically requires the presence of civil servants and state administrators as defendants, implying that the accused

					must hold such positions. Similarly, according to Article 11 of the Law on the Eradication of Corruption, Lily did not have a position as a government official or public servant.
3	49/Pid.Sus-TPK/2020/PN Jkt.Pst	Andi Irfan Jaya	On November 25, 2019, Andi Irfan Jaya encountered Djoko Tjandra, Attorney Pinangki Sirna Malasari, and Advocate Anita Kolopaking. At the meeting, a strategic plan was devised to exonerate Djoko Tjandra from the charges related to the Bank Bali Case. Due to the action plan's outcomes, Djoko Tjandra offered a bribe of US\$10 million. Andi Irfan Jaya assumed the role of an intermediary in the bribery transaction involving Djoko Tjandra and Attorney Pinangki.	Andi Irfan Jaya received a criminal punishment per Article 11 of Law Number 20 of 2001, which deals with eradicating corruption crimes.	Andi Irfan has been sanctioned according to Article 11 of the Republic of Indonesia Law Number 20 of 2001, which deals with eradicating corruption crimes, as stated in Court Decision Number 49/Pid.Sus-TPK/2020/PN Jkt.Pst. Considering the presence of civil personnel or state administrators among the actors, it is evident that Article 11 is improper. In the meantime, Andi Irfan did not hold a civil servant or state administrator position.
4	97/Pid.Sus-TPK/2019/PN.Jkt.Pst	Andi Taswin Nur	Andi Taswin Nur acted as the intermediary for the bribe in the bribery case involving the director of PT Angkasa Pura II. Draman Mappangara, the Director of PT Industri Telekomunikasi Indonesia, intended to bribe the director of PT Angkasa Pura II to secure PT Industri Telekomunikasi Indonesia as a provider and worker in the semi-	Andi Taswin was accused of violating Article 12, point a, of the Law of the Republic of Indonesia Number 20 of 2001, which deals with eradicating corruption, in conjunction with Section 55 of the Criminal	Andi Taswin was convicted and given a criminal penalty according to Decision Number 97/Pid.Sus-TPK/2019/PN.Jkt.Pst. The sentence was based on Article 12, point a, of the Republic of Indonesia Law Number 20 of 2001, which deals with eradicating corruption in conjunction with



			<p>baggage handling procurement project. Andi Taswin is the individual who engaged in lobbying activities and transferred funds from PT Industri Telekomunikasi Indonesia to the director of PT Angkasa Pura II.</p>	<p>Code.</p>	<p>Article 55 of the Criminal Code. Evidently, the situation is not entirely correct, given that Andi Taswin acted as an intermediary without being personally involved or a government official. Andi Aswin was only fulfilling his role as a liaison. According to Article 5 of Law Number 20 of 2001 on the Eradication of Corruption Crimes, it is evident that Andi Aswin had the intention or mental attitude to offer liaison services or act as a bribe intermediary or bribe broker. This was done to facilitate easier access for PT Industri Telekomunikasi Indonesia, which had a direct interest in dealing with the director of PT Angkasa Pura II due to the close relationship between Andi Aswin and Andra Yastrialsyah Agussalam, the Director of PT Angkasa Pura II. Andi Aswin did not intend to engage in bribery; he acted as a mediator for bribes. On the other hand, PT Industri Telekomunikasi Indonesia was involved in the</p>
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					bribery.
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Assistance (*Medeplichtigheid*) refers to an individual who deliberately offers guidance, information, or opportunities to those who commit illicit acts, either prior to or during the commission of the crime. Assistance is also defined as the presence of two or more individuals, one of whom acts as the perpetrator (*de hoofd dader*) and the other as the assistant (*de medeplichtige*).¹⁵ The cases mentioned above demonstrate that most bribery assistance or intermediaries were convicted under the penalties outlined in Article 55 of the Criminal Code. It is evidently improper, given the distinction between assistance and participation. According to R. Soesilo's book "The Criminal Code (KUHP) and its Complete Commentary Article by Article," the term "people who participate in carrying out" (*medepleger*) as defined in Article 55 of the Criminal Code is referred to as "jointly carrying out." A minimum of two individuals is required to constitute a criminal incident: the perpetrator (*pleger*) and the accomplice (*medepleger*).

At the same time, as defined in Article 56 of the Criminal Code, an individual "assists in committing" a crime when he provides such assistance intentionally during or prior to its commission and not afterward. The provision of assistance subsequent to the commission of a crime constitutes an act of "conspiracy" or "resistance," which in turn violates the stipulations outlined in Article 480 of the Criminal Code or the criminal act specified in Article 221 of the same code.¹⁶ The elucidation of the ambiguity of Article 15 of Law No. 20 of 2001, amending Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, has caused a *rechtsvacuum* in the criminalization of bribery assistance within the nation, creating a lacuna in Criminal Law.¹⁷

The issue of *rechtsvactuum* in the regulation of conviction for perpetrators of assisting bribery, which includes the absence of regulation of the elements of the subject of the perpetrator, the absence of regulation of the elements of passive bribery, and the absence of a formulation regarding conviction for perpetrators of assisting bribery, has clearly had implications for the lack of legal certainty in terms of conviction for perpetrators of assisting bribery. This is undoubtedly unfair legally because the imposition of Article 55 of the Criminal Code on perpetrators of bribery assistance violates the principle of legality and the

¹⁵Mahrus Ali, *Dasar-Dasar hukum pidana*, Jakarta: Sinar Grafika. 2011, p. 131.

¹⁶<https://yurismuda.com/perbedaan-penyertaan-dan-pembantuan-dalam-tindak-pidana/>, accessed on May 12, 2023.

¹⁷Muchamad Iksan, *Asas Legalitas dalam Hukum Pidana: Studi Komparatif Asas Legalitas Hukum Pidana Indonesia dan Hukum Pidana Islam (Jinayah)*, Jurnal Serambi Hukum, Volume 11, Number 1, 2017, p. 14.

principle of wrongdoing. This legal uncertainty evidently also philosophically violates the sense of justice at the level of equality before the law and justice from an Islamic perspective. Hence, it is clear from a *biomijuridika* perspective¹⁸ that the issue of *rechtsvactuum* in the conviction of perpetrators of assisting bribery has resulted in injustice both for the perpetrator and in terms of the opportunity for the perpetrator to be released from criminal responsibility due to the existence of a legal vacuum, which leads to the development of the crime of assisting bribery specifically and the development of bribery crime generally, in national and state life.¹⁹

4. Conclusion

In practice, the criminalization of bribery extends beyond those who are merely passive or active in nature. The possibility of individuals providing bribery assistance also cannot be eliminated. However, the provisions outlined in Article 15 of Law No. 20 of 2001, amending Law No. 31 of 1999 regarding the Eradication of Corruption Crimes concerning bribery assistance, have led to a cessation of prosecutions in bribery cases. The present circumstances have evidently led to ambiguity concerning the imposition of criminal penalties on those who provide bribery assistance.

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Hisar Sitohang, Martono Anggusti, Uton Utomo, Analisis Hukum Terhadap Perbuatan pidana Korupsi Dengan Penyalagunaan Jabatan Dalam Bentuk

¹⁸Biomijuridika is a legal thought from Barda Nawawi Arief, whose essence is that national criminal law science must refer to and explore divine knowledge, both that which exists in various religious teachings and from verses, signs, and examples of God's creation in nature. The science of national criminal law, therefore, is a science of criminal law based on God. This is in a country that believes in God and justice is carried out "for the sake of justice based on the belief in the One Almighty God." In a country that believes in God, justice is carried out "for the sake of justice based on belief in the One Almighty God."

¹⁹Muhammad Rustamaji, "Biomijuridika: Pemikiran Ilmu Hukum Pidana Berketuhanan dari Barda Nawawi Arief", *Undang: Jurnal Hukum*, Vol. 2 No. 1 (2019), p. 199-200.



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