

## LEGAL VACUUM IN CRIMINAL ELEMENT OF BRIBERY ASSISTANT CRIME IN INDONESIA

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### ABSTRACT

*The perpetrators of assisting bribery in a series of criminal bribery acts have an important function; this has a juridical consequence of the need for clear and definite punishment for perpetrators of assisting bribery. The ambiguity of Article 15 of Law Number 20 of 2001 on the Amendments of Law Number 31 of 1999 on the Eradication of Corruption Crimes, given the position of perpetrators of bribery assistance, has had a major impact on the legal vacuum in the criminal system on bribery criminal policies. Based on the study of this normative method article, it was found that punishment in bribery cases does not only include active perpetrators and passive perpetrators of bribery. Law Number 20 of 2001 on the Amendments to Law Number 31 of 1999 on the Eradication of Corruption Crimes set an ambiguous understanding and has resulted in the legal vacuum in convictions in bribery cases. This situation has resulted in uncertainty in the imposition of criminal sanctions for bribery assistance perpetrators.*

Keywords: Bribery assistance perpetrator, crime, legal vacuum, bribery

### INTRODUCTION

Today, law enforcement in bribery cases in Indonesia can still be considered not optimal. That is due to legal obstacles in law enforcement efforts in bribery cases in the country. One of the legal obstacles found was the non-operational nature of the provision regarding bribery assistance in Article 15 of Law Number 20 of 2001 on the Amendments to Law Number 31 of 1999 on Eradication of Corruption Crimes (Law Number 20 of 2001). Indonesia regulates bribery crimes and bribery assistance crime on that law but not giving a clear explanation to the differences between bribery and bribery assistance crime. According to the Article 15 of Law Number 20 of 2001 on the Amendments to Law Number 31 of 1999 on the Eradication of Corruption Crimes stated that "everyone who tries, assists, or conspires to commit crimes of corruption, shall be punished with the same punishment as referred to in Article 2, Article 3, Article 5 to Article 14 ". We can see that in the Article 15, there are three different actions referring to bribery these are everyone who tries, everyone who assists, or everyone who conspire to commit corruption crime (bribery). Neither Law Number 20 of 2001 nor Law Number 31 of 1999 doesn't give a clear explanation about the differences of subject and classification of the actions. That condition will set the investigation process to be biased.

As we try to look on another general regulation, assistance crime is regulated in Article 56 of the Indonesian Criminal Code, which states that:

*Convicted of helping to commit a crime:*

1. *Whoever intentionally helps commit the crime;*
2. *Whoever intentionally provides an opportunity, effort, or information to commit the crime.*

The crime of assistance, as regulated in Article 15 of Law Number 20 of 2001, cannot be linked to Article 103 of the Indonesian Criminal Code as a Bridge Article. A bridge article is an article that bridges a general criminal law with a law that explicitly regulates criminal law as stated in the Article 103 of the Indonesian Criminal Code. The bridge article is used to allow the application of criminal provisions and sanctions for an act criminal penalty according to laws and other external regulations the Indonesian Criminal Code is punishable by criminal law unless otherwise provided by law or there are Articles 1 to 85 of the Indonesian Criminal Code (Book 1) regarding general provisions, which allows the application of general criminal rules for criminal acts specified outside the Indonesian Criminal Code threatened with punishment unless the rule deviates.<sup>1</sup> Therefore, in a legal vacuum condition when the Indonesian Criminal Code doesn't regulate a criminal provisions and its sanction, the law enforcer can refer to another specified criminal law.

In this case, as mentioned that the definition of crime assistance according to Article 56 of Indonesian Criminal Code cannot be bridged to define the meaning of corruption assistance crime (in casu bribery), in Article 15 of Law Number 20 of 2001. This is because Article 103 of the Indonesian Criminal Code only relates the Criminal law outside the Indonesian Criminal Code are in book I of the Indonesian Criminal Code, while assistance is included in book II of the Indonesian Criminal Code. This vacancy makes most of the perpetrators of bribery criminal assistance or intermediaries only subject to provisions related to participation as outlined in Article 55 of the Indonesian Criminal Code<sup>2</sup>. Therefore, there is a legal vacuum in defining assistance bribery crime since neither Law Number 20 of 2001 nor the Indonesian Criminal Code regulates it.

This situation affects the pluralism of the legal paradigm in the corrupt criminal justice system in Indonesia, especially among judges as the vanguard in realizing legal justice in society. The problem of bribery and corruption initiated by bribery brokers can

<sup>1</sup> Andi Hamzah, 2005, *Pemberantasan Korupsi: Melalui Hukum Pidana Nasional dan Internasional*, Edisi Revisi, Jakarta, Radja Grafindo Persada also can be seen at Reny Okpirianti, *Korupsi sebagai Tindak Pidana Khusus dalam Rancangan Undang-Undang KUHP*, *Jurnal Varia Hukum*, No.15, Vol.31, March, 2019, pg. 3.

<sup>2</sup> Article 55 of Indonesian Criminal Code stated that:

(1) As principals of punishable act shall be punished: a) Those who perpetrate, cause others to perpetrate, or take a direct part in the execution of the act; b) Those who intentionally provoke the execution of the act by gifts, promises, abuse of power or of respect, force, threat, or deception or by providing an opportunity, means or information. (2) In respect to the provoker only those acts which have been deliberately provoked and their consequences shall be considered.

be seen in the regional balance fund bribery case in the 2018 State Budget and Expenditure Plan (APBN). The Jakarta Corruption Crime Panel of Judges, in this case, found Eka Kamaluddin guilty of committing a criminal act of corruption together with Amin Santono as Members of Commission XI House of Representative of Republic Indonesia (DPR RI) and Yaya Purnomo as civil servants at the Ministry of Finance Republic Indonesia received bribes of Rp. 3.685 billion. Those get the bribes from Ahmad Ghiast, the Director of CV Iwan Binangkit and Mustafa, the Regent of Central Lampung, through Taufik Rahman, the Head of the Central Lampung *Bina Marga*<sup>3</sup> Service. Eka Kamaluddin was proven to have violated Article 12 letter a of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption in conjunction with Article 55 paragraph (1) *jo*. Article 65, paragraph (1) of the Indonesian Criminal Code. The panel of judges sentenced Eka Kamaludin to 4 years in prison, a fine of IDR 200 million, a subsidiary, and one month in prison.<sup>4</sup>

In this case, one of the judges' panels had a dissenting opinion in Criminal Verdict Number: 76/Pid. Sus-TPK/2018/PN.Jkt.Pst related to one of the elements in the indictment contained in Article 12 letter a of Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption *in conjunction* with Article 55 paragraph (1) *in conjunction* with Article 65 paragraph (1) of the Indonesian Criminal Code, with the consideration that based on the provisions in Article 12 letter a of the Law Number 20 of 2001, there elements of civil servants and state apparatus, which means that the defendant must have a position as a civil servant and state apparatus. It means that, according to the dissenting opinion, judges think the bribery assistance crime must be a civil servant or state apparatus. At the same time, Eka Kamaluddin is a consultant or private party. In the verdict, considering bribery assistance, the legal subject is not a civil servant or state apparatus outside of a crime of office. Therefore, the element of a civil servant or state apparatus for the accused, Eka Kamaluddin, still needs to be fulfilled.<sup>5</sup> Considering that because one of these elements is not fulfilled, the other elements do not need to be considered. So, the accused must be acquitted of these charges.

The same applies to the second alternative indictment, Article 11 of the Law Number 20 of 2001. In the provisions of this article, there are also elements of civil servants and state apparatus as perpetrators of criminal acts.<sup>6</sup> *"The basic elements of civil servants and gifts also to civil servants*, these elements are not fulfilled, because the elements of the charges are not fulfilled, the defendant must be acquitted of the charges.<sup>7</sup> The legal vacuum regarding the position of passive actors who are not civil servant or state apparatus in corruption crimes will result in a loss of value certainty, benefit, and legal justice.<sup>8</sup>

The next case is a bribery case involving the Governor of Bengkulu, Ridwan Mukti, and his wife, Lily Martini Maddari, who committed the crime of accepting bribes from Rico Diansari, the Director of PT. Rico Putra Selatan (who was prosecuted separately) was caught in a Hand-Catching Operation (OTT) by the Corruption Eradication Commission (KPK) in 2017. In that event, KPK officers arrested Rico Diansari and Lily Martini Maddari shortly after Rico Diansari had handed over Rp. 1,000,000,000.- (one billion rupiah) as a commitment fee for the Project for Implementation of Development Activities/Improvement of the Muara Aman Test Road (Cold Water-Test) and Development Activities/Activities. Improvement of the Curup-Cold Road to Lily Martini Maddari, who was the wife of Ridwan Mukti, who was then governor of Bengkulu, the handover of the money was made at the private homes of Ridwan Mukti and Lily Martini Maddari. KPK officers arrested Ridwan Mukti, who was not at the house then but was chairing a meeting at his office.<sup>9</sup>

Investigators and Public Prosecutors at the KPK apply Article 12 as an alternative to Article 11 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 Amendment to Law Number 31 of 1999 concerning Eradication of Corruption *jo*. Article 55 paragraph (1) 1st of the Criminal Code against Ridwan Mukti and Lily Martini Maddari, who are the wives of Ridwan Mukti, because the recipient of the commitment fee of IDR 1,000,000,000 (one billion rupiahs) from Rico Diansari is Lily Martini Maddari who is not having the status of a civil servant or state apparatus as referred to in Article 12 letter a and Article 11, but as the wife of Ridwan Mukti who was then serving as the Governor of Bengkulu, Lily Martini Maddari knew or should have suspected that the money handed over by Rico Diansari given to mobilize Ridwan Mukti, who at that time served as the Governor of Bengkulu, to do or not to do something in his position that was contrary to his obligations, in this case, related to activities or projects carried out by the Bengkulu Provincial Government.<sup>10</sup>

The application of punishment in cases of participation and assistance is different; inclusion is regulated in Article 55 of the Indonesian Criminal Code, while assistance is regulated in Article 56 of the Indonesian Criminal Code. That became chaotic because these two types of criminal acts are regulated as one in Article 15 of Law Number 20 of 2001. Research on bribery has, in its development, been carried out by many parties, so it is necessary to know the differences between bribery research conducted by other authors and the object of the author's article study. The research conducted by other parties, namely:

1. Research conducted by Budi Parmono University of Brawijaya was conducted in 2011 with the title "Abuse of Authority in Corruption Crimes in Indonesia". This research looks at passive bribers or recipients of bribes and gratuities in abusing authority as passive bribers. The author's dissertation is more related to reformulation related to the criminal provisions of the criminal act of passive bribery corruption for legal subjects who are not civil servants or state apparatus based on the value of justice.<sup>11</sup>

<sup>3</sup> Directorate general of highway construction and maintenance.

<sup>4</sup> Criminal Verdic No. 76/Pid.Sus-TPK/2018/PN Jkt.Pst, retrieved from [https://putusan3.mahkamahagung.go.id/direktori/ putusan/534d233fce34c2effc0ce2fc2fd1c11a.html](https://putusan3.mahkamahagung.go.id/direktori/putusan/534d233fce34c2effc0ce2fc2fd1c11a.html), at May 12<sup>th</sup> 2022.

<sup>5</sup> Hisar Sitohang, Martono Anggusti, and Uton Utomo, Analisis Hukum Terhadap Tindak Pidana Korupsi Dengan Penyalagunaan Jabatan Dalam Bentuk Penyuaan Aktif (Studi Putusan Nomor : 195/Pid.Sus/TPk/2017/Pn Sby), *Patik: Jurnal Hukum*, Volume 07, Number 02, Agustus (2018), pg 85.

<sup>6</sup> Janpatar Simamora, Tafsir Makna Negara Hukum dalam Perspektif Undang-undang Dasar Negara Republik Indonesia Tahun 1945, *Jurnal Dinamika Hukum*, Volume 14, Number 3, September 2014, pg. 558.

<sup>7</sup> *Loc.Cit.*

<sup>8</sup> M Zulfikar Adhiguna, Ifahdah Pratama Haspsari, and Dodi Jaya Wardana, Pertanggung Jawaban Pidana Suap Terhadap Tindak Pidana Yang Melibatkan Sektor Swasta, *Jurnal Justisia*, Volume 7, Number 2, 2022, pg. 366-367.

<sup>9</sup> Criminal Verdic No.45/Pid.sus-TPK/2017/PN.Bgl retrieved from <https://putusan3.mahkamahagung.go.id/direktori/putusan/534d233fce34c2effc0ce2fc2fd1c11a.html> May 12th, 2022.

<sup>10</sup> *Loc.Cit.*

<sup>11</sup> Retrieved from <https://selma.ub.ac.id/program-doktor-ilmu-hukum-2/> at May 12<sup>th</sup> 2023.

2. Research conducted by Djamal from Sultan Agung Islamic University in 2017 titled "Reconstruction of Corporate Criminal Responsibility in Corruption Crimes Based on Justice Values". In this dissertation, the issue focuses on the scope of corporate responsibility in acts of corruption. However, this dissertation does not discuss the corporation's position as a party involved in a criminal act of corruption. The author's dissertation is more focused on efforts to reflect on legal subjects who are not civil servants or state apparatus who take advantage of their close relationship to be actively involved and even take the initiative in realizing the crime of bribery corruption.<sup>12</sup>
3. Research conducted by Dina Irawati from Sultan Agung Islamic University in 2011 titled "Decriminalization of Gratification Crimes into Bribery in the Perspective of Dignified Justice". This dissertation focuses on studies on decriminalizing criminal acts of gratification into bribery associated with the perspective of dignified justice. The author's dissertation is more related to the reformulation related to the criminal provisions of the criminal act of passive bribery corruption for legal subjects who are not civil servants or state apparatus capable of realizing justice.<sup>13</sup>

According to the passage, this article will be focus in discussing the scope and problem of the criminal element in bribery assistance crime in Indonesia.

## THE HISTORY OF BRIBERY CRIME

Bribery comes from the origin of the word *briberrie* (French), which means 'begging' (begging) or 'vagrancy' (vagrant). In Latin, it is called *bribe*, a piece of bread given to beggars (a piece of bread given to beggars). In its development, bribe means 'alms' (alms), 'blackmail', or 'extortion' (extortion) about 'gifts received or given in order to influence corruptly' (gifts or gifts received or given to influence maliciously or corruptly).<sup>14</sup>

That means that someone involved in bribery should be ashamed if he lives up to the meaning of the word bribe, which is disgraceful and even degrading to human dignity, especially for the bribe recipient. For Indonesia, which has been in the Reform Era since 1998, tackling corruption, already systemic and endemic, including bribery (former World Bank President James Wolfensohn called it "the cancer of developing countries"), is one of the reform agendas that must be completed. The criminalization of bribery has been carried out through Article 209 of the Criminal Code, which regulates active bribery (active mopping or active bribery) against civil servants. The partner of this article is Article 419 of the Criminal Code, which regulates passive bribery (passive mopping or passive bribery), which threatens punishment against civil servants who accept gifts or promises mentioned above. Furthermore, Article 210 of the Criminal Code regulates the bribery of judges and advisers in court. Judges and advisers who accept bribes are subject to criminal sanctions under Article 420 of the Criminal Code. The four articles were later declared as criminal acts of corruption through Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.<sup>15</sup>

The expansion of the criminal act of bribery in the form of retour-commission or gratuity is regulated in Article 418 of the Indonesian Criminal Code. This article was later raised as a criminal act of corruption (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001); 'Gratification is a broad gift giving and includes: giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tours, free medical treatment, and other facilities. Bribery involving the public interest (both active and passive) is criminalized through Law No. 11 of 1980 on Banking (Law No.11 of 1980). Bribery in the banking environment is regulated in Law No. 10 of 1998. Bribery in elections (money politics) is regulated in Law No. 12 of 2003 on General Election of Members of the House of Representatives of the Republic of Indonesia, Members of Regional Representative Council, and Members of Regional House of Representative (Law No.12 of 2003). Likewise, Law No. 32 of 2004 on Local Government relates to regional head elections.<sup>16</sup>

## LEGAL VACUUM OF CRIMINAL ELEMENT OF BRIBERY ASSISTANT CRIME IN LAW NO.20 OF 2001 ON THE AMENDMENT LAW NO. 31 OF 1999 ON THE ERADICATION OF CORRUPTION CRIMES

The ambiguity regarding the elements of the act of assisting bribery in Article 15 of Law Number 20 of 2001 has resulted in a legal vacuum in the criminal justice sector for perpetrators of assisting bribery. The perpetrators of bribery assistance are often sentenced to Article 55 of the Criminal Code, namely participating in bribery. That is not true, considering that participation in the crime of bribery must place the perpetrators of participation or participation in bribery as one of the parties that has an important role in the occurrence of bribery. It is understandable that based on the provisions in Article 12 Letter a of Law No.20 of 2001, there are elements of civil servants and apparatus state, which means that the accused, as subject to the provision for participating in bribery cases, must have a position as a civil servant and state apparatus.<sup>17</sup> Besides, Article 12 Letter c of Law No.20 of 2001 mentioned judges who received bribery (gift and promise) and Article 12 Letter d mentioned lawyer/advocate. So that, there are three bribery perpetrators' elements they are civil servant or state apparatus, judges, and advocate/lawyer who receive gift/payment and promise to do bribery related actions.

<sup>12</sup> Retrieved from <https://pdih.unissula.ac.id/> at May 12<sup>th</sup> 2023.

<sup>13</sup> *Loc.Cit.*

<sup>14</sup> Agustinus Edy Kristianto, retrieved from [http://korupsi.vivanews.com/news/read/28525-suap\\_korupsi\\_tanpa\\_akhir\\_1tgl](http://korupsi.vivanews.com/news/read/28525-suap_korupsi_tanpa_akhir_1tgl). June 16<sup>th</sup> 2019, pg.1.

<sup>15</sup> *Loc.Cit.t*

<sup>16</sup> *Loc.Cit.*

<sup>17</sup> Aidul Fitriaciada Azhari, Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi, *Jurnal Hukum IUS QUIA IUSTUM*, Volume 19, Nomor 4, October 2012, pg. 490.

Cases involving perpetrators of bribery who were sentenced under Article 55 of the Criminal Code occurred in various bribery cases in Indonesia. The following is a table related to several bribery cases involving perpetrators of bribery assistance other than civil servants and state apparatus:<sup>18</sup>

**Table 1: List of Bribery Assistance Cases Involving a Non-Civil Servant Party**

| Case Number                    | Bribery Assistant Criminal | Chronology of Bribery  | Sanction  | Notes  |
|--------------------------------|----------------------------|--|---|--|
| 76/Pid.Sus-TPK/2018/PN Jkt.Pst | Eka Kamaluddin             | On Friday night, 4 May 2018, at around 19.30 WIB, a meeting took place between Amin Santono, a member of the DPR's Commission XI, with Eka Kamaluddin, Yaya Purnomo, Directorate General of Finance, Ministry of Finance, and Ahmad Ghiast, Director of CV. Iwan Binangkit at a restaurant at Halim Perdanakusuma Airport. The parties scheduled the meeting to transfer money from Ahmad Ghiast to Amin Santono and Yaya Purnomo in the amount of Rp. 400,000,000,-. What is the purpose of giving the money so that CV? Iwan Binangkit received projects at the Housing, Settlement Areas and Land Office in the Sumedang district worth IDR 4 billion and projects at the PUPR office in the Sumedang district worth IDR 21.85 billion. After carrying out a hand-catching operation by the KPK, it was discovered that before handing over Rp. 400,000,000,-. Previously, Ahmad Ghiast had also transferred Rp. 100,000,000,- to Amin Santono. | Based on Eka Kamaluddin's actions as a bribe intermediary, Eka was sentenced to have committed the act as stipulated in Article 12 letter a Law No. 39 of 1999 in conjunction with Article 55 paragraph (1) 1st in conjunction with Article 65 paragraph (1) of the Indonesian Criminal Code. | In the bribery case between Ahmad Ghiast and Amin Santono, the position of the criminal sanction of Eka Kamaluddin as a bribe intermediary between members of the panel of judges is different. In this case, one of the panel of judges in the decision had a difference of opinion. The difference was related to one of the elements in the indictment contained in Article 12 letter a Law No.39 of 1999 in conjunction with Article 55 paragraph (1) 1st in conjunction with Article 65 paragraph (1) of the Indonesian Criminal Code. Based on the provisions in Article 12 letter a of the Law No.39 of 1999, there are elements of civil servants and state apparatus, which means that the accused must have a position as a civil servant and state apparatus. However, in the indictment, Eka Kamaluddin was a consultant or private party and a teacher at an Islamic boarding school. Regarding bribery assistance, the legal subject is not a civil servant or a state apparatus other than an official crime. Therefore, the element of a civil servant or state apparatus for the accused, Eka Kamaluddin, was not fulfilled. Considering that because one of these elements is not fulfilled, the other elements do not |

<sup>18</sup> Supreme Court of Republic of Indonesia, Putusan-Putusan Terkait Pelaku Pembantuan Suap, retrieved from <https://putusan3.mahkamahagung.go.id/search.html>, April 12<sup>th</sup> 2023.

45/Pid.Sus-TPK/2017/PN.Bgl.

Lily Martiani Maddari

The incident occurred on June 20, 2017, in the morning at 09.00. Jhoni Wijaya is the director of PT. Statics Partners provide funds of 1 billion in RP denominations. 100,000, -, packed in an A-4 sized cardboard box to Rico Diansari as the entrepreneur and treasurer of the DPD Golkar. After that, Rico met Lily who is the wife of Ridwan Mukti, who is the Governor of Bengkulu, at 09.30; at exactly 10.00, Rico was secured by the KPK, and the KPK brought Rico back to Ridwan Mukti's house at Ridwan Mukti's house the KPK secured Lily and found a bribe of 1M, it was discovered that Lily was a bribe intermediary between Jhoni Wijaya and Ridwan Mukti.

Because Lily Martiani received a commitment fee of IDR 1,000,000,000 (one billion rupiah) from Rico, Lily was sentenced to Article 12 letter a and Article 11 Law No.39 of 1999.

need to be considered. So the accused must be acquitted of these charges. The same applies to the second alternative indictment, Article 11 of the Law No. 39 of 1999.

Based on Bengkulu District Court Decision No.45/Pid.Sus-TPK/2017/PN.Bgl, which High Court Decision No. 4/PidSus-TPK/2018/PT.BGL, which Supreme Court Decision No. 1219 K/PidSus/2018 stated that Defendant I Ridwan Mukti and Defendant II Lily Martiani Maddari were proven legally and convincingly guilty of committing the crime of corruption together as in the indictment of Article 12 letter a Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption in conjunction Article 55 paragraph (1) 1st of the Indonesian Criminal Code. The verdict against Lily is unjustified because Article 12 Letter a of the Law No. 31 of 1999 contains elements of civil servants and state apparatus, which means that the defendant must have a position as a civil servant and state apparatus. Likewise, with Article 11 Law No. 31 of 1999, Lily is not a State Apparatus or civil servant.

49/Pid.Sus-TPK/2020/PN Jkt.Pst

Andi Irfan Jaya

Andi Irfan Jaya met with Djoko Tjandra, Attorney Pinangki Sirna Malasari, and Advocate Anita Kolopaking on 25 November 2019. During the meeting, an action plan was produced to free Djoko Tjandra from being held accountable for the Bank Bali case. Due to the results of the action plan, Djoko Tjandra paid a bribe of US\$10 million. Andi Irfan Jaya became a liaison regarding the bribery transaction

For his actions, Andi Irfan Jaya was sentenced to a criminal sentence as stipulated in Article 11 of the Law Number 20 of 2001.

Based on the court decision number Number 49/Pid.Sus-TPK/2020/PN Jkt.Pst. Andi Irfan was sentenced to sanctions as stipulated in Article 11 of Law No. 20 of 2001. That is inappropriate, considering that Article 11 has elements of actors who are civil servants or state apparatus. Meanwhile, Andi Irfan is not a civil servant and a State Apparatus.

between Djoko Tjandra and Attorney Pinangki.

97/Pid.Sus-TPK/2019/PN.Jkt.Pst

Andi Taswin Nur

Andi Taswin Nur is a bribe intermediary in the bribery case against the director of PT Angkasa Pura II. Draman Mappangara as the Director of PT Industri Telekomunikasi Indonesia, whom Andi Taswin bridges, has the intention of bribing the director of PT Angkasa Pura II so that he is willing to seek PT Industri Telekomunikasi Indonesia as a provider and worker in the semi baggage handling procurement project. Andi Taswin was the party that lobbied and gave PT Industri Telekomunikasi Indonesia money to the director of PT Angkasa Pura II.

For his actions, Andi Taswin was charged with Article 12 Letter a of the Republic of Indonesia Law No. 20 of 2001 in conjunction with Article 55 of the Indonesian Criminal Code.

Based on decision number 97/Pid.Sus-TPK/2019/PN.Jkt.Pst, Andi Taswin was sentenced to a criminal sentence as stipulated in Article 12 Letter a of Law No. 20 of 2001 in conjunction with Article 55 of the Indonesian Criminal Code. That is not quite right, considering Andi Taswin is an intermediary who is not a party with a direct interest and is a civil servant; Andi Aswin is only doing his job as a liaison. It can be seen together with Article 5 of Law No. 20 of 2001. Andi Aswin only has the intention or mental attitude regarding efforts to offer liaison services or act as an intermediary for bribes or bribe brokers so that PT Industri Telekomunikasi Indonesia as a party with a direct interest in the director of PT Angkasa Pura II can be more easily accessed because of the closeness between Andi Aswin and Andra Yastrialsyah Agussalam as Director of PT Angkasa Pura II. In other words, Andi Aswin had no intention of bribing; he was only an intermediary for bribes, while PT Industri Telekomunikasi Indonesia had the intention to bribe.

Assistance (*Medeplichtigheid*) is a person who deliberately assists in the form of advice, information or opportunities to other people who commit criminal acts, where the assistance is provided either at the time or before the crime occurs. It is said assistance if there are two or more people, one as a maker (*de hoofd dagger*), and the other as a helper (*de medeplichtige*).<sup>19</sup>

The various cases above show that the perpetrators of bribery assistance or bribery intermediaries were mostly sentenced under the provisions of Article 55 of the Criminal Code. That is not true considering that participation and assistance have differences. The book entitled "The Book of Criminal Law (KUHP) and its Complete Comments Article, Article written by R. Soesilo, explains that what is meant by people who participate in carrying out (*medepleger*) in Article 55 of the Indonesian Criminal Code is jointly carrying out. There must be at least two people, namely the person who committed the crime (pledge) and the person who participated in the crime (*medepleger*). Article 56 of the Indonesia Criminal Code explains that a person who "helps to commit" if

<sup>19</sup> Mahrus Ali, 2011, *Dasar-Dasar Hukum Pidana*, Jakarta, Sinar Grafika, pg.131.

he intentionally provides such assistance at the time or before (so not after) the crime is committed. Suppose assistance is given after the crime has been committed. In that case, the person commits an act of "conspiracy" or "resisting," violating the provisions of Article 480 of the Indonesian Criminal Code or the criminal act referred to in Article 221 of the Indonesian Criminal Code.<sup>20</sup> An explanation regarding the ambiguity of Article 15 of Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 has sparked a void in criminal law or a legal vacuum in the criminalization of bribery assistance in the country.<sup>21</sup> According to Table 1, we can conclude that the assistance bribery perpetrators are sentenced to be jailed by Article 12 Law Number 20 of 2001 *in conjunction* Article 55 the Indonesian Criminal Code, even if the perpetrators do not fulfill civil servant or state apparatus, judges, and lawyer. The judges made a mistake in applying the law and there was no legal action against the criminal verdict.

## CONCLUSION

Criminalization in bribery cases does not only cover active and passive perpetrators of bribery; the existence of perpetrators of assisting bribes cannot be ruled out; there is the fact that the provisions for assisting bribery in Article 15 of Law No. 20 of 2001, which are ambiguous which have resulted in a legal vacuum in terms of conviction in bribery cases. This situation has resulted in uncertainty in the imposition of criminal sanctions for bribery assistance perpetrators.

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