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Judul : Reorientation of the Ultimum Remidium Principle in Handling Economic Crime Regarding Protective Equipment and Covid-19 Medications

Penulis : Hwian Christianto

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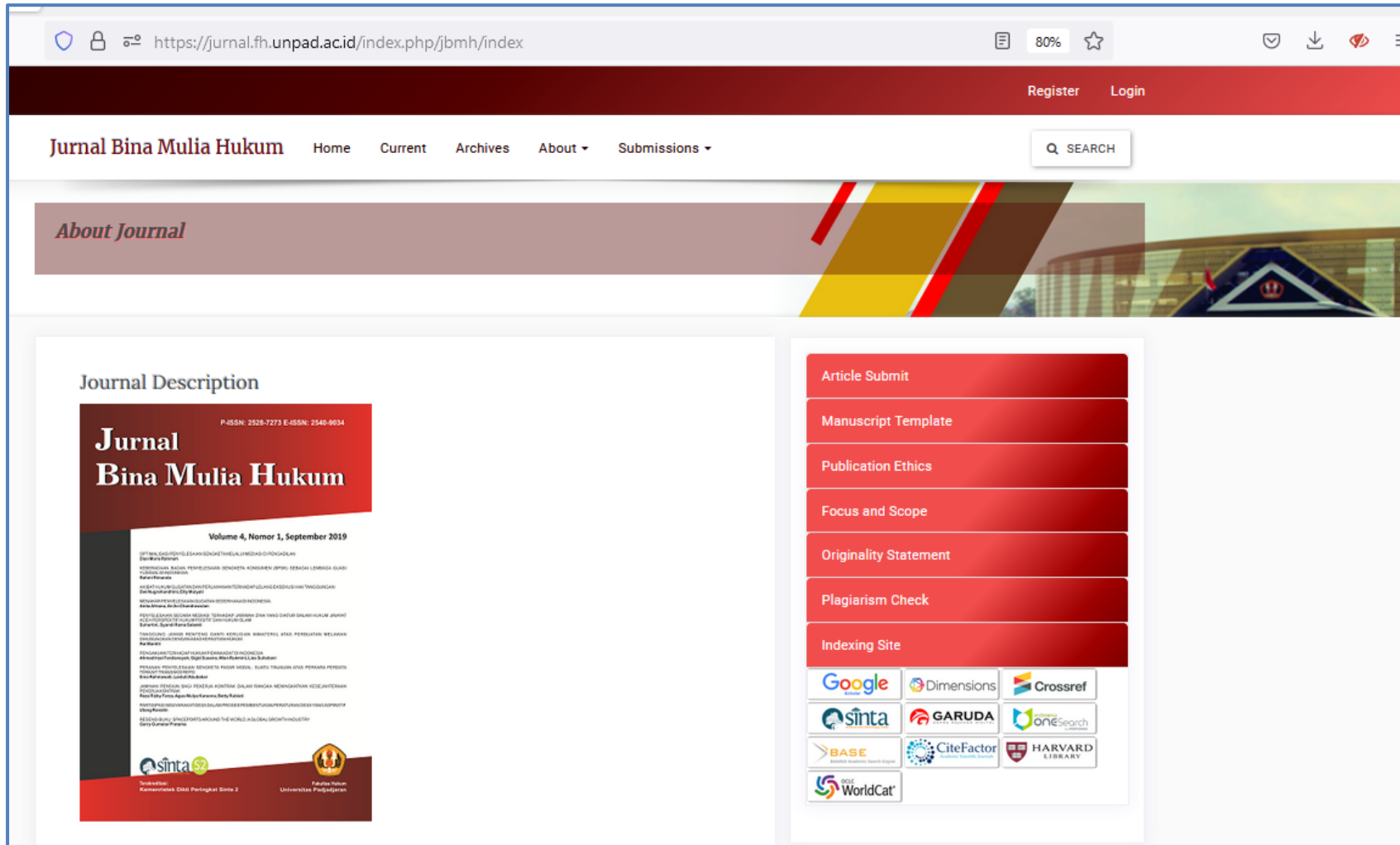
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
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Applying the ultimatum remedium principle to economic crimes needs to be studied from a regulatory perspective concerning the situation during the Covid-19 pandemic. The normative juridical research method combines a statutory approach with a conceptual approach. Both approaches provide a comprehensive understanding of the ultimatum remedium principle in legislation and a contextual understanding of economic crimes during the Covid-19 pandemic. The results show that Emergency Law 7/1955 applies the primum remedium principle with a double-track punishment system, while Trade Law applies the ultimatum remedium principle. Handling economic crimes related to providing personal protective equipment and/or medications to prevent and recover from Covid-19 infections can be considered essential goods and important commodities are given the situation and conditions during the Covid-19 pandemic in Law Number 7 2014. Applying Trade Law meets the ultimatum remedium principle but does not prioritize the recovery of economic losses suffered.

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## REORIENTATION OF THE ULTIMUM REMEDIUM PRINCIPLE IN HANDLING ECONOMIC CRIME REGARDING PROTECTIVE EQUIPMENT AND COVID-19 MEDICATIONS

Hwian Christianto<sup>a</sup>

### ABSTRACT

Applying the ultimum remedium principle to economic crimes needs to be studied from a regulatory perspective concerning the situation during the Covid-19 pandemic. The normative juridical research method combines a statutory approach with a conceptual approach. Both approaches provide a comprehensive understanding of the ultimum remedium principle in legislation and a contextual understanding of economic crimes during the Covid-19 pandemic. The results show that Emergency Law 7/1955 applies the primium remedium principle with a double-track punishment system, while Trade Law applies the ultimum remedium principle. Handling economic crimes related to providing personal protective equipment and/or medications to prevent and recover from Covid-19 infections can be considered essential goods and important commodities are given the situation and conditions during the Covid-19 pandemic in Law Number 7 2014. Applying Trade Law meets the ultimum remedium principle but does not prioritize the recovery of economic losses suffered.

**Keywords:** covid-19 pandemic; economic crime; ultimum remedium.

### INTRODUCTION

Since it was announced by the President of the Republic of Indonesia on March 16, 2020, until July 2021, Indonesian society has still been in the Covid-19 pandemic period.<sup>2</sup> It began with the enactment of two legal products, namely, Presidential Decree Number 11 of 2020 regarding the Declaration of a Public Health Emergency for Covid-19 (PD 11/2020) and Government Regulation Number 21 of 2020 regarding the Large-Scale Social Restrictions in Accelerating Covid-19 Handling (GR 21/2020). Both of these legislative regulations became the starting point for changes in Indonesian society's conditions entering the pandemic period with the Large-Scale Social Restrictions (*Pembatasan Sosial Berskala Besar/PSBB*) strategy. The PSBB efforts became the Government's primary choice during the Covid-19 pandemic, the implementation of which underwent changes following the situation and conditions of the community. By mid-2021, the Government's policy in anticipating the spread of the Covid-19 virus had also undergone adjustments by implementing the Community Activity Restrictions Enforcement (*Pemberlakuan Pembatasan Kegiatan Masyarakat/PPKM*) policy until July 20, 2021, even extended until July 30, 2021. In support of this PPKM policy, the Government issued Minister of Home Affairs Instruction Number 22 of 2021 concerning implementing Level 4 (four) Corona Virus Disease (Covid-19) of PPKM in the regions of Java and Bali.

PPKM brings significant changes to the community, especially in terms of the economic challenges faced by the people due to various restrictions and limitations. Business owners are trying to sustain their businesses despite facing the Covid-19 pandemic and complying with various health

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<sup>2</sup> Vivi Setiawaty, et. al., "The Implementation of First Covid-19 Cluster in Indonesia", *American Journal of Tropical Medicine and Hygiene*, No. 103 Vol. 6, 2020, p. 2340.

protocols. However, many business owners have exploited the situation to gain maximum profit. While business owners are entitled to seek profits, their efforts must consider society's larger interests, particularly during the Covid-19 pandemic. The involvement of business owners in the efforts to contain the spread of Covid-19 is evident from their provision of medical equipment and medications needed by the community. The medical equipment includes masks, oxygen tanks, oxygen, face shields, antiseptic solutions, and other equipment, while the medications include fever reducers, pain relievers, and vitamins to support immunity. The availability of medical equipment and medications is crucial for the community in preventing and combating the spread of Covid-19 during the pandemic.

There are several cases of business actors deliberately using the Covid-19 pandemic period to take actions that hinder the availability and acquisition of medical equipment and medications. Four cases of hoarding medical equipment include hoarding 8 boxes of masks and 13 boxes of antiseptic liquids in Semarang, Central Java; sending 200 boxes of masks purchased from pharmacies throughout Makassar to be sold in New Zealand by the perpetrator in Makassar, South Sulawesi; hoarding 358 boxes consisting of 120 Sensi brand face masks, 152 Mitra brand face masks, 71 Prasti brand face masks, and 15 Facemas brand face masks in Tanjung Duren, West Jakarta; and hoarding 180 cartons containing 360,000 Remedi brand masks and 107 cartons containing 214,000 Volca and Well-best brand masks in a warehouse in Neglasari, Tangerang.<sup>3</sup> In addition to the hoarding of medical equipment, there is also a case of alleged hoarding of Azithromycin 500 milligram medicine by PT ASA, a medication for treating Covid-19.<sup>4</sup> Similar cases also occurred involving the hoarding of Avigan, Ivermectin, and oxygen cylinders by three groups in Jakarta.<sup>5</sup> These cases indicate that perpetrators deliberately hoard medical equipment and medicine, intending to obtain greater profits by taking advantage of the Covid-19 pandemic period.

Based on the background, the discussion will focus on 2 (two) studies related to the existence of the *ultimum remedium* principle in Emergency Law Number 7 of 1955 regarding the Investigation, Prosecution, and Non-Criminal Economic Court (Emergency Law 7/1955) and Trade Law regarding the Trade (Trade Law) and its development in its application during the Covid-19 Pandemic.

## METHODS

The study uses three methods: the statute approach, the conceptual approach, and the case approach. Firstly, the author analyzes criminal law norms that regulate economic crimes in general, namely Emergency Law 7/1955, and its implementing regulations as well as Trade Law. The study of

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<sup>3</sup> Riska Farasonalisa (et.al), "Kasus Penimbunan Masker di sejumlah daerah yang dibongkar polisi semarang", 2020, <<https://regional.kompas.com/read/2020/03/05/06300021/4-kasus-penimbunan-masker-di-sejumlah-daerah-yang-dibongkar-polisi-semarang?page=all>>,[accessed on 21 July 2021].

<sup>4</sup> Sonya Teresa Debora,"Kasus Penimbunan Obat Covid-19 d Kalideres, Polisi Periksa Pegawai PT ASA", 2021, <<https://megapolitan.kompas.com/read/2021/07/14/19453381/kasus-penimbunan-obat-covid-19-di-kalideres-polisi-periksa-pegawai-pt-asa?page=all>>,[accessed on 21 July 2021].

<sup>5</sup> Dis/arh, "Tiga Kelompok Penimbun Obat Corona dan Tabung Oksigen dibekuk", 2021, <<https://www.cnnindonesia.com/nasional/20210708101115-12-664848/tiga-kelompok-penimbun-obat-corona-dan-tabung-oksigen-dibekuk>>, [accessed on 21 July 2021].

legislation, specifically during the Covid-19 pandemic, is also examined in Law Number 6 of 2018 regarding the Health Quarantine (Law 6/2018). Understanding these legal norms will be linked to the concept of criminal law related to the *ultimum remedium* principle, with legal doctrine and case studies used as reference materials based on understanding legal norms and criminal law concepts. The results of the understanding obtained from these three approaches will be used to draw conclusions to solve legal issues related to the existence of the *ultimum remedium* principle in handling economic crimes, especially during the Covid-19 pandemic.

## DISCUSSIONS

### The Principle of *Ultimum Remedium* in Emergency Law 7/1955 and Trade Law

Criminal Law as a public law has a distinctive characteristic in its harsh criminal sanctions.<sup>6</sup> It can be understood considering the criminal sanctions stated in Article 10 of the Criminal Code, which consists of Principal and Additional Penalties that have serious implications for the convicted person. Therefore, Dutch legal experts thought that “criminal law should only be used when there is no other way to tackle societal problems,” known as the term “*ultimum remedium*”.<sup>7</sup> The interpretation of the term “*ultimum remedium*” varies, among others, as “criminal law as the last resort remedy”, “criminal law as the ultimate weapon”<sup>8</sup>, and even “a middle ground that benefits all parties, including victims, perpetrators, and society”.<sup>9</sup>

The interpretation of *ultimum remedium*, whether as a last resort remedy or ultimate weapon, actually has similarities when considering the role of criminal law. Criminal law is applied as a last step or effort in resolving a case. It is different from the use of criminal law as the main and first tool explicitly stated in the law, considering the level of seriousness and consequences of the case, known as *primum remedium* or *optimum remedium*.<sup>10</sup> This means that the involvement of criminal law as *ultimum remedium* or *primum remedium* depends heavily on positive regulations/laws, including in economics. Regarding the latter understanding of *ultimum remedium* as a middle ground, it has similarities with the concept of restorative justice. The concept of restorative justice is an effort to bring justice that involves both perpetrators and victims to resolve cases peacefully and by mutual agreement.<sup>11</sup> This means that criminal law is not only oriented toward imposing criminal sanctions but also towards bringing the justice that society desires. In line with this, the interpretation of *ultimum remedium* focuses more on the involvement of criminal law in addressing legal issues/cases in society, as seen in positive law.

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<sup>6</sup> Topo Santoso, *Hukum Pidana Suatu Pengantar*, RajaGrafindo Persada, Depok: 2020, p. 122.

<sup>7</sup> *Ibid.*, p. 123.

<sup>8</sup> *Ibid.*, p. 123 – 124.

<sup>9</sup> Hisbul Luthfi Ashsyafari, “Penerapan Asas *Ultimum Remedium* dalam Penegakan Hukum Tindak Pidana Undang-Undang Informasi dan Transaksi Elektronik”, *Jurnal Yurisprudensi*, Vol. 4, January 2021, p. 30.

<sup>10</sup> Topo Santoso, *Loc.cit.*

<sup>11</sup> Rosdiana & Ulum Janah, “Penerapan Restorative Justice dalam Tindak Pidana Perzinaan pada Masyarakat Kutai Adat Lawas”, *Jurnal Bina Mulia Hukum*, Vol. 5, September 2020, p. 55.



The involvement of criminal law in regulating the economy is evident from the regulation of economic crimes, specifically Emergency Law 7/1955. Previously, there were 6 typologies of economic crimes related to controlled goods, price manipulation (*prijsbeheersing*), hoarding of goods, smuggling, rice milling obligations, and dividends, which were then improved in Emergency Law 7/1955.<sup>12</sup> Historically, Emergency Law 7/1955 addresses the need for national regulation of economic crimes, as stated in the Consideration section of the law. Reksodiputro explains that the Indonesian economy was in a "crisis" at that time, with the government facing difficulties in controlling the economy after the stage of the independence struggle (physical revolution).<sup>13</sup> Two important things were the background for the formation of Emergency Law 7/1955: the importance of formal criminal law regulations on actions that harm the economy and the unity of economic legislation. The first consideration shows that the lawmakers saw that certain actions could harm the nation's economy as a public interest that the government must protect. Another thing that can be understood from the first consideration is the importance of formal criminal law regulations, specifically for economic crimes regarding investigation, prosecution, and trial. In line with this understanding, Kesuma<sup>14</sup> asserts that crime has measurable negative impacts on country's economic growth.

The important aspects of the Emergency Law 7/1955 on economic crimes can be further understood from the Explanation section of Emergency Law 7/1955 in terms of the nature of economic crimes, including (1) the assumption that violations of economic rules are understood as business risks (*bedrijfrisico*), (2) the highly complicated nature of economic interests, making it difficult for judges and prosecutors to have a clear understanding, and (3) the violations providing significant benefits to the perpetrator, thus requiring "repressive" action. Economic crimes are carried out systematically, involving planning and complexity in hiding evidence of the crime.<sup>15</sup> Based on an understanding of these characteristics of economic crimes, the presence of criminal law plays a crucial role in effective repression or prosecution. This means that from the outset, Emergency Law 7/1955 emphasized the role of criminal law as the *primum remedium* or *optimum remedium* for the prosecution of economic crimes. Therefore, the use of criminal law in economics through Emergency Law 7/1955 obtained a normative juridical milestone to protect the economic interests of the Indonesian nation from economic crimes that are often considered business risks, complex to understand and bring significant benefits to the perpetrators.

The implementation of criminal law in Emergency Law 7/1955 is fascinating to study in formulating criminal sanctions for violators as regulated in Articles 6 through 16. Based on the regulations of Emergency Law 7/1955, criminal law appears to be prominent as the forefront means

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<sup>12</sup>Teguh Prasetyo & Jeferson Kameo, "Tipologi Tindak Pidana Ekonomi dalam Perspektif Keadilan Bermartabat", *Jurnal Hukum Bisnis Bonum Commune*, Vol. 3, August 2020, p. 206.

<sup>13</sup>Mardjono Reksodiputro, *Sistem Peradilan Pidana*, Rajawali Pers, Depok: 2020, p. 43.

<sup>14</sup>Derry Angling Kesuma, "Analisis Hubungan Tingkat Kejahatan dan Pertumbuhan Ekonomi di Indonesia", *Akselerasi: Jurnal Ilmiah Nasional*, Vol. 1, September 2019, p. 5-6.

<sup>15</sup>Meirison, "Tinjauan Islam terhadap Kejahatan Ekonomi", *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol. 5, June 2019, p. 134.

of handling economic criminal cases. It is not entirely wrong, considering this law regulates economic crime investigation, prosecution, and trial. It can be seen from the clear description of the scope of economic crimes in Articles 1e, 2e, and 3e of Emergency Law 7/1955. However, it should be understood that even though this law regulates criminal acts, handling economic crimes has certain distinct characteristics.

Handling cases of economic crimes, when observed from the Considerations section, emphasizes efforts to protect the community's economic interests from the handling of economic crimes within the unity of laws and regulations. The use of criminal law has fundamental differences compared to other crimes regulated in the Criminal Code. Criminal law policies in the field of economics in Emergency Law 7/1955 appear to emphasize efforts to restore losses caused by economic crimes that occur. It can be seen clearly from various punishments or sanctions regulated in Article 6 paragraph (2) to Article 16 of Emergency Law 7/1955. The imposition of regulated threatened punishment appears to pay attention to the severity of the punishment, which depends heavily on the profit gained by the perpetrator. This is evident in Article 6 paragraph (2) of Emergency Law 7/1955, which states that "...the price of the goods sold is one-quarter higher than the fine in letters a and b," then a 4-fold increase of the fine imposed on criminal acts with goods prices below the threatened fine will be applied. This regulation indicates the imposition of criminal punishment to restore losses caused by the perpetrator. Another interesting thing about the application of criminal law is the regulation of Additional Punishments, Discipline Measures, and Bail Money for Economic Crime perpetrators.

These three forms of punishment indicate that Emergency Law 7/1955 does not prioritize criminal sanctions but focuses on restitution damages. The additional punishment includes the revocation of rights, partial or total closure of a company, seizure of movable and immovable property to replace damaged goods, and the confiscation of all or part of the profits obtained by the offender (Article 7). These additional punishments demonstrate that criminal law is more focused on the restitution of damages rather than punishing the offender, as Article 10 of the Criminal Code stipulated. This understanding is further emphasized in the provision of disciplinary measures, where the offender's company is placed under supervision for a maximum of three years, a security deposit is required, and the offender is obliged to undertake tasks that have been neglected, including the damages incurred. It indicates that the emphasis of criminal law is more directed toward economic restitution. Based on this understanding, it is clear that Emergency Law 7/1955 applies criminal law as the primary means to achieve economic restitution.

The implementation of criminal law in Emergency Law 7/1955 regarding economic crimes is not automatically applied to criminal law regulations in other legal provisions. The regulation of economic crimes in Emergency Law 7/1955 essentially serves as the basis for regulating economic crimes while still leaving an open opportunity for new regulations in dealing with the development

of public views on criminal law and the economic conditions of society.<sup>16</sup> Law Number 7 of 2014 regarding the Trade (Trade Law) emphasizes implementing criminal law differently. Starting from four main considerations in implementing Trade Law, first, economic development is directed toward the common welfare through a democratic economy following the 1945 Constitution. Second, trade becomes the main development driver by strengthening production, income distribution, and domestic product competitiveness. Third, the need for political-economic alignment towards people's economy, including cooperatives and micro, small and medium enterprises as pillars of national economic development, and fourth, the need for harmonization of trade regulations in the era of globalization. The four basic considerations for trade regulation in Trade Law demonstrate the government's commitment to strengthening economic democracy in terms of domestic trade so that it can run smoothly and have competitiveness in the era of globalization. The use of criminal law in Trade Law is also regulated in Chapter XVIII on Criminal Provisions, starting from Article 104 to Article 116. The regulation of prohibited acts is diverse, but they have the same formulation of criminal sanctions imposed, imprisonment, and/or fines, as seen in the following table.

**Table 1. Prohibited Acts according to Trade Law**

NO	PROVISION	OFFENDER	PROHIBITED ACT	PENALTY
1	Article 104	Businesses	Failure to use or to affix an Indonesian-language label to goods traded domestically	Maximum imprisonment of 5 years and/or maximum fine of IDR 5 billion
2	Article 105	Distributor Businesses	Implementing pyramid scheme in distributing goods according to Article 9	Maximum imprisonment of 10 years and/or maximum fine of IDR 10 billion
3	Article 106	Businesses	Engaging in trade activities without proper licenses as stipulated in Article 24 paragraph (1)	Maximum imprisonment of 4 years or maximum fine of IDR 10 billion
4	Article 107	Businesses	Stockpiling basic goods and/or essential goods in certain quantities and time during shortages, price fluctuations, and/or trade barriers as stipulated in Article 29 paragraph (1)	Maximum imprisonment of 5 years and/or maximum fine of IDR 50 billion
5	Article 108	Businesses	Manipulating data and/or information regarding inventory of basic goods	Maximum imprisonment of 4 years and/or

<sup>16</sup>Luhut M.P. Pangaribuan, "Tindak Pidana Ekonomi dan Tindak Pidana Korupsi: Suatu Catatan Hukum dalam Kerangka Penegakan Hukum yang Lebih Efektif", in: Jufrina Rizal & Suhariyono AR (ed), *Demi Keadilan: Antologi hukum pidana dan sistem peradilan pidana enam dasawarsa Harkristuti Harkrisnowo*, Kemang Studio Aksara, Jakarta: 2016, pg. 98.

			and/or essential goods as referred to in Article 30 paragraph (2)	maximum fine of IDR 10 billion
6	Article 109	Producer or Importer	Trading goods related to safety, security, health, and environmental protection that have not been registered with the Minister as stipulated in Article 32 paragraph (1) letter a	1-year imprisonment and/or maximum fine of IDR 5 billion
7	Article 110	Businesses	Trading goods and/or services designated as prohibited to be traded as referred to in Article 36	Maximum imprisonment of 5 years and/or maximum fine of IDR 5 billion
8	Article 111	Importer	Importing goods in a non-new condition as stipulated in Article 47 paragraph (1)	Maximum imprisonment of 5 years and/or maximum fine of IDR 5 billion
9	Article 112, paragraph (1)	Exporter	Exporting goods prohibited from being exported as referred to in Article 51 paragraph (1).	Maximum imprisonment of 5 years and/or maximum fine of IDR 5 billion
10	Article 112, paragraph (2)	Importer	Importing goods prohibited from being imported as referred to in Article 51 paragraph (2)	Maximum imprisonment of 5 years and/or maximum fine of IDR 5 billion
11	Article 113	Business Actor	Trading goods domestically not in compliance with mandatorily-applicable SNI or technical requirements as stipulated in Article 57 paragraph (2)	Maximum imprisonment of 5 years and/or maximum fine of IDR 5 billion
12	Article 114	Service Provider	Trading services domestically not in compliance with mandatorily-applicable SNI, technical requirements, or qualifications as stipulated in Article 60 paragraph (1)	Maximum imprisonment of 5 years and/or maximum fine of IDR 5 billion
13	Article 115	Businesses	Trading goods and/or services using electronic systems that do not comply with data and/or information as stipulated in Article 65 paragraph (2)	Maximum imprisonment of 12 years and/or fine of IDR 12 billion

14	Article 116	Businesses	Organizing trade fair involves foreign participation and/or foreign-promoted products without a license from the Minister as stipulated in Article 77 paragraph (2)	Maximum imprisonment of 3 years and/or fine of IDR 5 billion
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Source: processed from Trade Law

Based on Table 2, Trade Law places criminal sanctions as a punishment threat imposed on perpetrators if they violate any of the fourteen legal provisions. What is interesting about the model of implementing punishment/sanctions in Trade Law is that it does not provide any regulation regarding additional punishments, disciplinary actions, or bail, as regulated in Emergency Law 7/1955. The formulation of the fourteen forms of criminal acts of trafficking as regulated in Trade Law shows that the emphasis of the criminal system still uses a single-track system. It is a setback compared to Emergency Law 7/1955, which applies criminal law with the principle of *primum remedium* and a double-track system.

Based on the previous explanation, it can be understood that positive law regarding economic crimes, specifically in Emergency Law 7/1955, has similarities and differences with Trade Law. The similarity lies in determining an action as an economic or a non-trafficking crime, which significantly depends on understanding economic and trade principles that apply at a particular time.<sup>17</sup> On the other hand, both are forms of regulating economic crimes with regulatory crime types since the actions are prohibited based on government regulations.<sup>18</sup> The difference lies in criminal law (criminal sanctions) and the criminal justice system. Emergency Law 7/1955 has emphasized this law as a law on the investigation, prosecution, and trial of economic crimes and therefore uses the principle of *primum remedium*. In contrast, Trade Law places criminal sanctions as a last resort for legal violations and applies the principle of *ultimum remedium*. Second, Emergency Law 7/1955 integrates primary and additional punishments with various variations (additional penalties, disciplinary actions, and bail). Emergency Law 7/1955 indicates a double-track criminal justice system. In contrast, Trade Law's criminal justice system is only oriented towards primary punishment as regulated in Article 10 of the Criminal Code and applies a single-track system.

### **Handling Economic Crimes during the Covid-19 Pandemic**

The Government of the Republic of Indonesia has established various strategies and policies to tackle the spread of the Covid-19 virus. PSBB has been chosen as a health quarantine measure regulated in Presidential Decree 11/2020 and Government Regulation 21/2000. This choice is based

<sup>17</sup> Juhari, "Kebijakan Kriminal Penanggulangan Tindak Pidana Ekonomi", *Jurnal Spektrum Hukum*, Vol. 15, October 2018, p. 204

<sup>18</sup> Daffa Abiyoga, Ivan Taffarel A., & Donny Arjun, "Studi Pemetaan Hukum Pidana Ekonomi di Indonesia", *Court Review: Jurnal Penelitian Hukum*, Vol. 1, May 2021, p. 9

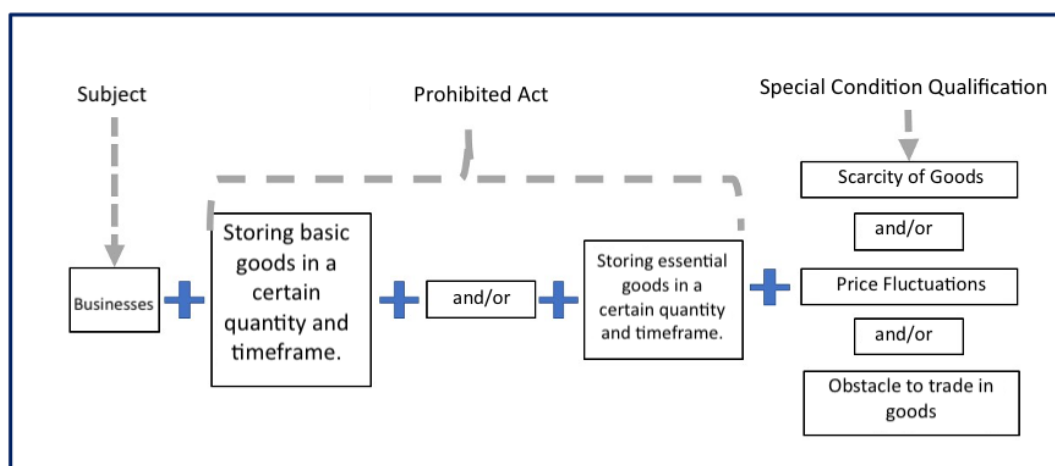
on Law Number 6 of 2018 concerning Health Quarantine (Law 6/2018), which regulates Public Health Emergencies. Article 49, paragraph (1) of Law 6/2018 mentions that PSBB is one of the 3 (three) strategy options (Home Quarantine, Regional Quarantine, and Hospital Quarantine). PSBB is described as a restriction on certain activities of the population in an area suspected of being infected or contaminated to prevent the spread or contamination of the disease (Article 1 number 11 of Law 6/2018). This choice certainly has a solid consideration basis from epidemiological considerations, the level of threat, effectiveness, resource support, operational technicalities, and economic, social, cultural, and security considerations (Article 11 paragraph (1) in conjunction with Article 49 paragraph (1) of Law 6/2018). It should be noted that PSBB is chosen as a health quarantine measure due to the existence of Public Health Emergencies as declared by the Government (Article 59 paragraph (1) of Law 6/2018). It means that PSBB is taken to protect public health from infectious diseases or contamination while not forgetting the interests of other members of society during the implementation of health quarantine, particularly economic interests.

The economic interests during health quarantine, especially during the Covid-19 pandemic, are vital. The government's imposed restrictions on activities, directly and indirectly, impact the community's economic condition. However, the economic requirements of individuals must be satisfied to enable them to sustain their livelihood, particularly related to personal protective equipment and medication for preventing or treating Covid-19 disease. Regarding the regulation of providing personal protective equipment and medication for the prevention and treatment of Covid-19 disease, the Law 6/2018 does not provide specific regulations. The rules for fulfilling fundamental necessities are outlined in health quarantine, which includes Home Quarantine, Regional Quarantine, and Hospital Quarantine. These three forms of health quarantine stipulate that the fulfillment of basic goods for humans and livestock is the responsibility of the central government and/or local government (Article 52, Article 55, and Article 58). The fulfillment of basic goods has been established in these three forms of health quarantine. Still, the regulation regarding the trade or distribution of goods, specifically personal protective equipment and medication for the prevention and treatment of Covid-19 infection, has yet to receive specific regulation. Similarly, in the UU 4/84 concerning the Outbreak of Infectious Diseases, there is no regulation on the provision of economic needs, especially personal protective equipment and medication for preventing and treating infectious diseases. The economic interests during health quarantine, especially during the Covid-19 pandemic, are vital. The government's imposed restrictions on activities, directly and indirectly, impact the community's economic condition. However, the economic requirements of individuals must be satisfied to enable them to sustain their livelihood, particularly related to personal protective equipment and medication for preventing or treating Covid-19 disease. Regarding the regulation of providing personal protective equipment and medication for the prevention and treatment of Covid-19 disease, the Law 6/2018 does not provide specific regulations. The rules for fulfilling fundamental necessities are outlined in health quarantine, which includes

Home Quarantine, Regional Quarantine, and Hospital Quarantine. These three forms of health quarantine stipulate that the fulfillment of basic goods for humans and livestock is the responsibility of the central government and/or local government (Article 52, Article 55, and Article 58). The fulfillment of basic goods has been established in these three forms of health quarantine. Still, the regulation regarding the trade or distribution of goods, specifically personal protective equipment and medication for the prevention and treatment of Covid-19 infection, has yet to receive specific regulation. Similarly, in the Law 4/84 concerning the Outbreak of Infectious Diseases, there is no regulation on the provision of economic needs, especially personal protective equipment and medication for preventing and treating infectious diseases.

Regulation regarding providing personal protective equipment and medications to prevent and treat Covid-19 during the pandemic refers to Trade Law. Specifically, Trade Law does not provide regulations on trade during the Covid-19 pandemic. However, if carefully examined, Article 25 paragraph (1) of Trade Law is closely related. Explanation of Article 25 paragraph (1) of Trade Law states that "basic goods" are "goods related to the livelihood of many people with a large scale of needs fulfillment and are a supporting factor for community welfare, such as rice, sugar, cooking oil, butter, beef, chicken, eggs, milk, corn, soybeans, and iodized salt." Meanwhile, "essential goods" are "strategic goods that play an important role in determining the smoothness of national development, such as fertilizer, cement, as well as oil and gas fuel." Both of these goods, in the context of Article 107 of Trade Law, are prohibited from being hoarded in the event of three conditions: scarcity, price volatility, and/or obstacles to the flow of trade in goods.<sup>19</sup> Understanding of the prohibited acts in the legal provisions of Article 107 of Trade Law can be explained in the following Chart 1.

**Chart 1. Elements of Criminal Acts in Article 107 of Trade Law**



Source: processed from Trade Law

<sup>19</sup>Richard Tulus, Eko Soponyono & Laila Mulasari, "Rekonstruksi Kebijakan Hukum Pidana dalam Upaya Penanggulangan Tindak Pidana Ekonomi: Studi Kasus terhadap Tindak Pidana Penimbunan Pangan", *Diponegoro Law Review*, Vol. 5, October 2016, p. 7.

Based on this understanding, personal protective equipment and medications for preventing and treating Covid-19 infections are not explicitly mentioned. The use of personal protective equipment and/or medications to prevent and treat Covid-19 infections is debated because neither Trade Law nor Presidential Regulation No. 71 of 2015 on the Determination and Storage of Basic goods and Essential goods mention these two items.<sup>20</sup> However, understanding basic goods and essential goods should be wider than the types of goods mentioned in the explanation of Article 25 paragraph (1) of Trade Law. Rather, the emphasis should be on essential as a keyword in using basic goods and essential goods. Understanding legal provisions, especially regarding elements of criminal acts, including the wording of legal provisions, must use legal interpretations allowed in criminal law. Regarding the interpretation of the phrases "basic goods" and "essential goods," various methods of interpretation are available. Since no specific legal provision regulates the trade of personal protective equipment and/or medications, understanding legal regulations is related to the Trade Law. Understanding of Trade Law is undoubtedly related to the legal needs in the field of trade in the era of globalization, which combines openness to values and norms prevailing in international law.<sup>21</sup> This need should have been anticipated by legal provisions and law enforcement by law enforcement officials in handling criminal cases in the field of the economy, including trade.

The criminal law provision prohibiting storing goods during the Covid-19 pandemic is Article 107 of Trade Law. Although Article 107 of Trade Law does not explicitly mention personal protective equipment or medications for preventing and treating Covid-19 infections, it does not mean that the provision cannot be applied. Criminal law still needs to be given space to be enforced to support health quarantine following the principle of *ultimum remedium*.<sup>22</sup> In line with this thinking, the author proposes extensive interpretation to understand the elements in Article 107 of Trade Law, specifically in the phrases "basic goods" and "essential goods" understood in the context of the Covid-19 pandemic. Extensive interpretation is essentially possible in criminal cases, considering that the method of interpretation still adheres to the original meaning as intended in the law to understand the development of the situation and conditions of society as a category of materiality.<sup>23</sup> Understanding of extensive interpretation is significantly different from analogy. The difference lies in the starting point of the interpreter in interpreting an element or formulation of a criminal law provision. Extensive interpretation still adheres to the original meaning of the law with adjustments to the situation and conditions of the interpretation of the element at present. It implies that even

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<sup>20</sup> Mohammad Faisol Soleh, "Penimbunan Alat Pelindung Diri pada Masa Pandemi Covid-19: Kajian Hukum Pidana Bidang Perlindungan Konsumen", *Undang: Jurnal Hukum*, Vol. 3, April 2020, p. 6.

<sup>21</sup> Mardjono Reksodiputro, *Menyelaraskan Pembaruan Hukum*, Komisi Hukum Nasional Republik Indonesia, Jakarta: 2014, p. 15.

<sup>22</sup> Joshua Aditya Setyanugraha, "Pemidanaan sebagai Upaya Penanganan Pandemi Covid-19 dalam Undang-Undang Kejarantinaan Kesehatan: Mengetahui Legalitas, Konstruksi dan Konsekuensi Rumusan Delik", *Jurnal Rechtsvinding*, Vol. 10, April 2021, p. 66.

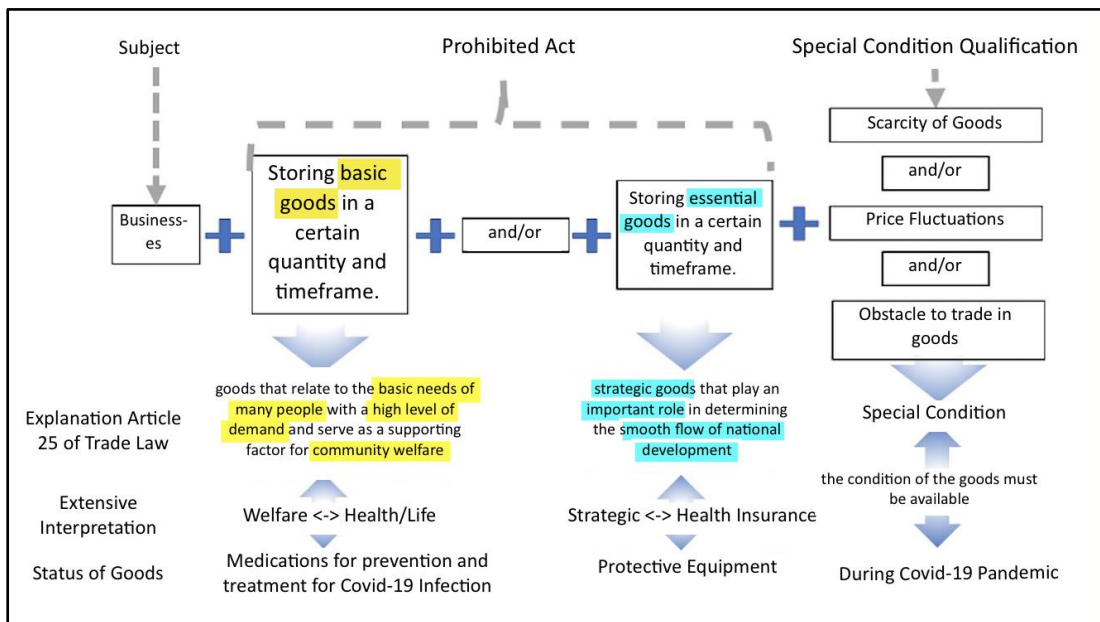
<sup>23</sup> Urbanus Ura Wruin, Dwi Andayani B, St Atalim, "Hermeneutika Hukum: Prinsip dan Kaidah Interpretasi Hukum", *Jurnal Konstitusi*, Vol. 13, March 2016, p. 102.



in criminal cases, an extensive interpretation can still be used because it is grounded in the meaning of the criminal law provision and aligns with the principles of legality (*lex stricta and lex certa*).

The interpretation of "basic goods" must be understood in the phrase "goods that relate to the basic goods of the community with a high level of fulfillment and become a supporting factor for the welfare of the society." If observed, goods that relate to the community's basic goods are goods that humans need to live, including health-related goods such as medications. The author believes that comprehending the degree to which a product belongs in the "basic goods" classification heavily relies on the community's objectives for well-being to survive in their specific circumstances and state. It means medications used to prevent and treat Covid-19 infections fall into that basic goods category. A good, in this case, medications, in normal times may not be considered a basic necessity, but not in the case of the Covid-19 pandemic. The author comprehends that the placement of a commodity in commerce is intertwined with the circumstances and context of society, which are impacted by numerous factors.

**Chart 2. The interpretation of Basic Goods and/or Essential Goods during the Covid-19 Pandemic**



Source: Christiano, 2021<sup>24</sup>

The phrase "essential goods" is based on understanding "strategic goods that play a crucial role in determining the smoothness of national development." This phrase surely is understood in the context of a normal situation and condition of society in the framework of national development. However, if we look closely at the phrase "strategic goods that play a crucial role in determining the smoothness of national development," it appears that the scope of essential goods is very broad and

<sup>24</sup>Hwian Christiano, *et.al*, "Model Rumusan Peraturan Pidana Pelanggaran Protokol Kesehatan di Masa Pandemi Covid-19", Penelitian, Lembaga Penelitian dan Pengabdian kepada Masyarakat Universitas Surabaya, 2021.

contextual. It is broad in that it is not limited to cement and fertilizers but includes all goods supporting national development. The criteria for goods that support national development can also be seen from the regulation of Trade Law concerning standardization which must pay attention to safety, health, and environmental protection, not only economic competitiveness but also trade supervision efforts conducted by the Government. Economic trade regarding "essential goods" also refers to the public health interests at a given time. In the Covid-19 pandemic, such as the current situation, goods that seek to support economic development or maintain public health remain guaranteed, which can be included in the understanding of "essential goods." Personal protective equipment such as masks that meet the Indonesian National Standard, face shields, soap or antiseptic tools, and other infection prevention tools are very important in supporting national health and personal safety development. Therefore, personal protective equipment during the Covid-19 pandemic is considered essential goods as intended in Article 25 paragraph (1) of Trade Law.

The use of criminal sanctions in Trade Law regarding the guarantee of fulfilling basic goods and essential goods implicitly applies the principle of *ultimum remedium*. This aligns with the government's efforts to recover the country's economic losses due to the Covid-19 pandemic rather than imprisoning offenders. The overcrowded conditions of prisons and correctional institutions should be a concern regarding excessive imprisonment.<sup>25</sup> The criminal law provisions related to the guarantee of fulfilling basic goods and essential goods are regulated in two articles, namely Article 107 and Article 108. The interesting thing about the regulation of Article 107 of Trade Law lies in the qualification of goods in trade and special situations. Article 107 of Trade Law implicitly confirms that basic goods and/or essential goods must be guaranteed for trading in normal times and certain situations. This particular situation is understood from the phrase "scarcity of goods, price fluctuations, and/or obstacles to trade in goods under Article 29 paragraph (1) of Trade Law." In other words, Article 107 of Trade Law regulates the special qualification of storing basic goods and/or essential goods in special situations, such as scarcity of goods, price fluctuations, and/or obstacles to trade. The law provision *a quo*, when compared to the trade of personal protective equipment and drugs for the prevention and treatment of Covid-19, provides legal protection. The act of storing personal protective equipment and/or drugs for the prevention and treatment of Covid-19 can be subject to the provisions of Article 107 of Trade Law. Suppose businesses engage in data and/or information manipulation concerning the availability of essential goods and basic goods to benefit themselves; they can be subject to Article 108 of Trade Law. The imposition of this last legal provision is possible when business actors provide false information or untrue statements about the supply of personal protective equipment and/or drugs to prevent and treat Covid-19 to gain maximum profit.

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<sup>25</sup> Iqraq Sulhin, "Covid-19, Pemenjaraan Berlebihan, dan Potensi Katastrofe Kemanusiaan", *Jurnal Hukum & Pembangunan*, Vol. 50, June 2020, p. 412-416.

## CLOSING

Implementing criminal law using the *ultimum remedium* or *primum remedium* depends heavily on positive regulation of Economic Crimes. The research results indicate that Emergency Law 7/1955 clearly places criminal law as the primary and first tool in dealing with economic crimes, thereby fulfilling the principle of *primum remedium*. Although emphasizing the imposition of criminal sanctions, Emergency Law 7/1955 combines the *primum remedium* principle with a double-track sentencing system through the regulation of additional penalties, disciplinary actions, and bail to restore the losses incurred. In contrast, Trade Law places criminal law as a last resort or ultimate weapon in dealing with violations of trading regulations (*ultimum remedium*) without possibly applying additional penalties.

When related to both regulations, handling economic crime cases during the pandemic is closely related to Trade Law. Imposing criminal sanctions for violators is necessary in hoarding basic goods and/or essential goods during times of scarcity, price fluctuations, and price changes. Understanding the drugs for prevention and recovery from Covid-19 infections and personal protective equipment can be included in the category of basic goods as they greatly determine the welfare and even safety of the public during the Covid-19 pandemic. The imposition of criminal provisions is important to protect the interests of society. It is in line with the importance of applying criminal law in economic crime cases during the Covid-19 pandemic, which should consider the goal of restoring economic losses rather than punishing the perpetrator.

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