

Conference Paper

Pandemic As a Crime Factor: Reason Mitigating or Aggravating Penal? (The Reflection Post Covid-19 in Indonesia)

Yaris Adhial Fajrin^{1*}, Radhityas Kharisma Nuryasinta¹, Muhammad Luthfi¹, Dedik Fitra Suhermanto², Iradhad Taqwa Sihidi³, Ardik Praharjo⁴

¹Law Faculty, University of Muhammadiyah Malang, Indonesia

²Department of International Relations, University of Muhammadiyah Malang, Indonesia

³Department of Government Studies, University of Muhammadiyah Malang, Indonesia

⁴Departement of Management, University of Muhammadiyah Malang, Indonesia

ORCID

Yaris Adhial Fajrin: <https://orcid.org/0000-0003-4254-2767>

Abstract.

Crime is part of the form of human behavior and will continue to develop following the dynamics of human life and civilization. There's no exception that the Covid-19 pandemic that hit the world also had an impact on Indonesia. The impact is not only in the sphere of human health but also in the sphere of social life, including changes in human habits and behavior. Various Indonesian government policies to reduce the spread of Covid-19, such as restrictions on activities outside the home, to prisoner assimilation policies have also influenced changes in human behavior and the economic condition of the community which can be a potential change in the form and rate of crime. Crime will not be separated from the problem of criminal law and punishment, especially modern criminal law that is oriented to the perpetrator and the deed (*daad-dader strafrecht*) or also known as penal individualization. One of the characteristics of penal individualization is that the crime must be adapted to the characteristics and conditions of the perpetrator, which is elaborated with the view of the ecology school in criminology, a person's evil deeds are influenced by the environment of the perpetrator (external factors). It becomes a question, is the pandemic condition a factor of crime, or is it a reason for aggravating or mitigating crime for criminals? To answer this question, the author uses a juridical/normative research approach, and it is found that the Covid-19 pandemic as a national disaster can become a mitigating circumstance and aggravating circumstances, in the form of Judicial Mitigating and Aggravating Circumstances.

Keywords: Covid-19, punishment, Indonesia, criminal law, mitigating-aggravating penal

1. INTRODUCTION

The law will not be separated from the issue of sanctions, because with sanctions the existence of the law will be maintained. Of the various forms of sanctions, it is known that there are forms of criminal sanctions as a marker and guarding the existence of criminal law. Criminal sanctions have the privilege of being a differentiator from

Corresponding Author: Yaris Adhial Fajrin; email: yaris@umm.ac.id

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other legal sanctions, namely having a coercive nature in giving suffering or misery to the violator/perpetrator. H.L.A Hart said regarding the requirements for criminal sanctions, namely the existence of sufferings and other unpleasant consequence[1]. Criminal law and its sanctions are closely related to taking human rights owned by a citizen (perpetrator) as a consequence of actions violating the human rights of other citizens (victims). In the context of Indonesia, which places written law as the primary source of laws, only the state has the right and authority to enforce criminal law, guided by the applicable laws and regulations.

The paradigm shift in punishment from retributive (absolute theory) to relativism (utility theory), also affects efforts to combat crime in Indonesia. Criminal law and punishment are no longer for retaliation, but for repairing the perpetrator so that he can return to (and accepted) the community (resocialization and reintegrating the perpetrator into the people), as stated in the Elucidation of the Indonesia Correctional Law. Harbert L. Packer stated that criminal sanctions need to be applied carefully and meticulously because otherwise, they will pose a threat of damages [2]. Moreover, criminal law recognizes the principle of *ultimum remedium* (which places criminal sanctions as the last option), so in terms of imposing criminal sanctions, various considerations need to be made. Not only juridical considerations (about legal facts at trial), but also non-juridical considerations. These considerations can be in the form of reason for aggravating the penal as well as mitigating the penal, which is contained in the Indonesian Criminal Code (KUHP) and the Indonesian Criminal Procedure Code (KUHAP).

The author gives an example of the provisions in Article 197 of the KUHAP which stipulates that the judge's decision letter must include reasons in the form of aggravating and mitigating circumstances, otherwise it could have implications for the decision which is null and void. There are also non-juridical reasons for aggravating and mitigating penal (which are not specified in the KUHP and the KUHAP) but often appear in practice, such as consideration of the age of the perpetrator who is young or the reason that the perpetrator does not regret his crime. The existence of such considerations can open up opportunities to use other non-juridical factors as reasons for aggravating and mitigating penal, including crime factors during a national disaster, such as a pandemic situation.

When it comes to the issue of an outbreak or a pandemic, it will be relevant to the current global situation affected by the Covid-19 pandemic, including in Indonesia. Around 2020 Covid-19 entered Indonesia, which was followed by the development of various virus variants until the level of spread has been able to be controlled at this time. Indonesia's success in controlling Covid-19 cannot be separated from the efforts

made by the Government and the community, such as vaccinations, implementing of strict health protocols, and limiting activities outside the home. Various policies of the Indonesian government in handling Covid-19 have not had a slight negative impact on people's lives, which can actually be a driving factor for crime.

Taking into account the background above, it is interesting to study in this paper crime (as a social phenomenon due to the Covid-19 pandemic in Indonesia) with the issue of reasons to aggravating and mitigating penal of the perpetrators. It is hoped that this paper can be a reference for law enforcement in dealing with crimes and punishing perpetrators when a national disaster phenomenon occurs in the future.

2. METHODOLOGY/ MATERIALS

This research uses normative legal research which is descriptive-analytical. While the data sources in this study used the library collection method, which consisted of primary legal materials such as laws and regulations that have relevance to the title the author chose, secondary legal sources were obtained through books, legal journals, scientific journals, and legal dictionaries, and websites. related to research, as well as tertiary legal materials/non-legal materials in the form of encyclopedias, and dictionaries.

3. RESULTS AND DISCUSSIONS

3.1. Covid-19 as a Criminogen Factor in Indonesia

Various parts of the world are experiencing a crisis caused by the Covid-19 virus pandemic an impact on various aspects of people's lives, both from the economic, security, social, and people's welfare aspects. The author gives an example of the economic impact, in the form of many companies cutting their employees' salaries to cutting their workforce because of the imbalance between operating costs and company income. Meanwhile, from the social and welfare aspects, the community must survive amid such difficult conditions, so that not a few people act recklessly to commit crimes to meet the needs of life[3]. This difficult condition is still coupled with various Indonesian government policies, such as the PSBB policy (large-scale social restrictions) to limit community social activities which has a massive impact on the slowdown of the community's economy. Amid this emergency, the need for basic materials is crucial, coupled with the PSBB policy which has caused a drastic decline in economic activity in Indonesia, making people's purchasing power low. Many companies are unable to

run production, causing the cessation of the small to the medium class business sector and this has an impact on mass layoffs of workers in various companies[3].

Large-scale disruptions to public safety and the infrastructure on which they depend, such as natural or non-natural disasters (such as epidemics, volcanic eruptions, earthquakes, floods) or man-made disasters (such as wars, and terrorist attacks) can radically change people's lives. Therefore, in particular, the Government of Indonesia declared the Covid-19 Pandemic as a national disaster on April 13, 2020, through Indonesia Presidential Regulation (Perpres) Number 12 of 2020. Perpres Number 12 of 2020 is still supported by other regulations that are hierarchically above it, namely Law Number 24 of 2007 concerning Disaster Management and Law Number 6 of 2018 concerning Health Quarantine.

The situation of the Covid 19 pandemic in Indonesia has more or less been studied by various experts in research and scientific articles. Here the author describes the situation in Indonesia when the Covid 19 pandemic hit Indonesia:

1. Increasing spatially heterogeneous poverty rates in Indonesia and increasing poverty in the provinces.[3] BPS data based on the National Socio-Economic Survey (Susenas), stated that there was an increase in poverty in March 2020 compared to September 2019.[4] This represents a 0.6 point increase in the poverty rate from 9.2% to 9.8%, with a 6.1% increase in poverty compared to September 2019 data (or about 1.6 million people fall below the poverty line). Poverty rates are concentrated in Java, particularly in DKI Jakarta, West Java, and Banten, where there is an increase of about one percentage point. The largest relative increases occurred in Jakarta at 32% compared to September 2019 levels (an increase from 3.4% to 4.5%), and 15% in West Java (from 6.8% to 7.9%). The poverty rate in urban areas increased by 13% (from 6.6% to 7.4%), while rural areas experienced a relative increase of only 2%.
2. The Covid-19 crisis and restrictions on people's activities and mobility have had a severe impact on economic growth. In the second quarter of 2020, Gross Domestic Product (GDP) fell 5.3% compared to the same quarter of 2019. Indonesia has not experienced such an economic contraction since 1998[5], which such economic shocks have long-term consequences[6]. However, some sectors have developed rapidly during the Covid-19 crisis, such as the fields of information-communication technology, health care, and social work. Working from home and social distancing restrictions increase Indonesia's dependence on information and communication technology (ICT), which has a positive impact on employment in

the sector. However, as the sector has a share of less than 5% of GDP, the increase in employment is dwarfed by contractions in other sectors and is likely to benefit the formal sector and more educated workers[5].

3. The impact of the Covid-19 Shock on banking and the vulnerability of the corporate sector in Indonesia, as researched by Reza Y. Siregar, Anton H. Gunawan and Adhi N. Saputro[7].
4. The World Bank survey (2020) found that many lower-middle-income households are vulnerable to income shocks, as 24% of the household breadwinners have stopped working. Job loss is especially prevalent in Java, in urban areas, among people with a high school education or less, and the industrial and service sectors. Most (approximately 64%) people with jobs also experienced a decrease in income[5]. Based on data from the Ministry of Manpower and BPJS Ketenagakerjaan, it was recorded that in March 2021 there were 29.4 million workers affected by the Covid-19 pandemic[8].
5. School closures in some areas in mid-March. While potentially effective in limiting the spread of the virus, school closures could disrupt the education of the current generation which could have implications for the long-term decline of human resources. The loss of face-to-face learning routines due to school closures could lead to reduced incomes of affected students in the future[9].
6. The prisoner assimilation program in the context of preventing Covid-19 in the Penitentiary, which is an integral part of the correctional process, actually seems to be a contradictory policy with the spirit of preventing Covid-19 in the environment outside the Penitentiary. In addition, the assimilation policy has worsened the socio-economic situation of the community outside the correctional facility, such as the increase in unemployment, and the increasingly limited employment opportunities during the pandemic. Such a situation adds to the criminogenic factors carried out by the prisoners as a result of the assimilation policy[9].

The impact of Covid-19 in Indonesia can be analyzed using a criminological approach because theoretically there is a match between the propositions in several criminological theories and the characteristics of the crime and its perpetrators. W.A. Bonger believes that the strongest driving factor for someone to commit a crime is economic factors, including unemployment[10]. Bonger's opinion will be in line with Abraham Maslow's opinion in his theory of motivation which states that human activity is the result of the motivation of five hierarchical needs, namely[11]: (1) Physiological, including

the need for air, water, food, sex, etc.; (2) A sense of security, including the need for safety, order and freedom from fear and threats; (3) Sense of belonging and love/social needs, human relationships; (4) Appreciation, including the need for self-esteem, respect from others; and (5) Self-actualization, including the need to develop, to realize one's potential.

Bonger and Maslow's opinion is considered the situation in Indonesia during the Covid-19 pandemic. Covid 19 which has an impact on the Indonesian economy and the increase in unemployment can be a criminogenic factor, or it can be taken as a proposition that national disasters (including the covid 19 pandemic) in Indonesia are criminogenic situations. Termination of Employment Relations (PHK), unemployment as a socio-economic impact of the pandemic will find it difficult to meet daily needs and lead to economic crushes so that it can encourage (motivate) a person to do all kinds of ways including crime or other violations of law to fulfil his life needs. Disasters that have an economic impact can become a criminogenic situation because the drive for economic needs can be the main and dominant motivation for perpetrators to commit crimes. Like the research of Mohamad Anwar, which found that the crime rate during the implementation of the Large-Scale Social Restrictions (PSBB) status increased to 11%, and the crime was dominated by the crime of theft[12].

The Covid-19 pandemic situation is not only placed as a motivation for people to commit crimes to fulfill their needs. A disaster situation can be an opportunity (opportunity) to commit a crime, as the theory of opportunity[13]. The author gave an example of the case of the Minister of Social Affairs of the Republic of Indonesia, Juliari Batubara, related to the corruption case in the procurement of social assistance (Bansos) handling Covid-19 at the Ministry of Social Affairs of the Republic of Indonesia. Crime in a disaster situation is not only caused by the necessities of life and economic pressure, but also the greed and greed of the perpetrators in taking advantage of opportunities/opportunities when a disaster occurs. The author's opinion is based on Jack Bologne's Gone Theory[12] and The theory of opportunity by Richard A. Cloward and Lloyd E. Ohlin. The Gone Theory and Opportunity Theory approaches are also appropriate to describe various other crimes during the Covid-19 pandemic that are rife in Indonesia, such as the crime of hoarding masks[14], or falsifying health certificates (PCR tests, antigens)[15].

In addition to using the criminological approach of Bongger-Maslow, Gone Theory, and Opportunity Theory, the problem of crime during a pandemic can also be studied from anomie theory, strain theory, and dan social control theory.

Anomie theory was introduced by Emile Durkheim, which is defined as a situation where social order is destroyed due to the loss of standards or values of a society's life[16]. Furthermore, Durkheim mentions that the loss of standards or values of a society is caused by a situation that undergoes a sudden change (sudden change). Covid 19 as a disaster has an impact in the form of sudden changes in people's lives, which results in a global multidimensional crisis, which also affects the shape and pattern of people's lives[17]. Large-scale disturbances inevitably lead to various negative public responses, such as rejection of government policies, panic, fear, xenophobia, the spread of fake news, misinformation, and other opportunistic behaviors (such as closing businesses, leaving sick people, degradation values empathy, altruism, caring). Not a few negative responses like that are considered violations of the law and even have evil values. Frailing and Harper mention several crimes that occur during a disaster: property crime, including looting, interpersonal violence, and fraud [18]. So this pandemic, in particular, has not only a huge social and economic impact but also a personal impact that can worsen everyone's mental health.

Not much different from Durkheim's Anomie Theory is the opinion of Robert K. Merton in Strain Theory. Merton and Durkheim both put their theory on the issue of anomie, only Merton did not use sudden change as the cause of anomie. Merton puts anomie as a result of the problem of the social structure of society which does not provide equal means in achieving the life goals of its members[19]. As the author has described previously, the Covid-19 pandemic situation in Indonesia has prompted the government to issue various policies to reduce the number of spreads Covid-19. The author's example is the policy of limiting community activities outside the home, which is not followed by a precise solution to the socio-economic impacts received by the community as a result of the policy. The situation is further exacerbated by the lack of coordination between the policies of the central government and local governments as described by Gabriel Lele in his writings[18].

The policy of limiting social activities has also led to the policy of implementing school closures (by replacing them with the implementation of online/online teaching and learning activities), without being followed by a policy of subsidies or online infrastructure assistance. The internet quota subsidy policy is still considered inappropriate, considering that online facilities (such as laptops, cell phones), electricity, and internet networks are not evenly distributed by students throughout Indonesia. As a result, not a few students are forced to not be able to take part in online/online teaching and learning activities optimally. Such a situation illustrates the correlation with the theoretical strain from Merton, that covid 19 results in the narrowness of public access to educational

facilities, which will affect social goals in the form of a person's level of education for his future. So it's not only if there are concerns about the reduced income of affected students in the future, as a result of the disruption of student education in this pandemic generation[9].

The next author will photograph the situation of the Covid-19 pandemic in Indonesia from the point of view of social control theory. The policy of limiting community social activities outside the home has indeed opened up opportunities for stronger relationships or ties between family members which have been strained due to their busy activities. Travis Hirschi (the originator of social bonds, self-control theory, and micro-sociological studies) interprets the strong ties or relationships between family members as a step to prevent delinquency or crime during a pandemic[20]. However, the writer needs to remind Albert J. Reiss's opinion that crime and delinquency can occur if: there is a failure to instil norms of good behaviour and the collapse of internal control[21]. Internal/personal control is an individual's ability to resist ways that are contrary to the norms/rules of society in meeting their personal needs. When a family fails to instil positive behavioural norms/values, routines at home (as a result of restrictions on community activities during a pandemic) will trigger crime/delinquency. Likewise, when internal/personal control collapses among family members, it will trigger crime/delinquency when all members carry out their routines at home. So it's a right conclusion if the Indonesian government's policy to limit people's activities outside the home increases crime/delinquency, such as domestic violence[22], or access to pornography.

The form and pattern of crime and its perpetrators vary by place and fluctuate in a short period, so it is not surprising that several studies have found different results in photographing crime during the Covid-19 pandemic. The results of research by Ben Stickle and Marcus Felson in the United States[23], as well as research by Lydia Cheung and Philip Gunby in New Zealand, view that the pandemic situation reduces crime rates[24]. Lockdown significantly changes the location of a person's whereabouts and activities and causes drastic changes in the type and level of economic activity, resulting in a lack of suitable crime targets. The two studies conducted in the United States and New Zealand are seen by the author as a form of analysis with a Routine Activity Theory (RAT) approach which puts the conditions of crime on three things, namely: Suitable target or potential victim available (the right target), Motivated offender (Motivated performers), Absence of a capable guardian to deter the offender (There are no safeguards or weak security and supervision). RAT the opinion of Lawrence E. Cohen and Marcus Felson, views crime as an event that is closely related to the environment

and emphasizes its ecological process, or in other words, it can be interpreted that crime is not only seen from the side of the perpetrator but also the side of the victim and their environment[25]. The author views that the pandemic may trigger a decrease in crime as a result of the policy of limiting community activities outside the home (activities inside the home), but the pandemic can encourage certain forms of crime, such as cybercrime, domestic violence, or access to pornography.

3.2. Covid-19: be the Reason for the Aggravating or Mitigating the Penal?

Talking the reasons for the aggravating and mitigating of the penal, it is not regulated in detail in the KUHP and the KUHP. Regarding the reasons for the weight and criminal penalties in the KUHP, E. Utrecht, introduced the term "reason that reduces the severity of the sentence" (*strafverminderingsgronden*) and "reasons that increase the severity of the punishment (*strafverhogingsgronden*)"[26]. *Strafverminderingsgronden* include: probation (Article 53), assisting crime (Article 57), and minors (Article 47), while *strafverhogingsgronden* include: a position as an official (article 52), resident (article 486-488), and a combination of criminal acts (Article 63-71). In addition to *Strafverminderingsgronden* and *strafverhogingsgronden* whose forms are regulated separately, the KUHP also recognizes the reasons for aggravating and mitigating penal that who become one in a delict (and are not separated from the elements of the act), such as theft with weight (Article 364-365), persecution with weight (Article 364-365). resulting in serious injury, death, or with a plan; spread in Articles 351, 353-356), minor maltreatment (Article 352), and so on. The provisions in the KUHP are different from the provisions in Article 197 paragraph (1) letter f of the KUHP which uses the terms "aggravating circumstances" and "mitigating circumstances", where when the judge's decision contains both, the decision is null and void.

The author uses the opinion of Dwi Hananta, who puts the reasons for the aggravating and mitigating penal in the KUHP as Legal Aggravating Circumstances or conditions of aggravation of penal sanction regulated by law[27]. Meanwhile, for mitigating criminal circumstances regulated in the law, the author calls it Legal Mitigating Circumstances. Dwi Hananta distinguishes between Legal Aggravating Circumstances with Judicial Aggravating Circumstances, which one Judicial Aggravating Circumstances are aggravating circumstances whose judgment is the authority of the court, not explicitly

regulated in law. To clarify the relationship between aggravating reasons and criminal penalties with aggravating and mitigating circumstances, it can be seen from the following.

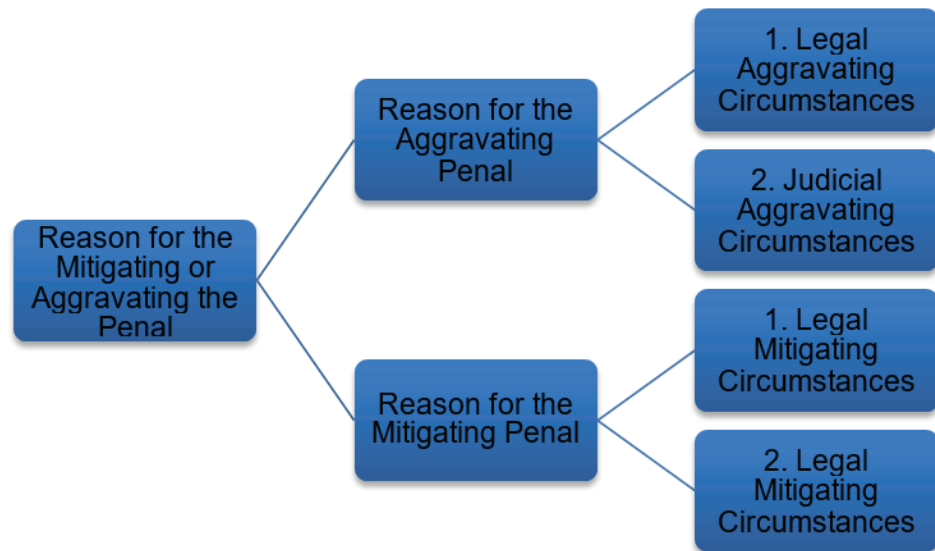


Figure 1: Reason for the Aggravating or Mitigating the Penal.

The word "circumstance" in Black's Law Dictionary is defined as "an accompanying or accessory fact, event, or condition", then by Dwi Hananta gives the notion of "aggravating and mitigating circumstances" as the nature, subject, atmosphere, or prevailing situation related to the crime, outside of the crime itself, which describes the seriousness of the crime or the level of danger of the perpetrator, which affects the size of the severity of the punishment to be imposed[27]. When talking about the severity of punishment, it cannot be separated from the principle of justice (as Gustav Radbruch's opinion regarding the position of the value of justice in legal purposes as a value that is more priority than the value of legal certainty), then regarding the reasons for mitigating and aggravating the criminal, it is necessary to based on philosophical, juridical and sociological foundations. Moreover, the KUHP and the KUHAP do not currently regulate criminal guidelines, of which the new sentencing guidelines are formulated in the Draft Indonesian Criminal Code. Another regulation that slightly explains this is Article 8 Paragraph (2) of the Indonesia Law number 48 of 2009 concerning Judicial Power which stipulates that "in considering the severity of the crime, the judge is obliged to pay attention to the good and evil nature of the accused".

Then what about the Covid-19 pandemic in Indonesia? Can a national disaster be included as a aggravating reason for a penal? Currently, the KUHP does not have the phrase "disaster" as part of the reasons for the aggravating of the penal. It's just that the KUHP mentions in a limited way the emergencies that become the reason for the

a aggravating reason, such as fires, eruptions, floods, earthquakes, sea earthquakes, volcanic eruptions, shipwrecks, stranded ships, train accidents, riots, rebellion or the dangers of war. Taking into account such conditions, disasters (including the national disaster of the Covid-19 pandemic) cannot be classified as Legal Aggravating Circumstances, but still possible to enter the Judicial Aggravating Circumstances category. The author's opinion is based on examples of Aggravating Circumstances in the decisions of criminal cases in Indonesia as detailed by Dwi Hananta in his writings, such as the reason "The defendant does not support the government program which is actively eradicating corruption in all fields" (Supreme Court Decision No. 1261 K/Pid.Sus/2015), or the reason "The actions of the defendants are not in line with the Indonesian Government program in eradicating drug trafficking" (South Jakarta District Court Decision No. 1372/Pid.B/2012/PN Jkt. Sel)[27]. When a large-scale disturbance to public safety is later designated by the government as a national disaster, then such a situation can be made possible as a disaster Judicial Aggravating Circumstances, because criminal acts committed by perpetrators could interfere with government programs related to national disaster management. I can add more: first, that the crimes committed during the Covid-19 pandemic as a national disaster added to the misery/suffering/difficulty of the victims (both individuals and communities); or secondly, that crimes committed during the Covid-19 pandemic as a national disaster injure human values.

When talking about "circumstance", then crimes in national disaster situations (such as the Covid-19 pandemic) can not only be photographed from a wide scale (macro/national) but also need to be photographed from a micro-scale (the perpetrator's situation). Moreover, the perpetrators are most likely also people/parties who are also affected by the current national disaster. The author cites the sentencing guidelines in the Draft Indonesian Criminal Code, that in sentencing, it is obligatory to consider things (among others) such as the motives and objectives of committing the crime, as well as the life history, social conditions, and economic conditions of the perpetrators of the crime. Such a formulation is a form of concretizing the criminal system that is oriented towards perpetrators and deed (*daad-dader strafrecht*) or penal individualization. Penal individualization is a criminal system that has characteristics (among them): punishment must be adjusted to the characteristics and conditions of the perpetrator, and there is flexibility for judges in choosing criminal sanctions. Taking into account the consideration of crime in the Covid-19 pandemic situation micro, it opens up opportunities to be used as the basis for mitigating punishment for perpetrators (actors who are also affected by the disaster). Moreover, the Covid-19 pandemic in Indonesia is a national disaster (which, as the author has analyzed in the first part of this article),

shows a connection between the impact of Covid-19 and the factors that cause crime (even placing the Covid-19 pandemic as a criminogenic situation). The author’s opinion is reinforced by various forms of Mitigating Circumstances in several decisions of judges in criminal cases in Indonesia, such as the reason “the defendant is still young”, “the defendant has never been convicted”, or the reason “the defendant is the backbone of the family”. The impact of the Covid-19 pandemic as a national disaster cannot be included as a Legal Mitigating Circumstances but as Judicial Mitigating Circumstances, because there is no statutory provision that makes it a Mitigating Circumstances.

The next question is, then when will the Covid-19 pandemic be positioned as Judicial Mitigating Circumstances or Judicial Aggravating Circumstances? The author is of the view that the Covid-19 pandemic can be Judicial Mitigating Circumstances or Judicial Aggravation, with the following limitations.

TABLE 1: Limitations of Judicial Mitigating Circumstances with Judicial Aggravating Circumstances in National Disaster Situations.

No.	Judicial Mitigating Circumstances	Judicial Aggravating Circumstances
1.	The defendants were among those who were badly affected by the disaster, both economically, educationally, and socially.	The defendant was not or less affected by the disaster, both economically and socially.
2.	The crime committed is a criminal offense that carries a maximum penalty of 5 years and under.	The crime committed is a crime that carries a maximum penalty of more than 5 years.
3.	Not being part of a member of organized crime, or transnational crime.	Become part of a member of organized crime, or transnational crime.
4.	The crimes committed did not have far-reaching consequences and did not qualify as serious or dangerous crimes.	The crimes committed have far-reaching implications and qualify as serious or dangerous crimes. The crimes committed further increase the misery/suffering/difficulty of the victims (both individuals and communities) in disaster situations.
5.	Not a resident (never been punished). Or become a resident because of being affected by a disaster.	the crimes committed have injured human values (beyond the limits of human values), especially in difficult times due to disasters.
6.	Has made efforts to settle out of court, and has regretted his actions.	criminal acts committed interfere with government programs in handling national disasters.

The author’s ideas, as stated in Table 1, are still being added to the reasons for mitigating/aggravating the criminal in the form of Judicial Mitigating Circumstances and Judicial Aggravating Circumstances which are well known in practice as well as Legal Aggravating Circumstances and Legal Mitigating Circumstances which are spread in the KUHP as well as Indonesia criminal legislation outside the KUHP. The imposition of criminal sanctions by taking into account the Aggregating Circumstances and Mitigating Circumstances during the national disaster (Covid-19), must also pay attention to the proportionality between the actions taken, the benefits obtained, and the penalties

imposed. As Becker and Ehrlich argue that committing a crime is a deliberate choice by the perpetrator based on consideration of the benefits and costs expected of violating the law[24].

4. CONCLUSION AND RECOMMENDATION

Covid 19 has been declared by the Government of Indonesia as a national disaster through Presidential Regulation (Perpres) No. 12 of 2020, on April 13, 2020. The determination of the status of a national disaster is an illustration that the Covid-19 pandemic has had a broad negative impact on a national scale, not only providing an impact on public health but also economic and social impacts. Such a situation occurs as an implication of the policies of the Indonesian Government in its efforts to reduce the spread of the Covid-19 virus, such as the policy of limiting community activities outside the home, to the policy of assimilation of prisoners, which concretely has an impact on increasing poverty rates, decreasing the level of the national economy, to indications as criminogenic factors in times of national disasters. Based on the criminological approach taken by the author with various theories, it was found that there was a conclusion that the national disaster of the Covid-19 pandemic could be a driving factor for crime, which could be a stimulus for crime both in terms of quantity and form/type.

Crimes during the Covid-19 pandemic as a national disaster, in the perspective of criminal law and punishment, can be used as part of the reasons for mitigating and aggravating the penal. Crimes during the covid 19 pandemic become Aggregating Circumstances (especially in the form of Judicial Aggravating Circumstances) when they meet the following qualifications: first, the perpetrator is not (or less) badly affected by the disaster, both economically and socially; second, the crime committed is a criminal offense that carries a maximum penalty of more than 5 years; third, become part of a member of organized crime, or transnational crime; fourth, the crimes committed have a broad impact and are qualified as serious or dangerous crimes; fourth, the crimes committed further increase the misery/suffering/difficulty of the victims (both individuals and communities) in disaster situations; and fifth, the criminal acts committed interfere with the government's program in handling national disasters. Meanwhile, they can become Mitigating Circumstances (in the form of Judicial Mitigating Circumstances), when they meet the qualifications: first, the perpetrators are those who are badly affected by the disaster, be it economically, educationally, or socially; second, the crime committed is a criminal offense that carries a maximum penalty of 5 years and under; third, not being part of a member of organized crime, or transnational crime; fourth,

the crimes committed did not have a broad impact and were not qualified as serious or dangerous crimes; and fifth, not being a resident (never been punished), or being a resident because of being affected by a disaster

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