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Prospect of Death Penalty in Corruption Offences Social Assistance Funds in Indonesia

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ABSTRACT

This legal writing aims to describe the prospects for the application of the death penalty in the crime of corruption of social assistance funds committed by Juliari P Batubara, the former Minister of Social Affairs, who based on the Central Jakarta District Court Decision Number 29/Pid.Sus-TPK/2021/PN Jkt.Pst, was sentenced to 12 years in prison. This research is a normative legal research. Based on the results of the study, it is concluded that the prospect of applying the death penalty in corruption cases should be quite large considering that the corrupt practices committed by Juliari P Batubara were carried out during a state emergency when the country was fighting the Covid 19 Pandemic, and also corrupt practices were carried out against funds that were actually intended to help people affected by the Covid 19 Pandemic. Therefore, Article 2 Paragraph 2 of the Anti-Corruption Law should be the basis for the prosecutor's demands and judges' considerations, which in its provisions state that the death penalty can be imposed on corruption crimes committed in certain circumstances, which the Elucidation of the Article explains that certain circumstances that can be given the death penalty in the Anti-Corruption Law are "circumstances that can be used as reasons for aggravating the crime of corruption if the criminal act is committed against state money intended for overcoming a state of danger, national natural disasters, overcoming the consequences of widespread social unrest, overcoming the economic and monetary crisis, and repeating corruption crimes".

Keywords: *Corruption Crime, Death Penalty, Covid 19.*

I. INTRODUCTION

Corruption offences have always received more attention than other criminal offences".³ This

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³ In recent decades, a series of scandals have fuelled popular awareness of corruption as a factor that can negatively impact political and economic decision-making, distorting public policy-in terms of increasing ineffectiveness and inequality-in any kind of political regime. The problem of dissipation, misappropriation and distortion in resource allocation due to systemic corruption has become a serious concern for international agencies and national policymakers in many developed and developing countries. see in, Alberto Vannucci, The formal and informal institutions of corruption: an analytical framework and its implications for anticorruption policies, (*Handbook edited by Enrico Carloni in collaboration with Diletta Paoletti, "Preventing corruption through administrative*

phenomenon is understandable given the negative impacts caused by this criminal offence. The inferred impact can touch various areas of life. So we recognise that corruption is a serious problem, this criminal act can endanger the stability and security of society, endanger socio-economic development, and also politics, and can damage "democratic values" and "morality" because gradually this act seems to become a culture. Corruption is a threat to the ideal of a just and prosperous society.⁴ So, it is not an exaggeration for Romli Atmasasmita to say that "corruption in Indonesia has become a virus that has eaten into the entire body of government since the 1960s until now and eradication measures are still faltering".⁵

Indonesia Corruption Watch estimates that the total amount of corruption in 2011 was IDR 2.13 trillion (\$US 238.6 million) (Sihite, 2012). The four main forms of corruption include: 1. embezzlement (IDR 1.23 trillion), 2. fake projects and travel expenses (IDR 446.5 billion), 3. misappropriation (IDR 181.1 billion) and 4. mark-up (IDR 171.5 billion).⁶

For a developing country like Indonesia, some of the institutions considered most corrupt include all the main institutions in the justice sector (police, courts, public prosecutors, and the Ministry of Justice), the main revenue agencies (customs services and tax authorities), the Ministry of Public Works, Bank Indonesia, and the Central Bank.⁷ Nevertheless, the steps and efforts to eradicate corruption by the government are still ongoing,⁸ Although various strategies have been implemented, corruption is still widespread in various sectors of life. On 29 March 2012, a joint agreement was signed between the Deputy Attorney General for Special Crimes, the Head of the National Police Criminal Investigation Agency and the Secretary General of the Corruption Eradication Commission on the Mapping of 10 (ten) Corruption Prone Areas in 2012, including:⁹ 1. Goods and Services Procurement Sector; 2. Finance and Banking Sector; 3. Taxation Sector; 4. Oil and Gas Sector; 5. State-Owned Enterprises/SOEs Sector; 6. Customs and Excise Sector; 7. Use of APBN/APBD and APBN-P/APBD-P Sector; 8. State/Local Assets Sector; 9. Mining Sector; 10. General Services Sector.

This shows that almost all sectors in Indonesia have vulnerabilities in eradicating corruption, so the author states that it is reasonable if there is an adage stating that Indonesia is currently

measures", Morlacchi Editore U.P. 2019). hlm 121

⁴ "Evi Hartanti, 2007. *Tindak Pidana Korupsi dan Penegakan Hukum*, Jakarta: Sinar Grafika", Hlm.1.

⁵ Romli Atmasasmita, 2004, *sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*, Mandar Maju, Bandung, hlm.1.

⁶ *Indonesia Corruption Watch*, 2011

⁷ Partnership for Governance Reform in Indonesia, 2001

⁸ Muhammad Bagus Adi Wicaksono and Rian Saputra, 'Building The Eradication Of Corruption In Indonesia Using Administrative Law', *Journal of Legal, Ethical and Regulatory Issues*, 24.Special Issue 1 (2021), 1–17.

⁹ Sugeng Purnomo, *Tindak Pidana Korupsi Dalam Penyaluran Kredit Pada Bank Pemerintah*, Disertasi, Program Doktor Ilmu Hukum, Universitas Hasanuddin, 2018.

experiencing a "corruption emergency". Corruption is not only a national concern, but also an international concern. In the Resolution on "Corruption in government" adopted by the 8th UN congress on "the prevention of crime and the treatment of offenders" in Havana Cuba in 1990.¹⁰

The widespread and systematic nature of corruption behaviour and its scope in all aspects of public life have made it an extra ordinary crime, so eradicating it is not easy, because corruption has become a culture at various levels of bureaucracy and public life.¹¹ The crime of corruption is indeed a major problem, so efforts to tackle it are highly prioritised. The 6th UN Congress on the Prevention of Crime and Treatment of Offenders in 1980 classified corruption as an offence beyond the reach of the law.¹² Corruption is a difficult criminal offence to eradicate because the perpetrators of corruption offences usually have a strong economic and political position, so corruption offences are classified as a criminal offence "*white collar crime, crimes as business, economic crimes, official crime dan abuse of power.*

In fact, corrupt practices also took place during the Covid 19 Pandemic in Indonesia, of course people's minds cannot forget the corruption case committed by Juliari P Batubara, who at that time served as Minister of Social Affairs of the Republic of Indonesia. Juliari received money amounting to Rp. 8,200,000,000, - (eight billion two hundred million rupiah) for the procurement of Covid 19 Pandemic Social Assistance. The case began with the procurement of goods in the form of social assistance for Covid-19 countermeasures at the Ministry of Social Affairs (Sembako Package), with a total of 272 (two hundred seventy-two) contracts worth IDR 5.9 trillion, implemented during two rice paddy periods. The Minister of Social Affairs has appointed Matheus Joko Santoso and Adi Wahyono as duty bearers through direct appointment of partners.¹³

As is known, President Joko Widodo officially declared the Covid-19 pandemic as a national

¹⁰ *Eight United Nations Conggres On The Prevention of Crime and the Treatmen of Offenders Report* (New York, United), 1991.

¹¹ Parman Suparman, *Komisi Pemberantasan Korupsi, Peran dan Wewenangnya Dalam Aksi Anti Korupsi di Indonesia*, Java Publising, Bandung, 2008, hal. 3. Mubyarto, dalam Andi Hamzah, *Pemberantasan Korupsi*, PT. Raja Grafindo Persada, Jakarta, 2004, hal. 7. " *On the whole corruption in Indonesia appears to present more of a recurring political problem than an economic one. It undermines the legitimacy of the government in the eye of the young, educated elite and most civil servants....Corruption redires support for the governments among elites at the province and regency level*".

¹² Barda Nawawi Arief dan Muladi, *Bunga Rampai Hukum Pidana*, PT Citra Adytia Bakti, Bandung, 1996, hal 134. Dikemukakan bahwa aparat penegak hukum relatif tidak berdaya atau tidak mempunyai kekuatan menghadapi jenis tindak pidana ini. Alasannya disebabkan antara lain : Kedudukan ekonomi atau politik yang kuat dari si pelaku (*the high economic or political status of their petrators*). Keadaan-keadaan sekitar perbuatan yang mereka lakukan itu sedemikian rupa sehingga mengurangi kemungkinan mereka dilaporkan atau dituntut (*the circumstances under which they had been committed were such asto decrease the likelihood of their being reported and prosecuted.*

¹³ Lihat dalam <https://nasional.tempo.co/read/1670737/apa-kabar-korupsi-dana-bansos-covid-19-juliari-batubara-kpk-masih-tunggu-penghitungan-kerugian-negara>, diakses pada tanggal 09 Februari 2023

disaster.¹⁴ The determination was stated through Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of the Covid-19 Spread Disaster as a National Disaster (hereinafter abbreviated as Covid-19 Presidential Decree). In response, the Head of the National Disaster Management Agency (Badan Nasional Penanggulangan Bencana) established the Status of a Certain State of Emergency for the Corona Virus Disease Outbreak in Indonesia based on the Coordination Meeting chaired by the Coordinating Minister for PMK on 28 January 2020.

Looking at these two realities where the corrupt practices carried out by Juliari Batubara during the Covid 19 Pandemic emergency, it has actually fulfilled the elements in the provisions of Article 2 Paragraph 2 of Law Number 31 of 1999 concerning Corruption as amended through Law Number 20 of 2001 concerning Corruption (hereinafter abbreviated as Corruption Law), where it is said:

1. Any person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp 200,000,000.00 (two hundred million rupiah) and a maximum of Rp 1,000,000,000.00 (one billion rupiah).
2. In the event that the criminal offence of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed."

Based on the elucidation of the Anti-Corruption Law, the meaning of "certain circumstances" is a situation that can be used as a reason for aggravation of punishment for perpetrators of corruption if the criminal act is committed against state money intended for overcoming a state of danger, national natural disasters, overcoming the consequences of widespread social unrest, overcoming economic and monetary crises, and repetition of corruption crimes.¹⁵ In this position, the elements of the criminal act of corruption committed by Juliari P Batu Bara actually fulfil the elements of Article 2 Paragraph 2 of the Anti-Corruption Law to be subject to punishment or the death penalty, which in the explanation point says that the criminal act is committed where the state money is intended for overcoming a state of danger, national natural disasters, overcoming the consequences of widespread social unrest, overcoming the economic

¹⁴ Lihat Keputusan Presiden Republik Indonesia Nomor 12 Tahun 2020 tentang Penetapan Bencana Penyebaran Covid-19 sebagai Bencana Nasional.

¹⁵ Salsabila Salsabila and Slamet Tri Wahyudi, 'Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan Restorative Justice', *Masalah-Masalah Hukum*, 51.1 (2022), 61–70 <<https://doi.org/10.14710/mmh.51.1.2022.61-70>>.

and monetary crisis, and repeating corruption crimes.

However, looking at the reality that occurs in the prosecution and court decisions, it is actually negated even though it has fulfilled the elements. This shows that the provisions of Article 2 Paragraph 2 of the Anti-Corruption Law have only become law in text, which until now has never functioned within the framework of eradicating criminal acts of corruption. Therefore, this legal article seeks to explain the problematic application of the death penalty in the crime of corruption in Indonesia, which in fact the national legal provisions accommodate the sanction. However, in reality, the application has never been carried out even though it has fulfilled the elements for the death penalty to function in the crime of corruption.

(A) Research Methods

This research is a normative legal research, using a case approach and statutory approach to outline the legal issues discussed.¹⁶ The legislative approach is carried out by analysing all laws and regulations related to the issues raised, namely corruption crimes and the prospect of enforcing death penalty sanctions on these crimes,¹⁷ The case approach is carried out by dissecting and describing corruption crimes that fulfil the elements in Article 2 Paragraph 2 of the Anti-Corruption Law in the Covid 19 Pandemic social assistance fund corruption case which has been decided and has permanent legal force in the Central Jakarta District Court Decision Number 29/Pid.Sus-TPK/2021/PN Jkt.Pst.

II. COVID 19 PANDEMIC AS A STATE OF EMERGENCY OF THE REPUBLIC OF INDONESIA

It is inevitable that the journey of state life does not always run normally. Sometimes the state is faced with a threatening situation. Like a person (naturlijk person) when faced with a situation of danger (noodtoestand), the state will exercise its right to self-defence (noodzakelijk verdediging).¹⁸ Namely by enacting Emergency Constitutional Law (staatsnoodrecht).¹⁹ Therefore, in constitutional practice, according to Jimly Asshidiqqie, there are two states, namely the state in a normal condition and the state of emergency. Staatsnoodrecht examines

¹⁶ Rian Saputra, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation : A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139–48 <<https://doi.org/10.53955/jhcls.v2i3.54>>.

¹⁷ Rian Saputra and Resti Dian Luthviati, 'Institutionalization of the Approval Principle of Majority Creditors for Bankruptcy Decisions in Bankruptcy Act Reform Efforts', *Journal of Morality and Legal Culture*, 1.2 (2020), 93–102 <<https://doi.org/10.20961/jmail.17i1.41087>>.

¹⁸ Lusia Indrastuti and Rian Saputra, 'Lost Role of Local Governments in Coal Mining Licensing and Management Environment in Indonesia', *European Online Journal of Natural and Social Sciences*, 11.2 (2022), 397–408.

¹⁹ Rizki Bagus Prasetio, 'PANDEMI COVID-19 : PERSPEKTIF HUKUM TATA NEGARA DARURAT DAN PERLINDUNGAN HAM (Pandemic Covid-19 : Emergency Constitutional Law Perspective and Human Rights Protection)', *Jurnal Ilmiah Kebijakan Hukum*, 15.2 (2021), 327–46.

the state in a state of emergency.²⁰

The term state of emergency can be found in the constitutions of various countries such as France (etat de siege), Germany (state of tension, state of defence) and Spain (state of alarm). The provisions of emergency law in the civil law tradition are explicitly contained in the constitution. In contrast, in the US and UK or other countries that follow the common law tradition.²¹ This practice is known as "martial law". Meanwhile, international human rights instruments such as the European Convention on Human Rights 1950, Inter-American Convention on Human Rights (IACHR) 1969, International Covenant on Civil and Political Rights (ICCPR) 1966, the term emergency is known as public emergency.²²

If examined theoretically, the term state of emergency itself is understood differently between the adherents of the state of emergency and the state of exception. State of exception adherents prioritise the sovereignty approach and consider the state of danger to be extra-legal.²³ One of the adherents of this figure is Carl Smith who said "Sovereign is he who decides on the exception". According to Carl Smith, the state of the country in the future, will experience the threat of an emergency like what cannot be predicted in advance. Therefore, it is better to determine who should get the authority to overcome emergencies.²⁴ Rather than losing the country just because it has to be subject to rigid written rules and will only sacrifice the goal because it is concerned with the means. According to him "All law is situational law".²⁵

Meanwhile, adherents of the "state of emergency" tend to use a rule of law approach where the state of danger must be subject to the constitution and laws. According to Jimly Asshidiqie, a state will never be perfect if it does not provide everything based on the law, and provide the means and vehicles to overcome every emergency to organise the law properly. This is what Indonesia embraces by adopting it in the constitution, namely in Article 22 of the 1945 Constitution.²⁶ In fact, in practice, there are many different reasons for the imposition of a state

²⁰ Fikri Hadi and Farina Gandryani, 'Status Darurat Kesehatan Akibat Pandemi Covid-19 Dalam Perspektif Hukum Tata Negara Darurat Di Indonesia', *Arena Hukum*, 15.3 (2022), 582–609 <<https://doi.org/10.21776/ub.arenahukum.2022.01503.7>>.

²¹ Fikri Hadi and Farina Gandryani, 'Kegagalan Peraturan Penanganan Covid-19 Di Indonesia', *Jurnal Konstitusi*, 19.1 (2022), 023 <<https://doi.org/10.31078/jk1912>>.

²² Wisnu Indaryanto, 'Dampak Pandemi Covid-19 Dan Urgensi Pembentukan Peraturan Daerah Tentang Bantuan Hukum', *Jurnal Legislasi Indonesia*, 18.3 (2021), 309–23.

²³ Aras Firdaus and Rudy Hendra Pakpahan, 'Kebijakan Hukum Pidana Sebagai Upaya Penanggulangan Kedaruratan Covid-19', *Majalah Hukum Nasional*, 50.2 (2020), 201–19 <<https://doi.org/10.33331/mhn.v50i2.61>>.

²⁴ Bungasan Hutapea, 'Alternatif Penjatuhan Hukuman Mati Di Indonesia Dilihat Dari Perspektif Ham', *Jurnal Penelitian HAM*, 7.2 (2016), 69–83.

²⁵ Rian Saputra, 'Development of Creative Industries as Regional Leaders in National Tourism Efforts Based on Geographical Indications', *Bestuur*, 8.2 (2020), 121–28 <<https://doi.org/10.20961/bestuur.43139>>.

²⁶ Jeni Danurahman and Eny Kusdarini, 'Dampak Pandemi Coronavirus Disease (Covid-19) Dalam Perspektif Hukum Di Era Digital', *Masalah-Masalah Hukum*, 50.2 (2021), 151–60

of emergency. In terms of categories, emergencies themselves vary greatly in terms of form, level and scale of danger. In general, emergencies can come from both inside and outside. External threats are identified with military threats, whether armed or not, but still threaten the lives and bodies of citizens.²⁷ While from within is identified with rebellion, social unrest, natural and non-natural disasters. Currently, non-natural disasters tend to be identified with infectious disease outbreaks.

In principle, the legislator will not be able to predict that a law that is being formed will be able to solve problems in the future. Similarly, the arrival of a situation that threatens the life of the state cannot be predicted when it will come and when it will end. To anticipate this, the state usually prepares various legal instruments that are prepared to deal with this. These arrangements are made either in its constitution or in ordinary laws.²⁸

The use of laws to overcome the crisis is in line with what Ferejohn and Pasquino said. According to them, many modern countries do not use emergency provisions in their constitutions because: "First, perhaps because of emergency powers. It makes sense for elected officials to be cautious about triggering the use of extraordinary powers and, indeed, that caution may be commendable. Perhaps, given the historical abuse of such powers... Secondly, it may be that due to advances in state-controlled technology for dealing with chaos, most emergencies can be well managed by the operation of the ordinary legal-constitutional system".²⁹

When associated with the legal policy of handling Covid-19 in Indonesia, it is known that the government chose to use ordinary laws in combating the Covid-19 pandemic, namely Law Number 6 of 2018 and Law Number 24 of 2007. This policy is reflected in the stipulation of the status of Public Health Emergency through Presidential Decree Number 11 of 2020 and Non-Natural Disaster Emergency through Presidential Decree Number 12 of 2020. So that based on the Presidential Decree, the indicators of the state emergency are clear internally.

III. PROSPECT OF DEATH PENALTY FOR CORRUPTION OF SOCIAL ASSISTANCE FUND IN INDONESIA

Talking about possibilities or opportunities, of course, it is necessary to conduct an analysis to strengthen the argumentation on the issues raised, which in this case is the case of corruption committed by the former Minister of Social Affairs Juliari P Batubara against the Covid 19

<<https://doi.org/10.14710/mmh.50.2.2021.151-160>>.

²⁷ Hadi and Gandryani, 'Status Darurat Kesehatan Akibat Pandemi Covid-19 Dalam Perspektif Hukum Tata Negara Darurat Di Indonesia'.

²⁸ Prasetio.

²⁹ Ferejohn and Pasquino, "The Law of the Exception: A Typology of Emergency Powers." Hlm 215-217

Pandemic social assistance fund.³⁰ Although the legal facts have shown that the corruption case has been resolved based on the Central Jakarta District Court Decision Number 29/Pid.Sus-TPK/2021/PN Jkt.Pst, the space for discourse must be wide open considering that corruption is a crime that has broad impacts on society.³¹

In the Central Jakarta District Court Number 29/Pid.Sus-TPK/2021/PN Jkt.Pst, the convicted person was sentenced to 12 years imprisonment, which is basically a progressive decision considering that the public prosecutor's demand for the case was 11 years imprisonment. However, if traced in detail and in detail, the death penalty chamber should have been given to the corruption case committed by the former Minister of Social Affairs of the Republic of Indonesia.³²

The argument is quite simple, the corrupt practices committed by Juliari P Batubara were carried out during a state emergency when the country was fighting the Covid 19 Pandemic, and also corrupt practices were carried out against funds that were actually intended to help people affected by the Covid 19 Pandemic.³³ Therefore, Article 2 Paragraph 2 of the Anti-Corruption Law should be the basis for the public prosecutor's demands and judges' considerations, which in its provisions state that the death penalty can be imposed on corruption crimes committed in certain circumstances, which the Elucidation of the Article explains that certain circumstances that can be given the death penalty in the Anti-Corruption Law are "circumstances that can be used as reasons for aggravating the crime for the perpetrators of corruption crimes if the criminal act is committed against state money intended for overcoming a state of danger, national natural disasters, overcoming the consequences of widespread social unrest, overcoming economic and monetary crises, and repeating corruption crimes".³⁴

Through this article, the author would like to say that the death penalty provision in the Anti-Corruption Law should be able to function in the Juliari P Batubara corruption case, in addition to the fulfilment of the elements in the Anti-Corruption Law. Also to signal a serious eradication of corruption and to show that the death penalty provision in the Anti-Corruption Law is not

³⁰ Rian Saputra and others, 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (JOURNAL OF INDONESIAN LEGAL STUDIES)*, 6.2 (2021), 437–82 <<https://doi.org/10.15294/jils.v6i2.51371>>.

³¹ Slamet Tri Wahyudi, 'Problematika Penerapan Pidana Mati Dalam Konteks Penegakan Hukum Di Indonesia', *Jurnal Hukum Dan Peradilan*, 1.2 (2012), 207 <<https://doi.org/10.25216/jhp.1.2.2012.207-234>>.

³² Rafi; et al Abdillah, 'Pidana Mati Dalam Hukum Nasional Menurut Perspektif Hukum Islam Dan Hak Asasi Manusia', *Al-Hakam Islamic Law & Contemporary Issues*, 3.2 (2022), 54–60.

³³ Linda Hindriana and Neni Sri Imaniyati, 'Penerapan Undang-Undang Tindak Pidana Korupsi Dalam Menangani Kejahatan Perbankan', *Aktualita*, 3.1 (2020).

³⁴ Lidya Suryani Widayati, 'Pidana Mati Dalam Ruu Kuhp: Perlukah Diatur Sebagai Pidana Yang Bersifat Khusus?(Death Penalty In The Bill Of Criminal Code: Should Regulated As A Special Punishment?)', *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 7.2 (2017), 167–94.

just a "paper tiger".³⁵

IV. CONCLUSION

Based on the results of the research, it is known that the prospect of applying the death penalty in corruption cases should be quite large considering that the corrupt practices committed by Juliari P Batubara were carried out during a state emergency when the country was fighting the Covid 19 Pandemic, and also corrupt practices were carried out against funds that were actually intended to help people affected by the Covid 19 Pandemic. Therefore, Article 2 Paragraph 2 of the Anti-Corruption Law should be the basis for the prosecutor's demands and judges' considerations, which in its provisions state that the death penalty can be imposed on corruption crimes committed in certain circumstances, which the Elucidation of the Article explains that certain circumstances that can be given the death penalty in the Anti-Corruption Law are "circumstances that can be used as reasons for aggravating the crime of corruption if the criminal act is committed against state money intended for overcoming a state of danger, national natural disasters, overcoming the consequences of widespread social unrest, overcoming the economic and monetary crisis, and repeating corruption crimes".

³⁵ Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1–13 <<https://doi.org/10.53955/jhcls.v2i1.21>>.

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