

## Law Enforcement against the Crime of Rejecting the Body of Covid -19 in Banyumas Regency

Erri Gunrahti Yuni U<sup>\*)</sup>

<sup>\*)</sup>HAK & Partners, Email:erie1406@yahoo.com

### Abstract

*The funeral process for Covid-19 victims in Banyumas Regency was rejected by the community at several burial locations. Until the Banyumas regent together with the Banyumas Police Chief went directly to the field to oversee the funeral process. This research is intended to examine law enforcement against the criminal act of rejecting the corpse of Covid -19 in Banyumas Regency, as well as what are the obstacles to law enforcement against the crime of rejecting the bodies of Covid -19 in Banyumas Regency and building law enforcement constructions against the crime of rejecting the bodies of Covid -19 in the future. The method used in this study is the sociological empirical juridical approach. The results of this study are: (1) law enforcement against the criminal act of rejecting the corpse of Covid -19 in Banyumas Regency, Law Enforcement Against the Crime of Rejecting the Body of Covid -19 in Banyumas Regency is carried out with a series of repressive actions are actions taken by law enforcement officials after a criminal act has occurred in the form of investigation, prosecution and proof at trial. (2) obstacle law enforcement against the criminal act of rejecting the corpse of covid -19 in banyumas district, (3) construction of law enforcement against the criminal act of rejecting the corpse of covid -19 in the future. The law certainly does not work in a vacuum, which is why in reality law is an integrating factor in society. Law as an instrument of regulation or social control, of course, must undergo a long process and involve various different activities in society. Likewise, law enforcement must pay attention to the situation, condition, time and place.*

### 1. Introduction

Body rejection COVID-19 at the crime scene in Tumiyang Village and Kedungwaringin Village it is certainly a humanitarian problem. On the one hand the rejection of the corpse covid-19 of course it should not happen, because it will result in the collapse of humanity. The funeral process for Covid-19 victims in Banyumas Regency was rejected by the community at several burial locations. Until the Banyumas regent together with the Banyumas Police Chief went directly to the field to oversee the funeral process. The Tumiyang Village Cemetery had to be demolished again due to demonstrations by residents. Two local villages and a neighboring village, namely Karangtengah Village, Cilongok District, refused to refuse.

On the other hand the rejection regarding the bodies of Covid 19 is not solely independent, but because there is no coordination between the task forces at the district level, and there is no technical or socialization provision for the task force at the village level, so that the human resources of the task force covid 19 in the village do not understand their duties and authorities, This argument originated from the corona pandemic, so that people were afraid because of ignorance of both the prevention and handling of victims of Covid-19, so that residents rejected the corpses

of Covid-19, the articles alleged did not reach the substance of the main problem, while those who insulted officials as a symbol of the state were not touched by the police. . The suspect Selamat as the head of the Gemplang village task force was never provided with technical training and coaching from the government Cq. The head of the regency task force, in this case the regional secretary. The social impact on the community as a result of reporting by the Banyumas Covid-19 Concerned Women's Alliance on Slamet and other administrators actually caused anxiety.<sup>1</sup>

As an alliance of people who care about the suspect in rejecting the corpse of Covid 19, Banyumas regrets what the complainant has done, because so far it is the reported person who has the duties and responsibilities in handling Covid 19 in the area. In this case Kurniawan stated, currently in an epidemic, everyone is in a difficult situation, so the government and officials are not rash in implementing the law because this is *salus populi suprema lex esto* which means people's safety is the highest law.<sup>2</sup>

Law enforcement is the process of making efforts to uphold or function legal norms in a real way as a guideline for behavior in traffic or legal relations in the life of society and the state. The police and the Attorney General's Office charged the perpetrators with Article 214 of the Criminal Code in conjunction with 212 of the Criminal Code which carries a penalty of seven years in prison.

The functioning of the criminal justice system in the framework of enforcing criminal law, both material criminal law and formal criminal law, must be able to fulfill the three basic values of law, namely the value of justice, legal certainty and benefit. Both in theoretical and practical contexts, these three basic values are not easy to realize harmoniously. Fulfilling the value of legal certainty, sometimes has to sacrifice the value of justice and benefit, as well as fulfilling the value of justice and benefit on the one hand, on the other hand will result in the sacrifice of the value of legal certainty.<sup>3</sup>

Based on this description, then whether law enforcement against the criminal act of rejecting the corpse of Covid -19 in Banyumas Regency is fair, beneficial and brings legal certainty, of course it needs to be studied scientifically and in depth. This research aims to know and analyzing law enforcement against the crime of rejecting the body of Covid -19 in Banyumas Regency, knowing and analyzing obstacles to law enforcement against the crime of rejecting the body of Covid -19 in Banyumas Regency. In addition, it is also aimed at building a construction of law enforcement against the crime of rejecting the body of Covid -19 in the future.

## 2. Methods

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<sup>1</sup>Ali, Alliance of Justice Seekers Audience with the Head of the Banyumas Police, Related to the Suspect of Rejecting the Body of Covid 19, <http://brantas.id/2020/04/24/aliansi-pencari-keadilan-audiensi-dengan-kapolresta-banyumas-terkait-tersangka-penolakan-jenazah-covid->, accessed on March 4, 2021.

<sup>2</sup>Ibid.

<sup>3</sup>Wibowo, Kurniawan Tri. (2020). Law and Justice (Unfair Trial). Depok: Papas Sinar Sinanti. Thing. 47

The method used in this study is the sociological empirical juridical approach. Sociological juridical research is carried out by examining library materials which are primary data. The specification of this research is descriptive namely provide a detailed, comprehensive and systematic description of the reality that occurred, namely regarding law enforcement against the criminal act of rejecting the corpse of Covid -19 in Banyumas Regency. Empirical research is carried out by researching in the field which is primary data obtained through the interview method, then analyzed using law enforcement theory, factors that influence law enforcement, the criminal justice system, the operation of the law, justice in an Islamic perspective, restorative justice.

### **3. Research Results and Discussion**

#### **3.1. Law Enforcement Against the Crime of Rejecting the Body of Covid -19 in Banyumas Regency**

Law enforcement against the criminal act of rejecting the bodies of Covid -19 in Banyumas Regency basically leads to a series of law enforcement actions. Conceptually, the meaning of law enforcement lies in the activity of harmonizing the relationship of values that are spelled out in solid and manifest principles and attitudes as a final stage of the elaboration of values, to create, maintain and maintain social peace.<sup>4</sup> Law as a protector of human interests so that these interests do not conflict with fellow human beings, the rules are applied according to agreements made by humans.<sup>5</sup>

Criminal law enforcement is basically an effort to overcome crime by applying criminal law rules. Efforts to tackle crime with criminal law are essentially part of law enforcement efforts (especially criminal law enforcement). Therefore, it is often said that politics or criminal law policies are also part of law enforcement policies.

Efforts to combat crime through the making of laws Criminal (law) is essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare (social welfare). Criminal law policy or politics is also an integral part of social policy or politics (social policy). Social policy can be interpreted as all rational efforts to achieve community welfare and at the same time include community protection.

Efforts to deal with crime through the penal route focus more on the repressive nature (oppression/eradication/suppression) after the crime has occurred, while the "non-penal" route focuses more on the preventive nature (prevention/deterrence) before the crime occurs. It is said to be a rough difference, because repressive actions can essentially be seen as preventive actions in a broad sense.<sup>6</sup>

Repressive actions are all actions taken by law enforcement officials after a crime has occurred.<sup>7</sup> Repressive actions are more focused on people who commit criminal acts, namely by providing a (criminal) law that is appropriate for their actions. This action can actually also be seen as a prevention for the future. This action includes the

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<sup>4</sup>Soekanto, Soerjono. (2007). Factors influencing Law Enforcement, Jakarta: PT Raja Grafindo Persada. Thing. 5

<sup>5</sup>Iswanto. (2005). Introduction to Law. Purwokarto: General Soedirman University. Thing. 167

<sup>6</sup>Soedarto. (2001). Capita Selecta Criminal Law. London: Alumni. Thing. 188

<sup>7</sup>Soejono, D. (1973). Criminological Doctrine. London: Alumni. Thing. 32.

methods of law enforcement officials in carrying out investigations, follow-up investigations, criminal prosecutions, examinations in court, executions and so on up to the coaching of convicts.

Repressive law enforcement is used by law enforcement officials, both the Police and the Attorney General's Office in solving the problem of rejecting the bodies of Covid 19 in Banyumas Regency. The repressive law enforcement carried out by the Banyumas Resort Police is to carry out investigations and investigations. Head of the Criminal Investigation Unit of the Banyumas Police, AKP Berry stated that: The police finally arrested a resident of Banyumas Regency who was considered the provocateur of refusing to bury the bodies of Covid-19 patients. All three have been named as suspects in the case. The Central Java Regional Police in Ungaran, Semarang Regency, also took action against those who refused the burial of the corpse of Covid-19. The police named three suspects who were the provocateurs of the rejection of the funeral in Sewakul, Semarang Regency. In the beginning, we shouldn't be careless, because this is a new situation.<sup>8</sup>

Based on this, it can be seen that there was uncertainty at the beginning of the crime of rejecting the corpse of Covid 19 in Banyumas Regency. The Banyumas Police did not immediately make arrests and conduct investigations, but the Central Java Regional Police in Ungaran, Semarang Regency took action against those who rejected the burial of the bodies of Covid-19 as a stimulus for law enforcement against the rejection of the bodies of Covid-19 in Banyumas Regency.

The context of the rejection of the Covid 19 body in Banyumas Regency, in this case, is included as an obstruction justice crime. Obstruction of justice is a type of criminal act in the context of court. Obstruction of justice is an act that is intended or has the effect of distorting, disrupting the proper function of a judicial process. Some examples are openly opposing an out-of-court order, others are attempts to bribe a witness or threaten a witness so that the witness will cancel or falsify the information provided.<sup>9</sup> *Obstruction of justice* is a disturbance of the judicial process in which there is an attempt to reduce the fairness or efficiency of the judicial process as well as towards judicial institutions.<sup>10</sup>

Arrangements regarding the offense of obstruction of justice have been regulated in the Criminal Code, namely in Articles 214-222. Based on Articles 214-222 of the Criminal Code, it is determined that the actions of parties who obstruct the legal process can be punished. In particular Article 221 paragraph (1) number 1 of the Criminal Code emphasizes that anyone who commits an act of obstructing the legal process is threatened with imprisonment for a maximum of nine months.<sup>11</sup> Normatively, the police have complied with the law rejection of the corpse of

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<sup>8</sup>Interview with the Head of the Criminal Investigation Unit of the Banyumas Police, AKP Berry, on April 29, 2021.

<sup>9</sup>Adji, Oemar Seno and Insriyanto Seno Adji. (2007). *Free Trial and Contempt Of Court*, Jakarta: Diadit Media. Thing. Thing. 285.

<sup>10</sup>Wagiman, Wahyu. (2005). *Contempt of Court in the Draft Criminal Code*. Jakarta: Elsam. Thing. 16

<sup>11</sup>Markhy S Gareda, *Acts of Obstructing the Judicial Process of Corruption Crimes Based on Article 21 of Law No. 31 of 1999 juncto Law No. 20 of 2001*, article in the journal *Lex Crimen*, issue no 1 Vol IV, 2015, p. 136, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/7009>, accessed on May 4, 2021.

Covid 19 in Banyumas Regency. The police apply articles related to obstruction justice not criminal namely Article 212Criminal Code, 214 Criminal Code, or Article 14 paragraph 1 of Law no. 4 of 1984 concerning Outbreaks of Infectious Diseases.

After an investigation is carried out, the next process in the criminal justice system is prosecution. As has been described regarding Article 109 of the Criminal Code that, in the event that an investigator has started to investigate an event constituting a criminal act, the investigator informs the public prosecutor about this. Since then the function of supervision and mentoring has also become attached to the Attorney General's Office. In the event that the public prosecutor is of the opinion that the results of the investigation carried out by the investigator in the opinion of the public prosecutor are incomplete, the public prosecutor shall immediately return the file to the investigator accompanied by instructions for completing it and the investigator is obliged to immediately carry out additional investigations in accordance with the instructions of the public prosecutor (Article 110 paragraph (3) KUHP and pre-prosecution cannot be carried out again if within 14 days the public prosecutor does not return the results of the investigation or if before the time limit expires there has been notification about this from the public prosecutor to the investigator (Article 110 paragraph (4)) of the Criminal Procedure Code.

In the April 2021 case the case of rejecting the bodies of Covid 19 in Banyumas Regency entered a new phase, namely prosecution. The prosecution process was carried out in two different courts. In the Pekuncen case, prosecution was carried out at the Purwokerto District Court, while in the Kedungringin Patikraja case, prosecution was carried out at the Banyumas District Court.

In the Banyumas Regency area there are 2 (two) District Courts which are both independent, namely the Banyumas District Court and the Purwokerto District Court. The Jurisdiction Area of the Purwokerto District Court covers 16 Districts in Banyumas Regency including South Purwokerto District, East Purwokerto District, East Purwokerto District North Purwokerto, West Purwokerto District, Karanglewas District, Baturaden District, Kedungbanteng District, Cilongok District, Rawalo District, Ajibarang District, Jatiwang District, Pekuncen District, Wangon District, Purwojati District, Gumelar District, and Lumbir District. While the legal jurisdiction of the Banyumas District Court is Kembaran District, Sokaraja District, Kalibagor District, Patikraja District, Banyumas District, Somagede District, Kebasen District, Kemranjen District, Sumpiuh District, and Tambak District.

The form of the charges in the two cases turned out to be different. Each case can be seen in the following table:

<b>CaseNo. 113/Pid.B/2020/Pn.Pwt</b>	<b>CaseNo. 59/Pid.B/2020/Pn.Bms</b>
The charges in this case take an alternative form, violating firstly Article 214 paragraph (1) of the Criminal Code or secondly Article 335 paragraph (1) 1st Jo. Article 55 paragraph (1) 1st of the Criminal Code or the third Article 14 paragraph (1) of	The indictment in this case is in the form of a combination or combination of subsidiarity and alternatives, namely violating the first primary charge of Article 214 of the Criminal Code subsidiary Article 212 of the Criminal Code or the second Article 14

the Infectious Disease Outbreak Law Jo. Article 55 paragraph (1) 1st of the Criminal Code.	paragraph (1) of the Infectious Diseases Law Juncto Article 55 paragraph (1) of the 1st Criminal Code or the third Article 14 paragraph (1) of the Law on Outbreaks of Infectious Diseases.
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Source: Verdict No. 113/Pid.B/2020/Pn.Pwt and Decision No. 59/Pid.B/2020/Pn.Bms

Based on the facts revealed before the trial, the Regent and Police delegation from the direction of Tumiyang and Return Villages negotiated 3 x (three times) until finally they were able to return to Margono Hospital, Purwokerto. That witness Azis and witness Adi Sigit saw that among the residents who at the time of the incident were angry and screaming when they saw the perpetrators who carried out the ambush included men wearing dull green jackets and men wearing sarongs and black shirts and wearing glasses and there was someone throwing bamboo towards the ambulance and the characteristics of the perpetrators of the obstruction and throwing were the same as those of the defendants. According to witness Riris and witness Adiono, who are residents of Glempang Village, Pekuncen District, Kab. Banyumas said that the incident went viral because it was recorded on a mobile phone so that all villagers knew in particular and all Indonesian citizens in general and the two witnesses believed that the one who shouted at the officers was the defendant KARNO and the defendant SLAMET and the one throwing the bamboo sticks was the defendant ARIF EKO . Thus there is action from the perpetrator to hinder the task of burying the body.

Based on this, the judge considered that the actions of the defendants fulfilled the elements of an active act in Article 214 paragraph (1) of the Criminal Code in the form of blocking and blocking the ambulance by placing concrete in the middle of the road, then throwing bamboo sticks at the cemetery officials so that it prevented the ambulance from returning. to Margono Hospital to be disinfected which is feared to have an impact on the health of the officers because they are tired and result in decreased immunity. This then led the judge to argue that the actions of the defendants qualified in obstructing the process of handling Covid-19 in the midst of an outbreak of a pandemic which was an unlawful act.

### **3.2. Obstacles to Law Enforcement Against the Crime of Rejecting the Body of Covid-19 in Banyumas Regency**

Criminal law enforcement is a system that involves harmonization between values and norms and the real behavior of society. These rules then become guidelines or benchmarks for behavior or actions that are considered appropriate or appropriate. The behavior or attitude aims to create, maintain, and maintain peace.<sup>12</sup>Disruption to law enforcement may occur, if there is a mismatch between values, rules and patterns of behavior. The disturbance arises when there is a mismatch between paired values, which manifests itself in confusing rules and patterns of behavior that are not directed

<sup>12</sup>Rahardjo, Satipto.(yyyy), Law Enforcement Issues. Bandung: New Light. Thing. 15

which disturb the peace of social life.

Studying law enforcement certainly examines the operation of law in society. According to ISSusanto, studying the operation of law means studying social, economic, political, cultural conditions (including the law) which "influence" in a broad sense, namely studying aspects of structure, culture and substance. In the operation of the law, it is necessary to have an oversight, because supervision is a very important thing so that all implementation of tasks is carried out in accordance with the provisions.<sup>13</sup>

The occurrence of the Criminal Rejection of the Corpses of Covid -19 in Banyumas Regency was motivated by social conditions that occurred globally in the world, namely the Covid 19 disaster which occurred not only in Indonesia but also in the world. BBased on the Current Situation of the Development of Coronavirus Disease (COVID-19) March 31 2020, the Ministry of Health of the Republic of Indonesia stated that as of March 29 2020 there were 693,224 cases with 33,106 deaths (CFR 4.8%) in 198 Infected Countries. The list of countries infected with COVID-19 may change every day following the development of data and information obtained in the WHO Situation Report. Meanwhile in Indonesia from 30 December 2019 to 30 March 2020 at 17.00 WIB, there were 6,663 people who were examined with the results of the examination, namely 5,249 people negative (188 crew members on the World Dream ship crew and 68 people on board the Diamond Princess), and 1,414 positive confirmed cases of COVID-19 (75 recovered and 122 died).<sup>14</sup>

The initial conditions for the entry of Covid 19 into Banyumas Regency certainly brought panic to the community. At that time, people were afraid to leave their homes, every alley was slaughtered with the words lockdown, schools were closed and lots of shops were closed. This is coupled with the prohibition of crowds both in mosques and other social events.

Under political conditions, the President decided to issue Presidential Decree Number 11 of 2020 concerning Stipulation of a Public Health Emergency of Corona Virus Disease (Keppres on ways to tackle the spread of 11 of 2020), and used this disease through various policies whose constitutional authority is based on Article 22 of the 1945 Constitution to issue regulations. Government in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability (Perppu 1 of 2020). It didn't stop there, one month later the President issued Presidential Decree Number 12 of 2020 concerning Designation of Non-natural Disasters with the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster.

Based on this, the occurrence of criminal acts and law enforcement efforts occurred in a national disaster emergency, namely the massive spread of Covid 19 in Indonesia. Thus the obstacleslaw enforcement against the criminal act of rejecting the bodies of Covid -19 in Banyumas Regency is also colored by limitations due to the Covid 19 disaster.

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<sup>13</sup>Ibid. p.19.

<sup>14</sup>Ministry of Health of the Republic of Indonesia , Current Situation of the Development of Coronavirus Disease (COVID-19) 31 March 2020, <https://infectionemerging.kemkes.go.id/situasi-dinding-emerging/situasi-terkini-perkembangan-coronavirus-disease-covid-19 -31-March-2020>

Lawrence M. Friedman<sup>15</sup>, which states that the operation of the legal system is influenced by 3 elements (Three Elements of Legal System), namely:<sup>16</sup>structure, substance, and culture. Therefore, the obstacles to law enforcement against the crime of rejecting the corpse of Covid -19 in Banyumas Regency are described through 3 elements (Three Elements of Legal System), namely structure, substance and culture.

Processlaw enforcement against the criminal act of rejecting the corpse of Covid -19 in Banyumas Regency can be described as follows:

### 3.2.1. *Substance*

There is confusion in applying the rules. However, the laws and regulations in Indonesia have actually prepared a series of rules that regulate these actions. The act of refusing to bury the body of a confirmed case of Covid-19 is included in a criminal offense and the perpetrators can be held accountable under the provisions of the Criminal Code and those outside the Criminal Code. In the Criminal Code, elements of Article 178 and Article 212 of the Criminal Code (following Article 214 of the Criminal Code if there are more than 1 (one) perpetrators). Meanwhile, provisions outside the Criminal Code are the Health Quarantine Law and/or the Communicable Disease Outbreak Law. In the Health Quarantine Law, the defendant's actions in refusing the burial of the body of a confirmed case of Covid-19 can be charged with Article 93 Juncto Article 9 paragraph (1) of the Health Quarantine Law, while in the Infectious Diseases Law the defendant's actions can be charged with Article 14 paragraph (1) Juncto Article 5 paragraph (1) letter e of the Law on Outbreaks of Infectious Diseases.

### 3.2.2. *Structure*

The obstacles found by the National Police as investigators for the criminal act of rejecting the corpse of Covid 19 are, among others, due to:the Covid 19 pandemic, so the health protocol, namely social distancing, must also be applied. Besides that, the lack of personnel is also a separate obstacle, because Work From Home is also implemented. Without certain facilities, it is impossible for law enforcement to take place smoothly. These facilities or facilities include, among others, educated and skilled human resources, good organization, adequate equipment, adequate finances and others.<sup>17</sup>The Covid-19 pandemic has also had an impact on aspects of criminal law enforcement. The criminal law enforcement process during the trial examination stage during the pandemic experienced various problems.

The problem that often occurs in online criminal trials is that the internet network is unstable and can even be disconnected. This happened when an online trial was conducted and the cause was damage to a tower at one of the national providers and this made it impossible for this online trial to continue and was postponed until a predetermined time. In this online trial, from the positive side, this trial is faster and costs less, so far, if you look at it from the

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<sup>15</sup>Ali, Ahmad. (2002). Legal Desolation in Indonesia. Jakarta: Ghalia Indonesia. Thing. 8

<sup>16</sup>Soekanto, Soerjono. Op cit., p. 8.

<sup>17</sup>Ibid., p. 37

best side.

Until now, the spread of the corona virus disease (Covid-19) pandemic has not subsided even though the government has implemented a life order policy (new normal). To prevent Covid-19, the Supreme Court (MA) has issued Circular No. 1 of 2020 concerning Guidelines for the Implementation of Tasks During the Period to Prevent the Spread of Corona Virus Disease (Covid-19) within the Supreme Court and the Judiciary Bodies below it (SEMA No. 1 of 2020). SEMA No. 1 of 2020 was later amended by SEMA No. 2 of 2020 and amended again with SEMA No. 3 of 2020.

The regulation stipulates that judges and judicial apparatus can carry out their official duties by working at home or where they live (work from home/WFH). The WFH includes the implementation of the case examination trial agenda which is carried out electronically via teleconference. The policy to conduct trials electronically was strengthened by the cooperation agreement between the Supreme Court, the Attorney General's Office, and the Ministry of Law and Human Rights which agreed to hold trials electronically for criminal cases during the Covid-19 pandemic.

Technical constraints related to human resources and infrastructure. In this regard, in his brief study on "Conducting Online Trials in the Midst of the Covid-19 Pandemic in 16 District Courts", the Ombudsman found the potential for maladministration, namely protracted delays in conducting electronic trials. This is indicated by the findings of a lack of resources for information and technology (IT) officers. As a result, electronic trial preparations are slow, especially if there are technical problems in the middle of a trial.<sup>18</sup>

### 3.2.3. Culture

Lawrence M. Friedman said that the last subsystem is legal culture or legal culture. Friedman as quoted by Soerjono Soekanto<sup>19</sup>, stated regarding culture that the legal culture, system-their beliefs, values, ideas, and expectations. (legal culture is a human attitude towards law, the legal system-beliefs, values, thoughts, and expectations). Legal culture refers, then, to those parts of general culture-customs, opinions, ways of doing and thinking that bend social forces to ward off or away from the law and in particular ways. (Legal culture is the mood of social thought and social forces that determine how law is used, avoided or misused).

Law enforcement in cases of rejection of bodies becomes a polemic, on the one hand there are those who support it and those who reject it. One of the camps that refuses to enforce the law is PPDI. PPDI stated that the rejection of the bodies of Covid-19 victims was not solely independent, but due to the lack of

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<sup>18</sup>Dian Cahyaningrum, Electronic Trials During the Covid-19 Pandemic, Journal of a Brief Study of Actual and Strategic Issues Vol. XII, No.14/II/Puslit/July/2020, p. 4, url: [https://berkas.dpr.go.id/puslit/files/info\\_short/Info%20Sikat-XII-14-II-P3DI-Juli-2020-191.pdf](https://berkas.dpr.go.id/puslit/files/info_short/Info%20Sikat-XII-14-II-P3DI-Juli-2020-191.pdf). accessed on 10 October 2021.

<sup>19</sup>Soerjono Soekanto, Op cit., p. 9

coordination between the regency-level Covid-19 task force and the village government, and the village-level task force was never provided with socialization and technical guidance so that the human resources of the task force covid 19 villages do not understand their duties and authorities.

### **3.3. Construction of Law Enforcement Against the Crime of Rejecting the Body of Covid -19 in the Future**

The law certainly does not work in a vacuum, which is why in reality law is an integrating factor in society. Law as an instrument of regulation or social control, of course, must undergo a long process and involve various different activities in society.<sup>20</sup>Likewise, law enforcement must pay attention to the situation, condition, time and place.

As is well known, the situation and condition of Indonesia during the Covid 19 era was an emergency situation. The spread of Covid-19 is increasingly massive and has hit almost all countries in the world. Various countries have implemented many ways to deal with diseases with various policies that have resulted in limiting people's movements, such as closing crowded places, prohibiting gatherings, closing schools and temporarily stopping office activities. In Indonesia the President decided to issue Presidential Decree Number 11 of 2020 concerning Stipulation of a Public Health Emergency of Corona Virus Disease (Presidential Decree on ways to tackle the spread of 11 of 2020), and use this disease through various policies whose constitutional authority is based on Article 22 of the 1945 Constitution to issue Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability (Perppu 1 of 2020). It didn't stop there, one month later the President issued Presidential Decree Number 12 of 2020 concerning Designation of Non-natural Disasters with the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster.

The key word for this incident was an emergency situation, in which the US Judge, Richard Posner, once said "A constitution that will not bend will break".<sup>21</sup>Posner wanted to explain that there is flexibility needed to be regulated to deal with conditions that are not normal in the constitution. The state is not always run under normal conditions, where all state instruments function properly according to the ideal state administration design. There are certain situations where the country is faced with unusual conditions that require a special constitutional approach through emergency regulations.

The question is what about criminal law and criminal law enforcement. Indonesia issued Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2020 concerning Requirements for Granting Assimilation and

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<sup>20</sup>Latipah Nasution, The Legal System in a Pluralist Society, Is a Bulletin of Justice, Volume 1 Number 8b (2017), p. 73, url: <https://journal.uinjkt.ac.id/index.php/is/article/view/9135>, accessed on 10 October 2021.

<sup>21</sup>Posner, RA (2006). Not a Suicide Pact: The Constitution in a Time of National Emergency, USA: Oxford University Press, p. 120.

Integration Rights for Convicts and Children in the Context of Preventing and Mitigating the Spread of Covid-19. The provision of assimilation amounted to 36,641 people, with details of 35,738 general prisoners and 903 child prisoners carried out in order to prevent the spread of Covid 19. Meanwhile, prisoners who were free through the granting of integration rights totaled 2,181 people, with details of 2,145 general prisoners and 36 child prisoners.

The policy of assimilation of prisoners in the midst of the Covid-19 pandemic is one of the granting of prisoners' rights in a humanitarian form as instructed by the UN Human Rights Council, Michelle Bachelet in her written statement in Geneva, which urges countries to relax prison populations. This is done to protect people who are detained in closed facilities such as overcrowded prisons. The risk of spreading Covid-19 will be more vulnerable in correctional institutions. Not only Indonesia, countries affected by Covid-19 have already taken steps to grant integration rights during this pandemic. For example, the United States released nearly 2,000 prisoners from Federal prisons to reduce the transmission of the Covid-19 outbreak. There is also Iran which freed 95 thousand prisoners, Brazil as many as 34 thousand prisoners,

When various emergency concepts have their own concepts of effective and efficient solutions but not through the usual channels, as well as the concept of assimilation, where when Covid occurs, prisons are reduced, then why is it added to law enforcement regarding the Covid problem which actually puts someone in prison? in the usual way, as was the case with the rejection of the body in Banyumas Regency.

Criminal law maintaining and protecting legal interests from actions or actions that attack or violate these legal interests. There are three types of legal interests that must be protected, namely:

- Individual legal interests (*individuale belangen*), for example legal interests for the right to life (*life*), legal interests for the body, legal interests for property rights, legal interests for self-respect and good name, legal interests for morals, and so on;
- The legal interests of the community (*sociale of maatschappe-lijke belangen*), for example the legal interests of security and public order, orderly traffic on the roads, and so on;
- State legal interests (*staatsbelangen*), for example legal interests for state security and safety, legal interests for friendly countries, legal interests for the dignity of heads of state and their representatives, and so on.<sup>22</sup>

That there was an interest that compelled a convict in the case of refusing a body at that time, so that it became a dilemmatic position. In case No113/Pid.B/2020./PN PwtDefendant I Karno Bin Tarsum stated that: I was told by the Head of Glempang Village, Kec. Pekuncen, residents of Glempang Village were ordered to block the road through the WhatsApp Group glempang. the message was that the villagers gathered together to dam the dyke (close the road) so that the body would not pass through Glempang, as far as Defendant I knew, the one who gave instructions or orders blocked or refused the passage of the Ambulance carrying the body of one of the victims who died of Covid-19 who was going to pass through the Glempang Village

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<sup>22</sup>Chazawi, Adam. (2002). Lesson of Criminal Law Part 1, Jakarta: PT. King of Grafindo Persada. Thing. 16-17

road and The Pekuncen Village is the Head of Glempang Village, Ms. Warsiti then Defendant I together with residents of Glempang Village,<sup>23</sup>

Based on this, at first the initiative to intercept was not in oneself Defendant I Karno Bin Tarsum, but Mrs. and Mr. Village Head, who conveyed blockading the road so that the group carrying the bodies of victims who died from Covid-19 did not pass through the Glempang Village road. The villagers were instructed to gather closer together, dam the dyke (close the road) so that the body would not pass through Glempang, according to the knowledge of Defendant I who gave instructions or orders to block or refuse the passage of the Ambulance carrying the body of one of the victims who died from Covid-19.

Another thing to say Defendant II Slamet bin Sayuti stated that:

That about Hit. 05.30 WIB there was an ambulance coming down from Tumiyang Village and Defendant II at that time already knew from that night that there was still an Ambulance in Tumiyang Village, then Defendant II shouted "there is an Ambulance", Defendant II was worried that the virus would spread, Defendant II took the initiative to approach the Ambulance to turn around but there were already shouts of "going round and round, Defendant II at that time knew the Ambulance was loaded and so we kept moving so that the Ambulance would not pass through Glempang Village;<sup>24</sup>

Based on this, it can be seen the intention of the perpetrator, namely: Defendant II Slamet bin Sayuti Defendant II was worried that the virus would spread, Defendant II took the initiative to approach the Ambulance to turn around. Defendant II also conveyed the Regent's instructions that what Defendant II was doing was only carrying out instructions from the Regent regarding the problem of the dangers of the Covid-19 virus, so that he was always on standby to anticipate the Covid-19 Virus, one of which was in this way, namely closing the route so that the bodies of victims of Covid-19 would not pass through and the Regent said that if the person dies, the virus dies too. Thus there is a conflict of interest where the villagers actually interpret the order from the Regent regarding the problem of the danger of the Covid-19 virus, so that they are always ready to anticipate the Covid-19 Virus, one of which is to close the lane (Lockdown), so that all activities including the Regent who want to pass not to pass.

In case Number 59/Pid.B/2020/PN Bms the defendant Khudlori Alias Dori Bin Mulyadi stated that:

The Defendant made this refusal because the victim was not a resident of Kedungwringin Village and his burial distance was less than 500 (five hundred) meters from residential areas, and according to the Defendant the corona virus is a very dangerous and easily transmitted virus;<sup>25</sup>

Based on these three conditions, it can be seen that each of the perpetrators' intentions to prevent or refuse the funeral of Covid's corpse was due to instructions, fear of infection and belief that Corona virus is a virus that is very dangerous and easily transmitted. This is of course a logical reason, where the condition at that time was

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<sup>23</sup>Decision Number 113/Pid.B/2020./PN Pwt, p. 44

<sup>24</sup>Ibid., p. 46

<sup>25</sup>Decision Number 59/Pid.B/2020/PN Bms, Hal. 48

indeed a Covid emergency that was not clear or not normal.

Muhammad Rezky Rinaldy and Syamsudin stated that, Several factors have caused obstacles to the burial of the bodies of Covid-19, including:

- There is a growing stigma against sufferers of Covid-19 or even those who are at the forefront of treating coronavirus patients. The reason is fear of becoming a source of spreading the corona virus. This is also a factor in hindering the burial of the body.
- Rejection due to lack of socialization and irrational public trust, Sociologist from the University of Indonesia (UI) Ida Ruwaida said, the rejection of the burial of the bodies of COVID-19 that occurred in the community was very regrettable. One of the roots of this problem comes from socialization which does not reach down to the lower levels of society. "The root of the problem could be the lack of intense socialization at the lower levels, but the problem is that the community already has beliefs that are sometimes irrational,"
- Rejecting corpses is more of a collective behavior, there are people who are provocateurs, refusing corpses is more of a collective behavior, of course there will be people who become provocateurs to move and influence society so that they are irrational. This attitude of the Indonesian people, said Ida, reflects that society's critical power is still low.
- Hoaxes about the Covid-19 virus that are rampant on social media, Indonesian people are easily stimulated by inaccurate information, so that it causes panic in local residents which has the impact of hindering the burial of Covid-19 bodies. During this corona virus pandemic alone, the Ministry of Communication and Information has recorded more than 1,096 hoaxes related to the corona virus. This figure proves that hoaxes about COVID-19 are still selling well. "Until now there have been a total of 1,096 hoax issues related to COVID-19 that are spread on the Facebook, Instagram, Twitter and YouTube platforms."<sup>26</sup>

The incident of rejecting the corpse of Covid 19 in Banyumas Regency occurred on March 31 2020. Pthe development of Coronavirus Disease (COVID-19) cases, using WHO data sources on 31 March 2020 based on the Current Situation of the Development of Coronavirus Disease (COVID-19) 31 March 2020 the Ministry of Health of the Republic of Indonesia stated that:

- Global Situation
  - The total global confirmed cases of COVID-19 as of March 29 2020 were 693,224 cases with 33,106 deaths (CFR 4.8%) in 198 Infected Countries.
  - The list of countries infected with COVID-19 may change every day following the development of data and information obtained in the WHO Situation Report.

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<sup>26</sup> Muhammad Rezky Rinaldy and Syamsudin, *Obstructing the Burial of Covid-19 Bodies in Review Based on Article 178 of the Criminal Code*, Journal of LEGALITY Volume 5 Number 2, December 2020 ISSN PRINT 2597-968X, p. 112-114, url: <http://ejurnal.untag-smd.ac.id/index.php/LG/article/view/5115>, accessed on 17 October 2021.

- Indonesian Situation Summary From 30 December 2019 to 30 March 2020 at 17.00 WIB, there were 6,663 people who were examined with the results of the examination, namely 5,249 people negative (188 crew members on the World Dream ship and 68 people on board the Diamond Princess), and 1,414 positive confirmed cases of COVID-19 (75 recovered and 122 died).<sup>27</sup>

In practice, in addition to state conditions under ordinary or normal conditions, circumstances that are not normal sometimes arise or occur. Circumstances that befall a country that are unusual or abnormal require separate arrangements so that state functions can continue to work effectively in these abnormal circumstances. In such circumstances, however, the system of legal norms intended for normal circumstances cannot be expected to be effective in achieving legal objectives which guarantee justice, certainty and usability.<sup>28</sup>

The impact that has been caused by the COVID-19 Pandemic has brought the country of Indonesia to an abnormal/dangerous/emergency situation. So it should be the responsibility of the government to be able to resolve disasters that are classified as non-natural disasters in accordance with the principles of democracy and nomocracy so that the goals of our nation can be realized even though the country is in an abnormal/dangerous/emergency condition.

*Salus Populi Suprema Lex*, which is an adage that comes from a famous philosopher named Cicero which means "Safety of the people is the highest law" which during the COVID-19 Pandemic was often echoed by academics and from the government itself.<sup>29</sup> This public safety matter is also closely related to the goals of the state as set forth in Paragraph IV of the Preamble of the 1945 Constitution which states that the Indonesian state aims to protect the entire Indonesian nation and all of Indonesia's bloodshed. Because of that, above, the texts of the articles of the 1945 Constitution as "Grundsgesetz" towards a more fundamental value in the goals of the state, namely protecting all Indonesian people and all of Indonesia's bloodshed, as a basic value in "Verfassung" or "the spirit of the constitution" which is far more important and must be prioritized than the text of the articles of the 1945 Constitution.

Based on this, law enforcement cannot only be based on ordinary conditions. There must be an explanation and the purpose of the law is no longer to retaliate or simply to guarantee security and order, but to educate the public so that they both understand the situation and conditions that are indeed an emergency. Law enforcement no longer has to be interpreted as providing a deterrent effect, but deeper, namely maintaining the safety of the people as the highest law. Where the public must be educated on safety, the government must always educate, as well as the public who must understand that Covid corpses are no longer dangerous, with a

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<sup>27</sup>Ministry of Health of the Republic of Indonesia , Current Situation of the Development of Coronavirus Disease (COVID-19) 31 March 2020, <https://infectionemerging.kemkes.go.id/situasi-dinding-emerging/situasi-terkini-perkembangan-coronavirus-disease-covid-19 -31-March-2020>, accessed on 17 October 2021.

<sup>28</sup>Asshidiqie, Jimmy. (2007), Emergency Constitutional Law. Jakarta: PT. RajaGrafindo Persada. Thing. 2

<sup>29</sup>Jimly Asshidiqie, Constitutional Dictator and Exceptional Law, [https://www.academia.edu/42814223/Hukum\\_Pengecualian](https://www.academia.edu/42814223/Hukum_Pengecualian), accessed on 17 October 2021.

series of evidence and clinical trials, so that people understand and believe.

Verdict No. 113/Pid.B/2020/Pn.Pwt and Decision No.59/Pid.B/2020/Pn.Bms shows that, even though at the same event, namely the rejection of Oki's body, there were even acts that were viral but the decisions could be different, and in fact actions that were more brutal and viral actually received lighter sentences than cases other. This is of course unfair because in terms of legal facts that cannot be disputed, when examined from a humanist perspective, the actions of throwing, threatening and blocking roads against the Regent's entourage are certainly worse than those who only reprimanded and threatened without any other action.

Law and justice are always related, as well as religious orders that tell humans to act fairly. Allah Subhanahu wa Ta'ala says:

*"Indeed, Allah orders (you) to act justly and do good, to give to relatives, and Allah forbids from cruelty, evil and enmity. He teaches you so that you can take lessons." (Surah An-Nahl [16]: 90).*

This verse includes a verse that is very broad and in its meaning. Rasulullah Shallallahu 'Alaihi Wasallam himself in the hadith narrated by Bukhari and Ibn Jarir from Ibn Mas'ud, said, "The verse that has the widest scope in the Quran about good and evil is this verse in surah An Nahl. Verily, Allah commands (you) to act justly and to do good."

Allah Subhanahu Wa Ta'ala stipulates justice as the general basis for social life for every nation and era, for every people at all times. Justice is the goal and mission of the Messengers of Allah to the world and the goal of the Shari'a and laws that were sent down with them. God's Word says:

*"Indeed, We have sent Our Messengers with clear evidence and We have sent down with them the Book and the Balance (of justice) so that mankind may carry out justice. And We created iron in which there is great power and various benefits for humans (so that they use the iron) and so that Allah will know who helps His (religion) and His Messengers. But God is not seen. Verily Allah is Strong, Mighty." (Surah Al-Hadid [57]: 25).*

Restorative justice is an alternative or other means of criminal justice by prioritizing the integrated approach of perpetrators on the one hand and victims/community on the other hand as a unit to find solutions and return to patterns of good relations in society. The key word of Restorative justice is "Empowerment", even this Empowerment is the heart of the restorative ideology, therefore the success of Restorative justice is determined by this empowerment. In the traditional concept, the victim is expected to remain silent, accept and not interfere in the criminal process. Fundamentally, the idea of restorative justice wants to rearrange the role of such victims, from being passive in waiting and seeing how the criminal justice system deals with 'their' crimes,<sup>30</sup>

In Indonesia, actually restorative justice is not a new concept because the concept of customary law in Indonesia as a vehicle for customary justice institutions

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<sup>30</sup>Prayitno, Praise Strong. (2013). restorative justice. Postgraduate in Law Studies. Purwokerto: Jenderal Soedirman University. Thing. 5

also has a concept that can be described as the root of restorative justice. The characteristics of customary law in each region are generally very supportive of the implementation of restorative justice. This can be seen from the general characteristics of Indonesian customary law, views on customary violations/customary offences as well as the models and solutions offered.<sup>31</sup>

The application of the principles of restorative justice in the concept of investigation and investigation of criminal acts in order to realize the public interest and a sense of justice for the people who do not yet have a legal basis and can be used as guidelines for its implementation and in the context of realizing the non-uniform understanding and application of restorative justice within the Police. Republic of Indonesia. This is also supported by Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, which states that in the public interest officials of the Indonesian National Police in carrying out their duties and authorities can act according to their own judgement.

Basically, in this case, the police cannot just enforce the law with the aim of punishment. In this case it is clear that law enforcement is actually causing public unrest which will ultimately result in social conflict. This is because with law enforcement, there were several demonstrations<sup>32</sup>and refusal to enforce the law. In addition, the Regional Government of Banyumas Regency has also stated that it will forgive. Achmad Husein apologized for the incident where the body of the Regent of Banyumas was turned over. The Regent stated that, said that the reason for the refusal was one of the reasons for the lack of outreach and education related to Covid-19.<sup>33</sup>

Law should be a social tool to maintain order as well as educate the public. *Salus Populi Suprema Lex* where the safety of the people is the highest law must be prioritized, this is because in an emergency, people also feel afraid of new conditions such as the presence of a Covid 19 body, therefore law enforcement should be wise and prudent by conducting education without aiming to apply a deterrent effect punishment.

#### 4. Closing

Law Enforcement Against the Crime of Rejecting the Corpses of Covid -19 in Banyumas Regency was carried out with a series of repressive actions, namely actions taken by law enforcement officials after the occurrence of criminal acts in the form of

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<sup>31</sup>Zulfa, Eva Achjani and Indriyanto Seno Adji. (2011). *Shifting Criminal Paradigm*, Bandung: Lubuk Agung. Thing. 67

<sup>32</sup>PPDI asked the President to release officials from Glempong Village, Pekuncen District, Banyumas Regency on behalf of Slamet (46) from being prosecuted in the case of refusing to bury the body of a Covid-19 patient. Fadlan Mukhtar Zain, Village Officials Accused of Refusing the Covid-19 Body to Be Released, Banyumas Regent: Let the Law Continue", <https://regional.kompas.com/read/2021/03/18/152836278/perangkat-desa-terdakwa-penolakan-jenazah-covid-19-Minta-dibebaskan-bupati.> , accessed on 17 October 2021.

<sup>33</sup> Muhammad Ridlo, Funeral Tragedy of Covid-19 Patients, Banyumas Regent Apologizes, <https://www.liputan6.com/regional/read/4217196/tragedi-pemakaman-jenazah-pasien-covid-19-bupati-banyumas-Minta-maaf>, accessed on 17 October 2021.

investigations, prosecutions and evidence at trial. The obstacles found by the National Police as investigators for the crime of rejecting the bodies of Covid 19 are, among others, due to the Covid 19 pandemic, so that the health protocol, namely social distancing, must also be implemented. Besides that, the lack of personnel is also a separate obstacle, because Work From Home is also implemented. Obstacles that occur when holding court cases virtually include a courtroom that has not been arranged with teleconference facilities, an unstable internet network, and human resources.

The ideal construction of law enforcement against the crime of rejecting the corpse of Covid -19 in the future is to place an emergency as a law. Therefore law enforcement should be wise and prudent by conducting education without aiming to apply a deterrent effect to punishment. Socialization should be carried out on an ongoing basis about Covid 19 must continue to be carried out by providing correct knowledge to the whole community, so that inhumane actions do not occur again against the victims of Covid 19, especially those victims who have sacrificed their lives to save the lives of others. It is better to adopt a restorative justice approach in handling the criminal act of rejecting the corpse of Covid -19.

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