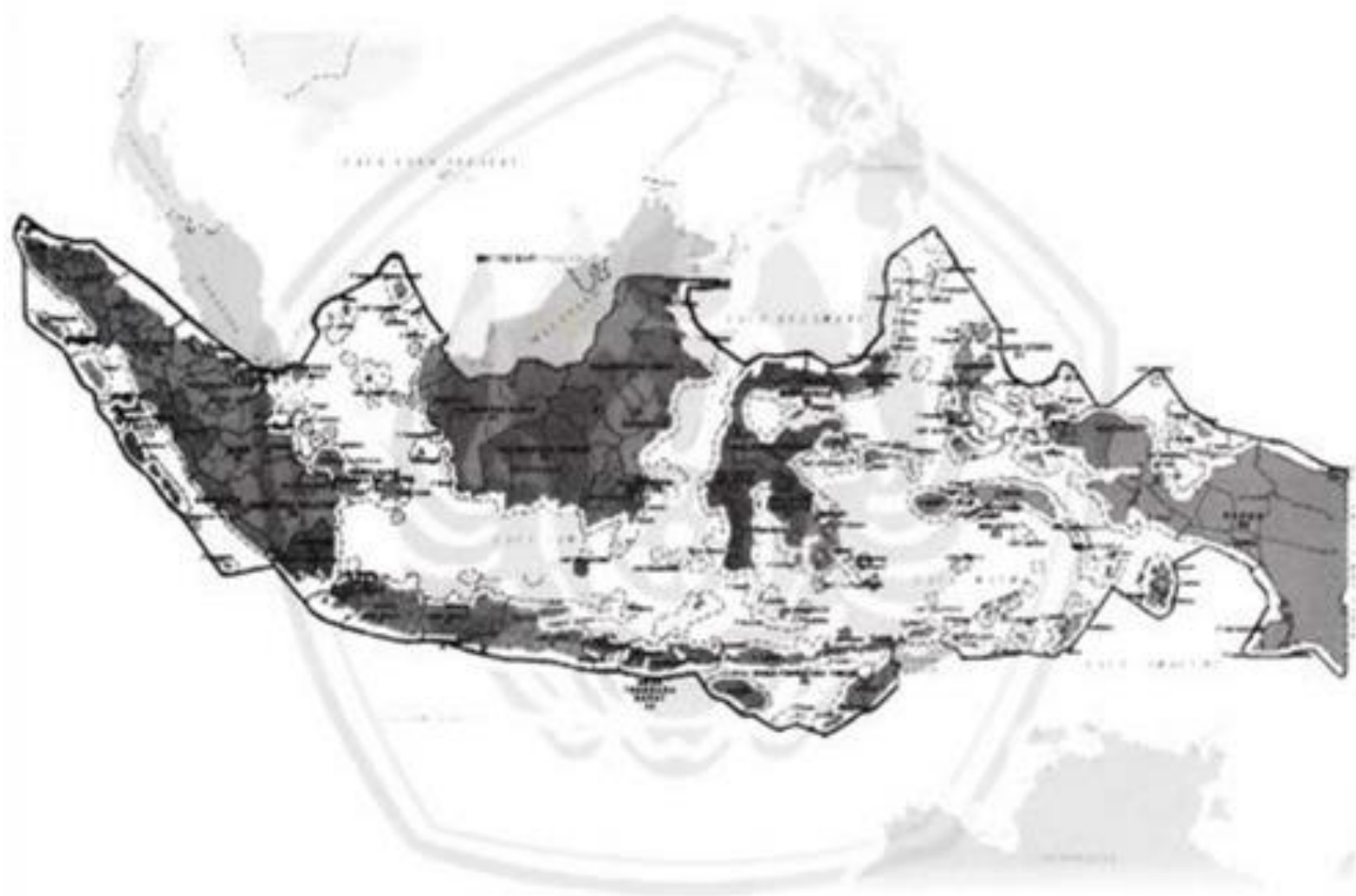


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The Functionalization of Law and Criminal Procedures to Confront Health Care Fraud in Hospitals

Musa Darwin Pane*, Diah Pudjiastuti**

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Abstract

Fraud is a systematic crime that has a very broad impact. It can happen in any fields, including in hospitals. Fraud is a form of corruption. Hospital is a health service institution. Corruption in hospitals has the potential to lead to ineffective health services for people. The phenomenon of health care fraud in hospital is an indication the law does not function in accordance with the objective. This study aims to determine the functionalization of law and sentence for fraudulent acts as a form of corruption in hospitals based on justice values. This study is a descriptive study with normative juridical method that employed statutory and conceptual approaches. The data were collected through a literature study. It was subsequently analyzed qualitatively. This study is of the position to view that prosecution of criminal acts of corruption requires functionalization of law. The functionalization of law must be interpreted as positioning everything in its proper place. It is the synergy of the legal system, which consists of formulative, judicial, and executive policies. The criminal procedures can apply the punishment system for perpetrators of fraudulent acts in hospitals that includes extended alternative punishment.

Keywords: fraud, legal functionalization, punishment system.

A. Introduction

Fraud is an action that has a purpose and is done in dishonest ways.¹ It is an act that takes advantage of the attached authority resulting in losses and potential losses for others.² In the context of hospital management, a bearer of specific authority may take advantage of the position to commit fraud that causes the low quality of hospital's health services for the community. Fraud, certainly, is against the law. It is regulated in Article 2 paragraph (1) of the Law number 31 of 1999 on the Eradication of Criminal Acts of Corruption. Conceptually, it only adheres to the doctrine of being against the law in a material sense. However, based on the decision of the Constitutional Court, Fraud is qualified as an act against the law

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¹ Laksono Trisnantoro and Julita Hendrartini, *Fraud di Jaminan Kesehatan Nasional*, Yogyakarta: Pusat Kebijakan dan Manajemen Kesehatan Fakultas Kedokteran Universitas Gadjah Mada, 2014, p. 4.

² Diah Setyawati, Amiruddin Saleh, and Musa Hubeis, "Pengaruh Majalah Ilmiah Kampus Pengawasan terhadap Peningkatan Pengetahuan dan Sikap APIP terhadap Fraud, serta Citra Pusdiklatwas BPKP", *Jurnal Komunikasi Pembangunan*, Vol. 15, No. 1, 2017, p. 93.

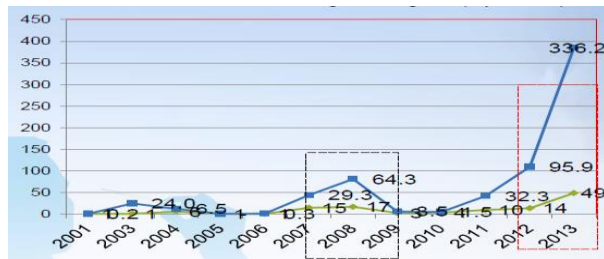
both in the formal and material senses. In the explanation of Article 2 paragraph (1), “what is meant by ‘against the law’ in the article includes legal acts in the formal sense and material meaning, namely even though these actions are not regulated in laws and regulations, but if these actions are considered despicable because it is not in accordance with the feeling of justice or the norms of social life in the community, the action can be sentenced”.

Fraud usually involves parties of government projects, such as contractors, project supervisors, and others. It may happen in procurement or delivery of goods. In general, fraud may be driven by necessity, opportunity, and greed, which basically, for that reason, justifies all means by utilizing the position or authority to benefit oneself and cause harm to others.³ Based on the form and the mode, fraud is a systematic action.⁴ For instances, fraudulent financial reporting and misappropriation of assets are well-planned and systemic actions. In the setting of hospital, fraudulent actions, which are carried out together, may decrease the quality of health services. Weak supervision and justification for fraudulent acts are challenges to the prevention and prosecution system for fraud in Indonesia. The system has not been running optimally. The fact is the absence of an integrated complaint system. For example, the community is asked to pay administrative fees before the patient gets treatment. Another example is the implementation of the national health insurance (JKN –*Jaminan Kesehatan Nasional*). There is a case when a patient got a prescription from a doctor, but the hospital did not provide the medicine so that the patient had to buy the medicine from outside the hospital pharmacy at the patient’s own expense. Other cases include a low salary of medical personnel and causing the medical personnel to seek additional income outside the hospital to meet their needs. The medical personnel can become less focused in their works. Other cases also include imbalances of health service systems with health service burden, lack of medical equipment –so that people who need help must be referred to other hospitals, lack of transparency in health facilities services, hospital waste treatment, procurement of medical devices in development projects Hospitals, and inefficiencies in systems supported by cultural factors such as closeness, kinship and so on.

There have been various regulations regarding health services. They are, among others, the Law Number 4 of 2019 on the Technical Standards for Fulfilling Basic Service Quality in Minimum Service Standards in the Health Sector and the Government Regulation Number 47 of 2016 on the Health Service Facilities, the Law Number 36 of 2009 on Health. However, these regulations do not yet regulate the prevention of fraud in hospitals. The figure below shows Health Corruption Eradication Trends from 2001 to 2013.

³ Syukri Kurniawan, Hari Sutra Disemadi, and Ani Purwanti, “Urgensi Pencegahan Tindak Pidana Curang (Fraud) dalam Klaim Asuransi”, *Halu Oleo Law Review*, Vol. 4, No. 1, 2020, p. 45.

⁴ Rita Anugerah, “Peranan Good Corporate Governance dalam Pencegahan Fraud”, *Jurnal Akuntansi*, Vol. 3, No. 1, 2013, p. 101.

Figure 1. Health Corruption Eradication Trends 2001-2013⁵

Source: <https://antikorupsi.org/>.

Figure 1 illustrates an increase in prosecutions for cases of health corruption. However, despite an increase in prosecutions, in 2008, there was a repeated pattern of increasing prosecutions. Therefore, the functionalization of law needs to be understood not only as a law enforcement task but also as a synergy of the whole legal system.

Table 1. Health Corruption Object

No	Corruption Object	Number of Cases	State Losses (Rp. / Billion)
1.	Medical equipment (<i>alkes –Alat Kesehatan</i>) fund	43	442,8
2.	Hospital development / rehabilitation fund	19	51,4
3.	Medicine fund	18	43,0
4.	Non-tax revenue (PNBP – <i>Penerimaan Negara Bukan Pajak</i>) fund	1	15,0
5.	Health insurance fund	16	14,6
6.	Community Health Center Development/Rehabilitation fund	5	12,9
7.	Funds for the procurement of lab equipment	1	4,9
8.	Hospital Income	3	3,3
9.	Hospital operational funds	4	2,2
10.	Education/Training budget	2	1,5
11.	Public Health Center's (<i>Puskesmas –Pusat Kesehatan Masyarakat</i>) infrastructure fund	4	1,3
12.	Integrated service postal (<i>Posyandu –Pos Pelayanan Terpadu</i>) fund	1	0,9
13.	Health department office's operational funds	2	0,2

⁵ Indonesia Corruption Watch, "Tren Korupsi Kesehatan", <https://antikorupsi.org/sites/default/files/dokumen/Tren%2520Korupsi%2520Kesehatan%25202013%2520.pdf>, accessed on August, 2021.

14.	Health department office's assets	1	0,1
15.	Family planning program (KB <i>-Keluarga Berencana</i>) fund	1	0,0
16.	Fund for laboratory infrastructure	1	0,0
Total		122	594,0

Source: <https://antikorupsi.org/>.

Table 1 show that the potentials of fraud cover medical equipment funds, which are one of the curative funds that have the largest percentage in the National and Regional Budget. Therefore, it is important to carry out an integrated action consisting of report, detection, investigation, sanctioning, and awareness.

Table 2. Health Corruption Mode

No	Corruption Mode	Number of Cases	State Losses (Rp. / Billion)
1.	Mark up	62	506,7
2.	Budget Abuse	14	33,0
3.	Embezzlement	28	25,1
4.	Fictitious procurement/Tender and data manipulation	11	25,7
5.	Bribery	2	3,1
6.	Abuse of authority	3	0,4
7.	Fictitious Honor	1	-
8.	Illegal levies	1	-
Total		122	594,0

Source: <https://antikorupsi.org/>.

Table 2 shows that, in general, the mode that is widely used is the mark-up mode or the inflating funds. Therefore, it is important to carry out a system of recruitment and placement of officials through strict and transparent screening to eliminate overcapacity of positions or human resources (HR).

Table 3. Institutions Where Corruption Occurs

No	Institutions Where Corruption Occurs	Number of Cases	State Losses (Rp. / Billion)
1.	Ministry of Health	9	249,1
2.	Health Office (District/City/Provincial)	46	191,0
3.	Hospital	55	118
4.	BPOM and other health institutions	1	15,0

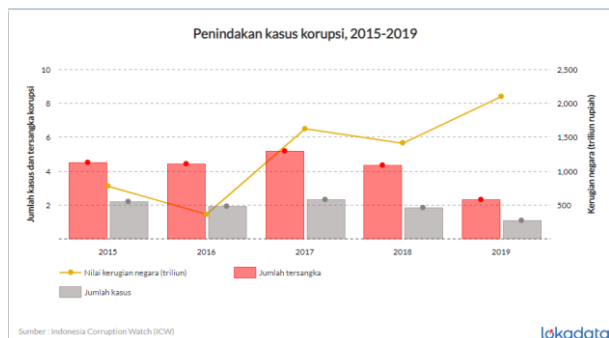
5.	Public health center/ <i>Puskesmas</i>	9	11,1
6.	State-Owned Enterprises (BUMN)/Regional Owned Enterprises (BUMD) in health field	1	9,0
7.	Community Based Organization (Ormas – <i>Organisasi Masyarakat</i>) /Foundation	1	0,9
Total		122	594,0

Source: <https://antikorupsi.org/>.

Table 3 shows that the most strategic places that cause state losses are the Ministry of Health. Therefore, it is important to increase checks and balances, as well as increase the competence, integrity, and professionalism of employees.

Indonesia is a state based on rule of law, where, if at all possible, everything must adhere to the law.⁶ In this regard, the legal functionalization of fraudulent acts must be enforced in accordance with the applicable laws for the sake of the people. For example, there was a case of illegal Sinovac vaccine sales in Medan, North Sumatra. The vaccine was intended for inmates, but it was traded to those who were not entitled, and the buyer received a vaccination certificate.⁷ Another example is the corruption in the Hospital project, which was allegedly carried out by the Mayor of Cimahi.⁸ The numbers of actions that have been carried out by law enforcers to crack down on criminal acts of corruption are as follows.

Figure 2. Corruption Case Enforcement in 2015-2019



⁶ Jimly Asshiddiqie, "Gagasan Negara Hukum Indonesia", delivered in the National Law Development Planning Dialogue Forum (*Forum Dialog Perencanaan Pembangunan Hukum Nasional*), Organized by National Legal Development Agency of the Ministry of Law and Human Rights, November 2011, p. 1.

⁷ Eko Ari Wibowo, "Jual Vaksin Covid-19 Secara Ilegal, 2 Dokter di Medan Raup Untung Rp. 238 Juta", <https://nasional.tempo.co/read/1464600/jual-vaksin-covid-19-secara-ilegal-2-dokter-di-medan-raup-untung-rp-238-juta/full&view=ok>, accessed on May, 2021.

⁸ Julkifli Sinuhaji, "5 Kasus Korupsi yang Mencuri Perhatian Sepanjang 2020, Mulai Jaksa Pinangki Hingga Mensos Juliari", <https://www.pikiran-rakyat.com/nasional/pr-011148547/5-kasus-korupsi-yang-mencuri-perhatian-sepanjang-2020-mulai-jaksa-pinangki-hingga-mensos-juliari?page=6>, accessed on May, 2021.

Source: <https://lokadata.beritagar.id>.

Figure 2 shows the number of suspects, the value of state losses (trillion), and the number of cases from 2015 to 2019. In 2015, the number of suspects was 1124 people with a state loss value of 3.11 trillion, and the number of cases was 550. On 2016, the number of suspects was 1101 people, with the value of state losses of 1.45 trillion, and the number of cases was 482. In 2017, the number of suspects was 1298, with a state loss value of 6.5 trillion, and the number of cases was 576. In 2018, the number of suspects was 1087 people, with state losses of 5.65 trillion, and the number of cases 454. In 2019, the number of suspects was 580 people, with state losses of 8.41 trillion, and the number of cases as much as 271. Based on table 1, the value of state losses in general increases. However, the number of cases and the number of suspects in general decreased. Nevertheless, the decline was influenced by the number of actions against the perpetrators of corruption in the year with the current year. There are cases in the year the occurrence of criminal acts but only finished the following year, as shown in Table 2 below.

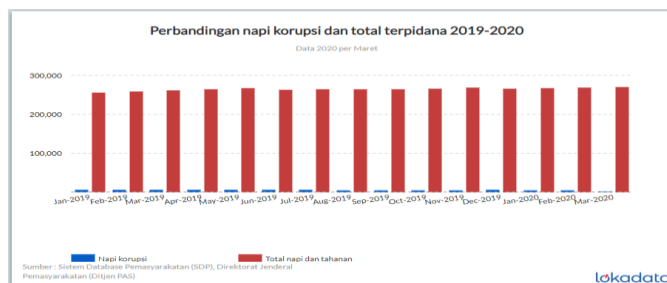
Table 4. Corruption Crimes between 2015-2019

Prosecution	2015	2016	2017	2018	2019	2020	Amount
Investigation	87	96	123	164	142	111	723
Investigation	57	99	121	199	145	91	712
Prosecution	62	76	103	151	153	75	620
Conclusion	38	71	84	104	142	92	531
Execution	38	81	83	113	136	108	559
Total	282	423	514	731	718	477	3145

Source: <https://www.kpk.go.id/>

Based on table 4, there has been an increase in prosecutions for corruption. Each stage of prosecution is not a measure of the case being investigated, prosecuted, and then executed in the same year. It can be compared with the number of convicts for corruption with other convicts.

Figure 3. Number of Corruption Convicts in 2019-2020



Source: <https://lokadata.beritagar.id>

Based on figure 3, in 2019, the number of convicts of corruption in general was almost constant and headed for a decline. However, based on the number of stages of inspection, investigation, and prosecution, there was an increase every year.

Thus, the number of losses due to fraudulent acts, which are qualified as a form of corruption as well as the number of prosecutions against corruption convicts, shows that the law has not been worked properly. The law is a part of the social control system, a means of resolving conflicts (disputes), and a means of driving change (social engineering). Consequently, it is important to carry out legal functionalization through the optimization of an integrated criminal justice system. It is expected that it will be able to overcome all forms of fraudulent actions and to provide a preventive impact for potential perpetrators from committing the crime, and to create a deterrent effect for perpetrators considering the legal consequences.

This study aims to answer several questions. First, how is the functionalization of law to the fraud perpetrators related to the justice values? Second, how are the functionalization and the criminal procedure for fraudulent perpetrators? Therefore, the purpose of this study is to reveal the functionalization of law and the punishment system for fraud perpetrators related to the justice values.

B. Functionalization of Law Against Perpetrators of Fraudulent Actions related to Justice Values

Justice is universal. In a state, justice is the philosophical foundation of its development. Equitable development will create social welfare for the people. Thus, state is obliged to protect its citizens, including in health care. This can be realized in providing service with courtesy and friendliness. As the embodiment of the fifth precept of Pancasila, which reads social justice for all Indonesian people, health is a human right that must be protected. Therefore, hospitals should be responsible to providing health services. The health service is a part of social services, so it is not allowed to contain commercial elements. This is intended to be in accordance with the justice values.

Indonesia is a state of law, where all problems must be resolved according to law.⁹ Based on the legal theory, the law has purposes, namely justice, expediency, and legal certainty.¹⁰ The existence of policies is required to achieve the legal objectives. Policy is the objective of provision or decision in the form of a law or certain standards.¹¹ Policy is a process which is an inseparable unit to achieve goals. If one process is problematic, it will have an impact on the next process and the results. In this case, the issue of policy or the government's agenda is the input, the strategy and program implementation are the process, and the performance of the strategy is the output.¹²

In terms of criminal politics, the concern in criminal law policy covers actions that should be categorized as criminal acts and the sanctions to be imposed on perpetrators of criminal acts. The criminal law policy is a means of crime prevention. Fraud in a hospital is qualified as a criminal act and becomes a type of corruption. It is legally regulated in the Law number 31 of 1999 in conjunction with the Law number 20 of 2001 on the Crime of Corruption. It explains that "against the law" includes acts against the law in a formal sense, as well as in a material sense. Therefore, even though an act is not regulated by law, if the act is seen as disgraceful by the people because it is considered not in accordance with the sense of justice or norms, a criminal procedure can be applied to the perpetrators of the act.

By paying attention to this, a state of law considers law enforcement important. This is in accordance with Mertokusumo's view that law enforcement is an element to restore the balance of order in a society.¹³ Furthermore, according to Arief, criminal law enforcement policies are a series of processes consisting of three policy stages. The first is the formulative policy stage or the legislative policy stage, namely the stage of drafting/formulating criminal law. The second is the judicial/applicative policy stage, namely the stage of implementing criminal law. The third is the executive/administrative policy stage, namely the implementation/execution stage of criminal law.¹⁴

Based on the description, criminal policy includes qualifications of criminal actions and appropriate sanctions. In the context of fraud, which is qualified as a type of corruption, the elements of corruption can be fulfilled. Sanctions for fraud

⁹ Juniarso Ridwan and Achmad Sodik Sudrajat, *Hukum Administrasi Negara dan Kebijakan Layanan Publik*, Bandung: Nuansa Cendekia, 2014, p. 11.

¹⁰ Tata Wijayanta, "Asas Kepastian Hukum, Keadilan dan Kemanfaatan dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga", *Jurnal Dinamika Hukum*, Vol. 14, No. 2, 2014, p. 219.

¹¹ Suharno, *Dasar-Dasar Kebijakan Publik: Kajian Proses dan Analisis Kebijakan*, Yogyakarta: UNY Press, 2010, p. 45.

¹² Aji Wahyudi, "Implementasi Rencana Strategis Badan Pemberdayaan Masyarakat dan Desa dalam Upaya Pengembangan Badan Usaha Milik Desa di Kabupaten Kotawaringin Barat", *Jurnal Ilmiah Administrasi Publik*, Vol. 2, No. 2, 2016, pp. 101-105.

¹³ Edi Setiadi and Kristian, *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum di Indonesia*, Jakarta: Prenadamedia Group, 2017, p. 135.

¹⁴ Nisa Yulianingsih, "Kebijakan Hukum Pidana dalam Tindak Pidana Korupsi Pengadaan Barang dan Jasa", *Law Reform*, Vol. 10, No. 1, 2014, p. 64.

must always pay attention to the values of justice that lives in the community, namely by returning losses to the third degree. In this case, the perpetrators returned the loss to the community through the hospital. The return was announced openly, by improving service to the community. Thus, the perpetrator felt ashamed of the actions. It can also cause a deterrent effect if the perpetrator remembered the law consequences. People's right can still be fulfilled. So far, the return on state losses is thought to be unclear both in its juridical and empirical levels.

It aims to make law enforcement fulfill the proportion of justice, certainty, and the benefit of law to be felt by the community.¹⁵ Based on the values of justice, law enforcement is an objective thing based on legal norms. Justice must be in accordance with public order. Justice is also determined by the community through living norms and is recognized by the community.¹⁶ In connection with law enforcement of fraud, the understanding of fair can be understood through Procedural and substantive justice.¹⁷

Fraud is defined as an act that violates the principle of justice, one of which is manifested in the form of abuse of authority.¹⁸ Various kinds of actions are categorized as fraudulent offenses, one of which can be seen in the Law Number 20 of 2001 on the Eradication of Corruption. Based on the law, there are eight groups of corruption offenses, one of which is fraud.¹⁹

It can be understood that fraud has a criminogenic factor in its occurrence.²⁰ It causes losses that may disrupt state's economic stability. The Government makes various policies to provide protection and welfare to the people in order to fulfill a sense of justice.²¹

Fraud can be driven by internal and external factors.²² It may occur due to opportunity, rationalization, and pressure. The causes of fraud and corruption mostly have similarities, namely greed, opportunity, and needs. It also may indicate leadership weaknesses in ethical and religious sense, low quality of education (morals), poverty, and weak law enforcement.

By taking into account the factors causing corruption above, the approach through criminal policy is considered to be more able to meet and anticipate the

¹⁵ Fence M. Wantu, "Mewujudkan Kepastian Hukum, Keadilan, dan Kemanfaatan dalam Putusan Hakim di Peradilan Perdata", *Jurnal Dinamika Hukum*, Vol. 12, No. 3, 2012, p. 479.

¹⁶ Agus Santoso, *Hukum, Moral, dan Keadilan Sebuah Kajian Filsafat Hukum*, Jakarta: Kencana, 2012, p. 85.

¹⁷ Darmoko Yuti Witanto and Arya Putra Negara Kutawaringin, *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif dalam Perkara-Perkara Pidana*, Bandung: Alfabeta, 2013, p. 13.

¹⁸ Djoko Prakoso and Ali Suryati, *Upeutisme: Ditinjau dari Undang Undang Pemberantasan Tindak Pidana Korupsi Tahun 1971*, Jakarta: Bina Aksara, 1986, p. 8.

¹⁹ Bambang Waluyo, "Optimalisasi Pemberantasan Korupsi di Indonesia", *Jurnal Yuridis*, Vol. 1, No. 2, 2017, pp. 171-172.

²⁰ Fransiska Novita Eleanora, "Pembuktian Unsur Sifat Melawan Hukum dalam Tindak Pidana Penyuaan" *Jurnal Ilmiah Hukum dan Dinamika Masyarakat*, Vol. 9, No. 2, 2016, p. 202.

²¹ Mahmud Mulyadi, "Pendekatan Integratif dalam Penanggulangan Tindak Pidana Korupsi", *Jurnal Hukum Samudra Keadilan*, Vol. 13, No. 1, 2018, p. 3.

²² Ita Suryani, "Penanaman Nilai-Nilai Anti Korupsi di Lembaga Pendidikan Perguruan Tinggi sebagai Upaya Preventif Pencegahan Korupsi", *Jurnal Visi Komunikasi*, Vol. 14, No. 2, 2015, p. 292.

development of the legal needs of the community to prevent and effectively eradicate every form of fraud, which is very detrimental to state finances or the state economy in particular and society in general.²³ According to Wahid, the impact of corruption is that it causes the level of poverty in the state to increase, the impact of high costs, the emergence of distrust of the government, and the prices to be expensive.²⁴ According to Alatas, corruption causes injustice, ineffectiveness, crime, weak bureaucratic apparatus, victim, the ability of the state in providing public services, and increased service costs.²⁵

Therefore, fraud requires consistent, firm, professional, and open solution. The solution must carry out in an extraordinary way because fraud is a criminogenic act of the occurrence of other criminal acts. It can form a network that has an impact on the occurrence of obstacles in law enforcement. Therefore, the handling must be carried out in a systematic and planned manner by utilizing the system and increasing supervision and evaluation and reducing the convoluted bureaucracy as well as eradicating the comfort zone which are the forerunner of fraud.²⁶ Fraud that is qualified as a criminal act of corruption in a hospital mostly is caused by (1) The low level of public health; (2) low health sector funding; (3) High prices of medicines; (4) low quality of medical equipment, etc. It shows that fraudulent practices benefit certain groups.²⁷ The importance of legal functionalization in the prosecution of criminal acts, as referred to in criminal policy is an effort to enforce a just law. Justice values cannot be separated from the application of sanctions against perpetrators of fraud, so that the relationship between fraud and justice is an inseparable unity.

Fraud in hospitals has an impact that is contrary to legal norms. In terms of protection of human rights, namely the protection of health, which is the responsibility of the state and protected by the constitution, the improvement in the health status of the people is an indicator of state's success in fulfilling the right to health as a basic right. If there is a fraud in the hospital involving officials and officials, it is very contrary to legal, social, and religious norms. Another example of fraud committed in hospitals is the procurement of medical devices and medicines that harm the community. People who are economically disadvantaged complain about the quality of hospital services. Hospital is a supporting factor in the implementation of national health. The functionalization of law through criminal

²³ Elyas M. Situmorang, Mompang L. Panggabean, Hendry Jayadi, "Kebijakan Kriminal Dalam Penggunaan Alat Bukti Petunjuk Dalam Tindak Pidana Korupsi di Indonesia", *to-ra*, Vol, 7, Special Issue (February), 2021, p. 208.

²⁴ Ruslin Abdul Gani, "Dampak dan Upaya Pemberantasan serta Pengawasan Korupsi di Indonesia", *Justice Pro: Jurnal Ilmu Hukum*, Vol. 1, No. 2, 2017, p. 6.

²⁵ Bahrin, "Dampak Korupsi Terhadap Kehancuran Negara dan Upaya Penanggulangannya", *Paper*, Institut Pertanian Bogor, 2004, p. 9.

²⁶ Ruslin Abdul Gani, *loc.cit.*

²⁷ Marcosius Nababan Thales, "Kebijakan Pengaturan Tindak Pidana Korupsi dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana dan Implikasinya Terhadap Pemberantasan Tindak Pidana Korupsi", *Doctoral Dissertation*, Universitas Andalas, 2016, pp. 2-3.

policies is expected to be able to prevent fraud and result in a deterrent effect for the perpetrators.

Criminal policy is closely related to public policy. According to Dicey, there are three principles in a state of law:²⁸

- (1) equality before the law
- (2) *human rights*, and
- (3) supremacy of law.

The functionalization of law is a process of a policy that requires an integrated complaint system. The system runs as a unit to support the realization of the objectives of law enforcement, namely the functioning of legal substance, structure, and culture.²⁹

In law enforcement, criminal law must refer to the policies that have been set.³⁰ Thus, in addition to synergizing the criminal justice system, several other factors are needed to influence the success of crime prevention. They are the importance of collaboration with society and culture in addition to coordination and communication of legal factors and law enforcement. The criminal justice system is an effort to solve social problems. In this regard, Clifford argues that the increase in crime can be understood as less effective function of law.³¹ Therefore, the use of law as a means to drive social changes will be more clearly visible if observations are directed at the activities of the Indonesian government in the development. The government is given the task of guiding the people of Indonesian to achieve its objective as affirmed in the 1945 Constitution.³² It is to form “a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice”.

In this case, the government should not only carry out the implementation but also supervise health care as a basic right of citizens. The law can function as a prevention and a solution of crime.³³ Health protection is the responsibility of the state. It is guaranteed by law. It is a human right that is protected by the constitution. Therefore, the state has an obligation to protect the fulfillment of the

²⁸ Iza Fadri, “Kebijakan Kriminal Penanggulangan Tindak Pidana Ekonomi di Indonesia”, *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 17, No. 3, 2010, p. 445.

²⁹ Armunanto Hutahaean, “Lembaga Penyidik dalam Sistem Peradilan Pidana Terpadu di Indonesia”, *Jurnal Legislasi Indonesia*, Vol. 16, No. 1, 2019, p. 28.

³⁰ Barda Nawawi Arief, *Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Semarang: Prenadamedia Group, 2014, p. 36.

³¹ Muladi and Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*, Bandung: Alumni, 2010, p. 196.

³² Maroni, “Fungsionalisasi Hukum dalam Masyarakat”, *Ilmu Hukum Litigasi*, Vol. 12, No. 2, 2011, p. 20.

³³ Indah Dwiprigitaningtias, “Fungsionalisasi Hukum Pidana dalam Menjaga Pelestarian Lingkungan Hidup”, *Jurnal Dialektika Hukum*, Vol. 1, No. 2, 2019, p. 211.

right to the health of its citizens. The functionalization of law is important in achieving fair law enforcement.³⁴

The criminal justice system has certain characteristics. They are, among others, having a purpose, being open, transforming values, and having control mechanisms, including the sub-systems of criminal justice.³⁵ The sub-systems in the criminal justice system are Police, Prosecutor's Office, Advocates, Judiciary, and Correctional Institutions. The operation of these sub-systems has not run optimally. Reksodiputro explains that the criminal justice system is a crime prevention system carried out by subsystems. It aims to prevent people from becoming criminals and to provide a deterrent effect for criminals. Therefore, the functionalization of law fulfills a sense of justice in society.³⁶

The police are the spearhead in the implementation of law. It brings violators to the criminal justice system.³⁷ If the police are unethical and have no integrity in carrying out their duties, a judicial mafia can be appeared. It may show that the criminal justice system is criminogenic.³⁸ For example, corruption in the police is divided into internal corruption and external corruption. Internal corruption does not involve the public outside the police community. The examples are the sale and purchase of strategic positions, corruption in the process of recruiting police officers, distribution of logistics, and distribution of police budgets. The external corruption directly involves the public interest. It occurs within the scope of police duties related to law enforcement, community service, and abuse of authority.³⁹

In the Prosecutor's Law, the Prosecutor's Office has the task and authority to carry out prosecutions. It determines whether a criminal case can be proceeded to the Court or not. The prosecution demanded by the Prosecutor's Office becomes the reference and basis for judges in imposing sanctions and decisions. Judge may not impose a sentence that exceeds what is demanded by the Prosecutor's Office.⁴⁰ In this regard, the Commission for Corruption Eradication (KPK –*Komisi Pemberantasan Korupsi*) can carry out functional relations with authorities such as legal action, coordination, joint supervision of police investigators and the

³⁴ Arisyah Putra, "Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Korupsi (Studi Putusan Pengadilan Negeri No. 53/Pid. Sus-TPK/2018/PN. SBY)", *Thesis*, Universitas Sumatera Utara, 2019, p. 47.

³⁵ Mares Ali, "Sistem Peradilan Pidana Progresif; Alternatif dalam Penegakan Hukum Pidana", *Jurnal Hukum Ius Quia Iustum*, Vol. 14, No. 2, 2007, p. 218.

³⁶ Sahuri Lasmadi, "Tumpang Tindih Kewenangan Penyidikan pada Tindak Pidana Korupsi dalam Perspektif Sistem Peradilan Pidana", *INOVATIF Jurnal Ilmu Hukum*, Vol. 2, No. 3, 2010, p. 39.

³⁷ Eddy Santoso and Sri Endah Wahyuningsih, "Peran Kepolisian dalam Sistem Peradilan Pidana Terpadu Terhadap Penanggulangan Tindak Pidana Perjudian", *Jurnal Daulat Hukum*, Vol. 1, No. 1, 2018, pp. 182-183.

³⁸ Agus Raharjo and Angkasa, "Profesionalisme Polisi dalam Penegakan Hukum", *Jurnal Dinamika Hukum*, Vol. 11, No. 3, 2011, p. 309.

³⁹ Indonesia Corruption Watch, "Mafia Hukum di Kepolisian", <https://antikorupsi.org/id/article/mafia-hukum-di-kepolisian>, accessed on September, 2021.

⁴⁰ E. Agus Suryadi and H. Supardi, "Mewujudkan Sistem Peradilan Pidana Terpadu Melalui Case Management System (Studi di Kejaksaan Negeri Kota Bogor)", *Jurnal Suara Hukum*, Vol. 3, No. 1, 2021, pp. 16-17.

prosecutor's office or even take over related cases of corruption based on law.⁴¹ The functionalization of law must be directly proportional to the efforts to prevent crime.⁴² In overcoming fraud in hospitals, namely having to enforce a fair legal functionalization process in the process of health services in hospitals, it is not enough just as social control but also to make efforts to move individuals to behave in accordance with ways to achieve the expected goals.

Thus, the functionalization of the law becomes very important in efforts to prevent and eradicate the occurrence of a crime based on the justice values, through the optimization of penal and non-penal efforts. The functionalization of law against fraud in health care to achieve the justice values should be carried out through three strategies to prevent corruption as follows.

1. There should be a long-term strategy by changing the culture, namely the existence of commitment, planning, implementation, evaluation, improvement, and response.
2. The intermediate strategy is in the form of improving the system to close the gap in corruption.
3. There should be a short-term strategy by providing direction in prevention efforts.

In other words, reporting, detection, investigation, sanction, and awareness must work well as a prevention strategy. It can be implemented through (1) the increase of competence, integrity, and professionalism of employees, (2) elimination of over-capacity positions or human resources; (3) improving oversight; (4) improving the system of recruitment and placement of officials through strict and transparent screening; and (5) improving public services.

Prosecution for fraud in hospitals can be optimal if the legal system is running – the legal substance. The structure to prevent the crimes is supported by the participation of the community to prevent fraud in hospital through an integrated complaint system. The legal substance is defined as rules and policies that contain the values of justice, expediency, and legal certainty. Furthermore, the legal structure runs by ensuring the integrity and professionalism of law enforcers in carrying out their functions, duties, and authorities, not creating opportunities for law enforcers to act against the law. The essence of the occurrence of law violations by law enforcers is due to the available space or opportunity. Thus, the functionalization of law in dealing with fraud in hospitals cannot be separated from the role of the community, through active participation. The participation of the community is expected to make the functionalization of law through penal and non-penal efforts running optimally and effectively to create legal goals. The

⁴¹ Sumiaty Adelina Hutabarat, "Kajian Hukum Kewenangan Penyelidikan Antara Kepolisian, KPK dalam Pemberantasan Pidana Korupsi dari Kelembagaan Negara", *Jurnal Spektrum Hukum*, Vol. 17, No. 1, 2020, p. 65.

⁴² Sahat Maruli Tua Situmeang, "Kebijakan Kriminal dalam Penegakan Hukum untuk Mewujudkan Keadilan dalam Perspektif Hak Asasi Manusia", *Res Nullius Law Journal*, Vol. 1, No. 1, 2019, pp. 34-35.

participation of the community, the prevention of the occurrence of a crime will increase supervision.

Fraud in hospital happens generally with the involvement of hospitals' officials and officers. For example, the fraud includes abuse of health insurance programs, hospitals' income, hospitals' operations, hospitals' construction, procurement of medicine and medical equipment, etc. Thus, legal functionalization is required through (1) the increase of competence, integrity, and professionalism of employees, (2) elimination of over-capacity positions or human resources; (3) improving oversight; (4) improving the system of recruitment and placement of officials through strict and transparent screening; and (5) improving public services.

Therefore, the optimization of functionalization of law to prevent fraud involves people's participation to prevent and eradicate the criminal act as well as playing an active role in the administration of the state based on the applicable laws and regulations. In fact, the functionalization of law must consider the implications of its application. Thus, fraud needs to be understood from upstream to downstream. As a result, the functionalization of law does not only cover the prosecution of a criminal act but also the prevention and control through the function of law enforcement officers, officials, and public. Related to the justice values, the prosecution of fraudulent acts requires functionalization of law. The functionalization of law must be defined as placing something in proper place, namely the synergy of a legal system consisting of formulative, judicial, and executive policies.

C. Functionalization and Procedure of Criminal Justice System for Fraud

Law is a collection of subsystems that are transformed into a complete system. The system consists of a collection of various rules, orders, and prohibitions made for the benefit and convenience of the community. Law is a regulation that has the power to compel individuals to obey everything that can harm the rights of others. Therefore, justice is the objective of the law that must always be considered. Justice is a balance between rights and obligations that accommodate all individual interests so that everyone gets the protection. Therefore, justice is the will to give everyone their rights. The principle of justice demands proportional, harmonious, and balanced action with the rights of every person. Balanced actions must be based on elements of justice and fairness. A law must be efficient, so that usefulness cannot be separated from justice.

In Indonesian, the criminal system is called *pidana*. It comes from the Dutch, which means punishment. Simons defines criminal law as all prohibitions and obligations which are subject to sanctions for those who violate them.⁴³ Sentencing

⁴³ Rise Karmilia, "Fungsionalisasi Hukum Pidana Terhadap Pertanggungjawaban Korporasi dalam Tindak Pidana di Bidang Asuransi", *Cano Ekonomos*, Vol. 6, No. 2, 2017, p. 116.

aims to restore balance in society, namely reintegrating prisoners into society.⁴⁴ One of the sanctions for prisoners is imprisonment,⁴⁵ which is still the *prima donna* in criminal convictions. Then, there is a need for legal reform to carry out a review and reassessment in accordance with the central socio-political, socio-philosophical, and socio-cultural values of the Indonesian people that underlie social, criminal, and law enforcement policies.⁴⁶

The Indonesian Criminal Code does not recognize the formulation of cumulative criminal sanctions. It turns out that the development of the types and forms of sanctions have developed from social work sanctions, payment of compensation, and fulfillment of customary obligations to repair the consequences of criminal acts, and so on based on the causes of crime. Therefore, it is necessary to make efforts to reform the criminal law in the criminal model, namely using an alternative punishment system that is aggravated for perpetrators of fraud in hospitals. The pattern of criminal weighting is a guideline that has been used by legislators due to the presence of special and additional elements. The intensified alternative punishment for perpetrators of fraud in hospitals is intended to increase the deterrent effect and protection of the community through refunding losses to the third degree.

Fraud is regulated in the Law Number 20 of 2001 on the Amendments to the Law Number 31 of 1999 on the Corruption Eradication.⁴⁷ The Constitutional Court also decides that the phrase 'against the law' in Article 2 paragraph (1) refers to both formal and material sense.⁴⁸ In the formulative policy on fraud, maximum sanctions are the death penalty.⁴⁹ The court decision on Fraud who is qualified as a crime of corruption is in the decision of the Supreme Court Number 1915K / PID.SUS / 2018 dated November 19, 2018.

Based on the description above, the use of this criminal law should be a last resort (*ultimum remedium*). It means that criminal law can be enforced after the administrative law and the civil law are enforced. Since criminal law has limitations, so it must be applied carefully and with caution. There are several principles in using criminal law, one of which is not applying criminal law as a form of retaliation for criminal acts committed.⁵⁰

⁴⁴ Desy Maryani, "Faktor-Faktor Penyebab Tidak Tercapainya Tujuan Pemidanaan Lembaga Pemasyarakatan di Indonesia", *Jurnal Hukum Sehasen*, Vol. 1, No. 1, 2015, p. 6.

⁴⁵ Fernando I. Kansil, "Sanksi Pidana dalam Sistem Pemidanaan Menurut KUHP dan di Luar KUHP", *Lex Crimen*, Vol. 6, No. 2, 2014, p. 28.

⁴⁶ Mudemar A. Rasyidi, "Pembaruan Hukum Tentang Efektivitas Pelaksanaan Pidana Denda dalam Tindak Pidana Korupsi", *Jurnal Mitra Manajemen*, Vol. 10, No. 1, 2019, p. 72.

⁴⁷ Flora Dianti, "Bentuk-Bentuk Tindak Pidana Korupsi", https://www.hukumonline.com/klinik/detail/ulasan/lt5e6247a037c3a/bentuk-bentuk-tindak-pidana-korupsi#_ftn3, accessed on June, 2021.

⁴⁸ Article 2 paragraph (1) of the Law Number 20 of 2001 on the Amendments to the Law Number 31 of 1999 on the Eradication of Corruption Crimes in conjunction with the Constitutional Court Decision Number 25/PUU-XIV/2016.

⁴⁹ Koko Arianto Wardani and Sri Endah Wahyuningsih, "Kebijakan Formulasi Hukum Pidana Mati Terhadap Pelaku Tindak Pidana Korupsi di Indonesia", *Jurnal Hukum Khaira Ummah*, Vol. 12, No. 4, 2017, p. 957.

⁵⁰ Dey Ravena, Kristian, *Kebijakan Kriminal (Criminal Policy)*, Jakarta: Kencana, 2017, p. 204.

These provisions are legal remedies that are cored to the protection of the community. Therefore, it is important to take a rational approach in applying criminal law. The problem of overcapacity in correctional institutions is often seen as failing to make convicts good citizens. Therefore, this is in line with Arief's view, that if positive law has not yet formulated the purpose of punishment. It means that there is uncertainty in a system where sentencing aims to reintegrate prisoners into society so that they can be accepted in the community.⁵¹ In this regard, there are four important reasons for formulating the purpose of sentencing as follows.⁵²

1. Sentencing is intended for synchronization, both structural synchronization and substantial synchronization.
2. Sentencing is a regulation in applying sentencing based on historical, philosophical, and juridical aspects.
3. Sentencing is an effort to protect the community.
4. Sentencing is a prevention against the occurrence of a crime that occurs in the community.

In the realization of the functionalization of law to optimize criminal policies through the synergy of the legal system and community participation, it is also important to carry out a criminal law reform system. In essence, it evaluates the applicable penalties to be in accordance with the values that live in society.⁵³ It is implemented in the renewal of the application of criminal sanctions for perpetrators of fraud in hospitals.⁵⁴

Sentence is not intended as an effort to revenge but it is an effort to foster a criminal as well as a preventive effort against the occurrence of similar crimes and to provide protection to the community. Therefore, sentence for those who commit fraud can be used as an ideal construction through the broad impact of their actions. The perpetrators are not only "humiliated" for their actions, but the family must also bear the consequences of the perpetrator's actions.⁵⁵ This means the use of a double track system of punishment. It requires the elements of reproach/suffering to be equally accommodated in the criminal system. The system of sanctions in the Law Number 31 of 1999 in conjunction with the Law Number 20 of 2001 uses a single-track system. Therefore, it is important to reform the punishment for perpetrators of fraud so that the values of justice can be realized.

⁵¹ Marcus Priyo Gunarto, "Sikap Memidana yang Berorientasi pada Tujuan Pemidanaan", *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, Vol. 21, No. 1, 2009, p. 103.

⁵² Nafi Mubarak, "Tujuan Pemidanaan dalam Hukum Pidana Nasional dan Fiqh Jinayah", *Al-Qānūn: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, Vol. 18, No. 2, 2015, p. 299.

⁵³ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: PT Kencana Prenada Media Group, 2010, p. 30.

⁵⁴ Dini Dewi Heniarti, *Sistem Peradilan Militer di Indonesia; Tujuan Teoritis, Praktis, Perbandingan Hukum & Pembaruan Hukum Nasional*, Bandung: Refika Aditama, 2017, p. 41.

⁵⁵ Musa Darwin Pane and Diah Pudjiastuti, "The Legal Aspect of New Normal and the Corruption Eradication in Indonesia", *Padjadjaran Journal of Law*, Vol. 7, No. 2, 2020, p. 202.

The meaning of justice in the concept of the purpose of punishment has developed. So far, it is seen to have various weaknesses because it does not provide any benefits for the victim and the community. This is further strengthened by the development of public opinion about criminal law in various parts of the world. This shift in discourse is caused by three main factors, namely the development of human rights, the changes in people's views on crime, and the changes in people's views of criminals themselves.⁵⁶

Furthermore, the implementation of the procedural law on handling fraud lies in the Criminal Procedure Code. It consists of three stages: investigation, prosecution, and examination in court.⁵⁷ There is overlapping powers to conduct investigations between the KPK and the police. However, it should not be used as an excuse, but it is important to coordinate and communicate efforts between the criminal justice sub-systems to achieve fair law enforcement.⁵⁸ Thus the importance of coordination both vertically and horizontally between law enforcement agencies so that each institution understands its authority.

In terms of prosecution, the sub-system of the Prosecutor's Office and the KPK as mandated in the law has the authority to prosecute the occurrence of a criminal act.⁵⁹ In a governance system that is not good, at the level of implementation, the prevention of fraud is far from what is aspired to.⁶⁰ The overlapping authority in fact has clear rules, where the takeover of the handling of cases must be in accordance with the provisions as stipulated in Article 9 of the KPK Law. The KPK in exercising its authority must comply with Article 11 and Article 50 of the KPK Law.⁶¹ Furthermore, the proper sentencing by judges shows that the criminal justice system is running in an effort to effectively impose criminal penalties.⁶² Therefore, the functionalization of criminal law against fraud is in accordance with the principles of justice, benefit, and legal certainty as the purpose of the law. Justice here can be interpreted as the passage of criminal policies in a system in the context of creating public order in a society.

The application of the criminal system for criminal acts is basically inseparable from the characteristics of the criminal acts. Since fraud is qualified as a form of corruption, which is in fact an extraordinary crime, the sentencing system ideally must be through extraordinary efforts compared to the handling of conventional

⁵⁶ Eva Achjani Zulfa, "Menakar Kembali Keberadaan Pidana Mati: Suatu Pergeseran Paradigma Pidana di Indonesia", *Lex Jurnalica*, Vol. 4, No. 2, 2007, p. 95.

⁵⁷ Adrianus Meliala, *Praktik Bisnis Curang*, Jakarta: Pustaka Sinar Harapan, 1993, p. 88.

⁵⁸ Sahuri Lasmadi, *op.cit.*, p. 35.

⁵⁹ Hasril Hertanto, *Penyidikan dan Penuntutan Tindak Pidana Korupsi*, Jakarta: Masyarakat Pemantau Peradilan Indonesia, 2020, p. 16.

⁶⁰ Cindy Rizka Tirzani Koesoemo, "Eksistensi Komisi Pemberantasan Korupsi (KPK) dalam Penanganan Penyidikan dan Penuntutan Tindak Pidana Korupsi", *Lex Crimen*, Vol. 6, No. 1, 2017, p. 68.

⁶¹ Yasmirah Mandasari Saragih, Teguh Prasetyo, and Jawade Hafidz, "Analisis Yuridis Kewenangan Komisi Pemberantasan Korupsi (KPK) sebagai Penuntut Pelaku Tindak Pidana Korupsi", *UNIFIKASI: Jurnal Ilmu Hukum*, Vol. 5, No. 1, 2018, p. 42.

⁶² Gatot Sugiharto, "Relevansi Kebijakan Penetapan Pidana Kerja Sosial dalam Sistem Pidana di Indonesia", *Jurnal Ilmu Hukum Novelty*, Vol. 7, No. 1, 2016, p. 84.

criminal acts. Theoretically, the application of criminal sanctions against criminal acts of corruption applies *adegium ne malis expediat esse malos*.

D. Conclusion

The functionalization of law ideally pays attention to the principles of public interest. Thus, the running of the legal system is a manifestation of a well-functioning legal system. It is the operation of legal sub-systems that are integrated and well implemented in accordance with positive law that influences social control. Based on the laws and regulations, especially the types of crimes regulated in the Law of eradication of corruption, the application of imprisonment is the *prima donna* in the context of law enforcement. Theoretically, punishment, aims to rehabilitate the perpetrators so that a balance can be realized in society; the perpetrators can be accepted back in the society. Therefore, the application of criminal law through imprisonment for perpetrators of fraud in hospitals must be reviewed through the criminal system by taking into account that criminal law should be used as a last resort in law enforcement. Thus, the study is of the opinion that non-penal efforts should be pursued more than penal efforts. The punishment system for perpetrators of fraud in hospitals is an extensified alternative punishment. If criminal law must be applied after taking another legal effort against fraud in the hospital, then the refund of losses to the third degree is an alternative to the community. It can also make criminals regret the crime and give implications for the reduction of criminal acts. This situation can be realized through progressive legal steps through legislative, judiciary, and executives' policies, as well as strengthening coordination between law enforcement agencies. Thus, revitalizing the refund of losses to the third degree for the fraud perpetrators uses a criminal policy mechanism as an effective way to build perceptions to the inmates that the fraud's actions are not profitable for the perpetrators –considering the legal impact it is created: refund losses to the third degree.

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