

# Economic-Related Reasons as a Motive to Avoid Sanction during Pandemic: Judges' Perspectives on Different Sentences on Crimes

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*Abstract:* - The economic sector has been severely impacted by the Covid-19 pandemic. Many criminals used this notion to avoid being severely sentenced. This study was performed to examine different judges' perspectives on the handling of criminal cases with economic motives during the Covid-19 pandemic. This qualitative study regarded the data that were collected through telephone interviews using the Interpretative Phenomenological Analysis (IPA) as the instrument. The findings show that judges have different perspectives on the imposing of punishment to criminals who used economic-related excuses. However, this phenomenon is difficult to control. In order to maintain the professionalism of the judges, judges should be more active in the trial process and able to identify the obstacles they face, such as the protracted legal process due to the potential for transmission of the coronavirus in the trial and communication difficulties due to the low quality of the internet network in online trials. Judges are required to keep their independency in making decisions for criminals regardless the criminal's motives by considering social changes that occur in society comprehensively. This attitude would make the society getting impressed by the performance of the judges.

*Key-Words:* - Crime, Disparity of sentences, Economic motives, Judges, Pandemic.

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## 1 Introduction

Covid-19 pandemic has greatly impacted various sectors, particularly the economy of Indonesia, [1]. The economic impacts of the pandemic have created uncertainties in the community income, [2]. This condition has made the community struggle to make living, [3]. Another issue following the condition is the high crime rates during the Covid-19 pandemic, [4].

As efforts of law enforcement and to maintain the security, every nation has implemented different policies, [5]. The government of Italia, Thailand and Columbia have released the inmates out of the prisons in order to prevent the spread of the Covid-19. Other countries have focused on the improvement of the public safety system, [6]. These different policies are the forms of responses toward the social changes during the Covid-19 pandemic.

Crime and economy are also crucial sectors during the pandemic, [7]. Criminal actions due to economic-related motives have become important issues to be handled, [8]. The United Nations Office on Drugs and Crime (UNODC) presented a downward trend of crime by up to 50% during the lockdown which would likely increase when the rules are relaxed, [9]. Meanwhile, cybercrimes tend to increase, including in China, [10]. Similarly, in the United States, conventional crime rates declined during the pandemic, but other types of crime such as cybercrime and domestic violence increased, [11].

The handling of social issues and crimes trends by the government has been regarded good. In Malaysia, 95.9% of the population believed that the pandemic would come to an end, while 89.9% of governments' programs were directed to the handling of social issues surrounding Covid-19 in

the field, [12]. The policies at the central and regional levels were often contradictory. For example, the central government demanded for a lockdown, but the local government objected to it, [13].

Every human being will do any measure in order to survive. A father stole a phone in order for his child to participate in online learning. The father conducted a crime and he was then arrested by the police, [14]. Based on the investigation, the parents had to conduct the crime as they were in a difficult economic situation due to Covid-19 pandemic, [15]. A person often has no other choice but to commit crimes to get food and drink, especially when the person has a family to feed, [16]. Crimes such as theft, fraud, embezzlement, and conventional property-related crimes still occur during the pandemic, causing material loss for the victims, [17]. These types of crimes can be categorized as crimes with economic motives.

Statistics Indonesia released data showing that 39,320 cases of major crimes occurred in 2019, such as corruption, fraud, and embezzlement of state finances which number then decreased in 2020 to 37,097 cases, [18]. Meanwhile, the number of thefts including motorcycle theft, ordinary theft, and violent theft reached 78,330 cases in 2019 which decreased to 73,264 cases in 2020, [18]. Crimes against goods and property rights of others with economic reasons are interesting to examine because perpetrators usually admit that they do the crime due to economic-related motives. There have been two views regarding this phenomenon: punishing the perpetrators or releasing them, [19].

Some people do not find the pandemic a legitimate reason for not imposing legal sanctions, [20]. Even they believed that perpetrators should be given heavier sanctions as they committed the crime during the pandemic when everyone is in trouble, [21]. They assume that releasing the perpetrators from sanction will set a bad precedent for the existing law enforcement and even increase the criminal rate as other criminals will use this economic motive to avoid the punishment, [22].

In contrast, those against punishment say that criminals with economic motives are unavoidable, [23]. Perpetrators commit crimes by being forced to survive or die, [24]. Seeing the different conditions, countries with low economies will be significantly harmed by high crime rates, [25]. Therefore, criminals with economic motives should be given an apology and released from judge's sentences, especially during this pandemic, [26].

Law enforcement officers also need to broaden and adjust their perspective to the Covid-19

pandemic, [27]. The adjustment of the system and law enforcement officers to social change is also shown by the law enforcement officers who are required to apply the health protocols in performing their duties. Many countries have made the health protocol rules a mandatory legal rule to be implemented, [28], [29]. For instance, China, the United States and Indonesia, also require all workers to wear masks and apply hand sanitizer, [30], [31].

On the other side, in relation to the law enforcement, judges hold the central role of giving sentences to the perpetrators, [32]. A judge must have broad perspectives, especially during the COVID-19 pandemic, [33]. The judges must also make decisions based on the justice values, [34]. During such situation, defendants often tried to use economic excuses to avoid the sanction. It is considered necessary to analyze judges' perspectives in giving sentences when thieves have to commit crime because they are in an urgent situation. This study was conducted to examine judge's perspectives on handling crimes with economic motives during the Covid-19 pandemic. In this study, two research questions were proposed: how do judges view crimes with economic motives that occur during the pandemic and how judges make decisions regarding crimes with economic motives during the pandemic.

## 2 Method

This study mainly examined judge's perception of crimes with economic motives due to the pandemic situation as a unique phenomenon, [35]. In this qualitative study, data were collected from telephone interviews, [36]. To gain a comprehensive finding, the researchers used the Interpretative Phenomenological Analysis (IPA), [37]. The researchers found IPA suitable for analyzing a phenomenon from the judge's point of view, [38]. The data collection was performed by phone considering the high Covid-19 transmission risk and the availability of the respondents, [39]. The data were collected from 30 judges of the district courts in Indonesia from different regions, [40].

The first stage of the criminal justice system is the trial at the district court, where the judge meets the parties directly, including the defendants and the witnesses, [41]. This stage is interesting to observe as the defendant often shares economic-related reasons regarding the crime in order to avoid the sanction, [42]. The Interpretative Phenomenological Analysis accommodated more spaces for

researchers to dig depth into the live feeling and perspectives of judges, [43].

Telephone conversations were carried out for an average of 60 minutes each, in which eight main questions regarding the judge's perspective on crime cases with economic motives during the pandemic were asked. Some additional questions were raised regarding their years of service, experience in handling economic-motivated crime cases, views on economic-motivated crimes, views on punishment for criminals in general and with economic motives during a pandemic, aspects that need to be considered in making decisions on economic-motivated crimes, obstacles faced by judges, the role of judges during a pandemic, and judges' advice for the improvement the law enforcement system during the pandemic. Furthermore, data on the years of service were collected to explore the philosophical standing of the judges, [44]. The direct experience of the judges in the court related to economic-related crime is also grouped into several different perspectives. The perspective depends on the motive of the crime. These differences can be by observing the process before and after the court hearing.

Next, the consideration in giving the sentences relating to the deepest motivation and the value of the stolen object. In addition, the patterns of the judge's points of view, including the obstacles and support things that let the crimes happen were also analyzed. Furthermore, the reasons why the judge expressed their opinion are categorized into severe, standard, and light punishments.

After the interview, the researchers narrowed down the aspects that represented the internal and external indicators. Any similar responses were placed into the same category in four aspects: mental health, total income, living environment, and education level. Mental condition and education level are internal indicators, while total income and the living environment are external indicators. The conversations were conducted using audio analysis, [45]. The researchers had previously checked the validity of the data by re-listening the interviews record, [46]. Table 1 presents respondent's information in this study.

Table 1. Distribution of Respondents

Code	Region
J1-10	East Indonesia
J11-J20	Central Indonesia
J21-J30	West Indonesia

Source: Primary data obtained by researchers

Respondents were judges who had handled crime cases with economic motives during the pandemic in Indonesia, the period between March 2020 to February 2022, [47], [48]. Crimes with economic motives were divided into two categories. First, minor crimes include theft, fraud, embezzlement, and other crimes with a value of less than 500 USD. Second, serious crimes include such as corruption, money laundering, narcotics, and others with an economic value of more than 500 USD. Meanwhile, respondents were categorized into three based on the geographic categories: western, central, and eastern Indonesia. Researchers selected prospective respondents through social media, with 30 respondents meeting the requirements.

### 3 Results and Discussions

#### 3.1 Judge's Perspective in Assessing the Right Decision for the Perpetrator

##### 3.1.1 Perpetrators should be Given Severe Punishments

One of the variables is the judge's perspective. Respondents who have worked for a long time handling various types of crimes were not easily swayed. The data showed that 60% of the respondents had worked under five years, 10% 6-10 years, and the remaining 30% had worked for more than ten years. Another variable is the respondents' opinion about crimes with economic motives that occurred during the corona pandemic as illustrated in the following picture.

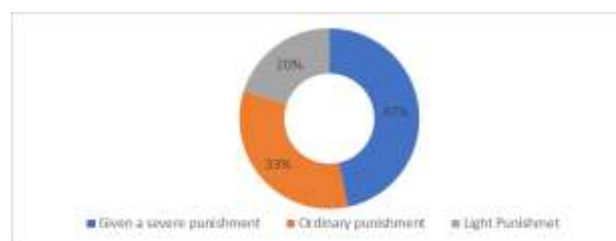


Fig. 1: Respondents' Perspectives

Source: Telephone Interview by researchers

The data present that judges predominantly (47%) think that perpetrators of crimes with economic motives should be punished severely. Meanwhile, 20% of them believe that perpetrators should be given light sentences. The rest 33% argued that standard sanctions as stated in legal regulations should be imposed regardless of the conditions.

The judges who believed that the perpetrators should be punished severely had worked for more than ten years (senior judges). They believed that the Covid-19 pandemic is a difficult condition for everyone that requires everyone to work harder. The prices of basic needs increase, while the employment rate is low. Other opinions that often arise among the respondents are:

*Everyone is equal in the law. Law enforcement must still be applied regardless of one's background. Covid-19 has brought disaster to mankind therefore it should not be used for crime and perpetrators should be given heavier sanctions to gain practical deterrent effect.*

In addition, the weighting of penalties for crimes with economic motives also applies to both minor and major crimes. A total of 14 respondents said that:

*It does not matter the amount of crime committed. Whether small or large, they (the perpetrators) are still defendants who must be held accountable for their actions. Especially in a condition where Covid-19 is rampant by taking advantage of the difficulties that other people are experiencing.*

These data show that the Covid-19 pandemic leads to the incrimination of criminals who take advantage of opportunities, such as stealing when everyone is at home or committing fraud when everyone is suffering from poor economic conditions. Moreover, if these crimes occur in large numbers and include organized criminals, such as those involved in corruption and narcotics, their actions will bring significant losses for many people.

The judges may also consider that it is fair if the perpetrator is given a heavier sanction than usual. They see that the impact of the crime affects many people. Hence, releasing them from punishment would be a huge mistake. If such policy is applied, it might motivate other people to conduct similar actions that will disrupt the law enforcement.

The deterrent effect of sanctions is a priority. Judges who hold this opinion believe that a deterrent effect can be obtained from imposing heavy punishment. Although it is difficult to measure the deterrent effect, judges who hold this

opinion believe that slowly but surely, everyone will be afraid to commit a crime because they have seen the consequences.

Severe punishment also emerges a deterrent effect for the perpetrators themselves. According to the theory of punishment which combines the theory of retaliation and purpose theory, punishment gets criminals aware of their crimes and behaves good after completing their sentences. This awareness creates the guilty feeling that they would not do the actions again. In addition, they would likely consider their family that they left behind when they are being punished. Hence, severe sanctions will create such deterrent effect for the perpetrator. Furthermore, with the correctional programs in prison, criminals are expected to become good people and be accepted into society again.

### **3.1.2 Perpetrators are given Standard/ Ordinary Punishments**

Some judges believe that the punishment for perpetrators of crimes with economic motives should be made accordingly to the law that applies to other types of crimes. As many as 33% of respondents claim that there is no difference between before, now, and in the future in responding to criminals with economic motives. They understand that the pandemic has greatly impacted the community, where perpetrators often have to conduct crimes. However, this situation should not be used to make a different judgment. A judge who held this opinion stated that:

*The law must not be mixed up with other elements, for example, Covid-19 pandemic. Good law enforcement is law enforcement under applicable regulations. Personal feelings should not interfere with the law. If that happens, then the law will be biased.*

This opinion sees law as an independent entity. This judge referred to Hans Kelsen's theory which claims the law cannot be mixed up with other considerations such as economics or politics, including Covid-19 pandemic [49]. This opinion was conveyed by the 12 judges with 6-10 years of work experience.

Legal independence is the main premise for this opinion. According to the researcher, judges who hold this opinion have a high sense of justice but seem rigid because they only look straight ahead, while human life is a *homo socius* that always needs the help of others in life. The researcher also argues

that there is an influence from the number of years the judges have worked, who tend to think like a horse with blinders that sees straight ahead, while ignoring the left and right sides, such as other social aspects.

The judges stated that there was no difference before and after Covid-19.

*If we are affected by Covid-19, judges will experience doubts. Meanwhile, a judge must be free from intervention and believe in his decision. Therefore, everything should refer to the rule as before Covid-19 hit.*

This statement clearly illustrates how judges maintain their beliefs by referring only to the regulations that existed before the coronavirus. They argue that going back to the beginning is a way out of the existing social interventions for all types of crime, including crimes with economic motives. The researcher sees these judges will ignore the social changes and only refer to written legal provisions. Such attitude will not give any benefit or cause losses to the perpetrators.

The perpetrators of the crime will not weigh in the sanctions given. The perpetrator will only be deemed to have committed a crime referenced in the applicable law. If the law does not adjust to the current social conditions, there will be a legal lag that is disadvantageous to society while benefitting the perpetrators.

The judge will see that the crime is a crime that does not adjust to the existing social changes. However, this tends to be detrimental to criminals with economic motives because the confession that their crimes were carried out to survive will be rejected as material for consideration by the judge.

### **3.1.3 Perpetrators are given Lighter Punishments**

The third group of opinions is the judges who argue that perpetrators of crimes with economic motives should be given leniency. Those who answered this were judges with work experience of above five years (20%). They believe that difficult economic conditions during the pandemic that had them do the action should be considered.

Difficult economic conditions are the first excuse since the pandemic indeed has created economic instability. Prices of essential goods have increased, incomes have decreased, unemployment rate increases, and many workers have been laid off. This makes it difficult for people to meet individual or family needs. Criminals confessed that they had

to do the crime as the social restriction made them do the crime. Moreover, those who work at night are facing increasing difficulties because of the lockdown policy limiting public spaces' activities. The social restrictions apply to everyone, from the rich to the poor, especially those with a tough economy before Covid-19 hit.

*Economic difficulties in the Covid-19 pandemic hit everyone. This is an indisputable fact. As judges, we must be observant to see the existing social changes in order to make effective decision-making.*

The judge who held this opinion also underlined that leniency in crimes with economic motives only applies to minor crimes of small value, such as theft on the street. Meanwhile, the judge cannot tolerate major crime.

The second reason for this perspective is the element of compulsion. The judge believes that this means that the perpetrators conduct crime due to economic difficulties. For instance, a mother steals milk from a supermarket for the sake of her child's survival. This happened because neither the mother nor her husband had a straightforward income, [50]. Similar cases like it occur in Indonesia. However, a major crime such as corruption should be excluded. Only state officials can perform corruption. For example, the vaccine fund corruption case that occurred at the end of 2020, where the perpetrator was a government official who abused his authority for personal gain, [51].

The element of compulsion also applies when the perpetrator admits his actions. The perpetrator must also explain the chronology well and go with the facts. The judge saw that the perpetrator's confession was made in good faith to correct mistakes. Judges who hold this opinion encourage perpetrators and victims to take restorative justice efforts.

## **3.2 The Contribution of Judges in Dealing with Crimes with Economic Motives During the Pandemic**

### **3.2.1 Active Role of Judges in Trial**

Based on the results of interviews, the researcher found that most judges (80%) thought that judges should be active in the trial. This also applies to crimes with economic motives, both minor and severe crimes. The judges thought that they should be active in the trial, actively exploring material truths and facts from all parties, such as legal

advisers, prosecutors, defendants, and victims might be helpful in their judgements. A cross-check of facts about the time and place of the incident should be conducted. After that, the testimony of the defendant should be compared to the ones of witnesses and expert witnesses. This process requires time and thoroughness on the part of the judge; therefore, the judge should be active in the trial.

In addition, there is the element of compulsion. Compulsory here means that the perpetrators have no other choice but to commit the crimes to survive economic hardship. The judges believed that this could only be applied to minor crimes for people with economic limitations or people from lower social classes. The judges considered several aspects in deciding on crimes with economic motives as seen in Figure 2.

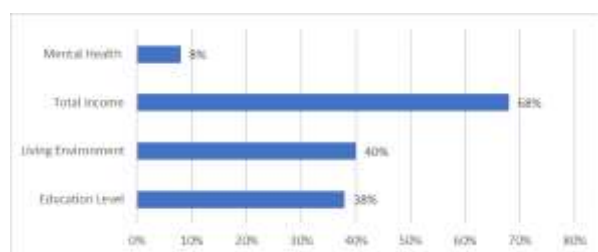


Fig. 2: Judge's Opinion on Factors that make Readers to be economically Motivated  
Source: Telephone Interview by researchers

Figure 2 shows that judges have several points of view regarding aspects that influence criminals with economic motives. The interview result showed some answers related to the greed and stressed mind related to the defendants' mental. In comparison, a lack of law awareness could be due to low education level. For these items, the researchers categorized them into internal indicators. On the other hand, the effect of a friend encouragement to commit the crime, the economic pressure of payroll deduction, and the increase in daily goods were the external factors that narrowed into two categories: total income and living environment.

Judges could choose more than one aspect from the four indicators in figure 2. Most judges believe that income or economic conditions are the main motivators of this type of crime. It can be seen from the report from Statista, the pandemic is global phenomena where at most significant economies lost at least 2.9 percent of their Gross Domestic Product (GDP) over 2020, [52]. The world's economic conditions have declined by 3.4% since the Covid-19 occurs, while the Indonesian economy is also full of dynamics based on the World Bank report as of December 2021, [53]. Consequently,

unemployment rate rises. Therefore, most judges use the income uncertainty as to the main driving force for someone to commit a crime to fulfill daily necessities,

The environment is taken into account by the judges. Harsh environment is a dominant source of crime. In the context of Indonesia, traditional markets, terminals, and densely populated housing usually contain thugs who act as rulers. They oppress and take advantage of others through violence. This is still happening in several places in Indonesia. Criminals with economic motives originating from this environment need to be given severe sanctions as an example to prove not to commit evil deeds.

The environment around the house should be improved in order for criminal number to lower. The researchers believe that any violence that happened every day can make someone get affected to do the same thing.

The next factor is perpetrators' education background. Of the total respondents, 38% of the judges find education vital in assessing a crime. They argue that someone with a low level of education tends to ignore the existing legal rules because they do not know that the significance of the law. Almost all perpetrators of crimes with economic motives, including minor crimes, such as theft on the street, fraud, and violence have a low level of schooling or some of them dripped out of the hotel. The judges believed that the approach to this problem should concern the education, hence people will obey and understand the law.

There were 8% of the judges had different opinions. They assumed that mental disorders are the cause of crime during a pandemic. One judge thought that most of the perpetrators he faced were new offenders who did not have a criminal record. The judge thought that a person who was good and obeyed the law but then committed crimes is an exciting thing to study. There have been many studies; for example, the research by Andrew T. Gloster et al. where social restrictions and restrictions on access to activities during a pandemic affect a person's mental condition; approximately 10% of the population, including someone who never did crimes before, [54].

### 3.2.2 Obstacles in Handling Crime with Economic Motives

Based on the interviews, researchers found that judges had at least two concerns when handling criminal cases with economic motives: exposure to Covid-19 and online trials. The first concern is exposure to the coronavirus, meaning that the

parties in the trial often test positive for Covid-19 based on antigen and PCR examinations. This makes the judges more careful in leading the trial to avoid getting infected. On the other hand, sometimes, the defendant's health condition is unknown, primarily when the courts are located in remote areas, where the difficulty of obtaining antigen and PCR tests coupled with the public's fear of carrying out initial tests.

The second concern is the online trial or e-court. According to the judge, the online trial by teleconference presented often disturbed by technical difficulties, such as the poor internet network due to different quality of the internet network. In addition, online trials also take longer time due to lagging voice and slow responses which require the judge to repeat his words.

#### 4 Conclusions

There has been a trend where a criminal uses economic-related excuses to avoid sentences. The judges have various perspectives to respond to this phenomenon. First, some judge believe that perpetrators should be given heavier sanctions as they take advantage of other people's difficulties during the pandemic. The second is the provision of ordinary sanctions under applicable legal rules. This is based on the idea of legal independence, where the pandemic is not a legitimate reason that should be allowed to interfere. Third, some judges prefer giving the perpetrators light sanctions. These judges argue that the social changes resulting from the pandemic created enormous economic uncertainty and deficits. This situation can compel a person to commit a crime. In addition, judges are required to take an active role in exploring material truth, especially crimes with economic motives, such as aspects of education level and mental health as internal factors, and the surrounding environment and income as the external factors. Furthermore, in the trial process, the judges often encounter some problems, such as a trial delay because some people who should be involved in the trials tested positive for Covid-19 and poor Internet network that disrupted the communication.

Based on the results of this study, judges should be independence in making the sentences for the perpetrators. They should consider the economic motives or any motives since the law needs to adjust to the current social changes that occur in society as a living law. The assessment of the judges' performance should also be improved.

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-Muhammad Ikram Nur Fuady was responsible for maintaining the major part of research, making the statistics and languages  
-Rahman Syamsuddin and Hamsir were carried out the analysis of the data from interviews  
-Anshar, Basto Daeng Robo, and Arisa Murni Rada were implemented the interviews  
-Hasdiwanti was responsible for compiling the manuscript

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