

THE EXISTENCE OF THE APPLICATION OF CRIMINAL COVER-UP TO INDONESIAN CRIMINAL LAW IN THE PERSPECTIVE OF THE PRINCIPLE OF EQUALITY BEFORE THE LAW

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Abstract

The application of the principle of equality before the law in criminal law enforcement has not been carried out as the spirit outlined by the Criminal Code which upholds Human Rights by setting aside all forms of differences and backgrounds that exist in defendants of any criminal act. the existence of the application of criminal cover-up in the Indonesian criminal law system and its analysis from the perspective of the Principle of Equality Before the Law. Cover crime, which is regulated in Law Number 20 of 1946, is a type of crime that provides an exemption from ordinary prison sentences, especially for convicts with a certain position or status background, with the aim of maintaining their honor and dignity.

This paper examines the policy of determining criminal cover from a criminal perspective, especially from the purpose of punishment. Based on the purpose of punishment formulated in the Criminal Code Bill, the purpose of punishment will not be achieved by using criminal means of cover-up. Cover crime also has the potential to cause discrimination because there is no measure for judges to impose these criminal sanctions. To provide legal certainty, lawmakers should clearly formulate criteria for judges to impose criminal sanctions for cover-up.

This study shows that the crime of cover-up is still positively recognized in the Indonesian criminal law system even though the frequency of its application is very rare and can only be imposed by the High Court. However, its existence causes a contradiction with the essence of the Principle of Equality Before the Law guaranteed by the Constitution. This principle demands that every citizen should be treated equally regardless of background, position, or social status. The granting of preferential treatment—i.e. placement in an institution separate from ordinary prisoners and without the obligation of forced labor—for certain groups through criminal cover-up has the potential to violate the principle of universal equality.

Therefore, despite having a formal legal basis, the criminal cover is seen as irrelevant to the spirit of criminal law reform that upholds substantive justice and equality in the modern era. It is recommended that the criminal cover be reviewed and considered for removal from the Criminal Code (KUHP) or criminal legislation in the future in order to strengthen the full implementation of the Principle of Equality Before the Law in Indonesia.

Keywords : *existence, criminal cover; purpose of criminalization*

INTRODUCTION

In Article 1 paragraph (3) of the 1945 Constitution, it is emphasized that Indonesia is a state of law.¹ The concept of the state of law means that all state administration must be based on and subject to the law, so that truth and justice can be upheld. Thus, every form of state authority must be accountable or accountable. In a country that adheres to the principle of the rule of law, there are three

fundamental principles that are the basis for law enforcement, namely: the principle of *supremacy of law* which places the law as the highest power; the principle of equality before *the law* which guarantees no preferential treatment for anyone; and the principle of legal process that is in accordance with procedure and does not contradict the provisions of the law (*due process of law*).

Cover crime has historically been introduced as an alternative to punishment

¹ 1945 Constitution Article 1 paragraph 3

for certain offenders who socially, morally, or socially are considered worthy of more humane treatment than prison inmates. This system at the beginning of its emergence was associated with the need to distinguish between serious criminals and lawbreakers who are harmless or commit mistakes due to certain negligence. However, in the development of modern law, the idea of differentiation based on social status or moral category is considered to have the potential to injure the principle of legal equality, especially after the strengthening of the constitutional principle that "all citizens have equal positions in the law" as contained in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, the application of selective cover crimes can raise criticism that the law gives privileges to certain groups.²

The principle of equality before the law can be used as a standard to affirm marginalized and minority groups.³ But on the other hand, due to the inequality of resources (power, capital, information), this principle is often dominated by rulers and financiers as a shield to protect their wealth and power. The principle of equality before the law applies under one umbrella of common law. The uniqueness of the law appears intact in addition to other social aspects such as economic and social. Equality before a "just" law seems to suggest that society may not be socially and economically equal. Differences in the treatment of "equality" in the legal, social, and economic fields have led to the erosion of the principle of equality before the law in the midst of socio-economic changes. Two people appear before the judge who has a dispute, then the judge must treat both equally. Equality in the law, if interpreted dynamically, is assumed to provide space

for justice seekers in the judicial system. Aristotle argued that justice carried out by the state must benefit all people, and the duty of law is to maintain justice so that it can reach all people without exception. Everyone has equal access to justice regardless of whether they are rich or poor.

Since Law Number 20 of 1946 concerning Cover Punishment was enacted, this provision has only been applied once, namely on July 3, 1946. This condition causes the application of the criminal cover to be unclear, both in terms of the type of sanction, the mechanism for its implementation, and the basis for its use. The imposition of the criminal of cover-up also creates legal uncertainty regarding the limitation of the meaning of crimes committed with a worthy intention or with noble motivation (Custodian Honesta). However, in the framework of national criminal law reform, especially the drafting of the new Criminal Code, the crime of cover-up is still maintained as one of the main crimes. The existence of this punishment can be found in the Draft Criminal Code Book I which has been prepared from 1982/1983 to 2019.⁴

At the beginning of the independence period, the Republic of Indonesia faced various severe challenges through battles against the Allied forces and the Dutch NICA that entered since September 1945. At the time of the enactment of Law No. 6 of 1946, the level or classification of the state of danger was not known. The State only establishes a state of danger in part or all of the territory of the Republic of Indonesia in the event of an attack, threat of attack, rebellion, or riot that has the potential to render the civil government unable to function, or due to a natural disaster. Even though the state is in a state of danger, law enforcement as well

² Mutiah, R., & Ekaputra, M. (2020). *Human Rights-Based Crime and Its Challenges*. Journal of Legal Finding.

³ Ibn Alwaton Surya Waliden, S. F. (2022). An Overview of the Principle of Equality Before the

Law on Law Enforcement in Indonesia. Journal of Constitutional Law, 20

⁴ Parluhutan Sagala, Ilman Hadi, and Arief Fahmi Lubis, "Criminal Penalty Of Closure As A Criminal Sanction For Times Of Danger / Emergency," no. 20 (2025): 799–811.

as executive, legislative, and judicial functions must still be carried out, albeit with the same procedures as in normal times. It is in this emergency situation that the type of criminal cover-up is added to the Indonesian criminal law system.

Indonesian criminal law is basically designed to achieve order, protection, and balance between the interests of individuals and society. In this framework, the concept of criminalization is a key instrument to enforce legal norms through the provision of sanctions for behavior that violates criminal provisions. One of the forms of punishment that has been known in the history of Indonesian law is the cover penalty, which is a type of crime of deprivation of independence that is lighter and more humane than imprisonment. However, along with the development of the legal system, the criminal of cover-up has experienced existential challenges because it is rarely applied and its relevance is beginning to be questioned in the context of the principle *of equality before the law* which demands equal treatment for all citizens. This condition raises a deep need to review the position of criminal cover-up in the national criminal structure.⁵

The principle of *equality before the law* is a fundamental principle in the modern legal state. This principle not only means formal equality, but also includes nondiscriminatory treatment in every aspect of law enforcement, including criminalization. When the legal system provides a type of crime that can only be given to certain groups based on an unclear interpretation of norms, this has the potential to create inequality of access to justice. Therefore, the existence of criminal cover-ups needs to be critically analyzed whether its existence is still compatible with the modern principle of equality that rejects all forms of preferential treatment

based on social background or other subjective factors.

On the other hand, the existence of cover-up crimes is also often associated with the development of criminal theories that emphasize the need for differentiation based on the characteristics of the perpetrators, motives, and the risk of recidivism. Modern criminalization is not only retributive, but also preventive, restorative, and rehabilitative. Cover crimes are considered to support these goals because they provide a more humane coaching space and a more conducive environment than regular correctional institutions. However, such arguments are only acceptable as long as they do not create disparities that are not constitutionally justified. Thus, this study is important to assess whether the relevant cover crime is maintained or otherwise needs to be eliminated from the criminal law system. In addition, Indonesia's criminal law is currently in a transition phase towards reforming the legal system through the enactment of the new National Criminal Code (Law No. 1 of 2023). These reforms have major consequences for the criminal structure, including the possibility of repositioning or even abolishing certain types of crimes. The existence of cover crimes has become increasingly problematic because the new Criminal Code regulates more clearly the differentiation between prison crimes, social work crimes, and supervision crimes – without providing explicit space for cover crimes. This raises the question: does cover crime still have a place in the new criminal paradigm?

In the context of law enforcement, the criminal cover-up is also questionable in terms of its implementation, which is very rare. The lack of implementation makes its existence have no real contribution to the criminal justice system. In fact, some experts consider that the

⁵ Satriawan, D. (2021). *Criminal Disparities in the Indonesian Judicial System*. Journal of Law and Development.

criminal cover-up is only a normative concept without empirical reality, so its existence has the potential to be confusing in legal practice. This discrepancy between norms and reality makes research on its existence relevant, especially to provide policy recommendations on whether the criminal cover needs to be revitalized or abolished altogether.

In addition to normative aspects, justice in sentencing must take into account the community's sense of justice. The application of criminal cover-up that tends to be given to perpetrators from educated groups or high social status gives the impression that the law provides privilege space. In fact, in the context of modern democracy, justice must be inclusive and impartial. Negative public perception of cover crimes can weaken trust in the criminal justice system, especially if it is considered that the crime is a tool to soften sentences for certain offenders.

The author sees the advantages and disadvantages of previous research related to the criminal cover-up that occurred in Indonesia. The advantages of the theoretical approach are that from Marpaung's research in 2020 it speaks to the existence of the implementation of criminal cover-up through a juridical-normative and historical approach. The main focus is to assess how the crime of cover-up is formulated in Law No. 20 of 1946, what is the normative justification, and how the practice of its enforcement from the early days of independence to the modern era. This study concludes that the crime of cover-up is more at the normative level, because it is only applied once (the incident of July 3, 1946). This condition shows that the criminal cover has lost its practical relevance, so that its existence is more symbolic in the structure of criminal law. However, this study does not discuss whether the existence of criminal cover-ups

affects the principle of equality before the law. Marpaung did not provide an assessment regarding the potential for discrimination, moral bias, or its impact on access to justice.⁶

Previous research from Febriyanti, Retnaningrum and Dwiatmodjo in 2021 examined the effectiveness of criminal cover-up from the perspective of criminal policy and legal reform. Research states that the effectiveness of cover crimes is very low due to the absence of implementation guidelines, a lack of practice, and vague phrases such as "respectable intent". The researcher considers that the absence of implementation makes this crime not meet the principle of legal certainty in the criminal justice system. But this study does not assess its impact on the principle of equality before the law, and does not provide a comparative empirical analysis of judgments or public perceptions of equality. The focus is more on procedural flaws—not the issue of legal discrimination.⁷

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PROBLEM FORMULATION

Based on the description of the background of the problem, the author formulates several problems that will be the focus of this research. The formulation of the problem is as follows:

1. What is the position and relevance of criminal cover-up in the context of Indonesia's criminal law reform?
2. How is the limit of the criminal cover able to meet the requirements of *the principle of equality before the law*?

⁶ Marpaung, S. T., *The Existence of Criminal Implementation and Criminal Punishment Cover*. Legal Reform. 2020

⁷ Febriyanti, F., Retnaningrum, D. H., & Dwiatmodjo, H. *The Effectiveness of Cover Criminal Law as a Criminal Sanction in the Reform of Indonesian Criminal Law*. SLR Journal. 2021

RESEARCH METHODS

This research uses a normative legal research method (doctrinal research), because the focus of the research is to evaluate the norms, principles, and legal concepts regarding the principle of equality before the law and criminal cover. This research analyzes relevant laws and regulations, doctrines, court decisions, and scientific works. To enrich the perspective, this normative research is supported by a limited non-doctrinal approach, in the form of observations on the practice of the application of cover crimes in court decisions and public discourse. The research uses several approaches, namely the legislative approach, the conceptual approach, the case approach and the historical approach. The researcher uses primary, secondary and tertiary legal materials. After the field data is obtained, conclusions are drawn. The method of drawing deductive conclusions draws conclusions from the general to the specific.

RESULTS OF RESEARCH AND DISCUSSION

1. The Position and Relevance of Cover Crime in the Context of Indonesian Criminal Law Reform

Imprisonment is a crime in the form of deprivation of liberty or freedom of movement from a convict by placing him in a correctional institution. The⁸ prison penalty has been officially established in Indonesia since the enactment of the Criminal Code on January 1, 1918, previously Indonesia only knew corporal punishment and fines. At that time, there was no firm limit to distinguish between corporal punishment and imprisonment, because in its implementation it was in the

form of a punishment that was deliberately inflicted on someone who violated the criminal law.⁹

In the discourse on the reform of Indonesian criminal law, the existence of Criminal Coverings is an interesting issue because it presents an alternative sanction to imprisonment, fines, or confinement. In the restructuring of criminal law through Law No. 1 of 2023 concerning the Criminal Code (Criminal Code 2023), the crime of cover is still maintained as one of the main crimes, as stipulated in Article 65 paragraph (1) letter b.¹⁰ Thus, from a normative perspective, legislators see that cover crimes are still relevant as part of a broader spectrum of punishment — an effort to enrich the choice of sanctions to be more flexible in responding to the complexity of the crime and the character of the perpetrator. This shows that the reform of the criminal law in Indonesia is not only about updating the list of articles, but also expanding the criminal paradigm.

The application of the criminal cover in Indonesia has been regulated and as the basis of this criminal law this cover can be seen first of all in Law No. 20 of 1946, in the Considerations it is said as follows:

“.... need to impose a new principal punishment, apart from the punishment Article 10a of the Criminal Code and Article 6a of the Criminal Code (1)”

Then in Article 1 it is stated: "Apart from the main punishment Article 10a of the Criminal Code and Article 6a of the Criminal Code, there is a new main punishment, namely the punishment of cover, which replaces the prison sentence in the following cases: as stated in Article 2 paragraph (1) and paragraph (2), which

⁸ Dwidja Priyatno. *Prison Sentence Implementation System in Indonesia*, Bandung: Refika Aditama. 2009

⁹ Dede Kania, *Prison Sentences in the Reform of Indonesian Criminal Law*, Jurnal Yustisia, Vol. 4 No 1 January-April 2015,

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<https://jurnal.sthm.ac.id/index.php/hukummilter/article/view/93>

states that in prosecuting the perpetrator of a crime with the threat of imprisonment, and caused by being motivated by a motive that should be respected, Then the judge may impose a cover sentence, but this does not apply if the judge believes that a prison sentence is more appropriate.

Still in Law No. 20 of 1946 concerning Cover Punishment, in Article 4 it stipulates that: "All regulations on prison sentences also apply to cover crimes, as long as they do not conflict with the nature or special regulations on the crime of cover".

As for what is meant by imprisonment, namely imprisonment for life or for a certain period of time, a certain time is a minimum of one day and a maximum of fifteen years in a row, and if there are two options between the death penalty and the life sentence, the judge may impose a sentence of 20 consecutive years, and imprisonment for a certain time, or between life imprisonment and imprisonment for a certain time; Likewise, in the event that the limit of fifteen years is exceeded because of additional criminal punishment due to coincidence, repetition or because of the provisions of Article 52. The imprisonment for a certain period of time shall not exceed twenty years.¹¹

From the point of view of modern criminal theory, cover crimes can have relevance if they are directed at rehabilitative and reintegrative goals, not mere retribution. This is in line with the change in the criminal paradigm carried out in the 2023 Criminal Code: from a traditional retributive model to a more restorative/corrective model.¹² With a cover sentence, the perpetrator can be released from physical prison, but still subject to certain restrictions on the right to liberty so that the potential stigmatization and psychological and social burden of prison

can be reduced, and opportunities for reintegration into society can be more likely to be opened.

However, to be able to make cover crime an effective rehabilitative instrument, a mature implementation and supervision mechanism is needed. Without implementation guidelines (including supervision, guidance, and social rehabilitation services), criminal cover-ups can lead to the form of "empty sanctions" — restrictions on pseudo-rights with no real effect on the rehabilitation of the perpetrator. This is emphasized in the analysis of the implementation of cover crime in the article Implementation of Cover Crime in Judicial Practice in Indonesia (2023), which highlights that the success of cover crime is highly dependent on the definition of "respectable intent", as well as the readiness of judicial and correctional institutions.

Furthermore, from the perspective of the criminal justice system as a whole, the recognition of covert criminals signals an important signal that the 2023 Criminal Code update not only modernizes norms, but also expands the philosophy of punishment — from an emphasis on punitiveness to a more humane alternative to sanctions. As stated in the article Reform of the Concept of Criminal Law in Law No. 1 of 2023 concerning the Criminal Code (2023), the concepts of criminal responsibility and punishment have been reformulated with a new juridical and philosophical basis, clarifying the element of intentionality or omission and introducing more varied sanctions.¹³

Thus, whether or not the application of the Cover Crime is relevant to other Principal Crimes, namely Prison and Confinement Crimes, this can be seen in the Coup on July 3, 1946. It was carried out by the leaders of the Republic, namely: "Major

¹¹ Republic of Indonesia. Law Number 1 of 1946 concerning Criminal Law Regulations.

¹² Muhammad Arafat, "A New Criminal Paradigm in the 2023 Criminal Code: Alternative Sanctions and the Transformation of Indonesia's Criminal

Justice System" 2, no. 1 (2025): 33–46, <https://doi.org/10.58540/jih.v2i1.1047>.

¹³ Nur Aripkiah et al., "Renewal of the Concept of Criminal Law in Law No. 1 of 2023 On the Criminal Code" 6, no. 1 (2025): 209–26.

General Soedarsono, Mr. Mohamad Yamin, Mr. Achmad Soebardjo, and Mr. Iwa Kusuma Sumantri et al., who were charged with Article 107 of the Criminal Code jo Article 53"¹⁴ the article states:

Article 107 :

(1) Treason with intent to overthrow the government, is threatened with imprisonment for a maximum of fifteen years.

(2) The leaders and administrators of treason in paragraph (1) shall be threatened with life imprisonment or a maximum of twenty years of temporary imprisonment.

Article 57

(1) In the case of assistance, the maximum principal penalty for crimes is reduced by one-third. (2) If the crime is threatened with the death penalty or life imprisonment, a maximum of fifteen years in prison shall be imposed.

(3) Additional criminal offences for assistance are the same as the crime itself.

(4) In determining the penalty for the helper, only the act that is deliberately facilitated or facilitated by him, along with its consequences, is taken into account.

Thus theoretically this indictment is understandable, although in practice it is difficult to understand. Because in Article 53 it applies to all criminal acts, while in Article 87 it is said that there is treason to commit an act, and if there is an intention for it from the beginning of implementation, as referred to in Article 53.

The author thinks that in terms of why the judge sentenced the accused to cover up the crime, the author agrees with Sudarto's opinion that if this political figure was sentenced to prison, even though this figure was actually a comrade in law of the

Republican leaders at that time, then it is clear that this figure cannot be equated with ordinary criminals, such as thieves, murderers, and so on. Therefore, there is a specific type of criminal offence for them.¹⁵

Regarding the events mentioned above, the author argues that in the current era the relevance of criminal cover-up in its application can be blamed for being used by some rulers through several legal experts as a method of salvation on the grounds that it is driven by a purpose that should be respected by referring to the events of July 3, 1946, because according to the author it was very natural at that time where the Republic was still turbulent and there was still a close relationship between the fighting figures at that time So it was decided that a criminal cover for them was decided to maintain honor and noble goals.

Thus, the relevance of criminal cover-up as part of criminal reform in Indonesia is highly dependent on the institutional readiness and commitment of the justice system to use these sanctions consistently. If it is only stagnant at the normative level without the real implementation of guidelines, training of judges, community supervisors, supervision, and rehabilitation, then the crime of cover-up risks remaining to become a mere "decoration" of the Criminal Code without substantive effect.

On the other hand, if implemented correctly, criminal cover can contribute to the goals of criminal law reform: reducing over-reliance on prisons, avoiding over-incarceration, providing restorative justice and opening space for rehabilitation and reintegration of offenders into society. This is in line with the goal of modern criminalization that is more humane and responsive to the social context.¹⁶

¹⁴ Republic of Indonesia. Law No. 73 of 1958 concerning the Enactment of Law No. 1 of 1946 of the Republic of Indonesia concerning Criminal Law Regulations for the Entire Territory of the Republic

¹⁵ Sianturi, S.R. Penitentiary Law in Indonesia. Jakarta: Center for Military Law Studies, AHM-PTHM College of Military Law, 2013.

¹⁶ Efendi Eva Achjani, Nindy Putri Nur; Zulfa. "Synergy or Conflict: Article 2 of the 2023 Criminal Code in Law Enforcement in Indonesia." State Law Review 4, no. Vol 8 No 2 (2024): Nagari

However, the challenges remain huge. Among them: how to formulate operationally the definition of "respectable intent"; how to determine criminal acts that are worthy of being subject to cover crimes; how to build a surveillance and rehabilitation system; how to ensure that the application of criminal cover-up does not create inequality of treatment between perpetrators; and how to evaluate its effectiveness empirically. All of this requires policy commitment, implementing regulations, and further research.

Therefore, in the context of the reform of criminal law in Indonesia with the 2023 Criminal Code as a normative foothold — criminal cover has great potential relevance, but its potential will only be realized if it is accompanied by a real implementation component. Otherwise, the criminal cover can become a "dead instrument". As a recommendation, the judicial system and policymakers need to immediately develop clear and measurable guidelines for the imposition of cover crimes; complete implementing regulations (e.g. in the form of PERMA or government regulations related to the implementation of criminal cover-ups); prepare supervision and guidance mechanisms (probation, supervision); as well as conducting empirical research to assess the criminal consequences of cover-up against the resocialization of perpetrators and the prevention of recidivism.

The cover crime in the 2023 Criminal Code holds a normative position as an alternative to the main crime, showing the courage of legislators to expand the criminal paradigm. However, to make it relevant in judicial practice and social life, implementing regulations, institutional frameworks, and real commitments from the judicial and correctional systems are needed. Without it, the criminal cover risks

becoming an "empty option" in a mere legal document.

2. What limits are the criminal cover-ups able to meet the demands of *the principle of equality before the law*

The principle of equality before the law is a key pillar of the modern legal state that demands not only formal equality on paper, but also substantive equality in the application of each norm in practice. In the context of criminalization, this principle requires that everyone who deals with the law be treated fairly without being influenced by social, political, or economic background factors. The cover crime reintroduced in the 2023 National Criminal Code presents a new discourse on how this alternative form of punishment interacts with the principle of equality. Historically, the crime of cover-up has often been associated with perpetrators of crimes with idealistic motives, politics, or for certain moral reasons. However, the current arrangement opens up wider application opportunities, although it still requires "respectable intent". The unclear normative standard of this phrase has the potential to cause differences in interpretation between judges, thus raising the risk of violating the principle of equality before the law. If objective standards are not developed, criminal cover-up can create a gap between perpetrators of crimes with different social statuses. Therefore, an in-depth evaluation is needed to assess the extent to which cover crimes are able to carry the value of equal justice in Indonesian criminal practice.¹⁷

In practice, the principle of equality before the law often clashes with social realities and power structures, especially when differences in socio-economic status have an impact on access to justice. Cover crime has the potential to reinforce inequality if it is not designed and operated to strict standards, because its lighter nature

Law Review (2024): 371–82.
<https://nalrev.fhuk.unand.ac.id/index.php/nalrev/article/view/839/188>.

¹⁷ Gobol et al., *Case Law Journal*, 2023.

than prison crime can be a kind of "hidden privilege" for certain groups. If judges have too broad discretion without concrete guidelines, then perpetrators from the social elite can more often get a cover sentence with various considerations, while perpetrators from marginalized groups are pushed to ordinary prison sentences. This is where academic anxiety arises: whether criminal cover-ups will actually deepen the legal gap. The experience of several countries shows that alternative criminalization is vulnerable to selective use if it is not strictly supervised. Therefore, consistency of implementation is crucial to ensure that criminal cover-up does not become a symbol of system-legalized inequality.¹⁸

The provision regarding "respectable intentions" in the cover crime is a critical point that affects the equality of its application. This phrase is not defined operationally in the Criminal Code or its explanation, so it carries a very subjective risk of interpretation. In the legal tradition, the ambiguity of norms is one of the main causes of legal uncertainty. If not clarified through Supreme Court Regulations or sentencing guidelines, this can result in irresponsible differences between verdicts for relatively similar cases. For example, a criminal act committed with a certain motive can be considered "honorable" by one judge, but considered not so by another judge. This inconsistency has the potential to hurt the principle of equality before the law because it provides room for personal bias or subjective values of judges to influence decisions. In the context of Indonesia, which is still facing the problem of disparity in decisions, this ambiguity must be responded to with comprehensive technical arrangements.¹⁹

Disparity in punishment is a latent issue in the Indonesian justice system. Empirical research shows that for the same crime, the disparity between judges'

decisions can reach 200–300%. If criminal cover-up is put into an unstandardized space of discretion, this kind of disparity can increase dramatically. The use of criminal cover-ups can vary between jurisdictions: one region may apply it extensively, while another is very rarely or never at all. This certainly violates the principle of legal equality between citizens. Furthermore, in areas with minimal supervision or legal resources, the risk of criminal irregularities is even greater. From the perspective of national justice, it cannot be left without regulatory intervention. Therefore, the existence of the Decision Disparity Center initiated by the Supreme Court can be used as an instrument to ensure that the application of the criminal cover does not give rise to new injustices.²⁰

To assess the limits of the criminal ability of cover to meet equality before the law, we need to understand the philosophical function of criminality itself. One of the functions of modern punishment is proportionality and individualization of punishment. Cover crime can actually be a means of individualizing punishment that does not harm the perpetrator excessively and supports social reintegration. However, if this individualization is carried out too freely, it can go against the principle of equality, especially if it is based on the motives or background of the perpetrator that is difficult to measure objectively. In this case, the balance between the principle of individualization and equality before the law is a key issue. Detailed technical regulations are needed so that the application of the criminal cover does not deviate from becoming a legal privilege. Therefore, the limit of criminal ability to cover is in how measurable the assessment mechanism is in judicial practice.²¹

In looking at the extent to which criminal cover-up can secure the principle of equality before the law, we also need to consider the institutional structure that will

¹⁸ Zulkarnain et al., *Locus Journal of Academic Literature Review*, 2023.

¹⁹ Gobol et al., *Case Law Journal*, 2023.

²⁰ Surya Waliden et al., *Constitution Journal*, 2024.

²¹ Effendy et al., *IJMRA*, 2025.

oversee its implementation. Indonesia's criminal justice system still faces classic problems such as unequal capacity of law enforcement officials, lack of periodic training, and uneven quality of legal analysis between regions. This situation has the potential to make new legal tools such as criminal cover-up not uniform in their application at the national level. This can create a gap between urban areas that tend to have better legal resources and rural areas or suburbs that lack facilities. If the technical standards for the implementation of criminal cover-up are not carefully constructed, regional disparities will become a serious problem. Therefore, the implementation of criminal cover-up requires a standardized case assessment infrastructure, periodic evaluation system, and a transparent national decision database. Without these elements, the potential for inequality will be even greater, considering the character of cover crimes that are alternative but relatively more "special" than ordinary prisons.²²

In addition to the institutional aspect, the epistemological aspect in the interpretation of law is also an important factor. Judges as interpreting subjects have different educational backgrounds, experiences, and personal values, so the product of their interpretation of the phrase "deserving intent" can differ significantly. In the study of legal hermeneutics, an overly subjective interpretation can give rise to class bias or a certain value bias. For example, a certain motive stemming from the moral aspirations of the middle class may be considered more "honorable" than similar motives of the lower classes, even though they are legally of equal value. This epistemological inequality can have a direct impact on the formal and substantive equality of the application of cover crimes. Therefore, interpretation guidelines are very necessary to guide judges in limiting their subjectivity space. Without clear

guidelines, the criminal cover can become a legal instrument that is filled with subjectivity, so it is contrary to the principle of equality before the law.

Within the framework of procedural justice, it is also important to question whether all defendants have equal access to the process of obtaining criminal cover. Reality shows that defendants who are accompanied by professional legal counsel tend to have a greater ability to present a convincing defense so as to qualify for "honorable intent" or understandable reasons. Meanwhile, defendants from economically weak circles who are not accompanied by qualified legal counsel tend to lose argumentatively. Thus, unequal access to legal aid can have a direct impact on a person's chances of obtaining criminal cover. This condition emphasizes that equality before the law is not only a matter of final decision, but also access to a fair and equal judicial process. Therefore, the integration of state legal aid and Legal Aid Institutions (LBH) needs to be strengthened to ensure equal access.

On the other hand, criminal cover-up has the potential to reduce the overcapacity of correctional institutions which has been a chronic problem in Indonesia. By transferring some of the perpetrators to alternative forms of punishment, the state can focus on more humane correctional reform. However, this advantage can only be enjoyed equally if the penalty of cover is not given discriminatory. If only certain groups get a cover penalty, then the benefits of alternative punishment will actually benefit certain social groups. Thus, equal access to cover crimes must be guaranteed so that there is no segmentation between "cover inmates" and "prison inmates" based on social status. This is not only contrary to equality before the law, but also contrary to the spirit of correctional reform itself.

²² Zulkarnain et al., *Locus Journal of Academic Literature Review*, 2023.

To ensure equality before the law, the mechanism for controlling and monitoring the implementation of the criminal cover also needs to be built seriously. This includes periodic judicial audits of judges' decisions, internal oversight of the Supreme Court, as well as transparent publication of judgments. In this way, the public and the academic community can participate in supervising the consistency of the implementation of the cover penalty. In a democratic country, transparency of decisions is one of the important pillars to prevent abuse of authority. If decisions related to cover crimes are published publicly, the public can criticize if there is injustice or disproportionate punishment for cover. This mechanism is important so that cover-up criminal verdicts are not closed in the judge's subjective space, but are open to evaluation by the public.

In addition, a comparative approach can help enrich perspectives regarding the application of alternative penalties such as cover-up. European countries such as the Netherlands or Germany, for example, have long used special forms of punishment for certain harmless or idealistic offenders. However, its implementation is always accompanied by strict criteria and an integrated monitoring system. Without clear criteria, forms of punishment such as cover can easily turn into discriminatory tools. In the context of Indonesia, which still faces challenges in terms of the integrity of the apparatus, the application of criminal cover-up requires stricter attention than countries with more stable legal systems. This comparative study shows the limits of the criminal ability of cover: it can only meet the principle of equality before the law if the judiciary and its supporting bureaucracy function properly.

From a critical criminological perspective, cover crimes have the potential to create a new category in the criminal structure: a kind of "middle class" between prison and non-custodial sentencing. This category can become an ambiguous space if

it is not strictly controlled. Theoretically, new forms of punishment sometimes produce unforeseen social consequences, such as covert stigmatization or new social categorizations of the convict. If the crime of cover is given more to perpetrators with certain social backgrounds, then the public can judge that only that group is considered worthy of alternative punishment. This will reinforce public bias and create a perception of injustice. In an already unequal social structure, the unfair application of the criminal cover will thicken the social gap in the judicial system.

Furthermore, the principle of equality before the law demands that regulations are not only explicitly non-discriminatory, but must also be able to prevent implicit or systemic discrimination. In the context of criminal cover, systemic discrimination can occur if the justice system is more sensitive to certain moral defenses that generally come from highly educated groups or good social standing. For example, perpetrators from high economic backgrounds can draft a defense that describes "honorable" motives, while perpetrators from low economies do not have access to such defense strategies. Without realizing it, the social structure will affect the structure of the decision. Therefore, the limit of the criminal ability of cover in fulfilling the principle of equality before the law is greatly influenced by the social structure that supports the judicial system.

Considering this complexity, cover crime actually has great potential to help Indonesia's penal system become more progressive, but that potential is conditional. The requirements lie not only in the aspect of norms, but also in institutional readiness, professionalism of the apparatus, legal aid system, information disclosure, and legal culture. If all these conditions can be met, then the criminal cover can become a modern criminal instrument that is fair and humane. However, if these conditions are not met, the crime of cover-up can actually deepen

injustice and is contrary to the principle of equality before the law. Thus, the limits of criminal ability to cover are largely determined by the ability of the legal system to minimize bias and ensure equal access.

As a general conclusion, the criminal of cover can meet the principle of equality before the law only if various normative, structural, and cultural prerequisites have been firmly met. Without clear operational guidelines, without adequate supervision of verdicts, without equitable legal assistance, and without transparency of the judicial system, criminal cover-up has the potential to become a discriminatory instrument. In other words, the criminal capacity of cover in fulfilling the principle of equality before the law is not a natural ability, but a capacity that must be built, maintained, and supervised. If the system succeeds in establishing these standards and mechanisms, criminal cover-up can become a symbol of the progress of Indonesia's criminal law. But if not, it can be an example of the state's failure to realize legal equality.

CONCLUSION

Cover crime is essentially placed as a form of punishment that is lighter, selective, and intended for perpetrators with a certain profile who are considered to have personality traits and a degree of guilt that should not be equated with prisoners in general. This idea has historically influenced the formulation of the RKUHP, especially when lawmakers sought to absorb the development of criminal theory that emphasized individualization, humanist approaches, and differentiated treatment. However, social and legal developments in the last five years show that the criminal position of cover-up is getting weaker, especially due to the presence of new forms of punishment such as criminal supervision, social work, and restorative justice mechanisms. Therefore,

even though the criminal cover still has a philosophical and juridical basis, its level of importance needs to be re-evaluated so as not to deviate from the direction of the reform of Indonesian criminal law which highlights the principles of effectiveness, efficiency, and the principle of anti-discrimination.

The ability of cover crimes meets the principle of equality before the law, various studies show that a criminal model that distinguishes the treatment between perpetrators, including cover crimes, can cause an imbalance if not limited by strict objective standards. The principle of equality before the law requires that all citizens must receive equal treatment regardless of privilege derived from social status, economic conditions, or position. The main obstacle to the criminal cover-up arises because of its nature which tends to be seen as "elitist", considering that historically it is more synonymous with special treatment for individuals who are perceived to have a certain social background. In order to be in line with the principle of equality before the law, the application of the criminal cover needs to be based on criteria that are clear, open, objective, measurable, and juridically testable. In addition, this type of crime should be placed as a last resort (special *ultimum remedium*) and should not open up opportunities for discrimination, either explicitly or implicitly. Without such a regulatory mechanism, the existence of criminal cover-up has the potential to deviate from the direction of criminal system reform that seeks to prioritize substantive justice in modern criminal law practice.

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