

Conditional Criminal Voices against the Defendants of Criminal Acts of Corruption in Principle Perspective Justice and Legal Guarantee

Ferry¹, Kiki Kristanto², Achmad Adi Surya G. Silam³

^{1,2,3}Universitas Palangka Raya, Indonesia

ferryplk99@gmail.com

Abstract

Corruption crimes that have been occurring widely, not only harm the state's finances, but also have been a violation of the social and economic rights of the community at large, so corruption crimes need to be classified as crimes whose eradication must be carried out extraordinarily. Every person convicted of corruption is sanctioned in accordance with the provisions of the laws and regulations. One form of sanctions imposed by judges related to corruption cases is the Conditional Criminal verdict, which means that the criminal does not need to live inside the Correctional Institution. The verdict is indeed the power of the judge guaranteed in the Law of Judicial Power as well as related to conditional criminality as stipulated in Article 14a of the Criminal Code, but in the Corruption Crimes Act, there is no mention of criminal threats with conditional criminals. In other similar cases, there is a judge's ruling that does not impose a conditional criminal sentence but provides a prison sentence for the accused of corruption, resulting in inconsistencies in the application of the law by the judge in sending the accused to corruption. Therefore, with a conditional criminal conviction will have implications on the principle of justice and legal certainty for convicted other corruption cases, as well as for the Government and society in general in preventing and eradicating corruption cases.

Keywords

Corruption; criminal code; government; law of judicial power



I. Introduction

The crime of corruption that has been happening so far is not only detrimental to the state's finances, but has also been a violation of the social and economic rights of the community at large, so that the criminal act of corruption needs to be classified as a crime whose eradication must be carried out in an extraordinary manner. Everyone who is proven to have committed a criminal act of corruption is given sanctions in accordance with the provisions of the legislation (Oeliga & Afita, 2017). One form of sanctions imposed by judges related to corruption cases is conditional criminal verdicts, which means that the crime does not need to be served in a correctional institution.

Corruption is a specific criminal act which is regulated outside of the Criminal Code, Corruption is a criminal act which involves bribery manipulation and acts against the law that are detrimental or can harm the country's finances or the country's economy, detrimental to the welfare or interests of the people / general. Acts that are detrimental to the country's finances or economy are corruption in the material field, while corruption in the political field can be realized

in the form of manipulating the vote by bribery, coercion intimidation and or interference that affects the freedom of choice to vote-commercialize in the legislative body or in administrative decisions in the field of implementation government. (Zulyadi, R. 2020)

Criminal decisions handed down by judges on a case are indeed the domain of the judiciary in accordance with the principle of freedom of judges guaranteed by the constitution of Article 24 of the 1945 Constitution of the Republic of Indonesia and Law Number 48 of 2009 concerning Judicial Power, where the principle of freedom of judges is is part of the judicial power (Fitra, 2017).

Judicial power is the power of an independent state to administer justice in order to enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the State of Law of the Republic of Indonesia.

The principle of freedom of judges in carrying out their duties as judges implies that judges in carrying out their duties of judicial power may not be bound by anything and/or pressured by anyone, but are free to do anything. The principle of freedom of judges is an independence or independence possessed by the judiciary in order to create an objective and impartial decision (Adonara, 2015). Therefore, the meaning of freedom of judges must be carried out and implemented as a responsible freedom, freedom in the corridor of order and legislation without being influenced by the Government, interests, pressure groups, print media, electronic media, and influential individuals. This is in accordance with what is mandated in the provisions of Article 3 of Law Number 48 of 2009 concerning Judicial Power (Aryanta, 2020), which states that:

- (1) In carrying out their duties and functions, judges and constitutional judges are obliged to maintain the independence of the judiciary.
- (2) All interference in judicial affairs by other parties outside the jurisdiction of the judiciary is prohibited, except in matters as referred to in the 1945 Constitution of the Republic of Indonesia.
- (3) Everyone who intentionally violates the provisions as referred to in paragraph (2) shall be punished in accordance with the provisions of the legislation.

Regarding the power of judges to impose conditional criminal sentences on a case, it is regulated in the provisions of Article 14a of the Criminal Code, which states that:

"If the judge imposes a maximum imprisonment of one year or a maximum imprisonment of one year, not including a substitute imprisonment, then in his decision the judge may also order that the sentence should not be served, unless in the future there is a judge's decision that determines otherwise, because the convict has committed an act. Before the probation period specified in the above-mentioned order expires, or because the convict during the probationary period does not meet the special conditions that may be specified in the order."

However, even in imposing a conditional criminal sentence, the judge can be guided by the provisions of Article 14a of the Criminal Code, but the problems related to conditional criminal acts for defendants of corruption are very different because corruption cases are special crimes whose settings are also specifically regulated in the Criminal Act. Corruption as *Lex Specialis Derogat Legi Generalis* (Hafi & Budiman, 2017), and it is quite clear that all types of criminal acts of corruption do not at all mention the threat of punishment can be in the form of conditional punishment but all threats of punishment are imprisonment and there are regulations regarding criminal threats minimum and maximum for corruption. The threat of imprisonment or deprivation of liberty is applied in the Corruption Crime Act, because the criminal act of corruption is essentially an act with an extraordinary crime classification

(extraordinary crime) which must be handled in an extraordinary manner in order to provide a deterrent effect and create a sense of justice and maintain legal certainty in society.

In the internal environment of the Supreme Court itself, convictions against criminal acts of corruption are not allowed with a conditional penalty (Nasution, 2019), based on the Circular Letter of the Supreme Court Number 7 of 2012 concerning the Legal Formulation of the Plenary Results of the Supreme Court Chamber as a Guide to the Implementation of Duties for the Court, where one of the the point says that:

"The Corruption Eradication Law makers have stipulated a special minimum penalty, therefore imposing a probation sentence is not allowed in principle, if it is violated, the Judge has stepped into the realm of the power of the legislator."

However, the fact is that until now in Indonesia there is still no unified understanding or common perception among judges as justice enforcers in order to maintain legal certainty in the community regarding conditional criminal convictions in cases of corruption.

One example of a corruption case whose verdict was a conditional criminal, namely Br. Dra. BADAH SARI, MM, Als BADAH Bint SULMAN. Where the chronology of the case is that the defendant as the Principal of the Palangka Raya 1 Public High School for the 2017/2018 Academic Year withdrew a levy or withdrawal of money that was mandatory, binding, and the amount and period of collection was determined in the implementation of the New Student Registration (PPDB) at the State Senior High School. 1 Palangka Raya.

For this action, the defendant was charged with violating the provisions of Article 12 letter (e) jo. Article 12A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption jo. Article 55 paragraph (1) of the Criminal Code jo. Article 65 of the Criminal Code, with the claim that the defendant Dra. BADAH SARI, MM Als. BADAH Binti SULMAN has been legally and convincingly proven guilty of committing a criminal act of corruption "several acts, each of which must be seen as an independent act, namely as a civil servant or state administrator with the intention of unlawfully benefiting oneself or others by abusing their power to someone gives something, pays, or receives payment with a discount, or to do something for himself whose value is less than Rp. 5,000,000, - (five million rupiah)", with the demand that the defendant be sentenced to imprisonment for 1 (one) year (six) months and a fine of Rp. 10,000,000 (Ten Million Rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months.

Where after going through the trial process by examining witnesses, experts, as well as examining the defendant and evidence in court, the Panel of Judges with the Palangka Raya District Court Decision Number: 62/Pid.Sus-TPK/2017/PN.Plk dated April 16 2018, in its decision, decided:

1. Stated that the defendant Dra. BADAH SARI, MM Als. BADAH Binti SULMAN has been legally and convincingly proven guilty of committing a criminal act of corruption together;
2. Sentencing the defendant Dra. BADAH SARI, MM Als. BADAH Binti SULMAN with imprisonment of 1 (one) year and a fine of Rp. 5,000,000, - (five million rupiahs) provided that if the fine is not paid, it is replaced with imprisonment for 1 (one) month;
3. To stipulate that the sentence will not be served, unless in the future there is another order in the judge's decision, because the defendant before the probationary period of 1 (one) year and 6 (six) months ends has committed a crime;
4. Determine that the period of detention that the defendant has served is deducted entirely from the length of the sentence imposed.

Then from the results of the first-level decision, it was reaffirmed in the decision at the cassation level, namely the Supreme Court Decision Number: 2312 K/PID.SUS/2018 dated October 30, 2018, the ruling of which is:

1. Stated that the defendant Dra. Badah Sari, MM alias Badah Binti Sulman was proven legally and convincingly guilty of committing a criminal act of corruption together;
2. Sentencing Dra. Badah Sari, MM alias Badah Binti Sulman therefore with a maximum imprisonment of 1 (one) year and a fine of Rp. 5,000,000 (five million rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month;
3. The order does not have to be carried out unless in the future there is a judge's decision that determines otherwise because the convict has committed a crime before the probationary period of 1 (one) year and 6 (six) months ends;
4. Determined to the defendant to pay court fees of Rp. 2.500 (two thousand five hundred rupiah).

Based on the decision at the Cassation level, the court's decision has obtained permanent legal force or *inkracht* (Parningotan Malau & Sesung, 2018) and Dra. Badah Sari, MM alias Badah Binti Sulman was executed by the Executing Prosecutor at the Palangka Raya District Attorney on February 13, 2019 based on the Order for Execution of Court Decision Number: Print-292/Q.2.10/Fu.1/02/2019 dated February 13, 2019 with the notes of Dra. Badah Sari, MM alias Badah Binti Sulman is not serving a prison sentence because the sentence is conditional with a probationary period of 1 (one) year 6 (six) months from the date of execution, namely from February 13, 2019 to August 13, 2020.

II. Review of Literature

Based on a brief comparison of the two decisions above, it can be seen that for the same type of corruption, namely illegal levies, as well as with the same profession, namely as a Civil Servant even in the same series of actions and actions, but in the implementation and imposition of the same verdict. Applied by each judge is very different. Moreover, in the case of Dra. Badah Sari, MM alias Badah Binti Sulman whose verdict was Conditional Criminal or Trial, while for Br. Zaini's sentence was sentenced to imprisonment, then based on the verdict, it will cause inconsistency in the application of the law by the judge, even though the conditional penalty is regulated in Article 14a of the Criminal Code and is related to a verdict or decision which is the domain or freedom of a judge based on Article 3 of the Law. Number 48 of 2009 concerning Judicial Powers, but specifically for corruption which is regulated in its *Lex Specialis*, namely Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is very clear that there is no regulation at all regarding criminal threats with conditional punishment.

This normative legal issue in the form of inconsistency is a problem, because a conditional criminal verdict for a defendant of a criminal act of corruption will create a sense of injustice and legal uncertainty, because it should be through the judge's verdict that is expected as a last resort for everyone to obtain a sense of justice and keep all laws and regulations in place. Laws throughout the territory of the State of Indonesia are applied appropriately and fairly and maintain legal certainty in the community.

The problem to be discussed in this study is about what is the *ratio decidendi* (legal considerations) conditional criminal sentences for defendants of criminal acts of corruption and the juridical implications of conditional criminal sentences for defendants of criminal acts of corruption against the principles of justice and legal certainty.

III. Results and Discussion

3.1 Ratio Decidendi (Legal Considerations) Conditional Criminal Sentences for Defendants of Corruption Crimes

The judge's verdict or decision is a product of the trial process in the Court (Asimin, 2018). While the Court is the last place of escape for justice seekers, so that the judge's decision should be able to meet the demands of justice seekers. Therefore, the judge in formulating, formulating and deciding a case must be based on legal considerations that are in accordance with the facts revealed at the trial, and in accordance with the law and the judge's belief without being affected by various external and internal interventions so that they can be accounted for. Professionally to the public (the truth and justice e).

Regarding the verdict or deciding a case, judges certainly have freedom because judges are constitutionally guaranteed their position. Judicial power is an independent power, meaning that it is free from the influence and interference of government power. This is in accordance with the characteristics of the rule of law itself, namely that there is an independence of judges who are free, impartial and not influenced by legislative or executive powers (Muhtarom, 2008).

Judges are still bound by the applicable legal regulations in deciding a case. The judge's freedom does not mean that the judge can take arbitrary action on a case that is being handled, but the judge in this case must be able to choose various possibilities based on the provisions of the legislation plus his belief (Haryono, 2017). Legal considerations or the Ratio Decidendi of the criminal act charged are important in the judge's decision. In essence, legal considerations are proof of the elements of a criminal act whether the defendant's actions fulfill and are in accordance with the criminal acts charged by the public prosecutor.

Related to the normative legal issue that the author examines, namely conditional criminal sentences against defendants for corruption, the authors describe the legal considerations of one of the judges' decisions in the case of corruption that ensnared Civil Servants, namely Mr. Dra. BADAH SARI, MM, Als BADAH Binti SULMAN. Where the chronology of the case is that the defendant as the Head of the State High School 1 Palangka Raya for the 2017/2018 academic year withdrew a levy that was mandatory, binding, and the amount and period of collection was determined in the implementation of the New Student Registration (PPDB) at SMA Negeri 1 Palangka Raya. 2017/2018 Academic Year. The fee is in the form of a committee contribution which will be requested from the parents/guardians of new students as a condition for re-registration.

Where after going through the trial process by examining witnesses, experts, as well as examining the defendant and evidence in court, the Panel of Judges with the Palangka Raya District Court Decision Number: 62/Pid.Sus-TPK/2017/PN.Plk dated April 16 2018, in its decision, decided:

1. Stated that the defendant Dra. BADAH SARI, MM Als. BADAH Binti SULMAN has been legally and convincingly proven guilty of committing a criminal act of corruption together;
2. Sentencing the defendant Dra. BADAH SARI, MM Als. BADAH Binti SULMAN with imprisonment of 1 (one) year and a fine of Rp. 5,000,000, - (five million rupiahs) provided that if the fine is not paid, it is replaced with imprisonment for 1 (one) month;
3. To stipulate that the sentence will not be served, unless in the future there is another order in the judge's decision, because the defendant before the probationary period of 1 (one) year and 6 (six) months ends has committed a crime;
4. Determine that the period of detention that the defendant has served is deducted entirely from the length of the sentence imposed;

Then from the results of the first-level decision, it was reaffirmed in the decision at the cassation level, namely the Supreme Court Decision Number: 2312 K/PID.SUS/2018 dated October 30, 2018, the ruling of which is:

- a. Stated that the defendant Dra. Badah Sari, MM alias Badah Binti Sulman was proven legally and convincingly guilty of committing a criminal act of corruption together;
- b. Sentencing Dra. Badah Sari, MM alias Badah Binti Sulman therefore with a maximum imprisonment of 1 (one) year and a fine of Rp. 500.000 (five million rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month;
- c. The order does not have to be carried out unless in the future there is a judge's decision that determines otherwise because the convict has committed a crime before the probationary period of 1 (one) year and 6 (six) months ends;
- d. Determined to the defendant to pay court fees of Rp. 2.500 (two thousand five hundred rupiah).

Whereas based on the decision at the Cassation level, the court's decision has obtained permanent legal force or *inkracht* and Dra. Badah Sari, MM alias Badah Binti Sulman has been executed by the Executing Prosecutor at the Palangka Raya District Attorney on February 13, 2019 based on the Order for Execution of Court Decision Number: Print-292/Q.2.10/Fu.1/02/2019 dated February 13, 2019 with the notes of Dra. Badah Sari, MM alias Badah Binti Sulman is not serving a prison sentence because the sentence is conditional with a probationary period of 1 (one) year 6 (six) months from the date of execution, namely from February 13, 2019 to August 13, 2020.

Based on the Court's Decision against Dra. Badah Sari, MM alias Badah Binti Sulman above, one of the decisions highlighted by the author is that the defendant is sentenced to a maximum imprisonment of 1 (one) year, provided that the sentence does not have to be served unless in the future there is a judge's decision that determines otherwise due to because the convict commits a crime before the probationary period of 1 (one) year and 6 (six) months ends. The criminal verdict received by Dra. Badah Sari, MM alias Badah Binti Sulman is called a Conditional Criminal or Trial Criminal which means that there is no deprivation of liberty that should be carried out in the Correctional Institution.

The *Ratio Decidendi* or legal considerations for judges in the court of first instance (Taqiuddin, 2017) in deciding the case against Dra. Badah Sari, MM alias Badah Binti Sulman, which consists of juridical and non-juridical considerations, where juridical considerations, the judge weighs based on the indictment, witness statements, defendant's testimony, evidence, and elements in the indictment article. In his indictment, the Public Prosecutor has indicted the defendant Dra. BADAH SARI, MM Als. BADAH Binti SULMAN with Article 12 letter e jo. Article 12A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) of the 1st Criminal Code in conjunction with Article 65 of the Criminal Code.

The sounds and elements contained in Article 12 letter e of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption are:

“Sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000 (two hundred million rupiah) and a maximum of Rp. 1,000. .000,000,- (one billion rupiah); civil servants or state administrators who with the intention of unlawfully benefiting themselves or others or exercising their power to force someone to give something, pay or receive payment at a discount, or to do something for themselves”.

Article 12A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is as follows:

- (1) The provisions regarding imprisonment and fines as referred to in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 do not apply to criminal acts of corruption whose value is less than Rp. 5,000,000.00 (five million rupiahs).
- (2) For perpetrators of criminal acts of corruption whose value is less than Rp. 5,000,000.00 (five million rupiahs) as referred to in paragraph (1) shall be punished with imprisonment for a maximum of 3 (three) years and a fine of not more than Rp. 50,000,000.00 (fifty million rupiah).

Article 55 paragraph (1) 1 of the Criminal Code states that:

"Convicted as a perpetrator of a crime:

1. those who do, who order to do, and who participate in doing the deed;
2. those who by giving or promising something by abusing their power or dignity, by force, threats or misdirection, or by providing opportunities, means or information, intentionally encourage others to do something.

Then Article 65 of the Criminal Code reads:

- (1) In the event that several acts must be considered as independent acts so that they constitute several crimes, which are threatened with the same principal punishment, only one sentence shall be imposed.
- (2) The maximum punishment imposed is the maximum amount of punishment that is threatened for the act, but it may be more than the maximum maximum of the most severe punishment plus a third.

Based on the Articles of indictment above, there are several elements in these Articles, including:

1. Civil Servants or State Administrators;
2. With the intention of benefiting oneself or others;
3. By violating the law or by abusing power;
4. Forcing someone to give something, to pay or receive a discount, or to do something for oneself;
5. Value less than Rp.5.000.000,- (five million rupiah);
6. Those who do, who order to do, or participate in doing;
7. Performing several actions, each of which should be viewed as a stand-alone act;

Then, in addition to the above juridical considerations, the Panel also in its legal considerations pays attention to non-juridical considerations, namely, even though the defendant is declared to have made a mistake in committing the crime, all circumstances, conditions that influence and accompany either before or after the crime occurs, are already consideration for the Tribunal in imposing a sentence on the defendant.

The things mentioned above are the Ratio Decidendi or legal considerations for judges at the Palangka Raya District Court to impose conditional criminal sentences, while the Ratio Decidendi or legal considerations for judges at the Supreme Court who reaffirm the District Court's decision to impose a conditional criminal verdict for defendant, based on legal considerations that:

"Regarding the severity of the punishment in a case is the authority of Judex Facti which is not subject to classification, unless Judex Facti imposes a crime that is not regulated by laws and regulations or exceeds the maximum criminal limit set."

From the Ratio Decidendi of the judges, the Supreme Court judges are of the opinion that, regarding the severity of criminal penalties (strafmaat) it is the authority or power of Judex Facti (judges who examine facts at the first level and at the level of appeal) which are guaranteed in the Law on Judicial Power (Aryanta, 2020), as long as the authority or power of the judge in passing a verdict does not exceed or exceed the maximum criminal limit that has been stipulated in the Act.

Normatively, there is not a single article in the Criminal Procedure Code that requires judges to decide a sentence in accordance with the demands of the Public Prosecutor. Judges have the freedom to determine the severity of the punishment in accordance with legal considerations and conscience. The law gives freedom to judges to impose criminal penalties between the minimum and maximum penalties that are threatened in the relevant criminal article. In certain cases where the facts of the trial are found to be incriminating so that the judge has the confidence to impose a sentence higher than the demands of the public prosecutor, then the sentence does not violate the criminal procedure law.

3.2 Juridical Implications of Conditional Criminal Sentences for Defendants of Corruption Crimes against the Principles of Justice and Legal Certainty

Regarding the juridical implications of conditional criminal sentences for defendants of criminal acts of corruption in the perspective of the principle of justice, if it is associated with the three examples of cases that the author describes in this study, namely the decision on behalf of Dra. Badah Sari, MM and the decision on behalf of Zaini, M.Pdi and the decision on behalf of Hermeninggildus Apriyady, S.Pd where the employment status of each of the defendants is as a Civil Servant, so that the juridical implications of the judge's decision in addition to having an impact on criminal penalties that must be lived by each convict, will also have an impact in terms of the relevant employment law.

In addition to criminal penalties, a Civil Servant will also be faced with disciplinary punishment, because it is quite clear that a Civil Servant has roles and responsibilities, one of which is to carry out public services that are free from corrupt practices, as mandated in Article 12 of the Law. Number 5 of 2014 concerning State Civil Apparatus, states that:

“ASN employees act as planners, implementers, and supervisors for the implementation of general government tasks and national development through the implementation of policies and public services that are professional, free from political intervention, and free from practices of corruption, collusion, and nepotism.”

As part of the State Civil Apparatus, a Civil Servant who is an element of The State and government administrators is required to be clean and free from corruption. The legal consequences for Civil Servants who are entangled in corruption cases are of course subject to sanctions in accordance with the provisions of the Law governing the State Civil Apparatus.

A Civil Servant who commits a criminal act of corruption will be closely related to the existence of an authority or because of the position or power held by a Civil Servant, so that the application of disciplinary punishment will be directed in accordance with the provisions in Article 87 paragraph (4) letter b of the Law. Number 5 of 2014 concerning State Civil Apparatus.

However, the normative fact in Article 87 paragraph (4) letter b of Law Number 5 of 2014 concerning State Civil Apparatus, states that Civil Servants are subject to disciplinary punishment in the form of dismissal if sentenced to imprisonment or confinement based on a court decision that has permanent legal force. (Fahmi et al., 2018). The criteria for

imprisonment or confinement based on Article 22 of the Criminal Code are deprivation of a person's freedom who is served in prison (Penitentiary), while for a decision in the form of a Conditional Criminal, in practice there is no deprivation of liberty that must be carried out by the convict. Which means that the sentence does not impede a person's freedom and is not served in the Correctional Institution.

These normative facts can raise doubts for the Personnel Guidance Officer in making decisions regarding disciplinary punishment for the Civil Servant concerned because the verdict is a Conditional Criminal, not a punishment for limiting freedom (as regulated in Article 22 of the Criminal Code) in the form of imprisonment or confinement as normalized in Article 87 Law Number 5 of 2014 concerning the State Civil Apparatus.

Furthermore, in terms of legal certainty, conditional criminal sentences will not create a sense of deterrent effect for perpetrators, and contrary to the spirit of the Corruption Crimes Act to prevent and eradicate all types and acts of corruption (Luhukay, 2020). Therefore, the regulation regarding the criminal act of corruption is special in nature and is included in the classification of extraordinary crimes (extraordinary crime). However, with the difference in the judge's verdict, it can lead to legal uncertainty or legal inconsistency related to the verdict against the accused of corruption.

IV. Conclusion

As for the conclusions in this writing in accordance with the problems raised by the author, namely:

1. Ratio Decidendi (legal considerations) conditional criminal verdicts for defendants of criminal acts of corruption, namely the judge uses the basis of juridical and non-juridical considerations. Juridical considerations include the indictment letter from the Public Prosecutor, witness testimony, testimony from the defendant, evidence, as well as elements in the indictment article, as well as the severity of the sentence under the jurisdiction of *Judex Facti*, as long as the verdict does not exceed or exceed the maximum penalty limit stipulated in the *Judex Facti*. The law, while the non-juridical considerations, the judge sees that an act cannot be seen abstractly from the juridical side, but the act must be seen in a concrete way, where in reality a person's actions are influenced by his personal character, social environment, all circumstances and conditions affecting and accompanying the defendant, either before or after the crime occurred.
2. The juridical implications of conditional criminal convictions for defendants of criminal acts of corruption in the perspective of the principles of justice and legal certainty, namely conditional criminal verdicts in criminal acts of corruption do not reflect a sense of justice and legal certainty, because in the Corruption Crime Act there is no explicit mention of the existence of criminal acts of corruption. The threat of punishment with a conditional sentence. In addition, in the Circular Letter of the Supreme Court (SEMA) Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Chamber of the Supreme Court as a Guide to the Implementation of Duties for the Court, it is mandated that conditional criminal sentences are not allowed in cases of criminal acts of corruption on the basis that the makers of the Act The Corruption Crime has determined the existence of a special minimum sentence, therefore imposing a probation sentence in principle is not allowed, if it is deviated, the Judge has stepped into the realm of the power of the legislator. So that the existence of a conditional criminal verdict in a corruption case will create a sense of injustice for other convicts as well as create legal uncertainty or legal inconsistency related to the verdict for defendants of criminal acts of corruption.

Suggestion

1. Judges should always maintain consistency in the application of the law that in cases of criminal acts of corruption, conditional criminal sentences should not be imposed, in order to guarantee a sense of justice and legal certainty for other convicts and the community in general and in accordance with the spirit of the Corruption Act to prevent and eradicate corruption.
2. Policy makers (Government) should compile a regulation that firmly regulates, minimum criminal threats in cases of criminal acts of corruption are not allowed with conditional punishment as a legal basis for law enforcers in carrying out enforcement related to criminal acts of corruption.

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Law Number 5 of 2014 concerning State Civil Apparatus

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