

The Effectiveness of Corruption Law Enforcement in Providing a Determinant Effect on the Performers

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Abstract

The existence of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, directly or indirectly, is expected to suppress leakage and irregularities in the state's finances and economy. By anticipating these deviations as early and as much as possible, it is hoped that the wheels of the economy and development can be carried out properly. However, ironically, the more intensive efforts to eradicate corruption have not led to a decrease in the number of corruption crimes in Indonesia. The purpose of this study was to determine the effectiveness of criminal sanctions given to defendants of corruption. The research method is carried out by examining library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. The professionalism of the judge's decision is very decisive in providing a deterrent effect to the perpetrators of criminal acts of corruption so that, only with an effective judge's decision can corruption be stopped or at least reduced. Moreover, the law has very firmly given the threat of the heaviest punishment, namely the death penalty to anyone who commits a criminal act of corruption that is detrimental to state finances, now how judges can implement the existing law through decisions that fulfil a sense of justice.

Keywords

corruption; law enforcement; criminal acts



I. Introduction

Law is the whole rule of life that is coercive to protect human interests in society. The legal targets to be addressed are not only people who actually act against the law, but actions that may occur, and the head of state equipment to act according to the law. Law as a regulatory instrument in society has been recognized for its authority. (Trianto and Tutik, 2007)

One of the unlawful acts that harm the state is the problem of corruption. The definition of a criminal act of corruption according to Article 2 paragraph (1) of Law Number 20 of 2001 concerning the eradication of criminal acts of corruption, namely: "Every person, both government and private officials who unlawfully commit acts of enriching themselves or corporations that can harm the State's finances or state economy, shall be sentenced to life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years and or a minimum fine of Rp. 200,000,000.- (Two hundred million Rupiah) and a maximum of Rp. .1,000,000,000.- (One Billion Rupiah)."

As is known, corruption is still a problem for Indonesia today. Corruption is a crime that causes state financial losses and violates social and economic rights that occur systemically. Corruption is significantly detrimental to the capacity of the state to develop the economy and provide social welfare facilities so the return of corrupted state assets and finances certainly needs to be a consensus in an effort to optimize law enforcement in corruption.

In eradicating corruption, the KPK makes arrests for the sake of arresting the perpetrators of corruption. The arrests were carried out as if the stories about corruption suspects would never end. Today he was arrested, the next day another arrest of the other perpetrators appeared. It is ironic indeed, in the history of Indonesian law enforcement, demands for eradicating corruption have actually been predicted since the days of President Soeharto, President Habibie, Gusdur, Megawati, and Susilo Bambang Yudhoyono. Every leader promised during his reign that he would eliminate corruption and eradicate it from the roots. However, why does corruption still exist and thrive? Why does the existing law seem unable to stop it? In fact, the punishment for the perpetrators of corruption is actually very severe. The perpetrator can be sentenced to life imprisonment or the death penalty as regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning corruption. The imposition of a life sentence or the death penalty is of course detrimental to state finances. The perpetrator according to Article 2 paragraph (2) of Law Number 31 of 1999 can be sentenced to death.

As a form of commitment to eradicating corruption, Indonesia has ratified the United Nations Convention Against Corruption (UNCAC) through Law Number 7 of 2006 concerning Ratification of the 2003 United Nations Convention Against Corruption. because it contains a series of guidelines in carrying out corruption eradication, including prevention efforts, formulation of the types of crimes including corruption, law enforcement processes, provisions for international cooperation as well as mechanisms for returning assets, especially those that are cross-border.

Enforcement is indeed not only influenced by the existence of qualified laws and regulations but also requires the commitment of law enforcement, community participation, adequate facilities and facilities, even no less important is the culture in society that contributes to the success or failure of efforts to enforce the law to eradicate class corruption. It is no longer an open secret that every suspect in a corruption case that we see in the electronic media does not show any shame, especially since they are state administrators who should be role models for the community. The increasing number of corruption cases has forced us to look at and review how criminal sanctions should be given to a corrupt defendant.

As we all know, corruption legislation as a special crime has different things from general criminal rules. Substantially there are sanctions that are cumulative in nature, there are special minimum criminal rules, and there are also articles that provide access to recover state losses. All of this is a form of legislative policy to eradicate corruption. However, the above regulation will lose its meaning if in its application it is not as expected, namely providing a deterrent effect for the perpetrators so that the purpose of sentencing can be achieved.

Efforts to overcome crime (criminal policy) with penal facilities are realized by the existence of a criminal justice system, which is one of the community's efforts to control the occurrence of crime so that it is within acceptable tolerance limits. Institutions involved in the criminal justice system include the Police, Prosecutors, Courts, and Corrections.

In Indonesia, judges are at the center of the criminal justice process, because judges' decisions are the culmination of the workings of the criminal justice system. Judges must realize that every decision they make has a broad impact, not only on the defendant, victim, or his family but also on society as a whole (Zulfa and Adji, 2011). Judges must have independence and break away from the influence of power and other powerful people (economic and political elites) so that the resulting decisions will reflect a sense of justice. Departing from research on judges' decisions on corruption defendants, it will help us to think about whether these sanctions are in accordance with the purpose of sentencing, from

here it is also hoped that new ideas for sanctions are more appropriate for corruptors will be born.

II. Research Method

The type of research that the author uses is normative legal research, with the data collection method used being library research. The data used include primary legal materials (binding materials), and secondary legal materials (legal materials that explain primary legal materials). To achieve the research objectives, the approach in this research is carried out carefully through the provisions of laws and regulations and various doctrines (opinions of legal experts) related to the problem of corruption. The materials that have been collected are then analyzed using descriptive-analytical methods, to obtain an overview related to the existing problems.

III. Result and Discussion

3.1. Corruption Crime Acts

Corruption is a criminal act that has a major role in hampering the achievement of state goals, thus making all the resources owned by Indonesia not directly proportional to the fate of the people. In this regard, one way for the people to live in prosperity is through overcoming corruption, which is the beginning of resolving various crises in Indonesia.

Corruption can also be interpreted as an act of enriching oneself or others by illegally taking state money to be used and exploited for personal or group interests. In this case, the perpetrators of corruption usually have power and position. With their power and position, they can influence other parties under their control with a policy.

Another thing that is discussed in criminal law apart from the definition or meaning of corruption is criminal acts. In criminal law lessons, when we talk about criminal acts, we talk about *stratbaarfeit*. This means that *stratbaarfeit* is equated with a crime. Thus, crime and crime as well as *stratbaarfeit* have the same meaning. If a definition is given, it can be described as a series of actions carried out by a person or several people that cause legal consequences for the perpetrators.

3.2. Enforcement of Justice by Judges

As stated above, corruption is a very extraordinary crime. For this reason, the handling must also be in a different way from the handling of other crimes. This extraordinary handling can be carried out by giving the heaviest punishment to the perpetrators, this is following the mandate of the Law on corruption. In the explanation of the Law on corruption, it is stated that to achieve a more effective goal in the context of preventing and eradicating corruption, Law Number 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the eradication of criminal acts of corruption contains criminal provisions that are different from the previous law, among these differences is the stipulation of the death penalty as a burdensome threat. For example, corruption is committed under certain circumstances.

The judge gave the heaviest sentence in his decision. It is not wrong then, in handling criminal cases, the judge is the judge of whether the law is running or not. Likewise in eradicating corruption. Judges are important actors to convict corruptors with sentences that uphold the values of community justice.

Judges are the spearhead of justice for society. However, on the other hand, judges are also burdened with professional responsibilities, meaning that judges cannot carry out their duties arbitrarily, judges have responsibilities, both morally, legally, and technologically in their profession.

Judges have a very central role in law enforcement. Judges have the authority to decide cases, who is right and who is wrong. Judges cannot take sides, unlike prosecutors who must side with the interests of the state and try to prove wrongdoing (reasons for upholding the law).

Judges must uphold their noble performance and integrity and must comply with the code of ethics and code of conduct of judges that have been set. Despite the many temptations they face, judges should still be on the straight path, because judges are one of the determining pillars of law enforcement.

Thus, in this condition, judges with integrity and professionalism are needed in their field. Because after all, a quality decision will bring a sense of justice to the community. Of course, without putting aside the evidence found during the trial. This evidence is important to know the extent of the involvement of the defendant.

Therefore, legal certainty and the usefulness of the judge's sentence through his verdict will bring benefits to the whole community. Because the judge handed down the verdict based on the belief and the available evidence, that the defendant was guilty. Especially if the judge can impose the heaviest sentence. Because as a special crime, the threat to perpetrators of corruption should be severe, including the death penalty.

For the implementation of the law on corruption to be effective, the effectiveness of the judge's decision is the key that corruption can be eliminated or at least reduced. This effectiveness can be imposed by imposing the heaviest punishment, for example, the death penalty. The death penalty as regulated under Law No. 20 of 2001 can be imposed on anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy. It is time for judges to be consistent in comprehensively interpreting the provisions of the Law on eradicating corruption and optimizing legal sanctions as effectively as possible in eradicating corruption.

3.3. Maximum Criminal Effectiveness for Convicts of Corruption

The main key in law enforcement for corruption is to create a commitment from law enforcement to work professionally and provide intelligent search for evidence. Thus, the disclosure of evidence is very easy to trace, because the relevant laws and regulations are sufficient.

The heaviest criminal threat with the death penalty for corruptors is very clearly stated in the article contained in the Law on corruption. However, in practice, the heaviest punishment has never been carried out. So that in the end the purpose of law in the form of legal certainty and benefit has not been achieved properly. State products as part of legal politics have not been implemented optimally in the form of implementing regulations that meet the elements of justice. As a crime with an extraordinary category, corruptors must stop their actions in taking people's money. Corruption must be eradicated in extraordinary ways. One of these ways is by establishing a state institution called the Corruption Eradication Commission (KPK) based on Law No. 30 of 2002. As well as giving the death penalty to perpetrators of corruption under the Corruption Crimes Act. This is a form of maximum effectiveness of sentencing decisions for perpetrators of criminal acts of corruption to provide a deterrent effect to corruptors. Thus, legal certainty, usefulness, and justice will always be maintained and created for the achievement of legal objectives.

Law enforcement to achieve certainty, benefit, and justice for the community is a respect for the rule of law that exists. The parties involved in law enforcement have a moral responsibility to run it. If someone commits an act of corruption, and the elements against the law are fulfilled, they must be processed with the existing punishment. Regardless of status and position. So that legal harmony is created. The sentencing process is carried out, of course, through a process of investigation and investigation, based on the formal provisions of the Criminal Procedure Code (KUHAP). This process aims so that the essence of the criminal act committed can be proven that the act is unlawful. Thus, before carrying out an investigative action, an investigation is carried out by an investigating officer with the intent and purpose of collecting preliminary evidence or sufficient evidence so that a follow-up investigation can be carried out.

The problem of corruption is very multi-complex caused by various multi-dimensional factors, so handling the problem of corruption, including taking action against someone suspected of having committed a criminal act of corruption, if possible, should be targeted not only for the sake of upholding justice from a legal perspective, but also from an economic perspective, including country finance. To prevent corruption as a crime that is dangerous to social life, a cultural change is needed, however, cultural change is a very big change and not an easy job, and even this change requires careful study and writing.

In the end, we agree that corruption threatens the life of the nation and state. To prevent corruption, the state and all its instruments must work seriously and earnestly. This extraordinary crime of corruption must not be allowed to continue. The state must strengthen professionalism as the authorized party to eradicate corruption more effectively and maximally. So that in the end it will make a deterrent to corruptors or people who want to commit criminal acts of corruption. The state in this case must provide an effective decision following the existing law so that it will bring a deterrent effect to other actors.

3.4. Confiscation of Assets as an Effort to Recover State Losses

Non-conviction-based asset forfeiture is a legal mechanism that allows state-owned assets that have been taken by criminals to be confiscated again. This concept is part of the United Nations Convention Against Corruption, 2003. The seizure of assets currently in force in Indonesia can only be carried out if the perpetrator is limited. the crime has been declared legally and convincingly proven guilty of committing a crime by a court decision that has permanent legal force (*in kracht*) in other words the seizure of assets is carried out by a criminal decision, but criminal confiscation has many difficulties in its implementation. One of them is the ability of the perpetrators to divert or flee the proceeds of crime and instruments of crime abroad and even the perpetrators may flee abroad and cannot be extradited to Indonesia. For example, the corruption case with the defendant Djoko S. Candra or even the most horrendous case in the history of eradicating corruption in Indonesia, namely the corruption case of Edy Tansil. They disappeared as if swallowed by the earth, even though their whereabouts were known but could not be executed by the government due to various diplomatic limitations. Even though their assets are still in Indonesia, they can even benefit from the movement of their businesses in Indonesia, while the Indonesian government cannot reach them. For this reason, it is deemed necessary to have a legal instrument that has a confiscation system that allows the seizure of assets resulting from criminal acts through a mechanism known as Non-Conviction Based (NCB) Asset Forfeiture. This mechanism emphasizes the seizure of assets from criminal acts "*in rem*" and not to the person (*in person*). Thus, a decision that has permanent legal force against the perpetrator of a crime is not a prerequisite that must be met in the confiscation of assets.

Non-Conviction Based Asset Forfeiture is a way to confiscate assets resulting from crime. In the common law system, two types of asset confiscation have developed, namely: (Muhhamad Yusuf, 2010: 616-617).

- a. Ordinary common law forfeiture (forfeiture that applies based on court decisions), and;
- b. Statutory forfeiture (forfeiture that applies under the law).

According to Fletcher N. Baldwin, Jr., the civil forfeiture model becomes significant for the return of the proceeds of corruption in Indonesia because the civil forfeiture uses a reversal of the burden of proof and can make confiscations more quickly after it is suspected that there is a connection between assets and criminal acts. In addition, civil forfeiture is a lawsuit against assets not to the defendant or to the suspect, so that state assets can be saved even though the perpetrator has died or died (Muhammad Yusuf, 2010: 617).

Asset confiscation without punishment is a comprehensive confiscation mechanism because it starts from tracing, blocking, and confiscation, as well as the trial process in court. Non-Conviction Based Asset Forfeiture can run effectively if there is a strong will from the Attorney General's Office to apply for confiscation of assets to the court. This commitment must also come from the court in this case the judge in examining and adjudicating the application for Non-Conviction Based Asset Forfeiture without being influenced by the opinion that the Non-Conviction Based Asset Forfeiture process violates Human Rights.

The application of reversing the burden of proof in the Non-Conviction Based Asset Forfeiture mechanism is not something that should be disputed and does not even violate human rights, because according to him, the reversal of the burden of proof in the Non-Conviction Based Asset Forfeiture has nothing to do with the principle of "who accuses him must prove his accusation" and is not related to the principle of "presumption of innocence". The reason is that the two principles are related to proving the guilt of a defendant at trial while reversing the burden of proof is a form or method of showing whether or not ownership of an asset is legal and explaining how the perpetrators of the crime obtained ownership of it.

With the inability of the perpetrator to prove that he has legally owned the assets, there is a strong suspicion that the assets are the proceeds of crime. It is the assets that cannot be proven which must then be declared as "legally tainted property" by the court (judge). Because it has been declared as tainted assets by the Court, the State Attorney's Attorney then submits a request for the tainted assets to be declared as state property.

The most appropriate and simple way to carry out the Non-Conviction Based (NCB) Asset Forfeiture mechanism is that initially assets suspected of being the proceeds of crime are blocked and withdrawn from economic traffic, namely through confiscation requested by the Court. Furthermore, the property is declared tainted property by a court order. After being declared as tainted property, the court then announces media that can be accessed and known by the public for a sufficient period of approximately 30 (thirty) days. This period is considered sufficient for third parties to be able to know that the court will confiscate assets. If within that period there is a third party who objected to the act of confiscation, then the third party may file a challenge to the court and prove with legal evidence that he is the owner of the property by explaining how the property was acquired.

IV. Conclusion

Corruption crimes committed by corruptors have eliminated people's rights in obtaining education, health care, and poverty alleviation. People's money which is mandated through the state budget or state treasury which incidentally comes from the people has been taken by corruptors in a way that is against the law. Money is actually money that can be used for access to prosperity. Due to the difficulty of the people in getting access to education and health as well as enjoying the facilities and infrastructure in the form of infrastructure, the people experience prolonged suffering. Living below the poverty line. Meanwhile, the corrupt live with wealth and luxury.

The professionalism of the judge's decision is very decisive in providing a deterrent effect to the perpetrators of criminal acts of corruption so that, only with an effective judge's decision can corruption be stopped or at least reduced. Moreover, the law has very firmly given the threat of the heaviest punishment, namely the death penalty to anyone who commits a criminal act of corruption that is detrimental to state finances, now how judges can implement the existing law through decisions that fulfil a sense of justice.

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