

THE IMPLEMENTATION OF CRIMINAL SANCTION TO THE ACTORS OF CORRUPTION IN INDONESIA

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ABSTRACT

The eradication of corruption in Indonesia is not merely aimed at corruption in imprisonment, but must also restore the damages of the corrupted State. The purpose of this study is to analyze the implementation of corrupt asset deprivation as an effort to repay the State's finances in Indonesia. The research method was done by using normative juridical approach, with secondary data source obtained by doing literature study, in the form of primary, secondary and tertiary legal materials. The results of the study were analyzed by using qualitative descriptive method. The result of the criminal sanction to corruptor in violation of Law No.31 / 1999 to 20/2001 was applied by a fairly mild criminal punishment of imprisonment ranging from 1 to 7 years and fine between 300 million up to 500 million rupiah. If it is compared to criminal penalties in the law, the imposition of criminal sanctions against corruption by the judge there is a tendency to impose minimal criminal sanctions despite the very heavy criminal threat.

Keywords: Implementation, Sanction, Actor, Corruption

A. BACKGROUND

In the era of President Joko Widodo, the strategy of eradicating corruption in Indonesia is carried out by strengthening various strategies and seriousness to save national economy, state finance and strengthening mentality of Indonesian nation. It realized by Nawacita Joko Widodo and Jusuf Kalla programs by strengthening the presence state in conducting system reform and law enforcement that is free of corruption, dignity, and trust and by revolutionizing nation character. The effort is made because corruption crime not only can harm the State's finances but also damage the joints of the life of nation and state. Efforts to eradicate corruption have been done by this nation, since the New Order regime but have not shown satisfactory results as expected. And now corruption is no longer an ordinary crime but has been categorized as extraordinary crime, even corruption is a very dangerous crime against humanity. Law enforcement of corruption is very urgent to be realized given the corruption crime has been very widespread in the state of Indonesia and is very detrimental to the state and citizens. The perpetrator of corruption is a rational criminal compared to the perpetrators of general criminal acts, because before committing a crime it has taken into account all the risks that will be faced, including legal process. This situation leads to the assumption that corruption in Indonesia is increasingly being prosecuted and is increasingly widespread and its development continues to increase from year to year, both in the number of cases and the amount of state loss and quality . One factor is the lack of commitment and consistency of law enforcement (read: imposition of criminal sanctions) against corruption committed by state officials. The imposition of criminal sanctions so far has not been able to inhibit the rate of corruption itself, because of the phenomenon of the perpetrators are not afraid of sanctions. When criminal sanctions are no longer frightening it is necessary to review the criminal justice police policy on corruption.

B. RESEARCH METHODS

The research method used was a normative juridical approach, with secondary data sources obtained by conducting literature study, which consists of primary legal materials in the form of various laws and regulations, secondary law materials and tertiary law materials, the results obtained were analyzed by using qualitative descriptive method.

C. RESEARCH RESULT AND DISCUSSION

Judge's consideration or Ratio Decidendi is an argument or reason used by a judge as a legal consideration on which to base before deciding the case . In the judicial practice of the judge's ruling before this juridical judgment is proved, the judge shall first withdraw the facts in the proceedings which arise and constitute a cumulative conclusion from the testimony of the witnesses, the statements of the accused, and the evidence. A judge in the event of a criminal to the defendant shall not impose the penalty unless by at least two valid evidences so that the judge obtains the conviction that a crime is actually committed and the defendant is guilty of doing so (Article 183 of KUHAP).

Legal evidence in question is:

- a) Description of Witness;
- b) Expert Description;
- c) Letter;
- d) Hints;
- e) Defendant's statement or things generally known so that there is no need to be proven (Article 184 KUHP).

As it is known that in every examination through a criminal proceeding process, a judge's decision must always be based on a letter of delegation containing all charges against the defendant's faults. In addition, the decision of the judge should also not be separated from the results of the evidence during the examination and the outcome of the trial. A judge may not impose a lower sentence than a minimum and also a judge shall not impose a penalty higher than the maximum limit of punishment prescribed by the Law. Rusli Muhammad argued that judges' considerations can be divided into 2 (two) categories, namely: juridical considerations and non-juridical considerations. Judicial consideration is the judge's judgment based on the juridical facts revealed in the hearing and by the Law stipulated as matters which must be contained in the decision such as the indictment of the public prosecutor, the statement of the defendant, the statements of the witness, the evidence and the Articles in criminal law. While non-juridical consideration can be seen from the background of the defendant, due to the actions of the defendant, the condition of the accused, and the defendant's religion ".

Trial facts are presented, oriented from the location of the incident (*locus delicti*), the scene (*tempus delicti*), and *modus operandi* on how the crime was committed. In addition it can also consider the aspects of direct or indirect consequences of the defendant's actions, the type of evidence used, and the ability of the defendant to account for his actions. If the facts in the hearing have been disclosed, then the judge's verdict considers the elements of the offense charged by the prosecutor, having previously considered the correlation between the facts, the offense charged and the elements of the defendant's faults. Later on, the Assembly consider and examine the fulfillment of elements of criminal offense against the defendant and proven legally convincing. In addition to the juridical consideration of the offense charged, the judge must also master the theoretical aspects, doctrinal views, jurisprudence, and the position of the case being handled, then later on the limitative set establishment.

The judge must actively ask questions and give an opportunity to the defendant represented by the legal advisor to ask the witnesses, as well as the prosecutor. All of it is meant to find material truth and ultimately the judge is responsible for everything he decides. Based on the provisions of Article 14 paragraph (2) of Law Number 48 Year 2009, it states that: in the deliberation session, each judge shall submit a written consideration or opinion to the case being examined and become an inseparable part. In addition, the judge's judgment must also not be detached from the results of the evidence during the examination and the outcome of the trial. Processing to determine the guilt or innocence of a person's conduct, this is solely under the authority of the judiciary, meaning that only this department is authorized to examine and prosecute loyal cases who have come to trial. Decision of criminal punishment based on formal juridical in this case, the judge's decision to sentence punishment to a defendant contains the order to punish the defendant in accordance with the criminal threat (*StraftMecht*) as stipulated in the criminal article. The District Court Judge takes a decision in court, considering several aspects, namely:

- (1) Error of a criminal offender. This is the main condition for a person to be punished. Errors here have the broadest meaning, that a perpetrator can be sentenced of such crimes. The intent of the offender must be determined normatively and not physically. To determine the existence of deliberate and intent must be seen from event after event, which must hold the normative measure of intent and intention is the judge.
- (2) The motive and purpose of a criminal offense. The criminal case contains the element that the act has the motive and purpose to deliberately against the law.
- (3) How to commit a crime. The perpetrator commits the act there is a planned element in advance to commit the offense. Indeed there is an element of intention in it is the desire of the perpetrator to oppose the law.
- (4) The mental attitudes of the offender. This can be identified by looking at the guilt, regret and promise not to repeat the action. The perpetrator also provides compensation or compensation to the victim's family and makes peace in a kinship.
- (5) Curriculum vitae and socioeconomic situation. The life history and socio-economic condition of the perpetrator of crime also greatly influences the judge's verdict and eases punishment for the perpetrator, for example has never committed any criminal act, comes from a good family, belongs to the community who are mediocre (lower class).
- (6) Attitudes and actions of the perpetrator after committing a criminal offense. The perpetrator in questioning the incident, he explains not convoluted, he accepts and acknowledges his mistake. The above matter also becomes a consideration for the judge to provide criminal relief for the perpetrator. Because the judge sees the offender being polite and accountable, also acknowledging all his actions by being honest and truthful. Because it will facilitate the trial
- (7) The criminal effect on the future of the criminal offender also has the objective of not only making a deterrent to the perpetrator of the crime, nor to influence the perpetrator not to repeat his actions, to free the guilt of the perpetrator, to socialize the perpetrator by establishing the guidance, thus making him a better person and useful.
- (8) Public view of a criminal offense perpetrated by the perpetrator. In a public crime the offender's acts are a disgraceful act, so it is only natural for the offender to be punished, so that the offender gets his reward and makes the lesson not to commit the act which can harm himself myself and others. It is stated that this provision is to guarantee the establishment of truth, justice and legal certainty.

The contextual aspect embodied in the freedom of judges in exercising judicial power is of three essences:

- a. Judges are only subject to law and justice
- b. No one, including the government, may influence or direct the judgment of the judge
- c. There are no consequences for the personal judges in performing their duties and judicial functions. The imposition of Criminal Sanctions against State Organizers Conducting Corruption in Indonesia is shown in the following table:

Table

Criminal Penalty Imposition against State Organizer
in Indonesia

No terdakwa Dakwaan Putusan Keterangan

1 Dr. (Honoris Causa) Bahtiar Chamsah, SE. Minister of Social Affairs of the Republic of Indonesia Period (2001 - 2009) has been detrimental to state finances of Rp. 36.688.865.603, - Article3 jo Article18 UUPTPK jo Article55 Paragraph (1) ke-1 jo Article65 Paragraph (1) KUHP Article2 Paragraph (1) jo Article18 UUPTPK jo Article55 (1) ke-1 jo Article65 (1) KUHP Corruption Court (Central Jakarta District Court): 1 year imprisonment 8 months fine of Rp 500 million; Corruption Court

(High Court of DKI Jakarta): Strengthen the previous court ruling. High level State Executive

2 Gayus H.T. Patahanan Civil Servant at the Directorate General of Taxes of the Ministry of Finance of the Republic of Indonesia (PNS Gol III / a) Harms state finances of Rp. 570.952.000, - First (primaty) Article2 (1) jo Article18 jo Article55 (1) 1st KUHP; (subsider) Article3 jo Article18 jo Article55 (1)1st KUHP; 2nd (primair) Article5 (1) letter a jo Article55 (1) 1stKUHP; (subsider); 3rdArticle6 (1) letter a UUPTPK; and4thArticle22 jo Article28 UUPTPK Corruption Court (South Jakarta District Court): 7 years imprisonment and a fine of Rp 300 million Court

Tipikor (High Court of DKI Jakarta): 10 years imprisonment and a fine of Rp 500 million Cassation Decision MA 12 years imprisonment and a fine of Rp 500 million Penyelenggara Negara (Eksekutif) Tingkat Bawah

3 HM Nasir bin Jafar Member of South Sumatra Provincial DPRD Disadvantages state finances of Rp. 25,000,000, Primair: Article 2 (1) UUPTPK Subsider: Article 3 UUPTPK More Subsider: Article 8 UUPTPK Corruption Court (Palembang District Court): Independent decision of all lawsuits Decision Cassation MA Penalty 1 year imprisonment, trial for 2 years State Executive (Executive) Intermediate Level

Based on the above table, it can be seen that the imposition of criminal sanctions for the State Organizer who committed the criminal acts of corruption in Indonesia, namely:

1) Dr. (HR) Bahtiar Chamsyah, SE Minister of Social Affairs of the Republic of Indonesia (2001-2009) was charged with misusing authority, opportunity or facilities available to him because of his position, to win certain parties in the procurement of sewing machines, beef cattle and sarongs from APBN and APBNP (FY 2004, 2006, 2006, 2007, 2008) to the detriment of state finances amounting to Rp 36,688,865,600, - (US \$ 450,000 more) pursuant to the results of the BPKP Report. Corruption Court ruling (Central Jakarta District Court) The defendant was sentenced to imprisonment of 1 year and 8 months and a fine of Rp 500 million; and the Decision of the Corruption Court (Jakarta High Court) upheld the decision of the previous court to impose a 1 year and 8-month imprisonment and a fine of Rp 500 million.

2) Gaius HP. Tambunan Civil Servant at Directorate General of Taxes Ministry of Finance Republic of Indonesia participated in unlawful acts, enriching themselves or others or a corporation (PT Surya Alam Tunggal) which harms state finances of Rp 570,952,000 (- US \$ 720,000). Corruption Court ruling (South Jakarta District Court) The defendant was sentenced to 7 years imprisonment and a fine of Rp 300 million; Decision of the Corruption Court (Jakarta High Court) The defendant was sentenced to 10 years imprisonment and a fine of Rp 500 million (exacerbated); and the Decision of the Supreme Court Cassation defendant has been sentenced to 12 years imprisonment and a fine of Rp 500 million (exacerbated).

3) H.M. Natsir Djakfar bin H. Djakfar, former Vice Chairman of South Sumatra Provincial Parliament, as Coordinator of Commission E was assigned to conduct a comparative study to Malaysia with Labor and Jamsostek (11 - 16 June 2001) for 7 days; official travel money of Rp 25.000.000, - has been taken but does not carry out its duties that cost the state Rp 25.000.000, - (US \$ 300,000). The Corruption Court's verdict (the Palembang District Court) was accused of being convicted of all legal proceedings; and the Decision of the Supreme Court to overturn the Corruption Court's Verdict (Palembang District Court) and the Supreme Court impose a 1 year imprisonment and the crime shall not be served (sentence) before 2 years

From the above data, it can be seen that criminal sanctions imposed on corruptors tend to be lighter when compared to threats formulated in the law, and no one is sentenced to death.

At this time the sentencing of people who pay off the proceeds of criminal acts of corruption, which in essence should be necessary penalization of those who enjoy the proceeds of the criminal act of Corruption itself. It can be charged under Article 3 of Law No. 15 of 2002 concerning Money Laundering as amended by Act number 25 of 2003, stating that whoever deliberately places, transfers, pays or spends, grants or donates, entrusted, brought abroad, exchanged, or other acts of property which it knows or merited shall be the proceeds of crime with the intention of concealing the origin of property, shall be punished for the crime of money laundering with a maximum imprisonment of 5 years and maximum 15 years and a fine of at least Rp 5 billion and a maximum of Rp 15 billion. Article 6 provides that any person who receives or controls: the placement, transfer, payment, grant, donation, custody and exchange of property which it knows or reasonably suspects is the proceeds of a criminal offense, is punishable by the same punishment as provided for in Article 3.

Regarding the relationship between corruption and money laundering, it can be seen in Article 2 of the Law on Crime of Money Laundry, namely corruption is predicate crime or crime origin of money laundering crime. The placement of corruption as the number one predicate crime (a) in Law no. 15 of 2002 as amended by Law no. 25 of 2003 is a manifestation of the minds of lawmakers who view corruption as the most pressing issue of the nation's priority in handling it. What has always been the question of many parties, especially law enforcement, is whether predicate crime needs to be proven first before it can be done in the investigation of money laundering crime. Therefore the researcher formed a theory with the title immediate impoverishment theory which is a concept of corruption eradication that is oriented to the state financial loss recovery maximally by emphasizing seizure/confiscation of assets of corrupt criminals and all members of their family. This is certainly not necessarily remove the criminal charges against the perpetrators of criminal acts of corruption and even the intent of touching to anyone who enjoys the results of corruption. This is in line with the concept of eradication of corruption in Indonesia that put corruption crime as an extraordinary crime that resulted in the destruction of the system of joint- joint state.

Based on Andi Hamzah's comparative study and study results from several countries, in general, material criminal laws applied in countries such as Australia, Hongkong, Malaysia, Singapore and Malaysia are corruption delays available within the Indonesian Criminal Code without altering more criminal threats heavy as done in Indonesia. According to the Act Number 31 Year 1999, the threat of criminal really terrible. In the first law all types of corruption are mild, moderate and severe prison sentences for life, but no one sentenced to life imprisonment for twenty years applies. Similarly, the new law, although the new law regulates the threat of capital punishment, but no one is sentenced to death even if the money is corrupted trillions of rupiah. As a result people are not afraid to do corruption so that corruption is becoming rampant as it is felt today.

As reported by Kompas, that corruption in Indonesia is in a very acute position and so entrenched in every joint of life. The development of corruption practices from year to year has increased, both from the quantity or the amount of financial losses of the state and in terms of quality more systematic, sophisticated and the scope has been widespread in all aspects of society. Based on the latest survey of Transparency International Indonesia Institute Year 2017, which conducted the Indonesia Corruption Perceptions Index (IPK) 2017 by measuring the perceptions of business actors and experts on the practice of bribery in 12 major cities in Indonesia, it is said that Medan city ranks first as city corrupted in Indonesia with a score of 37.4%, followed by Makassar in second place with a score of 53.4% and Bandung in third place with a score of 57.9 next to Semarang in fourth place with a score of 58.9%.

As a comparative material in the Chinese State the eradication of corruption is carried out with decisive action to the corrupt, namely the death penalty through a very thorough legal process, only those who do very severe corruption sentenced to death. Corruption is rampant from the top to the bottom and the state losses reach US \$ 16 billion (around Rp 120 trillion, 1999); The corruption eradication movement in China succeeded in returning public funds of 400 million yuan (over Rp 440 billion) to the state treasury and done for the reputation of the party that was destroyed by the corrupt mentality of its officials or was the affair of the party's life and death, as said by PM Zhu Rongji known as "Mr. Clean ", Corruption is a serious crime and the perpetrator was sentenced to death without tolerance.

The capital punishment is regulated in Article 48 Amendment IV to the Criminal Law of the People's Republic of China No.83 1997 which reads: The death penalty shall be applied to criminals who have committed extremely serious crimes. If the immediate execution of a criminal punishable by death is not deemed necessary, a two-year suspension of execution may be pronounced simultaneously with the imposition of the death sentence . Zhu Rongji, the fifth Chinese PM (March 17, 1998 - March 16, 2003) when inaugurated the idea: "Give me 100 coffins, 99 I will send for corruptors, One for myself if I do that"; His remarks are then proved. Comparisons in other countries, state officials who commit corruption are sentenced to imprisonment and fines followed by administrative sanctions (Hong Kong); or be subject to additional criminal (India); or as in China all state officials are sentenced to death; whereas in South Korea state organizers were sentenced to severe penalties, namely capital punishment or imprisonment of over 20 years. In case of concern, the imposition of criminal sanctions in Hong Kong, India and South Korea (except in China) has paid attention to the classification and stratification of the position of the state administrator, the state losses and the gravity of a criminal offense.

The problem in eradicating corruption in Indonesia is not only in the law itself, but also on the imposition of criminal sanctions, namely the application of criminal sanctions that have not been maximized. BaharuddinLopa in his book Corruption Crime and Law Enforcement divides corruption according to its nature in 2 (two) forms, as follows.

a. Covert Corruption isa corruption in passing seems politically motivated, but it is in fact hidden for money. Example: an official receives a bribe with the promise of receiving the bribe to be a civil servant or appointed in a position. However, in fact after accepting a bribe, the official does not care about his promise to the person who gave the bribe. The main thing is to get the money.

b. Multiple Duplicate Corruptions. Someone does corruption outwardly seems only motivated to earn money, but in fact other motives, namely political interests. For example: someone who persuades and bribes an official to abuse his power, the official in making his decision to provide a facility to the persuader, even though the boss does not even consider whether the facility will yield to him.

Besides, corruption also has characteristics such as:

a. Corruption always involves more than one person. This is not the same as a theft or fraud case. A corrupt operator is virtually non-existent and the case is usually included in the definition of embezzlement (fraud). An example is a statement about travel shopping or hotel accounts. Here, however, there is often a silent understanding among officials who practice frauds in order for this situation to occur. One way of fraud is excessive pocket requests, this is usually done by increasing the frequency of travel in the execution of tasks. This is the case with the current political elites which has led to polemics in society.

b. Corruption is generally done in secret, unless it is rampant and so deep that the ruling individual and those in his or her environment are not tempted to hide his actions. However, corruption motive, however, is kept confidential.

c. Corruption involves elements of mutual obligations and benefits. Obligations and benefits are not always money.

d. Those who practice corrupt ways usually try to envelop their actions by taking cover behind legal justification.

e. Those involved in corruption want tough decisions and are able to influence those decisions.

f. Every act of corruption contains fraud, usually done by public or public bodies (the public).

g. Any form of corruption is a betrayal of trust

Romli Atmasmita said that Law no. 31/1999 as amended by Law no. 20/2001 has 12 (twelve) prominent characteristics, namely:

- a. A criminal act of corruption is formally formulated (formal offense) not material offense in which the state financial loss return does not eliminate the criminal prosecution of the defendant but merely as a mitigating factor,
- b. The imposition of a regulation of the Corporation as a legal subject, in addition to an individual,
- c. The imposition of a regulation concerning the territory of entry into force or criminal jurisdiction which may be enforced beyond the territorial boundaries of Indonesia (extra-territorial jurisdiction),
- d. The inclusion of arrangements on a limited or balanced burden of proof system,
- e. The imposition of regulation on criminal threats with special minimum, in addition to the maximum threat,
- f. There is a threat of capital punishment as a weighting element in certain matters such as a state in a state of danger, a national natural disaster, a criminal act of corruption committed as a repetition of a crime or a state in a state of economic and monetary crisis,
- g. The inclusion of arrangements on joint investigation in cases of corruption that are difficult to prove under the coordination of the Attorney General,
- h. The inclusion of the regulation on investigations into the wider bank secrets, beginning with the freezing of suspended accounts which can be continued by seizure,
- i. The inclusion of arrangements on the role of the community as a means of social control, emphasized and expanded so that the legal protection of the reporting parties is more optimal and effective, similar to "whistle blower act"
- j. Mandates the establishment of an independent Corruption Eradication Commission (KPK), with membership consisting of government and community members (professionals) and their peers must be approved by the DPR,
- k. Contains provisions on wider civil servants than the Employment Act and other employment-related legislation,
- l. Contains additional criminal provisions, in comparison with additional criminal as set forth in the Criminal Code as well as in Law no. 3/1971.

D. CONCLUSION

Implementation of criminal sanctions against perpetrators of corruption, especially to the state organizers violating Law No.31 / 1999 jo 20/2001 in Indonesia has been applied a fairly mild criminal imprisonment between 1 year to 7 years and a fine of between 300 million up to 500 million rupiah when compared to criminal penalties in the law, the imposition of criminal sanctions against corruption conducted by the judge there is a tendency to impose minimal criminal sanctions despite the very heavy criminal threat.

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