The Phenomena Of Crime Of Corruption As An Extraordinary Crime

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ABSTRACT

This article aims to provide an explanation regarding the phenomenon and the application of legal consequences for Corruption Crimes which are classified as Extraordinary Crimes classified, which are caused by the actions of individuals who are more concerned with personal interests and enrich themselves without regard to the interests of the public, the nation and the state, here the level of loss of corruption is not only detrimental to state finances but also has a detrimental impact on all development programs in Indonesia, the quality of education is getting lower and lower, the quality of education is falling. The quality of buildings is getting lower, and poverty is not being handled which is increasingly rampant everywhere. Besides that, this article uses literature research from various text sources which aims to be able to express the opinions of several well-known experts or legal figures related to the phenomenon of Corruption which is increasingly common everywhere.

Keyword : Criminal, Corruption, Law, Extraordinary Crime

ABSTRAK

Artikel ini bertujuan untuk memberikan penjelasan terkait fenomena serta penerapan akibat Hukum atas Tindak Pidana Korupsi yang diklasifikasikan sebagai Tindak Pidana Kejahatan Luar Biasa diklasifikan, mana disebakan karena ulah oknum yang lebih mementingkan kepentingan pribadi serta memperkaya diri sendiri tanpa memperhatikan kepentingan umum, bangsa, dan negara, disini tingkat kerugian korupsi tidak hanya merugikan keuangan negara saja melainkan juga memberikan dampak kerugian terhadap seluruh program pembangunan di indonesia, kualitas Pendidikan yang semakin lama menjadi semakin rendah, mutu Pendidikan yang semakin jatuh. Kualitas bangunan yang semakin merendah, serta kemiskinan tidak tertangani yang semakin merajalela dimana-mana. Disamping itu Artikel ini memakai riset lilteratur dari berbagai macam sumber teks yang bertujuan agar dapat mengemukakan pendapat dari beberapa para pakar atau tokoh hukum ternama yang berkaitan dengan fenomena Tindak Pidana Korupsi yang semakin banyak dimanamana.

Kata Kunci : Pidana, Korupsi, Hukum, Kejahatan Luar Biasa

Introduction

Forms of crime always keep up with the times and transform into forms that are increasingly sophisticated and diverse. Various efforts have been made to tackle crime, but crime has never disappeared from the face of the earth, and has even increased along with the way of life of humans and the development of increasingly sophisticated technology, causing the growth and development of the pattern and variety of crimes that have emerged.

It is difficult to provide a limitation that can cover all the contents/aspects of the definition of criminal law because the content of criminal law is very broad and includes many aspects, which is impossible to include in a definition regarding the meaning of criminal law, usually only from the perspective of only one or a few contents, so that there are always certain sides or aspects of criminal law that are not included in and are outside it.[1] One of the criminal acts that is the enemy of all nations in this world, namely corruption. In Indonesia itself this criminal act of corruption has existed since before Indonesia's independence.

One piece of evidence showing that corruption existed in Indonesian society during the colonial era was the tradition of giving tribute by several groups of people to local authorities. In Indonesia itself, in addition to the enforcement process, there are complexities regarding corruption cases themselves due to the legislative policy of making laws whose products can still have multiple interpretations, so there are relatively many weaknesses found in them. One example that can be put forward here is Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption Crimes.

The large number of people who denounce this dishonorable act so that public disapproval of corruption according to the juridical conception is manifested in the formulation of law as a form of crime. There is a term in society in any form against Corruption, even including by the corruptors themselves in accordance with the expression "corruptors shout corruptors".[2]

[1] Adam Chazawi, *Pelajaran Hukum Pidana Bagian* I, Rajawali Press. Jakarta. 2011. Hal 1

[2] Elwi Danil. KORUPSI: *Konsep, Tindakan Pidana dan Pemberantasannya*, P.T. Raja Grafindo Persada. Jakarta, 2011. Hal 1.

There have been many descriptions of corrupt practices that have been exposed to the surface because this act of corruption has infected low-level officials to high-ranking officials, to high-ranking state institutions such as the legislature, executive and judiciary to state-owned enterprises. The development of such corruption has relevance to power, because with that power the ruler can abuse his power for personal, family, group and crony interests.[3] Corruption in the perspective of criminal law has the nature and character of an extraordinary crime because in general done systematically. There are four characteristics and characteristics of the crime of corruption as an extraordinary crime, First, corruption is an organized crime that is carried out systematically, Second, corruption is usually carried out with a difficult modus operandi so it is not easy to prove it, Third, corruption is always related to power. Fourth, corruption is a crime related to the fate of many people because state finances that can be harmed are very useful for improving people's welfare.[4]

Corruption that occurs in Indonesia which has always been a problem is a moral issue. There must be a strong political will to declare war on corruption, followed by a real step (political action) with the support of consistent law enforcement.[55] Various efforts can be made to reduce this one phenomenon, here the existence of law or the position occupied by the law itself is covering all areas that can help eradicate this act of corruption so that corruption can be eliminated or at least can be reduced. Law enforcement is a series of processes to translate values, ideas, ideals that are quite abstract into very concrete goals. The purpose of law or legal ideals contains moral values, such as justice and truth. These values can be realized in real reality.[6]

For this reason, an extraordinary law enforcement method is needed through the establishment of a special body that has broad authority, is independent and free from any power in efforts to eradicate corruption, whose implementation is carried out optimally, intensively, effectively, professionally and continuously. The consequences of the state establishing corruption as an extraordinary crime must be accompanied by extra steps to eradicate corruption

[3] Romli Atmasasmita, *Sekitar Masalah Korupsi, Aspek Nasional dan Internasional*. Mandar Maju. Bandung, 2004. Hal 1

[4] Eddy O.S. Hiariej. *Pembuktian Terbalik Dalam Pembuktian Tinad Pidana Korupsi.* Pidato Pengukuhan Guru Besar Fakultas Hukum Universitas Gadjah Mada.Universitas Gadjah Mada. Yogjakarta. 2012. Hal 3.

[5] Elwi Daniel. Op.Cit. Hal 69

[6] Satjipto Rahardjo. Penegakan Hukum Suatu Tinjauan Sosiologis. Cetakan Kedua. Genta Publishing. Yogjakarta. 2009. Hal vii

in the form of an extraordinary system and also every element of the state must work together in efforts to eradicate corruption.

1.1 Background of the Paper

The reason why corruption has the qualification as an extraordinary crime is because corruption is based on the landscape of efforts to eradicate corruption which can be metaphorically expressed in the Dutch language as "Het recht thinkt achter de feiten aan". The meaning of law is often left behind from events. The criminal act of corruption has characteristics where this action is carried out in a systematic way, involving individuals who have high intellectual power, including involving law enforcement officials, and having an impact in the form of loss and damage in a large scope, these are some of the characteristics that make Eradicating corruption is even more difficult if you only rely on ordinary law enforcement officers, especially if corruption has become a culture that infects all aspects and layers of society.

In the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it is said that the criminal act of corruption is an extraordinary crime (extra ordinary crime) so that extraordinary actions are also needed (extra ordinary measures). However, not all of the things in the explanation have proven to be true in their implementation.

It has been specifically explained according to law Number 31 of 1999 jo as well as in law Number 220 of 2001 concerning the Eradication of Corruption Crimes, the Defendant can prove that he is innocent of the alleged charges, in this case it can be classified as a Corruption Crime . If the defendant can provide this evidence, it does not mean that he can just go free and not be proven guilty of committing a criminal act of corruption, because here there is still a public prosecutor who is obliged to prove his charges. This article explains that there are provisions where there is limited reverse evidence, because here the public prosecutor is still obliged to prove his indictment.

1.1 Focus of the Problem

What is the rationale for the application of the Extraordinary Crime Law applied to Corruption Crimes in Indonesia? And the second is how is the form of enforcement and legal basis for criminal acts of corruption?

Research Methology

Here we use a research method using a literature search that contains relevant theories related to the research problem. In this research, an assessment of the concepts and theories used is based on the literature concerned with the available topics. In this research literature review has a role as something that can build the theoretical concepts used to form the basis of studies in this research. Not only that, literature review can provide an overview of the research approach required in a research that aims to improve theoretical aspects as well as practical utility aspects. This research is included in descriptive research, focusing on a systematic description of the facts obtained at the time the research was conducted.

Finding And Discussion

1. **Application of the Law on Extraordinary Crimes as applied to Corruption Crimes in Indonesia**

   In the application of the criminal act of corruption in Indonesia, the criminal act of corruption is a special crime which makes the criminal act of corruption regulated in more detail outside the Criminal Code (KUHP) and differs from the general provisions that apply in the Criminal Code. So, in the case of provisions in laws and regulations governing other things than what has been regulated in the Criminal Code, it can be interpreted that a form of special rule has overridden general rules (Lex Specialis Derogat Legi Generali). In other words, Article 103 of the Criminal Code allows a provision of statutory regulations outside the Criminal Code to overrule the provisions stipulated in the Criminal Code. Thus, the criminal act of corruption is included in a special criminal act.

The criminal act of corruption has a special procedural law that deviates from the provisions of procedural law in general. The Criminal Procedure Code which is applied lex specialist deviations intended to speed up procedures and obtain prosecution investigations as well as trial examinations in obtaining evidence of a criminal corruption case and such irregularities are carried out does not mean that the human rights of the suspect/defendant in the criminal act of corruption are not guaranteed or protected, but endeavored in such a way that these deviations do not constitute a complete abolition which is forced to be carried out to save these human rights from the dangers caused by corruption. While on the part of conducting investigations, prosecutions and examinations of court hearings in corruption cases as long as there are no deviations regulated in Law No. 31 of 1999, the process is identical to the general criminal case which refers to the Criminal Procedure Code. With the benchmark that the crime of corruption is an extraordinary crime because it is systemic, endemic with a very broad (systematic and widespread) impact which not only harms state finances but also violates the social and economic rights of the wider community so that action is necessary. efforts to comprehensive extra ordinary measures so that many regulations, institutions and commissions have been formed by the government to overcome them.

In Indonesia alone, the law on corruption has been amended 4 (four) times. As for the laws and regulations governing corruption, namely Law number 24 of 1960 concerning eradicating criminal acts of corruption, Law number 3 of 1971 concerning eradicating criminal acts of corruption, Law number 31 of 1999 concerning eradicating criminal acts of corruption, Law number 20 of 2001 concerning amendments to the Law on the Eradication of Criminal Acts of Corruption. In the provisions of Article 26 of Law no. 31 of 1999 states that: investigations, prosecutions, and examinations in court of criminal acts of corruption, are carried out based on the applicable criminal procedure law, unless otherwise provided for in this law. From the context of the provisions of Article 26 of Law no. 31 of 1999 as mentioned above, it can be concluded that the Criminal Procedure Code that was applicable to carry out investigations, prosecutions and examinations at court hearings was the Criminal Procedure Code that was in effect at that time (Positive Law/Ius Constitutum) unless the law stipulates otherwise.[7]

[7] IGM Nurdjana. *Sistem Hukum Pidana*. Op.Cit. Hal 164

Basically it is clear that Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) as Positive Law (Ius Constitutum/Ius Operatum) is a procedural law that is used practically at all levels of the judiciary in dealing with criminal acts of corruption. This provision implies that the criminal procedural law that applies to provisions against criminal acts of corruption is Law no. 8 of 1981 concerning Criminal Procedure Code (KUHAP) but there is an exception from the Criminal Procedure Code which uses the Special Criminal Procedure Code which deviates from the provisions of the general criminal procedure law, namely using Law no. 46 of 2009 concerning the Corruption Court, intended to speed up the judicial process of corruption cases.

The National Police of the Republic of Indonesia as a law enforcement institution, based on Law Number 2 of 2002 concerning the Indonesian National Police and Law Number 8 of 1981 concerning Criminal Procedure Code or known as the KUHAP (the Book of Criminal Procedure Law), has the authority conduct investigations and investigations in criminal cases including special criminal cases of corruption. Other authorized institutions according to the scope of duties and functions of the Attorney General's Office of the Republic of Indonesia are regulated in Law Number 8 of 1981 concerning Criminal Procedure Code and Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. Law enforcement to eradicate criminal acts of corruption that have been carried out conventionally has been proven to experience various obstacles.

For this reason, an extraordinary law enforcement method is needed through the establishment of a special body that has broad authority, is independent and free from any power in efforts to eradicate corruption, whose implementation is carried out optimally, intensively, effectively, professionally and continuously, then through the mandate of the Law -Invite No. 30 of 2002 concerning the Corruption Eradication Commission, the Corruption Eradication Commission was established. The Corruption Eradication Commission has the authority to carry out coordination and supervision, including carrying out investigations, investigations and prosecutions, while the formation, organizational structure, work procedures and responsibilities, duties and authorities as well as membership are regulated by law.

As formulated in Article 27 of Law no. 31 of 1999, that: in the event that corruption is found which is difficult to prove, a joint team can be formed under the coordination of the Attorney General. This provision indicates that in the framework of law enforcement against criminal acts of corruption, the institution that is prioritized is the Attorney General's Office. Thus, in addition to the National Police as Investigators who are given authority based on Articles 6 and 7 of the Criminal Procedure Code, the Attorney General's Office is also given the authority to conduct investigations into criminal acts of corruption.

In addition to the duties of the police and prosecutors, the institution that also has the task of carrying out investigations into criminal acts of corruption is the Corruption Eradication Commission (KPK) as stipulated in Article 6 sub C of Law no. 30 of 2002 that: The Corruption Eradication Commission conducts investigations, investigations, and prosecutions of criminal acts of corruption; Even the KPK has the authority to take over the investigation or prosecution of perpetrators of corruption that are being carried out by the police or the prosecutor's office, in the event that there are legal reasons as explained in Article 9 of Law No. 30 of 2002. Enforcement of criminal law against criminal acts of corruption, especially in the investigation process, is not only carried out by the police, prosecutors, and the commission for eradicating corruption, but in the case of other criminal acts that are essentially potential corruption but are regulated in legislation specifically outside the Criminal Code and the anti-corruption law, authority is also given to Civil Servant Investigators (PPNS) in accordance with the legal provisions which form the legal basis of each.

The evidentiary system in cases of criminal acts of corruption other than based on Law no. 8 of 1981 concerning Criminal Procedure Code which is also based on formal criminal law as stipulated in Law no. 31 of 1999 concerning the Eradication of Corruption as amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes, and Law no. 30 of 2002 concerning the Corruption Eradication Commission.[8]

[8] Ermansyah Djaja. *Meredesain Pengadilan Tindak Pidana Korupsi Implikasi Putusan Mahkamah Konstitusi No. 012-016-019/PUU/IV/2006*. Sinar Grafika. 2010. Hal 90

The Law on the Eradication of Corruption Crimes implements inverted evidence that is limited or balanced, namely that the accused has the right to prove that he has not committed a criminal act of corruption and is required to provide information about all of his assets and the assets of his wife or husband, children, and any assets a person or corporation suspected of having a relationship with the case in question and the public prosecutor is still obliged to prove his indictment. From the aspect of the evidentiary system in corruption offenses, this law applies limited or balanced reversal of evidence contained in the provisions of Article 37 which reads as follows:

1) the defendant has the right to prove that he did not commit a criminal act of corruption;
2) in the event that the accused can prove that he did not commit a criminal act of corruption, this information is used as a basis for stating that the charges are not proven.
3) As for the elucidation of Article 37 of this Law, it is explained as follows: This provision is a deviation from the provisions of the Criminal Procedure Code which stipulates that it is the prosecutor who is obliged to prove the commission of a crime, not the accused. According to this provision the defendant can prove that he did not commit a criminal act of corruption. If the defendant can prove it is not proven to have committed corruption, because the public prosecutor is still obliged to prove his charges. The provisions of this article constitute limited reversal of evidence, because the prosecutor is still required to prove his indictment. Basically, the provisions of Article 37 of Law No. 20 of 2001 according to his explanation are a balanced consequence of the application of reverse evidence against the defendant that the accused still needs balanced legal protection for violations of fundamental rights related to the presumption of innocence.) and self-blame (non-self-incrimination).

Then, in principle, the provisions of Article 38 C of Law no. 20 of 2001 has the premise that to satisfy the public's sense of justice for perpetrators of corruption who hide property that is suspected or should be suspected of originating from criminal acts of corruption. These assets are known after the court decision obtains permanent legal force (inkracht van gewijsde). With the starting point of this dimension, the state has the right

to file a civil lawsuit against the convict and/or his heirs for the property obtained before the court decision obtains permanent legal force (inkracht van gewijsde). Strictly speaking, this Corruption Eradication Law for carrying out civil lawsuits against convicts and/or their heirs for property obtained before a court decision obtains permanent legal force (inkracht van gewijsde) is not retroactive. one of the comprehensive steps that can be taken by the Indonesian criminal justice system is through a relatively adequate evidentiarysystem.

2. Forms of enforcement and legal basis for Corruption Crimes

In essence, crime prevention policies (including criminal acts of corruption) can be carried out through two approaches, namely the penal approach (the application of criminal law) and the non-penal approach (approaches outside of criminal law). This is motivated by the fact that crime is a social problem and a humanitarian problem. Therefore, crime prevention efforts cannot only rely on the application of criminal law alone, but also look at non-legal factors. Through a penal approach (implementation of criminal law), in general, the politics of criminal law is an attempt to determine which way Indonesian criminal law will be enforced in the future by looking at its current enforcement. This is also related to the conceptualization of criminal law that is best applied. Sudarto further revealed that carrying out criminal law politics means holding elections in order to achieve the best results of criminal legislation by fulfilling the requirements of justice and efficiency.

The non-penal approach is an approach to crime prevention without the use of punishment means (prevention without punishment), which includes community mental health planning, national mental health, child welfare and social workers. worker and child welfare), as well as the use of civil law and administrative law (administrative and civil law).

The pattern of criminal acts of corruption is based on behavior or actions that are immoral, unethical and/or unlawful for personal and/or group interests which are detrimental to state finances. must use civil law means.

In the Criminal Code there are certain articles which substantially contain the meaning of the notion of corruption. The provisions of the Criminal Code in a narrow

sense are actually quite capable of accommodating and accommodating various forms of deviant behavior which in the literature are understood as corruption. As of today, there are at least seven special laws that are normatively valid and can be used to prevent and eradicate corruption. The law includes:

1) Law no. 31 of 1999 concerning the Eradication of Corruption as amended by Law no. 20 of 2001.
2) Law no. 30 of 2002 regarding the Corruption Eradication Commission.
3) Law no. 46 of 2009 regarding the Corruption Court.
4) Law no. 28 of 1999 concerning the Organization of a State that is clean and free from Corruption, Collusion and Nepotism.
5) Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.
6) Law no. 13 of 2006 regarding the Protection of Witnesses and Victims.
7) Law no. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003.
8) Article 1 paragraph (2) of the Criminal Code stipulates that in the event of a change in the law after a crime has occurred, the law that most benefits/lightens the defendant is used. Based on this provision, there is no reason not to prosecute the perpetrators of corruption which were committed when Law Number 3 of 1971 was still in effect. Therefore, efforts to dispute the absence of transitional provisions in Law Number 31 of 1999 indicate a tug-of-war between parties who expressly intend to eradicate criminal acts of corruption and those who want the status quo in this transitional era. At the same time, based on Article 53 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, a Corruption Crime Court was formed which is within the General Court area and temporarily the Corruption Crime Court was formed at the Central Jakarta District Court whose jurisdiction covers the territory of the Republic of Indonesia. The Corruption Eradication Commission and the Corruption Court have made a breakthrough in law enforcement against criminal acts of corruption and have succeeded in deterring the perpetrators of corruption because none of the corruption cases tried by the corruption court have escaped the law. The existence of these two institutions

also made state officials feel afraid when dealing with the KPK.

Conclusion

Based on the discussion and research results that have been described, we the authors conclude the answers to the problem formulation, as follows :

What we can capture from the results of the research that we have made is that there are many factors that form the rationale regarding the application of the Extraordinary Crimes law against Corruption Crimes. From its history this Corruption Act has started since the colonial era where there was a tradition of giving tribute to officials or local ruling community groups. Even though the era has become as modern as it is today, there are still legislative policies for making laws whose products can still have multiple interpretations, so there are relatively many weaknesses found in them.

In the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it is said that the criminal act of corruption is an extraordinary crime (extra ordinary crime) so that extraordinary actions are also needed (extraordinary crime). measures). It has been specifically explained according to law Number 31 of 1999 jo as well as in law Number 220 of 2001 concerning the Eradication of Corruption Crimes, the Defendant can prove that he is innocent of the alleged charges, in this case it can be classified as a Corruption Crime .

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