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STATUS OF CORRUPTION ACTS UNDER THE INDONESIAN CRIMINAL LAW SYSTEM

[1] Ahmad Nur Azizy;* [2] Budi Parmono; [3] Moh. Muhibbin;
Malang Islamic University
Email: ach2creab35@gmail.com

** Corresponding Author*

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Abstract: *The purpose of this research is to describe the regulation of criminal law in Indonesia and to analyze the position of corruption in Indonesian criminal law. This research uses normative legal research in the form of library research using three types of legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials, with the nature of qualitative descriptive research. The results of the study show that the criminal act of corruption is a part of Indonesian criminal law whose arrangements are outside the Criminal Code (KUHP). In addition, this crime has certain specifications that are different from general criminal law which are regulated in separate laws, namely: Law Number 31 of 1999 as amended in Law Number 20 of 2001 concerning Eradication of Corruption Crimes. The criminal act of corruption is also known as a special crime.The criminal act of corruption is a part of the special criminal law which has certain specifications that are different from the general criminal law, such as deviations from procedural law and when viewed from the regulated material. The Criminal Procedure Code for corruption that is applied is lex specialist in nature, namely the existence of deviations intended to speed up procedures and obtain investigations, prosecutions and examinations at court hearings*

Keywords*: Status; Corruption Crime; Criminal Law System.*

1. INTRODUCTION

Criminal law according to Satochid Kartanegara has several meanings if it can be viewed from several angles. First, is criminal law in an objective sense; second, is criminal law in a subjective sense. (Siswanto, 2015) Criminal law in an objective sense is called Ius Poenale, namely a number of regulations that contain prohibitions or requirements where violations are punishable by punishment. Criminal law in a subjective sense is called Ius Puniendi, namely a number of regulations governing the state's right to punish someone who commits an act that is prohibited by law.

Corruption is a part of criminal laws, in addition to having certain specifications that are different from general criminal law, such as deviations from procedural law and when viewed from the regulated material, corruption directly or indirectly is intended to

minimize leakage and irregularities. to the country's finances and economy. By anticipating as early and as minimally as possible these deviations, it is hoped that the wheel of the economy and development can be carried out properly so that gradually it will have an impact on increasing development and people's welfare in general. (Lilik, 2000)

The criminal act of corruption is regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption Crimes. In addition, the procedural law in dealing with criminal acts of corruption uses the Criminal Procedure Code called KUHAP and its deviations which are specifically regulated in Law Number 20 of 2001. (Andi, 2008)

2. METHODS

This research is normative legal which uses a statutory law approach that focuses on primary legal material, namely Law Number 20 of 2001, amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. The nature of qualitative descriptive analysis. Collection of legal materials through document or library studies, processing of legal materials is carried out by inspection, tagging, reconstruction, and systematization. Analysis of legal materials was carried out qualitatively and comprehensively.

3. RESULTS AND DISCUSSION

3.1. Regulation of Corruption Crime in Indonesia

Criminal law is a legal regulation regarding criminal as well as part of the overall law in force in a country, which provides the basics and rules to: (Moeljatno, 2002) 1. determine which actions may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition; 2. determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to punishment as has been threatened; 3. determine in what way the imposition of punishment can be carried out if there are people who are suspected of having violated the prohibition.

According to legal scholars, the purpose of criminal law is to frighten people from committing crimes, either by scaring the masses (general preventie) or by scaring certain people who have committed crimes so that in the future they will not commit crimes again (special preventie) as well as to educate or improve people who have committed crimes so that they become people of good character so that they benefit society.

Basically, criminal law is based on 2 (two) things, namely:

a. Actions that meet certain conditions; intended actions committed by people, which allows for the award of punishment. Such acts can be called "criminal acts" or "evil acts". There must be someone who does it, so that the problem of

"certain" actions is broken down into two, namely actions that are prohibited, and people who violate the prohibition.

b. Criminal; Crime and action have similarities in the form of suffering. The difference lies only in the suffering, both the suffering due to actions that are smaller or lighter than the suffering caused by criminal imposition. Criminal or straf (Dutch) is called punishment. Criminal is more precisely defined as a suffering that is intentionally imposed or given by the state to a person or several people as a legal consequence for him for his actions that have violated the prohibition of criminal law. Specifically, this prohibition in criminal law is referred to as a criminal act (strafbaar feit). The Criminal Code as the main source of criminal law has provided details on the types of crimes, as formulated in Article 10 of the Criminal Code.

Criminal law has written and codified sources such as: The Criminal Code called KUHP, original name Wetboek van Strafrecht voor Nederlandsch Indie (WvSNI), first enacted in Indonesia with Koninklijk Besluit (Decree of the King) Number 3315 October 1915 and came into effect since January 1, 1918. (Siti, 2007) It is a derivative of the Dutch WvS which was made in 1881 and enforced in the Netherlands in 1886.

Even though the WvSNI was actually a derivative of the Dutch WvS, the colonial government at that time applied the principle of concordance (adjustments) for the implementation of the WvS in its colonial countries. Several articles were abolished and adapted to the conditions and mission of Dutch colonialism over Indonesian territory. WvSNI changed to the Criminal Code and applies to all regions of Indonesia based on Law Number 1 of 1946 concerning Criminal Law Regulations and confirmed by Law Number 73 of 1958 (LN number 127 of 1958) (Siti, 2007) concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia.

Law Number 8 of 1981 concerning Criminal Procedure Law. Law No. 8 of 1981 (Siti, 2007) or commonly referred to as the Criminal Procedure Code (KUHAP). The regulation which became the basis for the implementation of criminal procedural law in the general court environment before this law came into force was the updated "Indonesian Regulation" or known as "Het Herziene Inlandsch Reglement" or H.I.R. (Siti, 2007) (Staatsblad 1941 No 44), which is based on Article 6 paragraph (1) of Law Number 1 Emergency. In 1951, as far as possible should be taken as a guideline regarding civil criminal proceedings by all courts and district attorneys within the territory of the Republic of Indonesia, except for several amendments and additions.

Meanwhile, sources of law are written and not codified. This source of law is also commonly called special criminal law, namely criminal law that regulates certain groups or is related to certain types of criminal acts. The sources of specific criminal law in Indonesia include the Military Criminal Code, and several laws, including: a. Law Number 22 of 1997 concerning Narcotics; b. Law Number 5 of 1997 concerning Psychotropics; and c. Law Number 31 of 1999 concerning Eradication of Corruption Crimes.

3.2. The Corruption Status in the Indonesian Criminal Law System

One of the very serious crimes that occurred in Indonesia is the problem of corruption. Corruption has become a cause that can bring destruction to the country's economy. And the corrupt practices that have occurred have caused many losses; not only in the economic field, but also in the political, socio-cultural and security fields. (Deni, 2008)

Corruption is a criminal act that cannot be separated from problems with the state, state officials or people who have a respectable position in society. This is due to the role of each component in maintaining the country's economic resilience. If the resilience of these components is strong, so will Kuta's economic resilience. Vice versa, if the resilience of these components is weak, then the country's economy is also weak. Harkristuti Harkrisnowo stated: both corruption and ordinary criminal acts, the two classes of cases are equally criminal acts against property. The difference, at least, can be seen from two aspects, namely the perpetrator and the victim. The perpetrators of corruption are clearly not random people because they have access to commit corruption by abusing their authority, opportunities or means available to them because of their position.

Indonesia has legal bases for eradicating criminal acts of corruption which serve as guidelines and basis for prevention and prosecution. One of them became the basis for the formation of the Corruption Eradication Commission called KPK to become the overseer of eradicating corruption in the country. These legal bases are proof of the seriousness of the Indonesian government in eradicating corruption. Along the way, various changes to laws have been made to adapt to the current conditions of prosecution of corruption cases. Recognizing that they cannot work alone, the government through Government Regulations also invites the participation of the public to detect and report acts of corruption.

In the Indonesian criminal law system, corruption acts as a sub-system of general criminal acts. And therefore the criminal act of corruption is said to be a special crime. Specific criminal acts are part of criminal law, are outside the general criminal law that apply to certain people or actions and have special provisions for criminal procedure

The principles of specific crimes can be analyzed from the legal principles contained in the Criminal Code and outside the Criminal Code. The legal principles listed in the Criminal Code include:

1. Legality principle; meaning that no act can be punished except for the strength of the criminal rules in the laws and regulations that existed before the act was committed. (KUHP, Paragraph 1) If after the act has been committed there is a change in the laws and regulations, then the rule that is used is the one with the lightest sanction for the defendant. (KUHP, Paragraph 2)
2. Territorial principle; meaning that the provisions of Indonesian criminal law apply to all criminal incidents that occur in areas that are the territory of the Unitary State of the Republic of Indonesia, including Indonesian-flagged ships,

Indonesian airplanes, and Indonesian embassies and consuls in foreign countries.

3. The principle of active nationality; meaning that the provisions of Indonesian criminal law apply to all Indonesian citizens who commit criminal acts wherever they are. The principle of passive nationality means that the provisions of Indonesian criminal law apply to all criminal acts that harm the interests of the Indonesian state.

Reform in Indonesia has led to various changes in the legal system in Indonesia, especially constitutional law, especially changes to the Indonesian Constitution. One of the results of the Amendments to the Constitution of the 1945 Constitution of the Republic of Indonesia (the 1945 Republic of Indonesia Constitution) was the shift of the supremacy of the People's Consultative Assembly called MPR to supremacy of the constitution. As a result, the MPR is no longer the highest state institution because all state institutions are placed on an equal footing in the checks and balances mechanism.

The constitution is positioned as the highest law that regulates and limits the power of state institutions. The development of the trias politica concept has also influenced changes in institutional structure in Indonesia. In many countries, the classic concept of separation of powers is considered no longer relevant because the three existing functions of power are unable to bear the burden of the state in administering government. To answer these demands, the state has formed a new type of state institution that is expected to be more responsive in addressing the country's actual problems. (Prinst, 2002)

The post-reform Indonesian constitutional system gave birth to several state institutions whose authorities were directly mandated in the 1945 Constitution of the Republic of Indonesia, for example the MPR, President and Vice President, the People's Representative Council called DPR, the Regional Representatives Council called DPD, the Audit Board Finance called BPK, the Supreme Court called MA, the Constitutional Court called MK, and the Judicial Commission called KY, the Indonesian National Armed Forces called TNI, and the State Police. Meanwhile, state institutions whose sources of authority are provided in laws, one of which is the Corruption Eradication Commission called KPK.

The eradication of corruption in Indonesia is not just a matter of law and law enforcement alone, but rather a social and psychological social problem which is really very serious and is as bad as legal problems so that it must be addressed simultaneously. Corruption is a social problem because corruption results in the absence of a welfare government and is a problem of social psychology because corruption is a social disease that is difficult to cure. (Ermansjah, 2010)

Efforts to deal with corruption that are systematic and sustainable in several countries appear to be in stark contrast to the reality that is happening in Indonesia. This shows that the handling of corruption cases in Indonesia is still very slow and has not been able to deter corruptors. Although there are a number of institutions that have a role in dealing with criminal acts of corruption, including: the Police, the Attorney

General's Office, the Court of Corruption, the BPK, as well as the BPKP and also the Corruption Eradication Commission.

Law enforcement against criminal acts of corruption is very different from other crimes, partly because there are many institutions authorized to conduct judicial proceedings against criminal acts of corruption as mentioned in the first paragraph. This condition is a logical consequence of the predicate placed on the crime as an extraordinary crime. As a crime that is categorized as an extraordinary crime, the crime of corruption has extraordinary destructive power and damages the joints of the life of a country and a nation.

The position of the Corruption Eradication Commission can be compared to one another. It's just that, although his position is not higher, but much stronger. Its existence is implicitly stated in the law, so it cannot be abolished or disbanded simply because of the policy of the legislators. The Corruption Eradication Commission which was formed based on Law Number 30 of 2002 concerning the Corruption Eradication Commission is one of the extraordinary legal structures formed in the transitional era which still exists today. In many ways this institution has succeeded in providing shock therapy in eradicating corruption.

The emergence of the Corruption Eradication Commission when viewed from the point of view of institutional design is included in the "proportional model" framework, which is an institutional design that is based on the principle of the distribution of power, because according to one of the preambles above the consideration that the establishment of the Corruption Eradication Commission is due to the ineffectiveness of existing conventional law enforcement agencies . During the New Order regime, the working mechanism of conventional law enforcement agencies was inseparable from executive control and during this transitional period the existence of conventional law enforcement agencies experienced a crisis of legitimacy. (George, 2002)

Therefore the existence of the Corruption Eradication Commission in the legal system in Indonesia can be seen as a form of citizen control over the police, prosecutors and courts. The Corruption Eradication Commission or KPK is a state institution which in carrying out its duties and authorities is independent and free from the influence of any power. This is stated in Article 3 of Law Number 30 of 2002 concerning the Corruption Eradication Commission.

The Corruption Eradication Commission according to Article 3 of Law Number 30 of 2002 concerning the Corruption Eradication Commission is a State institution which in carrying out its duties and authorities is independent and free from the influence of any power. What is meant by any power is a power that can affect the duties and authorities of the Corruption Eradication Commission or members of the Commission individually from the executive, legislative, other parties related to corruption cases, or the circumstances of the situation or for any reason. While the purpose of establishing the Corruption Eradication Commission is to increase the usability and effectiveness of efforts to eradicate corruption.

The position of KPK is a state institution that is independent and related to judicial

power but is not under judicial power. In this case it is also emphasized regarding the status of the existence of a state institution, the Constitutional Court stated that in the Indonesian constitutional system, the term "state institution" is not always included as a state institution which is only mentioned in the 1945 Constitution of the Republic of Indonesia, or which formed based on constitutional orders, but there are also other state institutions formed on the basis of orders from regulations under the constitution, such as laws and even presidential decrees called Keppres.

Based on the position of the Corruption Eradication Commission as described above, it can be seen that this institution has more independence than the police and prosecutors. Even though this institution's authority includes the authority possessed by the police and the prosecutor's office, namely the authority to conduct investigations, investigations and prosecutions in criminal acts of corruption.

Theoretically, the existence of the Corruption Eradication Commission is an institution formed based on an order of law (Legislative entrusted power). The establishment of this institution in the transitional era was principally due to the public's distrust of existing conventional institutions such as the police, prosecutors and courts in eradicating corruption. This can be seen in one of the preambles to the establishment of Law Number 30 of 2002 concerning the Corruption Eradication Commission which says that government agencies that handle corruption cases have not functioned effectively and efficiently in eradicating corruption.

4. CONCLUSIONS

a. The criminal act of corruption is a part of Indonesian criminal law whose arrangements are outside the Criminal Code, KUHP. In addition, this crime has certain specifications that are different from general criminal law which are regulated in separate laws, namely: Law Number 31 of 1999 as amended in Law Number 20 of 2001 concerning Eradication of Corruption Crimes.

b. The position of the criminal act of corruption is one part of the special criminal law which has certain specifications that are different from the general criminal law, such as deviations from procedural law and when viewed from the regulated material. The Criminal Procedure Code, KUHAP for corruption that is applied is lex specialist in nature, namely the existence of deviations intended to speed up procedures and obtain investigations, prosecutions and examinations at court hearings

5. SUGGESTION

Considering that the criminal act of corruption is an extraordinary crime due to the fact that law enforcement arrangements are carried out using separate laws outside the Criminal Code, KUHP and the impact that has been very extraordinary for education, future generations, finance and the country's economy, prevention, control and eradication must involve all components of the nation or stakeholders.

EFERENCES

Books

Andi Hamzah, 2008, Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional, Jakarta: PT. Raja Grafindo Persada.

A. Siti Soetami, 2007, Pengantar Tata Hukum Indonesia; Bandung: PT Refika Aditama,

Andi Hamzah, 2008, Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional, Jakarta: PT. Raja Grafindo Persada.

Deni Styawati, 2008, KPK Pemburu Koruptor, Yogyakarta: Pustaka Timur

Ermansjah Djaja, 2010, Meredesain Pengadilan Tindak Pidana Korupsi Jakarta: Penerbit Sinar Grafika

Jeremy Pope, 2003, Strategi Memberantas Korupsi Elemen SistemIntegritas Nasional, Jakarta: Transparency International Indonesia dan Yayasan Obor Indonesia

Lilik Mulyadi., 2000, Tindak Pidana Korupsi (Tinjauan Khusus Terhadap Proses Penyidikan, Penuntutan, Peradilan Serta Upaya Hukumnya Menurut Undang-undang Nomor 31 Tahun 1999), Bandung: PT. Citra Aditya Bakti.

Moeljatno, 2002, Asas-Asas Hukum Pidana, Jakarta: Rineka Cipta.

Prinst Darwan. 2002. Pemberantasan Tindak Pidana Korupsi, Bandung: Citra Aditya Bakt

George JunusAditjondro. 2002. Korupsi Kepresidenan di Masa Orde Baru, dalam Mencari Uang Rakyat Kajian Korupsi di Indonesia. Yogyakarta: Yayasan Aksara.

Legislation

Kitab Undang-undang Hukum Pidana (KUHP)

Undang-Undang Nomor 31 tahun 1999 sebagaimana diubah dalam Undang-undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi.

Undang-Undang Nomor 19 Tahun 2019 tentang Perubahan atas Undang-undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi

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http://siyasahhjinnazah.blogspot.co.id

http://dorlan-harahap.blogspot.co.id