

## Legal Policy On Imposing Sanctions On Corruption Crimes In Indonesia

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### ABSTRACT

Corruption is currently one of the many major challenges that must be faced by the Indonesian nation. To some extent, corruption not only threatens the environment, human rights, democratic institutions and basic rights and freedoms, but also hinders development and exacerbates poverty. Based on the results of the study, it is known that; The legal regulation of corruption in Indonesia is regulated in Law No. 31 of 1999 as amended by Law No. 20 of 2001. In addition to imprisonment and fines, this law also regulates additional sanctions such as revocation of political rights and confiscation of assets. Additional sanctions aim to provide a deterrent effect, but their implementation is still hampered by inconsistent law enforcement and the difficulty of returning assets. The policy of sanctions for corruption crimes in Indonesia aims to provide a deterrent effect through principal and additional penalties, such as revocation of political rights and confiscation of assets.

**Keywords: Reformulation, Additional Criminal Procedure, Sanctions for, Corruption.**

### A. Introduction

The view on corruption is not only intended for civil servants, TNI, Police, BUMN (State-Owned Enterprises/ BUMD (Regional-Owned Enterprises) employees, central and regional parliament members or officials and judicial functionaries, conglomerates and private business entities, but can also be applied to all institutions and members of society with certain jobs that are directly or indirectly related to the public interest, for example advocates, public accountants, notaries and others.<sup>1</sup>

Efforts to eradicate corruption have been carried out in various ways, but the

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<sup>1</sup> Jeremy Pope, Strategi Memberantas Korupsi, Yayasan Obor Indonesia, Jakarta, 2003, hlm 21

results have not been satisfactory. One of the efforts to eradicate corruption is to use criminal law with its sanctions in the form of criminal penalties. The stipulation of criminal sanctions in corruption laws cannot be separated from one of the objectives to suppress and overcome the problem of corruption. On the other hand, corruption is increasingly widespread, which not only harms state finances, but also constitutes a violation of the social and economic rights of the wider community.

From a legal perspective, corruption crimes broadly include elements that include: unlawful acts, abuse of authority, opportunities or means of activities that are detrimental to the country's finances or economy. In a broad sense, corruption is the abuse of official office for personal gain. Corruption is a classic problem that has been around for a long time. The problem is that the legal reality in force in this country seems half-hearted and selective in efforts to eradicate corruption. Half-heartedness is seen from efforts to trap and pursue perpetrators of corruption and in determining the maximum punishment so that it can provide the right psychological effect. The punishment for corruptors who have been clearly sentenced by the judge is very light, so it can be said that it is not in accordance with their actions who have abused their power for personal or group interests. The punishment for corruptors does not have a deterrent effect on other potential corruptors.<sup>2</sup>

Corruption occurs when people start to separate personal finances from public finances. From most cases that occur in Indonesia, corruption actually represents the normative perception of capitalism, where there is a process of collusion that occurs between political elites and economic actors involving public interests and personal interests. In other words, corruption occurs when economic actors try to take advantage of the power held by political elites to pursue profits outside the actual process while the political elites themselves take advantage of the relationship to finance themselves and the political projects they are working on. Finding a solution

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<sup>2</sup> Setiadi, W. *Korupsi Di Indonesia*. (Jakarta: Fakultas Hukum Universitas Pembangunan Nasional (UPN)“Veteran”, 2018)

to the problem of corruption is difficult to do today. A complex problem that is very difficult to find common ground and the root of the problem for corruptors. If the government, political elites and bureaucracy and the behavior of the upper middle class did not live a luxurious lifestyle and were influenced by the demands of the times, perhaps corrupt behavior could be suppressed. Most of the elites who receive facilities and gratifications given by the people through taxes tend to be used by these people's representatives to be able to live a luxurious lifestyle. This kind of exclusive attitude is what should actually be eliminated as early as possible. Now it is appropriate for this nation to start thinking and making more intensive efforts to combat corruption, if necessary starting from the lowest strata and sectors of life that are not known to the general public. The principle of the presumption of innocence is no longer effective against corruption, and perhaps the principle of reverse burden of proof needs to be applied, and stricter and more consistent law enforcement against severe sanctions for perpetrators of corruption must also be carried out.

## **B. Research Methods**

Legal research is a series of systematic mechanisms in conducting research.<sup>3</sup> In this case, legal research is conducted to find solutions and answers to a problem that has been determined in the legal issue that is used as the object of research. The research method used to answer the problem. This research is a type of normative legal research.<sup>4</sup> This study uses secondary data sources. Secondary data sources, This research data consists of secondary data. Secondary data is data obtained from literature studies that are relevant to this study. Secondary data is "data sourced from literature studies (library research) related to publications, namely library data listed in official documents.

## **C. Analysis And Discussion**

### **1. Sanctions for Corruption Offenders in Indonesia**

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<sup>3</sup> Abdulkadir Muhammad. *Hukum dan Penelitian Hukum*. Cetakan I. (Bandung: Citra Aditya Bakti, 2004), hlm. 57.

<sup>4</sup> Jhonny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*. (Malang: Bayumedia Publishing, 2008), hlm. 47

Positive law defines criminal acts, what is meant by criminal acts are acts that violate the rules. While criminal law is the rules that have been set out in the law regarding the appropriate criminal penalties for the act. The term criminal act comes from the Dutch translation, which in Dutch is strafbaarfeit, what is meant by strafbaarfeit is a reality that can be punished, what is meant by punishable here is of course a human being for the actions he does. Many opinions interpret Criminal Acts or called strafbaarfeit. According to Simons, this strafbaarfeit is an act that violates the law, whether done intentionally or unintentionally, which is done by the person who must be held accountable. According to Simons, strafbaarfeit is also called een strafbaarfeit, meaning that in the law this act is threatened with punishment, which is contrary to the law and is done with error by the person who is then able to be held accountable for it.<sup>5</sup>

Based on the provisions of Article 43 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001, the special body is called the Corruption Eradication Commission which has the authority to coordinate and supervise, including conducting investigations, inquiries, and prosecutions. In Law No. 30 of 1999, there are types of criminal sentences that can be interpreted by judges against defendants of corruption crimes, namely against people who commit corruption crimes.

- a. Death Penalty The crime of corruption as referred to in paragraph 1 is committed in certain circumstances, such as when the country is in danger according to applicable laws, in corruption (recidivist), or when the country is in an economic and monetary crisis, then the death penalty can be imposed. The criminal threat is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty years) and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a

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<sup>5</sup> Rahmayanti Rahmayanti, 'Sanksi Hukum Terhadap Pelaku Tindak Pidana Korupsi Berdasarkan Hukum Positif Dan Hukum Islam', *Jurnal Mercatoria*, 10.1 (2017), 60

maximum of Rp. 1,000,000,000.00 (one billion rupiah).

b. Imprisonment:

- 1) Life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah) for anyone who unlawfully commits an act of enriching themselves or another person or a corporation that can harm the state finances or the state economy. (Article 2 paragraph 1).
- 2) Life imprisonment or imprisonment for a minimum of 1 (one) year and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of one Rp. 1,000,000,000.00 (one billion rupiah) for anyone who, with the aim of benefiting themselves or another person or a corporation, abuses the authority, opportunity, or means available to them because of their position or position that can harm the state finances or the state economy (Article 3).
- 3) Imprisonment of at least 3 (three) years and a maximum of 12 (twelve) years and/or a fine of at least Rp.150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp.600,000,000.00 (six hundred million) for anyone who intentionally prevents, obstructs or thwarts directly or indirectly the investigation, prosecution, and examination in court of suspects or defendants or witnesses in corruption cases. (Article 21).
- 4) Imprisonment of at least 3 (three) years and a maximum of 12 (twelve) years and/or a fine of at least Rp.150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp.600,000,000.00 (six hundred million rupiah) for anyone as referred to in Article 28, Article 29, Article 35, and Article 36.

- c. additional penalties (compensation), Confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including companies owned by convicts where corruption is committed, as well as goods that replace such goods. Payment of replacement money in an amount that is at most equal to the property obtained from corruption. There are several ways in which state losses occur, namely state losses related to various transactions: transactions in goods and services, transactions related to debts and receivables, and transactions related to costs and income. The three possibilities for state losses to occur give rise to several possible events that can harm state finances or the state economy:
- 1) Confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including the convict's company where the corruption was committed, as well as the property replacing the property.
  - 2) Payment of compensation in an amount that is at most equal to the assets obtained from the corruption.
  - 3) Closure of all or part of the company for a maximum period of 1 (one) year.
  - 4) Revocation of all or part of certain rights or elimination of all or part of certain benefits that have been or may be given by the government to the convict.
  - 5) If the convict does not pay compensation within a maximum period of 1 (one) month after the court decision that has obtained permanent legal force, his/her property may be confiscated by the prosecutor and auctioned to cover the compensation.
  - 6) In the event that the convict does not have sufficient assets to pay the replacement money, the convict will be sentenced to a prison sentence

that does not meet the maximum threat of the main sentence according to the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the eradication of criminal acts of corruption and the length of the sentence has been determined in the court decision.

## **2. Development of Returns Against State Losses**

The Process of Implementing the Return and Recovery of State Losses by the Prosecutor in Corruption Crimes, Regarding the procedures that can be applied for the process of returning/recovering state losses or returning the proceeds of crime in the form of assets. is of the opinion that the return of state assets/losses can be carried out through criminal, civil, and administrative or political channels. Based on the opinion of Purwaning M. Yanuar, regarding the efforts that can be implemented when returning state losses resulting from corruption.

In short, the author is of the opinion that an effort that can be implemented by law enforcers in recovering state losses due to corruption is as follows:

- a. Maximizing the Return of State Losses through Efforts to Confiscate and Trace the Assets of Defendants or Convicts, In eradicating corruption, the priority is not only to imprison the perpetrators of corruption, but also to return state losses. Efforts that can be made by law enforcers are to cooperate with local governments and village governments where the convicts have lived and settled so far. So that the existence of the convict's assets can be known and detected, whether in the form of land, buildings, business premises, workplaces or other assets of economic value. The Prosecutor's Office, the Corruption Eradication Committee, and the Police must also cooperate with banks regarding the convict's deposits in certain banks, and cooperate with the SAMSAT and the Transportation Agency to trace the defendant's assets in terms of ownership of a motor vehicle. Tracing the convict's assets is also carried out on the convict's siblings, the

convict's family and the convict's colleagues who are suspected of knowing about the defendant's assets. The confiscation action carried out by investigators is limited to property that is related to or the result of corruption committed by the suspect, while property that is not related to the suspect's corruption is only blocked to be confiscated during execution if the convict does not pay or pay off the replacement money as an addition. And the property that is confiscated and/or blocked can be confiscated and auctioned if the convict does not pay the replacement money or the convict prefers to carry out a subsidiary sentence rather than replace the state's losses.

- b. Convincing Convicts to Pay Replacement Money, Although in the legislation, if with the verdict the convict is unable to pay the replacement money, then he can be imprisoned. And the prosecutor can auction the assets confiscated from the convict to cover the state's losses, but if the assets auctioned do not cover the state's losses caused by the convict, then the convict is forced to serve a prison sentence in exchange for not paying the replacement money. If the convict prefers to carry out a subsidiary sentence rather than paying the replacement money, then the prosecutor's office will experience obstacles in terms of returning the state's losses if they do not have assets that can be confiscated from the defendant to cover the losses.
- c. Striving for the Community to Support the Eradication of Corruption, One of the elements that influences law enforcement is the community, therefore good law enforcement must involve the community to realize it. Because no matter how good the legal regulations are and how good the quality of officers and complete facilities are, if the community affected by the regulations does not grow awareness within themselves to comply with the regulations, then these three factors are useless.

- d. Providing Facilities and Infrastructure to Eradicating Corruption, One of the factors that influence law enforcement includes means or facilities to cover the performance of its educated and skilled human resources, organized, adequate equipment, sufficient finances, and so on, in this case the prosecutor's office in conducting investigations/eradicating corruption does not have wiretapping equipment, only the Corruption Eradication Commission (KPK) has and has the authority to carry out wiretapping. Without supporting means and facilities, it is impossible for law enforcers to play a maximum role. The prosecutor's office must cooperate with the Corruption Eradication Commission (KPK) which has wiretapping equipment and has the authority, so that efforts to eradicate corruption that occur can be maximized.

#### **D. Conclusion**

Legal policies related to criminal acts of corruption in Indonesia are designed to eradicate corruption firmly and comprehensively. Law Number 31 of 1999 which was amended by Law Number 20 of 2001 is the main basis for law enforcement against perpetrators of corruption. The policy of sanctions for criminal acts of corruption in Indonesia aims to provide a deterrent effect through principal and additional penalties, this must of course be responded to through reformulation of sanctions for criminal acts of corruption in Indonesia. However, its implementation is still constrained by the consistency of law enforcement.

## References

- Abdulkadir Muhammad. *Hukum dan Penelitian Hukum*. Cetakan I. (Bandung: Citra Aditya Bakti, 2004).
- Jeremy Pope, Strategi Memberantas Korupsi, Yayasan Obor Indonesia, Jakarta, 2003.
- Jhonny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*. (Malang: Bayumedia Publishing, 2008).
- Rahmayanti Rahmayanti, 'Sanksi Hukum Terhadap Pelaku Tindak Pidana Korupsi Berdasarkan Hukum Positif Dan Hukum Islam', *Jurnal Mercatoria*, 10.1 (2017).
- Setiadi, W. *Korupsi Di Indonesia*. (Jakarta: Fakultas Hukum Universitas Pembangunan Nasional (UPN) "Veteran", 2018).