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The Problematics of Unlawful Acts and Abuse of the Authority of Corruption Crimes and the Role of Corruption Court

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Abstract

The Corruption Eradication Commission (KPK) in Indonesia is demanded to be able to recover the state losses corrupted. The KPK continues to encourage leaders of state institutions and government agencies to be firm in their subordinates in order to prevent and crack down on acts of corruption indiscriminately. This paper examines the problematics of unlawful acts and abuse of the authority of corruption and its solutions by referring to the corruption crimes and Corruption Eradication Commission (KPK) role in Indonesia. By using descriptive analytical method, the results showed that some efforts can be made, such as the KPK continues to encourage the leadership of relevant state and government institutions to accelerate reforms and bureaucracy, from the central to the regions, through an application system that uses online mechanisms. That way, various modes of corruption such as in the procurement of goods and services, budgets, permits, and development projects will be stopped. As recommendation, the KPK leaders must be filled by elements from the police and prosecutors and judges who are professional. The presence of career judges who are experienced and professional in handling corruption will be more sensitive in determining suspects based on the results of the investigation, prosecution and defense of lawyers against the suspect or defendant.

Keywords: unlawful acts, abuse of the authority, corruption crimes, Corruption Eradication Commission, Indonesia.

1. Introduction

When the Corruption Judge did not really understand the meaning of "acts against the law" as regulated in Article 2 paragraph (1) of Law No. 31 of 1999 concerning Eradication of Corruption Crimes, it can harm the defendants. According to the explanation of the article, this includes both formal and material illegal acts. Even though the act is not regulated in the legislation, as long as the act is "reprehensible", not in accordance with a sense of justice or social norms, the act can be criminalized. When is the action called inappropriate and contrary to a sense of justice? What kind of justice? It is still abstract and relative. Justice should be factually concreted. If the act is not in accordance with and contrary to the norms of social life, even here the social norms are still abstract. Errors in violations of social norms must be proven concretely. Therefore, can unlawful acts that are contrary to customary law (unwritten regulations) be sentenced? This concept of thinking is very entangling and detrimental to the human rights of a suspect / defendant, as well as very disturbing to the sense of justice of the defendants.

Article 1 paragraph (1) of the Criminal Code which is a *legi generali* of the Corruption Act explicitly says "there is no act that can be convicted, if there are no legal rules that explicitly regulate it". How can we punish someone if the act is not regulated by law?. The question is whether the act of corruption is really an exception compared to other criminal acts. If this is the case, the formulation and phrases of this article should be concrete, not abstract, so as not to confuse law enforcement officials, especially judges. This article emphasizes that even if the act has not harmed the financial or economic condition of the state materially and factually, provided that corruption fulfil the elements of the act formulated by the public prosecutor's indictment, the act can be convicted. According to the author, this concept of thinking is very wrong and misguided, unless it is based on proof of material offense, that is, according to the legal facts revealed at the trial. This paper examines the problematics of unlawful acts and abuse of the authority of corruption and its solutions by referring to the corruption crimes and Corruption Eradication Commission (KPK) role in Indonesia. This study also examines the role of Corruption Court.

2. Corruption Cases and the Role of KPK in Restoring State Losses

Based on a hearing between the House of Representatives Commission III and the leadership of the KPK on July 1, 2019, the KPK still has arrears on cases that are detrimental to the country's finances, such as the BLBI case, e-KTP, procurement of medical equipment in Banten Province, procurement of helicopters in the Air Force. This includes corruption cases in the DPR and DPRD. Until the end of the 2015-2019 KPK leadership period, all of that was still unresolved. Not to mention cases of corruption in the field of policies that lead to criminal money laundering, corruption by selling influence, including the sale of positions, corruption in the procurement of goods and services in government institutions, corruption in licensing, and corruption in the development sector budgeting (Wibowo, 2018; Putra et al., 2020). KPK has not been able to completely prevent and eradicate these cases.

This happens because the KPK leadership has tended to run on its own, without involving solid cooperation between the police and prosecutors, including related institutions such as the Supreme Audit Agency (BPK), the Financial Services Authority (OJK), and the Transaction Reporting and Analysis Center Finance (PPATK). In fact, the KPK has a role as a trigger mechanism, which means that efforts to eradicate corruption by existing institutions have become more effective and efficient. Now, with the presence of the KPK Supervisory Board as mandated by Article 37B of Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the KPK, it is expected that the duties and authorities of the KPK leaders in the 2019-2023 period will run optimally, proportionally and professionally (Akbar, 2020).

Because the KPK in Indonesia is demanded to be able to recover the state losses corrupted by corruptors, the future KPK leaders must be filled by elements from the police and prosecutors and judges who are professional. The presence of career judges who are experienced and professional in handling corruption will be more sensitive in determining suspects based on the results of the investigation, prosecution and defense of lawyers against the suspect or defendant (Syamsudin, 2010). The Government and Parliament have changed Law No. 31 of 1999 became Law No. 20 of 2001. However, in particular Article 2 paragraph (1) which is the subject of the problem, the substance and explanation of the article have not changed at all. What changes is only the explanation of Article 2 paragraph 2 regarding "certain circumstances" which is not really our problem. It means that all the substance of the legal problems raised by the writer above still confuses law enforcement officials, even though it is clear according to the article.

3. Abuse of Authority in Corruption Crimes

On the contrary, there is a problem regarding the "abuse of authority" by state administrators, as regulated in Article 3 of the Anti-Corruption Law, which "can" result in state financial losses. Often these actions are not intended to enrich or benefit oneself, others, or corporations. However, it was still ensnared because of the "discretion" to "expedite the administration of government, fill the legal vacuum, provide legal certainty, overcome government stagnation in certain circumstances for public benefit and benefit" (vide Article 22 paragraph 2 of Law No. 30 of 2014 regarding Government Administration). However, in certain cases, the KPK prosecutor continued to blame the defendant until the Jakarta Corruption Court sentenced him guilty.

According to the author, changes in budget allocations cannot be criminalized, provided that the budget user first obtains approval from superiors (vide Article 25 paragraph 1 of the Law). However, the state administrators must still receive administrative sanctions (mild, moderate, or severe) from the employer concerned (vide Article 80 of Law No. 30 of 2014). Likewise, the application of Article 5 and Article 12 of the Anti-Corruption Law concerning criminal threats to grantor and receiver of gratuities, aka bribes. In practice, the trial does not really fulfil the sense of justice. Because, in general prosecutors demanded defendants, including judges in their decisions, always be more severe on state administrators / state officials as bribe recipients than bribe givers. Decisions such as this clearly damage the joints of justice, bearing in mind that there will never be a recipient of a bribe if it is not preceded by the presence of a bribe giver. If there is a bribery case, the penalty must be more severe to the giver than to the recipient. The legal logic is like that.

Because criminal events have occurred as Article 2 and or Article 3 or Article 5 and or Article 12 of the Corruption Act, the right solution to overcome this, the judge must also use the paradigm of Law No. 7 of 2006 concerning United Nations Convention Against Corruption (UNCAC), namely using a preventive, repressive, restorative, integral and comprehensive approach. The settlement of criminal cases that are restorative justice that leads to restoration back to its original state, for the sake of recovering losses / the country's economy as a whole, can empower Article 4 of the Corruption Law effectively and comprehensively.

According to Article 4 of the Anti-Corruption Law, if a defendant returns a state financial loss, the penalty is not written off. However, repayment of the loss was one of the factors that "lightened the sentence" of the defendant. However, often when the suspect / defendant returns the loss, the public prosecutor and judge continue to aggravate the defendant's demands or sentence, with the excuse: during the country's financial / economic control for many years, the state has been disadvantaged by the amount of interest the suspect receives / the defendant, so that it is very detrimental to the community. This kind of thinking is unrealistic and abstract. Judges' decisions must be concrete according to the fact of the actual loss that can be proven by authentic data from officials authorized to conduct financial audits. Therefore, it is better if the imposition of criminal law is the last resort (*ultimum remedium*). If the defendant's sentence continues to be aggravated, the defendant will not be willing to return the country's loss. If the state finances are not returned by the defendant, how much will the state be harmed? Because, in addition to the state must continue to pay salaries and honorariums of relevant law enforcement officials, severe punishment does not make corruptors give up and repent.

However, not all cases of corruption require a restorative justice approach. The conditions for the need for restorative justice are: First the act starts from an agreement. For example, bank credit or government procurement of goods and services. Second: the inner attitude that follows the actions of the perpetrator is not indicated by nuanced elements such as: deceit, manipulation, misrepresentation, concealment of facts, breach of trust, breach of trust, breach of trust, breach of trust subterfuge, and circumvention of regulations (illegal circumvention). Thus, the distributive justice approach in eradicating corruption is less relevant than the prevention and eradication of corruption by using a restorative justice approach.

4. The Role of Corruption Court

If a case such as mark-up is found, without any intention to patronize, the judge in decision of the Corruption Court should state that the Defendant was proven to have committed an act, but the act was not a criminal act, but an administrative act, so the Defendant must be released from the charge criminal (onslag) in accordance with article 191 paragraph 2 of the Criminal Procedure Code.

Thus, the implementation of fair law enforcement benefits can be felt, for comfort, order and peace in the life of society, nation and state (Hikmah & Sopoyono, 2019; Setiawan, 2020). As they are not afraid of being questioned by the Supreme Court Supervisory Agency or the Judicial Commission, finally the judge does not dare to sentence according to fair law enforcement. This is because the main objective of law enforcement is to guarantee justice through the aspects of legal benefit and certainty for justice seekers. Gustav Radbruch said that justice, expediency and legal certainty were the pillars of law enforcement (Leawoods, 2000). All three (namely justice, expediency, and legal certainty) are needed when we face legal issues. Therefore, law enforcement without a sense of justice, without the benefits and legal certainty of the state administrators through a state court decision, whether it is a general court decision, including Corruption, State Administration, Religious Courts and Military Courts, will only be a lip service. misery for justice seekers.

As is known, that a defendant can be convicted by the Corruption Court if it is proven to be detrimental to the financial / economic condition of the State. However, even if the suspect or defendant has returned the corrupted state's losses, the sentence will still be handed down even if it becomes a relief for the defendant, the prosecutor's or the judge's sentence will further aggravate the defendant's sentence. Prosecution and punishment like this clearly do not reflect a sense of justice (Rais, 2017; Yusni, 2020; Syarifuddin, 2020). Strangely, the judge was afraid to give a ruling under two-thirds of the demands of the public prosecutor, for fear of being examined by the Supreme Court Supervisory Agency and the Judicial Commission. In my opinion, if the judge is right and really provides legal considerations and decisions based on a sense of justice, why be afraid? That is the risk of the duties he is assigned as a judge. The purpose of supervision here is to ensure the accountability of professional and quality decisions. Unless there is an indication of the potential for KKN elements in making these decisions, that is the purpose of controlling by the Supreme Court MA and KY.

The importance of returning the money from corruption which is a financial loss / economy of the country's economy, rather than punishment as an ultimum remidium effort. This means that punishment is the last resort when the related party is not willing to return the results of the plunder or does not have assets that can be legally proven according to the law and is still stubbornly committing acts against the law.

This principle is relevant to Law No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (UNCAC) 2003. This convention enhances international collaboration specifically to track, freeze, confiscate, and recover assets resulting from corrupt acts placed abroad (Setiyono & McLeod, 2010; Weilert, 2016; Kumar, 2021). In addition, with this convention we can use a preventive approach and restorative justice integrally and repressively as the final act (*ultimum remidium*).

Because no matter how severe the sentence was handed down to the defendant, corruption still continues to plague all sectors and aspects of life. This is due to the ineffectiveness of the duties, authorities and obligations of the Corruption Eradication Commission as outlined in Article 6 of the Corruption Eradication Commission Law, which has been perfected by Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the KPK. The case of an electronic card (KTP) project is an example of corruption in the procurement of goods and services (PBJ) sector in Indonesia. Because the Corruption Eradication Commission has no expertise in handling cases, plus the absence of a criminal and financial / banking expert, the corruption case of the electronic KTP megaproject is still not finished. To this day this case still leaves various polemics because in addition to the value of the large losses, involving many government officials, both in the executive and legislative institutions.

5. Conclusion

State financial / economic losses are not explicitly determined by the amount in various regulations, as in Article 1 number 15 of Law no. 15 of 2006 concerning the Supreme Audit Board, Article 1 number 22 jo Elucidation of Article 59 paragraph (1) of Law no. 1 of 2004 concerning State Treasury, Elucidation of Article 32 paragraph (1) of Law no. 31 of 1999 concerning Eradication of Corruption, the definition only emphasizes the existence of formal losses that have the potential to harm state finances. However, the country's financial losses must be above billions of rupiah in real terms. Because Article 11 letter (c) of the Corruption Eradication Commission Law has explicitly stated that the Corruption Eradication Commission has the authority to carry out investigations, investigations and prosecutions of corruption regarding state losses of at least Rp1 billion. This loss can be proven through the supervision of the KPK with BPK, OJK, and PPATK, including the wider community.

With the first work program of KPK leaders in the 2019-2023 period, it is hoped that state and government institutions will be encouraged to continue to improve the system to break the chain of corruption in their work environment. Because, the KPK as a party that is trusted in preventing and eradicating corruption will continue to make every effort possible. Some efforts can be made, such as the KPK continues to encourage the leadership of relevant state and government institutions to accelerate reforms and bureaucracy, from the central to the regions, through an application system that uses online mechanisms. That way, various modes of corruption such as in the procurement of goods and services, budgets, permits, and development projects will be stopped. The KPK continues to encourage leaders of state institutions and government agencies to be firm in their subordinates in order to prevent and crack down on acts of corruption indiscriminately. This is done by strengthening supervision through a service system with a one-stop integrated service system (PTSP). In this way, meetings of applicants who have personal interests and have the potential to cause corruption can be prevented as early as possible. At the same time this can ensure there will be no more dirty games that break the law.

The KPK needs to continue to oversee every selection of strategic positions in government institutions. By doing so, it is hoped that the holder of this strategic position really deserves the position, not because of the KKN results. Because the position of KKN results will make the official do corruption again to return the money he gave as a bribe. From this habit, the KPK must be able to assess

the performance of relevant officials in as much detail as possible. Because if this dirty habit is still carried out in disguise, the Indonesian government system will continue to be undermined by acts of corruption that are difficult to cure. The KPK continue to oversee and monitor every state budget of the central government in the financing of facilities and infrastructure and infrastructure from the central to the regions. This is done in collaboration with BPK, OJK, and PPATK through an online system built by the KPK. Thus, leakage of state money in domestic and foreign government agencies can be eliminated.

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