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Research Article

Reconstruction of the Law on Criminal Acts of Corruption Toward the Prevention of Criminal Acts of Corruption

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Abstract.
Corruption is a criminal act against state finances that results in state and economic losses and hinders the progress of the nation and state, so that it is the state's commitment to eradicate and prevent corruption by making regulations and forming a corruption eradication commission, regulations in the form of corruption laws have changed from Law Number 3 of 1971 concerning the Eradication of Corruption, which is considered ineffective and requires changes to eradicate and prevent increasingly widespread corruption, so that Law Number 31 of 1999 concerning the Eradication of Corruption was passed to comply with the needs and developments of the law and to be able to make the corruption criminal justice system effective, but in line with the increasing cases of corruption that have become extraordinary crimes, changes were made to the corruption law which was then stipulated on November 21, 2021, namely Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption.

Keywords: criminal acts, corruption, reconstruction

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1. Introduction

That during the changes to the law on corruption crimes carried out from the enactment of Law Number 3 of 1971 to Law Number 20 of 2021, changes to the formulation of articles containing the definition of acts that can be qualified as criminal acts of corruption have become increasingly broad, affirmation of the return of state losses, calculation of fines, and the addition of the death penalty, but this is a legislative improvement that does not provide legal certainty in substance and juridically so that there are still multiple interpretations regarding the enforcement of the law on corruption crimes, namely the element of "enriching oneself or others or corporations". The word "enriching oneself" is not found in the explanation of the law, because it is considered clear enough, even though a certain measure is needed to assess whether a person by committing a criminal act of corruption can enrich himself or others or a corporation, the element of “enriching oneself” is actually the result of the ratification of the anti-corruption agreement by the UN in UNCAC through Law Number 7 of 2006, in Article 20:

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her legal income”. (Based on the constitution and the fundamental principles of the legal system of each member state, it should consider adopting in its legislative policy or other means as necessary to establish as a criminal offence any act of unlawful enrichment, committed intentionally, which causes a significant increase in the wealth of a public official, for which the perpetrator cannot rationally explain the extent of his legitimate income) ((UNCAC)).

Based on this understanding, it is necessary to prove the wealth of state administrators who have reported their wealth through LHKPN, this is also difficult to trace if not all of the wealth owned is reported. In addition, the element of “benefiting oneself or others or corporations” means the existence of facilities or conveniences as a result of acts of abusing authority.

So that the element of “enriching oneself or another person or a corporation” (Article 2 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001) and the element of “benefiting oneself or another person or a corporation” (Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001), are alternative elements so that the perpetrator of the crime of corruption does not need to enjoy the money from the crime of corruption himself because it is sufficient for the perpetrator to enrich another person or benefit another person.

Corruption cases since the last five years from the results of the case tracking system registered at the Corruption Court at the Pontianak District Court, there were 45 cases in 2019, 32 cases in 2020, 91 cases in 2021, then 47 cases in 2023 and in 2023 as many as 54 cases, with a total of 269 cases, the type of corruption that occurred 85% in regional government agencies related to the procurement of goods and services from agricultural agencies, fisheries, health services, education services, housing and settlement services and industry and trade services, the total state loss reached IDR 12,454,632,000, - (Twelve billion four hundred fifty four million six hundred thirty two thousand rupiah).

The defendants as state administrators in the prosecution were charged with committing the crime of corruption by jointly enriching themselves or other people or corporations which harmed the state's finances and economy as contained in Article 2 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. This article is the primary charge and Article 3 and Article 5 paragraph (1) and paragraph (2) are subsidiary charges used by the public prosecutor to ensnare the defendants.

The difference in articles used as alternative charges results in a choice for judges in giving a verdict against the defendant, around 90% of judges' decisions state that the defendant is not proven guilty of committing a criminal act as stated in the primary charge, but is proven to have committed a crime in the subsidiary charge, so that a verdict of imprisonment for a certain period of at least 1 year, a fine of Rp. 50,000,000, - (Fifty million rupiah) is the verdict most often given to defendants, this is certainly not in line with the concept of preventing and eradicating corruption as an extraordinary crime.

The criminal objectives for crime prevention can be divided into (Arief., 2005):

a. Special prevention (speciale preventie) or Special Prevention That the influence of criminal law is directed at the convict, where this special prevention emphasizes the purpose of criminal law so that the convict does not repeat his actions again. Criminal law functions to educate and improve the convict to become a good and useful member of society, in accordance with his dignity and honor.

b. General Prevention (Generale Preventie) or General Prevention General Prevention emphasizes that the purpose of criminal law is to maintain public order from criminal disturbances. The influence of criminal law is directed at society in general with the intention of intimidating. This means that the prevention of crime that is intended to be achieved by criminal law is by influencing the behavior of members of society in general not to commit crimes.

Punishment is not imposed quia peccatum est (because people make mistakes) or ne peccetur (so that people do not commit crimes), so it is quite clear that this objective theory seeks to create order in society.

Eradicating corruption is a mandate of reform and has become a commitment of the Indonesian nation as stated in MPR Decree XI/1998 concerning governance free from collusion, corruption and nepotism (Lopa Baharudin). In order to eradicate corruption that has become ingrained in the lives of citizens, the participation of all members of society is very important, both in the form of providing evidence and information (Teguh Sulistia and Aria Zurnetti, 2011). Without full participation and support for government efforts, law enforcement officers or commissions formed by the government to eradicate corruption will fail completely, especially in efforts to save state finances.

The imposition of criminal sanctions by judges on perpetrators of violations is based on the legal rules that have been violated by the perpetrator, where the legal rules in Indonesia do not contain any laws and regulations that contain definite criminal sanctions that can be imposed, but if they do not contain maximum words, they will contain minimum words, so that judges in imposing sentences will range from the criminal sanction rules contained in the regulations violated by the perpetrator.

The law gives judges the freedom to impose a sentence between the minimum and maximum sentences threatened in the relevant criminal article, depending on their assessment of how severe the appropriate criminal sentence is to be imposed on the defendant according to the severity of the defendant's guilt in the criminal act committed.

The meaning of eradicating corruption is all forms of corruption in the form of state financial losses, bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement and gratification, so that the maximum penalty should be applied as an effort to overcome and prevent corruption, because as we know that criminal law is the ultimum remedium for law enforcement, especially concerning corruption which is an extraordinary crime, but with the choice of articles as an alternative, a reconstruction is needed in the corruption law.

2. Methods

Legal research method is a systematic way of conducting research. Furthermore, Soerjono Soekanto explains that “Legal research is a scientific activity, which is based on certain methods, systematics and thoughts, which aims to study one or several specific legal phenomena, by analyzing them”. This research uses normative and sociological juridical methods, with primary data in the form of interviews and field observations, normative and sociological juridical approaches with qualitative analysis.

3. Results and Discussion

A conceptual framework or theoretical framework is a theoretical or conceptual framework for thinking about the problem being researched (Rianto Adi, 2010). In simple terms, a conceptual framework maps out how the concepts and variables in the research being conducted relate to each other.

3.1. Reconstruction

It is rebuilding or restoring something based on the original event, where the reconstruction contains primary values that must remain in the activity of rebuilding something according to its original condition. For the sake of rebuilding something, whether it is an event, past historical phenomena, to the concept of thought that has been issued by previous thinkers, the obligation of the reconstructors is to look at all sides, so that then something that is being rebuilt is in accordance with the actual situation and avoids excessive subjectivity, which can later obscure the substance of something that we want to build ((ed), 2002).

Based on this, in this research, the reconstruction that will be built is a system renewal in the application of corruption crime laws to effectively prevent an increase in corruption crimes.

3.2. Regulation of the Corruption Crime Act

a. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the formulation of criminal acts of corruption is regulated as follows:

1) Any person who unlawfully carries out acts to enrich himself or another person or a corporation which may harm state finances or the state economy (Article 2).

2) Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him due to his position or position or means available to him due to his position or position which may cause losses to the State or the State economy (Article 3).

3) Committing a criminal act according to articles 209, 210, 387, 388, 415, 418, 419, 420, 423 and 435 of the Criminal Code.

4) Any person who gives a gift or promise to a civil servant in consideration of the power or authority attached to his position or position or by the person giving the gift or promise is deemed to be attached to said position or position (Article 13).

5) Any person who violates the provisions of the law expressly declares that the violation of the provisions of the law constitutes a criminal act of corruption and the provisions regulated in this law apply (Article 14).

6) Any person who attempts, assists or conspires to commit a crime of corruption shall be punished with the same penalties as referred to in Articles 2, 3, 5 to 14.

7) Any person outside the territory of the Republic of Indonesia who provides assistance, opportunity, means or information for the occurrence of a criminal act of corruption shall be subject to the same punishment as the perpetrator of the criminal act of corruption referred to in Articles 2, 3, 5 to Article 14.

8) In addition to being subject to criminal penalties under Article 2, Article 3, Article 5 and Article 14, the accused may be subject to additional penalties as referred to in Article 18.

In addition to expanding the definition of acts that can be qualified as corruption, it also emphasizes that the return of state financial losses or the state economy does not eliminate the criminal penalty for the perpetrator of the crime of corruption (Article 4). However, if the return of the proceeds of the crime of corruption is done voluntarily without any external elements before the case is known to the public or law enforcement, then this cannot be used as a basis for prosecution. Then, the return that is done voluntarily should be treated as unlawful in a negative function. In this law, there is an aggravation, namely for criminal acts committed in certain circumstances, the threat of punishment can be in the form of the death penalty (the state is in a state of emergency, during a natural disaster, repeated acts of corruption and in a monetary crisis).

b. Law Number 20 of 2021 concerning Amendments toLaw Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption

Corruption crimes are formulated in thirty forms/types of corruption crimes in 13 articles. Corruption acts regulated in this law are grouped into seven forms such as state financial losses, bribery, embezzlement in office, extortion, fraudulent acts, conflict of interest in procurement and gratification.

3.3. Concept of Prevention of Corruption Crimes

In the effort to eradicate and prevent criminal acts of corruption in Indonesia, the efforts to improve regulations reflecting the level of seriousness of the government in eradicating corruption are not yet serious or still half-hearted, but through Law Number 24 Prp of 1960 concerning Investigation, Prosecution and Examination of Corruption Cases, an operation called Operation Budi was carried out to investigate ABRI employees who were considered to have committed corruption. Then in 1967 after the New Order was born, an institution tasked with eradicating corruption was formed. Starting with President Soeharto's speech on August 16, 1967, which essentially criticized the Old Order government, the Corruption Eradication Team (TPK) was formed through Presidential Decree Number 228 dated December 2, 1967, consisting of the Attorney General with an advisory team of the Minister of Justice and the Commander of the Army, Navy, Air Force and the Chief of Police at that time. The Corruption Eradication Team not only took action against corruption but also actively made prevention efforts so that corruption would not occur again.

Then on January 31, 1970, Soeharto issued Presidential Decree Number 12 of 1970 concerning Commission Four as a replacement for the previous Corruption Eradication Team. The Commission Four team was chaired by Wilopo with members IJ Kasimo, Johannes, Anwar, Tjokrominoto and M. Hatta as advisors. After four months of carrying out its duties, in July 1970 the Commission Four team was disbanded by Presidential Decree 50 of 1970 without any follow-up to the reports given to the government. In 1977 through Presidential Instruction Number 9 of 1977, President Soeharto launched a four-year operation. The purpose of the operation was due to the many illegal levies carried out by state officials. Some of the cases that were successfully uncovered in the operation were corruption cases at the National Police Headquarters with 4.8 billion in embezzled money, the Pluit case by Ending Wijaya who took 22 billion in state money and the Arthaloka case by PT MRE as a real estate company.

The demand for eradicating corruption or more precisely KKN/Collusion, Corruption and Nepotism is increasingly being voiced. Along with the amendment of the 1945 Constitution and the elimination of the dual function of the ABRI and the birth of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 as a replacement for Law 3 of 1971. Several corruption eradication institutions that have been formed (Collection, 2009):

Commission for Auditing the Wealth of State Officials (KPKPN 1999).

Joint Team for the Eradication of Corruption Crimes (TGTPK 2000-2001). Through Government Regulation (PP) 19 of 2000, it was determined that TGTPK with the top coordination was at the attorney general, it turned out that this team was also disbanded because based on the results of the judicial review of PP 19 of 2000 to the Supreme Court, it turned out that the team could only legally work if it was protected by a legal umbrella in the form of a law.

Corruption Eradication Commission (2002 – present with Law No. 30 of 2002 concerning the Corruption Eradication Commission); Although the initial birth of this institution that acquired the KPKPN caused pros and cons among politicians at that time, with the mandate of Article 43 of Law 31 of 1999, Law 30 of 2002 was formed with which the KPK was given the authority to coordinate and supervise, including conducting investigations, inquiries, and prosecutions for corruption crimes.

The Corruption Eradication Coordination Team (Timtas Tipikor 2005-2008). Formed based on presidential decree number 11 of 2005 on May 2, 2005

3.4. Concept of Punishment

The concept of punishment is part of the criminal justice system contained in criminal laws and regulations governing criminal sanctions, related to punishment, The definition of punishment is interpreted broadly as a process of giving or imposing a sentence by a judge, so it can be said that the punishment system includes all provisions of the law that regulate how criminal law is enforced or operationalized concretely, so that someone is subject to sanctions (criminal law). This means that all laws and regulations regarding Substantive Criminal Law, Formal Criminal Law and Criminal Implementation Law can be seen as a single criminal system.

Criminalization is the process of applying punishment, which is suffering in nature, the discussion of punishment is based on two aspects, namely punishment which is of legal substance and the application of punishment in the process of enforcing criminal law. The study of punishment and punishment will be based on the Criminal Code (lex generalis) and corruption laws and regulations (lex specialis), namely Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption.

Article 103 of the Criminal Code has determined that the criminal penalties applicable in the criminal law regulations in Indonesia are the corruption laws and regulations formulated in Article 10 of the Criminal Code, namely (1) principal penalties, including the death penalty, imprisonment, detention and fines, (2) additional penalties, including the revocation of certain rights, confiscation of certain goods and the announcement of the judge's decision, as well as special corruption laws and regulations, namely Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The criminal punishment system used in Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, namely:

1. Cumulative Sentencing System.

The system of applying criminal penalties comprehensively to more than one crime, by using the word "and", for example threatened with "imprisonment and fine", then the imprisonment is combined with the fine. The cumulative criminal penalty system is formulated in Article 2 paragraph (1), Article 3, Article 5, Article 6, Article 9, Article 10, Article 12, Article 12A paragraph (2), and Article 12B paragraph (2) of Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

2. Alternative Sentencing System.

The criminal punishment system is based on the choice of punishment, using the word "or," for example threatened with "imprisonment or fine", then there are 2 (two) choices, namely imprisonment (single) or fine (single). The corruption law in Indonesia does not formulate an alternative punishment system independently (single), but the alternative punishment system is formulated in a cumulative-alternative combined punishment system or an alternative punishment system for the same type of punishment, namely imprisonment, formulated in Article 2 paragraph (1), Article 3, Article 12, Article 12 B paragraph (2).

3. Combined Cumulative and Alternative Sentencing System.

The criminal application system is based on 3 (three) criminal options, using the word "and or," which can be applied in a limited (single) manner, cumulatively with the word "and," alternatively with the word "or." For example, if threatened with "imprisonment and or a fine", then there are 3 (three) criminal options, namely imprisonment (single/limitative), fine (single/limitative), imprisonment and a fine (a combination of two criminals/cumulative). The combined cumulative-alternative criminal system is formulated in Article 3, Article 5, Article 7, and Article 11.

The above sentencing system uses a sentencing pattern based on the criminal limit which is determined with certainty in one sentence (closed limitative) or minimum and maximum size (open limitative), so that there are 2 (two) limitative sentencing patterns, namely:

a. Closed limited sentencing is a sentencing system with a single limited sentencing pattern, for example the application of the main sentence in the form of the death penalty, a fine for corporations, as formulated in Article 2 paragraph (2) and Article 20 paragraph (7) of Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

b. The open limited sentencing system is a sentencing system with a limited-open sentencing pattern, for example, a minimum prison sentence of 4 years and a maximum of 20 years, or a fine of at least Rp 200,000,000 and a maximum of Rp 1,000,000,000. The limited sentencing pattern is marked by the sentence “shortest/least-longest/most”, it must not be below and above the specified sentence. The open sentencing pattern is marked by the “choice between” in the sentence “shortest/least-longest/most”, but it must not be below and above the specified sentence. The open limitative sentencing pattern is formulated in Article 2 paragraph (1), Article 3, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 12 A paragraph (2), and Article 12B paragraph (2).

4. Conclusion

Reconstruction of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption to suit the needs and developments of the law and to be able to make the corruption criminal justice system effective, but in line with the increasing cases of corruption which have become extraordinary crimes, changes were made to the law on criminal acts of corruption which were then stipulated on November 21, 2021, namely Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Reconstruction of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is a form of optimization of Prevention of state losses is an effort to avoid or reduce the risk of state financial losses caused by various factors, including corruption, abuse of authority, and inefficient practices in state financial management. This prevention involves various aspects, such as improving governance, increasing transparency and accountability, and strengthening the supervision and law enforcement system.

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