

Enriching and/or Profitable Phrases in Criminal Actions of Corruption Related to Criminal Decisions of Corruption

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Abstract

The judge decision in criminal case of corruption is practically happen by disparity case. Therefore, the problem of punishment is not only important for judge and the process of criminal justice, but also the law process entirely, especially in the term of law construction. This research is normative research so the data collecting is done through literary study and qualitative analysis. The result of this research shows that: 1) the regulation of corruption case eradication, there is no explanation include an explanation about element of enrichment or advantageous but, there is law opinion can be parameter of "enrichment" element in corruption case namely how much the national detriment which has been abused by suspect act. 2) The implementation of enrichment and advantageous element by judge in the future is the threat given in the form of incompetence to do in law.

Keywords

judge decision; corruption; enrichment; advantageous; national detriment/national loss



I. Introduction

Corruption that is happening in Indonesia today, is already in a very serious position and is rooted in every aspect of life. The development of corrupt practices from year to year is increasing, both in terms of quantity and amount of state financial losses as well as in terms of quality, which is increasingly systematic, sophisticated and has broadened its scope in all aspects of society. The increase in uncontrolled corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. The rise of corruption cases in Indonesia no longer recognizes the boundaries of who, why, and how. It is not only officials and interests who commit criminal acts of corruption, both in the public and private sectors, but corruption has become a phenomenon. As the opinion of Nyoman United Putra Jaya, which states that corruption is not only carried out by state officials, among state administrators, but also state administrators with other parties, such as families, cronies and businessmen, thus destroying the joint social, national and state life. as well as endangering the existence of the state.

Corruption is an act that can not only harm the state's finances but can also cause losses to the people's economy. Barda Nawawi Arief is of the opinion that a criminal act of corruption is a very despicable act, condemned and really hated by most of the people; not only by the people and nation of Indonesia, but also by the people of the nations of the world.

The development of corruption in Indonesia is still relatively high, while its eradication is still very slow. Romli Atmasasmita stated that corruption in Indonesia has become a flu virus that has spread throughout the government since the 1960s. Furthermore, it's said that corruption is also related to power, because with that power the ruler can abuse his power for personal, family and crony's interests.

Corruption is an extraordinary crime, because it can damage the joints of state life. However, in reality, the punishment for the perpetrators is very light compared to the criminal threat, giving rise to the assumption that the increase in crime is caused by judges giving lighter sentences to perpetrators of corruption. Therefore, it is better if the action taken by the court is an "ultimum remedium" against violators/criminals, especially corruption.

In practice, there are still things that are neglected, due to the consideration of the judge's decision which does not clearly and unequivocally distinguish the nominal value of state losses lost due to the convict's actions. In essence, the judge does not distinguish the meaning of the element of enriching and/or benefiting himself or another person or corporation for every corruption case he decides, resulting in a disproportionate sentence. In addition, the judge in his decision also did not consider the existence of criminal acts of corruption that harm state finances or the state economy and corruption that harms state finances or the state economy. Such differences must be stated by the judge in his decision, So that there is a clear classification between criminal acts of corruption that are detrimental to state finances or the state economy (there has been a state loss or reduced state finances), and corruption that is detrimental to the state (there isn't a state loss or state finances being still as before., not reduced)

So that there is a clear classification between criminal acts of corruption that are detrimental to state finances or the state economy (there has been a state loss or reduced state finances), and corruption that is detrimental to the state (there isn't a state loss or state finances being still as before., not reduced). Furthermore, the court in passing the decision to give criminal sanctions to corruptors turned out to give different punishments between one perpetrator and another. In other words, there is a disparity in punishment, namely the application of unequal punishments for the same crime.

Therefore, the issue of sentencing is not only important for judges and the judicial process. The pattern of punishment is very important for the legal process as a whole, especially in terms of law enforcement. One of the elements that must be possessed so that the law enforcement process runs smoothly is high trust and respect for the law. Most likely it won't be achieved if the sentence variation is too big. This also concerns the issue of comparability, which is usually expected to come from the court as an institution or the judiciary as a process. As long as institutions don't pay attention to consequences and penalties, it will be difficult to build public trust in the courts. It is the hope of most people that the verdict handed down will really bring about a significant change in corruption cases that have destroyed the foundations of social and state life.

II. Research Methods

This type of research is normative research. This study uses a case approach. The research location is the Surabaya Corruption Court. The data sources used are primary data sources, secondary data sources and tertiary legal sources. The data obtained in this study is by means of literature studies. All data that has been identified and collected is analyzed qualitatively.

III. Results and Discussion

3.1 Limiting the Value of State Losses Included in the Enriching and/or Profitable Category in the Crime of Corruption

Corruption, which is qualified as an extraordinary crime and is considered rooted and even a system, is a problem that must be faced together as a nation. The damage caused by these crimes has undermined the foundation of the nation's life, which has broad implications for trust in government and community leadership. The rampant corruption that occurs in Indonesia is a major obstacle to attracting foreign investors to invest in Indonesia. This becomes a very big difficulty in efforts to build the economy, because corruption is rampant from the lowest level of government to the highest level of government, making planning and implementing economic development something that cannot be designed properly and appropriately. Corruption is said to have taken root in society. The public has also lost faith in the honesty and sincerity of government officials. This is the result of research conducted by Ravikanth B. Lamani and G. S. Venumadhava which mentions corruption has infected every sphere of modern life. It has vitiated the moral values of the society and the police force cannot be an exception. In fact, corruption of police is not a new phenomenon, but the irony is that the issue has seldom been seized by the organization with a sense of seriousness.

Corruption has resulted in a fairly high level of state economic and financial losses. Therefore, it can be said that corruption is a violation of human rights, namely the collective rights of the community. As a result of which, people become poor and their rights are hampered in obtaining economic progress due to the inability of the government to implement our development.

Regarding the element of "harming the state's finances", law enforcement officials cooperate with relevant agencies, namely the BPK or BPKP, which helps investigators calculate state losses. In general, corruption is the abuse of authority and power for the benefit of oneself or a particular group, so that the main variable in corruption is power. In other words, those who have power, especially over public resources, will have a great opportunity to commit acts of corruption, whereas in the context of regional autonomy, criminal acts of corruption occur after the decentralization of power to the local level.

However, financial or state economic losses (state losses) are not a condition for the occurrence of criminal acts of corruption. Article 2 is not perfect, but the consequences of state losses can arise from acts of enriching oneself against the law. This measure can cause harm based on experience and logic/reasons of people in general by paying attention to various aspects surrounding actions that are categorized as enriching oneself.

Since the loss does not need to arise, it is sufficient according to common sense that an act can cause state losses without mentioning and mentioning the existence of certain forms and amounts of state losses, as in material crimes. To prove that it can harm the state, it all depends on the ability of the judge to analyze and assess the aspects that accompany or surround the actions in the series of events that occurred.

However, there is a judge's decision that contains legal considerations regarding the nominal amount of state losses, namely Decision Number 76/Pid.sus-TPK/2021/PN.Sby. 76/Pid.sus-TPK/2021/PN.Sby The Panel of Judges on that occasion did not provide a limit to facilitate the category/measurement of the value of "enriching" as a criterion in determining limits and benchmarks that distinguish between the criteria for the element "enriching" and the criteria for the element "enriching". profitable".

However, the element of "detriment to state finances" must be regulated in the provisions of the laws and regulations regarding corruption, especially for the nominal

amount of the loss. Therefore, to eradicate corruption effectively, it is necessary to have statutory provisions that meet the minimum requirements, namely having a clear and easy-to-understand editorial and a measurable nominal value of state losses. In addition, political will is also needed for every element of society, especially for state officials who are trusted to act in managing state finances so that they are not careless and greedy.

3.2 Application of Enriching and/or Profitable Elements By Judges in Future Corruption Crimes

The final decision on a criminal case in the Criminal Procedure Code is submitted to the Judge and the Judge will make a decision based on valid evidence plus his belief. The judge's decision ideally will provide justice for all parties, as well as provide benefits and legal certainty, although in reality it is not easy to accommodate justice between the defendant and the community who are harmed simultaneously, because justice is related to subjective feelings, whose benchmarks are very relative. Although it is difficult to find the right parameters to determine justice in carrying out their judicial authority, judges have freedom/independence guaranteed by the constitution and law.

Therefore, a special standard of action is needed for handling corruption crimes, because implementation in the field will vary. This depends on the independence of judges in handling corruption cases. The understanding that can be used as a guide is the provisions of the law on judicial power that oblige judges to explore, follow and understand the values of justice that live in society and the provisions that outline that judges' decisions must reflect a sense of justice for the Indonesian people. At present, the perception of justice that is desired by the public, among which is the prevention and eradication of corruption, is serious and consistent. Besides that, it is also guided by the objective condition of the nation, which has suffered state financial losses and has caused tremendous suffering in all fields due to corruption. Referring to these matters, it can be determined that the emphasis is between justice for the accused and justice for all persons who have been deprived of their rights to reach the right decision.

Therefore, in addition to assessing the legal facts in court by considering various matters in accordance with the provisions of the legislation and current decision-making practices, the impact of corruption in the form of large losses suffered can be taken into consideration as a first step. Judges' consideration in making decisions, every decision in corruption cases. Decisions on corruption cases are based on the idea of emphasizing public justice, not seeking popularity. Nor is it forced to impose punishment in every corruption case, because whatever the facts and circumstances, it will be very dangerous if in the end there is abuse/arrogance of power. On the other hand, if, in the decision of a corruption case, the judge also carefully considers the justice of the defendant and the justice of the community as long as the decision is made fairly, then this is not considered a failure of the judge in fighting corruption.

The occurrence of criminal disparity is caused by the judge's perception of the philosophy of punishment and the purpose of sentencing plays an important role in imposing a crime. One judge may think that the same deterrence goal can only be achieved by imprisonment and fines, but on the other hand, with the same goal, another judge will argue that the imposition of additional penalties would be more effective. A judge will impose a heavier sentence, because based on statutory regulations the punishment must be in accordance with his actions. On the other hand, the judge will impose a lighter sentence, because the judge believes that the sentence must be in accordance with the person.

Courts have an important role in law enforcement and justice. This is because, as people who carry out activities in the field of justice, judges must equip themselves with

values that develop and live in society about the meaning of justice, in addition to mastering written legal norms. However, however ideal a conception may be, the human factor behind it is of equal importance. Thus, it is hoped that the role of the judiciary can be useful as a forum in terms of: a) providing legal services, legal protection and justice for the community. b) As a place of embodiment of honesty, nobility, cleanliness and a sense of responsibility towards fellow human beings, the state and God. c) As the most important and last place for law enforcement and justice.

Judges, as part of the judiciary, have a very important role in upholding the rule of law. In the explanation of Law Number 4 of 2004 concerning Judicial Power, it is stated that the freedom of judges in exercising their judicial power is not absolute. Because the task of the judge is to uphold law and justice based on Pancasila. The task of the judge is carried out by interpreting and looking for the basics and principles that form the basis for the cases he handles, so that the decisions taken reflect a sense of justice.

But in fact, it is not uncommon for decisions made by judges to be controversial. It is said to be controversial, because the criminal sentence against one of the perpetrators of corruption is heavier while the other perpetrators are given a lighter sentence, even though the article violated is the same.

According to the Criminal Procedure Code, the judge in the trial process is the leader. This position gives them the right to regulate the course of the trial and take action in the event of interference in the trial. For the sake of the decision, the judge has the right and is obliged to collect information from all parties, especially from witnesses and defendants, including their legal advisors. The position of an honorable judge is balanced with a heavy responsibility. It is said to be difficult, because he must realize that, because of his oath of office, he is not only responsible to the law, to himself and to society, but also must be responsible to God Almighty. Therefore, in the context of his responsibilities, it is considered important for a judge. Not only as a skilled officer to improve his ability in the technical field of law (judicial), but also his personality must also reflect the authority that he is God's representative in resolving all disputes he faces.

The judge who is the leader in the effort to apply the law for justice in the trial must be aware of his responsibilities so that when he acts and acts, not only accepts, examines and then makes decisions, but also that from all his actions he is always directed to bring about justice based on the Almighty God. One. This is what judges must realize in court proceedings as well as the realization of their responsibilities.

Meanwhile, Bismar Siregar stated that the task of the judge is as an element of law enforcement in order to law as a tool of engineering In the era of Indonesia's development, it is obligatory to formulate legal values that live in society which are considered by the community to be disturbing the balance and must be punished, but in the written legal provisions there are no rules.

It is known, corruption cases are currently increasing with actors involving state and state officials being harmed by up to billions of rupiah. Thus, the punishment for perpetrators of criminal acts of corruption should be the maximum criminal punishment. But in reality, law enforcement in corruption cases is still not effective. Court decisions are generally still far below the maximum criminal limit stipulated in the law. Judges in making decisions related to corruption cases apply penalties that are quite far below the maximum criminal provisions in the Corruption Eradication Law. Furthermore, the court in imposing a decision on giving criminal sanctions to the perpetrators of criminal acts of corruption is different or the application of the punishment is not the same for the same crime.

Various factors are behind this occurrence, although normatively the judge's considerations are based on legal facts submitted by the public prosecutor which are formulated in the indictment. The factors that cause differences in the imposition of criminal charges are as follows: (1) Sourced from the law itself. The factor of the difference in the imposition of a crime comes from the law itself. Although it can be justified ideologically, it has weaknesses related to "judicial discretion" which is too broad due to the absence "sentencing standards". In this case, it is about the meaning of the words "enrich" and "beneficial", as well as the nominal limit of state financial losses in the category of enriching or profitable in corruption. (2) That factor comes from the judge himself. Judge's perception of philosophy of punishment dan the aims of punishment play's an important role in criminal prosecution. A judge may think that this goal can only be achieved by imprisonment, but on the other hand, with the same goal, another judge will argue that the imposition of a fine would be more effective. In addition, the difference in sentencing is also related to the personality, values and attitudes of judges. As is well known, the decision-making process of judges in certain cases requires careful consideration and thought. (3) Other factors. For example, in this case, the factors of gender, recidivism and age. Women tend to be punished with lighter sentences and are rarely sentenced to death. The punishment for recidivists will be more severe and even, according to the Criminal Code (Articles 486, 487 and 488) it can formally be used as a legal basis to strengthen the sentence.

Whereas in the Criminal Procedure Code, the final decision of a criminal case is submitted to the Judge and the Judge will make a decision based on valid evidence plus his belief. Ideally, the judge's decision will provide justice for all parties, even at the same time providing benefits and legal certainty, despite the fact that it is not easy to accommodate justice between the defendant and the injured community at the same time, because justice is related to a "subjective sense" whose benchmark is very strong. relatively.

There is a difference in the judge's decision and the verdict handed down seems light when compared to the provisions of the law governing criminal acts in the corruption eradication law. In fact, judges in making decisions must pay attention to 3 important elements, namely: justice, legal certainty, and expediency.

Soerjono Soekanto said that legal certainty is certainty because there is law and certainty in the law itself. Legal certainty demands the creation of general regulations or generally accepted legal rules. To create a safe and peaceful atmosphere in society, this method must be firmly enforced and implemented. Next up is justice. Justice is a harmonious state that brings peace to the hearts of people, which, if disturbed, will cause shock. While the benefits of the law are to avoid shocks in society, so that the law creates certain relationships in society.

With the criminal disparity, the sense of justice in society has not been achieved. The purpose of the law that provides benefits has also not been achieved because the perpetrators of corruption have not decreased but have increased in number. As for legal certainty, that with the conviction of perpetrators of criminal acts of corruption has provided legal certainty for the community. This is intended so that the perpetrators of crimes must be punished according to the offense they committed, even though the punishment does not reflect the community's sense of justice.

Therefore, in order to achieve justice in society, it is necessary to revise the corruption eradication law in the future. The revision of the Corruption Eradication Law should be more frightening for potential corruptors when committing corruption crimes. Several revisions that need to be made include: a) criminal threats must be rational and proportional, meaning that criminal threats must be adjusted to the consequences of the

crime itself. b) The threat of capital punishment for the perpetrators of corruption crimes that harm the state finances is at least Rp. 1,000,000,000.00 (one billion rupiah) and c) additional criminal threat in the form of inability to act according to the law for each criminal decision handed down to the perpetrator of a criminal act of corruption with a total loss of at least Rp. 500,000,000.00 (five hundred million rupiah).

It is important to revise the Law on the Eradication of Corruption Crimes, considering that corruption has recently become increasingly troubling to the public. Therefore, the government must immediately revise the laws and regulations, because corruption that continues without serious handling is feared to damage the order of state life in Indonesia. This is in accordance with the results of research conducted by Eureka Mujaj (2013). From the results of his research, it is stated that "corruption is seen as an increasingly noticeable phenomenon in our society which seriously affects the lawful state, democracy and Human Rights. After the great political, social and economical changes which took place in Albania after 1995, the phenomenon boosted. With the approval of the new Penal Code, more precisely in law 7895 date 27.01.1995, there was the legal basis which sanctioned Corruption as a penal offense. Yet, with time it needed to be improved and amended. This was largely due to the insufficiency of the actual legal basis to prevent or eliminate this problem".

Corruption is a very dangerous thing in the course of a government, even more dangerous than the impact of losses caused by natural disasters and wars though. This is because the danger of corruption can destroy the structure of the state to the smallest part of a sovereign government, and destroy the spirit of unity and integrity that is increasingly being eroded. People's aspirations to eradicate corruption and other forms of irregularities are increasing, because in reality corruption in Indonesia is currently happening systematically and widely. This is because corruption is not only detrimental to state finances, but also violates the socio-economic rights of the wider community, which in turn has an impact on the emergence of crises in various fields, including in the political, social and economic fields.

IV. Conclusion

First, the definition of the element of enrichment and/or profit in a criminal act of corruption does not contain any information included in its explanation in the Act. Article 2, paragraph (1) regulates the element of "enriching", and in Article 3, concerning the element of "benefit", if you look at the provisions of Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. However, in the explanation section of the Anti-Corruption Law, it does not explain the criteria for "enriching" and/or "profitable" elements, it only states that in order to achieve the goal of preventing and eradicating corruption more effectively, this corruption law contains criminal provisions that determine punishment. certain minimum sentences, higher fines, and the death penalty. Nevertheless, there is a legal opinion in the Criminal Decision of the Surabaya District Court Number 76/Pid.sus-TPK/2021/PN.Sby which can be used as a benchmark for the element of "enriching oneself or other people or corporations. state that has been abused/diverted by the defendant's actions. Regardless of the use of state finances for the benefit of the defendant himself or the interests of others as well as for the purposes desired/unwanted by the defendant, it is not necessary to pay attention to the increase in the defendant's wealth, but the impact of the large state losses which greatly affect the disruption of the development and economy of the country/region.

Second, the limit on the value of state losses which are included in the category of enriching and/or profiting in criminal acts of corruption is not regulated by law. However, there is a judge's decision that includes legal considerations regarding the nominal amount of state losses, namely Decision No. 76/Pid.sus-TPK/2021/PN.Sby In legal considerations, the criminal decision In the Surabaya District Court no. Corruption case. 76/Pid.sus-TPK/2021/PN.Sby, the Panel of Judges on that occasion did not provide a limit on state losses to facilitate the category/measurement of the value of "enriching" as a criterion in determining limits and benchmarks that distinguish between the criteria for the element of "enriching" . with the criteria of "favorable" elements.

Third, the application of elements that are enriching and/or beneficial by judges in the punishment of criminal acts of corruption in the future are: a) the criminal threats imposed must be rational and proportional. This means that the criminal threat must be adjusted to the consequences caused by the crime itself. b) the threat of capital punishment against the perpetrators of criminal acts of corruption that harm the state finances of at least Rp. 1.000.000.000,00 (one billion rupiah). c) additional criminal threats in the form of incompetence against the law for every criminal decision handed down to perpetrators of criminal acts of corruption with a state loss of at least IDR 500,000,000 (five hundred million rupiah).

Meanwhile, based on the conclusions as stated above, it can be suggested to the government to revise the Law on the Eradication of Corruption Crimes. This needs to be done so that there is clarity of information, especially regarding the meaning of enrichment and benefits, as well as a benchmark for limiting the nominal amount of state losses. In addition, it also revised the threat of the death penalty for corruptors.

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