

RECONSTRUCTION OF CRIMINAL SANCTIONS ON CORRUPTION BASED ON DIGNITY JUSTICE THEORY (Case Study On Corruption Court Decision)

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Abstract

As a universal form of crime, corruption can not be termed as a new problem in matters of law and economics for a Nation. The development of corruption in Indonesia at this time is very dangerous development and hamper prosperity in achieving levels of Indonesian society. Corruption affects civil servants and law enforcement officers. There are several factors generally understood to mobilize human intentions to commit corruption. In other words, there habit of consumptive life. Buy goods that are not so required. There is no shame in social life with all the luxuries that do not fit the job profile. Coupled with no fear of God because of the lack of religious foundations and many other factors that are trusted public can influence a person committing corruption. The idea for the reconstruction of criminal sanctions against perpetrators of corruption based on values of justice with dignity can be realized by studying the court decision corruption case. The idea of such reconstruction is motivated by, among others, the urgency of public policy according to the law of the importance of a step in the eradication of corruption more quickly and effectively in a superb tackle extraordinary crime.

Keywords: *Corruption, Justice Theory, Reconstruction Criminal Sanctions.*

A. Introduction

The idea of reconstruction of criminal law in the perspective of Dignity justice theory (hereinafter abbreviated as dignified Justice). Justice dignified, also is jurisprudence emphasizes the base values of justice according to law. Such as maintaining balance and proportionality in law. Balance desired in criminal law, for example visible from the goal through

regulation and sanctions to give legal protection to the public interest without compromising the interests of individuals, both victim and offender are also in Dignity Justice are required to watch human dignity as a noble creation of God Almighty¹.

¹ In-depth discussion of the Theory of Dignified Justice, proposed in the (infra) is also in: Teguh Prasetyo, 2015, *Hukum berbasis Keadilan Bermartabat*, First Edition, Nusa Media, Bandung, It is about criminal law justice-oriented, ie fairness or justice in the sense of

The idea as mentioned above can also be perceived as a immediate need. Said to be urgent, given the need for it is commonly understood, and it is also stated above, that corruption is an extraordinary crime in Indonesia. Corruption as an extraordinary crime that has spread and spread in the community, and needs to be eradicated effectively and efficiently; or reduced as far as possible, among others through the deterrent effect and the threat of criminal sanctions against the perpetrators of criminal acts such extraordinary crimes.

The need for a legal means to eradicate corruption is right, it is also motivated by the development of a sort of a belief that corruption in Indonesia is like a malignant cancer diseases. Disease called corruption is potentially shut down the system and harmony of a body, in this case meant by "body" is, namely the Republic of Indonesia. It said the Homeland as a body, because it is similar (analogous) with a micro

providing protection against human dignity as a noble creature citaan God Almighty was in line with the main legal value of Pancasila as the soul of the nation (Volksgeist) Indonesia and the highest; the source of all sources of law first. It is one of the important postulates Dignity Justice Theory used in this dissertation research as a grand theory,

system is intact, the body and soul of a human being (people).

Homeland body and soul, the body and soul (Volksgeist) of Indonesia in fact continues to be haunted by the increase in the number and quality of the corruption in Indonesia continues to increase from year to year. As already hinted above, that the development and improvement of corruption that undermine the public system, the nation and the state, and therefore must be confronted with the legal system. Improvement of the quality and quantity of corruption as a criminal offense remarkable was not only seen in terms of number of cases of corruption. The improvement can also be seen from the amount of state financial losses incurred by the evil called corruption. Increased corruption can also be seen in terms of quality. As an outstanding criminal offenses, crimes of corruption carried out more systematically.

All the picture abstraction above demonstrate that the practice of corruption in Indonesia is very rooted in fact tend to be cultural. Corruption marked by abuse of authority or unlawful act that is considered normal.

According to the research institute Political and Economic Risk Consultancy (PERC) and Transparency Internastional Indonesia always occupy the country with the title of the most corrupt in Asia in 2010 and 2011.² In the report it was stated that the crime of corruption has some special properties, namely as a form of white collar crime.³ Other special properties, as well as corruption is usually done jointly or done in an organized manner (corporatif). Corruption is also a special crime because it is usually done by a sophisticated modus operandi so hard proof. Therefore their means, in this case the legal means, including criminal sanctions against the perpetrators to eradicate corruption, which is the very root, is felt not enough. Needed extension of the concept acts of corruption committed by the subject of law and increased efforts to restore financial loss or non conventional state.

Recapitulation of corruption per August 31, 2016, the Commission to make the handling of corruption with the details; investigation of 61 cases,

58 cases of investigation, prosecution of 46 cases, inkraft 41 cases, and the execution of 53 cases.⁴

This condition is very worrying because corruption is still a major issue in various media and scrutiny and comments never cease. Indication of the strengthening of government corruption ditataran apparatus indicates weak management by the government both at central and local levels of power to remote villages.

B. DISCUSSION

Indonesian Encyclopedia mentions the word corruption comes from the Latin, namely corruption or corruptus. The meaning of these two words, ie bribery. Alternatively, it can also mean corruptore, which means destroyer. In a word destroyer that there are symptoms which officials, state agencies abuse their authority with bribery, fraud, and other irregularities.⁵ Whereas in French the word corruption is called corruption. In Dutch copied or corruptien corruptie term

2 Indonesian Transparency Society, 2005, *Behind The Constitutional Court Palu*, Jakarta.

3 The term was raised by Sutherland, 1997, *The White Collar Crime*, West Publishing, New York, p., 1.

4 Anti-corruption Knowledge Portal, 2016.

5 Evi Hartanti, 2005, *Korupsi*, Sinar Grafika, Jakarta, p., 8.

that means containing deeds corrupt and bribery.⁶

According to Act No. 24 (Prp) of 1960 on Investigation, Prosecution and Investigation of Corruption are listed in the State Institutions No. 72 of 1960 the formulation of the notion of corruption consists of two major groups. There are also two terms of corruption is comprised of:

First Large group. In this group, the corruption is subdivided into five types, namely: a. any person who acts unlawfully enrich themselves or another person or entity that directly or indirectly, a financial or economic harm State or known or reasonably suspected by him that the act was detrimental to the State finances or the economy of the State. b. Whoever with the intention of enriching himself or another person or entity, abuse of authority, opportunity, or means available to him because of the position or positions, directly or indirectly detrimental to the finances or the economy of the State. c. Anyone who committed crimes listed in Articles 209, 210, 387, 415, 416, 417, 418, 419, 420,

423, 425, 435 of the Criminal Code. d. Whoever gives a gift or promises to civil servants referred to in article 2 by considering a power or an authority attached to the office or the giver of gifts or promises that are considered inherent to the position or that position. e. Any person who without reasonable excuse, in the shortest possible time after receiving gifts or promises given to him, as mentioned in Article 418, 419 and 420 of the Criminal Code does not report the gift or pledge to the authorities. Second Large Group, which consists of a provision, that whoever attempted or conspiracy to commit criminal acts mentioned in paragraph (1) a, b, c, d and e Article on top. Any person who without reasonable excuse, in the shortest possible time after receiving gifts or promises given to him, as mentioned in Article 418, 419 and 420 of the Criminal Code does not report the gift or pledge to the authorities. Second Large Group, which consists of a provision, that whoever attempted or conspiracy to commit criminal acts mentioned in paragraph (1) a, b, c, d and e Article on top. Any person who without reasonable excuse, in the shortest possible time after

⁶ Adami Chazawi, 2005, *Petisi Hukum Pidana dan Korupsi di Indonesia*, Media Publishing, Malang, p., 1

receiving gifts or promises given to him, as mentioned in Article 418, 419 and 420 of the Criminal Code does not report the gift or pledge to the authorities. Second Large Group, which consists of a provision, that whoever attempted or conspiracy to commit criminal acts mentioned in paragraph (1) a, b, c, d and e Article on top.⁷

In addition to the various notions about corruption as noted above, various attempts have been made to eradicate corruption. However, already mentioned above also, that the results achieved in reality is still far from the expected. But we realize the effort to eradicate corruption is not as easy to reverse the hands. Even the Corruption Eradication efforts have been carried away from the time of independence of the Republic of Indonesia. The existence of two provisions of the legislation which specifically regulates the resulting corruption in the period between 1960 through 1998. The two provisions that proves the Government and the State did not remain silent in the field of Combating Corruption. Legislation include:

1. Act No. 24 / Prp / 1960 on the Investigation, Prosecution and Investigation of Corruption;
2. Act No. 3 of 1971 on Corruption Eradication.

Besides the two laws mentioned above, the State through the People's Consultative Assembly passed a law in the form of MPR Decree No. XI / MPR / 1998 on the Implementation of the State Clean and Free from Corruption, Collusion and Nepotism. The Act gives the mandate to the organizers of the State concerned, especially the good law enforcement that police, prosecutors and the judge as an instrument in Combating Corruption.⁸

Regulation is made jointly between the law enforcement agencies. The regulations in question, such as: Decree of the President of the Republic of Indonesia Number 11 Of 2005 concerning the Establishment of the Coordination Team for Eradication of Corruption; Government Regulation

⁸ Arief Wahyudi Hertanto and Nurul Arief Wicaksono, 2007, *Antara Tindak Pidana Korupsi dan Upaya Hukum*, Pelita Press, Jakarta, p.23.

7 *Ibid.*

No. 19 Of 2000 on the Joint Team on Corruption Eradication; Instruction President of the Republic of Indonesia on December 9, 2005 No. 4 of 2005 on the Acceleration of Corruption and has formed an ad hoc Timtastipikor team led by Deputy Attorney General for Special Crimes Attorney General of the Republic of Indonesia which is responsible directly to the President;

In addition to making strict rules about corruption in law, Indonesia is also actively participating in the efforts of the International Society for the prevention and Combating Corruption. Evidence of the activity of Indonesia in combating corruption at the international level, namely by the signing of the United Nations Convention against Corruption (UNCAC). International convention for destroying corruption was signed on December 18, 2003. The signing was done at the headquarters of the United Nations. The Convention was adopted on the 58th session of the General Assembly through resolution No. 58/4 on October 31, 2003.

Ratification of the Convention, as noted above is a national commitment to improve the image of Indonesia in the international political arena. Another important meaning of the ratification of the Convention are:

- a. to improve international cooperation, especially in the tracing, freezing, seizing, and recover assets to corruption stationed abroad;
- b. improve international cooperation in realizing good governance;
- c. increase international cooperation in the implementation of the agreements on extradition, mutual legal assistance, the delivery of prisoners, the transfer of criminal proceedings, and law enforcement cooperation;
- d. encourage the establishment of technical cooperation and exchange of information in the prevention and Combating Corruption under the umbrella of economic development cooperation and technical assistance in the sphere of bilateral, regional, and multilateral;
- e. and harmonization of national legislations in preventing and

Combating Corruption in accordance with this Convention.⁹

Aside from some of the legislation governing the Corruption Eradication included in material criminal law as mentioned above, the State of Indonesia also generally have the Criminal Code (criminal procedure law), which is known as Formal Criminal Law. Code of Criminal Procedure regulates how the state through the tools of power should act to criminalize and convict. Criminal Procedure Law serves to seek and find the truth of the material through the process of proving, before the judge reached the decision and then the decision is implemented. In another sense, the Criminal Procedure Code serves to run or maintain Criminal Law Petition. The ultimate purpose of such a law, namely achieve order, security, peace.¹⁰

Criminal Procedure Code is part of public law which essentially maintains criminal law materially. Therefore, the nature of the Code of

Criminal Procedure is the coercive provisions. The purpose of such a nature, that is to protect the common interest in maintaining a sense of security, peace and peace in social life. In addition, the nature of the Criminal Procedure Code has a dimension of human rights protection. Dimension it requires the Indonesian criminal procedure law should protect the interests and rights of the person being prosecuted as a suspect or defendant.

Code of Criminal Procedure requires that the person being processed and prosecuted law are treated fairly. The will is aiming to avoid the mistakes in judging someone (error in persona). The Will it also aims to uphold the presumption of innocence. It dictates that the will of people prosecuted in accordance with applicable law and subject to punishment in accordance with the evidence revealed in advance of the trial, and so forth. All of it, as a logical consequence of the realization and the State of Law

9 Explanation of Act No. 7 of 2006 on the UNCAC (United Nations Convention).

10 Andi Hamzah, 1983, *Pengantar Hukum Acara Pidana Indonesia*, Ghalia Indonesia, Jakarta, p., 18.

must guarantee and protect the human rights of each citizen.¹¹

Code of Criminal Procedure current can not be separated from its historical context in the Indonesian Criminal Procedure Code before the colonial period. At first the applicable law in Indonesia is customary law or the unwritten law. While the common law itself is a reflection of the scattered laws of the soul of the nation (*Volksgeist*) Indonesia. Such a law is a sign of the Indonesian nation will beam over the centuries. The soul of the nation was raised and lives and preserved in the midst of society.

Historical linkages contemplated above is visible from the Dutch Colonial era. At that time, there were changes in legislation in the Netherlands. With the principle of concordance change was imposed also in Indonesia on May 1, 1848. At that time in Indonesia known some regulations codification of Criminal Law, such as the Reglement op de Rechtelijke Organisatie (RO. Stb Stb jo 1847-23 1848-57). The rules governing the organizational

structure of the judiciary. There is also Inlands Reglement (IR Stb 1848 Number 16) which regulates the Criminal and Civil Procedural Law at the trial for those who belong to Indonesia and East Foreign population. Similarly there Reglement op de Strafvordering (Stb. 1849 number 63), which regulates the provisions of Criminal Law for the European population groups and equalized. While landgerechtsreglement (1914 No. 317 jo Stb Stb. 1917 No. 323) set the event in front of the court and hear the case-a case summary to all segments of the population. Besides the rules above, in the colonial era ordinances also apply to areas outside Java and Madura are set separately.¹²

In application of the Criminal Procedure Code is still necessary implementing rules set by each institution (of the police, prosecution and courts). Also in development now, mainly as a result of the influence developments that affect the technology weapons verification system, the existing arrangement

11 *Ibid*, p., 22.

12 *Ibid*, p., 46-47.

seen in the Criminal Code is no longer sufficient. The views and the development of values that exist in the community, both in the national and global environment also affect the ways of tackling crime or crimes so complex. So that later resulted in various procedures that are specifically made, as opposed to the Criminal Procedure Code and regulated in the various legislations. Such a development, requires the government then to revise the Criminal Procedure Code after nearly thirty-four years imposed. Currently the draft Criminal Procedure Code has been completed, then the proposed discussion and approval in the House.

In connection with the above description, it should be noted also that the criminal justice system (SPP) in Indonesia adopted the principle of justice is done with a simple, fast and low cost / light. The principle that all pursuant to Article 4 (2) of Act No. 14 Of 1970 About the Basic Provisions on Judicial Authority. Currently the Act was amended, and the principle can be found in Article 2 (4) of Act No. 48

Of 2009 concerning Judicial Authority.

Elucidation of the article refers, mean that a simple examination and settlement is done efficiently and effectively. While the light is defined as the cost of court fees that are accessible to the public. However, the principle is simple, fast and low cost in the examination and completion of a court does not rule precision and accuracy in the search for truth and justice.

There is a judgment that has become common knowledge that in reality the practice proves that it's ideal in principle very different or even run counter to this principle. Including aspects regarding the status of the legal subject Witnesses who want to look for the idea that there may be directly used as a defendant, who became a focal concern of this study.

In the practice of criminal proceedings in Indonesia found many cases protracted handlers, especially at a time in the investigation phase. For the case that the level of proof is difficult as

in the case of corruption may still be able to understand the presence of obstacles, such as searching for evidence and the evidence on the level of investigation. Constraints it has become because it needs a long time to achieve the desired results. Generally understood among investigators, that there are difficulties in conducting examination of witnesses. That's because it takes the difficulty of finding witnesses or other technical constraints.

In this regard which also shows there are still obstacles to the prolonged investigation, which is when the handling of corruption cases which are clear points explained. Intended to sign or bright spots, namely the bright spots in the handling of corruption cases.

It needs to be further described as follows. In the treatment, at the level of investigation, someone already established as a suspect by investigators. The man has also been submitted to the public prosecutor to serve the defendant by the judges in the court. Similarly,

the evidence. The goods are in fact already shown in court. Similarly, evidence such as witnesses, have been examined in court. Furthermore, the other bright point mark, which had no support in the form of approval of judges and lawyers on the status imposed on the defendant. However the reality in the ongoing process in the trial court obtains new facts.

Similarly, in the trial was realized that indeed these facts already described the Public Prosecutor in the Indictment. The Public Prosecutor indictment, namely that in addition perpetrators criminally accountable as the defendant there are witnesses who have a good role as doenplegen or medeplegen in doing Corruption concerned. Corruption, according to the Prosecution conducted by the legal subject status as a witness in the trial together with legal subjects that are drafted by the defendant.

Further than that, even in the indictment referred to, the possibility that a corporation can also serve as a place to receive and deposit the money flow from the evil Corruption.

Nevertheless, all the signs that light, especially the natural person who conceptualized by witnesses or corporations which have a role as well Medeplegen Doenplegen or as beneficiaries of the corruption money has not done the investigation by the investigator.

If the investigation conducted against legal subjects who participate in witness committed the crime together defendant as set forth in the description of the signs or bright dots above, it can definitely be protracted or time consuming for the settlement in question. It's been which a code, if the investigator will call the witnesses. Redialing the purpose, which is to do the examination that will be poured in the dossier (BAP). Next will be the beam delivery phase one to the Public Prosecutor for investigation. It resulted in such witnesses will be called again by the investigator. Dealing then occur such as back and forth. Similarly, the provision of witness testimony would be done anyway back and forth,

In this case if the witness be examined live or remain near the

distance. Thus, to meet the investigator calls so it's not a problem. However, if the domicile or residence distant witness, then these witnesses would cost a lot. Or, if the witness does not come then investigators will be constrained by distance and cost. That caused investigators who will come to witness. Moreover, if the witness would be examined are abroad. The final thing that can lead to a certainty that the investigations budget will swell. The occurrence of inefficiencies, ie what constitutes a violation of the principle of justice that is fast, simple and low-light, as stated above.

In other parts, there are also other obstacles. For investigators who will carry out the filings, it certainly costs a lot. Therefore, it will result in swelling of the state budget to meet the needs of investigators in conducting the investigation. So, when in the case using a technical expert in evidence, the expert will also be repeatedly called. All of which can lead to a certainty that the state will issue a budget to finance these experts.

In addition to the obstacles in the investigation process can also be ascertained terliat also in the process of prosecution. What happens at the level of investigation it will be repeated again at the level of prosecution. Will take place at the level of repetition in the form of calling prosecution witnesses. Again, repetition so it obviously is an inefficiency or violation of law, that is a violation of the principle of justice that have been mentioned above. Repetition can be ascertained at the prosecution level will cost very much. Especially when handling corruption cases.

There are still other obstacles. Currently in handling cases of corruption, the Corruption Court only in the provinces. It would be difficult for the public prosecutor in the District areas. The Prosecution was going back and forth to hear the case. if the area of the District Court where the Public Prosecutor to be located away from the province, it then led to a certainty, that the need for the cost of a very high cost.

In connection with the handling of the case by the Attorney Commission, the Public Prosecutor at the Commission who hear a case in the region will require a transport aircraft, for flight from Jakarta to the regions. So, again it certainly is inefficient because it requires a very high cost. In fact, when examined closely, the case described above is a case which is actually just a matter development.

Intended by the development of the case, namely that the case was already done in the process of evidence in court proceedings. Meanwhile, if the development of the case against the witness legal subjects which have a role along with the defendant in the legal subject of corruption if not done the legal process, then it will not achieve a fair law enforcement. Intended to non-achievement of justice, namely that substantive justice will not be realized.

Continues the handling of criminal cases of corruption that had been put forward in the above mentioned, in Act No. 8 of 1981 About the Code of Criminal

Procedure (Criminal Procedure Code) is not set how to implement the principle of justice is done with a simple, fast and low cost / light. Likewise with the Criminal Procedure Code Bill being discussed in Parliament. Both of them do not regulate how to implement the principle of justice is done with a simple, fast and low cost / lightweight.

C. CONCLUTION

As an extraordinary crime, corruption, in addition to the constraints outlined above, should also be considered that in the law in Indonesia, both criminal and civil, it is known that there are two subject Law is composed of human (naturlijk persoon) and corporate as a legal entity and not a

legal entity (rechts persoon). Subject Law of the executor or supporters of rights and obligations. In that sense, all the conditions applicable to the human subject (naturlijk persoon) should be able to apply to the subject corporation (rechts persoon).

The idea of such reconstruction is motivated by, among others, the urgency of public policy according to the law of the importance of a step in the eradication of corruption more quickly and effectively in a superb tackle extraordinary crime. In other words, the corporation as the subject is not immune from the law, except concerning criminal deprivation of liberty.

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