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Formulation of Prosecution of Corruption Criminal Acts Based on Justice Values

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Abstract. *The implementation of the authority of the public prosecutor's criminal prosecution in handling non-corruption cases tends to be low, does not have a clear benchmark and the range of punishment for corruption crimes in the Corruption Law is far. So that there is potential for abuse of authority in handling corruption crimes. The purpose of this study is to determine the prosecution of perpetrators of corruption crimes; analyze the basis for the public prosecutor's considerations in determining the severity of criminal charges against defendants in corruption cases; analyze the formulation of prosecution of perpetrators of corruption crimes based on the value of Justice in the future. The approach method used in this research is the normative legal method, The results of this study are (1) The current regulation of corruption in Indonesia has been regulated through Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which stipulates corruption as an extraordinary crime with a law enforcement approach involving various institutions such as the Prosecutor's Office, Police, and Corruption Eradication Committee. Although law enforcement efforts have been carried out through investigation, inquiry, and prosecution mechanisms, the effectiveness of this regulation still faces challenges such as disparity in sentences, high costs of handling small corruption cases, and weaknesses in proving state losses. (2) The basis for consideration by the Public Prosecutor in determining the severity of criminal charges against defendants in corruption cases includes aspects of legal certainty, justice, and benefit, as regulated in the law, the Attorney General's Circular, and legal principles. These considerations include the magnitude of state losses, the impact of corruption on society and the environment, and the extent to which the defendant enriches himself or others. (3) Stipulating a firm minimum penalty is necessary to prevent disparities in sentencing and provide a deterrent effect, while sentencing guidelines must be designed so that judges have a clear basis for considering factors that mitigate or increase sentences.*

Keywords*: Criminalization; Corruption; Prosecutor's*

1. Introduction

The crime of corruption in Indonesia has entered the acute area or can be said to be at a very low point. Corruption is not only carried out together, but has been carried out systematically by parties in the hope of enriching themselves or others. Rampant corruption is a form of resistance to the law carried out by some communities or a small number of

certain members of society who hide behind power or authority for their personal interests by harming state finances.[1]

The powerlessness of law enforcement officers in this case makes it increasingly clear that criminal acts of corruption must be stopped immediately. Restoring trust in law enforcement officers must be implemented immediately. A great sense of desire for law enforcers must be aroused. The existence of this extraordinary corruption certainly hinders the sustainability of development in Indonesia. Criminal acts of corruption as an extraordinary crime that threatens the ideals of the state that requires more serious legal handling,[2]How can corruption be everywhere, it has hit Indonesian society and has entered all levels of society, as if there is no longer any fear, shame or sin for those who commit the crime of corruption.

The authority of the prosecutor in prosecuting corruption crimes can be seen in Article 39 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and is strengthened through Law Number 11 of 2021 concerning the Prosecutor's Office, especially in Article 30C.

In the examination stage in the Court hearing led by the Judge, the submission of charges is one of the parts in that stage, the submission of charges is regulated in Article 182 paragraph 1 letter (a) of the Criminal Procedure Code, which states that after the examination is declared complete, the Public Prosecutor files a criminal charge. The submission of this charge is based on a series of facts revealed in the trial into a construction of the actual event and the event is analyzed legally by the Public Prosecutor, Legal Counsel and Judge according to their respective points of view. By the Public Prosecutor this analysis is included in a letter called a letter of charge (requisitoir).[3]

In the indictment, among other things, considerations are included in submitting the criminal charges consisting of aggravating and mitigating factors for the defendant. At the end of the indictment, the Public Prosecutor will state the criminal charges against the defendant. In material criminal law, there is a specific maximum limit for the threat of punishment stated in each formulation of the crime, as well as a general minimum limit for the threat of punishment referring to Article 12 paragraph (2) of the Criminal Code (KUHP). So that in submitting a criminal charge, the prosecution revolves around the specific maximum limit and the general minimum limit for the threat of punishment, except for criminal provisions that specifically regulate the specific minimum limit for the threat of punishment.[4]

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[1]Ismail Prabowo, Fighting Corruption with a Sociological Approach, Dharmawangsa Media Press, Surabaya, 1998, p. 26

[2]Faisal Santiago, Strategy for Eradicating Corruption Crimes, Sociological Legal Study, Lex Publica Journal, Vol 1. No. 1, 2014, pp. 57-68

[3]Dimas Indianto Wahyudi (et. al), Implementation of Basic Considerations of Public Prosecutors in Determining the Severity of Criminal Charges Against Defendants in Corruption Cases (Study at the Semarang District Attorney's Office), Diponegoro Law Journal, Vol. 10, No. 1, 2021, pp. 96-107

[4]Ismail Syam (et. al), Legal Analysis of Public Prosecutor's Considerations to Determine the Severity of Charges Against Defendants in Narcotics Crimes (Study at the Bener Meriah Prosecutor's Office), Vol. 4, No. 2, 2023, pp. 100-111

The Public Prosecutor's considerations in determining the charges are 2 (two), namely: considerations that can be aggravating and considerations that can be mitigating. The Public Prosecutor's demands submitted at trial greatly influence the decision (verdict) handed down by the Judge against the Defendant.

The implementation of the authority of the public prosecutor's (JPU) criminal prosecution in handling non-corruption cases tends to be low, does not have a clear benchmark and the range of punishment for corruption crimes in the Corruption Law is far. So that there is the potential for abuse of authority in handling corruption crimes. This causes implications of legal uncertainty and justice in every criminal prosecution and a decrease in the level of public trust. Many criminal charges are not commensurate with the corruption crimes committed by the perpetrators so that they do not provide a deterrent for people who want to commit corruption.

Success in carrying out the authority of criminal prosecution including eradicating corruption is not seen from the number of corruption cases tried. But from the success of providing benefits to the lives of the community in the form of benefits of justice and legal certainty. As well as benefits of welfare and benefits of protecting the economic human rights of the community. Therefore, the Public Prosecutor must understand about justice in implementing the law which must be based on Pancasila as the highest legal principle.

The purpose of this study is to determine the current regulation of corruption crimes; to analyze the basis for consideration of the public prosecutor in determining the severity of criminal charges against defendants in corruption cases. and to determine and analyze the formulation of prosecution of perpetrators of corruption crimes based on the value of Justice in the future.

2. Research methods

The approach method used in this writing is normative legal research. The specifications in this study are descriptive analytical. The type and source of data use secondary data. The data analysis used in this study is qualitative analysis.[5]

3. Results and Discussion

3.1 Current Corruption Crime Regulations

The formulation of the material of Law Number 31 of 1999 concerning the Eradication of Corruption is carried out as a preventive effort in anticipating corruption which is increasingly difficult to prevent and eradicate. For corruption cases that are difficult to prove, then according to the provisions of Article 27 of Law Number 31 of 1999, the regulation allows for the formation of a Joint Team coordinated by the Attorney General who has the task and authority to investigate and prosecute corruption. However, based on the judicial review submitted to the Supreme Court, this authority is no longer the authorization of the Attorney General. Currently there is a Corruption Eradication Commission which has very broad duties and authorities to investigate and prosecute corruption, however, the results have not been seen optimally.

[5]Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 1981, p. 201

Although the prosecutor's office is not specifically mentioned as an investigator and public prosecutor in handling corruption cases in Law Number 31 of 1999 concerning the Eradication of Corruption, if based on the Criminal Procedure Code, especially Article 284 paragraph (2), the prosecutor's office can still investigate and prosecute corruption cases.[6]

Law enforcement against corruption is very different from other crimes, including because of the many institutions that have the authority to carry out the trial process for corruption. Such conditions are a logical consequence of the predicate placed on the crime as an extra ordinary crime. As a crime that is categorized as an extra ordinary crime, corruption has extraordinary destructive power and damages the joints of a country and nation's life. The impact of corruption can be seen from the occurrence of various disasters which according to Nyoman Serikat Putra Jaya, the negative impact of corruption is very damaging to the order of national life, even corruption is a deprivation of the economic and social rights of the Indonesian people.[7]

In corruption cases in Indonesia, the implementation of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption shows an effort to meet these three objectives. Law enforcement involving the Prosecutor's Office, the Police, and the Corruption Eradication Commission (KPK) is a concrete form of the preventive aspect, where investigative, inquiry, and prosecution steps are designed to prevent wider corruption. In addition, the existence of a mechanism for returning state losses shows that the aspect of reparation is also a major concern in the corruption law enforcement system in Indonesia.

However, from the perspective of retribution theory, the effectiveness of criminal punishment against corruption perpetrators is often questioned due to the disparity in punishment. Although corruption is categorized as an extraordinary crime, the punishment imposed is often considered not to have provided a significant deterrent effect. This could be related to obstacles such as the high cost of handling small corruption cases or the difficulty of proving state losses in some cases. The Attorney General's circular prioritizing cases with large losses reflects a form of discretion that tries to optimize resources, but in the context of Algra, this step needs to be balanced with systematic efforts to provide substantive justice, both for the community and for the perpetrators, so that punishment continues to reflect justice and the overall objectives of criminal law.

3.2 The Public Prosecutor's Consideration Basis in Determining the Severity of Criminal Charges Against Defendants in Corruption Cases

In determining the severity of a charge in a corruption case, the Circular of the Attorney General of the Republic of Indonesia Number: SE003/A/JA/2010 concerning Guidelines for Criminal Charges in Corruption Cases is based on. This circular is in connection with the stipulation of the Circular of the Attorney General of the Republic of Indonesia Number: SE001/A/JAA/01/2010 dated January 13, 2010 concerning Control of Handling of Corruption

[6]Asrianto Zainal, Law Enforcement of Corruption Crimes by the Prosecutor's Office, FH IAIN Kendari Journal, 2016, pp. 1-18

[7]Nyoman Sarekat Putra Jaya. Some Thoughts towards the Development of Criminal Law. Bandung: Citra Aditya Bakti, 2008, p. 69.

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Cases, so in order to prevent or minimize disparities in criminal charges, it is deemed necessary to establish guidelines for prosecuting corruption cases.

If the factor of returning/rescuing state financial losses and the factor of enriching/profiting oneself do not meet in one column, then the provision applies that the defendant is charged with a minimum criminal penalty in the column of the factor of returning/rescuing state losses or the column of the factor of enriching/profiting oneself which contains a lower criminal charge with a maximum criminal charge in the column of the factor of returning/rescuing state losses or the column of the factor of enriching/profiting oneself which contains a higher criminal provision.

If there is more than one defendant either in one case file or in a separate case file, then the application of criminal prosecution guidelines applies to each defendant according to the percentage of the return/rescue factor for state financial losses and the percentage of the enrichment/self-benefit factor. In addition to the nominal amount of losses and the rescue of state losses.

There are several things that are the basis for consideration by the Prosecutor in determining the severity of a charge against a criminal act of corruption, for example the impact of losses caused by a criminal act of corruption. As a criminal act, corruption is recognized as being able to have a negative impact on the entire ecosystem, not only humans but also on the environment in which humans live. Corruption in the field of environmental licensing, the impact caused by corruption can be felt directly or there are also impacts that appear or are felt after the act of corruption is carried out, even long after the corruption is carried out or in the long term. The impact of corruption on the environment can be in the form of a decrease in environmental quality, even changes in the function of the environment which was originally a habitat and source of life for living things to become a threat to the lives of living things. As for the impact on humans, namely the emergence of material losses from changes in environmental function, for example flooding, erosion, or abrasion due to changes in environmental function. Corruption even has a direct impact on the emergence of regional losses or state losses. The magnitude or smallness of the impact of this corruption will affect the severity or lightness of the demands from the Public Prosecutor to the defendant of the corruption crime. The socio-legal perspective sees that the process of determining the prosecution by the Public Prosecutor in court, many factors are involved. Theoretically, the factors involved can be classified as follows: raw in-put, namely factors related to the background of law enforcement actors such as ethnicity, religion, education and so on; instrumental in-put, namely factors related to work and formal education; environmental in-put, namely socio-cultural environmental factors that influence a person's life, for example family, organizational and social environments.

The efforts of the Prosecutor's Office in enforcing the law against criminal acts that harm state finances, especially at the investigation stage as discussed by the author in this study, are through the issuance of a Circular Letter from the Deputy Attorney General for Special Crimes Number B-1113/F/Fd.1/05/2010 Concerning Priorities and Achievements in Handling Corruption Cases, as well as Circular Letter Number: B765/F/Fd.1/04/2018 concerning Technical Instructions for Handling Corruption Cases at the Investigation Stage, which considers not following up on corruption with a small value.

The circular issued by the Deputy Attorney General for Special Crimes is a form of discretion of the Indonesian Attorney General's Office, especially the Deputy Attorney General for Special Crimes (Jampidsus) as a field that specifically handles investigations of Corruption Crimes due to considerations of the costs required in the law enforcement process against corruption crimes with a relatively small state loss value which in the handling process requires more time and costs when compared to the value of the losses incurred, therefore the policy in law enforcement carried out by the Deputy Attorney General for Special Crimes is full enforcement.[8]

Full enforcement of the law by the Prosecutor's Office which requires the exercise of discretion by the Prosecutor's Investigating Prosecutor during the investigation process of a corruption crime with a relatively small state loss value, this action is based on the provisions of the law which states that the Attorney General has the duty and authority to determine and control the policy of law enforcement and justice within the scope of the duties and authority of the Prosecutor's Office.

Law enforcement carried out by the prosecutor's office against a criminal act of corruption has its own procedures so that in law enforcement against corruption cases must go through several stages in order to create a law enforcement that is cleaner, more honest, fair and has clear legal certainty. These stages show a pattern in handling criminal acts of corruption by the prosecutor's office as a law enforcement agency that has a very important role in handling criminal acts of corruption which is manifested in a strong, planned and systematic foundation and legal basis.[9]

3.3 Formulation of Prosecution of Corruption Offenders Based on Justice Values in the Future

The criminal law formulation policy is based on the provisions in the considerations contained in a regulation of legislation that has been enacted is the initial step in determining new policies or reformulating policies that are consciously carried out by legislative institutions together with the executive which are then enforced by the judiciary. The regulation of criminal law policy is formulated to overcome a crime or criminal act in order to achieve protection and public welfare.[10]

Article 2 paragraph (1) of the Corruption Crime Law stipulates that:

“Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000, (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).”

From the provisions of Article 2 paragraph (1) of the Corruption Crime Law above, the policy for formulating the minimum criminal threat system, in particular, is a minimum prison

[8]Muhammad Yusuf, Slamet Sampurno, Muhammad Hasrul, and Muhammad Ilham Arisaputra. The Position of Prosecutors as State Attorneys in the Scope of Civil and State Administrative Law. Yustika Journal: Media for Law and Justice, Vol. 21, No. 02, 2018, pp. 12-27

[9]Achmad Ali, Exploring Empirical Studies of Law, Yarsif Watampone, Jakarta, 1998, pp. 42-44

[10]Astan Wirya, Criminal Law Formulation Policy in Handling Forestry Crimes, Ius Journal of Law and Justice Studies, Vol 3, No. 7, 2015, pp. 19-21

sentence of 4 (four) years and a minimum fine, in particular, of at least IDR 200,000,000.00 (two hundred million rupiah).

In order to be subject to the criminal threat of Article 2 paragraph (1) of the Corruption Crime Law, the following elements must be fulfilled:

1. The existence of the perpetrator in this case is "every person";
2. There are acts which must be carried out “against the law”;
3. The purpose of the act is to "enrich oneself, other people or corporations"; and
4. The consequence of this act is that “it can harm state finances or the state economy.”

The element of “every person” in Article 2 paragraph (1) of the Corruption Crime Law requires that those referred to as perpetrators of corruption crimes are “every person”. The term every person in the context of criminal law must be understood as individuals (Persoonlijkheid) and legal entities (Rechtspersoon). In the context of the Corruption Crime Law, the corruptors can also be corporations (legal entities or non-legal entities) or anyone, whether civil servants, soldiers, members of the public, businessmen and so on, as long as they fulfill the elements contained in this article.[11]

The element of “against the law” in Article 2 paragraph (1) of the Corruption Crime Law should be understood formally and materially. Formally, it means that the act called a criminal act of corruption is an act that is against/contradicts the law, such as Law Number 8 of 1981 concerning the Criminal Code, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism, Government Regulation Number 105 of 2000 concerning the Management and Accountability of Regional Finances, Government Regulation Number 109 of 2000 concerning the Financial Position of Regional Heads and Deputy Regional Heads, Regulation Number 110 of 2000 concerning the Financial Position of the DPRD, etc.

Meanwhile, in material terms, it means that an act called a criminal act of corruption is an act which, although it does not conflict with applicable laws and regulations, if the act is considered reprehensible because it is not in accordance with the sense of justice or norms of social life in society, then the act can be punished.

The expansion of the element of “against the law” is strongly opposed by some legal experts and has a great influence on the current law enforcement process. The reason for those who reject the expansion of the element of “against the law” is that if the element of “against the law” is interpreted broadly, then the understanding of being against the law in a material sense (Materiele Wederrechttelijkeheid) in Criminal Law is interpreted the same as the understanding of being against the law “(Onrechtmatige Daad)” in Article 1365 of the Civil Code and this is very much in conflict with the principle of legality which in Latin is called “Nullum Delictum Nulla Poena Lege Pravie Poenale” which in Indonesian criminal law has been adopted and stated in Article 1 paragraph (1) of the Criminal Code which reads “an act cannot be punished/criminalized, except based on the power of existing statutory provisions.”

[11]Wahyu Beny Mukti Setiawan, The Role of Judges in Applying Article 2 of the Corruption Crime Law to Subsidiary or Alternative Charges,http://media.neliti.comaccessed November 14, 2024

In relation to the expansion of the unlawful element, considering the characteristics of criminal acts of corruption that have emerged recently, ideally the unlawful element must be understood both formally and materially because: First, corruption occurs systematically and widely, not only harming state finances, but also inhibiting the growth and sustainability of national development that demands high efficiency is a violation of the social and economic rights of the community at large so that it is classified as an extraordinary crime (Extra Ordinary Crime), so its eradication must be carried out in extraordinary ways (Extra Ordinary Efforts). Second, in responding to the development of legal needs in society, in order to make it easier to prove so that it can reach various modes of operation of financial or economic irregularities in the country that are increasingly sophisticated and complicated.

This argument is basically in accordance with the dictum considering letter b and the general explanation of paragraph three of Law Number 31 of 1999, as well as the dictum considering letter (a) of the general explanation of paragraph two of Law Number 20 of 2001, so it is very reasonable that an unlawful act of corruption must be understood and proven materially and/or formally.

The formulation of prosecution of perpetrators of corruption using Hans Kelsen's theory of justice focuses on a normative approach that emphasizes the importance of law as a normative system that must be obeyed to create order and justice. Kelsen views law as a rule that is not only binding but must also be applied consistently without discrimination. In Article 2 paragraph (1) of the Corruption Crime Law, the determination of the minimum criminal threat aims to create legal certainty and guarantee equality in the application of punishment. In other words, this rule emphasizes that all perpetrators of corruption, regardless of their status or social position, must be treated equally in accordance with applicable law.

However, justice in Kelsen's perspective also includes the ability of the law to adapt to concrete situations in order to avoid substantive injustice. In this regard, the proposed sentencing guidelines, especially to allow for sentence reductions under certain conditions, reflect an attempt to integrate substantive justice into the legal framework. Thus, although specific minimum criminal penalties are set to provide a deterrent effect and maintain legal certainty, flexibility in the application of penalties is needed so that the law can adjust to the complexity of corruption cases, such as small amounts of state losses or other mitigating factors. This allows for the application of laws that are not only formally but also substantively fair. Justice according to Hans Kelsen does not mean that the law must be static; on the contrary, the law must be dynamic and responsive to the needs of society. In handling corruption crimes, revisions to criminal rules, including the preparation of sentencing guidelines, are an effort to balance legal certainty and substantive justice. With clear sentencing guidelines, judges can apply the rules consistently while considering relevant factors in each case, thus creating harmony between formal and substantive justice as idealized in Hans Kelsen's theory of justice.

4. Conclusion

Current regulations on corruption in Indonesia have been regulated through Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which stipulates corruption as an extraordinary crime with a law enforcement approach involving various institutions such as

the Prosecutor's Office, Police, and Corruption Eradication Commission (KPK). The basis for consideration by the Public Prosecutor in determining the severity of criminal charges against defendants in corruption cases includes aspects of legal certainty, justice, and benefit, as regulated in the law, the Attorney General's Circular, and legal principles. These considerations include the magnitude of state losses, the impact of corruption on society and the environment, and the extent to which the defendant enriches himself or others. Subjective factors, such as emotional attitudes, morality, and professionalism of the prosecutor, also influence the prosecution process. With clear guidelines and oriented towards recovering state losses and deterrent effects. The formulation of prosecution of perpetrators of corruption in the future must be based on the value of justice by balancing legal certainty and deterrent effects. The determination of a firm minimum criminal threat is needed to prevent disparity in punishment and provide a deterrent effect, while sentencing guidelines must be designed so that judges have a clear basis in considering factors for mitigating or aggravating punishment. With this approach, legal formulation not only prioritizes formal but also substantive justice, which allows the application of laws that are responsive to the needs of society and the complexity of corruption cases, in accordance with the principles of justice and public interest.

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