

Law Enforcement by the Prosecutor's Office Against Corruption Crimes

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Abstract: *The purpose of this research is to find out, study and analyze law enforcement carried out by the Prosecutor's Office as a sub-criminal justice system for criminal acts of corruption. In this writing the author uses a normative juridical method with research specifications in the form of descriptive analysis. The reform period has rolled on until now, corruption has not been reduced, but has spread to the regions. With the Regional Autonomy Law, regional officials feel that they have turned to practice corruption which is of course very detrimental to state/regional finances or the state/regional economy. The public often protests and expresses their aspirations through demonstrations demanding that law enforcement officials, especially prosecutors, take action against perpetrators of corruption so that state finances that have been corrupted by corruptors can be saved. The authority of the Prosecutor's Office before a case is transferred to court includes receiving notification, examining case files, carrying out pre-prosecution, carrying out detention, making an indictment, closing the case, and transferring the case to court.*

Keywords: *Corruption; Crimes; Enforcement; Prosecutor.*

1. Introduction

Terminologically, the term "legal state" in the provisions of Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia does not refer specifically to one of the main concepts in the Western legal tradition, either Rechtsstaat or Rule of Law. This means that the term "legal state" in the 1945 Constitution of the Republic of Indonesia is a relatively 'neutral' concept that opens up room for interpretation for new understandings in accordance with the paradigm and reality of the Republic of Indonesia.¹

The implication of Indonesia as a State of Law is to enforce the law itself, one of which is criminal law. Criminal law is said by many experts to be public law. What

¹Beno, Gunarto and Sri Kusriyah, (2020), Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court), Jurnal Daulat Hukum, 3 (1), p 109

is meant by public law is the law that regulates the relationship between individuals and society/government. Therefore, criminal law plays its role as a balancer in social and state life. Based on the objectives of criminal law which contain the meaning of prevention against unhealthy social symptoms.²

Further division of criminal law based on the scope of the rules is divided into two parts, general criminal law and special criminal law. General criminal law is criminal law that can be applied to everyone in general, while special criminal law is intended for certain people only.³ Since Indonesia's independence, the applicable criminal law regulations are not only contained in the Criminal Code. These regulations are also contained in other laws as written, uncodified and codified laws. Developing criminal law regulations has a legal basis stated in Article 103 of the Criminal Code. Based on this provision, it is possible to create criminal law regulations outside the Criminal Code in order to meet the needs of society, as long as they do not conflict with the criminal law that has been modified in the Criminal Code. The provisions of this article state that "The provisions of the eight Chapters I in Book I also apply to events for which criminal penalties are determined according to other statutory provisions unless otherwise specified in the law or government regulations. It can also be said that general criminal law is the law regulated in the Criminal Code (KUHP) while special criminal law is the criminal law regulated outside the Criminal Code. Sudarto is of the opinion that the formation of special criminal laws that have general criminal law principles does not eliminate the obligation of law enforcers to respect the legal principle of 'no punishment without fault' (Geen Straft Zonder Schuld).

One part of the special criminal acts that will be discussed is economic crimes. Criminal law according to Andi Hamzah is part of criminal law, which is a separate pattern, namely economic patterns. Some parts of economic criminal law are corruption, money laundering, and many more related to the economy. One of the economic crimes that occurs today is Corruption. Corruption is a social phenomenon that can be found everywhere. History proves that almost every country is faced with the problem of corruption. It is not an exaggeration if the definition of corruption always develops and changes according to the changing times.

Corruption has many detrimental economic, financial, social and security impacts. It misallocates and distributes income, distorts asset and commodity prices, and breeds social ills and crime.⁴ Given the circumstances as such and the need to immediately regulate criminal acts of corruption, then on the basis of Article 96 paragraph (1) of the 1950 UUDS, the replacement of the Central

²Syamsul Bachri, (2011), Introduction to Indonesian Law: Second printing, Makassar: AS Publishing, p 65.

³Zainal Abidin Farid, (2010), Criminal Law 1, Jakarta: Sinar Grafika, p 1

⁴Sutan Remy Sjahdeini, (2003), Money Laundering: Definition, History, Causal Factors, and Impact on Society, Business Law Journal, Jakarta: Business Law Development Foundation, 22 (3), p 5

Warlord Regulation was stipulated with statutory regulations in the form of Government Regulation in Lieu of Law, namely Government Regulation in Lieu of Law Number 24 of 1960 concerning Investigation, Prosecution and Examination of Criminal Acts of Corruption, which then on the basis of Law Number 1 of 1960 became Law Number 24 Prp 1960 concerning Investigation, Prosecution and Examination of Criminal Acts of Corruption.

The Attorney General's Office of the Republic of Indonesia (Kejaksaan) is part of the Criminal Justice System in Indonesia. The role of the prosecutor's office in the criminal justice system is very central because the prosecutor's office is the institution that determines whether a person should be examined by the court or not. The prosecutor also determines whether a suspect will be sentenced or not through the quality of the indictment and charges made. In the Attorney General's Law, the Attorney General's Office of the Republic of Indonesia as a state institution that exercises state power in the field of prosecution must carry out its functions, duties, and authorities independently, regardless of the influence of government power and the influence of other powers. In addition to having authority at the prosecution stage, the prosecutor's office also has authority at the investigation stage, however, this authority is only for certain criminal acts, this is regulated in the explanation of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

The Prosecutor's Office is given the function or role to handle the Eradication of Criminal Acts of Corruption and Money Laundering, where its existence is strengthened by the stipulation of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which previously, there were no regulations governing the function of the prosecutor's office in enforcing the law in eradicating criminal acts of corruption and money laundering, not only regulated in the Prosecutor's Office Law, but also regulated in various laws and regulations such as the Criminal Procedure Code (KUHAP), the Corruption Eradication Commission Law and Government Regulations.

The description above has attracted the author's attention to study, understand, and research more deeply regarding the efforts of the Prosecutor's Office in enforcing the law against corruption crimes by using the implementation of authority in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. In connection with this theme, to research further and include it in legal research with research purposes knowing, reviewing and analyzing law enforcement carried out by the Prosecutor's Office as a sub-criminal justice system against criminal acts of corruption.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. Corruption Terminology

The Indonesian Encyclopedia calls corruption (from Latin: *corruptio* = bribery; *corruptore* = to damage) a phenomenon in which officials and state agencies abuse their authority by means of bribery, forgery and other irregularities.⁵ Literally, corruption is something rotten, evil and destructive. This is because corruption is related to moral aspects, rotten nature and circumstances, positions in government agencies or apparatus, abuse of power in office due to gifts, economic and political factors, and placement of family or groups into civil service under the authority of their position.

Based on Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, the following elements were found:

- a. Unlawfully
- b. Litigating against oneself or another person or a corporation;
- c. Harming state finances or the state economy.

Considering the formulation of provisions on criminal acts of corruption as contained in Law No. 20 of 2001, it can be seen that the unlawful element of the provisions on criminal acts of corruption is a means to carry out acts of enriching oneself or others or corporations. While what is meant by detrimental is the same as becoming a loss or being reduced, so that what is meant by the element of harming state finances is the same as becoming a loss of state finances or a reduction in state finances.

As a result of the formulation of these provisions, even though an act has harmed state finances or the state economy, if it is not carried out unlawfully, the act of enriching oneself or another person or a corporation does not constitute a criminal act of corruption as referred to in Law No. 20 of 2001.

3.2. Law Enforcement Implemented by the Prosecutor's Office as a Sub-criminal Justice System against Criminal Acts of Corruption

Criminal law enforcement is one form of crime prevention efforts. The use of criminal law as a tool for crime prevention is part of criminal policy. Efforts to combat crime with criminal law are carried out in order to achieve the ultimate

⁵Evi Hartanti, (2005), *Criminal Acts of Corruption*, Sinar Grafika, Jakarta, p 8

goal of the criminal policy itself, namely to provide protection for the community in order to create order and prosperity. Efforts to prevent and combat crime using criminal law are also called penal policy.⁶Criminal law policy is not only limited to making laws and regulations that regulate certain things. But more than that, criminal law policy requires a comprehensive approach that involves various legal disciplines other than criminal law and the reality in society so that the criminal law policy used does not deviate from the broader concept of social policy and national development plans in order to realize community welfare.⁷

Law and law enforcement are some of the factors of law enforcement that cannot be ignored because if ignored it will cause the failure to achieve the expected law enforcement. Therefore, the existence of the Prosecutor's Office as one of the elements of the criminal justice system has a strategic role in a state of law because the Prosecutor's Office is a filter between the investigation process and the examination process in court, so that its existence in the life of society must be able to carry out the task of law enforcement.

The definition of a prosecutor in Article 1 paragraph (6) letter a of the Criminal Procedure Code is: "A prosecutor is an official who is authorized by this law to act as a public prosecutor and to implement court decisions that have permanent legal force." Furthermore, the definition of a prosecutor according to Article 1 paragraph (2) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely: "A prosecutor is a functional official who is authorized by law to act as a public prosecutor and implement court decisions that have permanent legal force and other authorities based on law". It is explained that the meaning of a prosecutor in the Criminal Procedure Code and Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia has the same function, namely a prosecutor as a public prosecutor. However, in the provisions of Article paragraph (1) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, it has broader authority, namely other authority based on law.

The Prosecutor's Office is the only state institution that is a government apparatus that has the authority to transfer criminal cases, prosecute perpetrators of criminal acts in court and implement the determination and verdict of criminal judges, this power is a characteristic of the Prosecutor's Office that distinguishes other law enforcement institutions or agencies. In addition, in general criminal acts, the Prosecutor is only a public prosecutor, but in special criminal acts in this case corruption, the Prosecutor acts as an investigator and

⁶Muller Lissner, (2005), Myths and Misconceptions About Chronic Constipation. *American Journal of Gastroenterology*, 100(1), p 311

⁷Ellen Benoit, (2003). Not Just a Matter of Criminal Justice: States, Institutions, and North American Drug Policy, *Sociological Forum*, 18(2), p 215

public prosecutor. As an investigator, special expertise and skills are needed to find and collect evidence so that the suspect can be found. Basically, the investigation and inquiry of every criminal act is the beginning in handling every criminal act, especially corruption.

The role of the Prosecutor's Office in corruption cases begins when the case has not been referred to the court until the implementation of the court's decision. The authority of the public prosecutor before the case is referred to the court includes receiving notification, examining case files, conducting pre-prosecution, detaining, making indictments, closing cases, and referring cases to the court. Furthermore, the role of the prosecutor during the examination process in court includes bringing the defendant to trial, reading the indictment, presenting witnesses, preparing evidence, reading the indictment, and implementing the court's decision. Especially in relation to handling corruption crimes, we always coordinate with the Police and the Corruption Eradication Commission.⁸

Prosecutors as law enforcement officers are also given the authority to conduct investigations into certain crimes, one of which is corruption. In handling corruption crimes as mandated by Law Number 31 of 1999, if it is considered that there is a corruption crime that is difficult to prove, then the prosecutor can be involved in the investigation. In addition, this is also emphasized in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, which stipulates that the authority of the prosecutor's office to conduct investigations into certain crimes is intended to accommodate several provisions of laws that give authority to the prosecutor's office to conduct investigations, for example, the law on human rights courts, the law on corruption, and various other laws.

Related to the authority of the prosecutor as an investigator in corruption crimes. Based on the provisions of Article 27 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, it is determined that "in the event that a corruption crime is found that is difficult to prove, a joint team can be formed under the coordination of the attorney general. This is also emphasized in the provisions of Article 39 which states that; the attorney general coordinates and controls the investigation, inquiry, and prosecution of corruption crimes carried out jointly by persons subject to general justice and military justice. Furthermore, the provisions of Article 29 determine the authority of investigators, namely as follows:

1. For the purposes of investigation, prosecution, or examination in court, the investigator, public prosecutor, or judge has the authority to request

⁸Zico Junius Fernando, Pujiyono, Nur Rochaeti, (2022). Confiscation of Assets of Criminal Actors from the Perspective of Human Rights and Criminal Law Principles, Indonesian Legislation Journal, 19 (1), p 117

information from the bank regarding the financial situation of the suspect or defendant.

2. Requests for information to the bank as referred to in paragraph (1) are submitted to the Governor of Bank Indonesia in accordance with applicable laws and regulations.
3. The Governor of Bank Indonesia is obliged to fulfill the request as referred to in paragraph (2) within a maximum of 3 (three) working days, calculated from when the complete request documents are received.
4. Investigators, public prosecutors, or judges can ask banks to block savings accounts belonging to suspects or defendants that are suspected of being the result of corruption.
5. If the results of the examination of the suspect or defendant do not provide sufficient evidence, at the request of the investigator, public prosecutor or judge, the bank will also revoke the blocking on that day.⁹

The above provisions are made to facilitate the process of investigation, prosecution, and examination of corruption crimes, this law regulates the authority of investigators, public prosecutors, or judges according to the level of case handling to be able to directly request information about the financial condition of the suspect or defendant to the bank by submitting the matter to the Governor of Bank Indonesia. Furthermore, the authority given to the prosecutor as an investigator as stated in the explanation of Article 26 of Law Number 31 of 1999 concerning the Eradication of Corruption is the authority of the investigator also includes the authority to conduct wiretapping. Then in Article 30C Paragraph iLaw Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia states that the Attorney General's Office carries out wiretapping based on a special law regulating wiretapping and organizing a monitoring center in the field of criminal acts.

In the event of alleged corruption, the Prosecutor's Office always coordinates with related agencies such as the police and the Corruption Eradication Commission to jointly conduct investigations. As an institution that has a supervisory function, the Corruption Eradication Commission always monitors the development of the handling of corruption committed by the Prosecutor's Office.

Corruption is a special crime in the sense that corruption has special provisions for criminal procedures. Thus, the Prosecutor's Office has the authority to conduct investigations. Criminal acts that contain provisions for certain criminal acts are called "special crimes". Corruption based on Law Number 20 of 2001

⁹Editorial (RK), (2003), Responding to the Globalization of Money Laundering, Journal of Business Law, Jakarta: Business Law Development Foundation, 22 (3), p 219

concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption contains "special provisions for criminal procedures" including:

- 1) The suspect is obliged to provide information about all corporate assets known to him (Article 28).
- 2) The accused has the right to prove his innocence (Article 37).
- 3) If the defendant has been legally summoned and does not appear at the court hearing without a valid reason, the case can be examined and decided without his presence (Article 38).

In carrying out its duties, the law enforcement apparatus is a subsystem of the criminal justice system. In the context of law enforcement, each subsystem has a different role according to its field and in accordance with the provisions of the Law, but together they have the same main objective, namely to combat crime and re-incarcerate convicts. The operation of each subsystem must be in accordance with the provisions of the Law that regulates it. One of the law enforcement subsystems of the criminal justice system is the Prosecutor's Office.¹⁰ Law and law enforcement are some of the factors of law enforcement that cannot be ignored because if ignored it will cause the failure to achieve the expected law enforcement. Therefore, the existence of the Prosecutor's Office as one of the elements of the criminal justice system has an important position and strategic role in a state of law so that its existence in the life of society must be able to carry out the task of law enforcement.

In eradicating corruption, it is appropriate to involve the Prosecutor's Office. This is because the large number of corruption cases that occur in Indonesia makes it impossible for the KPK to handle corruption cases without involving related agencies. In addition, this is also intended to restore the existence of the Prosecutor's Office as a law enforcement officer, especially for corruption cases. As is known, the presence of the KPK is a manifestation of the weakness of the Prosecutor's Office in handling corruption cases. With the cooperation in handling corruption cases carried out by the KPK and the Prosecutor's Office, it is hoped that it will be able to restore the existence and professionalism of the Prosecutor's Office in handling corruption cases.¹¹

4. Conclusion

The role of the Prosecutor's Office in corruption cases begins when the case has not been referred to the court until the implementation of the court's decision. The authority of the public prosecutor before the case is referred to the court includes receiving notification, examining case files, conducting pre-prosecution, detaining, making an indictment, closing the case, and referring the case to the

¹⁰Ilham Gunawan, (1990), *The Posture of Corruption in Indonesia: A Legal, Sociological, Cultural and Political Review*, Bandung: Angkasa, p 29

¹¹Interview Results With Eddy Sumarman, Head of Purworejo District Attorney's Office, Held On December 22, 2023

court. Furthermore, the role of the prosecutor during the examination process in court includes bringing the defendant to trial, reading the indictment, presenting witnesses, preparing evidence, reading the indictment, and implementing the court's decision. Specifically in relation to handling corruption crimes, we always coordinate with the Police and the Corruption Eradication Commission. Prosecutors as law enforcement officers are also given the authority to conduct investigations into certain crimes, one of which is corruption. In handling corruption crimes as mandated by Law Number 31 of 1999, if it is considered that there is a corruption crime that is difficult to prove, the prosecutor can be involved in the investigation. In addition, this is also emphasized in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, which stipulates that the authority of the prosecutor's office to conduct investigations into certain criminal acts is intended to accommodate several provisions of laws that grant authority to the prosecutor's office to conduct investigations, for example, the law on human rights courts, the law on corruption crimes, and various other laws.

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