

Effectiveness of Implementing Criminal Punishment for Perpetrators of The Criminal Act of Assistance in Bribery

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Abstract. *The crime of bribery is the act of giving money and goods or other forms from the bribe giver to the bribe recipient which is done to change the recipient's attitude towards the interests/interests of the giver, even though the attitude is contrary to the recipient. So that in bribery there is a transaction action related to easy access to obtain benefits through policies issued by the bribe recipient who is a state administrator unlawfully. The crime of bribery in its development has differences with the crime of extortion and the crime of gratification. This study uses Juridical Sociology legal research with the aim of systematically describing the facts and characteristics of the research object being studied precisely. This study went through the stages of literature study, the data obtained were then analyzed through a qualitative analysis approach. Qualitative data processing and analysis generally emphasizes its analysis on the process of primary legal materials and secondary legal materials. The formulation of the regulation related to the criminal punishment system for perpetrators of assisting bribery in corruption crimes is currently unable to provide legal certainty, this is due to the absence of provisions regarding perpetrators of assisting bribery in Law No. 20 of 2001 concerning the Eradication of Corruption, in addition, the implementation of Law No. 20 of 2001 concerning the Eradication of Corruption has not adjusted to UNCAC 2003 which regulates corruption bribery in the private sector. The weakness in the formulation related to the criminal punishment system for perpetrators of assisting bribery in corruption crimes who are not Civil Servants or State Administrators is currently in the regulatory aspect, namely the absence of provisions regarding perpetrators of assistance in Law No. 20 of 2001 concerning the Eradication of Corruption has had implications for the misapplication of the law in criminal punishment for perpetrators of assistance. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption as regulated in the UNCAC in 2003.*

Keywords: Assistance; Bribery; Criminalization.

1. Introduction

The crime of bribery in its development has differences with the crime of extortion and the crime of gratification. Bribery occurs when a service user actively offers a reward to a service officer with the intention of speeding up his/her affairs, even though it violates procedures. Conversely, extortion occurs when a service officer actively offers services or asks for a reward from a service user to speed up his/her services, even though it violates procedures. Grease money can be a combination of bribery and extortion. Then, bribery and extortion will occur if a transaction or deal occurs between the two parties. This is different from gratification, where there is no agreement between the two. Gratuity occurs when the service user gives something to the service provider without any offer or transaction. This gift seems to be without any intention. However, behind that, gratification is given to arouse the heart of the service officer, so that in the future the service user's goals can be facilitated. The term is "planting good deeds", which can be collected at some point. Gratification according to the Explanation of Article 12B of the Corruption Eradication Law is a Gift in the broad sense, which includes the gift of money, goods, discounts, commissions, interest-free loans, travel tickets, accommodation facilities, tours, free medical treatment, and other facilities. Bribery and extortion have an element of promise or aim to want something from the gift. While gratification is a gift that does not have an element of promise, but gratification can also be called bribery if the party concerned has a relationship with a position that is contrary to the obligations and rights of the person concerned.¹

Related to the subject of the perpetrator of assisting in bribery, it is also regulated in Article 3 of the Republic of Indonesia Law Number 11 of 1980 concerning the Criminal Act of Bribery of Financial/Administrative Rights of Leaders and Members of the Highest/High State Institutions and Former Members of High State Institutions as well as Former Leaders of the Highest/High State Institutions and Former Members of High State Institutions.

The crime of bribery in its development is a criminal act that damages the life of the nation and state through the impacts it causes, namely in the form of indirect losses to the country's economy. Based on Law Number 11 of 1980 concerning the Criminal Act of Bribery of Financial/Administrative Rights of Leaders and Members of the Highest/High State Institutions and Former Members of High State Institutions and Former Leaders of the Highest/High State Institutions and Former Members of High State Institutions, what is meant by the crime

Bribery is an act of giving money and goods or other forms from the bribe giver to the bribe recipient which is done to change the recipient's attitude towards the interests/interests of the giver, even though the attitude is contrary to the recipient. Based on this understanding, it can be seen that the crime of bribery has characteristics in the form of the activeness and initiative of a person or

group of people to give a certain amount of money or goods or a facility to state administrators to obtain convenience in accessing government products which can be known to be done unlawfully. So that in bribery there is a transaction action related to access to convenience to obtain benefits through policies issued by the recipient of the bribe who is a state administrator unlawfully.²

The crime of bribery in its development has differences with the crime of extortion and the crime of gratification. Bribery occurs when a service user actively offers a reward to a service officer with the intention of speeding up his/her affairs, even though it violates procedures. Conversely, extortion occurs when a service officer actively offers services or asks for a reward from a service user to speed up his/her services, even though it violates procedures. Grease money can be a combination of bribery and extortion. Then, bribery and extortion will occur if a transaction or deal occurs between the two parties. This is different from gratification, where there is no agreement between the two. Gratuity occurs when the service user gives something to the service provider without any offer or transaction. This gift seems to be without any intention. However, behind that, gratification is given to arouse the heart of the service officer, so that in the future the service user's goals can be facilitated. The term is "planting good deeds", which can be collected at some point. Gratification according to the Explanation of Article 12B of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption is a Gift in the broad sense, namely including the gift of money, goods, discounts, commissions, interest-free loans, travel tickets, accommodation facilities, travel, free medical treatment, and other facilities. Bribery and extortion have an element of promise or aim to want something from the gift. While gratification is a gift that does not have an element of promise, but gratification can also be called a bribe if the party concerned has a relationship with a position that is contrary to the obligations and rights of the person concerned.³

The book entitled "The Book of Laws Law Criminal Code (KUHP) and its complete article by article commentary written by R. Soesilo explains that what is meant by the person who co-perpetrated (medepleger) in Article 55 of the Criminal Code is jointly committing. There must be at least two people, namely the person who committed (pleger) and the person who co-perpetrated (medepleger) the criminal act. Meanwhile, regarding Article 56 of the Criminal Code, it explains that a person who "helps to commit" if he intentionally provides such assistance, at the time or before (so not after) the crime is committed. If assistance is given after the crime is committed, then the person commits an act of "conspiracy" or "tadah" violating the provisions of Article 480 of the Criminal Code or the criminal incident referred to in Article 221 of the Criminal Code.⁴ This problem of legal uncertainty can lead to incorrect implementation of criminal penalties for perpetrators of assisting in bribery.

Based on the various explanations above, it is necessary to discuss in more depth regarding "The Effectiveness of the Implementation of Criminal Punishment for Perpetrators of the Crime of Assisting in Bribery?"

2. Research Methods

This study uses Juridical Sociology legal research, namely research that attempts to describe and interpret objects according to what they are, with the aim of systematically describing the facts and characteristics of the research objects studied precisely. This study went through the stages of literature study, the data obtained were then analyzed through a qualitative analysis approach. Qualitative data processing and analysis generally emphasizes its analysis on the process of primary legal materials and secondary legal materials.

3. Result and Discussion

3.1. Current Criminal Sanctions Regulations Against Bribery Assistance Perpetrators

The implementation of criminal justice is only one aspect, namely the community's efforts to overcome community crimes using criminal law (penal) means, in addition to that, there are still known community efforts to overcome crimes through non-criminal law (non-penal) means. These non-criminal law efforts greatly support the implementation of criminal justice in achieving its goals. Law is part of human creations that are used to uphold human dignity. Law is not only a product of reason, but also part of intuition. Olsen said that "law, however, consists not only of rules and decisions, but also the framework of institutions proving a structure that forms the condition of the workable existence and acceptance".⁵

This suboptimality of the law shows that the problem of perpetrators of assisting in bribery is not only seen as an absolute problem. violation of the provisions of Article 12 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption alone, the issue of bribery involving perpetrators of bribery assistance is a matter of human morality. Law is basically a medium in translating the protection of rights against a violation that threatens, therefore the law must be able to show truth and justice for society, while morals are a tool for measuring truth and justice in society. Mill and Brandt in their moral theory, say that good right actions are actions that produce goodness for more people.⁶

The existence of this legal commodification shows how the issue of bribery is a legal issue that confronts the dynamics of human morality. Bribery as one of the categories of corruption crimes in Indonesia is basically classified as Extra Ordinary Crime or extraordinary crime, so that acute corruption crimes are felt to be insufficient only by expanding the acts formulated as corruption as

originally regulated in the Criminal Code, corruption itself in its development is regulated in Articles 209, 210, 387, 388, 415 416, 417, 418 and 419 of the Criminal Code then these articles are included in being regulated more clearly in Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning corruption crimes regulated in articles 5, 6, 7, 8, 9, 10, 11 and 12, but these efforts are still considered conventional methods, so new methods and ways are needed to be able to stem the spread of bribery as one of the categories of corruption crimes.

This is due to the fact that there are no provisions regarding perpetrators of bribery assistance in Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, in addition to the fact that the implementation of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption has not been adjusted to UNCAC 2003 which regulates matters of bribery corruption in the private sector.

The crime of bribery as one of the categories of corruption is a moral issue that has resulted in a bad culture in Indonesian democracy throughout the history of the founding of the Indonesian state. The former Vice President, Bung Hatta, who was an advisor to President Soeharto in a meeting examining corruption issues by Commission IV, explained that "corruption has become an art and part of Indonesian culture". According to Hatta, the eradication of corruption can begin with education and a culture that is free from corruption. This statement is based on Hatta's observation that corruption at that time. It had become so widespread in society, that a columnist in the Jakarta Times newspaper published on July 3 1970 suggested with a humorous tone that the Department of Education and Culture form a corruption section in the Directorate General of Culture..⁷

Regarding the debate on this legal subject, the Supreme Court has issued a Circular of the Supreme Court (SEMA) No. 7 of 2012 concerning the criteria for state losses to differentiate the use of Article 2 paragraph (1) and Article 3 of Law No. 31 of 1999. The Supreme Court justices agreed that if the state loss is less than Rp. 100,000,000, then Article 3 of Law No. 31 of 1999 is used and if the state loss is more than that amount then Article 2 paragraph (1) of Law No. 31 of 1999 is used. However, this is not appropriate and does not resolve the existing debate. Apart from the various existing debates, the subject of the perpetrators of assistance in bribery other than ASN or State Administrators does not receive special attention, in the criminal act of bribery corruption, passive perpetrators are only narrowed down by legal experts to the aspect of ASN or State Administrators..⁸

Based on the various explanations above, it can be seen that the basis of the thinking of legal experts who influence the process of forming criminal policies related to the eradication of corruption in its development is based only on two

basic issues, namely:

- a. private subjects as stated in Article 2 paragraph (1) as perpetrators of criminal acts of corruption, while private individuals as perpetrators of assisting in bribery are not taken into account when considering legal subjects in Article 12 of the Corruption Eradication Law concerning bribery;
- b. the second issue is the issue of the position of unlawful acts and abuse of authority as acts that have or do not have a genus-species relationship. While the perpetrators of assisting bribery other than ASN or State Administrators are not directly related to the discussion at this point.

3.2. Weaknesses and Solutions in the Current Issue of Criminal Sanctions Regulations Against Bribery Assistance Perpetrators

The formulation policy stage is the initial stage and source of foundation in the process of concretization for subsequent criminal law enforcement, namely the application and execution stages. The existence of the formulation stage shows that efforts to prevent and overcome crime are also the duties and obligations of law makers, not only the duties of law enforcement/implementers. Moreover, the stage. This formulation is the most strategic stage, because any errors at this stage will greatly hinder prevention and mitigation efforts at the application and execution stages. The formulation stage is closely related to criminal law policy. According to Sudarto, criminal law policy means efforts to realize criminal legislation that is in accordance with the circumstances and situations at a certain time and for the future.⁹

The weakness in the formulation related to the criminal punishment system for perpetrators of assisting bribery in corruption crimes who are not Civil Servants or State Administrators currently lies in the regulatory aspect, namely the absence of provisions regarding the perpetrators of assistance in Law No. 20 of 2001 concerning the Eradication of Corruption, in the applicative aspect, namely the judge's analogy which is vague due to the problem of *rechtsvacuum* in the issue of punishment for perpetrators of assistance in bribery, in the execution aspect, namely the absence of regulations for perpetrators of assistance in bribery in Law No. 20 of 2001 concerning the Eradication of Corruption has had implications for the misapplication of the law in the punishment of perpetrators of assistance. The solution that can be done is to formulate regulations regarding actions and punishment for criminal acts of perpetrators of assistance in bribery in corruption crimes and include regulations on bribery in the private sector in Law No. 20 of 2001 concerning the Eradication of Corruption as regulated in the UNCAC in 2003.

4. Conclusion

The formulation of the regulation related to the criminal punishment system for

perpetrators of assisting bribery in corruption crimes is currently unable to provide legal certainty, this is due to the absence of provisions regarding perpetrators of assisting bribery in Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, in addition to the implementation of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption has not adjusted to UNCAC 2003 which regulates corruption of bribery in the private sector. The weakness in the formulation related to the criminal punishment system for perpetrators of assisting bribery in corruption crimes who are not Civil Servants or State Administrators currently lies in the regulatory aspect, namely the absence of provisions regarding the perpetrators of assistance in Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption has had implications for the misapplication of the law in the punishment of perpetrators of assistance. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption as regulated in the UNCAC in 2003.

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