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Legal Analysis Related to Legal Certainty in the Criminal Conspiracy in Law Number 20 Of 2001

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Abstract. *In its development, law enforcement in the act of conspiracy in corruption crimes is very difficult to do this because the standard definition and elements of criminal acts of conspiracy in corruption issues are not clearly regulated. This writing aims to analyze and understand the construction of conspiracy in corruption crimes in Indonesia. To analyze and understand the weaknesses of the law in cases of conspiracy in corruption crimes. To analyze and understand the reconstruction of conspiracy in corruption crimes based on progressive law. The type of research in this writing is sociological juridical. Based on the research conducted, it was found that the implementation of law enforcement in cases of conspiracy related to corruption is currently not fair, this is due to the unclear elements in criminal acts of conspiracy in corruption cases so that existing law enforcement is based on political interests, where the authorities will be able to find a way out of the trap of Article 15 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, while parties who do not have the authority of power will not be able to escape the trap of Article 15 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.*

Keywords: *Certainty; Criminal; Conspiracy; Corruption; Legal.*

1. Introduction

Legal issues related to conspiracy in corruption arise from the lack of clarity and clarity in the definition of conspiracy itself, leading to multiple interpretations. The implementation of the meaning and substance of conspiracy in corruption is not yet fully reflected in legislation, making it difficult for both state administrators and law enforcement officials to exercise their authority.[1]For example, in the case of Anggodo Widjojo, in the case on August 31, 2010, the Panel of Judges at the

[1]Ibnu Suka, Gunarto, and Umar Ma'ruf, The Role and Responsibilities of the Indonesian National Police as Law Enforcers in Implementing Restorative Justice for Justice and the Benefit of Society, Khaira Ummah Law Journal Vol. 13. No. 1 March 2018, pp. 115-116.

Corruption Court stated that Anggodo was legally and convincingly proven to have committed the crime of corruption by sentencing him to 4 (four) years in prison and a fine of Rp. 150 million, subsidiary to 3 (three) months in prison. The Chief Justice of the Panel of Judges, Tjokorda Rai Suwamba, said that only the first charge, namely Article 15 in conjunction with Article 5 paragraph (1) letter a of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, was proven, namely that every person makes a criminal conspiracy to give or promise something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his position that is contrary to his obligations.[2]

The same case also occurred with the defendant Mochtar Mohamad, in this case Mochtar Mohamad who is the Mayor of Bekasi City was charged with Article 5 paragraph (1) letter a in conjunction with Article 15 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The evil conspiracy carried out by Mochtar Mohamad was together with Tjandra Utama Effendi as the Regional Secretary of Bekasi City who carried out an evil conspiracy to commit the crime of corruption, namely giving money amounting to IDR 500,000,000,- (five hundred million rupiah) to the ADIPURA Assessment Team, including Melda Mardalina as a Civil Servant at the Ministry of Environment, with the intention that the Adipura Assessment Team, including Melda Mardalina, will provide a proper assessment or a score of 73 so that the Bekasi City Government will receive the 2010 ADIPURA Award.[3]

His actions made the Panel of Judges declare Mochtar Mohamad proven to have committed a criminal act of corruption and sentenced him to 6 (six) years in prison and a fine of IDR 300,000,000,- (six hundred million rupiah), with the provision that if the fine is not paid, the defendant will be subject to a substitute sentence in the form of imprisonment for 6 (six) months. The Panel of Judges assessed that the actions of the defendant Tjandra Utama Effendi and the Heads of SKPD were clearly a criminal conspiracy, because there were 2 (two) or more people who agreed to commit a criminal act of corruption in the form of giving money to Civil Servants to do something in their positions, namely increasing the value to get the Adipura award, the existence of the criminal conspiracy since the meeting and continued with the collection of funds through the Heads of each SKPD.

In addition, another case of conspiracy to commit corruption was committed by a member of the House of Representatives named Drs. Setya Novanto. In

[2]thttp://www.bbc.com/indonesia/berita_indonesia/2010/08/100831_anggodovonis.shtml, accessed on January 2, 2025.
[3]Supreme Court Decision Number 2547 K/Pid.Sus/2011.

connection with the conspiracy in Article 15 of Law Number 31 of 1999 concerning the Eradication of Corruption, there has been a Constitutional Court Decision Number 21/PUU-XIV/2016 dated September 7, 2016. The case concerns the applicant Setya Novanto, who at that time was a member of the House of Representatives, where according to the applicant he had been questioned in an investigation on suspicion of corruption in the form of conspiracy or attempted corruption in the extension of the contract of PT. Freeport Indonesia. Because the applicant is suspected of having committed a special crime in the form of conspiracy to commit corruption in his meeting with the President Director of PT. Freeport Indonesia at that time, Maroef Sjamsuddin and businessman Muhammad Riza Chalid in June 2015. So the applicant is positioned as a perpetrator of conspiracy together with Muhammad Riza Chalid to commit corruption related to the extension of the permit or contract of PT. Freeport Indonesia.

The Constitutional Court considered that all provisions in Article 2, Article 3, Article 5 to Article 14 of the Corruption Crime Law are qualitative crimes that require a person's quality as a civil servant or state official to fulfill the elements of the crime. Therefore, the Constitutional Court is of the opinion that Article 15 in conjunction with Article 12 letter e of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, can only be applied to agreements between 2 (two) or more people who have special qualities as civil servants or state officials as referred to in Article 1 number 1 and Article 1 number 2.[4]

Although it is not explicitly stated in the Constitutional Court's decision, it is clear that what is meant here is that the businessman Muhammad Riza Chalid, who participated with the applicant in his meeting with the President Director of PT. Freeport Indonesia, is a person who does not meet the special qualities of a Civil Servant (PNS) or state official, so that the applicant cannot be said to have committed a criminal conspiracy. Based on these considerations, the Constitutional Court in its decision has decided, among other things, to grant the applicant's request in its entirety, namely (1) The phrase "Evil conspiracy" in Article 15 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150) is contrary to the 1945 Constitution of the Republic of Indonesia insofar as it is not interpreted as, "Evil conspiracy is when two or more people who have the same qualities agree to commit a criminal act." (2) The phrase "evil conspiracy" in Article 15 of Law

[4]Fatkhurohman and Nalom Kurniawan, Shifting Corruption Crimes in Constitutional Court Decision Number 25/PUU-XIV/2016, Constitutional Journal, Volume 14, Number 1, March 2017, pp. 4-5.

Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150) does not have binding legal force as long as it is not interpreted as, "Evil conspiracy is when two or more people who have the same qualities agree to commit a criminal act." This decision shows that the Constitutional Court has added the words "having the same quality and mutually agreeing to commit a crime", namely the special quality as a civil servant or state official as referred to in Article 1 number 1 and Article 1 number 2 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

In connection with the Constitutional Court Decision Number 21/PUU-XIV/2016 dated September 7, 2016, according to the author, the understanding of the meaning of evil conspiracy still causes multiple interpretations, moreover the meaning of evil conspiracy in relation to corruption is not included in a separate chapter of the corruption crime law, thus causing legal weaknesses for perpetrators of corruption. Evil conspiracy does have a number of weaknesses related to the difficulty of the proof process, especially related to the element of agreement. The first opinion states that there must be a clear agreement between the briber and the bribe giver or the blackmailer and the blackmailed. While other opinions state that such an agreement is not necessary.

The concept of "agreement" needs to be proven by a meeting of minds that does not require an agreement between the briber and the briber or the blackmailer and the blackmailed. However, an agreement between two or more people to request something without the consent of the briber or the blackmailed is considered strong enough. It is also emphasized that a meeting of minds does not need to be with words that indicate explicit agreement but is sufficient with body language and sentences that indirectly indicate an agreement. The rationale used is Article 55 of the Criminal Code. In addition, in criminal law theory, there is a term known as successive mittnerscraft, which means that participation in a crime, including criminal conspiracy, can be carried out secretly.

Based on the above background, the author is interested in further research and analysis of the meaning of criminal conspiracy in corruption to avoid multiple interpretations, necessitating a reconstruction. Corruption is essentially an extraordinary crime that harms the state and society.[5]

[5]Rian Prayudi Saputra, Comparison of Indonesian Criminal Law with England, Jurnal Pahlawan, Volume 3 Number 1 2020, p. 54.

2. Research Methods

The type of research used in this study is sociological legal research. The approach used is sociological legal research, with the specification of this paper being descriptive analytical. Data collection methods include field studies and literature studies. Data analysis uses qualitative methods.

3. Results and Discussion

3.1. The Construction of Criminal Conspiracy in Criminal Law Politics in Indonesia

It has been explained above that the provisions related to criminal conspiracy in corruption crimes are generally regulated in Articles 88, 110, 116, 125, 139c, 164, 457 and 462 of the Criminal Code. Among these articles, Article 88 only provides an authentic interpretation of "samenspanning" (criminal conspiracy); Article 164 concerns a person who knows about the criminal conspiracy, so the person concerned himself is not involved in the criminal conspiracy; while Articles 457 and 462 concern crimes that begin with conspiracy, so their activities do not only reach the conspiracy alone but are continued with actions.

In its development, proving an agreement in criminal conspiracy in corruption is not easy. This problem is further complicated by Constitutional Court Decision Number 25/PUU-XIV/2016, which removed the phrase "can" from actions that have the potential to cause state financial losses. The removal of this phrase clearly means that new acts that could potentially result in corruption cannot be punished. Therefore, to be declared guilty of corruption, concrete evidence must be provided regarding the economic and financial losses to the state. This clearly adds to the complexity of proving criminal conspiracy cases, where proof in cases of criminal conspiracy in corruption can be imposed if it can be proven that there was an agreement between two or more people to carry out the corruption crime.

This can be seen in the case of Syahril Djohan with Haposan Hutagalung in the Arowana case where the Prosecutor charged Syahril Djohan with Article 5 paragraph (1) letter a of the PTPK Law in conjunction with Article 55 paragraph (1) Ke-1 of the Criminal Code, subsidiary Article 13 of the PTPK Law in conjunction with Article 55 paragraph (1) Ke-1 of the Criminal Code, the Second Charge namely Article 5 paragraph (1) letter a of the PTPK Law, Article 55 paragraph (1) Ke-1 of the Criminal Code, Article 15 of the PTPK Law, Article 88 of the Criminal Code in conjunction with Article 13 of the PTPK Law, Article 15 of the PTPK Law, and Article 88 of the Criminal Code. In this case the Prosecutor argued that Syahril Djohan had entered into a joint conspiracy to commit a criminal act of corruption, but the

judge's opinion was different, according to the judge Syaril Djohan only attended the meeting and in a listening capacity and did not take further action.[6]

In the Arowana case, it is clear that the evidence in criminal law in the form of witness statements, documents, defendant statements, electronic evidence is not able to prove an agreement as a basis for the existence of a criminal conspiracy in a corruption case. However, it is different from the Setya Novanto case, in that case Setya Novanto filed a lawsuit against Article 15 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 Concerning the Eradication of Corruption, where in the lawsuit Setya Novanto through his attorney stated that Article 15 has a weakness in the form of easy interpretation of the act of criminal conspiracy in the Corruption TP. This is due to the interpretation of the agreement which is multi-interpretable, while in his case, according to Setya Novanto, he cannot be proven to have committed a criminal conspiracy because he is not a high-ranking official of PT. FREEPORT who is able to determine the divestment, so according to him and his attorney, the charge of criminal conspiracy against him is a putative offense, namely an offense that is suspected of being a crime but is not a criminal offense.[7]However, Setya Novanto was still found guilty with evidence in the form of a recording of Setnov's conversation with Freeport officials.

Based on the various explanations above, it is clear that the implementation of criminal penalties in cases of conspiracy to commit corruption is also strongly influenced by the dominance of political power. In the case of Syahril Djohan, the perpetrator was acquitted, but in the case of Setya Novanto, the perpetrator was still convicted. This clearly contradicts Pancasila justice, which requires a balance in the realization of human values so that justice for all groups in society can be realized properly.[8]

In line with the above view, Chambliss and Seidman state that any action taken by role holders, implementing institutions, or lawmakers is always within the complex scope of social, cultural, economic, and political forces, and so on. All social forces are always at work in every effort to function the applicable regulations, apply their sanctions, and in all the activities of the implementing institutions. Ultimately, the role carried out by these institutions and legal institutions is the result of the operation of various kinds of weaknesses. Then TelcotParsons stated that from a sociological perspective, society is seen as living in a series of unified systems consisting of parts that are interconnected with each other.[9]Parson's view was developed from the organizational system development model found in

[6] http://repository.unair.ac.id/94028/4/4.%20BAB%20I%20.pdf, Accessed March 20, 2025.
[7]Rian Prayudi Saputra, Op., cit.
[8]Dafit Supriyanto Daris Warsito, The Criminal System for Narcotics Abusers, Jurnal Daulat Hukum, Vol. 1. No. 1 March 2018, p. 40.
[9]Ragil Tri Wibowo and Akhmad Khisni, Restorative Justice in Application for Crime Investigation on Property, Jurnal Daulat Hukum Volume 1 No. 2 June 2018, pp. 555-556.

biology, where the theory is based on the assumption that all elements must function so that society can carry out its functions properly.[10]

As a system, this theory positions law as one subsystem within a larger social system. Besides law, there are other subsystems with different logics and functions. These subsystems are culture, politics, and economics. Culture addresses values considered noble and virtuous, and therefore must be upheld. This subsystem serves to maintain ideal patterns within society. Law refers to rules as shared rules of the game. The primary function of this subsystem is to coordinate and control any deviations to ensure compliance with the rules. Politics is concerned with power and authority. Its task is to utilize power and authority to achieve goals. Meanwhile, economics refers to the material resources needed to support the system. The task of the economic subsystem is to carry out an adaptive function, namely the ability to control the means and facilities needed for the system's needs.[11]These four subsystems, besides being inherent realities of society, also simultaneously represent challenges that each unit of social life must face. The life and death of a society is determined by the functioning of each subsystem according to its respective duties. To ensure this, the law is tasked with regulating the harmony and synergistic movement of the other three subsystems. This is what is called the integrative function of law in Parsons' theory.[12]

1) The Relevance of the Value of Legal Certainty in the Regulation of Criminal Conspiracy in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001

Prior to the Constitutional Court's decision, Article 15 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 was unable to explain the types of conspiracy in criminal acts of corruption and did not contain the elements and procedures for committing the act along with an explanation.

Article 15 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 states that:

Any person who attempts, assists or conspires to commit a crime of corruption shall be punished with the same penalties as referred to in Article 2, Article 3, Article 5 to Article 14.

Article 15 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 relates to Article 53 and Article 56 of the Criminal Code. Article 53 of the Criminal Code states that:

[10]Bernard Raho, SVD, Modern Sociological Theory, Prestasi Pustaka, Jakarta, 2007, p. 48.
[11]Bernard L. Tanya, et al. Legal Theory of Human Order Strategy Across Space and Generations, Genta Publishing, Yogyakarta, 2010, p. 152.
[12]Loc.Cit.

(1) Attempting to commit a crime is punishable if the intention to do so is evident from the commencement of the act, and the failure to complete the act is not solely due to one's own will.

(2) The maximum principal penalty for a crime, in the case of an attempt, is reduced by one third.

(3) If the crime is punishable by death or life imprisonment, a maximum prison sentence of fifteen years is imposed.

(4) Additional penalties for attempted crimes are the same as for completed crimes.

Meanwhile, Article 56 of the Criminal Code states clearly and firmly that:

1. Convicted as an accessory to a crime: those who intentionally provide assistance at the time the crime is committed.

2. those who intentionally provide the opportunity, means or information to commit a crime.

Temporary Article 88 of the Criminal Code cannot be linked to Article 15 of the UUPTPK because Article 88 of the Criminal Code is contained in Book IX of the Criminal Code and according to Article 103 of the Criminal Code, the provisions as referred to in Book IX of the Criminal Code cannot be linked to criminal provisions outside the Criminal Code. This is emphasized by the wording of Article 103 of the Criminal Code which reads: The provisions in Chapters I to VIII of this book also apply to acts which are punishable by other statutory provisions, unless otherwise stipulated by law.

So it is clear that Article 15 of the PTPK Law cannot be linked to Article 88 of the Criminal Code because Article 88 of the Criminal Code is in Book IX of the Criminal Code while Article 103 of the Criminal Code only able to bridge the provisions of the Criminal Code with criminal provisions outside the Criminal Code only when related to the provisions of the Criminal Code regulated in Book I. This situation is further complicated by the absence of provisions on criminal conspiracy in the Corruption Law. The Constitutional Court's decision in Case Number 25/PUU-XIV/2016, the phrase "can" in Article 2 and Article 3 of the PTPK Law, then criminal conspiracy can only be proven by proving the existence of an agreement between two or more people that has clearly harmed the state's finances and economy. If these elements cannot be proven, then criminal conspiracy in criminal corruption cases cannot be imposed. This means that criminal conspiracy in corruption cases as regulated in the Constitutional Court's decision does not also contain elements *meeting of minds.* Further more, the acts of conspiracy and attempted corruption are combined in Article 15 as if these two types of crimes were similar, even though they clearly have differences. The differences in question are:

1) According to the Criminal Code, attempted criminal acts are Attempting to commit a crime is punishable if the intention to do so is evident from the commencement of the act, and the failure to complete the act is not solely due to one's own will. Meanwhile, conspiracy is when two or more people agree to commit a crime.

2) Attempted crimes are divided into two categories: attempted crimes, as regulated in Article 53 of the Criminal Code, and attempted violations, as regulated in Article 54 of the Criminal Code. Meanwhile, criminal conspiracy is only regulated in Article 88 of the Criminal Code.

3) There are differences in the elements of criminal conspiracy and attempted crime. In attempted crime, the elements consist of the intention to commit a crime deliberately, There is a beginning of implementation (Begin Van Uitvoering), and the act is not completed due to circumstances beyond the control of the perpetrator of the crime. Meanwhile, the elements of the crime of criminal conspiracy consist of two or more people who have agreed to commit a crime.

4. Conclusion

The construction of criminal conspiracy in corruption crimes in Indonesia has not been able to realize justice this is due to the unclear elements and mechanisms for proving criminal conspiracy acts in Article 15 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001.There needs to be regulation regarding element and the meaning of criminal conspiracy specifically in the crime of corruption.

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