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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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LAW ENFORCEMENT AGAINST CORRUPTION IN PERSPECTIVE OF HUMAN RIGHTS IN INDONESIA

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Abstract

Corruption has a correlation with Human Rights (HAM) correlations are both very clear, because in almost all cases of corruption, directly or indirectly, will be followed by human rights violations. Acts of corruption always starts from the abuse of power, which means that the perpetrators of corruption are usually carried out by the holders of power. In other words, that the deviant act committed by the bureaucracy in the form of corruption, can create misery for poor people in a country. That means the act of corruption has taken place the deprivation of the rights of the public on the economic, social and cultural, that means there has been a violation of Human Rights.

A. PRELIMINARY.

1. Background

In the Quran written some verses that talk about the skulduggery or in the language of today is corruption. This shows that the corruption existing in prophetic times this shows that the phenomenon of corruption has existed since humans began to organize their lives in the form of regular organizations. Corruption intensity different time and place, like other social problems, corruption is very much determined by factors outside. At first note refers to the issue of corruption bribes to judges and the behavior of government officials, who initially considered an act of corruption.

Along with the globalization era that drove the development of society and state organizations, corruption has also evolved from one phase of life to another phase of life. Nearly all countries are found to corruption, although with a different intensity from one another, so that some say that a government would fall if the act of corruption is not eradicated. Corruption is not only contained in any democratic country, the country's military dictator corruption also exists. In every stage of the development of any economic system, from capitalist countries such as the US open, to the centrally planned economies the former Uni Soviet.

Not a secret anymore that corruption in Indonesia has been the octopus in the system of government and an overview of how decaying governance in this country. Good in all state institutions of the executive, legislature and judiciary proven to have committed criminal acts of corruption either done individually or collectively, both human subject (persoon) and legal (recht persoon).

Corruption has resulted in poverty, low levels of education and health, and poor public services. And as a result of corruption suffering is experienced by the people especially the small communities that are under the poverty line. Already, in some areas of news in print and electronic media, we can read and see that floods, landslides, crumbling infrastructure, transport interrupted, the distribution of goods is hampered, public health collapsed and all of this is the effect of the presence of corruption, which would the impact would not be felt by innocent little society.

It was nice not believe it, legislations corruption already applied the Act No. 31 of 1999 (LNRI 1999-40; TLNRI 387) on the Eradication of Corruption jo Act No. 20 of 2001 on the Amendment to Act No. 31 of 1999 on Combating Corruption and Act No. 8 of 2010 on money laundering that predicate crime is corruption, which sanctions the weight plus the additional penalty in the form of payment of compensation, but does not reduce the perpetrators of corruption is reduced even seem such actions will become things A commonplace unlike other criminal acts, astahfirullohalazdim.

Although already in the form of the corruption court by Act No. 46 of 2009 on Corruption Court with the KPK that its formation is based on Act No. 30 of 2002 on Eradication Commission Corruption, which he said was terrible for anyone who deal with it, but the fact is when the KPK investigators examined the level of their sweet smiles and even when faced with corruption court hearing they added a wide smile.

This is a phenomenon that occurs actors thief treasure people casually wipe out, if possible without remaining state finance and economy of the state, without mercy, without compassion, without even thinking about the punishment of their god dredge state finances for the sake of lust world, enrich or benefit themselves or another person or a corporation.

There is human rights and inherent in every human being as a creature of God. Therefore, it is universal, meaning that apply anywhere and to anyone and can not be taken by anyone. It takes human rights but to protect themselves and the dignity of his humanity are also used as a moral foundation in associating or dealing with fellow human beings.

Humans live in the natural world have rights and obligations. Therefore, in addition to human rights, there is also a human obligation, namely an obligation that must be implemented in order materialize or upholding human rights (HAM). In the use of Human Rights, we are obliged to pay attention, respect, and respect human rights which are also owned by others. Among them should not be cheating or corruption (ghulul).

Based on the description it would appear that corruption is an extraordinary crime, which in combating it required incredible institution (extra ordinary institution) and also have caused damage in various aspects of community life, the nation, and the state so it is irrelevant if the act of corruption is a violation of human rights. Under these conditions, a paper entitled "Law Enforcement against Corruption in perspective of human rights in Indonesia" would be interesting to talk about the call for papers in the UNISSULA Semarang.

2. Problem Formulation.

Based on the description in the Background problem in advance, then the problem will be studied or investigated are:

- The extent of correlation between corruption with human rights?

3. Framework Theory.

To answer the above problems it is indispensable theories relating to corruption measures. According to Parson voluntaristic action theory, the actors are active actors and creative and have the ability to evaluate and select from alternative actions. Actor pursuit of goals in situations where the norms directing in choosing alternative ways and means to achieve the goal. As Max Weber divides human behavior (conduct) in 4 (four) types, the first, Purpose-rational conduct, namely human behavior is determined rationally and orientatined toward a goal (rational purpose). Human behavior in this case includes a precise calculation and decision means most effective way to achieve the objectives chosen and considered clearly. Second, Value-rational conduct, which is a human behavior that is based

on rational values. According to this model an offender involved in important absolute value or the value of the activities concerned. He further pursue such value (ethicts, aesthetics, or religion) rather than taking into account the means in a way that is evaluative neutral. Third, Affectual conduct, a human action that is under the direct domination or emotional feelings. Fourth, Traditional conduct an action that is based on the habits that arise from the established practices and respecting the existing authorities.¹

B. DISCUSSION.

Before discussing the above problems, it must first know the definition of corruption, that the word corruption is etymologically derived from the Latin "koruptio" means "bribery", or "corrumpere" means "destructive". This happens with officials from state agencies abused their positions so as to allow the occurrence of bribery, fraud, and other irregularities. From Latin is evolving into other languages, such as English uses the term "corruption", "corupt", French use the term "corruption", the Dutch use the term "corruptive". In latin Law Dictionary Fockema Andreae said corruptie mainly used for state employees who received kickbacks are receiving gifts and so while they know that the gift was intended to do something contrary to his obligations.²

The word corruption was first used by Poerwadarminta in Indonesian Language Dictionary, a translation of the Dutch word "corruptive". Then Corruption in the Indonesian dictionary is defined as "misappropriation or embezzlement (company or state funds to personal benefit or others).³

According Oemar Seno Adji, that the literal meaning of the word "corruption" is "decay, depravity, dishonesty, incorruptible, immorality, perversion of chastity,

¹ Adi Sulistiyono, 2002, Dissertation "Membangun Paradigma Penyelesaian sengketa Non-Litigasi Dalam rangka Pemberdayaan alternatif Penyelesaian Sengketa bisnis/ Hak Kekayaan Intelektual" Program Doktorate in law Universitas Diponegoro, Semarang, p.13 and 14.

² N.E. Algra dkk, 1983, *Kamus Istilah Hukum Fockema Andreae, Belanda – Indonesia*, translation Saleh Adwinata dkk, First Edition, Binacipta, Jakarta, p. 83.

³ Departement of education and culture, 1995, *Kamus Besar Bahasa Indonesia*, Fourth Edition, Balai Pustaka, Jakarta, p. 527

words or speech insulting or defamatory. Thus, the essence of corruption is the abuse of trust people for personal gain ".⁴

Pitlo and friends, Schroder cited the opinion which says that first of all it must be understood that there is no binding definition of corruption in general, and that corruption is defined differently by people with each other. Then Pitlo and friends tried to impose limits define of corruption based science concepts science, among others:

- a. In political science, generally applicable definition of "corruption is abuse office and administration, economics or politics, whether caused by themselves or other individuals for get benefit personal, causing loss to the general public, companies or individuals.
- b. Economics science, economists give a definition concrete about corruption as follows: "for the parties involved, corruption is a favorable exchange (between achievement and contra exchange for material or non-material) happens secretly and voluntarily, in violation norms in force, and at least an abuse of office or authority possessed by one of the parties involved in the field of public and private ".⁵

Law enforcement is always associated with several variables substance law, procedural law, social and political conditions, the level of public awareness, the legal apparatus, the availability of legal aid facilities. Criminal justice of a country, including Indonesia reflects the authority for the country, both nationally and in the international community. Mission of the criminal law, will not have the power deterrence and prevention (general and specific) for the general public, if state officials and citizens who have the potential of committing corruption still have the perception that the law enforcement process in Indonesia is prone to intervene. Good intervention of power influence and power of bribes by various modes operandy. Especially in cases dimensional transnational criminal cases and endanger the country, both in economic, political, and social culture. Including corruption offenses

⁴ Oemar Seno Adji, 2006, *Korupsi dan Beban Pembuktian*, Oemar Seno Adjo and colleagues, Jakarta, p. 6

⁵ Pitlo, dkk, 2006, *Mengenai Teori-teori Politik dari Sistem Politik Sampai Korupsi*, Nuansa, Jakarta, p. 404 - 405

committed by foreign nationals are systemic. Also the corruption that impact declining competitiveness of Indonesian human resources, directly or indirectly, have a causal relationship with the state authority and dignity of the nation Indonesia.⁶

Corruption is an urgent problems that must be addressed, in order to achieve economic growth and a healthy. Various notes about the daily corruption reported by the mass media both print and electronic, reflected an increase and development of models of corruption. Anti corruption rhetoric is not powerful enough to dismiss this despicable practice. Regulations and laws that are part of the political laws made by the government, become meaning less, if not accompanied with sincerity for the manifestation of the legislation that exists. Political law is not enough, if there is no recovery against the executor or the perpetrators of the law. Constellation like this reinforce the political reasons of laws designed by the government not only meets mainstream more is going on.

Political dimension of law which is "enforcement policy" or "policy enactment", is the imposition of a dominant policy in developing countries, where legislation is often used as a political instrument by the government, the authorities precisely, to things that are negative or positive. And draft legislation with the dimensions of such a dominant place in Indonesia, which would open the door for the entry of corruption through legislation weakness.

Almost all the legislation that has a dimension of political policy law "enforcement policy", and give space to the corruption practice. Fact happened shows that industrial countries can no longer patronize the developing countries about corruption, because through commit corruption system socioeconomic damaged, both developed and developing countries. Even in his book "The Confesion of Economic Hit Man" John Perkins reinforce the large role superpower like the United States by donor agencies such as the IMF, World Bank and Multinational ensnare developing countries like Indonesia mired in rampant corruption and trapped in foreign debt which was unusually large, entirely corrupted by the Indonesian authorities at the time.

In democratic life in Indonesia, corrupt practices more easily found various areas of life. First, because of the weakening of social values, personal interests become more mainstream choice than the public interest, as well as ownership of

⁶ Artidjo Alkostar, paper "*Fungsi Protektif Hukum Pidana Dalam Perkara Korupsi*", Hal.1

individual objects into personal ethics that underlies social behavior most people. Secondly, there is no transparency and accountability of public integrity systems. Bureau of public services can be used by public officials to pursue personal political ambitions, solely for the promotion and advancement. While the quality and quantity of public services, not the priorities and main orientation. And these two reasons pushed in Indonesia, public service is never maximised because of corruption and democratization actually facilitates corruption.

Corruption Efforts in Indonesia Corruption is endemic in Indonesia, even nations Indonesia including one of the countries that have a habit of corruption is highest when compared with other countries. Such conditions make the effort to eradicate corruption in Indonesia faces many obstacles. Nonetheless, the government has set in the Act since 1957 until now it continuously, namely:

1. In 1957 the Military Authorities issued Regulation No.PRT / PM / 06/1957 on "Combating Corruption". In This regulation means mentioned corruption deeds financial and economic disadvantage. Military Authorities then issued Regulation No. PRT / PM / 001/1957, which provides the legal basis to the Military Authorities to confiscate and seize goods from someone who acquired a sudden and harmful.
2. In 1967, corruption is uncontrollable and expanding rapidly, and therefore the President issued Decision 228 of 1967 on the Establishment Team Corruption tasked to assist the government in combating corruption as soon as possible and orderly. In addition, the President also issued Presidential Decree No. 12 Year 1970 on the Establishment of the Commission 4, which consists of Wilopo SH, I.J. Kasimo, Prof. Ir. John and Anwar Tjokroaminoto. The task is to conduct research and assessment of the policies that have been achieved in combating corruption and providing advice to the government on the policy is still needed in the fight against corruption.
3. The Government in 1971 succeeded in making Act 3 of 1971 on Corruption. But with the birth of the Law does not necessarily make fighting corruption a good walk. But instead efforts to eradicate corruption impressed not implemented in earnest. This can be seen in the absence of criminals who put on trial because of

the difficulty of proof issue. So that in this period (orde baru) corruption to flourish and grow into different aspects of life.

4. After its scrollable Reform, and the alternation of orde baru power devices start popping the law governing the issue of corruption, namely:
5. MPR No.XI / MPR / 1998 on the implementation of state clean and free from corruption, collusion, nepotism (KKN)
6. Act No.28 of 1999 as the implementation of the MPR No.XI / MPR / 1998 on the implementation of state clean and corruption-free
7. Act No. 31 of 1999 on the eradication corruption.
8. Act No.20 of 2001 on the amendment of Act No. 31 of 1999 on Corruption Eradication.

At the time of the Reformation is the eradication of corruption began with an intensive re-activated, and already many cases were brought to court, although still not satisfactory as people.

Corruption rules above will be applicable if law enforcement has a noble willingness to uphold. From the level of police investigators, prosecution by the Public Prosecutor to the decision by Judge corruption determined and noble spirit to combat, severe in law enforcement instead there is the corruption, therefore, particularly judges should have the responsibility *Ilahiyyah*.

Responsibility professionalism judge must be based on compliance with the standards of competence are:⁷

1. KNOWLEDGE is the knowledge about the law as a whole and the way of working of the law, so the law is always moving Centripetal toward Truth value (logical), the value of Justice (ethical), the value of balance or harmony (aesthetic) and simultaneously move towards the centrifugal dynamics social, political, cultural, and technological (scientific evidence).
2. LEGAL TECHNICAL SKILL CAPACITY namely technical skills to operate the peripherals law. Thus the hands of the judge who has the skills to "high flying hours" law can function optimally so as to achieve procedural justice and substantial justice, as above the law is law that the GOLDEN

⁷ Artidjo Alkostar, papaer "*Tanggung Jawab dan Kemulyaan Tugas Hakim Tindak Pidana Korupsi*", p.1

RULE Universal Mind. In the hands of the Professional Judges ruling the court process will produce enlightening for the social dynamics of a fair and civilized.

3. MORAL INTEGRITY. Judge moral integrity is the foundation for the reliability of Justice in carrying out the mandate of justice that is Noble.⁸

Literally rights are fundamental rights or fundamental. The word "right" highly correlative with the "duty", because people have a right and also have obligations. This means that when we discuss rights can not escape the obligation to talk about as well, because it is natural, or the degree of human dignity. Because sometimes people yell to get attention for the fulfillment of their rights, when he forgot that he was temporarily violate the rights of others who are obligations (for example: the protesters were using in part the highway thus closing the right of others to use the road).

After World War II human rights began to receive the attention of all countries, so was born a declaration agreed by all Member States of the United Nations (UN), so that the UN Assembly in 1948 declared a declaration called the "Universal Declaration of Human Rights". When read in Article 1, 2, and 3 could be found in the formulation of what are human rights, namely:

- Article 1: "all men are born free and have the dignity and the same rights. They are endowed with reason and conscience and should relate to one another in a spirit of brotherhood".
- Article 2: "Everyone is entitled to all the rights and freedoms set forth in this declaration such as race, color, enis sex, language, religion, and politics".
- Article 3: "Everyone has the right to life, liberty and safety as an individual".

Referring to the above, that corruptor is a pirate treasure the people and tarnish the nation's way of civilization. Corruptor is an extraordinary crime, has caused damage in various aspects of community life, the nation and the state, has been detrimental to the financial state, the country's economy and hamper national development corruption also inhibits the

⁸ Artidjo Alkosar, *Op.Cit.*, p.8

growth and sustainability of national development that demands efficiency high, by Therefore criminals violating human rights.

D. CONCLUSION.

1. Conclusions.

Based on analysis above, be concluded that Corruption has a correlation with Human Rights (HAM) correlations are both very clear, because in almost all cases of corruption, directly or indirectly, will be followed by human rights violations. Acts of corruption always starts from the abuse of power, which means that the perpetrators of corruption are usually carried out by the holders of power. In other words, that the deviant act committed by the bureaucracy in the form of corruption, can create misery for poor people in a country. That means the act of corruption has taken place the deprivation of the rights of the public on the economic, social and cultural, that means there has been a violation of Human Rights.

2. Suggestions.

Human Rights are fundamental rights or fundamental. when we discuss rights can not escape the obligation to talk about as well, because it is natural, or the degree of human dignity, therefore keep human rights by way of fight and destroy corruptor in Indonesia.

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