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



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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THE PRINCIPLE OF NATURAL JUSTICE AND HUMAN'S RIGHT PROTECTION FOR CITIZENS IN ERADICATION OF CORRUPTION IN INDONESIA

Indriyana Dwi Mustikarini
IKIP PGRI MADIUN
Email : indriyanad@yahoo.com

ABSTRACT

There are 550 corruption cases in Indonesia until 25th of February 2016. This number is increasing by the years. This research is meant to find the principal of natural justice and humans' right protection in corruption eradication.

This study is a legal study with statute and conceptual approach. The application of the Act no 31, 1999 related to Humans' Right and The Act No 28, 1999 related to a clean and corruption, collusion and nepotism free of State Implementation. The collocation of the Act No 31/1999 were influenced by the reformation spirits with respect toward humans right (HAM) whether it is related to deviated action done by bureaucracy apparatus in the form of corruption, has caused the lower society to suffer in this country. This State Implementation action has caused the violation of Human's Right in economy, social as well as culture as stated in the Act no 31, 1999 and 1945 Constitution.

The Act no 28, 1999 related to a clean and corruption, collusion and nepotism free State Implementation stated that the implementation of the principle of natural justice are law assurance, orderly state implementation, public interest, openness, propositionalism, professionalism, and accountability foundation will be one way to give protection of justice for the citizens toward the state implementation action. The implementation of a principal of natural justice and the maintenance of Human's right is also a way to eradicate corruption crime in Indonesia.

This paper recommends firstly to the government to be consistent to implement the principal of natural justice based on the Act no 28, 1999 related to a clean and corruption, collusion, and nepotism-free state implementation. Secondly, the maintenance of the Act No 31, 1999 related to Human's Right as a step to eradicate corruption

Keywords: The Principle of Natural Justice, Human's Right, Corruption

I. BACKGROUND

Corruption has increased rampantly in Indonesia, Indonesia Corruption Watch (ICW) mapping of corruption cases in Indonesia during the January 2016 to June 2016 period. During that time, a total of 210 cases were dealt with and the 500 people named as suspects by three law enforcement agencies. Corruption in Indonesia is like a usual things, it is entrenched. Corruption in Indonesia is like a haven for the corruptors. This was shown by Indonesia's position where it is placed on fifth out of 146 most corrupt countries surveyed by Transparency International in 2004.¹

Corruption has resulted in the majority of Indonesian people suffer and live in poverty, prevention of corruption has become our homework considering corruption to spread so rapidly like mushrooms and extended its authority even to the bottom. Eradication of corruption set in Law No.31 of 1999, the Acts no.20 of 2001 and shape the implementation of article 43 of Law no. 31, 1999, namely the establishment of the Law no.30 of 2002 on the Corruption Eradication Commission or KPK.

Deviant act committed by the bureaucracy in the form of corruption, has caused misery for poor people in the country of Indonesia. The action of some officials had led to violations of human rights in economic, social and cultural rights as stipulated in Law No. 31 of 1999 and 1945.

II. PROBLEM

Based on the above explanation, the author formulates the problem as follow:

1. How is the implementation of the principle of natural justice in corruption eradication in Indonesia?
2. How is the human's right protection in corruption eradication in Indonesia?

III. METHODS

The method used in this research is the study of law. Legal research in question is a process of finding the rule of law, principles of law, and the legal doctrines in order to address the legal issues at hand.²

The legal research study on the general principles of good governance and protection of human rights in the fight against corruption, which refers to the 1945

¹ Rina Atriana, *ICW: 500 Orang Jadi Tersangka Kasus Korupsi Sepanjang Januari-Juni 2016*, Detik News, Minggu 28 Aug 2016, 15:09 WIB di akses 7 Desember 2016 Pukul 14.23 WIB.

² Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta : Kencana Prenada Media, hal. 35.

Constitution, Act No. 31 of 1999 on Human Rights, Law No. 28 of 1999 on the Implementation of the state which is clean and free of corruption, collusion and nepotism, as well as the Presidential Instruction No. 5 Year 2004 on the Acceleration of corruption. Approach legislation (statutory approach) is an approach to obtain scientific truth. But the approach of legislation which are used not only see the shape of legislation but also the material contained therein.³

IV. DISCUSSION

4.1. The Implementation of The Principle of natural Justice in Corruption Eradication in Indonesia

The Principle of Natural Justice in Netherland is known as *Algemene Beginselen van Behoorlijke Bestuur (ABBB)*, according to Jazim Hamidi is a principle containing ethical values used for officials of country administration who life and grow in the environment of Country's Administration Law.⁴

AAUPB which already acknowledged in the practice of law in Netherland namely, equality principle, belief principle, Law Assurance Principle, precision principle, motivation principle, prohibition of authority misapplication, and prohibition of arbitrary act.⁵

On the other hand, the article 10 of the Act no 30, 2014 related to Governance Administration as well as its explanation states that the principle of natural justice includes:

1. The principle of Law Assurance

Is the principle in the country's law which prioritizes the principle of provisions of the legislation, propriety, regularity and fairness in every policy of the governance.

2. Beneficial principle

Is the benefit that must be look upon in balance namely:

a. The interest of one individual to another individual

³ *Ibid*, hal. 102.

⁴ Nomensen Sinamo S.H, M.H. *Hukum Administrasi Negara*. (Jakarta: Jala Permata Aksara, 2010). hal. 142.

⁵ Philipus M. Hadjon, 2008, *Pengantar Hukum Administrasi Indonesia*, Yogyakarta: Gajah Mada University Press , hal. 270.

- b. The interest of individual to the society
 - c. The interest of the citizens to the foreigners.
 - d. The interest of groups of people to another group of people.
 - e. The interest of the government to the citizens
 - f. The interest of the current generation to the next generation
 - g. The interest of human to the ecosystem
 - h. The interest of men and women
3. The Principle of Non-party
- Is the principle which obliges institution and/or government officials in deciding and/or implementing decision and/or action with considering to the interest of any party thoroughly and non-discriminative.
4. Precision principle
- Is a principle which implies that some decisions and / or actions should be based on the information and documents are completed to support the legality of the establishment and / or implementation of decisions and / or actions so that the decisions and / or actions in relation are carefully prepared before the decisions and / or actions is set and / or performed.
5. The Principle of Non Misusing Authority
- Is a principle that requires each agency and / or Government officials did not use his authority for personal benefit or the benefit of others and not in accordance with the purpose of granting authorization, not to exceed, not abuse, and / or do not confuse authority.
6. Principle of Openness
- Is a principle that serves the public to gain access and obtain information that is true, honest, and non-discriminatory in governance with regard to the protection of personal rights, class, and a state's secret.
7. Principle of Public Interest
- Is a principle that puts the welfare and public benefit in a way that is aspirational, accommodating, selective, and non-discriminative.
8. Principle of Good Service
- Is a principle that provides services with a timely manner, clear procedures and fees, in accordance with the standard of service, and the provisions of legislation.

With reference to the eight principles of good governance at the top of AUPB is an organizing principle used in the country to issue the decision. Organizers of the state in issuing decisions and actions in governance, created the law, abuses of authority, ensuring the accountability of the agency as well as government officials, provide legal protection to the people and government officials as well as apply the principles of good governance will create clean, good, moral, equitable, honorable, and respect the rights of others and free from actionarbitrary and abuse of authority government. Compliance with the organizers of the general principles of good governance will avoid the occurrence of corruption. This happens because state officials act in accordance with its duty and authority without violating the authority limits.

4.2. The protection of Human's Right in Corruption Eradication in Indonesia

Corruption is the misuse or abuse of state funds (companies, organizations, foundations, etc.) for personal gain or others.⁶ In Article 2 of Law No. 31, 1999 Any person who acts unlawfully enrich themselves or another person or a corporation that could harm the state finance and economy of the country.

From definition above that corruption is a person or legal entity who acts against the law to enrich themselves for the benefit of another person or other people who can hurt state finances.

Corruption in Indonesia is already a very common crime. In connection with Human Rights (HAM), which violated the rights of the fulfillment of economic, social, and cultural. Thus corruption in Indonesia can be considered in violation of Human Rights (HAM). The government budget is used for the fulfillment of economic, social and cultural which is abused resulted in misery of the Indonesian as the economy worsened.

Human Rights arrangements stipulated in Law No. 39 of 1999. Definition of Human Rights in Article 1 paragraph 1 of Law No. 39 In 1999, Human Rights is a set of rights attached to nature and human existence as a creature of God Almighty and it is His grace that must be respected, upheld and protected by the state, law and government, and everyone for the respect and protection of human dignity.

⁶ Departemen Pendidikan Nasional, 2014, *Kamus Besar Bahasa Indonesia Pusat Bahasa*, Jakarta : Gramedia Pustaka Utama, Hal. 736.

Human Rights are fundamental rights that are naturally inherent in human beings, is universal and is not inherited and should be protected, respected, preserved and should not be trampled or stolen by anyone. Indonesia is a country that signed the Universal Declaration of Human Rights which has been endorsed by the United Nations General Assembly, in its meeting on 16 December 1966. International Convention on the Rights of Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights). This declaration is generally ensures equal status and uphold human dignity.

Respect for Human Rights (HAM) in economic, social and cultural rights are implemented in Act No. 11 of 2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic Rights, Social and Cultural).

The implementation of state with upholds the implementation of Law 31 of 1999 on Human Rights and Law No. 11 of 2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic Rights, Social and Cultural), So human rights, especially in economic, social and culture will be protected.

Thus the eradication of corruption in Indonesia can be done by implementing AUPB (the General Principles of Good Governance), the protection of Human Rights by Law No.31 of 1999 on Human Rights and the rights and protection of economic, social and cultural refers to Act OF No. 11 of 2005 on Ratification of the International Covenant On Economic, Social And Cultural Rights (International Covenant On Economic Rights, Social and Cultural).

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