



Law Enforcement Against Criminal Activities of Corruption in Criminal Decisions for the Payment of Fair Replacement: A Study of Law and Society

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Abstract

Inconsistent law enforcement has strayed from its original duty as a defender of order to generate peace, prosperity, and justice. Law enforcement irregularities can cause "noise" in society. "Noisy" law enforcement undermines the rule of law. This study analyses law enforcement against criminal actions of corruption in criminal decisions on payment of equitable recompense money. The socio-Legal approach was applied. The study shows that legal enforcement against corruption in criminal choices for replacement money is ineffective and far from social justice. The judge's verdict for compensation is disproportionate to the losses. The court follows normative requirements in the law to make compromising choices for offenders without adequate assets to pay replacement money. The judge's decision to relieve the felon from replacement money benefits him. The judge always subsidises replacement money with a prison sentence.

Keywords: *Criminal Law; Corruption; Payment of Compensation Money; Socio-Legal Approach*

Introduction

The people of Indonesia have finally concluded that corruption is a threat to both the present and the future of their nation and state (King, 2000). This is evident from the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: XI/MPR/1998 concerning State Organizers that are Clean and Free of Corruption, Collusion, and Nepotism. This decree, which according to the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: I/MPR/2003, remains in effect until the formation of law, can be found here. Concerning the Establishment of a Clean and Free State from Corruption, Collusion, and Nepotism, Law Number 28 of 1999 was passed in 1999 and is the law being questioned here. Other legal provisions were also developed to eradicate corruption, such as Law Number 31 of 1999 and About the Eradication of Criminal Acts of Corruption, later amended by Law Number 20 of 2001. This law was one example of the many different legal provisions that were made (Kusuma, 2018).

For this reason, it is necessary to prevent and overcome corruption through law enforcement policies through legal instruments for recovering assets acquired from corruption, in this case, the

criminal law instrument for payment of replacement money. These legal instruments can be found in the Indonesia Code, the Indonesia Statutes, and other jurisdictions (Zaidan, 2017).

Beginning with the requirement of the Constitution, the criminal law policy of eradicating corruption is not only focused on measures to punish the culprits, but it must also limit public losses through the asset recovery process. This is because the Constitution mandates this. The procedure of repaying state assets or state losses resulting from criminal acts of corruption is a recent development in Indonesia's criminal justice system (Wibawa et al., 2015).

The punishment for providing replacement money, intended to recoup losses due to corruption but has not been successful in doing so, has not been able to recover the state's financial losses, and the punishment for paying replacement money is still considered an additional offence. It is not required for the public prosecutor to file a lawsuit, and it is not required for the judge to decide on the criminal payment of a substitute criminal to the person who committed a criminal act of corruption. When it came time to put the sentence into effect, the defendant opted to serve his time in prison rather than pay the amount of replacement money that the judge had decided to impose in his judgement because he did not want to pay it. It should come as no surprise that this violates the standards of fairness upheld in our society.

Crimes that are so significant and very damaging to the state and its citizens are only given minimal criminal consequences, which are not proportional to the losses generated by the crimes. On the other hand, a thief whose only crime is to cause harm to the victim is not considered to have committed a particularly serious offence. However, they still face the possibility of serving up to five years in prison. Take, for instance, the situation of Aal, a student at the State Vocational High School 3 in Palu, Central Sulawesi, who had to go through the process of going to trial and ultimately ended up being found guilty in the case. Theft only for stealing sandals worth Rp. 30 thousand, grandmother minah, a cocoa thief with a sentence of 1 year in prison, and other cases that have received criticism from the public because the decisions handed down are far from a sense of justice, thus making the public lose confidence in the judiciary are examples of cases that have received criticism from the public. Law enforcement officials tend to follow directives in the law solely. In implementing the law, law enforcement officers should look at the state of the community to be fair for the community.

Inconsistency in law enforcement has caused it to depart from its inherent duty, which is to maintain order to provide peace, prosperity, and justice for the people being policed. A community may experience a state of "commotion" due to inconsistencies or abnormalities in how law enforcement is carried out (Edwards, 2014).

A "noisy" law enforcement system will prevent the rule of law from serving its intended purpose and prevent it from functioning effectively. The writer formulates the problem: How is law enforcement against corruption in criminal decisions on payment of reparation money that is fair? Based on the description of the backdrop of the problem.

Research Methods

The Socio-Legal approach was utilised in this research, which was carried out in the field of law. An interdisciplinary theoretical and methodological approach predominantly entwined with the social sciences and humanities is utilised to pursue the primary goal of Socio-Legal Studies, which is to provide answers to and explanations for a wide range of legal challenges. In the same way, in other nations, Socio-Legal Studies functions as an umbrella for a variety of subfields, including legal sociology, legal anthropology, politics, gender and law, legal psychology, and many others (Irianto, 2021). The theoretical and practical aspects of the growth of legal science are substantially enriched by the incorporation of Socio-Legal Studies. Theoretically, this method makes room for the growth of contemporary legal

research via an interdisciplinary lens by providing space for such an approach. In terms of their application, the study findings are most helpful when used as a foundation for the formulation of laws and policies, as well as for the reform of institutions, particularly the judicial system (Nalle, 2015).

Results and Discussion

According to Fockema Andreae, "corruption" originates from the Latin corruption or corruptus, which was later copied into several different languages. It is copied in English to become corruption or corrupt; in French, it becomes corrupted; and in Dutch, it is copied into the term corruption. As another example, it is copied in English to become corruption or corrupt in Dutch (korruptie). The word "corruption" originated in Dutch and was borrowed into Indonesian. In Dutch, the word "corruptie," which can alternatively be transcribed as "corruptien," refers to an act of corruption or bribery (Hamzah, 2005).

People's trust in the government is declining as a direct result of corruption, another major consequence in addition to the financial losses that corruption causes to the state. There is not a single government agency that does not engage in corrupt practices. Not only Indonesia but no other country in the world is free from corruption, so the prevention of corruption should indeed be carried out by countries in the world together and continuously. This is especially important for the people of Indonesia, for whom the problem is not only preventing corruption but also eradicating it, given that the number of cases, state losses, and the modus operandi of corruption continues to increase from year to year (Prabowo, 2014).

Corruption eradication is a series of actions to prevent and combat corruption (through efforts to coordinate, supervise, monitor, investigate, investigate, prosecute, and examine in court) with the participation of the community based on the applicable laws and regulations. These actions are carried out by the laws and regulations currently in place (Sativa & Daskalakis, 2018).

The problem of eradicating corruption in Indonesia is not only a matter of law and law enforcement alone but also of social and psychological problems that are very serious and as serious as legal issues, so they must be addressed simultaneously. Since these problems are very serious, they must be addressed simultaneously (Putra & Linda, 2022).

The creation of various anti-corruption provisions within laws and regulations still needs to be followed by substantial efforts for improvement in other areas, such as restructuring the national economy and reforming bureaucratic institutions. There is still the prevalent mentality that the only way to settle any situation is through legal means (Sativa & Daskalakis, 2018). Nevertheless, the new legislation will only impact if implemented and followed. In addition, the law itself, particularly the Criminal Law, should be the last resort for solving an issue (*ultimum remedium*). If the present rules and regulations are not followed by other systemic measures, both preventative and repressive, then the law will not be able to become the last efficacious medicine. This is especially true if the legislation is not applied in practice and instead only becomes a form of paper.

A state is a tool used to defend its citizens' human rights through a legal system that is used to accomplish justice and prosperity. The law can safeguard the rights of citizens, and a state is a tool used to protect its inhabitants' rights.

The law should be carried out not only by the logical ideas upon which it is based but also with feelings, care, and a spirit of engagement (compassion) for the people of Indonesia who are enduring hardship. Every available resource and effort should be put into overcoming difficulty. At this moment, the people of Indonesia are attempting to challenge the way of thinking that has been prevalent up until

this point, which brings about further challenges. The institution of law in Indonesia should serve as a means of bringing prosperity and contentment to the lives of its citizens.

Adopting juridical-preventive laws and creating deterrent effects is one approach that might be used to eliminate corruption in Indonesia today. The judicial-preventive action is taken to prevent corruption by enforcing laws, regulations, and legislation that more firmly regulates criminal acts of corruption. On the other hand, the deterrence effect is the enforcement of severe penalties for perpetrators of corruption through regulations and legislation aimed at making corrupt actors think twice about their actions (Mukhlisin, 2020).

Because of the consequences of breaking the law, it becomes authoritative. Legal sanctions are defined as an unpleasant (miserable) condition placed on the perpetrator of a law violation to restore his soul so that he does not commit another violation. This definition comes from the field of criminal law.

Criminal sanctions take physical and spiritual restraint, and their purpose is to encourage the perpetrators of criminal acts to reflect on their deeds. The ideal outcome of this process is that the perpetrators will be aware of their past deeds and will not repeat them in the future. At the same time, these sanctions are intended to warn the general public not to engage in illegal behaviour. Engage in illegal behaviour. It is possible to say that the objective of criminal sanctions is multifaceted; nonetheless, the primary purpose of criminal sanctions is to uphold the norm itself. This is because if the norm is successful, it will increase public welfare and justice (Paternoster, 2010).

Most of the judges in this area have a positivistic and legalistic outlook. When it comes to offenders who do not possess adequate assets to pay restitution, judges will typically choose to follow the normative rules in the law rather than make compromising decisions for them. The conclusion that the judge came to was that it would be more beneficial for the offender to be released from replacement money.

It is clear that judges who handle cases of corruption adhere to the flow of legalism. Written law because their decisions in corruption involving replacement money are still strongly influenced by the positivistic-legalistic flow. This flow emphasises that the nature of the law is written law (law), so it is clear that judges who handle corruption cases adhere to this flow. The view that glorifies written law is an exaggerated view of the power that creates written law. Because of this, it is considered that power is the source of law and power itself is the law. As a result, this creates a period in which trust is completely transferred to the law to overcome the uncertainty of unwritten law. Judges can establish legal certainty through legislation, but those laws will be unchanging and unyielding.

The excessive acceptance of the flow of legalism among judges of corruption in Indonesia results in a highly inflexible attitude on the part of judges when deciding cases of replacement money. These judges do not view the interests of the state and society as victims who are damaged due to corruption.

The positivism of judges in the context of criminal decisions for replacement money tends to be compromising and only becomes a mere trumpet of the law. Without making legal breakthroughs to protect the state's economic rights, the efforts to eradicate corruption are rigid and only pursue formal justice. This is due to the acceptance of legal positivism among judges. This runs counter to people's feeling of justice in our society. Bismar Siregar said, "Judges are obligated to interpret the law such that the law functions as a living law." This is because judges do not simply impose formal laws but must locate justice in the midst of society (Suyuthi, 2013).

In its most basic form, the challenge of putting the criminal execution of reparation payments into practice is likewise difficult for law enforcement. The mechanism of the legal system that deals with criminal offences is what is used to carry out the process of law enforcement. According to Satjipto Rahardjo (2009), the practice of law enforcement is not a neutral activity; rather, it possesses its social

structure, which causes it to vary from one era to the next, from one legal framework to another, and from one geographic location to another.

From a practical standpoint, if the state is serious about freeing itself from the burden of economic losses caused by corruption. Therefore, judges should avoid getting caught up in the current positivism. If they base their decisions solely on formal standards, they will not be able to accomplish social justice, nor will they be able to explain the essence of justice or the benefits of law enforcement. The burden of economic losses to the state will continue to be significant, and the number of illegal acts of corruption will continue to rise.

According to Satjipto Rahardjo (2006), the law cannot be construed as an absolute institution because its meaning and application are contingent entirely on individual perception and behaviour. The human being, not the legal system, is the one who makes the decision. Putting humans in conflict with the law forces us to make difficult decisions, but in essence, all extant legal theories can be traced back to these two aspects of human nature. When the focus of a theory moves toward legal considerations, it is more likely to view the law as something unchangeable, independent, and conclusive. The more attention is paid to human beings, the more place for the human aspect will need to be made in theory. Naturally, the value of state losses is far greater than the replacement money because the paradigm that occurs in the criminal judgement of replacement money shows that judges show more shifts in legal factors, so that written legal rules (laws) are absolute and final—paid because the judge ruled that the law should be the definitive rule.

According to Munir Fuady (2003), Indonesia is the strangest country in the world regarding its efforts to eradicate corruption. This is because, despite being one of the most corrupt countries in the world, it is precisely the fewest corruptors who have been thrown into prison, and the amount of replacement money that was saved is much smaller than the state financial losses lost due to corruption. In other words, Indonesia is the strangest country in the world regarding its efforts to eradicate corruption. Inconsistency in applying the law is one of the barriers that must be overcome to eliminate corruption in Indonesia.

Convicts of corruption benefit significantly from this condition, as they have elevated expectations of being exonerated from the obligation to pay replacement money if the judge decides that such a requirement is superfluous. There is no requirement to impose replacement money. The provision of compensation in the legislation is a different loophole for the abuse of authority to abuse of power because there is no requirement for judges to implement it. Meanwhile, in terms of the judges' profession, the supply of compensation in the law is a particular loophole.

Public concern or awareness to provide information early on to law enforcement officers against people suspected of committing criminal acts of corruption is still lacking; in fact, there is a tendency to cover up. In addition to problems related to laws and regulations and problems related to law enforcement, the public's lack of awareness to report or notify criminal acts of corruption in their environment and property owned by the defendant, the public's lack of awareness to report or notify criminal acts of corruption in their environment and property owned by the defendant, and the public's lack of awareness.

Despite popular belief, the concept of legal justice is not codified in any one body of law. The discussion regarding legal justice focuses more narrowly on the decisions made by courts. It is not the content of the rule of law that constitutes a test of legal justice; rather, it is the analysis of the decisions reached by the courts in each instance. Therefore, the notion of legal justice needs to be connected to the specific instance that is the focus of the legal principle being applied. One must first be provided with a set of rules before being able to attempt to find legal justice by applying those rules to a collection of facts. In the end, the judge posed three questions concerning the case's resolution. These questions were

as follows: what legal rules were used; what judgement or version of the facts was used to apply the rule of law; and is the rule of law applicable?

In the end, the judges will decide after considering all three of these factors. The judge did not consider this, and despite the imposition of additional fines for the payment of replacement money, the results have not been maximised in terms of recovering assets that were the consequence of illegal acts of corruption.

However, justice does not necessarily follow the rule of law; rather, it is the other way around. The corrupt are highly astute at hiring advocates to protect themselves from the threat posed by corrupt courts. The manoeuvres are more painful because they are carried out in the name of the law, the rule of law, and other legal concepts. The law has been manipulated in this situation to obscure its true intent. As a result, we can deduce that what constitutes a valid desire to carry out the law is the factor that decides what the law is. The sociological theory of law supports a significant portion of this. Therefore, according to the discipline, the law is not just a set of guidelines but also behaviours (and social structure). The term "sociological theory" refers to a compilation of various points of view about the problems that individuals face and the social phenomena that occur in everyday life (Silbey, 2018).

The law can be interpreted in a more qualified plus-minus fashion. If it is claimed that the law will end criminal activity through the prospect of criminal sanctions, then this is only the beginning of the process. That only accounts for aspirations and goals (aspirational). Therefore, even after there are laws in place, action is still required so that the goals set forth by the legislation can be accomplished. The cops are still required to take action. There is still a demand for reports compiled by the community and those supporting the "wants" of the law. Therefore, laws and other regulatory frameworks need to finish the design exactly and comprehensively. In this section, it is stated that the law only possesses positive and negative traits.

As a result, anti-corruption strategies should focus on the "opportunity and desire" component (Wulandari & Parman, 2019). Reducing opportunities can be done by implementing systemic changes, and reducing desires can be done by inverting the strategy of "high profit, low risk" to "low profit, high risk" by preventing things from happening, strictly enforcing the law, and effectively and successfully frightening people. Establish and implement measures of accountability. In addition, for a plan to be effective, its primary focus must be on upholding the law and meting out punishments, preventing future offences, and educating the general public (Easton & Piper, 2016).

Community members are one of the elements that contribute to the success of a rule. By "effectiveness," we mean the community members' awareness of the need to comply with statutory regulation, also referred to as the "degree of compliance." To put it another way, the degree to which community members comply with the law is one measure of how effectively it is being implemented. The issue of legal culture is intricately connected to the topic of legal awareness of society, which was researched and written about by Lawrence M. Friedman (1975). In this context, "legal culture" refers to many classifications of values, ideas, and attitudes that impact how the law is carried out.

The idea of having a legal consciousness in and of itself carries with it some aspects of value that, of course, have been implanted in the minds of citizens ever since they were children and that has been institutionalised. This socialisation process eventually results in establishing a guideline that is upheld by the community and is ingrained through the institutionalisation phase. In addition, what is internalised and institutionalised eventually becomes evident in the form of norms, which serve as a standard for how citizens should conduct themselves. So, the actions of citizens contain components of values that they have long lived by, which influences how the law is carried out in society.

At the very least, the community has the initiative to report if there is any suspicion of additional assets of state administrators in their environment, which makes it easier for law enforcement officers to

track and freeze the property if it is proven that the property is the result of a criminal act of corruption. Legal awareness and active participation of every community member are very much needed to eradicate corruption.

People who do not care about law enforcement will not have an effective deterrent to prevent law enforcement that is not in line with the sense of justice in people's hearts. This sense of justice is what drives people to care about law enforcement. Even if it is left entirely up to law enforcement, it is still conceivable for sound legal standards to become nothing more than tools to accomplish particular subjective aims rather than a method of achieving justice and maintaining public order (Tyler et al., 2015).

To what extent is it necessary for a legal system to have a legal culture to prevent abuses of this kind? The overall attitude towards the law, particularly a concern for law enforcement, is reflected in the legal culture of a country. The culture of the people will dictate the general attitude that most people have regarding this law. The community's sense of order and the cultural values it holds dear will be reflected in the community's legal system. A democratic society will unquestionably have democratic legal characteristics in terms of the content and execution of the laws. However, a feudalistic society will also have a feudalistic legal structure in place. Likewise, so on.

The Constitution of the Republic of Indonesia from 1945 provides protection and benefits for every citizen within the context of upholding the Constitution's supremacy as the state's basic law. The Constitution of the Republic of Indonesia from 1945 also guarantees law enforcement and justice within a legal process that is fair or just. Therefore, a series of principles of a fair and comprehensive legal process, good and perfect, the 1945 Constitution of the Republic of Indonesia and the laws and regulations do not mean much for any citizen or society if it is not enforced or applied legally. This is because the Constitution was written in 1945. Truthfully and impartial, it will give the impression that Indonesia is not democratic or lawful (*rechtstaat en democratische*) (Tibaka & Rosdian, 2018).

The ultimate purpose of the legal system is to bring about economic growth while preserving social order. Humans must uphold justice in all aspects of their lives, whether on an individual or societal level. This is because, in addition to satisfying the fundamental requirements of human existence when interacting with others, justice can foster goodness both among people and in their surrounding environment. Since peace will be the offspring of justice, the primary objective of the legal system in the framework of social life is to establish social justice.

Conclusion

It is not possible to say that the enforcement of laws against criminal actions of corruption in criminal decisions about the payment of replacement money is successful, and it is very distant from the value of community justice. The amount of the criminal payment of compensation that the judge ordered is not equal to the losses that were sustained as a result of the crime. Even though the amount does not adequately compensate for the harm done, courts frequently follow the normative rules of the law to impose an equitable decision for convicted parties who do not possess sufficient assets to make restitution. Because of this, the conclusion reached by the judge is more favourable for the criminal to be released from having to pay replacement money. In addition, the judge would invariably substitute time spent in jail for the amount of money awarded as compensation.

This can be illustrated by contrasting a minor theft with the commission of a serious offence, in which the value of justice has not been realised even though the victim suffered very little loss. The losses that are the result of corrupt practices are bigger than the losses that are the result of larceny crimes. The judge's ruling, which was not fair, is not something the community can tolerate. The choices that judges make in court are one manifestation of justice in the legal system. It is not the content of the rule of law

that constitutes a test of legal justice; rather, it is the analysis of the decisions reached by the courts in each instance. The definition of legal justice needs to be connected in some way to the specific case that is the focus of the legal system's application of the rule of law. Pursuing legal justice is only feasible if one has a set of rules and the opportunity to apply those rules to a collection of facts.

At the very least, the community has the initiative to report if there is a suspicion of additional assets of state administrators in their environment, which makes it easier for law enforcement officers to track and freeze the property if it is proven that the property is the result of a criminal act of corruption. Legal awareness and active participation of every community member are very much needed to eradicate corruption.

People who do not care about law enforcement will not have an effective deterrent to prevent law enforcement that is not in line with the sense of justice in people's hearts. This sense of justice is what drives people to care about law enforcement. Even if it is left entirely up to law enforcement, it is still conceivable for sound legal standards to become nothing more than tools to accomplish particular subjective aims rather than a method of achieving justice and maintaining public order.

In addition to providing the community with legal protection, it is also necessary to add rewards (gifts) to encourage the community's role as a reporter. This is necessary because the community can become intelligent to discover what is happening in their environment. As a result, the community plays an essential part in law enforcement efforts against corruption and contributes to recovering losses brought on by corruption.

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