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Conditional Criminal Conviction in the Perspective of Eradicating Corruption

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Abstract

Corruption is a global problem. Currently, corruption is more understandable by various parties than eradicating it, even though corruption is one type of crime that can touch various interests related to human rights, state ideology, economy, state finances, national morals, and so on, which is evil behavior that tends to be difficult to deal with. This research is dotted with reviewing and reviewing the rules regarding conditional sentences that apply in Indonesia. In this study, researchers will use a normative type of research, namely normative research, namely legal research that puts the law as a building of a norm system. The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, and doctrines. Corruption crimes regulate Criminal Threats that allow Conditional Crimes to be applied in this case. Unfortunately, application of conditional crime for corruption cases that are sentenced to probation, or imposed conditional sentences, of course, it greatly hurts the sense of justice of the community besides that criminal convictions in corruption crimes should be applied without any tolerance for Corruptors because corruption crimes are extraordinary crimes, so corruption needs to be dealt with in extraordinary ways as well.

Keywords: *Corruption; Criminal Law; Conditional Sentence*

Introduction

Corruption is a global problem. No longer a problem of a regional or national nature. Because corruption is a threat that can lead to the fragile stability and security of society, state institutions, democratic values, ethical values, and justice and hinder sustainable development and law enforcement (Hamzah, 2014). Currently, corruption is more understandable by various parties than eradicating it, even though corruption is one type of crime that can touch various interests related to human rights, state ideology, economy, state finances, national morals, and so on, which is evil behavior that tends to be difficult to deal with. The difficulty of overcoming corruption crimes can be seen from the many decisions of defendants in corruption cases, or the lack of crimes borne by the defendants that are not comparable to what they do. This is very detrimental to the country and hinders the development of the nation. Recognizing the complexity of the problem of corruption during a multidimensional crisis and the real threat that will inevitably occur, namely the impact of this crime. Therefore, corruption can be categorized as a national problem that must be faced seriously through a balance of firm and clear

measures by involving all the potential that exists in society, especially the government and law enforcement officials (Hartanti, 2005).

As explained above as the ideal of eradicating corruption, which is a form of Indonesia's commitment to fighting corruption, Indonesia needs to implement and harmonize legislation consistently in order to eliminate gaps and differences in substance and consistency of law enforcement itself. Efforts to deal with corruption systematically and continuously must be in line with the reality that occurs but in fact shows that the handling of corruption cases in Indonesia is still very slow and has not been able to deter corruptors, such as in the conditional criminal conviction of corruption crimes, this shows that the provisions for conditional criminal convictions are not synchronous and in line with the ideals of conditional criminal acts, for example in The decision of the Banjarmasin District Court Number 2 / Pid.Sus-TPK / 2018 / PN Bjm in 2018, which has occurred in the case of conditional sentences in corruption criminal cases in Indonesia, namely:

a) The decision of the Banjarmasin District Court Number 2/Pid.Sus-TPK/2018/PN Bjm of 2018, is a judgment with the defendant Drs. H. M. Gazali, M.PD. I bin (Alm) Khairul is the Principal of SMA Negeri 10 Banjarmasin, who stated that the Defendant was validly and conclusively proven guilty of committing the "Corruption Crime".
b) The motive for the corruption crime committed is the Corruption Crime in the New Student Admission Levy (PPDB) with a List of Prospective Students who are declared to have Passed through *offline* academic year 2018/2019. The defendant is threatened in Article 11 of Law Number 31 T ahun 1999 concerning the Eradication of Corruption Crimes which has been amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes jo. Article 55 paragraph (1) 1 jo. Article 64 paragraph (1) of the Criminal Code.
c) Furthermore, the criminal penalty imposed is imprisonment for 1 (one) year and by paying a fine of Rp.50,000,000 (fifty million Rupiah) provided that if the fine is not paid, it is replaced by imprisonment for 4 (four) months. It has then been determined that the sentence shall not be served, unless in the future there is another order in the decision of the Magistrate, because the Convict before the lapse of probation of 2 (two) years has committed an act punishable.

Then it can also be seen in the following example of the verdict as the second example in the imposition of conditional criminal judgments on corruption crimes that cause financial losses to the State, hence the decision is based on the Denpasar District Court Decision Number 14 / Pid.Sus-TPK / 2017 / PN Dps of 2017, which is explained as follows:

a) In the Denpasar District Court Decision Number 14 / Pid.Sus-TPK / 2017 / PN Dps of 2017, Declared **Defendant I Putu Agung Mashika, S.T. T**erbukti legally and convinced guilty of committing a "corruption crime".
b) Stated defendant **I Putu Agung Mashika, S.T.** Guilty of committing a criminal offence "has received a gift, when it is known or reasonably suspected that the gift was given as a result of or caused by having done or not done something in his office, which is contrary to his obligations, as stipulated and threatened with criminality in Article 12 letter b Jo. Article 12A paragraph (2) of R.I Law No.31 /1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law No.20/2001 on Eradication of Corruption.
c) Stipulating that the crime does not need to be carried out, unless in the future there is a court decision with legal force that has permanent legal force has been found guilty of committing a criminal act before the expiration of probation for 1 (one) year and 6 (six) months.

As an example, the Decision of the Banjarmasin District Court Number 2 / Pid.Sus-TPK / 2018 / PN Bjm of 2018 and the Decision of the Denpasar District Court Number 14 / Pid.Sus-TPK / 2017 / PN

Dps of 2017 shows the decline of law enforcement in eradicating corrupt criminal acts. Regarding this sentence of probation or conditional sentence, Muladi defines it as a criminal offense, in which case the convict does not have to serve the sentence, except where during the probation period the convict has violated the general or special conditions that have been determined by the court (Muladi, 2002). It can be seen that Conditional Criminal conviction can be interpreted as a form of light punishment for perpetrators of Corruption / Corruptors.

Method

In this thesis research, researchers will use a normative type of research, namely normative research**,** namely legal research that puts the law as a building norm system (Isnaini & Utomo, 2019). The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, and doctrines. Normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems faced. Normative legal research is carried out to generate new arguments, theories or concepts as solving the problem at hand (Iskandar, 2019).

Discussion

Corruption is a problem that occurs in various countries including Indonesia. Each country has a specific strategy in overcoming problems that can hinder the development and progress of the country. The word corruption comes from the Latin *Corrupti or Corruptus* which literally means rottenness, depravity, dishonesty, bribery, immoral, deviation from chastity (Hamzah, 2014). The definition of corruption according to Law Number 31 of 1999, especially in Article 2, that concerning the Eradication of Corruption Crimes means that Corruption is Any person who is categorized as against the law, commits acts of enriching oneself, benefiting oneself or others or a corporation, abusing authority or opportunities or means that exist on him because of his position or position that can harm the state's finances or the country's economy (Utomo, 2020). Viewed in the consideration which is the ideal of eradicating corruption in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes with its ideals stating as follows:

1. That the criminal act of corruption is very detrimental to the state finances or the country's economy and hinders national development, so it must be eradicated to realize a just and prosperous society based on Pancasila and the 1945 Constitution.
2. That the consequences of corruption crimes that have occurred so far, in addition to harming the state finances or the country's economy, also hinder the growth and continuity of national development which demands high efficiency.

As seen in Law Number 20 of 2001 concerning the Eradication of Corruption Crimes in its consideration also states that:

1. That the criminal act of corruption that has been widespread so far, has not only harmed the state's finances, but has also been a violation of the social and economic rights of the community at large, so that the crime of corruption needs to be classified as a crime whose eradication must be carried out exceptionally.
2. That to better ensure legal certainty, avoid diversity of legal interpretations, and provide protection for the social and economic rights of the community, as well as fair treatment in eradicating corruption.

Corruption itself is divided into four types, namely: discretionary corruption; illegal corruption, mercenary corruption, and ideology corruption. Discretionary corruption is corruption committed because of the freedom to determine policies, even if they seem to be legitimate, not acceptable practices by

members of the organization. Illegal corruption is a type of action that intends to disrupt the language or intentions of law, rules, and regulations. Mercenary corruption is a type of corruption crime intended for personal gain, through abuse of authority and power. Ideology corruption is a type of illegal or *discretionary* corruption intended to pursue group goals (Djaja, 2010). Looking at the definition above, corruption is a criminal act that should get an appropriate and fair punishment so that the perpetrator gets a deterrent effect and for the sake of upholding the principles of law and justice (Hatta Isnaini Wahyu Utomo, 2019).

Interestingly, in Indonesia, there is a rule that applies contrary to the principles of law and justice (Isnaini & Wanda, 2017). The rule is known as conditional criminal for perpetrators of corruption crimes. Conditional punishment for corruption perpetrators is a manifestation contrary to the ideal of corruption crimes that people who commit corruption are punished as severely as possible but the reality in corruption cases is that there are still many corruptors who get conditional sentences, this is very contrary to the ideals in the rules of corruption crimes. A conditional criminal institution commonly referred to as a criminal agreement or criminal offense, that is, imposing a sentence on a person but the criminal does not need to be served unless in the future it turns out that the convicted person before the end of the probationary period commits another criminal act or violates the agreement given by the judge. So, the criminal conviction remains only the executor of the criminal is suspended (Soesilo, 1996).

The provisions regarding conditional punishment are still valid in accordance with the provisions as stipulated in the Criminal Code, this is based on article 103 of the Criminal Code "The provisions in Chapter I to Chapter VIII of this book also apply to acts that by other statutory provisions are threatened with a criminal offense, unless by law it is specified otherwise" on the other hand, the Law on the Eradication of Corruption Act itself regulates criminal threats that allows conditional criminal penalties to be applied in corruption cases. But for corruption cases that are sentenced to probation, or imposed conditional sentences, of course, it greatly hurts the sense of justice of the community, besides that criminal convictions in corruption crimes should be applied without tolerance for corruptors because corruption crimes are extraordinary crimes, so corruption needs to be dealt with in extraordinary ways as well. The Anti-Corruption Law already provides for minimum sentences for perpetrators of corruption, so judges cannot decide on less than that minimum verdict.

This regulation regarding conditional punishment is contained in Article 14 letter (a) to letter (f) of the Criminal Code. Article 14 (a) of the Penal Code provides that a judge may affordably assign a sentence in a conviction, if:

a. The judge sentenced him to a maximum of one year in prison.
b. The judge sentenced him to confinement (not confinement for the imposition of fines or confinement for the seizure of goods)

The judge imposed a fine, under the condition of:

a) If it really turns out that the payment of fines or the seizure of goods stipulated in the decree raises a very objection to the convict.
b) If the perpetrator of the criminal act is sentenced to a conditional fine, it is not an offense related to state revenue.

The application of conditional criminal law should be directed to the following benefits: enhancing individual freedom, and on the other hand maintaining legal order and providing protection to society effectively against further violations of the law; improving community achievement of the rehabilitation philosophy by maintaining a sustainable relationship between inmates and society normally; avoiding and weakening the negative consequences of criminal deprivation of liberty that often hinder correctional efforts to return inmates to society; reducing the costs that must be incurred by the

community to finance an efficient correction system; limiting the disadvantages of the criminal application of the revocation of liberty, particularly to those whose lives depend on the perpetrator of the crime; can fulfill the objectives of integrative punishment, in its function as a means of prevention (general and special), community protection, maintaining community solidarity and offsetting (Muladi; Barda Nawawi Arief, 2005).

Criminal act is a juridical sense, in contrast to the term "evil deed" or "crime" *(crime or Verbrechen or misdaad)* which is interpreted criminologically and psychologically. As an overview of the definition of a crime or criminal act that juridically the definition of a crime or criminal act is "an act prohibited by law and whose offense is subject to sanctions", that criminologically a crime or criminal act is "an act that violates the norms prevailing in society and gets a negative reaction from society, and psychologically a crime or criminal act is "an abnormal human act that is unlawful, caused by the psychiatric factors of the perpetrator of the act (Prakoso, 2017). That every criminal act in the Criminal Code can generally be described its elements into two kinds, namely subjective and objective elements. What is meant by subjective elements are elements that are attached to the perpetrator or that are related to the perpetrator's self and include everything contained in his heart (Lamintang, 1984). Meanwhile, what is meant by objective elements are elements that have to do with circumstances, namely the circumstances in which the actions of the perpetrator must be carried out.

Conclusion

Eradicating corruption is not the goal, but rather the fight against evil behavior in government, which is part of the broader goal, which is to create an effective, just, and efficient government through various strategies in the eradication of corruption as follows:

a) Bureaucratic Reform

The authority of public officials to make decisions and the tendency to abuse them can be minimized by moderating the organizational structure and management of public programs. This change will reduce incentives for members and can reduce the number of transactions and increase opportunities for the public to get good public service.

b) Culture

The most powerful in the battle against corruption is to cultivate a democratic and egalitarian culture. A feature of democratic culture is openness and devotion to openness. The most effective guardians of openness are citizens who are gathered in organizations formed for the expected purpose. In this context a free press is urgently needed. Without the freedom to ask questions or to effect change, the people remain powerless because they are set in a superficial democratization system.

c) Institutional

Institutionally, there are key functions that must be performed by the backbone of the eradication of corruption, both at the preemptive, detective, and repressive levels. Harmonization of performance between the attorney general's office, POLRI, financial examination agency (BPK), and KPK plays an important role in the success of eradication. It's just unfortunate, right now overlapping authority and unfair competition loom over the performance of some of those agencies. The feud between the KPK and the POLRI, or POLRI and the attorney general's office is one example of this disharmony.

d) Human Resources

Efforts to eradicate ethical poverty and raise awareness are necessary, therefore superior human resources must continue to be built, especially through education. Such community resources are a very important foundation for the national integrity system in the eradication of corruption. A less educated and apathetic society does not know its rights and succumbs to the abuse of authority by officials, while unprincipled government officials will simply follow the dominant current that exists in their work

environment without being able to think critically in understanding and exercising their rights and obligations.

e) Infrastructure

The infrastructure referred to here is the Triassic institution of politics which includes the executive, legislative, and judicial. The running of executive, legislative, and judicial functions in the corridors of their respective rights and obligations will make the expected contribution in the eradication of corruption. On the contrary, if not, it means that this national political infrastructure needs to be addressed so that the institution functions as it should and ultimately supports efforts to eradicate national corruption.

The implementation of conditional criminal law for perpetrators of corruption crimes is a manifestation of the weak handling of corruption activities in Indonesia. The conditional criminal law for perpetrators of corruption crimes is precisely contrary to the principles of the benefits of enacting a conditional criminal law. The enactment of conditional criminal law is precisely a loophole for corruption perpetrators in avoiding criminal liability for what has been done. Thus, the enforcement of the principles of law, justice, and deterrent effect does not apply to perpetrators of corruption acts because after being designated as suspects, the perpetrators can try to apply for the implementation of the conditional criminal law. If the Indonesian government wants to uphold the principle of justice and eradicate corruption, the main thing that can be done is a review of the implementation of conditional criminal law for perpetrators of corruption acts. Strengthening criminal law enforcement against perpetrators of corruption by not enforcing conditional criminal law is one of the concrete manifestations of the Indonesian government's seriousness in eradicating corruption in all fields.

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