

Implementation Of Corruption Offences As Special Crimes In The Draft Penal Code

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Abstract. *Corruption is a problem that needs to be taken seriously and is a legal issue in every country in the world, including Indonesia. The disease of corruption is increasingly rampant. The seriousness of the government in overcoming criminal acts of corruption is the establishment of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes. The formulation of the problem discussed in writing this thesis is Regarding the Application of the Criminal Act of Assistance in corruption. The research method used in writing this thesis is a research method carried out with a Normative Juridical Approach, namely Legal Principles and referring to Legal Norms contained in the library research method (library research), namely conducting research using data from various reading sources such as Laws - Invitations, books, magazines and the internet which are considered relevant to the problems that the author will discuss in this thesis. The assistance of corruption crimes committed by Widjokongko Puspoyo who helped Widjanarko Puspoyo receive gifts from Bulog partners caused Widjokongko Puspoyo to be punished for violating Article 11 Law No. 20 of 2001 concerning changes to Law no. 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 15 of Law no. 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 56 I of the Criminal Code. Assistance in Corruption Crimes is regulated in Article 15 of Law No. 31 of 1999, in this article it states that the act of assisting corruption will be punished the same as the perpetrators of corruption in accordance with the provisions in Law No. 31 of 1999 as has been amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes. In Article 15 Criminal Responsibility for Assistance Crimes in corruption cases is seen from the extent to which the act of assisting the Corruption Crime was carried out. In determining the amount of punishment for the assistant to the criminal act of corruption, it can be seen from the articles violated by the assistant to the criminal act of corruption.*

Keywords: *Corruption, Crime, Draft Criminal Code*

INTRODUCTION

Law has several provisions and among them are Criminal Law provisions. Based on the doctrine as stated in the Criminal Code (KUHP), the provisions can be classified into General Criminal Law (*ius commune*) and Special Criminal Law (*ius singulare, ius speciale, or bijzonder strafrecht*). Corruption is one part of the Special Criminal Law because it has certain specifications that are different from other general criminal laws such as the existence of deviations in procedural law and when viewed from the material regulated.

Based on the description of the background above, the author is interested in studying and knowing more about these problems in a scientific work with the title, How is the

Application of the Crime of Corruption in the Draft Law and Legal arrangements for Crimes committed jointly and continuously Regarding the Eradication of the Crime of Corruption?

RESEARCH METHODS

This type of research is normative juridical research, using statute approach and conceptual approach, with primary and secondary data collection techniques. The data analysis used is qualitative data analysis. Based on the results of research and discussion, the concept of jointly and continuously committed criminal offences in the Corruption Crime, namely if the realisation of the Corruption Crime is carried out by more than one person or two or more people who jointly have the intention or desire for the realisation of the act.

THEORETICAL REVIEW

In Terminology, Corruption comes from the Latin word "corruptio" which means corruption or depravity, and is also used to designate a rotten condition or action. Corruption is often associated with dishonesty or fraud in the financial sector. Thus, to corrupt means to commit fraud or irregularities concerning finances.¹ Corruption is defined as an act done with an intent to gain some advantage contrary to official duties and other truths. An act of an official or trusted person who unlawfully and wrongfully uses some benefit for himself or others contrary to official duties and other truths.²

Law No. 31/1999 Jo Law No. 20/2001 on the Eradication of the Criminal Act of Corruption states that corruption is any person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm state finances or the state economy. Lord Acton's phrase can describe the relationship between "corruption" and "power", namely "Power tends to corrupt, and absolute power corrupts absolutely", meaning that power tends to corrupt and absolute power tends to corrupt absolutely.³

The crime of corruption has become a serious problem in Indonesia, because it has spread to all fields and sectors of public life in a widespread and systematic manner. Corruption is a tangible manifestation of the violation of people's social rights that has become endemic and systematic. Corruption is also committed by officials or former heads of government during their tenure/leadership even after they have left office (high profile crime) and most of the proceeds of corruption are kept abroad.⁴

¹ Elwi Danil, *Korupsi; Konsep Tindak Pidana, dan Pemberantasannya*, PT.Raja Grafindo Persada, Jakarta, 2011, hlm 3.

² Surachmin dan Suhandi Cahaya, *Strategi Teknik dan Korupsi*, Sinar Grafika Offset, Jakarta 2010, hlm 10.

³ Ermansyah Djaja, *Memberantas Korupsi bersama KPK*, Sinar Grafika, Jakarta, 2008, hlm 1.

⁴ Frans H. Winata, *Suara Rakyat Hukum Tertinggi*, Kompas, Jakarta, 2009, hlm 289.

The panel of judges who examined and tried the case of corruption that occurred at the Langkat District Health Office has sentenced each of the defendants through the Medan District Court Decision Number: 106/Pid.Sus.K/2014/Pn.Mdn which stated that the defendants were convicted of violating Article 12 Jo Article 18 of Law Number: 31 of 1999 concerning the Eradication of Corruption as amended by Law Number: 20 of 2001 concerning Amendments to Law Number: 31 of 1999 concerning the Eradication of Corruption Jo Article 55 paragraph (1) to 1 Jo Article 64 paragraph (1) of the Criminal Code (KUHP) with imprisonment of 4 to 6 years.

RESULTS AND DISCUSSION

Definition of Corruption Crime

Proceeds of crime assets are usually defined as any property, whether tangible or intangible, whether movable or immovable, that is the result of a criminal offence, or obtained as a result of a criminal offence, or as a form of profit from a criminal offence. Furthermore, the assets that can be confiscated are not only limited to that which is obtained or a form of profit obtained from a criminal offence. Assets that are used to finance (as capital), or as tools, facilities, or infrastructure, even any assets related to a criminal offence or all assets belonging to the perpetrator of a criminal offence can also be confiscated, in accordance with the type of criminal offence related to the assets. Thus, the perpetrators of criminal offences or any person who is involved or wants to be involved in a crime or criminal organisation will realise that in addition to the possible benefits they will get, they are also faced with the risk of losing their wealth.

Law No. 8/2010 on the Prevention and Eradication of Money Laundering uses the term -criminal proceeds¹ to describe assets obtained from criminal offences as well as assets related to criminal offences, although the more appropriate term is -criminal assets.

The use of the term -results of criminal offences² actually seems to limit the scope of assets related to criminal offences, because in fact assets related to criminal offences have a broader meaning than just the proceeds of criminal offences.²³ In the same context, this understanding can also be applied to assets resulting from corruption offences.

Definition of continuing criminal offences

Continuous action (*voortgezzette handeling*), by the legislator has been regulated in Article 64 paragraph 1 of the Criminal Code, which reads: "Staan meerdere feiten, ofschoon elk op zich misdrijf of overtreding opleverende, in zoodanig verband, dat zij moeten worden beschouwd als eene voortgezette handeling, dan wordt slechts eene strafbepaling toegepast,

bij verschil die waarbij de zwaarste hoofdstraf is gesteld". which in general can be interpreted : "If there is such a relationship between several behaviours that they must be considered as a continuous act, even though each of them is a crime or an offence, then only one criminal provision applies, and if there is a difference, then the criminal provision that carries the heaviest basic punishment applies".⁵

In contrast to the fact contained in the *Memorie van Toelichting*, where the legislator has talked about what is called voortgezet misdrijf and voortgezette overtreding, then in the formulation of criminal provisions according to Article 64 Paragraph 1 of the Criminal Code above, the legislator has talked about several behaviours that seem to stand alone, but which because there is such a relationship, the behaviours must be considered as one continuous act.⁶ According to the MvT (*Memorie van Toelichting*), the Criteria for Actions - Actions that have such a relationship that must be seen as a continuous action are:

- a. There must be a single decision of will;
- b. Each act must be of the same kind;
- c. The interval between the acts is not too long.

Joint and Continuous Criminal Offences in Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 on the Eradication of the Crime of Corruption

The provisions of Article 15 of the Law Against Corruption are unique compared to other Articles with similar elements, namely having a special provision on the element of assistance. The special provision in question is that if the perpetrator assists in the commission of a criminal offence, then the punishment for the perpetrator will be increased by 1/3 (one-third) of the punishment. In general, the perpetrator who assists the criminal offence is given the opposite punishment, which is reduced by 1/3 (one-third) of the punishment. The provision contained in Article 15 of the Law on Corruption has the same meaning as the provision on Criminal Responsibility in Criminal Law. If we look at the formulation of Article 15 of the Anti-Corruption Law, which regulates participation in the crime of corruption with a focus on assistance, we can see that the provisions of Article 15 of the Anti-Corruption Law are similar to the provisions on criminal responsibility in criminal law.

One of the reasons for the formation of the Anti-Corruption Law was also borne out by the existence of offences of office in the Criminal Code. The regulation of this offence previously existed in the Criminal Code which was adopted more specifically by the Anti-Corruption Law in several articles. Offences of office are acts committed by persons who are

⁵ P.A.F. Lamintang, *Dasar-dasar Hukum Pidana Indonesia*, PT Citra Aditya Bakti, Bandung, 2011, hlm 706

⁶ *Ibid.*, hlm 706.

endowed with certain characteristics. The nature in question is, for example, the Special Nature of Authority, Work, or Power. This criminal offence is generally committed by civil servants who are in the task of carrying out their respective authorities. Based on the development of this offence, the Corruption Crime itself has had innovations in the realisation of the crime, namely the cooperation between private parties and government parties.⁷

CONCLUSIONS AND ADVICE

A. Conclusions

1. The regulation of criminal offences committed jointly is regulated in Article 15 of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 on the Eradication of the Criminal Act of Corruption, which is a form of "Assistance" which is punishable by the same penalty as the perpetrator. Meanwhile, regarding continuous acts in the Law on the Crime of Corruption, there is no article that specifically regulates it, so it is left to judicial practice and is guided by the provisions of Article 64 of the Criminal Code.
2. Efforts that have been included in the Laws and Regulations to ensure the recovery of state losses include: 1) confiscation of assets resulting from corruption; 2) reverse proof in order to optimise the return of assets resulting from corruption; 3) return of assets resulting from corruption through civil lawsuits; and 4) criminal payment of compensation in the context of returning assets resulting from corruption. Efforts that have been accommodated in the legislation to maximise the recovery of state losses are constrained by several aspects both in terms of law enforcement personnel and regulations. In terms of regulations, the rules related to the seizure of assets from corruption offences that refer to the Criminal Code, Criminal Procedure Code and Corruption Law are not considered adequate to provide a basis for conducting asset seizure and return. Therefore, the return of assets from corruption offences in the Indonesian legal system cannot be effectively enforced and carried out.

B. Advice

1. The Government and the House of Representatives should formulate more clearly the joint and continuous acts in the Corruption Act so that there is legal certainty in the application of the law regarding joint acts (participation) and continuous acts (agglomeration) in corruption cases.

⁷ P.A.F Lamintang dan Theo Lamintang, *Delik-Delik Khusus Kejahatan Jabatan dan Kejahatan Jabatan tertentu sebagai Tindak Pidana Korupsi*, Sinar Grafika, Jakarta, 2011, hlm 28

2. In order for the public to file an Cassation, the applicant must first understand and understand the reasons for filing an Cassation. Thus, the submitted Cassation Petition can be considered by the Supreme Court Judge.

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