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Juridical Review of The Legal Responsibility of Perpetrators of Corruption Offences in Indonesia

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Abstract: *In the recent reform era, there has been no effective effort to eradicate corruption. This is particularly ironic, given that the goal of reform is to eradicate corruption, collusion and nepotism (KKN). It also shows that more democratic governments are not serious about eradicating corruption. The crime of corruption in Indonesia has been increasing year by year. Corruption has become an extraordinary crime. Thus, efforts to eradicate it can no longer be done in an ordinary way, but are required in an extraordinary way. Corruption can pose a danger to the life of mankind, because it has penetrated the world of education, health, provision of food for the people, religion, and other social service functions. The difficulty of overcoming corruption can be seen from the number of acquittals of defendants in corruption cases or the lack of punishment borne by defendants who are not proportional to what they have done. This is very detrimental to the State and hampers the development of the nation. In this case, corruption cases are also difficult to disclose because the perpetrators use sophisticated equipment and are usually committed by more than one person in a covert and organised situation. Overcoming corruption requires measures such as improving the system, including improving the applicable laws and regulations, improving the way government works, strictly separating state ownership and private ownership, enforcing professional ethics and institutional discipline, applying the principles of good governance and optimising the use of technology and improving human beings, including improving human morals as believers, improving legal awareness, increasing legal awareness, electing leaders who are clean, honest and anti-corruption.*

Keywords: *Corruption, Crime, Criminal Offence*

INTRODUCTION

In the recent reform era, there has been no effective effort to eradicate corruption. This is particularly ironic, given that the goal of reform is to eradicate corruption, collusion and nepotism (KKN). It also shows that more democratic governments are not serious about eradicating corruption. The crime of corruption in Indonesia is widespread in society. Its development continues to increase from year to year. The uncontrolled increase in corruption will bring disaster, not only to the life of the national economy but also to the life of the nation and state in general. Corruption is a violation of the social and economic rights of society. The crime of corruption has become an extraordinary crime. Likewise, efforts to combat it can no longer be done in an ordinary way, but are required in an extraordinary way. This is because corruption is a crime that is very detrimental to the state.

The development of world civilisation seems to be running towards modernisation, which always brings changes in every aspect of life. Along with that, forms of crime also keep up with the times and transform into increasingly sophisticated and diverse forms. Crimes in

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the field of technology and science always follow suit. Today's crimes no longer always use the old ways that have occurred over the years. along with the age of this earth. We can see examples such as cybercrime, money laundering, corruption and other crimes.

One of the criminal offences that is the enemy of all nations in this world. In fact, the phenomenon of corruption has existed in society for a long time, but has only attracted worldwide attention since the end of the Second World War. In Indonesia itself, the phenomenon of corruption has existed since Indonesia was not yet independent. One of the evidences that shows that corruption already existed in Indonesian society during the colonial era is the tradition of giving tribute by some groups of people to the local ruler.

The rapid economic growth in Indonesia has not only led to economic problems, but has also increased criminalisation as a new dimension of crime that involves an unlawful misuse of economic power, as well as public power. This form of structural crime includes well-organised systems, organisations and structures. This is because corruption is a crime committed by people with high intelligence. To reveal corruption cases, one aspect is the proof system which lies in the burden of proof. The development process can lead to progress in people's lives, but it can also result in changes in the social conditions of society that have negative social impacts, especially regarding the problem of increasing criminal acts that disturb the community. One of the criminal offences that can be said to be very phenomenon is the crime of corruption.[1]

So far, corruption has been tolerated by various parties rather than combating it, in this case the crime is one type of crime that can touch various interests concerning the country's economy, state finances, national morale, as well as evil behaviour that tends to be difficult to overcome.[2]

Corruption in Indonesia continues to show an increase from year to year. The crime of corruption has become widespread in society, both in terms of the number of cases that occur and the amount of state losses, as well as in terms of the quality of criminal acts committed that are increasingly systematic and their scope enters all aspects of people's lives. Corruption is a serious problem, this criminal offence can endanger the stability of public security, endanger socio-economic development, and also politics, and can damage democratic values and morality because gradually this act seems to become a culture. Corruption is a threat to the ideals of a just and prosperous society. The uncontrolled increase in corruption will bring disaster, not only to the life of the national economy, but also to the life of the nation and state.[3]

[1] B Sudarso, *Korupsi di Indonesia*, Karya Bratara Aksara, Jakarta, 1990, hlm. 3
[2] Muliadi, *Tindak Pidana Korupsi*, Citra Aditya Bakti, Bandung, 2000, hlm.4 .
[3] Muliatno Sindudarmoko dan Sofyan Syafri Harahap, *Ekonomi Korupsi*, Pustaka Quantum, Jakarta, 2001, hlm.4 .

Law enforcement basically involves all Indonesian citizens, which in its implementation is carried out by law enforcers. The law enforcement is carried out by authorised officials. The state apparatus authorised to examine criminal cases are the police, prosecutors and courts. The police, prosecutors and judges are three elements of law enforcement, each of which has duties, powers and obligations in accordance with the applicable laws and regulations. In carrying out their duties, these law enforcement elements are a sub-system of the criminal justice system. In the context of law enforcement, each of these sub-systems has a different role in accordance with its field and in accordance with the provisions of the applicable laws and regulations.

The difficulty in eradicating corruption is in reporting. It is likened to a 'vicious circle', the meaning of the vicious circle is that in the event of an act of corruption, there are those who know that corruption has occurred but do not report it to the authorities, there are those who know but do not feel aware, there are those who want to report but are prohibited, there are those who may but do not dare, there are those who dare but do not have the power, there are those who have the power but do not want to, on the other hand, there are also those who have the power, have the courage but do not want to report it to the authorities.

The crime of corruption, which is a special criminal offence, requires cooperation with other parties to resolve the case. This cooperation with other parties is called a legal relationship, because in carrying out cooperation in a rule or law that is certain in nature. Legal relationships with other parties can be in the form of individuals, legal entities and government agencies. Legal relations with individuals, for example with a witness, a suspect, a legal advisor. Legal relations with legal entities, for example with Organised Companies where the suspect commits acts of corruption. While legal relations with other government agencies can be with fellow law enforcers, namely the Police, Courts and Correctional Institutions. The difficulty of overcoming corruption can be seen from the number of acquittals of defendants in corruption cases or the lack of punishment borne by defendants who are not proportional to what they have done, this is very detrimental to the state and an obstacle to national development.[4]

Corruption is a threat to the principles of democracy, which uphold transparency, accountability and integrity, as well as the security and stability of the Indonesian nation. Because corruption is a criminal offence that is systematic and detrimental to sustainable development, it requires comprehensive, systematic and sustainable prevention and eradication measures at both the national and international levels. In implementing efficient and effective

[4] Evi Hartanti, *Tindak Pidana Korupsi*, Sinar Grafika, Jakarta. 2005, hlm.2 .

prevention and eradication of corruption offences, support for good governance management and international cooperation is required, including the return of assets derived from corruption offences.

Problem

Based on the background description above, the problem formulation that wants to be raised in writing this journal is:

1. How is the form of responsibility of the perpetrators of corruption offences in Indonesia?
2. How is the Prevention and Handling Process of Corruption Crime in Indonesia?

RESEARCH METHODS

The data used in this journal are primary data and secondary data referred to by the author as follows:

a. Primary data consisting of Law No. 24 Prp. of 1960, Law No. 3 of 1971, Law No. 28 of 1999,

Law No. 31 of 1999, Law No. 20 of 2001, Law No. 30 of 2002. 2001, Law No. 30 of 2002, concerning the Corruption Eradication Commission (hereinafter KPK, the Corruption Eradication Commission).

b. Secondary data is material that provides an explanation of primary legal materials, such as seminar results or consisting of books, scientific writings, internet and literature studies, even personal documents or opinions from legal experts as long as they are in accordance with the object of this research.

The data collection method used in this research is secondary data obtained through library research, namely by conducting research on various literatures such as: books, laws, scholars' opinions, lecture materials, as well as materials obtained through the internet, which aims to find conceptions, theories, or notions related to legal issues regarding the crime of corruption.

RESEARCH RESULTS

1. How to deal with and the process of handling corruption offences in Indonesia.

Countering corruption can be successful in accordance with its aims and objectives with the potential for legal certainty, justice and expediency, by implementing the Countering Corruption Programme to the maximum extent to eradicate corruption through both repressive and preventive approaches:

1. Repressive measures to eradicate corruption are oriented towards:
   a. Maximum efforts to recover state losses;
   b. Prioritising the quality of cases handled;
   c. Handling is carried out professionally and proportionally based on Trikrama Adhyaksa (Satya, Adhi, Wicaksana).
2. Preventive measures to eradicate corruption are oriented towards:
   a. Providing support to government programmes in the context of poverty alleviation, revitalisation and bureaucratic reform and remuneration.
   b. Effectivising legal counselling activities and legal information to the public
   c. Increasing the guarantee of community supervision

Investigations in criminal acts of corruption are first handled by investigators from the Prosecutor's Office and by the Police. In special criminal acts the prosecutor acts as an investigator. The legal basis that gives the Prosecutor's Office the authority to investigate corruption offences is Article 30 paragraph (1) letter d of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia which reads as follows

'In the criminal field, the prosecutor's office has the duty and authority to investigate certain criminal offences'. Based on this article, corruption offences are special criminal offences in the sense that corruption offences have special provisions of criminal procedure. Thus, the prosecutor's office is authorised to conduct investigations.

Criminal offences that contain provisions against certain criminal offences are called 'special criminal offences'. The criminal offence of corruption under Law No. 20/2001 on the amendment of Law No. 31/1999 on the Eradication of the Criminal Offence of Corruption contains special provisions of criminal procedure, among others:

1. The suspect is obliged to provide information about all the assets of the corporation he knows (Article 28).
2. The defendant has the right to prove his/her innocence (Article 37).
3. In the event that the defendant has been legally summoned and does not appear at the court session without a valid reason, the case can be examined and decided without his presence (Article 38).[5]

Not all corruption cases that are investigated can be upgraded to the prosecution stage. If one of the elements is not supported by evidence or there are reasons based on jurisprudence, because the unlawful nature is not proven, then the case is issued a letter of termination of

[5] Arya Maheka, *Mengenali dan Memberantas Korupsi*. Komisi Pemberantas Korupsi Republik Indonesia, Jakarta 2006, hlm. 45

investigation. If the investigation has been completed, and from the results of the investigation evidence is obtained regarding the criminal offense that occurred, the results of the investigation are set out in the case file.

To avoid any mistakes at the examination level, it is necessary for the Public Prosecutor to clearly know all the work carried out by the investigator from start to finish. This is important considering that it is the Public Prosecutor who is responsible for all treatment of the defendant, from the time the suspect is investigated, then examined the case, detained and finally whether the charges made by the Public Prosecutor are valid or not based on the law, so that the public's sense of justice is truly fulfilled. In order to realize the rule of law, the government has laid a strong foundation in the effort to combat corruption. Based on the provisions of Article 43 of Law No.31 of 1999 concerning the Eradication of Corruption as amended by Law No.20 of 2001, the special body is called the Corruption Eradication Commission, which has the authority to coordinate and supervise, including conducting investigations, investigations and prosecutions.

The authority of the Corruption Eradication Commission in conducting investigations, investigations and prosecutions of corruption crimes includes crimes that:

1. Involving law enforcement officials, state officials and other people who are related to corruption crimes committed by law enforcement officials or state officials.
2. Criminal offenses that receive attention from the public, and / or
3. Involving State losses of at least Rp.1,000,000,000.00 (one billion rupiah).

In handling corruption cases, the Corruption Eradication Commission may not issue a letter of termination of investigation and prosecution. The handling of corruption cases by the Corruption Eradication Commission must be complete and clear, for this reason the Corruption Eradication Commission is equipped with broad authority to overcome various existing obstacles. Corruption eradication is a series of actions to prevent and overcome corruption (through coordination, supervision, monitoring, investigation, prosecution and court hearings) with the participation of the community based on applicable laws and regulations.

2. Bentuk Pertanggung Jawaban Para Pelaku Tindak Pidana Korupsi di Indonesia

The word responsibility is derived from the word responsible, namely according to Koesnadi Hardjasoemantri, that guilt responsibility and punishment are expressions that are heard and used in daily conversation both morally, religiously, and legally. The three elements are related to one another and are rooted in the same situation, namely the punishment of violations of a system of rules that can be broad and diverse, covering the fields of civil law and criminal law, moral rules and much more. The similarity between the three elements

includes a set of rules about behaviour, which is followed by a certain group. Thus the system that gave birth to the concept of guilt, responsibility, and punishment is a normative system.

Being responsible for a criminal offence means that the person concerned is legitimately liable to punishment for the acts he or she has committed. A criminal offence can be legitimately witnessed if there are rules for the act in a system of relations and the system of laws applies to the act committed. In other words, the act is not justified by that system. This is the basic concept that law aims to achieve justice and justice is usually interpreted as equality. In the use of criminal witnesses as a means of social sanctions in all limitations, Muladi as quoted by H. Setiyono said that the conditions for optimal use of criminal witnesses must include:

1. The prohibited act according to most members of the community is conspicuously considered to be harmful to society, considered important by the community.
2. The application of criminal witnesses to prohibited acts is consistent with the objectives of punishment.
3. The eradication of the prohibited act will not hinder or obstruct the desired behaviour of the society.
4. The behaviour can be understood in a way that is not one-sided and non-discriminatory.
5. Its regulation through the criminal law process, will not give the impression of aggravating, both qualitatively and quantitatively.
6. There are no options based on the criminal witness, to deal with such behaviour.

That in Indonesia the principle of corporate liability is not regulated in the general criminal law (KUHP), but is scattered in special criminal law (the principle of corporate liability is not recognised in the natural biological connotation (natuurlijke persoon).The legal subjects in the Corruption Eradication Law are: every person or corporation (Article 2 paragraph (1) and Article 3). Legal subjects who can be charged as perpetrators of corruption offences are not only individuals (in their capacity as private persons or civil servants), but also corporations. Article 20 paragraph (1) states that if the criminal offence of corruption is committed by or on behalf of a corporation, then prosecution and punishment can be given to: (1) The corporation and or (2) its management. Article 20 paragraph (2) states that the criminal offence of corruption is committed by a corporation, if the criminal offence is committed by persons who, by virtue of their employment or other relationships, act within the corporation either individually or jointly. There are two types of basic punishment threatened in the formulation of the offence (i.e. imprisonment and fines), only fines are most appropriate for

corporations. But actually, in addition to fines, several types of additional punishment in Article 18 paragraph (1) can also be used as the main punishment for corporations.

Regarding fines for corporations, Article 20 paragraph (7) of the Corruption Eradication Law only stipulates that the maximum is increased by 1/3 (one-third). There is no special provision regarding the implementation of fines in Article 30 of the Criminal Code (i.e. if the fine is not paid, it will be replaced by substitute imprisonment for 6 (six months)) cannot be applied to corporations.

That with the existence of Law No. 31 of 1999 Jo. Law 20 of 2001, Law 3 of 1971 on the Eradication of the Crime of Corruption is not in accordance with the development of legal needs in society, which is expected to be more effective in preventing and eradicating criminal acts of corruption. In Law 31 of 1999, there are several formulations of corruption offences, which are formally formulated, which is very important in proof. With the formal formulation adopted in this law, even though the proceeds of corruption have been returned to the state, the perpetrators of corruption are still brought to court and convicted. In this accountability system, there has been a shift in the view that corporations can be held accountable as makers, in addition to natural human beings. So the rejection of corporate criminalisation based on the university delinquere non potest doctrine has changed by accepting the concept of functional actors (functioneel daderschap). Along with the large role of corporations in the economic sector, the regulation of corporations as subjects of criminal offences in our positive criminal law shows many developments.

The development of the recognition of corporate criminal liability as a maker, as regulated in several laws and regulations outside the Criminal Code, is in accordance with the purpose and function of law and criminal law as a means of social protection in order to achieve the main goal, namely public welfare, is due to the tendency of corporations to violate the law in obtaining profits. The recognition of corporate liability as a subject of criminal offence in criminal law should be formulated in the upcoming Indonesian National Criminal Code. Opinions that agree on the responsibility of corporations can be stated as follows:

1. Without the criminal responsibility of the corporation, there will be a void of criminalisation if the corporation is the owner or licence holder.
2. It is clear that corporations are functional actors and receive benefits from various activities including those that are criminal in nature.
3. Practical considerations:
    a. It is not easy to trace the line of command in the event of a crime in a corporation,
    b. Criminalisation of corporate management does not control the actions of the corporation.
4. In line with developments in civil law.

CONCLUSIONS AND SUGGESTIONS

Conclusion

From the description as mentioned above, the author draws conclusions:

1. The forms of responsibility of the perpetrators of corruption include the ability to distinguish between good and bad actions in accordance with the law and those that are contrary to rights and the ability to determine the will according to the insanity of the good and bad actions committed.
2. How to tackle corruption offences requires the following steps:
   a. System Improvement, including improving the prevailing laws and regulations, improving the way government works, strictly separating state ownership and private ownership, enforcing professional ethics and institutional discipline, applying the principles of good governance and optimising the use of technology.
   b. Human Improvements include improving human morals as people of faith, improving legal awareness, increasing legal awareness, electing clean, honest and anti-corruption leaders..

Advice

The government and all law enforcers in the territory of Indonesia should be able to act more firmly and optimise their authority in following up and eradicating perpetrators of corruption, which can damage various interests concerning human rights, state ideology, economy / state finances, national morals. It is necessary to impose severe punishment on the perpetrators of corruption as a legal policy in accordance with the provisions of the applicable law.

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