International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 08-11-2022, Accepted: 24-11-2022, Published: 10-12-2022
Volume 8, Issue 6, 2022, Page No. 184-187

Juridical analysis of certain circumstances as a basis for enforcing corruption crimes

Nabila Sagita Yusuf[1], Rizanizarli[2], Yanis Rinaldi[2]
[1] Student, Master of Law Program, Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia
[2] Lecture, Master of Law Program, Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

Abstract
This research intends to recognize and analyze the legal reasoning of special conditions in Article 2 paragraph (2) of the Corruption Crime Law as a burden on the death penalty, the relationship caused by the regulation on the formulation of Article 2 paragraph (2) of the Corruption Law to law enforcement and the reformulation of certain circumstances as a reason for the imposition of the death penalty for perpetrators of corruption crimes in the future. This research is a type of juridical research which is literature research. This research is legal research that perceives principles, rules, norms and doctrines. This approach is also known to the general public as a normative legal approach or research. This normative research stage is carried out by conducting a literature study, namely reviewing references or written sources, be it books, journals, or laws and regulations. This research has 3 conclusions. Initially, the legal reasoning factor in Article 2 of the 2 section (2) of the Corruption Act is used as a death penalty, namely: 1) providing lessons for potential perpetrators of corruption, 2) looking at the impact of corruption and 3) corruption actions carried out under special circumstances. Second, the linkages that the regulations for the formulation of Article 2 paragraph (2) of the Corruption Law have on law enforcement, namely: 1) the death penalty cannot be applied to corruption crimes during non-natural disasters because the KPK plays a role only based on what is stipulated by law, 2) the death penalty is only valid in the provisions of Article 2 paragraph (2) as a result of which the repetition of corruption crimes outside of Article 2 paragraph (2) cannot be submitted criminal, 3) the similarity of the factors of criminal acts in Article 2 and Article 3 is often used by suspects to obtain smaller rewards. Third, the reformulation of special conditions as a reason for the imposition of the death penalty for perpetrators of corruption crimes in the future, namely: 1) the addition of the phrase non-natural disasters to the explanation of Article 2 paragraphs, (2) in the Corruption Act, 2) the penalty of bui for life and paying replacement money worth in accordance with the value of the losses incurred as criminal penalties.

Keywords: corruption, crime, law

Introduction

Rizanizarli pointed out that imprisonment is the dominant type of punishment applied by judges to perpetrators of prosecutions in conflict with the law [1, 7]. According to Eddy. O.S, the new policy of the Modern Criminal Law Paradigm began to change from Retributive to Collective, Restorative and Rehabilitative justice. In Corrective Justice, the correction of the offender's guilt is that the perpetrator must be sanctioned. Then Restorative justice wants the role and position of the victim not to be forgotten in the criminal justice process, of course. The last one is the concept of Rehabilitative Justice, which is expected that the perpetrator will not repeat it again and restore the rights of the victim and the perpetrator of course [2].

On the topics outlined above, it is interesting to raise the case of death charges against corruption defendant Asabri Heru Hidayat. In this case, the public prosecutor charged Heru Hidayat with the death penalty for violating the charges to one primary, namely Article 2 paragraph (1) of the Jo Tipikor Law. Article 18 of Law 31 of 1999 concerning the Eradication of Corruption Crimes (Tipikor Law) Jo Article 55 paragraph (1) 1 of the Criminal Code and the second primary indictment, namely Article 3 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU Law).

In this case, the Public Prosecutor applied the death penalty because the phrase "certain circumstances" in Padal 2 subsection (2) of the Typographical Act was an element of encumbrance. Prosecutors in this case certain circumstances in the article are "very malicious" and eligible for the death penalty.

Nesia Tanudjaya stated: "The death penalty is a special subject and is always threatened alternatively, it is clear that the death penalty is still necessary as part of the criminal sanctions that can be imposed by judges" [3]. Lastly as a comparison and authenticity on this study Hindun Harahap. explaining the Urgency of the Death Penalty against perpetrators of Corruption Crimes in an effort to eradicate Corruption Crimes in Indonesia, it is considered very important to impose on corruption perpetrators, because the implementation of the Death Penalty basically aims to scare and provide a deterrent effect on corruption perpetrators. The entirety of this study does not explain further about the basis of criminal prosecution in corruption crimes, and only cooperates with perpetrators of corruption crimes, so in this case the problem in this thesis is a new thing. Based on this background, it is necessary to raise this issue in research in the form of a thesis with the title "Juridical Analysis of Certain Circumstances as a Foundation in the Enforcement of Corruption Crimes" [4].

Method

This research uses a type of juridical-normative research, namely legal research that perceives principles, rules, norms and doctrines. This approach is also known to the general public as a normative legal approach or research. This

normative research stage is carried out by conducting a literature study, namely reviewing references or written sources, be it books, journals, or laws and regulations [5].

In juridical-normative research, which is a study that deductively starts from the analysis of the articles in the laws and regulations and the opinions of these legal experts who regulate the problem to be studied. Juridical legal research means research that refers to the study of existing literature or to the secondary data used. While normative means legal research that aims to obtain normative knowledge about the relationship between one regulation and another and its application and practice [6].

Discussion

Certain Circumstances as a Basis for Enforcing Corruption Crimes

Various legal foundations and instruments have been established in Indonesia to muzzle and eradicate corruption. Armed with laws and government regulations, corruption is sought to be prevented and the perpetrators are given appropriate punishment.

Indonesia has the legal foundations for the eradication of corruption which serves as a guideline and foundation in prevention and enforcement. One of them became the basis for the establishment of the Corruption Eradication Commission or KPK to become the supervisor of the eradication of corruption in the country. These legal bases are proof of the seriousness of the Indonesian government in combating corruption. Along the way, various changes to the law were made to adjust to the latest conditions of enforcement of corruption cases. Realizing that they cannot work alone, the government through a Government Regulation also invites the participation of the community to detect and report corruption crimes. The following are the legal basics of eradicating corruption in Indonesia.

Law No. 3 of 1971 concerning the Eradication of Corruption: This law was issued during the New Order under the leadership of President Soeharto. Law No. 3 of 1971 provides for a maximum prison sentence of life and a maximum fine of Rp. 30 million for all offenses categorized as corruption. Although the law has clearly outlined the definition of corruption, which is an act of harming state finances with the aim of benefiting oneself or others, the reality is that corruption, collusion, and nepotism were still rife at that time. So in subsequent administrations, anti-corruption laws emerged with various improvements here and there. Law No. 3 of 1971 was declared invalid after being replaced by Law No. 31 of 1999 concerning the Eradication of Corruption Crimes.

MPR Decree No XI / MPR / 1998 concerning Clean and Free State Organizers of KKN After the New Order regime fell to replace the Reformation period, a Tap MPR Number XI / MPR / 1998 appeared concerning Clean and Free State Organizers of KKN. In line with the MPR TAP, the government of President Abdurrahman Wahid established state bodies to support efforts to eradicate corruption, including: the Joint Team for Countering Corruption Crimes, the National Ombudsman Commission, the Commission for Examining the Wealth of State Officials and several others. In the MPR TAP, it emphasized the demands of the people's conscience so that development reforms can be successful, one of which is by carrying out the functions and duties of state organizers properly and responsibly, without corruption. The MPR tap also ordered an examination of the assets of state organizers, to create public trust.

Law no. 28 of 1999 concerning the Implementation of a Clean and Free State for KKN This law was formed in the era of President BJ Habibie in 1999 as a commitment to eradicate corruption after the overthrow of the New Order regime. In Law no. 28 of 1999 concerning the Implementation of a Clean and Free State, the KKN explained the definitions of corruption, collusion and nepotism, all of which are despicable acts for state organizers. The law also provides for the establishment of a Commission of Examiners, an independent agency tasked with examining the wealth of state organizers and former state organizers to prevent corrupt practices. At the same time, the Business Competition Supervisory Commission (KPPU) and the Ombudsman were formed.

Law Number 20 of 2001 jo Law No. 31/1999 concerning the Eradication of Corruption Crimes The above law has become the legal basis for the eradication of corruption in the country. This law explains that corruption is an unlawful act with the intention of enriching oneself, others, or that has the effect of harming the state or the country's economy. The definition of corruption is explained in 13 articles in this law. Based on these articles, corruption is mapped into 30 forms, which are further grouped into 7 types, namely embezzlement in office, extortion, gratification, bribery, conflict of interest in procurement, fraudulent acts, and state financial losses.

Government Regulation No. 71 of 2000 concerning Procedures for the Implementation of Community Participation and Awarding in the Prevention and Eradication of Corruption Crimes. Through this iregulation, the government wants to invite the public to help eradicate corruption. The participation of the community regulated in this regulation is to seek, obtain, provide data or information about corruption crimes. The public is also encouraged to submit suggestions and opinions to prevent and eradicate corruption. The rights of these communities are protected and followed up in the investigation of cases by law enforcement. For their participation, the community will also get awards from the government which is also regulated in this PP.

Law No. 30 of 2002 concerning the Corruption Eradication Commission. Law No. 30 of 2002 concerning the Corruption Eradication Commission became the originator of the birth of the KPK during the Presidency of Megawati Soekarno Putri. At that time, the Prosecutor's Office and the Police were considered ineffective in eradicating corruption so it was considered necessary to have a special institution to do so. In accordance with the mandate of the law, the KPK was formed with the aim of increasing the usability and usefulness of efforts to eradicate corruption. The KPK in carrying out its duties and authorities is independent and free from the influence of any power. This law was then refined by the revision of the KPK Law in 2019 with the issuance of Law No. 19 of 2019. The 2019 Law stipulates an increase in synergy between the KPK, the police and the prosecutor's office for handling corruption cases.

Law No. 15 of 2002 concerning Money Laundering. Money laundering is one of the ways corruptors hide or eliminate evidence of corruption crimes. This law regulates the handling of cases and reporting of money laundering and suspicious financial transactions as a form of effort to

eradicate corruption. This law was also first introduced by the Center for Financial Transaction Reporting and Analysis (PPATK) which coordinates the implementation of efforts to prevent and eradicate money laundering in Indonesia.

Presidential Regulation Number 54 of 2018 concerning the National Strategy for Corruption Prevention (Stranas PK) of this Presidential Regulation is a replacement for Presidential Regulation No. 55 of 2012 concerning the National Strategy for the Prevention and Eradication of Long-Term Corruption in 2012-2025 and the Medium Term of 2012-2014 which is considered no longer in accordance with the development of corruption prevention needs. Stranas PK listed in this Presidential Regulation is a national policy direction that contains the focus and targets of corruption prevention which is used as a reference for ministries, institutions, local governments and other stakeholders in implementing corruption prevention actions in Indonesia. Meanwhile, the Corruption Prevention Action (Aksi PK) is an elaboration of the focus and objectives of Stranas PK in the form of programs and activities. There are three focuses in Stranas PK, namely Licensing and Commercial Administration, State Finance, and Law Enforcement and Bureaucratic Democracy.

Presidential Regulation No.102/2020 concerning the Implementation of Supervision for the Eradication of Corruption Crimes. Issued by President Joko Widodo, this Presidential Regulation regulates KPK supervision of agencies authorized to carry out the eradication of corruption crimes, namely the National Police of the Republic of Indonesia and the Prosecutor's Office of the Republic of Indonesia. This presidential regulation also regulates the authority of the KPK to take over corruption cases that are being handled by the National Police and the Prosecutor's Office. This presidential regulation is referred to as part of efforts to strengthen the KPK's performance in the eradication of corruption.

Permenristekdikti Number 33 of 2019 concerning the Obligation to Implement Anti-Corruption Education (PAK) in Higher Education. The eradication of corruption is not just enforcement, but also education and prevention. Therefore, the Minister of Research, Technology and Higher Education issued a regulation to organize anti-corruption education (PAK) in universities. Through Permenristekdikti Number 33 of 2019 concerning the Obligation to Implement Anti-Corruption Education (PAK) in Higher Education, public and private universities must organize anti-corruption education courses at every level, both diplomas and undergraduates. Apart from being in the form of courses, PAK can also be realized in the form of student activities or studies, such as co-curricular, extracurricular, or in student units. As for Assessment Activities, it can be in the form of a Study Center and Study Center This PAK teaching activity must be reported periodically to the Ministry through the Director General of Learning and Student Affairs lanlka

Corruption is an act carried out with the intention of providing an unofficial advantage with the rights of another party to falsely use his position or character to obtain an advantage for himself or others, contrary to his obligations and the rights of the other party.

Corruption occurs if three things are met, namely (1) A person has the power to determine public policy and carry out the administration of the policy, (2) The existence of economic rents, namely the economic benefits that exist as a result of the public policy, and (3) The existing system makes the opportunity for violations by the official concerned

Provisions regarding corruption crimes include being regulated in Article 2 paragraph (1) of Law Number 20 of 2001 amendment to Law Number 31 of 1999 concerning the Eradication of Non-Criminal Corruption, which reads "Any person who unlawfully commits an act of enriching himself or others or a corporation that can harm the state finances or the country's economy, shall be sentenced to imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah". In Article 2 paragraph (2) it is stated that "In the event that the crime of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed".

Certain circumstances referred to in Article 2 paragraph (2) namely corruption crimes committed during natural disasters, monetary crises, and so on can be sentenced to death. However, in this case, the two cases of corruption of social assistance funds that have been presented, the two perpetrators who committed the crime of corruption of social assistance funds are only subject to punishment under Article 3 and Article 11 jo article 18 of Law No. 20 of 2001. Which should be the two perpetrators can be punished with impunity because they have fulfilled the elements of article 2 paragraph (2) which states that criminal acts committed under certain circumstances then the death penalty can be imposed. Apart from Article 2 paragraph (2), Article 52 of the Criminal Code can also be imposed on cases that should be sentenced with impunity.

The provisions regarding the enforcement of corruption crimes are specifically regulated in Article 2 paragraph (2), in which there are elements of corruption crimes that can be subject to punishment. The elements referred to as "certain circumstances" in this provision are circumstances that can be used as a reason for criminal prosecution for perpetrators of corruption crimes, namely if the criminal act is committed against funds intended for the management of dangerous circumstances, national natural disasters, countermeasures due to widespread social unrest, overcoming economic and monetary crises.

Article 2 paragraph (2) is actually strong enough to bind judges in deciding corruption cases with impunity. However, in reality, the judge has never decided a corruption case with the death penalty even though the case has fulfilled the elements of the enforcement contained in Article 2 paragraph (2). Until now, the death penalty has not been imposed on perpetrators of corruption crimes with impunity. The rules of other Articles containing impunity are also never used, as contained in Article 52 of the Criminal Code, which reads: "Whenever an official for committing a criminal offence violates a special obligation of his office, or at the time of committing a criminal offence using the powers, opportunities and means afforded to him because of his office, his penalty is increased by one-third ".

Although until now the death penalty has never been used, at least the perpetrators of corruption crimes can still be subject to the maximum punishment so that the punishment given will be much heavier and have a more deterrent effect on the perpetrators. However, the rules contained in this Article have also never been used by judges in deciding sentences for perpetrators of corruption crimes. This is

because the judge only sees the corruption case as a special crime so it directly refers to a specific regulation as well.

The corruption law only regulates certain circumstances, namely state of danger, national natural disasters, countermeasures due to widespread social unrest, overcoming economic and monetary crises as reasons for enforcement. This law does not regulate concursus or recidives as reasons for enforcement. So that if the perpetrators who commit corruption crimes are included in the consursus or recidivide, the rules in the Criminal Code can be used as a rule of enforcement because in the corruption law there is no regulation regarding concursus or recidivists. Given that if there are no rules governing it in the special rules, penalties can be imposed using general rules. Similar to this corruption case, if the corruption law does not regulate as stipulated in Article 52 of the Criminal Code, at least the judge can consider the content of the Criminal Code Article to sentence the perpetrator so that he can be subject to the maximum sentence.

about sanctions against perpetrators of corruption crimes who misuse social assistance funds intended to overcome natural disaster relief funds, contained in Articles 78 and 79 of the Disaster Management Law. However, in its application, this article has also never been used by judges to decide the punishment of perpetrators who commit corruption crimes against natural disaster relief funds, even though it is known that the rules of the Article have very clearly regulated sanctions against perpetrators of corruption crimes during natural disasters.

Regarding sanctions against perpetrators who commit corruption crimes against social assistance funds, until now there are no specific rules regulated in the Law or the Ministerial Regulation on social assistance. So that when there are perpetrators who commit criminal acts of corruption of social assistance funds, they cannot be immediately entangled with the provisions contained in the regulations governing social assistance. Which should be in the regulation should be regulated regarding the sanctions given to people who commit criminal acts of corruption of social assistance funds. And it must also be regulated regarding the sanctions of enforcement against perpetrators who commit criminal acts of corruption of social assistance.

The imposition of corruption crimes of social assistance must be imposed on perpetrators who commit corruption crimes that result in losses experienced by many people, especially those carried out during natural disasters where the funds should be used to help victims of natural disasters but these funds are misused by perpetrators so as to cause many people to suffer losses.

Many corruption cases in Indonesia have been tried and decided with low sentences, and as a result, corruption cases are still rampant. This should serve as a lesson for the next judges who will decide the punishment for perpetrators of corruption crimes. Because it can be seen from the previously decided cases with low sentences that do not deter perpetrators and make more and more other perpetrators commit corruption crimes. This should be a very important concern for judges, if low sentences do not deter perpetrators and will add new perpetrators of corruption crimes then it should be against perpetrators of corruption crimes to be imposed with the maximum penalty and even the death penalty can be imposed so that the perpetrators are deterred and become a stern warning to others who want to commit future corruption crimes, So that in the future people will not easily commit corruption crimes considering the severity of the punishment that will be received.

Conclusion

Based on research on criminal prosecution in the criminal act of corruption of social assistance funds, the conclusion that can be given is that the Rules in Article 2 paragraph (2) are actually strong enough to bind judges in deciding corruption cases with ballast. But in reality, the judge never decides a corruption case with the death penalty even if the case has met the element of ballast. Judges are also considered not firm in deciding the punishment of perpetrators of corruption crimes with impunity, judges tend to decide a case based only on the charges given by the prosecutor.

It is recommended to the judge, it is hoped that the verdict imposed on the perpetrator is in accordance with the provisions of the ballast, as stated in article 2 paragraph (2) of Law Number 20 of 2001, Article 52 of the Criminal Code, Article 78 of Law Number 24 of 2007, and other rules governing weighting. And it is also expected that in deciding the punishment of the perpetrator, the judge will not only consider mitigating matters, but also must consider burdensome matters because it concerns the lives of many people.

References

1. Rizanizarli. "The Application of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Aceh", Aceh Development International Confeence 2015 (ADIC), Academy of Islamic Studies, University of Malaya, Kuala Lumpur, 2015, 28.
2. Amarullah Bustamam. "Death Penalty for Corruptors of Non-Natural Disaster Funds (Study of Presidential Decree No. 12 of 2020)", Legitimacy,2020:9:2.
3. Nesia Tanudjaya, Application of the Death Penalty in the Perspective of Criminal Law Renewal in Indonesia, Thesis, Bhayangkara University Jakarta Raya, 2016, 4.
4. Hindun Harahap. The Urgency of the Death Penalty Against Corruption Perpetrators, Thesis, University of North Sumatra, 2010, 4.
5. Revision Drafting Team. Manual for Writing a Thesis for Master of Law Study Program, Faculty of Law, Syiah Kuala University, Darussalam, Syiah Kuala University, 2017, 9.
6. Abdul Kadir Muhammad, Law and Legal Research, Bandung, Citra Aditya Bakti, 2004, 52.
7. Rizanizarli, "The Application of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Aceh", Aceh Development International Confeence 2015 (ADIC), Academy of Islamic Studies, University of Malaya, Kuala Lumpur, 2015, 2.8