



Law enforcement of corruption crimes after the constitutional court verdict number 25/PUU-XIV/2016

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Abstract

The emergence of legal uncertainty in criminal acts of corruption from formal offenses into material offenses. This causes law enforcers have to prove the state financial loss in actual or real terms (actual loss). So with The Constitutional Court Verdict Number 25/PUU-XVI/2016 which delete the word can in Article 2 paragraph (1) and Article 3 of The Corruption Law, it can be as consideration in renewal The Law which relate to state financial loss.

Keywords: After the constitutional court verdict number 25/PUU-XIV/2016

Introduction

The word corruption comes from Latin, *corruptio* or *corruptus*. *Corruptio* has various meanings namely the act of damaging or destroying. *Corruptio* is also interpreted as rottenness, ugliness, depravity, dishonesty, can be bribed, being immoral, deviation from holiness, the insulting or slanderous words or utterances ^[1]. Corruption also worsens the government's image in the eyes of the public even more, which is reflected in the form of public's distrust and non compliance to the law. If there is no significant improvement, then the condition seriously endanger the survival of the nation ^[2].

Bearing in mind that one of the elements of criminal acts of corruption in Article 2 and Article 3 of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Criminal Acts of Corruption is that there is the element of state financial loss. The element give the consequence that eradicating criminal acts of corruption is not only aiming to give a deterrent effect on the corruptors through imposing heavy prison sentences, but also recovering state financial losses due to corruption as confirmed in the preamble and general explanation of the Corruption Crime Law.

As for what is meant by "state finances" in the general explanation of Law Number 31 of 1999 concerning Criminal Acts of Corruption, it is stated that state finances are all state assets in whatever form which is separated or not separated, including inside it all parts of state assets and all rights and obligations arising from being in mastery, management and accountability of officials of state institutions, both at the central and regional levels, being in mastery, management and accountability of State-Owned Enterprises or Regional-Owned Enterprises, foundations, legal entities and companies that include state capital or companies that include third parties capital based on agreements with state ^[3].

Based on Article 1 Paragraph (1) of Law Number 17 of 2003 concerning State Finances, it is explained that state finances are all state rights and obligations that can be valued by money, as well as everything wether in the form of money or goods that can be made property of the state in connection with the implementation of the rights and obligations.

As is known in the Constitutional Court decision Number 25/PUU-XIV/2016 revoked the phrase "can" in Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Corruption. This Constitutional Court decision interprets that the phrase "can harm state finances or the state economy" in Article 2 paragraph (1) and Article 3 of the Corruption Law must be proven by real state financial losses (actual loss) not potential or estimated state financial losses (potential loss). By the phrase "could" harm the State's finances it means that the State has not yet suffered real loss. The word "can" in the element could harm state finances must be interpreted as potential. In Article 2 paragraph (1) of the Corruption Law, potential only is sufficient for there to be elements of a criminal act of corruption.

Referring to what has been described above then it can be interpreted that the formulation of offenses in the provisions of Article 2 and Article 3 of the Corruption Law has undergone quite significant changes where criminal acts after the Constitutional Court Decision Number 25/PUU-XIV/2016 corruption must be able to be calculated in a definite and real way of how much the value of the State's losses (actual loss), not based on suspicion, estimation and potential (potential loss).

Constitutional Court Decision Number 25/PUU-XIV/2016 will also change the law enforcement system regarding criminal acts of corruption that have been carried out by law enforcement officials. This provides new challenges for law enforcement officials in handling cases of criminal acts of corruption. It will be difficult for perpetrators of criminal acts of corruption to become suspects if state losses must be already real, not potential or estimated state losses anymore. Judging from the law enforcement phase, there are at least several factors that affect law enforcement, including the legal factors themselves namely the parties who will be restricted by the law only, law enforcement factors namely the parties who form and implement the law, means or facilities factors which support law enforcement, community factors namely the environment where the law applies or is applied and cultural factors namely as the result of work, creativity and feelings that are based on human intention in social life ^[4].

Research Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data^[5].

Based on the background above, the problem formulation in this research focuses on how to enforce the law for criminal acts of corruption before and after the Constitutional Court Decision Number 25/PUU-XIV/2016 and what is the ideal concept for enforcing cases of criminal acts of corruption according to the criminal justice system.

Result and Discussion

Article 14 of the Constitutional Court Regulation (PMK) Number 1 of 2012 concerning Legal Products of the Constitutional Court, states that the decision of the Constitutional Court is a statement of the Court stated in an open plenary session for public in order to carry out the authority and obligation of the Court to adjudicate at the first and final level whose decision is final.

Based on Article 56 of Law Number 24 of 2003 as amended by Law Number 8 of 2011 concerning the Constitutional Court, there are 3 (three) types of decisions that can be handed down in relation with the case of judicial review of the Constitution, namely that the petition cannot be accepted, the application is rejected and the application is granted. Meanwhile, in its development, as explained by the Center for Research and Case Studies, Management of Information and Communication Technology, Registrar's Office and Secretariat General of the Constitutional Court of the Republic of Indonesia in the book *Models and Implementation of Constitutional Court Decisions in Reviewing Laws*, there are also other rulings in practice at the Constitutional Court such as conditional constitutional (Conditionally Constitutional) and conditionally unconstitutional (Conditionally Unconstitutional).

According to the provisions of Article 47 of Law Number 24 of 2003 concerning the Constitutional Court, "The decision of the Constitutional Court obtains permanent legal force since pronouncing in an open plenary session for public." As determined by Article 56 of Law no. 24 of 2003 concerning the Constitutional Court.

In the evidentiary system adopted by the Criminal Procedure Code as stated in Article 183 of the Criminal Procedure Code, it combines objective and subjective elements in determining whether the defendant is guilty or not, there is no dominant one between these two elements, both are interrelated. However, the position of the judge's beliefs in this system seems to determine everything. If the case is legally proven (valid in the sense of evidence according to law) but does not convince the judge of the existence of the error, then the judge cannot make a criminal decision. Article 341 paragraph (4) of the Dutch Criminal Procedure Code states that the defendant's guilt is not considered proven based on the defendant's confession only, and Article 342 paragraph (2) of the Dutch Criminal Procedure Code states that the testimony of a witness only is not enough to consider the defendant's guilt has been proven. This is in accordance with Article 183 of the Criminal Procedure Code regarding the strength of evidence

in Indonesia. With the starting point of the provisions of Article 183 of the Criminal Procedure Code, the criteria for determining whether a defendant is guilty or not, the judge must pay attention to aspects of the defendant's guilt which must be proven by at least two valid pieces of evidence and Judge's confidence^[6]. In criminal procedural law, evidence is known in Article 184 paragraph (1) of the Criminal Procedure Code, as stated there are five types, namely witness statements, expert statements, letters, instructions and defendant's statements^[7].

Based on the provisions of Article 37, 37 A of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, criminal acts of corruption carry a limited and balanced burden of "reverse proof". Article 37 of Law No. 20 of 2001 in full reads^[8], the defendant has the right to prove that he has not committed a criminal act of corruption, in the event that the defendant can prove that he has not committed a criminal act of corruption, this evidence is used by the court as a basis for declaring that the charges are not proven. The criminal act of corruption cannot be separated from state/regional losses, the definition of state/regional losses is as emphasized in Article Number 22 of Law no. 1 of 2004 concerning the State Treasury is a shortage of money, securities and goods, which is real and certain in amount as a result of unlawful acts, whether intentional or negligent.

In corruption criminal law, there are two main types of punishment which are imposed simultaneously, namely the imposition of two main types of punishment which are imperative, between imprisonment and a fine and the imposition of two main types of punishment simultaneously which are imperative and facultative, namely between imprisonment and a fine.

The punishment system for criminal acts of corruption stipulates special minimum and special maximum threats, both regarding imprisonment and fines and does not use a system that determines general maximum and general minimum criminal threats as in the Penal Code. The specific maximum prison sentence that is threatened far exceeds the general maximum in the Penal Code 15 (fifteen) years namely the highest up to 20 years. In the Penal Code, it is permissible to impose imprisonment up to more than the general maximum limit of 15 years, namely 20 years, in the event of repetition or concurrent (because it can be increased by a third) or certain criminal acts as an alternative to the death penalty (for example Articles 104, 340, 365 paragraph (4) Penal Code).

In addition to the main punishment, the convict may also be given additional punishment as an effort to restore state finances, including confiscation movable goods which is tangible or intangible or immovable goods which is used for or obtained from criminal acts of corruption, including companies owned by convicts where the criminal acts of corruption was committed, as well as the price and goods that replace these goods, payment of replacement money in a maximum amount equal to the property obtained from criminal acts of corruption, closure of all or part of the company for a maximum period of 1 (one) year and revocation of all or certain rights or the elimination of all or part of certain benefits that the government has or can provide to convicts.

Law enforcement of criminal acts of corruption before the Constitutional Court decision number 25/PUU-XIV/2016 in Article 2 Paragraph (1) "Every person who unlawfully

commits an act of enriching himself or another person or a corporation which can harm state finances or the economy state, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah)". In Article 3 "Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position which can harm state finances or the state economy, shall be punished by life imprisonment or imprisonment a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah)." From this explanation, it can be seen that the inclusion of the word "can" must be interpreted according to Article 2 Paragraph (1) above, which states that the word "can" before the phrase "is detrimental to state finances or the state economy", indicates that the criminal act is a formal offense, namely the existence of a criminal act of corruption, simply by fulfilling the formulated elements of the act, not by the emergence of consequences.

Law enforcement of criminal acts of corruption after the Constitutional Court decision number 25/PUU-XIV/2016, the concept of state financial loss has changed, namely that the implementation of the element of financial loss uses the concept of actual loss According to the Constitutional Court, it provides more legal certainty that is fair and in line with efforts to synchronize and harmonize national and international legal instruments. So with the Constitutional Court's decision to delete the word can in Article 2 paragraph (1) and Article 3 of the Corruption Law, it can be taken as a consideration in updating the law relating to state financial losses.

The ideal concept of enforcing cases of criminal acts of corruption according to the criminal justice system is that several things need to be done against perpetrators of criminal acts of corruption, such as improvement of legal norms (legislative policies) relating to criminal acts of corruption in Indonesia as part of an independent judicial power, the criminal justice subsystem must be independent and free from intervention, reformence of the justice system for criminal acts of corruption, improvement of the supervision system and providing heavier sanctions for perpetrators of criminal acts of corruption.

Conclusion

The emergence of legal uncertainty in criminal acts of corruption from formal offenses to material offenses caused a basic qualification, namely that law enforcers have to prove the state financial loss in actual or real terms (actual loss). The implication in this case could give rise to legal unsynchronization in eradicating criminal acts of corruption, because there must have a proving of the state financial loss in actual or real terms.

So with the Constitutional Court's decision which deletes the word "can" in Article 2 paragraph (1) and Article 3 of the Corruption Law, it can be taken into consideration in renewing laws relating to state financial losses. The Laws including inside it the Law are created for three purposes, namely justice, certainty and usefulness. The principle of legality become an importance so that an act cannot be

punished without prior regulations governing it (*Nullum delictum nulla poena sineprevia legi poenale*).

The pattern of law enforcement in SPPI is still not able to carry out maximum law enforcement against perpetrators of Corruption Crimes, because there are still several weaknesses and problems, seen from the regulatory aspect there are still overlapping regulations, the quality of justice still needs to be improved because it not been able to create justice in society, The monitoring system for the performance of law enforcement officers related to corruption law enforcement still needs to be improved because it is not yet integrated, while the sanctions given are still not optimal so they do not have a deterrent effect on perpetrators.

The pattern of law enforcement against perpetrators of Corruption Crimes in the future or ideally, is expected to there are changes, improvements and enhancements in the various aspects above, such as improving regulations, independence of the four sub-SPPIs, enhancing the judicial supervision system and giving a maximum and heavier sanctions to the perpetrator so that it has a deterrent effect both on the perpetrator and on other public.

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