



Criminal law reform on corruption as a means of overcoming the “culture” of corruption in Indonesia

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Abstract

The purpose of writing this article is to analyze the dynamics of the development of the culture of corruption in Indonesia and the efforts to overcome it. For this reason, the approach method is in the form of normative legal studies. Data were collected by reading and studying legal documents. Furthermore, the data were analyzed using qualitative descriptive analysis. The results of the discussion are that corruption has been considered a new "culture" in Indonesia. If the "culture" of corruption is allowed to develop, corruption will become an obstacle to the government's program to improve the welfare of all Indonesian people. To prevent the growth of the "culture" of corruption in Indonesia, the efforts made are: reforming the criminal law on corruption which includes the application of reversed proof, the application of the teaching of the nature of material unlawfulness in a positive function, the accumulation of criminal sanctions and special minimum criminal provisions are aggravated. This is intended so that people feel deterred from committing corruption; however, efforts to reform the law on corruption need to be supported by law enforcement officers who are clean, professional, and have strong moral courage.

Keywords: Corruption, criminal law reform, “culture” of corruption, overcoming

Introduction

Recently, corruption, which is classified as an extraordinary crime,^[1] has been one of the issues widely reported in the mass media. Pope Francis described corruption as a malignant social disease and the worst social epidemic, which manifests in a more dangerous way than leprosy^[2]. Therefore, corruption is considered the common enemy of the Indonesian people^[3]. This is reasonable because the impacts it causes, in addition to harming the state's finances, can also hinder the realization of the general welfare (bonum commune) and damage the morality of citizens (especially the younger generation), which can cause national disintegration.

Based on news in the mass media, it is clear that corrupt practices in Indonesia are proliferating. What is even more fatal is that these corrupt practices have occurred in every institution, both government and private institutions, carried out by those who are highly respected, state and community leaders such as bureaucrats from the lowest level to high-ranking state officials and people's representatives (DPRD and DPR RI). Even the perpetrators of corruption include law enforcement officers from the district court level to the Supreme Court of the Republic of Indonesia, the district attorney's office level to the Attorney General's Office of the Republic of Indonesia, and the regional police level to the Indonesian Police. That is why some parties consider Indonesia a heaven for corruptors.

Corruptors in Indonesia seem to have no conscience, shame, or guilt to commit corruption either individually or together (in groups)^[4]. Even corrupt behavior is something that is "cultured" among state officials in Indonesia. Therefore, a new term emerged, namely, "corruption as a new culture in Indonesia"^[5]. It is said so because the practice of corruption has been so deeply rooted in a person as if it were a good habit that needs to be maintained and therefore difficult to change. For this habit that is difficult to change, it is

interesting to quote an expression in the Bugis language, "*Llele blue tellele abiasang*" (which means mountains can move but habits cannot or in other words changing habits is more difficult than moving a mountain)^[6].

In the above context, efforts to eradicate corruption face very serious challenges. In this regard, the author is interested in conducting a study on the "Culture" of corruption in Indonesia and efforts to overcome it. The problems discussed are: How does the culture of corruption develop in Indonesia? How are efforts to overcome the development of a culture of corruption in Indonesia?

Methods

In solving the problems as described in the introduction, a literature study was conducted with a normative legal approach. The data used are: (1) primary legal materials: laws and regulations in the field of justice; (2) secondary legal materials: research results and opinions of leading legal experts; and (3) tertiary legal materials: legal dictionaries and encyclopedias. Data collection was carried out by reading, copying, and reviewing legal documents related to the authority of judges in court decisions. Data was processed by editing data and grouping data according to type and purpose. Furthermore, qualitative data analysis was carried out and presented descriptively. This is done to obtain a clear picture of the strategic role of the judge's conscience in making court decisions in criminal justice in Indonesia.

The discussion flow in this article includes several stages of activities, namely: preliminary study, topic determination, problem formulation, data collection, data presentation and processing, data reduction, data analysis and conclusion, and writing articles. Several stages of these activities are interactive efforts. This means that the data analysis is an effort that continues and is repeated continuously between several stages of these activities as shown in Figure 1.

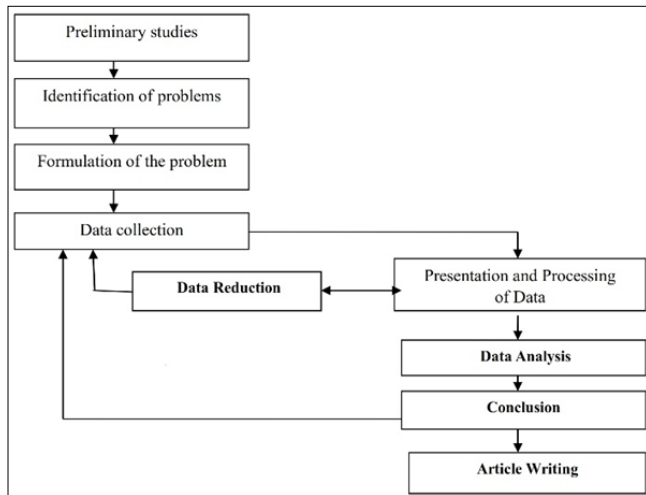


Fig 1: Writing flowchart

Discussion and Analysis

Power and Dynamics of Corruption “Culture” in Indonesia

Viewed from a cultural perspective, the flourishing of corruption practices in Indonesia is influenced by cultural factors or customs (traditions) in society in the past. In the past, for example, there was a rule to give tribute to the king. This tribute rule was applied to large areas of land. At that time, large areas of land belonged to the king, so the people who worked the land had to pay taxes, rent, or tribute. Some of the tribute collected was given to the king and some was given to the dignitaries or princes. At the time the rule was in effect, the community did not consider it an act of corruption or deviant behavior, but as a form of obligation to their king.

Thus, this custom continues to apply. Until now, the practice of corruption in Indonesia in the form of giving something to officials has become a habit^[7]. This habit is still considered commonplace in society and is not considered a criminal act (corruption), because society has been accustomed to seeing it since ancient times. Because in the past it was considered a form of obligation, there was no sense of guilt in the perpetrators. If we refer to the definition of corruption^[8], this kind of practice is categorized as a criminal act of corruption because this practice involves the use of money to influence decisions so that the perpetrator of the bribe gains a profit.

The above is in line with Donald Black's^[9] opinion as follows:

One theory of deviant behavior explains the motivation of the deviant with his participation in a culture. Especially, deviant behavior is seen as conformity to the values of a subculture, so what is wrong from the standpoint of the larger society is acceptable or even virtuous from the standpoint of the deviant's associates.

Reality also shows that the enforcement of corruption cases in Indonesia is more oriented towards protecting the interests of the educated or prominent compared to protecting the interests of the common people (marginalized people)^[10]. Educated people are rarely touched by the law, even if they are processed, they are rarely sentenced or at least given light sentences. Because with all their abilities they can use all means including paying great lawyers so

that they are free from the clutches of the law in every trial process. This is in contrast to cases of violations of the law (corruption) committed by those who come from marginalized or common people. Every violation they commit is considered a serious violation and the perpetrators will be processed by applicable law and if proven, will be given severe penalties. The above is in line with the opinion expressed by

Donald Black^[11] about the culture of law enforcement in the United States as quoted below.

On the other hand, the more educated the victim of an offense, the more serious it is. Whoever may be a repository of culture—whether a teacher, professional, priest, or shaman—receives more protection from the law. A crime against him is worse, and, in general, he is more easily offended. He is more likely to complain to the authorities, to take his case to court, and to get what he wants. In modern America, for example, the more educated victim of an automobile accident is more likely to hire a lawyer. In matters of all kinds, a more educated person is more likely to seek the services of a lawyer. He is also more likely to take his case to court.

In this case, social control^[12] is more directed at those with low social status than those with higher social status (high class). This also applies when formulating rules (corruption crimes), where the legal rules are more oriented towards protecting the interests of the elite. For example, the formulation of minimum criminal sanctions in Article 3 of Law No. 31 of 1999 on the Eradication of Corruption which has been updated by Law No. 20 of 2001. One of the fundamental weaknesses is that the formulation of special minimum criminal sanctions is not comparable to the maximum criminal sanctions. For example, the minimum sanction in Article 3 is 1 year in prison and a minimum fine of Rp. 50,000,000 (fifty million rupiahs) while the maximum threat is life imprisonment or 20 years in prison and a minimum fine of Rp1,000,000,000 (1 billion rupiahs). The formulation of minimum criminal sanctions in the Corruption Law is not in line with to formulation of special minimum criminal sanctions, namely to prevent the occurrence of very striking disparities in sentencing, both for the same case in the context of inclusion (deelnemings), or for different cases but the type of crime violated by the perpetrators is the same. As is understood that in various countries, the problem of disparity in sentencing^[13] is identified as a factor that can reduce the appreciation of both perpetrators of criminal acts and the community for the courts. Especially for perpetrators of criminal acts, they will consider themselves victims of judicial caprice and for criminal enforcement officers, this will be one of the obstacles to the re-correction process^[14].

According to the author, the concept of formulating minimum criminal sanctions as mentioned above is a deliberate and systematic effort by lawmakers (the elite) to protect their interests from the clutches of the law. Because they have the potential to commit violations of corruption. Someone can't make rules that are detrimental to themselves, on the contrary, they will try to make rules to protect themselves and/or their group from the clutches of the law.

Efforts to Overcome the "Culture" of Corruption in Indonesia

To prevent the growth of a "culture of corruption" (corruption practices) in Indonesia, several things need to be done as follows.

a. Reformulation of Criminal Provisions and Criminal Procedure in the Corruption Law

Efforts to review the Corruption Eradication Law are absolute demands (condition sine qua non). This occurs because the provisions in the Corruption Law are considered inadequate to provide a deterrent effect to corruptors and prevent others from committing corruption. In this regard, the following urgent things need to be done.

First, Corrupt behavior must be threatened with severe criminal sanctions, namely in the form of the formulation of absolute cumulative criminal sanctions between imprisonment and fines, where these provisions are not regulated consistently in Law No. 31 of 1999 concerning the Eradication of Corruption which has been updated by Law No. 20 of 2001. In the sense that not all criminal threats in the Corruption Eradication Law are formulated in absolute cumulative terms, but some are formulated in relative cumulative terms.

Second, the threat of special minimum criminal penalties needs to be aggravated to match the threat of maximum criminal penalties. For example, if the threat of maximum criminal penalties is the death penalty life imprisonment, or 20 years in prison, then the threat of minimum criminal penalties should be 10 or 15 years in prison. In addition, it needs to be regulated in the corruption law that the special minimum criminal penalty must be applied by the judge in his/her decision. If the judge does not apply it, the judge is seen as making a mistake in applying the law so that it can be a reason for the public prosecutor to take legal action such as an appeal, cassation, cassation in the interests of the law, and judicial review.

Third, the application of the principle of reverse burden of proof is increasingly becoming a significant need in combating or eradicating criminal acts of corruption^[15]. This principle requires the application of discipline for everyone in reporting personal and legal entity wealth. Even so, the updated law must be able to prevent the practice and extortion of officials in applying this principle^[16].

Fourth, it needs to be regulated in the Corruption Law that a request for judicial review is not only the right of the convict but also the right of the parties, including the right of the public prosecutor. This is an exception to the provisions in Article 263 of the Indonesia Criminal Procedure Code which stipulates that the legal remedy for judicial review is the absolute right of the convict or his heirs. This change is intended to anticipate the criminal justice process that pretends to protect the interests of the perpetrators of the crime (shielding) and the trial is not carried out independently or impartially. Reality shows that cases of "judicial corruption"^[17] are increasingly rampant in Indonesian judicial institutions. In this case, there is a case of bribery of judges which resulted in the emergence of an acquittal (*vrijspraak*) and a verdict of release from all legal charges (*ontslag van alle rechtsvervolging*).

Fifth, Realizing that corruption in Indonesia has become an extraordinary crime, it is necessary to rethink the possibility of implementing the teaching of the material unlawful nature in its positive function. In the sense that a person can

be prosecuted without having to violate the provisions of the Corruption Law but based on a sense of justice. This is by the provisions of the Republic of Indonesia Law on Judicial Power that judges must explore the legal values that live in society (the living law).

b. Improving the legal structure

Efforts to improve the legal structure include several things, including (1) law enforcement institutions need to be supported by various policies so that they can be kept away from political and power intervention; (2) preparing professional law enforcement officers with high morals so that the law is enforced properly without discrimination and upholding justice and legal certainty; (3) strengthening the role of external supervisory institutions for law enforcement institutions such as the Judicial Commission, the Prosecutor's Commission, and the National Police Commission. In this case, various institutions need to be supported by the government both in terms of funding sources and resources so that they work optimally in supervising the performance of judicial institutions in handling corruption cases in Indonesia.

c. Improving legal culture

In the context of improving legal culture, the things that are done include: (1) society is encouraged to free itself from corrupt, collusive, and nepotistic behavior. In this case, society should not get used to bribing state officials, including law enforcement; (2) society should not be apathetic but proactive in submitting written or verbal reports to law enforcement officials, especially the police, regarding suspected corruption. (3) There needs to be a social movement from all components of society to actively control the behavior of state officials, including law enforcement officials, who abuse their authority and practice corruption. Lord Acton emphasized that power tends to corrupt, absolute power corrupts absolutely^[18]. In this case, people who have power tend to behave badly, and if someone has that much power, there is a tendency for that evil behavior to become even worse.

Conclusion

Based on the description above, it is concluded that corruption, which is one type of extraordinary crime, has developed rapidly in Indonesia. That is why people consider corruption as a "culture". If the crocodile of corruption is allowed to grow without any concrete efforts to eradicate it, corruption will become an obstacle to the government's program to improve the welfare of the Indonesian people. Because corruption will affect high economic costs and ultimately cause slow economic growth in Indonesia^[19].

To prevent the growth of a culture of corruption in Indonesia, efforts are made to reform the criminal law on corruption in Indonesia, both concerning provisions of material criminal law and provisions of criminal procedure law, including adopting reversed burden of proof and increasing minimum sentences. This is intended so that people feel deterred from committing corruption.

Furthermore, no matter how good a law is, which Lawrence M. Friedman^[20] considers to be an element of legal substance if it is not supported by law enforcers who are clean, professional, and have strong moral courage, law enforcement against perpetrators of corruption cannot run properly. Therefore, it is necessary to have a commitment or moral courage from the government, especially law enforcement officers in the form of real actions to drag

corruptors ("big fish") to court. If proven, the judges should not hesitate to impose severe sentences, including life imprisonment or imprisonment for a certain period of up to 20 years, and a proportional fine. This is not an act of "revenge", but rather for the sake of upholding the law by the sense of justice in society.

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- See Kompas, 21 November 2009, p. 6, "Justice Crisis".
- As a comparison material, you can read the book written by, Luh Nyoman Dewi Triandayani, (ed), Budaya Korupsi Ala Indonesia, Pusat Studi Pembangunan Kawasan, Jakarta Selatan, 2002.
- See Antonius Sudirman, Hati Nurani Hakim dan Putusannya: Suatu pendekatan dari Perspektif Ilmu Hukum Perilaku (Behavioral Jurisprudence), Case Study of Judge Bismar Siregar, Especially in footnote No. 5, p.4.
- Luh Nyoman Dewi Triandayani Penyunting), "Budaya Korupsi Ala Indonesia", Penerbit Pusat studi Pengembangan Kawasan, 2002, p. 6-7.
- According to Andi Hamzah in A. Abu Ayyub Saleh, "Eradication of Criminal Acts of Corruption and Optimizing the Duties, Authorities and Obligations of the Corruption Eradication Commission", a paper in the Public Consultation Event on Legislation Reform in the Field of Law Enforcement, LBH Faculty of Law, University of 45 Makasar, May 13, 2004, p. 5, corruption is a criminal act related to bribery, manipulation and other acts as unlawful acts that are detrimental or can be detrimental to state finances or the state economy, detrimental to the welfare/interests of the people/general public.
- Donald Black, *The Behavior of Law*, Academic Press, Inc. (London), 1976, p.79.
- Antonius Sudirman, Harian Fajar, 2011, Among others, it is emphasized that the reality so far, there have been attitudes and behaviors of some of the nation's children including the behavior of leaders and law enforcement officers that have violated the principle of the supremacy of law. First, there have been discriminatory practices in the law. In crimes involving small people (warungan crimes), the law is enforced firmly, on the other hand law enforcement does not apply to the powerful or "criminals in ties" (white collar crime). Even if processed, the sentences imposed are very light or even acquitted or released from all legal charges. So that the impression arises that Indonesia is a paradise for corruptors. Second, law enforcement is influenced by legal mafias. Namely, the emergence of engineered cases involving the police, prosecutors and judiciary. For example, the engineered cases that befell Bibit-Chandra, Susno Duadji, the tax mafia case carried out by Gayus Tambunan. Third, Indonesia is classified as a country that commits the most abuse of authority and corruption.
- Ibid, p. 67. See also the opinion of Joseph H. Michalski *The Behavior of Law: A Theoretical Integration*, *The Open Social Science Journal*, 6, 2014, p.3. "The proposition effectively states that among disputants who find themselves located along a vector that confers a status advantage of any kind, law tends to be more active. Those who are wealthier, are more integrated, have a higher cultural status, have more organizations, and/or have a higher normative status (respectability) will use law more often to settle their disputes than those who have inferior statuses along one or more dimensions. Any and all status advantages thus help explain the behavior of law."
- View opinion Donald Black, Ibid, p. 80-83.
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