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Policy And Corruption

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Abstract: *This study aims to determine to what public the policy to the corruption. This research was a normative research in the form of the research on the legal principles, data were collected throught the library research in the form of the primary, secondary and tertiary legal materials, all the data were analysed qualitatively.The research result indicates that the policy in the strafbaar feit corruption is the policy in the abuse of power and float to the surface the loss have the shape state finances in the strafbaar feit in intentional.*

Keywords: *Policy; Corruption.*

INTRODUCTION

Judging the policy of Public Officials at the Corruption Court is an interesting topic to be discussed in view of the fact that until now there are still differing views of experts[1] including law enforcement officers (Police, Prosecutors, Judges), Lawyers and the public regarding whether or not public policy is tried in the Court of Action Corruption Crime. This difference of views is worthy of respect even though it is worth considering that for the sake of a legal certainty the difference of views must be narrowed even if it can be ended.

Speaking of public policy is certainly related to the exercise of

[1] Prof. Dr. Indriyanto Seno Adji SH, MH in the Systemic Corruption Polemic Writing said that the Criminal Justice and Civil Courts did not have the authority to assess the Substantive State Policy as well as the Bank Indonesia Board of Directors Policy regarding clearing dispensations against 18 banks. By Prof. Lie Oen Hock SH, stated explicitly that ordinary judges are not permitted to hear policies ruler, a pattern of settlement through Administrative Courts (State Administrative Courts). In fact, according to Dr. Juniver Girsang, SH, MH in his book Abuse of Power, page 185 says that it is very ironic indeed that in eradicating corruption it turns out that it is fertile to abuse power from law enforcement officials who are processing corruption cases due to the opportunity provided by the legal product of the crime of corruption itself.

power by public officials, British historian Lord Acton said that governance is always carried out by humans and humans[2] without exception has weaknesses with very popular words "power tends to corrupt and absolute power corrupts absolute" that power tends to corruption and absolute power tends to absolute corruption. By Charles Louis de Montesquieu who is popular with the theory of separation of power departs from the idea that humans are pleased with power and always want to expand that power, so that there is no concentration of power which will eventually result in misuse that power must be separated. Regarding policy and corruption, in my opinion, what is important to understand together in this article relates to the variables under the title "Policy and Corruption" is the answer to the questions: what is public policy?[3] What is corruption? can public policy be punished (corruption)?[4] Which judicial competencies test public policy? whether the competence of the Corruption Court? or State Administrative Courts? What public

[2] Indonesian humanity according to Mochtar Lubis has six main characteristics, namely 1) hypocritical alias hypocritical, pretending, other in advance, others behind are the main characteristics of Indonesian people, Indonesian people join in cursing corruptors but he himself is a corruptor, famous Indonesian people with the attitude of ABS (Originally Mr. Glad), 2). Scary and reluctant to be responsible; 3). Feudal life; 4). Still superstitious; 5) .artistic; 6). Have a weak character, less strong character. Whereas according to Ali Akbar's research there are fifteen Indonesian human characteristics, namely: 1). Friendly; 2). Lazy; 3). Un disciplined; 4). Corruption; 5). Emotional; 6). Individualist; 7). Like to imitate; 8). Inferiority; 9). Wasteful; 10). Believe superstition; 11). Stupid; 12). Chatterbox; 13). Hypocrisy; 14). Arrogant; 15). Creative.

[3] Black's Law Dictionary states that policies are general principles that guide the government in the management of public affairs (the general principles by which the government is guided in its management of public affairs). While Public Policy (public policy) has an understanding in the broad sense, namely the principles and guidelines that must be followed, so it is not allowed to do actions that tend to cause loss or damage to the wider community. The term policy is taken from the word "policy" (English) or "politiek" (Dutch). Public policy is often also understood as an instrument used by the government to solve public problems by using the "rational choice" approach to choose the best alternative to solve problems faced by society. Public policy always involves many actors by sharing interests, so that public policy is basically a political product. (For example, BLBI, Century Bank, Hambalang, Sisminbakum etc) policies.

[4] Evi Hartanti in the book Corruption Crime page 8 explains that etymological Corruption comes from Latin "corruptio" or "corruptus" which means damaging, dishonest, can be bribed. Corruption also means evil, decay, immorality and depravity and dishonesty. Corruption is also defined as bad actions such as embezzlement of money, receipt of bribes. In the large Dictionary of Indonesian Language corruption means bad, rotten, often uses goods (money) entrusted to him, can bribe (through his power for personal gain) fraud and embezzlement (state or company money) for personal or group interests.

policies are included in the category of corruption?

METHOD

The method used in this study is a normative juridical law study to examine the implementation of legal principles of the legislation of criminal acts of corruption associated with abuse of authority by public officials in carrying out their powers. The legal material used in this study is primary legal material, namely Law Number 31 of 1999 as amended by Act Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. The analysis uses qualitative methods, namely all legal materials are arranged systematically and analyzed qualitatively according to the problem.

DISCUSSION

The Aspect of Corruption

It was realized that the practice of corruption in Indonesia had threatened the country's efforts to realize people's welfare, the practice of corruption had weakened democratic institutions and values and law enforcement institutions. Even from time to time the development of corruption is already massive both in the amount of state financial losses and the quality of criminal acts of corruption[5] committed as well as perpetrators of criminal acts of corruption, therefore corruption has been interpreted to be an extraordinary crime.[6]

To the extent that observable corruption practices[7] have damaged the joints of the economy and

[5] The term "Criminal Act" is a juridical technical term from the Dutch word: "Strafbaar feit" or "Delict" with the understanding of actions prohibited by criminal law and can be subject to criminal sanctions for anyone who violates them. In the literature of criminal law there are those who translate the term "criminal event", or "criminal acts" or "acts that may be punished"

[6] In the VII UN Congress in Milan in 1985 with the theme "The New Dimension of Crime in the Context of Development" the concern was about the occurrence and increasing "abuse of power" by public officials who were widely known as "Systemic Corruption" or often said " Institutional Corruption ". Abuse of power involves parties of capital owners (conglomerates) and officials who make conspiracies and aim for the interests of certain groups. For example the case (A.T. when Mensegneg, Syahril Sabirin when the BI Governor, Century Case, Hambalang etc.). This institutional corruption is always related to policy issues. This form of structural crime makes this form of corruption a part of organized crime that engulfs the entire world including systems, organizations

[7] Corruption has spread and is evenly distributed among government institutions and the private sector even though corruption has been considered as part of the life of this nation.

impoverished society[8], as released by Kompas daily because the severity of the form of corruption in the form of abuse of authority is considered a common practice, this can be seen from the Minister, the House of Representatives, the House of Representatives Regions, Governors, Regents, Mayors involved in corrupt practices (proven based on Court decisions). Corruption that is happening in Indonesia at the present time is not a corruption that happens accidentally in the management of state finances by individual state-owned enterprises, local company, but has been carefully planned since the budget planning process and the implementation of the budget[9]. Corrupt officials distort the choice of the public sector to improve public policies that are inefficient and unfair. The government produces too many ineffective projects and pays too much for projects that are basically useful[10]. Seeing this condition is not surprising that the research institute Political and Economic Risk Cosultancy (PERC) and Transparency International put Indonesia as the champion of corruption in Asia[11].

The regulation of corruption in Indonesian positive law has actually existed for a long time, namely since the enactment of the Criminal Code (*Wetboek van Strafrecht*) on January 1, 1918 as a codification and unification of laws that apply to all groups in Indonesia in accordance with the concordance principle and promulgated in the 1915 Staatblad Number 752 dated 15 October 1915. After independence Indonesia with Military Rulers Regulation Number Prt/PM/06/1957 dated 9 April 1957, Number Prt/PM/03/1957 dated 27 May 1957 and Number Prt/PM/011/1957 on July 1, 1957, which was later replaced with Law Number 3 of 1971 which was valid for 28 years later after the reform underwent another change to Law Number 31 of 1999 as already amended by Law Number 20 of 2001 concerning Amendment to Law

[8] Maria Hartiningsih, (2011). *Korupsi yang Memiskinkan*, Jakarta: Kompas, 2011, p. XI.

[9] Surachmin dan Suhandi Cahaya, (2011). *Strategi dan Teknik Korupsi*, Jakarta: Sinar Grafika, 2011. p. 38.

[10] Susan Rose-Ackerman, (2010). *Korupsi dan Pemerintahan Sebab, Akibat dan Reformasi*, Jakarta: Pustaka Sinar Harapan, p. 52.

[11] Krisna Harahap, (2009). *Pemberantasan Korupsi di Indonesia Jalan Tiada Ujung*, Bandung: Grafitri, p. 23.

Number 31 of 1999 concerning Eradication of Corruption Crimes

Since 1998 a number of laws and regulations have been passed which began with the Decree of the People's Consultative Assembly Number XI/MPR/1998 concerning Clean State Administrators and free of Corruption, Collusion and Nepotism and MPR Decree Number VIII/MPR/2001 concerning the direction of Corruption Eradication and Prevention policies. Collusion and Nepotism. Following up on the decree of the MPR, a number of laws have also been passed, including Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 Year 2001 concerning Amendments to Eradicating Corruption Crime whose main objectives are to prevent and eradicate chronic disease called Corruption.

From the definition of corruption as regulated in Law Number 31 of 1999 concerning Eradication of Corruption Crime as amended by Law Number 20 Year 2001 concerning Amendment to Law Number 31 of 1999 concerning the Eradication of Corruption Crime there are 8 (eight) types groups of corruption offenses (corruption acts) and their elements and very relevant ones discussed in accordance with the topic of "policy and corruption", namely: Corruption Crimes that harm the State Finance or the State Economy as stipulated in Article 3 of Act Number 31 of 1999 as amended by Law Number 20 Year 2001 concerning Eradication of Corruption Crime and discussion will ocused on corruption that is detrimental to state finances due to abuse of authority due to the issuance of public official policies.

Article 3 of Law Number 31 Year 1999 as amended by Law Number 20 Year 2001 stipulates that Everyone who aims to benefit himself or another person or a corporation, misuses the authority, opportunity or means available to him because of a position or position that can be detrimental state finances or the state economy shall be punished with imprisonment for life or imprisonment for at least 1 (one) year and no later than 20 (twenty) years and or a fine of at least IDR 50,000,000 (fifty million rupiahs) and at most IDR 1,000,000,000.00 (one billion rupiah). From these

regulations, the elements are: - actors (humans and or corporations), benefit themselves, others, or corporations, misuse the authority, opportunity or means thereof because of their position or position, detrimental to the state's finances or the country's economy.

Corruption Actor

Seeing the development of the perpetrators of criminal acts of corruption is not only carried out individually or individually but carried out jointly or in groups. The perpetrator in corruption is that every person can be an individual and a corporation can consist of:

1. Those who do;
2. Who ordered to do;
3. And take part in doing;
4. As well as advocates;
5. Those who provide assistance at the time the crime is committed;
6. Those who deliberately give opportunities, means to commit crimes.

Based on Article 55 of the Criminal Code the perpetrators of corruption who can be punished as the person who commits a criminal event are: (1) the person who commits, who instructs to do or participate in the act; (2). A person who by giving, agreement, misusing power or influence, violence, threat or deception or by giving opportunity, effort or information, intentionally persuades to do something. Conceptually/theoretically those who can be punished as people who do can be divided into 4 (four) types, namely: (1). People who do (*pleger*): This person is someone who has done all the elements of a criminal incident alone. In the event of a crime committed in a position, for example, the person must also fulfill the element of the status of "civil servant". (2). The person who ordered to do it (*doen pleger*). Here there are at least two people who ordered and were told, meaning that it was not the person himself who committed the crime but told others. (3). People who take part in (*medepleger*), participate in the meaning of the word together to do, at least there must be two people, all of them must do things completely. (4). People who by giving, wrongly use power, use violence, intentionally persuade to do deeds (*uitloker*).

Abuse of authority as a Corruption Crime

Delegation of abuse of authority in criminal acts of corruption as stipulated in Article 3 of the PTPK Law with elements of the offense as follows:

a. With the aim of benefiting themselves or other people or a corporation;
b. Misusing the authority, opportunity or means available to him because of his position or position;
c. Which can be detrimental to the country's finances or the country's economy.

Indeed, the subjective element that is inherent in the mind of the perpetrator of corruption is according to Article 3 of the Law on the Eradication of Corruption Crime is the purpose of committing an act of misusing authority, opportunity or means available to him because of his position or position to benefit himself or another person or corporation. In terms of its form the error is included in the category of deliberation (*dolus*) not in the form of accidental (*culpa*) because actually abusing the authority must be done intentionally. In positive law regulations in Indonesia, more specifically the laws and regulations in the area of corruption do not determine the definition of intent.

In theory, there are several forms of intentions, namely: a). Intentional purpose; b). Intention as certainty, necessity; and c). Intentionality with possibilities. If it is honestly understood, actually with a favorable purpose in the elements of Article 3 of Law Number 31 Year 1999 as amended by Law Number 20 Year 2001 concerning Amendment to Law Number 31 Year 1999 concerning Eradication of Corruption Crime is a mistake in the form of intentions patterned as an intention, so abuse of authority will not occur because of negligence because basically abuse of authority is done intentionally (awareness).

The element of "abuse of authority" as a core part of the offense of Article 3 of the Law on the Eradication of Corruption Crime, after being reviewed based on the search for references, as well as the opinion of criminal law experts does not provide definition or limitation of the definition of abuse of authority adequately, nor is there a criminal expert who states that abuse of authority is the realm of

administrative law or the realm of criminal law, including when it is included in the criminal realm is also unclear, which is now normatively a positive legal norm in the law of corruption (the domain of criminal law), as well as in the practice of proof often and always associated with concepts that apply in administrative law, but it is clear and certain that authority is a core concept of Constitutional Law and Administrative Law. Likewise in the Law on the Eradication of Corruption Crime does not provide an explanation of the concept of abuse of authority, therefore in practice there are various interpretations. The diversity of interpretations is related to the subject of abuse of authority and parameters used to measure whether there has been abuse of authority. What's interesting is the explanation from R Wiyono, SH in his book entitled Discussion of the Law on Eradicating Corruption Crime, publisher Sinar Grafika on page 52 distinguishes the subject of the perpetrators of corruption who said that the perpetrators of criminal acts of corruption who are not civil servants or private individuals can only commit criminal acts of corruption by misusing opportunities or existing facilities because of their position, this is truly wrong, but in practice this literature is often used as a reference by judges, prosecutors and lawyer.

In line with the main pillar of the rule of law, namely the principle of legality on the basis of this principle that the authority of the government including stipulating and making policies must definitely originate or originate from legislation. In the literature of administrative law there are two ways to obtain government authority, namely attribution and delegation, sometimes also mandates. To examine who must be judicially responsible if abuse of authority must also be seen in terms of the birth of that authority.

In each authorization to certain government officials, the responsibility of the officials concerned is implied. In the concept of jurisdiction responsibility attribution of authority by the recipient of the authority and in the delegation of authority delegation therefore if there is abuse of authority the delegator must be responsible,

other than the mandate does not happen the transfer of authority means only acting on behalf of the mandate so that the juridically responsible is the authority.

In the administrative law, every use of authority contains accountability, but it must still be separated from the procedures for obtaining and exercising government authority, because not all officials who exercise government authority automatically assume legal responsibility. Officials who obtain and exercise authority in attribution and delegation are parties who bear legal responsibility, while officials who carry out their duties on the basis of mandates are not those who bear legal responsibility. In the perspective of public law which is domiciled as the subject of law is a position that is an institution with a scope of work for a long time and to him given the task and authority.

In the administrative legal concept, every authorization to a state agency or official is always accompanied by the purpose and purpose of the given authority, so that the application of that authority must be in accordance with the purpose and purpose of the given authority. In the case that the use of authority is not in accordance with the purpose and purpose of the granting of authority, it has committed abuse of authority. The parameters of the purpose and purpose of granting authority in determining the occurrence of abuse of authority are known as the principle of specialization which substantially implies that each authority has a specific purpose. In assessing the presence or absence of abuse of authority in determining a public policy, it must be distinguished first whether the authority is included in the classification of bound or free authority. In the boundary authority to assess whether there is an abuse of authority using the legality principle or *wetmatigheid van bestuur*, while the free authority of the parameters used are general principles of good governance. So to prove and evaluate government actions in determining public policy, there has been an abuse of authority or not, the first step that must be taken is whether the legislation gives the authority to determine the public policy. Furthermore, the second step is whether the determination of public

policy deviates from the purpose of the authority given ?. In criminal acts of corruption the laws and regulations are used as a basis to prove the abuse of authority, which means that if the abuse of authority is proven, then the next third question that must be proven is whether the result of the determination of public policy is a state or state economy loss? In calculating the value of state financial losses, there is still a debate between the authority of the Supreme Audit Board or the implementing agency of the Government Internal Control System such as the Development Finance Supervisory Agency and the Regional Inspectorate, while from the aspect of calculating state financial losses to determine the amount of money substitute. If the answers to the questions above have caused losses to the state or the economy of the country, corruption has occurred and the basis for criminal charges is Law Number 17 of 2003 concerning State Finance and/or Law Number 1 of 2004 concerning State Treasury. On the basis of these thoughts, it is proven that the abuse of authority is not accompanied by state or economic losses of the state, so that the action cannot be classified as a criminal act of corruption, and the most important thing to remember is imposing a criminal sanction must not conflict with the principle of legality, this is also in accordance with Article 15 of Law Number 12 Year 2011 because in addition to laws and regional regulations it is prohibited to include criminal sanctions. As an embodiment of the principle of the rule of law, the government can only carry out legal actions if it has legality or is based on laws that are a manifestation of people's aspirations. In democracies the actions of the government must get the legitimacy of the people formally contained in the law. So the principle of legality is the basis for the government to act in achieving certain goals. Giving authority to the government is given by means of legislation. In the practice of justice often found the Public Prosecutor's charge against the subject of offense is not an official doing misuse of authority and vice versa the subject is offended by an official who is against the law. someone who does not have a public office. So the parameters for measuring abuse of authority and parameters of measuring against the

law are two different things. Parameters of abuse of authority are 1) Legislation; 2). Good general principles of government, while unlawful parameters are: 1). Legislation; 2). Value of propriety and public justice.

In criminal acts of corruption can cause losses to the state/economy of the country shows that as a formal offense the consequence of the formulation which is prioritized is that the action is not the result as in the formulation of material offenses. In formal offenses there is no need to look for a causal relationship between the result and the most important action is that the action misuses authority. In fact, in practice it also raises problems, especially in terms of legal certainty, this arrangement is actually not very just academic. In dealing with legal issues like this we argue that for the sake of certainty and a sense of justice and the benefit of the law itself for human welfare, the legal principle is used. As stipulated in Article 1 number 22 of Law Number 1 of 2004 concerning State Treasury, it is determined "the loss of state/region is a lack of money, securities and goods that are real and definite in number as a result of unlawful or unlawful acts. Arrangements like this if connected with the word can harm state / state economy in Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption with different formulations as it is clear that there has been a conflict of norms, Academically, if there is a conflict of norms like this, the rule of law must be applied for the certainty and harmonization of law, one of the principles of the law is law which will defeat the previous law (lex posteriori derogat legi priori). So the determination of state losses must refer to the provisions of Article 1 number 22 of Law Number 1 of 2004 concerning State Treasury, which means that state losses must be real and definite, the amount of which is calculated by the institution granted authority by law, namely the Supreme Audit Agency.

CONCLUSION

From the above description, it can be drawn the conclusion that examining and adjudicating corruption cases due to the determination of public officials'

policies is the competence of the Corruption Court and public officials can be held criminally liable. and the act is an intentional criminal act.

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