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Characteristics of corruption crimes in the perspective of criminology

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A R T I C L E I N F O

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ABSTRACT

This study aims to men analysis the causes of corruptors have yet to be charged by the applicable legal provisions, as well as to examine the current law enforcement problems of corruption. The type of research in this study is the normative juridical method, whose other name is doctrinal legal research, also known as library research or document study because this research is carried out or aimed only at written regulations or other legal materials. The approaches used by researchers in compiling this research are, among others: the Statute Approach and the case approach. Every ruler tends to maintain his power, and it is also possible that with his power, he can prepare himself to prevent or avoid legal proceedings that can potentially execute him for his arbitrariness.

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1. INTRODUCTION

The development of eradicating corruption in Indonesia has been running ups and downs amid the domination of political interests and power. One of the agendas of the struggle for reform carried out by the community is the elimination of Corruption, Collusion, and Nepotism (KKN) practices; demands for eradicating KKN have become increasingly intense since Suharto fell from the presidency. Various demands from both students and other pro-reform movements demanded that former President Suharto and his cronies be immediately investigated and tried because they were suspected of having carried out KKN practices while he was in power. The criminal act of 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. (Muhtar, 2019).

State officials make corruption cases a powerful weapon in their speeches, speaking as if they are clean, anti-corruption. The community, through NGOs and mass organizations, does not want to be outdone, benefiting from the anti-corruption campaign in Indonesia. Weak law in Indonesia is used as a powerful weapon for corruptors to avoid prosecution. The corruption case of former President Suharto is an example of a corruption case that has never reached a settlement point. Even though the resolution of the Suharto corruption cases and his cronies, the BLBI funds and other major corruption cases will be able to stimulate economic development programs in Indonesia (Fauzia & Hamdani, 2022). Literally, corruption is the behavior of public officials, both politicians and civil servants, who unfairly and illegally enrich themselves or enrich those close to them, by abusing the public power entrusted to them (Widiastuti, 2018).

In fact, efforts to eradicate corruption in Indonesia have not yielded satisfactory results. Amendment and replacement of regulations on corruption crimes aimed at dealing with the difficulty of handling corruption cases and demonstrating the government's efforts to curb the development of the increasing potential for corruption (Afifah, 2022). This is because corruption

has a hidden pattern of behavior and has targets in the political or state, legal, economic, financial and socio-cultural fields which are a challenge for a set of law enforcers. The criminal act of corruption is seen as an extraordinary crime or known as an extraordinary crime, this is because the practice of corruption is increasingly widespread and systematic and its coverage area is very wide.

Meanwhile, Okorim, as quoted by Petter Gottschalk, argues that (Sequeira & Djankov, 2010): Corruption is defined as the giving, requesting, receiving, or accepting of an improper advantage related to a position, office, or assignment. The improper advantage does not have to be connected to a specific action or not-doing this action. It will be sufficient if the advantage can be linked to a person's position, office, or assignment. Corruption is to destroy or pervert the integrity or fidelity of a person in his discharge of duty, it is to induce to act dishonestly or unfaithfully, it is to make venal, and it is to bribe.

In connection with the above opinion Lord Acton said: "Power tends to corrupt, and absolute power corrupts absolutely". The phrase using is a kind of postulate put forward by Lord Acton that power tends to corrupt (Cislak et al., 2018). This is in line with what was stated by Montesquieu in le Esprit Des lois which is translated as The Spirit of law that towards people in power there are three tendencies. First, the tendency to maintain power. Second, the tendency to enlarge power (Lammers et al., 2016). Third is the tendency to take advantage of power. In relation to utilizing this power, what is called abuse of power often occurs which often enriches oneself or enriches others.

Several years ago, around the mid-90s, the broadcast of fugitive corruptors on television had raised pros and cons. Those who are pro with the broadcast are of the opinion that the fugitive suspect in the corruption case being broadcast can be immediately found and tried according to applicable law. Meanwhile, those who were against argued that the broadcast was contrary to the principle of the presumption of innocence. There was even a new breakthrough by the Corruption Eradication Committee, namely the KPK's Resistance to wearing uniforms which were also designed and intended to provide a deterrent effect for corruptors.

Jeremy Pope in his book Confronting: The Elements of the National Integrity System, explains that corruption is a global problem that everyone should be concerned about. The practice of corruption is usually parallel to the concept of totalitarian government, a dictatorship that places power in the hands of a few people (Lee et al., 2019). However, this does not mean that in a democratic social-political system there is no corruption, it can even be worse, meaning that in a social-political system there is tolerance and even giving room for corrupt practices to thrive. Corruption is also an act of violating human rights, continued Pope.

According to Dleter Frish, former Director General for European Development. Corruption is an act of increasing costs for goods and services, increasing the debt of a country, and lowering the quality standards of goods. Usually development projects are chosen because of the involvement of large capital, not the urgency of public interest, corruption always causes an uncertain socio-economic situation (uncertainly). This uncertainty is not asymmetric information in economic and business activities. The private sector often sees this as the biggest risk that must be borne in running a business, it is difficult to predict how much Return on Investment (ROI) can be obtained because the costs incurred due to corrupt practices are also difficult to predict, Akhiar Salmi in his paper explains that corruption is a bad deed, like embezzlement (Holmes, 2015).

Law of the Republic of Indonesia Number 28 of 1999 concerning the Implementation of a State that is Clean and Free from Corruption, Collusion and Nepotism, article 1 explains that the criminal act of corruption as intended in the provisions of the laws and regulations of the Republic of Indonesia defines corruption as one of the crimes. Mubaryanto, Pancasila Economic Activist, in his article explained about corruption that, one of the big problems related to justice is corruption, which we have now softened into "KKN". Perhaps the name change from corruption to KKN has a reason because corrupt practices are related to connections and nepotism.

This is of concern to the authors to examine what causes these corruptors to not be ensnared by the applicable legal provisions, as well as to examine Is it because our legal construction is not perfect? Or is it because of bad law enforcement by law enforcement officials?

2. RESEARCH METHOD

The type of research in writing this proposal isnormative juridical research method whose other name is doctrinal legal research which is also known as library research or document study because this research is conducted or aimed only at written regulations or other legal materials (Soekanto, 2007). The approaches used by researchers in compiling this research are, among others: Statute Approach; The case approach (Hulukati et al., 2020). The literature (secondary material) or law research conducted by the library was analyzed for this study. The topics covered included studies on legal principles, legal systematics, and the coordination of Sociology and legal criminology on disruptive technologies. References used to inform the author's decision to use this approach are: first, the problem's binding substance may be found in the legislation itself. The Constitution from 1945, the rules and regulations of the government, Pancasila, the case law, and other sources. Second, data materials that explain main data legal documents are called secondary sources. Things like invoices, findings, scientific efforts, etc. Third, data elements that give knowledge regarding main and secondary rules are called tertiary sources of law. Dictionary books, encyclopedias, periodicals, newspapers, television, and the internet are all good examples of such sources.

The analytical method utilized to analyse the legal information was legal hermeneutics, and the research methods included statutory research and a case approach. One definition of legal hermeneutics is the practice of "materializing" the law in question in an attempt to better understand it.Data collection was carried out through library research, meaning data and information collection techniques from several books and readings and legislation related to the problem under study. This literature study was conducted in the library. The legal materials used in this study were obtained from searches through literature studies, namely collecting various legal materials, both in the form of laws and regulations, literature, scientific papers, results of previous research, documents, opinions of legal practitioners, journals, and various relevant books related to this research.

3. RESULTS AND DISCUSSIONS

Causes of Corruptors Have Not Been Ensnared By Applicable Legal Provisions

In the understanding of the rule of law, it is the law that holds the highest command in the administration of the state. What actually leads in the administration of the state is the law itself in accordance with the principle of the rule of law, and not of man, which is in line with the notion of nomocratie, namely power is exercised by law. The rule of law in the material sense aims to protect citizens against arbitrary actions from authorities so as to enable humans to gain their dignity as human beings. Therefore, the essence of the rule of law in the material sense is that there is a guarantee for members of the community to obtain social justice, namely a condition where members of the community feel reasonable respect from other groups; while each group does not feel disadvantaged by the activities of other groups (Ahmed, 2021).

Indonesia's legal state is a legal state based on the values of Pancasila, which is the philosophy and basis of the state. Pancasila as the basis of the state which is a reflection of the soul of the Indonesian nation, must be the source of law for all existing legal regulations. Materially, the Indonesian Law State which is based on Pancasila in making its legal substance must uphold and be based on (Siallagan, 2016):

The values of Belief in the One and Only God, meaning that the law used as the basis for regulating the state's life must originate from and not contradict religious values and be in harmony with the teachings of existing religions. In this case, laws originating from religious teachings are part of and become one of the sources of laws and statutory regulations.

Just and civilized human values, meaning that the law used as the basis for regulating the state's life must originate from and not conflict with universal human values, the values of justice, and the values of civility. Thus, laws and regulations must uphold the value of Human Rights.

The values of Indonesian unity, meaning that the law which is used as the basis for regulating the life of the state must originate from and not conflict with the values of the Indonesian nation while maintaining unity and unity while respecting the diversity of religions, cultures, ethnicities, languages, traditions and customs. Which exists. Thus laws and regulations must

recognize and guarantee the values of local wisdom, traditions and culture of the archipelago, which are diverse.

Populist values are led by wisdom in deliberations/representation, meaning that the law which is used as the basis for regulating the life of the state must originate from and not conflict with the interests and aspirations of the people, which are determined through deliberations on a representative basis based on common sense (wisdom) and 'good faith and wisdom (wisdom). With laws and regulations, it must be democratic both substantially and procedurally.

The values of social justice for all Indonesian people mean that the law used as the basis for regulating the state's life must be a law that can truly create social welfare in a fair and equitable manner for all Indonesian people. Thus laws and regulations must be able to guarantee the realization of justice and welfare for all people without exception.

The law itself is a product of politics; in other words, it is politics or the ruler who makes or formulates the law. In theory, Emanuel Kant emphasized that the purpose of the state is to uphold the law and guarantee citizens' freedom. The freedom of citizens is limited by law, while the law itself reflects the people's will. Based on the building theory put forward by several thinkers above, it can be concluded if we talk about the authority of the authorities to establish a rule of law in which it is possible to restrict human rights, it cannot be separated from the root principle of people's sovereignty and the state's obligation to protect human rights. -the rights of its citizens.

The state is run by the authorities, apart from having the authority to make/formulate laws, the authorities also have the task of enforcing these rules, both starting from civil and criminal matters, it must be regulated in such a way as to create justice, certainty and legal benefits. As for criminal law according to WLG Lemaire, criminal law consists of norms that contain imperatives and prohibitions which (by the legislators) have been associated with a sanction in the form of punishment, namely a special suffering. Meanwhile, according to WFC van Hattum, criminal law is a whole of the principles and regulations followed by the state or another general law society (FITRI WAHYUNI, 2017).

In short, criminal law is the law that regulates criminal acts (criminal acts).
Crime or commonly referred to as crime is a social phenomenon because it cannot be separated from space and time. According to Van Hamel, a crime is a person's behavior (menselijke gedraging) which is formulated in law (wet), which is against the law, which deserves to be punished (strafwaardig) and is done by mistake. In the government of a country must be regulated regarding the law and the imposition of sanctions for violations of the law. Law is a whole collection of rules or rules in a common life that can be enforced by a sanction (MEYSERI et al., 2018).

In general, criminal acts are divided into 2 types, namely crimes and violations. The meaning of the crime itself according to R. Soesilo is an act of behavior which besides harming the sufferer, is also very detrimental to society, namely in the form of loss of balance, peace and order. While Violation is an act against the law which therefore causes harm to other people. Seen from his point of view crime and transgression refer to the same point. Between crimes and violations have a detrimental impact on a party.

In the context of punishment, principles are defined as basic conceptions, ethical norms, and legal principles that guide the formation of criminal law norms through the making of criminal laws and regulations. In other words, legal principles are basic conceptions, ethical norms, and basic principles for the use of criminal law as a means of overcoming crime (FATEM, 2019). Meanwhile, Soedarto himself emphasized that the use of criminal law must also take into account the principle of costs and results (cost benefit principle) (Zaidan, 2022).

Suppose it is associated with the application of criminal sanctions for corruption. In that case, some aspects or interests must be considered, firstly paying attention to the perpetrator's aspect, secondly paying attention to the victim's aspect, and thirdly the community aspect, that the interests of society are not fulfilled due to corruption. Criminal sanctions against perpetrators of corruption have been formulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. Article 2 threatens the perpetrators of corruption with the threat of life imprisonment or imprisonment for a minimum of 4 (four) years, a maximum of 20 (twenty) years, and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah). In Article 3, it can be seen

that the threat for perpetrators of corruption is life imprisonment or imprisonment for a minimum of 1 () year in prison and a maximum of 20 (twenty) years in prison and or a fine of at least Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

However, even though there have been regulations in such a way and strengthened by the application of the retroactive principle, there is still legal uncertainty against the perpetrators of corruption, namely where the perpetrators of corruption seem difficult to be trapped in articles related to corruption, especially Suharto and New Order cronies who were seriously accused of committing this particular crime.

Previously it has been explained that politics is the mother of law. Law is a product of politics (rulers). The legal product referred to in legal politics is positive law (ius constitutum) which is made by taking into account other social phenomena, especially political phenomena that influence them (Isharyanto, 2021).Then it is also necessary to know that legal politics is a series of concepts, principles, basic policies, and statements of the will of state authorities which contain the politics of law formation, the politics of determining law, and the politics of implementation, as well as law enforcement, concerning the functions of institutions and the development of law enforcers to determine the direction , the form, as well as the content of the law to be formed, the law in force in its territory and regarding the direction of development of the law that is built and to achieve the goals of the state. Of course, it is different between regulations and law, or legal will, regulations must have political interference, which with political interference it is not certain that society can implement and be able to accept it. This is because the regulation was made only for the purpose of being a "legal umbrella" for those who make it,

Related to the authorities, Montesquieu in le Esprit Des lois which is translated as The Spirit of law that towards people in power there are three tendencies. First, the tendency to maintain power. Second, the tendency to enlarge power (Lammers et al., 2016). Third is the tendency to take advantage of power. In relation to utilizing this power, what is called abuse of power often occurs which often enriches oneself or enriches others.

So it can be concluded that every ruler has a tendency to maintain his power, and it can also be with his power that he is able to prepare himself to prevent or avoid legal remedies that have the potential to execute him for his arbitrariness.

Current Problems of Law Enforcement of Corruption Crimes

The problem of law enforcement against criminal acts of corruption is still classified as inadequate and even far from the expectations of society, this is evidenced by the high level of corruption crimes. A number of corruption cases that caused huge (fantastic) losses to the state were uncovered by law enforcement officials (the Police, the Attorney General's Office, and the Corruption Eradication Commission), for example corruption cases in condensate sales (PT Trans-Pacific Petrochemical), PT Asabri, PT Jiwasraya, Century Bank, corruption cases at the Ministry of Social Affairs and the Ministry of Maritime Affairs and Fisheries, to the PT Duta Palma corruption case, and corruption cases in regional governments in Indonesia which are still in the process of investigation and investigation by law enforcement officials (Harefa, 2022).

Many corruption cases are due to a lack of integrity on the part of law enforcers. We can see quite a few law enforcers even tripping over corruption cases by accepting bribes from suspects in the cases they handle. For example, let's say Patrialis Akbar, a former MK judge sentenced to 8 years in prison and fined 300 million rupiahs by the district court for corruption because he was proven to have accepted a bribe of US$10,000 from a businessman named Basuki Hariman. The money was given to Patrialis to help win the decision on case number 129/PUU-XIII/2015 related to the judicial review of Law Number 41 of 2014 concerning Animal Husbandry and Health, which was submitted to the Constitutional Court. Not only that, but not long ago, there were 2 Supreme Court judges were arrested by the KPK, namely Sudrajad Dimyati and Gazalba Saleh. The KPK detained both in the alleged bribery and Intidana bankruptcy cases.

Taverne once stated, that: “Give me an honest and intelligent prosecutor. Give me an honest and intelligent judge, and with the worst laws, I will make a fair verdict (Supriadi, 2008). The law enforcement factor is one of the keys to success in law enforcement, namely the mentality or personality of the law enforcers themselves (Novita & Agung Basuki Prasetyo, 2017). In the context of law enforcement by every law enforcement agency, justice and truth must be expressed, felt,

seen and actualized. Factors of facilities and facilities Supporting facilities and facilities include educated and skilled human resources, good organization, adequate equipment, adequate finances. Without adequate means and facilities, law enforcement cannot run smoothly and it is impossible for law enforcers to carry out their proper roles (Fitri & Yusran, 2020). Community factors the community has a strong influence on the implementation of law enforcement, because law enforcement originates from the community and aims to reach within the community. The most important part in determining law enforcement is the legal awareness of the community. The higher the legal awareness of the community, the more likely it will be for good law enforcement.

It is the same with the theory put forward by Soerjono Soekanto that the main problem of law enforcement actually lies in the factors that might influence it. These factors have a neutral meaning, so that the positive or negative impact lies in the content of these factors. These factors are as follows (Pramuji & Putri, 2020): The legal factor itself, for example the law, law enforcement factors, namely the parties that form and apply the law, factors of facilities and activities that support law enforcement, community factors, namely the environment in which the law applies or is applied, cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.

In addition, not infrequently, our law enforcement is still subjective, not objective; law enforcement is still oriented "to whom first". This situation is like what Satjipto Rahardjo, an Indonesian legal officer, often reminds us in his various writings that law enforcement that must be carried out by Polri investigators still seems to be seen in the wrong way, even more so when law enforcement is still equated with enforcing regulations. Written rules. Of course, it is a difference between regulations and law or legal will; regulations must have political interference, which with political interference, it is not certain that society can implement and be able to accept it. This is because the regulation was made only to be a "legal umbrella" for those who make it, not for the benefit of the wider community or for the sake of the law that must be respected. As for the law, it is a will for order from society which is based on a mindset (clean thoughts and clean will), as conveyed by Prof. Dr Barda Nawawi Arief, SH. or the will of society's clearest minds to respect one another (Hartono, 2010).

Based on the description above, it is increasingly clear that various corruption cases need to be thoroughly disclosed, not only due to our incomplete legal construction but also law enforcement by law enforcement officials. It is said so because, in essence, the law is a whole structure (system) which consists of sub-systems. If there is a shortage in a sub-system, it will be complemented by other sub-systems.

Legal construction in the form of statutory rules is only a sub-system, an inanimate object. Whereas law enforcement is more focused on law enforcement officials, they are living things that are always dynamic in keeping up with the times, including the development of societal norms and their demands. Regarding the last thing mentioned, both lawyers, police, prosecutors and judges in an integrated criminal justice system in criminal justice must be more sensitive so that every corruption case that occurs in this country can be resolved to its roots if you want to put forward the law as commander in chief.

4. CONCLUSION

Related to the authorities, Montesquieu in le Esprit Des lois, translated as The Spirit of law, has three tendencies towards people in power. First the tendency to maintain power. Second, the tendency to enlarge power. The third is the tendency to take advantage of power. About utilizing this power, what is called abuse of power often occurs, which often enriches oneself or enriches others. So every ruler tends to maintain his power, and it can also be with his power that he can prepare himself to prevent or avoid legal remedies that have the potential to execute him for his arbitrariness. The incomplete disclosure of various corruption cases is not only due to the incomplete construction of our law but rather to law enforcement by law enforcement officials. It is said so because, in essence, the law is a whole structure (system) which consists of sub-systems. If there is a shortage in a sub-system, it will be complemented by other sub-systems.

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