



Efforts to Eradicate Criminal Acts of Corruption as an Extraordinary Crime Through International Cooperation

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Abstract

Corruption is a common enemy that must be eradicated by Indonesia in order to achieve a just and prosperous life. The Indonesian government has made various efforts to eradicate corruption and save state finances. Various products of legislation, institutions, special teams and commissions have been formed by the government to combat corruption to its roots in order to save the economy and state finances. However, corruption is still a problem as an inhibiting factor for the country's economic development. The research was conducted using a normative juridical method with a statute approach and a conceptual approach. Eradication of criminal acts of corruption as an extraordinary crime, because it is serious, systematic and structured, should also be carried out in an extraordinary manner. Extraordinary eradication of criminal acts of corruption is carried out through extraordinary duties and authorities of the Corruption Eradication Commission (KPK), through investigations, investigations and prosecutions carried out in an extraordinary manner by the Corruption Eradication Commission (KPK), development of international cooperation in the context of mutual legal assistance, investigations joint and extradition treaty.

Keywords : *Corruption, Crime, International Cooperation*

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Introduction

In the practice of state administration, the system of state government or the way of administering the state requires powers that are limited by law. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which affirms "The State of Indonesia is a State of Law". Based on the provisions of this constitution, the Indonesian

government has limited powers, meaning that it is limited by the constitution and in its implementation it is not permissible to act arbitrarily, in this case, the law must control power.

The adoption of the principle of the rule of law in the 1945 Constitution of the Republic of Indonesia as the State Constitution, implies that the highest power in the State of Indonesia is the law made by the people through their representatives. Some of the powers possessed by state institutions are obtained through the 1945 Constitution of the Republic of Indonesia, and some are derived from law. The Corruption Eradication Commission or the Corruption Eradication Commission (KPK) is authorized by law, namely Law Number 30 of 2002 concerning the Corruption Eradication Commission. The establishment of the Corruption Eradication Commission (KPK) with Law Number 30 of 2002 was carried out with the consideration that, (a) eradication of criminal acts of corruption needs to be professionally, intensively and continuously improved, because corruption has harmed state finances, the state economy and hindered national development; (b) government institutions that handle corruption cases, have not functioned effectively and efficiently in eradicating criminal acts of corruption, and (c) the orders of Article 43 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. Corruption is a crime that touches various interests related to human rights, state ideology, economy, state finances, national morals which tend to be difficult to overcome¹.

In Law Number 30 of 2002 it is emphasized that the Corruption Eradication Commission (KPK) is a State institution which in carrying out its duties and authorities is independent and free from the influence of any power (Article 3). "Any power" in this provision is a power that can influence the duties and authorities of the Corruption Eradication Commission or individual members of the Commission from the executive, judicial, legislative, other parties related to cases of criminal acts of corruption, or circumstances and situations or with any reason (Explanation of Article 3). The Corruption Eradication Commission was formed with the aim of increasing the efficiency and effectiveness of efforts to eradicate corruption (Article 4). In its development, corruption in Indonesia has become increasingly widespread and has penetrated various elements, including the executive, legislative and judicial institutions. Corruption is not

¹ Widiastuti, T. W. (2009). Korupsi dan Upaya Pemberantasannya. *Wacana Hukum*, 8(2).

only detrimental to the state's finances, but has also violated the social and economic rights of the community, and is even categorized as an extraordinary crime.

Corruption is a common enemy of the Indonesian nation that must be prevented and eradicated². Corruption is the same as a disease that attacks various sectors such as economy, politics, culture, ethics, morals and even religion³. The crime of corruption is a crime that is special in nature both in the context of the act and the party handling the investigation of the crime⁴. Indonesian government has made various efforts to eradicate corruption and save state finances. Various products of legislation, institutions, special teams and commissions have been formed by the government to combat corruption to its roots in order to save the economy and state finances. However, (a) corruption is still a problem as an inhibiting factor for the development of the country's economy; and (b) the Corruption Eradication Commission is also still a debatable issue among politicians, academics and the public. However, the eradication of extraordinary crimes of corruption should be carried out in an extraordinary manner too⁵. Various efforts have been made by the government to eradicate corruption simultaneously, considering that corruption is a white collar crime as well as an extraordinary crime⁶.

One form of corruption that is often revealed is corruption that is detrimental to state finances⁷. In the context of law enforcement against criminal acts of corruption, Indonesia has established a special court for criminal acts of corruption based on Law Number 30 of 2002. The establishment of a court for criminal acts of corruption raises its own problems, because Law Number 31 of 1999 concerning the Eradication of Corruption is completely does not mandate the establishment of a special court for corruption, but mandates the establishment of an independent commission to eradicate corruption. The idea of forming a Corruption Court

² Toule, E. R. M., & Ubwarin, E. (2021). Kebebasan Hakim Dalam Penjatuhan Pidana Korupsi Dikaitkan Dengan Surat Edaran Mahkamah Agung Nomor 3 Tahun 2018. *TATOHI: Jurnal Ilmu Hukum*, 1(7), 691-696.

³ Umar, H. (2012). Pengawasan untuk pemberantasan korupsi. *Jurnal Akuntansi dan auditing*, 8(2), 109-122.

⁴ Suhendar, S. (2019). Penyidikan Tindak Pidana Korupsi Dan Kerugian Keuangan Negara Dalam Optik Hukum Pidana. *Pamulang Law Review*, 1(1), 85-100.

⁵ Muhammad Yusuf. (2013); Miskinkan Koruptor, Pembuktian Terbalik Solusi Jitu Yang Terabaikan; Pustaka Juanda Tigalima, Jakarta

⁶ Waluyo, B. (2017). Optimalisasi pemberantasan korupsi di indonesia. *Jurnal Yuridis*, 1(2), 169-162.

⁷ Saputra, R. (2015). Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi yang Merugikan Keuangan Negara Terutama Terkait Dengan Pasal 2 Ayat (1) UU PTPK). *Jurnal Cita Hukum*, 3(2), 95573.

emerged in the process of enacting Law Number 30 of 2002. In Article 53 it is emphasized "With this Act a Corruption Crime Court has the task and authority to examine and decide on corruption crimes whose prosecution is proposed by the Corruption Eradication Commission".

The Corruption Court is established and has the duty and authority to examine and decide on corruption crimes whose prosecution is filed by the Corruption Eradication Commission (KPK), causing legal problems; (a) The Corruption Court was established based on Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK), which regulates executive powers but includes judicial powers; (b) The Corruption Court was established only to examine and decide on corruption crimes for which the Corruption Eradication Commission (KPK) has filed a prosecution; (c) The provisions governing the establishment of the Corruption Court which is placed as part of the corruption eradication institution mentioned above have influenced the workings of the Corruption Court which must punish defendants for corruption crimes for the sake of eradicating corruption. The government's efforts to accelerate the eradication of corruption have yielded results in many ways, but on the other hand, it seems that these efforts are still considered insufficient to lead to clean governance.⁸

Discussion

1. The Corruption Eradication Commission as the Sole Corruption Eradication Agency

Eradication of Corruption Crimes carried out extraordinarily, through efforts to make the Corruption Eradication Commission the only institution to eradicate corruption. The eradication of corruption in Indonesia has so far been carried out by three state institutions, namely the Indonesian National Police, the Indonesian Attorney's Office (investigation and prosecution), and the Corruption Eradication Commission (KPK), (investigation and prosecution). From the observations of corruption eradication so far, the public has full hope in eradicating corruption in the KPK and considers the Police and the Prosecutor's Office to be slow in eradicating corruption. Without placing any other thoughts on the Police and the Prosecutor's Office, in our opinion, efforts should be made so that the KPK can become the only institution to eradicate corruption in Indonesia. First, from a philosophical point of view, by quoting Gad Barzilai as

⁸ Rasul, S. (2009). Penerapan Good governance di Indonesia dalam upaya pencegahan tindak pidana korupsi. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 21(3), 538-553.

contained in David S. Clark (Encyclopedia of Law & Society)⁹ who said “If there is cultural diversity in a society, then law as a process of identity practice places itself as a subject in countless political conflicts over hegemony. Why do people obey the law? The concept of hermeneutics replies that it is nothing else, because law is essentially religious or natural and, therefore, undeniably evokes justice. In this context, the diversity of corruption eradication institutions, the law must overcome political conflicts related to eradicating corruption. Laws that are religious and natural will be obeyed if the institutional hegemony of corruption eradication exists in one institution, namely the KPK.

Second, from a normative juridical perspective, the Corruption Eradication Commission is a state institution which in carrying out its duties and authorities is independent and free from the influence of any power (Article 3 of Law Number 30 of 2002). This institution was formed because law enforcement to eradicate corruption that has been done conventionally through law enforcement agencies has been proven to experience various obstacles. For this reason, an extraordinary law enforcement method is needed. This institution was formed because law enforcement to eradicate corruption that has been done conventionally through law enforcement agencies has been proven to experience various obstacles. For this reason, an extraordinary law enforcement method is needed. The Corruption Eradication Commission based on Law Number 30 of 2002 has extraordinary duties and powers, so that the legal community calls it a super body, because (a) the Corruption Eradication Commission (KPK) is in charge of coordinating and supervising the competent agencies. carry out eradication of corruption and monitor the administration of state government (Article 6); (b) The Corruption Eradication Commission (KPK) has the authority to coordinate investigations, investigations and prosecutions of criminal acts of corruption, establish a reporting system, request information, conduct hearings or meetings, and request reports from agencies that carry out corruption eradication (Article 7); (c) take over the investigation and prosecution of perpetrators of criminal acts of corruption which are currently being carried out by the Police or the Prosecutor's Office (Article 8 and Article 9); (d) in carrying out the authority to investigate, investigate and prosecute as referred to in Article 6 letter c, the Corruption Eradication Commission (KPK) is authorized to investigate and

⁹ Achmad Ali; 2009; *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicial Prudence) Termasuk Interpretasi Undang Undang (Legal Prudence)*; Kencana, Jakarta p 352

prosecute corruption crimes involving law enforcement officers, state administrators and involving state losses of more than Rp. 1,000,000,000.- (one billion rupiah) (Article 11); (e) KPK may establish representatives in the provinces (Article 19 paragraph (2)). Therefore, in the future, investigations, investigations and prosecutions of corruption cases should be centered on the KPK based on Article 6 of Law Number 30 of 2002. This can be done if the KPK has established its representatives in every provincial capital in accordance with Article 19 of the Law. Number 30 of 2002. Before being able to open KPK representatives in the regions, the KPK can still take over the investigation and prosecution of corruption crimes by the Police and the Prosecutor's Office with the conditions as referred to in Article 8 of Law Number 30 of 2002¹⁰.

Third, sociologically, the Corruption Eradication Commission is an independent state institution which in carrying out its duties and authorities is free from any power. In carrying out its duties and authorities, the institution has shown good performance and is considered successful in eradicating corruption in Indonesia. This is important, because the leadership of this institution consists of elements of the government and elements of the community so that the monitoring system carried out by the community on the performance of the Corruption Eradication Commission in conducting investigations, investigations, and prosecutions of criminal acts of corruption remains attached to this institution.

With the provisions of Law Number 30 of 2002, the Corruption Eradication Commission has: (i) been able to establish a strong network and treat existing institutions as conducive "counterpartners" so that the eradication of corruption can be carried out efficiently and effectively; (ii) not monopolizing the duties and authorities of investigation and prosecution; (iii) functioning as a trigger and empowering existing institutions in eradicating corruption (trigger mechanism); (iv) functions to supervise and monitor existing institutions, and in certain circumstances may take over the duties and authority of the investigation, investigation, and prosecution (superbody) currently being carried out by the police and/or the prosecutor's office.

2. Reverse Proof

Corruption as an extraordinary crime requires an instrument that is also extraordinary, so that the recovery of state financial losses can be effective. This is important, because in the case

¹⁰ Adami Chazawi; 2016; *Hukum Pidana Korupsi Di Indonesia*; Raja Grafindo Persada; Jakarta p 393

of a criminal act of corruption, the most important element is the loss of state finances. Regarding this State financial loss, Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 stipulates that the State financial loss must be returned or replaced by the perpetrators of corruption. According to Suhadibroto¹¹, return of state financial losses can be done through two legal instruments, namely civil law and criminal law. The criminal law instrument is carried out by the investigator by confiscating the property belonging to the perpetrator and then by the public prosecutor, it is demanded to be confiscated by the judge. Meanwhile, civil instruments are carried out by the State Attorney (JPN) or institutions that have been harmed by the perpetrators of corruption (suspects, defendants, convicts or their heirs if the convict dies).

In accordance with the General Elucidation of Law Number 31 of 1999 as amended by Law Number 20 of 2001, it is known that the legislators have vowed to eradicate corruption in an "extraordinary way" and in a "special way", because corruption in Indonesia occurs systematically. and widespread and has violated the social and economic rights of the wider community. The "extraordinary method" and "special method" referred to are reverse proof, which is charged to the defendant, electronic evidence, corruption crimes are clearly formulated as formal offenses, corporations as the subject of corruption crimes, minimum criminal threats, imprisonment for convicts who cannot pay replacement money, broadening the understanding of civil servants, civil lawsuits to restore state financial losses¹². The burden of reverse proof is based on the principle of "presumption of guilt" (presumption of innocence) as opposed to the system of proof to the public prosecutor which is based on the principle of presumption of innocence. On the principle of presumption of guilt, the public prosecutor submits the defendant to the trial court which has taken one step forward, namely that he is not burdened with the obligation to prove his indictment. By filing the charges, the defendant is deemed guilty. Therefore, the party who is obliged to prove the defendant's innocence is the defendant himself¹³.

3. International Cooperation Development

¹¹ Muhammad Yusuf; opcit ; p 4

¹² Ibid p 5

¹³ Adami Chazawi; 2016; Hukum Pidana Korupsi Di Indonesia; Raja Grafindo Persada; Jakarta p 370

Corruption has become a serious threat that not only attacks the joints of the national economy of a country, but its impact also greatly affects the international economic system and weakens democratic values and values of justice in all countries. Eradication of criminal acts of corruption is not the responsibility of one country alone, but is a shared responsibility of countries in the world whose law enforcement requires international cooperation. Countries must work together in eradicating corruption, because this crime is not only an extraordinary crime, it is also borderless (regardless of national boundaries) and transnational (cross-country). Therefore, the handling must also be global and transnational.

International cooperation in the context of eradicating criminal acts of corruption is not only meant to punish corruptors so as to create a deterrent effect, but also strives as much as possible so that state losses can be saved (asset recovery). In order to save assets (asset recovery) in handling corruption crimes, each country must open a wider cooperative relationship, not only in law enforcement of the perpetrators but also in returning assets resulting from corruption that were taken away/hidden in the territory of other countries. This is in line with the 2003 United Nations Convention Against Corruption (UNCAC). This convention has been ratified by Indonesia with Law Number 7 of 2006 concerning Ratification of the 2003 United Nations Convention Against Corruption.

UNCAC provides a comprehensive international cooperation framework in order to increase its effectiveness and has the potential to improve enforcement of the eradication of corruption. The international cooperation framework includes 3 (three) important things, (a) Mutual Legal Assistance (MLA). Each State party shall provide one another with as much legal assistance as possible in investigations, prosecutions and litigation relating to the crimes covered by UNCAC; (b) Joint Investigation. Each State party is considering entering into bilateral or multilateral agreements or arrangements with respect to key law enforcement matters such as investigations, prosecutions or litigation within one or more States; and (c) Extradition, the establishment of extradition treaties for the offenses established in accordance with the Convention¹⁴.

¹⁴ Muhammad Yusuf; 2013; Miskinkan Koruptor, Pembuktian Terbalik Solusi Jitu Yang Terabaikan; Pustaka Juanda Tigalima, Jakarta p 26-29

Conclusion

Eradication of criminal acts of corruption as an extraordinary crime, because it is serious, systematic and structured, should also be carried out in an extraordinary manner. Eradication of extraordinary criminal acts of corruption is carried out through the extraordinary duties and powers of the Corruption Eradication Commission (KPK). The authority to investigate and prosecute corruption crimes is centralized in this institution, requiring the withdrawal of the authority to investigate and investigate corruption crimes from the Indonesian National Police and the authority to investigate and prosecute corruption crimes from the Attorney General's Office of the Republic of Indonesia, and then be handed over to the Corruption Eradication Commission (KPK).

The authority to investigate and prosecute corruption crimes is centered on the Corruption Eradication Commission (KPK), which is carried out through the establishment of the Regional Corruption Eradication Commission (KPK) at the provincial level. This extraordinary act has been supported by the application of the principle of reverse proof, the existence of special courts for corruption in all provincial capitals, and the development of international cooperation in the context of mutual legal assistance, joint investigations and extradition agreements. In order to carry out the policy of investigating and prosecuting extraordinary criminal acts of corruption only at this institution, it is necessary to harmonize the law through changes to Law Number 31 of 1999, Law Number 20 of 2001, Law Number 30 of 2002, Law on the Prosecutor's Office and Law on the Police of the Republic of Indonesia.

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