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Legal Reconstruction of Special Criminal Sanctions against Corruption Based on Justice Values

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Abstract

The research aims to analyze and discover the weaknesses in regulations on criminal sanctions against perpetrators of criminal acts of corruption at this time, and the reconstruction of regulations on criminal sanctions against perpetrators of criminal acts of corruption based on the value of justice using a constructivism paradigm, through direct interviews with informants empirically supported with studies literature through theoretical steps. The research results show that the act of abuse of authority is a form or manifestation of an unlawful act regulated in Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001. From the principles of legislative regulation, one of the reasons for the difference in criminal threats in Article 2 and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 is the principle of lex specialis derogat lex generalis (specific laws exclude general laws). The difference in the threat of minimum and maximum sentences in Article 2 and Article 3 of the Corruption Crime Law results in Judges imposing different sentences for the same case. Reconstruction of criminal sanctions against perpetrators of criminal acts of corruption based on the value of justice in Article 3 of the Corruption Eradication Law, namely: Every person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because position or position that could harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000,- (fifty million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah).

Keywords: Legal Reconstruction, Special Crime, Corruption, Justice Value.

INTRODUCTION

Corruption as an extra ordinary crime also requires an extra ordinary prevention and eradication, the government updated or replaced the legal regulations regarding corruption from Law Number 3 of 1971 concerning the Eradication of Corruption, then replaced by Law Number 31 of 1999, concerning the Eradication of Corruption Crimes, and has been amended by Law Number 20 of 2001, concerning Amendments to Law Number 31 of 1999, also promulgated Law Number 28 of 1999, concerning the Administration of a State that is Clean and Free from Corruption, Collusion and Nepotism, Government Regulation Number 71 2000, concerning Procedures for Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes, Law Number 30 of 2002, concerning the Corruption Eradication Commission (KPK) and Presidential Instruction Number 5 of 2004, concerning the Acceleration of Corruption Eradication and Law - Law Number: 7 of 2006, concerning the 2003 United Nations Convention Against Corruption.

Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 include criminal threats and special minimum and special maximum fines. In relation to corruption cases, the special minimum penalty is an exception, namely offenses that are deemed to be very detrimental, dangerous, or disturbing to society and offenses that are qualified by their consequences (erfolsqualifiziertedelikte) as a quantitative measure that can be used as a benchmark for offenses that are punishable by imprisonment of more than 7 (seven) years can be given a special minimum threat because it is classified as very serious (Widodo, 2018). The adoption of a special minimum threat system that is not recognized by the Criminal Code is based on the following rationale: To avoid criminal disparity for offenses that are not essentially different in quality; make general prevention

more effective, especially for offenses that are considered dangerous and disturbing to society; By analogy, if in certain cases the maximum penalty (general or specific) can be increased, then the minimum penalty can be increased in certain cases.

Even though the offense in Article 3 does not include the element of breaking the law, this does not mean that this offense can be committed without breaking the law. The element of unlawfulness is inherent in the entire formulation. By abusing authority, the opportunity means breaking the law.

The incessant arrest of perpetrators of criminal acts of corruption can be felt as a breath of fresh air showing the seriousness of law enforcement against corruptors. On the other hand, the disparity in criminal decisions and the low level of criminal sanctions imposed by judges at courts for criminal acts of corruption have received harsh criticism from the public (Widodo, 2019). Due to disparities in decisions, negative opinions disrupt the sense of justice, and public distrust in eradicating and enforcing the law on criminal acts of corruption. The public considers disparity to be the judge's lack of seriousness in imposing sanctions on perpetrators of criminal acts of corruption and reducing the deterrent effect for corruptors and prospective corruptors.

There is a reverse logic built by lawmakers on corruption crimes. Offenses that contain elements with the aim of benefiting oneself, other people, or the corporation, abusing the authority, opportunity, or means available to him because of his position or position actually carry a minimum criminal threat, especially lighter than offenses that are committed that do not necessarily have a goal or purpose and do not have authority. Generally, corruption cases start with abuse of authority. Criminal sanctions in Law Number 31 of 1999 Jo. Law Number 20 of 2001 contains a lack of sense of justice for the defendant which causes the law to not work in accordance with the aims, benefits, and ideals of law in Indonesia.

Based on this Problem, the author then Formulate Several Problem Discussed in this Article, Namely:

1. What are the weaknesses of The Special Criminal Sanctions against Corruption in Indonesia currently?
2. How Is The Legal Reconstruction Of The Special Criminal Sanctions Against Corruption Based On The Value Of Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of Data Used include Primary Data and Secondary Data. Primary Data is Data Obtained from field Observations and Interviews with Informants. While Secondary Data is Data Consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Special Criminal Sanctions against Corruption in Indonesia Currently

Based on Article 2 of Law Number 46 of 2009, the position of the Corruption Court is a special court within the general judiciary. The location of the court for criminal acts of corruption is determined in Article 3, namely in the capital of each Regency/City whose legal area includes the legal area of the relevant district court.

Initially, this court emerged based on Article 53 of Law Number 30 of 2002, before Article 53 was annulled by the Constitutional Court based on Decision Number 012-016-019/PUU-IV/2006 dated 19 December 2006, which was declared contrary to the 1945 Constitution. Especially the Judicial Power Chapter, because special courts can essentially only be formed within one of the General Courts through a separate law. Because the legal basis was not strong, the legislators finally formulated and ratified the legal basis for the Corruption Court, the legal basis for which was Law Number 46 of 2009.

The authority of the Corruption Court is regulated by the provisions of Article 5 of Law Number: 46 of 2009, which stipulates that the Corruption Court is the only court that has the authority to examine, try, and decide criminal cases. Regarding the authority of the Corruption Court, Article 6 regulates that the Corruption Crime Court as intended in Article 5 has the authority to examine, try and decide cases:

a. Corruption crime;
b. The criminal act of money laundering whose origin is the criminal act of corruption; and/or
c. A criminal act that is expressly defined in another law as a criminal act of corruption.

Regarding procedural law, the Corruption Court in principle uses Law Number 8 of 1981 concerning Criminal Procedure Law unless otherwise specified in the Corruption Court Law. Some of these exceptions will be described as follows (Rusmiati, 2018):

a. The first exception regarding the composition of the panel of judges in the Corruption Court consists of career judges and ad hoc judges. Article 1 number 1 of Law Number: 46 of 2009, provides an understanding that Career Judges are judges at the District Court, High Court, and Supreme Court who are designated as judges for criminal acts of corruption. Article 1 point 2 of Law Number 46 of 2009, provides an understanding that an ad hoc judge is someone who is appointed based on the requirements specified in this law as a judge for criminal acts of corruption. The significance of the appointment of ad hoc judges, as stated in the General Explanation of the Anti-Corruption Court Law, is that ad hoc judges are needed because their expertise is in line with the complexity of corruption cases, both regarding modus operandi, evidence, and the breadth of the scope of corruption crimes, including in the financial sector. And banking, taxation, capital markets, and government procurement of goods and services.
b. The second exception concerns the time period for completing examinations of corruption cases at each examination. In the Criminal Procedure Code, the time period for a criminal case at each court level to be examined, tried, and decided is not specified. Meanwhile, in Law Number 46 of 2009, the time period for completing examinations for each level of examination is regulated in Articles 29 to Article 32.

Furthermore, Article 51 (1) also explains: In the event that a criminal offense is punishable by imprisonment or a fine, the lighter principal penalty must be given priority if the judge is of the opinion that this is appropriate and can support the achievement of the objectives of the sentence.

In the formulation of paragraph (1), which contains an imperative element, a principle is intended that the use of criminal sanctions must still take into account the principle of subsidiarity. In other words, heavier types of criminal sanctions are only used if other, lighter types of criminal sanctions are deemed less appropriate or unable to support the achievement of the objectives of the punishment (Toebagus, 2022).

Although alternative systems basically have the character of choosing one, in developing thinking both can be chosen. The rationale is that a 6-year prison sentence is offered as an alternative with a fine of Rp. 6 million, then it can be interpreted that the weight of the two types of crime is considered the same. This means that the sentence of 6 years in prison is as if it were identical to a fine of Rp. 6 million. Based on this thinking, the maximum penalty is 6 years in prison or is considered equivalent to a fine of IDR 6 million. So the alternative formulation actually contains a cumulative criminal threat of ½ (maximum prison/maximum fine).

If the above line of thinking is continued, with the existence of Articles 74 and 75 paragraphs (1) and (2) of the Draft Criminal Code, a penalty of ½ of the maximum imprisonment can be replaced with a supervision sentence (which has a maximum of 3 years) and ½ of the maximum fine of Rp. 3 million) together. The imposition of a supervision sentence together with a fine is based on the main idea, that with a supervision sentence alone it seems as if the defendant has not been punished.

Based on the main ideas that are currently developing to provide the possibility of combining criminal sanctions (straf/punishment) with action sanctions (maatregel/treatment). Supervision crime is a type of non-custodial sanction that is more action-oriented (Pradiptyo, 2011). From the description, it can be seen that there are several possibilities that the judge can impose on perpetrators of criminal acts who are threatened with alternative punishment (imprisonment or fines), namely:

a. Imposing a prison sentence only (can be replaced with a supervision sentence),
b. Just impose a fine, or
c. Imposing a prison sentence and a fine (with a limit: half of the maximum amount of each), or
d. Supervision sentence (maximum 3 years) and fine (half of the maximum).

2. Legal Reconstruction of the Special Criminal Sanctions against Corruption Based on the Value of Justice

In order to optimize the efforts made by the government and law enforcers in eradicating criminal acts of corruption, it is time to evaluate both legislative products, as well as the functions and roles of institutions including law enforcers through a comprehensive political approach to criminal law, both oriented towards

penal (sanction) and other approaches. oriented towards a non-penal approach which prioritizes a preventive approach which has not been touched so far and is more oriented towards a repressive approach through a combination of criminal sanctions with fines, what must not be forgotten is that there must be a commitment from the Judge to have the courage to impose the maximum penalty to have a deterrent effect on perpetrators of corruption (Azizy, 2023).

Minimizing disparities in punishment can be achieved by specifying in law a definite amount of punishment, which must be applied by the court in accordance with the severity of the crime as stipulated in that law. Therefore, the Chief Justice in determining the standard of punishment cannot do so unilaterally. First of all, he must collect data regarding the sentences that have been imposed for one type of crime that have been imposed by judges in his jurisdiction within a certain period of time. Then the data that has been collected is submitted to a panel meeting with all the judges in the court's jurisdiction. At the assembly meeting, the judges must be heard one by one regarding aspects related to the purpose of punishment, sense of justice, and so on, all of which must be tested against the data that has been collected earlier. If an agreement can be reached regarding the standard of punishment, then the standard of punishment that will be determined by the Chief Justice will be a joint decision between all judges in the jurisdiction of that court. This means that the judge's so-called freedom, once the standard of punishment has been decided, becomes somewhat restricted, in the sense that the judge can only move between the mitigated term, base term, and aggravated term (Saragih, 2018). The real freedom of judges is when each judge expresses his opinion and sense of justice in a panel meeting when discussing the determination of sentencing standards based on the sentencing data that has been collected above.

Considering the complex aspects that must be considered in determining this sentencing standard, the first step must be to start with the district court. If the sentencing standards set in each district court have been in place for several years, only then will the sentencing standards be set for one high court area. If the standard of punishment can begin to be determined by the high court, this is where the system used in Japan can be followed in order to determine the standard of punishment for all of Indonesia. Namely carrying out transfers of judges regularly and appropriately, so that experience in the old place can be applied in the new place (specifically regarding punishment), holding training for judges, and so on. Determining the reasons that can reduce or increase the punishment is certainly not as difficult as when it is necessary to determine the standard of punishment (Manurung, 2023). Therefore, to determine these reasons it is not necessary to use methods such as when determining the standard of punishment, but it can be determined by the Supreme Court and applies to all of Indonesia.

Judging from the explanation above, it is very clear that protection from corruption laws is more focused on protecting the interests and authority of the state and society, not on the perpetrator as a legal subject.

Since the beginning, eradicating criminal acts of corruption has had the aim of benefiting oneself, other people, or corporations, which can be detrimental to state finances or the country's economy under the control of the perpetrators of these criminal acts of corruption, however, it is precisely the perpetrators of these criminal acts of corruption who from the start have had an aim, so that the special minimum criminal threat in Article 3 of the law on eradicating criminal acts of corruption should be higher than the special minimum criminal threat in Article 2 of the law on eradicating criminal acts of corruption.

As a comparison, the Criminal Code itself regulates that people who commit criminal acts against those under their supervision have a higher criminal threat, in this case, among others, in Article 294 paragraph (1) of the Criminal Code which states that: Whoever commits an obscene act with his child, stepchild, or child. Adopted by him, a child under his supervision who is not yet an adult, a minor whose care, education, or care is entrusted to him or his servant, or an underling who is a minor, is threatened with imprisonment for a maximum of seven years.

Article 293 paragraph (1) states that: Whoever, by giving or promising money or goods, abuses the bearer arising from a relationship of circumstances, or by deliberate misdirection moves a minor and of good behavior to commit or allow obscene acts to be committed with him, even though his immaturity is known or should be reasonably suspected, he is threatened with imprisonment for a maximum of five years. Likewise, in Article 3 of the law on eradicating criminal acts of corruption, the minimum criminal threat in particular should be heavier than the minimum criminal threat in Article 2 paragraph (1) of the law on corruption crimes, because in general, criminal acts of corruption occur starting from the perpetrator who has authority. In the future, Article 2 and Article 3 of The Corruption Crime Law must be reformulated, especially criminal threats, in order to achieve justice for the parties so that the law can be useful for justice seekers, especially those whose perpetrators themselves are not aware that what they have committed is a form of criminal act which is categorized as an extraordinary criminal act.

CONCLUSION

1. Abuse of authority is a form of unlawful act in Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001. From the principles of legal

regulation, one of the underlying reasons is the difference between the criminal threat of Article 2 and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 is the principle of lex specialis derogat lex generalis (laws of a special nature to the exclusion of general ones). The difference in the threat of minimum and maximum sentences in Article 2 and Article 3 of the Corruption Crime Law results in Judges imposing different sentences for the same case.

2. Reconstruct criminal sanctions against perpetrators of criminal acts of corruption based on the value of justice in the 3 Laws on the Eradication of Corruption Crimes, namely: Every person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of his/her position or position which may harm state finances or the state economy, shall be punished with life imprisonment or with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000,- (fifty million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah).

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