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Legal Reconstruction of False Statements in Corruption Case Pretrial as Quasi-Delict Based on Justice Value

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Abstract

The objectives of this study are to analyze the weaknesses in the regulation of False Statements In Corruption Cases Pretrial Currently and how to reconstruct the regulation of False Statements In Corruption Case Pretrial As Quasi-Delict based on the value of justice, using the constructivism paradigm. The approach method used in this research is social legal research, concept approach, and comparative approach. The results of the study found that the Weaknesses is regarding the fact that whistleblowers (reporters) and justice collaborators (who participate in providing the information) have actually been included in the scope of parties that need to be protected in Law no. 13 of 2006, however, due to the lack of strict provisions, problems arose in its implementation, not to mention the long process of making the minutes of examination, the low understanding of law enforcement officials in the pretrial mechanism, and the low public awareness in giving correct witness testimony. Therefore, The Reconstruction proposed by the author is in the form of harmonization of the article, Article 174 Paragraph (1) of the Criminal Procedure Code by highlighting the punishment in the form of a minimum sentence of 3 (three) years and maximum 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred fifty million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs) for false statement.

Keywords: Legal Reconstruction, False Statement, Quasi-Delict, Justice Value.

INTRODUCTION

The act of obstructing the legal process is a criminal act because it clearly impedes law enforcement and damages the image of law enforcement agencies. Based on the corruption cases that have emerged in various countries such as Indonesia, it appears that there have been several attempts by interested parties to obstruct the legal process being carried out by law enforcement officials. If this is not dealt with firmly, of course, the perpetrators of corruption will take advantage of their networks or colleagues to avoid legal proceedings or weaken evidence so that they are not entangled in the law or decisions that already have legal force and cannot be implemented (Widodo, 2019).

This is also experienced by East Nusa Tenggara High Prosecutor's Office investigators in eradicating corruption, often encountering obstacles, both those that occur internally and externally, one of the problems that occur internally may be budgetary issues for eradication. The Corruption eradication movement is still very lacking, while external obstacles can still be found such as the Defendants themselves or through their Legal Counsel who are looking for a way to remove or help their clients in an improper way, one of which is to provide facilities, money and promise something to important Witnesses so that did not provide the correct information in this Corruption Criminal Court process (Toebagus, 2022).

One concrete form of this incident was when the East Nusa Tenggara High Prosecutor's Office was sued pre-trial by the Regent of West Manggarai who was active at that time, namely Agustinus CH Dullah (Markhy, 2015), regarding the legitimacy of the determination of the suspect in the Corruption Case on regional assets in the form of land which was suspected of causing harm to the state around 1 .3 trillion, where in the pre-trial process there were two important witnesses, namely Zulkarnain Djudje and Harum Francis who withdrew their statements in the BAP

owned by the East Nusa Tenggara High Prosecutor's Office investigators, the two witnesses withdrew their statements in the examination of witnesses at the Pre-trial Session and explaining the opposite of his statement when he was examined as a witness by the East Nusa Tenggara High Prosecutor's Office investigator on November 6, 2020 number 9 (nine) for witness Harum Fransiskus, and on November 18, 2020, on number 6 (six) for witness Zulkarnain Djudje.

This incident certainly caused uproar for the East Nusa Tenggara High Prosecutor's Investigators because the testimony of the witness was very important as valid evidence in the possession of the East Nusa Tenggara High Prosecutor's Office investigators, but in the process the East Nusa Tenggara High Prosecutor's Investigators found facts that the Defendant Ali Antonius who at that time was Agustinus CH Dullah's attorney, led the two witnesses to withdraw their statements and explain otherwise in the Pre-trial hearing so that the determination of the suspect made by the East Nusa Tenggara High Prosecutor's Office investigators was declared invalid by the Single Judge of the City Corruption Court Kupang, so that by finding sufficient facts and initial evidence, the East Nusa Tenggara High Prosecutor's Office investigators made the first arrest of witnesses Zulkarnain Djudje and witness Harum Francis at the residence of the Defendant Ali Antonius right after the trial was over The Pre-trial, and in the process the two Witnesses explained that if they were indeed ordered and led by the Defendant, to explain information that was not true in the Pre-trial Process against the suspect Agustinus CH Dullah, so that with sufficient preliminary evidence, the East Nusa Tenggara High Prosecutor's Office Investigator Timur named the Defendant as a suspect, and also detained Ali Antonius, and immediately transferred the file to the trial stage.

However, in practice, it turned out that there were various obstacles regarding the application of Article 22 Jo. Article 35 Paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes so that the indictment of the Public Prosecutor is canceled in favor of The law was in the Interlocutory Judgment of the Kupang City District Court, but, in the end, through the Legal Countermeasures, the Public Prosecutor's Indictment could be justified, and resulted in the trial process on the main case being continued. Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of False Statements in Corruption Case Pretrial as Quasi-Delict Based on Justice Value*" where the main problem discussed in this article is as follows:

1 What are the weaknesses in the regulation of False Statements in Corruption Cases Pretrial Currently?
2 How to reconstruct the regulation of False Statements in Corruption Case Pretrial as Quasi-Delict 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 in the Regulation of False Statements in Corruption Cases Pretrial Currently

In cases of criminal acts of corruption, the act of obstructing the legal process is already a crime product that thrives in Indonesia. Even Heinzpeter Znoj (2017) corruption continued to run rampant even when

the corrupt New Order regime was overthrown. Various actions that constitute forms of obstruction of justice are evidently found in a comprehensive manner in the normative provisions of Indonesian criminal law.

In this regard, false statements during examinations at trials of corruption will certainly make it difficult for judges and public prosecutors to dig up the facts at trial, although in the end false statements still occur so this constitutes an act of obstruction. Obstructive actions are all endeavors or actions in any way that interferes with or hinder something therefore *"...if there is a statutory regulation that is not clear or has not regulated it, the judge must act on his own initiative to resolve the case*".

Therefore, it can be concluded that false statements by witnesses of corruption are included in the Obstruction of Justice which is an indirect obstacle at the time of examination in court considering the impact of these actions the process of searching for material evidence carried out by judges and public prosecutors will experience significant difficulties in the end, it takes time to uncover cases of corruption (Widodo, 2019).

In the event that a person has been sworn in or made a promise as a witness but the testimony or information he has given as a witness is suspected of being false, the judge has the authority to issue an order for the witness to be detained for further prosecution in a case charged with perjury. The judge's authority is based on the provisions of Article 174 paragraph (2) of the Criminal Procedure Code. The complete formulation of Article 174 of the Criminal Procedure Code is as follows:

a. If the testimony of a witness at trial is suspected to be false, the head judge at trial will seriously warn him to provide true testimony and put forward a criminal threat that can be imposed on him if he continues to provide false testimony.
b. If the witness persists in his testimony, the head judge at trial because of his position or at the request of the public prosecutor or the accused may order the witness to be detained for further prosecution in a case charged with perjury.
c. In such case, the minutes of examination of the hearing shall be made by the clerk immediately which contains the testimony of the witness stating the reasons for the suspicion that the testimony of the witness is false and the minutes shall be signed by the chief judge of the session and the clerk of court and immediately submitted to the public prosecutor to be resolved according to the provisions of this law.
d. If necessary, the head judge at trial adjourns the trial in the original case until the examination of the criminal case against the witness is complete.

Based on the discussion above, there are a number of things that must be considered before the judge exercises his authority, namely: Witness testimony is suspected to be false. A Question arises, How can the judge come to the allegation that the information given by a witness is false information? One of the grounds for arriving at such an allegation has been stated in Article 163 of the Criminal Procedure Code. Article 163 of the Criminal Procedure Code stipulates that if the testimony of a witness at trial differs from the statement contained in the minutes, the head judge at trial reminds the witness about this and asks for information regarding the differences and it is recorded in the minutes of examination of the trial.

From the formulation of this article, it can be seen that one of the grounds for arriving at the allegation of false testimony is if the witness's testimony at trial differs from the statement contained in the minutes.

Another possible basis, which is not mentioned in the Criminal Procedure Code, is if the testimony of the witness differs from the testimony of other witnesses or witnesses. If several other witnesses give the same statement between them, while their testimony differs from that of another witness, suspicion may arise that the testimony of this one witness is false. Nonetheless, it was not easy for the Judge to arrive at a decision that the witness needed to be detained and charged with perjury. However, a judge will only make such a decision if the judge is quite sure that the witness gave false information. Even though the judge's conviction is only required to pass a verdict on punishment, the judge's order to detain and indict the witness tends to show that the judge is quite sure of the witness's mistake (Riabchenko, 2019).

The presence of witnesses is a very decisive element in a criminal justice process. According to Law no. 8 of 1981 concerning Criminal Procedure Code (KUHAP), "*Witness testimony is one of the pieces of evidence in a criminal case in the form of a statement from a witness regarding a criminal event that he heard for himself, saw for himself and experienced for himself by stating the reasons for his knowledge*."

The role of witnesses in the criminal justice process is very important as The witness is the key to obtaining material truth. According to Article 1 number 26 of the Criminal Procedure Code, "*Witness is a person who can provide information for the purposes of investigation, prosecution, and trial regarding a criminal case that he himself heard, saw and experienced himself*."

Article 184 of the Criminal Procedure Code places witness testimony in the first place over other evidence in the form of expert testimony, letters,

instructions, and statements of the accused. Furthermore, Article 185 paragraph (2) states that "*The testimony of a witness alone is not sufficient to prove that the defendant is guilty of the actions he was charged with.*" furthermore, Paragraph (3) states that "*The provisions referred to in paragraph (2) do not apply if accompanied by other valid evidence*". This can be interpreted that the testimony of more than one witness alone without being accompanied by other evidence, can be considered sufficient to prove whether a defendant is guilty or not.

This is closely related to the provision of witnesses for corruption cases stipulated in Article 41 paragraph (2) letter e of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes, which states that "*people who participate in helping efforts to prevent and eradicate criminal acts of corruption have the right to receive legal protection, in the event that they are asked to be present in the process of investigation, investigation, and at court hearings as reporting witnesses, witnesses, or expert witnesses, in accordance with the provisions of the applicable laws and regulations.*" In addition, Law no. 30 of 2002 concerning the Corruption Eradication Commission also regulates witness protection. Article 15 Law no. 30 of 2002 states that "*The Corruption Eradication Commission is obliged to provide protection for witnesses or reporters who submit reports or provide information regarding the occurrence of criminal acts of corruption.*"

One interesting thing found in Law no. 13 of 2006 is that this law regulates the protection of witnesses and victims and Article 1 mentions the definition of witnesses and victims. A witness is a person who can provide information for the purposes of investigation, investigation, prosecution, and examination before a court of law regarding a criminal case that he himself heard about, saw for himself, and/or experienced himself (Yusliwidaka, 2023). Meanwhile, a victim is someone who suffers physical, mental, and/or economic losses as a result of a crime. However, in the chapter on the protection of witnesses and victims, namely in Article 10, the term *"reporter*" suddenly appears, which reads: "*Witnesses, victims, and reporters cannot be legally prosecuted either criminally or civilly for reports, testimonies that will be, are being, or has been given.*" Then the Elucidation of Article 10 paragraph (1) states, that what is meant by "*reporter*" is a person who provides information to law enforcement about the occurrence of a crime.

Therefore, whistleblowers (reporters) and justice collaborators (who participate in providing the information) are actually included in the scope of parties that need to be protected in Law no. 13 of 2006, however, due to the lack of strict provisions as explained above, problems arose in its implementation. Therefore a legal reconstruction is needed to realize the value of justice.

2. Reconstruction of the Regulation of False Statements in Corruption Case Pretrial as Quasi-Delict Based On the Value of Justice

As a special criminal law provision, the Corruption Law certainly cannot regulate the entire corporate criminal system in the formulation of its articles. It is in this position that the general provisions of criminal law, in this case, the Criminal Code and the Criminal Procedure Code, assume their role as the core of the Indonesian criminal law system. However, the facts speak differently. The second position of the Code which does not yet recognize corporations as subjects of punishment results in the absence of general provisions for corporate punishment.

One of the efforts to overcome the problem is through court decisions that have the value of jurisprudence and the enactment of internal regulations that are used as guidelines for law enforcers in the process of corporate punishment. However, both of these efforts have some weaknesses. The first weakness is the position of Indonesian court decisions which do not have binding force for subsequent judge decisions (the *stare decisis* doctrine), making court decisions will have a variety of approaches. Second, the position of internal regulations, both PERJA and PERMA, which only have binding power, often makes it difficult to implement, especially regarding harmonization between the internal regulations of each law enforcement agency.

For this reason, in the midst of the protracted process of reformulation of the Criminal Code and Criminal Procedure Code that has been running for decades, it is important for the new Corruption Law to regulate a more complete corporate criminal punishment system compared to the current provisions in the Corruption Law.

As described earlier, it is difficult for specific laws to have complete and detailed arrangements for corporate punishment. However, it is important for the new Corruption Law to add provisions regarding corporate punishment. Arrangements that must exist in addition to those currently regulated in Article 20 of the Corruption Law include; The addition of articles on criteria for determining corporate wrongdoing and the determination of special additional penalties for corporations (Idrus, 2022). Both of these arrangements are important in ensuring the effectiveness of corporate punishment in the future.

The arrangements for corporate punishment in the Corruption Bill will retain the provisions of Article 20 that are currently in effect. The Draft Bill on Corruption in the corporate context only adds 2 articles

namely draft Article 21 and draft Article 22 as a complement to the regulation of corporate punishment.

The addition of criteria in determining corporate guilt (*mens rea*) in the draft Article 21 of the Corruption Law is in line with what was done by the Supreme Court in its Corporate PERMA. This arrangement is exactly the same as the arrangement in Article 4 of the Corporate PERMA. In practice, the arrangements in the draft Article 21 will facilitate the enforcement of corporate criminal law in the future because the Corruption Law will not only regulate the criteria for determining criminal acts by corporations, which in this case is contained in Article 20 paragraph 2 of the Corruption Law but also regulate how to determine guilt. corporation. The determination of *actus reus* and *mens rea* has led to multiple interpretations in practice. The hope is that, with the limitations set out in the Corruption Law, a uniform approach can be created in building a corporate corruption criminal accountability system.

The next thing that is no less important is the determination of special additional penalties for corporations. In corporate punishment, the criminal sanctions that best suit the characteristics of the corporation are financial penalties and sanctions related to the company's daily activities. The main type of punishment as regulated in Article 10 of the Criminal Code which is in accordance with the characteristics of corporations is only fines. Fines in the context of principal crimes, even though for corporations, are made heavier by a third, in certain cases they are felt to be disproportionate to criminal acts and the corporation's financial capacity. For this reason, it is important for the new Corruption Law to regulate additional punishment specifically for corporations as a means of maximizing corporate punishment. If you look at the arrangements for the draft Article 22 of the Corruption Bill mentioned above, the additional penalties that can be imposed on corporations are all adjusted to the characteristics of the corporation, such as dissolution, compensation, license revocation, and so on.

In the context of corporate punishment, additional punishment is often felt to be more severe than the main punishment. This is because only fines can be imposed on corporations. With additional special criminal regulations for corporations, the effectiveness of the purpose of punishment for corporations will be created because the sanctions imposed are in accordance with the characteristics of corporations that are capable of creating a deterrence effect in corporate crime.

In the midst of the process of revising the Corruption Law, it is important for the legislators to consider increasing the number of articles related to corporate punishment. The draft additional article as discussed above is an effort to streamline corporate corruption criminal law enforcement. The draft proposed in the revision of the Corruption Law actually accommodates the developments that have been achieved in law enforcement practices so far, so that future implementation will run effectively.

In connection with the description that has been conveyed above, the reconstruction of the regulations governing the provision of false information in the trial process in corruption cases can be carried out by harmonization to Article 174 Paragraph (1) of the Criminal Procedure Code where if the testimony of a witness at trial is suspected of being false, the head judge of the pretrial hearing and/or or the head judge of the judiciary seriously warns him to give true information and put forward criminal threats that can be imposed on him if he continues to give false statements and Article 22 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which reads Every person as referred to in Article 28, Article 29, Article 35, or Article 36 who intentionally does not provide information or gives information that is not true, in the pretrial hearing or trial trial shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 12 (twelve) years and or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 600 000,000.00 (six hundred million rupiahs).

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1 Weaknesses in the Regulation of False Statements In Corruption Case Pretrial is in the regulation of False Statements in Pretrial as Corruption Offenses arrangements regarding incorrect statements that are no longer in line with the times, as whistleblowers (reporters) and justice collaborators (who participate in providing the information) have actually been included in the scope of parties that need to be protected in Law no. 13 of 2006, however, due to the lack of strict provisions, problems arose in its implementation, not to mention the long process of making the minutes of examination, the low understanding of law enforcement officials in the pretrial mechanism, and the low public awareness in giving correct witness testimony.

2 The Reconstruction proposed by the author is in the form of harmonization of the article, Article 174 Paragraph (1) of the Criminal Procedure Code reads that if the testimony of a witness at trial is suspected to be false, the head judge of the pretrial session and/or the head judge of the trial seriously

warns him to provide true information and make threats punishment that can be imposed on them if they continue to provide false information and Article 22 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which reads Every person referred to in Article 28, Article 29, Article 35, or Article 36 who deliberately does not give information or gives information that is not true, in a pretrial or trial session, shall be punished with a minimum sentence of 3 (three) years and maximum 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred fifty million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs).

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