

Law Enforcement of Corruption Offenses on the Application of Criminal Sanctions of Deprivation of Certain Rights for State Civil Apparatus

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ABSTRACT

Aim of the Study: This research aims to analyze and find the urgency of the establishment of criminal sanctions of revocation of certain rights in law enforcement of corruption and the application of criminal sanctions of revocation of certain rights and to find the ideal concept of criminal sanctions of revocation of certain rights against State Civil Apparatus who commit corruption in Indonesia.

Methodology: This study employed a normative juridical method, utilizing analytical descriptive specifications through fieldwork, literature reviews, and data collection methods. Data from these sources were analyzed, including interviews with relevant parties and a variety of articles, books, journals, and laws and regulations.

Findings & Conclusion: The study shows that the urgency of applying criminal sanctions for revocation of certain rights needs to be implemented since there are still State Civil Apparatus who are proven to have committed Corruption Crimes but are still able to get the benefits from the state, namely in the form of compensation money and retirement money so that the revocation of certain rights must be applied.

Keywords: State Civil Apparatus, Certain Rights, Corruption, Revocation, Criminal.

Introduction

According to historical accounts, the Military Ruler Regulation Number PRT/PM/06/1957 was issued in 1957, marking the official start of the legal fight against corruption. (Wisbowo Agus, et al., 2020). Following the New Order era, when the government issued Presidential Decree No. 28 of 1967 concerning the Establishment of a Corruption Eradication Team, regulations pertaining to the eradication of corruption were once again formed. This was reinforced by Law No. 3 of 1971 concerning the Eradication of Corruption Crimes. These developments took place after the enactment of Law No. 24 of 1960 concerning Corruption Crimes. The government redoubled its efforts to enforce anti-corruption

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measures with the issuing of Law No. 28 of 1999 on Clean and Free State Administration of Corruption, Collusion, and Nepotism and MPR Decree No. XI/MPR/1998 on Clean and Free State Administration of Corruption, Collusion, and Nepotism. In response to the increasing incidence of corruption by State Civil Apparatus, the government did not stop there. Law No. 31 of 1999 concerning the Eradication of Corruption and Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption were issued (Wisbowo Agus, et al., 2020).

As per the definition provided by Law Number 5 of 2014, the State Civil Apparatus comprises government employees and civil servants who are employed in government institutions and have work agreements, law enforcement factors that can affect the effectiveness of law enforcement, particularly with regard to corruption, are necessary in order to produce State Civil Apparatus employees who are professional, possess professional ethics, professional values, and are free from political interference.

To reduce corruption, it is possible to change the paradigm of the State Civil Apparatus profession by providing better salaries and remuneration. Providing better income is aimed to prevent and reduce the possibility of corrupt activities. However, the efforts to change the paradigm that have been made have not been fully successful in eradicating corrupt practices committed by the State Civil Apparatus (Sutrisno, 2021).

Based on a report compiled by Kata Data institution throughout 2022, there were 79 cases of corruption crimes that had been handled by the Corruption Eradication Commission, where 53 of the total perpetrators of corruption crimes were State Civil Apparatus (Cindy Mutia Annur, 2022). The State Civil Apparatus, which is supposed to be clean from corruption, collusion, and nepotism, actually contributes to the most corruption perpetrators handled by the Corruption Eradication Commission. One way for people to live prosperously is to overcome corruption, which is the first step in solving various crises in Indonesia. Corruption is a major factor in the obstruction of the state's goals, meaning that all the resources owned by Indonesia are not directly proportionate to the fate of the people (Arya Maheka, 2006).

Since the United Nations Convention Against Corruption was ratified in 2003 by Law Number 7 of 2006, the government has held the legal tools necessary to eradicate corruption. These instruments were originally created on April 9, 1957, under Military Ruler Regulation number Prt/PM/06/1957. Ten legal tools are currently available to accomplish this. Syaiful Bakhri (2009) Finally, Law Number 20 of 2001 concerning Amendments to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption—the Anti-Corruption Law—was made public.

The preamble to the law states:

"That the criminal act of corruption, which has been widespread, is not only detrimental to state finances but has also violated the social and economic rights of the community at large so that the criminal act of corruption needs to be classified as a crime whose eradication must be carried out in an extraordinary manner."

In line with the prevailing regulations, three government institutions, namely the Ministry of Home Affairs, the Ministry of State Apparatus Utilization and Bureaucratic Reform, and the National Civil Service Institution (BKN) decided to issue a Joint Decree to dishonorably dismiss Civil Servants (PNS) who have committed corruption crimes with *inkracht* status.

Given that corruption is a unique crime its eradication should ideally be accomplished in a unique way. This is especially true if the corruption was committed by State Civil Apparatus. In addition to the traditional punishment of confinement, which is appropriate in this case, it is also necessary to impose additional punishment in the form of the revocation of certain rights, as specified in Article 18 paragraph (1) letter d of the Anti-Corruption Law.

The existence of Article 18 as an additional punishment in the Anti-Corruption Law has provided a

solution in covering state losses, especially in terms of returning corrupt assets on a national scale through civil lawsuits or through criminal law as stipulated in Article 18 of the Anti-Corruption Law, which can be a solution to returning state losses in the form of asset returns, which until now these provisions have not been applied, including also related to the revocation of certain rights such as Civil Service Rights.

The imposition of additional punishment in the form of revocation of certain rights against State Civil Apparatus who commit Corruption Crimes is motivated by the fact that there are still many State Civil Apparatus who commit corruption crimes compared to other professions or other state administrators.

One type of additional penalty that is appealing to discuss is the denial of all or part of certain rights against the convict, especially in light of the urgency of criminal sanctions for the revocation of certain rights in law enforcement of corruption. The Anti-Corruption Law stipulates several types of additional punishment that can be imposed on those who commit corruption in addition to the main punishment of imprisonment and fines.

Study Objective

To analyze and find the urgency of criminal sanctions of revocation of certain rights in law enforcement of corruption crimes.

Research Question

What is the urgency of criminal sanctions for the revocation of certain rights in law enforcement of corruption crimes?

Significance of the Research

Here are academic and practical reasons why this research matters:

1. Theoretically, the results of this research are expected to contribute to the development of criminal law science in particular relating to the application of criminal sanctions for revocation of certain rights against State Civil Apparatus who commit corruption in the Indonesian criminal law system.
2. Practically, the results of this study are expected to be an input for law enforcement officials in the application of criminal sanctions for revocation of certain rights against State Civil Apparatuses who commit corruption through the Indonesian criminal justice system.

Literature Review

Criminal punishment is defined as suffering or pain that is deliberately imposed on people who commit acts that meet certain conditions. Punishment is necessary in criminal law which aims to be a means of general and special prevention for community members so as not to violate criminal law (Tri Andrisman, 2009).

Unlike the terms evil and crime, the definition of crime is based on the law. Crime is defined by formal legal definitions as any behavior that contravenes a criminal statute. For this reason, all legal prohibitions must be observed, and those who break them must face consequences. As a result, both federal and local laws and government regulations must contain specific requirements and restrictions that all citizens are required to abide by (Lamintang, 1996).

The word corruption originates from the Latin *corruptus*, which is borrowed into several languages worldwide. For instance, *corrupt* is borrowed into English as *corruption*, *corrupted* into French as *corruption*, and *corruptive* (*korrupctie*) is borrowed into Dutch. The term "corruption" was first borrowed into Indonesian from the Dutch language (Nursya, 2020).

The crime of corruption is a form of deviation from the power or influence attached to a government official who has a certain position so that the position official can commit a corruption crime. Law Number 31 of 1999 concerning Corruption Crimes also provides a definition of corruption crimes.

Methodology

Research Design

This work is a comparative legal inventory of positive law as well as a normative juridical analysis of legal research on legal principles and regulations. The library materials or secondary data in the form of primary, secondary, and tertiary legal materials used to discuss legal issues in the study constitute normative legal research. The primary research consists of a review of the literature supported by fieldwork.

Research Specifications

In order to understand the conceptual meaning of the phrases used in the legislation, as well as how they are applied in actual practice and in court decisions, this research employs descriptive analysis of legal materials. Thus, analyzing legal concepts, legal systems, legal principles, legal regulations, and other juridical concepts is basically the goal of legal analysis (Muhaimin, 2020).

Research Data

According to Muhaimin (2020), secondary data, particularly legal materials, main legal materials (laws with binding power), complementary materials, and tertiary legal materials (legal information materials) are the kind of data employed in this legal research.

Results and Discussion

Urgency of Criminal Sanction of Revocation of Certain Rights in Corruption Law Enforcement

Corruption is a crime that is difficult to eradicate. Acts of corruption can occur in various fields and circles. The scope is quite broad, making it quite difficult to monitor. Corruption seems to be a culture in some countries that is difficult to eliminate. Legal efforts are often made by the government but it is still difficult to eliminate it.

The community's desire to take part in the government's efforts to end corruption and other irregularities is growing as a result of the fact that corruption has actually resulted in significant losses for the state, which can then have an effect on the emergence of crises in a variety of fields. This condition makes corruption one of the most severe crimes among other types of crimes, this is in line with the function of state finances which are used to finance state activities to improve the welfare of its people, besides one of the most dominant sources of state finances that contribute to state revenue comes from taxes collected from the citizens. (Felicia Edbert and Tundjung Herning Sitabuana, 2022). So it is appropriate to say that corruption is a heinous act because the perpetrators courage to steal the money that comes from the citizens. Therefore, in order to protect human rights and the interests of society, measures to prevent and eradicate corruption must be further strengthened and reinforced.

Indonesia is no exception, various efforts have been made. Among them are the Anti-Corruption Eradication Law, the Corruption Eradication Commission Law, and even the Criminal Code. Various revisions in the law were made as a form of effort to eradicate corruption. However, until this moment, corruption still occurs. Criminal acts of corruption that occur often occur in the State Civil Apparatus environment as the data described in the previous chapter. In fact, the Criminal Code in Indonesia has been updated, namely Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code).

Indonesia is a State of Law (Rechtsstaat), not a State of Power (Machtsstaat), as the Constitution declares. This entails acknowledging the principles of the supremacy of law and the constitution, the separation of

powers and their limitation in accordance with the constitutional framework outlined in the document, the existence of guarantees of human rights in the document, the concept of an impartial and free judiciary that upholds the equality of all citizens before the law, and the guarantee of justice for all, including protection from the abuse of power by those in positions of authority.

Thus, in the sympathetic of the rule of law, it is the law that holds the highest power in the administration of the state. Therefore, state institutions or officials in acting must be based on statutory regulations. State Civil Apparatus who commit criminal acts of corruption must be processed under the applicable law. However, the author argues that the rules in Indonesia related to the eradication of corruption, especially the implementing regulations, still provide policies for perpetrators of corruption among State Civil Apparatuses.

Based on the description above, it proves that the deterrent effect given to State Civil Apparatus who commit corruption is still not felt. From several existing cases, the court's decision was only in the form of basic criminal sanctions. The additional criminal sanctions imposed are only the revocation of political rights. So that the urgency of applying the revocation of certain rights such as revocation of employment rights for State Civil Apparatus who commit corruption crimes and have received an *inkracht* verdict is needed.

Legal arrangements for State Civil Apparatus employees who commit corruption crimes and the imposition of sanctions are not explicitly regulated in the State Civil Apparatus Law and its implementing regulations, in this case, Government Regulation No. 11 of 2017 which has been amended by Government Regulation No. 17 of 2020. Legal arrangements for State Civil Apparatus employees who commit corruption crimes and the imposition of sanctions are only explicitly found in the Circular Letter of the Minister of Home Affairs Number 180/6871/SJ concerning Law Enforcement Against State Civil Apparatus Committing Corruption Crimes, dated September 10, 2018 (abbreviated as Ministry of Home Affairs Circular Letter No. 180/6871/SJ Year 2018).

In Ministry of Home Affairs Circular Letter No. 180/6871/SJ Year 2018 it is emphasized that, first, corruption is an extraordinary *crime*, thus its eradication must be carried out extraordinarily, and strict sanctions for State Civil Apparatus who do so. Second, to dishonorably dismiss State Civil Apparatus who commits a criminal act of corruption and has obtained a permanent legal *force/inkracht* District Court Decision in accordance with the provisions of applicable laws and regulations.

The indecisiveness of the norms governing State Civil Apparatus employees who commit corruption crimes and the imposition of sanctions in the State Civil Apparatus Law, especially the provisions of Article 87 paragraph (4) letter b and its implementing regulations, namely Government Regulation No. 11 of 2017 which has been amended by Government Regulation No. 17 of 2020, directly or indirectly affects the imposition of sanctions of dishonorable dismissal for State Civil Apparatus employees who commit corruption crimes.

Talking about the deterrent effect has recently appeared in various discourses in the wider community, both on campus, in mass media, in non-governmental organizations, and in legislative, executive, and judicial institutions. The emergence of the term deterrent effect cannot be separated from the anger and concern of the community due to the gap between the law that should be and the law in reality (*das sollen and das sein*) in the eradication of corruption. Various equivalents of the word deterrent effect known so far include the words "not daring to repeat the act/crime", and "fear of committing the act". However, the term deterrent effect is the most popular term so far, even the Corruption Eradication Commission uses the term "deterrent effect and shock therapy". (I Ketut Mertha, 2015)

Indeed, the term deterrent effect has been proposed by scholars since the Greek era, but the term deterrent effect is not found in Indonesian legislation. Therefore, the term deterrent effect is sought in the views of scholars. Although the deterrent effect is not found in the legislation, the author continues to use the term deterrent effect in writing this dissertation in relation to the urgency of applying additional criminal

sanctions, namely revocation of employment rights for State Civil Apparatus who are proven to have committed corruption crimes.

Etymologically, the deterrent effect consists of two syllables. According to the Big Indonesian Dictionary, effect means the result, influence, and impression that arises in the minds of spectators, listeners, and readers. Meanwhile, deterrent means unwilling, not daring to do it again. Therefore, the term deterrent effect is appropriate for the discussion of eradicating corruption.

To realize legal certainty, especially administrative law for State Civil Apparatus who commit corruption crimes, according to the author, it is necessary to reconstruct legal arrangements and impose sanctions for State Civil Apparatus employees who commit corruption crimes through changes and/or improvements to the formulation of norms in the State Civil Apparatus Law, especially the provisions of Article 87 paragraph (4) letter b of the State Civil Apparatus Law and its implementing regulations, namely based on Article 295 of Government Regulation No. 11 of 2017 as amended by Government Regulation No. 17 of 2020, it is stated that State Civil Apparatus who are honorably discharged, honorably discharged not at their request, and dishonorably discharged are given employment rights following the provisions of laws and regulations.

The author argues that until now there has been no prosecution from the Public Prosecutor regarding the additional punishment of revocation of certain rights, especially the revocation of employment rights for State Civil Apparatus who commit corruption crimes. Even the judges have not yet decided to sanction perpetrators of corruption who come from State Civil Apparatus to be deprived of certain rights such as revocation of employment rights. According to the author, one of the factors may be the existence of implementing regulations that still provide policies for perpetrators of corruption from State Civil Apparatus, still allowed to be honorably discharged and given employment rights. In other words, the implementing regulation is an obstacle for law enforcers, both prosecutors and judges, in imposing sanctions on perpetrators of corruption from the State Civil Apparatus.

Conclusion

The urgency of Criminal Sanctions for the Revocation of Certain Rights in Law Enforcement of Corruption is very much needed at this time, due to the increasing prevalence of corruption among State Civil Apparatus in the form of corrupt practices, collusion, nepotism, bribery, gratuities, and others, so that a maximum deterrent effect is needed so that other State Civil Apparatus are afraid to commit corruption. Criminal sanctions for revocation of certain rights need to be applied, especially against State Civil Apparatus who are proven to have committed corruption, but in fact, until now the implementation related to the sanction of revocation of certain rights against State Civil Apparatus who commit corruption has never been implemented either by the Prosecutor in his prosecution or by the Judge in his decision, so that the deterrent effect felt is not optimal.

The urgency of applying criminal sanctions for revocation of certain rights such as revocation of employment rights is because there are still State Civil Apparatus who are proven to have committed corruption crimes but can still enjoy money from the state, namely in the form of compensation and pensions. The presence of the New Criminal Code does not really affect the implementation of additional criminal sanctions for revocation of certain rights because Article 86 of the New Criminal Code does not regulate the revocation of rights as in Article 18 paragraph (1) letter d of the Anti-Corruption Law, which revocation of employment rights is included in Article 18 paragraph (1) letter d of the Anti-Corruption Law, and related to Article 295 of Government Regulation No. 11 of 2017 as amended by Government Regulation No. 17 of 2020, so that the revocation of certain rights, especially regarding the revocation of employment rights, can still be implemented because Indonesia adheres to the principle of *Lex specialis derogat legi generali*.

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