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Juridical Analysis Of Final Review Review (Pk) Of Criminal Corruption Cases By The Head Of Personnel Body Formation In Pagar Alam City

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Abstract: This research is to find out the Legal Considerations of the Panel of Judges in imposing a criminal verdict on corruption committed by the Head of Formation of the Civil Service Agency in using his position in Pagar Alam City (Case study of Cassation Decision No. 2697 K/Pid.sus/2016, with PK No. 163/Pid.sus/2019). Where the regulations regarding the eradication of corruption are listed in Law No.20 of 2001 which has been revised in several articles. The formulation of the problem in this study How is the verdict of the panel of Judges at the Cassation level in the Supreme Court of the Republic of Indonesia with Number 2697 K / PID.SUS / 2016, against the perpetrators of abuse of authority due to acts of Corruption related to the appointment of honorer to CPNS, and how is the verdict of the Supreme Court Judges at the level of Reconsideration against the perpetrators of the crime of participation (article 55 of the Criminal Code) as the head official of the personnel formation field of Pagar Alam City with decision number: 163 PK/Pid.sus/2019. This research is a qualitative normative juridical research which is then presented descriptively by describing the problem and drawing conclusions to determine the results. The result of the research obtained is that the judge's consideration at the cassation level is not in accordance with the applicable law because the perpetrator is an official in a government office who abuses his authority so that it is appropriate for the decision of the supreme court judge at the cassation level to impose a sentence in accordance with the applicable law.

Keywords: Corruption, Abuse of Authority, Pagar Alam City

INTRODUCTION

One of the criminal acts that is always in the spotlight in Indonesia is the issue of Corruption. Corruption is nothing new in this country. Corruption in Indonesia is even classified as an extra-ordinary crime or extraordinary crime because it has damaged not only state finances and the country's economic potential, but has destroyed the socio-cultural, moral, political and legal pillars of national security. Apart from that, it can also be said that

comprehensive corruption has become a serious problem for the Indonesian nation, giving rise to a negative impact on the Indonesian State in international society. Even though various efforts have been made to eradicate corruption, there are still no signs of decreasing crime rates. Indonesia is still ranked as the most corrupt country in the world.

The term corruption comes from the Latin word corruption, meaning bribery, and corrumpere, meaning damage. Symptoms where officials of state bodies abuse their positions, thereby enabling bribery, forgery and various other irregularities. In Indonesia, law is an official rule that binds the people in the form of prohibitions and rules made to regulate the people of a country. Law can also be interpreted as the main intermediary in social relations between society regarding criminalization and criminal and civil law and also as the protection of human rights. In general, the function of law is to order and regulate society and resolve problems that arise. Indonesia has actually had regulations regarding the eradication of criminal acts of corruption since 1971, namely law (UU) No. 3 of 1971 concerning the eradication of criminal acts of corruption. However, because this regulation was deemed no longer able to keep up with developments in legal needs in society, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes was issued, which was then revised through Law Number 20 of 2001 in several articles.

In Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes as abbreviated as PTPK. The law states that there are several qualifications for acts that can be called Corruption Crimes. However, in various cases, the criminal acts that are most frequently raised and filed in court are those listed in Article 11.

Article 11 of the PTPK Law states that: 1) Civil Servants or State Administrators; 2) Receiving a gift or promise; 3) Know it; 4) It is reasonable to suspect that the gift or promise was given because of power or authority related to his position, or that in the mind of the person giving the gift or promise was related to his position.

The forms of legal application include, among others: 1) In accordance with laws/regulations; 2) Not in accordance with the law/regulations. Compliant but deviant from year to year there is an increase in Corruption Crimes. Based on the results of a Transparency International (TI) survey based in Germany, Berlin. States that from 2001 until now Indonesia's corruption perception index (IPK) has remained considered low, namely 1.9 out of a value range of 1-10. Meanwhile, the Political and Economic Risk Consultancy (PERC) in 2005 ranked Indonesia as the most corrupt country in the Asian region. Only Bangladesh and Myanmar beat Indonesia.

The increase in criminal acts of corruption occurs because corruption has penetrated various aspects of government in various state institutions, both exclusive, legislative and judicial. One type of corruption that is major in the increase in Corruption Crimes is the Corruption Crime of Abuse of Authority, which is listed in article 3 of Law no. 31 of 1999 as amended, updated with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes (PTPK).

Criminal acts committed jointly and abuse of power in the case under study are formulated in special criminal regulations (lex Specialis), namely Law no. 31 of 1999 which was amended by Law no. 30 of 1999 concerning the eradication of criminal acts Jo UU NO. 20 of 2001 concerning amendments to Law no. 31 Tahun 1999. Corruption Crime Case in Case No. 163 PK/Pid.sus/2019 which was carried out by several perpetrators who were carried out together in falsifying the Letter of Proposal for Honorary Determination as CPNS. Inclusion is regulated in the Criminal Code, namely Article 55 paragraph 1 which reads "Convicted as a Criminal Offense: 1) Those who do it, who order it to do it, and who participate in doing it; 2) Those who give, or allow something by abusing power or dignity, by violence, by threats or misleading, or by providing opportunities, suggestions or information, and encouraging other people to commit acts.

Because of the problems described above, the author tries to examine cases of positions similar to that of corruption committed by the Head of the Formation Division of the Civil Service Agency in Pagar Alam City, South Sumatra. The defendant was named Drs Muhammad Herison bin Komri Abas. Indicted for committing a criminal act of corruption which was carried out jointly with separate prosecution files (Splitsing). Charged with primary charges under Article 3 Juncto article 18 of law number 31 of 1999 concerning the eradication of Corruption Crimes as amended and supplemented by law Number 20 of 2001 concerning amendments to law number 31 of 1999 concerning the eradication of Corruption Crimes Juncto Article 55 paragraph (1) 1 of the Criminal Code.

Based on the problems above, the author is interested in conducting research whose results will be stated in the title: "Judicial Analysis of the Final Review Decision (PK) on Corruption Crimes by the Head of Personnel Agency Formation in Pagar Alam City" (case study of PK Decision with Number: 163 PK/Pid.sus/2019).

Theoretical Framework

Theoretical Framework is the identification of theories that are used as a basis for thinking for conducting research or to describe the frame of reference or theory used to study problems. The Theory of Retribution, this theory was known at the end of the 18th century. Basically, the flow of retribution is differentiated into a subjective style in which retribution is shown to the wrongdoing because it is reprehensible and an objective style in which retribution is shown only to the actions that have been carried out by the person concerned. Like the way of thinking according to: 1) Immanuel Kant: have a way of thinking that injustice means they must be repaid with injustice as well. Because punishment is an absolute demand of the law and decency that is firmly adhered to, it can be called "de ethisce vergeldingstheorie"; 2) Hegel: has a way of thinking that law or justice is a reality, this way of thinking is dialectical, this theory is called "de Dialectische Vergeldingsthoerie"; 3) Helbert: have the idea that if someone commits a crime in society, then society must be given satisfaction by imposing a crime, so that the feeling of satisfaction can be returned again. The way of thinking uses the basis of Aesthetica, so the theory is called "de Aesthetica Vergeldingstheorie"; 4) Stahl: His way of thinking is that God created the state as his representative in implementing legal order in this world. Criminals must be punished so that legal order can be restored.

Theory of The Purpose of Punishment

Goal theory arose because the theory of retribution was less than satisfactory. The aim theory provides the rationale that the legal basis of criminal law lies in the criminal purpose itself. This theory also had views from its adherents in that era who were grouped under General Preventie; The criminal objective to be achieved is prevention aimed at the general public/everyone so that they do not violate public order, because this was introduced by Anslem von Feurbach, known as the "Psycholigische Swag" theory. Special Prevention / Speciale Preventie criminal purpose is to prevent criminals from committing crimes again.

Combined Theory

Objections to the theory of retaliation and the theory of objectives can give rise to a third school which is based on the way of thinking that punishment should be based on the objectives of the elements of retaliation and maintaining public order which are applied in combination by emphasizing one of the elements without eliminating the other elements or on all existing elements. Adherents of this theory then introduced "de Absolute gerechtingheid" which was popularized by Hugo De Groot (Grotius) and "Justice Sociale" which was introduced by Rosi.

Criminal Law Enforcement Theory

According to Sajipto Raharjo, law enforcement is essentially the enforcement of ideas or concepts about justice, truth, social benefits, and so on. So law enforcement is an effort to make these ideas and concepts become a reality.

Theory of Justice in Society

According to Roscoe Pound, justice is concrete results that can be provided to society. The increasingly widespread recognition and satisfaction of human needs, demands or desires through social control; increasingly widespread and effective guarantees of social interests; an effort to eliminate continuous and increasingly effective waste and avoid clashes between humans in enjoying resources, in short social engineering is increasingly effective.

Corruption Eradication Theory

Corruption is the behavior or actions of one or more people who violate applicable norms by using and/or abusing power or opportunities through the procurement process, determining revenue levies or providing facilities or other services carried out in the activities of receiving and/or disbursing money or wealth. Storage of money or wealth as well as licensing and/or other services with the aim of personal or group gain so that it directly or indirectly harms the interests and/or finances of the state/community.

METHODS

This research is normative legal research. Normative legal research uses normative case studies in the form of legal behavioral products, for example reviewing laws. The main point of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in cases "in concreto", legal systematics, level of synchronization, legal comparison and legal history.

RESULT AND DISCUSSION

Definition of Criminal Acts

The definition of "criminal act" comes from a term known in Dutch criminal law, namely "strafbaar feit". Strafbaar Feit can be translated from 3 syllables, namely "Straf" which means criminal, "Baar" which means can or may, and "Feit" which means action, event, violation. So, in simple terms "criminal act" can be understood as acts that can or may be criminalized. There is no uniformity among experts regarding the correct terms to be used to translate the meaning of strafbaar feit. Experts use several terms "criminal act, criminal act, criminal violation, criminal incident, punishable act, offense, and so on"[1]. From the results of several translations, it can be concluded that it is very difficult to give a generally applicable meaning to the term strafbaar feit. In the Dutch East Indies Wvs (KUHP) there is also no official explanation of what is meant by strafbaar feit. result) that are prohibited by law. Specific criminal acts are more concerned with issues of legality or those regulated by law. Special criminal acts contain references to legal norms alone or legal norms, matters regulated by law are not included in the discussion. These special criminal acts are regulated by law outside of general criminal law

Criminal acts are divided into 2 parts, namely General Crimes and Special Crimes, namely: 1) General Crimes, what is meant by general criminal acts are criminal acts that are regulated in the Criminal Code and are acts of a general nature, where the legal source focuses on the Criminal Code as a source of material law and the Criminal Procedure Code as a source of formal law; 2) Special Crimes, what is meant by special criminal acts are types of criminal

acts whose legal arrangements are outside the codified Criminal Code, have specific characteristics and case handling, both from the applicable legal regulations.

Understanding The Crime of Corruption

The definition of criminal acts of corruption is activities carried out to enrich oneself, a group or other people. Where these activities violate the law and harm other people or the country. Corruption comes from the Latin words Corruptus and Corruption, meaning bad, depraved, deviating from purity, insulting or slanderous words. In the Black Law Dictionary in the KPK Corruption Crime module, Corruption is an act carried out with the intention of obtaining some benefit which is contrary to official duties and other truths "an act of an official or someone's trust which violates the law and is full of mistakes using a number of benefits for oneself or others that are contrary to duties and other truths. In a broad sense, the definition of corruption is the abuse of official position for personal gain. All forms of government/governance are susceptible to corruption in practice.

Based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, there are 30 criminal acts of corruption which are categorized into seven types, namely state financial losses, bribery, extortion, embezzlement in office, fraud, conflict of interest in the procurement of goods and services and gratuities. Corruption basically has five components, namely: 1) Corruption is a behavior; 2) There is abuse authority and power; 3) Done for personal or group again; 4) Violating the law or deviating from norms and morals; 5) Occurs or is carried out in government or private institutions.

In the context of criminal law, not all known types of corruption qualify as criminal acts. Therefore, any act that is declared as corruption, we must refer to the Corruption Eradication Law.

Definition of Civil Servants

In Law Number 43 of 1999 concerning amendments to Law Number 8 of 1974 concerning the principles of Civil Service in Article 1 paragraph 1 of Law number 5 states: Civil Servants are citizens of the Republic of Indonesia who have fulfilled the specified requirements, are appointed by authorized officials and entrusted with government office functions or other general duties and paid salaries based on applicable laws and regulations

Abuse of Authority

Abuse of authority is the use of authority by Government Agencies and/or Officials in taking decisions and/or actions in administering government which is carried out by exceeding authority, mixing authority, and/or acting arbitrarily as intended in Article 17 and Article 18 of Law Number 30 of 2014 concerning Government Administration. With the element of abuse of authority, the subject of the offense in Article 3 of the PTPK Law must be a civil servant or state administrator because acts of abuse of authority can only be committed by civil servants or officials who are given the authority to carry out public services.

Article 3 of the PTPK Law contains the core parts of the offenses or criminal acts (delicts bestandelen) which include:

With the aim of benefiting yourself or other people or a corporation; 1) Abusing the authority, opportunities or facilities available to him because of his position or position; 2) Can be detrimental to state finances or the country's economy.

Explained in Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, Abuse of Authority reads: "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 position or position which can detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum

of 1 (one) year and a maximum of 20 (twenty) years or a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum a lot of IDR 1,000,000,000.00 (one billion rupiah).”
This article explains the abuse of power carried out for the sake of a person's position or position to carry out the functions or interests of the state. According to the law to eradicate criminal acts of corruption, there are other meanings of abuse of authority, namely: 1) Violating written rules which form the basis of authority; 2) Having deviant intentions even though the actions are in accordance with the regulations; 3) Potentially detrimental to the country.

Meanwhile, the concept of abuse of authority in State Administrative Law, namely: 1) Detournement de pouvoir, or exceeding the limits of power; 2) Abuse de droit, or arbitrary.

CONCLUSION

Legal provisions in cases of criminal acts of corruption committed due to abuse of authority in the position he holds, as carried out by the Head of Pagar Alam City personnel body formation in this case are contained in article 3 in conjunction with Article 18 of Law Number 31 of 199 concerning the Eradication of Corruption Crimes as has been amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

Furthermore, in Article 55 Paragraph (1) 1 of the Criminal Code regarding the context of participation in the defendant's actions carried out jointly, which means that people participate in carrying out these actions, where other parties are involved in proposing the issuance of NIP to 10 (ten) people. the name of Wiwin Widya Astuti, et al. which should not be able to be returned because it was canceled by the Central State Civil Service Agency (BKN) due to a lack of work period of 1 (one) year so it did not meet the requirements. So they should not be proposed as Civil Servants (PNS).

So that the defendant was legally and convincingly proven guilty of committing a criminal act of corruption together with other colleagues for the appointment of 10 honorary employees as CPNS who could no longer be nominated due to a lack of 1 year of service

REFERENCES

Abdullah, *"Hukum Kepegawaian Indonesia"*, Rangkang Education Yogyakarta & PuKap-Indonesia, 2012, hlm.2

Abdulkadir Muhammad. "*Hukum dan Penelitian Hukum. Cet. 1"*. Bandung: PT. Citra Aditya Bakti. 2004, Hlm 52,

Adami Chazawi, *"Pelajaran Hukum Pidana Bagian I"*, RajaGrafindo Persada, Jakarta,2014, hlm. 67,

Dellyna,Shant, *"Konsep Penegakan Hukum"*. Yogyakarta : Liberty1988, Hal 34

Djoko Sumaryanto, *"Pembalikan Pembebanan Tindak Pidana Korupsi dalam rangka pengembalian Kerugian Keuangan Negara"*, Jakrta, PT. Prestasi Pustakarya,2009, Hlm110

Ermansjah Djaja, 2010, *"Memberantas Korupsi Bersama KPK (Komisi Pemberantasan Korupsi)"*,Sinar Grafika, Jakarta hlm. 13.

Firman Wijaya, *"Delik Penyalahgunaan Jabatan dan Suap dalam Praktek"*, Penaku

Idhamsyah, "Pelaksaan Hukum Dalam Masyaraka", Terdapat di situs "https://idhmsyah12.wordpress.com/"Pelaksanaan hukum-dalam-Masyarakat/. Skripsi . Universitas Pancasila Th 2018 Survei Transparency International "terdapat pada situs https://ti.or.id/perpustakaan/

Kimberly Ann Eliot. "Korupsi dan Ekonomi Dunia" Yayasan Obor: Indonesia, Jakarta hlm 1-2

Nandang Alamsah D dan Sigit Suseno, *"Modul 1 Pengertian dan Ruang Lingkup Tindak Pidana Khusus"*, hlm. 7

UU No. 20 Tahun 2001 tentang perubahan atas UU No. 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.