

The Reconstruction of The Corruption Eradication System in The Perspective of The Criminal Law in Indonesia

Tinuk Dwi Cahyani¹(corresponding author), **Nu'man Aunuh**²

¹Universitas Muhammadiyah Malang, Indonesia: tinuk_cahyani@yahoo.com

²Universitas Muhammadiyah Malang, Indonesia: nukmanaunuh@yahoo.com

Submitted: January 21, 2020 - Revised: January 31, 2020 - Accepted: February 13, 2020 - Published: February 28, 2020

ABSTRACT

Corruption is a crime, just like all other crimes which has existed since a long time ago. The problem is that corruption is like a virus in the society which may spread very quickly. It is difficult to eradicate. The efforts to eradicate corruption has been carried out, but the reality shows that it keeps on increasing along with the increasing welfare, technologies, and development. On 2018, Indonesia stood in the 89th place of the world corruption rank. Thus, there needs to be a reconstruction to the forms of the main and the additional punishments in Indonesia's positive law, so that it is clear that corruption is a terrible crime which must be fought using extraordinary methods. In Indonesia's constitution of Corruption Eradication Article 2 clause 2 of the constitution No. 31 of 1999 it states that, "In the case of the crime of corruption as meant in clause (1), when carried out under certain conditions, death penalty may be imposed." From the explanation of that article, and also from the Constitution No. 31 of 1999 it can be concluded that the forms of existing main punishments are: Imprisonment for some time or life sentence, death sentence, or fine. Meanwhile, the forms of additional punishments are: The revocation of certain rights, the deprivation of certain items, the announcement of the judge's verdict, the deprivation of tangible movable properties (unmovable and intangible) which are used or are obtained from corruption, the payment of replacement money according to the amount obtained from corruption, the closing of some businesses for the maximum period of one year, and the revocation of all or some rights (the elimination of some privileges).

Keywords: reconstruction; corruption; criminal law

INTRODUCTION

Corruption has become something like a culture in the society. A person who committed corruption is not usually scared nor ashamed, even though many laws against it are written clearly. Corruption is deemed to be a culture in the society's and in the nation's lives. It makes it hard to eradicate it in one time. Thus, the eradication of corruption is carried out step-by-step. The country tries to press down corruption so that it is at the lowest point possible. There are many forms of corruption in Indonesia, as mentioned in the Constitution. It is written in the Constitution No. 20 of 2001 regarding the crime of corruption's categories, which are more detailed than the previous law.⁽¹⁾ Meanwhile, in the interpretation of the Constitution No. 20 of 2001 *jo* the Constitution No. 31 of 1999, there are two types of corruption, which are: (a) the criminal act of corruption (it can be seen in Articles 5 until 12 of the Constitution No. 20 of 2001 *jo* Articles 13 until 16) and (b) criminal actions which are related to the criminal act of corruption (see Articles 21 until 24 of the Constitution No. 31 of 1999).⁽²⁾

In this case, the first category refers to the perpetrator, whether it is the main or the supporting perpetrators. The survey results of the *Transparency International*², Indonesia scored 2,8 CPI (Corruption Perception Index 2009). This index shows that there is a high risk of corruption in Indonesia which are carried out by business actors (observers or state analysts). This also shows that the efforts to eradicate the criminal act of corruption is still far from success. It also demands the government's commitment in forming a better governance. This score is far from the neighboring countries such as Singapore and Brunei which scored 5,5; Malaysia with the score of 4,5; and Thailand with the score of 3,3.⁽³⁾

From year to year, corruption still often happens in Indonesia. Even though the perception index increases annually, it is still in a dangerous condition to the state. Meanwhile, there are the forms of the main and the additional punishments in the Constitution No. 31 of 1999 *jo* the Constitution No. 20.

On 2001, the government did not yet categorize corruption as an extraordinary crime. Thus, there needs to be a reconstruction towards the forms of main and additional punishments in the positive law in Indonesia, so that it is clear that corruption is a serious crime which must also be fought using extraordinary methods. One way to eradicate this extraordinary crime is by extending and sharpening the forms of the main and the additional punishments.⁽⁴⁾ From the background above, it can be concluded that the questions which must be addressed are: how are the forms of the main and the additional punishments in the constitution of corruption eradication in Indonesia, and how is the reconstruction of the forms of the main and the additional punishments in the constitution of corruption eradication in Indonesia?

METHODS

The approach method used by the author in this research was the normative-judicial legal research method, which is a research using literature study. It contains only secondary legal data, especially those related to the problems which are discussed in this paper.⁽⁵⁾ Normative Juridical legal research was a library research, this research searched on the corruption eradication in the criminal law in Indonesia. Library research its mean this research sources from document and from law, or another research to fulfil conclusion

RESULTS

Indonesia has the mission to carry out national development, which aims to achieve welfare and to create holistic Indonesian people which are just and prosperous. In the middle of the effort to achieve national development in various fields, the people's ideas in eradicating corruption and other forms of crimes or deviations must be kept up. This is because in reality, corruption creates significant losses to the state in various fields. The efforts to eradicate corruption must be increased and developed.⁽⁶⁾

The eradication of the criminal act of corruption needs extraordinary support from various parties. Some obstacles in handling corruption includes budget, human resources, and obstacles in investigating state officials. Corruption is a vital problem to the bureaucracy both in the present times and in the past. In the Indonesian history, it is written that since the Juanda Cabinet (the Old Order), there are two occasions as to when the Body of Corruption Eradication was formed. One of those bodies is the "*Panitia Retooling Aparatur Negara*" (PARAN) which was formed under the "Constitution of Dangerous Condition".

In reviewing the development of bureaucracy and governance in Indonesia from the New Order, the Old Order, and the Reformation Era, there are always practices of corruption, collusion, and nepotism. These practices have entered all aspects to the society's lives, and it has destroyed the society's mentalities. The nation's wealth which is supposed to be used for the welfare of the people are corrupted, stockpiled, and kept overseas by government officials from the central government to the regions. From the highest eselons to the office helpers corrupt. They use the wealth for personal interests and to guarantee the prosperity of their own families.⁽⁷⁾ In Indonesia's history of corruption eradication, the enforcement of a state with good governance through law enforcement is not easy to be applied. The conflicting politics, the society's culture and the conflicting law makes it harder to eradicate corruption. The exception is if the corruption eradication is done with the courage to act, such as what is carried out by the head of the Commission of Corruption Eradication (KPK). This commission has made a blow through its courage to enter the executive, legislative, and judicial territories.⁽⁸⁾

Before, at the time of the New Order, Soeharto clearly criticized the government of the Old Era which are regarded to have failed in eradicating corruption in the democratic relation which is centralized to the state palace. He stated that on August 16th, 1967 in his state speech. This speech gave hope to the Corruption Eradication Team (TPK) with the Attorney General as its leader. From time to time, people start to question the seriousness of TPK in eradicating corruption. Then, Soeharto appointed the Committee of Four in which its members are old figures who are deemed to be clean, wise, and with high integration to eradicate corruption. They are I. J. Kasimo, Mr. Wilopo, Prof. Johannes, and A. Tjokroaminoto. They had the role to clean the Department of Religion and companies such as Bulog, CV Waringin, PT Mantruss, Telkom, Pertamina, etc.⁽⁹⁾

In the Reformation Era, the effort to eradicate the criminal act of corruption was initiated by President Bacharuddin Jusuf Habibie (B. J. Habibie) with the issuing of the Constitution No. 28 of 1999 regarding the state establishment which is free from corruption, collusion, and nepotism. The new bodies formed are KPKPN and KPPU. This effort is then continued by the following president, Abdurrahman Wahid. He formed the Joint Team of Corruption Criminal Act Eradication (TGPTPK) through the Presidential Decree No. 19 of 2000. Yet this body was dissolved by the Supreme Court through the juridical review lawsuit which conflicts with the Constitution No. 31 of 1999.

The criminal act of corruption which happened thoroughly did not only happen in the central government. Yet, it also happened in all autonomous territories in Indonesia. This makes the state's loss increase from year to year. It is difficult to control, as there is minimum supervision from the law-enforcing apparatus. This is also due to the society's ignorance. This criminal act is a terrible violation towards the people's economic and social rights. Because of that, it must be categorized as a crime in which its eradication must be carried out in extraordinary ways. One of the ways is to apply the reverse evidencing system.⁽¹⁰⁾

DISCUSSION

According to the international transparency society, there are some factors which support the widespread corruption in Indonesia. These factors are: (1) the messed-up public and financial administration systems in the society, (2) the absence of the political development in the government, (3) the politization of the bureaucracy,

(4) the supervising institutions which are not independent, (5) the dominant role of the military in the political field, (6) the parliament which does not function well, (7) the weak power of the civilians, (8) the restricted mass media, and (9) the opportunistic private sectors. All of the factors mentioned are already rooted in all aspects of the governmental bureaucracy, thus it is difficult to prevent the criminal act of corruption. It must be eradicated using extraordinary means.

In the international point of view, the crime of corruption is categorized as a white-collar crime which has complex impacts. The 8th Congress of the the United Nations was about “Prevention of Crime and Treatment of Offenders,” which issued the resolution of, “Corruption in Government,” which is regarding the impacts of corruption, on 1990 in Havana. The Constitution No. 31 of 1999 *jo* the Constitution No. 20 of 2001 regarding the Eradication of the Criminal Act of Corruption explains that the criminal act of corruption is categorized as an extraordinary crime. Thus, there needs to be extraordinary measures to eradicate it. Yet, in the application of the law enforcement, the existing institutions such as the police force and the attorney are not enough. There needs to be a specialized team as the executor, which is the Commission of Corruption Eradication (KPK). Also, in bringing justice upon this crime, there needs to be a special court. In this case, it is the criminal act of corruption court.

According to many experts, corruption will keep on existing if the welfare of the employees is still low. The fulfillment of “life’s needs” is deemed to be the main reason as to why someone corrupts or bribes. From that theory, in Susilo Bambang Yudhoyono (SBY)’s governmental era, there was the policy of a drastic and a sustainable salary increase for the state civil employees and other governmental officials. Even for those who work in a corruption-prone job, an increase of salary was given (remuneration). In the end, this policy caused social jealousy for the labor who received “minimum wage”.⁽¹¹⁾

It is time for the government to think about a more structured and a more transparent supervision system. The state system should be formed and applied seriously. The government should not create a regulation then leave it to that. As stated by the head of the Commission of Corruption Eradication, most of the criminal act of corruption handled is not only related to the state loss, yet most is caused by bribery. Meanwhile, this act is closely related to morality, personality, and the human rights. In the globalization era like the current times, it is not easy to order the employees to live simply, to have good morals, and to be pious. Having a lifestyle is part of the human rights and must not be meddled up by other people.

When talking about an urgency, we are talking about why an idea or a system must be applied. As we know, in the case of corruption, no perpetrator has been given a death sentence yet. Meanwhile, the Constitution on the criminal act of corruption has regulated that the maximum punishment for this crime is death sentence, for certain actions of corruption. It is stated in Article 2 clause 2 of the Constitution No. 31 of 1999 as follows:

“In the case of the criminal act of corruption as mentioned in clause (1) is carried out in a certain condition, death sentence may be given.” Then, in its description, it is stated that the “certain condition” means that there is a ballast action to the criminal act of corruption. This means that if that corruption is carried out when the state is in a condition of threat, such as when there is a national natural disaster, an economic and a monetary crisis, and if the same perpetrator did this action repeatedly.⁽¹²⁾

The urgency of death sentence in public may be caused by some reasons, one of them is that corruption is categorized as a white-collar crime which has complex impacts. It can destroy the potential effectivity of all types of governmental programs. It can inhibit development and cause victims of individuals, groups, and societies. There is a close relation between corruption and other types of organized crimes, such as money laundering.

Corruption becomes more massive both in the central and in the regional governments. Apart from the role of the law-enforcing institution on corruption which is the Commission of Corruption Eradication, there needs to be stricter, more extraordinary punishments which are hoped to become a good deterrent effect, so that the corruptive acts may be limited.

The researcher spread out questionnaires to academicians regarding the type of punishments suitable for the perpetrators of corruption. The results are similar with the thoughts of the researcher. From the 300 academicians, 51% agreed with death sentence in the face of the public. This means that more than half of the academicians samples hope that there needs to be death punishment in public to inhibit the corruptive acts in the government. In the Constitution No. 31 of 1999 *jo* the Constitution No. 20 of 2001, there are some punishments (sanctions) which may be given by the judge to the perpetrators of the criminal act of corruption, which are: death sentence, imprisonment, additional punishments. Based on that, there needs to be a reconstruction towards the forms of punishment in the constitution of corruption eradication. This reconstruction is not meant to create new things, but rather to shift the forms of punishments, from that which is limited as stated in Article 2 clause (2) of the Constitution No. 31 of 1999, which is then added with the additional punishments in Article 18:⁽¹³⁾

Meanwhile, the forms of additional punishments are: The revocation of certain rights, the deprivation of certain items, the announcement of the judge’s verdict, the deprivation of tangible movable properties

(unmovable and intangible) which are used or are obtained from corruption, including the perpetrator's companies, including the price to replace that item, the payment of replacement money according to the amount obtained from corruption, the closing of some businesses for the maximum period of one year, and the revocation of all or some rights (the elimination of some privileges).

In this case, the writer sees that there needs to be a reconstruction towards the Constitution No. 20 of 2001 on Article 2 clause (2), which are the words "dangerous condition." Here, there is no specific nor detailed explanation, so it is possible that this makes the corruption perpetrators free from the existing punishments. If these words are re-explained in detail, on what the dangerous really means, the writer thinks that the corruption punishments will not become too flexible.⁽¹⁴⁾

The shift stated by the writer above is the shift of the death sentence, from the punishment which is limited to a certain action or condition, to an action or a condition which is broader. It means that the state decides on the amount of money which must be corrupted for the perpetrator to be given death penalty. For example, of one corrupts more than Rp. 100 million, he/she will be sentenced to death.

CONCLUSION

From Indonesia's Constitution of Corruption Eradication, it can be concluded that in the Constitution No. 31 of 1999 Article 2 clause (2), there are some forms of main punishments, such as imprisonment for a period of time, life sentence, death sentence, or fine. Meanwhile, the forms of additional punishments are as follows: Meanwhile, the forms of additional punishments are: The revocation of certain rights, the deprivation of certain items, the announcement of the judge's verdict, the deprivation of tangible movable properties (unmovable and intangible) which are used or are obtained from corruption, including the perpetrator's companies, including the price to replace that item, the payment of replacement money according to the amount obtained from corruption, the closing of some businesses for the maximum period of one year, and the revocation of all or some rights (the elimination of some privileges). In this case, the writer sees that there needs to be a reconstruction towards the Constitution No. 20 of 2001 on Article 2 clause (2), which are the words "dangerous condition." Here, there is no specific nor detailed explanation, so it is possible that this makes the corruption perpetrators free from the existing punishments. There needs to be a change in the words, "dangerous condition" so that the perpetrators cannot easily escape from the punishments of their criminal action. Thus, it is hoped that there are no weak points in the constitution, to create a certainty of law.

REFERENCES

1. Andi J. Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional. Jakarta: Raja Grafindo Persaja; 2007.
2. Peter B. Teori-teori Sosial; Observasi Kritis terhadap Para Filosof Terkemuka. Yogyakarta: Pustaka Pelajar; 2002.
3. Efendi G. Cepat dan Mudah Memahami Hukum Pidana. Jakarta: Prestasi Pustaka Raya; 2011.
4. Andi H. Perbandingan Pemberantasan Korupsi di Berbagai Negara. Jakarta: Sinar Grafika; 2005.
5. Soerjono S. Penelitian Hukum Normatif; suatu tinjauan singkat. Jakarta: PT. Raja Grafindo Persada; 2001.
6. Kholis, Efi L. Pembayaran Uang Pengganti Dalam Perkara Korupsi. Jakarta: Solusi Publishing; 2010.
7. Laden M. Asas dan Teori Hukum Pidana. Jakarta: Sinar Grafika; 2005.
8. Leden M. Tindak Pidana Korupsi, Pemberantasan dan Pencegahan. Jakarta: Djambatan; 2001.
9. Tintin SM, Rusma D. Tinjauan Konseptual Yuridis Terhadap Korupsi. Jakarta: Pustaka Karya; 2005.
10. Evi H. Tindak Pidana Korupsi Edisi Kedua. Jakarta: Sinar Grafika; 2012.
11. Saleh W. Tindak Pidana Korupsi dan Suap. Jakarta: Galia Indonesia; 2007.
12. Elwi D. Korupsi Konsep, Tindak Pidana, dan Pemberantasannya. Jakarta: Raja Grafindo Persada; 2012.
13. Djodjodirdjo M. Tinjauan Elementer Perbuatan Melawan Hukum. Bandung; 1991.
14. Dono W. Hukuman mati untuk Koruptor: Sebuah Pilihan?. Penelitian Internal Dosen. Universitas Lambung Mangkurat. Lampung; 2013.