

LEGAL ANALYSIS OF RESOLUTION OF CRIMINAL ACTS OF CORRUPTION THROUGH CONNECTIONAL COURTS

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ABSTRACT

Corruption can be committed by any member of society. It is possible that it was committed by members of the TNI together with civilians, who formally must be tried legally in a connectivity court. Based on this, the problem in this thesis is how the legal regulations for resolving corruption crimes through connectivity courts, how the mechanism for handling connectivity cases in corruption cases, what are the obstacles to resolving corruption crimes through connectivity courts. Connectivity cases are good for general crimes and special crimes (corruption). The legal basis for criminal justice is regulated in Article 89 of the Criminal Procedure Code, Article 198 of Law Number 31 of 1997 concerning Military Justice and Article 16 of Law Number 48 of 2009 concerning Judicial Power. And with the enactment of Law Number 48 of 2009 concerning Judicial Power, an implementing regulation concerning Article 16 is needed, so that there is uniformity in the provisions of the articles concerning criminal justice.

1. Introduction

Corruption is an enemy of every country in the world. Deep-rooted corruption will hamper development. The government's failure to eradicate corruption will further weaken its image in the eyes of the public. Its implementation can be seen in the form of public distrust and non-compliance with the law, and increasing poverty rates in the country. Corruption in various parts of the world consistently receives more attention than other crimes due to the negative impacts it causes and the consequences it poses. Recognizing the complexity of corruption amidst a multi-dimensional crisis and the imminent threat of this crime, corruption can be considered a national problem that must be addressed seriously through a balance of decisive measures involving all available resources within society, especially the government and law enforcement agencies.

The impacts and consequences of corruption in Indonesia are numerous and can affect various aspects of life. Corruption is a serious problem. This crime can



jeopardize societal stability and security, jeopardize socio-economic and political development, and undermine democratic values and morality, as it poses a significant threat to the ideals of a just and prosperous society.

Law enforcement based on justice is carried out by every citizen, every state administrator, and every community institution, including the military. To achieve this, institutions are needed to enforce the law to achieve justice, legal certainty, and order in the legal system, namely judicial bodies, as stipulated in the 1945 Constitution. The implementation of these institutions is regulated by Law Number 48 of 2009 concerning Judicial Power. It states that judicial bodies under the Supreme Court include the General Court, the Religious Court, the Military Court, the State Administrative Court, and the Constitutional Court.

These judicial bodies, including the military court and the general court, have different authorities, as the subjects within each court have fundamental differences. General courts are civilian courts that generally have the authority to examine, try, and decide criminal and civil cases, while military courts have the authority to examine, try, and decide criminal cases involving military personnel and civilians in cases of connection. Based on these provisions, the judicial system imposed on military personnel is different from that of civilians. Military personnel who violate the law must comply with the military justice system, which is implemented in the Military Court. Military Courts are courts that implement judicial power within the military environment. Courts within military justice consist of military courts, high military courts, main military courts, and military combat courts.

In practice, despite the existence of regulations, there is no conformity between *das sollen* and *das sein*. This means that what should be (*das sollen*) is not in accordance with the reality or facts that occur (*das sein*), because based on Article 89 of the Criminal Procedure Code, if a crime is committed by both military and civilian personnel, they are tried in the general court environment, unless there is agreement from the Minister of Defense and Security and the Minister of Justice, it must be tried in the military court environment.

In reality, when crimes occur in society that are committed by TNI personnel together with civilians, the military agency tries to have the TNI members tried in a Military Court. Reviewing Article 89 paragraph (2) of the Criminal Procedure Code, the investigation of criminal cases as referred to in paragraph (1) is carried out by a permanent team consisting of military positions of the Indonesian Armed Forces and military auditors or high-ranking military auditors in accordance with their respective authorities according to the law applicable to criminal case investigations.





Article 89 paragraph (1) of the Criminal Procedure Code (KUHAP) has a basic principle that cases of connection are examined and tried by general courts. However, there are exceptions to this element, namely, trials in military courts, provided, among other things, that there is a decree from the Minister of Defense and Security requiring the connection case to be examined and tried by military courts. The decree from the Minister of Defense and Security in question has received a letter of approval from the Minister of Law and Human Rights that the connection case be examined and tried by military courts.

In practice, in state administration, fundamental changes are apparent in the administration of justice. Previously, the administration of justice was carried out by the Minister of Law and Human Rights, who held the leadership of the Ministry of Law and Human Rights. With the enactment of Law Number 48 of 2009, the administration of judicial power is carried out by the Supreme Court and its subordinate judicial bodies, namely general courts, military courts, state administrative courts, and the Constitutional Court.

2. Research Method

This research is descriptive and analytical, that is, research that describes, examines, explains, and analyzes laws and regulations related to the objectives of this research. The purpose of descriptive research is to accurately describe the characteristics of individuals, circumstances, phenomena, or specific groups, or to determine the frequency or distribution of a phenomenon or the frequency of a particular relationship between a phenomenon and other phenomena in society. The primary purpose of analyzing legal materials is to conceptually understand the meaning of the terms used in statutory regulations, while also understanding their application in practice and legal decisions. In accordance with the research problem and objectives, the type of research used is normative legal research. This type of research utilizes literature or secondary data, including books and legal norms contained in legislation, legal principles, legal rules, and legal systems. It also examines statutory provisions, court decisions, and other legal materials relevant to the research formulation.

The type of research conducted in this thesis utilizes the normative legal research method (normative juridical). Normative juridical research is legal research that refers to the legal norms contained in legislation. This study examines literature or secondary data covering the principles of legal system, levels of vertical and horizontal synchronization, comparative law, and legal history.

This research uses a statute approach to analyze the implementation of the death penalty policy for corruptors in eradicating corruption. The data in this study were



obtained through secondary data, namely data collected through the study of literature. Secondary data is data obtained from official documents, books related to the research object, and laws and regulations.

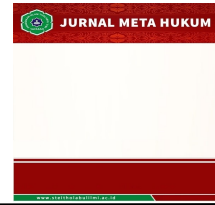
3. Research Results And Discussion

In practice, corruption cases still face omissions. This is because judges' decisions do not clearly and explicitly distinguish between the nominal value of state losses incurred as a result of the convict's actions. In other words, judges fail to differentiate between the concept/definition of enrichment and/or benefiting oneself, another person, or a corporation in each corruption case they decide, resulting in disproportionate sentences. Furthermore, judges, in their decisions, fail to consider the distinction between corruption that has harmed state finances or the state economy and corruption that will harm state finances or the state economy. Judges should clearly distinguish between corruption that has harmed state finances or the state economy (where the state loss has actually occurred or state finances have decreased) and corruption that will harm the state (where the state loss has not yet occurred or where state finances remain unchanged).

The issue of sentencing is not only important for judges and the judicial process. The sentencing pattern is crucial for the overall legal process, particularly in law enforcement. One element that must be upheld for a smooth law enforcement process is high trust and respect for the law. This is likely to be unattainable if sentencing varies too widely. This also concerns the issue of fairness (proportionality), which is typically expected from the court as an institution or the judiciary as a process. As long as these institutions do not consider the consequences and sentencing, it will be difficult to institutionalize public trust in the courts. The public expects that the sentences imposed will truly bring about significant change in addressing the problems of corruption that have devastated the very foundations of society and the state.

A person's actions are only categorized as corruption if they involve active actions only, not passive ones. This means that if state losses occur that benefit a state official or another person and are determined not to be due to the active actions of the state official, then the state official is not committing corruption. The "action" must also be for the enrichment of oneself or another person. Because of the use of the word "or" between oneself and another person, this formulation is alternative. Thus, simply enriching others, even if not enriching oneself, is included in this definition of corruption.

The elements of "enriching oneself or another person or a corporation" (see Article 2 paragraph (1) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001)

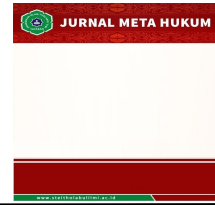


and "benefiting oneself or another person or a corporation" (see Article 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001) are alternative elements, meaning that the perpetrator of a criminal act of corruption does not need to personally enjoy the proceeds of the crime; it is sufficient for the perpetrator to enrich or benefit another person. The element of "enriching oneself or another person or a corporation" is more difficult to prove because it must be able to demonstrate an increase in the perpetrator's wealth before and after the act of corruption is committed. However, theoretically, the element of "enriching oneself" can be proven by demonstrating that the perpetrator of a criminal act of corruption lives a luxurious lifestyle in their daily lives. Meanwhile, the element of "benefiting oneself or another person or a corporation" means the existence of facilities or conveniences as a result of abusing authority.

Regarding the element of "causing financial loss to the state," law enforcement officials collaborate with relevant agencies, namely the Supreme Audit Agency (BPK) or the Financial and Development Supervisory Agency (BPKP), which assist investigators in calculating state losses. Generally, corruption involves the abuse of authority and power for personal or group gain. Therefore, the primary variable in corruption is power. In other words, those with power, particularly over public resources, are more likely to engage in corruption. However, in the context of regional autonomy, corruption occurs following the decentralization of power to the local level. This demonstrates that judges have discretionary authority in determining sentences for corruption perpetrators based on the element of "enrichment," ranging from a minimum sentence of four years to a maximum of life imprisonment or the death penalty. Similarly, fines are subject to the maximum fines stipulated above. Thus, the imposition of criminal penalties with minimum and maximum penalties, which should be imperative under Law No. 31 of 1999 concerning the Eradication of Corruption, is, in practice, limited, making it difficult to effectively achieve the goal of preventing and eradicating corruption.

A closer look at the wording of articles, such as the elements of "enrichment" and/or "profit" in the law, reveals that their criteria, definitions, and meanings are not clearly defined, potentially leading to multiple interpretations. To date, numerous decisions by judges in corruption cases lack clear legal considerations, particularly regarding the distinction between the elements of "enrichment" and/or "profit."

Considering the history of existing corruption laws, it is almost certain that none of them have explicitly stated or outlined the criteria/definition of the element of enrichment, except in the explanation of Article (1) of Law Number 3 of 1971, which states that the term "enrich" can be linked to Article 18 of Law Number 3 of



1971, which requires the accused to provide evidence regarding the source of their wealth in such a way that the increase in wealth disproportionate to their income can be used to corroborate other witnesses that the accused has committed a criminal act of corruption. However, in practice, the District Court is not obligated to consistently link this to Article 18 if the accused has admitted to receiving state funds. This explanation is intended to link the prohibition on "enriching oneself" in the corruption law with the obligation for the accused to provide information regarding the source of their wealth upon the judge's request. This obligation does not exist if the judge does not request it, so the unreasonable increase in wealth can be reduced from the testimony and viewed as an indication of "self-enrichment," which must be supported by other evidence, such as witness testimony.

The lawmakers do not provide an explanation of what is meant by enriching oneself or another person or corporation. However, this is linked to Article 37 paragraph (4), which states that the accused/suspect is obliged to provide information regarding the source of wealth in such a way that the wealth is disproportionate to the income or increase used as evidence. Apparently, no common formulation has been found regarding the definition of "self-enrichment," either in the law or according to expert opinion, in determining a certain amount, or the criteria/measures for a person or corporation to be considered enrichment, except only stating an increase in assets for the perpetrator/other person/corporation.

The definition of "enrichment" does not simply mean an increase in the assets of the perpetrator, another person, or a corporation. This requires greater caution in anticipating disparities in sentencing/criminalization for defendants, especially when considering the magnitude of the increase in assets of perpetrators of corruption crimes that have resulted in state losses reaching hundreds of millions of rupiah, billions of rupiah, or even trillions of rupiah. To determine whether the District Court or the Military Court/High Military Court will adjudicate criminal connections cases, a joint investigation by the Prosecutor/High Prosecutor and the Military Auditor/High Military Auditor is first conducted based on the results of the permanent team's investigation. Based on the results of this investigation, a report is prepared, signed jointly by officials from the Prosecutor's Office and officials from the Military Auditor/High Military Auditor.

For criminal connections cases tried/examined by general courts (District Courts), the panel of judges consists of a presiding judge from the general court and associate judges from each general court and military court, respectively, on an equal basis. In criminal cases involving connection tried/examined by military courts, the panel of judges consists of a presiding judge from the military court





and a balanced number of member judges from each military court and general court, each with titular rank. The involvement of the military along with civilians in committing a crime under criminal law is considered a connection case. This means that there are two courts within the court's jurisdiction: general courts for civilians and military courts for military personnel. Civilians are fully subject to the Criminal Procedure Code (KUHAP), while military personnel are subject to the procedural law stipulated in Law Number 31 of 1997 concerning Military Justice.

The crime of connection is an accessory offense involving civilians subject to general courts and military personnel subject to military courts, where they commit a crime together. Article 89 of the Criminal Procedure Code stipulates that in connection courts, two courts can adjudicate a connection case: either a general court or a military court if, according to the decision of the Minister of Defense and Security, with the approval of Law and Human Rights, the case must be examined and tried within the military court environment. Therefore, to determine which court can adjudicate the case, an investigation must be conducted by a permanent team as stipulated in Article 89 paragraph (2), consisting of investigators as referred to in Article 6, the Indonesian Armed Forces military police, and military prosecutors or high-ranking military prosecutors in accordance with their respective authorities according to applicable law in accordance with criminal case investigations. This permanent team is formed by a joint decree of the Minister of Defense and Security and the Minister of Law and Human Rights as stipulated in paragraph (3). In carrying out its duties to determine which court has the authority to adjudicate, Article 90 of the Criminal Procedure Code explains how a permanent team works as referred to in Article 89 paragraph (2) of the Criminal Procedure Code, which has been formed to determine which court will adjudicate the connection trial.

4. Conclusion

The legal provisions for resolving corruption crimes through joint courts are regulated in Article 89 paragraph (2) of the Criminal Procedure Code and Article 198 paragraph (2) of Law Number 31 of 1997 concerning Military Courts, Article 39 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, and Article 42 of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK). The mechanism for handling joint court cases in corruption cases is specifically for investigations of joint court cases, carried out by the Permanent Joint Court Investigation Team as stipulated in Article 89 of the Criminal Procedure Code and Article 198 paragraph (2) of Law Number 31 of



1997 concerning Military Courts. These investigators are general court investigators as referred to in Article 6 of the Criminal Procedure Code, consisting of Indonesian National Police officers and certain Civil Servant Officials (PPNS) who are specifically authorized by law, the Military Police, Military Prosecutors, or High Military Prosecutors. The obstacle to resolving corruption cases through connectivity trials is the overly complex and lengthy procedure. The formation of the connectivity case investigation team is based on a joint decree between the TNI Commander and the Supreme Court. Furthermore, the Supreme Court and the Minister of Defense must mutually propose the appointment of member judges to handle connectivity cases. These two factors contribute to the lengthy process of resolving connectivity cases and often lead to separate case examinations (contrary to the principles of speedy, simple, and low-cost justice).

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