THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Judicial Analysis of the Burden of Proof on the Perpetrator of Corruption Criminal Act in Medan District Court

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Abstract:
Corruption criminal act develops rapidly since in the transition era there is weakness in law. Consequently, there is an opportunity for a few people to do fraud and illegal acts and to misuse their positions and formal functions in order to make them rich, and the criminal acts are done systematically and sophisticatedly. Some people believe that legal provisions which specifically regulate the corruption criminal act; namely, Law No. 31/1999 in conjunction with Law No. 20/2001 on the Eradication of Corruption Criminal Act are not effective any more, especially in onus probandi (the burden of proof) on corruptors. The system of the burden of proof, which follows the principles of reversal of the burden of proof stipulated in Article 12B, paragraph 1 a and b, Article 37A, and Article 38B of Law No. 20/2001 on the Amendment of Law No. 31/1999, is used only as supporting evidence when the principal case is proved. Meanwhile, how to maximize the implementation of the burden of proof on the perpetrators of corruption criminal act in which the public prosecutor brings a corruption case to Court, depends upon the nature of the case and the type of indictment. The system of burden of proof can be used to eradicate corruption in the Court if some policies and general principles of justice such as independency, impartiality, and legal certainty, are applied.

Keywords: *Burden of Proof, Perpetrator, Corruption Criminal Act*

1.Introduction

Birth of Law No. 31 1999 Jo Law No. 20 of 2001 on Corruption Eradication coupled with the enactment of Law No. 30 of 2002 on the Corruption Eradication Commission, clearly aiming for as soon as possible is able to overcome and eradicate the rampant corruption that is going on and do not forget the other main objectives are as efficient and effective as possible to reduce and restore the country's financial losses that caused the corruption act. Corruption has become a culture and culture, civilization has become ingrained in the body of this nation, and has become a lifestyle. The phenomenon of corruption and other social and political inequality. Concrete manifestation of all the actions of the officers and state officials are reluctant to eradicate corruption, resulting regulations on combating corruption are half-hearted and without firmness regarding sanctions and essential.

Corruption is a major problem in this nation that must be overcome as effectively as possible. Corruption has caused widespread poverty, unemployment hampered, rampant abuse of authority, theft of public money on a large scale and weak law enforcement. The officials persisted and tried to justify his actions. While the actions of this officer is clearly an attempt to abuse of authority, position, and power.

Corruption always get more attention than other crimes. This phenomenon is understandable considering the negative impact caused by this criminal act. The impact can touch various biddang life. Corruption is a serious problem, this criminal act may endanger the stability and security of society, endanger the socio-economic development, and also political, and can undermine democratic values and morality as it slowly works as a culture. Corruption is a threat to the ideals toward a just and prosperous society.

Advanced industrial countries, corruption is considered a disease of the world to be under siege, prevented and eradicated by all the countries and citizens of the world. Understanding is exactly the union convention held nations on Anti-Corruption (TOR) in 2004 in Merida (Mexico). The Convention then dihasilkanlah agreements that were signed jointly by the participating countries were present, including Indonesia.

One of the most important parts TOR is a clear message that the government's main tasks are: (i) the establishment of prevention and eradication of corruption strategy as outlined in the legislation that firm and effective, (ii) conduct continuous monitoring process, (iii) enforce law relating to the settlement of those cases of corruption, while other tasks dispensed to the role of the judiciary, parliament and civil society, including non-governmental organizations.

Mubyarto cites the opinion, Theodore M. Smith, in his "Corruption Tradition and Change" Indonesia (Cornell University No. 11 April 1971) says as follows:

"Overall corruption in Indonesia meuncul more often as a political, rather than economic. He touched keabshan (legitimacy) government in the younger generation, educated elite burghers and employees in general. Corruption reduces support for the government of the elite in ringkat provinces and districts.

A person who has a certain authority and influence because of his always so easily exploit labor for personal use and household, whereas the worker should have to work in the interests of the company. Such a situation is considered to be the logical thing by the people because it is a regular and frequent. In Order to handle and eradicate corruption that has been entrenched and systematic, as well as to ensure legal certainty, avoidance of diversity of legal interpretation and provide protection against social and economic rights of the community as well as fair treatment in eradicating corruption, the government deems it necessary to amend Act law No. 31 of 1999 on Corruption Eradication. Act No. 31 of 1999 felt inadequate for the Eradication of corruption needs to be mandated in Decree No. VIII / MPR / 2001 on the recommendation Direction Policy Eradication and Prevention of Corruption, Collusion and Nepotism. The commission was then operated by the formation of Law No. 21 of 2001 on the Amendment of Act No. 31 of 1999.

The main obstacle is encountered during the implementation of Law No. 31 of 1999 in the handling of corruption is the lack of budget support, human resources have not been adequate, barriers in investigations against state officials, the difficulty of penetrating the secrets Bank, criminal procedural law not effective and efficient, and low support from all parties, both government and society. The history of the development of the criminal procedure law indicates there is some system or theory to prove the alleged act, namely verification system based on the law positively (positief wettelijke bewijsthorie) verification system based on the belief that judges only logical (laconviction raissonnee) and the theory of proof under the law is negative (negative (wettelijke).

Law No. 20 of 2001 tebalik verification system is a system in which the burden of proof is on the defendant and the proof is only valid at the time of examination before the court with possibility of additional or special inspection if the inspection found property belonging to the defendant derived from corruption but it has not been indicted. The court verdict has obtained permanent legal force, but it is known there is still a wealth of convict who allegedly obtained may be derived from corruption, then the state can do a lawsuit against the convicted person of his heirs.

Article 37 of Law No. 20 of 2001 stated;

1. The defendant has the right to prove that he was not guilty of corruption.
2. In the event that the defendant can prove that he was not guilty of corruption, the government used by the Court as a basis for stating that the indictment was not proven. This article is the consistency of the application of the principle of reversal of the burden of proof to the defendant. The defendant remains impartial require legal protection for violations of fundamental rights relating to the presumption of innocence and blame themselves. How the rule of law against the perpetrator Imposition Proof of Corruption? How does the policy of the law against the imposition of the evidence given to the perpetrator of Corruption?

2. Discussion

Corruption committed by or on behalf of a corporation. Legislators Crime corruption is fully aware that corruption is not only done by people but also by the corporation, through its officials who lately increasing intensity with different modus operandi. Even corporation is not only a legal entity but also that is not incorporated. Where regulations, not found in the applicable regulations ever before. As set forth in the general explanation that "new developments set out in this law is the corporation as a subject in which corruption can not be penalized". It is set in advance in the law No. 3 of 1971 on the Eradication of Corruption.

Type of corruption that can be the subject of a corporation are as referred to in Article 2 paragraph (1) and 3 of Law No. 31 of 1991 on the eradication of corruption are:

"Any person who acts unlawfully enrich themselves or another person or a corporation that could harm the state finances, and" Anyone with the intention of enriching himself or any other person or corporation, abuse of authority, opportunity or means at its disposal because of the position or positions that could harm the state finance or economy of the country ".

The principle of this error is a principle that is applied in criminal liability, criminal means only imposed against those who really have made a mistake in a criminal offense. As to the definition of this error, Mezger said that "error is the overall requirement that provides the basis for their personal reproach against the creator of the criminal".

The principle of the existence of dolus and culpa should be evidence based errors that are accountable to the perpetrator (or Negligence liability or fault on fault liability). This principle if it is associated with the perpetrators of corruption would be difficult to prove. Therefore necessary application of legal principles which hold the perpetrators without proving any element of fault or strict accountability (strict liability) without having proved the presence or any element of fault on the criminal.

The principle of strict liability is necessary to caution against the balance between individual interests with the interests of society, because of criminal responsibility to change the paradigm of an expanded conception of error into the conception of the absence of fault at all. This concept was adopted by Act No. 31 1999 Jo Act No. 20 Year 2001 on Corruption Eradication, which espoused the principle of burden of proof but not by a legal system that adheres to the principles of criminal procedure stelsel negative proof system with the initial evidence for investigations and prosecutions.

Theory of evidence, there are four (4) types, namely:

i. Proof Positive Theory, that the guilt or innocence of the defendant relying upon some evidence that has been set in advance. According to this theory the judge's conviction must be set aside.
ii. Negative Proof Theory, that the judge may only convict if the least evidence that has been determined by the existing laws, the judge added confidence gained from their evidences that. The defendant could be found guilty of a criminal act against her, if there is evidence plus the judge's own convictions. That is the beginning of the obligation or burden of proof to prove

that the defendant is guilty of the Public Prosecutor, and if the public prosecutor was not able to present evidence against the defendant, the judge based on such evidence may attract further conviction verdict, the Criminal Code embraced this theory.

iii. Proof Theory Free, that evidence and proof manner not specified in the legislation. This theory recognizes the existence of evidence and proof manner, but not defined or regulated by law.

iv. Proof theory based on the belief, that the judge convict solely based on his personal beliefs and the decisions do not need to mention the reasons for its decision.

The evidentiary principle adopted by the Penal Code, is the principle of the presumption of innocence (presumption of innocence). Thus, it can be understood, that the Indonesian criminal procedural law (Criminal Code) adheres to the theory of negative evidence. It is apparent from the wording of Article 183 Criminal Procedure Code, which states that the evidence is legitimate, are the tools that had to do with a criminal offense, in which these tools can be used as material evidence, in order to generate confidence for the judge, upon the truth of the existence of a criminal offense has been committed by the defendant.

System of ordinary or conventional burden of proof, the general prosecutor to prove guilt of the accused and the accused may deny evidence of the prosecution in accordance with Article 66 of the Criminal Procedure Code. Theory reversal of the burden of proof that this dalamhal can be divided into the theory that the burden of proof is absolute or pure that the defendant prove to innocence. Then the reversal of the burden of proof that the theory is limited and balanced in terms of the accused and the prosecution to prove guilt or keridakbersalahan each of the accused. In essence, the principle of reversal of the burden of proof in criminal law system Indonesiaa known among others in corruption as stipulated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.

Corruption acts are criminal offenses as well as generally done in various modus operandi of irregularities keuangana state or country's economy, which is increasingly sophisticated and complex. So a lot of those cases of corruption escaped from the "network" system proving the Criminal Procedure Code. Because the evidentiary law, tried to apply remedies of proof.

Efforts legislators, the tidang half-hearted, because both the offense of corruption applied two systems simultaneously, namely Systems Act No. 31 of 1999 and at the same time the Criminal Code system. Both theory it is the application of the law of evidence is done by applying the reversed evidence is limited or balanced, and using negative verification system according to the legislation.

Proof as a business activity object to prove something which is evidenced by evidence that may be used in certain ways also to declare what it proved as proven or not under the Act. As we know that the process of verification activities carried out jointly by the three parties: judges, prosecutors and defendants legal counsel, every point has been determined and regulated by law. Overall legal provisions governing all aspects of the evidence that the so-called rules of evidence.

So, do not apply the theory of proof pure, but the theory of proof is limited and balanced. In the explanation of the Law No. 31 of 1999, said the term "reversed evidence is limited and balanced", ie, the defendant has the right to prove that he was not guilty of corruption and shall provide information about the entire possessions and property of his wife or husband , children, and property of any person or corporation who is suspected of having ties to the case in question and the public prosecutor still obliged to prove the charges.

Proof corruption acts adopted two theories of proof, namely:

i. Free Theory, which be followed by the defendant, and

ii. Negative Theory statutory, which be followed by a public prosecutor.

Free theory as reflected and implied a general explanation, as well as the intangible, matters listed in Article 37 of Law No. 31 of 1999, as follows:

i. The defendant has the right to prove that he was not guilty of corruption;

ii. In the event that the defendant can prove that he was not guilty of corruption, it shall be used as a beneficial thing for him;

iii. The defendant shall provide information about the entire possessions and property of the spouse, children, and property of any person or corporation who is suspected of having ties to the case in question;

iv. In the event that the defendant can not prove the disproportionate wealth and source of additional income or wealth, then the information can be used to strengthen existing evidence that the defendant was guilty of corruption;

v. In the circumstances referred to in subsection (1), paragraph (2), (3), and paragraph (4), the public prosecutor is still obliged to prove the charges.

Criminal law policy regarding the reversal of the burden of proof is also subject to the provisions of Article 38B paragraph (1) of Law No. 20 of 2001 which states that any person who is accused of committing one of the corruption of this Act shall prove otherwise his property that has not been indicted , but also probably derived from corruption. In effect, the provisions of this deed is a reversal of the burden of proof is devoted to the confiscation of wealth allegedly from corruption.

Imposition of proof as to the provisions of Law No. 20 of 2001 can be described is known about the faults of allegedly committing corruption as the provisions of Article 12B and Article 37 of Law No. 20 of 2001. Then the ownership of assets of the alleged offender is proceeds of corruption stipulated in the provisions of Article 37A and Article 38B (2) of Act 20 of 2001. Specifically Nomr, criminal law policy against corruption directed against the perpetrators and error to property derived from the alleged perpetrators of corruption.

3. Conclusion

The setting of the imposition of proof contained in Act No. 20 of 2001. The imposition of proof of property and wealth and the suspect or the accused as to which is referred to in Article 37 A and B of Article 38 paragraph (1) is a right thing but this arrangement must be accompanied by a statement saying about the position where the burden of proof is higher and eventually used as guidelines in decisions about whether or not the suspect's guilt. Article 38 A states that all evidence concerning reverse authentication is done at the

time of examination in court. Imposition of proof was given to the perpetrators of corruption by determining the presence and extent of loss the country has always been a heated debate between the various parties, for example between the defendant and his counsel with the public prosecutor, to determine that, during this attorney assisted many experts of Council Directive Finance and Development, or other expert appointed. Of course description is given of expert skill or after doing some sort of a special audit of the agency or company which cause losses to the state. If this state of financial loss associated with an item that is hard to do appraisal by appraisal services, is certainly to make an assessment.

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