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Corruption in Terms Legal Indonesia

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Abstract:
Corruption in Law No. 31 of 1999, not specified in accordance with the elements of a criminal offense in the formulation of the article, only refer only to the relevant chapters. While in Law No. 20 of 2001, which modify and add law No. 31 of 1999, in which the articles designated or related, elements specified, intended in chapters that new corruption. Are classified as criminal offenses Bribery group; group of criminal acts fraudulent act; group of criminal offenses or falsifying books examination list, group the crime of embezzlement; group a criminal offense receive a gift or pledge.
Element against the law in corruption polemical and problems in proving the "tort" in both the formal and material terms. Tort material in corruption experienced a state of suspended animation by the Constitutional Court Decision Number 033 / PUU-IV / 2006 dated July 25, 2006, which has eliminated the dimension tort materially. Arguments as a ratio decidenci Constitutional Court decision, namely, first, worth and qualified morality and sense of justice are recognized in society, varying from one region to another, two, studied from the practice of the establishment of laws and legislation are good, which is also recognized legally binding, the explanation serves to explain the substance of norms contained in articles and not add a new norm, moreover contains a substance that is completely contrary to the new norms described. Third, with regard to the legality principle in Article 1, paragraph (1) of the Criminal Code, the demand for legal certainty, which the person may be prosecuted and judged on the basis of a written law (lex scripta) that have been there first. Fourth, the concept of unlawful material (materiele wederrechtelijkheid) with a starting point in the law is not written in the size of propriety, prudence and precision that live in the community as a norm of justice, is a measure of uncertainty, and vary from one society to certain other public environments.

Keywords: *Corruption, law provisions indonesia*

1. Introduction

Characteristics of corruption is very different from the legal system adopted by rule Criminal Code, especially concerning the perpetrators of crime, the corruption of criminal responsibility is broader than general crime, namely:

a. The possibility of sentences in absentia (without the presence of the defendant). It is engaged in the Article 38 paragraph (1) till (3) UUPTPK.
b. The possibility of seizure of goods that have been seized for a defendant who had died before the verdict of the court which can not be changed anymore (Article 38 paragraph (5) UUPTPK. Decision Confiscation of the accused who have died may not be appealed (Article 38 paragraph (6) UUPTPK).
c. Formulation of corruption in UUPTPK very broad in scope, especially the third element in Article 2 till 13 UUPTPK. The element is "directly or indirectly detrimental to the financial and economy of the state or known or reasonably suspected by him, that the act was detrimental to state finance or economy.

Reformation marked by the appearance of corruption prevention and treatment initiatives at the central level. During the period 1998 to 2006 there were at least 13 (thirteen) regulations relating to the eradication of corruption. Of the various anti-corruption policy regulations, which have to do with the handling of laws against crimes of corruption, among others:

1. Law No. 31 of 1999, as amended by Act No. 20 of 2001 on Corruption Eradication.
2. Law No. 30 of 2002 on the Corruption Eradication Commission (KPK).

KPK is an important institution in the efforts to combat corruption. The institution is tasked to investigate cases of corruption with a loss of over 1 billion rupiah and attract public attention, to coordinate the supervision of law enforcement in handling cases of corruption, the state administrators, to monitor, investigate and prosecute corruption cases as well as various efforts to prevent corruption.

3. Presidential Instruction No. 5 of 2004 on Accelerating Efforts to Fight Corruption.
4. The Attorney General's Circular Letter No. 007 / A / JA / 1/2004 on the Acceleration Handling of Corruption in Indonesia. In this regulation clearly stated that the cases of corruption that still exists throughout the High Court and the State Attorney resolved within three (3) months.
5. National Action Plan for the Eradication of Corruption (RAN PK) 2004-2009 formulate action plans to eradicate corruption in the government managed by Bappenas in coordination with the Minister / non Department related, elements of the public and the Commission.
6. Circular No. Dirtipikor the Criminal Police Headquarters Pol .: B / 345 / III / 2005 on Corruption Case Handling Prioritization.

1.1. Grouping Corruption

In Law No. 31, 1999, the provisions of the articles are not specified in accordance with the elements of a criminal offense in the formulation of the article, but only refer to the articles concerned. While in Law No. 20 In 2001, a law change and add law No. 31, 1999, the articles of designated or related, elements of criminal offenses in the articles that intended specified in the articles of the new corruption. Of crimes designated or related to it can be classified as a criminal offense Bribery group; group of criminal acts fraudulent act; the crime of falsifying a book group or list examination; group of criminal offenses of embezzlement; group a criminal offense receive a gift or pledge.

1.2. Criteria Corruption

1.2.1. Elements of Unlawful In UUPTK

Article 2 (1) of the Act PTPK determine:

Any person who acts unlawfully enrich themselves or another person or a corporation that can be detrimental to state finance or economy of the state, shall be punished with imprisonment for life or criminal minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200.000.000, - (two hundred million rupiah) and maximum Rp. 1.000.000.000, - (one billion rupiah).

Article 2 (1) UUTPK requires several characteristic elements of criminal acts, namely: unlawfully enrich themselves or another person or a corporation, which can be detrimental to state finance or economy. Elucidation of Article 2 (1) UUPTPK, determine that what is meant by "unlawfully" is covering tort in the formal sense and in terms of material, ie, although such actions are not stipulated in the legislation; but if such actions are deemed reprehensible because it does not fit in society, then such actions can be imprisoned. It is against the law to carry out acts that can be punished, in this case to "enrich themselves or another person or entity or corporation" and includes acts of misconduct by a feeling of community justice must be prosecuted and remain convicted.

Literally "enrichment" means to get richer, while the word "rich" means having many possessions, money and so on. It can be argued that enrich the means to make people who are not rich to be rich or people who are already rich get richer. Under the provisions of Article 37 paragraph (4) it is known that the accused / suspect is obliged to provide information about the source of wealth in such a way so that the wealth that is disproportionate to the income or the addition can be used as evidence. The term "enriched" is indicated any change or addition to the wealth of one's wealth as measured from the income earned. Seeing the elements of proof to enrich themselves, another person or a corporation with nature against the law.

Article 3 UUPTPK determine that each person with the intention of enriching himself or another person or a corporation, abuse of authority, opportunity or means available to him because of the position or positions that could harm the state finance or economy of the state, shall be punished with life imprisonment or criminal imprisonment for one (1) year and a maximum of 20 (twenty) years and or a fine of Rp. 50.000.000, - (fifty million rupiah) and maximum Rp. 1.000.000.000, - (one billion rupiah).

Under the provisions of Article 3 UUPTK there are some elements, namely:

a. Each person,
b. With the intention of enriching himself or another person or corporation,
c. Abusing authority, opportunity or means available to him because of the position or positions,
d. Finances could harm the state or country economy.

1.2.2. The decision of the Supreme Court No. 42 K / Cr / 1966 dated January 8, 1966

The Supreme Court found the three (3) the nature of the loss of the element (bestandellen) against the material law as a reason for criminal eraser (not written) form factors to the state is not harmed, the public interest is served and the defendant does not make a profit.

The Supreme Court is also of the opinion to justify the opinion of the High Court that disappearance nature against the law can also be due to the principles of justice or principles of law are unwritten, which the Supreme Court in principle can justify that an action can generally lost its nature as unlawful, not only by a provision in the legislation, but also based on the principles of justice or principles of law are unwritten and general nature.

In essence, the Supreme Court's decision considerations is what is considered as the development of futuristic interpretation of the dive community's sense of justice on the one hand, on the other hand argue that since the decision was unlawful nature of the teaching material has had a positive function. This positive function, according to the general teaching criminal law, is not allowed because it is against the principle of legality.

1.2.3. Supreme Court Decision No. 2608 K / PID / 2006

Supreme Court Decision No. 2608 K / Pid / 2006 in a case of corruption by doing enrich themselves or another person or corporation that could harm the economy of the state finances. The Supreme Court argued in its consideration that expressed an explanation of Article 2 paragraph (1) of Law Number 20 Year 2001 jo Law No. 31 of 1999 as contrary to the Constitution of the Republic of Indonesia Year 1945 and has been declared also does not have binding legal force , it is the element against the law in Article 2 (1) UUPTK becomes unclear formulation is, therefore, based on the doctrine of "sens-clair" (la doctrine du sensclair) judge must perform legal discovery. Elements against law decided by the Supreme Court No. 2608 K / Pid / 2006 can be a tort is constructed as an act punishable in this regard is "to enrich themselves or another person or entity or corporation" and may also include acts of misconduct by a feeling of community justice.

1.2.4. The Constitutional Court Decision No. 003 / PUU-IV / 2006

Corruption polemical and prolonged the problems related to verification "unlawful act" both in terms of formal and material. Special tort material contained in both the positive and negative function becomes problematic in itself. Dimensions tort material either positive or negative function functions in the corruption experienced a state of suspended animation by the Constitutional Court Decision Number 033 / PUU-IV / 2006 dated 25 July 2006. The Constitutional Court has removed the dimension tort materially. There is some argument as the ratio decidenci Constitutional Court decision negates the nuances of tort material is namely: First, the elucidation of Article 2 paragraph (1) sentence first part of Act No. 31 jo Law No. 20 of 2001 which determines that the reference to "unlawfully" in this article include unlawful act in formal sense and in the sense of material that although such actions are not stipulated in the legislation, but if such actions are deemed reprehensible because it does not correspond to the sense of justice or the norms of social life in the community, then such actions can be imprisoned. Worthy and qualified morality and sense of justice are recognized in a society different from one region to another, will lead to that what is in the region is an act that is against the law, in other areas may not constitute an unlawful act. Secondly, studied from the practice of the establishment of laws and legislation are good, as the Constitutional Court Decision No. 005 / PIU-II / 2005, which was also recognized legally binding, the explanation serves to explain the substance of the norms contained in the article and did not add any new norm, let alone to include substances totally opposed to the new norm, let alone to include the substance completely contradict with the norms described. The provision of point E attachment Act No. 10 of 2004 on the Establishment of legislation, among other things determines explanation shaper serves as an official interpretation of legislation on certain norms in the torso. Explanations only load description or elaboration further norms regulated in the corpus that explanation as a means to clarify the norms of the torso, should not result in unclear norms described, the subsequent explanation can not be used as a legal basis to make further regulations and therefore was the explanation of the contents avoided formulation containing veiled changes to the statutory provisions in question. Thirdly, the Constitutional Court judge there was indeed a matter of constitutionality in the first sentence explanation of Article 2 (1) of Law Number 31 Year 1999 jo Law No. 20 of 2001, due to the provisions of Article 28 D Paragraph (1) of the 1945 Constitution recognizes and protects the constitutional rights of citizens to obtain insurance and legal protection certainly, by which in the field of criminal law translated as the legality principle in Article 1, paragraph (1) of the Criminal Code, that the principle is a demand for legal certainty, which the person may be prosecuted and judged on the basis of a law written (lex scripta) that have been there first. It thus demands that a crime has elements against the law, which must be in writing in advance force, which formulated the act or the result of human actions clearly and strictly prohibited so therefore can be prosecuted and criminal, in accordance with the principle of nullum crimen sine lege scripta by Hence the concept of unlawful formally written (formele wederrechtelijkheid), which obliges the legislator to formulate as carefully and as much detail as possible is a requirement to ensure legal certainty (lex certa). Fourth, the Constitutional Court held that the concept of unlawful material (materiele wederrechtelijkheid) with a starting point in the law is not written in the size of propriety, prudence and precision that live in the community as a norm of justice, is a measure of uncertainty, and vary from one environment given society to society other, so that what is against the law in one place might elsewhere be accepted and recognized as legitimate, and not against the law, according to the measure known in the life of the local community so that the elucidation of Article 2 paragraph (1) the first sentence of Law No. 31 of 1999 jo Law No. 20 of 2001 is incompatible with the protection and guarantee of fair legal certainty contained in Article 28 D Paragraph (1) of the 1945 Constitution, and thus the explanation of Article 2 paragraph (1) of the Act No. 31 of 1999 jo Law No. 20 of 2001 in the case of what is meant by "unlawfully" in this Article includes unlawful act in formal sense and in terms of material, ie, although such actions are not stipulated in the legislation, but if such actions considered reprehensible because it does not correspond to the sense of justice or social norms of life in society, then such actions can be imprisoned ", is contrary to the 1945 Constitution and does not have binding legal force.

2. Conclusion

1. In Act No. 31 of 1999, not specified in accordance with the elements of a criminal offense in the formulation of the article, only refer only to the relevant chapters. While in Law No. 20 of 2001, which modify and add law No. 31, 1999, in which the articles designated or related, elements specified, intended in chapters that new corruption. Classified as a group of criminal offenses of bribery; group of criminal acts fraudulent act; the crime of falsifying a book group or list examination; group of criminal offenses of embezzlement; group a criminal offense receive a gift or pledge.
2. Nature against formal law, which is an act that is against the law, when threatened with criminal action and formulated as an offense in the legislation; being the nature of its legal action against it can be deleted, only on the basis of a statute. So according to this teaching is the same as fighting against the law or contrary to law.

3. Nature against the material law, an act that is against the law or not, is not only contained in the legislation (written), but also to be seen the enactment of the principles of law that are not written. Nature against legal acts, which obviously included in the formulation of the offense can delete based formulation of laws that are not written (uber gesetzlich). So according to this teaching against the law the same as contrary to law (written law) and is also contrary to the unwritten law including deontology and so on. So the issue against legal action, if it meets the formulation offense act, the act is against the law.

3. Recommendation

1. There should be a strict separation between administrative violations in the implementation of work in government with the offense / crime of corruption. Violation of administration / procedures do not constitute corruption. Violations may be subject to administrative sanctions administration while the offense / crime of corruption can be punished as described above.
2. In the Criminal Law known criminal responsibility is "individual criminal responsibility" means that every person who blamed a criminal offense must be considered individually. Blame someone committing a crime, be held accountable individually according to his actions. This relates to the principle schuldhaftung: who does / guilty he is responsible or which do / guilty responsible. So the device error on education should not be charged to the Regent (unless previously there was a conspiracy / committing corruption).
3. Unlawfully in corruption is a formal law suit against the Constitutional Court Decision No. 003 / PUU-IV / 2006 dated 25 July 2006. So someone blamed guilty of corruption by the legislation in force (written / formal). A person should not be held guilty of corruption based on merit or based on the principle of fairness (material) for violating the principle of legality and the principle of legal certainty

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