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Juridical Review on Criminal Acts of Corruption Performed by Customers in State-Owned Enterprises

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Abstract---This study aims to determine: The application of material criminal law, and for judges' consideration of criminal acts of corruption committed by customers in state-owned enterprises. Qualitative research methods that describe the problems in the Decision. Data collection techniques: Surveys to research sites, literature studies through books, relevant research results, and related laws and regulations. Interviews with related parties and officials. Results: (1). The application of material criminal law to criminal acts of corruption in the decision of Article 18 of the 1999 Corruption Crime Act which has been amended by Law Number 20/2001 juncto. Article 55 Paragraph (1) 1st KUHP jo. Article 64 Paragraph (1) of the Criminal Code, is appropriate to be applied because it is carried out jointly. (2). The judge's consideration in the decision, based on the facts of the trial, evidence, and statutory regulations, the judge believes that the defendant abused his authority and harmed the state and could not be justified on the grounds of apologizing. Therefore, the defendant is legally and convincingly guilty of committing a criminal act of corruption that was carried out jointly. So the verdict of the trial judge is very correct.

Keywords---corruption, crime, customers, juridical review

Introduction

Corruption can paralyze and damage the sustainable development of the State. (Djamali, 2013). This corrupt practice can be found in various modus operandi and can be done by anyone. Regulations for eradicating criminal acts of corruption since 1971, namely Law Number 3 of 1971 concerning the Eradication of Corruption Crimes. Because this regulation was deemed ineffective, in following legal developments, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption was issued, and it was revised by Law Number 20 of 2001, namely Article 2 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001 explains that anyone who violates the law commits acts of enriching himself or another person or group that can harm the country's finances and economy. Furthermore, in Article 3 of Law Number 31 of 1999 jo. Law No. 20 of 2001, explains the behavior of corruption through abuse of authority (Bowles & Garoupa, 1997; Kugler et al., 2005; Glaeser & Saks, 2006).

The Law on the Eradication of Criminal Acts of Corruption is a hope for the State in eradicating corruption, however, eradicating corruption is still experiencing difficulties. Corruption as a chronic disease of society that cannot be cured spreads to all government sectors and also to state-owned companies. (Atmasasmita., 2016). Corruption begins and develops in the government and state-owned companies. With this power, public officials and state-owned companies can suppress or extort those who need services from the government or state-owned enterprises. Corruption in the private sector has also occurred a lot in the public sector, if the business is related to the public sector, for example, the taxation sector, banking, and other services.

The application of the Articles of Law-PTPK to corruption crimes that have fulfilled its elements has experienced errors in the application of prosecutors, judges, and legal advisors. (Hartanti., 2012). Perpetrators of criminal acts of corruption committed by customers of state-owned enterprises cause different views from legal circles. Problems found in the field in the application of articles by prosecutors, judges, and lawyers, in imposing articles on corruption cases that are not appropriate. (Taqiuddin & Risdiana, 2022). That is, the case fulfills the elements of Article 2 of the PTPK Law, but what is imposed is Article 3, the possibility of causing the incident to occur is because Article 3 has a lighter threat so that it is used to relieve the perpetrators. It often happens in other cases where the perpetrator is

sentenced to Article 2 while the perpetrator's actions only meet the elements of Article 3, namely the element of abuse of authority is fulfilled in its quality as an office holder.

Corruption committed by customers of Bank Negara Indonesia Persero. The defendant has the initials MPL, accused of committing a criminal act of corruption which was carried out jointly with the prosecution carried out separately. (Prasetyo, 2015). Primary indictment with Article 2 paragraph (1) Jo. Article 18 paragraph (1) letter b of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes jo. Article 55 paragraph (1) of the 1st Criminal Code. Subsidiary Article 3 Jo. Article 18 of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes jo. Article 55 paragraph (1) of the 1st Criminal Code.

In this case, Maria was proven to have violated Article 18 of the 1999 Corruption Crime Act which was amended by Law Number 20/2001 juncto. Article 55 Paragraph (1) of the 1st Criminal Code jo. Article 64 Paragraph (1) of the Criminal Code. (Soekanto., 2004). The defendant was declared legally and convincingly guilty of committing a criminal act of corruption which was carried out jointly on a subsidiary charge and sentenced to 18 years in prison and a fine of Rp 800 million, a subsidiary of 4 months in prison. In addition, the panel of judges required Maria to pay replacement money of Rp 185.8 billion.

Method

By using qualitative research that aims to understand the phenomena and symptoms experienced in the field on the research subject. (Ali, 2014). Used to research related to behavioral research in this case the criminal act of corruption.

Data collection techniques

The data collection techniques carried out by the author are:

- 1) Survey the research location field as research subjects to observe the phenomena that occur
- 2) Literature study by understanding books, relevant research results, and related laws and regulations.
- 3) Interviews with related parties and officials related to research.

Data Source

The sources used in this study are divided into two data, namely:

- 1) Primary data is obtained directly from the source in the field. Through interviews with judge officials and parties related to corruption cases.
- 2) Secondary data is research data obtained indirectly through intermediary media obtained and recorded through other materials by related parties

Discussion

Application of material criminal law against Bank Negara Indonesia corruption crimes

Material criminal law against corruption in the case under investigation, the application of material criminal law found in the data in this decision is an indictment (Moeljatno, 2021). the demands of the public prosecutor, and the verdict, which is as follows:

Case position

The case of the burglary of BNI Bank with a value of Rp. 1.7 trillion by Maria Pauline Lumowa and her colleagues, that since the beginning of the disbursement through letters of credit (L/C), worth the US \$ 157.4 million and 56.1 million euros is full clumsiness. As the burglar of PT Bank Negara Indonesia Tbk, with a value of Rp. 1.7 trillion, Maria Pauline Lumowa opened Pandora's box in this case. (Rato., 2010). After a long time of about 17 years, the

government was able to arrest a suspect named Maria Pauline Lumowa, as a burglar of BNI Bank, now he must end his escape and was arrested by the Ministry of Law and Human Rights through extradition from abroad, the State of Serbia. The perpetrator is a suspect in the burglary of funds from the BNI Kebayoran Baru branch through a fictitious Letter of Credit (L/C). The case of the BNI Bank burglary was carried out by corruptors and their gangs. Whereas in the disbursement of funds through a letter of credit facility L/C worth US\$ 157.4 million and 56.1 million euros using fictitious documents. (Djaja, 2010). The loan application is approved by the Regional Head of BNI Kebayoran Jakarta by providing details and requirements that need to be met. Then BNI Kebayoran, can further process applications for credit facilities, PT Aditya Putra Pratama Finance, and PT Infinity Finance. Based on the judge's decision, the Public Prosecutor.

Prosecutor's indictment

Indicted for money laundering Maria Pauline Lumowa as the owner or key person or controller of PT Sagared Team and Gramindo Group was charged with committing a criminal act of corruption together with Adrian Herling Waworuntu, witness Jane Iriany Lumowa, and witness Koesadiyuwono, and witness Edy Santoso, and witness Ollah Abdullah Agam, Adrian Pandelaki Lumowa and witness de Titik Pristiwati and witness Aprilia Widharta, and witness Richard Kountul in the period 2002-2003, filed for disbursement of Letter of Credit L/C by attaching fictitious export documents to BNI 46 thus violating the guidelines export. (Chazawi, 2012). The actions of Maria Pauline Lumowa as a suspect, by enriching herself, and others or being carried out in a corporation, can cause state finances of IDR 1.2 trillion. the various names and corporations that have benefited are as follows, Adrian Herling Waworuntu, PT Jaya Sakti Buana Internasional, PT Bima Mandala, PT Mahesa Karya Putra Mandiri, PT Prasetya Cipta Tulada, PT Infinity Finance, PT Brocolin International, PT Oenam Marble Industri, PT Restu Rama, PT Aditya Putra Pratama Finance, and PT Grahasali (Anokhin & Schulze, 2009; Gudjonsson, 1984; Ashforth & Anand, 2003).

Subsidiary

The Supreme Court sentenced Pauline Maria Lumowa to 18 years in prison and the Supreme Court also increased the sentence with replacement money that had to be returned to the state to 14 years in prison if she couldn't pay, which was previously required 7 years in prison. (Effendi, 2011). The punishment remains imprisonment for 18 years and a fine of Rp. 800 million, subsidiary to imprisonment for 4 months. With the obligation to pay compensation in the amount of Rp. 185,822,422,331 subsidiary with imprisonment for 14 years. So if he does not pay the replacement money, the defendant must serve the principal sentence of 18 years in prison and an additional 14 years in prison to 32 years in prison.

Public prosecution

The Public Prosecutor's demands demanded a prison sentence of 20 years and a fine of Rp. 1 billion, subsidiary to 6 months in prison. The Public Prosecutor stated that the suspect as the owner of PT Sagared Team and Gramarindo Group caused state losses of more than Rp 1.2 trillion. Asked the panel of judges for the Corruption Crime of the Central Jakarta District Court, which examined and tried the suspect's case, to impose a sentence of 20 years reduced on the defendant while the defendant is in detention so that the defendant remains detained. The prosecutor asked the judge to impose a fine of Rp. 1 billion, subsidiary to 6 months in prison, and to pay a fine of Rp. 185.8 billion. If the defendant does not pay the replacement money within one month after the verdict, his property will be confiscated by the prosecutor and auctioned off as replacement money. Demand that the panel of judges in the court of corruption declare that the defendant is proven legally and convincingly guilty of committing a criminal act of corruption (Rose-Ackerman, 1975; Levitt & Miles, 2007; Emmanuel et al., 2017).

Judges' considerations in decisions against corruption crimes

The judge in deciding the case with the considerations that the judge has as the basis for trying the defendant. (Pradwipta Brianaji et al., 2015). The judge's consideration in the decision number Article 55 Paragraph (1) 1 of the Criminal Code jo. Article 64 Paragraph (1) of the Criminal Code. Jakarta Corruption Court Judge, in the sentencing hearing that has been held. The presiding judge stated that the defendant was proven guilty of corruption and money laundering, with the case of burglary of Bank BNI which cost the state Rp 1.2 trillion. The trial stated that the defendant Maria Pauline Lumowa was legally and convincingly proven guilty of committing a criminal act of

corruption which was carried out together with money laundering. Sentencing the defendant in the form of imprisonment for 18 years and a fine of IDR 800 million, subsidiary of 4 months in prison. (Kanter, 2018). Whereas the defendant was also sentenced to pay compensation of Rp. 185 billion. So if he does not pay replacement money, then his property will be confiscated to be auctioned by the Prosecutor's Office, and if the convict does not have money to pay the replacement money, he will be sentenced to seven years in prison.

Consideration of judge's decision

For the judge's consideration, he has included things that are aggravating and mitigating the defendant, namely:

- 1) Things that relieve the defendant as polite behavior and have never been in prison and the assets of PT Sagared Team and PT Gramindo Group have been confiscated by the State.
- 2) The judge found that Maria had violated and did not support the government in eradicating corruption, and the defendant was included on the People's Wanted List, for avoiding and running away from the case that ensnared her.
- 3) The defendant is the owner or key person or controller of PT Sagared Team and Gramindo Group. (Lengkong, 2017). The judge said that the defendant was proven to have enriched himself and others by disbursing a Letter of Credit (LC) with fictitious documents.
- 4) Considering based on legal facts against the disbursement of 41 Letters of Credit (LC), which were submitted by the company by attaching fictitious documents, to enrich themselves and other people and groups, a total disbursement of funds from Letter of Credit (LC), with fictitious documents incorporated in PT Gramindo Group with a value of Rp 1,214,648,422,331.43 (Rp 1.2 trillion).

Corporate corruption

In this case, the defendant did not enjoy the results of the corruption alone. Together with i.e. Adrian Herling Waworuntu who enjoys Rp 300 billion, Ollah Abdullah Agam Rp 696.35 billion, Adrian Pandelaki Lumowa (late) Rp 308.24 billion, Pristiwati Point Rp. 178.59 billion, Aprilia Widharta IDR 28.22 billion, Richard Kountul Rp 44.41 billion. Meanwhile, the judge stated that the defendant had fulfilled two elements in this case, namely: (a). Enriching self and others (2). It is detrimental to state finances.

Amar judgment/dictum

Considering based on the considerations above, the element of enriching oneself or another person called a corporation has been fulfilled in the defendant's actions. (Winanti, 2019). So the assembly believes that the element of harming the state has been fulfilled. Disbursement of 41 Letters of Credit (LC) with attachments of fictitious export documents, by making credit to Bank BNI, with a checking account at Gramarindo Group, with witness statements stating that the loan was an appointment from the defendant. Violating Article 2 paragraph 1 in conjunction with Article 18 of Law of the Republic of Indonesia Number 31 of 1999 concerning Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Crimes of Corruption in Article 55 paragraph 1 of the Criminal Code in conjunction with Article 64 paragraph 1 of the Criminal Code. Violating Article 3 paragraph 1 letter an of Law Number 15 of 2002 concerning the prevention and eradication of money laundering offenses as amended by Law Number 25 of 2003 concerning amendments to Law Number 15 of 2002 concerning the prevention and eradication of money laundering offenses (Amiruddin, 2012; Effendi, 2011; Gaviria, 2002; Deflem, 1995; Arsawati 2016).

Conclusion

Based on the results of the discussion above, the researchers can conclude as follows: The application of material criminal law to criminal acts of corruption committed by customers of state-owned enterprises in the decision Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Crime of Corruption in Article 55 paragraph 1 1 of the Criminal Code in conjunction with Article 64 paragraph 1 of the Criminal Code, and the application of the article is appropriate because the elements of a criminal offense in the article have been proven to have been fulfilled. Likewise, Article 55 paragraph (1) of the 1st Criminal Code is

appropriate to apply to this case because of the realization of the offense due to the cooperation between the Defendant, his partner, and the credit applicant.

The judge's consideration in deciding on the criminal act of corruption committed by the Defendant as a customer of a state-owned enterprise in the decision number Jo Article 55 paragraph 1 1 of the Criminal Code Jo Article 64 paragraph 1 of the Criminal Code, is appropriate because in the judge's consideration, the defendant's actions are the act of abusing his authority to benefit others which results in harming the state's finances and there is no justification, the defendant is a person who according to law is capable of being responsible, and committed the act intentionally and there is no excuse for forgiveness. So the judge believes that the defendant is legally and convincingly guilty of committing a criminal act of corruption that is carried out jointly because it has fulfilled the elements in Article 3 of Law no. 31 of 1999 jo. UU no. 20 of 2001 jo. Article 55 paragraph (1) of the 1st Criminal Code.

Suggestion

Law enforcers, both judges, prosecutors, and lawyers must know and understand and be qualified, especially regarding the law of criminal acts of corruption, because it is expected that when handling cases they can apply the appropriate provisions of criminal law, articles, and legislation, so that the perpetrator's criminal acts of corruption receive punishments commensurate with unlawful acts, so that there is a deterrent effect, which is based on the proper application of criminal law according to the article, so a sense of justice can be felt for all parties. For banking actors, in this case, BNI Bank, so as not to suffer state financial losses due to misunderstandings about acts of corruption, in carrying out banking activities, they must be careful in paying attention to the applicable laws and regulations, including the Company's Internal Regulations. Bank BNI must be transparent, accountable, and adhere to the principles of good banking management and avoid conflicts of interest in making decisions in conducting transactions.

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