



THE EXISTENCE OF THE CRIMINAL THREAT OF THE DEATH PENALTY IN THE CRIMINAL ACT OF CORRUPTION IN INDONESIA

Utreck Ricardo¹, Firman Halawa²

Universitas Pembangunan Panca Budi, Medan^{1,2}

*Correspondence Email: utrecksiringo80@gmail.com

ABSTRACT

The uncontrolled increase in criminal acts of corruption will bring disaster not only to national economic life but also to the life of the nation and state in general. The Corruption Eradication Commission took over the investigation and prosecution as intended on the grounds that public reports regarding criminal acts of corruption were not followed up, the process of handling criminal acts of corruption was protracted or delayed without justifiable reasons. The purpose of this research is to find out and analyze what is the legal basis for the Corruption Eradication Commission's authority to carry out investigations and prosecutions? What are the obstacles faced by the Corruption Eradication Commission in carrying out investigations and prosecutions of corruption crimes? The research method used is normative juridical. The type of data used is secondary data. The results of the research are that the authority of the Corruption Eradication Commission to handle corruption cases is regulated in Article 6 letter c of the Corruption Eradication Commission Law which states that the Corruption Eradication Commission has the task of carrying out inquiries, investigations and prosecution of criminal acts of corruption. However, the Corruption Eradication Commission has additional authority, namely that it can take over corruption cases even if they are being handled by the Police or Prosecutor's Office (Article 8 paragraph (2) of the Corruption Eradication Committee Law). However, the takeover of the corruption case must be for the reasons stipulated in Article 9 of the Corruption Eradication Committee Law. Apart from the authority to take over corruption cases, there are other things that fall under the authority of the Corruption Eradication Committee, namely as regulated in Article 11 of the Corruption Eradication Commission Law and Article 50 of the Corruption Eradication Commission Law. The conclusion is that mutually agreed arrangements are needed to eliminate the notion that there is overlapping authority in terms of who has the authority to prosecute criminal acts of corruption that emerged after the issuance of the Law.

Keywords: Prosecutor, Corruption Crime.

INTRODUCTION

The establishment of the Corruption Eradication Commission (KPK) is a mandate from Article 43 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (KPK) which is independent with the task and authority to eradicate criminal acts of corruption. The Corruption Eradication Commission has a vision to create an Indonesia free from corruption and a mission to drive

change to create an anti-corruption nation. Regarding the breadth of authority that the Corruption Eradication Committee has compared to the Police and Prosecutor's Offices, there is potential for overlap in the use of authority between the three institutions. For example, in the case of alleged corruption in the two-wheeled and four-wheeled simulator project for the driving license (SIM) exam which involved high-ranking members of the police as suspects, this case resulted in the withdrawal of 20 police investigators at the Corruption Eradication Committee (KPK) which indirectly weakened the Corruption Eradication Commission's performance in eradicating criminal acts of corruption in Indonesia. . To overcome this and to make the KPK more effective in eradicating corruption, it is necessary to have the authority of the KPK to appoint independent investigators and at the same time be able to overcome the lack of norms in the KPK. The Corruption Eradication Commission has the task of carrying out inquiries, investigations and prosecutions of criminal acts of corruption. The definition of an investigator is an investigator at the Corruption Eradication Commission who is appointed and dismissed by the Corruption Eradication Commission. Investigators as referred to above carry out the function of investigating criminal acts of corruption. Law Number 30 of 2002 concerning the Corruption Eradication Commission in Article 3 and Article 4 states that "The Corruption Eradication Commission is a State Institution which in carrying out its duties and authority is independent and free from the influence of general power" in Article 4 "The Corruption Eradication Commission is formed by the aim of increasing the efficiency and effectiveness of efforts to eradicate criminal acts of corruption." 1 Article 6 of Law Number 30 of 2002 regulates the authority of the Corruption Eradication Commission clearly, namely as follows: 1. Coordination with agencies authorized to eradicate criminal acts of corruption 2. Supervise agencies authorized to eradicate criminal acts of corruption. 3. Carry out investigations, investigators and prosecutions of criminal acts of corruption. 4. Carry out measures to prevent criminal acts of corruption and, monitor the administration of state government.

FORMULATION OF THE PROBLEM

1. What is the legal basis for the KPK's authority to carry out investigations and prosecutions?
2. What obstacles does the KPK face in carrying out investigations and prosecutions in corruption crimes?

METHOD

This research is normative research. The type of research used is normative juridical, namely a research method that examines the authority of the Corruption Eradication Commission (KPK) in efforts to eradicate criminal acts of corruption in Indonesia. The research approaches used include the statutory approach and the case approach. The type of data used is secondary data. Secondary data sources used include primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials consist of legislation, treatises on making legislation and judges' decisions. The law studied is Law no. 30 of 2002 concerning the Commission for the Eradication of

Election Corruption Crimes Article 50 which relates to the authority of the Corruption Eradication Commission and other law enforcement institutions in carrying out investigations. The data collection techniques used are library materials through literature books, statutory regulations, as well as data collection through electronic media related to the problem being studied. The analysis used is qualitative. namely analyzing research data to then be studied in depth and interpreted by researchers to obtain the expected conclusions. The legal materials that have been systematized are then analyzed qualitatively.

RESULTS AND DISCUSSION

1. **Becomes the legal basis for the Corruption Eradication Committee's authority to carry out investigations and prosecutions**

According to Leden Marpaung, corruption is the act of possessing "state finances" illegally (haram). In the Big Indonesian Dictionary of the Department of Education and Culture as quoted by Leden Marpaung, corruption is defined as: "... misappropriation or embezzlement (of state or company money and so on) for personal or other people's interests. The word "state finances" is usually inseparable from "government officials", because those who manage "state finances" are government officials. 4 Definition of Corruption Crimes according to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes contained in Article 2 paragraph (1) and Article 3. Article 2 paragraph (1) determines that "any person who unlawfully commits an act of enriching himself or another person or a corporation which can cause financial loss." state or state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)". And in article 3 it states "any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the State's finances or the State's economy, shall be punished by life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

Law enforcement against criminal acts of corruption carried out by institutions such as the Prosecutor's Office of the Republic of Indonesia and the Police of the Republic of Indonesia, in practice often faces obstacles and is seen as not independent and independent. 5 There are various approaches that can be taken to the problem of corruption, and the meaning remains appropriate no matter how we approach the problem. that, from various aspects. A sociological approach, for example, as used by Syed Hussein Alatas in his book *The Sociology of Corruption*, would have a different meaning if we took a normative approach; Likewise with politics and economics. The emergence of the Corruption Eradication Commission (KPK) whose function is to carry out inquiries, investigate and prosecute criminal acts of corruption is a response

to the ineffectiveness of handling criminal acts of corruption by the Police and Prosecutor's Office. The formation of the Corruption Eradication Commission as an independent institution that has special authority in eradicating corruption is based on the need for a corruption eradication institution that is free from the influence of any power.

The Corruption Eradication Committee Law clearly gives the Corruption Eradication Commission very broad and extensive authority to systematically prevent and eradicate corruption and makes the Corruption Eradication Committee the main pillar in eradicating corruption. However, the existence of the Corruption Eradication Committee (KPK), with all its duties and authorities, provides a gap of weakness while still providing a large role for the Police and Prosecutor's Office in carrying out their duties and authority in eradicating criminal acts of corruption. The uncontrolled increase in criminal acts of corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. Widespread and systematic criminal acts of corruption which constitute a violation of the social and economic rights of the community. Therefore, criminal acts of corruption can no longer be classified as ordinary crimes but have become extraordinary crimes. Likewise, efforts to eradicate it can no longer be carried out normally, but are required in extraordinary ways. 6 Law enforcement to eradicate criminal acts of corruption carried out conventionally has so far proven to experience various obstacles. For this reason, various extraordinary methods of law enforcement are needed through the establishment of a special agency that has broad, independent authority and is free from any power in an effort to eradicate criminal acts of corruption, the implementation of which is carried out optimally, intensively, effectively and professionally.⁷ By Therefore, according to Mertokusumo, if in law enforcement, what is considered is only legal certainty, then other elements are sacrificed, likewise if what is considered is only expediency, then legal certainty and justice are sacrificed. 8 Basically, the formation of the Corruption Eradication Commission is aimed at increasing efficiency and results. in order to eradicate criminal acts of corruption. The Corruption Eradication Committee (KPK) can be categorized as a special (ad hoc) body which was formed with the main aim of handling certain corruption cases.

In Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission. The Corruption Eradication Committee (KPK) is a special agency that has broad, independent authority and is free from any power to eradicate corruption. The Corruption Eradication Committee (KPK) was formed because the Police, Prosecutor's Office, or other institutions that were supposed to prevent corruption could not work well in eradicating corruption in Indonesia. The way to deal with corruption must be in an extraordinary way. For this reason, the Corruption Eradication Committee (KPK) was formed which has extraordinary authority, so it is not surprising that the Corruption Eradication Commission (KPK) is called a super body. Furthermore, the authority of the Corruption Eradication Commission as mandated in Articles 7, 8, 9, 10, 11, 12, 13 and 14 of Law Number 30 of 2002, as supporting the

implementation of the duties as intended in Article 6 of Law Number 30 of 2002, Commission Corruption Eradication. Based on the provisions of Article 43 of Law no. 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law no. 20 of 2001, a special agency was formed to handle efforts to eradicate corruption. The special agency in Law no. 30 of 2002 is the Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission (KPK). The formation of the Corruption Eradication Committee (KPK) was based on the need to have an independent public prosecutor (JPU) in handling corruption cases. 9 Eradicating Corruption has now become an agenda for the international community. At the same time, provisions have also been agreed on that regulate the establishment of an independent anti-corruption institution, a mechanism for returning assets resulting from corruption in the country. others through "mutual legal assistance"; extradition, "joint investigation; transfer of sentenced person; transfer of proceedings; and the obligation to report annually to an "international institution" called the "Conference of the Parties". 10 Law enforcement or application of the law and judicial processes or court proceedings are important elements of legal certainty. However, the two things above are not sufficient to achieve legal certainty, let alone guarantee the fulfillment of the needs and satisfaction of the legal interests of justice seekers or the wider community in general. so that it can be seen as a violation of human rights, namely the socio-economic rights of the people. Therefore, the public longs for the Corruption Eradication Commission (KPK) as an institution that is the hope of the Indonesian nation that emerged amidst existing law enforcement institutions in line with the crisis of public confidence in the law itself. Another broader authority of the Corruption Eradication Commission is to take over the authority of investigation and prosecution from the police and prosecutors with the principles of "trigger mechanism" and "take over mechanism".

This takeover of authority can be carried out if there are indications of "unwillingness" from the relevant institution in carrying out its duties and authority. Indications of "unwillingness" are based on Article 9 of the Corruption Eradication Committee Law, namely (i) the existence of public reports regarding criminal acts of corruption which are not followed up, (ii) the process of handling criminal acts of corruption which is protracted, (iii) the existence of elements of nepotism which protect the perpetrators. corruption, (iv) interference from the executive, legislative and judiciary, (v) other reasons that make handling criminal acts of corruption difficult to carry out. The impact of criminal acts of corruption can be seen from the occurrence of various natural disasters and environmental damage such as floods, even Nyoman Union Putra Jaya said that the negative consequences of criminal acts of corruption are very detrimental to the fabric of the nation's life, in fact corruption is a deprivation of the economic and social rights of the Indonesian people. 12 The victims of corruption are invisible and not individuals, but the State. It is precisely because of this invisibility that the public does not generally feel that corruption is a criminal act that endangers citizens (at least directly). Another thing is that street crimes are much higher than

corruption crimes, so public perception is difficult to change because street crimes are visible. 13 Corruption crimes are extraordinary crimes so they need comprehensive handling because difficulties occur, one of which is in terms of prosecution.¹⁴ All authorities relating to investigations, investigations and prosecutions regulated in Law Number 8 of 1981 concerning Criminal Procedure Law also apply to investigators, investigators and public prosecutors at the Corruption Eradication Commission. The provisions as intended in Article 7 paragraph (2) of Law Number 8 of 1981 concerning Criminal Procedure Law do not apply to investigators of criminal acts of corruption as stipulated in this Law. (Article 38 of Law Number 30 of 2002 concerning the Corruption Eradication Commission (UU 30/2002)). The judicial justice system is essentially identical to the law enforcement system, because the judicial process is essentially a process of enforcing the law, so it is essentially identical to the "judicial power system" because "judicial power" is basically the "power/authority to enforce the law". If focused on the field of criminal law, it can be said that the "Criminal Justice System" (known as SPP or Criminal Justice System/CJS) is essentially a "Criminal Justice System" which is essentially identical to the "Judicial Power System in the Field of Criminal Law" (SKK-HP).

Investigations, prosecutions and examinations in court as well as the implementation of decisions that have obtained permanent legal force regarding criminal acts as intended in this Law are carried out in accordance with the provisions of statutory regulations, unless otherwise provided in this Law (Article 68 Law 8/2010). Investigations into criminal acts of corruption are carried out by predicate criminal investigators in accordance with the provisions of the procedural law and provisions of statutory regulations, unless otherwise determined according to this Law. (Article 74 Law 8/2010) The large amount of intervention aimed at the Corruption Eradication Committee is a challenge for the Corruption Eradication Commission commissioners in carrying out their duties and authority.

Regarding the Corruption Eradication Commission's authority in terms of policies to prevent and eradicate criminal acts of corruption, it will be limited to only a few things. These provisions can be seen in article 11 of Law Number 30 of 2002 concerning the Commission for the Eradication of Corruption, which states that criminal acts of corruption that fall within the authority of the Corruption Eradication Commission are: a. Involving law enforcement officials, state officials and other people who are related to criminal acts of corruption committed by law enforcement officials or state officials; b. Get attention that disturbs the public; and/or c. Concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah). With this, the Corruption Eradication Committee is presented to only handle corruption cases that meet these criteria, so its authority is limited. Even though other articles stipulate that the Corruption Eradication Committee can take over cases handled by other law enforcement officials for several reasons, one of the reasons is that the handling of criminal acts of corruption contains elements of corruption. During the New Order regime's reign, the working mechanisms of conventional law enforcement institutions

were inseparable from executive control and during this transition period the existence of conventional law enforcement institutions experienced a legitimacy crisis. 16 Restrictions like this directly narrowed and reduced the portion of the Corruption Eradication Committee's authority as a specially formed commission. eradicate corruption, although in certain cases the Corruption Eradication Commission may override some of these provisions. However, this remains an obstacle for the Corruption Eradication Committee in carrying out its duties and authority. For example, with the authority of the Prosecutor's Office and the Corruption Eradication Commission in carrying out prosecutions for criminal acts of corruption, there has been a dualism in the prosecution of criminal acts of corruption. even though according to the provisions of the law the person who has the authority to prosecute criminal acts is a prosecutor within the Prosecutor's Office of the Republic of Indonesia.

2. **Obstacles Faced by the Corruption Eradication Committee in Carrying Out Investigations and Prosecution in Corruption Crimes**

On the one hand, the function of the Corruption Eradication Commission (KPK), as a super body for law enforcement for corruption crimes, has received juridical justification. So the presence of the Corruption Eradication Commission generally tends to cause controversy in the practice of law enforcement for corruption crimes at the field level. In particular, there is an impression of selective logging whose traces cannot be erased. On the other hand, the role of law enforcement institutions, such as the police and prosecutors, feels reduced. Because, previously handling corruption cases was the joint authority of the police and prosecutors. However, since the issuance of Law No.30/2002, corruption crimes, in a certain size (above 1 billion) are the competence jurisdiction of the Corruption Eradication Commission. Thus, the police, which is the gateway to the investigation and investigation process in law enforcement in violations and crimes, including corruption crimes, is greatly reduced. In certain corruption crimes, the police are unable to carry out inquiries and investigations at the field level, creating a counter-productive situation for the police's image. Problems in law enforcement regarding criminal acts of corruption must be resolved properly, so there is a need for harmonization between institutions handling corruption crimes, meaning that institutions handling corruption know their respective duties and authorities in eradicating and enforcing the law on criminal acts of corruption. The most important thing in law enforcement for criminal acts of corruption is cooperation between institutions handling criminal acts of corruption by providing handling of inquiries and inquiries and even sharing in handling corruption cases.

CLOSING

Conclusion

Based on the description in the discussion chapter, conclusions can be drawn as follows:

The KPK's authority to handle corruption cases is regulated in Article 6 letter c of Law no. 30 of 2002 concerning the Corruption Eradication Commission states that the Corruption Eradication Committee (KPK) has the task of carrying out inquiries, investigations and prosecutions of criminal acts of corruption. However, the Corruption Eradication Commission has additional authority, namely that it can take over corruption cases even if they are being handled by the Police or Prosecutor's Office (Article 8 paragraph (2) of the Corruption Eradication Commission Law). However, the takeover of the corruption case must be for the reasons stipulated in Article 9 of the Corruption Eradication Commission Law. Apart from the authority to take over corruption cases, there are other things that fall under the authority of the Corruption Eradication Commission, namely as regulated in Article 11 of the Corruption Eradication Commission Law and Article 50 of the Corruption Eradication Commission Law.

REFERENCES

- Aditjondro, George Junus. 2002. *Korupsi Kepresidenan di Masa Orde Baru*, dalam *Mencari Uang Rakyat 16 Kajian Korupsi di Indonesia*. Buku I. Yogyakarta: Yayasan Aksara.
- Akhmaddhian, Suwari. *Penegakan Hukum Lingkungan dan Pengaruhnya Terhadap Pertumbuhan Ekonomi di Indonesia (Studi Kebakaran Hutan Tahun 2015)*, *Jurnal Unifikasi*, ISSN 2354-5976 Vol. 03 Nomor 01 Januari 2016. FH Uniku, Kuningan. pp.1-35.
- Atmasasmita, Romli. 2004. *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*. Bandung : Mandar Maju. Atmasasmita, Romli. 2004. *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*. Bandung : Mandar Maju.
- Djaya, Ermansjah. 2008. *Memberantas Korupsi Bersama KPK kajian Yuridis Normatif UU No. 31 Tahun 1999 jo. UU No. 20 Tahun 2001 Versi UU No. 30 Tahun 2002*, Cet. Pertama. Jakarta ; Sinar Grafika Offset.
- Effendy, Marwan. 2005. *Kejaksaan RI Posisi dan Fungsinya dari Perspektif Hukum*, Jakarta : Gramedia Pustaka Utama.
- Hartanti, Evi. 2008. *Tindak Pidana Korupsi*, Edisi Kedua. Jakarta : Sinar Harapan Offset.
- Harkrisnowo. Harkristuti. 2009. *Korupsi, Konspirasi dan Keadilan di Indonesia*, dalam *jurnal kajian putusan pengadilan DICTUM*, L e I P 1.
- Ibrahim, Jhonny. 2005. *Teori dan Metode Penelitian Hukum Normatif*. Malang : Bayumedia Publishing.
- Jaya, Nyoman Sarekat Putra. 2008. *Beberapa Pemikiran ke arah Pengembangan Hukum Pidana*. Jakarta :

- Citra Aditya Bakti. Lubis, M. dan J.C. Scott. 1997. *Korupsi Politik*, Jakarta : Yayasan Obor Indonesia. Manan, Bagir. 2005. *Sistem Peradilan Berwibawa (Suatu Pencarian)*, Cet. Pertama. Yogyakarta : FH UII Press.
- Marzuki, Peter Mahmud. 2008. *Penelitian Hukum*. Edisi Pertama, Cetakan Ke-4. Jakarta : Predana Media Group. Muladi. 1995. *Kapita Selekta Sistem Peradilan Pidana*, Semarang : Badan Penerbit Universitas Diponegoro.
- Firman Halawa, *Kebijakan Hukum Pidana Terhadap Tindak Pidana Korupsi Pemyalahgunaan Wewenang Dalam Jabatan Pemerintah Menurut Undang-Undang Nomor 30 Tahun 2014*, *Jurnal Sosial dan Ekonomi*, 1 (1), 41-51, 2020.
- Yasmira Mandasari Saragih, Firman Halawa, Sukur Tandino, T Riza Zarzani, (*BIRCI-Journal*) 4 (3), 4678-4684, 2021.
- Ferina, dkk, *Tinjauan Kesiapan Pemerintah Desa Dalam Implementasi Peraturan Menteri Dalam Negeri Nomor 113 Tahun 2014 Tentang Pengelolaan Keuangan Desa (Studi Kasus Pada Pemerintah Desa Di Kabupaten Ogan Ilir)*. *Jurnal Manajemen dan Bisnis*, Volume 14, Nomor 3, 2016.
- Hasyim Adnan, *Pengawasan Alokasi Dana Desa Dalam Pemerintahan Desa*, *Jurnal Al'Adl*, Volume 8, Nomor 2, Mei-Agustus 2016.
- Ismaidar, *Aspek Hukum Mengenai Tindak Pidana Terhadap Para Pelaku Korupsi*, *Jurnal Doktrin*, Volume 3, Nomor 5, Januari 2015.
- Ivan Freyser Simorangkir, Syaiful Asmi Hasibuan, *Analisis Hukum Terhadap Pembuktian Terbalik Dalam Tindak Pidana Korupsi Di Indonesia*. *Journal Of Social Science Research* 3 (4) 7926-7938, 2023.
- Moh. Sofiyanto, dkk, *Pengelolaan Dana Desa Dalam Upaya Meningkatkan Pembangunan Di Desa Banyuates Kecamatan Banyuates Kabupaten Sampang*, e-Jurnal Riset Manajemen Prodi Manajemen Fakultas Ekonomi Unisma, November 2016.
- Yusrianto Kadir dan Roy Marthen Moonti, *Pencegahan Korupsi Dalam Pengelolaan Dana Desa*, *Jurnal Ius*, Volume 6, Nomor 3, Desember 2018.