ISSN 2830-4624

published by Master of Law, Faculty of Law Universitas Islam Sultan Agung

Volume 3 No. 4, December 2024

Ideal Formulation of Corruption Crime Investigation...
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Ideal Formulation of Corruption Crime Investigation Conducted Under Certain Circumstances

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Abstract. The purpose of this research is to find out and analyze the implementation of corruption crime investigations in certain circum stances. To find out and analyze the obstacles in the implementation of corruption crime investigations in certain circumstances. To find out and analyze the ideal formulation of corruption crime investigations carried out in certain circumstances. The method used by the researcher is normative legal approach and the specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from literature studies. Based on the results of the study,The implementation of corruption investigations in certain circumstances, namely in the investigation process, case development techniques are used to collect data and facts of the case. In addition, the police use investigative audit techniques as a method of searching and collecting data, information and other findings to find out the truth or even the error of a fact by coordinating with the BPK/BPKP. In cases of corruption committed by state officials, there must be a permit that must be completed before conducting an investigation. The obstacles are the lack of legal certainty and loopholes in the laws and regulations. Unclear or even overlapping legal provisions can cause confusion and hinder the investigation process. This can make the implementation of our duties less effective. The solution is to revise the laws and regulations. This aims to clarify existing legal provisions and eliminate articles that conflict with each other. The ideal formulation of corruption investigations carried out in certain circumstances is the implementation of its authority, has resolved corruption cases with a fairly large amount of state losses. Thus, the role of Polri investigators is still very much needed in conducting corruption investigations, considering that more than half of the public reports have not been resolved by the Police.

Keywords: Corruption; Crime; Formulation; Investigation.

1. Introduction

The Republic of Indonesia is a country based on law, therefore all aspects of the organization and administration of the state are regulated in a system of laws and regulations. This is as regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a state based on law. As a country of law, it is only right that everything carried out in the life of the state and society must also be within the corridor of law. This means that in society, law is absolutely necessary to regulate relations between citizens and relations between society and the state.

In relation to this matter, Satjipto Raharjo³ stated that in every society there must be laws that regulate the behavior and life order of the members of society. For the existence of legal order in society, components of activities are needed, namely the creation of legal norms, the implementation of these legal norms and the resolution of disputes that arise in an atmosphere of legal order. If we look at the life of society in Indonesia today, we can see that there have been many regulations issued to maintain the continuity of life as a state and society. The issuance of these regulations illustrates the existence of legal norms that are created to regulate the rights and obligations of the state and society. The implementation of regulations containing these legal norms is basically part of law enforcement because law enforcement is an effort to ensure that the law must be obeyed. Violations or deviations from applicable laws will be subject to sanctions in accordance with the provisions stipulated in the law. In this case, criminal law is used. Thus, law enforcement using criminal law and civil law instruments is also an effort to seek justice.

Crime or criminal acts as a social phenomenon in society, can cause material and immaterial losses to society. One of the main causes of crime or criminal acts is the weakening legal awareness of society. This is a supporting factor for society to commit crimes or criminal acts. "Corruption in Indonesia has become very widespread and has entered all levels of society." 4continues to increase from year to year, in the number of cases that occur and the amount of state financial losses,

¹Sri Endah Wahyuningsih and Rismanto, 2015, Criminal Law Enforcement Policy Against Money Laundering in the Context of Reforming Criminal Law in Indonesia, Journal of Legal Reform, Volume II No 1, p.46, url: http://jurnal.unissula.ac.id/index.php/PH/article/view/1414/1087

²Angga Dwi Arifian and Sri Kusriyah, 2021, The Investigation on Criminal Acts of Corruption in the Jurisdiction of Rembang Police, Law Development Journal, Volume 3 Issue 3, p. 460 url:http://jurnal.unissula.ac.id/index.php/ldj/article/view/16086/5838

³Sajipto Rahardjo, 1979, Law and Social Change, Alumni, Bandung. p. 102

⁴Supreme Court of the Republic of Indonesia, Corruption in the Vortex of Politics and Culture, article in https://www.pn-palopo.go.id/index.php/berita/artikel/220-korupsi-dalampusaran-politik-dan-budaya, accessed on June 3, 2024, at 18.45 WIB

"and in terms of the quality of criminal acts of corruption that are carried out increasingly systematically and have entered all aspects of people's lives."⁵

Corruption can no longer be classified as an ordinary crime but has become an extraordinary crime. The trend of corruption cases is increasing day by day, even today there is a growing public opinion that corruption has become a new culture, in the sense that it has mastered the behavior of not only the state bureaucracy, but also the world of education.

In addition to causing state losses and national and state life, corruption also has a negative impact on democracy, the economy, and the general welfare of the state. Often the crime of corruption is associated with state apparatus, both civil servants and state officials or often referred to as white collar crime.⁶

According to Lawrence M. Friedman, ⁷legal system is a legal entity consisting of three elements, namely legal structure, legal substance and legal culture. In simple terms, the legal structure is related to institutions or institutions that implement the law or can be said to be law enforcement officers. In terms of criminal law, the institution tasked with implementing it is manifested in a criminal justice system, which is essentially a system of power to enforce criminal law consisting of investigative power, prosecutorial power, power to try and pass decisions and the power to implement decisions/criminals by implementing/executing bodies/apparatus. ⁸In the process of enforcing criminal law, these elements are manifested in the institutions of the Police, Prosecutor's Office and Courts.

Corruption cases are currently becoming a case that continues to be in the spotlight in Indonesia because the perpetrators are none other than state officials who occupy important positions in government. Corruption is an unlawful act that can directly or indirectly harm the country's economy, which in terms of material, is seen as an act that is contrary to the values of social justice.⁹

Based on the problems above, the objectives of this study are as follows: to find out and analyze the implementation of corruption crime investigations in certain circumstances. To find out and analyze the obstacles in the implementation of corruption crime investigations in certain circumstances. To find out and analyze the ideal formulation of corruption crime investigations carried out in certain circumstances.

⁵Anti Corruption Clearing House, Long History of Corruption Eradication in Indonesia, article in https://acch.kpk.go.id/id/component/content/article?id=144:sejarah-panjangpemberantasan-korupsi-di-indonesia, accessed on June 3, 2024, at 18.46 WIB

⁶Teguh Suista and Aria Zurneti, Criminal Law: New Horizons Post-Reformation, Raja Grafindo Persada, Jakarta, 2011, p. 63.

⁷Lawrence M. Friedman, 1975, The Legal System, Asocial Secience Perspective, Russell Sage Foundation, New York

⁸Barda Nawawi Arif, 2001, Problems of Law Enforcement and Crime Prevention Policy, Citra Adtya Bakti, Bandung, p. 28

⁹Igm Nurdjana, 2010, Criminal Law System and the Latent Danger of Corruption, Pustaka Pelajar, Yogyakarta, p. 18

2. Research methods

The method used by the researcher is normative legal approachAndThe specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from literature studies.

3. Results and Discussion

3.1. Implementation of Corruption Crime Investigations in Certain Circumstances

KCorruption is defined as acts of bribery, abuse of authority or breaking the law for personal gain, trading influence, and other reprehensible acts. ¹⁰In the criminal act of corruption as stated in Article 2 paragraph (2) of Law 31 of 1999, "In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed."

The definition of certain circumstances as referred to in the Article constitutes an aggravation for the perpetrator of the crime of corruption, that the crime is committed when the country is in a state of danger, which is further explained in the Corruption Eradication Law in Article 2 paragraph (2). What is meant by certain circumstances is a situation which is made an aggravation for the perpetrator of the crime if it is committed in terms of using funds which are allocated for dealing with a state of danger, national natural disasters, dealing with widespread community unrest, economic and monetary crises experienced by the country.

Article 2 paragraph (1) and (2) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption;

- (1) Any person who unlawfully carries out acts to enrich himself or another person or a corporation which may harm state finances or the state economy,
- (2) In the case of a criminal act of corruption as referred to in paragraph (1) being committed under certain circumstances, the death penalty may be imposed. What is meant by "certain circumstances" in this provision is intended as an aggravation for the perpetrator of the criminal act of corruption if the crime is committed at a time when the country is in a state of danger in accordance with applicable laws, at the time of a national natural disaster, as a repetition of the criminal act of corruption, or at a time when the country is in a state of economic and monetary crisis.

The qualifications of certain circumstances as explained above will be difficult to fulfill to be included in a criminal offense. Article 2 paragraph (1) and (2) of the Corruption Eradication Law which regulates the death penalty for corruptors, has in fact never been applied, because it does not meet the qualifications or the requirements of certain circumstances are not met by the corruptor. This indicates that, regardless of the repetition of the crime, the imposition of the death penalty

¹⁰ Cristiana, Y. 2016. Eradication of Criminal Acts of Corruption from a Progressive Law Perspective. Jakarta, p. 41

on corruptors can only be carried out if the country is in an "extraordinary" situation, namely the country is in danger according to the applicable law, a national natural disaster is occurring, or when the country is in an economic and monetary crisis.

Thus, conditions are needed to be qualified as a criminal act of corruption in certain circumstances. Anyone who unlawfully carries out acts of enriching themselves or others or a corporation that can harm state finances or the state economy as stipulated in Article 2 paragraph (2) of Law Number 31 of 1999 which is carried out in "certain circumstances" is an aggravation for the perpetrator of the crime of corruption.¹¹

Thus, based on the explanation of the specific circumstances, a qualification of the act can be made between:

- 1. The crime of corruption is a crime committed when the country is in a state of danger in accordance with applicable laws.
- 2. Criminal acts of corruption during national natural disasters.
- 3. At a time when the country is in a state of economic and monetary crisis. According to the author, the death penalty for perpetrators of corruption in certain circumstances can only be carried out if the perpetrator does it when the country is in a state of economic and monetary crisis.

Criminal investigation is a series of actions by investigators in terms and according to the methods regulated by law to seek and collect evidence, which with the evidence makes clear about the crime that occurred and to find the suspect. Investigation is the most important stage in the framework of criminal procedure law in Indonesia, because in this stage investigators try to reveal facts and evidence of the occurrence of a crime and find the suspect of the crime.

The implementation of criminal investigations first begins with a stage called investigation, namely a series of investigators' actions to search for and find an event suspected of being a crime in order to determine whether or not an investigation can be carried out. After the investigation is complete and the investigator is of the opinion that it can be continued to the investigation stage, the next step is to search for and collect evidence that can shed light on the crime that occurred and to find the suspect.

Corruption in the bureaucracy is the highest compared to other sectors. Several cases show that the bureaucratic system is the cause of corruption in the bureaucracy, for example, there is an order from a superior to cut the budget for procurement of goods and subordinates carry out the superior's order as a form of job duties. Criminal acts of corruption in the bureaucracy are not entirely due to the perpetrator's intention, there is a classification of bureaucrats who commit corruption, namely the group of bureaucrats who deliberately commit corruption

¹¹Evi Hartanti, 2007, Criminal Acts of Corruption, second edition, Sinar Grafika, Jakarta, p. 12

and the second group of bureaucrats because of the factor of their superiors or their job orders committing corruption, for subordinates who do it because they are only carrying out their superior's orders that they cannot refuse, then the elimination of criminal penalties applies to subordinates who carry out their superior's orders in corruption cases as regulated in Article 51 paragraph (1).

In investigating corruption crimes, there are several things that need to be considered, namely:

- 1. Investigations, prosecutions and court hearings are conducted based on applicable criminal procedure laws.
- 2. If a corruption case is found that is difficult to prove, a joint team can be formed which is coordinated by the Attorney General.
- 3. The suspect is required to provide information about his/her assets, the assets of his/her wife or husband, children, and the assets of other people or corporations suspected of being related to criminal acts of corruption.
- 4. The Corruption Eradication Commission (KPK) can take over investigations and/or prosecutions of corruption perpetrators that are being carried out by the police or the prosecutor's office.
- 5. The Corruption Eradication Committee (KPK) can stop the investigation and prosecution of corruption cases if the investigation and prosecution are not completed within 2 years.
- 6. Anyone who assists a perpetrator of corruption will be subject to the same criminal penalties as the perpetrator of corruption.

The implementation of investigations into corruption crimes in certain circumstances, namely in the investigation process, case development techniques are used to collect data and facts of the case. In addition, the police use investigative audit techniques as a method of searching and collecting data, information and other findings to find out the truth or even the error of a fact by coordinating with the BPK/BPKP. In cases of corruption committed by state officials, there must be a permit that must be completed before conducting an investigation.

3.2. Obstacles in the Implementation of Corruption Crime Investigations in Certain Circumstances

Certain circumstances exist in criminal acts of corruption. In the Corruption Eradication Law, the definition of certain circumstances by the legislator is stated as a reason that aggravates the punishment, so that the death penalty can be imposed. This provision is as regulated in Article 2 paragraph (2) of Law Number 31 of 1999 as amended by Law Number 20 of 2001, namely "in the case of a criminal act of corruption as referred to in paragraph (1) being committed under certain circumstances, the death penalty is imposed". The meaning of certain circumstances is contained in the explanation of the Article. This provision is only found in the Corruption Eradication Law of 1999 as amended by the Corruption

Eradication Law of 2001 with the addition of the category of "certain circumstances" contained in the explanation of the Article. According to Andi Hamzah, what is meant by certain circumstances in the Article is a formulation of the crime.¹²

Corruption also causes bureaucratic inefficiency and increases administrative costs in the bureaucracy. If the bureaucracy has been surrounded by corruption in various forms, then the basic principles of a rational, efficient, and quality bureaucracy will never be implemented. The quality of service will certainly be very poor and disappoint the public. Only the wealthy will get good service because they are able to bribe. This situation can cause widespread social unrest, social inequality and then possibly social anger that causes the fall of bureaucrats.¹³

Expressing a legal case, interpretation is one of the means that can be used to express the meaning of the law as a text. ¹⁴Interpretation involves putting words into words so that they can be understood, logical understanding and explanation, and translation from one language to another so must be done carefully.

The constraints are the lack of legal certainty and loopholes in the laws and regulations. Unclear or even overlapping legal provisions can cause confusion and hinder the investigation process. This can make the implementation of our duties less effective. The solution is to revise the laws and regulations. This aims to clarify existing legal provisions and eliminate articles that conflict with each other.

3.3. Ideal Formulation of Corruption Crime Investigation Conducted Under Certain Circumstances

Corruption has caused damage to various aspects of community, national and state life so that it requires extraordinary handling. In addition, prevention and eradication of corruption need to be carried out continuously and sustainably and need to be supported by various resources, both human and other resources, such as increasing institutional capacity and improving law enforcement in order to foster awareness and attitudes to follow the eradication of corruption in society. Corruption in criminology is a type of white collar crime. The term corruption that is already familiar in society has shown the increasing public awareness of corruption.¹⁵

¹²Andi Hamzah, 2006, Eradication of Corruption Through National and International Criminal Law, Revised Edition, Jakarta, p. 111

¹³Tunku Abdul Aziz, 2005, Fighting Corruption: My Mission, Konrad Adenauer Foundation, Kuala Lumpur, p. 60

¹⁴Urbanus Ura Weruin, Dwi Andayani B, St. Atalim, 2016, Legal Hermeneutics: Principles and Rules of Legal Interpretation, Constitutional Journal, Volume 13, Number 1,

¹⁵Bruyi Rohman Warsito, 2018, 'The Cause Of Corruption Crime On Village Funds And Investigations Process In The Purworejo', Journal of Daulat Hukum, Vol.1.No. 3 http://jurnal.unissula.ac.id/index.php/RH/article/view/3348>.

Various crimes in society can occur in various forms, and the most severe is the spread of corrupt behavior in all elements of government apparatus and all elements in society. Currently, corruption has become a global problem between countries that is classified as a transnational crime. In fact, because multidimensionality has bad implications for large economic and financial losses for the people of the country, corruption is classified as an extraordinary crime so that eradicating corruption has become a priority agenda for almost all countries in the world (including the Indonesian government) must be addressed seriously.¹⁶

The existence of the National Police Investigator has been clearly and firmly stated as an institution authorized to conduct investigations according to Article 1 number 1 and Article 6 of the Criminal Procedure Code, as the main provisions governing criminal procedure law in Indonesia. If this is changed, it means that the main components of the criminal justice system that already exist in our criminal procedure law must be replaced, if the authority of the National Police investigator is removed and then handed over to the Attorney General's Office and the KPK investigator, it will result in many related regulations that must be changed.

Then, if viewed from the Human Resources (HR) aspect, however, the Police have had professional and trained investigators so far to carry out their duties as investigators. The proof is that the Corruption Eradication Committee (KPK) has asked the Police for assistance with investigators, since the KPK was established until it had the authority to appoint its own investigators.

There needs to be the same authority given so that it does not cause problems in its implementation. No institution feels that other institutions have more authority than the authority they have. Ideally, Police Investigators and Prosecutor's Office investigators are also given extra authority like that of the KPK in enforcing the law against perpetrators of TPK. This means that there needs to be additional authority given or expansion of the authority held by Police Investigators and Prosecutor's Office investigators like that held by the KPK. For example, the authority to wiretap, confiscate, does not have the authority to issue SP3.

Mistakes/weaknesses at the legislative/formulation policy stage are strategic mistakes that can hinder law enforcement efforts "in concreto". It is called a strategic policy because it provides the basis, direction, substance and limits of authority in law enforcement that will be carried out by those with judicial and executive authority. This strategic position has the consequence that weaknesses in criminal law formulation policies will affect criminal law enforcement policies

¹⁶Arief Gunawan, Andri Winjaya Laksana, 2023, Effectiveness of Law Enforcement in Investigation of Criminal Acts of Corruption, Ratio Legis Journal (RLJ), Volume 2 No.2, p. 766, https://jurnal.unissula.ac.id/index.php/rlj/article/view/32778/9142

and crime prevention policies.¹⁷If it is associated with the problems in the regulation on the investigation of corruption crimes that provide investigative authority to the National Police investigators, the Attorney General's Office investigators and the KPK investigators, which still have several weaknesses, such as the granting of unequal authority to the three institutions, unclear regulations and others will certainly also hinder the implementation of law enforcement so that the acceleration of the eradication of corruption cannot be achieved as expected. Viewed from the aspect of criminal law policy (penal policy), the target of criminal law is not only to regulate the actions of citizens in general, but also to regulate the actions (in the sense of "authority/power") of the authorities/law enforcement officers.¹⁸

It is expected that in formulating legal formulation policies in the field of corruption in general and investigation of corruption crimes in particular in the future, the three principles of the formation of legislation above must also be considered. The philosophical basis is truly a reason that illustrates that the regulations to be formed or the implementation of revisions to legislation related to the duties and authorities of the Police, Prosecutor's Office and the Corruption Eradication Committee to conduct TPK investigations must consider and must not conflict with the outlook on life, awareness, and legal ideals that include the spiritual atmosphere and philosophy of the nation that originates from Pancasila and the 1945 Constitution.

The ideal formulation of corruption investigations carried out under certain circumstances is the implementation of its authority, has resolved corruption cases with a fairly large amount of state losses. Thus, the role of Polri investigators is still very much needed in investigating corruption, considering that more than half of the public reports have not been resolved by the Police. In the future, what needs to be attempted is how to overcome and find solutions to improve the character, commitment, quality of performance, and trust of the public who have already lost trust in the Police who have so far been considered incapable of eradicating corruption in Indonesia. Likewise, the institutional structure has undergone many changes that lead to strengthening the performance of Police investigators in taking action and preventing corruption, by improving the structure of their investigations.

4. Conclusion

Based on the results of the research and discussion above, it can be concluded as follows: The implementation of corruption investigations in certain circumstances, namely in the investigation process, case development techniques are used to collect data and facts of the case. In addition, the police use investigative audit

¹⁷Barda Nawawi Arief, 2010, Problems of Law Enforcement and Criminal Law Policy in Combating Crime, Kencana Prenada Group, 3rd edition, Jakarta, p. 25

¹⁸Barda Nawawi Arief, 2015, Selected Chapters on the Integrated Criminal Justice System, Pustaka Magister, Semarang, p. 17

techniques as a method of searching and collecting data, information and other findings to find out the truth or even the error of a fact by coordinating with the BPK/BPKP. In cases of corruption committed by state officials, there must be a permit that must be completed before conducting an investigation. The obstacles are the lack of legal certainty and loopholes in the laws and regulations. Unclear or even overlapping legal provisions can cause confusion and hinder the investigation process. This can make the implementation of our duties less effective. The solution is to revise the laws and regulations. This aims to clarify existing legal provisions and eliminate articles that conflict with each other. The ideal formulation of corruption investigations carried out in certain circumstances is the implementation of its authority, has resolved corruption cases with a fairly large amount of state losses. Thus, the role of the National Police investigators is still very much needed in investigating corruption crimes, considering that more than half of the public reports have not been resolved by the Police.

Based on the conclusion of the research results above, there are several things that can be input, including the need for cooperation between the government, law enforcement and the community in efforts to eradicate corruption so that the goal of eradicating corruption can be achieved properly; the need to improve education for investigators, both police and prosecutors, so that in carrying out their investigative duties, these investigators have more knowledge because perpetrators of corruption generally come from intellectuals.

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