IJERLAS
International Journal of Educational Review, Law And Social Sciences

IMPLICATIONS OF CONSTITUTIONAL COURT DECISION NUMBER 003/PUU-IV/2006 ON THE APPLICATION OF UNLAWFUL ELEMENTS IN ARTICLE 2 OF THE CORRUPTION ERADICATION LAW

Febri Fitra Kusuma[1], I Nyoman Nurjaya[2], Yuliati[3]
Faculty of Law, Universitas Brawijaya, Malang, Jawa Timur, Indonesia[1,2,3]
Corresponding E-mail: [1)]febrifitra10@gmail.com

Abstract

One of the elements found in Article 2 of the Corruption Law is the element of illegality. In the explanation of Article 2, it is stated that "illegality" refers to both material and formal illegality. However, in 2006, the Constitutional Court issued a decision regarding the Formal Review of the phrase "illegality" in Article 2 of the Corruption Law through Constitutional Court Decision Number 003/PUU-IV/2006. In this decision, the judges declared that the explanation in Article 2 of the Corruption Law no longer has legally binding force. This means that the element of illegality in Article 2 of the Corruption Law can only be interpreted as a formal illegality element. Nevertheless, in practice, there are still court decisions that interpret the element of illegality in Article 2 of the Corruption Law as a material illegality element. Using the normative juridical research method, this study aims to address the issues related to the implementation of the element of illegality in Article 2 of the Corruption Law after the issuance of Constitutional Court Decision Number 003/PUU-IV/2006. This study concludes that judges can still interpret the element of illegality in Article 2 of the Corruption Law as a material illegality element by considering Article 28 paragraph (1) of Law No. 4 of 2004 concerning the Judicial Authority, which states "Judges are obliged to explore, follow, and understand the legal values and sense of justice prevailing in society."

Keywords: ***Corruption Crime, Element of Illegality, Constitutional Court Decision***

1. INTRODUCTION

Based on the latest Transparency International Report, Indonesia's Corruption Perceptions Index (CPI) is recorded at 34 points on a scale of 0-100 in 2022 (Spyromitros & Panagiotidis, 2022). This indicates that Indonesia is one of the countries with a relatively high level of corruption cases. Corruption is also one of the criminal activities that is highlighted in Indonesia. Corruption is no longer a foreign concept in Indonesia. It is even classified as an extraordinary crime, affecting not only the nation's finances and potential but also eroding socio-cultural, moral, political, and legal pillars, as well as national security (Suramin, 2021). On the other hand, regardless of the type of corruption offense, whether it involves abuse of power, unlawful acts, bribery (both giving and receiving), it ultimately revolves around the issue of money (Kristiana, 2018). In terms of the nature of the act, crimes can be classified into two categories: crimes according to law (mala in se) and crimes according to statute (mala prohibita). The underlying concept in classifying crimes as mala in se or mala prohibita is that these acts are morally reprehensible (violating moral principles) and concurrently breach the law. Crimes falling under mala prohibita are actions declared illegal by legislation. These types of crimes typically pertain to violations of laws related to public interests (regulatory offenses or public welfare offenses) (Ali, 2022).

Criminal acts of corruption are regulated under Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, hereinafter referred to as the Corruption Eradication Law. This law categorizes corruption crimes into 7 types of offenses (Napisa & Yustio, 2021) :

1. Relating to state finances/national economy;
2. Bribery;
3. Embezzlement in office;
4. Extortion;
5. Fraudulent acts;
6. Conflict of interest in procurement; and
7. Corruption related to gratification.

However, among these seven types of offenses, what draws attention is the corruption offense related to financial losses to the state, as stipulated in Article 2 paragraph (1) of the Corruption Eradication Law, which states, "Any person who, unlawfully, enriches oneself or others or a corporation to the detriment of the state's finances or the national economy, shall be subject to imprisonment for life or a minimum imprisonment 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 rupiahs) and at most Rp. 1,000,000,000.00 (one billion rupiahs)." One of the elements present in Article 2 of the Corruption Eradication Law is the element of unlawfulness. The explanation of Article 2 of the Corruption Eradication Law clarifies that "unlawfully" encompasses both formal and material unlawfulness. However, in 2006, Constitutional Court Decision Number 003/PUU-IV/2006 declared that the explanation of Article 2 of the Corruption Eradication Law does not have legally binding force. As a result of this Constitutional Court Decision, the element of unlawfulness cannot be interpreted as material unlawfulness.

Nevertheless, following Constitutional Court Decision Number 003/PUU-IV/2006, there are still Court Decisions that interpret unlawfulness in Article 2 of the Corruption Eradication Law as material unlawfulness, as seen in Court Decision Number 1/Pid.Sus-TPK/2016/PN.Gto. As a result, the issue raised in this study is, what are the implications of Constitutional Court Decision Number 003/PUU-IV/2006 for the application of the element of unlawfulness in Article 2 of the Corruption Eradication Law? Based on the foregoing, the researcher is interested in analyzing the implications of Constitutional Court Decision Number 003/PUU-IV/2006 for the Application of the Element of Unlawfulness in Article 2 of the Corruption Eradication Law.

2. IMPLEMENTATION METHOD

Legal research is a process of discovering legal rules, principles, and doctrines to address legal issues. The type of research conducted here is normative research (Roy, 2023). Normative research is an inquiry to test a norm or written provision in force. Normative research can also be characterized as research conducted by examining literature or secondary data (Irwansyah, 2020). This research employs three approaches: statutory approach, conceptual approach, and case approach. The technique for analyzing legal materials in this research uses systematic interpretation. Systematic interpretation involves interpreting legal texts while considering other

legal documents. In this study, the sources of law used consist of two types: primary legal materials and secondary legal materials.

3. RESULTS AND DISCUSSION

In 2006, Constitutional Court Decision Number 003/PUU-IV/2006 was issued, which essentially stated that "unlawfully" in Article 2 of the Corruption Eradication Law cannot be interpreted as material unlawfulness. Referring to Article 10 paragraph (1) of the Republic of Indonesia Law Number 8 of 2011 Concerning Amendments to Law Number 24 of 2003 Concerning the Constitutional Court, every Constitutional Court decision is final and binding, a principle known as Erga Omnes. Article 10 paragraph (1) of the Republic of Indonesia Law Number 8 of 2011 Concerning Amendments to Law Number 24 of 2003 Concerning the Constitutional Court states, "A Constitutional Court decision is final, meaning that a Constitutional Court decision immediately gains permanent legal force upon being pronounced, and there is no legal remedy available. The final nature of Constitutional Court decisions under this Law also includes binding legal force (final and binding)." Constitutionally, the final nature of Constitutional Court decisions is a legal product resulting from judicial review of laws submitted by parties. This implies that Constitutional Court decisions are the first and final legal recourse for petitioners, and there is no further remedy (Wijaya & Nasran, 2021). Based on this provision, judges should interpret "unlawfully" in Article 2 of the Corruption Eradication Law as formal unlawfulness. However, in practice, the final and binding nature applying the Erga Omnes principle in Constitutional Court Decision Number 003/PUU-IV/2006 has not been fully implemented due to a lack of an ideal concept (Hakim, 2018). This is evident in court decisions where there are still judges who interpret "unlawfully" in Article 2 of the Corruption Eradication Law as material unlawfulness, meaning that they do not abide by the ruling in Constitutional Court Decision Number 003/PUU-IV/2006.

This is evident in Court Decision Number 1/Pid.Sus-TPK/2016/PN.Gto. In that decision, the judge interpreted "unlawfully" in Article 2 of the Corruption Eradication Law as material unlawfulness, with reasoning that, in essence, a judge must unearth, follow, and understand the legal values and sense of justice prevalent in society when adjudicating a case. This aligns with what R. Wiyono states in his book that as long as judges, when formulating their decisions, adhere to the provisions in Article 28 paragraph (1) of Law Number 4 of 2004 and its explanations, they also have a basis to interpret the element of "unlawfully" in Article 2 paragraph (1) through a positive interpretation of the concept of unlawfulness in its function (Wiyono, 2022). Moreover, another reason "unlawfully" in Article 2 of the Corruption Eradication Law can be interpreted as material unlawfulness is that it constitutes a bestanddeel delict or the core element of an offense. Referring to the principle of legality, there is a shared understanding among criminal law experts that the principle of legality means that no act can be criminalized unless it is based on existing criminal provisions in the law. Sudarto notes that two things are encompassed by the principle of legality. First, a criminal act must be formulated in legal regulations. Second, these legal regulations must exist prior to the occurrence of the criminal act. Criminal acts must be defined by law, but the disreputable nature of an act or the unlawfulness that constitutes an element of the offense does not necessarily have to derive solely from written rules.

This provision is as stipulated in Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP). From this definition, what is important to explore is the meaning of "act that can be penalized." Concerning the word "act" in Article 1 paragraph (1) of the KUHP, Noyon and

Langemeijer state that the intended act can be either positive or negative in nature. A positive act means "doing something," while a negative act means "not doing something." Not fulfilling one's obligations or, in other words, omissions (Kärki, 2023), is included under negative acts. Furthermore, regarding criminal acts, Enschede defines them as "human behavior that meets the requirements of a delict, is unlawful, and can be reprehended." (Doan & Nie, 2023). Criminal acts with the element of unlawfulness are also present in Article 12 letter e of the Corruption Eradication Law, which states, "Civil servants or state officials who, with the intention of unlawfully benefiting themselves or others, or by abusing their authority, coerce someone into giving something, paying, or receiving a payment with a discount, or for performing something for themselves." Based on the text of Article 12 letter e of the Corruption Eradication Law, it can be concluded that this provision also contains the element of unlawfulness as a bestanddeel delict, just like in Article 2 of the Corruption Eradication Law. As previously explained by the researcher, if the element of unlawfulness as a bestanddeel delict is interpreted as material unlawfulness, this does not conflict with the principle of legality.

To strengthen this argument, the researcher examines Decision No. 95/Pid.Sus/TPK/2018/PN.Sby. In the judge's consideration in Decision No. 95/Pid.Sus/TPK/2018/PN.Sby regarding the element of unlawfulness, the judge does not seek a written provision as the basis for proving the element of unlawfulness in Article 12 letter e of the Corruption Eradication Law. This is different from proving the element of unlawfulness in Article 2 of the Corruption Eradication Law. When proving the element of unlawfulness in Article 2 of the Corruption Eradication Law, the judge always searches for a written provision as the basis for proving the element of unlawfulness. From the analysis of the judge's considerations regarding the element of unlawfulness in Article 12 letter e, it can be concluded that if "unlawfully," which is the element or bestanddeel delict, is interpreted as material unlawfulness, this cannot be considered contrary to the principle of legality.

4. CONCLUSION

In Constitutional Court Decision Number: 003/PUU-IV/2006, the judge stated that the explanation of Article 2 of the Corruption Eradication Law does not have legally binding force. Therefore, the implications for the application of the element of unlawfulness in Article 2 of the Corruption Eradication Law must be interpreted as formal unlawfulness. This is in line with the provision in Article 10 paragraph (1) of the Republic of Indonesia Law Number 8 of 2011 Concerning Amendments to Law Number 24 of 2003 Concerning the Constitutional Court, which states, "A Constitutional Court decision is final, meaning that a Constitutional Court decision immediately gains permanent legal force upon being pronounced, and there is no legal remedy available. The final nature of Constitutional Court decisions under this Law also includes binding legal force (final and binding)." However, in practice, judges can still interpret the Element of Unlawfulness in Article 2 of the Corruption Eradication Law as material unlawfulness, considering the provision in Article 28 paragraph (1) of Law No. 4 of 2004, which states, "A judge is obliged to unearth, follow, and understand the legal values and sense of justice prevalent in society," as shown in the considerations of the judge in Decision 1/Pid.Sus-TPK/2016/PN.Gto.

REFERENCES

Ali, M. (2022). *Dasar-dasar hukum pidana*. Sinar Grafika.

Doan, H., & Nie, J.-B. (2023). Expectations and human rights protection: the case of Vietnam during COVID-19. *Wellcome Open Research*, *8*(147), 147.

Kristiana, Y. (2018). *Independensi kejaksaan dalam penyidikan korupsi*. PT Citra Aditya Bakti.

Napisa, S., & Yustio, H. (2021). Korupsi di Indonesia (Penyebab, Bahaya, Hambatan dan Upaya Pemberantasan, Serta Regulasi) Kajian Literatur Manajemen Pendidikan dan Ilmu Sosial. *Jurnal Manajemen Pendidikan Dan Ilmu Sosial*, *2*(2), 564–579.

Spyromitros, E., & Panagiotidis, M. (2022). The impact of corruption on economic growth in developing countries and a comparative analysis of corruption measurement indicators. *Cogent Economics & Finance*, *10*(1), 2129368.

Suramin, S. (2021). Indonesian Anti-Corruption Law Enforcement: Current Problems and Challenges. *Journal of Law and Legal Reform*, *2*(2), 225–242.