



THE ROLE OF THE PROSECUTOR IN EFFORTS TO COMBAT CORRUPTION AS A CONTRIBUTION TO CRIMINAL LAW REFORM

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Abstract

The objectives of this research are: 1). To find out the criminal act of corruption as a special crime. 2). To find out the supporting and inhibiting factors in handling the criminal act of corruption as a special crime. 3). To find out the efforts made to maximize the performance of handling the criminal act of corruption as a special crime. The results of this study are that efforts to eradicate corruption through fair law enforcement currently still seem to require a tough struggle. Because the crime of corruption is an extraordinary crime (extra ordinary crime) which is different from ordinary criminal crimes, the efforts that must be made require an integrated and extraordinary system. As an extraordinary crime (extra ordinary crime), eradicating corruption requires extraordinary political will so that the President as head of state becomes an important figure in mobilizing and coordinating the role of the Police, Prosecutors, Courts, and the Corruption Eradication Committee (KPK) to become a powerful force, so that KKN practices, such as bribery, price inflation, gratuities, and other abuses of authority carried out by civil servants or state officials, both at the central and regional levels, can have their room to move narrowed through extraordinary and integrated enforcement methods.

Keywords: *Criminal Law, Corruption Crime*

INTRODUCTION

The Attorney General's Office of the Republic of Indonesia as one of the law enforcement institutions is a state institution that exercises state power, especially in the field of prosecution. Prosecution is an action by the Prosecutor to refer criminal cases to the district court, especially corruption crimes, to judges in court hearings. The perpetrators of criminal violations who will be prosecuted by the prosecutor's office are those who are truly guilty and have fulfilled the elements of the alleged crime supported by sufficient evidence and supported by a minimum of 2 (two) witnesses. The role and function of the Attorney General's Office of the Republic of Indonesia are regulated in Law of the Republic of Indonesia Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

Based on the law, the prosecutor's office as one of the law enforcement institutions is required to play a greater role in upholding the supremacy of law, protecting public interests, enforcing human rights, and eradicating Corruption, Collusion, and Nepotism (KKN). The Attorney General's Office of the Republic of Indonesia as a state institution that exercises state power in the field of prosecution must carry out its functions, duties, and authorities independently, free from the influence of government power and the influence of other powers. The duties and authorities of the Attorney General's Office are grouped into three areas, namely: Article 30 paragraph (1) of Law of the Republic of Indonesia Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, states:

1. In the criminal field, the prosecutor's office has the following duties and authorities:
 - a) Carrying out prosecution; Carrying out judges' decisions and court decisions that have obtained permanent legal force;
 - b) Supervise the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions;

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- c) Conducting investigations into certain criminal acts based on the law;
- d) Complete certain case files and for that purpose can carry out additional examinations before being transferred to the court, the implementation of which is coordinated with the investigator.

LITERATURE REVIEW

The Law on the Eradication of Corruption has many advantages, meaning that it covers many acts that are considered corrupt acts which before this law came into effect could not be punished or were not considered crimes, such as unlawful acts that could harm the state, and bribery of civil servants. If what is stated here applies to the formation of law in general, what needs more attention is the formation of criminal law, because it concerns the values of human life, not only those concerning the individual, feelings, and soul of a person, but also the values of society in general.

As an effort in law enforcement to create order, security, and peace in society, there needs to be clear legal regulations. Law enforcement in a broad sense encompasses the implementation and application of the law against every violation or deviation of the law committed by legal subjects. In a narrow sense, it is an activity of taking action against every violation or deviation of laws and regulations. As one component of the law enforcement apparatus, the Prosecutor's Office has an important role in the justice system in Indonesia.

In an effort to uphold the law, the Prosecutor's Office has its own characteristics compared to other agencies, where the prosecutor is an official who is authorized by law to act as a public prosecutor and to implement court decisions that have permanent legal force. In order to support and provide a legal basis in carrying out its duties, the Government then ratified Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office. In this Law, the Prosecutor's Office has been stratified, consisting of: the Attorney General's Office, the High Prosecutor's Office, and the District Prosecutor's Office. As an organization, the Prosecutor's Office is certainly inseparable from bureaucracy.

The bureaucratic system here plays an important role because that is where the process or flow of handling corruption crimes is carried out. In the Decree of the Attorney General No. KEP 225/A/JA/05/2003 Concerning Amendments to the Decree of the Attorney General No. KEP 115/A/JA/10/1999 Concerning the Organizational Structure and Work Procedures of the Indonesian Attorney General's Office, it is stated that, to support the performance of the prosecutor's office, several sections are formed, namely: Development Sub-section, Intelligence Section, General Crime Section, Special Crime Section, Civil and TUN Section.

A corruption case, in the prosecutor's office, requires cooperation between these sections. It is impossible or even difficult if the prosecutor's office works alone. Within the prosecutor's office, the handling of corruption cases is handled by the Special Crimes section. Special crimes are crimes regulated outside the Criminal Code. In general, the criminal procedure law that applies to special crimes is general criminal procedure law, in this case the Criminal Procedure Code. However, this is not always the case. Sometimes the criminal procedure law that applies to special crimes:

1. It is a combination of general criminal procedure law (KUHAP) with special procedural law which is regulated separately in the special crime. If such a combination occurs, it is usually emphasized in the special criminal law, by stating that in addition to the provisions of the special criminal procedure law contained therein, general criminal procedure law is also applied by combining the two. Thus, there are two investigative authorities between the police and the prosecutor's office as an exception to the principle of sole investigative authority for the Police;
2. In addition to the above-mentioned criminal procedural law merger, special crimes regulate their own criminal procedural law at the level of investigation and evidence examination. This is for example found in Corruption Crimes. Thus, in several special crimes, there is still the authority of the prosecutor to conduct an investigation, because the Special Crimes Law itself explicitly states the authority of the prosecutor to conduct an investigation, such as in



economic crimes, corruption crimes, and others. However, it must be remembered that the existence of exceptions does not at all mean reducing the validity of the application of the Criminal Procedure Code as procedural law for all criminal cases, including special crimes as long as the special crime does not regulate its own procedural law as a whole, nor does it at all reduce the principle of functional differentiation which gives sole authority to the Police as an investigative agency.

One of the basic objectives of eradicating corruption in Indonesia is to return state losses. However, the paradigm of retributive justice which is the legal basis for eradicating corruption and punishing perpetrators of corruption is not relevant to the main objective of the law on eradicating corruption in Indonesia. What is actually important in the spirit of eradicating corruption, namely the return of state losses, is only an additional punishment that can also be replaced by imprisonment. This article is intended to examine the concept of punishment for perpetrators of corruption that is relevant to be applied in Indonesia in accordance with what is desired by the law by considering the development of the life of the nation and state today. The study focuses on deepening the elaboration of the concept of restorative justice to maximize the return of state finances in punishing perpetrators of corruption in Indonesia. By using the normative legal research method, this study concludes that the concept of restorative justice in punishing perpetrators of corruption can be implemented in the form of strengthening the norms of returning state losses from additional punishment to the main punishment. In order to anticipate the perpetrators being unable to pay the losses, the concept of forced labor can be applied rather than imprisoning perpetrators of corruption.

IMPLEMENTATION METHOD

Research is a scientific activity based on a systematic method and certain thoughts that aims to study one or several specific legal phenomena by analyzing them. In conducting legal research, it should always be tied to the meaning that can be given to the law. In conducting research so that it is carried out optimally, researchers use several methods as follows:

1. Type of Research

The type of research used is descriptive, by using this type of research, the author wants to provide the most complete picture regarding the role of prosecutors in handling corruption as a special crime in the legal area.

2. Approach Method

The approach method used in this study is an empirical legal approach. Legal is to study the normative concept or laws and regulations, while empirical is to study the existing reality regarding the role of prosecutors in handling corruption as a special crime in the jurisdiction of the District Attorney's Office.

3. Research Location

The location that will be the place to conduct the research is the District Attorney's Office. The researcher is interested in choosing a research location in the jurisdiction of the District Attorney's Office for the reason that corruption in the jurisdiction of the Attorney's Office increases every year and the modus operandi used by the perpetrators of corruption varies.

4. Data Types

The type of data that will be used by the author is as follows:

a. Primary Data

A number of statements or facts about the role of prosecutors in handling corruption crimes as special crimes that were directly obtained from the Prosecutor's Office and other parties related to the problem being studied.

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b. Secondary Data

Secondary data in the form of library materials consisting of:

1) Primary Legal Materials, including:

- a. The 1945 Constitution of the Republic of Indonesia.
- b. Criminal Procedure Code.
- c. Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.
- d. Law No. 31 of 1999 as amended and supplemented by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.
- e. Attorney General's Decree No. KEP-225/A/JA/05/2003 Concerning Amendments to Attorney General's Decree No. KEP-115/A/JA/10/1999 Concerning the Organizational Structure and Work Procedures of the Republic of Indonesia Prosecutor's Office.

2) Secondary Legal Materials:

- a. Books by scholars related to the author's thesis title.
- b. Articles related to the discussion that will be discussed in this thesis.
- c. Scientific literature that is related to the things that the author will research.
- d. Journals related to the discussion that will be discussed in this thesis

3) Tertiary Legal Materials

Tertiary legal materials include materials that provide information and explanations about primary legal materials and secondary legal materials in the form of legal dictionaries, scientific dictionaries and language dictionaries.

RESEARCH RESULTS AND DISCUSSION

A. The Role of Prosecutors in Corruption Crimes

Basically, the Prosecutor's Office is a state law enforcement tool, protector and guardian of the community, obliged to maintain the rule of law. The Prosecutor's Office thus plays a role as a law enforcer. A person who has a certain position is usually called a role holder. A right is actually the authority to act or not to act, while an obligation is a burden or task. Every law enforcer sociologically has a position and role as a law enforcer. Position is a certain position in the social structure, which may be high, medium or low.

The position actually has a container, the contents of which are certain rights and obligations. These rights and obligations are roles. A certain role can be described in the following elements:

1. The ideal role
2. The role that should be
3. The role that is assumed by oneself

The actual role is sometimes also called "role performance". Thus it can be understood that the ideal role and what should come from other parties, while what is considered by oneself and the actual role is carried out from oneself. A law enforcer, as with other citizens, also has a position and role. As a law enforcer, he is the center of attention that is certainly directed at his role.

The Prosecutor's Office is the only state institution that is a government apparatus that has the authority to transfer criminal cases, prosecute perpetrators of criminal acts in court and implement the determination and verdict of criminal judges, this power is a characteristic of the Prosecutor's Office that distinguishes other law enforcement institutions or agencies. In addition, in general criminal acts, the Prosecutor is only a public prosecutor, but in special criminal acts in this case corruption, the Prosecutor acts as an investigator and public prosecutor.

Understanding the problem of a crime, one must first understand the role of the victim that influences the occurrence of a crime. The victim who has the status of a passive or active participant in a crime, plays various roles that influence the occurrence of the crime. The implementation of the victim's role is influenced by certain conditions directly or indirectly, the influence does not always have the same results on the victim.

This victim problem is actually not a new problem, because certain things are less noticed, even ignored. If we observe the problem of crime according to its actual proportions in dimensions, then



our attention will not be separated from the role of the victim in the emergence of a crime. The victim has a functional role in the occurrence of a crime. In reality it can be said that it is impossible for a crime to occur if there is no victim. Without a victim, a crime cannot occur, so it is clear that in a crime that occurs, the perpetrator is not always the guilty party, but the victim also has a role in the occurrence of a crime.

The role in question is the attitude and condition of a person who will become a potential victim or an attitude and condition that can trigger someone to commit a crime. The victim can play a role consciously and unconsciously, directly or indirectly, actively or passively, with positive or negative motivation. It all depends on the situation and conditions at the time the crime takes place. The victim as the main participant in the crime plays various roles that are limited by certain situations and conditions, in reality it is not easy to distinguish each role played by the victim.

CONCLUSION

The results of the research after analysis can be concluded as follows:

- 1) The application of sanctions for the return of state financial losses in corruption crimes based on the results of the author's research at the Prosecutor's Office shows that convicts who are sentenced to payment of replacement money prefer to undergo subsidiary sentences in the form of imprisonment as a substitute for payment of replacement money rather than paying replacement money. This tendency will occur if the subsidiary sentence is more beneficial than the payment of replacement money. The choice of convicts to undergo subsidiary sentences is actually not an alternative, but as a consequence of the provisions of the law if the convict does not pay replacement money, he must undergo subsidiary imprisonment.
- 2) The right sanction for a third party who receives the proceeds of corruption is to pay compensation in an amount that is in accordance with what they received, while the legal instrument is by combining the lawsuit for compensation. Such a sanction is based on the idea that the third party has committed an unlawful act because by enjoying state finances that are not their right, it has resulted in state financial losses, so the person concerned is obliged to replace the loss.
- 3) According to the prosecutor, the public interest which is used as the main basis for stopping the prosecution of a criminal case is when the state experiences a state of being harmed by the prosecution of a person.

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