

Law Enforcement against Corruption in the Criminal Justice System in Indonesia

Amran Suadi¹

¹Universitas Islam Negeri Sunan Ampel, Surabaya, Indonesia. E-mail: amransuadi1954@gmail.com

ABSTRACT

Law enforcement occupies a strategic position in legal development, more or less a country of law. Speaking of law enforcement, the most important and fundamental thing is how the ability (especially in the field of corruption), then the judicial system that can accommodate and appreciate the demands of justice both the spirit of formal law and the demands of a sense of justice by the community, in the eradication of corruption is a basic need. Law enforcement is an absolute requirement for the creation of a peaceful and prosperous country. If the law is established, then certainty, security, peace or a harmonious life can be realized. The absence of law enforcement will hinder the achievement of the community to meet the needs of his life. The success of corruption law enforcement in Indonesia depends on the work or not of all components of the criminal justice system (SPP) itself, ranging from investigation, prosecution, examination in court and in the implementation of criminal.

KEYWORDS

Law Enforcement, Corruption, Criminal Justice System.

Introduction

The state of law is no stranger to the science of state regulation since ancient times until now, only in the practice of state regulation people still doubt whether the state law has been fully implemented. This can be understood because in practice, a clean understanding according to theory, still needs to be taken into account by the real factors that live in society according to time and place.

The idea of the country of law had emerged long before the Revolusi of 1688 in England, but only reappeared in the XVII Century and became popular in the XIX Century. The background to the rise of the state of law is a reaction to the arbitrariness of the past.¹ Padmo Wahjono mentioned that the state should be based on the law in every way, it has been coveted since Plato wrote "Nomoi". E. Kant presents the principles of the State of Law (Formal), J. Stahl centered the State of Law (materiel). Deceys apply for "Rule of Law".² In summary, it is an ideal country in the 20th century, if all state activities are based on law. Therefore, Mochtar Kusumaatmadja mentions the fundamental understanding of a legal state is, "... country by law, where power is subject to the law and all persons are equal before the law."³

Eradicating corruption is not an easy job, because eradicating corruption is like preventing and eradicating the virus of a disease in this case the disease of society. Proper diagnosis and treatment is needed so that the virus can not only be prevented but in the future it does not happen again. The problem of fighting corruption in Indonesia is so complicated, among others, based as a result of the policy of such a complicated problem. Such as the abundance of policies that are so loaded with violations and legal crimes that are very popular with the term corruption, collusion and nepotism (KKN).

If it is associated with the letter a considerant weighing Law No. 30 of 2002 concerning the Corruption Eradication Commission hereinafter referred to as the KPK Law, which states that in order to realize a fair, prosperous and prosperous society based on Pancasila and the Constitution of the Republic of Indonesia year 1945 (hereinafter referred to as the 1945 Constitution), the eradication of corruption crimes must be handled professionally, intensively

¹Lilik Mulyadi, *Pembalikan Beban Pembuktian Tindak pidana Korupsi*, PT. Alumni, Cetakan ke-2, Tahun 2013, hlm. 59. Lihat pula Ni`matul Huda, *Negara Hukum, Demokrasi & Judicial Review*, Penerbit UII Press, Yogyakarta, 2005, hlm.1

²Padmo Wajono, *Indonesia Negara Berdasarkan Atas Hukum*, Ghalia Indonesia, Cetakan pertama, Jakarta, 1983, hlm.7

³Mochtar Kusumaatmadja, *Pemantapan Cita Hukum dan Asas-Asas Hukum Nasional di Masa kini dan Masa Akan Datang*, Makalah, Jakarta, 1995, hlm. 1-2

and continuously, because corruption has harmed the country's finances., the state economy and impede national development.

Then if you look at the data submitted by the Attorney General's Office and kpk against the eradication of corruption that they have done, corruption crimes are crimes that can be said to be at the nadir and already entrenched, so that in eradication requires seriousness and very strong handling. The Attorney General of the Republic of Indonesia presented the results of the performance during 2016. Korp Adhyaksa claimed to have saved Rp 20.5 trillion and USS 263.9 thousand, as well as conducting a state financial recovery worth Rp 49.2 billion. While the Corruption Eradication Commission (KPK) in total, in 2016 has conducted 96 investigation activities, 99 investigations, and 77 prosecution activities, both new cases and the rest of the handling of cases in the previous year, and successfully carried out executions against 81 court rulings that have been in full force. More than 497.6 billion rupiah has been put into the State treasury in the form of PNBPN from the handling of corruption cases. This shows that corruption in Indonesia is extraordinary and requires extraordinary handling as well.

Problem

Based on the description above, two things will be explored more deeply as follows:

- A. Is the pattern of law enforcement that has been regulated in the Indonesian criminal justice system has been able to eradicate corruption in Indonesia until now?
- B. How is the ideal law enforcement pattern against corruption according to the Indonesian criminal justice system?

Discussion

A. Law Enforcement Pattern against Corruption in the Indonesian Criminal Justice System (SPPI)

To analyze law enforcement against TPK according to SPPI can currently be seen from various factors, among others:

1. Regulation/Regulation of Corruption in the Indonesian Criminal Justice System

The State of Indonesia is a State that upholds the law as mandated by the constitution, which in the Torso of the 1945 Constitution contained the basic principles of state administration and government that meets the requirements as a state law, among others:⁴

- (a) The State Government is based on the law as mentioned in Article 1 paragraph (3) Chapter I of the 1945 Constitution of the Republic of Indonesia which was ratified on November 10, 2001, that "The State of Indonesia is a State of Law"
- (b) The state of law embraced in the 1945 Constitution is a similarity of degrees in front of the law. This is seen in Article 27 paragraph (1) of the 1945 Constitution which reads: "All citizens are equally positioned in law and government, and must uphold the law and government with nothing but".
- (c) The state of law is the freedom and independence of the position of judicial power from the influence of the government and its guarantees for the position of judges in the Act. The power of justice in Indonesia is exercised by 2 (two) institutions, namely the Supreme Court and the Constitutional Court. In Article 24 B of the 1945 Constitution the third amendment is mentioned "The Judicial Commission has an independent authority to propose the appointment of a Supreme Court Justice and has other authority in order to maintain and uphold the honor, dignity and conduct of judges".
- (d) The protection of the rights and freedoms of citizens. This is seen in the first Point of Thought Explanation of the Opening of the 1945 Constitution and Article 27 paragraphs (2), (3), Article 28, Article 28 (A), 28 (D), 29 and 31 of the 1945 Constitution.

⁴Mastra Lba dalam Firman Freaddy Busroh. (2017). "Upaya Pencegahan Korupsi Melalui Reaktualisasi Nilai-Nilai Pancasila", Lex Publica, Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia, Volume IV, Nomor 1, hlm. 632-634.

- (e) There is a principle that every regulation of government is based and sourced firmly on legislation that is more relevant to its level.

Based on the elements of the State Law above see the main key of a State law is legislation that is the rule of law itself, as an element of law enforcement.

The ratification of Indonesia against UNCAC (United Nation Convention Against Corruption) in 2003, means that Indonesia is juridically recognized and ready to implement UNCAC in the Indonesian criminal justice system.

The current legislative/statutory policy does not support the Criminal Justice System (SPP), the Criminal Law Enforcement System (SPHP and the Integrated System of Judicial Power in the Field of Criminal Law (SKK-HP). Integrated SPP/SPHP/SKK-HP is implemented in 4 sub-systems of power, namely investigation, prosecution, the power to prosecute/prosecute criminals, and the power of execution / execution of criminal.

KPK based on Law No. 30 of 2002 concerning Corruption Eradication Commission (Hereinafter referred to as KPK Law), It turns out that in its implementation raises several problems, which are considered to inhibit the acceleration of the eradication of corruption crimes, among others 1) differences in interpretation of their respective authority to investigate corruption crimes, 2) the desire of the parties to protect indicated peers criminal corruption, 3) lack of coordination among the 3 institutions authorized to investigate tpk itself 7 Seen overlapping arrangements about the investigation of TPK that must be addressed so as not to cause problems in the implementation of tpk investigation in the future.

2. Quality of Corruption Criminal Justice

Every society generally wants order and justice to be established in every violation of the law that occurs, so judan against the corruptors who have been considered very detrimental to society, nation and country. But the fact that law enforcement against tpk actors often make the public disappointed.

Many who have been convicted of corruption escape from the law precisely after struggling with the law. Even if some of them are convicted, the number is relatively very small. Then the sad sanction against the slightest is relatively very light, not in accordance with the deeds done. It is important to note that although light is not all necessarily carry out its law for various reasons. The reality portrays it as if what happened was with law there is no other, the opposite of Mc Iver's opinion that "without law there is no order, and without order men are lost, not knowing where they go, not knowing that they do". Such a thing certainly invites dissatisfaction masyoritas community, so increasingly vigorously voiced the improvement of the worsening situation. People really dream of immediate change.

Then if seen the Court authorized to resolve tpk according to SPPI is the Tpk Court, as the only court authorized to resolve tpk that occurred. TPK Court is a special court located in the General Judiciary in every capital city district / city, except the special area of the capital city of Jakarta is in each existing District Court. As for TPK conducted by Foreign Nationals is the jurisdiction of the TPK Court in the Central Jakarta District Court. The problem is that the procurement of this special court is very slow so that before the TPK court is there, the examination of tpk cases is carried out in the district court concerned, because the TPK Court is still in the general judicial area. This may be due to some of the limitations that the government has.

3. Surveillance System

The system of monitoring the performance of each law enforcement officer in the performance of their duties has been regulated through the honorary board of the code of ethics and the like, both in the police, prosecutors and the judiciary. But the supervision of judges now in addition to being carried out by the Supreme Court through the enforcement of the Code of Ethics and Code of Conduct of Judges (KEPPH) through the Supervisory Board of the Supreme Court of the Republic of Indonesia (MA RI) as the principal organ is also carried out by the Judicial

Commission (KY) as an auxiliary organ, supporting elements in order to support the power of an independent, clean and authoritative judiciary independently. Both must join hands in conducting supervision of the court institutions.⁵

4. Sanctions Against TPK Actors

The sanctions contained in the TPK Law are currently considered by most of the public to be too light, although there has been a burden and the granting of minimum and maximum sanctions in the TPK Law 1999 and No 20/2001, when compared to the sanctions contained in the TPK Law No. 3 of 1971. This is proven by still not deterrence of the public to do TPK, which moreover we still see during the process of examining corruptors that are aired in the media does not look remorse and fear to face sanctions against the speeding they do.

Public perception of a risk is not the same, depending on the actual condition of each. This resulted in sanctions being applied in criminal justice not having a universal effect. According to Soerjono Soekanto the effect of a sanction is an empirical problem, therefore humans have an unequal perception of the sanctions, except that humans also have different toleransi to suffering.⁶

Then against the death penalty that has been stipulated in Article 2 paragraph (2) tpk law is actually good enough, but there is no judge who will drop it as a maximum criminal, so it will be a criminal factor of others to commit the same crime.⁷ It also means that the intention of lawmakers to include the death penalty that is expected as a means to give deterrent effect to the perpetrator is not achieved.

Then in many cases, even if the case involves a corporation, most are only individuals who are responsible or who are dragged to court, while corporations are more stretched, not feeling the deterrent effect. They live to replace the person who is serving the sentence with a new person, when the opportunity to ensnare the corporation is increasingly wide open with the birth of Supreme Court Regulation (PERMA) No. 13 of 2016 on the procedure of Confectionery of Criminal Acts by the Corporation.⁸

B. Ideal Law Enforcement against Perpetrators of Corruption in Indonesia

Strict, consistent and non-discriminatory law enforcement is essential for the realization of the pillars of justice and legal certainty and will bring benefits to the community by providing a deterrent effect, so as to prevent someone who wants to commit corruption. Another benefit is the growing public trust in law enforcement efforts and law enforcement apparatus, so that public support for law enforcement agencies will strengthen.

Based on what has been described in the previous section, so to achieve ideal law enforcement against perpetrators of corruption crimes need to be pursued several things as follows:

1. Improvement of the Legal System (Legislative Policy) Related to TPK in Indonesia

This can be done by reviewing the legislation related to SPP to tpk in Indonesia, then making legislation that can support an independent and independent law enforcement system. If the State issued a regulation related to tpk, as a form of legal product, of course the problem that is considered or anticipated is not only a short-term problem, but also related to welfare, as well as the security of state wealth in a relatively long time. The interests of the people in the field of prevention and eradication of tpk, as well as the regulation of other aspects related to the implementation of state regulation, state administration and governance, which is entrusted to the organizers of power is actually a proof of the existence of the functioning of the law.

⁵Putusan Mahkamah Konstitusi RI Nomor 005/PUU-IV/2006 mengenai Pengujian UU No 22 Tahun 2004 tentang Komisi Yudisial dan U No 4 Tahun 2004 tentang Kekuasaan kehakiman terhadap UUD Negara RI Tahun 1945

⁶*Ibid*, hlm 4

⁷Ali Dahwir. (2017). "Rekonstruksi Sanksi Pidana Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi di Indonesia", *Lex Publica, Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia*, Volume IV Nomor 1, hlm. 648-649

⁸Bambang Waluyo (2007). "Upaya Taktis dan Strategis Pemberantasan Korupsi di Indonesia", *Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia*, Volume IV, Nomor 1, hlm. 627-628

2. As part of an Independent Judicial Power, all Four Subsystems of the SPP must be Independent and Independent Powers (Independent)

The limitation of the understanding of judicial power in the narrow sense that has been described in the previous section both in the formulation of the 1945 Constitution that has been in the amendment and in the Law of Judicial Power should be reviewed because in essence "the power of the judiciary is the power of the State in enforcing the law", so it is synonymous with the need to enforce the law or "law enforcement power". Actually, there has been revealed in the last sentence that reads "in order to enforce the law and justice based on Pancasila, for the implementation of the State of Law of the Republic of Indonesia". But this is formulated only as the "purpose" of the holding of the judiciary not as the nature of the formulation of judicial power. Therefore ideally the power of the judiciary is formulated in a broad sense as "the power of the State to enforce the law and justice for the implementation of the State of Law of the Republic of Indonesia". So the power of the judiciary not only means "the power to adjudicate" (the power to enforce the law in the court bodies), but includes the power to enforce the law in the entire process of law enforcement in the Criminal Justice System (SPP) namely the power of investigation by the institution / investigative body, the power of prosecution by the institution / public prosecution agency, the power to adjudicate by the body / institution of the court and the power of execution of the verdict / criminal by the body / institution of execution.

3. Improving the Quality of the Judiciary (Reform of the TPK Justice System)

The quality improvement intended here includes several aspects related to or that affect the quality of the judiciary itself, such as individual quality (HR), institutional quality, quality of work/management mechanisms, quality of facilities/infrastructure, environmental quality (social, economic, political, cultural conditions; including the legal culture of society).

Then also needed increased synergy among law enforcement in the eradication of TPK. Signing of a Memorandum of Understanding (NKB) dated March 29, 2017 between the National Police, Prosecutors and KPK covering the scope of cooperation.

4. Developing/improving Surveillance Systems

Increased supervision, control / control of the judiciary tpk to eradicate the mafia judiciary related to 'abuse of power' because TPK in general is carried out in congregation by parties related to the holder of power. Barda Nawawi Arief argues ideally the Supreme Court (MA) becomes the controller and supervisor of the entire law enforcement process, because as long as there is no affirmation of legislation on who will be "the top law enforcement officer" of the entire law enforcement process in the management of our criminal justice system.

5. Giving Tougher Sanctions to TPK Actors

Bambang Waluyo argues that death penalty, additional criminal charges, revocation of political rights, and criminal prosecution for corporations can already be done because it is one form of strict, consistent law enforcement:⁹

- (a) Death penalty stipulated in Article 2 paragraph (2) of tpk law, namely against TPK conducted when the State is in a state of danger, national disaster, repetition of corruption crimes and in the event of economic and monetary crisis,
- (b) Additional criminal charges in the form of revocation of political rights should be increased because it is also seen as having a deterrent effect. Political Rights as stipulated in Article 25 of the International Convention on Civil and Political Rights or the right to vote and be elected to public office against corruption, are intended to prevent the public from corrupt leaders. Some of the corruptors who were sentenced to additional crimes include former chairman of the Constitutional Court Akil Mochtar, former Head of the Indonesian Police Traffic Corps Djoko Susilo, former President of the Social Justice Party Lutfi Hasan Ishaak and former member of the House of Representatives Dewi yasin Limpo.

⁹Bambang Waluyo. *Op.Cit.*

- (c) Criminal prosecution for corporations as stipulated in Article 20 of the TPK Law governing the criminal prosecution of corporations or their administrators involved in TPK. Such as the case of the Banjarmasin Sentra Antasari Market development project investigated by the Banjarmasin State Prosecutor's Office in 2010, which was decided to pay a fine of Rp 1.3 billion (principal penalty) and the closure of the company for 6 months (additional criminal).

Conclusion

The pattern of law enforcement in SPPI is still not able to do maximum law enforcement against tpk actors, because there are still some weaknesses and problems, judging from the regulatory aspects there is still overlap of arrangements, the quality of the judiciary still needs to be improved because it has not been able to create justice in the community, the system of supervision of the performance of law enforcement officials related to corruption law enforcement still needs to be improved again because it is not yet integrated, while the sanctions given are still not considered maximum so it has not caused a deterrent effect to the perpetrators.

The pattern of law enforcement against tpk actors in the future or ideal is expected to change, improve and improve in various aspects above, such as the improvement of regulations, independence of the four sub SPPI, improving the judicial supervision system as well as the provision of maximum and tougher sanctions to perpetrators so as to cause penjeran effect both for perpetrators and to other communities.

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