

CRIMINAL ACCOUNTABILITY OF STATE OFFICIALS COMMITTING POLITICAL CORRUPTION IN INDONESIA

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Abstract

Political corruption is a form of violation of people's human rights and is a worrying phenomenon because it is dominated by state officials who have superior positions. This article aims to find out how the reality of law enforcement against corruption is carried out by state officials and how the criminal responsibility of state officials who commit political corruption in Indonesia. This article uses a normative juridical method. The results shows that law enforcement against state officials who commit political corruption has not been carried out optimally. The low demands of prosecutors followed by judges' verdicts against state officials who commit corruption are the cause of the difficulty of eradicating this crime. The imposition of a maximum criminal threat or life imprisonment for perpetrators of political corruption is something that should be done to create a deterrent effect for the perpetrators or the public who see it. In this case, law enforcement officers must have the courage, integrity, and high morale to be indiscriminate in eradicating political crimes in Indonesia.

Keywords: Criminal Liability; State officials; Political Corruption.

Abstrak

Korupsi politik merupakan bentuk pelanggaran terhadap hak asasi rakyat dan termasuk fenomena yang memprihatinkan karena didominasi oleh pejabat negara yang memiliki kedudukan superior. Artikel ini bertujuan mengetahui bagaimana realita penegakkan hukum terhadap korupsi yang dilakukan oleh pejabat negara saat ini dan bagaimana pertanggungjawaban pidana pejabat negara yang melakukan korupsi politik di Indonesia. Artikel ini menggunakan metode yuridis normatif. Hasilnya menunjukkan penegakan hukum terhadap pejabat negara yang melakukan korupsi politik terbilang belum terlaksana dengan maksimal. Rendahnya tuntutan jaksa diikuti vonis hakim yang dijatuhkan terhadap pejabat negara yang melakukan korupsi menjadi penyebab sulitnya kejahatan ini diberantas. Penjatuhan ancaman pidana maksimal atau pidana seumur hidup bagi pelaku korupsi politik merupakan hal yang seharusnya dilakukan guna menimbulkan efek jera bagi pelaku ataupun masyarakat yang melihat. Dalam hal ini aparat penegak hukum harus memiliki keberanian, integritas, dan moral yang tinggi untuk tidak pandang bulu dalam memberantas kejahatan politik di Indonesia.

Kata Kunci: Pertanggungjawaban Pidana; Pejabat Negara; Korupsi Politik

Introduction

Political corruption is a criminal act committed by abusing authority by parties who have political positions with the intention of obtaining personal gain illegally or against the law. In Indonesia, political crime is a crime of concern and the practice of abuse of authority by the elite holding state power is increasingly prevalent. Artidjo Alkostar defines political corruption as an act in which the perpetrators are elite political parties who are currently serving in the government, where the act has an impact on the political and economic conditions of a country. This act is usually carried out by parties or people who have political positions or positions. In this regard, political corruption can be carried out by people who have positions as presidents or governors or mayors, for example in the circle of public power who essentially have political positions in a country. An act can be categorized as political corruption, because the act is carried out using political facilities or facilities owned by the perpetrator. Facilities or infrastructure that the perpetrators misused, in which the trust or mandate was given by the people.¹ Politics and corruption can be very intertwined because politics related to policy making and corruption related to abuse of authority will be closely related when

someone who occupies a political position takes a policy by abusing his authority whose purpose is to benefit himself or his group, this is what called corruption.²

Political corruption is categorized as a form of political crime in a country or “domestic political crimes by the state”. Subjects who commit political crimes are state officials committed against the public. In this case, the act of political corruption has indirectly violated the human rights of the people. The actions of state officials who are political party elites result in potential state financial losses or state financial losses, which are carried out by abusing their authority as state officials.³

This refers to the opinion of “Piers Beirne and James Messerschmidt” who criminologically divides political crimes into three types. “First, political crimes against the state or political crimes” aimed at the state. Simply put, in the form of this first typology, political crimes committed are aimed at the state and the functioning of state institutions where the subject in this typology is *natuurlijke persoon* or in the phrase the Criminal Code (KUHP) is “Hij Die” or “whoever “ “Second, domestic political crimes by the state or political crimes by the state”. In simple terms, in the form of this second typology, the subject who commits political crimes is the state. Included

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- 1 Jupri and Roy Marthen Moonti, “Diskriminasi Hukum Dalam Pemberantasan Korupsi Politik Di Daerah”, *Dialogia Iuridica Jurnal Hukum Bisnis Dan Investasi*, Vol. 11, No. 1 (September 2019): 116, diakses 16 Februari 2022. DOI: <https://doi.org/10.28932/di.v11i1.1997>.
 - 2 Fransiska Adelina, “Bentuk-Bentuk Korupsi Politik”, *Jurnal Legislasi Indonesia*, Vol. 16, No. 1 (Juni 2019): 62. Diakses 14 Februari 2022, doi: <https://doi.org/10.54629/Jli.V16i1.256>.
 - 3 Nehru Asyikin, “Pengawasan Publik Terhadap Pejabat Publik Yang Melakukan Tindakan Korupsi: Perspektif Hukum Administrasi”, *Jurnal Wawasan Yuridika*, Vol. 4, No. 1 (April 2020): 87, diakses 11 Februari 2022. DOI: <http://dx.doi.org/10.25072/jwy.v4i1.316>.

in this typology are state corruption and state political repression. Third, international political crimes by the state or international political crimes by the state. In this typology, it can simply be emphasized that the subjects who commit political crimes are international organizations or states against other countries.

⁴ In connection with this opinion, political corruption is included in the typology of the second type of political crime.

Illegal acts by officials are categorized as political corruption only if the actions are directly related to their official duties, in this case the abuse of public power for personal gain. In today's modern era, corruption has become a reality of crimes related to multilateral and international relations. Moreover, the modus operandi of political corruption and its impact is more complex when compared to criminal acts of corruption committed by individuals who do not have political positions or private legal entities, for example. Political corruption that occurs in many countries is carried out by state officials, which is not uncommon. In essence, political corruption has a negative impact that destroys the life order of the state and injures the basic rights of the people in the country concerned. ⁵

It will be a complex problem, if the deviation or abuse of authority and power is concentrated for personal, group or corporate

interests. For his actions, state officials who commit corruption can be held criminally responsible as stipulated in the provisions of the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes. However, it seems that these regulations have not been used optimally by law enforcement officers in overcoming corruption cases that are a scourge for the country today. Corruption has become a structured and organized crime.⁶ Structured because corruption is generally carried out by the power structure in a country, and organized because the state's political organizations are mostly involved in corruption.

In the records of the Corruption Eradication Commission (KPK) for the 2004-2020 period, cases involving politicians ranked second after the private sector, which amounted to 274 members of the DPR/DPRD involved. Governor as many as 21 people, Mayor/Regent and Deputy as many as 122 people, Head of Institution/Ministry as many as 28 people and Echelon Officials in ministries or state institutions as many as 230 people.⁷ This figure certainly raises a concern, because various law enforcement efforts have been carried out but the intensity and quality of corruption does not show a decline. Based

4 Piers Beirne and James Messerschmidt, *Criminology, Second Edition* (Harcourt: Brage College, 1995).pp.56.

5 Artidjo Alkostar, "Mengkritisi Fenomena Korupsi Di Parlemen", *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 15, No.1 (April 2008): 3. Diakses pada 11 Februari 2022. <<https://doi.org/10.20885/iustum.vol15.iss1.art2>>.

6 Loura Hardjaloka, "Studi Penerapan E-Government Di Indonesia Dan Negara Lainnya Sebagai Solusi Pemberantasan Korupsi Di Sektor Publik", *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol.3, No.3 (Agustus 2014): 452.

7 Komisi Pemberantasan Korupsi, "Laporan Tahunan KPK RI 2020" (Jakarta: KPK, 2020).Hlm. 32.

on this description, the problems related to the Criminal Accountability of State Officials Who Do Political Corruption in Indonesia are First, What is the reality of law enforcement against political corruption carried out by State Officials in Indonesia today? Second, what is the criminal responsibility of state officials who commit political corruption in Indonesia and the weaknesses in its implementation?

In previous research, there were several articles discussing Political Corruption, such as in the article written by Andjeng Pratiwi and Ridwan Arifin discussing "Enforcement of Political Corruption Law in Indonesia Contemporary Problems and Issues".⁸ This article discusses cases of political corruption in Indonesia and their eradication. In addition, another research written by Fransiska Adelina with the title "Forms of Political Corruption". As the title suggests, this study discusses the causes of political corruption and its forms.⁹

Then the third research was conducted by Jupri and Roy Marthen Moonti entitled "Legal Discrimination in the Eradication of Political Corruption in the Regions". This article discusses the reality of eradicating political corruption in the regions, especially the Jember and Bone Bolango areas.¹⁰ Furthermore, the fourth research conducted by Rochman

Achwan entitled "Reconceptualizing Political Corruption in Democratising Societies".¹¹ This study explores exploring the ways in which complex institutional networks play an important role in bringing about political corruption. Using Indonesia as a case in point, this study shows that the rise and growth of political corruption lies in the complex interactions between dominant institutions and organizations, including SOEs, parliaments, and political parties; and the fifth research conducted by Haroldo V. Ribeiro, Luiz G. A. Alves, Alvaro F. Martins, Ervin K. Lenzi, and Matjaž Perc entitled "The Dynamical Structure of Political Corruption Networks"¹². This study discusses the dynamic structure of political corruption networks that can be used to predict partners successfully in future scandals and discusses the important role of network science in detecting and reducing political corruption.

These articles do not discuss the reality of law enforcement against political corruption carried out by state officials in Indonesia today and how the criminal accountability of state officials who commit political corruption in positive law in Indonesia and the weaknesses in its application. This is the difference between this article and the articles

8 Andjeng Pratiwi and Ridwan Arifin, "Penegakan Hukum Korupsi Politik Di Indonesia Permasalahan Dan Isu-Isu Kontemporer", *Hukum Mimbar Justitia*, Vol.5, No.2 (Juni 2019):148.

9 Fransiska Adelina, "Bentuk- Bentuk Korupsi Politik", *Legislasi Indonesia*, Vol. 16, No.1 (April 2019):62

10 Jupri and Moonti, Op Cit, hlm. 117.

11 Rochman Achwan, "Reconceptualising Political Corruption in Democratising Societies", *Asian Social Science*, Vol. 10., No.11 (Marc 2014): 21. Diakses 13 Februari 2022. <<https://doi.org/10.5539/ass.v10n11p201>>.

12 Haroldo V. Ribeiro and others, "The Dynamical Structure of Political Corruption Networks", *Journal of Complex Networks*, Vol.6, No.6 (Oktober 2018): 989. Diakses 5 Februari 2022. <<https://doi.org/10.1093/comnet/cny002>>.

mentioned above. The research method used in writing this article is a normative juridical method, namely legal research conducted by examining secondary data obtained from literature studies. The specification in this research is descriptive analytical research. Types and techniques of data collection in legal research obtained through literature study. The analytical method used in this research is qualitative research, by conducting an in-depth analysis of the data contained in a literature.¹³

Discussion

The Reality of Law Enforcement Against Political Corruption carried out by State Officials in Indonesia Currently

Corruption in the political field is very complex and has been going on for a long time. Various modes that are attempted to commit corruption in the political field also involve people who are respectable, have high social status and aim to win a political party and people who will sit in the legislative seats. This condition is caused by high political costs while these political parties only have minimal funding sources. One of these political costs is funding for campaigns in order to introduce and instill confidence in the public that the political party or legislative candidate cares about and fights for the rights of the people in their constituency. Campaigns that involve

many people as well as campaigns using mass media and electronic media also require large costs.

Political corruption in an institutional perspective is an act that deviates from the duties of formal public roles to obtain money or personal wealth (individuals, close family, and private groups) in a way that violates the rules of people in certain positions who can influence. This can be categorized into acts of bribery to mislead someone's judgment, nepotism on the grounds of kinship and improper access to public resources for personal gain. The scope of political corruption from a behavioral perspective includes: patronage, vote buying, pork barreling, bribery, bribes, conflict interests, nepotism, influence selling, and campaign financing.

Forms of political corruption consist of: bribery of the length of the procedure and queues for public services, supervision by the public bureaucracy, and improve economic power, peddling influence (trading in influence) public officials to people who make the decision to guarantee the execution of the exchange corruption of people who give bribes, purchases vote to maintain party power politics, nepotism or patronage to help relatives and people who are one group or one ideas are assigned to a particular job, and corruption in the financing of political parties.¹⁴

The impact of corruption on politics and democracy is evidenced by the new

13 Yeni Sri Lestari, "Kartel Politik Dan Korupsi Politik Di Indonesia", *Pandecta : Jurnal Penelitian Ilmu Hukum (Research Law Journal)*, Vol. 12, No. 1 (Februari 2017): 75. Diakses 11 Februari 2022. <<https://doi.org/10.15294/PANDECTA.V12I1.7820>>.

14 Adelina. *Op Cit*. Hlm. 73.

constituents that will run after being bribed. Bribery is carried out by candidates for party leaders to fulfill their personal or party interests only so that they are no longer relied on regarding their abilities and leadership. In addition, corruption has taken the government hostage, resulting in the strengthening of the plutocracy or the political system controlled by the owners of capital, the destruction of people's sovereignty, and the destruction of people's trust in democracy.

Political corruption can occur in countries that are in power with the predicate of a dictatorship or democracy. There is no guarantee that a country is free from corruption, especially political corruption if the country adopts a dictatorial or democratic system of government. The Indonesian state which adheres to a democratic government system, the evidence is that until now political corruption is still happening and very often happens. Even more concerning is the fact that the perpetrators of political corruption are political elites. In this regard, what distinguishes political corruption from one country to another is its form. Based on the form of political corruption between countries can be identified and can be classified. The form of political corruption between countries is different, this is influenced by the government system and political system adopted by the country.

The form of political corruption in

question is the intensity of political corruption practices and is related to the elasticity of the government's response as the holder of state power.¹⁵ The government with all its authorities and legal instruments has the potential to abuse its authority by committing criminal acts of political corruption. The emergence of political corruption is in line with the low or non-implementation of supervision over the practice of administering state power. This low level of supervision can be caused by inadequate education and socio-economic conditions of the people. This is also influenced by the level of community political participation. The higher the political participation, the better the public supervision of the administration of a country's government. Another possibility is that the practice of political power itself is considered oppressive and shifts from moral norms and just laws. The existence of this corrupt power practice through a political culture that continues to seek socio-political legitimacy. "Political corruption consists of various aspects related to power, because the central figure of political corruption is a legal subject who has political power, gets a mandate from the people, has a constitutional and legal mandate to uphold democracy and justice in all aspects of people's lives and livelihoods. Political corruption indicates the abuse of authority, mandate, mandate, which has been entrusted by the people as the holder of the highest power

15 Maria Silvy E. Wangga, R. Bondan Agung Kardono, and Aditya Wirawan, "Penegakan Hukum Korupsi Politik", *Kanun Jurnal Ilmu Hukum*, Vol. 21, No. 1 (Juni 2019): 60. Diakses 3 Februari 2022. <<https://doi.org/10.24815/kanun.v21i1.12862>>.

in a democratic country. Political corruption is carried out by perpetrators by abusing the authority, opportunities and facilities that are directed at the socio-political positions and positions attached to them. The misuse of the strategic position of political corruption actors has a negative impact on the people in terms of economy, politics, law and social education”.

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Authority is the right owned by the Agency and/or Government Officials or other state administrators to make decisions and/or actions in the administration of government. Abuse of authority is the use of authority by Government Agencies and/or Officials in making decisions and/or actions in the administration of government which is carried out by exceeding authority, mixing authority, and/or acting arbitrarily as referred to in Article 17 and Article 18 of Law Number 30 of 2014 concerning Government Administration. A request for an assessment of the element of abuse of authority is a written request to the Court to assess whether or not there is an element of abuse of authority committed by a government agency and/or official in a decision and/or action.

Abuse of authority when viewed based on the principle of “lex posteriori derogate legi priori”, the authority to examine and decide on elements of abuse of authority due to positions in Corruption is the absolute competence of

the State Administrative Court. The legal implications of the legislation policy that gives the authority to examine and decide on the abuse of authority in Corruption to two judicial institutions, First, it has the potential to cause a dispute on the authority to try between the two courts; Second, it creates uncertainty in the mechanism for handling abuse of authority in Corruption, thus hampering efforts to eradicate Corruption.¹⁷

Corruption will destroy the civilization of a nation, destroy the economic system and what is even worse will destroy the mentality of a nation, especially its young generations. So to erode the culture of corruption from the start we have to teach our children, our families, our friends, about the moral values called honesty, because the honesty of a nation is what will be the capital for the development of a nation. great nation, advanced and civilized.

The condition of Indonesia, which is stricken with “political and economic cancer, is already in a critical stage. The malignant cancer of corruption continues to gnaw at vital nerves within the Indonesian state, resulting in an institutional crisis. Political corruption is carried out by people or institutions who have political power, or by conglomerates who carry out collusive transactional relationships with power holders.¹⁸

As mentioned in the background above in the report of the Corruption Eradication

16 Artidjo Alkostar, “Korelasi Korupsi Politik Dengan Hukum Dan Pemerintahan Di Negara Modern”, *Jurnal Hukum*, Vol.16, No. 1 (Juni 2009):155.

17 Mohammad Sahlan, “Kewenangan Peradilan Tipikor Pasca Berlakunya Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan”, *Jurnal Arena Hukum*, Vol.9, No.2 (September 2016): 171.

18 Evi Hartanti, *Tindak Pidana Korupsi* (Jakarta: Sinar Grafika, 2017).Hlm. 34.

Commission (KPK) for the years 2004-2020, most of the perpetrators of corruption are politicians. The perpetrators of corruption have high positions in government. Examples of cases include the procurement of E-KTP which is one of the corruption cases with fantastic state losses. This case dragged the former chairman of the Golkar Party Setya Novanto with a total state loss of Rp 2.3 trillion. Then the case of Luthfi Hasan Ishaq, the former President of PKS who was proven to have received bribes of Rp. 1.3 billion from the President Director of PT. Indoguna Utama related to the management of the addition of beef import quotas in 2013. The most recent case in 2020 was, Juliari P. Batubara, who served as the inactive Minister of Social Affairs, the Indonesian Minister of Social Affairs as well as a PDI-P (PDIP) politician, allegedly received a total of Rp. 17 billion from two packages of social assistance implementation in the form of basic necessities for the handling of Covid-19 in the Greater Jakarta area in 2020.

It is undeniable that in fact the cost of politics in Indonesia is very high. These political costs include the cost of the Success Team (Timses), campaign operational costs such as the cost of banners and other operational costs. Not to mention the phenomenon of political dowry costs that must be given by the Candidate Pair (Pasekon) to participate in political contestation in Indonesia. The costs that have been incurred by the Pasekons

before they occupy certain positions in the Government are very influential on political crimes that occur in Indonesia. This means that the political corruption that is happening in Indonesia today is a logical consequence of the high cost of politics in Indonesia.

Based on the examples above, the perpetrators of political corruption are essentially figures who should undoubtedly have an understanding of moral values, values of philosophy of life, professionalism, and integrity in carrying out their positions. This is because those who are perpetrators of political corruption are actually political figures who are well known by the Indonesian people. His track record of political positions cannot be doubted. Indonesian society, whose political knowledge is still relatively low, generally only judges and selects officials based on their level of popularity, not on the individual capacities of the officials. The law has mandated trust in state officials or state administrators so that they can serve the community in accordance with their duties and authorities. This proves that "state administrators are captive in Lord Acton's postulates, power tends to corrupt, absolute power is corrupted absolutely because of the superior position it has so that it gives birth to oligarchic or kleptocratic power".¹⁹ From the research results, political scientists state that an irrational political system is the real cause behind corruption. The government or officials have enormous power and this is useful for rent-seeking officials. It is argued

19 Saldi Isra, *Pemilu Dan Pemulihan Daulat Rakyat* (Jakarta: Themis Publishing, 2017).hlm. 52.

that the absence of oversight and monitoring in the political system leads to corruption. Lack of transparency in administration and democracy, sectarianism, favoritism, and for representing development interests were identified as causative factors in corruption. Decentralization and excessive centralization are also noticed by scientists. That the excessive top-down centralized structure is responsible for corruption in India.²⁰ An important aspect to note about the politics of corruption is that a government system that is not transparent and centralized will encourage the development of corrupt behavior.

Based on this, seeing the rampant corruption cases carried out by the country's political elite, Muladi argues that the problem tends to be related to the legal culture (legal culture) and the moral quality of its human resources, in the form of views, attitudes, perceptions, behaviors, and even the philosophies of community members. which is counterproductive.

The basic thing stated by Muladi highlights aspects of a person's legal culture in his behavior in the community and in the implementation of his role in society. A corruptor, both corrupt in a broad sense and in a narrower sense, namely political corruptors, are those who are certain to have a bad legal culture. So that what needs to be built together is the legal culture and legal awareness of the

Indonesian people to jointly fight corruption.

In fact today, corruption convicts get punishments that are not commensurate. They are imprisoned but supported by elite facilities. Various types of regulations governing corruption were established, including "Law Number 20 of 2001 concerning amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, then Government Regulation Number 19 of 2000 concerning the Joint Team for the Eradication of Corruption Crimes. , then there is Law Number 30 of 2002 concerning the Corruption Eradication Commission". The establishment of these regulations and laws is expected to be able to reduce the quantity of corruption cases that occur and get a positive response from the public. With the existing regulations, it is hoped that the state will be able to effectively control corruption, especially for legislative figures with the aim that they are aware that even though they have the authority, they should not abuse the authority attached to them. Especially if it relates to regional allocation funds.²¹

Facts on the ground show that, so far in the enforcement of criminal law against criminal acts of political corruption in Indonesia, often cases of political corruption are tried, the prosecutor who is tasked with making demands only submits demands for a minimum

20 D. Gambetta, *Corruption: An Analytical Map*, Dalam S.Kotkin Dan A. Sajo (Eds), *Political Corruption In Urban America* (Bloomington: Indiana University Press, 2002). pp. 45.

21 Wiki Oktama Putri and Ridwan Arifin, "Penegakan Hukum Terhadap Anggota Legislatif Dalam Kasus Tindak Pidana Korupsi Di Indonesia", *Al Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan*, Vol. 8, No.1 (Februari 2019), 2019.

sentence even though based on 2 and 3 of the Corruption Criminal Act, the defendant can be prosecuted with a maximum sentence of 20 years in prison and life imprisonment and even death. This will be more effective in reducing the number of corruption cases in Indonesia because of the severity of the punishment given. The judge should in his decision use the maximum threat. To eradicate corruption in Indonesia, law enforcement officers need not hesitate in making efforts to impoverish and revoke political rights considering the large negative impact on the state for corruption, especially corruption committed by state officials.

Criminal Accountability of State Officials Committing Political Corruption in Indonesia

Criminal liability is based on the theory of criminal responsibility, which states that to be able to impose a crime on the perpetrator for committing a criminal act, the law regarding criminal responsibility serves as a determinant of the conditions that must exist in a person so that it is legal if sentenced. Accountability for a criminal act committed by a person is to determine the guilt of the crime he has committed. Criminal liability can only occur after someone has previously committed a crime.²² Accountability for criminal acts of corruption as regulated in Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number

20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, contains provisions - provisions which include the following:

- a. Article 2 and Article 3 relate to criminal acts of corruption related to state financial losses or the state economy;
- b. Article 5, Article 6, Article 11, Article 12, Article 12 letter (a), (b), (c), (d), Article 12B, and Article 13, corruption crimes related to bribery;
- c. Article 7 paragraph (1), Article 7 paragraph (1) letters a, b, c, d and Article 7 paragraph (2) Article 12 letter (i), criminal acts of corruption related to contracting, suppliers and partners;
- d. Article 8, Article 9, and Article 10, criminal acts of corruption related to embezzlement;
- e. Article 12 letters (e), (f), (g), (h), criminal acts of corruption related to forced requests or extortion of positions (kneveleraij);
- f. Article 21, Article 22, Article 23, and Article 24, criminal acts related to criminal acts of corruption are acts that are not detrimental to state finances or abuse of authority, position and position but acts that can hinder efforts to eradicate corruption.

Based on the provisions of "Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption", the following are some

²² Hasbullah F Sjawie, *Pertanggungjawaban Pidana Pada Tindak Pidana Korupsi* (Jakarta: Kencana, 2015). Hlm. 41.

of the sanctions and/or types of criminal penalties that can be imposed on state officials who commit criminal acts of corruption, among others:

First, the death penalty. Any person who is proven to have unlawfully committed an act to enrich himself or another person or a corporation that results in losses to the state's finances or economy, as stipulated in the provisions of "Article 2 paragraph (1) of the Corruption Eradication Law Number 31 of 1999 in conjunction with Law Number 20 of 2001" can be sentenced to death if it is carried out in certain circumstances.

One of the weaknesses in Article 2 paragraph (2) is that the execution of the death penalty for convicts of corruption does not apply because there is a formulation of the death penalty, namely the requirement of "certain circumstances". In the elucidation of Article 2 paragraph (2), the definition of "certain circumstances" is the reason for the aggravation of the punishment in order that the death penalty can be applied. The weakness according to the explanation of "Article 2 Paragraph (2) of the Corruption Crime Act" is that there is no confirmation of the requirements of "certain circumstances" as formulated in the explanation of the regulation. The absence of the imposition of capital punishment on corruptors is not an excuse even though there are no clear parameters or measures related to it. "Although the actions of the corruptors

are considered a mistake that must be legally accounted for, the fact that the death penalty has never been executed has made Indonesia a new commodity for perpetrators of corruption. Until now, the judge has never handed down a death sentence for violators of Article 2 of the Corruption Crime Act".²³

The death penalty should be imposed based on the highest level of loss experienced by the state and has implications for the welfare of society. It is necessary to qualify the amount of the loss which is determined separately in the law so that it is possible to impose the death penalty. So that there is a benchmark when a perpetrator of a criminal act of corruption can be sentenced to death. So in this case the threat related to the death penalty is clear and firm and does not have multiple interpretations. This will certainly have a more effective deterrent effect and serve as a reminder for everyone not to even think about doing it.

Second, life imprisonment or a minimum of 4 (four) and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) to Rp. 1,000,000,000.00 (one billion rupiah), shall be sentenced to every person who commits the acts as stated in Article 2 paragraph (1) of the Corruption Eradication Law Number 31 of 1999 in conjunction with Law Number 20 of 2001.

Third, life imprisonment or a minimum imprisonment of 1 (one) year and a maximum

23 Mohammad Khairul Muqorobin and Barda Nawawi Arief, "Kebijakan Formulasi Pidana Mati Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi Pada Masa Pandemi Corona Virus Disease 2019 (COVID-19) Berdasarkan Perspektif Pembaharuan Hukum Pidana", *Jurnal Pembangunan Hukum Indonesia*, Vol.2, No.3 (Agustus 2020): 387. Diakses 3 Februari 2022. <<https://doi.org/10.14710/jphi.v2i3.387-398>>.

of 20 (twenty) years and or a minimum fine of Rp. 50,000,000.00 to 1,000,000,000.00 (one billion rupiah), as stipulated in Article 3 of the Corruption Crime Act Number 31 of 1999 in conjunction with Law Number 20 of 2001, which is aimed at anyone who has benefit himself or another person or corporation by abusing the authority or position he is currently occupied, which for his actions can harm state finances or the state economy. The maximum or lifelong criminal threat is a relevant criminal threat imposed on state officials who commit political corruption considering that often the amount of state losses incurred by perpetrators is fantastic, this punishment will certainly be more commensurate with the actions committed than the imposition of a minimum criminal threat which is clearly very serious. not commensurate with the losses that have been caused.

Fourth, additional punishment. As stated in Article 18 of the Corruption Crime Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, among others: confiscation of movable goods, both tangible and intangible or movable or immovable goods intended for or obtained from the proceeds of corruption crimes, including the company owned by the convict where the act of corruption was committed, as well as the goods that replace it; make payments of compensation in the same amount as the assets obtained from the proceeds of corruption; closing of all or part of the company owned by the convict within a maximum period of 1 (one) year; revoke all or

part of certain rights, or eliminate all or part of certain benefits that have been or can be given from the government to the convict.

In this case, if the convict does not pay the replacement money within 1 (one) month after the court's decision which is declared legally binding, the prosecutor will confiscate the convict's property and the property will be auctioned in lieu of compensation. Unpaid. If the property owned by the convict is not sufficient to pay the replacement money, he will be sentenced to imprisonment for a length of time that does not meet the maximum threat of the main crime in accordance with the provisions of the Corruption Eradication Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 and the length of time. punishment has been determined in the decision. In this case, law enforcement officers must also have the courage and high integrity to be indiscriminate in eradicating political crimes in Indonesia. In addition, the cultivation of high morals in law enforcers is the most important factor in enforcing the law. If this is not instilled, we will always encounter political corruption in Indonesia. With regard to acts of corruption committed by a corporation, it will only be subject to a fine with a maximum criminal provision of 1/3 (one third).

As a form of protection for the state and society from corruption crimes committed by state officials, the imposition of maximum imprisonment in law enforcement against perpetrators of political corruption needs to

be carried out. The imposition of criminal sanctions that are relatively light and not commensurate with the impact caused by political corruption actors will not instill a deterrent effect on the perpetrators but will instead be the cause of the birth of other corruptors. For now, law enforcement officers seem fierce in handling small cases but benign in handling large cases, especially those carried out by state elites. According to Indonesia Corruption Watch or commonly abbreviated as ICW, in general, perpetrators of corruption crimes receive a verdict by a court judge in the form of a relatively light prison sentence. In practice, the implementation of additional penalties is very dependent on the judge. The data released by ICW indicates that political crimes in Indonesia.

In fact, if we refer to Jeremy Bentham's opinion, it is stated that the main things from punishment must have benefits, therefore there are 3 (three) benefits of sentencing, among others; Punishment must be able to improve self-improvement of the perpetrator of the crime, the sentence must be able to eliminate the ability to commit the crime again, the punishment must provide compensation to the party who was harmed for the act of the perpetrator.²⁴

This means that the purpose of punishment is to prevent the occurrence of criminal acts committed by the perpetrator in the future and

to protect the rights of victims who have been harmed by the perpetrator's criminal acts. The purpose of this punishment is in accordance with the ideals of the national criminal law, namely paying more attention to the rights of victims, not more concerned with the rights of criminals. The enforcement of criminal law like this will create justice, certainty and benefit for the community, especially in the context of criminal law enforcement.

Based on the facts, the criminal law of corruption in several countries, especially in Indonesia, looks as if it is not functioning as it should. The imposition of a light prison sentence by the judge will certainly not provide a deterrent effect and is not commensurate with the impact of the crime committed. In cases involving state elites, law enforcement institutions seem to have lost their integrity. In fact, if we refer to the opinion of Barda Nawawi Arief, judging from the policy of criminal law, the target address of the criminal law is not only evil actions of citizens but also acts (in the sense of authority / power) carried out by authorities / law enforcement officers.²⁵ This means that based on the opinion expressed by Barda Nawawi Arif, someone who abuses his authority or power is also included in the target of criminal law. The enforcement of criminal law against state administrators is still relatively weak, this is evidenced by the low level of criminal threats imposed on state officials who

24 Jeremy Bentham, *Teori Perundang-Undangan, Prinsip-Prinsip Legislasi Hukum Perdata Dan Hukum Pidana, Penerjemah Hurhadi* (Bandung: Nuansa, 2016). Hlm. 51.

25 Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Bandung: PT.Citra Aditya Bakti, 2001).Hlm. 41.

commit criminal acts of corruption is one of the reasons for the emphasis on the number of criminal acts that are difficult to carry out. This is of course because the sentence handed down on the perpetrator has not been able to provide a deterrent effect. In this case, the government must be more assertive, especially the state apparatus who is the long arm of the people, should be trustworthy, set a good example and make every effort in their position to do what is best for the country and the people of Indonesia. In addition, in order to form regulations that are more effective and efficient, it is necessary to reform several provisions in the Corruption Law which are considered to be less firm, not detailed and have multiple interpretations.

Conclusion

Based on the results of the description of the above discussion, it can be concluded that political corruption is a crime that destroys the life order of the state and violates the basic rights of the people in the country concerned. According to the records of the Corruption Eradication Commission (KPK) for the 2004-2020 period, the perpetrators of political corruption are dominated by people who hold political positions. This of course raises concerns. The reality of law enforcement against political corruption carried out by state officials in Indonesia is currently not running optimally. In cases involving state elites, law enforcement institutions seem to have lost their integrity. Corruption convicts

who involve state officials receive laws that are not commensurate with the actions they have committed.

In terms of criminal liability, the low threat of criminal prosecution and the judge's verdict is one of the factors causing the difficulty of suppressing this crime rate in Indonesia. The imposition of a maximum sentence of imprisonment or life imprisonment is considered relevant to be imposed on the perpetrator. Even the implementation of the death penalty for state officials who commit corruption is considered necessary, this aims to protect the state and society considering the very large impact on the order of the nation and state. So far, the death penalty has never been applied because there are indicators of "certain circumstances" as a condition for its implementation. In this case, a re-formulation is needed that contains the qualification provisions for the amount of the loss which is determined separately in the Corruption Crimes Act so that it is possible to impose the death penalty. So that it can be used as a benchmark when a perpetrator of a criminal act of corruption can be sentenced to death. In this case, it is necessary to reform some of the provisions in the Law in order to form regulations that are more effective and efficient in eradicating corruption, especially those committed by state officials in Indonesia.

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