International Journal of Law, Policy and Social Review
www.lawjournals.net
Online ISSN: 2664-6838, Print ISSN: 2664-682X
Received: 28-03-2022, Accepted: 14-04-2022, Published: 29-04-2022
Volume 4, Issue 2, 2022, Page No. 20-27

Implementation of judge freedom principles in implementing criminal sanctions for corruption in connection with the purpose of criminal

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Abstract
Efforts to eradicate corruption have been carried out for a long time by using various methods, sanctions against perpetrators of corruption. In examining and deciding criminal cases before him, judges have the freedom to make legal discoveries and make judgments. All decisions of a judge are left to the views and beliefs of the judge to determine whether or not the defendant is guilty. In this study, the author uses a normative juridical approach. Research Specifications, this research is descriptive analytical. Types of data, namely secondary data. Data was collected through library research on secondary data. The data obtained in this study were analyzed using qualitative normative methods. The results of this study are: *First*, that the judge's considerations in imposing sentencing decisions related to Corruption Crimes must pay attention to juridical and non-juridical considerations. Justice is viewed from the perspective of justice for the accused. *Second*, the impact of the minimum punishment specifically for corruptors affects the life of the accused in society, such as feeling ashamed, losing honor, being ostracized, distrusted and even looked down upon by the community, neighbors and friends, the impact is self-defeating and automatically affects the defendant's nuclear family.

Keywords: judge, freedom, corruption, criminal, criminalization

Introduction

Efforts to eradicate corruption have been carried out for a long time by using various methods, including sanctions against perpetrators of corruption, but almost every day we still read or hear news about corruption. News about the arrest operation (OTT) against the perpetrators of corruption is still common. What was quite shocking was the Corruption Eradication Commission's arrest of 41 of the 45 members of the Malang City DPRD. Then, no less shocking was the news about being caught in the hands of a member of the Mataram City DPRD who was extorting money related to the rehabilitation assistance for educational facilities affected by the Lombok earthquake, NTB. The following will describe the causes, obstacles, solutions and regulations of corruption in Indonesia. (Wicipto Setiadi, 2018:250). Corruption has very dangerous consequences for human life, both aspects of social, political, bureaucratic, economic, and individual life. The danger of corruption for life is likened to that corruption is like cancer in the blood, so the owner of the body must always do "dialysis" continuously if he wants to be able to live continuously.

If corruption in a society is rampant and becomes the food of the people every day, the result will be that the society becomes a chaotic society, there is no social system that can work properly. Every individual in society will only be selfish (*self-interest*), even *selfishness*. (Wicipto Setiadi, 2018:250). There will be no genuine cooperation and brotherhood. Empirical facts from research results in many countries and theoretical support by social scientists show that corruption has a negative effect on the sense of social justice and social equality. Corruption causes sharp differences between social groups and individuals in terms of income, prestige, power and others.

Corruption also jeopardizes the moral and intellectual standards of society. When corruption is rampant, there is no main value or nobility in society. Theobald stated that corruption creates a climate of greed, *selfishness*, and cynicism. Chandra Muzaffar states that corruption causes an individual's attitude to put his own interests above everything else and will only think about himself only. If the climate of society has been created that way, then the public's desire to sacrifice for the good and development of society will continue to decline and may be lost.

The regulation on the freedom of judges in deciding a case is based on the independence of judicial power which is constitutionally regulated in the 1945 Constitution of the Republic of Indonesia, which is then implemented into Law Number 48 of 2009 concerning Judicial Power. In examining and deciding criminal cases before him, judges have the freedom to make legal discoveries and make judgments. All decisions of a judge are left to the views and beliefs of the judge to determine whether or not the defendant is guilty. In this case the judge is required to make legal discoveries. The discovery in question is the facts revealed at the trial here, the judge is obliged to explore every information given and assess whether the information given is valid or not.

In making legal discoveries, you must be free, free in the sense of being free from all interventions, both in the trial, namely the parties involved in the trial and outside the trial, namely the wider community itself. The most

important thing in a legal discovery is how to find or find the law for a concrete event. In addition, the task of the judge is not to punish and punish, but to make a decision that is as fair as possible, namely: if the defendant is proven legally and convincingly guilty, then the defendant must be sentenced to a sentence that must also be proportional to the severity of the crime he committed. (Achmad Ali, 2009:481) As we know that the regulation on the freedom of judges to impose a special minimum penalty in corruption has not been regulated in the law, only that the imposition of sanctions below the minimum is contrary to the Criminal Code which only recognizes maximum punishment and is contrary to the principle of legality. So far, judges have only relied on the principles of judicial power and conscience in making a decision based on the principle of justice itself.

More than just a philosophical reason, that breaking through the formal provisions of a special minimum criminal as part of the performance of an *independent* or free in finding a legal norm. (Ramadan Ismail, 2013:126) In line with this, Satjipto Rahardjo described that it is not illegal for judges to deviate from the law if justice can be obtained by violating the law and injustice will arise if the provisions in the legislation are applied. . (Darmoko Yuti Witanto, 2013:123) According to Chairul Huda, judges are bound to impose a criminal sentence between the minimum and maximum punishment, however, the judge can ignore if the minimum criminal sentence is still too severe. If legal certainty and justice cannot be met, the judge may take a stance to prioritize justice over legal certainty.

The provision of criminal sanctions below the specific minimum limit in the Anti-Corruption Law as a form of effort to eradicate corruption that is rife in Indonesia lately, the formation of the Anti-Corruption Law should be balanced with various provisions and applicable legal rules, especially in the formulation of minimum criminal offenses. In this Corruption Law, which basically provides a coercion to show a desire to meet the demands of the community which requires a minimum objective standard in a decision-making by judges. This is due to the public's distrust of the judge's own performance in deciding a corruption case.

The implementation of the minimum penalty in the Anti-Corruption Law is not accompanied by any provisions regarding the rules or guidelines for punishment which are a special rule outside the Criminal Code which includes a specific minimum penalty in the formulation of the article. At least when the judge adjudicating the criminal case in question is faced with the fact that there are many factors that mitigate the crime. This means that, even though the formulation of the article in the Anti-Corruption Law has determined a minimum penalty in particular, but with certain legal considerations, the judge has violated the special minimum criminal limit. In this case, at the level of implementation, there is a judge's decision that imposes a prison sentence below the specific minimum criminal threat limit with their respective explanations. So that the problem that arises then is a clash between legal certainty on the one hand and legal justice on the other. Judges no longer interpret the same as in the law and judges are also not allowed to remain or continue to be guided by the formulation of the law when faced with facts at trial that are mitigating and based on justice. For example, mitigating factors related to the action, and related to the person.

Specific minimum criminal sanctions which are expected to reduce criminal disparities and ensure protection of the rights of the accused are actually very much different between theory and reality, in some corruption cases criminal disparity is still common, as is the case in the corruption case committed by Gayus Tambunan in the legal mafia case. and taxes. Gaius was sentenced to 7 years and paid a fine of Rp. 300 million, and returned by the state along with a total interest of Rp. 570 million. This verdict is much lighter than the prosecutor's demands, 20 years and a fine of Rp. 500 million. (VIVANews http:// vivanews.com/berita/200177-kenapa-hakim--hanya--vonis-7-tahun-.htm,)

Another corruption case is the case of Urip Tri Gunawan, a former prosecutor involved in the BLBI bribery case. Prosecutor Urip was proven to have accepted bribes from Artalyta Suryani of US$ 660 thousand and former Head of IBRA Glenn MS Yusuf through lawyer Reno Iskandarsyah of Rp. 1 billion. The panel of judges chaired by Teguh Haryanto sentenced the defendant to 20 years in prison and a fine of Rp. 500 million with a subsidiary of 1 year in prison. This verdict is heavier than the prosecutor's demands of 15 years and a fine of Rp. 250 million.

In the corruption case above, there are several things that become important notes, namely related to the application of special minimum criminal sanctions for corruption crimes, there are differences (criminal disparities). The judge in imposing special minimum criminal sanctions on corruption defendants with various considerations and evidence at trial of course in accordance with the judge's belief. The problem is the belief of each judge that there is no clear benchmark and besides that there is no clear pattern of punishment for judges to impose special minimum criminal sanctions on defendants of corruption. In the application of special minimum criminal sanctions against corruption defendants, there are often overlaps regarding the length of the sentence and the amount of the fine imposed. In addition, from the aspect of legal protection, there is still injustice (discrimination). Then a problem arises, namely: What is the judge's consideration in imposing a criminal under a special minimum against perpetrators of corruption? And how is the impact of imposing a minimum sentence on perpetrators of corruption related to the purpose of sentencing?

In addition, the objectives of this research are: To analyze the judge's considerations in imposing a sentence below the specific minimum on the perpetrators of corruption, and to analyze the impact of the imposition of a minimum sentence on the perpetrators of corruption related to the purpose of punishment.

Based on this background, it is clear that there are still frequent criminal disparities related to the special minimum criminal sanctions imposed by judges on criminals. Here, it can be seen that there is no clear pattern of

punishment for judges in passing sentences (criminal sanctions), so that with the difference in sentences, it can be said that the protection of human rights for perpetrators of crimes does not have clear standards.

Results and Discussion

Judges' considerations in imposing sentences below the special minimum against perpetrators of criminal acts of corruption

The recent increase in the number of corruption cases in Indonesia has prompted the government to act by establishing an independent and independent government agency called the Corruption Eradication Commission (KPK). This is because corruption in Indonesia occurs systematically and widely so that it is not only detrimental to the state's financial condition, but also violates the social and economic rights of the wider community. (Lilik Mulyadi, 2013:3).

Corruption is an organized *crime*, where in committing the crime it does not only involve one or two people, but more than that. As in the corruption crime of bribery, bribery is not only committed by two people but can be committed by more than 5 people. Corruption is a crime that is considered not only detrimental to the state, but the impact of these actions is also detrimental to society. Therefore, the consideration of the enactment of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, one of which is that corruption which has occurred so far is not only detrimental to state finances, but has also become a violations of social and economic rights of the community at large, so that criminal acts of corruption need to be classified as crimes whose eradication must be carried out in an extraordinary manner. One of the efforts to eradicate corruption in Indonesia is the establishment of the Corruption Eradication Commission (KPK). (Adami Chazawi, 2016:40).

In terms of eradicating corruption, there are two determining factors, namely the legal factor (*laws*) and the human factor (*men*), namely the ability and authority of law enforcement to understand these factors first, then apply them in concrete situations in accordance with the demands of national development. Especially law graduates whose professions are in the field of law application such as prosecutors, judges and lawyers, need to have three things, namely knowledge, deep understanding and skills in addition to a deep sense of morality. (Sudarto, 1977:20).

Eradication efforts carried out by the KPK are still very much needed, considering that although corruption has been handled, there is still news about the arrests of perpetrators of corruption. This shows that the handling of corruption has not provided much of a deterrent effect among the public.

The provision of criminal sanctions below the specific minimum limit in the Anti-Corruption Law as a form of effort to eradicate corruption which is rife in Indonesia in recent times. In this Corruption Law, which basically provides a coercion to show a desire to meet the demands of the community which requires a minimum objective standard in decision-making by judges. This is due to the public's distrust of the judge's own performance in deciding a corruption case.

There are still many obstacles experienced in the context of eradicating corruption, due to the increasingly sophisticated tactics and modus operandi used by perpetrators of corruption. In addition, the strategies used by the perpetrators so far tend to be more advanced or more sophisticated than law enforcement. The steps taken in the context of eradicating corruption can still be said to be ordinary, even though corruption is an unusual crime so that in its eradication it must use extraordinary methods.

Judges have the freedom to make an assessment based on their views and beliefs to determine whether or not the defendant is guilty. the judge must consider the facts in the trial and also look at mitigating or aggravating factors. In practice, there are judges who deliberately give decisions below the minimum limit in cases of corruption. Legal issues in this study are regarding the regulation of judges' freedom regarding the imposition of special minimum crimes in corruption crimes and judges' considerations in imposing special minimum crimes in corruption crimes.

The implementation of the minimum penalty in the Anti-Corruption Law is not accompanied by any provisions regarding the rules or guidelines for punishment which are a special rule outside the Criminal Code which includes a specific minimum penalty in the formulation of the article. At least when the judge adjudicating the criminal case in question is faced with the fact that there are many factors that mitigate the crime. This means that, even though the formulation of the article in the Anti-Corruption Law has determined a minimum penalty in particular, but with certain legal considerations, the judge has violated the special minimum criminal limit. In this case, at the level of implementation, there is a judge's decision that imposes a prison sentence below the specific minimum criminal threat limit with their respective explanations. So that the problem that arises then is a clash between legal certainty on the one hand and legal justice on the other. Judges no longer interpret the same as in the law and judges are also not allowed to remain or continue to be guided by the formulation of the law when faced with facts at trial that are mitigating and based on justice. For example, mitigating factors related to the action, and related to the person.

In his decision, the judge must state which acts of the defendant, based on the facts revealed at the trial, meet the formulation of a certain article of the legislation, in the basic research the judge's consideration of the criminal offense of corruption is decided at a special minimum. The judge's decision must include the actions of the defendant who meet the formulation of the article on the crime of criminal acts of corruption contained in article 3 of the Republic of Indonesia Law no. 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption, which reads: "Every person who, with the aim of

benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position. which can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)". The basis for the judge's consideration in imposing a sentence on the defendant in the corruption case is Article 3 of Law number 20 of 2001 in conjunction with Law number 31 of 1999, namely the basis for consideration of juridical and non-juridical judges. It can be explained as follows:

a. Basic Juridical Considerations

The basis for juridical considerations is the judge's considerations from a legal point of view. So that in deciding on the crime of corruption in Article 3 of Law No. 20 of 2001 in conjunction with Law No. 31 of 1999, the judge must examine carefully and thoroughly based on what was revealed at the trial, namely based on the available evidence, whether the defendant's actions met the elements of corruption. -The elements of article 3 are: (R. Wiyono, 2012:45)

1. Benefit oneself or another person or a corporation;
2. Abusing the authority of opportunities or facilities that exist because of position or position;
3. It is detrimental to state finances or the state economy.

b. The basis for non-juridical considerations

The basis for non-juridical considerations is the consideration from a non-legal aspect. The application of the severity of the sentence imposed on a judge is adjusted to the motivation and consequences of the perpetrator's actions, especially in the application of the type of imprisonment, but in the case of certain laws, certain laws have normatively regulated articles regarding sentencing with minimal threats as regulated in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The judge in his consideration must also pay attention to aggravating and mitigating matters as stated in Article 8 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power which states that: "In considering the severity, the judge must also pay attention to the good and evil nature of the defendant".

Here it is explained that the judge must pay attention to the good and evil characteristics of the accused, in considering the punishment to be imposed and the personal circumstances of the accused need to be considered or taken into account in order to give a commensurate and fair punishment. This personal situation is obtained from information from people from the environment, neighbors, psychiatrists and so on. In addition, in imposing a sentence, the judge must explore the background of the occurrence of a criminal act by taking into account the nature and seriousness of the crime as well as the circumstances which include the acts charged with the accused, including the level of education, the personality of the defendant and the environment and others, so that the judge feels confident that the decision handed down is true and fair.

The judge in obtaining confidence from various circumstances known to the judge from outside the court must obtain from legal evidence contained in the trial, in accordance with the conditions specified in the Act.

In addition, the judge's decision is also guided by 3 (three) things, namely: (MARI Education and Training Center, 2003)

1. The juridical element which is the first and main
2. element Philosophical elements have the core of truth and justice
3. Sociological elements, namely considering the cultural values that live and develop in society.

In Article 1 of Law Number 48 of 2009, it is stated that "Judicial Power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the State of Law of the Republic of Indonesia".

The regulation on the freedom of judges in deciding a case is based on the independence of judicial power which is constitutionally regulated in the 1945 Constitution of the Republic of Indonesia, which is then implemented into Law no. 48 of 2009 concerning Judicial Power. In examining and deciding criminal cases before him, judges have the freedom to make legal discoveries and make judgments. All decisions of a judge are left to the views and beliefs of the judge to determine whether or not the defendant is guilty. In this case the judge is required to make legal discoveries. The discovery in question is the facts revealed at the trial here, the judge is obliged to explore every information given and assess whether the information given is valid or not.

In making legal discoveries, you must be free, free in the sense of being free from all interventions, both in the trial, namely the parties involved in the trial and outside the trial, namely the wider community itself. The most important thing in a legal discovery is how to find or find the law for a concrete event. In addition, the task of the judge is not to punish and punish, but to make a decision that is as fair as possible, namely: if the defendant is proven legally and convincingly guilty, then the defendant must be sentenced to a sentence that must also be proportional to the severity of the crime he committed. (Achmad Ali, 2009:481).

Basically, judges can only make decisions in cases of criminal acts of corruption under the threat of a special minimum sentence. This can be done by the judge depending on the point of view/perspective. Judges must prioritize the principle of justice for all parties in deciding cases, especially corruption, which of course is supported by evidence and the role of the suspect. The judge's consideration in deciding a case, especially in a corruption case, is seen from the level of error of the perpetrator. In this case, it is the loss he has caused and after that it is also seen whether the suspect has had good intentions by returning what he has taken from the

state. Good faith is also meant in terms of whether during the examination the defendant was cooperative in providing information to investigators and being good in front of the court by not giving false information.

Judges in imposing special minimum sanctions when viewed from the corruption law there are no provisions that regulate it. Judges only use the principles of judicial power and judicial freedom supported by evidence in the field. Decisions under the special minimum threat can be deviated by considering the principle of justice, this is because the number of sanctions imposed by judges on perpetrators is not in accordance with the length of detention or the sentence he received.

The lack of evidence and witnesses against the suspect was the cause. However, the imposition of criminal sanctions below the minimum limit can still be given as long as the judge sees that the suspect already has good intentions such as returning what he has taken/corrupted to the state. In the case of a maximum sentence, the judge cannot exceed it. That is because if it is exceeded, it is not a sense of justice that is created but violates human rights themselves.

The imposition of sanctions below the minimum limit, especially in the field of corruption, can also be given as long as it must be considered carefully in order to fulfill a sense of justice for all parties. The consideration that is meant is that judges must really pay attention to the aspect *integrative* which must meet various elements. Corruption has the main goal of restoring state losses (*recovery assets*) which means that if the losses suffered by the state for the actions of the defendant have been returned, especially if the losses incurred are small and the defendant already has the initiative to return them, this can be deviated with criminal threats under minimum limit. Decisions below the minimum threshold must be truly selective. If a defendant already has the initiative to return the loss to the state, this does not remove the sentence so that in order to fulfill the principle of justice, the defendant is still sentenced but the verdict may be below the minimum limit of the law.

The judge in making the decision must be in accordance with the indictment article in the sense that the judge is bound by the minimum and maximum limits so that the judge is judged to have enforced the law correctly and correctly. In fact, there are judges who dare to give decisions below the special minimum limit and even under the demands of the public prosecutor on the grounds of fulfilling a sense of justice for all parties, including the accused and following conscience, which many people refer to as the words of God. . Decisions that violate these rules are guided by a sense of community justice, because there are also judges who hold the view that a judge cannot only hide behind the law, more than that the judge can impose a criminal under minimal threat as long as the decision does not contain elements of interest that interfere with the decision. judge, the judge's decision must be completely objective by upholding a sense of justice.

Impact of Imposing a Minimum Criminal Acts of Corruption Perpetrators Associated with the Purpose of Sentencing

In connection with the punishment of perpetrators or sentencing, there are known streams of sentencing objectives in criminal law, namely:

a. Classical School, This flow is a reaction against the French regime in the 18th century in France, where in that regime the state does not guarantee legal certainty, equality before the law and justice. This flow requires criminal law that is systematically and clearly structured and focuses on legal certainty. (Muladi and Barda Nawawi Arief, 1984:25) According to the classical school, the purpose of criminal law is to protect individuals from the power of rulers. The foundation stone was Markies van Beccaria who wrote "*Dei Delitti E Delle Pene*" in 1764. In this paper, Beccaria emphasizes the point of legal certainty by saying that criminal law must be regulated in written legislation and clearly formulated articles (*lex scripta and lex certa*). (Bambang Poernomo, 1985:24)
b. Modern School, Modern flow developed in the 19th century and the center of this flow is the perpetrator of the crime. This stream focuses on finding the causes of crime, using empirical methods and intending to directly approach and influence criminals. This school teaches that the purpose of criminal law is to protect society against crime. In line with this goal, the development of criminal law must also pay attention to the crime and the condition of the criminal (the perpetrator of the crime). In its development, criminal law has an influence that enriches knowledge of criminal law from criminology. The influence of this criminology has given rise to modern schools which assume that the purpose of criminal law is to eradicate crime so that the legal interests of society are protected. (EY Kanter and SR Sianturi, 2002:56)

In Indonesia itself, positive law has never formulated the purpose of punishment. So far, the discourse on the purpose of sentencing is still at a theoretical level. However, as a study material, the Draft National Criminal Code has determined the purpose of punishment in Book One of General Provisions in Chapter II with the title Criminal, Criminal and Action. The purpose of punishment according to Wirjono Prodjodikoro, namely: (Wirjono Prodjodikoro, 1981:16)

1. To frighten people not to commit crimes, either by scaring people (preventive generals) or by scaring certain people who have committed crimes so that in the future they will not be punished. commit crimes again (speciale preventive); and
2. To educate or improve people who commit crimes so that they become people of good character so that they are beneficial to society.

The purpose of the punishment itself is expected to be a means of protecting the community, rehabilitation and resocialization, fulfilling the views of customary law, as well as psychological aspects to eliminate guilt for the person concerned.

Although punishment is a misery, it is not meant to suffer and demean human dignity. PAF Lamintang states: (PAF Lamintang, 1988:23) "Basically there are three main ideas about the goals to be achieved with a punishment, namely:

a. To improve the personality of the criminal himself,
b. To make people become a deterrent in committing crimes, and
c. To make certain criminals incapable of committing other crimes, namely criminals which by other means cannot be repaired."

The demands of absolute justice are clearly seen in Kant's opinion in his book "*Philosophy of law*" as quoted by Muladi as saying: (Barda Nawawi Arief, 1984:50) "Criminals are never carried out solely as a means to promote other goals/goods, both for the perpetrator himself and for society, but in all cases must be imposed only because the person concerned has committed a crime. Even if all members of the community agree to destroy themselves (dissolve the community) the last killer who is still in prison must be sentenced to death before the resolution / decision to dissolve the community is carried out. must not remain with the members of the community, because otherwise they can all be seen as people who took part in the killing which is a violation of public justice."

Ahmad Hanafi is of the opinion that the main objectives of imposing a crime are prevention and education. (Ahmad Hanafi, 1993:191) The definition of prevention here is to restrain the maker from repeating his finger act or not continuing to do his act, and preventing others from doing it.

Corruption, as a universal phenomenon, emerged hundreds of years ago and arises because of the inability of a person or group of people to restrain their passions and greed to enrich themselves. This greed is supported by the existence of a weak government accountability system. Corruption in Indonesia from year to year continues to increase due to several internal and external factors. Internal factors include two things, namely the need for corruption (*corruption by needs*) where a person commits a criminal act of corruption because he is forced to because of the pressure of need, for example the salary received is not sufficient. And the impulse of greed (*corruption by greed*), where someone commits corruption not because of the urgency of the necessities of life, but because of the desire to live in luxury. External factors include a supportive environment, such as the permissive attitude of society towards acts of corruption.

Criminal law is a norm of appropriate and inappropriate behavior and at the same time maintains a harmonious relationship between the holder of power or the state and its people. What is meant by harmonious legal relations is that the formation of criminal law norms as far as possible does not conflict with human rights and basic rights of members of the community both in the legal, political, economic and social fields so that criminal law does not pose a threat to justice. and welfare of the people themselves.

On the other hand, criminal law is expected to function as an authoritative protector in the context of this relationship. The nature of criminal law since its inception has still had a repressive function in addition to a preventive function in a prospective sense. Criminal law is a prospective law or law to guide human behavior in the future. Criminal law must maintain that there is always a balance and harmonization between basic human rights and human obligations.

Corruption crime (Tipikor) in Indonesia has plagued various aspects of life. The history of eradicating corruption in Indonesia is indeed a long history with various laws and regulations equipped with various special teams or commissions to support the eradication of corruption. However, in reality, corruption is still massive and rampant at various levels of society.

The crime of corruption is a violation of social rights and economic rights of the community, so that corruption is no longer classified as an ordinary crime, but turns into an extraordinary crime (*extraordinary crime*). So that the eradication effort can no longer be carried out in the usual way, but is carried out in extraordinary ways as well. (Ifrani, 2016, Journal of the Constitution, Vol. 8, No. 6).

Corruption always gets more attention than other criminal acts. Corruption and Collusion and Nepotism is an act in one breath because all three violate the rules of honesty and legal norms. (Evi Hartanti, 2007:15)

Based on experience in several countries that have experienced rampant corruption cases, one of the appropriate steps to be taken in the context of eradicating corruption effectively and efficiently is to establish an independent special institution/agency. This method is carried out considering that conventional law enforcement methods (which are carried out by the police and prosecutors) have in fact been proven to have many failures (ineffective) even in some cases law enforcement officers (police, prosecutors, and judges) are involved and trapped in committing criminal acts of corruption. This even protects the corrupt, this condition has prompted the establishment of the Corruption Eradication Commission (KPK) as an independent institution and free from the influence of any power in the context of eradicating corruption.

In the application of special minimum criminal sanctions against corruption defendants, there are often overlaps regarding the length of the sentence and the amount of the fine imposed. In addition, from the aspect of legal protection, there is still injustice (discrimination).

Sentencing can be interpreted as the stage of determining sanctions and also the stage of imposing sanctions in criminal law. The word "criminal" is generally defined as law, while "criminal" is defined as punishment. The doctrine distinguishes material criminal law and formal criminal law. JM Van Bemmelen explains these two

things as follows: (Leden Marpaung, 2005:2) "Material criminal law consists of criminal acts which are called successively, general rules that can be applied to the act, and the punishment that is threatened for the act. Formal criminal law regulates how a criminal procedure should be carried out and determines the order that must be observed on that occasion".

Sentencing as an act against a criminal, can be justified normally not primarily because the punishment has positive consequences for the convict, the victim and other people in society. Therefore this theory is also called the theory of consequentialism. Criminals are imposed not because they have done evil, but so that the perpetrators of crimes will no longer do evil and other people are afraid to commit similar crimes.

The imposition of a special minimum sentence on defendants in corruption cases has an impact not only on him personally in the form of imprisonment and fines, but also for the continuation of the convict's life in the public and his work. In accordance with the purpose of punishment which provides a sense of deterrence to the convict, punishment is solely as a reward for unlawful acts that focus on controlling the community, special minimum penalties for perpetrators of corruption have an impact on the life of the defendant while in detention or after the defendant is released from detention. and return to society.

Roeslan Saleh said that "Criminals cannot be avoided in society, although it must be admitted that punishment is indeed a last defense tool. He is the end and the culmination of the whole system and efforts that can move humans to carry out certain behaviors that are expected by society. (Ruslan Saleh, 2004:8)

For the imposition of crimes on certain offenses, which should be prioritized between the interests of legal certainty on the one hand or the interests of justice on the other. Likewise, which should be prioritized between the interests of protecting the community on the one hand, and the interests of fostering individual perpetrators of criminal acts on the other. This is a reaction and a critical attitude towards the various criminal cases that have been decided by the judiciary on criminal cases. Outward appearance of the problem is the emergence of a discourse of criminal disparity (*disparity of sentencing*) between these offenses.

There is a fact that there is a very striking criminal disparity for offenses which essentially do not differ in quality, and there is a desire to meet the demands of the community which requires an objective minimum standard for certain offenses which are highly reprehensible and detrimental or harmful to society and the state, as well as for the sake of more effectively the effect of general prevention (*general prevention*) on certain offenses that are seen as dangerous and disturbing to the public, the law institution then determines that for certain offenses, in addition to the maximum punishment in particular, a minimum punishment is also determined in particular.

Barda Nawawi Arief also said that "When viewed from the point of view of the criminal system, the inclusion of the minimum number of sanctions or criminal threats in the formulation of offenses (special rules) is only one of the sub-systems of the criminal system. Therefore, this special minimum penalty cannot simply be determined or operationalized in the formulation of the offense. To be determined, there must be another subsystem that regulates it, namely there must be rules or guidelines for punishment". (Barda Nawawi Arief, 2003:134)

In the contents of Article 2 paragraph (1), the Act is a prohibition for everyone regardless of whether he is in a position occupying a certain position, or currently has a certain authority if he is proven to have committed a crime. the act of enriching oneself or another person, or a corporation that can harm the state's finances, then he can be sentenced to a prison sentence of at least 4 (four) years. Meanwhile, in the contents of Article 3 which contains elements of abusing the authority, opportunities or facilities available to him because of his position, he is only sentenced to imprisonment for at least 1 (one) year.

The implementation or enforcement of criminal law is carried out through a process called the Criminal Justice System. The Criminal Justice System is an institution that was formed with the aim of carrying out law enforcement efforts which in its implementation are limited by procedural law. This Criminal Justice System aims to enforce criminal law and punish criminals and provide guarantees for the implementation of law in a country. (Eva Achjani Zulfa and Indriyanto Seno Adji, 2011:19)

Conclusion

That the judge's considerations in imposing sentencing decisions relating to Corruption Crimes must pay attention to juridical and non-juridical considerations, as well as aggravating and mitigating matters. In addition, the judge in passing a criminal decision under the specific minimum penalty in the Law on the Eradication of Criminal Acts of Corruption is based on justice from the perspective of justice for the defendant. The imposition of a special minimum sentence on defendants in corruption cases has an impact not only on him personally in the form of imprisonment and fines, but also for the continuation of the convict's life in the public and his work. In accordance with the purpose of punishment which provides a sense of deterrence to the convict, punishment is solely as a reward for unlawful acts that focus on controlling the community, special minimum penalties for perpetrators of corruption have an impact on the life of the defendant while in detention or after the defendant is released from detention and return to society.

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