



BREAKING THE FLOW IN INDONESIAN LAW ENFORCEMENT: CASE STUDY OF THE IMPLEMENTATION OF DEATH PENALTIES IN CASES OF CRIMINAL ACTIONS

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Article history:	Abstract:
Received: 6 th January 2023 Accepted: 6 th February 2023 Published: 11 th March 2023	Corruption is an extraordinary crime due to the damage it causes to the country's economy. As a criminal act that is classified as an extraordinary crime, corruption needs to be handled extra. It is a historical record in Indonesia that the wave of reforms forced fundamental changes in the law enforcement system to eradicate racism. This effort was realized by the birth of the KPK institution and the amendment of The Corruption Bill Number 3 of 1997 with The Corruption Bill Number 31 of 1999. Furthermore, as a legal system, legal instruments must go hand in hand in order to realize the objectives of the system. The application of sanctions will closely support the effectiveness of the norm, this is in line with the concept that the carrying capacity of sanctions will provide coercion in realizing the goals of the norm. The death penalty has basically been accommodated in Article 2 paragraph (2) of Law Number 31 of 1999, but there are rigid requirements in the elements of the Article a quo which precludes the possibility that certain types of actions cannot be given the appropriate punishment. The Supreme Court as the holder of judicial power has actually issued Perma Number 1 of 2020 which essentially classifies the highest state losses in the corruption stratum as 100 (one hundred) billion. This clearly illustrates that the rule of law has not been able to accommodate cases that have already been rolled out. For example, the case of Heru Hidayat which "fantastically" has cost the state more than 40 (forty) trillion. However, in the Asabri case, even though the prosecutor had demanded that he be sentenced to death, the panel of judges had a different opinion. This is a fundamental question, are legal norms in Indonesia able to accommodate the development of existing laws?

Keywords: Corruption, Norm, Punishment

INTRODUCTION

Follow criminal corruption has in a manner wide agreed upon by all party as Extraordinary Crime, even more carry on categorized as crime transnational (Pradjonggo, 2010). Corruption in Indonesia has transformed become culture, p This proven through report Transparency International subject index Indonesian corruption in 96th position out of 180 countries (Wibowo, 2021). because that is, eradication follow criminal This Already duly use method special, incl with punishment given. this drawn in formation Commission Eradication Corruption (KPK) post-reform, remember such demands big from society. In process, society own perception special in heavy lightness drop criminal for corruptor (Yanto, 2017). More further, increasingly heavy sentence imposed, perception public to enforcement law the more improving. Vice versa, if drop criminal low so in a manner direct has hurt the sense of justice society.

kindly historical idea eradication follow criminal corruption has done since 1960, which in later day embodied in Constitution Number 3 of 1971. More go on, nation We has own experience long in face such KKN practices real during the order era new. because it was born A wave great reform that one agenda, among others sue government For organize effort real in eradication follow criminal corruption. Leave from characteristic disruptive from resulting corruption loss finance or resulting in the country's economy how difficult development national so crime This proper classified as crime outside normal. Remember Constitution Number 3 of 1971 already No can accommodate development existing laws, then issued Constitution Number 31 of 1999 as of this writing writer make as point pedestal testing. Presence Act a quo true describe that Corruption enter in realm criminal specifically the setting Good material and formal can deviate of the Criminal Code remember characteristic his crimes (Asshiddiqie, 2017).

Kindly philosophical, normalizing tightly relation with application penalty in it, result something norm No own penalty so norm the not mutatis mutandis can obeyed (Zaidan, 2017). So can concluded second matter this, fine norms and sanctions own linkages in a manner functional. In context corruption, effectiveness enforcement norm with gift commensurate sanctions will become counterweight in effort its eradication. This is also in line with opinion Soekanto (1982) which in principle put norm as direction for public in act. Basically, corruption is form from included crimes as *rechtsdelicten* /intrinsicly wrong, in principle crime this is also prohibited in various norm, for example religious and moral norms. So as offense or penalty criminal, necessary understood that norm This Special Sanctions Law. However, basically existence norm other felt Still less, then criminal here to give back the existing balance "restitutio in integrum". (Abdullah & Ruben 1983).

More continue, necessary understood that system eradication follow criminal corruption need present in a manner holistic. Started of the combined processes of prevention, investigation, prosecution and execution in A system integrated. Prof. Subekti explain in a 'system' is present A regular effort To use realize desired goal. Syafii (2003). As a rule of law, then For handle follow criminal corruption will always tightly with system existing law. The elements in system These include: First, the formation process law; Second, application law; Third, enforcement law in system Justice or in a manner narrow can also be understood as enforcement law. So can confirmed if one from component the No fulfilled so difficult it feels like for Indonesia to with 'gallantly' opposed rasuah. this looked of two components the main one is in this paper, that is effectiveness regulation legislation in implement norms, and application from norm That alone.

Justice, expediency, and certainty become deep fundamentals philosophy law all time. In contextualization of this article actually discussion about criminal dead for defendant follow criminal corruption has very long scrolling. However, until this writing made Not yet There is none decision court that brought down criminal die. Though, deep history enforcement Indonesian law has there is at least 2 (two) times the prosecution general request drop follow criminal die. demands dead First filed to the accused Dicky Iskandar, however until decision cassation assembly No drop criminal die. recently this is the prosecutor general return demand dead defendant Heru Hidayat in case Asabri which harmed the country more of 22 (twenty two) trillion. However, at the level First judges are back Not yet can drop criminal die. So, the question arises is is law The same very Not yet accommodate idea drop criminal dead for corruptor?

Indeed law positive in Indonesia has accommodate criminal dead for corruptors, as meant in Article 2 paragraph (2) of the Law Number 31 of 1999 "(2) In matter follow criminal corruption as meant in paragraph (1) is carried out in circumstances particular, **criminal dead can dropped**"

In chapter the a quo delivers provision in a manner strict For drop criminal dead for corrupt, more carry on the phrase "state particular" explained in explanation article by article of the a quo law namely: "What is meant with "state specified" in provision This intended as weighting for perpetrator follow criminal corruption if follow criminal the done at deep state time circumstances danger in accordance with applicable law, at the time happen disaster natural national, as repetition follow criminal corruption, or at times the state in circumstances crisis economics and monetary."

Based on explanation that, no found more carry on possible conditions burdensome defendant corruption that harms the country in a "fantastic" amount. because that's the rules legislation as A system must each other complete. In Article 6 paragraph (1) letter a Perma Number 1 Year 2020 only give parameter 100 (one hundred) billion as heaviest category.

Article 8 Perma aquo more carry on give explanation in drop criminal Articles 2 and 3 of the Corruption Law by provision meant. However, if returned to context Article 2 paragraph (2) of the Corruption Law although has fulfillment aspect error height, aspect impact height, and aspect profit defendant high, but also not yet can sentenced criminal maximum consequence factor element of "state". certain "who have not fulfilled. because it arises question new: is law existing positive indeed has accommodate development the current situation?

METHOD STUDY

In Study This used method data collection and processing. In method data managemen, author use method library through analysis to books, journals, regulations legislation, and documents written others that are linearly relevant to issue law in journal this. Furthermore the author also bases study This with method studies case, which is relevant can support argument writing journal this. because That can concluded that in this paper use method study law juridical normative.

DISCUSSION

1. Implementation Articles 2 and 3 of Law no. 31 of 1999 about Eradication follow Criminal Corruption

Positive law in Indonesia agrees exists application criminal dead besides to follow criminal corruption. A number of loading conditions threat criminal death, including crimes narcotics, human rights Human Rights, and Terrorism. Besides that in the Criminal Code, for example murder plan, theft with violence, treason to President and Vice President, persuade foreign countries For hostile or fight, protect enemy or help enemy time war), treason against the king or heads of friendly countries, blackmail with resulting violence wound heavy or dead, as well piracy in the seas, coasts and rivers that resulted death. this reflect that Indonesia

remains maintain legality criminal dead as one method in punish perpetrator crime, good to follow criminal general nor follow criminal special .

As something categorized crimes as crime outside normal , eradication follow criminal corruption is one urgency biggest for Indonesian nation . Corruption done in various sector , that is in reception taxes , non- tax receipts , spending goods and services , assistance social , Budget State Income and Expenditures or Budget Income and Spending Regional Budget, as well as the Allocation Fund General (DAU), Allocation Fund Special, and Deconcentration . A number of case standout that gets attention big society and need effort and work hard apparatus enforcer law For reveal it is including cases project Hambalang, SIM simulator, and the latest is case Heru Hidayat .

Special about punishment dead in follow criminal corruption , state efforts to eradicate corruption of course Already arranged in provision Constitution special . That is , if look at the rules For eradicate practice corruption , then Indonesia only know provision special (*lex specialis*) and not There is provision general rule about follow criminal corruption moment this . However , that 's a cause for concern is in In practice , it is very rare for judges to drop criminal dead , though demands from prosecutor general has include chapter related criminal die . it caused by the association with aggravating reasons nor relieve so that factor relieve it Far more dominant seen from punishment highest , education , and others.

Handling to follow criminal corruption become important remember damaging impact joints life nation in various aspect . For it , maker Constitution try deal with it with publish a number of regulation legislation about follow Criminal Corruption , including the Law Number 31 of 1999 concerning Eradication follow Criminal Corruption as has changed with Constitution Number 20 of 2001 concerning Changes to the Law Number 31 of 1999 concerning Eradication follow Criminal Corruption . In Explanation General Constitution the aquo is stated that in framework reach more goals effective For prevent and eradicate follow criminal corruption , law This load provision different crime with Constitution before , among other things proof reversed and severe sanctions , ie threat criminal dead which is weighting criminal .

Through Constitution aquo arranged about types follow criminal corruption accompanied with threat fine , fine form criminal fines , imprisonment , even criminal die . Criminal dead Alone in Indonesian law is also regulated in the Criminal Code CHAPTER II regarding Criminal . Article 10 of the Criminal Code describes about various form criminal , that is consists from criminal main and criminal addition . Criminal dead including type criminal occupying tree order First as well as is the heaviest punishment Because concerns life someone . Next , in Explanation General Constitution Number 20 of 2001 got also found that corruption in Indonesia occurs in a manner systematic and widespread so that No only harm state finances , but also has violate rights social and economic public in a manner broad . follow criminal corruption raises external consequences normal in various aspect life society , like increasing number poverty , unemployment , foreign debt , and damage nature .

Case follow criminal moderate corruption lively become highlight for public , that is in case corruption involving PT Asabri funds Heru Hidayat (next called with initials 'HH') as Defendant . Case the aquo has disconnected through Court follow Criminal Corruption at the Central Jakarta District Court with Number : 50/ Pid. Sus TPK/2021/PN Jkt. Pst January 18 , 2022. With one amar the verdict handed down **zero crime** against HH, prosecutor general has another view so case This Not yet will done . About zero crime , the panel of judges in essence argue that drop **criminal lifetime life** in case before , that is case **Jiwasraya** against HH has become background strong back he fell nil penalty added with consider provision Article 67 of the Criminal Code. Temporary it , deep memory he appealed prosecutor general still argued that law positive in Indonesia no know zero penalty in journey enforcement law during This so that decision against HH in the case Asabri with nil crime only will give birth to precedent that gave rise to impression he ranted punishment in Indonesia.

For contextualize phenomenon with appropriate punishment for defendant , the jury will refer to the Regulations RI Supreme Court Number 1 of 2020 concerning Guidelines punishment Article 2 and Article 3 of the Eradication Law follow Criminal Corruption . In context case of HH, accordingly with Article 6 paragraph (1) letter a PERMA a quo about magnitude category state finances or country's economy with the heavier category from **Rp. 100,000,000,000.00 (one hundred billion rupiah)** , then with a grand total attribution obtained by HH from case Jiwasraya and Asabri at once , ie as big **Rp23,372,184,321,226.00 (twenty three trillion three hundred and seven twenty two billion one hundred eight twenty four million three hundred twenty One thousand two hundred and twenty six rupiahs)** , amount This actually has **including** in **heaviest category** . because it , though in condition letter charges that are not load chapter drop indictment criminal dead as in Article 2 paragraph (2) of the Act Criminal Corruption , the panel of judges remains No will hindered in matter explore and produce breakthrough law positive in order to fulfill a sense of justice in society .

Through analysis case follow criminal corruption in PT Asabri funds as has outlined before , got concluded that actually implementation provision Articles 2 and 3 of Law no. 31 of 1999 about Eradication follow Criminal Corruption in the practice Still need emphasized . Root problematic matter This no arise from capability apparatus enforcer the law , however precisely provision black on top as white limit invention law . As actions that are detrimental to the state, no support government programs in eradication corruption , collusion , and nepotism , as well impact on distrust public to institution insurance and capital markets, then Defendant HH

has duly sentenced appropriate punishment . Until moment this , a lot device no law _ boils down to fairness and not protect the people. kindly know , law made No Empower For touch official frequent height do corruption and indeed enjoy privileges Because treated special . rampant corruption caused on weak factor device the law . At least the actors who did follow criminal corruption is the person who owns extensive network so that sometimes they will use matter the For avoid even buy law . With so , a lot party suspect that punishment dead only just bluff for the sake of inflicting effect deterrent , and no Once held with really .

2. Drop Outside Death Penalty Provision Existing ballast

Eradication follow criminal Corruption is closely related tightly with enforcement law enforced by the authorities enforcer law. Quoting Lawrence M. Friedman, effort enforcement law covers components : 1) regulations legislation ; 2) apparatus enforcer law ; and 3) culture later law all That packed in something system law . In system adopted Indonesian law system law Europe Continental , legal The positives applied are highly patterned legism . Genre law the stick to the basics Lex Dura Sed Tamen Scripta which is very tight relation with principle certainty law .

According to Sudikno Mertokusumo , certainty law want law For implemented and enforced in a manner firm for every incident concrete and not can There is deviation . this aim For try order in society and avoid action arbitrarily by the authorities enforcer law . Although so , enforcement law No Can solely give certainty law just . Form enforcement given law always have to see benefits in society . Don't until happen A enforcement giving rise to law anxiety inside society . With so , will a sense of justice emerges in society through enforced law . problem related values justice be one problem law in Indonesia. Because of the law patterned positive legism , then for law , every crime by the litigants will sentenced criminal or appropriate punishment _ with what it says in sound chapter in law . this can raises polemic , because justice according to law Not yet Of course The same with moral justice in society .

In disconnect something case , the judge must apply third principle law in a manner balanced and proportionate that follows principle casuistic priorities . Case follow criminal belonging to corruption into the extraordinary crime , efforts government or country for eradicate corruption of course Already arranged in provision Constitution special . For that , Indonesia only know provision special where is one element existing specialties in description chapter in Constitution follow criminal corruption is there is threat criminal die . Based on Article 2 paragraph (2) of the Law Number 31 of 1999 concerning Eradication follow Criminal Corruption which reads : " In matter follow criminal corruption as meant in paragraph (1) is carried out in circumstances particular , criminal dead can dropped " .

Although has there is chapter in Constitution follow Criminal Corruption gives threat punishment dead to perpetrator corruption , application punishment dead until moment This Still is debate that is not end among practitioner law , NGOs, academia and society general . No few refused and agreed _ punishment dead dropped . Approving parties drop punishment dead view that perpetrator corruption must punished with punishment as heavy as possible Because culprit Already take people 's rights forced or not humane so that drop punishment dead become appropriate For done . Implementation criminal dead for perpetrator follow criminal corruption should no including field violations _ right basic humans , remember the corruptors has torment the people slowly with take people 's rights No valid . Consequence from deed corrupt that the people become suffer consequence poverty , hunger , as well lack of cost education and health Because what should become people's rights have taken in a manner forced by criminals .

Take example HH cases were decided **in a manner valid and convincing proven** guilty do follow criminal corruption as charged by the prosecution common then dropped criminal tree 'nil'. Prosecutor common at the time the judge prosecute HH criminal dead with consideration That consequence HH's actions in case This has raises loss State Finance is very large with amount entirely as big **Rp22,788,566,482,083.00 (twenty two trillion seven hundred eight twenty eight billion five hundred six twenty six million four hundred eight twenty two thousand eight twenty three rupiahs)** , where attribution from loss the country 's finances enjoyed by HH **of IDR 12,643,400,946,226 (twelve trillion six hundred and four twenty three billion four hundred million nine hundred and four twenty six thousand two hundred and twenty six rupiahs)**.

There are 4 reasons for the Judge to drop nil verdict to HH than sentence died HH as demanded by the prosecution common , among others are 1) Judge think if prosecutor Prosecutor General has violate principle prosecution Because indict chapter beyond what was charged . 2) Prosecutor general No prove conditions certain use of funds made defendant moment do follow criminal corruption . 3) HH did follow corruption when the country is in circumstances safe , 4) the accused No proven do follow criminal corruption in a manner repetition . Whereas if see mark loss state finances and the attribution enjoyed by the defendant HH is very far away outside reason humanity and seriously injure the sense of justice in society . Despite Thus , the panel of judges remains No grant demands criminal dead to HH.

If case the contextualized in regulation legislation , see that elements the weight inside Constitution No Can accommodate drop punishment dead to defendant case follow criminal corruption with amount fantastic state losses . Based on Article 2 paragraph (2) of the Law Number 31 of 1999, fall punishment dead can done with **circumstances certain** . Element circumstances certain explained in Explanation Article 2 paragraph (2)

in Constitution Number 31 of 1999 concerning Eradication follow Criminal Corruption , namely : " What is meant with " state specified " in provision This is possible situation made reason weighting criminal for perpetrator follow criminal corruption that is if follow criminal the done for the allocated funds for countermeasures circumstances danger , disaster natural national , countermeasures consequence unrest widespread social , coping _ crisis economics and monetary , and repetition follow criminal corruption ". The Panel of Judges did not grant demands law dead to defendant Heru Hidayat with reason Prosecutor General No enter chapter weighting as meant Article 2 paragraph (2) of the Corruption Law the .

In Regulation Supreme Court Number 1 of 2020 Article 8 letter c number 1 mentioned about aspect profit defendant tall as guidelines judge case Article 2 and Article 3 of the Corruption Law , namely : " 1. Asset value object obtained _ defendant from follow criminal corruption magnitude more of 50% loss state finances or the country's economy in the matter in question " . If associated in a manner casual with HH case , value treasure objects obtained by HH through follow criminal corruption the PT Asabri case No more of 50% of state losses . So , case the No fulfil elements of the guidelines listed in Perma The number 1 of 2020 .

Case follow criminal corruption committed by HH is case with mark fantastic attribution and is the highest " record " in notes history in Indonesia in losses suffered by the state in case follow criminal corruption . Through analysis case the can seen that problem drop criminal dead for Corruption in Indonesia is contained in the regulations that regulate it alone . Good Constitution nor perma No can accommodate urgency drop punishment dead for defendant follow criminal resulting corruption fantastic state losses . The law should can give expediency for public rather raises anxiety so that benefit the No can felt in a manner direct .

More far , actually punishment die at various that part of the world should Can give effect wary for corrupt No except Indonesia. Because rule related matter That plastered real in existing regulations , only just implementation Not yet seen The same once . If compared with other countries , for example China, their Corruption Perceptions Index (CPI) 2020 Far more Good from Indonesia. The Bamboo Curtain Country occupy ranked 78th out of 181 countries with CPI score of 42 out of 100 values highest . Compared backwards with China, Indonesia's CPI continues experience decline from score of 40 to 37 in 2020. Application punishment die in China is not solely only Because enforcement punishment for corruptor . However _ matter it is also done For increase credibility political China's declining international consequence practice corruption in his government . See urgency from facet benefit , yes properly follow criminal corruption that harms the country with mark fantastic get punishment worth it .

SUGGESTION

Required change to Article 2 of the Law Number 31 of 1999 which expands condition drop criminal dead for corruptors who don't only limited to the weights that exist . More further , in change Later element of " state ". particular " also includes state losses amounting to " fantastic " .

CONCLUSION

Eradication corruption in Indonesia continues experience transformation post demands for reform, Law Number 31 of 1999 became product early born _ from wave reform spirit . In Constitution the aquo exists normalization criminal , which is basically every norm must own Power apply and power benefit in a manner real For ensure its effectiveness . Criminal dead actually has accommodated in Article 2 paragraph (2) of the Act a quo, however up to this writing issued 2 (two) demands prosecutor to drop criminal dead for corrupt No Once granted panel of judges. More carry on reason fundamental assembly No fell punishment dead consequence No fulfillment of " conditions ". certain " in existing cases . this is irony , because Regulation Legislation No accommodate internal state losses number of " fantastic " in element of " state ". certain ". Whereas in a manner firm based on Explanation Constitution Number 20 of 2001 corruption is follow that criminal done in a manner systematic and widespread so that No only harm state finances , but also has violate rights social and economic public in a manner broad . Until moment this , a lot device no law boils down to fairness and not protect the people. kindly know , law made No Empower For touch corrupt get and enjoy the privilege because treated special . rampant corruption is Because factor device the law weak including regulation existing legislation . because That needed change in a manner fundamental from Law 31 of 1999, use accommodate a sense of justice public as well as become learning real for the perpetrators follow criminal corruption .

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