



Right Punishment For The Performers Of Corruption

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Abstract: Corruption has been a serious problem since the days of our ancestors until now. Whatever means have been used to prevent this from happening again. But unfortunately the deterrent effect that is felt does not really make the perpetrator repent. Once the perpetrator commits an act of corruption, then once he feels the punishment. Then he does it again or even new seeds of corruption perpetrators emerge. Recently the RKUHP being drafted by the DPR has drawn a lot of criticism. How could I not, instead of creating fear and a deterrent effect, this RKUHP actually eases the punishment for corruptors. The RKUHP, which is considered to be inconsistent with the existing laws, has caused confusion among law enforcers. Weakening the side of punishments such as fines and prison terms for corruptors will lead to more rampant corruption cases. The purpose of writing this article is to analyze what kind of punishment we have applied and assess whether the punishment is appropriate to be applied or there are still many shortcomings. Then in compiling this article the writing method used is descriptive qualitative with the data source used by the author, namely the research library, which is data obtained from existing literature from books, journals, the internet and other references that are in accordance with the research problem. Eradicating corruption from above through the KPK without any reinforcement by including provisions from the United Nation Convention Against Corruption (UNCAC), such as an eagle preying on rats in a bottle of bars. Because so far, the Corruption Act has not met all the standards of the UNCAC.

Keywords: Draft, RKUHP, punishment, UNCAC

INTRODUCTION

Corruption is a problem as old as human civilization. The trail of corruption is also evenly distributed in almost all corners of the world. Based on the 2017 Corruption Index survey, there is no country that is close to a perfect score in the 2016 Corruption Perception Index. That means that there is not one country in the world that is completely free from corruption. The survey also revealed that about two-thirds of the world's 176 countries are at

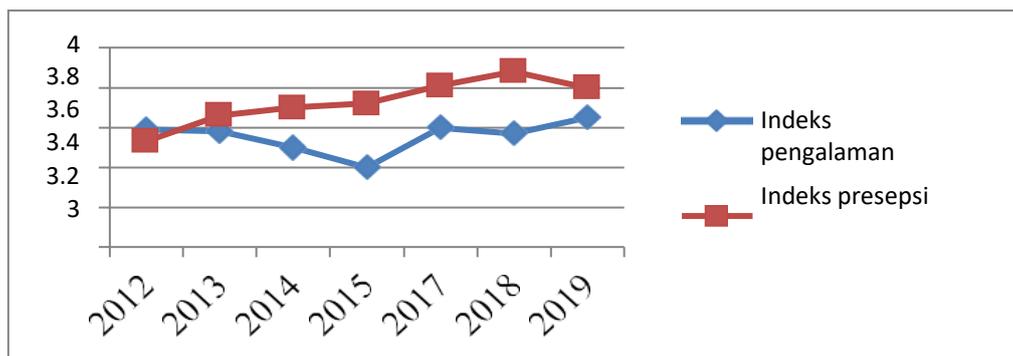
the “very corrupt” level. Overall, the global average score for corruption is only 43 out of 100. This indicates that corruption is endemic in most countries around the world. The World Bank considers corruption to be a major challenge in achieving the goal of reducing extreme poverty by 2030. This is at the same time a big challenge in increasing mutual prosperity for the poorest 40 percent of people in developing countries.

Corruption has a major impact on the lives of the poor. According to the World Bank, corruption prevents the poor from accessing health services, which has an impact on public health. The lack of access forces them to bribe in order to get that access. The poor consistently spend 12.6 percent of their income on bribes. Globally, each year there are 1.5 trillion dollars in bribes or bribes in business or personal. This amount is equivalent to 2 percent of global GDP or 10 times greater than foreign development assistance funds. So reducing corruption is the goal of Sustainable Development Goals. In fighting corruption, each country has its own rules which can be seen from the various forms of punishment for corruptors. In Indonesia, the non-governmental organization in the field of monitoring and eradicating corruption, Indonesia Corruption Watch (ICW), stated that during the first semester of 2015, judges on average only sentenced corruptors to 25 months or two years and one month in prison. This does not include remissions, which will certainly shorten detention time. This means lightening the punishment for corruptors.

In the same period in 2014, the average conviction of a defendant with a corruption case was about two years and nine months, higher than the average convictions for corruption in the same period in 2015. Corruption in Indonesia is already prevalent. It occurs in various regions and at various layers ranging from state officials, politicians, regional heads to people's representatives. A corruption case that is still hot is the e-KTP megacorruption that has dragged various public officials to people's representatives. There is also corruption in the Koran which emphasizes corruption to be a “chronic disease” in Indonesia.

Recently, there have been many student action movements. One of the reasons for this mass wave was the cancellation of the KPK Bill, which appeared to be “hastily” passed by the DPR. I don't know what the motive is behind it. The people considered that there were odd things which were none other than indications of the weakening of the KPK in eradicating corruption. Of course this is a breath of fresh air for the perpetrators of corruption. The bad intention to steal people's money seems to have been facilitated by the untangled corruption eradication. So, is the current law tough enough for corruptors? If we look at the Anti-Corruption Act, the existing penalties are not very light. For example, in article 2 paragraph 1 of the Corruption Act, it reads: Any person who illegally commits an act of enriching himself or another person or a corporation that can harm the state finances or the state economy, is sentenced to imprisonment with life imprisonment or a minimum imprisonment of 4 years and maximum of 20 years and a fine of at least 200 million rupiah and a maximum of 1 billion rupiah.

Based on data obtained from the Central Statistics Agency (BPS), the index of corruption behavior in Indonesia can be seen from the experience index and perception index. Judging from the perception index, it always increased until 2018, which was 3.88 and decreased by 0.08 in 2019, namely to 3.8. Meanwhile, if seen from the experience index, it has increased, namely in 2018 it was 3.57 and in 2019 it was 3.65. The decline in the perception index shows that Indonesia is trying to prevent and eradicate corruption in Indonesia. Anti-corruption behavior index (IPAK) data on perception and experience dimensions can be described in Chart 3.



Source: Badan Pusat Statistik (BPS)

Chart 3. Anti-Corruption Behavior Index (IPAK) Perception and Experience Dimensions, 2012-2019

The Corruption Eradication Commission was formed with the aim of reducing corruption in Indonesia. However, it is not uncommon in several cases, that there have been criminalization and fabrication of cases against KPK leaders and officials, so that the KPK weakens. In order to combat this increasingly rampant corruption, Rais Syuriah, the Executive Board of the Nahdlatul Ulama (PBNU) KH Masdar Farid Mas'udi, once mentioned executing corruptors to death in order to have a deterrent effect like that of China and Vietnam. On the other hand, the death penalty is considered to violate human rights. This creates a dilemma. Prison and fines do not deter corruptors. Then what punishment is appropriate for corruptors?

Based on the above background, the purpose of writing this article is to analyze what kind of punishment we have applied and assess whether the punishment is appropriate to be applied or there are still many shortcomings. Therefore this article will focus on finding the right punishment solution for the perpetrators of corruption.

LITERATURE REVIEW

Corruption

Every person categorized as violating the law, committing an act of self-enrichment, benefiting himself or another person or a corporation, abusing the authority or opportunity or means available to him because of his position or position that can harm the state finances or the State economy is defined as corruption according to Law No. .31 of 1999. There are also other opinions from experts such as Kusuma (2003) explaining that corruption is the use of power for personal gain. If you pay close attention to this definition of corruption, collusion and nepotism are part of corruption or a form of corruption itself. Then Anwar (2003) argues that the definition of corruption is an abuse of trust for personal gain.

Types of Corruption

Whereas of the 30 types of articles in the Corruption Act are grouped into 7 (seven) types of Corruption Crime as described below [1]:

- a. State Financial Losses:
 - Article 2
 - Article 3
- b. Bribery:
 - Article 5 paragraph (1) letter a
 - Article 5 paragraph (1) letter
 - Article 13
 - Article 5 paragraph (2)
 - Article 12 letter a
 - Article 12 letter b

- Article 11
 - Article 6 paragraph (1) letter a
 - Article 6 paragraph (1) letter b
 - Article 6 paragraph (2)
 - Article 12 letter c
 - Article 12 letter d
- c. Embezzlement in office:
- Article 8
 - Article 9
 - Article 10 letter a
 - Article 10 letter b
 - Article 10 letter c
- d. Extortion:
- Article 12 letter e
 - Article 12 letter g
 - Article 12 letter h
- e. Cheating:
- Article 7 paragraph (1) letter a
 - Article 7 paragraph (1) letter b
 - Article 7 paragraph (1) letter c
 - Article 7 paragraph (1) letter d
 - Article 7 paragraph (2)\
 - Article 12 letter h
- f. Conflict of interest in procurement:
- Article 12 letter i
- g. Gratuities:
- Article 12 B jo. Article 12

A more operational type of corruption is also classified by the reform figure, M. Amien Rais, who states that there are at least four types of corruption, namely (Anwar, 2006: 18):

- a) Extortive corruption, namely in the form of bribes or bribes committed by entrepreneurs to the authorities.
- b) Manipulative corruption, such as a request by a person with economic interests to the executive or legislature to make regulations or laws that are beneficial to their economic business.
- c) Nepotistic corruption, namely the occurrence of corruption due to kinship, friendship, and so on.
- d) Subversive corruption, namely those who arbitrarily rob state assets to be transferred to foreign parties with a number of personal benefits.

Corruption in Indonesia

Corruption in Indonesia is like a tree, evenly distributed from the roots to the tips of the tallest trees. Not only high-ranking officials who commit corruption, many from the common people also do it. Corruption often occurs in society, such as bribery, gratuities, and many more. This makes the criminal act of corruption seem to become a culture and inherent in society. Corruption is like a fungus that is spreading and multiplying if not handled

Government efforts to eradicate corruption

There have been many attempts by the government and the establishment of anti-corruption bodies is one of them. This anti-corruption agency has existed since the era of the old order called the Special Military Operation in 1957. The anti-corruption agency has developed in line with the changing times. Currently, the Corruption Eradication Commission (KPK) is the body that handles various cases of corruption in Indonesia. The KPK as the spearhead of handling corruption cases has become the foundation of the Indonesian people.

The implementation of the death penalty is also an attempt by the government as stated in Law Number 31 of 1999 as amended in Law Number 20 of 2001 concerning

Eradication of Corruption Crimes. Precisely in Article 2 paragraph 2. Article 2 regulates punishment for corruptors, of which the death penalty is one of the options. Article 2 of the Law reads as follows: Article 2 (1) Any person who illegally commits an act of enriching himself or another person or corporation which can harm the state finances or the state economy, is sentenced to imprisonment with life imprisonment or imprisonment of at least 4 years and a maximum of 20 years and a fine of at least Rp. 200 million and a maximum of Rp. 1 billion. (2) In the event that the criminal act of corruption as referred to in paragraph (1) is committed in certain circumstances, the death penalty may be imposed.

Another effort made by the government is to provide education and anti-corruption material from elementary school to university level. The most appropriate handling of corruption is through education. Providing anti-corruption education is the most appropriate preventive step because it will instill an anti-corruption spirit from an early age and will be stored in his mind until adulthood.

RESEARCH METHOD

According to Winarno, research methodology is a scientific activity carried out with careful and systematic techniques. According to Nasir (2011), the notion of research methods is the main method used by researchers to achieve goals and determine answers to the problems posed. According to Sugiyono (2016), the notion of a research method is a scientific way of obtaining data with specific purposes and uses.

According to Moleong (2005: 6), qualitative research is research that intends to understand the phenomena experienced by research subjects such as behavior, perception, motivation, action, etc. in a holistic manner, and by means of descriptions in the form of words and language. a special context which is natural and by making use of various natural methods.

Qualitative research is descriptive research and tends to use analysis. Process and meaning (subject perspective) are emphasized more in qualitative research.



Source: *maxmanroe.com*

Chart.1 Research Methods

According to Miles & Huberman (1992: 16) the analysis consists of three streams of activity that occur simultaneously, namely: data reduction, data presentation, conclusion / verification.

RESULT & DISCUSSION

Punishment is a very vital part of fighting corruption in Indonesia, this country has long been independent and there have been many acts of corruption that have occurred in this country so that there is Law Number 20 of 2001 concerning the Eradication of Corruption (UU Tipikor) and the RKUHP Corruption 2019

The Criminal Code (RKUHP) continues to draw criticism, especially regarding corruption offenses. The formulation of articles in the RKUHP is said to be more profitable for corruptors.

This was explained by Indonesia Corruption Watch (ICW) on Thursday (8/3). According to ICW, the criminal penalties and fines in the RKUHP are lower than in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption (Corruption Law).

For example, the minimum criminal penalty for perpetrators of corruption as stipulated in Article 2 paragraph 1 of the Anti-Corruption Law is higher than in the RKUHP. When referring to the Anti-Corruption Act, the minimum sentence for perpetrators of corruption is 4 years, while in the RKUHP it is 2 years. Here is the explanation.

In terms of Prison

Article 2 paragraph 1 of the Corruption Act, reads:

Every person who illegally commits an act of enriching himself or another person or a corporation that can harm the state finances or the country's economy, is sentenced to imprisonment with life imprisonment or imprisonment of at least 4 years and a maximum of 20 years and a fine of at least 200 million rupiah and maximum 1 billion rupiah.

Article 687 of the RKUHP, reads:

Every person who unlawfully commits an act of enrichment of himself or another person or a corporation which causes losses to the state finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 years and a maximum of 20 years and a fine of at least Category II and the maximum. many Category VI.

In terms of fines

Article 3 of the Corruption Act, reads:

Anyone who, with the aim of benefiting himself or another person or a corporation, misuses his / her authority, opportunity or means because of his position or position which can harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 year. and a maximum of 20 years and / or a fine of at least Rp. 50 million and a maximum of Rp. 1 billion.

Article 688 of the RKUHP reads:

Anyone who, for the purpose of benefiting himself or another person or a corporation, misuses his / her authority, opportunity or means because of his position or position which is detrimental to the state finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 2 years and at the maximum. 20 years and a fine of at least Category II and at most Category IV.

An explanation of the category of fines is in Article 89 of the RKUHP, namely:

(1) The maximum fine is determined based on:

- a. Category I IDR 10,000,000
- b. Category II IDR 50,000,000
- c. Category III IDR 150,000,000
- d. Category IV IDR 500,000,000
- e. Category V IDR 2,000,000,000
- f. Category VI IDR 15,000,000,000
- g. category VII IDR 100,000,000,000

Then, another comparison is related to criminal entanglement in interdisciplinary investigations or what the KPK usually does using Article 21 of the Anti-Corruption Act, which reads:

Anyone who deliberately prevents, obstructs, or thwarts directly or indirectly the investigation, prosecution and examination in court proceedings against suspects and defendants or witnesses in a corruption case, shall be sentenced to imprisonment for a minimum of 3 years and a maximum of 12 years and or a fine of at least IDR 150 million and a maximum of IDR 600 million.

This article is compared to Article 308 of the RKUHP, which has a maximum sentence of only 7 years (in the Corruption Act the maximum sentence is 12 years). The following reads Article 308 of the RKUHP:

(1) To a maximum imprisonment of 7 years and a maximum fine of Category IV, anyone who:

- a. by using violence or threats of violence or by intimidating investigators, investigators, public prosecutors, advocates, or judges so that the judicial process is disrupted;
- b. submit false evidence, false information or direct witnesses to provide false testimony in court proceedings;
- c. prevent, obstruct, or thwart directly or indirectly the process of investigation, prosecution and examination in court proceedings;
- d. carry out violence or threats of violence to officials who are on duty in the process of investigation, prosecution and examination at court sessions; or
- e. Damaging evidence or evidence. Decent Punishment for Corruptors

It turned out that I was not the only one who thought these sentences were so unfair, many people had their opinion about the punishment that the corruptors in Indonesia deserved. Instead of deterring them, this punishment is also expected to reduce corruption in Indonesia. In fighting corruption, each country has its own rules which can be seen from the various forms of punishment for corruptors. China is one of them that is trying to fight corruption by stipulating that anyone who is proven to have committed corruption with more than 100,000 yuan or around Rp.194 million will be sentenced to death.

China, the Chinese government does not play around punishing the corruptors. Among the death sentences were Xu Maiyong, former deputy mayor of Hangzhou and Jiang Renjie, deputy mayor of Suzhou in 2011. They were found guilty of bribing 100 million yuan and 200 million yuan, respectively - which if accumulated up to 50 million US dollars. In addition, the Chinese Minister of Railways, Liu Zhijun, was also sentenced to death for accepting bribes and abusing his position or authority from 1972 to 2011.

He helped win tenders for railroad construction projects and got US \$ 13.5 million from corrupt practices. Corruption is one of the main causes of public dissatisfaction with the government in China. That is why the government has taken firm steps against corruptors. Hundreds of officials are convicted each year for corruption cases.

Vietnam, Vietnam also impose the death penalty for criminals. In 2014, a director of the Vietnam Development Banks was sentenced to death after he and 12 others approved a bogus loan of \$ 89 million. In order for him to agree to the contract, he was bribed with a BMW, a diamond ring and 5.5 million US dollars.

Germany, If China and Vietnam apply the death penalty, then in Germany, anyone who offers, pays or accepts a bribe in a domestic or foreign transaction can be subject to up to 10 years in prison, pay a fine and confiscate all proceeds from corruption, according to the German Penal Code (Strafgesetzbuch).

United States, Different again with those imposed in the United States. The developed countries also continue to work hard against corruption. In America, corrupt practices can be sentenced to 5-20 years in prison and a fine of 100 thousand-5 million US dollars for each violation. Singapore is also not free from corrupt practices. In that country, anyone who

accepts, pays a bribe will be sentenced to no more than 5 years in prison and pay a fine of not more than 100 thousand US dollars.

Japan, In Japan, corrupt practices have become a hallmark of Japan's post-war economic boom which built a close alliance known as the "iron triangle" between Japanese businessmen, politicians and the ruling Democratic Party.

This close proximity led to the creation of secret agreements that led to acts of corruption. Article 197 of the Japanese Criminal Code prohibits a public official from accepting a bribe or in Article 198 which prohibits offering a bribe. The penalty for receiving a bribe is imprisonment of under 5 years and confiscation of the proceeds from the bribe. Meanwhile, officials who offer bribes face imprisonment for 3 years and pay a fine of 2.5 million yen, or Rp.301 million. Officials caught in corruption cases in Japan usually immediately resign from their positions.

Indonesia, meanwhile in Indonesia, the non-governmental organization in the field of monitoring and eradicating corruption, Indonesia Corruption Watch (ICW), stated that during the first semester of 2015, judges on average only sentenced corruptors to 25 months or two years and one month in prison.

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However, it is not uncommon in several cases, that there have been criminalization and fabrication of cases against KPK leaders and officials, so that the KPK weakens. In order to combat this increasingly rampant corruption, Rais Syuriah, the Executive Board of the Nahdlatul Ulama (PBNU) KH Masdar Farid Mas'udi, once mentioned that the corruptors had to death in order to have a deterrent effect like that of China and Vietnam.

CONCLUSION AND RECOMMENDATION

Conclusion

The handling of perpetrators of corruption in Indonesia, according to our group, is still ineffective and perhaps the punishment is loosening up which makes it easier for corruptors. In contrast to other countries such as China and Saudi Arabia, which impose the death penalty for criminals, thus reducing the number of corruption in that country. Even in North Korea the punishment is even stronger where corruptors are sentenced to death and made into dog food, then if in Germany corruptors are sentenced to life imprisonment and are obliged to return the money they have corrupted. Here we feel that Indonesia is still too opening up loopholes for individuals for corruption and is less assertive in terms of eradicating corruption which is an obstacle to the progress of this country where this country should have been able to achieve and manage all its resources properly but are hampered by corrupt elements. for the sake of one's own stomach.

Suggestions

Based on the above conclusions, we propose several suggestions in order to increase the deterrent effect of corruptors:

- a. Life sentence for corruptors and the return of all money that has been corrupted by him.
- b. Impoverished by the state with the intention of withdrawing all of its assets and business that is owned by the state so that these people really start life from scratch.

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