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The Strong Influence of Nepotism on Corruption On The Buying of Positions In The Reason of Government

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Abstract: Corruption has even become a bad habit damage cornerstones of life in society and pollute the integrity of the nation. The widespread abuse of authority by state parties or officials in government agencies has become a culture aimed at increasing their wealth and even seeking promotion through nepotism. Nepotism is the tendency to prioritize (benefit) one's own relatives, especially in positions and ranks within the government. Nepotism in practice encourages people to do something or not do something as a shortcut to realizing personal benefits in the future through closeness to people who have positions in the agency. The strong influence of nepotism on the buying and selling of positions in the government domain has real detrimental impacts (*actual loss*). This research is legal research (*doctrinal research*) with a conceptual approach (*conceptual approach*), the legal approach (*statues approach*). The results of this research explain that the practice of nepotism which is part of criminal acts of corruption is very dangerous for the existence of the state, one of which is the integrity of the nation. Cases of nepotism that result in buying and selling positions often occur in government agencies due to greed and weak development supervision and the impact of state losses can be said to be real (*actuell loss*).

Keyword: Nepotism; State Losses; National Integrity; Well-Being.

INTRODUCTION

Corruption has become a crime that is considered to destroy the foundations of social and state life¹. The impact of criminal acts of corruption results in losses of state assets which should be intended for the benefit of the people but are drained by certain parties to enrich themselves. State losses resulting from criminal acts of corruption are already in the dangerous category. The dangerous category for the impact of corruption in several countries hinders economic growth and undermines political legitimacy which further worsens poverty and people's lives.² Corruption in Indonesia is a national problem recurrent and the emergencies that Indonesia has faced from time to time over a relatively long period

¹ Hisar Sitohang, et al, "Legal Analysis of Corruption Crimes with Abuse of Position in the Form of Active Bribery". PATIK: Legal Journal. Vol.7. No.2. 2018.pp.75-88

² Oktovianus Lawalatta, "Corruption and Human Rights Violations". 2013.<https://fh.unpatti.ac.id/korupsi-dan-pelanggaran-hak-asasi-manusia/> accessed on October 27, 2023

of time, so it is hoped that the courts can help resolve a number of past corruption crimes in order to restore lost wealth. In the provisions of Law Number 31 of 1999 concerning Amendments to Law Number 20 of 2001 concerning Prevention of Corruption Crimes, if a person or corporation is proven to have committed a criminal act of corruption, they are obliged to pay compensation for property obtained from a criminal act of corruption.

The widespread abuse of authority by state parties or officials in government agencies has become a culture aimed at increasing their wealth and even seeking promotion through nepotism. In the provisions of Article 3 of Law Number 31 of 1999 which regulates; *Any 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 may harm the state's finances or the state's economy, shall be punished by life imprisonment or a minimum imprisonment of 1 (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)*

Regarding the provisions of Article 3 that there are actions "*abuse of authority, opportunity, or means, due to position*" is an objective element for someone who commits a criminal act in a government agency. Authority is closely related to the position or position held by a person, but only applies to people who have a certain position or position or people who have certain personal qualities.³ Certain personal qualities make it easier to commit criminal acts in the form of buying and selling positions and even extortion. In practice, buying and selling positions either through bribery or nepotism has become commonplace in government agencies.

We still often find the practice of nepotism in Indonesia, to the point that it has become commonplace that employee recruitment, both in government institutions and private companies⁴. The impact of nepotism in an institution will result in damage to the functions of the state. It can be seen that state institutions aim to assist the government in realizing its goals of building a more advanced and prosperous Indonesian society. Furthermore, the Constitutional Court issued Decision Number 25/PUU-XIV/2016 which explicitly explained that state financial losses must be actual losses or state financial losses must be real and certain or in other words state financial losses must be proven and not potential. In a broad sense, nepotism basically applies to very special situations, namely in the case of someone using their position to gain profit, often in the form of employment for family members.⁵ The author analyzes that even though nepotism does not directly result in real losses, the person has used his position to act against the law. So you can be sure *actual loss* already occurred. Therefore, the author will analyze the problem of the influence of nepotism on corruption in the sale and purchase of positions in the realm of government.

METHOD

This research uses legal research methods (*doctrinal research*) namely research focused on examining the application of rules or norms in positive law. According to Peter Mahmud, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.⁶ This research uses a statutory approach (*statues approach*) and conceptual approaches (*conceptual approach*).

³ Adami Chazawi, "Corruption Criminal Law in Indonesia, (Depok: Rajawali Pers. 2017), p. 62

⁴ Muhammad Arfandy Amran, et al. "Analysis of Criminal Acts of Collusion and Nepotism in Law Number 28 of 1999". *Supremacy: Journal of Thought and Research in the Social Sciences, Law & Teaching*. Vol. XVIII. No.1.2023.pp.30-46

⁵ Hariyanto, Priayism and Corruption Collusion Nepotism (KKN): Study of Group Status in Sleman Regency, Yogyakarta Special Region Province. *Aspiration* Vol.3.No.2.2012.p. 118-199

⁶ Peter Mahmud Marzuki, *Legal Research* (Prenada Media 2005).p.35

RESULTS AND DISCUSSION

Nepotism in Corruption Crimes

In the midst of the hustle and bustle of human interaction involving various interests and levels of individual or group power, a means of social control is needed that ensures that there is no human behavior that prioritizes one's own interests and results in harm to others. Massive losses to other people have often occurred due to actions by irresponsible parties who misappropriate the state budget for their own interests. The crime of corruption is a form of action by a perpetrator who enriches himself by stealing state money which is actually intended for the benefit of the people. The practice of nepotism which is part of criminal acts of corruption is very dangerous for the existence of the state, one of which is the integrity of the nation.

Nepotism is the tendency to prioritize (benefit) one's own relatives, especially in positions and ranks within the government. As a corrupt behavior, the practice of nepotism is still inherent in society, and it has even become a reasonable habit to help each other from family or people you know. Apart from that, the public's understanding of the definition of the practice of nepotism and corrupt behavior is very poor, so this has an impact on the public's ignorance of whether these acts fall into the category of nepotism as corrupt behavior or not. It is stated in the Corruption Crime Law, and the Corruption Eradication Committee (KPK) is an act that is prohibited and categorized as violating the law⁷. In the provisions of the Corruption Law regarding Nepotism as in Article 5 of Law Number 31 of 1999 concerning Amendments to Law Number 20 of 2001, it is stated that; *Every person who commits a criminal act as intended in Article 209 of the Criminal Code, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 750,000,000.00 (seven hundred and fifty million rupiah)*

According to conventional theory, the purpose of law is to realize justice (*justice*). Benefits (*legal utility*). In terms of realizing justice, Adam Smith stated that there was a great need in the field of moral philosophy, and as a legal theorist from Glasgow University in 1750, he gave birth to the teachings of justice. Smith said that the purpose of justice is to protect oneself from harm. The prevention of nepotism itself is regulated by the Corruption Law through Article 5, which refers to Article 209 of the Criminal Code (KUHP). The form of nepotism itself is "*anyone who gives or promises something to an official with the intention of moving him to do or not do something in his position contrary to his obligations*". Encouragement to do something or not do something as a shortcut to realizing personal benefits in the future through closeness to people who have positions in that agency.

In practice, nepotism itself will not work if there is no money or gifts given to officials that will help the giver to further their goals. Legal politics in the Corruption Law, Criminal Code, and KKN Law state that nepotism is classified as a prohibited act and has the potential for state losses. As discussed above, up to now law enforcement against nepotism has not been effective, both in terms of the substance of law enforcement and the regulations regarding nepotism itself.⁸. The existence of a law can become a legal product that can fulfill justice for the people if in its drafting it meets the guiding principles of national law, namely

⁷ Ayu Linanda, "The Practice of Nepotism as Corrupt Behavior in Building an Anti-Corruption Culture Based on the Perspective of the Community of Kampung Pelangi, Sidodadi Village, Samarinda City". *Journal of Legal Studies: The Juris*. Vol. IV. No.1.2020.p. 40-50

⁸ Dahniati, "Nepotism in the Perspective of Indonesian Criminal Law". *JOM Faculty of Law, University of Riau*. Vol. VII. No.1.2020.p.1-15

the elements of legal certainty, usefulness and justice.⁹ The author analyzes that there is disobedience by law enforcement in implementing a provision regulated in law which has an impact on community losses due to acts of nepotism.

In the provisions of Article 22 of Law of the Republic of Indonesia Number 28 of 1999 concerning State Administrators who are Clean and Free of Corruption, Collusion and Nepotism, it is stated that, Every State Administrator or Member of the Audit Commission who commits nepotism as intended in article 5 point 4 shall be punished with a maximum prison sentence. a minimum of 2 (two) years and a maximum of 12 (twelve) years and a minimum fine of Rp. 200,000,000,- (two hundred million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah). Factors that hinder law enforcement against nepotism in Indonesia are as follows;

1. There has not been a common understanding of law enforcement officials regarding the criminal act of nepotism, even though in fact it is the lack of understanding between law enforcement officials regarding nepotism which is the most important obstacle in efforts to prove and eradicate nepotism;
2. The rapid progress of science and technology makes it increasingly difficult for indications of nepotism to occur. With the development of science and technology, the modus operandi of nepotism is increasingly developing, and increasingly difficult to prove;
3. Law enforcement institutions that have the authority to enforce laws against nepotism themselves. Concretely, there is a need for a common vision, good coordination and cooperation between law enforcement sub-systems so that the aim of the law, namely to provide legal justice to the entire community, can be implemented and realized;
4. The ineffectiveness of a legal rule (law) can of course be seen from many aspects/factors, and in this writing the rule will be seen from the substance of the nepotism criminal article linked to the theory of justice;
5. Weak regulation of nepotism, so there are many interpretations regarding which actions can be considered nepotism and which actions do not include nepotism;
6. It is difficult to prove that nepotism has occurred, this is because it is difficult to fulfill the requirements to be used as evidence, because witnesses often do not want to testify and it is difficult to find other evidence such as letters and instructions;
7. Community culture generally considers nepotism to be a normal thing to do and always covers up nepotism

Laws are a type of statutory regulation whose formation takes a long time using lengthy procedures as specified in Law Number 12 of 2011 concerning the Formation of Legislative Regulations.¹⁰ The formation of legislative regulations, especially laws, should be carried out carefully and cautiously because it concerns the interests of the state and the people at large.¹¹ Carefully looking at future situations is a skill that must be possessed by legislators so that they are able to accommodate modes of unlawful action that have the potential to harm society. According to Burkhardt Krems, science in the field of legislation or legal science in the broadest sense (*Legislative science*) is an interdisciplinary science from law, political science and sociology¹². In relation to these three sciences, it is broader when viewed in terms of problems, paradigms and methods and narrower when viewed in terms of

⁹ Winda Wijayanti, "The Existence of Laws as Legal Products in Fulfilling Justice for the People (Analysis of Constitutional Court Decision Number 50/PUU-X/2012). Constitutional Journal. Vol.10. Number 1. 2013.p. 180-204

¹⁰ Muhammad Fadli, "Formation of Laws that Follow Community Developments". Indonesian Legislation Journal. Vol.15. No.1.2018.pp.49-58

¹¹ *Ibid.*

¹² *Ibid.*

research objects.¹³ The imposition of penalties on parties who commit nepotism within the scope of criminal acts of corruption should be easier for law enforcers to implement, if the legal product is formed by looking at predictions of problems that will occur in the future. Community participation carried out actively in determining public policy or legislation can provide hope for resolving legal problems that will occur in the future.¹⁴ In this regard, Robert B. Gibson stated: "*The demand for public participation was once the exclusive preserve of radical challenging centralized and arbitrary power. Many radical critics continue to believe that the resolution of present problems requires the active participation of all individuals in making the decisions which affect their lives*"¹⁵. Therefore, it is necessary to make changes regarding the regulation of nepotism so that the state is able to achieve justice in society for real losses to the state (*actual loss*) has occurred.

Actions of Nepotism Against the Buying and Selling of Departments in the Government

Buying and selling positions in government agencies has become a habit for several individuals who want to be promoted without having to follow the applicable mechanisms. Coordinator *Indonesia Corruption Watch* (ICW), Adnan Topan Husodo, in the discussion said that the appointment of a leader in an institution due to political intervention has the potential to worsen the bureaucratic reform that the government is currently intensifying.¹⁶ Bureaucratic reform is one of the government's efforts to achieve *good governance* and carry out fundamental reforms and changes to the government administration system, especially regarding institutional (organizational) aspects, management and human resources of the apparatus. Buying and selling transactions will actually damage the government's agenda which is organizing a government institution in its governance and have an impact on the welfare of the community. According to the Corruption Eradication Commission, there are eight areas that are said to be vulnerable to corrupt practices and need to be paid attention to, including: 1). Budget planning; 2). Grants and social assistance funds; 3). Taxes and levies; 4). Procurement of goods and services; 5). Licensing sector; 6). Village fund management; 7). Asset management and; 8). Buying and selling positions.

Buying and selling positions as a form of corruption in the selection process for positions in regional government in Indonesia is a violation of law and public morals¹⁷. Buying and selling positions in government agencies begins with acts of nepotism by several parties who need these positions. Buying and selling positions has a bad influence not just for a moment, not only on the immediate environment, but long term and affects everything related to it.¹⁸ Buying and selling positions is one of the many forms, types and forms of criminal acts of corruption. As stated in Law number 31 of 1999 and Law 20 of 2001 concerning the eradication of criminal acts of corruption, corruption has many branches, namely state losses, embezzlement, fraudulent acts, extortion, gratification, bribery, conflicts of interest in procurement, and other criminal acts related to corruption. In this context, buying and selling positions in local government is interpreted as a form of corruption¹⁹. The

¹³ CST.Kansil et al., "Legislation Skills (Before and After 1998). Jakarta:PT. Patchwork.p.37

¹⁴ Joko Riskiyono, "The Influence of Public Participation in the Formation of Laws". Jakarta: Perludem.p.xi

¹⁵ R.B. Gibson,1981"*The Value of Participation, dalam P.S. Elder (edit.), Environmental Management and Public Participation*, Canadian Environmental Law Research Foundation of the Canadian Environmental Law Association, Ottawa.hlm.7

¹⁶ Faculty of Law, University of Indonesia, "Buying and Selling Positions Disrupts Bureaucratic Reform". Law.ui.ac.id,<https://law.ui.ac.id/jual-beli-jabatan-ganggu-reformasi-birokrasi/> accessed on November 1, 2023

¹⁷ Amalia Syauket and Kardinah Indrianna Meutia, "Buying and Selling Positions as an Area Prone to Corruption Disrupts Bureaucratic Reform". *Sasana Law Journal*. Vol.9. No.1.2023.pp.149-158

¹⁸ *Ibid.*

¹⁹ Pujileksono Sugeng, "Corruption Through Buying and Selling Positions in Regional Governments in a Sociological Perspective," *Urban Sociologi* 5, No.2.2022

following are several things that cause the buying and selling of positions to become increasingly widespread, resulting in state losses as follows;

1. Political intervention in bureaucratic Commercial;

The essence of the problem in Article 53 of Law Number 5 of 2014 is related to the State Civil Apparatus (ASN), where in the law it is stated that the President is the person who has the highest power regarding the development of ASN and can grant a right in the form of " authority: for regional leaders to be able to determine, appoint, transfer, and also make efforts to dismiss bureaucratic officials from the positions they hold. The rights that have been given ultimately lead to mistakes and also provide an opportunity for politicians to carry out bribery practices to buy and sell positions for government bureaucratic officials. This matter has been included in an incident of commercialization of the bureaucratic apparatus which should be in direct conflict with the law that has been established and also applies to all elements of the bureaucracy, whether in the central government, regional government or village government. However, in the process this is just a formality and there are still many hidden practices

2. Transactional Politics;

Transactional politics can also be interpreted as trade politics, where it can be understood that there are those who sell and those who buy. Of course everything related to this requires a means of payment that has been determined together. If in the buying and selling process, the instrument used for payment is cash. However, in practice what happens in the world of politics, if there is a transactional political practice, it can be understood that there are parties who will give a certain amount of money or dowry and there will also be those who get or receive money that occurs in the practice of political transactions. However, even so, in the world of politics, a certain amount of dowry is not always used in political transactions. In fact, in some cases in the world of politics, transactional politics can also be related to agreements on positions and other rewards from a policy that will benefit the parties. politician. Transactional politics can also be understood as part of a division of political power or giving which can take the form of goods, money, services, and can even be in the form of certain policies where the action is carried out with the aim of influencing one or more people and also to obtain benefits. certain things that are based on the results of political agreements that have been made by several political parties or political elites. In Indonesia itself, transactional politics is even better known as something that is more related to election contestation. Transactional politics can even be understood as part of a distribution of political power or giving which can take the form of goods, money, services, and can even be in the form of certain policies where the action is carried out with the aim of influencing one or more people and also to gain benefits. certain benefits based on the results of political agreements that have been made by several political parties or political elites. In Indonesia itself, transactional politics can even be interpreted as part of making certain promises with the aim of influencing voters' votes.

According to Abdullah Hehamahua, he sees three factors causing corruption in Indonesia, namely: first, high consumption and low salaries²⁰. Second, ineffective development supervision. Third, the greedy attitude of officials. From cases of nepotism to resulting in buying and selling of positions which often occurs in government agencies due to greedy attitudes and weak development supervision. In fact, the Corruption Eradication Committee's authority in enforcing criminal acts of corruption within the scope of nepotism

²⁰ Zalzabilla Mauliana Julianti Sholahuddin Harahap, "Legal Review of Arrest Operations Related to the Bribery Case of Buying and Selling Positions at the East Java Ministry of Religion in Connection with Law Number 30 of 2002 concerning the Corruption Eradication Commission". Vol.6. No.1.2020.Proceedings of Legal Studies.ISSN:2460-643X.p.202-205

should have been reduced. This is because the authority of the Corruption Eradication Commission (KPK) in eradicating nepotism has been regulated as such based on Article 5 of Law Number 31 of 1999. The mixture of interests between these two matters will definitely seriously disrupt the objectivity, rationality and professionalism of the work culture which will hinder the pace of institutional performance to realize common goals with the formation of the respective public institutions. -each.

The poor quality of public services provided by the bureaucracy has a positive correlation with the level of corruption. In the context of modern government, the bureaucracy as a representation of the existence of the government plays an important role both in completing administrative tasks internally for the interests of the government itself and outwardly to serve the interests of citizens. Public officials whose opinions are based on state money are actually obliged to carry out the interests of the people. From these various opinions, the author tends to have the same opinion as the definition of a state institution according to Constitutional Court Decision Number 005/PUU-I/2003 or Decision Number 031/PUU-IV/2006 regarding the review of Law Number 32 of 2002 concerning Broadcasting and Jimly's opinion Asshidiqie, which essentially states that state institutions are institutions that are not only formed based on the 1945 Constitution, but also institutions that are formed based on statutory regulations and aim to carry out government duties and functions and are not community institutions²¹. The author assumes that as long as there are many acts of nepotism that occur in a state institution, the impact of state losses can be said to be real (*actual loss*).

CONCLUSION

1. The practice of nepotism which is part of criminal acts of corruption is very dangerous for the existence of the state, one of which is the integrity of the nation. Nepotism itself will not be successful if there is no money or gifts given to officials who will help the giver to further their goals. Then, it is added that corrupt behavior, the practice of nepotism, is still inherent in society, and it has even become a reasonable habit to help each other from family or people you know. The weakness in enforcing criminal acts of nepotism is that there is disobedience by law enforcers in implementing provisions regulated in law which have an impact on the community's losses due to acts of nepotism.
2. Buying and selling positions in government agencies has become a habit for several individuals who want to be promoted without having to follow the applicable mechanisms. Buying and selling positions as a form of corruption in the selection process for positions in regional government in Indonesia is a violation of law and public morals. Cases of nepotism that result in buying and selling positions often occur in government agencies due to greed and weak development supervision. Therefore, assuming that as long as there are many acts of nepotism that occur in a state institution, the impact of state losses can be said to be real (*actual loss*).

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²¹ Isharyanto, "State Institutional Law: Legal and Constitutional Studies Concerning the Constitutional Development of the Republic of Indonesia)". Surakarta: Faculty of Law, Sebelas Maret University. p.6

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