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# CRIMINAL ACT OF CORRUPTION ABUSE OF AUTHORITY OF OFFICE (Analysis of Decree No.16 PID.SUS-TPK/2018/PN.JKT.PST)

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***ABSTRACT***

*Corruption in government bodies carried out by bureaucratic machines that are seen is only corruption with a state loss of more than 1 (one) billion, while below one billion is rarely found, because the focus of eradicating corruption is indeed worth 1 billion and above and mostly involves "extraordinary" people. In fact, there are many modes that the ministry is currently preparing when asking the House for a budget. For example, break down a budget package into smaller amounts, but increase the number of packages. This research uses normative juridical legal research methods, namely an approach that includes legal research on legal principles, legal systems, and the level of vertical and horizontal synchronization. Corruption continues to occur, whether in the executive, legislative, or judicial institutions, even among businessmen, all of which are interrelated to facilitate all matters to be achieved. Corruption still occurs and almost every day news of corruption is always published in the news both in print, electronic media and others.*

***Keywords:** Corruption; Vertical; Horizontal.*

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## INTRODUCTION

The crime of corruption is carried out in various modes with the support of various tricks that are getting more sophisticated day by day (Kadir & Moonti, 2018). Corruption is very neatly arranged starting from the stage of preparing the concept of development budgeting and operational budget planning. With this careful preparation at the stage of implementing development, corruption can be carried out very smoothly, neatly, and difficult to detect by the hands of the law. Corruption has been so well systemized that it has evolved into a crime that is very difficult to fight (Sukiyat, 2020).

The modus operandi of corruption needs to be seen from stage to stage. Starting from the formulation of state financial budget policies (formulation of

budget policies), operational planning of the state financial budget (budget operational planning), to the implementation of the state financial budget. By looking at these stages, we will identify more deeply the bonds of corruption that are so systemic and entrenched (Nasution, 2022). From the following long explanation, people can sniff out corruption crimes and can take preventive measures early.

One form of subterfuge to benefit individuals, families, and groups is the existence of budgets that seem to be held in the public interest (White & Wildavsky, 1989). In fact, the actual use of the budget post cannot be accounted for for the benefit of the wider community. For example, comparative study activities (work visits) are chosen not on the basis of their benefits to society, but on the basis of their desire to travel.

Corruption in government bodies carried out by bureaucratic machines that seem to be only corruption with a state loss of more than 1 (one) billion, while below one billion is rarely found, because the focus of eradicating corruption is indeed worth 1 billion and above and mostly involves the public (Thoha, 2007). "Big" people. In fact, there are many modes that the ministry is currently preparing when asking the House for a budget. For example, break down a budget package into smaller amounts, but increase the number of packages.

The previous administration inherited a fat bureaucracy that was partly ineffective in carrying out government functions or public services. However, the bureaucracy has a kind of "code of conduct" for "equally able to eat" (Daraba, 2019). The code of ethics has an effect on the professionalism of policy determination and budget allocation. It is not surprising that some development projects are designed simply so that certain institutions are not "idle". Some projects are also run by institutions that are not in accordance with their main duties and functions (tupoksi). For example, projects that are supposed to be carried out by technical institutions (agencies) are partly run by government bureaus that are supposed to run government administration. In some cases, more projects are run by bureaus than agencies. The reason is that the department has received deconcentration funds. As a result of various manipulations at the formulation and planning stages, corruption occurs at the implementation stage. In reality, it shows the practice of plundering people's money, both in the process of collecting state revenues and in the realization or implementation of the state budget. (Alfitra, 2014)

In the Law on the Eradication of Corruption, there is no regulation regarding direct preventive measures related to corruption (Junianto, 2019). The author argues that the criminal regulation as stated in the Law is only an indirect prevention, that is, so that others do not or are afraid to commit corruption crimes or the person concerned (convicted) deters the recurrence of corruption in the future. What is clear is that corruption itself has already occurred and cannot be corrected. (Hamzah, 2005)

In this regard, the judge's decision in the Central Jakarta District Court with Decision Number 16/Pid.Sus/-TPK./2018 PN. Jkt. Pst who examines and hears cases and makes decisions based on article 3 jo article 18 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. Sentence a defendant who is validly and conclusively proven

to have committed an act of abusing his authority or position. From this phenomenon, the following formula is derived:

1. What are the elements contained in Article 3 of Law Number 31 of 1999?
2. How do judges apply material law to perpetrators of corruption crimes based on Article 3 in Decision No. 16/2018?

The benefit of theoretical research is to provide a systematic and focused understanding of the criminal act of corruption and to deepen the understanding of criminal law in legal science, as well as to contribute ideas to the dynamic development of legal knowledge.

In absolute theory or retaliation theory (retributive theory/vergeldings), punishment is imposed solely because a person has committed a crime or criminal act (quia peccatum est). Criminal is an absolute consequence that must exist in retaliation for the person who committed the crime. According to Johannes Anderaes, the primary purpose of criminal justice according to the absolute is "to meet the demands of justice" (to meet the demands of justice) while the beneficial effect is secondary. This demand for absolute justice is clearly seen in the opinion of Immanuel Kant in his book "Philosophy of Law" as follows: Criminal acts are never committed solely as a means of promoting other purposes/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. (Muladi & Arief, 1998)

The theory of legal certainty provides an explanation that all kinds of crimes and violations must be given strict sanctions based on the provisions of the laws and regulations that regulate them. In this theory, it is closely related to the principle of legality in criminal law, that every criminal act regulated in laws and regulations must be processed in the criminal justice system to ensure legal certainty.

The theory of expediency provides an explanation that if in the trial the judge views the defendant's actions not because they are purely against the law, but in terms of expediency aimed at implementing norms in society and seen when sentenced to prison in the form of imprisonment, then the elements of society object. So as a judge's consideration by looking at the benefits, the defendant will not be sanctioned but only given rehabilitation measures to the defendant so as not to repeat his actions again.

The theory of justice explains that in enforcing the law a judge must also pay attention to the theory of legal justice and must also look at concrete facts in the trial. Since seeing a sense of justice is not appropriate if the defendant is not based solely on malicious intent and is old, underage or due to certain circumstances that should not be sentenced to prison, the judge must be able to give consideration according to the sense of justice. The value of the law and the sense of justice of judges are much more prioritized in realizing fair law (Nuryanto, 2018).

## RESEARCH METHOD

This research uses normative juridical legal research methods, namely an approach that includes legal research on legal principles, legal systems, and the level of vertical and horizontal synchronization by reviewing books, laws and regulations, provisions, internet media, and research results published through

materials. literature. Secondary data is sourced from legal materials, consisting of primary, secondary, and tertiary legal materials, as follows.

1. Primary Legal Materials.
   a. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes
   b. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.
   c. Law Number 7 of 1995 concerning Economic Crimes and Law on Tax Crimes.
2. Secondary Legal Materials, that is, materials that provide explanations of primary legal materials.
3. Tertiary legal materials, that is, legal materials that provide instructions and explanations about primary legal materials and secondary legal materials such as legal dictionaries, encyclopedias and others. (Soekanto, 1985)

## RESULT AND DISCUSSION

### A. These elements are contained in Article 3 of Law Number 31 of 1999.

#### 1. Study of Corruption in Corruption and Joint Crimes

In the general criminal law (KUHP) that distinguishes between the main and additional punishments in Article 10, the main punishment consists of the death penalty, imprisonment, confinement, and fines. While additional penalties consist of: disenfranchisement of certain rights, confiscation of certain items, and announcement of the judge's ruling. In the criminal law, corruption regarding the main types of crimes is the same as the main types of crimes in Article 10 of the Criminal Code. Regarding additional types of crimes, there is a new type that is unknown according to Article 10 of the Criminal Code, which is contained in Article 18 paragraph (1) of the TPK Law.

a. Confiscation of tangible or intangible movable goods or immovable goods used for or obtained from corruption crimes, including companies belonging to convicts where corruption crimes are committed, as well as the price of goods that replace such goods.
b. Payment of replacement money in the maximum amount equal to the property obtained from the criminal act of corruption.
c. Closure of all or part of the company for a maximum of 1 (one) year.
d. Revocation of certain or partial rights or removal of all or part of certain benefits that have been or may be granted by order to the convict. (Chazawi, 2002)

The principles of formal criminal law in special criminal law generally continue to apply criminal procedural law derived from codification (KUHAP), except those specifically regulated in the relevant special criminal law legislation. Therefore, in the case of procedural law of corruption, the procedural law of the Code of Criminal Procedure applies, unless specifically provided for in this Act.

#### 2. Definition of Evidence in Corruption Crimes

Regarding the types of evidence that can be used and the power of evidence and how to use it to prove in court, is the most important thing in

evidentiary law with a negative system. These three main points have been stated in the articles of the fourth part of the Criminal Procedure Code. Regarding the different types of evidence, it is contained in Article 184. Meanwhile, how to use evidence and the strength of evidence is contained in Articles 185-189 of the Criminal Procedure Code. Regarding the type of legal evidence used to prove it, it has been specified in Article 184 paragraph (1) of the Criminal Procedure Code.

a. Witness testimony
b. Expert statement
c. Letter
d. Instructions
e. Defendant's statement.

According to the law for the proof of corruption, the material is further expanded. Article 26A of Law no. 31 of 1999 which is amended by Law no. 20 of 2001 stipulates that proof can also be formed from 2 (two) other evidence from Article 188 paragraph (2) of the Criminal Procedure Code, namely:

a. Information that is spoken, sent, received or stored electronically by optical means or the like.
b. Document, that is, any recorded data or information that can be seen, read, and or heard that can be issued with or without the aid of means, whether written on paper, any physical object other than paper, or electronically recorded, that is, writing, sound, images, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning.

**3. Special Evidentiary Law on Corruption**

In the law of proof of corruption, especially regarding the burden of proof, there are differences with the provisions in the Criminal Procedure Code. In certain cases and in certain criminal acts there are deviations. The burden of proof is not absolute on the public prosecutor, partly on the defendant, or on either the public prosecutor or the defendant opposite. Practitioners are called reverse and semi-reverse systems. In addition to the reverse and semi-reversal system, to prove the criminal act of corruption (other than bribes receiving gratuities of Rp. 10 million or more) the usual system of indictments against public prosecutors also remains in force. So there are 3 systems of burden of proof in the law of proving corruption. Reverse system, semi-reverse and ordinary system. The purpose of the ordinary system is the burden of proof on the public prosecutor, as in the Criminal Procedure Code.

Unlike the case with the pure reverse load proving system. As is known, the pure counter-evidentiary system only applies to the criminal act of bribery corruption to receive gratuities with a value of Rp. 10,000,000.00 (ten million rupiah) or more, and to prove the origin of the defendant's property. Meanwhile, the criminal act of bribery corruption receiving gratuities is very broad in scope. In order to fully understand the criminal act of corruption in receiving gratuities, it is also necessary to understand other forms of bribery corruption, both passive and active forms of bribery.

In the reverse proof load there is a specificity. The reverse system is used to prove two objects of proof. First, the object of the criminal act of corruption receives gratification. However, negatively, it means that no crime has occurred. The second concerns the object of property that has not been charged in casu at its source.

For the second object, the burden of reverse proof is not used directly to prove the occurrence of a crime, but for the defendant it is used so that the judge does not impose the crime of confiscation of goods on the property of the defendant who has not been charged.

Meanwhile, for the public prosecutor, it is used to demand that the judge impose a criminal sentence of confiscation of goods. For judges, it is used to reject the prosecution's demands or accept them in casu to impose a criminal seizure of the property of a defendant who has not been charged.

**B. The application of material law by judges to perpetrators of corruption crimes based on Article 3 in Decision No. 16/2018.**

In Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The elements are:

1. Everyone's Element

   What everyone means in Article 2 of Law Number 31 of 1999 is that if with his position or position the defendant does not have the authority to carry out the act, then the defendant is included in the meaning of the element of "everyone" as referred to in Article 2 of the Law. Number 31 of 1999 as amended by Law Number 20 of 2001.
2. Unlawful Elements

   This article contains an act against the law in a formal and material sense, that is, although the act is not regulated in the laws and regulations, but if the act is considered reprehensible because it is not in accordance with the sense of justice or norms of social life in society, then the act can be punished. In this provision, the word "may" before the phrase "damage the country's finances or the country's economy" indicates that the criminal act of corruption is a formal criminal act, that is, the existence of a corruption crime is sufficient if the elements of the act that have been formulated do not encounter consequences.
3. The element of enriching oneself or another person or corporation

   Meanwhile, what is meant by "profitable" is the same as getting a profit, that is, the income earned is greater than the expenses, regardless of the further use of the income earned. Thus, what is meant by the element of "benefiting oneself or another person or corporation" is the same as seeking profit for oneself or another person or corporation.
4. Elements Can Be Detrimental to State Finances or the Country's Economy

   That the crime of corruption is a formal criminal act, meaning that the consequences do not need to occur. However, if the act can/can harm the state's finances or the country's economy, then the criminal act has been completed and has been carried out perfectly. Meanwhile, what is meant by "harm" is equivalent to being a loss or being reduced, so that what is meant

by the element of "harming state finances" is the same as losses to state finances or reduced state finances.

The judge's ruling was not correct in stating that the defendants had been found lawfully and convincingly guilty of committing the crime of corruption together, as in the supplementary indictment. Where in the explanation of article 2 paragraph (1) shows that the criminal act of corruption is a formal criminal act, that is, the existence of a corruption crime is sufficient to meet the elements of the act that has been formulated not by the emergence of consequences. "Against the Law" in this article includes acts against the law in a formal sense as well as in a material sense, that is, although the act is not regulated in laws and regulations, but if the act is considered reprehensible because it is not in accordance with the sense of justice or norms of life in society, then the act can be punished.

That the acts committed by the accused constitute a deliberate error (opzet als oogmerk), not negligence (culpa). The defendants first planned fictitious activities and accompanied them with receipts but there was no implementation, only as supporting documents in the process of disbursing the activity budget. Meanwhile, based on Decision Number B.II/3/01966 dated March 11, 2013, the defendant has the task of carrying out budget and treasury management, verification, as well as accounting and financial reporting, but the authority possessed by the defendant has nothing to do with corruption committed by the defendant by planning and making unlawful fictitious activities so as to benefit himself or others or corporations and cause losses to state finances or the economy of the country. There are two types of error, namely intentional (opzet) and negligence (culpa). According to Indonesian criminal law theory, there are three types of intentional acts, namely as follows:

1. Deliberate intention.

   That with a deliberate purpose, the perpetrator can be accounted for and easily understood by the general public. If this kind of intent exists in a criminal act, the offender deserves criminal penalties. Because with this deliberate purpose, it means that the offender really wants to achieve the result that is the main reason for this threat of punishment.
2. Deliberately with certainty.

   This intentionality exists when the offender, with his actions, does not aim to achieve the result on which the offense is based, but he knows very well that the result will inevitably follow the action.
3. A deliberate possibility.

   This intention, which is obviously not accompanied by the certainty that the intended outcome will occur, but merely imagines the mere possibility of that outcome.

Furthermore, regarding negligence because it is a form of error that results in being held accountable for someone's actions. Negligence (culpa) lies between intentional and unintentional, after all culpa is considered less lenient than intentional, therefore, the violation of culpa is quasi-delict (quasisideliet)

so the punishment is reduced. Culpa violations contain two kinds, namely negligence violations that cause consequences and those that do not cause consequences, but what is threatened with punishment is the act of recklessness itself, the difference between the two is very easy to understand, that is, negligence that causes consequences with the occurrence of that result, then an offense is made. negligence, for those who do not need to cause consequences by negligence itself is already threatened with criminals. The requirements of the elements that must be present in the breach of negligence are:

1. It does not make a presumption as required by law, while this suggests the defendant thinks that the consequences will not occur because of his actions, when that view is then incorrect. The fault lies in the wrong thoughts/views that should be removed. The defendant had absolutely no idea that prohibited consequences might arise because of his actions. The fallacy lies in not having the slightest idea that the consequences may arise which is a dangerous attitude.

Failure to exercise caution as required by law, in this regard refers to not conducting research on policies, skills/preventive measures found in certain circumstances/in the manner of taking action.

## CONCLUSION

Corruption continues to occur, whether in the executive, legislative, or judicial institutions, even among businessmen, all of which are interrelated to facilitate all matters to be achieved. Although the modus operandi of corruption has been classified as an extraordinary crime, it is still the stakeholders/officials who have the opportunity to commit corruption crimes. Various ways have been carried out to eradicate corruption, for example by strengthening the law on the eradication of corruption, which was previously Law Number 3 of 1971 which was later amended by Law Number 31 of 1999, and changed again to Law No. 20 of 2001. Not only that, efforts to establish a special law enforcement agency for the eradication of corruption (KPK) based on Law Number 30 of 2002, then changed again to Law Number 19 of 2019 concerning the Corruption Eradication Commission, but corruption still continues. occurs and almost every day news of corruption is always published in the news both in print, electronic media and others.

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