

The Implementation of Principle *Equality before the Law* in Addressing Corruption in Indonesia

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Abstract. *Equality Before the Law is the equality principle of citizenship in the eyes of the law, especially criminal acts of corruption that are not in accordance with this principle. The research method used was library research. The objects in this study are decisions that are not in line with the principle of equality before the law. The analytical method used by researchers is content analysis. Based on the case that the authors have found through the review of the decision, there is a case handling that is not in accordance with the principle of equality before the law. One of them is that the perpetrators of corruption received a verdict as status as city arrest, which means they have exclusive rights. The decision is included in the light category because in other decisions with different cases, they get sentences under five years, whereas the loss of state money is not few, even the impact on society due to criminal acts committed by these corruptors is immense losses for state finances. This study concludes the existed decision is not in accordance with the principle of equality before the law.*

Keywords: *equality before the law, corruption, Indonesia*

INTRODUCTION

The term "corruption" has become so popular among society, because it has been conversated at the grassroots level such as in *Tegal* food shack, *indomie* stalls, *angkringan* stalls, among street vendors, and meatball and chicken noodle sellers. At the elite level, the discussion of corruption has also become so familiar as the theme of discussion in cafe and hotel lobbies, as well as among universities, NGOs and observers. Also, it has been placed the theme of corruption as the main topic in seminars, discussions and workshops. In printed media, corruption has no differences as before it becomes a theme of articles and opinions, as is television, almost all TV stations endlessly race to discuss the issue of corruption [1].

Corruption always has consequences. The negative consequences of systemic corruption towards the process of democratization and sustainable development are [2]:

1) Corruption delegitimizes the democratic process by reducing public trust towards the political process through money politics;

- 2) Corruption distorts decision making on public policy. Make the absence of public accountability and deny the rule of law. Law and bureaucracy only serve power and capital owners;
- 3) Corruption eliminates a system of promotion and punishment based on performance due to the relations of patron-client and nepotism;
- 4) Corruption can result in the low quality of development projects and public facilities and also in sequence with the needs of the society, so it disrupts sustainable development;
- 5) Corruption has an impact in the collapse of the economic system due to uncompetitive products and accumulation of foreign debt.

According to the authors, as it has been described above, corruption has an impact on various lines of people's lives, with state's money being corrupted, protection for the people does not exist, the state is unable to provide solutions to the problems faced by its people. The presence and existence of the state as a protector of society should be able to prosper all the people at least fulfilled the basic needs of food, clothing, home, health and education. It means how can the nation's generation become an excellent generation if it does not eat nutritious food. They will easily get sick or unhealthy due to lack of nutritious food since with nutritious food and a healthy environment; they are able to well develop and adapt. To have a dream to become a developed society, at least we have economic stability, then the welfare of the society will be achieved [2]. First, the eradication of corruption still conveys a message as if there is a selective habit, and still has not touched political authority holders at the level of power, so the settlement of corruption cases has not been solved. Although there are one or two cases that affect those who have authority, it usually does not reach the highest authority. Second, criminal prosecution filed by prosecutors and criminal sentences decided by judges do not reflect that corruption is a serious crime and deserves a humiliation through punishment, this is reflected in the average submission of charges and convictions which tend to be light. Indeed in certain cases, such as bribery cases involving attorney Urip Tri Gunawan, it appears that criminal charges and convictions appear to be maximum, but in many other cases tend to be relatively light. In the case of a traveler check involving members of the People's Representative Council or DPR in the election of the Deputy

Governor of the Bank Indonesia Senior, which was opened at the invitation of Agus Condro, it shows how light the punishment that was imposed on the corruptor. Third, in carrying out criminal proceedings at the Correctional Institution it was later discovered that from this relatively light criminal case, in fact it still received remission in such a way that practically the convicted person only underwent punishment in a relatively short time. This situation is further aggravated by the existence of custody who are undergoing legal proceedings in the form of a trial or currently in the filing of legal submission in the form of appeals or cassations, turned out able to walk out of custody.

Adhering to the principle of equality before the law (equal position in law and government) there should be no defendants of corruption who received special treatment between one and the other perpetrators to be detained by the Court (Judge) [3].

However, from several cases that happened in the Corruption Court in the Pekanbaru Court, there are indications that the principle of Equality Before The Law is being ignored. For example the case of Asnil, Civil Servants (PNS) of the Ministry of Public Works of the Republic of Indonesia (PU RI), as the Proxy of Budget User (KPA) PPLP of the Directorate General of the Ministry of PU RI, which was given the status of city arrest by the Pekanbaru Attorney. In fact, his status is a corruption suspect in a drainage construction project in Pekanbaru City. By giving the status of city arrest to Asnil automatically in the period 2013-2014, 5 suspects or defendants of corruption were given the privilege of being as city arrest status. Previously, the defendant in a corruption case who was privileged by a city arrest was Syafrudin Sayuti, a Head Department of Transportation (Kadishub) of Pekanbaru, who was convicted of 4 years of corruption in the procurement of Transmetro SAUM equipment, which was granted the status of city arrest. Then three defendants corruption of meningitis vaccine for Umra pilgrims Pekanbaru, namely Iskandar, the former head of the port health office or (KKP) Pekanbaru SSK II Airport who also received city arrest status [3].

Based on laws and regulations that the criminal proceedings against perpetrators of corruption or the criminal trial system against perpetrators of corruption are regulated in Law Number 8 Year 1981 regarding Criminal Procedure Law which is commonly referred to as the Criminal Procedure Code (hereinafter referred to as KUHAP) then Law Number 31 Year 1999 as amended and supplemented by Law Number 20 Year 2001, Law Number 30 Year 2002 regarding the Establishment of the Corruption Eradication Commission and Law Number 46 Year 2009 regarding the Establishment of a Criminal Court Corruption by adhering to the *Lex Specialis Derogat Legi Generali* principle; therefore the handling of the perpetrators of corruption is in the corruption court justice system, while the case

examination is conducted by a Corruption Court Judge.

With the problems outlined above, regarding the principle of equality before the law in handling criminal acts of corruption, which occurs in some cases there is an imbalance for the perpetrators of corruption because the corrupters have a background of officials, former officials, public figures or famous people so there are some special treatments of the perpetrators of corruption, whether they are suspects, defendants or convicts. This is what is interesting for the author to write the title "Implementation of the Principle of Equality Before The Law in Handling Corruption in Indonesia".

METHOD

The research method is a process of examination using logic, which is explained by Sunaryati Hartono, the Research method is a method or way or a process of examination or investigation that uses logical-analytical reasoning and thinking (logic), based on the postulates, formulas, theory of a particular science (or several branches of science) to test the truth (or verify) a hypothesis or theory about certain scientific symptoms or phenomenon, social phenomenon or legal phenomenon [4]. The method of approach used in this study is a normative juridical approach, which is an approach that is carried out through the study and interpretation of the legal and regulatory literature relating to the issue to be discussed both explicitly and implicitly—operationally carried out with library research [5]. Library Research (i.e. study) is taking sources from books with the intention of being used as a source of primary law for instance books, journals, internet, and also the materials relevant to this research. In this study, researchers took the object of the researches, such as decisions that are not relevant to the principle of equality before the law. On the other hand, the analytical method used by researchers is content analysis.

RESULT & DISCUSSION

The theory and concept of equality before the law as adopted by Article 27 paragraph (1) of the Amendment to the 1945 Constitution provides the basis for the protection of citizens to be treated equally before the law and government. This is meant that all people are treated equally before the law. Equality before the law in the simplest sense is that all people are equal before the law. Equality before the law is one of the most important principles in modern law. This principle becomes one of the pillars of the Rule of Law doctrine, which also spreads to developing countries like Indonesia. If it can be said the principle of equality before the law is one of the manifestations of the state law (*rechtstaat*) with the result that there must be equal treatment for

everyone before the law (gelijkheid van ieder voor de wet) [6].

In the sense that equality before the law is a firm principle that indiscriminately applies for perpetrators of crime whether or not they are former officials, officials, public figures or law enforcement officials, regardless of ethnicity, religion [6].

The Indonesian government does not remain silent in overcoming corrupt practices. Since the reformation era of the government's efforts have been carried out through various forms of enactment of several laws and regulations regarding corruption that have been applied, including 1. Law of the Republic of Indonesia Number Year of 1999 regarding Eradication of Corruption. 2. Law of the Republic of Indonesia Number 20 Year 2001 regarding Amendment to the Law of the Republic of Indonesia Number 31 Year 1999 regarding Eradication of Corruption. Government efforts in terms of eradicating corruption are also through the formation of institutions, agencies or commissions specifically tasked with investigating allegations of corruption, including 1. Establishment of the Commission for the Examination of State Officials Assets (KPKPN) in 2001 based on the Law of the Republic of Indonesia Number 28 Year 1999. 2. Establishment of Criminal Act of Corruption Eradication Commission (KPTPK) with Republic of Indonesia Law Number 30 Year 2002. 3. Establishment of Corruption Eradication Commission (KPK) of 2003 based on Republic of Indonesia Law Number 31 Year 1999 jo Republic of Law Indonesia Number 20 Year 2001 jo Law of the Republic of Indonesia Number 30 Year 2002. With the existence of regulations and the formation of a several institutions, agencies or commissions have not shown signs of success in combating corruption in this country. Even lately, it has become even more corrupt. Because the rules and institutions, agencies or commissions have not worked seriously and the efforts made tend to be only actions of penal policy in the Indonesian criminal law system [7].

The factors that cause corruption in Indonesia consist of 4 (four) aspects. First, aspects of individual behaviour, namely internal factors that encourage a person to commit corruption such as greed, lack of morale when face temptation, inadequate income to fulfil life's need, an urgent need for life, a wasteful lifestyle, lazy or unwilling to work hard, as well as not practising religious teachings correctly. Second, organizational aspects, namely lack of leadership model, improper corporate culture, inadequate accountability system, weaknesses in management control systems, management tends to cover up corruption in the organization. Third, society aspects, namely relating to the social environment whereas individuals and organizations are located undervalues that are conducive to the occurrence of corruption, lack of awareness that the most disadvantaged from the

corrupt practices in the society itself and they are involved in corrupt practices. The prevention and eradication of corruption will only succeed if the community participates actively. In addition, there is a misinterpretation of understandings in the culture of the Indonesian nation. Fourth, aspects of laws and regulations are the issuance of monopolistic laws and regulations which only give benefit to relatives and or cronies of state authorities, inadequate quality of legislation, ineffective judicial review, imposition of light sanctions, application of sanctions inconsistent and indiscriminate, and weak in field of evaluation and revision of laws and regulations [8].

The application of the principle of equality before the law against perpetrators of corruption in Indonesia has not been carried out properly as mandated by the law. Some appeared cases in the mass media related to the perpetrators of criminal acts of corruption who have received "privileges" in the eyes of this law have seriously impacted the sense of justice in for the public. There is a culture of bribery in the law enforcement environment (police, prosecutors, judges) who examine corruption cases. Such practice seems to have become a tradition and even maintained, and it is no longer a public secret. It shows the work performance of unprofessional law enforcement. In line with that, it shows the legal culture that lives and develops in society experiences abuse power, thus creating a crisis of public trust in the performance of law enforcement officials. Therefore law enforcement must uphold morals, be professional in carrying out duties and integrity pacts.

In addition, knowledge is also one of the weak factors in implementing equality before the law. Although most of the education of law enforcement officers have a law degree background, it cannot be denied that the knowledge gained is not the same. Some know the principle of Equality Before The Law, and others do not know. If law enforcement officials do not know the principle, how can they seriously enforce these principles? Problems in each organization are usually about different knowledge and experiences. Everyone certainly makes policies based on their knowledge and experience. Often many factors can influence every policy giving, including in applying the principle of equality before the law [3]. The eradication of corruption is a joint commitment starting from law enforcement, regional government, central government, and the role of the civil society that work together to eradicate corruption. Because corruption is one of the extraordinary crimes and a bad habit that harms the country in terms of the economy, the way to handle should also be carried out carefully. It may include establishing the principle of equality before the law against perpetrators of corruption both at the stage of examination at the police, prosecutor and court level to achieve of legal justice in public life as mandated by the law. Besides, the need for education related to

understanding equality before the law both to law enforcement officials and to the society are hardly needed.

CONCLUSION

The application of the principle of equality before the law against perpetrators of criminal acts of corruption in Indonesia has not fully fulfilled the mandate of the Constitution. The factors that are affecting among others are the first lack of integrity, morality and professionalism of law enforcers in carrying out their profession, especially in corruption cases. Second is the lack of knowledge/understanding of the principle of equality before the law from the law enforcement officials. Third, there are weaknesses in the supervision aspect of the law enforcement institute towards law enforcers who do not apply the principle of equality before the law against corruption cases. To fulfill the principle of equality before the law in corruption cases, there are some points to do such as; maintaining moral and integrity of law enforcement institutions, giving education or understanding for citizen and law enforcers regarding equality before the law, and keeping the synergy of all elements of society in eradicating corruption solemnly .

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