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Implications of Shifting the Office in the Law Eradication of Criminal Acts of Corruption (Constitutional Court Decision No. 25/PUU- XIV/2016)

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ABSTRACT
A criminal act of corruption is a criminal act regulated in the Law of the Republic of Indonesia Number 20 of 2001 Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In this Law, a formulation of the offense has been regulated, namely a formal offense as regulated in Article 2 paragraph 1 and Article 3 of the Law of the Republic of Indonesia Number 20 of 2001 on Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. But in the 2016 period, the Constitutional Court issued a Decision, namely the Constitutional Court Decision No. 25/PUU-XIV/2016. This decision has juridical implications or legal consequences, namely: 1. changing the provisions for shifting offenses (criminal acts) from formal offenses (criminal acts) to material offenses (criminal acts), in the formulation of Article 2 paragraph 1 and Article 3 of the Law of the Republic of Indonesia Number 20 of 2001 Amendment to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption; 2. With this decision, it will make legal efforts to prove cases of criminal acts of corruption more difficult because they collide with the existence of an outdated theory in criminal law; 3. And will also have legal consequences for the formulation of Article 4 of the Law of the Republic of Indonesia Number 20 of 2001 Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes relating to the return of state losses obtained from the proceeds of Corruption.
Keywords: *Implikasi, Delik Formil, Tipikor, Mahkamah Konstitusi*.

1. INTRODUCTION

The enforcement of criminal acts of corruption in Indonesia has undergone considerable changes, so that it has become a debate among academics and legal practitioners. The reason is the Constitutional Court Decision Number 25/PUU-XIV/2016 which states that the word can in Article 3 and Article 2 paragraph 1 of the Anti-Corruption Law does not have binding legal force and is contrary to the Constitution. Where Article 2 paragraphs 1 and 3 reads as follows:

Pasal 2 ayat (1): Setiap orang melakukan perbuatan memperkaya diri sendiri, orang lain atau korporasi secara melawan hukum yang dapat merugikan keuangan negara/ perekonomian negara dipidana penjara seumur hidup atau pidana penjara paling singkat 4 tahun dan paling lama 20 thn dan denda dua ratus juta paling sedikit dan paling banyak satu milyar rupiah.

Pasal 3: Setiap Orang menyalahgunakan kewenangan, sarana, kesempatan yang ada pada dirinya karna kedudukan atau jabatan dengan tujuan menguntungkan diri sendiri, suatu korporasi atau orang lain yang dapat merugikan perekonomian negara atau keuangan negara dipidana penjara seumur hidup, atau penjara paling singkat satu tahun dan dua puluh tahun paling lama dan atau denda lima puluh juta paling sedikit.

The Constitutional Court's decision stems from the petition of 7 people consisting of civil servants and retired civil servants who are generally charged with Article 2 paragraph 1 and Article 3 of the Anti-Corruption Law. The Constitutional Court's decision stated that the word "can" harm the state economy or state finances must be proven by definite/real losses, not just potential losses [1].

The Constitutional Court's decision Number 25/PUU-XIV/2016 abolished the word "can" so that there was a shift in corruption offenses that were originally formal offenses to material offenses. So the country's economy or financial loss must be calculated with certainty. The question is whether this change in offense will make it easier or more difficult for law enforcers to enforce corruption in Indonesia. The Constitutional Court's decision is inconsistent with the previous Constitutional Court's decision, namely the Constitutional Court's Decision Number 03/PUU-IV/2006 dated July 25, 2006, the Constitutional Court at that time decided that the

phrase "can" in article 3 and article 2 paragraph 1 indicated that the crime was a formal offense. so that corruption is considered to be proven by the fulfillment of the elements of the act, not the consequences. Because if you depend on the consequences, you must require a short audit because it can only be carried out by certain institutions and thus will greatly affect the corruption law enforcement process itself. The work of law enforcement will be very burdened with and difficult to eradicate corruption. In a number of cases, the amount of state losses often continues to increase with the development of cases.

In addition, against the Constitutional Court Decision No. 25/2016 there were dissenting opinions by 4 Constitutional Court judges, namely I Dewa Gede Palguna, Suhartoyo, Maria Farida, Aswanto. Stating that the word can does not conflict with legal certainty as argued by the applicant. The abolition of the word can in articles 3 and 2 paragraph 1 actually makes a fundamental change to the corruption offense. If the state financial loss has not occurred despite enriching oneself and the unlawful nature of a corporation and other people has been proven, then it is concluded that corruption has not occurred. The word can be judged from the explanation of article 2 paragraph 1 which states that the word can before the word detrimental to state finances shows that it is a formal offense in the criminal act, that is, it is considered corruption if the elements of the act that have been formulated do not depend on the consequences or not.

The Corruption Eradication Regulation basically has two main meanings, namely as a preventive and repressive measure. Preventive measures are related to prevention so that people do not commit these crimes, while repressive measures are the provision of criminal sanctions and efforts to restore losses to the state and the country's economy as much as possible. Based on the conditions mentioned above, in this case the authors attempt to conduct an assessment of the Legal Implications of the Constitutional Court Decision No. 25/PUU-XIV/2016 in the Enforcement of Corruption in Indonesia [2].

2. RESEARCH METHODS

The type of research used is normative legal research, namely research that examines library materials that are arranged systematically and then conclusions are drawn in relation to the problem to be studied. The approaches used are the statutory approach (Statute Approach) and the analytical approach (Analytical Approach). Legislative approach by reviewing all laws and regulations related to the issues/cases studied [3]. While the analytical approach is carried out by examining the meaning of a legal term such as principles, examining the understanding, systems, rules, and juridical concepts by looking at legal practice and court decisions [4].

3. IMPLICATIONS OF SHIFTING OFFENSES IN THE CORRUPTION LAW

Constitutional Court Decision No. 25/PUU-XIV/2016 which abolishes the word "can" in article 2 paragraph (1) and article 3 of the corruption law, resulting in a corruption offense which was originally a formal offense to become a material offense which must require the existence of a consequence, namely an element of loss. State finances must be calculated with real or certainty.

Juridically, the implication of the Constitutional Court's decision is that all efforts to enforce the corruption law, especially those in Article 3 and Article 2 paragraph (1) (Corruption Loss to the State) must have a calculation of state losses carried out by the auditor before the determination of the suspect will be carried out. . Because without a real/certain calculation by the state auditor, the acts that will be suspected cannot be categorized as corruption.

The word "can" in the Anti-Corruption Law should be seen as a unit of offense in the Anti-Corruption Law. Because the state economy or state finances are difficult to determine with certainty the amount. When the word "can" be removed from the corruption law, saving the state's economy or state losses will be very impossible to do because they have to wait for the crime to be completed/completed.

This means that logically the loss has occurred. According to the Court, the word "can" creates legal uncertainty because it is a formal offense that requires the crime to be fulfilled with the potential for state losses, not real state losses [5]. However, for losses that occur on a large scale, it will certainly be very difficult if it must be proven precisely and accurately and in a limited time. It will also raise doubts about the amount of the proposed loss because it will not be done quickly which will have an impact on whether or not the act is proven.

Basically, the regulation of eradicating corruption has 2 main meanings, namely as a preventive and repressive measure [6]. Preventive measures are related to the regulation of eradicating corruption. The hope is that people will not commit acts of corruption. Repressive measures include imposing severe criminal sanctions on perpetrators and at the same time seeking to recover corrupted State finances as much as possible [6].

The Anti-Corruption Law in the consideration section states that corruption is an act that is very detrimental to the economy or state finances which becomes an obstacle to national development, therefore it must be suppressed and stopped in order to create a prosperous and just society based on Pancasila and the 1945 Constitution of the Republic of Indonesia [7]. In addition, Corruption has so far hampered national development and the country's growth [8]. With the decision of the Constitutional Court,

it is feared that the eradication and investigation of criminal acts of corruption based on Article 3 and Article 2 of the Anti-Corruption Law will be difficult to complete. In fact, it is almost impossible for there to be a Hand Arrest Operation by law enforcement even though Article 3 and Article 2 of the Anti-Corruption Law are perfectly carried out [9]. This is because law enforcers such as the KPK and others will depend on the results of the examination of the agency that has the authority to calculate state financial losses which according to SEMA No. 4 of 2016 is the BPK/financial audit body. In practice, it often creates problems that can affect the process of handling corruption cases. Starting from the "multi-definition" of state finances and state losses, the authority to calculate state losses, the slow process of calculating state losses which is considered to hinder the handling of corruption cases, and until the execution of replacement money in corruption cases has not been maximized [9].

The Supreme Court of the Republic of Indonesia through (SEMA) RI No. 4/2016 states that the agency that has the authority to state who has the authority to declare the existence/absence of negative financial losses is the BPK which has constitutional authority [9]. Meanwhile, other agencies such as BPKP/Inspectorate/Regional Apparatus Work Unit have the authority to audit and audit but are not authorized to declare or declare state financial losses [9]. With the decision of JR's application by the Court, according to the author, it creates legal uncertainty.

The reason is whether those who usually do the calculation of state financial losses are the BPK or BPKP or the inspectorate of each institution and public accountants. Then what if the loss of state finances after the calculation by the competent authority becomes the reason for the defendant in the corruption case articles 3 and 2(1) to be free from the imposition of a criminal act of corruption? then what if there is a difference in the calculation between the agencies. Will the defendant be free from lawsuits? Therefore, it is very necessary to regulate the period of calculating the loss of state financial losses so that it does not drag on and even becomes a gap for the defendant/suspect to escape punishment. This, of course, also makes the corruption trial protracted and takes a long time and slows down the law enforcement process [10]. For example, if the KPK or other law enforcement officers determine the suspect if there are indications of state financial losses. In fact, the exact calculation of the loss will only be obtained by the authorities after the inspection is made, because the calculation to the BPK can be carried out after the inspection is carried out. if the calculation must be done first so that it can determine whether this is a loss to the state or not whether it can be suspected or not, then it will certainly slow down the law enforcement process carried out by law enforcers, both KPK, prosecutors, etc.

After it was decided that JR's request was stated in the Constitutional Court's Decision No. 25/PUU--XIV/2016 which changed the offense to a material offense, it certainly became a big and serious challenge for the BPK and agencies that have the authority to calculate state financial losses at the request of law enforcement officers and become the authorized agency to announce whether or not there has been a State financial loss calculated by BPKP, SKPD or agency inspectorate in accordance with Sema 4/2016.

4. CONCLUSION

Corruption itself does not change its academic view of its actions which, if allowed to continue, will continue to take root, so that it is no longer an extraordinary crime but is positioned as an enemy of mankind because this crime does not look at developing, developed and so on.

The regulation regarding the Eradication of Corruption has two main meanings, namely as a repressive and preventive measure. Preventive measures are related to prevention so that people do not commit these crimes, while repressive measures are the provision of criminal sanctions and efforts to restore losses to the state and the country's economy as much as possible.

Constitutional Court Decision No. 25/PUU--XIV/2016 which abolishes the word "can" in article 3 and article 2 paragraph (1) of the Corruption Law, causes corruption offenses which have been formal offenses to turn into material offenses which require consequences, namely the element of state financial losses must be calculated. for real/definitely. The Anti-Corruption Law is nebis in idem because the examination of the object of the same article was tested and then decided in the Constitutional Court's decision no. 003//PUU--IV/2006 and Constitutional Court Decision No. 44//PUU--XI/2013. With the decision of the constitutional court No. 25//PUU—XI/2016, it is feared that the eradication of corruption based on article 3 and article 2(1) will be more difficult to carry out, perhaps it is also impossible for OTT to remain. because law enforcement is very dependent on the financial audit agency / BPK which in practice will cause problems that will certainly affect the handling of corruption eradication in Indonesia.

Starting from the existence of "multi-definition" of state finances and state losses, the authority to calculate state losses, the slow process of calculating state losses which are considered to hinder the handling of corruption cases, and until the execution of replacement money in corruption cases has not been maximized.

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