

Implementation of the Principle of Justice in Implementing the Death Penalty Against Criminal Acts of Corruption Procurement of Social Assistance in Handling Covid-19

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ABSTRACT

This research is related to applying the principle of justice in imposing the death penalty for the perpetrators of corruption in the provision of social assistance for handling covid-19. The research method used is normative juridical using secondary data. The study results show that implementing the principle of justice in implementing the death penalty against criminal acts of corruption procurement of social assistance in handling covid-19 can be applied through distributive justice because covid-19 has been officially declared a national disaster. The corruption committed by Juliari Peter Batubara as The Minister of Social Affairs is corruption in providing social assistance for handling covid-19. However, to provide a deterrent effect and also serve as a warning to potential perpetrators of criminal acts of corruption besides the death penalty. Another more important thing is confiscating the perpetrators' assets and increased KPK supervision from passive to active by providing a written warning to the potential perpetrator of a criminal act of corruption to cancel his intention to commit a criminal act of corruption.

Keywords: Corruption, Covid-19, Death, Justice.

1. INTRODUCTION

Corruption is an act that is very serious and very dangerous for the survival of the state. The losses incurred in criminal acts of corruption are more devastating than natural disasters or even war. In Indonesia, corruption grows and thrives like mushrooms in the rainy season. Its existence will be challenging to eradicate if there is no real action from the government and related parties. The eradication of corruption that has occurred so far has not been carried out optimally. Therefore, eradicating criminal acts of corruption needs to be improved professionally and comprehensively, intensively, and continuously because corruption has harmed state finances, the state economy and hindered national development.

The essential thing in eradicating all forms of corruption is formulating laws and regulations as the legal basis for eradicating corruption. In Indonesia today, Law Number 31 of 1999 jo. Law Number 20 of 2001 regarding Eradication of Criminal Acts of Corruption is

expected to support the formation of a clean and free government of corruption, collusion, and nepotism. It also requires a shared vision, mission, and perception of law enforcement officials in overcoming it. The similarity of vision, mission, and perception must be in line with the demands of the conscience of the people who want the realization of state administrators who can carry out their duties and functions effectively, efficiently, free from corruption.

The hallmark of a particular criminal law is that there are always certain deviations from the general criminal law. Thus the criminal system for criminal acts of corruption has deviated from the general principles in the criminal system according to the Criminal Code. As for the things that deviate from the general criminal system, both regarding the type and the criminal system.

In eradicating corruption in Indonesia, the law provides rules that, in principle, deviate from what is regulated in the general criminal law (KUHP). An example of its specificity is the Corruption Crime Act which deviates from the Criminal Code, one of which is

the imposition of the death penalty for perpetrators of corruption.

The death penalty for perpetrators of criminal acts of corruption is regulated in Article 2 of Law Number 20 of 2001 regarding the Eradication of Corruption Crimes which states that:

- (1) Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs).
- (2) If the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.

The explanation of "certain circumstances" in this provision refers to the situation when the country is in a dangerous situation by applicable laws, during a national natural disaster, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis. Based on this explanation, the condition for the imposition of the death penalty for perpetrators of criminal acts of corruption is corruption carried out during a national natural disaster or a state of economic and monetary crisis, resulting in state losses.

Problems arise when corruption occurs during a national natural disaster, but the perpetrators escape the death penalty. This situation is as happened in corruption in the procurement of social assistance for handling COVID-19.

Based on the Presidential Decree (Keppres) of the Republic of Indonesia Number 12 of 2020, regarding the Designation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, it is stated that Indonesia is experiencing a period of Covid-19 pandemic. President Joko Widodo has officially declared COVID-19 as a national disaster. Based on this determination, the Ministry of Social Affairs of the Republic of Indonesia in 2020 held social assistance for handling Covid-19 in the form of basic food packages worth Rp. 5.9 trillion with a total of 272 contracts and carried out in two periods.

Juliari Peter Batubara, as Minister of Social Affairs, appointed Matheus Joko Santoso and Adi Wahyono as Commitment Making Officers (PPK) in the implementation of the project by direct appointment of partners. This effort is suspected that there will be a fee for each work package that the partners must deposit to the Ministry of Social Affairs through Matheus. The fee for each social assistance package agreed by Matheus and

Adi is Rp. 10 thousand per food package from a value of Rp. 300 thousand per social assistance package.

During the first period of the basic food assistance package, it was suspected that a fee of Rp. 12 billion was distributed in cash by Matheus to Juliari through Adi with a value of around Rp. 8.2 Billion. In this case, the suspects are threatened with Article 12 of Law Number 20 of 2001 regarding the Eradication of Criminal Acts of Corruption, the punishment for which is life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and maximum imprisonment of 20 (twenty) years. a minimum fine of Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Referring to the background described above. The main issue to be discussed is how to implement the principle of justice in implementing the death penalty against criminal acts of corruption, procurement of social assistance in handling covid-19?

2. RESEARCH METHODS

This research is normative juridical research because the target of this research is law or normative methods in the form of legal principles and legal systems.³ The normative research in this study describes or describes in detail, systematically, thoroughly, and deeply the implementation of the principle of justice in implementing the death penalty against criminal acts of corruption procurement of social assistance in handling covid-19. This research is descriptive because it describes the applicable laws and regulations and is associated with legal theories in their implementation practices related to the problems to be studied. The data obtained will be analyzed by qualitative analysis.

3. RESEARCH RESULT AND DISCUSSION

Corruption is said to be a perfect crime because the perpetrators are considered people who are already in a good economic condition, financially prosperous people, so it is unreasonable if there are still parties who continue to commit corruption solely. To enrich themselves, Actors who should carry out their responsibilities as public officials, serve the community and provide adequate facilities for the community in such a way as to deviate the budget to be used for the perpetrator's interests. The modus operandi is organized so that it is difficult to decipher and find the main perpetrator. It is increasingly difficult to do if political interests and forces also play a role in covering up the government's corruption phenomenon.

The crime of corruption in Indonesia every year has increased,⁴ even though the punishment given by the law is hefty and provided legality to law enforcement officers to take action and punish perpetrators of corruption, up to

the death penalty as regulated in Article 2 of Law Number 20 of 2001 regarding Corruption Eradication.

The death penalty in Indonesia is still a debate because several parties such as Human Rights NGOs oppose the death penalty for violating Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that the right to life, the right not to be tortured, the right to freedom thoughts and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before retroactive laws are human rights that cannot be reduced under any circumstances.

The right to life is a non-delegable human right, meaning that a person's right to life cannot be served under any circumstances, in an emergency, or for reasons regulated in laws and regulations, for example committing a crime punishable by death Referring to the term non-derogable rights, as the origin of the phrase "human rights that cannot be reduced under any circumstances" contained in Article 28I paragraph (1), it can be stated that as a law, the death penalty should be abolished since the second amendment to the 1945 Constitution. in year 2000.

Based on this, a question arises: is it fair to impose the death penalty on perpetrators of corruption in the procurement of social assistance for handling COVID-19? The author argues that it is necessary to know the meaning of fair according to the view of legal science before answering this question.

According to Aristotle, justice is created from the ethical, social heart of every citizen and ruler. Law is only used as a tool to guard justice. Law is essential to bind every citizen so that justice is achieved, so justice itself must be seen from various meanings, namely:

1. Distributive justice, namely justice that gives each person a share or share according to his services. He cannot demand that everyone get the same amount because the merits of each person are not the same, so it is not equality but proportionality.
2. Commutative justice, namely justice by giving everyone as much as possible without considering individual services, emphasizes that everyone must get the same.

Based on this, justice can be used in several ways, namely commutative justice, suitable for all people to be equal before the law. In contrast, distributive justice is the punishment of criminals seen from the severity of the crimes committed by the perpetrators. Therefore, should the perpetrators of corruption in the procurement of social assistance for handling COVID-19 be sentenced to death?

Based on poverty data from the Central Statistics Agency (BPS) for the period 2015-2020, it is stated that

the trend of the number of poor people for the period March 2015 to September 2019 has consistently fallen from 28.59 million people to 24.79 million people. The number of poor people in Indonesia in March 2018 was around 25.95 million people, decreased by 280 thousand people in September 2018, decreased professional backgrounds. The total state loss that was calculated was Rp. 18.1 trillion. Meanwhile, the number of bribes that were successfully revealed by law enforcement was Rp. 20.2 billion, and the number of illegal levies was Rp. 44.6 billion. Again by 530 thousand people until March 2019 and 350 thousand people in September 2019. In the same semester, the total population of poor people in urban areas fell by 13.1 thousand, 530 thousand, and 137 thousand people. In contrast, it fell by 262.1 thousand (27 thousand) and 880 thousand people in rural areas, respectively. The number of poor people in urban areas has started to increase since March 2019, while the number of poor people in rural areas from March 2019 to September 2019 has decreased.

From September 2019 to March 2020, the number and prevalence of poverty in urban, rural, and national areas showed an increase. The increase in the number of poor people was 1,300 thousand, 333 thousand, and 1,630 thousand people, respectively, or an increase in prevalence of 0.82% points, 0.22% points, and 0.56% points. The number of poor people in March 2020 reached 26.42 million people, or an increase of 1.63 million people (9.78%). By region, the increase in poverty in urban areas is much higher than in rural areas. The poverty disparity between urban and rural areas is still relatively high.⁸

Based on this, the Covid-19 pandemic has dramatically affected the amount of poverty in Indonesia. Therefore, to deal with residents affected by the COVID-19 pandemic, the government held social assistance programs such as basic food assistance packages, cash assistance, and direct cash assistance (BLT) from village funds. This assistance scheme is in addition to the assistance distributed through the Family Hope Program (PKH) and Non-Cash Food Assistance (BPNT).

The existence of a criminal act of corruption in the procurement of social assistance for handling COVID-19 carried out by Juliari Peter Batubara as the Minister of Social Affairs is undoubtedly a very despicable act and deserves the death penalty as stipulated in Article 2 of Law Number 20 of 2001 regarding Eradication of Corruption Crimes. The crime of corruption causes it to be an extraordinary crime (extraordinary crimes). After all, it is systemic, endemic with a comprehensive impact (systematic and widespread) that harms state finances and violates the social and economic rights of the wider community. So that the enforcement efforts need extraordinary comprehensive measures so that the government forms many regulations, institutions, and commissions to overcome them.

This regulation is as stated in the Considering section of Law No. 20 of 2001 regarding the Eradication of Criminal Acts of Corruption, which states that corruption crimes that have been widespread so far have harmed the state's finances and have also constituted a violation of social and economic rights. The community's economy at large, so that the criminal act of corruption needs to be classified as a crime whose eradication must be carried out extraordinarily.

The great crime is an act carried out to eliminate other human rights, has been agreed internationally as a gross violation of human rights within the International Criminal Court and the Rome Statute, receiving the maximum sentence, including the death penalty for the perpetrator of the crime.

International criminal law uses the term the most severe crimes of concern to the international community, similar to extraordinary crimes. Since the establishment of the Rome Statute of International Criminal Court in 1998, the term the most severe crimes concern to the international community has been introduced, a crime that falls within the jurisdiction of the International Criminal Court. Article 5 of the Rome Statute translates the most severe crimes of concern to the international community into four types, namely genocide, crimes against humanity, war crimes, and crimes of aggression. This crime is considered an extraordinary crime because it has seriously injured the conscience of humanity and is a severe violation that threatens world peace, security, and prosperity.

Based on this, it is clear that the criminal act of corruption in the procurement of social assistance for handling COVID-19 is a crime against humanity because it violates the social and economic rights of the wider community. However, in its implementation, Juliari Peter Batubara, as the Minister of Social Affairs, was only charged with Article 12 of Law Number 20 of 2001 regarding the Eradication of Criminal Acts of Corruption. The heaviest threat of which is life imprisonment considering that the KPK has not found strong evidence to ensnare Article 2 of the Law. Law Number 20 of 2001 regarding the Eradication of Corruption Crimes. Based on distributive justice stated by Aristotle.

The author argues that justice is not equality but proportionality. The sentencing of corruption crimes against natural and non-natural disaster funds must, of course, be distinguished so that the death penalty for perpetrators of corruption in the provision of social assistance for handling COVID-19 is very fulfilling. A sense of justice, because covid-19 has been officially declared a national disaster, and the corruption committed by Juliari Peter Batubara as the Minister of Social Affairs is corruption in the procurement of social assistance for handling COVID-19. However, to provide a deterrent effect and serve as a warning to potential perpetrators of criminal acts of corruption, apart from the

imposition of the death penalty, another more important thing is the confiscation of the perpetrators' assets and increased supervision of the KPK.

The confiscation of the perpetrators' assets is carried out to minimize state losses as regulated in Article 38B and Article 38C of Law Number 20 of 2001 regarding the Eradication of Criminal Acts of Corruption. Apart from that, the KPK needs to increase its supervision. In this case, the KPK's supervision is active.

Currently, the KPK's supervision of corruption is still passive. This situation means that the KPK acts when corruption has occurred. In the future, the KPK should be able to carry out active supervision and prevention. It means that when the KPK knows and has evidence of conversations or communications that lead to acts of corruption, the KPK can give a written warning to potential perpetrators of corruption to discourage them from committing crimes. Acts of corruption.

With active supervision from the Corruption Eradication Commission and law enforcement officers, it is hoped that crimes of corruption in general and acts of corruption in the procurement of social assistance funds can be minimized. With a reduction in the number of corruption crimes, it is hoped that the corruption eradication index in Indonesia can be increased.

4. CONCLUSION

Implementing the principle of justice in implementing the death penalty against criminal acts of corruption procurement of social assistance in handling covid-19 has been officially declared a national disaster, and corruption committed by Juliari Peter Batubara as Minister of Social Affairs is corruption. Providing social assistance for handling COVID-19. However, to provide a deterrent effect and also serve as a warning to potential perpetrators of criminal acts of corruption, apart from the imposition of the death penalty, another more important thing is the confiscation of the perpetrators' assets and also increasing the supervision of the KPK from passive to active by providing the written warning to potential perpetrators of criminal acts of corruption to discourage their intention to commit acts of corruption.

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