# Legal Protection for Convicted Corruption Those Who Do not Enjoy the Results of Corruption Decision Analysis of Semarang State Court Number 72/Pid.Sus-Tpk/2019/Pn.Smg

Bernat(✉)

Doctoral Program in Law, Unissula, Semarang, Indonesia
bernat.pjt@gmail.com

**Abstract.** Legal protection is the right of every citizen, therefore legal protection for convicts who are found guilty of committing a criminal act of corruption in the Semarang District Court Decision Number: 72/pid.sus-TPK/2019/Pn.Smg with a sentence of 4 (four) years and 6 years. (six) months in prison and a fine of Rp. 200,000,000 (two hundred million rupiah) while the convict does not enjoy the proceeds of corruption. This study aims to analyze and explain Decision Number: 72/Pid.Sus-TPK/2019/Pn.Smg is appropriate in the sentencing of convicts and how legal protection is for convicts who do not enjoy the results of corruption. This research is a normative research and uses a case approach, and the problems raised in this study are analyzed by legal protection theory, the theory of error in criminal law and the theory of Islamic criminal law. Based on the results of the study, it can be concluded that the sentencing of the convicts is not appropriate, because the error due to negligence (culpa) which is used as the basis for the decision has no relationship with the convict, there is no mentality and behavior/nature of the convict who is despicable in committing acts against the law both materially and formally., the convict did not enjoy the slightest result for the disgraceful act of another party who with the modus operandi of falsifying documents to take money from BRI so as to harm the state's finances. Thus, based on law, the state is obliged to protect and give an acquittal from all lawsuits against the convict.

**Keywords:** Legal Protection · Convicts · Who Don't Enjoy the Results · Corruption

## 1 Introduction

Human welfare is basically an end in itself, as a result protection against it becomes the highest legal principle or the most powerful source of law Najm ad-Din at-Tufi.[1] This in Indonesia is in line with Prof. Sacipto Rahardjo's progressive legal thinking,

[1] Abdullah M.al-husayn al-Amiri, 2004, *Dekonstruksi Sumber Hukum Islam Pemikiran Hukum Najm ad-Din Thufi*, Gaya Media Pratama, Jakarta, Page.42


F. Kerem Giray et al. (Eds.): LICS 2022, ASSEHR 754, pp. 236–242, 2023.
https://doi.org/10.2991/978-2-38476-074-9_27

which states that "Law is for humans, not humans for law".[2] The consequence of this understanding is that the existence of law as an order of life must be able to protect and protect humans from various circumstances and needs as long as it is in the realm of justice (out of the book), not humans are forced to follow the text of the law (text of the book).

That is why law enforcers are in a neutral position to balance various kinds of human life patterns, this is where the law can function as an "umbrella" meaning that humans get protection from the pouring rain and the hot sun, from unfair treatment, from arbitrariness to humans who are not have power, and to get their rights as human beings who are treated equally in the eyes of the law (equality before the law), that way the law is able to carry the message of Justice, Certainty and expediency, as mentioned by a German philosopher Gustav Radbruch.[3]

Equality before the law as meant that everyone is equal in the eyes of the law, meaning that when someone is caught up in a legal case, he has the right to get the same treatment, even victims and perpetrators get equal treatment in the eyes of the law both in terms of enforcement and protection. And this principle means that they must be treated equally before the law regardless of ethnicity, religion, rank, position and so on. This principle is regulated in Article 5 paragraph (1) of Law Number 4 of 2004 concerning judicial power: "the court judges according to the law without discriminating against people".[4]

Talking about legal protection for everyone attracts the author's attention to examine one of the Semarang District Court decisions in the corruption case Number: 72/Pid.Sus-TPK/2019/PN.Smg, by private employees at PT.Bank Rakyat Indonesia (BRI) ) Purbalingga, decided on Thursday, February 13 2020, the case in question is a bad credit case carried out by the company CV.Cahaya Group (CV.Cahaya, PT Banyumas Televisi, PT Bumi Citra Satria, PT Bukit Citra Cahaya, SMK TI Bina Citra Informatika, SIT Cahaya Insani), had previously collaborated with PT. BRI (persero) tbk Purbalingga Branch to provide the BRIGUNA credit facility on May 4 2015. So that bad credit occurred as a result of debtors who were submitted for credit by CV.Cahaya Group as many as 171 debtors , there are 82 (eighty two) debtors are permanent employees while 89 (eighty nine) are people whose names are borrowed and recognized as permanent employees by CV.Cahaya Group. Of the 171 debtors, there were details of 5 debtors having been paid off, while the remaining loans were declared bad.

With the verdict as stated[5] ***Mengadili :*** 1. Declare that Defendant I Imam Sudrajat, SH and Defendant II Endah Setiaroni, A.Md have been legally and convincingly proven guilty of committing the "Criminal Act of Corruption which was carried out jointly" as the primary indictment; 2. Sentenced against the defendants therefore with imprisonment for 4 (four) years and 6 (six) months respectively and a fine of Rp. 200,000,000.- (two hundred million rupiahs) provided that the not paid is replaced with imprisonment for 2 (two) months; 3. Determine that the period of arrest and detention that has been served by the defendants is deducted entirely from the sentences imposed; 4. Ordered

[2] Sajipto Rahardjo,2010, *Penegakang Hukum Progresif*, Buku Kompas,Jakarta, Page.61

[3] Ahmad Ali,2003, *Menguak Teori Hukum ( Legal Teory ) dan teori Peradilan (* Jurisprudence*)*, Kencana, Vol.1,Cetakan Ke 5, Page.288

[4] Achmad Sulchan,2018, *Kemahiran Litigasi Hukum Pidana,* Unissula Pers,Semarang, Page.7

[5] Putusan Pengadilan Negeri Semarang Nomor 72/Pid.Sus-TKP/2019/PN.Smg, Page.195

the defendants to remain in detention; 5. Ordered evidence, in the form of; ATM 171 Briguna Credit Debtors Employees of CV.Cahaya Group, all of which were used in other cases on behalf of the defendant Ir. FIRDAUS VIDHYAWAN, MM, the defendant AANG NUGRAHA and the defendant YENI IRAWATI; 6. Stipulates that the defendants be burdened with the cost of the case in the amount of Rp. 5,000, - (five thousand rupiah).

For the authors of the decision, it is a very important issue to analyze, whether in the decision it was appropriate to apply the sentence to the guilty person or vice versa, that the application of the sentence to the innocent person, because on the basis of weighing the judges of the case did not show evidence that the the defendant enjoyed the proceeds from the corruption alleged against him, and also the defendants did not have the slightest intention to commit an act that could harm state finances and enrich other people or certain corporations.

There are two important things that need to be explored in this writing, namely the intention (mens rea) of the act and not enjoying the results of the act, meaning that by the act of corruption which then does not enjoy the results of the corruption, the element of intention/mens rea of the act is aborted because acts of corruption are basically those who have the intention to commit crimes of enriching themselves or other people or certain corporations by using their authority or illegal power facilities.

Therefore, the legal counsel for the defendants was of the opinion that there was a modus operandi that was deliberately manipulated by the real perpetrators so that it seemed as if the defendants were wrong in carrying out their duties even though the defendants had carried out their duties in accordance with the authority given to him as (AAO) and (AO) at PT Bank Rakyat Indonesia BRI (persero) Tbk Purbalingga Branch, there is evidence of falsification of documents from the CV.Cahaya Group. What should have been the case of forgery of documents by private parties was proven first, who did the forgery of the document, and who should be responsible for the forgery of the document, this was not disclosed by the public prosecutors and the CV did not elaborate on the forgery of documents. .Cahaya Group. Therefore the defendants were made victims of the crimes in this case.[6] Was it true that the defendants were negligent and had carried out their duties according to the operational system of procedures and that there was a modus operandi that was intentionally manipulated or was it the other way around.

## 2 Research Methods

To answer the writing questions that have been formulated above, the authors will use the normative research method.[7] Normative legal research is also called doctrinal legal research, according to Peter Mahmud Marzuki, Normative legal research is a process to

[6] PenasIhat Hukum Para Terdakwa John Richard Latuihamallo,SH.,MH. & Partners, *Surat Pleidoi, Page*.7

[7] Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, The Legal Protection Against Children Through A Restorative Justice Approach, *Law Development Journal*, Volume 3 Issue 2, June 2021, Page 223-231

find a rule of law, legal principles, or legal doctrines to answer the legal issues faced".[8] The research specifications used in this study used descriptive analytical.[9]

## 3 Results and Discussion

The results of the author's research are based on the decision of the Semarang District Court Number: 72/Pid.Sus-TPK/2019/PN.Smg. Corruption crime case involving the convict A.N. Imam Sudrajat, SH, born in Banyumas, 10-11-1970, male, having his address at Jl. Sokarasa Tengah Rt. 001/007 Kel. Sokaraja Tengah, Kec. Sokaraja, Kab. Banyumas. And Endah Setiorini, Amd, born in Purbalingga, 23-05-1979, a woman whose address is Jl. Hartono Rt. 02/02 Kel. Purbalingga Kulon Kec. Purbalingga, Kab. Purbalingga. In this case the defendants were charged with Article 2 paragraph (1) in conjunction with Article 18 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning eradication of criminal acts of corruption.

The public prosecutor charged the convicts with violating Article 2 paragraph (1) of Law no. 31 of 1999 in conjunction with Law No.20 of 2001, and was decided by a panel of judges guilty of committing a criminal act of corruption and threatened with Article 2 in conjunction with Article 18 paragraph (1) letter b of the law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption, here the authors see that there are irregularities in the application of the principle of error imposed on convicts, as is the case in the basis of weighing the judges explaining that the convict proven guilty for not being prudent in carrying out his duties as AAO and AO (Account Officer). Where the task was carried out by the defendants not being careful, causing losses to the state.

It is not enough for a person to be punished if the person has committed an act that is against the law or is against the law.[10] So even though his actions fulfill the formulation of offenses in the law and are not justified, they do not yet meet the requirements for criminal imposition.

Thus, the first condition in the culpa/negligence against the convict, namely "Not making the necessary assumptions according to law", is irrelevant to be argued against the convict/defendant. Therefore, if it is related to accountability, then the one who must be responsible is the CV Cahaya group for state losses, as the saying goes "Whoever does it, he must be responsible". It is absolutely not true that the actions of other people are borne by the accused/convict.

Incurring state losses is a different case, separate from the implementation of the convict's duties/authorities, CV Cahaya Group takes money and enjoys it causing losses to the state because it does not carry out its obligations as a creditor/consumer so it is referred to as bad credit, resulting in losses to the state, so the inner relationship of this person, namely CV Cahaya Group, with his disgraceful actions, namely falsification of

[8] Peter Mahmud Marzuki, Penelitian hukum, Jakarta; Kencana Prenada,2010, Page.35

[9] Julizar Bimo Perdana Suka , Bambang Tri Bawono , and Andri Winjaya Laksana, The Implementation of Code of Conduct for Members of Police as Accurators of Murder, *Law Development Journal*, Vol 4 No 2, June 2022, Page 197-204

[10] Sudarto1983, *Hukum dan Perkembangan Masyarakat,* Sinar Baru, Bandung, Page.85.

documents, has a relationship, thus accountability must be given to CV Cahaya Group, who enjoys and owns and controls the money taken, not the defendant who has carried out his obligations as a servant in providing facilities to the company legally and there is no particular inner relationship with disgraceful acts (forgery of documents) on the part of CV Cahaya Group.

Second, the convict in this case has carried out his duties as stipulated in the banking regulations and was also recognized by the panel of judges that the convict legally committed the act because of cooperation as the basis for the convict in carrying out his duties, meaning that the convict did his duties not outside the provisions of the rules and nature. The convict's mind does not show any intention to commit acts that are prohibited or outside the provisions, and it is legally the convict's duty to act in this case offering BRIguna credit, making cooperation documents and carrying out document analysis up to submitting it to the credit breaker.

In this case the prosecutor's indictment, the prosecution of the prosecutor up to the consideration of the panel of judges. The legal facts contained that CV.Cahaya Group, in this case witnesses Firdaus Vidyawan, Aang Eka Nugraha and Yeni Irawati, were the ones who committed the act of falsifying documents to withdraw money from BRI, on the basis Whatever the actions of Ir.Firdaus Vidyawan, Aang Eka Nugraha and Yeni Irawati were guilty of committing the act of falsifying documents, the consideration of the panel of judges justified the defense of the defendants' legal advisers who said "that is true, as the defense of the Defendant's Legal Counsel based on the facts proved that there was a criminal act of forgery involving the requirements made by the CV. Cahaya and PT. Banyumas Citra Televisi (Ir. FIRDAUS VIDHYAWAN. MM, et al.) in a neat and planned manner in applying for BRI Guna loans, thus making Defendant I IMAM SUDRAJAT and Defendant II ENDAH SETIORINI, as the Account Officer (AO) feel confident and believe in the correctness of the data- data submitted by the CV. Cahaya and PT. Banyumas Citra Television (Ir. FIRDAUS VIDHYAWAN, MM, et al.)".

As described above, according to the author, the result of the act of falsifying documents by the CV.Cahaya Group in this case (Ir.Firdaus Vidyawan, Aang Eka Nugraha and Yeni Irawati) causing losses to the state is not the act of the convict who manipulated or because of his negligence causing state losses , because the convicts have carried out their duties in accordance with the procedures stipulated in the banking regulations and there is no proof of the convict's mind related to the act of document forgery either intentional (dolus) or negligence (culpa). Therefore, the element of unlawful nature in this case should be able to be stated that the convicts were not proven to have committed an unlawful act both formally and materially because there was no element of guilt on the part of the convict indicating the existence of an offense.

Thus, in this discussion, according to the author, it is based on the theory of errors in criminal acts "Not criminalized if there is no mistake (geen straf zonder schuld actus non facit reum nisi mens sir rea)". That there is no fault in the convict as alleged by the public prosecutor and considered by the panel of judges regarding the criminal act of corruption as referred to in Article 2 paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Crime Eradication, Article 55 paragraph (1) 1st Criminal Code with Decision No.72/Pid.Sus-TPK/2019/Pn.Smg, because the elements of guilt due to negligence according to the

author are not fulfilled in convict I Imam Sudrajat, S.H and convict II Endah Setiorini, Amd. Accordingly, the imposition of a sentence against the convict himself of 4 (four) years and 6 (six) months in prison and a fine of Rp.

## 4 Conclusion

The imposition of sentences against corruption convicts who do not enjoy the proceeds of corruption as stipulated in Decision Number: 72/Pid.Sus/TPK/2019/Pn.Smg is inappropriate, this is because it is based on the principle of error due to negligence or culpa as the basis for the panel of judges' considerations is irrelevant because there is no inner connection with the act of forgery with the convict/defendant, and with the convict's behavior there is no reprehensible nature that gives rise to unlawful acts both materially and formally, thus according to the authors the element of guilt due to negligence is not proven, and those who enjoy, control over all losses the state is another party, namely CV Cahaya Group, everything started with a disgraceful act with the operating mode of falsification of documents to take money at PT BRI Purbalingga Branch with the BRIguna program, all money disbursed is enjoyed and controlled by CV Cahaya Group, namely Ir. Firdaus Vidyawan, Aang Eka Nugraha and Yeni Irawati.

## Bibiliography

Abdullah M.al-husayn al-Amiri, 2004, Dekonstruksi Sumber Hukum Islam Pemikiran Hukum Najm ad-Din Thufi, Gaya Media Pratama, Jakarta,

Achmad Sulchan 2018 Kemahiran Litigasi Hukum Pidana Unissula Pers Semarang

Ahmad Ali,2003, Menguak Teori Hukum ( Legal Teory ) dan teori Peradilan ( Jurisprudence), Kencana, Vol.1,Cetakan Ke 5, Page.288

Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, The Legal Protection Against Children Through A Restorative Justice Approach, Law Development Journal, Volume 3 Issue 2, June 2021,

Julizar Bimo Perdana Suka , Bambang Tri Bawono , and Andri Winjaya Laksana, The Implementation of Code of Conduct for Members of Police as Accurators of Murder, Law Development Journal, Vol 4 No 2, June 2022,

Penasihat Hukum Para Terdakwa John Richard Latuihamallo,SH.,MH. & Partners, Surat Pleidoi,

Peter Mahmud Marzuki 2010 Penelitian hukum Kencana Prenada Jakarta

Putusan Pengadilan Negeri Semarang Nomor 72/Pid.Sus-TKP/2019/PN.Smg,

Sajipto Rahardjo 2010 Penegakang Hukum Progresif Buku Kompas Jakarta

Sudarto, 1983 Hukum dan Perkembangan Masyarakat Sinar Baru Bandung