



Criminal Effectiveness on Evil Consultancy in Corruption Criminal Actions

Mahdi Nur^(✉)

Doctoral Program in Law, Unissula, Semarang, Indonesia
mahdi.nur@gmail.com

Abstract. Law enforcement in criminal conspiracy acts of corruption is very difficult to do, this is because the standard understanding and elements of criminal conspiracy in corruption are not clearly regulated. This thesis aims to determine and analyze the effectiveness of punishment against conspiracy to commit crimes of corruption as well as to identify and analyze the legal certainty of punishment for conspiracy in criminal acts of corruption. The approach method used in this research is normative juridical. Meanwhile, the specifications used in this thesis are analytical descriptive. The sources and types needed in this research are secondary data. Secondary data is divided into three parts, namely primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method used in this research is literature study. While the data analysis method used is qualitative data analysis method. Based on the research conducted, it was found the fact that the implementation of law enforcement in cases of conspiracy related to corruption is currently not fair, this is due to the unclear elements in the criminal act of conspiracy in corruption cases so that existing law enforcement is based on political interests, where the authorities will be able to looking for a way out of the snares of Article 15 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, while parties who do not have the authority to power will not be able to escape the snares of Article 15 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The weaknesses that cause this are weaknesses in the form of overlapping rules, law enforcement which only prioritizes evidence in the form of real losses and ignores meetings of mind, the influence of power and politics. So it is necessary to reconstruct Article 2 and add provisions of Article 15A of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The results of the reconstruction of Article 2 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption is to add the word "can" again and Article 15A states about the elements of conspiracy. commit criminal acts of corruption, both openly and secretly (meetings of mind).

Keywords: Effectiveness · Corruption · Criminal · Evil Conspiracy

1 Introduction

Corruption in Indonesia has existed for a long time, both before and after independence, the Old Order era, the New Order era and continued into the reform era. Various efforts have been made to eradicate corruption crimes, but the results are still far from satisfactory. As a type of crime, corruption has its own characteristics compared to other types of crime. Illegal commissions received by public officials (illegal commission) and illegal contributions of money to political parties.¹

Based on Article 110 paragraph (1) of the Criminal Code (KUHP), criminal acts that can be linked to conspiracy to evil are only related to crimes regulated in Articles 104, 106, 107 and 108 of the Criminal Code (KUHP). These articles relate to crimes that are very dangerous and can threaten the security of the state (*staatsgevaarlijke misdrijven*), such as attempts at treason and rebellion. In its development, conspiracy not only applies to parties who commit treason and rebels but also applies to narcotics criminals, money laundering perpetrators and corruptors respectively through laws that regulate them.

Based on the description above, an evil agreement, if the matter for committing a crime has been agreed upon (*overeengkomen*) by two or more people, for an agreement to commit a crime there must be an agreement between them or in other words they have the same intention, whereas if only the intention cannot be punished because the intention is manifested by a concrete act. Therefore, Article 88 of the Criminal Code cannot provide the meaning of the phrase conspiracy of evil in Article 15 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts Corruption. This shows that if Article 88 of the Criminal Code (KUHP) is used as a reference for interpreting Article 15 of the Corruption Law, it will actually make the regulation not provide legal certainty because there is no understanding of the meaning.²

Other legal problems arise due to the lack of clarity and clarity in the meaning of the conspiracy itself, which causes multiple interpretations. The implementation of the meaning and substance of the conspiracy in corruption has not been fully reflected in laws and regulations so that both state administrators and law enforcers experience difficulties in carrying out the functions of this authority.³ For example in the case of Anggodo Widjojo. In this case, on August 31, 2010, the Panel of Judges at the Tipikor Court stated that Anggodo was legally and convincingly proven to have committed a criminal act of corruption by imposing a prison sentence of 4 (four) years and a fine of Rp. 150 million, a subsidiary of 3 (three) months in prison. Chairman of the Panel of Judges Tjokorda Rai Suwamba said that only the first indictment, namely Article 15 in conjunction with Article 5 paragraph (1) letter a of Law Number 31 of 1999 concerning

¹ Kristian dan Yopi Gunawan, *Tindak Pidana Korupsi (Kajian Terhadap Harmonisasi Antara Hukum Nasional dan The United Nations Convention Against Corruption (UNCAC))*, Refika Aditama, Bandung, 2015, page. 22.

² Muchamad Hari Prabowo, Luthy Yustika, *Penjatuhan Sanksi Pidana Yang Samaantarapermufakatan Jahat Dengan Delik Percobaandalamtindak Pidana Korupsi*, JCA of LAW Vol. 1 No. 2 Tahun 2020, page 177–184

³ Kartika Rahmasari Dewi, *Pembuktian Terbalik dalam Tindak Pidana Pencucian Uang dengan Perkara Pokok Tindak Pidana Korupsi dalam Upaya Pengembalian Kerugian Negara*, Tesis UNS, Surakarta, 2018, page 15

the Eradication of Corruption Crime in conjunction with Article 55 paragraph (1) of the 1st Criminal Code, was proven, namely everyone commits an evil conspiracy to give or promise something to a civil servant or state administrator with the intention of a civil servant or state administrator doing or not doing something in a position that is contrary to the obligations fulfilled.⁴

In connection with the Constitutional Court Decision Number 21/PUU-XIV/2016 dated September 7 2016, according to the author, the meaning of the meaning of conspiracy to evil still causes multiple interpretations, moreover the meaning of conspiracy to evil in relation to criminal acts of corruption is not included in the chapter of the law. corruption itself, thus causing legal weaknesses for the perpetrators of corruption. Evil conspiracy does have a number of weaknesses related to the difficulty of the proving process, especially with regard to the elements of the agreement. The first opinion states that there must be a clear agreement between the briber and the bribe giver or extortionist and the extortionist. While other opinions state that the agreement is not necessary.⁵

2 Research Methods

To answer the writing questions that have been formulated above, the authors will use the normative research method.⁶ The research specifications used in this study used descriptive analytical.⁷ Metode penelitian yuridis normatif adalah penelitian hukum kepustakaan yang dilakukan dengan cara meneliti bahan-bahan kepustakaan atau data sekunder.⁸

3 Results and Discussion

In line with the view above, Chambliss and Seidman also stated that any action to be taken by the role holders, implementing agencies and legislators is always within the scope of the complexity of social, cultural, economic and political forces and so on. All social forces always work in every effort to function the applicable regulations, apply sanctions, and in all the activities of implementing institutions. In the end, the role played by legal institutions and institutions is the result of the operation of various weaknesses. Then Telcote Parsons stated that from a sociological point of view, society is seen as living in a series of unified systems consisting of parts that are interconnected with one another. Parson's view was developed from the organizational system development

⁴ http://www.bbc.com/indonesia/berita_indonesia/2010/08/100831_anggodovonis.shtml

⁵ Budiono, A. Suap Dalam Al-Quran Dan Relevansinya Dengan Gratifikasi Di Indonesia (Kajian Tafsir Tematik). MIYAH: Jurnal Studi Islam, 17 (01), 2021, page 122–149.

⁶ Bimo Bayu Aji Kiswanto, and Anis Mashdurohaturun, The Legal Protection Against Children Through A Restorative Justice Approach, Law Development Journal, Volume 3 Issue 2, June 2021, Page 223–231

⁷ 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

⁸ Soerjono Soekanto dan Sri Mahmudji, Penelitian Hukum Normatif, Suatu Tinjauan Singkat, Raja Grafindo Persada, Jakarta, 2003, Page. 13.

model contained in biology where the theory is based on the assumption that all elements must function so that society can carry out its functions properly.⁹

As a system, this theory places law as one of the sub-systems within a larger social system. Besides law, there are other sub-systems that have different logic and functions. The sub-systems in question are culture, politics, and the economy. Culture discusses values that are considered noble and noble, and therefore must be maintained. This sub-system functions to maintain ideal patterns in society. The law refers to the rules as the rule of the game. The main function of this sub-system is to coordinate and control all deviations to comply with the rules of the game. Politics has to do with power and authority. Its task is the utilization of power and authority to achieve goals. Meanwhile, economics refers to the material resources needed to support the system. The task of the economic sub-system is to carry out the adaptation function in the form of the ability to control the means and facilities for the needs of the system.¹⁰

Apart from this context, John Rawls defines justice as the main virtue of the presence of social institutions. However, benevolence for the whole society cannot rule out or challenge the sense of justice for everyone who has obtained a sense of justice. Especially weak people who seek justice.¹¹ Furthermore, John Rawls sees social justice more in aspects of the form of distribution of justice in society. Justice is translated as fairness where the principle is developed from utilitarian principles. This theory is adopted from the maximin principle, namely the process of maximizing a minimum thing in a society that is carried out by every individual who is in an initial position where in that position there is no bargaining about the role and status of a member of society. This principle seeks to answer as far as possible about maximizing a minimum that is closely related to the benefits of the weak lower class of society.¹²

The pattern of giving the concept of justice according to Rawls must be initiated based on a person's original position, not because of his status and position in the social space. In order to acquire this original nature, one must reach its original position which is called the veil of ignorance. The condition of the veil of ignorance intends to place a person in the same condition as one another as a member of society in a state of ignorance. So that in such a situation, other people do not know the advantages of giving something to someone who has reached the point of "veil of ignorance".¹³

Wirjono Prodjodikoro stated that the purpose of criminal law is to fulfill a sense of justice. There are several objectives of criminal law viz:¹⁴

1. Maintenance of social order.
2. Protection of members of the public from crime, harm or unjustified harm committed by other people;

⁹ Bernard Raho, SVD, *Teori Sosiologi Modern*, Prestasi Pustaka, Jakarta, 2007, page.48.

¹⁰ Bernard L. Tanya, dkk. *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, 2010, page. 152.

¹¹ Pan Muhammad Fais, *Teori Keadilan John Rawls*, Jurnal Konstitusi, 2009, page. 135.

¹² John Rawls, *Teori Keadilan*, Pustaka Pelajar, Yogyakarta, 2011, diterjemahkan oleh Uzair Fauzan dan Heru Prasetyo, page. 12–40.

¹³ John Rawls yang disarikan oleh Damanhuri Fattah, *Teori Keadilan Menurut John Rawls*, Jurnal TAPIs Volume 9 No.2 Juli-Desember 2013, page.42.

¹⁴ Wirjono Prodjodikoro, 1981, *Asas Asas Hukum Pidana*, Eresco, Bandung, page. 16.

3. Re-socialization (resocialization) of lawbreakers;
4. Maintain or maintain the integrity of certain basic views regarding social justice, human dignity, and individual justice.

Richard D. Schwartz and Jerome H. Skolnick argued that, criminal sanctions are meant for:¹⁵

1. Prevent the repetition of criminal acts (to prevent recidivism);
2. Prevent other people from doing the same act as the convict (to deter other people from the performance of similar actions);
3. To provide a channel for the expression of retaliatory motives (to provide a channel for the expression of retaliatory motives).

Muladi then formulated a combination of sentencing goals with ideological, juridical, philosophical, and sociological approaches based on the notion that a crime is a disturbance to the balance in social life, which results in individual or societal damage. For this reason, punishment should not only aim for a deterrent effect, but to repair individual and social damage. In other words, there are 4 main elements of the purpose of sentencing, namely prevention, community protection, efforts to maintain community harmony, and balancing. This is clearly contrary to the goal of individualization of criminal law which requires balance and clarity as well as justice in the enforcement of criminal law. Sri Endah stated that:¹⁶

If what the national law aspires to is the Pancasila legal system, then it is appropriate to study and develop laws that contain Pancasila values, meaning laws that are oriented to the values of Belief in the One and Only God, laws that are oriented to the values of a Just and Civilized Humanity, laws that are based on the value of Unity, and the law imbued with the values of Democracy Led by Wisdom of Wisdom in Deliberation/Representation and the value of Social Justice for All Indonesian People.

4 Conclusion

The construction of conspiracy to commit criminal acts of corruption still contains ambiguity, this is due to the unclear elements and mechanisms for proving the conspiracy to commit crimes in Article 15 of Law Number 31 of 1999 Jo. Law Number 20 of 2001.

Arrangements for conspiracy to evil are still not able to provide legal certainty, this is due to the unclear regulation of the meaning and elements of conspiracy in Article 15 of Law Number 31 of 1999 Jo. Law Number 20 of 2001.

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¹⁶ Sri Endah Wahyuningsih, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Islam Dan Pembaharuan Hukum Indonesia*, UNDIP, Semarang, 2013, page. 68.

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