

Legal Analysis of Article 3 Paragraph (1) and Article 2 Paragraph (1) of Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 on the Eradication of Corruption

A Study of Supreme Court Decision Number 1481 K/Pid.Sus/2018

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ABSTRACT

This research analyzes the application of Article 3 Paragraph 1 and Article 2 Paragraph 1 of Law Number 20 Year 2001 concerning the Amendment to Law Number 31 Year 1999 concerning the Eradication of Corruption, particularly through a case study of Supreme Court Decision Number 1481 K/Pid.Sus/2018. The study aims to delve into judicial considerations in deciding corruption cases and contribute to the development of concepts and theories of justice within Indonesian criminal law. The methodology employed is a normative juridical approach with descriptive-analytical methods. The findings indicate that the Supreme Court's decision aligns with existing legal provisions, unlike the decisions rendered by the District Court and High Court. These lower court rulings were not based on clear legal provisions, specifically Article 12 letter e combined with Article 12A Paragraph (2) of Law Number 31 Year 1999 Jo Law Number 20 Year 2001 concerning the Eradication of Corruption, which stipulates a minimum imprisonment of 4 years and a maximum of 20 years. This discrepancy has rendered the District Court and High Court decisions inconsistent with applicable law.

Keywords:

Eradication,
Criminal Acts,
Corruption

INTRODUCTION

Corruption represents a deviation from the proper exercise of public office, where public officials exploit their position for personal, familial, or group gain, thereby violating legal norms and undermining public trust. According to Syamsuddin (2011), corruption encompasses not only unlawful enrichment but also constitutes a breach of ethical and constitutional principles essential to the integrity of state governance. In criminal law theory, corruption is considered a substantive offense (*materiële delicten*), particularly following legislative developments that emphasize its harmful consequences to the state and society.

A major turning point in Indonesia's anti-corruption legal framework occurred with the enactment of Law Number 20 of 2001, which amended Law Number 31 of 1999. This amendment shifted the characterization of corruption offenses from *formal offenses* to *material offenses*, thereby placing greater emphasis on the actual or potential harm caused by corrupt acts, particularly in terms of state financial losses (Assegaf, 2013). This development was further reinforced by Constitutional Court decisions that

interpreted state loss as not necessarily needing to be actual or quantifiable, but rather as sufficiently proven through potential or indirect losses caused by unlawful conduct.

Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law provide distinct legal foundations. Article 2 criminalizes any act that unlawfully enriches oneself or others and causes a loss to state finances, while Article 3 emphasizes abuse of authority, opportunity, or means arising from one's position that results in similar harm. This distinction often leads to interpretive challenges in legal practice, particularly in determining the appropriate article to apply based on the evidentiary burden of proving state losses.

Such challenges are evident in cases like the Sem Beti case in Kupang. At the District Court level, the judiciary applied Article 3, which traditionally requires demonstrable state financial loss. However, at the Supreme Court level, the case was reinterpreted under Article 2, shifting the focus toward unlawful enrichment irrespective of direct financial quantification. This inconsistency in legal interpretation underscores the issue of *legal uncertainty* and may give rise to *legal injustice*, as inconsistent verdicts compromise the public's faith in the judiciary.

The principles of *legal certainty* (*rechtzekerheid*) and *equality before the law* are essential pillars of a functioning legal system. Von Hirsch (1993) emphasized the importance of proportionality in sentencing to prevent disparities that erode the credibility of legal institutions. In this regard, uniform application of legal provisions is crucial to uphold the rule of law and ensure that anti-corruption measures have a tangible deterrent effect.

This analysis also draws attention to Civil Court Decision Number 111/Pdt.G/2022/PN JMB, which, although civil in nature, provides insight into how legal ambiguity and noncompliance with procedural obligations—such as failure to submit requisite legal documents—can perpetuate disputes and hinder fair resolution. Such examples further illustrate the broader implications of legal inconsistency and the necessity for clear jurisprudential standards.

By examining Supreme Court Decision Number 1481 K/Pid.Sus/2018, this study aims to critically assess the legal reasoning employed in differentiating between the application of Article 2 and Article 3. The goal is to contribute to the discourse on strengthening judicial integrity and consistency within Indonesia's anti-corruption legal framework.

METHOD

This research employs a normative juridical approach, commonly referred to as doctrinal legal research, which focuses on the study of legal norms, statutory provisions, and court decisions to examine the application of minimum criminal sanctions in corruption cases. The normative approach allows for an in-depth analysis of legal theories, concepts, and regulations—particularly those contained within the Indonesian Penal Code and Law Number 31 of 1999 as amended by Law Number 20 of 2001 on the Eradication of Corruption. The purpose is to understand how the law should be interpreted and applied consistently across different judicial levels in relation to corruption offenses.

In addition, the study adopts an analytical-descriptive approach to systematically present and explain the legal issues at hand, focusing on judicial reasoning and the consistency of statutory interpretation. This approach is supported by three legal

research methods: the statute approach, which analyzes relevant legislation; the conceptual approach, which examines the foundational legal concepts guiding judicial interpretation; and the case approach, which involves a detailed analysis of Supreme Court Decision Number 1481 K/Pid.Sus/2018. These methods together aim to reveal the normative basis of judicial decisions and assess the extent to which they align with the principles of justice, legal certainty, and proportionality.

RESULTS AND DISCUSSION

1. Implementation of Corruption Crimes within Criminal Elements in Indonesia

Article 2, paragraph (2) of the Indonesian Law on Corruption stipulates that under specific circumstances, the death penalty may be imposed on individuals found guilty of corruption. These "certain circumstances" encompass situations where corruption involves funds designated for emergency response, national natural disaster relief, addressing widespread social unrest, or mitigating economic and monetary crises. This provision also applies to cases of repeated corruption offenses.

The crime of corruption, as defined under Indonesian law, comprises three core elements:

- a. **Any person or corporation:** This element refers to an individual or an organized group, whether formally constituted as a legal entity or not, as defined in Article 1, paragraph (1) of Law No. 31 of 1999.
- b. **Unlawful act:** This signifies an action that contravenes prevailing legal regulations, as elucidated in Chapter 1, Book I of the Criminal Code. Criminal penalties are only applicable if the act explicitly violates existing criminal law provisions. An act is interpreted as being carried out by an individual, another person, or a corporation through the abuse of their authority, opportunity, or available means, particularly due to their official position. Such actions must demonstrably result in financial detriment to the state or national economy. Perpetrators are subject to imprisonment ranging from a minimum of one year to a maximum of twenty years, or life imprisonment. Additionally, fines can range from a minimum of IDR 50,000,000 to a maximum of IDR 1,000,000,000. These stipulations are in accordance with Article 1, paragraph (1) of Law No. 31 of 1999.

2. Judge's Consideration in Supreme Court Decision on Corruption Crime No. 1481K/Pid.Sus/2018

The corruption case involving the defendant Sem Beti in Kupang concerned unremitted tax revenues. Sem Beti, who served as Acting Head of the *Trantib and Linmas Section* at the Takari District Office, Kupang Regency, also functioned as the Coordinator of the Integrated Team of Mining Tax Control Officers for Mineral, Metal, and Rock Mining Materials at the Takari District Monitoring Post during 2013-2014.

In the verdict issued by the Kupang District Court (Kupang District Court Decision No. 63/Pid.Sus-TPK/2017/PN Kupang), Sem Beti was convicted and sentenced for failing to remit collected taxes to the treasurer. The defendant was charged under Article 3 in conjunction with Article 18 of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, and Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP) in conjunction with Article 64, paragraph (1) of the Criminal Code.

At the cassation level, the Supreme Court (MA) modified the decision by applying Article 2 Number (1) Jo. Article 18 of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption Jo. Article 64 Number (1) of the Criminal Code, Law No. 8 of 1981

concerning the Criminal Procedure Code, Law No. 48 of 2009 concerning Judicial Power, and Law No. 3 of 2009 concerning the Supreme Court. The Supreme Court's rationale for applying Article 2 Number 1 was based on the magnitude of the state loss; if the loss was substantial, Article 2 was deemed more appropriate, whereas for lesser losses, Article 3 would be applied.

The initial verdict against the defendant was deemed erroneous, with the imposed punishment considered justified due to the defendant's proven failure to remit taxes to the treasurer. The initial charges, namely Article 3 Jo. Article 18 of Law No. 20 of 2001 concerning the Eradication of Corruption, Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP) Jo. Article 64 number (1) of the Criminal Code (Kupang District Court Decision No. 63 / Pid.Sus-TPK / 2017 / PN Kupang), reflected a more specialized interpretation by the District Court judge. The High Court's decision largely aligned with the District Court's findings and reasoning. However, in the Supreme Court's cassation effort, the judges instead applied Article 2 Number (1) Jo. Article 18 of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 Number (1) of the Criminal Code, Law No. 8 of 1981 concerning the Criminal Procedure Code, Law No. 48 of 2009 concerning Judicial Power, and Law No. 3 of 2009 concerning the Supreme Court. The rationale for applying Article 2 Number 1 was that if the state loss was substantial, Article 2 should be imposed, but if the loss was minor, the Supreme Court judge was of the opinion that Article 3 should be applied.

Comparing these applications, Article 2 Number 1 of the Corruption Eradication Law states: "Every person who unlawfully enriches themselves or corporations that, in practice, enrich themselves in a manner that results in state losses, shall be threatened with imprisonment for life or a minimum of 4 years and a maximum of 20 years."

Based on the explanation above in finding the conclusion that there is a difference in sentencing. In order to impose a verdict on a corruption perpetrator which is a special crime that is detrimental to many aspects, it is absolutely necessary to implement the correct, firm, and harsh articles. Because regulations are made firmly to provide deterrence. So, a regulation or legal process should not open up opportunities for inconsistency in the implementation of punishment and differences in sentencing. This can certainly cause uncertainty. Especially if someone should get a heavy sentence but gets a light one. The principle is that the law must be given parity (equivalent to what was done) If there is a difference in sentencing, it means that there is inequality in punishment between the crime committed and the punishment. What needs to be considered so that this does not happen is the emphasis on the principle of proportionality. The existence of differences in sentencing a defendant. criminal act. is actually a reasonable thing. It will be a problem if the punishment imposed causes injustice and public suspicion.

Therefore, based on the judge's considerations, the author agrees with the Supreme Court's Decision and disagrees with the District Court and High Court Decisions which are not based on the provisions of statutory regulations, namely Article 12 letter e in conjunction with Article 12 A Paragraph (2) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which carries a minimum prison sentence of 4 (four) years and a maximum of 20 (twenty) years, thus contradicting the applicable laws. In addition, the verses in the judge's decision as explained above, in Article 5 paragraph (1) of Law No. 48 of

2009 concerning Judicial Power, it is stated that judges and constitutional judges are required to explore, follow, and understand the legal values and sense of justice that live in society. Such a thing is certainly the obligation of the Judge to explore and understand the land lawsuit before deciding the case, including in this case a civil case related to the issue of compensation for unlawful acts in a land lawsuit because if the Judge does not understand the land lawsuit, the decision issued by the Judge does not provide the value.

CONCLUSION

In the application of law against criminal acts of corruption in Indonesia, Article 2 paragraph (1) of Law No. 31 of 1999 which has been revised by Law No. 20 of 2001 emphasizes that corruption is an unlawful act to enrich oneself, others, or corporations that can harm the state. The severe penalties include life imprisonment or a minimum of 4 years to a maximum of 20 years, as well as large fines. This reflects Indonesia's commitment to eradicating corruption as a serious crime that has a broad impact on social, economic, and political stability. With strict regulations and severe penalties, Indonesia, affirming that perpetrators of corruption must be held legally accountable, demonstrating a commitment to justice and shared progress. The Supreme Court's decision is in accordance with existing provisions, in contrast to the District Court and High Court Decisions which are not based on clear legal provisions, namely Article 12 letter e in conjunction with Article 12 A Paragraph (2) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which stipulates a minimum prison sentence of 4 (four) years and a maximum of 20 (twenty) years. This causes the District Court and High Court Decisions to be inconsistent with applicable law.

Acknowledgment

The suggestion in this study is that the implementation of punishment for perpetrators of corruption crimes must be enforced seriously in order to provide a real deterrent effect so that perpetrators of corruption will not repeat their actions. The government needs to revise the Law on Corruption, especially in Articles 2 and 3 to avoid legal uncertainty.

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