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THE LEGAL POLICY OF INVESTIGATION AND VERIFICATION ON CORRUPTION

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This study is focused on legal policy of investigation and verification on Indonesian corruption acts. This normative legal research used legislation approach based on the primary law material in the form of positive law and secondary law material including books or other related literatures. This study revealed 2 results in accordance with formulated issues. First, Article 26 of Law No 31/1999 on the Corruption Act revealed the existence of a procedural law containing double meaning. Here, the criminal procedure law that was specified on corruption acts deviated from general criminal procedure law. The deviations were intended to accelerate procedure and simplify investigation up to prosecution and provision in court regarding the defendant's human rights. Secondly, Article 37 of the Corruption Act specified various matters of proof, including the use of reversed verification systems. The verification was an extension of the provisions of Law No 8/1981 on Criminal Procedure Law which stipulated that the prosecutor had the authority to prosecute a person charged with a criminal offense with the burden of proof.

Keywords: legal policy, criminal procedure code, investigation, verification, corruption acts law, corruption acts, Indonesia.

ПРАВОВАЯ ПОЛИТИКА В ОБНАРУЖЕНИИ И ПОДТВЕРЖДЕНИИ КОРРУПЦИИ

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Исследование сосредоточено на правовой политике обнаружения и подтверждения коррупционных действий в Индонезии. Это нормативно-правовое исследование использует законодательный подход, основанный на материалах основного законодательства в форме действующего права и материалах вторичного права, включающего книги и сопутствующие документы. Это исследование выявило два результата в соответствии с

заявленными вопросами. Во-первых, статья 26 Закона № 31/1999 «О коррупции» доказывает существование процессуального закона, содержащего двойное значение. В этом случае процессуальные нормы в отношении расследования преступлений, связанных с коррупцией, отступают от основного уголовно-процессуального права. Такие отклонения основаны на необходимости ускорения процедуры и упрощения следствия, включая вынесение обвинения и ведение судебного процесса, а также обеспечения прав человека в суде. Во-вторых, статья 37 антикоррупционного Закона уточняет различные типы доказательств, включая использование измененных систем проверки. Эта статья расширяет положения Закона № 8/1981 «Об уголовно-процессуальном праве», который дает право привлекать к ответственности человека с необходимостью доказательства его вины в суде.

Ключевые слова: правовая политика, уголовно-процессуальный кодекс, расследование, освидетельствование, антикоррупционные законодательные акты, коррупционные действия, Индонезия.

Introduction

Provision is a process of how the evidence is used, filed, and maintained in accordance with applicable law of procedure [10, p. 3]. The verification aims to seek and apply the truths existing in the case, not merely looking for one's faults. Although in its practice there is no absolute certainty to be achieved but by research and persistence using existing evidence, it would be obtained a reliable truth. The evidentiary system aims to prevent innocent people from being jailed.

Concerning to the importance of the verification system in the process of corruption acts settlement, it is necessary to understand the concept of verification system itself, which consists of word system and proof. Based on Oxford Advanced Leaner's Dictionary of Current English, it is explained that system is: “group of things or part working together in regular relation”; “Ordered set Ideas, orates, principles ate”; or “orderliness” [5, p. 877]. Meanwhile, Black’s Law Dictionary defines system as [1, p. 1300]:

– Orderly Combination or arrangement as part of a particle or element into a whole especially such combination according to some rational principle.

– Any method arrangement of parts.

– Method, manner, fashion.

Based on the explanation above, it can be defined that the basic elements of system is a group combination and regular orderly that have regular relationship among parts as a whole.

Verification system based on the concept mentioned above is a group or collection process of how the evidence tools are used, filed and maintained in accordance with the applicable law. Sasangka and Rosita [9, p. 7] emphasized that the verification system is arrangement of various evidence used and how judges should form their beliefs. Furthermore, the definition above implied a very important meaning if it is linked to one problem study, whether it is a general issue or a legal issue. It will be more important if the concept of evidentiary system is linked to the problem of proof in the settlement process of corruption acts.

The criminal case investigation is based on verification system according to the law negatively, as stated in Article 183 of Law No 8/1981 regarding Criminal Procedure Code (KUHAP). It is determined that the judge shall not impose a penalty on a person, except with at least 2 valid evidences and he/she is convinced that a crime is actually committed and the defendant is guilty of doing it. based on Article 183 of KUHAP, there are two elements that can be imposed as criminal sanctions: (a) At least two valid evidences; and (b) The judge believes that the criminal actually took place and the defendant did it.

The purpose of Article 183 of KUHAP is to guarantee the establishment of truth, justice, and legal certainty. In order to achieve this objective, the judge should have the utmost confidence in the evidence presented by Public Prosecutor and valid evidence instruments as stated in Article 184 of KUHAP. The negative system ofevidentiary system in a criminal case based on Article 183 of KUHAP stated that to blame a defendant, it requires a minimum of proof set out in the law. However, even

if the evidence is more than the minimum but the judge is not convinced of the defendant's wrongdoing, he should not condemn and punish the defendant.

The judge's conviction in the negative system must be based on the available evidence. The evidence is intended to strengthen his conviction to verdict someone. According to Sasangka and Rosita, in a negative system based evidence system, there are 2 things that are required to prove the defendant's faults [9, p. 13], namely:

– *Wettelijk*, i.e. there is a valid evidence that has been established by law.

– Negative, i.e. the conviction (conscience) of the judge based on the evidence about defendant's faults.

Dealing with the statement above, D. Simonas cited by Andi Hamzah stated that negative law proof (negative *wettelijk bewijs theorie*) is based on double evidence, those are on the judge's conviction and on the law and the the basis conviction sourced from legislation [3, p. 234].

The problem is who should be burdened for verification of corruption act. The verification problem in a corruption act is the government's responsibility as a state organization consisting of administrative office that has authority. According to Indroharto, the government authority is not merely meant to be allowed or capable of carrying out government affairs, but also their authority to establish and maintain the positive law.

Judicially the definition of authority is an ability provided by legislation to prove the legal consequences. Usually, authority is interpreted in a broader sense that is the authority to do something which means the ability to maintain a positive law [6, p. 68].

In the other side, Government authority is always limited by positive law. That is, the nature of power and the scope of a governmental authority is always limited. The restriction is actually an element or requirement of a legal state. The state of law, according to Hadjon, was born from the influence of *Rechsstaat* as follows [2, p. 4].

– The principle of legality, i.e. every government action should be based on legislation (*Wettelijke Gronslag*).

– Division of power i.e. this requirement implies that state power should not rest on one hand only.

– Basic rights (*Gronrechten*). Basic rights are the object of legal protection for the people and at the same time limit the power of law formation.

– Free court oversight to test the legitimacy of governmental action (*Rechmatigheid Toetsing*).

– Based on the description mentioned above, this research focuses on analyzing the legal policy for corruption investigation and verification in Indonesia.

Research method

This normative legal research used the legislation approach; it was done through the examination of all written legal rules related to the subject matter based on the concept of criminal law. This research was based on 2 legal materials. Those are the primary legal material in the form of positive law, namely legislation related to the subject matter and secondary legal material including books or other literature in criminal law and criminal procedure law and research results related to the title of the study.

The data were processed by categorization as a selective class of law material classification. All legal materials are grouped according to universally determined, meticulous, and strict criteria according to the subject matter. The next step was to analyze the legal material and to present in a descriptive-analytic way, namely to examine concepts including legal notions, legal norms and legal systems related to this research.

Discussion

Legal policy on investigation toward Indonesian corruption acts

Before conducting an investigation, it is required an observation. Vision will not be completed and getting an adequate description without observation.

Under the Article 1 point 5 on the KUHAP, observation is a series of actions to seek and discover the truth about the situation or event related to a crime or offense, or suspected of a crime. The search and attempt to discover the truth of crime

allegation is intended to find out how investigator manner about the truth, whether it can be investigated or not in accordance with the ordinance set forth by KUHAP.

In addition, observation is proposed to demand the responsibility of investigator not to take an action in the framework of law enforcement that undermines one's dignity. Moral demands and responsibilities serve as a warning to investigator to act carefully because it can be continued in the pre-trial session stage.

Furthermore, Investigation or "*opsporing*" according to the provisions of Article 1 point 2 on the KUHAP, it is mentioned as a series of investigative actions in respect of and in accordance with the manner laid down in this law to seek and collect evidence, in which the evidence makes clear the criminal offense and to find the suspect.

Hamzah explains the investigation parts related to the procedure in the criminal case as; provisions on investigative instruments, provisions on knowing criminal acts, examination at the scene, calling the suspect or defendant, detention, searching (frisking), examination or interrogation, news report (searches, interrogations and on-site inspections), foreclosure, submission of cases and addressing the case to the prosecutor and returning it to the investigator for improvement [4, p. 96].

During observation process, it is emphasized the act of "seeking and finding" an event that is considered or suspected to be a crime. Meanwhile, in investigation, it is emphasizedd on the act of "seeking and gathering evidence" thus the criminal act is found to be light as well as determine the perpetrator.

Indeed, provisions contained in Article 7 paragraph (1) of KUHAP linked with Chapter V KUHAP and Chapter XIV KUHAP explais that the investigator task is broader than the inquiry. However, the manner in which they are described in the Criminal Procedure Code is not sequential and spread in several chapters. The investigator obligations-authority as well as the function-scope of the investigation are less arranged systematically, sthus in order to fully understand the investigation, problem cannot be observed from the provisions of Chapter XIV only but from other chapters and Articles outside the two chapter. For instance, Chapter IV the first section ruled about observer and investigator. Chapter V rules about arrest, detention,

searches, incitements, and so on. Whereas, Chapter VI rules about suspects and defendants. The issues set forth in the chapters and subsequent chapters basically cover the functions and powers of investigation, but on the new investigations are set forth in Chapter XIV.

On the other hand, in the special criminal proceedings for corruption in Chapter IV from Article 25 to Article 40 of Law No 20/2001 on Amendment to Law No 31/1999 concerning the eradication of criminal acts of corruption (corruption acts law) provides for investigation, prosecution, and court-trial. Article 26 of the Corruption Act stipulates: "Investigation, prosecution, and court-trial for corruption shall be conducted under applicable criminal procedure law unless otherwise provided in this law".

From the provisions of Article 26 of the corruption acts law mentioned above, it appears that there are procedural laws that contain double meaning. The criminal procedure law specifically for the criminal act of corruption deviates from general criminal procedure law. This deviation is intended to expedite the procedure and facilitate the investigation, prosecution, and court-trial without ignoring the defendant's or suspect's human rights. However, such deviations are not a complete abolition of the suspect's or defendant's human rights, but merely a forced reduction to be treated in order to save the human rights from the dangers posed by corruption acts.

On the other hand, as long as there is no deviation as set forth in the Corruption Law, then the process of corruption cases refers to the general procedural law, namely the KUHAP. Exceptions to the KUHAP according to Corruption Law are as follows:

– Investigation, prosecution, and court trial in corruption cases shall take precedence over other cases for immediate settlement (Article 25).

– For investigation purpose, the suspect shall be obliged to provide information about all of his or her possessions, wife/husband, son/daughter and of any person or corporation which is known and or suspected to have any connection with the criminal act of corruption committed by the suspect (Article 28).

– The investigator, public prosecutor or judge for the purpose of investigation, prosecution or court- trial shall be authorized to seek information from the bank regarding the financial condition of the accused or the accused in accordance with the prevailing laws and regulations and the Governor of Bank Indonesia shall be obliged to fulfill the request within a period of 3 days (maximum) after the request is received completely. Furthermore, it can be blocked, if the result of the trial of the suspect or defendant do not obtain sufficient evidence, at the request of the investigator, the public prosecutor or judge, the bank must revoke the blocking (Article 29 paragraph (1), (2), (3), (4), and (5)).

– The investigator shall open, inspect, and confiscate mail by post, telecommunication, or other means of communication suspected of having links to a criminal act of corruption being investigated (Article 30).

– In the investigation and court-trial, witnesses and other persons concerned with corruption are prohibited from mentioning the names or addresses of the complainants or other matters that provide the possibility of knowing the identity of reporting party (Article 31 paragraph (1)).

– In case the investigation finds and believes that one or more elements of corruption do not have sufficient evidence, whereas actually there is a financial loss of the state, the investigator immediately submits the case of the investigation proceedings to the state attorney for a civil suit or submitted to the Harmed to file lawsuits and free judgments in cases of corruption does not eliminate the right to claim harm to state finances (Art. 32).

– In the event that a suspect or defendant dies at the time of the investigation or court-trial, whereas in fact there has been a financial loss of the state, the investigator / prosecutor shall immediately submit the case file or a copy of the hearing to the state attorney or handed over to the Disadvantaged to be made a civil suit against his heirs (Articles 33 and 34).

– The Attorney General coordinates and controls observation, investigation, and prosecution of corruption acts committed jointly by persons subject to the General Courts and Military Courts (Art. 39).

As the following investigation process of corruption acts, after witnesses and suspects are examined, the next stage if it is deemed necessary to investigators, they might carry out these following actions:

Issuing an arrest order in Serse form model: A.5, followed by an official report of the Serse form model: A.11.03 or a detention order for the Serse model: A.11/04 where the arrest and detention must comply with the provisions of Article 21 KUHAP. Detention period conducted by the investigator is no more than 20 days and if subjected to unfinished checks may be extended by the public prosecutor to a maximum of 40 days (Article 24 paragraph (1) of the KUHAP.

Accordint to provisions of Article 30 on corruption acts law, investigators are allowed to disclose, examine, and confiscate letters and items by post, telecommunications or other means of communication suspected of having links to cases being investigated. Basically, this provision is intended to authorize the investigator in order to expedite the investigation process which had stipulated in the KUHAP to open, examine, or seize the letter must obtain prior permission from the chairman of the district court.

The provisions of Article 29 on corruption acts law, the investigator for the purpose of investigation is authorized to ask the bank for information about the financial condition of the suspect. The request shall be subject to prevailing laws in the banking sector, whereas the Governor of Bank Indonesia shall be obliged to fulfill the request within 3 working days as from the application date receipt. If the investigator suspects that the suspect's bank account is allegedly derived from corruption, then it is permitted to ask the bank to block it. On the contrary, if the suspect does not get sufficient evidence to commit a criminal act of corruption, the investigator may ask the bank to revoke the blocking.

If such acts have been committed, based on Article 121 of Criminal Procedure Code, investigators based on the oath provisions of their positions should prepare the dated official report of the alleged crime by referring to the time, place and circumstances of the criminal offense, name and place-stay suspects or witnesses, their statements, notes on deeds and/or objects, and everything that is deemed

necessary. In the accompanying official report, it is attached the information suspect report, news of arrest or detention, and others. Subsequently, resumes were made, covered and after be bound, these corruption acts files are submitted to the prosecutor.

Legal policy on verification toward Indonesian corruption acts

The verification effort of one case is absolutely necessary for the court. Verification is a basic stage or process that is decisive and at the same time as a basis for judges to determine their belief in the case concerned with the evidence proposed by the prosecutor. Whereas the types of evidence have been determined in a limitation manner under the law, that is, as provided in Article 184 paragraph (1) of the Criminal Procedure Code as; witness information, expert description, letter, hints, defendant statement.

The judge examination, in seeking and putting the truth to be imposed on the decision in the criminal case, should be based on the instruments of evidence which have been determined by the limitation law as provided in Article 184 (1) on KUHAP. It means that judges should not diverge or define other evidence, other than those specified in the law. The composition of the evidence as set forth in Article 184 paragraph (1) of Criminal Procedure Code is hierarchical in nature, which indicates the existence of putting nature of the composition. According to Sasangka and Rosita from the sequence tools of evidence, it can be concluded that the provision in criminal cases is more emphasized on witnesses' information [9, p. 7].

The previous corruption acts law, namely Law No 3/1971 does not specifically mention the evidence instruments that can be used in the verification process. Therefore, the verification process in the corruption acts still refers to the provision types as specified in Article 184 (1) on the Criminal Procedure Code. This is because Article 14 of the previous corruption acts law clearly states, "corruption cases are examined and prosecuted by the District Court according to the law and applicable law only in this law is not specified otherwise".

Nowadays, the difficulties and also the weakness of eradicating corruption is a matter of verification. Whereas, provision is one of the factors that often faced in the

process of searching and gathering evidence. The verification toward corruption act often cannot be done, because of the lack of clear evidence of corruption act.

As matter of fact, the previous Corruption acts law has provisions that provide the widest possible opportunity and authority to law enforcement officials, especially investigators in searching and collecting evidence. Article 6 on the Corruption law states: "Each suspect shall be obligated to provide information about all property of his/her spouse, child and any persons and bodies known or suspected of having any connection with the case if requested by the investigator", this Article is facultative provision. It is seen with the phrase "when requested by the investigator". That is, if it is not requested by the investigator, the suspect is not obliged to provide information on the property allegedly having a relationship with the case concerned.

The most recent corruption acts law provides more distinct law than as law above, that suspect is obliged to provide information about all of his property, property of his/her spouse, children, and property of any person or corporation that is known and/or suspected to be related to corruption. Although not requested by the investigator, as provided for in Article 28 on the law. Thus, the latest corruption acts law is more firmly regulated on the matter, thus it is expected that such a provision will make it easier for investigators to seek and collect evidence. The difficulty that has been a constraint in the verification process as described above will be resolved soon.

Furthermore, for the smoothness and the accurate examination of the case, the investigator may request the suspect and any person connected with the case to show him any letters and other items that need to be examined and that the investigator may seize it (Article 11 paragraph (1) of the previous Corruption law). Elucidation of Article 11 paragraph (1) states: "This Article sets out some provisions if the investigator requires information about the finances and or property of the suspect". Based on the explanation, what is referred as a letter and other items as specified in Article 11 paragraph (1) are letters and goods related to the finances and or property of the suspect.

Concerning with the verification matter, the above Article has provided convenience to the investigator in order to search and find the evidence. Such conveniences would be clearer, as to certain persons who shall be required to keep secrets relating to their dignity, occupation or work cannot refuse to show any letters or portions of letters suspected of relating to the corruption act. In fact, if deemed necessary, the investigator may seize it without the rightful permission or the Chairman of the District Court as specified in Article 43 of the Criminal Procedure Code.

Meanwhile, the innocence presumption is also applied to the investigation process toward corruption act. Based on the explanation of Article 17 paragraph (1) on the previous corruption acts law, the verification rules are not fully followed. Although this does not mean that the Article requires a reversed provision, but a public prosecutor is being exempt from the obligation to prove the defendant fault, and the defendant is burdened to proof of wrongdoing. In this Article, the judge allows the defendant to give verification which is not a legal evidence, but anything that can further clarify or clearer tha case position.

The latest Corruption law is expected by many parties to be embraced by a reversed evidentiary system. Muladi said that the purpose of the issuance of Law No 31/1999 as the revision of Law No 3/1971 is no longer appropriate for the development of legal needs and social aspirations [7, p. 5]. It is expected that the presence of new corruption acts law could meet and anticipate the development of legal needs in society, especially in order to prevent and eradicate more effectively any form of criminal acts, especially corruption act, which is very detrimental to the state's finances and economy.

More deeply, the purposes of the latest corruption acts according to Muladi are as follow [7]:

– Strengthening the legal foundation in an effort to eradicate the increasingly sophisticated and difficult corruption especillly its evidentary.

– Preventing the occurrence of greater loss of state finances.

– Increasing greater different effect for potential actors.

– Growing public trust in the country and abroad toward law enforcement in Indonesian corruption acts.

To strengthen the legal foundation in an effort to eradicate the increasingly sophisticated and difficult corruption, it would be appropriate if it is applied reversed proof system. However, in fact, the law does not apply it fully. In principle, the concept of reversed proof shows that proof is entirely the responsibility of defendant. The defendant must be able to prove that he is not guilty of committing a corruption act by providing information about all property belonging to his/her spouse, children, and property of any person or corporation allegedly related to the criminal act of corruption alleged to him. In this case, the public prosecutor has no obligation to prove.

In the latest corruption acts law, the provision governing the evidence is in Article 37containing the following provisions:

– The defendant has the right to prove that he/she does not commit a corruption act.

– In the case that a defendant can prove that he/she does not commit a corruption act, the information shall be used as a favorable matter to him.

– The defendant is obligated to provide information about all of his property and property of his/her spouse, children and property of any person or corporation suspected of having any relationship with the case concerned.

– In the case that the defendant cannot prove that the wealth is not equal to his income or the source of his or her wealth, the information can be used to strengthen existing evidence, that the defendant has committed a corruption act.

Under circumstances referred to paragraph (1), paragraph (2), paragraph (3) and paragraph (4), the prosecutor should be obligated to prove his indictment.

If we observe the provisions of the aforementioned Article, it can be said that the provision is taken over the provisions of Article 17 and Article 18 of previous Corruption Law. However, there is a change in paragraph (1) which states that the verification by the defendant is a right. It means, the defendant can deny all allegations alleged to her/him by providing evidences of the contrary based on the

evidence he/she has, both of his property and the property of his wife/husband, children or property of another person or corporation related to the crime concerned as well as the addition of unbalanced wealth with the source of the addition of his wealth. Thus, the evidence is a defense of himself that he does not commit a corruption act. However, if he cannot provide evidence that can convince the judge, then the evidence will substantiate the preexisting instruments of evidence presented by public prosecutor. Although the defendant may or may not be able to prove, the prosecutor remains obliged to prove his indictment.

According to Muladi, a provision is an extension of provisions contained in KUHAP that the prosecutor is authorized to prosecute a person charged with a criminal offense with the consequence of proving the burden of proof. Based on explanation above, it is stated that the law embraces a limited reversed verification system [8, p. 6]. This system intended in the general explanation as well as the Article by paragraph explanation. Based on this explanation, the author concluded that it is an obscure explanation, since no further explanation of what is meant by limited reversed verification system.

According to the author, the reversed verification system specified in the corruption act is a joint verification system between conventional evidence and reversed verification system, although in general explanations as well as elucidation of an Article by chapter, it is said to be limited reversed verification or balanced. The author's opinion is based on the burden of proof in which each party, the public prosecutor and the defendant, is obliged to prove. The defendant must be able to prove that he/she does not commit a corruption act. On the other hand, the public prosecutor is still obliged to prove the defendant's wrongdoing, even if the defendant is able to prove that he/she does not commit a corruption act.

Conclusion

Article 26 of law No 31/1999 concerning the eradication of corruption act law (UU *Tipikor*) shows the existence of a procedural law that contains double meaning. Here, the criminal procedure law that is specific to the corruption act deviates from general criminal procedure law. The existence of such deviations is intended to

expedite the procedure and facilitate the investigation, prosecution, and court-trial without ignoring the defendant's or suspect's human rights. However, such deviations are not a complete abolition of the suspect's or defendant's human rights, but merely a forced reduction to be treated in order to save human rights from the dangers posed by corruption act.

Basically, the reversed verification system referred to Article 37 on the corruption act law is a joint verification system between the ordinary the reversed verification system, although in general explanations as well as elucidation of an Article by the Article, it is said to be limited or balanced reversed verification. This is based on the burden of proof in which each party, the prosecutor, and defendant, is obliged to prove. That is, on the one hand, the defendant must be able to prove that he/she does not commit a corruption act. On the other hand, the public prosecutor is still obliged to prove the defendant's wrongdoing, even if the defendant is able or able to prove that he/she does not commit a corruption act.

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