

LEGALITY OF FINANCIAL RIGHTS OF STATE ADMINISTRATORS SUSPECTED OF CORRUPTION: CAN IT BE QUALIFIED AS AN UNLAWFUL ACT?

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ABSTRACT

In carrying out the government system, Law Number 28 of 1999 concerning Good and Clean State Administrators was formed from Corruption, Collusion, and Nepotism which regulates the rights, obligations, prohibitions, and sanctions for state administrators. The consequence of the principle of legality is that in the criminal justice process, the presumption of innocence is imposed until a decision is made. This principle is widely used by state administrators who stumble on corruption to resign when they are named suspects so that they are entitled to pension rights. Therefore, this research aims to describe and analyze the financial rights of state administrators who are suspected of corruption. The method used in this research was descriptive with a normative juridical research design. The legal materials used in this research included primary legal materials, secondary legal materials, and tertiary legal materials. Analyzed using the deductive logic analysis method by interpreting and discussing research result materials based on the definition of law, legal rule, legal theory, and doctrine related to the problem being studied. The results of the data analysis inferred that law enforcement against corruption cases was still not optimal. The law enforcers only looked at criminal offenses committed without looking more broadly at the elements of criminal acts such as locus delicti and tempus delicti so that they could find out the impact and actions of other related criminal acts.

Keywords: Legality Principles, State Administrators, State Financial Losses/State Economy, Corruption

A. INTRODUCTION

1. Background Research

The principle of the effectuation of criminal law is contained in Article 1 paragraph (1) of the Criminal Code, which states: "No act may be punished, except for the strength of the criminal provisions in the law, which existed before that act". To run a government system, the ideals of a just and prosperous society can be realized as mandated in Pancasila (Five Principles of the Republic of Indonesia) and the 1945 Constitution of the Republic of Indonesia, Law Number 28 of 1999 concerning Good and Clean State Administration from Corruption, Collusion, and Nepotism, and Law Number 12 of 1980 Concerning Financial/Administrative Rights of Leaders and Members of the Highest/High State Institutions and Former Leaders and Members of the Highest/High State Institution which regulates the rights, obligations, prohibitions, and sanctions for state administrators.

Today, many state administrators have stumbled on

corruption cases. According to the Law Dictionary, corruption is a form of crime by enriching oneself by committing embezzlement, which directly or indirectly harms the state's economic finances; an unlawful act by enriching oneself or another person by abusing the authority, opportunity, or means available to him because of his position or position which can harm other people or the state.¹

The problem of criminal acts of corruption brings us to the door of destruction because corruption has so far been widespread in society, nation, and state. The corruption causes losses to state finance and violates society's social and economic rights. Therefore, acts of corruption need to be classified as a crime whose eradication must be carried out extraordinarily and provide maximum deterrent effect in eradicating corruption, besides that to guarantee legal certainty better, avoid various interpretations of the law and provide protection for the social and

¹ M. Marwan, Jimmy. P, "*Kamus Hukum : Dictionary of Law Complete Edition*", (Reality Publisier 2009) p. 384

economic rights of the community, as well as treatment fairly in eradicating corruption.²

The consequence of the existence of the principle of legality is that during the criminal justice process. The suspect is subject to the principle of presumption of innocence until the court gives an *Eintracht* decision. Arrangements regarding the principle of the presumption of innocence can be seen in Law Number 48 of 2009 concerning Judicial Power in Article 8, which states as follows:

“Everyone who is suspected, arrested, detained, prosecuted, or presented before a court must be considered innocent before a court decision states his/her guilt and has obtained permanent legal force”.³

The principle of presumption of innocence gives freedom to suspects to take legal actions that do not conflict with statutory regulations. One of them is the

² Hajairin, *Kriminologi Dalam Hukum Pidana*, Suluh Media, Yogyakarta, 2017, p. 294

³ Article 8 Law Number 48 of 2009 Concerning Judge's Power

interim dismissal of the House of the Representatives of the Republic of Indonesia (Known as DPR RI) which is divided into two: Honorable Discharge and Dishonorable Discharge which can be imposed on state administrators if they violate the rules, code of ethics, and prohibitions as stipulated in Law Number 17 of 2014 concerning the People's Consultative Assembly (Known as MPR RI), the House of Representatives, and the Regional House of Representatives (Known as DPRD) to maintain the dignity, honor, image, and credibility of the House of Representatives.

Termination of time by submitting a resignation is mostly carried out by state administrators from their positions while still being named suspects. If the legislative members resign, they are still entitled to pensions as stipulated in Law Number 12 of 1980 concerning the Financial/Administrative Rights of Leaders and Members of the Highest/High State Institutions and former Leaders and Members of the Highest/High State Institutions. This

scheme has been proven to be carried out by corruptors who also occupy seats in the House of Representatives, such as Nazaruddin and Wa Ode Nurhayati. Both of them still receive pension money even though they are convicted of corruption.⁴

Dismissal of members of the House of Representatives is proposed by the leadership of the political party to the leadership of the House of Representatives with a copy to the president. After the president formalizes the dismissal, the pension payment will be made by the state starting next month from the issuance of the pension decree. The state pays the pension fund which is sourced from the State Revenue and Expenditure Budget. So, it can be implied that the state has not only experienced financial/economic losses due to criminal acts of corruption, but it also continues to issue pension funds to state administrators who have

proven to have committed corruption.

Based on the background of the research, the author intends to conduct research entitled “Legality of Pension Rights for State Administrators Before Appointment as Corruption Convicts”.

2. Identification of Problems

Based on the description of the background in the previous section, the research problems are formulated as follows:

1. Can the financial rights of state administrators who are suspected of corruption be qualified as an unlawful act?
2. What are the criminal responsibilities of officials who issue pension decrees for state administrators who are convicted of corruption?

B. RESEARCH

METHODOLOGY

The method used in this research was descriptive with a normative juridical research design. The legal materials used in this research included primary legal

⁴<https://www.suara.com/bisnis/2022/09/01/145607/sudah-terbukti-korupsi-anggota-dpr-masih-dapat-uang-pensiun-dari-negara?page=2>

materials, secondary legal materials, and tertiary legal materials that were analyzed using a deductive logical method. It was done by interpreting and discussing research result materials based on the definitions of law, legal rules, legal theories, and doctrines related to the problems being investigated.

C. RESULTS AND DISCUSSION

1. Legality of Financial Rights of State Administrators Suspected of Corruption: Can It be Qualified as an Unlawful Act?

The principle of the application of criminal law is contained in Article 1 paragraph (1) of the Criminal Code, which reads:” No act may be punished, except for the strength of the criminal provisions in the law, which existed before that act”. To carry out the government system to actualise the ideals of a just and prosperous society as mandated in Pancasila and the 1945 Constitution of the Republic of Indonesia, Law Number 28 of 1999 concerning Good and Clean State Administration from Corruption, Collusion, and Nepotism is enacted. This law

regulates the rights, obligations, prohibitions, and sanctions for state administrators. And Law Number 12 of 1980 Concerning Financial/Administrative Rights of Leaders and Members of the Highest/High State Institutions and Former Leaders and Members of the Highest/High State Institutions regulates pension rights for state administrators who retire with honor.

The consequence of the existence of the principle of legality is that during the criminal justice process, the suspect is subject to the principle of presumption of innocence until the court gives an *Eintracht* decision. Arrangements regarding the principle of the presumption of innocence can be seen in Law Number 48 of 2009 concerning Judicial Power in Article 8, which states as follows: “Everyone who is suspected, arrested, detained, prosecuted, or presented before a court must be considered innocent before a court decision states his/her guilt and has obtained permanent legal force”.⁵

⁵ Article 8 Law Number 48 of 2009 Concerning Judge’s Power

Corruption itself is universally defined as depravity, perversion, or taint destruction of integrity, virtue, or moral principles (an impairment of integrity, virtue, or moral principles). Juridically, the definition of corruption is contained in Law Number 31 of 1999 which was renewed by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

Article 3 of Law, Number 31 of 1999 concerning the Corruption Eradication states that:

Any person who, with the aim of benefiting himself/herself or another person or a corporation, abuses the authority, opportunity, or means available to him/her because of his/her position or position which can harm the state's finances or the state's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50.000.000.00 (fifty million rupiahs) and a maximum of

Rp. 1.000.000.000.00 (one billion rupiah).⁶

Law Number 31 of 1999 concerning Corruption Eradication as amended by Law Number 20 of 2001 (Corruption Eradication Law) provides threats to perpetrators of corruption in the form of imprisonment, fines, and payment of replacement funds. For replacement money, if the convict does not pay the replacement funds, then the convict's assets or assets will be confiscated. Meanwhile, a fine that is not paid by the convict will be subject to imprisonment as a substitute for a fine. In addition to containing the three types of sanctions, the Corruption Eradication Law also regulates the possibility of confiscating assets which are assets or proceeds from criminal acts of corruption.

In carrying out his duties as an investigator, the elements of a criminal act are important to see whether a criminal act was committed by a corruption suspect or

⁶ Article 3 Law Number 31 of 1999 Concerning Corruption Eradication

not. According to EY Kanter and SR Sianturi, the elements of a crime are:

1. Subject,
2. Mistakes,
3. Unlawful act,
4. An action that is prohibited or required by law for its violation is punishable by crime,
5. Time, place, and condition (other objective elements).⁷

If in the criminal justice process, all the elements of a crime and the articles used as the basis for indicting state administrators are proven, then they can be determined as convicts. Locus delicti and tempus delicti can be used as guidelines or references for law enforcement officials to see whether other unlawful acts have been committed and the extent of the impact of these crimes based on existing laws and regulations. Thus, investigators can determine which article will be used as an indictment in the criminal justice process. Regarding state administrators who resign when named as suspects, the prosecutor should suspect this as an act that is against the law in a corruption case.

⁷ Ibid.

This act can be included as violating Article 3 of Law Number 31 of 1999 concerning the Corruption Eradication as amended by Law Number 20 of 2001 (Corruption Eradication Law) which reads as follows:

“Any person who, with the aim of benefiting himself/herself or another person or a corporation, abuses the authority, opportunity, or facilities available to him/her because of his/her position or position which can harm the state's finances or the state's economy shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50.000.000 (fifty million rupiahs) and a maximum of Rp. 1.000.000.000 (one billion rupiah)”.⁸

Opportunity is an opportunity or the availability of sufficient and

⁸ Article 3 Law Number 31 of 1999 Concerning Corruption Eradication

optimal time to perform certain actions, a person who because of having a position or position has the best opportunity or time to carry out certain actions based on that position or position.⁹ If this opportunity is used by him/her to commit other acts that are not supposed to be carried out and are contrary to the legal obligations of his position in his position, then there has been an abuse of opportunity because of his position or position.¹⁰

Article 5 paragraph (4) of Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion, and Nepotism states that state administrators are obliged not to commit acts of corruption, collusion, and nepotism. If state administrators violate these provisions, they may be subject to administrative sanctions, criminal sanctions, and/or civil sanctions under the provisions of the applicable laws and regulations.

⁹ Adami Chazami, *Hukum Pidana Korups Di Indonesia*, PT RAJAGRAFINDO, Jakarta, 2016, p. 64

¹⁰ Ibid

Article 236 paragraph (3) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council (Known as DPD), and the Regional/Local House of Representatives states that the members of the House of Representatives are prohibited from engaging in corruption, collusion, and nepotism. If it is proven that the violation is based on an Eintracht court decision, then he will be dismissed as a member of the House of Representatives.

Dismissal of a state administrator is known as an interim dismissal, with the proven corruption committed, it can be said that the state administrator should be dismissed with no respect so that he is not entitled to a pension. Dismissal with respect is a dismissal carried out by a state administrator if he violates obligations, rules, codes of ethics, and prohibitions while holding office.

State administrators are aware of the existence of Article 12 of

Law Number 12 of 1980 concerning Financial/administrative rights for leaders and members of the highest/highest institutions as well as former heads of the highest/highest state institutions and former members of state high institutions are often used as a bridge for state administrators to obtain pensions. With this article, the administrators use the opportunity that exists between the ongoing criminal justice process to resign so that they are said to have retired with honor and received a pension. This is because state administrators have not been proven to have violated the provisions of their positions so that they can be dishonorably dismissed and lose their right to a pension fund.

2. Criminal Accountability of Officials Who Issue Pension Decrees for State Officials

a. Determined as Corruption Convicts

Criminal liability is a form of determining whether a suspect or defendant is held accountable for a crime that has occurred. In other words, criminal responsibility is a

form that determines whether a person is acquitted or convicted.

The Criminal Code (Known as KUHP) does not clearly state the criminal responsibility system adopted. Several articles in the Criminal Code often mention wrongdoing in the form of intentional or negligent, but unfortunately, the meaning of wrongdoing is not explained by law.

There is no further explanation regarding intentional wrongdoing or negligence, but based on the doctrine and opinions of legal experts regarding the articles in the Criminal Code it can be concluded that these articles contain elements of intentional wrongdoing or negligence that must be proven by the court to punish the offender who commits a criminal act, apart from having been proven to have committed a crime, the element of intentional or negligent error must also be proven.¹¹

This concept departs from the principle of "No Criminal Without

¹¹ Hanafi Amrani, Mahrus Ali, 2015, Sistem Pertanggungjawaban Pidana, Jakarta, Rajawali Pers, p. 52

Guilt (geen straf zonder schuld beginsel). This principle is very fundamental in holding criminals accountable for having committed a crime. The definition of this principle shows that a person cannot be punished if he has no fault, whether in the form of intention or negligence.

To determine the existence of a mistake a person must meet several elements, among others:

1. The ability to be responsible for the maker.
2. The inner relationship between the creator and his actions in the form of intentional (*dolus*) or negligence (*culpa*) is called a form of guilt.
3. There is no reason for deleting the error or there is no reason for forgiveness.¹²

These three elements are an inseparable unit. The one depends on the other, in the sense that this is the sequence, and what is mentioned later depends on what is mentioned first.

¹²Muladi & Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi*, (Jakarta: Kencana Prenada Media Group, 2010), p. 76

The decree-making official who issues the pension decree has justification reasons, namely based on Article 50 paragraph (1) of the Criminal Code (implementing laws and regulations) which reads: "Anyone who commits an act that complies with statutory regulations may not be punished".

Pension decrees are obtained by state administrators by resigning before being found guilty of corruption proven to have committed so that it is included in an honorable discharge. Article 240 of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, and the Regional/Local House of Representatives state as follows:

(1) Dismissal of the members of the House of Representatives as referred to in Article 239 paragraph (1) letters a and b and paragraph (2) letters c, d, g, and h is proposed by the leadership of the political party to the leadership of the House of Representatives with a copy to the President

(2) At the latest 7 (seven) days after receiving the proposal for dismissal as referred to in paragraph (1), the leadership of the House of Representatives must convey the proposal for dismissal of the members of the House of Representatives to the President to obtain the official dismissal.

(3) The President formalizes the dismissal as referred to in paragraph (2) no later than 14 (fourteen) days after receiving the recommendation for the dismissal of a member of the House of Representatives from the leadership of the House of Representatives. Based on the description above, officials who issue pension decrees for state administrators when they become suspects of corruption cannot be held criminally responsible because they do not meet the requirements for mistakes committed by state administrators.

D. CLOSING

1. Conclusion

a. In Article 236 paragraph (3) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of

Representatives, the Regional Representative Council, the Regional House of Representatives states that the members of the House of Representatives are prohibited from engaging in corruption, collusion, and nepotism. If it is proven that the violation is based on an Eintracht court decision, then the member will be dismissed as a member of the House of Representatives. With the proven corruption committed, it can be said that the country's organizers should be dishonorably dismissed so that they are not entitled to a pension because they violated obligations, rules, codes of ethics, and prohibitions while holding a position. State administrators are aware of the existence of Article 12 of Law Number 12 of 1980 concerning Financial/administrative rights for leaders and members of the highest/highest institutions as well as former heads of the highest/highest state institutions and former members of state high institutions are often used as a bridge for state administrators to obtain pensions. With this article, the administrator uses the opportunity

that exists between the ongoing criminal justice process to resign so that he is said to have retired with honor and received a pension. This is because state administrators have not been proven to have violated the provisions of their positions so that they can be dishonorably dismissed and lose their right to the pension fund.

b. The Decree-making official who issued the pension decree has justification reasons, namely based on Article 50 paragraph (1) of the Criminal Code (implementing laws and regulations) which reads: "Anyone who commits an act that carries out laws and regulations should not be punished". Pension decrees are obtained by state administrators by resigning before being found guilty of corruption proven to have committed so that it is included in an honorable discharge. In Article 240 of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, and the Regional House of Representatives.

2. Suggestion

Regarding the settlement of criminal acts of corruption, it is expected to pay more attention to the elements of criminal acts so that it can see the impact and other actions related to criminal acts of corruption. By paying attention to the elements of locus delicti and tempus delicti, law enforcement officials can make more complex charges to eradicate corruption so that the mandate of the law on eradicating corruption can be achieved.

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