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Research Article

Reconstruction of Article 2 and Article 3 Act No. 31 Year 1999 Amended With Law No. 20 Year 2001 on the Eradication of Criminal Accidents of Corruption Policy Formulation Based on Justice Values

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Abstract: The history of the eradication of corruption in Indonesia is a long history, with a series of legislation equipped with various Special Commission to support the eradication of corruption. But until now corruption is still rampant and massive. In reality, in relation to the handling of criminal cases of corruption, it can be seen from the fact that many courts have different judgments on similar cases, where the penalty given is different so as to cause injustice for the defendant in particular and for society in general.

There are two main issues that will be discussed, namely (1) how the practice of applying formulation policy Article 2 and Article 3 of Law no. 31 of 1999 as amended by Act no. 20 Year 2001. Concerning the Eradication of Corruption in Indonesia; (2) how the reconstruction of formulation policy Article 2 and Article 3 of Law no. 31 of 1999 as amended by Act no. 20 Year 2001. Concerning the Eradication of Corruption in Indonesia;

This research uses constructivism paradigm research method, and sociological juridical approach, which is descriptive analysis, based on primary data source with field study to Corruption Court at District Court of Semarang, and to High Court of Central Java and secondary data to analyze in the form of decision The court was analyzed descriptively qualitatively.

The results of his research is the application of Article 2 is applied for private actors while Article 3 is applied for the civil servants and in the imposition of criminal punishment there is no punishment guidance that can assist the judge in imposing the criminal, so there is juridical weakness in the application of Article 2 and Article 3 Act No . 31 of 1999 in conjunction with Law no. 20 Year 2001 on the Eradication of Corruption.

Keywords: Reconstruction, Policy Formulation, Corruption, Justice Value.

INTRODUCTION

The phenomenon of corruption in Indonesia has become a central issue, even today it is very popular beyond any issues that arise in Indonesia. The act of corruption has been entrenched so that it has damaged every aspect of life and hampered the achievement of the welfare of society. Corruption in Indonesia occurs systematically and extensively so that it not only harms the losses of the state, but also has violated the social and economic rights of society widely, so it can be said that corruption is an ordinary and as if it has been entrenched in Indonesian society.

The history of the eradication of corruption in Indonesia is a long history with a series of legislation equipped with various teams or special commissions to support the eradication of corruption. But until now corruption is still rampant and massive. As a result of the ongoing corruption, people are deprived of the basic rights to prosperity.

The term of corruption is firstly present in the repertoire of Indonesian law in the War Ruling Regulation No. Prt/ Perpu / 013/1958 Regulation on the Eradication of Corruption. Furthermore, it is included in Law Number 24 / Prp / 1960 concerning Investigation of Prosecution and Corruption Criminal Investigation, which since August 16 1999 has been replaced by Law Number 31 Year 1999 and will become effective no later than 2 (two) years later (August 16, 2001) and subsequently amended by Law Number 20 Year 2001 dated November 21, 2001.

In the Anti-Corruption Eradication Act there are 2 (two) important articles to ensnare corrupt perpetrators that harm the state finance, namely Article 2 on the unlawful act and Article 3 regarding the abuse of authority, the criminal as stipulated in Law Number 31 Year 1999 jo Act no. 20 Year 2001 on the Eradication of Corruption is set limits minimum penalty and maximum criminal penalty limits, thus preventing dropped a strange decision, which is considered unfair. In the eradication of corruption in Indonesia there is a lot of injustice to the punishment imposed on the defendant of corruption. This is due to the formulation of minimum penalty rules which when thought of is very unfair. In the formulation of Article 2 and Article 3 of Law Number 31 Year 1999 which has been amended by Law Number 20 Year 2001 concerning the Eradication of Corruption, although there has been a change in this Law, but in terms of minimum punishment regulation (minimum straf rule) remains in the formulation in Article 2 paragraph (1) and Article 3 of Law no. 31 Year 1999 on the Eradication of Corruption.

Article 2 paragraph (1):

"Any person who unlawfully commits an act of enrichment for himself or another person or a corporation that may harm the state's finances or the economy of the state, is sentenced to imprisonment with life imprisonment or imprisonment of a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred

million rupiah) and at most Rp. 1.000.000.000,00 (one billion rupiah) ".

Article 3 reads:

"Any person who, in the interests of himself or another person or a corporation, misuses the authority, opportunity or means available to him because of a position or position which may harm the state's finances or the economy of the state, is liable to a life imprisonment or a maximum imprisonment 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 rupiah) and at most Rp. 1.000.000.000,00 (one billion rupiah) ".

In practice in the Court of Corruption of the Public Prosecutor formulating the indictment using the primary charge of Article 2 paragraph (1) of Law no. 31 of 1999 amended by Law no. 20 Year 2001 Concerning the Eradication of Criminal Acts of Corruption and Subsidiary Charges Article 3 of Law no. 31 of 1999 which amended by Law no. 20 Year 2001 on the Eradication of Corruption, so that the judge in examining and deciding cases of corruption will prove primary indictment first and if not proven then subsidiary indictment where the defendant himself is the one that must prove it.

based on the problem mentioned above, then the Formulation of the problem discussed in this research are :

1. How is the practice of applying Article 2 and Article 3 of Law no. 31 of 1999 as amended by Act no. 20 Year 2001, Concerning the Eradication of Corruption in Indonesia?
2. How to reconstruct the formulation policies Article 2 and Article 3 of Law no. 31 of 1999 as amended by Act no. 20 of 2001, Concerning Amendment to Law no. 31 Year 1999 on the Eradication of Corruption in Indonesia based on Value of Justice ?

Research Result and Discussion

1. Implementation of Article 2 and Article Article 3 of Law no. 31 of 1999 as amended by Act no. 20 Year 2001 on the Eradication of Corruption.

Corruption is the act of doing something with the authority of others; a corruption is an act committed with intention to give an unofficial advantage with the rights of the other party wrongly uses his position or character to gain an advantage for himself or others, in contrast to his obligations and the rights of others).[1]

In handling cases of alleged criminal acts of corruption, as regulated and threatened with Article 2 and Article 3 of Law no. 31 of 1999 Jo Law no. 20 Year 2001 on the Eradication of Corruption, the Public Prosecutor used the indictment with a form of subsidiary indictment, which is a form of indictment consisting of two or several indictments compiled and lined up sequentially, ranging from the heaviest criminal charges to the lightest crime. Often also this form of indictment is defined as a substitute indictment, or in English terms is called with the alternative of. This means subsidair indictment (second order indictment) replaces primair (first-order indictment). So on the bottom of the order when ascended to top order.[2] The formulation of the letter dakwaanya is as follows:

Primair is Article 2 paragraph (1) of Law no. 31 of 1999 as amended by Law no. 20 of 2001 on the Eradication of Corruption, is "Every person who unlawfully commits an act of enrichment of himself or another person or a corporation that may harm the state's finances or the economy of the country, is subject to a life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp.200,000,000.00 (two hundred million rupiah) and a maximum of 1.000.000.000.00 (one billion rupiah).[3]

Subsidair's indictment is Article 3 of Law no. 31 of 1999 as amended by Law no. Law No. 20 Year 2001 on the Eradication of Corruption, which reads "Anyone who with his own benefit or another person or a corporation, misuses his or her authority, opportunity or facilities because of the position or position which may harm the state finance or state economy, imprisonment of a life sentence or imprisonment of 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 rupiah) and a maximum of Rp.1.000.000.000.00 (one billion rupiah) ".

Whereas in practice Article 2 paragraph (1) of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 on the Eradication of Corruption is generally applicable, meaning it does not have to view a person having a position, authority or position or a person receiving a salary or wage from the state, this unlawful act is applied to private parties, so it can be concluded Article 2 may be imposed against someone who is not in office.[4] This can be observed in case verdict Number: 91 / Pid.Sus-TPK / 2014 / PN. SMG, dated 19 January 2015, with defendant Heri Adi Sunarno working in private, has been found guilty of a criminal act of corruption as Article 2 paragraph (1) of Law no. 31 of 1999 as amended by Law no. 20 Year 2001 on the Eradication of Corruption.[5]

While Article 3 of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 on the Eradication of Corruption can be applied to a person who has a position, authority or position or a person receiving a salary or wage from the state, and can not be applied to a legal subject who is not in the course of taking

[1] Black, Henry Campbell, *Black Law Dictionary* 7th *Edition dalam Disparitas Putusan Hakim Identifikasi dan Implikasi Komisi Yudisial RI*, West Publishing CO, London, 1999, p. 830.

[2] Interview with Dr. Suratno, S.H.,M.H., on 15 August 2017 in high prosecutor office of Central Java.

[3] Undang-Undang No. 31 Tahun 1999 sebagaimana telah diubah dengan Undang-Undang No. 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi,

[4] Interview with Dr. Sastra Rasa, S.H., M.H., Corruption Crime Ad Hoc Judge on semarang city national court, on 16 August 2017.

[5] Copies of the Corruption Court Judgment at the Semarang city National Court, Number: 91/Pid.Sus-TPK/2014/PN. Smg, on 19 January 2015.

office.[6] This can be seen as in the case verdict Number: 2 / Pid.Sus-TPK / 2015 / PN. SMG, dated July 6, 2015, with the accused Hasanudin, S.E. as Member of the People's Legislative Assembly, as well as the decision of the case Number: 156 / Pid.Sus-Tpk / 2015 / Pn.Smg, dated 24 February 2016, on behalf of Defendant Damar Susilowati, SH.

The Panel of Judges in the consideration of the "everyone" element in the provisions of Article 2 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 Concerning the Eradication of Criminal Acts Corruption is not a core offense or a bestanddel delict, but is a delict element that is a legal subject suspected or charged with a criminal offense whose proof depends on proving the core offense and in this case the subject of the law alleged to have committed an offense, so that the element of every person in Article 2 paragraph (1) is not applicable to a person who has a post, authority or position, every person as a legal subject who holds office or position is the legal subject as intended in Article 3 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 on the Eradication of Corruption. Whereas in relation to the application of the element of unlawful acts as referred to in Article 2 of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 on the Eradication of Corruption can not be applied to a person who has a position, authority or position or a person who receives a salary or wage from the state, unlawful acts can only be applied to private parties who commit a criminal act of corruption that has no position or position (general), that in the case of Heri Adi Sunarno for not having any position, he shall be punished as referred to in Article 2 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 on the Eradication of Corruption, while Hasanudin, S.E who has the position and position as a member of the House of Representatives Banjarnegara District and Damar Susilowati, S.H. which has an occupation as a notary can not be criminalized by a criminal act as referred to in Article 2 of Act Number 2 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 concerning the Eradication of Criminal Acts of Corruption but in Criminal with Criminal as meant in Article 3 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 on the Eradication of Corruption (Special).

Whereas in relation to the imposition of the duration of the crime, from the three examples of cases mentioned above are highly varied, for Heri Adi Sunarno was sentenced to imprisonment to 4 (four) years, for Hasanudin to be sentenced to for 2 (two) years 3 (three) months and for Damar Susilowati is only given for 1 (one) year. Whereas in relation to the imposition of the decision and the duration of the crime, it appears that the panel of judges based on the facts of the trial and the aggravating and lightening things, to the impression that the above case appears unfair and there is discrimination.

What about a person who does not have a position or position and loss of state is very little and losses of the state have been returned, then to that matter a person is still subject to criminal sanction as in Article 2 paragraph (1) of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 Concerning the Eradication of Corruption, although the value of the loss is small but if it still does not have the position or position of Article 2 with minimum threat of 4 (four) years and a minimum fine of Rp.200.000.000.000.00 (two hundred million rupiah) 1,000,000,000.00 (one billion rupiah), while a person who has a position or position but his loss up to hundreds of billions or even millions can be complied with Article 3 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 Concerning the Eradication of Criminal Acts of Corruption whose threat of minimum punishment is 1 (one) year and a minimum fine of Rp.50.000.000.00 (fifty million rupiah maximum Rp.1.000.000.000.00 (one billion rupiah), the Judges Council should examine and decide the case dare to impose a minimum penalty, since all the losses of the state have been returned, but in fact the judges did not dare to impose the minimal punishment contained in Article 2 and Article 3 of Law No. 31 Year 1999 jo Law No. 20 Year 2001 About the Eradication of Corruption.

Based on the above matters, it is clear that there has been discrimination or injustice to the application of Article 2 and Article 3 as well as to the imposition of the duration of the crime in corruption cases, and it is a juridical issue or weakness in Article 2 and Article 3 Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 on the Eradication of Corruption.

2. Reconstruction of Formulation Policy of Article 2 and Article 3 of Law no. 31 of 1999 as amended by Act no. 20 Year 2001 on the Eradication of Corruption based on Justice Value.

The criminal law policy is carried out through several stages, namely the formulation stage that is the law enforcement stage in abstracto by the legislature, the application stage, namely the application of criminal law in concreto by law enforcement officers from the police, to the court and the execution stage of the implementation stage criminal law concretely by criminal executives, and in this case the author has conducted a discussion related to policy formulation stage about the imposition of punishment in Article 2 and Article 3 of Law no. 31 of 1999 as amended by Act no. 20 Year 2001 on the Eradication of Corruption.

In the context of the criminal law policy (penal policy) according to Marc Ancel, the penal policy is: *"Both a science and art, of which the practical purposes ultimatly are to enable the positive rules better formulated and to guide not only the legislator who has to draff criminal subtites, but the court by which they are applied and the prison administration which gives practical effect to the court' decision.*[7] Which

[6] Interview with Dr. Robert Pasaribu, S.H., M.H., Corruption Crime Ad Hoc Judge on semarang city national court, on 16 August 2017.

[7] Marc Ancel,1965. *Social Defence A Modern Approach Problem,* Rouledge & Kegan Paul, London, p. 209, dalam I Gede Artha 1, *Op.Cit.*, p. 33.

means a science as well as an art that ultimately has a practical purpose to enable positive rule of law to be formulated better and to provide guidance not only to the Law and to the organizers or execution of judicial decisions applying the law and to the organizers or executor of court decisions.

In relation thereto, a review of criminal policies must be conducted as crime increases can also be seen as an indispensable guide to applicable criminal justice policies, as stated by W. Clifford, that "increased crime has attracted enough attention that not the efficient structure of the existing criminal justice system as a crime prevention mechanism.[8]

The imposition of duration of punishment contained in Article 2 and Article 3 of Law no. 31 of 1999 as amended by Act no. 20 Year 2001 Concerning the Eradication of Criminal Acts of Corruption has listed special and special maximal penalty threats, but in practice it has not been implemented properly given the absence of rules or guidelines that regulate it so that in practice discrimination or injustice arises in the handling of corruption criminal activities. Based on the results of research that has been done by the author, there have been juridical problems or weaknesses that existed in Article 2 and Article 3 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 on the Eradication of Corruption, namely the absence of guidelines for the imposition of the criminal punishment of a minimum of special. In order to overcome these problems, the Reconstruction of the Formulation of Article 2 and Article 3 of Law Number 31 Year 1999 of Jo Law Number 20 Year 2001 Concerning the Eradication of Corruption is to make guidance on the criminal punishment of minimum criminal punishment to the perpetrators of criminal acts as intended by Article 2 and Article 3 of Law Number 31 Year 1999 of Jo Law Number 20 Year 2001 on the Eradication of Corruption. The reconstruction is as follows :

Table of Reconstruction of

Formulation Policy for Article 2 and Article 3 of Law no. 31 of 1999 Jo Law no. 20 Year 2001 on the Eradication of Corruption

Article 2	Article 2 Weaknesses	Article 2 Reconstruction
Article 2 paragraph (1) reads: " Any person who unlawfully commits an act of enrichment of himself or another person or a corporation which may harm the state finance or state economy, shall be sentenced to life imprisonment or imprisonment of a minimum 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and at most Rp. 1.000.000.000,00 (one billion rupiah) ". Article 2 paragraph (2) reads: " In the event that the criminal act of corruption as referred to in paragraph (1) is conducted under certain circumstances, capital punishment may be imposed.	The absence of guidance in the imposition of a special minimum punishment, so that the Panel of Judges who examines and decides cases of corruption do not dare to pass a special minimum verdict, even though the state losses have been returned or the perpetrator is not the only principal actor as a participant assisting the crime.	The need of a special crime minimum penalty guideline: - A defendant may be subjected to a special crime minimum penalty if he has returned state losses to those who enjoy the proceeds of corruption and for the principal actors. - A defendant may be sentenced to a minimum of special charges if the defendant has been proven to commit a crime.
Article 3	**Article 3 Weaknesses**	**Article 3 Reconstruction**
"Any person who, intentionally prospering himself or others or a corporation, misuses the authority, opportunity or means available to him because of his position or position, which may harm the State's finances or the economy of the State, is liable to life imprisonment or shortest imprisonment 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50.000.000,00 (fifty million rupiah) and at most Rp. 1.000.000.000,00 (one billion rupiah) ".	The absence of guidance in the imposition of a special minimum punishment, so that the Panel of Judges who examines and decides cases of corruption didnt dare to pass a special minimum verdict, even though the state losses have been returned or the perpetrator is not the only principal actor as a participant assisting the crime.	The need for a minimum special crime sentences : - A defendant may be subjected to a special minimum sentences when it has returned state losses to those who enjoy the proceeds of corruption and for the principal actors. - A defendant may be sentenced to a minimum of special sentences for a defendant proven to commit a crime.

[8] W. Clifford , *Reform in Criminal Justice in Asia and Far East* (terjemahan, tanpa penerbit, tahun dan tempat), p. 10 dalam I Kt Rai Setiabudhi, *Ibid*., p. 106.

CONCLUSION

1. In Practice in the Court on Corruption cases, the public prosecutor's indictment is constituted subsidaires, namely the primary indictment of Article 2 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 Concerning the Eradication of Corruption and Subsidiary Charges Article 3 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 on the Eradication of Corruption. Then based on the facts of the trial the Panel of Judges consider the primary indictment first, and if it is not proven then the subsidiary charges are considered. In practice, some of the Panel of Judges stated that the primary indictment is not proven when the subject of the criminal law does not take office, and which proves to be a subsidiary indictment when the legal subject of the offender is anyone who takes office..

2. In the imposition of the duration of criminalization for perpetrators of criminal acts in Article 2 and Article 3 of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 on the Eradication of Criminal Acts of Corruption in corruption criminal acts, different when the state losses have been returned, and only as a person doing the crime, the Panel of Judges does not dare to impose a minimum criminal penalty on the grounds that it has no rules or guidelines..

3. It is needed to reconstruct the value of Article 2 and Article 3 of Law no. 31 of 1999 in conjunction with Law no. 20 Year 2001 on the Eradication of Corruption, by creating guidelines for the imposition of special minimum punishment. The legal reconstruction is as follows: "The existence of specific Minimum Crime Accident Guidelines:

3.1 A defendant may be subjected to a special minimum penalty if he has returned the state's loss to those who enjoy the proceeds of corruption and to the principal actors.

3.2 A defendant may be subject to a special minimum penalty if the defendant is proven to commit a crime.

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