

Motif as an Element in Criminal Acts of Corruption

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ABSTRACT:

Introduction: This research aims to know and explain the motive as an element in the Corruption of criminal acts.

Research Method: This research is normative study that approaches Literature Studies that analyse How theories in application of Law on this research.

Discussion: The substantiation of the intention of the corruption crime as well as the evil deeds of the perpetrators is important, unlike the criminal acts associated with the life, where the motive to prove in the crime is a number of variations. Many parties have been convicted or are undergoing legal proceedings as suspects or defendants feel that they have no intention and evil deeds. So that there should be no supposition, indictment, and rationing of corruption.

Conclusion: The results of the study, from a number of Judges' decisions in consideration of their decisions, were also explained by Agus Rahardjo as the Chairperson of the Republic of Indonesia KPK which stated that the motives for actually taking action to prevent corruption made 1 (one) justification for a person suspected or charged with a case because the guarantee could be free from legal bondage.

KEYWORDS: Motif; Elements; Corruption Crime

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I. INTRODUCTION

Article 1 paragraph (3) of the Constitution of the Republic of Indonesia year 1945 expressly states that the state of Indonesia is a legal state. As a legal state, all aspects of community, nationality, and state including government must always be based on the law. So to realize the state of law is required order in order, among others in the field of legislation.

The rapid Development of the law, especially the criminal law, makes criminal law experts still experiencing differences in views on a theory of law, likewise also with the advancement of Culture and science, human behaviour in people's lives and state is increasingly complex. Such behaviour when legally reviewed, of course, there are behaviors that are appropriate to the norm and that can be categorized as a form of violation of the norm. Behavior that deviates from the norm will usually make a new problem in the field of law and harm society.^[1]

This phenomenon can be seen from the on going debate between legal experts on the validity of motives in someone committing a criminal offense, there are experts who say need motif and some say no in the process of proving.

Mudzzakir said the motives must be proven, this is done to find the evil nature behind the criminal act, motive can prove the intention behind one's actions.^[2] It is also presented by Otto Hasibuan that the motive is not contained in the Article proceeding chapter, but he implied in his, and must be proved.^[3]

Unlike Masruchin Rubai who say motifs are only made material to prove a criminal act intentionally or not, which arises from an objective fact, which can be seen or observed.^[4] Material criminal acts are things after the fact. Meanwhile, Eddy O. S Hiarij suggests that there are those who require motives and some are not, such as Article 340 of the Criminal Code (KUHP) about murder planning that does not require motive, while the Article that requires motive like Article 378 Criminal Code, which requires motive in the proof.^[5]

Based on this, the author is interested to review and explain the motive as an element in the corruption of criminal acts.

II. RESEARCH METHODS

This Research is normative juridical, which is a study discussing/reviewing the law in the application of criminal acts of corruption motifs that become objects of research. The study uses a library study approach that analyzes how the theories in implementing the law in this study. The source of the data in this study came from library research, obtained from the primary legal material, consisting of the basic norms of the Constitution 1945, The Code of Criminal Law, as well as Law number 20 year 2001 on the amendment to Law Number 31 year 1999 on the Eradication of criminal corruption.

Secondary legal materials, such as Results of Research, reports, journals, Articles, results of seminars or other scientific meetings relevant to this research. Tertiary legal materials or supporting legal materials that include materials that instruct and explain to primary and secondary laws, such as the General dictionary, the Legal Dictionary and primary, secondary and tertiary materials (supporting) outside the field of law that can be used to complement or as supporting data from this research.

Data collection techniques are conducted through study of data obtained from legislation, textbooks, journals, research results, encyclopedias, bibliography and others conducted through classifications and detailed records (deemed complete), systematic and directed about documents/libraries.

III. DISCUSSION

Motif As An Element Of Corruption Crime

Corruption is a serious problem because it can affect stability and security in the community, ruin the order of democratic values and morality, and endanger economic development, socio-political, and can create poverty in a massive way so that it needs attention from the Government and society and social institutions.

Corruption crimes entered into the extraordinary criminal category (*extra Ordinary crime*) so that its appearance is needed a remarkable way, if only holding and relying on the law of Criminal Proceedings (KUHAP) then the law enforcement against the crimes of corruption will not be effective. Therefore, the legislation on the eradication of corruption crimes is also governed by Some of the necessary event provisions for more Effective law enforcement against corruption crimes.

Corruption eradication was governed by Law Number 20 of 2001 on corruption eradication. We can then know that in Law No. 20 of 2001 There are 30 (thirty) deeds classified as corruption crimes. Broadly, the deed can be divided into 7 (seven) types:^[6]

- 1) that detrimental to state finances (enriching oneself or abusing authority so detrimental to state finances);
- 2) bribery;
- 3) gratuities;
- 4) evasion in the position;
- 5) extortion;
- 6) fraudulent conduct;
- 7) conflicts of interest.

Looking at every clause in the criminal law (*strafbemoest*), many concluded that in every criminal offence there is only one perpetrator to be subject to a criminal penalty. But the reality often happens more than one involved in the corruption crime event. Next to the perpetrator there is one or several other people who participated.

Elements of Corruption criminal act will not be detached from the elements contained in Article 2 and Article 3 of the Law Number 31 of 1999 as amended by Law Number 20 of 2001 on the Eradication of corruption acts, as follows:

Article 2 : Any person who is against the law commits the act of enriching themselves or another person or a corporation that harms the finances of the country or the country's economy, is sentenced to life imprisonment or imprisonment in the shortest 4 (four) years at least 20 (twenty) years, and a fine of at least two hundred million dollars and at most one billion rupiah.

Article 3 : Any person with a purpose to benefit oneself or another person or a corporation, misuse the authority, opportunity or means there of because of the position or position that is detrimental to the state's finances or the country's economy, sentenced to life imprisonment, or imprisonment for the shortest 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least fifty million dollars and at most one billion rupiah.

Andi Hamzah suggests there are several reasons for corruption including:^[7]

- 1) lack of salary or income of public servants in the appeals with the needs of the longer days are increasing,
- 2) management irregularities,
- 3) modernization.
- 4) mental emotions.
- 5) combined several factors.

In the end with the decree of the Constitutional Court No. 25/PUU-XIV/2016 which provides a new interpretation of the provisions of Article 2 paragraph (1) and Article 3 Law Number 31 years 1999 by eliminating the phrase "can" with the reason of not providing the legal certainty precisely because it conflicts

with the Constitution 1945 and not in accordance with Law Number 30 year 2014 does not resolve the problem on the application of Article 2 paragraph (1) and Article 3 Law Number 31 year 1999. This is because the problem in the practice of the implementation of both chapters is not the presence of the phrase can harm the state's finances or not.

There is a difference of opinion on the difference between Article 2 paragraph (1) and Article 3 Law Number 31 year 1999. According to Indriyanto Seno Adji, the relationship between Article 2 paragraph (1) and Article 3 Law Number 31 year 1999 is the relationship of genus Delict with species delict. In this case the element against the law in Article 2 paragraph (1) Law Number 31 year 1999 is a genus delict while the element misuse authority in Article 3 Law Number 31 year 1999 is a species delict.^[8] However, some law scholars do not agree that the relationship between the two chapters is the genus delict and species delict, then in the form of a qualified proceeding (Gekwalificeerd delict) with a light proceeding (Geprivilegieerd delict) should be a criminal threat in Article 2 paragraph (1) heavier than Article 3 Law Number 31 year 1999.^[9]

IV. CONCLUSION

A. Conclusion

Motive in the evidence of criminal acts of the corruption is necessary, this to see the evil intention of a person in conducting the corruption act, that is, a person who is accused of committing criminal acts involved as perpetrators as well as persons who are trapped (victims) or those who participated in a criminal act corruption. So the judge in the evidence can see what punishment can be given to the defendant, according to evil intentions that cause the prosecution to be given to the defendants in the criminal.

B. Suggestion

It is expected to law enforcement officials, especially the judge to be able to further explore more than the intent or intention of someone who is involved in the case of corruption crimes and the judge should see someone who has no malicious intentions despite the loss of the state so that despite the allegations of corruption, this is seen from the number of someone who is paid in the proceeding to acknowledge or give information that he Despite the loss of state, but a person who does not have the intention of enriching themselves, others or the cooperation.

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