

Analysis of the Basis of the Decisions of the Judges in the Criminal Proceedings of Corruption at Perusda Aneka Services (AUJ) Bontang

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Abstract

A criminal offense or punishable act is a breach of norms committed by an actor, intentionally or unintentionally, with the conviction of the perpetrator aimed at maintaining the rule of law and safeguarding the public interest. The constituent elements include: conduct and consequences, circumstances accompanying or accompanying the act, additional circumstances aggravating the offense, objective unlawful elements and subjective unlawful elements. As in decision No. 11/Pid.Sus.Tpk/2020/Pn Smr, where the jury did not consider all the aspects that should be included in the basis for considering the decision, which are in the element of receiving and in the element of gratuity is understood as: actual acceptance, actual transfer of control over the item, direct or indirect receipt of the goods/items/gifts or, if the item was not accepted, confirmation of acceptance by the recipient. The reward element refers to the explanation of Article 12b of the Anti-Corruption Act. In the case of satisfaction and justice in the case Decision No. 11/Pid.sus.TPK/2020/PN Smr, Referring to the decision of the judge in the corruption case Dandi Prio Anggono, S.Sos as director of the Regional Enterprises and Services Company whose where the jury did not consider all the aspects that should be included in the basis for considering the decision, decision that found the accused guilty. In the decision of the defendant Dandi Prio Anggono, S. Sos, the judges panel ordered the defendant to pay compensation of Rp. because the defendant had finally proved and collectively committed a criminal act of corruption and knowingly passed on funds to several people including the DPRD, but in the claims for compensation demanded money and persons who received the flow of money non-prosecuted evidence in the dictum of the prosecutor's statements of indictment, therefore the decision was based on the principle of evidence with tools and evidence and the witness, in accepting the decision, the judiciary issued a decision finding the accused guilty

Keywords: Judicial considerations, crimes of corruption

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1. Introduction

Indonesia is based on the rule of law, not on mere might. Indonesia's declaration of the rule of law is contained in Article 1(3) of the 1945 Constitution, which emphasizes the concept of a rule of law by stating that "Indonesia is a rule of law" (Ali, 2009). The law prescribes what must be done and/or what can be done and what is forbidden (Ali, 2011). The legal targets to be addressed are not just individuals who actually act against the law, but also legal action and government agencies that may arise to act in accordance with the law. The working system of such a law is a form of law enforcement (Yunara, 2012). Corruption can also

damage public finances or the state economy directly, so that public finances are cut and disrupted and can have widespread negative effects and bring the country to the brink of collapse. The more advanced technology, industry, economy and trade have made the perpetrators of corruption crimes not only committed by human beings, but the legal subjects also include corporations or legal entities (Danil, 2011).

Considering the context of the corruption cases that have occurred in Indonesia, large-scale corruption is serious corruption that harms the state and society at large. The corruption in question is also inextricably linked to the power problem. Officials have deliberately abused their powers to commit unlawful acts for personal gain. An official who has the power (has authority) automatically has the power to influence the policies to be enacted. According to the nature of power (political power), namely, to forcibly control (force) human behavior (society) so that people are willing to submit to the state (government) (Reksodiputro, 2012). In this case, each policy implemented is actually a provision or rule that conforms to the goals of the ruler himself. From here, the opportunity for corruption is enormous (Mulyati, 2018). Unless given a very deterrent effect, corruption will continue to exist. Based on the background description above, the authors are interested in taking up this question in the form of a thesis entitled "Analysis of the Basis of Judges' Consideration in the Case of Corruption Crimes at Perusda Aneka Usaha Jasa (AUJ) Bontang" Case Study Decision No .11/Pid.Sus. Tpk/2020/Pn Smr.)"

2. Methods

The type of research used is normative legal research, normative legal research is a scientific research method for finding the truth based on jurisprudential logic from the normative side. This type of research does not recognize field research because what is being researched is legal material, so it can be said that it is; library- based, with an emphasis on reading and analyzing the primary and secondary materials, so this research focuses on investigating the Corruption Crime Judge's Decision at Perusda Various Business Services (AUJ) Bontang Case Study Decision Number 11/Pid.Sus. Tpk/ concentrated. 2020/ Pn Smr.An Dandi Prio Anggono, S.Sos.Bin Suyitno (Belated) to know the progress of the judge's decision and the reasons the judge used in deciding the case (Sunggono, 2018).

Existing objects are then examined with a problem approach consisting of: legislative approach (statutory approach), analytical approach, case approach (Waluyo, 2018). Decision No. 11/Pid.Sus.Tpk/2020/Pn Smr, which aims to study the application of legal norms or rules in legal practice, in particular in relation to cases - cases that have been decided as seen in the jurisprudence of cases that are the focus of research. Primary sources for legal material are legal codes on corruption laws and judges' decisions in the cases discussed while the secondary legal materials used are authentic and published scholarly works

3. Results

The considerations of the judges' college on all aspects included in the decision basis in Case No. 11/Pid.Sus.Tpk/2020/Pn Smr. This is set out in Article 14, paragraphs (1), (2) and (3) of Law No. 48 of 2009 on the Judiciary, which reads: Decisions are made on the basis of a confidential judges' meeting. In a deliberative session, each judge is required to present written considerations or opinions on the case under consideration and become an integral part of the decision. If unanimous consensus cannot be reached in a deliberative session, the opinion of another judge must be included in the decision. There are 2 (two) things that the judge must consider before making his decision.

In this case, the provisions regarding the above two things are provisions in the Code of Criminal Procedure (KUHP) in which the decision-making structure is as follows: first consideration of the facts (whether the accused really committed the act alleged against him, then the examination of the law (whether the accused's acts are criminal acts and the accused is guilty so that he can be convicted) (Mulyati, 2018).

In this case, legal certainty wants the law to be consistently implemented and enforced for each specific case and that there are no deviations. Legal certainty protects the community from arbitrary actions by other parties and this is related to the striving for social order. Justice without distinction of position and authority then use in law enforcement (Ismail, 2016).

As stated in Decision No. 11/Pid.Sus.Tpk/2020/Pn Smr, in which the judges panel found that the accused Dandi Prio Anggono was legally and persuasively found guilty of committing the criminal act of together and to continue that the judiciary convicted the accused Dandi Prio Anggono with the accused's guilt and sentenced the accused to 6 years imprisonment and a fine of Rp. 300,000,000 (three hundred million rupiah) if not paid it will be replaced by 3 (three) months imprisonment and punish the accused to pay a substitute money of Rp. IDR 3,757,458,137 (Three Billion Seven Hundred Fifty Seven Million Four Hundred Fifty Eight Thousand One Hundred Thirty Seven Rupiah) no later than 1 (one) month after the decision of the case has become permanent, the defendant does not pay, his property may be confiscated for auction and if this is insufficient, it will be replaced by imprisonment of 4 (four) years and 3 (three) months.

Judges making decisions must be based on law or be designated by law. The judge may not impose a penalty lower than the minimum penalty, nor may the judge impose a penalty greater than the maximum penalty established by law (Hadjon, 2017). When making decisions, there are several theories that judges can use (Mertakususno, 2019). According to Mackenzie, there are several theories or approaches that Sudarto can use (Tuanakotta, 2018). So clearly and convincingly in that case, in the case of corruption and gratification, was it decided that gratification would come with a guilty verdict (Suhariyanto, 2017). Judges can look at everything not only on the basis of positive law, but also pay attention to the values of justice living in society in substantive matters, but for formal matters / procedures that exist, of course, they cannot be separated from procedural law that binds them, because of course the decision is void if the procedural law is violated (Ali, 2014).

4. Conclusion and Suggestions

In the results of the decision, the jury did not consider all aspects that should be included in the basis for considering decision No. 11/Pid.Sus.TPK/2020/PN Smr related to the element of receiving rewards the element of acceptance and the element of gratification are understood as: was actually accepted, transfer of power over objects in real form, direct or indirect receipt of goods/objects/gifts or, if the object was not received, there is basically a confirmation of acceptance of the recipient. The reward element refers to the explanation of Article 12b of the Anti-Corruption Act. The reversal of the burden of proof applies only to offenses related to their position and is not inconsistent with their duties or obligations. The prosecution is obliged to do so and will not be reported within 30 (thirty) business days of receipt. The reversal of the burden of proof, however, does not apply to bribery when accepting other gifts (passive bribery).

The public prosecutor's office bears the burden of proof for all other elements of the offense of passive bribery (mandatory). In this context, the form of abuse of office committed by the defendant in this case is abuse of office to undertake acts contrary to the public interest or to advance personal, group or class interests. In other words, the powers that the defendant has are not being used in accordance with its duties and powers, which may or may not be proper business conduct. As explained in Article 12C of Law 20/2001, it is declared that a gratuity is not an act of bribery or a criminal act of corruption if the recipient of the KPK reports it. Failure to speak up is considered a bribe. In order to determine whether it is a criminal act of bribery, the recipient of a gift whose value is Rp. 10,000,000.00 or more shall prove in the reporting system that the gift is not a bribe to the recipient of the gift, but its value less Rp. 10,000,000.00 proves that the donation is a bribe from the public prosecutor's office. In court practice, there are judges who issue decisions that find the accused guilty in a decision.

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