

The Consistency Of High Attorney Of Papua In Corruption Investigation

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Abstract: This study aimed to determine the consistency of High Attorney of Papua in corruption investigation and efforts to return the state financial loss. The type of study used in this paper is a normative-judicial and empirical-judicial. The results showed that the High Attorney of Papua in corruption investigation is not optimal due to the political interference on a case that involving local officials so that the High Attorney in decide the case is not accordance with the rule of law. The efforts of the High Attorney of Papua to return the state financial loss through: State Auction Body, civil- and criminal laws.

Index Terms: Corruption, Investigation, Attorney, State Loss

1 INTRODUCTION

According to Black's Law Dictionary, corruption is an act done with the intent to provide an illegal benefit by the rights of other is wrong to use his/her position or character to gain an advantage for himself or others, contrary to the obligations and rights from other parties (Campbell, 1990). Corruption exists when a person unlawfully putting personal interests above the public interest as his/her discretion. Corruption comes in many forms and can vary from small to monumental. It can happen in the private or public sectors and often occur in these two sectors simultaneously (Klitgaard, 1988). The trend of corruption development is increasingly rising. Even, today are growing public opinion that corruption has been transformed into a new culture, in a sense have mastered the behavior is not only the state bureaucracy, but also the business arena and the whole society. The high level of corruption will harm the interests of development a whole. Almost every part of life, there is always corruption. Ranging from subordinates to superiors, from officials to clerks, in the fields of trade, administrative, even in education appear corruption practices. Corruption is strongly influenced by public attitudes. Normal life of society, to accept anything in everyday life or less get serious pressures of social, economic and political will be free from corruption. Meanwhile, high pressures of society, economics and politics, will be easier to do corruption. Mentality to get rich quick, success quick, instant style to be prone to corrupt behavior rather than the people who love the results through mature work processes. Many cases of corruption in Indonesia, based on the monitoring of Indonesia Corruption Watch (ICW) during 2008, there were 194 cases with 444 defendants and convicted by courts throughout Indonesia. State loss value of cases reached Rp. 11.7 trillion. From 444 defendants that have been tried and sentenced, as many as 277 defendants (62.38 percent) were acquitted by the court.

Only 167 defendants (37.61 percent) were eventually convicted. However, ICW see that 167 defendants were eventually convicted; the vonis has not provided a deterrent effect for corruptors. Since 2001, through Act No. 21 of 2001 on Special Autonomy for Papua Province, Papua has become a special autonomous region. Papua Special Autonomy acts is a rule or a policy provided by the central government in promoting development in various aspects through 4 (four) main priorities; economy, education, health and infra-structure. But in fact, based on the reports of complaints coming into the Corruption Eradication Commission, Papua province perched on the 19th order of corruption in Indonesia. In this assessment, in addition calculated by the large number of complaints received, also added to the number of expenditures are used, either through the state budget or special autonomy funds. Until now, many cases of alleged corruption in the province of Papua and West Papua have not been addressed and dealt with seriously by the law enforcement agencies in spite of the "political will" of central and local governments to eradicate social ills that impoverish the people of Papua. Corruption related to the complexity of various issues includes moral or mental, lifestyle as well as cultural, social, economic systems, political and etc. In encounter such characteristics, a way to combat corruption that known is through criminal law as a tool of criminal policy in preventing or reducing crime. According to the Center for International Crime Prevention (CICP), corruption has broad dimension includes bribery, embezzlement, fraud, exertion, abuse of power, exploiting ones' position in business activity for the benefit of individuals that is illegal (exploiting conflict interest, insider trading), nepotism, illegal commission and contributed money illegally to the party. However, until now the problem of corruption in Indonesia cannot be solved completely, but the expectations so that the Indonesian nation free of corruption and a new will with the value of both law enforcement officials, especially prosecutors will try to do the duties in a more decisive and fair. Attorney is a subsystem within the Criminal Justice System (other than the Police, Courts and Prisons) plays an important role in the creation of the Integrated Attorney.

2. METHOD OD THE RESEARCH

This study is legal research conducted in Jayapura with research site in the High Attorney of Papua, this site based on the authority and presence of the Attorney in addressing corruption. In this study, the population is parties in relation to the problems in addressing the corruption that existed in the

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High Attorney of Papua. Sample of this study is set by using purposive sampling. Legal materials obtained was processed qualitatively by using identification inventory methods in logic-systematic as the themes that have been formulated for later analysis. To refine this analysis, we also using means or method of comparison and law interpretation (rechtsvergelijking en rechtsinterpretatie). By doing comparative law, it intended to obtain comparisons source that will become a material of discussion, especially with past corruption legislation (Atmasasmita, 1996).

3. RESULTS AND DISCUSSION

3.1 Consistency in Legal Perspective

According to the theory of consistency, to establish a truth is not based on the relation of subject to the reality (object), because if it is based on the subject relation (its idea, its impression) to the object, there must be subjectivity. Personal as subject with its identity and potentials, even with its character still tend to be subjective. Therefore, understanding the subject that one about reality would be possible different to the understanding of other subjects. Besides, who ensures that the idea or impression of a person to really reconnect fully with reality, with the actuality. Continuous relations with similar subject often cause different reactions. In addition, the idea or impression of person on a reality it is not related at all to the idea or impression to others. How can be determined, who is among those who are closer to the truth, and who reaction among those who are closer to the reality. In any way we set, we have to realize that every judgment there will be other ideas and judgment. Thus, the criterion of truth is not merely related to the reality. Truth is regarded as precise relation with the impression of reality alone, will always never existed. Because the best way we can go is to seek the truth based on the consistency between the ideas or impressions of a reality. That is based on the consistency (provision) between an idea and impression of person with other people for a same object, and then this is seen as true. In other words, something is true (truth) to what extent the consistency between truth arrested one subject with another of a similar reality (object). More consistency of the idea or impression arrested several subjects of the similar object, the true idea or impression (Covell, 1992). Hence, as consistency theory above, researchers can find an understanding or concept that a truth based on their consistency and reliability. This means the more consistency of something, the more confident its truth or more valid as true. Consistency is very closely related to the conscience (Reksodiputro, 2002). Conscience is never wrong. Mismatches occur due to human insensitivity in listening to his/her conscience, so causing a lack of consistency in talking and doing. In this context, the law must not conflict with freedom. One of the greatest works that relate to attitudes, change attitudes, and beliefs are under the coverage of consistency theory. All consistency theories begin with the same premise, that people are more comfortable with the consistency than inconsistency. Meanwhile, consistency is main principle in the process of cognitive and attitudinal changes that can be generated from the information that disrupt this balance. Although the vocabulary and concepts of these theories differ, the basic assumption of consistency is to bring them all in the language of cybernetics, man seeks homeostasis or balance and the cognitive system is a major tool that can be used to achieve a balance.

3.2 Constraint faced by the High Attorney of Papua in Corruption Investigation

Corruption is closely related to abuse of authority or influence in the position of a person as an official who deviate from the legal provisions so that such actions harm the economy and state finances. Moreover, the corruption is highly diverse as complex forms of crime revealed by the increasing sophistication of the modus operandi used and perpetrator wiliness to remove any trace (Hujberg, 2005). This condition makes the reveal of corruption in Papua province is increasingly difficult to reach and thus require considerable time and manner that is quite difficult to prove legally adequate. The difficulty of revealing or entrap the corruptor is also caused general prosecutors difficult in giving evidence to convince the judge, even more revealing of corruption is complicated its handling which necessarily requires concentration and accuracy in addition to understanding actually against the law (Yunus et al., 2015). According to Marmosudjono (former Attorney General of the Republic of Indonesia), as quoted in Yunara Edi (2005) that is a constraint in corruption are: First, in general, perpetrators of corruption have certain qualities both the capabilities and social status; Second, the perpetrators of corruption have the qualities as a smart person, who have the authority and opportunity; Third, the modus operandi is complicated and done with sophisticated techniques. Based on the results of interviews with the Assistant of Special Crimes the High Attorney of Papua, Bangkit Sormin, dated 3 April 2015, he mentioned that the constraints in disclosure of corruption cannot be separated from the characteristics of corruption itself, where the perpetrator of corruption in general high-educated and have expertise in the field, so early were able to hide his/her action and destroy evidence related. In corruption, perpetrators use facilities, infrastructure and advanced technology and conducted in a systematic and planned. For example, through multimedia includes computers, internet and others. Generally, also perpetrators of corruption is the superior (officials) so that the perpetrators are protected by corps/agencies, besides the witnesses are subordinate/staff while the perpetrator is the superior so that it is sometimes in the process of trial, witnesses reluctant to testify the truth. The difficulty of obtaining evidence that is legally valid in disclosure corruption is one of the constraints for investigator to indict the corruptor to the justice. Corruptor and witnesses and those involved in it deliberate cover so that the investigator/prosecutor have difficulty obtaining evidence and witnesses following accurate data as well as a concrete basis for prosecution. Nothing was reported as a direct victim witness. In contrast to general crime, the injured is a person (people) as direct victims so quickly reported the case to the authorities, while the victims of corruption crime or the injured party is not an individual, but the government agency (the state). This causes the corruption is difficult to prove in court, and even more difficult when the perpetrator is the high officials or leaders of political parties/political elite who have the authority and have a lot of period. In addition, the intervention of government officials/countries those want to acquit the defendant of criminal responsibility, either by using the authority of the position or by kinship way.

Table 1. The handling of corruption in Papua Province, 2014

No	Cases	Value (Rp)	Location	Implementer
1	Budget fraud case of local representative sec-retariat of Jayapura dis-trict 2006	1,5 billion	Jayapura	State Attorney of Jayapura
2	Corruption PT. Pega-daan Branch Merauke	1,9 billion	Merauke	State Attorney of Jayapura
3	Alleged corruption of so-cial assistance of Sarmi district in period 2012/ 2013	4,5 billion	Sarmi district	Attorney General
4	Alleged corruption of private home fence reha-bilitation of Sarmi district	2,6 billion	Sarmi district	Attorney General

Source: Primary data, 2015 (edited)

Table 2. The handling of corruption in Papua Province, 2015.

No	Cases	Value (Rp)	Location	Implementer
1	Alleged corruption of private home Renovation of Mimika regent 2015	35 billion	Timika	State Attorney of Timika
2	Corruption of diesel engine procurement in Nabire district 2015	21 billion	Nabire	High Attorney of Papua
3	Alleged corruption of air-craft purchase type Grand Karebau from Special Allocation Fund 2015	146 billion	Puncak Jaya	High Attorney of Papua

Source: Primary data, 2015 (edited).

As table above, shows that the performance of Attorney to handle corruption is still have minimum portion so that the performance ratings of high Attorney (attorney) of Papua declined rapidly as the minimum number of cases handled this year. Where there are many cases that cannot be resolved and are still investigating with a very limited number of officers. It was recognized that, in order to resolve the problem of corruption in Papua is not an easy job to do, there needs to be a deepening and accuracy to expose corruption cases in Papua. One of the most important elements in the handling of corruption is the State Finance Loss. While, the definition of the state finances according to Van Der Kemp are all rights that can be valued in money and so is everything (in the form of money or goods) that can be owned by the state with respect thereto. Meanwhile, in Act No. 17 of 2003 on State Finance, the definition and state finance is: "... all rights and responsibilities which can be valued by money and everything in money or in goods which could be used as state property in connection with the implementation of those rights and obligations (Article 1 figure 1)." In the explanation of Act No. 17 of 2003 on this definition and scope of state finances stated when seen from the side of the object as "State Finance" includes all the rights and responsibilities which can be valued in money, including policies and activities in the field of fiscal, monetary and management of state assets set aside, as well as everything in money, or in goods which could be used as state property in connection with the implementation of rights

and obligations. In terms of the subject as "State Finance" includes the entire object as mentioned above, and/or state-owned and controlled by the central, local government, state/region enterprises, and other agencies related to the State finances. In terms of process, the State Finance includes the entire of activities related to the management of object as mentioned above, starting from the policy formulation and decision-making to the responsibility. In terms of goals, "State Finance" includes all the policies, activities and legal relationships relating to the ownership and/or control of object as mentioned above in the context of state governance (Hamzah, 2016). Based on the definition above, it can be argued that the elements of state loss, are: First, the state loss is reduced state financial in the form of precious money, state-owned goods the amount and/or value should be; Second, the reduction of state loss must be real and definite number or in other words the loss is really going on with the amount of loss can be determined with the amount, so the state loss is only an indication or the potency of losses; Third, the loss is a result of an unlawful act, either intentionally or negligent, unlawful must be proved carefully and precisely. From several provisions above, it can be said that the concept of state loss in the sense of material delict can no longer be used or can no longer be maintained due to whether or not an act can be said as corruption should be the preparatory action was done, but not real could harm the state finances. The preparatory action will also lead to acts that can be detrimental to state finance, so as to prevent a criminal act of corruption that really harm the state finances should be used the concept of a formal delict in determining whether there has been a state financial loss or not. One element in the corruption is the presence of state finance losses. To the state finance losses, corruption legislation No. 3 of 1971 and No. 31 of 1999 jo Act No. 20 of 2001, established a policy that state finance losses to must be returned or replaced by corruptor (Asset Recovery). The provision of asset confiscation as result of corruption through civil lawsuit in corruption legislation is an alternative way if through criminal prosecution cannot be made for reasons justified by the Act (Yusuf, 2013). In other words, the return of state financial losses due to corruption through civil way can be done after the examination process of corruption through the criminal complete or cannot continue due to certain reasons, such as the death during the investigation, which automatically causes a loss of power to prosecute. As the article 77 of Criminal Law: "the authority to prosecute criminal is lost if dies". Restitution is a form of extra-punishment in the corruption. In essence, both legally and doctrine, judges are not required to always impose extra-punishment. However, specific to the corruption, it needs to be considered. This is because corruption is an act that is contrary to the law which harms state finances; in this case the state's loss must be restored. A way that can be used to recover the state loss is to require the defendant who proven and convincingly conduct corruption to return the state finance in a form of restitution. Thus, although it is only extra-punishment, but it is not wise to let the defendant does not pay restitution as a way to recover state losses.

4 CONCLUSION

High Attorney of Papua in corruption investigation is not optimal due to the political interference on a case that involving local officials, so that the High Attorney of Papua in deciding the case are not in accordance with the actual laws.

An effort to return the state losses by the high Attorney of Papua is still very minimal which the return amount does not reach 50% of the total losses in 2015. Hence, as small as corruption must be eradicated, because corruption is a major cause of declining efficiency of the ongoing developments in realize a just and prosperous society based on Pancasila and the 1945 Constitution. Needed to improve the capacity of law enforcement officials especially prosecutor in handle corruption by attend trainings asset tracing, legal audit, forensic accounting and public relations in order to the court process with delivery indicators to increase the completion of corruption with high complexity.

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