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Legal Enforcement Against Political Parties as Subjects of Corruption Crime in Indonesia

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Abstract

Law enforcement regarding criminal and administrative accountability of political parties has not been regulated in the National Law, so that so far only individual political parties have been prosecuted. On the other hand, we all know that political parties can be said to enjoy the proceeds of corruption from their party members to fund party activities. This article aims to examine law enforcement against political parties as legal subjects for criminal acts of corruption in Indonesia using normative research. The results of the analysis show that political parties are the same as corporations. This is viewed from the characteristic and conceptual aspects of existing legislative provisions, namely the law on eradicating criminal acts of corruption and the law on political parties. Regarding the accountability that can be requested from corporations that are proven to have committed acts of corruption, it refers to the Criminal Code except for the death penalty, imprisonment and imprisonment. Apart from that, the law on eradicating criminal acts of corruption also regulates the imposition of a maximum fine plus one third. In relation to corruption committed by political parties, additional punishment is required which the judge can impose in the form of a reduction in state financial assistance to political parties, a ban on participating in elections, or the dissolution of political parties.

Kata Kunci:

Penegakan Hukum, Partai Politik, Korupsi

Abstrak

Penegakan hukum terkait pertanggungjawaban pidana maupun administratif partai politik belum diatur dalam UndangUndang Nasional, sehingga selama ini yang diperkarakan hanya oknum partai politiknya saja, dilain sisi dapat kita ketahui bersama bahwa partai politik dapat dikatakan ikut menikmati hasil korupsi anggota partainya untuk mendanai kegiatan partai. Artikel ini bertujuan untuk mengkaji penegakan hukum terhadap partai politik sebagai subjek hukum tindak pidana korupsi di Indonesia dengan jenis penelitian normaif. Hasil analisis menunjukkan bahwa partai politik sama dengan korporasi. Hal ini ditinjau dari aspek karakteristik dan konsep dari ketentuan perundang-

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undangan yang ada yakni undang-undang tentang pemberantasan tindak pidana korupsi dan undang-undang tentang partai politik. Mengenai pertanggungjawaban yang bisa dimintakan kepada korporasi yang terbukti melakukan tindakan korupsi adalah mengacu pada Kitab Undang-Undang Hukum Pidana kecuali pidana mati, pidana penjara dan pidana kurungan. Selain itu undang-undang pemberantasan tindak pidana korupsi juga mengatur untuk menjatuhkan denda maksimal ditambah dengan sepertiganya. Dalam kaitannya dengan korupsi yang dilakukan partai politik perlu pidana tambahan yang diberikan hakim bisa dalam bentuk pengurangan bantuan keuangan negara terhadap parpol, larangan menjadi peserta pemilu, atau pembubaran parpol.

INTRODUCTION

The issue of political dowry has become a culture in the circle of political parties (political parties), especially ahead of candidacy in both regional elections and elections. Transactional politics that leads to requests for money from the candidates who are carried out triggers corrupt practices because they have to seek (return) political dowries to financiers. The forms of returns can vary, ranging from the distribution of projects funded by the APBD to gratuities for the management of business licenses which ultimately lead to corruption.

Indonesia adheres to a democratic system that puts the highest power in the hands of the people. The people who form the government, participate in organizing the government and are the main goal of implementing the State government. The government of, by and for the people is called a democratic system. That is as if sovereignty is in the hands of the people and is carried out according to the constitution. To carry out the democratic mechanism, the constitution regulates the implementation of elections. Elections held every five years are a mechanism for elite circulation, both in the executive and legislature, as well as a measure of whether the country is democratic or not. In the process of holding elections, political parties are presented as the main pillar of democracy.

Various efforts have been made by the government in preventing and eradicating corruption, but corruption is still growing, even showing an increase from year to year. This is evident from the existence of the Hand Capture Operation (OTT) carried out by the Corruption Eradication Commission (KPK) against several regional heads and legislative members in various regions in Indonesia, This shows that corruption in Indonesia is still rampant. High political power is suspected to be one of the factors causing acts of corruption committed by regional heads and legislative members. Seeing the amount of political money spent by someone who is elected either as a regional head or who is elected as a legislative

member, of course after being elected they think about how to return the money they have spent in the regional head election or in the legislative election. Such a condition can encourage a person to commit acts of corruption.

Regarding political corruption cases, what needs to be the epicenter of attention is the subject of corruption which always ends up on individuals from political parties, while political parties as legal entities seem to have legal immunity. So many political party figures who are entangled in corruption cases raise ambiguity, whether the corruption is purely only carried out by individuals personally, whether the money does not flow to political parties, or indeed the corruption is carried out in an organized and systematic manner by political parties. Of course, this is a big question mark, especially if political bribery carried out in parliament in the preparation of legislation has a significant rupiah value and has implications for further policies. Not a small amount of money is poured by capital owners into political parties in order to enforce a regulation. The orientation is so that the results are on the side of the owner of capital (political bribery).

Several party members have undergone criminal responsibility for corruption crimes committed by them, but only limited to individual actions. (Wangga, 2018). If it is related to Article 1 number 1 of Law Number 31 of 1999 concerning the eradication of Corruption, "A corporation is a collection of people and/or wealth that is organized either as a legal entity or as a non-legal entity" and the meaning of the phrase "Every Person" is then explained in article 1 number 3 which reads "Everyone is an individual or including a corporation", So here we can draw the conclusion that political parties can be included in the category of everyone who can be burdened with criminal responsibility for corruption crimes if proven to have committed corruption (Mochtar, 2019). However, until now there is no firm rule that states that political parties are corporations that can be criminally held accountable for their actions, both in the eradication law (Aspan, 2020).

In the end, it will be difficult to dichotomize the offense between political parties and their cadres in the practice of political corruption. Political parties are positioned as the dominant entity because in most corruption cases investigated by the KPK involve "political people" who incidentally are the elites of their political parties. (Agil & Hastuti, 2021) So it is clear that there is a common thread that leads to the financing of party political activities for corrupt practices carried out. This practice of rent seeking is carried out by almost all political party cadres when occupying important government positions, both at the central and regional levels (Aspan and Suwandi, 2020). Until now, there has never been a single political party as a

legal entity that can be held criminally accountable, although it is clear that political parties are enjoying the proceeds of corruption carried out by their cadres (Wangga, 2018).

RESEARCH METHODS

This research uses a statute apporarch approach and a case appoarch approach. In contrast to social research, the case approach in normative law research aims to study the application of norms or rules carried out in legal practice (Marzuki, 2008:93). This type of research uses juridical-normative research methods or often called doctrinal law research (Muhammad, 2004:52).

RESULTS AND DISCUSSION

Criminal Responsibility of Political Parties in Corruption Crimes

As defined, the criminal concept will provide an explanation of the sanctions (in this case a form of punishment) given to the subject of the offense by the state as a result of violating a criminal law provision regarding the relevant provisions that regulate it, therefore it is said to be a reaction against the perpetrator of the offense. Meanwhile, in criminal law, punishment is the provision of punishment for a crime that has been determined or simply it can also be called a process of giving punishment to the subject of an offense who is proven to have violated existing legal rules. (Setiady, 2010)

Over the course of this nation's history, in dealing with the problem of corruption, it has taken steps to establish positive law which can be seen in changes to aspects of statutory regulations. The government has regulated the formulation of accountability norms for legal entities (corporations) that commit criminal acts of corruption, which are outlined in the PTPK Law. To overcome doubts about the mechanism for enforcing the accountability of legal entities, the Supreme Court then established Regulation of the Supreme Court of the Republic of Indonesia (Perma) Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

The existence of criminal liability regulations for legal entities is a step in law enforcement that can be applied to political parties, as a juridical consequence that has been mutually agreed upon and is believed to be neutral, impartial and objective as stipulated in Article 4 paragraph (1) and paragraph (2) in the Perma. By accepting corporations as subjects of criminal law which are considered to be able to commit criminal acts and can be held

criminally responsible for them, of course there will be other consequences in their implementation (Kristian, 2014). Regarding corporations as perpetrators of criminal acts of corruption, law enforcers should use accountability as regulated in Article 20 of Law No. . 31 of 1999. In the PTPK Law, several parts of it provide special legal regulations for corporate criminal acts (Rifai, 2014)

The first two paragraphs of Article 20 of the PTPK Law can be said to regulate corporate criminal liability (in this case including political parties) (Adriano, 2013). Paragraph (1) of the PTPK Law states the responsibilities that can be asked of a corporation and/or its management, if it is in the interests of the corporation to commit an act of corruption. Furthermore, paragraph (2) of the PTPK Law provides the definition of a corporation that commits a criminal act of corruption, namely if the criminal act is committed by an individual, either on the basis of a certain relationship (work relationship or other relationship) carrying out actions within the scope of the corporation, whether indirectly together or alone. (Hendra & Suardana, 2019)

Article 20 paragraph (1) of the PTPK Law provides an opportunity for a corporation to be brought to court due to its actions in committing a criminal act of corruption carried out together with its management. The size of the elements of a corporation's fault can be seen as stated in paragraph (2) of the provisions of the regulation, confirming that a corporation can be held criminally liable as the subject of an offense when, based on certain relationships, its organizers act within the corporate environment, either jointly or individually. an act of corruption. So it can give the public prosecutor a choice in order to prosecute only the management, or only the corporation, or even both. Paragraph (2) of article 20 of the PTPK Law follows functional theory and the doctrine of identicalization. (Hendra & Suardana, 2019)

A corporation is considered to have committed a criminal act of corruption if the criminal act is committed by individuals in the corporation concerned who have a very close relationship. Then the sanctions that can be given to corporations (including political parties) refer to Article 10 of the Criminal Code, which contains two types, namely in the form of basic penalties and additional penalties. When it is proven that an act of corruption was committed by a political party, the sanctions that can be imposed are all types of criminal sanctions except the death penalty, imprisonment, imprisonment, apart from that these sanctions can only be imposed on the administrators or organs of the political party concerned. If you look at the provisions of Article 20 Paragraph (7) of the PTPK Law, the sanction that can be imposed is a fine as the main penalty with an addition of one third of the

maximum penalty provisions. Apart from that, Iwan Setiawan also gave a statement that apart from fines, other sanctions that could be imposed were dissolution, liquidation and so on (Hendra & Suardana, 2019).

Ideal Criminal Liability for Political Parties as Legal Subjects of Corruption

Corruption in the political sector is very complex and has been going on for a long time. The various modes used to carry out corruption in the political field also involve people who are honorable, have high social status and aim to win over a political party and people who will sit in legislative seats. This condition is caused by high political costs while the political party only has minimal funding sources. One of these political costs is funding for campaigns in order to introduce and instill confidence in the public that the political party or legislative candidate cares about and fights for the rights of the people in their electoral district. Campaigns that involve a large number of people and campaigns using mass media and electronic media also require large costs. The many modes that occur in the field of political corruption require an in-depth and continuous analysis so that law enforcement officials and the public can understand the methods used by political corruptors to achieve their desired goals. (Spell: 2021)

And we don't stop at giving it a scary name, but also suggest that it will be done to cover up so that corruption in the political field is not known by law enforcement officials. This condition shows that corruption in the political sector has become widespread, systematic and in increasingly complex ways. the meaning of eradicating in a manner appropriate to the severity of corruption. Apart from the explanation above, the political party law has encountered problems in its implementation. Where the a quo law emphasizes that political party financial management is carried out transparently and accountably. So political parties are required to make annual financial reports which include budget realization reports, balance sheets and cash reports. These financial reports must be audited by a public accountant and published periodically. The aim is to make financial reports accessible to the public, including a list of contributors. However, the provisions for making annual financial reports are not followed by technical provisions on how to make annual financial reports. The implication of this problem is that since the enactment of Law no. 2 of 2008, in fact there are no political party financial reports that are uniform and meet reporting standards. Political parties only

abort their obligations by making random financial reports, or do not make them at all because the requirement to make annual financial reports is apparently not followed by the provisions for imposing sanctions (Junaidi, 2019)

Moving on from the discussion that political parties are corporations as the basic foundation for enforcement, there are 3 types of criminal acts of corruption that can be used as parameters in the design of law enforcement that will be formulated, namely (Mulyadi, 2018):

1. First Type Corruption Crime, contained in Article 2 of the Anti-Corruption Law which states that: "Every person who unlawfully commits an act of enriching himself or another person or a corporation which can harm state finances or the state economy, shall be punished with life imprisonment. life or imprisonment for a minimum of 4 (four) years, a maximum of 20 (twenty) years, and a fine of at least two hundred million rupiah and a maximum of one billion rupiah." If the criminal act of corruption as intended in paragraph (1) is committed, under certain circumstances the death penalty can be imposed.
2. Second Type Corruption Crime, regulated in the provisions of article 3 of the Corruption Law which states that: "Every person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can causing harm to state finances or the state 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 fifty million rupiah and a maximum of one billion rupiah.
3. The Third Type of Corruption Crime, contained in the provisions of Articles 5, 6, 8, 9, 10, 11, 12, 12A, 12B, 12C and 13 of the Corruption Law, originates from articles of the Criminal Code which were then slightly modified in the formulation when withdrawn becomes a criminal act of corruption in accordance with Law Number 20 of 2001 by eliminating editorial.

Apart from this discourse, it is also natural and relevant when there is a design for law enforcement on political party corruption, where the first level is to reduce state subsidies to parties. So, when political parties are subject to additional punishment in the form of cutting the political party's aid funds, it is hoped that awareness will arise to place their best cadres in public positions to avoid corrupt behavior.

The maximum deduction percentage of 30 percent is considered a proportional figure based on the extent of the act of corruption and the impact of the act. The final amount subject to deductions of course depends on the court's decision. Law Number 2 of 2008 concerning Political Parties actually also regulates a mechanism for providing administrative sanctions in the form of postponing political party funding assistance from the state when there is a neglect of the political party's obligation to submit regular accountability reports once a year regarding financial receipts and expenditures. sourced from APBN and APBD assistance funds.

So far, the laws relating to elections and regional elections have regulated provisions regarding sanctions prohibiting parties from nominating candidates for the next election period if they fulfill the elements prohibited in these two laws. The element in question is that the political party receives compensation in the nomination process and is proven through a court decision that has permanent legal force. However, this provision is limited to cases of nomination donation funds, and does not extend to the level of criminal acts of corruption. Even imposing sanctions is not a complete prohibition. Thus, in this second design, political parties as a whole at any electoral level are prohibited from registering to participate in the next election period if the members or administrators of the political party while in power are proven to have collectively committed a criminal act of corruption. Of course, this is oriented towards internal improvements to political parties and a fundamental deterrent effect for all parties.

The third construction is the dissolution of political parties followed by a prohibition on political party administrators from carrying out political activities, including moving to another party or establishing a new political party. It can be constructed that this prohibition is valid for ten to fifteen years for political parties that are dissolved due to corruption. Related to this, what needs to be identified is that there is corruption carried out systematically and organized by political parties and there is corruption funds flowing to political parties. This means that there are structured orders from the management or involving the management to commit corruption. Apart from that, this design also applies to criminal acts of corruption that are committed repeatedly, so that political parties that commit these acts can be punished by dissolution based on a court decision that has permanent legal force.

The second construction is that they are prohibited from participating in elections in the following period. What needs to be identified regarding this is that corruption is carried out collectively by members or administrators of political parties and the money is channeled to

political parties. From data obtained in 2018, at least 545 or 61% of the corruption actors charged by the Corruption Eradication Commission (KPK) were members of the DPR, provincial, district and city DPRD, as well as regional heads supported by political parties, most of which were indirectly carried out collectively. . This was proven, for example, in the case of members of the Malang City DPRD in 2018 in the alleged criminal act of bribery in the discussion of the Malang City Government's APBD-P, where as many as 41 members of the Malang City DPRD who were involved in corruption were arrested by the Corruption Eradication Commission. Apart from that, there was also a corruption case within the Jambi DPRD in 2019 which involved 12 members of the Jambi DPRD. Meanwhile, at the beginning of 2020, as many as 14 members of the DPRD of North Sumatra were named by the Corruption Eradication Commission as suspects in the alleged bribery crime case during the era of Governor Gatot Pujom Nugroho. In this second level design, apart from providing criminal sanctions, additional sanctions were also given to political parties by not being allowed to participate. elections for the next period, whether at the presidential, DPR, Provincial DPRD, Regency/City DPRD or regional head elections.

CONCLUSION

Political parties can be categorized as corporations, namely legal subjects that can be held criminally responsible in the event that their personnel or management commit criminal acts of corruption based on the theory of criminal punishment against corporations, provisions in Law Number 7 Emergency of 1955 concerning Economic Crimes, Law Number 31 1999 concerning Prevention and Eradication of Corruption Crimes Jo Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Prevention and Eradication of Corruption Crimes, Law Number 32 of 2009 concerning the Environment, Law Number 35 of 2009 concerning Narcotics, Law Number 6 of 2009 concerning Health, Law Number 2 of 2008 in conjunction with Law Number 2 of 2011 concerning Political Parties. There are several types of sanctions that can be imposed on political parties, depending on which provisions are used. If you use the provisions in Article 20 of the Corruption Law, then the form of sanction is only a fine, with the maximum penalty being increased by 1/3 (one third), however, if you use the provisions in Article 7 of the TPPU Law, then the form of sanctions can be in the form of: In relation to corruption What is done by a political party requires additional punishment given by a judge, which could be in the form of

a reduction in state financial assistance to the political party, a ban on participating in elections, or the dissolution of the political party.

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