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Research Article

Analysis of Supreme Court Regulation Number 1 of 2020 Concerning Guidelines for The Criminalization of Corruption Crimes in the Perspective of Justice

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ABSTRACT

Supreme Court Regulation (Perma) Number 1 of 2020 was issued as a guideline for judges in determining the punishment of perpetrators of corruption crimes. This guideline aims to create legal certainty, proportionality, and consistency in the imposition of criminal sanctions in order to achieve substantive justice. This study analyzes the extent to which the application of the Perma has reflected the principle of justice, both from the perspective of criminal law and restorative justice. Using juridical-normative methods and a case comparison approach, this study finds that the implementation of Perma No. 1 of 2020 still faces challenges in judicial practice, especially in adjusting to the elements of state losses and the level of guilt of the defendants. The problem that will be discussed in this study is how urgent is the evaluation of Perma No. 1 of 2020 concerning guidelines for criminalizing corruption crimes from a justice perspective. The research method used is a normative research method with a statute approach, case approach, and theoretical approach, and analyzed using content analysis.

Keywords: *Perma No. 1 of 2020, Criminalization, Corruption, Justice, Criminal Law*

Introduction

Corruption has long been a serious problem in Indonesia. Although various efforts have been made, such as the establishment of the Corruption Eradication Commission and the strengthening of anti-corruption regulations, corrupt practices are still rampant in various government and private sectors. The corruption cases that continue to emerge show that this problem is not only a violation of the law,

but also a systemic problem that hinders the development and welfare of the community. Some of the factors that cause the high rate of corruption in Indonesia include:

1. **Weak Law Enforcement:** Despite the existence of anti-corruption institutions, law enforcement against corruptors is still not optimal. Many cases are not followed up firmly or even receive light punishments.

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2. **Corrupt Culture:** In some environments, corruption is considered commonplace and even part of the bureaucratic system.
3. **Lack of Transparency and Accountability:** The low openness in the management of the state budget and the lack of supervision make the opportunity for corruption even greater.
4. **Lack of Public Awareness:** There are still many people who are permissive to corruption, both because of ignorance and because of distrust of the existing legal system.

Corruption has a wide negative impact, one of which is hindering development. Funds that should be used for the public interest are diverted to the interests of individuals or certain groups. Corruption makes social disparities widen because economic resources are not distributed fairly. Injustice in law enforcement against corruption cases causes people to lose trust in the government and legal institutions. The rise of corruption cases in Indonesia is a big challenge that must be overcome immediately. Corruption not only harms the state financially, but also hinders the welfare of the community. Therefore, synergy is needed between the government, law enforcement, and the community to create an environment that is clean from corruption. With a strong commitment and concrete actions, Indonesia can break out of the cycle of corruption and move towards a more transparent and integrity government.

Throughout 2024, Indonesia continues to face serious challenges in efforts to eradicate corruption. Various law enforcement agencies have taken various steps to address this problem, but the data shows that corruption is still a significant problem. The Corruption Eradication Commission reported that throughout 2024, they have handled 93 corruption cases by designating 100 people as suspects. The cases handled by the KPK involve various sectors and show that corruption is still rampant in various lines of government and institutions. The National Police also showed its commitment to eradicating corruption by uncovering 1,280 corruption cases throughout 2024. Of these, 431 cases were successfully resolved, and as many as 830 people were designated as

suspects. This step shows the efforts of the National Police in cracking down on corrupt perpetrators and securing state assets. The Deputy Attorney General for Special Crimes (JAM-Pid-sus) of the Attorney General's Office also plays an active role by handling 2,316 cases of corruption crimes in the investigation stage throughout 2024. In addition, they managed to save the state's finances with a total of Rp44.13 trillion. This shows the important role of the Attorney General's Office in law enforcement efforts and the recovery of state assets lost due to corruption.

An example of a case that occurred in North Lampung Regency, Lampung Province, is the Former Head of the Head of Division and Head of Division at the North Lampung Community and Village Empowerment Office related to the corruption case of gratuities for pre-service technical guidance for the elected Village Head in 2022 amounting to Rp 25 million. Law enforcement in the eradication of corruption crimes is regulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended several times last by Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (Corruption Law). This law enforcement is a repressive effort but plays a preventive role to prevent other perpetrators from committing corruption crimes. As well as the function of law to order and regulate society, and aims to achieve justice in society.

However, the problem is that there are provisions in Article 16 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Criminal Guidelines (Perma No. 1 of 2020) Article 2 and Article 3 of the Law on the Eradication of Corruption which explains that judges can not impose fines in the event of state financial losses or the state economy below Rp50,000,000, (fifty million rupiah). This provision raises concerns about the integrity of judges in deciding cases and the effectiveness of law enforcement in eradicating corruption. Corruption is one of the serious problems faced by Indonesia. As an extraordinary crime, corruption has a far-reaching impact on the economy, society, and public trust in state institutions. Article 16 of Supreme

Court Regulation Number 1 of 2020 has the potential to cause problems in judicial integrity and the effectiveness of corruption eradication. Therefore, the evaluation of this article is urgent to ensure that the criminal system in corruption cases runs fairly, transparently, and provides maximum deterrent effects. Without proper revision, this provision can reduce public trust in the judiciary and open a gap for abuse of authority in handling corruption cases. Based on this description, the problem in this study is how urgent is the evaluation of Perma No. 1 of 2020 concerning guidelines for criminalizing corruption crimes from a perspective of justice.

Research Methods

The research method used is a normative research method. By using the statute approach and case approach, as well as a theoretical approach related to the analysis of Supreme Court Regulation Number 1 of 2020 concerning Guidelines for the Criminalization of Corruption Crimes in the Perspective of Justice. The statute approach is to examine matters related to legal principles, legal views and doctrines, and laws and regulations related to the environment, and accurate and accountable data related to humanist film laws in Indonesia. Case Approach is a concept in legal research that uses the study of court decisions as the main analysis material. This approach aims to understand how legal norms are applied in judicial practice and to see patterns or consistency in law enforcement. The theoretical approach is a framework of thought or perspective used in research to analyze a phenomenon based on relevant theories. This approach serves as a conceptual basis for understanding, explaining, and interpreting a problem scientifically. In addition, an in-depth examination of the legal facts is also carried out to then try to solve the problems that arise in the symptoms concerned.

Results and Discussion

1. The Problem of the Rise of Corruption Cases in Relation to Aspects of the Legal System in Indonesia

Corruption is a chronic problem that continues to eat away at Indonesia. Although various policies and regulations have been implemented, corruption cases are still rampant, involving various levels of society, ranging from high-ranking state officials to bureaucrats at the regional level. Law serves as a tool to create order and justice in society. In this context, legal system theory is important to understand how the law works in a country. One of the serious problems faced by Indonesia is corruption, which undermines the legal order and public trust in state institutions. Using the perspective of legal system theory, we can analyze the factors that cause weak law enforcement in the eradication of corruption in Indonesia. Legal system theory emphasizes that law is a system consisting of various elements that interact with each other. Some of the experts who developed this theory include.

Friedman divides the legal system into three main elements, namely legal structure, namely legal institutions and institutions that function to enforce rules, legal substance, namely applicable legal norms, rules, and policies, and legal culture, namely people's attitudes, perceptions, and habits in obeying the law. Luhmann sees law as a social system that is autopoietic (capable of reproducing itself). Law works in a closed system that only responds to events that the law itself deems relevant. In this context, the law must be able to adapt to social developments to remain effective. Pound introduced the concept of sociological jurisprudence which emphasized that the law must be able to reflect social needs and function as a tool of social engineering

One of the main factors that cause the rise of corruption is the weak aspect of the legal system in Indonesia, both in terms of legal substance, legal structure, and legal culture. In terms of legal substance, Indonesia already has various legal instruments that regulate the eradication of corruption under the Corruption Law. However, the main problem in this legal substance lies in several things:

- a. Inconsistency of Regulations: Some regulations still have legal loopholes that can be exploited by corrupt actors to avoid heavy sanctions.

- b. Sanctions That Lack a Deterrent Effect: Penalties for corrupt perpetrators are often considered too light compared to the impact caused. Many corruptors get short sentences and are even given remission.
- c. Lack of Regulation Regarding the Return of State Losses: Although there are rules regarding the return of assets resulting from corruption, their implementation is still weak, so the state often has difficulty in recovering losses due to corruption.

The legal structure includes institutions responsible for law enforcement against corruption cases. Indonesia has various institutions such as the Corruption Eradication Commission, the Police, and the Prosecutor's Office. However, there are several problems in this legal structure such as political intervention in law enforcement agencies, weak coordination between institutions, often overlapping authority between the KPK, the Police, and the Prosecutor's Office in handling corruption cases, which causes the legal process to be slow, and the lack of transparency in the legal process. Legal culture in society is also an important factor in the eradication of corruption. Some of the legal and cultural factors that worsen the condition of corruption eradication in Indonesia are the normalization of corruption practices. Corruption is often considered something common in bureaucracy and politics, so that people tend to be permissive to corrupt practices. Lack of public participation in supervision. The low level of public awareness to supervise and report acts of corruption has made many corrupt actors able to act freely. The rise of corruption in Indonesia cannot be separated from various problems in the legal system, both in terms of legal substance, legal structure, and legal culture.

To overcome this problem, concrete steps are needed involving regulatory reform, strengthening law enforcement institutions, and changing the legal culture in society. Only with a holistic approach can Indonesia realize a more effective legal system in eradicating corruption and restoring public trust in legal institutions. The Legal System Theory provides a comprehensive framework in analyzing corruption problems in Indonesia. By improving

the legal structure, strengthening the substance of the law, and building a better legal culture, the eradication of corruption can be carried out more effectively. Only with a strong commitment from all elements of society, the legal system can function optimally in upholding justice and eradicating corruption.

2. The Urgency of Evaluation of Perma Number 1 of 2020 concerning Guidelines for the Criminalization of Corruption Crimes in the Perspective of Justice

Criminalization is an important aspect of the criminal law system that aims to sanction criminals. The essence of punishment is not only limited to the provision of punishment, but also reflects the philosophy of justice, community protection, and rehabilitation of criminals. Along with the development of legal science, experts put forward various theories regarding the nature and purpose of criminals, which continue to develop in accordance with social and legal values in society. The essence of criminalization is rooted in the concepts of justice, social protection, and crime control. According to Sudarto, criminalization is a reaction to acts that violate criminal law. He emphasized that criminalization must consider the balance between the interests of the community and the individual rights of the perpetrators. Van Bemmelen explained that criminalization aims to uphold law and order and justice in society. He emphasized that criminalization is not only as retaliation, but also as a means to prevent crime and rehabilitate perpetrators.

Ancel introduced the concept of individualization of punishment, namely that punishment must be adjusted to the social and psychological conditions of the perpetrator, so that the purpose of punishment is not only as a punishment, but also to foster the perpetrator to become a good member of society. The purpose of penal crime has evolved from mere retaliation to an instrument of social justice and community protection. Immanuel Kant stated that punishment is a form of retribution for criminals. Punishment must be given as a logical consequence of his actions, without considering other benefits. Georg Wilhelm Friedrich Hegel developed the *lex talionis* theory (law of

retribution), in which punishment must be commensurate with the crime committed.

Jeremy Bentham argues that the main goal of criminalization is to prevent crime through a deterrent effect. He emphasized that punishment must have benefits for society, especially in reducing crime rates. Herbert L. Packer explained two criminal models, namely the crime control model which focuses on the effectiveness of crime prevention, and the due process model which emphasizes the protection of the rights of the accused. Barda Nawawi Arief stated that criminalization must pay attention to aspects of justice, welfare, and legal protection for both victims and perpetrators of crimes.

The fact that the penal code is not only limited to the provision of punishment, but also reflects the balance between the interests of individuals and society. Experts have different views on the purpose of punishment, from retribution theory to penitentiary theory. In the modern era, a more humane approach to criminalization is increasingly emphasized, with the main goal of preventing crime, protecting society, and rehabilitating perpetrators so that they can contribute to society again. Therefore, the penal system must continue to be evaluated in order to adapt to the evolving values of justice and human rights. Corruption is a criminal act that can hinder development and damage the legal order and community welfare. In Indonesia, various regulations have been issued to eradicate corruption, including the Supreme Court Regulation (Number 1 of 2020 concerning Guidelines for the Punishment of Corruption Crimes. This regulation aims to create more consistent criminal standards and avoid disparities in punishment for corrupt perpetrators.

However, in its implementation, this Perma has caused various debates related to the principle of justice, especially in terms of the effectiveness of providing a deterrent effect on corrupt actors. Therefore, the evaluation of Perma is urgent. Perma Number 1 of 2020 establishes guidelines for judges in imposing criminal penalties on perpetrators of corruption crimes based on the amount of state losses, profits obtained by perpetrators, and several weighting and mitigating factors.

This guideline categorizes criminalization into several levels based on the amount of state losses, the profits obtained by the perpetrators, the level of fault and the role of the defendant, and the impact caused. With this guideline, it is hoped that judges' decisions will be more uniform and objective. However, in practice, this regulation actually causes various problems that lead to injustice. Problems in the Implementation of Perma Number 1 of 2020 include the following:

- a. Lenient Punishment for Corrupt Perpetrators: One of the main criticisms of this Perma is the number of light sentences for corruption defendants, especially in the category of relatively small state losses. Judges often impose minimum sentences even though the perpetrator has a significant role in the crime. This causes the deterrent effect on perpetrators and potential corruptors to be weak.
- b. Imbalance Between State Losses and Punishments: In many cases, the penalties handed down are not proportional to the amount of state losses. Defendants who cause losses of billions of rupiah are sometimes only sentenced to a few years in prison or even only pay a fine. This is contrary to the principle of retributive justice, where the punishment should be commensurate with the crime committed.
- c. Lack of Attention to Non-Material Factors: This Perma focuses more on the aspect of state losses in material form, while social impacts, such as the loss of public trust in state institutions, are not taken into account in criminalization. From the perspective of substantive justice, the law should consider the broader impact on society.
- d. Potential Disparities in Judicial Practice: Although Perma aims to reduce criminal disparities, in practice there are still inconsistencies in the application of punishments. Some defendants with similar cases receive different sentences, depending on subjective factors, such as the role of the defendant and the judge's considerations.

Based on the above problems, the evaluation of Perma Number 1 of 2020 is an urgent need to ensure justice in the criminalization of

corruption. Some of the main reasons for the urgency of this evaluation are to increase the deterrent effect on corrupt actors. Article 16 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Criminal Guidelines (Perma No. 1 of 2020) Articles 2 and 3 of the Law on the Eradication of Corruption which explains that judges can not impose fines in the event of state financial losses or the state economy under Rp50,000,000, (fifty million rupiah). This provision needs to be evaluated because it will conclude the confusion related to the subjectivity of the verdict and can make disparities and sanctions that are not oriented towards the justice of the community that has been harmed by the corruption committed. The implication of Article 16 of Perma No. 1 of 2020 on Justice is that it can create a gap in the provision of punishment. This article has the potential to create a criminal disparity, where a corruptor who harms the state in small amounts is not subject to a fine, while other law violators still receive punishment even though the violation is relatively light. This is contrary to the principle of equality before the law.

It is possible that this rule is used by individuals to break down corruption crimes into several small transactions to avoid fines. From the perspective of utilitarian justice, this rule can actually harm society more broadly than the expected benefits. From the perspective of justice theory, Article 16 of Perma No. 1 of 2020 which allows judges not to impose fines for corrupt perpetrators with state losses below Rp50,000,000 has several weaknesses, including being contrary to retributive justice, because the punishment is not fully proportional to the perpetrator's actions. It is not in line with utilitarian justice, because it can reduce the deterrent effect and potentially increase small-scale corruption crimes. It can be abused, so it is contrary to the principle of substantive justice which demands fair legal treatment for all parties. Therefore, there needs to be an evaluation of this regulation to better reflect the principle of justice in the eradication of corruption, including by ensuring that the punishment not only considers the amount of state losses but also the social impact caused

There needs to be a revision that ensures harsher punishment for corruptors, especially for those who have a great influence in the crime. A light sentence will only provide an incentive for other officials to commit corruption because they feel that the law does not provide severe consequences. The evaluation needs to take into account the social and moral impact of acts of corruption. Not only the amount of state losses must be the main consideration, but also the impact on public trust and government stability. Perma No. 1 of 2020 needs to be clarified so as not to provide space for judges to impose minimum sentences on perpetrators with less strong reasons. Regulations regarding weighting factors must be more detailed so that justice is truly upheld.

The evaluation of Perma No. 1 of 2020 must also ensure that there is a supervisory mechanism for judges in issuing verdicts so that the punishment is more objective and not affected by external factors, such as political intervention or personal interests. Perma Number 1 of 2020 has a good purpose in uniformizing the criminalization of corruption crimes, but in practice it still raises various problems related to justice. Evaluation of this regulation needs to be carried out so that the law can be more effective in cracking down on corruptors with heavier penalties and commensurate with their impact on society. Only with significant improvements can Indonesia's legal system be more decisive in eradicating corruption and upholding the principle of justice for the entire community.

Conclusion

Based on the results of research related to Supreme Court Regulation Number 1 of 2020 concerning Guidelines for the Criminalization of Corruption Crimes in the Perspective of Justice, it can be known that the Supreme Court Regulation (Perma) Number 1 of 2020 concerning Guidelines for the Criminalization of Corruption Crimes is an important step in realizing justice and legal certainty in handling corruption cases. However, in its implementation, there are provisions that need to be evaluated, especially Article 16 which states that the judge can not impose a fine if the state financial loss

or the state economy is below Rp50,000,000.00. This provision has the potential to weaken the deterrent effect for corrupt perpetrators and is contrary to the principle of justice in criminal justice. From the perspective of justice, every perpetrator of corruption should still be subject to sanctions that have a repressive and preventive impact, including fines, in order to prevent small-scale corruption practices that can develop into larger crimes. Therefore, the evaluation of Article 16 in Perma No. 1 of 2020 is urgent to ensure that the criminal policy in corruption crimes remains effective, fair, and does not provide loopholes for perpetrators to avoid legal liability.

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