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IMPLEMENTATION OF LAW OF THE REPUBLIC OF INDONESIA NUMBER 20 OF 2001 CONCERNING AMENDMENTS TO LAW NUMBER 31 OF 1999 CONCERNING THE ERADICATION OF CORRUPTION CRIMES AGAINST SELECTION BRIBERY CASES INDEPENDENT PATHWAY STUDENTS

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ABSTRACT

This study aims to find out and analyze the phenomenon of bribery cases for independent path student selection and find out and analyze about the factors causing and impacting corruption. This research belongs to the normative type of research. So it can be known that the act of bribery in the phenomenon of bribery cases of independent track students has a damaging impact that is as bad as the criminal act of bribery bribery that occurs in the public domain, so it is necessary to take concrete steps to criminalize the act of bribery. Bribery as stipulated in the UUTPK is very diverse, the threat of criminal penalties and fines regulated in it also varies, causing legal uncertainty in law enforcement and contrary to the principle of legality. In addition, corruption is caused by many factors, both political, legal, economic, organizational, and cultural. Economic factors, such as low salaries, losses suffered, poverty, and others are often considered the dominant factors

Keywords: Corruption, Bribery, Admission of New Students

INTRODUCTION

The admission system for prospective new students at state universities, one of which is through an independent pathway mechanism.

Unfortunately, the line has loopholes in the occurrence of corruption, such as the case of being caught by the Rector of the University of Lampung (Unila) Karomani (KRM),

Unila Heryandi (HY) Vice Rector I for Academic Affairs and Unila Senate Chairman Muhammad Basri (MB) allegedly accepted bribes related to the graduation of new student admissions from independent lines.

Meanwhile, the private bribe giver is Andi Desfiandi (AD). This action is considered to hurt the reputation and trust of the public in the world of higher education in Indonesia.

According to him, this action smeared the world of education carried out by the leadership of one of the state universities.

Therefore, he asked the government to evaluate the new student admission system so that loopholes or potential corruption can be closed.

"Given that, the arrest of the Rector of Unila proves that there is a potential hole of corruption in the admission of new students to the independent pathway,"

The government, especially the Ministry of Education, Culture, Research and Technology (Kemendikbud Ristek) should immediately compile technical guidelines (juknis) that regulate

provisions related to the admission of new students for independent pathways by prioritizing the principles of transparency and accountability.

"The Ministry of Education and Culture is to ensure that the governance system for independent pathway student admissions in all state universities is thoroughly evaluated."

"The arrest of the rector of the University of Lampung proves that there is a gap in the potential for corruption in the admission of independent pathway students".

METHOD

The research method used in this study is a normative legal research method. Normative legal research is legal research carried out by examining library materials or secondary data (Soekanto & Mamudji, 2014).

According to Peter Mahmud Marzuki (Marzuki, 2010), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced.

In this type of legal research, often the law is conceptualized as what is written in legislation or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate (Amiruddin, 2012).

RESULTS AND DISCUSSION

The Phenomenon of Bribery Cases for Independent Pathway Student Selection

The crime of bribery is the most perfect form of behavior to describe corruption, in some sociological literature, corruption is often identified with bribery.

Therefore, almost every regulation that regulates corruption as a criminal act, always mentions bribery as one of the prohibited acts.

Bribery is the most prone criminal offense to occur to any public official who is inherently attached to him or her public authority.

UNCAC, therefore, pays great attention to bribery by placing it first in chapter III on criminalization and law enforcement.

Even within the concept offered by UNCAC, prohibited bribery is not just bribery involving public officials or occurring in the public sector.

From the point of view of legal comparison, the regulation regarding the prohibition of bribery is regulated within the Wetboek Van Strafrecht which can generally be divided into 2 (two) categories:

1. Active bribes involving public officials (*Wetboek Van Strafrecht, Titel IV VIII & VIII Misdrijven Betreffende de uitoefening van Staatsplichten En Staatsrechten*, n.d.)
2. Passive bribery involving *public officials* (*Wetboek Van Strafrecht, Titel IV VIII & VIII Misdrijven Betreffende de uitoefening van Staatsplichten En Staatsrechten*, n.d.)

The criminal act of bribery has long been regulated in Indonesian laws and regulations, since the Dutch colonial era, the prohibition on giving and receiving bribes has been regulated in the *Wetboek Van Strafrecht (WvS).*

Similarly, when WvS was adopted into the Criminal Code, the criminal act of bribery was still regulated as an act that was prohibited in Indonesia until now as regulated in the UUTPK.

In its development, positive law in Indonesia has never clearly formulated the definition of bribery.

Therefore, the formulation of Article 12B paragraph (1) of the UUTPK which states that any gratification to a civil servant or state administrator is considered to be the giving of a bribe..." is a multi-interpretive sentence,

because bribery is formulated into several different articles of the UUTPK, namely Article 5, Article 6, Article 11, Article 12, and Article 13, and each provider has a different formulation of delink and the threat of punishment.

a. The first formulation of bribery is that which involves a civil servant or state organizer as the recipient of a bribe, to do or not to do something in his office, or to relate to something contrary to his obligations.

The threat of punishment to the giver and recipient of the bribe is a maximum imprisonment of 1 year and a maximum of 5 years and/or a fine of at least Rp.50,000,000.00 and a maximum of Rp.250,000,000.00.

With this formulation, the threat of punishment can be alternative by imposing one type of punishment, criminal or fine, or cumulative by imposing criminal penalties and fines simultaneously.

b. The next formulation governing bribery is to involve a judge or advocate.

The threat of punishment to the giver and recipient of the bribe is a maximum sentence of 3 years and a maximum of 15 years and a trough fine of a little Rp.150,000,000.00 and a maximum of Rp.750,000,000.00.

With the formulation as intended, the threat of punishment that can be imposed is cumulative to impose criminal penalties and fines simultaneously.

c. The next formulation of bribery provides for passive bribery (the recipient of bribes) by civil servants or state administrators, in whose formulation it is sufficiently proved that the acceptance of bribes is carried out by insinuating or it can be suspected that the bribes are related to the power or authority associated with his office.

The threat of punishment to the recipient of bribes as referred to is a maximum imprisonment of 1 year and a maximum of 5 years and or a fine of at least Rp.50,000,000.00 and a maximum of Rp.250,000,000.00.

With the formulation of Article 11, the threat of punishment can be alternative by imposing one type of punishment, criminal or fine, or cumulative by imposing criminal penalties and fines simultaneously.

d. The last formulation of bribery regulates passive bribery (recipients of bribes) by civil servants, state organizers, judges, and advocates.

The threat of punishment for bribe recipients is a sentence of life imprisonment or imprisonment of at least 4 years and a maximum of 20 years and a fine of at least Rp.200,000,000.00 and a maximum of Rp.1,000,000,000.00. (Law on the Eradication of Corruption, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999).

With this formulation, the threat of punishment can be alternative by imposing one type of punishment, criminal or fine, or cumulative by imposing criminal penalties and fines simultaneously.

In addition to the act of bribery as formulated above, UUTPK also formulates gratuities that are considered bribes, namely for civil servants or state administrators who receive gratuities related to their position or contrary to their obligations or duties.

For these acts, they are threatened with life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years, and a fine of at least Rp.200,000,000.00 and a maximum of Rp.1,000,000,000.00.

With various formulations regarding the criminal act of bribery and gratification which is considered bribery, it shows that gratification has 2 (two) different dimensions.

The first is a gratification which is not considered bribery and gratification which is considered bribery. Referring to the definition of gratification given by UUTPK22, gratification is a gift in a broad sense, which includes giving money, goods, rebates *(discounts)*, commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment, and other facilitation.

With the meaning as intended, gratification has a neutral meaning, there is no despicable or negative meaning of the word gratification (Tim Penulis, 2010).

Arrangements regarding gratification are necessary to prevent the occurrence of corruption acts of bribery committed by civil servants or state administrators.

When viewed from its history, gratification is actually a form of solidarity, mutual cooperation, and concern that has become a culture that lives in a society in Indonesia.

With such a history, gratification is actually a positive practice in social life. However, when the practice of gratification is adopted and used in the bureaucratic system, it becomes an obstacle to realizing good governance.

Gifts given to public officials tend to be self-serving and in the long run, can potentially affect the performance of public officials which ultimately creates non-transparent and accountable management of government.

The characteristic of the existence of merit or mutual expectations from the giver to the recipient of the gratification makes gratification synonymous with bribery. Bribery and gratification make civil servants or state organizers who receive it have a *conflict of interest.*

The term conflict of interest is a situation where a state operator who gains power and authority under laws and regulations has or is suspected of having a personal interest in any use of the authority he has, so as to affect the quality and performance that it should be.

In bribery, it is clear that after an agreement between the giver and the recipient of the bribe, the bribe recipient has an interest in carrying out the promise he made with the bribe-giver.

Under such conditions, the recipient of the bribe has a conflict of interest in exercising authority in his office. Meanwhile, conflicts of interest that can arise from receiving gratuities include:

1. The receipt of gratuities can bring *vested interest* and a reciprocal obligation to a gift so that the independence of state administration can be compromised;
2. Acceptance of gratuities may interfere with the objectivity and professional judgment of state organizers;

3. The receipt of gratuities can be used to obscure the occurrence of corruption crimes.

Because there are consequences arising from gratification in the form of self-expectation or return from the gratification giver, as well as the emergence of a conflict of interest, then before the onset of a conflict of interest, gratification needs to be publicly stated by the recipient. A declaration or declaration of receipt of gratification *(declaration* of interest) is important to decide the existence of a vested interest in gratuities granted to civil servants or officials of the country.

The declaration of interest in Indonesia is manifested in the form of reporting by the recipient of gratuities to the state through the KPK as referred to in Article 12 C of UUTPK24.

Reporting done by gratuity recipients is not just an administrative act. Gratification reporting can be interpreted as follows:

1. Gratification reporting shows that the receipt of gratuities has no effect on civil servants or state administrators in exercising their authority.
2. Gratification reporting means that the recipient of the gratification has no hidden intention behind the gratification received.
3. Gratification reporting means that the recipient of the gratification submits a decision regarding the legal status of the gratification goods to the state.
4. Gratification reporting also means that gratification whistleblowers are trying to support efforts to prevent corruption.

The regulation regarding the criminal act of bribery and its slices with the criminal act of gratification which is considered bribery can cause uncertainty about the boundaries between the formulation of the criminal act of bribery between one and the other because of its identical formulation.

In addition, the unclear and unclear boundaries between the formulation of the criminal act of bribery and the formulation of the criminal act of gratification which is considered bribery open the opportunity for multi-interpretation to occur. The principle of legality is one of the fundamental principles in criminal law.

A well-known phrase to describe the principle of legality is " *nullum dictum nulla poena sine praevia lege penal",* it should not be in a person's law if the law does not provide for the acts he does.

In Indonesian criminal law, the principle of legality is contained in Article 1 paragraph 1 of the Criminal Code which states "an act cannot be punished, except based on the strength of existing criminal legislation provisions".

According to Enschede, in the principle of legality, there are only 2 meanings, namely:

1. An act can be punished if it is regulated in criminal legislation;
2. The power of criminal provisions cannot apply retroactively.

Similarly, Wirjono Prodjodikro stated that criminal sanctions can only be determined by the law and criminal provisions should not apply retroactively (Wirjono, 2009).

The same thing was conveyed by Sudarto who stated that there are two things contained in the principle of legality. First, a criminal act must be formulated in legislation.

Second, this legislation must exist before the occurrence of non-criminal (Sudarto, 1990). The principle of legality demands legal certainty having written conditions or in written legal form *(lex script).*

The written law must be interpreted as what is read *(lex stricta).* Criminal law is formulated in detail and meticulously and is not a multi-interpretation *(lex certa).* This principle is also known as *bestimmtheitgebot.*

The formulation of vague or overly complex criminal provisions will only give rise to legal uncertainty and hinder the success of criminal prosecutions because citizens will always be able to defend themselves that such provisions are useless as a code of conduct (Remmelink, 2003).

With the explanation above, theoretical difficulties arise for jurists who have a legalistic understanding to determine the act of gratification that is considered bribery, while bribery itself does not have a clear definition because it is regulated in several provisions with different formulations.

In addition, legal uncertainty arises in the enforcement of criminal acts of bribery and gratification.

Factors Causing and Impacting Corruption

Corruption occurs due to various causes or factors. These factors include political, economic, social, and cultural. In systemic corruption, these factors intertwine and determine the occurrence of corruption.

Although in some respects corruption brings benefits, the negative impact of corruption outweighs its usefulness.

The negative impact of corruption not only harms the country's finances and economy, but also afflicts the people and damages the joints of people's lives, nations, and states.

In the book entitled The Role of Parliament in Eradicating Corruption, ICW (2000) identifies four factors that cause corruption, namely political factors, legal factors, economic and bureaucratic factors, and transnational factors.

Political factors are one of the causes of corruption because many political events are influenced by *money politics.*

The legal factor is the cause of corruption because many legal products are not clear in their rules, the articles are multi-interpretive, and there is a tendency for the rule of law to be made to benefit certain parties even though ordinary people cannot see it.

Similarly, sanctions are not equivalent to prohibited acts, so they are not on target and are felt to be too light or too heavy.

In line with this, Susila (Hamzah, 2005), stated that acts of corruption are easy to arise because there are weaknesses in the legislation that includes:

(1) The existence of laws and regulations that contain the interests of certain parties,
(2) The quality of laws and regulations is inadequate,
(3) Less socialized regulations,
(4) Sanctions are too light,
(5) Inconsistent and indiscriminate application of sanctions, and
(6) Weak field of evaluation and revision of laws and regulations.

Weak law enforcement, the low mentality of the apparatus, low public awareness, and lack of government political will, are also triggers for corruption.

Economic factors are the cause of corruption, especially in countries where the economic system is very monopolistic.

State power strung together with insider information helps create opportunities for government employees to heighten their interests and their allies.

The series of factors relates to bureaucratic factors, in which in such an atmosphere the government's economic policies are implemented, developed, and monitored in a non-participatory, non-transparent and unaccountable manner.

Transnational factors are strongly linked to the development of cross-border economic relations which often add source land for the growth of corruption in the government bureaucracy.

Corruption is easy to occur because foreign (transnational) companies can operate in a country without having to enter the line of the central bureaucracy.

They can get into the bureaucratic line of local government by giving pelican money so that they can invest in the regions.

Corruption proceeds like a symbiosis of mutualism, where foreign businessmen have money that can be used to bribe officials to obtain permission to do business in the regions, while regional elites have the authority to decide.

ICW describes political, legal, economic, and transnational factors as contributing factors to corruption. (Mashal, 2011) provides a not much different view of the causes of corruption.

Citing Mauro's views, mentioned six things that cause corruption to take place.

1. The motivation to earn in an extreme way, is associated with conditions of poverty, low wages, and high risks from work (due to illness, accidents, and unemployment).
2. The opportunity to get involved in corruption, because is caused by many regulations that encourage a high chance of committing corruption.
3. Weak legislative and judicial systems.
4. The population is small with an abundant amount of natural resources.
5. Weak laws and ethical principles.
6. Political instability and weak political will.

Some people say that poverty is the root of the problem of corruption. This is not entirely true, because many rich and prosperous countries are full of scandals that involve very few people who can be categorized into poor or deprived groups.

Much of the corruption was committed by Asian and African leaders, and they were not classified as poor people.

Thus, corruption is not caused by poverty, but quite the opposite, poverty is caused by corruption (Pope, 2003).

CONCLUSION

Based on the explanation above, it can be concluded that the act of bribery in the phenomenon of bribery cases in the selection of independent pathway students has a damaging impact that is as bad as the criminal act of bribery that occurs in the public domain, so it is necessary to take concrete steps to criminalize the act of bribery.

Bribery as stipulated in the UUTPK is very diverse, the threat of criminal penalties and fines regulated in it also varies, causing legal uncertainty in law enforcement and contrary to the principle of legality.

In addition, corruption is caused by many factors, both political, legal, economic, organizational, and cultural. Economic factors, such as low salaries, losses suffered, poverty, and others are often considered the dominant factors.

In fact, political factors, main infidelity between political elites and businessmen, are key factors that lead to corruption. Corruption gives rise to different understandings among perpetrators (pro-corruption) and opponents of corruption.

Pro-corruption parties, that is, corruptors who enjoy the results of corruption will definitely declare corruption positive for development efforts because, with development, corruptors can manipulate it for their benefit.

On the contrary, for people who lose money because of corrupt actions, it is clear that corruption is negative and a disease that must be eradicated.

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