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Prospects for Eradicating Corruption Through the Authorisation of Suspect Determination by Judges in Indonesia

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Abstract

The objective of this research is to explain the justification behind empowering judges to determine suspects in corruption cases based on trial evidence. Additionally, it aims to discuss the potential for incorporating this authority into future reforms of procedural laws related to corruption eradication. This study employs a normative legal research methodology, utilising both a legislative and conceptual approach. The findings indicate that the fundamental justification for granting judges the authority to determine suspects in corruption cases based on trial evidence includes two key aspects: Firstly, corruption is considered an exceptional crime. Secondly, judges' determination of corruption suspects based on trial facts aligns with the theoretical principles of legal realism derived from the American legal tradition. The regulation of granting the judge the power to determine the suspect based on trial facts in cases of corruption, which is considered an exceptional crime that supersedes the principles of conventional procedural law, has been implemented. This includes two main aspects: firstly, the implementation of the reverse proof system in corruption offences, which is not present in conventional criminal procedure law; secondly, the suspension of the principle of non-retroactivity in the efforts to eliminate acts of terrorism, which is also absent in conventional criminal procedure law. Furthermore, a notable instance of judicial regulation in the identification of suspects has occurred in the context of the crime of Illegal logging, as stipulated in Law Number 18 of 2013 about the Prevention and Eradication of Forest Destruction.

Keywords: Determination of Suspects; Judges; Corruption Crime.

The topic of eradicating and preventing corruption in the public sector remains a compelling subject for discussion, particularly within the realm of law enforcement. This signifies that each lawful measure undertaken in the pursuit of eliminating corruption holds significance. Hence, it is justifiable to classify the offence of corruption as an extraordinary crime due to its systematic and pervasive nature. If left unchecked, the consequences of corruption can be catastrophic for economic stability and national progress. Consequently, combating corruption necessitates the implementation of exceptional legal measures.

This tendency is comprehensible due to the adverse consequences resulting from this criminal conduct. The deduced influence can affect multiple aspects of life. We acknowledge that corruption is a grave issue, as it poses a threat to the stability and security of society, hampers socio-economic progress, undermines political integrity, and erodes democratic principles and moral values, as it becomes ingrained in the culture over time. Corruption poses a significant danger to the concept of a fair and flourishing society. Romli Atmasasmita's statement that corruption in Indonesia has been pervasive in the government since the 1960s and continues to persist, despite efforts to eradicate it, is not an exaggeration.

According to Indonesia Corruption Watch, the aggregate sum of corruption in 2011 was IDR 2.13 trillion ($US 238.6 million). The judicial sector, including the police, courts, public prosecutors, and the Ministry of judicial, along with significant revenue agencies such as customs services and tax authorities, the Ministry of Public Works, Bank Indonesia, and the Central Bank, are among the institutions widely regarded as corrupt.

The Anti-Corruption Law serves the purpose of not only penalising corrupt individuals, but also aims to recover the financial damages incurred by the State due to corruption offences. Furthermore, the government was compelled by the political situation and public demands to promptly address the issue of corruption in Indonesia. This led to the enactment of Law No. 31 of 1999, which specifically addresses corruption crimes. This law was subsequently modified and expanded by Law No. 20 of 2001, commonly known as the Anti-Corruption Law.

Nevertheless, the present predicament reveals that this objective has not yielded the desired results, aside from the fact that the enforcement measures appear to be biassed, in addition to the disproportionate ratio between the state's expenditure to combat corruption and the relatively meagre recovery of financial losses incurred by the state. In 2012, it was reported that the amount of money allocated towards combating corruption between 2001 and 2009 was Rp. 73.1 trillion. Additionally, the state managed to recoup Rp. 5.3 trillion in financial losses during the same period. The lack of efficiency in the efforts to eradicate corruption in Indonesia is supported by the Corruption Perception Index, which remains relatively high at 40, ranking 85th out of 180 nations worldwide.

The criminal act of corruption in Indonesia has had a significant expansion and has infiltrated different sectors, including the Executive, Legislative, and Judicial branches. Corruption not only damages the financial resources of the State, but also infringes upon the social and economic rights of the community, and is even classified as an exceptional offence. Hence, more strategies must be employed to eliminate corruption in Indonesia. Throughout history, the Government of Indonesia has implemented numerous initiatives to combat corruption and safeguard State money. The government has implemented a range of legislation, institutions, and specialised teams to address corruption at its core, with the aim of safeguarding the economy and state finances.

The history of Corruption Eradication dates back to the old order government, during which efforts to combat corruption were initiated through the enactment of Law Number 24 Prp of 1960. This law introduced provisions to address corruption crimes in the Criminal Code and established specialised institutions dedicated to eradicating corruption. Nevertheless, the institution's efforts to eliminate corruption were mostly ineffective due to the absence of specific provisions addressing actions that cause financial loss to the state. Law No. 3 of 1971 on the Eradication of the Crime of Corruption was implemented during the New Order period (1971-1999). This law incorporated the definition of corruption from the Criminal Code and utilised formal offences. The OPSTIB Team was established as a Law enforcement body in compliance with Presidential Instruction No. 9/1977. However, the performance of the

OPSTIB Team was lacking, leading to the formation of the State Organiser Wealth Examination Commission / KPKPN in 1999 by Presidential Decree 127/1999.

During the reform era (1999-2002), Law No. 3 of 1971 became outdated in meeting the evolving legal requirements. As a result, Law No. 31 of 1999 was enacted and subsequently amended by Law No. 20 of 2001, which focused on the eradication of corruption and aimed to improve the definition of corruption offences outlined in Law 3/1971 (active corruption and passive corruption). Confirmation of the establishment of corruption offences as legal offences and broadening the definition of public officials.

Furthermore, Law No. 28/1999 was enacted to establish a clean state administration that is free from corruption, collusion, and nepotism. Furthermore, to expedite the elimination of corruption, a Joint Corruption Eradication Team was established under PP 19/2000, in addition to the law enforcement efforts conducted by the Police and the Public Prosecutor's Office. The establishment of the Corruption Eradication Commission was a response to the ineffective and inefficient performance of government agencies in handling corruption cases. This commission was created under Law No. 30/2002.

Examining the profound consequences of corruption, it becomes evident that it not only undermines the fundamental pillars of a nation's economy, but also significantly impairs the global economic system and undermines democratic principles and the pursuit of justice worldwide. Given this fact, the elimination of corruption is not solely the duty of one country, but rather a collective obligation of all nations. In terms of law enforcement, achieving this goal necessitates international collaboration.

This aligns with the 2003 UN Convention against Corruption, which governs the process of recovering assets. The Convention mandates that asset recovery is a core concept, and participating countries are obligated to exert the utmost effort to collaborate and offer help in asset recovery endeavours. The primary aim of the UN Convention against Corruption is to restore governmental assets in order to revive the economy. As previously stated, the process of recovering assets, particularly those situated in foreign countries, necessitates collaboration between the respective nations involved. An example of such an agreement is the Mutual Legal Assistance in criminal situations (MLA) Agreement.

From a legal standpoint, there are numerous legal instruments in place, both at the national and international levels, to address corruption. However, in practice, prosecuting corruption cases can be challenging. It is not uncommon to observe that, in court, individuals are identified as suspects of corruption based on the evidence presented during the trial. Nevertheless, the Corruption Eradication Commission, the Police, and the Attorney General's Office have refrained from officially designating him as a suspect in a corruption violation.

However, it is still important to acknowledge the performance of the three law enforcers in combating corruption. Based on the most recent data, the overall effectiveness of law enforcement against corruption in Indonesia is generally commendable. As an illustration, data from the years 2017-2021 reveals that the KPK carried out a total of 604 investigations, 551 investigations, 510 prosecutions, 457 convictions, and 476 executions. Furthermore, the KPK has effectively implicated certain firms as suspects. This is a historical documentation for the KPK, which formerly lacked the authority to investigate corporations as potential offenders.

The Prosecutor's Office in the years 2017-2021 also follows the same principle. According to the 2021 Corruption Case Prosecution Trends Monitoring report released by Indonesia Corruption Watch (ICW), the Prosecutor's Office has had fluctuating performance in the field of prosecution over the past five years. There has been a rise in the number of corruption

cases being prosecuted, as well as an increase in the number of suspects implicated and the amount of public damages caused. The Prosecutor's Office dealt with the highest amount of state damages in the corruption case of PT Asabari, which amounted to IDR 22,780,000,000,000 (IDR 22.78 trillion).In 2021, the Prosecutor's Office dealt with 371 cases involving 814 individuals who were identified as suspects.

When evaluating the comparison between the target and the actual execution of corruption cases, the overall performance of the Prosecutor's Office may be classified as category B or Good, as the percentage stands at approximately 64.8%. Nevertheless, the Prosecutor's Office deals with an average of 31 cases per month, indicating that there may be several prosecutors in the regions who are potentially neglecting corruption charges. According to the monitoring results, the Prosecutor's Office has identified 5 actors who are predominantly named as suspects. These actors include 242 individuals from the civil service (ASN), 159 individuals from private parties, 101 Village Heads, 60 Directors/Employees of Regional-Owned Enterprises (BUMD), and 58 Village Apparatus. Additionally, there are several individuals with political experience who are involved in the acting profession, such as the Chairman or Member of the Regional People's Representative Council (DPRD) (11 individuals), the Regent or Deputy Regent (5 individuals), and the Chairman or Member of the Regional People's Council (DPR) (2 individuals). In the corruption case involving PT Asabri, the Attorney General's Office has identified 10 corporations as suspects. This deserves recognition.

Contrary to the Police's performance in the years 2017-2021, the monitoring findings indicate that the Bhayangkara corps' performance has actually declined in the past five years, both in terms of the number of cases and the number of suspects identified. The goal for addressing instances of corruption conducted by the Police in 2021 is to handle 1,526 cases. Regarding personnel, Indonesia has a total of 517 Police institutions, which include 1 national-level Directorate of Corruption, 34 provincial-level Polda, and 483 regency/city-level Polres.

Every police force at the provincial and district/city levels must address corruption cases, with the number ranging from a minimum of one case to a maximum of 75 cases. At the Police Headquarters Criminal Investigation Unit, the goal is to handle 25 cases each year. In 2021, the Police dealt with only 130 cases and identified 244 individuals as suspects, as shown by the findings of ICW surveillance. When comparing the aim and actual prosecution of corruption cases, the overall performance of the Police is categorised as E or Very Poor, with a proportion of only approximately 8.45 percent.

Nevertheless, in terms of finance and staff, the Police possess ample resources in comparison to the Attorney General's Office and the KPK. According to the monitoring data, it is evident that the Police frequently utilise articles related to state financial losses when prosecuting corruption cases. A total of 121 corruption cases, accounting for about 94.5%, were subject to prosecution under paragraphs 2 and 3 of the Anti-Corruption Law. Furthermore, for the remaining instances, law enforcement employed charges of bribery in three cases, extortion in two cases, money laundering in two cases, gratuities in one case, and conflict of interest in procurement in one case. The Police identified five actors who were prominently listed as suspects: ASN (73 individuals), Village Heads (57 individuals), Private Sector (37 individuals), Village Apparatus (28 individuals), and Directors/Employees of BUMD (17 individuals). Regarding individuals involved in corruption cases, the Police did not consider any political figures as potential suspects. This indicates that the Police have been unsuccessful in identifying and focussing on crucial individuals. Regarding patterns, the Police primarily arrested Village Heads and Village Apparatus officials at the village level.

The author acknowledges that the performance of the three law enforcement agencies is not being intentionally undermined, but reiterates that this is the truth. Various corruption cases that have been prosecuted before the Corruption Court have identified individuals or legal entities who have met the necessary criteria to be classified as corruption suspects, based on the legal evidence presented. For instance, in the case of corruption involving Setya Novanto, his initial designation as a suspect was revoked by Pre-Trial Decision Number 97/Pid.Prap/2017/PN.Jkt.Sel. This decision was made because his designation as a suspect was solely based on trial facts, and the Corruption Eradication Commission (KPK) relied on the Investigation Warrant (Sprindik) of Irman and Sugiharto, as well as Andi Narogong, to question witnesses, carry out seizures, and gather evidence. The examination, seizure, and evidence findings were utilised in the Setya Novanto case. The public has been captivated by the pretrial verdict of Setya Novanto, as it is believed to be riddled with several abnormalities. The anti-corruption group ICW asserts that there were multiple anomalies in the pretrial procedure concerning the designation of Setya Novanto as a suspect.

Despite the cancellation of the pretrial judgement, Setya Novanto, who was previously re-examined and identified as a suspect in a corruption case, has now been prosecuted and sentenced by the court. He has been sentenced to 15 years in jail, fined IDR 500 million, and ordered to pay restitution of USD 7.3 million. In addition, the judge additionally invalidated the political privileges of the previous Speaker of the House of Representatives for a duration of five years. Upon reflection on the case, it is evident that the trial's facts can be utilised for law enforcement, particularly in the prosecution of corruption offences in Indonesia. Therefore, the architecture of the law enforcement system for combating corruption must be adapted to these specific circumstances. The application of specific criminal offences should not be considered equivalent to the application of general criminal offences. One potential measure to consider is granting judges the authority to assign the status of a suspect in a corruption offence to an individual or legal body, based on the evidence shown during the trial. This research delves into the issue of restricting the jurisdiction of judges to decide suspects in corruption charges. It examines the rationale behind this regulation and explores the potential benefits of implementing it.

Research Methods

This study is a normative legal research that focusses on the concept of 'positive legal norms in the legislative system'. This research has verified that the suitable and employed method in this legal research is a statutory approach, as well as a conceptual approach. The research methodology employed in this work involves doing a document analysis, complemented by interviews. Documentary studies involve the gathering of secondary information from a variety of sources such as legal texts, books, academic journals, articles, research reports, and other relevant materials pertaining to the subject being investigated.

Discussion

1. The rationality of regulating the authority to determine suspects by judges in corruption offences in Indonesia

Corruption in Indonesia has pervaded the power system in a highly organised, methodical, and extensive manner. The exercise of power is hindered in its ability to properly benefit the populace due to the prevalence of widespread corrupt practices. The abundance of natural resources in the country known as gemah ripah loh jinawi has hindered the realisation of prosperity. The Indonesian people have indeed achieved this situation. Consequently, following the reformation, the elimination of corruption has emerged as a top goal. Indeed, nearly all reform initiatives, whether through direct or

indirect means, strive to minimise the possibility of corruption. The complete elimination of corruption is not merely an aspiration for all, but it cannot be achieved effortlessly or quickly.

Corruption is a grave issue in the global arena as it poses a significant threat to the stability and security of both society and the state. Moreover, it jeopardises the social and economic progress of society, politics, and can even undermine democratic principles and national ethics by fostering a culture of corruption. The United Nations Convention Against Corruption, established in 2003, is a clear indication of the world community's apprehension regarding the consequences of corruption. Indonesia officially approved and accepted this convention by enacting Law Number 7 in the year 2006. One of the key statements in the introduction of the law is that corruption is no longer limited to a specific area, but has become a global issue that impacts society and the economy as a whole. Therefore, it is necessary to have international collaboration to prevent and eliminate corruption, as well as to recover or return assets obtained through corrupt practices.

Based on this premise, it is evident that corruption is an exceptional offence. Thus, in order to further explain the justification (raison d'etre) for giving the power to identify the suspect to the court in cases of corruption, the author presents the following justifications:

a. The crime of corruption as an extra ordinary crime.

Crimes that are classified as extraordinary or extraordinary crimes have a significant worldwide influence on human civilisation. Various phrases are employed to define the concept of an extraordinary crime, including extraordinary crimes, extreme crimes, serious crimes, and crimes that have a wide-ranging and systematic influence on social, economic, political, legal, and cultural aspects of life. Regardless of the terminology employed to characterise the interpretation of "extraordinary crimes," it is clear that these crimes differ from normal crimes in terms of their nature, characteristics, methods of commission, and impact.

There is a scarcity of sources available to explore the meaning, definition, or interpretation of the word "extraordinary crimes." When considering the matter of exceptional crimes, the focus is mostly on crimes against humanity and genocide, which are both severe infringements of human rights.

The term "extraordinary crime" originated from severe violations of human rights. Article 5 of the 1998 Rome Statute outlines the criteria for the most severe crimes that are of interest to the international community, including genocide, crimes against humanity, war crimes, and crimes of aggression. Subsequently, the phrase "extraordinary crime" is consistently applied to these four specific categories of offences. While the emergence of democracy in most countries throughout the world makes it increasingly impossible for war crimes and crimes of aggression to occur, they still remain challenging to detect or prevent. Nevertheless, in line with recent legal advancements, the phrase "extraordinary crime" is now extended beyond the four specific sorts of crimes to encompass offences that share similar features, such as terrorism, narcotics, and psychotropic crimes.

Extraordinary crimes in Indonesian are referred to as extraordinary crimes. Ford holds the belief that the exceptional offences mentioned in this context pertain to severe breaches of human rights. Extraordinary crimes refer to acts that are undertaken with the explicit goal of violating human rights and falling under the jurisdiction of the International Criminal Court. Perpetrators of these crimes may be subject to the imposition of the death penalty.

Sukardi defines extraordinary crime as a criminal act that has a significant and wide-ranging impact on social, cultural, ecological, economic, and political matters. This impact is evident in the consequences of the action and has been examined by various governmental and non-governmental organisations at national and international levels. Winarno argues that

extraordinary crime not only adversely affects the economy, but also has detrimental consequences for the environment, society, and culture of a country.

According to Mar A. Drumbl, an extraordinary crime refers to a highly exceptional offence that is significantly distinct from other criminal acts in terms of its magnitude or scale. This crime is grave, pervasive, and colossal, and it poses a threat to humanity. Claude Pomerleau defines extraordinary crime as a deliberate, methodical, and coordinated behaviour, act, or action that primarily targets individuals and certain groups based on discriminatory motives. Within the Indonesian legal framework, these particular offences are categorised as unique criminal offences, as they are governed separately from the provisions of the Criminal Code. Some examples of specific legislation that governs crimes that are deemed to share similarities with exceptional crimes include: 1) Law No. 26/2000 on Human Rights Courts; 2) Law of the Republic of Indonesia Number 5 of 2018 on the Amendment to Law Number 15 of 2003 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 on the Eradication of the Criminal Offence of Terrorism; 3) Law No. 35 of 2009 concerning Narcotics; 4) Law No. 5 of 1997 on Psychotropic; 5) Law No. 31 of 1999 jo. Law No. 20 of 2001 on the Eradication of the Criminal Act of Corruption.

The categorisation of exceptional offences will inevitably provoke discussions and divergent opinions among legal scholars. However, despite varying interpretations, experts usually contend that crimes can be regarded as extraordinary if they have a wide-ranging and systematic impact, resulting in significant damages. The category of crimes that are considered extraordinary crimes is distinguished by the presence of specific procedural laws in their enforcement. This include acts of corruption or corrupt practices. Essentially, the procedural law followed in the Corruption Court examination adheres to the relevant criminal procedural law, with certain deviations or specificities.

Corruption is a distinct aspect of criminal law that differs from normal criminal law in several ways. It involves violations from procedural laws and is handled differently in terms of its material aspects. Hence, the criminal act of corruption is specifically designed to reduce the frequency of leaks and irregularities in the financial and economic affairs of the state, whether by direct or indirect means. By proactively identifying and addressing these abnormalities at the earliest possible stage, it is expected that the functioning of the economy and the progress of growth may be effectively ensured, leading to a steady improvement in development and the overall well-being of society.

Based on these characteristics, it may be inferred that the general mechanism of criminal procedural law may be altered if it has been specifically regulated in the procedural legislation for corruption offences. The discourse of reforming the criminal procedure law for corruption in the future includes the possibility of judges determining corruption suspects based on facts and evidence presented in the trial. This reform aims to expedite the judicial process of corruption cases and eliminate corruption in Indonesia.

b. Determination of corruption suspects by judges based on trial facts from the perspective of legal realism

American legal realism is a school of legal philosophy under which law and morals are distinguished, and greater emphasis is placed on social facts. Realism refers to the approach of addressing the actual state of the world, in its current form. Legal realism is an examination of law in practice, rather than merely as a set of norms outlined in legislation that may not be properly enforced.

According to proponents of this school of thought, it is necessary to disregard the normative aspect of legislation. For them, the law is primarily a representation of the symbolic

significance attributed by individuals in society. This interpretation diverges significantly from the intricacies of philosophy and instead encompasses a synthesis of other disciplines, including sociology, psychology, anthropology, and economics. When it comes to managing a case, the judge must consistently make a decision regarding which principle to prioritise and which party to favour. The choice frequently comes before the discovery or implementation of the legal regulations that serve as its foundation.

In the context of legal realism, the creative abilities of judges play a crucial role in shaping the law through their decisions (known as judge-made law). This is because the law is not just based on logical reasoning, but also on real-life experiences and factual evidence. Hence, it is accurate to assume that the objective of legal realism is to enhance the adaptability of legislation to societal requirements.

The author's assertions in this work are strongly supported by these pertinent descriptions, which serve as a primary theme. Firstly, if judges are granted authority and their decisions are based on the evidence presented during the trial, it is crucial to consider the judges' experience and honesty in effectively implementing laws against corruption. Furthermore, this can enhance the adaptability of judges within the constraints of legal positivism that has been prevalent and evolved in the realm of legal scholarship thus far.

Furthermore, if judges are granted authority with limitations that are contingent upon the specific circumstances of the trial. This will offer a fresh outlook on combating serious crimes, where judges are expected to prioritise a fair and just approach grounded in legal realities that have significant impact on the nation and the state. In addition, judges will consistently be expected to enhance their expertise, in order to avoid being mere conduits for the law, and to be capable of substantiating the optimum legal framework, rendering legal judgements that are rooted in public justice and the factual circumstances of the trial.

2. Prospects for regulating the authority to determine suspects by judges based on trial facts in corruption offences

Upon initial examination, the judge's assessment of the suspect's authority in the corruption case, based on the trial's facts, is highly delicate. This is due to its significant divergence from universally established principles in the field of criminal procedural law. Undoubtedly, all legal experts and students comprehend the principle of due process of law, commonly referred to as the criminal justice system. Law enforcement agencies have been subjected to restrictions in criminal law enforcement to reduce the potential for abuse of authority and to guarantee that law enforcement is conducted within legal boundaries and without arbitrariness.

Nevertheless, given the current state of inertia and inefficiency in combating corruption in Indonesia, it is imperative to create opportunities for unconventional thinking. There is no harm in departing from the established principles of the traditional criminal justice system in order to generate innovative ideas and concepts that can be used in the future.

Significant efforts have been made to address the procedural law concerning the elimination of extraordinary crimes, which supersedes the principles of traditional procedural law. Similarly, there have been instances where the current procedural law on corruption has contradicted conventional criminal procedural law. Hence, the author presents multiple arguments to support the idea of empowering judges to determine the guilt of a suspect based on trial evidence in cases of corruption. This approach could potentially be incorporated into future regulations aimed at eradicating corruption. The author's rights are outlined as follows:

a. Evidence system for corruption offences that deviates from conventional procedural law

The evidence in corruption cases is determined by multiple laws, including Law No.

8 of 1981 on Criminal Procedure, Law No. 31 of 1999 on the Eradication of the Crime of Corruption (amended by Law No. 20 of 2001), and Law No. 30 of 2002 on the Corruption Eradication Commission. According to Article 183 of KUHAP, a judge cannot provide a punishment to someone unless they have at least two valid pieces of evidence that prove a crime has happened and that the defendant is guilty of it. Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption has been modified by Law No. 20 of 2001, which amends Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption. In essence, from a normative standpoint, corruption is an exceptional crime.

The Law on the Eradication of the Crime of Corruption implements a form of reverse proof that is both limited and balanced. This means that the defendant has the right to demonstrate their innocence regarding the crime of corruption. However, they are also required to disclose information about their own assets, as well as the assets of their spouse, children, and any individuals or corporations suspected of being connected to the case. Despite this, the burden of proof still lies with the public prosecutor, who is obligated to substantiate their charges.

In relation to the evidential system for corruption charges, this law employs the use of reverse evidence, which is subject to certain limitations or considerations as outlined in Article 37: 1) The defendant possesses the entitlement to demonstrate their innocence regarding the charge of corruption. 2) If the defendant successfully establishes their non-involvement in the crime of corruption, such evidence will serve as grounds for declaring the indictment unsubstantiated.

The interpretation of Article 37 of this Law is as follows: 'This article diverges from the requirements of the Criminal Procedure Code, which mandate that the prosecution is responsible for demonstrating the commission of a criminal act, rather than the defendant.' As per this stipulation, the defendant has the ability to demonstrate that they did not engage in the act of corruption. Should the defendant successfully establish their innocence regarding the corruption violation, the prosecution is obligated to substantiate the claims.

The requirements of this article represent a form of limited reverse proof, as the prosecutor is still obligated to substantiate the charges. The provisions of Article 37 of Law No.20 of 2001 are a fair result of applying reverse proof against the defendant. Despite this, the defendant still requires equal legal protection for violations of fundamental rights, specifically the principles of presumption of innocence and non-self-incrimination. Deviation from standard criminal procedural principles in this case is a logical result of corruption being an exceptional crime, which necessitates exceptional legal procedures (extraordinary enforcement) and extraordinary legal tools (extraordinary measures).

b. Deviations from the principle of non-retroactivity inextra ordinary crimes of terrorism

The author aims to demonstrate that standard criminal procedure law is rendered useless and frequently overruled when confronted with extraordinary crimes in this sub-discussion. In this particular section of the paper, the author provides an example of how criminal procedural legislation has deviated from the principle of non-retroactivity in the context of terrorism-related crimes.

If we solely rely on the provisions stated in Article 1 paragraph (1) and Article 1 paragraph (2) of the Criminal Code, the debate regarding the principle of retroactivity will come to an end. These articles restrict the concept of retroactivity to only apply to temporary circumstances or to laws that are in a transitional phase. This implies that in cases where there was no existing criminal regulation, the introduction of a new criminal regulation that applies to prior crimes does not constitute retroactivity. This concept, as discussed by Barda Nawawi Arief, falls within the realm of legal sources. However, if we adopt a broader interpretation, retroactive refers to the application of a law or regulation to past events, even situations where there were no legal

provisions or criminal regulations in place prior to the occurrence of the act. The issue of retroactivity occurs as a result of applying the principle of legality. The principle of legality can be examined from different perspectives, including historical, socio-criminological, legal reform in terms of iterative and linear approaches, and criminal policy elements.

The notion of legality in Indonesian criminal law is enshrined in Article 1, paragraph (1) of the Criminal Code. This rule stipulates that no act can be penalised unless it is explicitly prohibited by pre-existing laws. This principle is categorised into three components: Nulla poena sans lege (no punishment without the requirements of the law), Nulla poena sine crimine (no punishment without crime), and Nullum crimen sine poena legali (no criminal act without punishment according to the law). Sudarto states that this article encompasses two key points. Firstly, a criminal act must be explicitly defined or referenced in the legislation. Secondly, the legislation must be in place prior to the occurrence of the criminal act.

The requirements of this article result in the restriction of retroactive criminal law, sometimes known as non-retroactivity. Retrospective application is allowed if it aligns with the stipulations outlined in Article 1, paragraph (2) of the Criminal Code. The ban of retroactive enforcement is grounded on two fundamental principles: 1) Safeguarding individual liberty against the capriciousness of those in power; 2) Recognising that criminal punishment also entails psychological coercion, as posited by Anselm von Feurebach's psychologische dwang theory. In order to deter individuals from engaging in criminal activities, authorities employ punitive measures to impact the moral conscience of potential offenders, discouraging them from taking action.

Nevertheless, the non-retroactive principle is disregarded in the criminal offence of terrorism. The provision on the principle of retroactivity is stated in Article 46 of Government Regulation in Lieu of Law (Perpu) No. 1 of 2002 on Eradication of Criminal Acts of Terrorism, which was later enacted as Law No. 15 of 2003. This provision also appears in Perpu No. 2 of 2002 on the Enforcement of Perpu No. 1 of 2002 on Eradication of Criminal Acts of Terrorism in the Bali Bombing Incident on 12 October 2002, which was subsequently enacted as Law No. 16 of 2003.

According to Article 46 of Law No. 15 Year 2003, the Government Regulation in Lieu of Law can be applied retroactively to legal actions in specific cases that occurred before the regulation came into effect. The application of this retroactive provision will be determined by a separate Law or Government Regulation in Lieu of Law. The clause serves as the foundation for the issuance of Perpu No. 2 Year 2002, which encompasses the notion of retroactivity. Nevertheless, the phrase '...may be treated retroactively for legal actions for certain cases before the enactment of this regulation, ...' suggests that, apart from Perpu No. 2 Year 2002, there is a potential for retroactive application to acts of terrorism other than the Bali Bombings on 12 October 2002. Whether this will occur has to be seen as we see the progress of the two Perpu.

The imposition of the death penalty against the perpetrators of Bali Bombing I, namely Amrozi, Ali Imron, and Imam Samudera, was based on Perpu No. 1 Year 2002/UU No. 15 Year 2003 and Perpu No. 2 Year 2002/UU No. 16 Year 2003. Masykur Abdul Kadir has submitted Perpu No. 1 Year 2002/UU No. 16 Year 2003 for judicial review to the Constitutional Court. The Constitutional Court's ruling on the judicial review of Perpu No. 1/2002/UU No. 16/2003 would affect the terms of Article 46 of Perpu No. 1/2002/UU No. 15/2003.

c. Regulation of Suspect Determination by Judges in Illegal Logging Crime in Law Number 18 Year 2013 on Prevention and Eradication of Forest Destruction

In the Indonesian legal system, judges have been given the power to identify individuals as suspects based on trial evidence, as a means to combat the crime of illegal logging. An

intriguing aspect of Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction, often known as the PPPH Law, is the provision that empowers judges to identify and list suspects as sought individuals (DPO).

When discussing judicial power, it is important to note that judges have the responsibility of both enforcing the law and making decisions in legal disputes. Adjudicating refers to the process of receiving, examining, and making decisions on cases that are presented to an individual. This process is similar to the examination of cases that have reached an advanced stage, namely the examination that takes place in a court. The procedural law procedures pertaining to this matter have been explicitly and comprehensively regulated in the Criminal Procedure Code, as well as in several statutes, regulations, and decisions of the Constitutional Court.

The PPPH Law grants judges expanded authority, namely to include the ability to place individuals on a wanted list and to designate them as suspects. According to the rules of the Criminal Procedure Code and other procedural law regulations, judges do not possess either of these powers. The act of placing an individual on the wanted list is primarily the responsibility of an investigator and public prosecutor during the preliminary examination phase of the case investigation process. The responsibility for assessing whether a person is a suspect lies with an investigator who is involved in the process of conducting investigations.

The judge is given the power to assess the status of a suspect based on substantial preliminary evidence provided in court by a witness. The presence of evidence indicating a person's strong suspicion of committing a criminal offence carries significant ramifications within the procedural law procedure. Typically, the assessment of a suspect's status occurs during the initial examination or preliminary examination phase. Afterwards, the suspect and evidence are submitted to the public prosecutor at the prosecutor's office, in accordance with the appropriate jurisdiction of the case. This implies that the identification of an individual as a suspect serves as a link between the initial investigation and the trial phase, with the public prosecutor playing a crucial role in this connection.

When a court designates someone as a suspect, it indicates that the process of examining the case has progressed to the stage prior to the trial, and has at least entered the phase of considering evidence. In the specific case examined by the researchers, the court identified an individual who was first called upon as a witness by the public prosecutor and found that this person was a DPO (data protection officer). If, while examining the witness or other evidence, the court discovers substantial preliminary evidence, the judge will designate the individual as a suspect. The court will determine the suspect's status by incorporating it in the verdict of the case under examination, alongside the examination of other defendants. As a result, the Public Prosecutor, who acts as the enforcer of the judge's judgement, is obligated to implement the ruling.

Based on the author's arguments in this qualification paper, it is evident that judges have been given the power to determine the suspect's guilt based on trial facts in corruption cases. This practice, which goes against conventional procedural law, has become common. Additionally, certain aspects of current procedural law on corruption have contradicted traditional criminal procedural law. The first issue is the use of the reverse proof system in corruption offences, which is not commonly used in traditional procedural law. The second issue is the departure from the non-retroactive principle in the effort to eliminate criminal acts of terrorism. Lastly, there is the regulation regarding the determination of suspects by judges in the crime of illegal logging, as stated in Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction.

Conclusion

The author's research reveals that the granting of authority to judges in determining suspects in corruption crimes is based on two key factors. Firstly, corruption is considered an exceptional crime. Secondly, judges determine corruption suspects based on trial facts, aligning with the theoretical basis of legal realism from the American legal tradition. The regulation of judicial authority to determine suspects in corruption cases as an extraordinary crime, surpassing conventional procedural law doctrines, has been accomplished through two means. Firstly, the implementation of the reverse proof system in corruption offences, which is not present in traditional criminal procedure law. Secondly, the abandonment of the principle of non-retroactivity in the eradication of terrorism offences, which is not recognised in conventional criminal procedure law. Furthermore, there has been a specific instance of judicial regulation on the identification of suspects in cases of Illegal logging, as outlined in Law Number 18 of 2013, which pertains to the Prevention and Eradication of Forest Destruction.

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