Legal Protection for the Public on Positional Abuse for Corruption Offences

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ABSTRACT

The reasons for a public official to commit corruption may be varied, but generally known as the GONE theory (Greedy, Opportunity, Need, Exposure) as proposed by Jack Bologna. Corruption leads to a deceleration of the country’s economic growth, decreased investment, increased poverty and increased income inequality. Corruption not only affects the country, but also the whole society. The impacts of corruption on various aspects can be perceived by the public. Therefore, this research is conducted to determine the application of the law against public officials who are corrupt, to analyse the juridical mechanism in public malfeasance, and to analyse court decisions on corruption committed by public officials. The type of research used is juridical normative combined with a statutory approach, conceptual approach, analytical approach, and case study approach. There are 3 legal sources used, such as (1) primary legal sources consist of laws and regulations related to the research topic; (2) secondary legal sources consist of books, law journals, and legal dictionaries; (3) tertiary legal sources consist of internet media, print media, and mass media. The implementation of anti-corruption values to the community is based on needs such as honesty, discipline, responsibility, simplicity, and justice. Improving applicable laws and regulations, improving bureaucratic reform governance, creating an anti-corruption work environment, applying clean and good governance principles, and utilising transparency technology are some of the efforts to prevent corruption in society.

Keywords: Corruption Offences, Public Malfeasance, White-Collar Crime
INTRODUCTION

Public officials are mandated and responsible by the state to manage government affairs for the continuity of a country. In addition, the government must be professional by prioritising the interests of the nation over personal interests. If there is a country that is less than optimal in implementing the pillars of democracy, then achieving the quality of public services is impossible and tends to open up opportunities for corruption, collusion and nepotism in the government. There are many irregularities committed by the public officials, one of which is corruption. According to Law No. 20/2001, corruption is the act of a person or group of people who intentionally and unlawfully enrich themselves or other people or companies that can be detrimental to state finances or the national economy. Corrupt behaviour is deviant, destructive and contrary to the values of truth, morals and ethics. The reasons for a public official to commit corruption may be varied, but generally known as the GONE theory (Greedy, Opportunity, Need, Exposure) as proposed by Jack Bologna. The greedy and need factors relate to the perpetrator, while the opportunity and exposure factors relate to the aggrieved party.

Corruption is classified as an extraordinary crime because it has a massive impact in the short and long term. Corruption leads to a deceleration of the country’s economic growth, decreased investment, increased poverty and increased income inequality. Corruption not only affects the country, but also the whole society. The impacts of corruption on various aspects can be perceived by the public. The state has attempted to minimise opportunities for corruption, such as preventive and detective efforts. Preventive efforts such as the establishment of institutions that can prevent corruption, establishing laws that impose penalties on corruption perpetrators. The redactions are listed in the Law on the Eradication of Corrupt Acts Chapter 2 Article 2 as follows:

1. Any person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may be detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

2. If the corruption offence as referred to in Paragraph (1) is committed under certain circumstances, death penalty may be imposed.

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Detective efforts have also been pursued such as system improvements and follow-up on public complaints, Indonesia’s participation in anti-corruption and anti-money laundering movements in the international community and so on. Based on previous background, this research is conducted to determine the application of the law against public officials who are corrupt, to analyse the juridical mechanism in public malfeasance, and to analyse court decisions on corruption committed by public officials.

LITERATURE REVIEW

Legal Regulation of Positional Abuse by Public Officials

According to Philipus M. Hadjon, the occurrence of positional abuse can be proven factually, that is, it is committed consciously, which then diverts the objectives granted to the authority owner, either for personal or other parties’ interests.\(^4\) The condition of the Indonesian bureaucracy in the current reform era has not improved because there are still many bureaucrats who are arrogant, act as lords, and conduct corruption, collusion, nepotism and wasteful behaviour in the central, provincial and district/city governments. There are many public officials in this country who abuse the authority and power entrusted to them by utilising all the rights of the community for their personal interests and satisfaction. The habit of financial fraud committed by public officials can occur at any level and system of government, and it has even existed from the ancient times until now.\(^5\)

In Law No. 20/2001 on the amendment of Law No. 31/1999 on the eradication of corruption offences, there are several articles that regulate positional abuse, such following below:

1. Article 9 of the Law on the Eradication of Corruption;
2. Article 10 letter a of the Law on the Eradication of Corruption;
3. Article 10 letter b of the Law on the Eradication of Corruption;

In addition, Article 8 of the Corruption Eradication Law explains that positional abuse is an act committed by public officials with the authority they have by defrauding financial reports, removing evidence, and allowing others to remove or destroy evidence with the aim of benefiting themselves to the detriment of state finances.\(^6\)

The redactions are listed in the Law on the Eradication of Corrupt Acts Chapter 2 Article 2 as follows:

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\(^6\) Muhammad Hadinata, Dr. Marlina, and Dr. Isnaini, “Analisis Hukum Tindak Pidana Penyalahgunaan Wewenang Yang Dilakukan Oleh Aparatur Sipil Negara (Studi Putusan No. 58/Pid.Sus-TPK/2017/PN.Mdn)” (Universitas Medan Area, 2018).
1. Any person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may be detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

2. If the corruption offence as referred to in Paragraph (1) is committed under certain circumstances, death penalty may be imposed.

RESEARCH METHODOLOGY

The type of research used is juridical normative combined with a statutory approach, conceptual approach, analytical approach, and case study approach. Normative in legal research is a research that examines applicable legal norms, which in this research used three sources of legal sources used are primary, secondary, and tertiary legal sources. There are 3 legal sources used, such as (1) primary legal sources consist of laws and regulations related to the research topic; (2) secondary legal sources consist of books, law journals, and legal dictionaries; (3) tertiary legal sources consist of internet media, print media, and mass media. In this research, the researcher uses a normative juridical approach, which is carried out by examining and understanding through the Statutory Approach of Law No. 20/2001 concerning amendments to Law No. 31/1999 concerning Eradication of Corruption, Law No. 19/2019 concerning Corruption Crimes, Law No. 2/2002 concerning the Indonesian National Police, as well as Law No. 11/2021 concerning Amendments to Law No. 16/2004 concerning the Attorney of the Republic of Indonesia and how the authority investigate corruption cases in line with the investigative authority of the Police and the Attorney General’s Office. The second approach applied in this research is conceptual approach, which is a legal research method that offers an analytical point of view to solve problems from the perspective of legal principles related to legislation. The third approach applied in this research is analytical approach, which is an approach that seeks to understand an idea, the way the author displays or presents his ideas, the author's attitude in presenting his ideas, intrinsic elements and the relationship mechanism of each intrinsic element, thus being able to build harmony and unity in order to build the totality of form and meaning. The last approach applied in this research is the case study approach. Case study approach was employed to examine the case involving Murtadho, S.Sos., M.M. As the Head of Porong Sub-District who is supposed to be a good example for his community, Murtadho has been proven to have committed illegal levies against his subordinates. Directory of Decisions of the Supreme Court

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7 Sugiharto, “The Regulation Policies on Legal Aid Norms for Indonesian National Police and Their Family,” YURIS (Journal of Court and Justice) 1, no. 3 (2022).
of the Republic of Indonesia with Decision Number: 35/Pid.Sus-TPK/2020/PT SBY. The provisions of Article 35 Paragraph (2) of Law No. 46/2009 on the Corruption Court state that the Defendant Murthado, S.Sos., M.M. was legally and convincingly proven guilty of committing the crime of corruption with the intent to unlawfully benefit himself or others.

RESULT AND DISCUSSION

The Provision of Positional Abuse in Article 3 of Law No. 31/1999 and Law No. 20/2001 on Corruption Offenses

Overview of Positional Abuse

In Article 3 of Law No. 31/1999 amendment with Law No. 20/2001 regulates actions that deviate from the rules stating that every person who has the purpose of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her power or position that can harm 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 IDR 50,000,000 (fifty million rupiah) and a maximum of IDR 1,000,000,000 (one billion rupiah).

The Scope of Positional Abuse

Reviewed in Subject of Law

The term legal subject is derived from the Dutch word rechtssubject, which translates as supporter of rights and obligations. Humans and legal entities are examples of legal subjects. Understanding legal subjects cannot be separated from the opinions of legal experts. A legal subject, according to Utreck, is a supporter of rights, namely a human or body with the legal capacity to become a supporter of rights.

Legal Consequences of Positional Abuse

As a fundamental concept, public law includes at least three important components: influence, legal foundation, and legal compliance. The influence component maintains the objective of controlling the behavior of individuals subject to the law. The legal foundation component requires a legal basis for exercising authority. The legal compliance component implies the existence of authoritative norms, while encompassing both general standards (applicable to all types of situations) and specific standards (relating to specific authorities).

Corruption adversely affects a nation’s economic growth rate. Corruption can also reduce the level of public happiness in a country. Positional abuse by officials in corruption is a terrible offense because of its significant consequences both in the
near and long term. Not only does it harm the country, the misappropriation of officials in the form of corruption can also torment the public.

Analysis on Positional Abuse Authority in Corruption Offense

Reviewed From a Juridical Analysis
The ambiguity of legal provisions, multiple interpretations, and the tendency to make laws that favor certain parties could contribute to the emergence of corruption within the legal framework. In Article 2 Paragraph 1 of Law No. 31/1999 describes a statement that reads as follows: Perpetrator means every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm state finances or the state economy. This element could be relevant to Article 20 Paragraphs (1) to (7).

Reviewed From a Theoretical Analysis
According to Jean Rivero and Waline, abuse of office is the misuse of authority for the benefit of oneself, a group, or an organization by sacrificing the public interest. Meanwhile, according to Philipus M. Hadjon, to determine whether there has been an abuse of authority, it can be proven factually that the official has abused the authority for a specific purpose and deviated from a certain regulation.

Reviewed From a Sociological Analysis
The mean–ends theory of Robert Merton contends that corruption is a socially driven human behavior that leads to violations of accepted social norms. Family, in particular, has a strong influence on a person’s social life. Families have a significant role in several instances, sometimes even motivating individuals to engage in corruption when the chance presents itself.

Legal Liability of State Officials for Positional Abuse in Corruption Offenses

Overview of Law Enforcement
The success of the state in executing the law is one of the indicators within a state of law. Law enforcement in a state of law can be considered to be successful if every component of society implements and obey the applicable laws. The absence and lack of maximization from law enforcement may result in implications for the credibility of the rule makers. The purpose of law in general is to ensure balance, order, tranquillity, justice, and happiness for everyone. In the meantime, criminal law enforcement is a component of the wider national law enforcement system/policy. In Indonesia, statehood is defined as a State of Law (rechtstaat, instead of machtstaat) and a unitary state. The law continues to be ineffective in reality when viewed from the perspective of empirical legal validity, which examines how the law impacts people’s lives by examining whether it works to
guide people’s behavior and whether law enforcement officials are succeeding in implementing the law.

**Corruption Law Enforcement Authorities**

In certain criminal offenses, law enforcement authorities act as investigators and investigators in addition to elements of the Prosecutor’s Office Investigators and Police Investigators. This is in accordance with Article 17 of Legislation 27/1983 concerning the Implementation Regulations of the Criminal Procedure Code that investigators in certain criminal offenses are prosecutors, police and other officials determined by the law.³

Law enforcement officials are a group with the authority to be in charge of maintaining the safety and security of a nation. Arrest, search, investigation, and judicial procedure in line with statutory instructions in their respective fields are the sorts of law enforcement authority given or entirely entrusted in carrying out the process of justice for rule of law offenders to be held. The police, the prosecutor’s office, the judiciary, and the presence of the Corruption Eradication Commission make up Indonesia’s four main components of the law enforcement apparatus.

The applicable procedural law means that the investigation of corruption crimes must be guided by the Indonesian Criminal Procedure Code. If the Indonesian Criminal Procedure Code does not mention it, then a special law can be used. Article 106 of the Indonesian Criminal Procedure Code states that police investigators are obliged to carry out investigative actions regarding the occurrence of criminal acts, whether through reports or complaints.⁴

Police investigators are also responsible for conducting investigations into corruption cases. However, police investigators must pay attention to Article 27 of Law Number 31 Year 1999 which reads as follows: In the event of the discovery of a corruption crime that is difficult to prove, a joint team between police investigators and prosecutors will be formed under the coordination of the Attorney General.⁵

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⁵ Presiden Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi* (Jakarta, 1999).
Evidence in the Crime of Corruption

The definition of evidence in the Indonesian Criminal Procedure Code is crucial when examining criminal cases in court. Evidentiary requirements are part of the criminal procedure law process, which governs the kinds of evidence that are permitted by law. There is a connection between the actions taken and the evidence that can be used to persuade the judge that a crime has been committed. The purpose of evidence is to provide some kind of explanation of an event’s accuracy so that it may be inferred that it has actually happened and that existence can be rationally justified. Evidence establishes that a criminal act has taken place, the defendant is responsible for doing it, and some sort of accountability is consequently required. Article 183 of Indonesian Criminal Procedure Code states: A judge shall not impose a sentence on a person unless he or she is convinced by at least two valid pieces of evidence that a criminal offense has actually occurred and that the defendant is guilty of committing it. Meanwhile, the provisions of valid evidence are regulated in Article 184 of the Criminal Procedure Code, which reads: What considered as valid evidence are: Witness testimony; Expert testimony; Letters; Clues; Statement of the defendant. A case must be proven with evidence that provides directions, especially in prosecutions for corruption. Evidence serving as guidance may not be sufficient on its own; it needs to be backed up by further information that the prosecution and legal counsel have access to or can supply.

Analysis of Law Enforcement Against State Officials Who Commit the Crime of Corruption

Reviewed From a Juridical Analysis

In Article 39 of Law No. 31/1999 on the Eradication of Corruption states that the attorney general coordinates and controls the investigation and prosecution of corruption offenses. Law enforcement for perpetrators of corruption is carried out by the Corruption Eradication Commission in addition to the investigation and prosecution. According to Law No. 30/2002, The Corruption Eradication Commission has the authority to coordinate and supervise the investigation and prosecution of corruption offenses.

Reviewed From a Theoretical Analysis

According to A. Minkenhof, who was cited by Andi Hamzah, the judicial system in the nation is weak because judges are put in a position of too much trust. Bloot gemoedelijke overtuiging, or the idea of evidence by supposition provides the impression that they are quite arbitrary since it rejects the requirement for a system that controls proof and leaves everything up to the judge’s judgment.

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11 Indonesia, Kitab Undang-Undang Hukum Acara Pidana (KUHAP).
Criminalization is the process of imposing punishment or subjecting someone to punishment. This penalty’s imposition has two connotations, which are: In a broad sense, the components that make up the legislation define the criminal law punishment system (penalty in abstracto), and in a concrete sense, this is related to various organizations or groups, all of which assist and implement a series of punishments in criminal law.

**Reviewed From a Sociological Analysis**

In sociological terms, the dispute about the death penalty for corruptors is an issue that frequently arises. This demonstrates that opposition or conflict will always exist as long as humans survives on Earth. This is affected by each person’s or group’s unique origins, both in terms of how they think and react to a policy regulated by the government. The spread of corrupt practices in Indonesia, according to the structural perspective of functionalism, is a symptom that the legal system is not effectively achieving its goals of promoting legal compliance and social order. Certainly, the law as a legal product does not operate alone in its implementation. Law enforcers are involved in the law; thus, they also hold the key to the law’s effectiveness in society. According to functionalism, order is produced by the operation of elements that are associated with one another.

**CONCLUSION AND SUGGESTION**

**Conclusion**

There are several factors caused positional abuse for corruption offences based on Law No. 20/2001 on the amendment of Law No. 31/1999 on the eradication of corruption offences juridically, theoretically, and sociologically. The factors that cause corruption according to juridical law are not clearly regulated on this matter, but there is a tendency for the law to be beneficial to certain parties. In Article 2 Paragraph 1 of Law No. 31/1999, it states that every person who intentionally violates the law, commits an act of enriching himself, another person or a corporation that can be detrimental to state finances or the state economy. Based on this arrangement, it is concluded that a person’s actions may be called against the law, but not necessarily abuse of authority in the form of position. Meanwhile, the theoretical abuse of authority is committed consciously, which then diverts the objectives given to the authority owner. The transfer of purpose is based on personal interest or intention, either to benefit oneself or other parties. Then, The means-ends scheme of corruption is sociologically a human behaviour caused by social pressure, which leads to the violation of norms. According to Merton’s theory, social conditions in a certain place emphasise economic success but limit opportunities to achieve it, leading to high levels of corruption.

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There are several ways to enforce the law against public officials who are corrupt juridically, theoretically, and sociologically. Law enforcement against public officials who are corrupt is juridically regulated in Article 39 of Law No. 31/1999 concerning the eradication of corruption, which explains that not only police and attorney investigators act, but the Corruption Eradication Commission must also participate in eradicating corruption in Indonesia. In addition, law enforcement against public officials who are corrupt theoretically tends to rely more on judges, which causes judges’ decisions to be subjective. The last, law enforcement against public officials who are corrupt sociologically states that there are many differences between the backgrounds of each individual in responding to the death penalty for corruptors, which still brings pros and cons within the scope of the court and society.

**Suggestion**

For law enforcers and lawmakers, it is required to examine the material related to corruption, especially regarding the mode of characteristics and unlawful acts. The deepening of corruption as a way to prevent and eradicate acts of corruption committed by government officials and their staff. In addition, it is required to consistency of law enforcement agencies and state apparatus in preventing corruption that occurs in the implementation of government services.

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