

ROLE OF COMMUNITIES IN PREVENTION AND ERADICATION OF CORRUPTION

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ABSTRACT

In society there are always three sectors, namely the government, employers and civil society. Among the three sectors, the last sector is that the community is very rarely involved in the prevention and eradication of criminal acts of corruption. Even though without the participation of the community corruption is difficult to overcome. And in laws and regulations it has been clearly regulated what constitutes the rights of the people and is highly expected to play a role in the prevention and eradication of criminal acts of corruption.

This study aims to identify, understand and analyze the importance of the role of civil society in eradicating and preventing corruption. So that community awareness of their rights and obligations can be built in eradicating and preventing corruption. The research is a normative study using several approaches, namely the legislative approach, the case approach to the analytical approach and the comparative approach. The analysis used is qualitative juridical. The results of this review are that the participation of the community in the prevention and eradication of criminal acts of corruption can be realized in the form of, among others, seeking, obtaining, and providing information on alleged corruption; for that reason, the community is also given the right to obtain services in seeking, obtaining and providing information by law enforcers who handle cases of corruption; participation in conveying suggestions and opinions responsibly to law enforcers who handle cases of corruption; in participating, civil society has the right to obtain answers to questions about the report given to law enforcement. All of these things have a strong legal basis, in addition to community members who are considered to be instrumental in uncovering cases of corruption, they will be given awards in the form of charter and awards in the form of material.

Keywords: community, prevention, eradication, corruption.

INTRODUCTION

The government's failure to eradicate corruption will greatly affect the weakening of the government's image in the eyes of the public. This can be seen in the implementation of government which is reflected in the form of public distrust, disobedience of the community towards the law, and the difficulty of reducing the absolute poverty rate. Corruption conditions as above, make many people think "darkness almost reaches perfection".

The holders of popular sovereignty, namely the People's Consultative Assembly has begun to trigger the eradication of corruption, collusion and nepotism by issuing the Decree of the People's Consultative Assembly Number XI / MPR / 1998 concerning the Implementation of a Clean and Corruption Free, Collusion and Nepotism (KKN). The part that becomes an important consideration in the provision is: that the demands of the people's conscience require the existence of state administrators who are able to carry out their functions and duties seriously and responsibly so that development reform can be effective and effective; And that in the administration of the state there have been business practices that benefit certain groups of people and foster corruption, collusion and nepotism that involve state

officials with employers so as to damage the joints of state administration in various aspects of national life.

Corruption in Indonesia, including in Bali, is now systemic in nature, so it not only harms the State and the country's economy, but also violates the economic and social rights of the community at large. An Australian criminologist Athol Noffitt described the danger of corruption (as quoted by Baharuddin Lopa), that "once corruption is carried out moreover by higher officials, corruption will grow more fertile".¹⁴ In this connection, besides the people can directly participate personally, also can be through groups or an organization, but in reality people usually participate, often in collaboration with community organizations such as Non-Governmental Organizations (NGOs). This has been given space by legislation. For example in Law Number 31 of 1999 jo. Law Number 20 Year 2001 concerning Eradication of Corruption Crime, especially in Chapter V concerning Community Participation (Article 41).

Through the reform movement since 1998, the government has been seriously supported by civil society determined to eradicate and eradicate criminal acts of corruption, but the fact that corruption is still rampant. According to Romli Atasasmita, efforts to eradicate corruption must be supported by a strategy.¹⁵

In *The United Nations Convention Against Corruption 2003*, which has been ratified based on Law Number 7 of 2006, Article 13 states that "each state party is obliged to take appropriate actions, in its authority and in accordance with the basic principles of its internal law, increasing the active participation of individuals and groups in outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention and resistance of corruption and increasing public awareness of the existence, causes and gravity of and threats shown by corruption'. The purpose of this provision is to require all recipient countries / parties to include their communities in combating corruption.¹⁶

Nam-Joo Lee, the chairman of the South Korea's Independent Corruption Eradication Commission (KICAC) on one occasion stated that, "*There are sectors, the government, business and civil society. Among the tree, the last one is creating a free-spirited and independent sphere. It has established a new set of rules for reform and presented new values through the interaction with the other two sector. Varied changes, political, economic, and social, have been achieved through this process.*"¹⁷ Government-owned anti-corruption institutions with work plans created by themselves cannot perfectly eradicate corruption. This will only be done much better if civil society is active and attentive, such as monitoring and supervising together to improve morale and other policies for more effective repetition of corruption. So in Korea the success of eradicating corruption cannot be separated from the participation of civil society.

On the basis of the previous description, it would be very interesting to raise the issue of "The Participation of Civil Society in the Eradication and Prevention of Corruption Crime".

¹⁴ Nyoman Serikat Putra Jaya, *Reposisi Pengadilan Tindak Pidana Korupsi dalam Konteks UUD 1945*, p. 1.

Furthermore, there is no greater weakness in a nation from corruption that seeps all levels of public service. Corruption weakens the back line, both in peace and war.

¹⁵ Romli Atasasmita, *Sekitar Masalah Korupsi Aspek Nasional dan Internasional*, CV. Mandar Maju, Bandung, 2004, p.12.

¹⁶ Gap Analysis Indonesian Laws versus The United Nations Convention Against Corruption (draft report), Corruption Eradication Commission, t.t, p.35.

¹⁷ Nam-Joo Lee, *Korea's Anti-Corruption Strategies and the Role of Private Sector*, UN Round Table Presentation, December 9, 2003, Korea Independent Commission Against Corruption, p.2.

Through this article, it is expected that the public awareness of the rights and obligations in eradicating and preventing corruption can be obtained. By means of the participation of civil society in the eradication and prevention of criminal acts of corruption, it is expected that the work force of law enforcement agencies can be improved, because the functioning of community plays a role and means indirectly the community oversees or supervises the performance of law enforcement officers in handling acts criminal corruption. What are the rights and obligations of the community in their efforts to participate in eradicating and preventing corruption? And specifically in Bali, how are the efforts of the Balinese people in preventing corruption.

RESEARCH METHOD

The research method used is a normative juridical approach method. While the specification of the study is descriptive analytical, the approach taken is the legislative approach, analytical approach, case approach and comparative approach. The legal material used in this study consists of primary, secondary and tertiary legal materials. Primary legal materials are legal materials. Secondary legal material is legal material obtained from textbooks, foreign journals, opinions of scholars, legal cases, and symposiums conducted by experts related to criminal acts of corruption, while tertiary legal materials such as legal dictionaries, encyclopedias and others- others that provide meaningful explanations or explanations and / or give meaning from a concept whose meaning is unclear, both in primary legal material and secondary legal material.¹⁸ Legal materials are collected based on the topic of the problem. The analysis used is qualitative juridical, namely the researcher examines legal interpretation, legal construction, legal philosophy and legal comparison by using inductive logic and deductive logic.

RESULTS AND DISCUSSION

1. Corruption and Community Participation

If you see the origin of the word corruption, the word corruption comes from the Latin "corruptio" or "curruptus". Corruptio comes from the word corrumpere, an older latin word. From Latin it goes down to most European languages like English, namely corruption, / currupt; France is corruption, and the Netherlands is coruptie, this is a coruptie from the Dutch word that goes down to Indonesian, namely corruption.¹⁹

Corruption means rotten, fake, bribery, bad, broken likes to accept bribes, abuse money / property belonging to the company or the state; receive money by using his office for personal gain. Corruption also means depravity, dishonesty, immorality, deviation from holiness; bribery; forgery; fraud or embezzlement of state or company money as a place for someone to work for personal or other people's interests.²⁰

Bad life in prison for example, is often referred to as corrupt life, where all kinds of crimes occur there. Although the word "curruptio" is very broad in meaning, but often "corruptio" is equated with the meaning of bribery as in the Encyclopedia "Grote Winkler Prins" mentioned as follows: "*corruptio = omkoping, noemt ment het verschijnsel dat ambtenaren of andere personen in dienst der openbare zaak (zie echter hieronder voor zogenaamd niet ambtelijk*

¹⁸ Robert E.Rodes, Jr., & Howard Pospesel, *Premises and Conclusion, Symbolic logic for Legal Analysis*, Prentice Hall, Upper Saddle River, New Jersey, 1997, p. 7.

¹⁹ Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*, PT. Raja Grafindo Persada, Jakarta, 2005, p. 4

²⁰ Arya Maheka, 1978, *Mengenal dan Memberantas Korupsi*, The Corruption Eradication Commission, quoted from various sources. Dictionary of Indonesian Language, 1991, Legal Dictionary, 2002, and The Lexicon Webster Dictionary, p. 12.

currupatie) zicht laten omkopen.” In the Netherlands there are laws that threaten bribery received not by civil servants.²¹

Mubyarto (apparently highlighting corruption / bribery in political and economic terms only), cites Smith's opinion as follows:

On the whole corruption in Indonesia nappears to present more of a recurring politycal problem than an ekonomic one. It undermines the legitimacy of the government in the eye of the young, educated elite and most civil servants.....corruption reduces support for the government among elites at the province and regency level. (Overall corruption in Indonesia appears more often as a political problem than an economy. It touches on the legitimacy of the government in the eyes of the younger generation, educated elites and employees in general ... corruption reduces support for the government from elite groups at the provincial and district levels)²².

Juridical corruption is defined by various variations in various countries, but generally more in common. For example Malaysia, Japan and Korea, the notion of corruption is almost the same as what is stipulated in the Criminal Code in Indonesia. Like for example in the Criminal Code (KUHP). In addition, the development of corruption corruption offenses in the legislation to eradicate corruption has undergone 5 (five) changes (in 1957, 1960, 1971, 1999 and last 2001). These changes involve policies in formulating offenses and criminal policies and convictions. The change in policy certainly cannot be separated from the broader government policy in establishing a policy in the field of criminal law in a series of efforts to eradicate criminal acts of corruption, considering that the modus operandi of corruption is experiencing such rapid development in accordance with technological developments.

Unlike the case with law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the formulation of criminal acts of corruption in which Article 2 is mentioned:

- (1). Anyone who unlawfully commits / enriches himself, another person or a corporation that can harm state finances or the country's economy is punished with imprisonment for life or imprisonment for at least 4 (four) years and a maximum of 20 (twenty) year and a fine of at least Rp. 200,000,000. (two hundred million rupiahs) and at most Rp. 1,000,000,000. (one billion rupiah).
- (2). In the event that a corruption act, as referred to in paragraph 1, is carried out in certain circumstances, capital punishment can be imposed.

The concept of community participation is also community participation, which contains things about (a). Mental and physical involvement; (b). Responsibility; (c). And the purpose. This also means that one's involvement or in group activities will involve in it about thoughts, feelings that require awareness to carry out an activity.

With regard to community rights in participation, it is interpreted as an active role of individuals, as well as through community organizations, in the prevention and eradication of criminal acts of corruption, both mental and physical involvement and responsibilities, among others, entitled: seeking, obtaining and providing information on suspicions there has been a crime of corruption and conveying suggestions and opinions to law enforcement (the Police and the Prosecutor's Office) and or the Corruption Eradication Commission regarding cases of corruption. Likewise the community has the right to obtain services and answers from law enforcement or the Corruption Eradication Commission for information, advice or

²¹ Andi Hamzah, Loc-cit.

²² Andi hamzah, op-cit, p.4.

opinions submitted to law enforcement or corruption eradication commissions. In addition, it also has the right to legal protection both regarding legal status and security.

Furthermore, with the consideration that to optimize the provision of convenience to the community in helping efforts to prevent and eradicate criminal acts of corruption, and facilitate the implementation of giving awards to the public, it is necessary to replace Government Regulation Number 71 of 2000 concerning Procedures for Implementing Community Participation and Awarding in the Prevention and Eradication Corruption with the enactment of Government Regulation Number 43 of 2018. In this government regulation, among others, it is regulated by the community who have contributed to efforts to prevent, eradicate or disclose corruption crimes given an award. The award is given to: a). Communities that are actively, consistently and sustainably engaged in the prevention of corruption; or b). Reporter. The award referred to is given in the form of a). charter; and / or b). premium.

Further in Article 14 this government regulation states that, (1) awards in the effort to prevent corruption are given to communities that are actively, consistently and continuously engaged in the prevention of corruption

as referred to in Article 13 paragraph (2) letter a (2) The award as referred to in paragraph (1) shall be given in the form of a charter. (3) To give the award as referred to in paragraph (2), Law Enforcement conducts an assessment based on a report on activities to prevent corruption that have been committed. (4) The assessment as referred to in paragraph (3) is conducted periodically.

Award in the Context of Eradication and Disclosure Regulated,

In Article 15, namely: (1) Awards in efforts to eradicate or disclose corruption are given to the Reporting Party as referred to in Article 13 paragraph (2) letter b. (2) Awards as referred to in paragraph (1) can be given in the form of: a. charter; and / or b. premium. (3) To give the award as referred to in paragraph (2), Law Enforcement evaluates the level of truth of the report submitted by the Reporter in an effort to eradicate or disclose a criminal act of corruption. (4) The appraisal as referred to in paragraph (3) shall be carried out within a maximum of 30 (thirty) working days as of the copy of the court's decision that has obtained legal force is still accepted by the Prosecutor. (5) Assessment as referred to in paragraph (4) is coordinated by the Prosecutor. In giving an assessment as referred to in Article 15, Law Enforcement considers at least: a. the active role of the Reporting Party in disclosing criminal acts of corruption; b. quality of report data or evidence; and c. factual risk for the Reporting Party.

In Article 17:

- (1) In the event that the results of the assessment referred to in Article 15 are agreed to give an award in the form of a premium, the amount of the premium is given at 2% 0 (two percent) of the amount of state financial losses that can be returned to the state.
- (2) The premium amount given as referred to in paragraph (1) shall be a maximum of Rp. 200,000,000.00 (two hundred million rupiahs).
- (3) In the case of corruption in the form of bribery, the amount of the premium is given at 2% 0 (two percent) of the value of the bribe and / or money from the booty auction.
- (4) The premium amount given as referred to in paragraph (3) shall be a maximum of Rp. 10,000,000.00 (ten million rupiahs).

Given the importance of the participation of civil society in realizing the anti-corruption movement, the KPK places a strategy for raising community participation as one of the four main pillars of strategy.

2. Legal Basis of Community Participation in Prevention of Corruption

The legal basis of community participation in eradicating and preventing corruption is based on the provisions of international law and national law as follows:

1. International Provisions

a. Article 13 *United Nations Convention Against corruption (UNCAC), 2003: each state party shall take appropriate measures, within its means and in accordance with the fundamental principles of its domestic law, to promote the active participation of individuals and group outside the public sector, such as civil society, non governmental organizations and community-based organizations, in the prevention of and the fight against corruption.* In this case, each State must take action in accordance with its authority based on its internal legal principles, increasing the active participation of individuals and groups outside the public sector, such as civil society, and other organizations in the prevention and eradication of corruption.

b. Article 36 *Specialized Authorities (Special Authorities).*

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such a body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State party, to be able to carry out their functions effectively and without any undue [influence] [pressure]. Such persons or staff of such body or bodies should have the appropriate training and resource to carry out their tasks. Each participating country is obliged, in accordance with the basic principles of its legal system, to ensure the existence or position of a body or agencies or people (civil society) who have specificity to fight corruption through law enforcement. Bodies or agencies or people must be given the freedom needed, in accordance with the basic principles of the participating state's legal system, to be able to carry out their activities effectively and without influence/pressure.

c. Article 63, *United Nations Convention Against corruption (UNCAC), 2003: Conference of the States Parties to the Convention*

Point 3 : the Conference of the states parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities. (Conference of participating countries must adopt procedures and rules governing the activities expressed in this article, including rules regarding recognition and participation of community observers/observers).

Point 4 sub c: Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations (Collaborate with relevant international and regional organizations and mechanisms and non-governmental organizations --- formed by civil society).

2. National Provisions

a. 1945 Constitution of the Republic of Indonesia

The State Constitution of the Republic of Indonesia in 1945 (the 1945 Constitution) provides a very strict guarantee in Article 28 E paragraph (3) that "Everyone has the right to freedom of association, assembly and opinion". So that this provision is further developed by the rules below, which in principle the people are always included in the matter of decision making.

b. Decree of the People's Consultative Assembly

People's Consultative Assembly (MPR-RI) Decree Number VIII / MPR / 2001 Concerning Recommendations on the Direction of the Policy to Eradicate and Prevent Corruption, Collusion and Nepotism. In his consideration, among others, it was stated that, "the problems of corruption, collusion and nepotism that hit the Indonesian nation have been very serious, and are extraordinary crimes and destabilize the joints of the life of the nation and state".

c. Laws

The Law of the Republic of Indonesia Number 28 of 1999 concerning Organizers of Clean and Free Corruption, Collusion and Nepotism, provides opportunities for the public to participate. Furthermore, in Law Number 31 of 1999 jo. Law Number 20 Year 2001 concerning Eradication of Corruption Crime. Regarding community participation in this law, it is regulated in Chapter V, especially in Article 41 and Article 42.

d. Government Regulations

Government Regulation of the Republic of Indonesia Number 68 of 1999 concerning Procedures for Implementing Community Participation in the Implementation of the State. It is stated in this regulation, that what is meant by community participation is the active role of the community to participate in realizing clean and easy state organizers from corruption, collusion and nepotism, which are carried out in accordance with the legal, moral and social norms that apply in societ.

CONCLUSION

Community participation has a strong legal basis, both based on International Law, and based on National Law, particularly in Articles 41-42 of Law Number 31 of 1999 jo. Law Number 20 Year 2001 concerning Eradication of Corruption Crime, which is further regulated in Government Regulation Number 43 of 2018 concerning Procedures for Community Participation and Awarding in the Prevention and Eradication of Corruption. The participation of the community can be realized in the form of, among others (a). The right to seek, obtain, and give information regarding the alleged corruption of corruption; (b). The right to obtain services in seeking, obtaining and providing information on allegations of corruption has occurred to law enforcers who handle cases of corruption; (c). The right to convey suggestions and opinions responsibly to law enforcers who handle cases of corruption; (d). The right to obtain answers to questions about the report given to law enforcers within a maximum of 30 (thirty) days; (e). The right to obtain legal protection in terms of: (1) exercising their rights as referred to in letters a, b, and c; (2). Requested to be present in the process of investigation, investigation, and in court proceedings as a reporting witness, witness or expert witness, in accordance with the provisions of the applicable legislation. In addition, those who are considered meritorious in their efforts to prevent and eradicate corruption will be given awards in the form of money and / or in the form of material, such as what is stipulated in Government Regulation Number 43 of 2018 concerning procedures for implementing Community Participation and Awarding in Prevention and Eradication of Corruption Crimes.

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