

Strategy for Preventing Corruption through State Administration Law in Indonesia

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Abstract: *Corruption does not happen in only one country but it has spreaded to many countries, so issue of corruption has become the world's attention, which not only cause the collapse of the economy of one country, but also the effect to other countries. Corruption could affect the social, cultural, educational, legal and so on. It can damage the joints of the economy of the state. The state will not be able to carry out the construction. In Indonesia, many ways has been done to reduce these corrupt practices by implementing various laws on corruption as an effort to eradicate, but in fact corruption continues to grow like mushrooms in the daytime. The eradication effort by law enforcement alone is not enough. The ways through the administrative law is expected to reduce corruption in Indonesia.*

Keywords: *Prevention, Corruption, the State Administration Law; Strategy*

I. INTRODUCTION

Slogan: *prevention is better than cure (voorkomen is beter and genezen)* is an expression that is always used in general in the health sciences, whereas in criminalistics corruption, said prevention is better than combat (*voorkomen is beter and te bestrijden*). It is an expression which is great not too excessive. Preventing is better than combat action due to prevent an act of corruption has not occurred while combating implies that the act of corruption has occurred. Thus, in the prevention does not require special time and cost compared with combat action. Therefore there is a different principle between Prevents (preventive) and Combat (repressive) in acts of corruption.

The phrase prevention is better than the eradication of truth which requires a proof. Is it true that "Prevention is better than Combat"?, Especially in cases of corruption that is rife in many parts of the world not only in Indonesia. So it deserves a world organization of The United Nations (UN) which is deeply concerned over the issue of corruption, and as a form of real efforts to prevent and combat corruption means the end of the UN talks in Palermo, Italy to establish the United Nations Convention Against Transnational Organized Crime (UNCATOC) and through this institution gave birth of Convention against Corruption, known as United Nations Convention Against Corruption (UNCAC) in 2003. While in Indonesia, it is known as the Convention against Corruption (TOR) of the UN, 2003. In addition to corruption as a transnational organized crime, corruption can result in damage to the joints of the economy of a country. The UN through UNCATOC intends to address the issue of corruption which are dealt with separately through their respective countries.

In Indonesia, the issue of corruption almost enters to the limit of the climax. Of course if corruption is likened to a disease whose name is cancer, it may be said to have reached the stage four, a virus that has spread almost throughout the body. If the human body is equivalent to a state organ, then the analogy corruption has spread almost evenly overall. Meaning that almost all government agencies involves with the name of corruption. A government agency should perform his duties as a public service and must be able to provide prosperity for its people. But the fact that government agencies have changed the function which is no longer a servant of the people but makes miserable, especially corruption committed by individuals or cooperation between both in large and small institution. The state finances should be used to develop economy in order to create public welfare but the state money is grabbed by corruptor.

The number of corruption cases in Indonesia increase by 12% throughout 2014, amid severe government to combat and eradicate corruption, which is one of the nation's biggest problems. Lembaga Indonesia Corruption Watch (ICW) said that there were 629 cases of corruption in various types such as bribery, abuse of authority, misappropriation of funds and falsification of data. Of all the types of corruption cases, there are more than 1,300 people who had been named as a suspect. Data 2014, the number of corruption cases in 2013 as many as 560 cases with 1271 suspects. It is estimated that throughout 2014, around Rp 5.3 trillion money disappeared brushed the corrupt and the most disadvantaged are Indonesian citizens who pay taxes because the money is largely become food by corruptors.

Corruption in Indonesia is extremely alarming. Even in a variety of surveys, Indonesia includes one list of most corrupt countries in the world. Data Transparency International on the list of most corrupt countries in 2001 says Indonesia ranked 96 of 102 countries surveyed with a score of 1.9 (score cleanest 10). In 2002, Indonesia ranked fourth most corrupt country out of 102 countries surveyed. Similar data was the latest in 2003 issued by the same agency said that Indonesia ranks sixth most corrupt country out of 133 countries surveyed with the same fixed value of 1.9.

Its predicate is amazing and it is very disgusting, is because the country is famous for the religious life and civil society but it turned out as the most corrupt country in the world. Various kinds of corruption cases ranging from large, medium to small cases occur year after year continuously without stopping, starting from the Minister, Governors, Regents, Mayors, Principal till at a lowly civil servant. Rampant corruption actions is not without reason, the punishment severe, moderate and mild been made, but the criminals still run the action. The threat of imprisonment as eradication efforts undertaken seems have not been able to work optimally, even now the punishment is very easy to be bought and mocked. It can be seen from the number of law enforcement agencies were involved in the bribery case, from the police, judiciary and even the Justice manifestly as law enforcement had to be involved.

No half-hearted impact of acts of corruption committed by government officials have resulted in the country bear the losses ranging from hundreds of millions, billions of trillions of rupiah. various cases of corruption with imprisonment as one of the efforts to eradicate corruption is not a deterrent actors / suspects of corruption. It may be due to corruption mostly dominated by state officials and people which have much money. It is possible with the money going *pat gulipat game* with law enforcement agencies. It is still clear in our memory a variety of high-profile cases of hundreds of billions simply vanished, even the perpetrators of corruption (corrupt) itself is not touched by the law and still roam freely as if there is no act of corruption that have done. For example the case of Bank Century abuses that occurred in the period of 2005-2008, case of Bank Indonesia Liquidity Assistance (BLBI) first sticking when the Supreme Audit Agency (BPK) revealed the results of the audit in August 2000 and many other cases which can not be written one by one. All of which cases involves government officials as state officials, although the perpetrators of corruption there also involve the private sector but the private sector is just as participate course of their collaboration with the government authorities, remain the main perpetrators of the government.

If this corruption is a disease, the saying goes mention any definite disease there is no cure, and what medications given for diseases such thing as corruption in Indonesia can be cured. There are two (2) drugs in an attempt to cure the disease of corruption though not fully guarantee the disease disappear (healed) total, but at least will reduce the acts of corruption. First, eradication efforts by implementing various laws to combat corruption with sanctions threat of prison sentences as high as life imprisonment, in fact efforts to eradicate not reduce or eliminate the disease of corruption is, in fact corruption is rampant and spread almost to all corners of people's lives. Second, prevention efforts through the State Administrative Law, considering the issue of corruption is closely associated with organizers and governments perpetrators and the corruption which is also derived from the state finances, the prevention efforts through the State Administrative Law, is expected to overcome and reduce the intensity of acts of corruption that occur in the environment good governance of the highest level officials, namely the President and his cabinet to the clerks in all government agencies.

II. THEORETICAL REVIEW

Corruption should be regarded as an extraordinary crime (extra-ordinary crime), so the effort to overcome it required an outstanding reduction (extra-ordinary enforcement) to perform actions that are outstanding as well (extra-ordinary measures). It said corruption as an extraordinary crime caused by the impact of corruption is very widespread. Corruption will undermine not only the civilization of a country but the world civilization, as the relationship of corruption is not just about the territory of a country, but can spread to other countries.

Undeniably, all countries agree that the corruption is closely associated with a power, meaning the emergence of acts of corruption due to the power of someone who is directly related to the government as state officials and public service, whether the person is an officer or a petty official. Power is a tool to influence a person, the greater the power of course, the greater the ambition (desire) to enlarge the influence. Power is a tool to carry out actions that set the direction of the organization (institution), an official with the power to stimulate and direct subordinates to do something that benefits him or his group although the direction contrary to the law. Similarly, an official of the treasurer who holds the finance will be easier for him to engage in corruption because the treasurer has the power to save finances, thus it is easy for him to use the money for personal or group interests.

Power will be pushing for a person to commit acts of corruption, while for those who do not have power certainly would never do corrupt, such as a driver or security guard (security) will never corrupt because they do not have the power to use state finances, so the phrase Lord Acton said "Power tends to corrupt, and

absolute power corrupt" is an expression that really correspond to reality. Identical powers to the authority as mentioned in Kamus Besar Bahasa Indonesia that the "Authority" is the right and power possessed to do something. So if this authority is associated with an act or acts of corruption, then it implies a series of power or attached to the office or position of perpetrators of such behavior, thus the act of corruption is abuse of authority or power use is contrary to the laws of government officials.

In Indonesia, regulations on corruption organized by Act No. 31 1999 Juncto Act No. 20 of 2001 on the Eradication of Corruption (Act PTPK), and the abuse of authority is determined and mentioned in Article 3 which states that the corruption that is:

Any person who with the intention of enriching himself or another person or corporation, abuse of authority, opportunity or means available to him because of the position or positions that could harm the state finance or economy of the state, shall be punished with life imprisonment or imprisonment of at least 1 (one) years and a maximum of 20 (twenty) years and or a fine of Rp. 50.000.000, - (fifty million rupiah) and Rp. 1.000.000.000, - (one billion rupiah).

Seen from the formula of corruption, it can be understood that there are two (2) important elements occurrence of acts of corruption, namely, first, abuse of authority, second, could harm the country's finances. While the potential for abusing the authority was in someone as a public official who must have elements, namely: appointed by the competent authority, for example, the Minister appointed by the President, the Director General is appointed by the Minister and so on, then assume a certain position, and perform most of the duties of the state or scientific equipment state governance. The authority in the concept of the State Administration Law is a rule formalized both the class of a particular person or against a particular government that comes from the legislative, executive, judicial or auditory, which is capable of acting as provided by the law applicable to the legal relationship certain. Thus the authority referred to here is certainly the authority vested in office or position rests with the Civil Service is based on legislation and not an authority on private parties or private, that deals with issues of authority or position as the basis of acts of corruption, the officials who were given that authority should be held accountable. So it must be separated personal accountability of the perpetrators of corruption with accountability office or for a certain someone who assumed office in government.

From the aspect of Administrative Law acts of corruption can not be called a tort (*onrecht matig daad*), but as an act of abuse of authority (*onrechtmatig overhead daad* or *detournement de pouvoir*), in corruption every act of abuse of authority is definitely against the law, so an unlawful act in view of the state administration synonymous with abuse of authority. In a government, abuse of authority is always parallel to the concept *detournement de paouvoir* that an officer used his authority to other purposes that deviate from the objectives that have been given as provided by law.

Administrative Law or legal governance contains norms that serve size (parameters) in the use of authority by the governing bodies. The parameter used is the extent to which legal compliance or noncompliance of the law by the public official, so that in case of use of authority that is not appropriate, then the government agency in charge must be held accountable or be held accountable, because after the administrative law, it is intrinsically linked with public authorities as well as the supervision of the authorities concerned.

Then the country legally losses can be attributed to the discretion of government officials, because of the absence or presence of the word "may" in the phrase "that could hurt the financial state or the country's economy" as mentioned in Article 2 (1) and Article 3 of Law No. 31 1999 Jo. UU no. 20 of 2001. Indeed, the word "may" has a very broad scope, so that the meaning of (*begripen*) becomes unclear and confusing, the word can mean a loss to the state may not exist yet. So it gives less certainty, legal uncertainty was used as the basis for investigators and prosecutors to carry out selective in corruption cases, as a result of law enforcement actions which has the potential to carry out abuses of authority or arbitrary action in the process of law which is contrary to the values of justice based on the constitution of the 1945 for the word "may" must be interpreted narrowly is really directed at the perpetrators of corruption, not against people associated that can encompass a lot of people in handling corruption judge actions.

Then, the word "to" contain elements of formal and not material, which means that the act of corruption is closely associated with the state finance or wealth of the country. If not the state finances were taken by corrupt then it is thus not included in the category of corruption, so there is an element financial harm state is a must. This is one of the elements that hamper for the Indonesian government to combat corruption, because sometimes all the formal elements have been fulfilled in the act of corruption. But if there are any other institution, whether it comes from the Supreme Audit Agency (BPK) or BPKP who do examination towards corruption and said there is no financial loss to the state, the act of corruption has never been considered. It is contrary to the wishes of the United Nations Convention Against Corruption (UNCAC), 2003, does not require any financial loss to the state as an element of acts of corruption, but simply by the act of violation of the rights of the social and economic society at large. It has included a category their acts of corruption, Even if that is the

case there is a difference between an element of corruption according to the provisions in Indonesia with the wishes of the international community as stipulated in the rules of the UNCAC in 2003.

Since the act of the new corruption meet the elements of abuse of authority, while the authority is there on state officials, and the element of financial loss to the state, while the state financial losses are committed by public officials as state officials, then of course corruption can not be separated by the actions of state officials and abuse their authority for their own interests or group that can result in financial harm state.

The shape of the state financial losses by referring to the Law No. 17, 2003, on State Finance and Law No. 31, 2009 on Corruption Eradication, according to Eddy Mulyadi Soepardi, are:

1. Any issue of a resource/wealth of the country/region (either in cash, goods) should not be issued.
2. All expenditure of a resource/wealth of the country/region is greater than it should be according to the applicable criteria.
3. Loss of resources/wealth of the country/region that should be accepted (including acceptance with fake money, goods fictitious).
4. Acceptance resources/wealth of the country/region is smaller/lower than it should be accepted (including acceptance of damaged goods, the quality does not match).
5. The emergence of an obligation of the state/region that should not be there.
6. The emergence of an obligation of the state/region larger than it should be.
7. Loss of a right country/region that should be owned/accepted in accordance with the applicable rules.
8. Right to country/region received less than they should be accepted.

So it is quite clear that the act of corruption is an act of state officials who abuse their authority to seek personal gain or a group which resulted in losses to state finances.

III. DISCUSSION

There are several actions that officials can be qualified as acts of abuse so-called tort, they are:

1. A government official to use an authority with a purpose of manifestly not in the public interest, but with the purpose of personal or political purposes.
2. A government official to use an authority with a purpose (which should be obvious from the letters in question) contrary to the provisions of the legislation which contains the legal basis of that authority.
3. A government official to run an authority for a purpose other than that obviously required by law with the authority.

Any abuse of authority committed by officials of the organizers is not no motive, usually of police abuse motive wants to seek personal gain or a particular group. The motive even has certainly planned in advance, and something that is not possible misuse of authority apply spontaneously, while deeds planned can usually state financial harm is not small. Abuse of authority is generally done for personal benefit which is not in the public interest. Most appropriate example of the abuse of power can be seen from the actions of state officials which have shifted their budgets planned, for example, the budget for road construction diverted for the construction of privately owned schools.

Then the losses this country there is no sense of firm according to Law No. 17 Year 2003 on State Finance and the Law on corruption, and the only understanding of the meaning and limits legally on state losses can be seen from Article 1 paragraph 22 of Law No. 1 of 2004 on State Treasury which states that the loss of the country is short on cash / marketable securities and tangible goods, and certainly the amount as a result of an unlawful act, either intentionally or through negligence. So the country's financial losses due to the abuses of authority from oneself because of the position and its position in the administration in.

Apart from that act of state officials who abuse their authority is not without cause, only causes this always overlooked making corrupt practices continue in many countries of this hemisphere. While in Indonesia alone the issues of corruption like octopus hands were spread throughout the government agencies. In each country is different from the causes of acts of corruption committed by government officials against the acts of abuse of authority. According to Andi Hamzah there are three (3) factors as the cause of acts of corruption, namely:

1. Lack of salary or opinion of civil servants compared to the needs of the increasingly rising.
2. Background of the culture or the culture of Indonesia, which is the source or cause widespread corruption.
3. Management poorly and supervision are ineffective and inefficient.

While in general in Indonesia there are several categories as corrupt as the cause of the state officials who abuse their authority, the category in question can be derived from the scope of the bureaucracy, but more contained in the self itself of state officials, including:

1. The surveillance system is inadequate. In running the government, there are 3 (three) supervisory institutions should be implemented effectively and efficiently, the third such supervision is Supervision Functional coming from the government is also composed of the Supreme Audit Agency (BPK), and Financial Supervisory Agency (BPKP), Inspectorate General (IG) and regulatory authorities level Province and State. Of all the institutions of government oversight is only CPC results of the tests are reported to the House of

Representatives (DPR) as the supervisory agency of the people. But it's ironic once is sometimes Parliament itself cooperating the perpetrators of corruption by way of indication after receiving reports of losses to the state. The Parliament asked for a tribute to the officials who have abused of his authority. Then Supervision Attached (*Waskat*) derived from the immediate supervisor, to the attached surveillance is very ineffective due to the boss always protect his subordinates or superiors together with subordinates to work together to do a job that is not good and seek mutual benefit (group). Then the Society Oversight carried out by the public directly or derived from the Non Governmental Organization (NGO). This oversight is also inadequate due to the difficulty for people to be able to obtain data corruption of government officials, so that the abuse of authority continue to apply, especially for perpetrators of corruption would attempt to cover up his actions.

2. The management control system is still weak. Agencies anywhere if there is weak management will push for state officials who have a strategic position to commit an act of abuse of authority that lead to acts of corruption, so the necessary management control system consisting of the organization, policies, plans, procedures, record keeping, reporting, personnel development, internal controls, all of which are summarized in a management policy that ultimately synergize to increase the performance of institutions.

3. Management of corruption together. In general, the act of corruption may occur due to the chance and narrowness, due to the chance opportunity to perform acts of corruption because there is authority for it, while the narrowness due to circumstances related to the pressing economic needs, may be to build a residential house and so on. So the opportunity and the narrowness of this applies to every part of the management. So when any part of the management of this corruption respectively, of each of these sections will cover up his actions let alone act was carried out jointly. So there is a management efforts to cover up acts of corruption within the organization environment.

4. Lack of welfare for civil servants. Welfare is the basis to push for civil servants in an agency anywhere to work professionally, although professional it is not dependent on the quality of the employees only, but must be supported by the instrument as a support professional manner. It will not be possible to complete a job data is done manually, of course with the computer data as professional equipment. So with insufficient income or salary for civil servants will make them work is not professional, for example in terms of health care, is often made to buy the drug should be public servants concerned, this is clearly not a professional, so that even this condition is the basis for corruption.

5. Bureaucracy convoluted. Bureaucracy is a means for the ruling government to carry out public services in accordance with aspirations of the community, where the bureaucracy is everywhere according to community needs, ranging from large and small. And bureaucracy in large-scale example of a country, while the small bureaucracy to the village offices. In a democratic state, the bureaucracy becomes a tool to bridge the administrative measures taken by officials or the authorities to facilitate the objectives to be achieved. Supposedly bureaucracy can help the public to all matters of public interest can be resolved quickly with a low cost. But sometimes an officer or ruler will use this bureaucracy for personal gain by creating a bureaucracy that is long and convoluted, so with bureaucracy convoluted will be obtained greater profits due to cite the cost of a great community, this way of corruption through the bureaucracy long and convoluted.

6. Services are not optimal. Both the poor bureaucracy is not independent of how well the services carried out by agents. A service of the government in general is reflected by the performance of the government bureaucracy itself, where it is because every society always wants the government to provide a quality service from bureaucrats, for which the government must provide services properly.

IV. CONCLUSION

Corruption as stipulated in Law No. 31 1999 Jo. UU no. 20 of 2001 is an extraordinary crime that generally these crimes committed by the intellectuals of an official who has the authority to use state finances, so that acts of corruption is virtually an act of state officials who consequently financial harm state does little to impact will damage the joints of the economy of a country. Many factors cause the appearance of an act of corruption, one contributing factor in the view of administrative law is an abuse of authority of officials as state officials. As for as the causes of abuse of power by state officials was due to surveillance systems were inadequate, management control systems are weak, the management of corruption together, the lack of well-being against government officials, bureaucracy is cumbersome and services by bureaucracy as organizer state administration was not optimal. Thus opening up holes for acts of corruption of state officials. For that there are three ways to do government through administrative law, among others, by systemic structural, abolitionistic and moralistic. Although these ways does not guarantee that acts of corruption becomes lost or is no longer, but

at least can inhibit and reduce not widespread acts of corruption in Indonesia, when these measures will be effective, then the expression of prevention is better than eradicating the necessary evidence to applied in different countries.

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