The Basis For The Judge's Consideration Of Acquitting The Perpetrators Of Corruption Crimes

Anjuandi Saragih¹, Sohibul Ihsan²
Sopyan Sitepu & Partners, Indonesia, anjuandi22@gmail.com
Universitas Islam Negeri Raden Intan Lampung, Indonesia, ihsan.sh.mh@gmail.com

Article’s Information

**Abstract**

The decision to release is known as the "vrijpraak" decision in the Continental European family of law. In general, the defendant is released after being found illegally and convincingly guilty of the crime charged by the prosecutor/public prosecutor in the indictment. We can see the acquittal in case Number: 2/Pid/Sus-TPK/2019/PN.Tjk. This study aims to determine the basis of the judge's legal considerations in imposing an acquittal and how the perpetrators of corruption are held accountable. This study uses a qualitative method: data collection techniques using library research and field studies, which are enriched by interview data sources. Based on the research results, the actions of Defendant Idhamsyah did not meet the elements stated in the Subsidiary indictment by the Public Prosecutor, so the defendant was not legally and convincingly proven guilty of committing a criminal act of corruption. Defendant as PPK did not meet the criteria for the element of "everyone" as stated by the Public Prosecutor, so the element of "everyone" was not fulfilled in the defendant's actions, according to the Panel of Judges. The judge advises dealing with corruption cases to be fair rather than harsh. Judges must consider all aspects of a juridical, philosophical, and sociological nature when deciding a case.

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A. Introduction

Corruption is a universal disease in the political order of all countries in the world. The word corruption comes from the Latin Corruptio or Corruptus, which is further stated that Corruptio also comes from the original word Corrumpere, an older Latin word. It is from Latin that many European languages such as English, namely Corruptie (Korrupie), can or should be suspected, the term corruption comes from Dutch and became Indonesian, namely "Korupsi". The increase in corruption in uncontrolled road construction will bring disaster, not only in the life of the national economy but also in the life of the nation and state in general. By road, we mean not only a piece of land with transportation infrastructure, but also a way of life. In Indonesia, the majority of corruption occurs in the public sector (government). Corruption in the public sector is more dangerous than corruption in the private sector because it affects not only government institutions but also all Indonesians, so the current study of corruption is primarily focused on the realm of bureaucracy. Because the position and position in the realm of bureaucracy allows public officials to abuse their position and commit corruption.

Corruption is a severe problem that can jeopardize societal stability and security, jeopardize social, economic, and political development, and harm democratic values and morality. The act appeared to become a culture over time. Even in September 2018, the Minister of Home Affairs of the Republic of Indonesia issued Circular Letter Number 180/6867/SJ Year 2018 concerning Law Enforcement against State Civil Apparatuses Committing Corruption Crimes. This policy was issued in response to the Minister of Home Affairs (Mendagri) Tjahjo Kumolo's request that a large number of Civil Servants (PNS) who have been proven to have committed criminal acts of corruption and already have permanent legal force (inkracht) be dishonorably dismissed immediately.

Eradication of criminal acts of corruption by judges in court, which is currently being carried out very aggressively, is a fundamental step towards a better state of life. However, all of the eradication carried out by judges has obstacles and obstacles where a judge must carefully examine the evidence presented before the trial because it is an extraordinary crime which is regulated separately by Law Number 21 of 2001 in conjunction with Law Number 31 of 1999 regarding the Eradication of Corruption Crimes today.

Corruption eradication is the most challenging and complex issue. There have been numerous writings, seminars, symposiums, and discussions on the subject, but the problem remains unresolved. When law enforcement officers attempted to crack a case of corruption at the time, the primary and first obstacle they encountered was that it came from government

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1 Ermansjah Djaja, Memberantas Korupsi Bersama KPK (Jakarta: Sinar Grafsika, 2008).
officials, specifically the ranks of central government and regional government. As a result, investigation and case investigation corruption has slowed or stopped entirely.\(^7\)

In exemplary behavior, a judge must be professional, uphold the truth, be honest, fair, and responsible. Because it is the judge who leads the trial, the judge is the determining factor for the smooth completion of a criminal case, which in particular is a criminal act of corruption. Corruption is subordinated to the public interest in the pursuit of personal goals, which include violations of norms, duties, and public welfare, as well as secrecy, betrayal, fraud, and extraordinary ignorance of the societal consequences. In a nutshell, corruption is the misappropriation of trust for personal gain.\(^8\) In fact, it is undeniable that at this time many defendants in corruption cases were acquitted by judges. The Public Prosecutor charged the defendant with strong charges, but when the judge handed down a verdict, the judge acquitted the accused of corruption related to development. Corruption crimes in the regions can be carried out by parties who generally have important positions in government, including by civil servants within the government of the Public Works Department. One of the corruption cases in road construction is Case Number: 2/Pid.Sus-TPK/2019/PN.Tjk which was carried out by IR. Idhamsyah, MM. Bin Ahmad Yang is currently retiring from the Public Works Service, the Public Works Office of the East Lampung Regency Government.

There was a road construction agreement contract between the Public Works Department and a power of attorney for the director of PT. Achilles Raja as a result of Idhamsyah's actions, where as a result of the contract agreement, which was carried out conditionally, there was a road construction work agreement that had abused its authority and position as a PPK on the Road Construction Project in East Lampung, where as a result of the contract agreement, work that was not f The agreement has been reached. In the indictment, the Public Prosecutor (JPU) stated that the defendant Idhamsyah, a resident of Haji Abdullah Street, Kedaton, Bandar Lampung, committed corruption in increasing the main Rajabasa Lama road section on Way Kambas Road, Labuhan Ratu District, East Lampung Regency, which was sourced from the Special Allocation Fund. (DAK) in 2016 with a budget of Rp 3.6 billion. However, the project was not in accordance with the contract and there was a lack of volume, and the amount of expenditure could not be accounted for, causing state financial losses of more than Rp. 1.5 billion. where in the development implementation process there is a lack of volume of road construction work at the final stage, namely the Asphalt Concrete Wearing Course (ACWC) coating.

Based on the above background, the author is interested in examining more deeply the case of corruption in road construction by writing a research entitled "Basic Judgment of Judges Imposing Free Decisions Against Old Commitment-Making Officials in Corruption in the Construction of the East Lampung Road" (Study of Decision Number: 2/Pid.Sus-Tpk/2019/PN.Tjk).

B. Discussion
1. Basis for Judges' Consideration in Imposing Free Decisions Against Old Commitment-Making Officials in the Construction of the East Lampung Road

In making decisions, most judges in Indonesia use juridical and non-juridical considerations. To make a decision in the culmination of a criminal case, Sudarto believes that judges must consider juridical, philosophical and sociological aspects. It can be concluded that the decision must consider two things;\(^9\) that there must be at least two valid pieces of evidence.

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according to the applicable law; and on the basis of the valid evidence, the judge believes that a criminal act has occurred and the defendant is at fault. To make a decision in the culmination of a criminal case, Sudarto believes that judges must consider three aspect, namely the juridical, philosophical and sociological aspects.

The legal consideration in a judge's decision is to base their decision on the formal provisions of the legislation. According to the law, the judge cannot impose the sentence unless there are at least two pieces of valid evidence at the time of imposing it (Article 183 of the Criminal Procedure Code). Philosophical considerations mean that the judge considers the sentence imposed on the defendant to improve the behavior of the defendant who has committed a crime through the sentencing process. This is the meaning of the philosophy of punishment so that after the convict is released from the correctional institution, he will be able to improve himself and not commit another crime. The sociological consideration in making the basis for consideration is that the judge in imposing a sentence is based on the defendant's social background in everyday life. From this background and habits, it will strengthen the elemental analysis of judges' considerations in making decisions and pay attention that the sentence imposed has benefits for the community.

Meanwhile, judges' non-juridical considerations are based on other factors not stipulated by laws and regulations of a sociological nature, as well as other facts revealed during the trial that is not regulated by applicable laws.\(^\text{10}\) The principle of independent judicial power requires that judges be free from interference, pressure, or coercion, directly or indirectly, from the power of other institutions, peers, superiors, and other parties outside the judiciary. So that when a judge decides a case only for the sake of justice based on law and conscience, although it is difficult, it is not impossible for the establishment of the Independence of Judicial Power.\(^\text{11}\)

The actions taken by the defendant in the demands of the Public Prosecutor stated that the defendant Ir. Idhamsyah, MM. Bin Ahmad has been proven legally and convincingly according to law guilty of committing a crime "with the aim of benefiting oneself or another person, or a corporation, abusing the authority, opportunity or means available to him because of his position or position that is detrimental to state finances or the state economy". The decision is based on a subsidiary indictment of Article 3 Jo. Article 18 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption As amended and added to by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. It then sentenced Ir. Idhamsyah, MM. Bin Ahmad with a prison sentence of 2 (two) years and 6 (six) months reduced as long as the defendant is in temporary detention with an order that the defendant remains detained and a fine of Rp. 50,000,000.- (fifty million rupiah) Subsidiary 4 (four) month of confinement.

In the case of the Public Prosecutor's indictment, which is prepared on a sub-dividual basis, the Panel of Judges will consider the Primary indictment first. If the primary charge is proven, then the subsidiary indictment does not need to be considered again, and vice versa; if the primary charge is not proven, then the subsidiary charge must be considered. Article 2 paragraph (1) of Law Number 3 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption whose elements are as follows:

1. Everyone's Elements
2. The element is against the law
3. The element of doing the act of enriching oneself or another person or corporation
4. Elements that can harm the state's finances or economy.

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Whereas Martiman Prodjohamidjojo mentions "two minimum pieces of evidence" as referred to and stipulated in Article 183 of the Criminal Procedure Code, in practice, it must be a combination or combination of valid evidence, which can be in the form of witness testimony and expert testimony, or witness testimony and letters, and so on. ULP, through Pokja I, is a related party who has the duties and responsibilities, and authority to determine the winner of the auction so that the Defendant may not interfere with the authority of Pokja I in determining the winner of the auction because the Procurement Service Unit through Pokja I has determined the winner auction, namely PT. Achilles Raja, based on the results of the stipulation, the Defendant as PPK was obliged to follow up to carry out the stages of signing a contract with a partner as the duties and authorities of the Defendant as PPK were regulated in Presidential Decree Number 54 of 2010 then the Defendant drafted a contract which was assisted by Syirajudin Syirad (late). However, the partner column still listed the PT director's name, Achilles Raja, namely Juliusman, not Sutanto, so that the draft contract before being signed by Defendant was revised by the witness Ketut Durma on the orders of Defendant.

The Tribunal thought that the defendant requested a revision of the draft contract because the name listed in the draft contract was the name of the CV director. Achilles Raja, namely JULIUSMAN, while at the evaluation stage of the procurement auction, came to the Pokja committee with complete documents was Sutanto, who also brought the Director's Power of Attorney so that the defendant deemed it necessary to revise the draft contract because the witness Su tanto is not Juliusman, so the defendant is only willing to sign the draft contract if the name of the partner listed in the contract has been revised. In connection with the position and capacity of the Defendant as PPK in these activities, as evidenced at the trial, the defendant has carried out all his duties and responsibilities, namely making HPS, requesting an auction, determining the winner of the auction, signing the contract and paying a 20% down payment to partners of PT. Achilles King.

After carrying out some of his duties and authorities, the defendant entered retirement starting on October 1, 2016, and no longer served as PPK on the job because he was replaced with a new PPK, namely, witness SUPARDJAN, then the authority and responsibility as PPK has been transferred to witness SUPARDJAN since witness SUPARDJAN was appointed as PPK replacing the defendant; thus the Panel of Judges believed that the defendant no longer had the authority over the work carried out by Sutanto after his position and capacity was replaced by the witness SUPARDJAN, including signing documents for disbursement of funds until the work was 100% completed. Whereas after the replacement of the PPK, witness Sutanto continued the work on asphalting the AC-WC starting from October 17, 2016, until October 24, 2016, when the defendant no longer had the authority to do the work because of the existence of the replacement of PPK from the defendant to the new PPR Ir. Suparjan then de facto and de jure the defendant was no longer involved in these activities.

2. **Criminal liability for perpetrators of corruption in the construction of roads in East Lampung.**

Literally, criminal liability is criminal liability containing the principle of error (culpability principle), which is based on a monodualistic balance that the principle of error based on the value of justice must be aligned in pairs with the principle of legality based on the value of certainty. Criminal responsibility is a mechanism to determine whether a defendant or suspect is responsible for a criminal act that occurred or not. In order to be able to convict the perpetrator, it is required that the criminal act he has committed fulfills the elements specified

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in the Act. In order to be criminally accountable, it must contain errors. There are two types of errors, namely intentional (opzet) and negligence (culpa).\(^\text{13}\)

In Indonesia, corporations are known as a subject of criminal law. But currently, there is a lack of clarity regarding the concept of the corporation as a subject of criminal law and what entities can be accountable under criminal law. In addition, the arrangement regarding the loading criminal liability for corporations is still very minimal, especially regarding the separation of corporate and management criminal liability (human subject) when a crime occurs in the corporation.\(^\text{14}\) Namely intentional (opzet) and negligence (culpa). Formulating criminal liability negatively, especially concerning the repressive function of criminal law, in this case, being accountable for someone in criminal law means being punished; thus the concept of criminal responsibility is a necessary condition for imposing a crime against a person who commits a crime while starting from the Monodualistic idea (daad en dader strafrecht), a due process (due process) for determining criminal liability is not only carried out by taking into account the interests of the community, but also the maker.\(^\text{15}\)

The elements of strafbaar feit include elements of action, called objective elements, and elements of the maker. So strafbaar feit can also be said as conditions for dropping criminal law, if there has been a strafbaar feit, the perpetrator can be convicted. A.Z. Abidin, said that the monistic sect towards Strafbaar Feit is the majority worldwide, looking at the elements of offense maker as part of strafbaar feit. If in a criminal event there is more than one person, then the responsibility and role of each must be sought in the event. The relationship between participants in resolving the crime is jointly committing a crime. A person has the will and plans a crime and uses other people to carry out the crime. A person who commits a crime while another person helps carry out the crime.\(^\text{16}\)

Based on data from Indonesia Corruption Watch (ICW), the record of corruption that occurred shows that out of 267 corruption cases, 42.70% were cases of government procurement of goods and services where government employees / apparatus, both central and regional, were the main actors of corruption. Of the local government employees 39.03% are Commitment Making Officers (PPK), and Technical Implementation Officers (PPTK).\(^\text{17}\)

This creates a sense of injustice remembering that based on Presidential Regulation Number 16 of 2018 concerning the Procurement of Goods/ Government Services, it appears that in the process of implementing the procurement of goods/services does not only KDP is involved, but there are other parties who also take part in the interrelated procurement of goods and services each other, including Budget Users and Budget User Authority. Where PA has duties and authorities in implementing the Plan General Procurement while KPA has authority in accordance with what was delegated by PA regarding procurement.\(^\text{18}\)

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Criminal liability is a person's responsibility for the crime he has committed. Thus, the occurrence of criminal liability because there has been a crime committed by someone. Where the community has agreed to reject a certain act which is manifested in the form of a prohibition on the act. As a consequence of the community's refusal, the person who commits the act will be reproached, because in this incident the maker can actually do something else. Criminal liability is essentially a mechanism built by criminal law to react to violations of an agreement to refuse a certain act.19

One of the tasks of the PPK is to control the contract that has been signed between the PPK and the provider of goods/services.10 The PPK has great responsibility and authority to enter into an agreement with the provider. PPK as a government official who drafts a contract, signs a contract then manages a contract with a provider of goods or services, after the contract is completed, then the PPK processes the contract payment and delivery as state/regional property assets. holders of government power in the aim of achieving the goal of using the budget performance that is economical and efficient and meeting its targets effectively requires legal protection in achieving output effectively, efficiently and accountably.20

In connection with the position and capacity of the Defendant as PPK in these activities as evidenced at the trial, the Defendant has carried out all of his duties and responsibilities, namely making HPS, requesting an auction, determining the winner of the auction, signing the contract and paying a 20% down payment to partners of PT. Achilles King. After carrying out some of his duties and authorities, the Defendant entered retirement period Effective October 1, 2016 and no longer served as PPK on the job because he was replaced with a new PPK, namely witness Supardjan, then the authority and responsibility as PPK has been transferred to witness Supardjan since witness Supardjan was appointed as PPK replacing the Defendant, thus the Panel of Judges was of the opinion that the Defendant no longer had the authority over the work carried out by Sutanto after his position and capacity was replaced by the witness Supardjan, including signing documents for disbursement of funds until the work was 100% completed.

Based on the things described above, the Defendant is not the right person to be held accountable for the corruption case in the construction of the road in East Lampung. Because based on the facts at trial the Defendant was not proven in the first element of the primary indictment of the public prosecutor, namely the element of every person. Because the first indictment that was indicted was not proven in the primary indictment, it is the same for the subsidiary charges and there is no need to prove it anymore.

C. Conclusion
The judge's consideration in granting the release of the Old Commitment Making Officer for the construction of the East Lampung road was because the defendant's actions did not meet the elements as stated in the Subsidiary indictment by the Public Prosecutor. The basis for not fulfilling these elements is because the defendant's capacity is no longer in office for the project that suffered a legal loss. The defendant cannot be held responsible for the loss because he is no longer in his capacity as a Commitment Making Officer (PPK) on the corrupted budget project. Then the Public Prosecutor should examine the latest PPK that replaces the old PPK because the project for constructing the East Lampung road segment occurred when the latest PPK took office.

Bibliography


