

A Juridical Causality Relation between Political Dowry and Corruption by Regional Heads (Constitutional Law and Criminal Law Perspective)

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Abstract- In early 2017 until February 2018, the Commission of Corruption Eradication arrested ten Regional Heads who red-handedly fired for political dowry and corruption. This research was sociological-juridical method with the aims of research to find the relation between political worry and corruption by regional heads. This research was also descriptive-analytic research with the subjections is descriptions on the constitutional and criminal law perspective. Cases handled by the Commission of Corruption Eradication are committing a crime, abusing the authority, making pledges to another party, accepting gifts and bribes from regional heads. Not only will the regional heads participate in the elections, but it also includes the family member of those regional heads. Corruption committed by the Regional Head from the Governor, Regent, and Mayor can be subjected to the element of criminal acts and violate Law No. 31 of 1999 Act No. 20 of 2001 concerning Eradication of Corruption Crimes.

Keywords: *political dowry, corruption, regional heads*

I. INTRODUCTION

The issues of corruptions have become a serious discussion for years. We had observed from 2010 until 2014, in the era of President Susilo Bambang Yudhoyono. During these four years of observation, there are many legislative members sentenced to corruption scandals. In the era of President Joko Widodo, corruption trends have changed. Not only are legislative members penalized, but the legislative members such as Governors, Regents, Mayors in almost every regency in Indonesia also punished for the cases.

Etymologically, the word corruption comes from Dutch language *stafbarfeit* or *delic*, an action that can be penalized with sanctions. Criminal law of *delic* can be divided into some

terms, for example criminal event (Article 14 paragraph 1 of the Constitution of the Republic of Indonesia), criminal act [1], punishable act [2], and criminal offense [3]. Literally, meanwhile, corruption can be termed as crime, badness, bribery, immoral act, and dishonesty [4] [5]. It can also be defined as a despicable act of embezzling money and receiving the bribe [4] [5]. It is an awful act that influences people to do more negative acts [6].

The trend mode of corruption revealed is the regional heads who have been elected receive project fees in exchange from the legislature and the private sectors. They abused their authority as government power to the civil servants. The regional heads receive a payoff for some kinds of influence or action in return, such as promotion in a local government institution [7].

The corrupted money later then called political dowry for it used as a return for the political campaign fund. The usage of illegal money is for the campaign in the regional head election. In this study, there are two research questions: 1) how is Indonesian Government Trias Politica concept according to the constitutional law perspective; (2) how criminal law perspective analyzes the Regional Heads who practice political dowry and corruption.

In the legal perspective, the constitutional power in Indonesia is divided into three, namely legislative power, executive power, and judiciary power. Legislative power includes People's Consultative Assembly, People's Representative of Indonesia, and Regional Representative Council. Executive power includes the President and his ministries, Governor, Regent, and Major. Meanwhile, judiciary or judicial power includes the Supreme Court of Indonesia, Constitutional Court of Indonesia, and Judicial Commission of Indonesia.

Research From the minister of Interior 311 regional head caught in a corruption case. This Phenomenon according to Huntington, "Democracy is not enough only with the election" [8]. Political corruption is always an abuse of power and facility for political benefit purpose by political officials.

The candidates of regional election commonly offer bribery inform of money to the political party. The corruption practices of the candidates to support their campaign is conducted by embezzling the government state budget or by having an illicit deal with some private companies. This deal intends to make those private sectors dominate the projects of development in the areas where the candidate that they support win the election.

After Elections Regional heads that are proven give political dowry or conduct corruption as they are caught red-handed by the Corruption Eradication Commission should be apprehended and sentenced to prison. According to Law number 31 of 1999 juncto Law number 20 of 2001 on Eradication of the Criminal Act of Corruption, what are categorized as corruption include committing a crime, abuse of authority, giving or promising something, receiving payments or promises, and gratification counted [9].

We aim to analyze cases of the regional heads who are arrested for political dowry and corruption and to study the democracy with integrity that has good government and good governance principles before the Indonesian general election 2019. The Election Supervisory Board has rights to give sanctions to those regional heads who are proven practicing political dowry and corruption based on Indonesian legislation [10].

The result of the study can be used for the House of Representatives to revise regional government election law, concerning sanctions for regional heads who practice political dowry and regional head candidates who are suspected of corruption. Those suspects should not be allowed to register candidacy for regional election. Furthermore, this recent study can be a reference for the future researchers who are interested to discuss political dowry and regional head corruptions.

II. RESULT AND DISCUSSIONS

A. The Descriptions Of Indonesian Trias Politica Concept

The government is a system that holds the mandate of the people who carry out the functions of the country and the functions of constitutional law [11]. The implementation of government is the distribution of power reflected in the performance of state administration. The power is mainly held by the three state institutions: legislative institutions, executive institutions, and judicial institutions.

According to Roger H. Sultau, the purpose of a nation is enabling its people to develop and carry out their creative power as free as possible. Whereas, according to Harold J. Laski, a nation is formed on the basis of the common culture whose people have particular interests to unite [12].

a. Trias Politica (Separations of Power)

The term *trias politica* is derived from Greek that means "Separations of Power". According to Trias Politica concept, the three political powers cannot be associated in a branch, those should be separated. The separated powers initiated by Montesquieu described in Trias Politica concept are the following points [13];

1) Legislative power; it is the Authority Under the Constitution to Make Laws.

Legislative power is an authority to make or alter the laws. Legislative power in Indonesia is divided into three: People's Consultative Assembly (MPR), The House of Representative (DPR), and Regional Representative Council (DPD). The obligation and authority of People's Consultative Assembly are written in Article 3 of the 1945 Constitution: amend and stipulate the 1945 Constitution, and impeach the president and vice president.

The House of Representative has several tasks and obligations [14]: (1) making laws; (2) having the right of interpretation, the right of inquiry, the right to provide opinions; (3) in coordination with president, pointing the ambassador; (4) giving amnesty, abolition, functioning of budget rights and supervision; (5) providing approval when the president makes an agreement; (6) electing members of the Supreme Audit Agency (BPK); (7) providing dismissal for the Judicial Commission and appointing the members of the Constitutional Court; (8) providing consideration or approval to the president; (9) appointing The Commander of the Indonesian National Armed Forces and The National Police Chief; (10) endorsing the members of The Commission of Corruption Eradication (KPK), BI Governor and member of the National Human Rights Commission; (11) providing an endorsement and dismissal of the president and vice president. Article 22 c and 22 d of the 1945 Constitution regulate the tasks and rights of the Regional Representative Council (DPD): (1) providing opinions; (2) pointing and being elected; (3) defending; (4) commanding; (5) administering the protocols, the implementation of the national budget, and its management.

2) Executive Power; it is the Authority to Execute Laws.

Executive power in the government level executes and enforces laws. The president leads the executive power to execute laws. The president does not lead by himself, but he is assisted by the ministers, governors, regents, and mayors.

An example of legislative alignment as legislators and executives as the institution executing the law is the House Representative make laws concerning the election of Regional Government Heads. Therefore, the candidates shall follow the rules according to the law [15].

3) Judicative Power

Judicial power is the power that is obliged to defend the law. Judicial power consists of institutions at the judicial level: Supreme Court and Institutional Court. Supreme Court (MA)

is the highest judicial court. It has the highest position and oversees the judiciary at the High Court and District Courts. Institutional Court is the judiciary institution, which specifically handles cases of electoral disputes and examines the material of laws that have the highest position, and oversees the judiciary at the High Court and District Courts.

Judicial Commission (KY) a court institution, which specifically handles cases of Judges and Prosecutors who violate the code of ethics. The idea of Indonesia as stated in Pancasila and The Constitution of The Republic Indonesia 1945 is creating an equitable and prosperous society system materially and spiritually [16].

The Indonesian government system is presidential. Therefore, the cabinet is not responsible to the House of Representative and it cannot be dismissed during the president periods. On the contrary, the President cannot fire the House of Representative. The Ministers are not allowed to become members of the House of Representative. Generally speaking, Trias Politica concept concerning on separation of power is certainly described in the Indonesian-state administration [17].

a. Trias politica and Eradication of Corruption in the Perspective of Good Governance

While good governance is defined as the actions of public institutions to direct, manage, and control the public affairs in order to actualize certain justice values in everyday life, good government is the settlement decided by the government, the private parties, and the people concerning the government constitution [18]. Good government is indicated by the government's productivity and the outcomes. Specifically, those are indicated by the increase of people's productivity, purchasing power, and spiritual prosperity that is depicted by the sense of security, sense of happiness, and sense of nationality [19].

The principles of good governance include;

a) Participation

In this principle, people or citizens have the rights to elect the regional heads that are not corrupt. In this case, law enforcement is equal for all people regardless of the position of apparatus or common people. All people have the same right before law. As a result, if there is a leader who is found guilty of offering political dowry or committing corruption practices, he/ she should be sentenced according to the anti-corruption legislation [20]. Moreover, the money obtained from the crime should be confiscated and returned to the state's general treasury.

b) Transparency

The use of State Budget and the companies that win the contract along with the budget are supposed to announce transparently by using the electronic application developed by the local government. Moreover, the application should be accessible to the public. Thus, everyone can openly monitor the process.

c) Responsiveness

The government or the institution needs to serve all stakeholders concerning their problems of health, education, development, and so on.

d) Consensus orientation

It is the mediation in the decision-making process to reach the consensus over the local public affairs.

e) Accountability

The regional government is supposed to be accountable to the public, particularly concerning the use of State Budget and the performance of government apparatus.

f) Strategic vision

Regional government should provide clear vision and mission of the regional development.

Simply, it can be inferred that good government and good governance is different. While the good government is the government's principles that are attached to the government officers in person, good governance is the principles required in implementing regional autonomy.

B. Sentence for the Bribery and the Corruption of Regional Heads

In Latin, the word corruption is spelled as *corruptio* or *corruptus*, in France is spelled as corruption and in Dutch is spelled as *Korruptie* [21]. The history of corruption had occurred from the colonial era, from which corruption was highly happening. Therefore, corruption seems to be inevitable in Indonesia. According to Alatas, the essence of corruption is the betrayal of people's trust by stealing their money, the nepotism by involving family member, and bribery to make everything settled [22]. World Bank limits the definition of corruption as power misuse of certain people only to get personal benefits. This definition is summed into three terms; corruption, collusion, and nepotism [23].

1) Political Dowry of Regional Head

For the candidates of the regional head election, having money for the political campaign activity is indeed crucial [24]. It is because the money is the weapon for the election battle, and it seems impossible to win the election if the candidates have no money. A political campaign is an activity of gaining community or society's support to help the candidate win the election. Unfortunately, there are several cases in which regional heads are caught red-handed by Indonesia's Corruption Eradication Commission concerning the receiving of bribery.

Nevertheless, some actions can be done to minimize the practice of bribery. The eligible candidates should be strictly selected. The General Election Committee should appoint some staff to gather thorough information about the candidates and make sure that they are free from bribery. Moreover, the Election Supervisory Body as the election's supervisor should watch over the candidates and punish them in case they are found guilty by receiving the bribe. It is conducted to ensure the selected candidate is a leader with high integrity who never conducts corruption practices [25].

2) Corruption of Regional Head According to Law number 31 of 1999 *juncto* Law number 20 of 2001 on Eradication of the Criminal Act of Corruption

In the perspective of criminal law, corruption is the action of committing a crime that can be subjected to prison. As it is also inflicted financial loss for the state's budget, then the corrupt person is also fined and asked to return the money to the state treasury.

In this article, the author will analyze the corruption phenomena of the regional head who caught red-handed by the Corruption Eradication Commission. According to Law number 31 of 1999 *juncto* Law number 20 of 2001 on Eradication of the Criminal Act of Corruption, corruption is categorized as:

a) The action of committing a crime

Regional heads including governor, reagent and major deliberately do the corruption to enrich their personal gain, thereby creating losses to the state finance is sentenced to a minimum of 4 (four) year imprisonment and be fined a minimum of Rp 200.000.000 (two hundreds million rupiahs) and a maximum of Rp 1.000.000.0000 (one billion rupiahs) [26].

b) Abuse of authority

Anyone with the aim of enriching oneself or a corporation by abusing the authority, which creates losses to the state finance, is sentenced to life imprisonment or to a minimum of 1 (one) year and a maximum of 20 (twenty) year imprisonment and to a minimum fine of Rp 50.000.000 (fifty million rupiahs) (Articles 11 and 12 of Law No. 20 of 2001 concerning Eradication of Corruption Crimes, 2001). Most of the corrupt regional heads abuse the authority by granting some projects to private sectors in order to gain more support.

The example is the case of Nganjuk Regent, Taufiqurrahman. He is accused of the illicit deal of certain position in district government of Nganjuk. Moreover, the Regent of Jombang, Nyono Suharli Wihandoko, is also accused in the same case. He subjectively approved the appointment of Inna Silestyani as the new head of Health Service in Jombang Regency.

c) Giving or promising something

Any person(s) who gives or promises something to a civil servant or state apparatus because of or in relation to something in violation of his/her obligation whether or not it is done because of his/her position shall be sentenced to a minimum of 1 (one) year imprisonment and a maximum of 5 (five) year imprisonment and be fined a minimum of Rp 50.000.000 (fifty million rupiahs) and a maximum of Rp 250.000.000 (two hundreds and fifty million rupiahs) [27].

d) Receiving payments or promises

Article 11 mentions that a civil servant or state apparatus who receives a payment or a promise believed to have been given because of the power or authority related to his/her position shall be sentenced to a minimum of 1 (one) year imprisonment and a maximum of 5 (five) year imprisonment and be fined a minimum of Rp 50.000.000 (fifty million rupiahs) and a maximum of Rp 250.000.000 (two hundreds

and fifty million rupiahs). Meanwhile, article 12 mentions that a civil servant or state apparatus who receives a payment or a promise believed to have been given to encourage him/her to do something or not to do anything because of his/her position in violation of his/her obligation shall be sentenced to life imprisonment or a minimum of 4 (four) year imprisonment and a maximum of 20 (twenty) year imprisonment and be fined a minimum of Rp 200.000.000 (two hundreds million rupiahs) and a maximum of Rp 1.000.000.000 (one billion rupiahs) (Articles 11 and 12 of Law No. 20 of 2001 concerning Eradication of Corruption Crimes, 2001).

e) Gratification

Bribery received by private parties or apparatus in regional government is commonly termed as gratification [28]. Article 12B of this law mentions that any gratification for a civil servant or state apparatus shall be considered as bribe when it has something to do with his/her position and is against his/her obligation or task with the provision that (a) when the gratification amounts to Rp 10.000.000 (ten million rupiahs) or more, it is the recipient of the gratification who shall prove that the gratification is not a bribe, and (b) when the gratification amounts to less than Rp 10.000.000 (ten million rupiahs), it is the public prosecutor who shall prove that the gratification is not a bribe.

Additional sentences shall be given to the regional heads that are found guilty of the criminal offense as referred to in Criminal Code. Those additional sentences are the confiscation of movable and immovable properties, the compensation that shall be paid to the maximum of the wealth obtained from the criminal act of corruption, the closure of the company, and revocation wholly or partially of rights [29].

Corruption is categorized as a special crime that is specifically handled by the Corruption Eradication Commission. It is definitely different from other general crimes [30]. The sentence should be in a minimum of 5 (five) year imprisonment. Moreover, the sentenced fine of a minimum of Rp 250.000.000 (two hundred and fifty million rupiahs) is also incomparable to wealth obtained from the corruption that amounts to billion rupiahs. Considering this phenomenon, the penalties for the subjected crime offense should be in maximum penalties (life imprisonment or death penalty) to cut the corruption practices. As a result, Indonesia will be one of the least corrupt countries [31].

3) The Head Regional Corruption Case

a) The Commission of Corruption Eradication Siti Masitha Soeparno, the Mayor of Tegal, red-handedly on August 29, 2017, at 5.50 pm. The arrest was carried out at Siti's official residence. The case was allegedly related to bribery of the physical building of the Intensive Care Unit of Kardinah District Hospital in Tegal for 5.1 billion rupiahs. The money would be used for the political campaign of the Mayor of Tegal election for 2019-2024 periods.

b) Eddy Rumpoko with his employee Edi Setyawan and Prima Filipus Djap, the Director of PT. Dailbana were

caught under arrest by The Commission of Corruption Eradication. The Mayor of Batu and his employee accepted 500 millions rupiah, 300 millions of total amounts were used to buy Alphard car. The bribe was the capital expenditure and machinery projects. The substantial budget in 2017 for the procurement of furniture of Batu city Government was 5.26 billion rupiahs.

- c) The Regent of Nganjuk Regency, Taufiqurrahman was accused of the rotation of Nganjuk regency officials. He and some officials were caught red-handedly on October 26, 2017. Taufiq, Ibum, and Suwandi were suspected to accept 289 million rupiahs from M. Bisro and Harjanto.
- d) Non-active Kutai Kartanegara Regent Rita Widayari and PT. Media Bangun Bersama Commissioner Khairudin were charged as money laundering suspects on January 16, 2018. They concealed 435 billion gratuities into cars possession under other people's names. She was sentenced for accepting project fees of procurement of goods and services for the Regional Budget of Kutai Kartanegara Regency.
- e) The Commission of Corruption Eradication arrested East Halmahera of North Maluku Regent Rudi Erawa who would be elected as Maluku Governor. Rudi was caught red-handedly for the main suspect, accepting 6.3 billion bribes from some national-road project contractors in East Halmahera. The arrest was on January 31, 2018.
- f) Jambi Governor, Zumi Zola and the Head Executor of Public Work and Public Housing Department, ARN were suspected accepting gratuity for a project in Jambi Province on February 2, 2018. Zumi was also guilty of 6 billion bribes during his responsibility as a governor for 2016-2021 periods.
- g) Jombang Regent, Nyono Suharli Wihandoko was subjected to a suspect for 275 million-bribery scandal from the Head Executor of Public Health Department, Inna Silestyani. The bribe was for enacting the legislation of the Head of Health Department definite position [32].
- h) The Commission of Corruption Eradication arrested Ngada Regent of East Nusa Tenggara, Marianus Sae on February 11, 2018. He was endorsed by Partai Demokrat, Partai PDIP, and Partai PKB. Martinus was penalized for accepting the 54 billion project from PT. Sinar 99 Permai, a road-infrastructure project tender. The President Director was also caught red-handedly by The Commission of Corruption Eradication.
- i) The Commission of Corruption Eradication apprehended Subang Regent, Imas Aryumningsih on February 14, 2018. Imas used bribery transaction code "itunya (that's it)" to show the bribe given by the private sector. The project was for issuing building permits. While the 4.5 billion was for local government and the factory, Imas and the intermediary agent

accepted 1.5 billion bribes. The money would be the political campaign fund for Subang Regent Election [33].

- j) Kendari Mayor of Southeast Sulawesi, Adriatma Dwi Putra and his father, Asrun, who would be the Governor candidate on the next election, were arrested by The Commission of Corruption Eradication on February 28, 2018. The Commission of Corruption Eradication spokesman, Febri Diansyah said that the corruption case ranged billions and was still counted.

CONCLUSION

Indonesian Election is supposed to strengthen Indonesian democracy with integrity to create a good government and good governance. Indonesian Election is very expensive for the regional head candidate in the elections. The candidate searches financial source for his/her elections from all source including debt or from Businessman in the reciprocity of project or some of the law. If the candidate victorious in the elections, then he needs to recover his/her election cost. This led him as regional government head (regent/mayor or governor) became corrupt and stolen government fund with several methods or modus or accepting a bribe from a businessman. Thus the regional government can't be good governance because of lack of participation, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability, and strategic vision.

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