

## ERADICATION OF CRIMINAL ACTS OF CORRUPTION TOWARDS DIRECTORS OF COMMANDITAIRE VENNOOTSCHAP WHO PERFORM CRIMINAL ACTS OF CORRUPTION

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### Abstract

This study aims to determine and to qualify criminal acts of corruption within article 2 and article 3 of Law Number 31 Year 1999 On Eradication of Criminal Acts of Corruption, and to determine the application of material criminal law and legal considerations by the judges in deciding the verdict. The statute approach, which examines laws that are related to research problems, is the approach used in this normative research. In addition to the statute approach, the author also carries out a case approach, which means that this research is complemented by a review of the judge's considerations in the decision. The primary and secondary materials obtained were then analyzed descriptively to be then presented qualitatively. This research concluded that: 1) Article 2 and Article 3 of the Law of 1999 has several differences. One of the differences can be found on the subject. Article 2 applies to anyone who commits the act and Article 3 applies to anyone with a "post or position" who abuses the authority in committing the act. This means the subject of Article 3 only refers to Civil Servants; and 2) the application of material law against the CV Director who committed the criminal act of corruption is improper due to the facts that the defendant as a CV director is not considered as a Civil Servant and the judge consideration sentenced the defendant with subsidiary indictment (Article 3) because according to the judges his action fulfills the materials of the article.

**Keywords:** Application of Articles, Criminal Acts of Corruption, CV Director

## INTRODUCTION

Indonesia is a country with the largest population in Southeast Asia and is also known as an archipelagic country because it has five large islands and has diversity in them such as religion, ethnicity, and culture and is rich in flora and fauna contained therein. Based on this explanation, it is now known that Indonesia has a very large population and has abundant natural wealth.

With the large number of people residing in Indonesia, this country is not spared from the many actions that can harm society both materially and non-materially and one example is a crime.

Indonesia is a rule of law country that has two types of criminal law, namely general criminal law and special criminal law. General criminal law by definition is criminal legislation that is generally accepted and has been included in the Criminal Code as well as any legislation that changes and adds to the Criminal Code.

Crime is a deviant behavior that is usually found in every human being, which the human himself sometimes does either consciously or not. And it keeps happening over and over again to each other. Andi Hamzah stated that a criminal act is any human action that violates the law, so it should be criminalized and considered a mistake. It was also explained that the people who commit crimes must be held accountable for their actions with a crime if the person has a mistake, someone who has a mistake at the time he does this can be seen from how society normatively sees the mistake.

Discussing a crime cannot be separated from this regard, there are 2 perspectives in reviewing the elements in criminal acts, namely the theoretical perspective and the legal perspective. Moeljatno explained the elements of a crime in his theory that something can only be considered a crime if there is an act in it, with legal regulations prohibiting it, and violations will be subject to criminal sanctions. Apart from its elements, the characteristics of a crime are formal and material. The formal nature means that a crime is prohibited and threatened with punishment by law is to commit an act, while the material nature is a type of crime that is prohibited and threatened with punishment by law is the emergence of a consequence. So related to the formal nature is the implementation of a crime only when the act is completed, while the material nature is the implementation of a crime only when the consequences have arisen.

Indonesia has criminal acts of corruption, namely through Law number 31 of 1999 concerning the Eradication of Corruption Crimes by changing it to Law number 20 of 2001 concerning amendments to Law number 31 of 1999 concerning the Eradication of Corruption Crimes. Discussing corruption in general, the public knows two definitions of corruption as written in Articles 2 and 3 of Law Number 31 of 1999, namely:

### Section 2

"Anyone who unlawfully commits an act of enriching himself or another person who is a corporation that can harm the state's finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) ) know n and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"

### Article 3

"Anyone who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position or the means available to him because of his position or position which can harm the state's finances or the state's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"

The frequent occurrence of criminal acts of corruption in Indonesia has a detrimental impact on many aspects of the country. Not evenly distributed among officials, corruption cases have also occurred in a number of legal entities/corporations or entrepreneurs working in an agency.

In Indonesia, it is not only state officials who commit many acts of corruption, but also corporations in Indonesia. It was proven that three corporations were found to have committed acts of corruption in 2018 as well as 32 private officials in the same year.

Determination of punishments/sanctions for the perpetrators is sometimes still far unfair with the results of the actions he has committed. There are articles that are most often used related to criminal acts of corruption, namely Article 2 and Article 3 of Law no. 31 of 1999 Corruption Crime. There are still many judges' decisions that should be subject to articles according to the results of their actions but are instead subject to other articles.

## METHOD

This research is of a normative type because it applies an analysis of legal norms (existing provisions). In addition, it is also doctrinal research because this research discusses systematically, analyzes the relationship between provisions, examines the obstacles encountered, and predicts future developments. This study has research objects, namely norms, concepts, principles, and legal doctrine. Therefore, this study also looks at the rules and norms that are applied in making decisions. Besides that, it is a literature study by examining and reviewing secondary materials obtained from research.

## RESULTS AND DISCUSSION

### Qualifications for Corruption Crimes in Article 2 and Article 3 of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes

In Indonesia, regulations regarding Corruption Crimes have been regulated in Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning Eradication of Corruption Crimes. In criminal corruption cases, in imposing a sentence, Article 2 and Article 3 of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes. However, the application of Articles 2 and 3 has not been maximized in corruption cases because the meanings of these articles according to some people are still ambiguous, so according to the author it is very important to qualify Articles 2 and 3

#### Qualification of Corruption Crime in Article 2 of Law

In Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption reads Article 2 paragraph (1) as follows:

“the state or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. Everyone who unlawfully commits an act of enriching himself or another person who is a corporation which can cause financial harm and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

The above article carries the phrase 'unlawfully' with the meaning of formal or material unlawful acts, which means that acts that can be subject to crime can also include acts that violate social and societal norms even though these actions are not contained in statutory regulations. As for that article, the word 'can' is inserted before the phrase 'harmful to the state finances or the country's economy', which thus means a formal offense in the criminal act of corruption so that even though it has not resulted in significant consequences, when the elements of the previously formulated action have been fulfilled then this will be considered as a criminal act of corruption.

In the formulation in Article 2 paragraph (1) which contains that the criminal act of corruption is a formal offense, it means that it will assume that it is not always necessary that state losses have occurred first. It is said to be a formal offense because if there is an act that is prohibited and threatened in the law, then the offense is declared complete.

Based on upholding the provisions of Article 2 paragraph (1), then without requiring evidence of loss to the state's economy, a person who has been and is currently practicing corruption can already be considered guilty.

Compared with Article 2 paragraph (1) with Article 1 paragraph (1) letter a of Law no. 3 of 1971, Article 2 paragraph (1) is a formal offense, namely an offense that does not need to see the consequences, while Article 1 paragraph of Law no. 3 of 1971 is a material offense, which means that an offense can be considered proven if a result is found that is clearly prohibited and threatened by law. However, with the revocation of the material explanation of the unlawful element based on the Constitutional Court decision no. 003/PPU-IV/2006 which explains that if the provisions of the article insofar as the nature of material unlawfulness mentioned above are not binding, then what applies now are teachings against formal law. So it can be concluded that article 1 paragraph (1) letter a of Law no. 3 of 1971 is no longer applied with the decision of the Constitutional Court No.

As for the phrase 'everyone' in Article 2 paragraph (1) it means that the perpetrators who commit acts of corruption do not have certain conditions, for example the requirements for Civil Servants as the meaning of the phrase 'everyone' in acts of corruption. So based on the author's observation, the phrase is considered to mean an individual and/or corporation.

#### Qualification of Corruption Crime in Article 3

In Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption Article 3 reads as follows:

"Anyone who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or

position or the means available to him because of his position or position which can harm the state's finances or the state's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"

Article 3 stated above has the same intent with article 2 regarding the statement in the word 'can'. The purpose of these provisions can be found in article 2 which has been explained previously.

Furthermore, the term 'every person' contained in the wording of article 3 refers to the perpetrators of the criminal act of corruption as the term stipulates that the perpetrator of the criminal act of corruption must be a position holder and at least have a position.

Basically, 'officers and holders of positions' are only individuals, thus Article 3 stipulates that only individuals can commit acts of corruption in Article 3, while corporations can never commit acts of corruption. The meaning of the word position or position in this law also needs to be studied further in order to see who can be charged with this article.

For now, in the rules contained in the legislation, it is not definitively explained regarding the word "position" or "position", but this explanation can be found in Article 17 paragraph (1) of Law no. 43 of 1999 concerning Staffing Principles. The elucidation of Article 17 paragraph (1) states: "What is meant by position is a position that shows the duties, responsibilities, authorities and rights of a Civil Servant in a State organizational unit. Positions within the government bureaucracy are career positions. Career positions can be divided into 2, namely structural positions and functional positions. So it is clear, from this explanation it can be understood that Article 3 of Law no. 31 of 1999 only applies to ASNs who have "title or position".

From the explanation above, it can be seen that the position is the owner of the position who works with duties, responsibilities, and authority, all of which are attached to Civil Servants, both structural positions and functional positions. Meanwhile, what is meant by position is very multi-interpretation. If we interpret the position in (function) then the director of the company can also have that position. Because the meaning of the position here is very multi-interpretation, so the meaning of the position does not include the position (public servant) but can also not be an official.

However, according to the author, this is not the meaning of the word's "position" and position. The reason is, the author refers to the beginning of the sentence in Article 17 paragraph (1) of the Law. 43 of 1999 which says (what is meant by position is position) it is clear from the explanation of the article that it does not separate the words "position" and "position" because in it it is written that position is position. So the word "position" or "position" is nothing but a word that is one unit with one another. Also, some law enforcers still interpret "position" and "position" separately, but according to the author it is not good if one element of the article has many interpretations in it. With that, the factor of abuse of authority and power is because position and/or position cannot be interpreted word for word, because if you want to interpret words for example (authority, opportunity, position or position, there is still a distinction between "authority and "position") then this article will lead to many interpretations. Because, as previously discussed, it is not permissible to be fragmented in interpreting these elements. Because if interpreted separately regarding these elements will lead to multiple interpretations for this element.

We only need to know that, the first element in Article 3 is only specifically for those with criminal acts of corruption for office holders and domiciles. as previously discussed, that it should not be fragmented in interpreting these elements. Because if interpreted separately regarding these elements will lead to multiple interpretations for this element. We only need to know that, the first element in Article 3 is only specifically for those with criminal acts of corruption for office holders and domiciles. as previously discussed, that it should not be fragmented in interpreting these elements. Because if interpreted separately regarding these elements will lead to multiple interpretations for this element. We only need to know that, the first element in Article 3 is only specifically for those with criminal acts of corruption for office holders and domiciles.

**Table 1.** The difference between Article 2 and Article 3

<b>Difference</b>	<b>Section 2</b>	<b>Article 3</b>
Maker element	Article 2 can be imposed for Corruption Crimes committed by anyone.	Article 3 can only be imposed on a person holding a particular position or position as a Civil Servant, because the term 'position or position' only refers to Civil Servants. Just.

Elements of Action	Concerned with the addition of personal gain or a handful of other people or corporations/companies.	Addition of personal or group or corporate/company benefits.
Elements Against the Law	There is a term contained in the term Against the Law which is contained in article 2 so it needs to be proven in writing.	It was found that there is no term Against the Law contained in section 3.
ThreatCriminal	Subject to criminal penalties in the form of imprisonment for at least 4 years.	Subjected to criminal threats At least 1 year.

It was previously known that there were several differences found in Article 2 and Article 3. However, the author himself has views on the differences between the two articles above, including:

1. The absence of an unlawful element in Article 3 does not mean that the article does not contain an unlawful element in it. Because it is known in Criminal Law that one of the elements of the offense is Against the Law. So, even though the Unlawful Element in Article 3 is not written, the Article still contains an Unlawful Element, namely in the abuse of authority.
2. According to the author, the sanctions given to the perpetrators in Article 3 are still lacking. Considering that those who commit acts of corruption in Article 3 are especially those who hold "positions or positions" who are none other than Civil Servants, the criminal sanctions that must be given to perpetrators who are entangled in Article 3 should be heavier than the sanctions given to people who not occupy a position or office.

## CONCLUSION

This research can conclude that Article 2 and Article 3 are two articles, each of which is different from one another. One of the differences lies in the subject, where Article 2 explains that the subject included in the Article applies to anyone (general), in contrast to Article 3 which explains that only Civil Servants can be subject to this Article 3, on the grounds that Article 3 there is the phrase "position or position" in it. which, the word "position or position" is intended for Civil Servants. Also, the application of sanctions for perpetrators who are ensnared in Article 3 must be more severe, because in Article 3 perpetrators are only specifically for those who hold "positions or positions" or none other than the defendant must fulfill the element "Unlawful" in Article 2, what is meant by "Unlawful" in Article 2 is a means to commit acts of enriching oneself or other people or corporations.

From this explanation, the element of "Unlawful" is fulfilled which is a means to commit acts of enriching oneself or other people or corporations. And in Article 3 there is the word "position or position" which is only intended for Civil Servants, while the defendant is not a Civil Servant but is the Director of CV. Polemics regarding Article 2 and Article 3 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes are still widely debated regarding these two articles.

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