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Juridical Analysis of Legal Sanctions for Criminal Acts of Corruption Conducted Together (Study of Supreme Court Decision Number 1054 K/Pid.Sus/2019)

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Abstract
Cases of criminal acts of corruption were carried out jointly based on the study of the Supreme Court's decision Number 1054 K/Pid.Sus/2019. The Defendant Luanna Wiriawaty as Director of PT Djaya Bima Agung who was appointed as the winner of the auction for the Procurement of KB II Batang Three-Year implants Plus Inserter T.A 2014 at the Directorate of Family Planning Health Development through the Government Line at the Deputy for Family Planning and Reproductive Health BKKBN, together with witness Yenny Wiriawaty as President Director of PT Triyasa Nagamas Farma as well as shareholder of PT Djaya Bima Agung and witness Karnasih Tjiptaning, S. Kom., MPH as Commitment Making Officer (each is subject to separate prosecution). This study aims to examine the regulation of criminal acts of corruption that are carried out together based on the applicable legal provisions in Indonesia. To examine the mechanism of reverse evidence in the crime of corruption and to analyze juridically the legal sanctions for the crime of corruption carried out together with the decision of the Supreme Court Number 1054 K/Pid.Sus/2019. This research method uses normative research with data types consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of this study the Supreme Court has mistakenly applied article 2 paragraph (1) to the defendant in the aquo case, in the author's opinion the difference between article 2 and article 3 of Law 31 of 1999 concerning the Crime of Corruption, namely in Article 3, the perpetrator can be charged if has the authority, while in Article 2, everyone referred to in the article is broader and more general. Furthermore, judex juris was wrong by not applying Article 64 of the Criminal Code.

Keywords: Sanctions, Law, Crime, Corruption, Together.

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A. Introduction
In general, the problem of corruption is found in almost all countries in the world. And in almost all countries, the word corruption itself basically implies a bad meaning and is detrimental to the state and society.[1] Corruption is a misappropriation or embezzlement (state or company money, etc.) for personal gain. Criminal acts of corruption are carried out systematically with a very neat modus operandi so that they are not easily detected by law enforcement officers. Cases of criminal acts of corruption are difficult to reveal because the perpetrators use sophisticated equipment and are usually carried out by more than one person in a disguised and organized state. . Therefore, this crime is often called a white-collar crime or white-collar crime.[2] In general, the perpetrators in corruption crimes are educated and educated subjects, so based on this, the perpetrators in corruption crimes can be held accountable for their actions before criminal law.[3]

The judiciary as the spearhead in processing unlawful acts, in this case corruption, has a responsibility and holds a very large mandate to provide a sense of justice for the community. In relation to corruption, a separate judicial body has been established considering that corruption is categorized as an extraordinary crime called the Corruption Court. The Corruption Court is within the general court

[1] Artidjo Alkostar, *Korupsi Politik Dinegara Modren*, Yogyakarta: FH UII Perss, (2008): p.61.
[2] Leden Marpaung, *Tindak Pidana Korupsi Pemberantasan dan Pencegahan*, Jakarta: Djambatan, (2009): p. 5.
[3] Rika Susilawaty, et.al., (2020). "Analisis Yuridis Terhadap Perbuatan Mark-up Oleh Panitia Pengadaan Barang Dan Jasa Dalam Proyek Pemerintah", Journal of Education, Humaniora and Social Sciences (JEHSS) 3, No. 1, (2020): p.91-96.

environment. This Corruption Court is located in every provincial capital. The birth of the Corruption Court is proof of the government's enthusiasm in eradicating corruption. However, in practice, the performance of the Corruption Court in eradicating corruption is not in line with public expectations.[4]

Kejahatan korupsi di Indonesia tampaknya masih menjadi trending topicdan bahkan hot issue untuk diperbincangkan. Perbincangan korupsi tidak pernah ada ujungnya. Masyarakat terus saja disajikan dengan berbagai pemberitaan yang ada. Korupsi sebagai fenomena penyimpangan dalam kehidupan sosial, budaya, kemasyarakatan dan kenegaraan sudah dikaji dan ditelaah secara kritis oleh banyak ilmuwan dan filosof. Aristoteles misalnya, yang diikuti oleh Machiavelli, sejak awal telah merumuskan sesuatu yang disebutnya sebagai korupsi moral (moral corruption).[5] The ongoing changes to the law aim to close the existing regulatory loopholes, so that they can ensnare perpetrators of criminal acts of corruption that have undermined state finances and made people miserable. Corruption causes development programs that have been prepared by the government cannot be implemented effectively (right on target) and efficiently (right on cost).[6]

Sentences against perpetrators of criminal acts of corruption carried out jointly are those who commit, who order to do, and who participate in committing the act and/or those who by giving or promising something by abusing their power or dignity, by violence, threats or misdirection. , or by providing opportunities, facilities or information, intentionally encouraging others to do the acts as referred to in Article 55 to Article 56 of the Criminal Code in conjunction with Article 2 to Article 3 of the PTPK Law.[7]

Article 2 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001 explains that anyone who unlawfully commits, acts to enrich himself or another person or a corporation that can harm state finances or the country's economy. Furthermore, in Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 also explains about corrupt behavior through abuse of authority. The Corruption Eradication Act (UU PTPK) is a hope for the Indonesian people in eradicating corruption, but eradicating corruption cases is still experiencing difficulties, eradication steps are still stalled. until now. Corruption is a chronic and incurable disease that has spread to all government sectors and even to state-owned companies.

One of the criminal acts that has always been in the spotlight in Indonesia is the problem of corruption. Corruption is not a new thing in this country. Corruption in Indonesia has even been classified as an extra-ordinary crime or extraordinary crime because it has damaged not only the state's finances and the country's economic potential, but has also destroyed the pillars of socio-cultural, moral, political, and the legal order of national security.[8]

Meanwhile, the politics of criminal law against corruption has brought about a change or renewal of perspective on corruption into a form of extraordinary crime, so that the legislation governing the eradication of corruption needs to be prioritized in its formation. classified as white collar crime, substantially the criminal elements contained in these laws and regulations are very potential as a criminal act of corruption considering the enormous state losses are found in the formulation of articles that meet the elements of corruption offenses or criminal acts. corruption crime.[9]

Based on the Supreme Court Decision Number 1054 K/PID.SUS/2019, the defendant has violated Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 Junto Article 55 paragraph (1) 1, thus the judge sentenced Therefore, the Defendant is sentenced to imprisonment for 6 (six) years and a fine of Rp. 200,000,000.00 (two hundred million rupiahs) provided that if the fine is not paid, it

[4] Fandi Gus Pratomo, "Analisis Kritis Terhadap Pembuktian Unsur-Unsur Tindak Pidana Korupsi Sebagai Upaya Mencari Kebenaran Materiil Hukum Pidana (Studi Putusan Nomor : 78/Pid.Sus/2011/Pn.Tipikor.Smg)", Recidive 3, No. 1, (2014): p.29-30.

[5] Albert Hasibuan in Mansyur Semma, *Negara dan Korupsi: Pemikiran Mochtar Lubis atas Negara, Manusia Indonesia, dan Perilaku Politik*, Jakarta: Yayasan Obor Indonesia, (2008): p.32.

[6] Mansur Kartayasa, *Korupsi dan Pembuktian Terbalik Dari Prespektif Kebijakan Legislasi dan Hak Asasi Manusia* , Jakarta: Kencana, (2017): p.vii.

[7] Hasaziduhu Moho, "Penjatuhan Hukuman Dalam Tindak Pidana Korupsi Yang Dilakukan Secara Bersama-Sama", Jurnal Panah Keadilan 1, No.1, (2021): p.6.

[8] Ermansjah Djaja, *Memberantas Korupsi Bersama KPK (Komisi Pemberantasan Korupsi),* Jakarta: Sinar Grafika, (2010): p.13.

[9] P.Pope, *Strategi Pemberantasan Korupsi Elemen Sistem integritas Nasional, Transparacsi lnternasional Indonesia*, Jakarta: Yayasan Obor Pancasila, (2003): p.71.

is replaced with imprisonment for 6 (six)) months and abolishing the replacement money charged to the Defendant.

Based on the descriptions above, the researcher is interested in conducting research with the title "Juridical Analysis of Legal Sanctions for Criminal Acts of Corruption Done Together (Study of Supreme Court Decision Number 1054 K/Pid.Sus/2019)". The research method used is normative legal research, namely by formulating legal principles to formulate legal provisions, both from social data and positive written facts.[10] Data collection tool with library research, namely research on written documents [11] This legal material will also serve as an interesting literature review and evaluate a variety of different sources including academic articles, and professional journals, books, and web-based resources.[12]

The procedure used to collect data in this study is in the form of documentation, namely: guidelines used in the form of notes or quotes, searching legal literature, books and others related to identifying problems in this study offline and online.[13] Analysis of legal materials is carried out using the content analysis method (centent analysis method) which is carried out by explaining the material of legal events or legal products in detail in order to facilitate interpretation in the discussion,[14] through a statutory approach, namely formulating a legal definition based on legal principles from the results of a study of laws and regulations by looking at various opinions of experts and writers related to the issues discussed.[15]

B. Discussion

1. Arrangements for Corruption Crimes Conducted Together Based on Legal Provisions Applicable in Indonesia

Corruption is a complex phenomenon, it can be seen from various complementary perspectives. The legal perspective sees that corruption is a crime. Politics sees that corruption tends to occur in the political realm. Sociology sees corruption as a social, structural and institutional problem. Religion sees that corruption occurs due to weak religious values in each individual. External influences can also increase the potential for corruption, such as insufficient salaries, political interests, poor legislation and law enforcement, lack of accountability and transparency, and people who do not support anti-corruption behavior.[16]

The potential for corruption can be influenced by the quality of human resources. The quality of human resources is not only intellectual, but also moral and personality. The fragility of morality and the low value of honesty, as well as the sense of shame that seems to disappear, further accentuate the greed and zeal of a person, especially the state apparatus, causing widespread negative impacts and bringing the country to the brink of collapse.[17]

Corruption crimes committed jointly are described in Articles 2 and 3 of Law 31 of 1999 in conjunction with Article 55 of the Criminal Code. Article 2 paragraph (1) explains that any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years. and a maximum of 20 (twenty) years 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). Paragraph (2) explains that in the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.

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[10] Amarudin & Zainal Asikin in Surya Perdana, et.al., "Advantages and Disadvantages of Electronic Mortgage Registration Based on the Perspective of Business Administration Law", IJRS: International Journal Reglement & Society 3, No. 3, (2022): p. 179.

[11] Rahmat Ramadhani, "Kedudukan Hukum Perjanjian Perikatan Jual Beli (PPJB) dalam Kegiatan Pendaftaran Peralihan Hak Atas Tanah", IURIS STUDIA: Jurnal Kajian Hukum 3, No. 1, (2022): p. 47.

[12] Rahmat Ramadhani, "Legalisasi Aset Tanah Dan Asupan Modal Usaha Menengah Kecil Masyarakat", Seminar Nasional Kewirausahaan, 2, No. 1, (2021): p. 280.

[13] Rahmat Ramadhani, "Peran Serta Masyarakat dalam Pemberantasan Mafia Tanah Pasca Pandemic Covid-19", Seminar Nasional Hukum, Sosial dan Ekonomi (SANKSI), 1, No. 1, (2022): p. 3.

[14] Rahmat Ramadhani & Ummi Salamah Lubis, "The Function of the Delimitation Contradictory Principle in the Settlement of Land Plot Boundary Disputes", IJRS: International Journal Reglement & Society 2, No. 3, (2021): p. 138.

[15] Farid Wajdi & Rahmat Ramadhani, "Legal Problems of Land Services Online", IJRS: International Journal Reglement & Society 3, No. 1, (2022): p. 20.

[16] Nanang T. Puspito , et.al, *Pendidikan Anti Korupsi untuk Perguruan Tinggi* Jakarta: Kemendikbud, (2011): p.5 & 39.

[17] Warso Sasongko, *Korups*i, Yogyakarta: Relasi Inti Media, (2017): p.1.

Article 3 explains that any person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of a position or position that can harm state finances or the state economy, is sentenced to life imprisonment or imprisonment. a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).

Events or criminal acts or commonly known as criminal acts can be committed by anyone and at the same or different time, can also be committed by several people together. In other words, a crime can be committed by more than one person involved in committing the crime.

The problem of inclusion (deelneming) in criminal law is basically related to the problem of determining the burden of criminal responsibility against the perpetrator for the crime that has been committed. Regarding the issue of criminal liability, of course, it will also relate to who is the perpetrator and who is the assistant in committing the crime.[18] Article 55 of the Criminal Code states:[19] First, Convicted as the maker (dader) of a criminal act: 1st. Those who do, who order to do and those who participate in doing the deed. 2nd. Those who give or promise something, by abusing their power or dignity, by force, threats or misdirection, or by providing opportunities, means or information, intentionally encourage others to do something. Second, with respect to the proponent, only actions that are intentionally recommended are taken into account, along with their consequences.

Based on the provisions of Article 55 of the Criminal Code, it can be concluded that what is meant by participation is if the person involved in the occurrence of a criminal act or crime is not only one person, but more than one person. The maker (dader) consists of: First, the perpetrator (pleger), the perpetrator is a person who commits an act that fulfills the formulation of the offense and is seen as the most responsible for the crime or is defined as a person whose actions result in a criminal act, without his actions the criminal act will not be realized.[20]

Second, who ordered to do (doenpleger), ordered to do (doenpleger) is a form of participation, in which it is clear that there is someone who orders another person to commit a crime, and there are other people who are ordered to commit the crime. The person who orders the act is usually referred to as a midellijk dader, namely the perpetrator who does not directly commit a crime himself, but through the intermediary of another person. In relation to criminal liability to pleger for the occurrence of an offense ordered by him, there are two forms of accountability in it: Actor intellectualis (doen pleger) is only responsible to the extent of actions actually committed by materialist actors; The intellectualist actor is only responsible for the actions he is really ordered to do.

Third, the person who participates in committing (mededader), Mededader is a person who cooperates with other people to commit a crime and together he also acts in the implementation of a criminal act in accordance with what has been agreed. So, in this form of participation, two or more people who are said to be medeplegers must all be directly involved in a collaboration when the crime is committed.

Fourth, a person who deliberately persuades (Uitlokker), Uitlokking is any act that persuades another person to commit a criminal act by using the methods and efforts specified in Article 55 paragraph (1) of the 2nd Criminal Code so that the other person is moved to fulfill his recommendation.[21]

2. Reverse Evidence Mechanism in Corruption Crimes

In the explanation of Law no. 31 of 1999 explains that the reverse evidence system used is limited and balanced, namely, the defendant has the right to prove that he has not committed a criminal act of corruption and is obliged to provide information about all of his property, his wife's property, or her husband, children, and property. any person or corporation suspected of having a relationship with the case in question. Martiman Prodjohamidjojo stated "A balanced case is said to be more appropriate as comparable, described as / in the form of the defendant's income or a source of additional property of the defendant, as the defendant's income and the acquisition of property as output."

Thus, balanced can be interpreted as a balance between income and assets suspected of originating from criminal acts of corruption. The word balanced can also be interpreted as the distribution of the burden of proof between the Public Prosecutor and the evidence by the defendant. The word limited

[18] H.M. Rasyid Ariaman & Fahmu Raghib, *Hukum Pidana*, Malang: Setara Press, (2015): p.117.
[19] Mahrus Ali, *Dasar-Dasar Hukum Pidana*, Jakarta: Sinar Grafika, (2015): p.122.
[20] Mulyati Pawennei & Rahmanuddin Tomalili, *Hukum Pidana*. Jakarta: Mitra Wacana Media, (2015): p.131.
[21] Leden Marpaung, *Asas Teori Praktik Hukum Pidana*, Jakarta: Sinar Grafika, (t.t): p.84.

means that if the defendant can prove his argument that he did not commit a criminal act of corruption, the public prosecutor still has the obligation to prove his indictment. The reverse proof system that is limited and balanced is enhanced by the issuance of Law no. 21 of 2001 concerning amendments to Law no. 31 of 1999. In this law, the provisions of Article 37 of Law No. 31 of 1999 are changed into two articles, namely Article 37 and Article 37 A of Law no. 21 of 2001.

There are not many changes in this amendment to Article 37. In the explanation of article 37 it is stated that this article is a balanced consequence of the application of reverse evidence against the defendant. The defendant still needs balanced legal protection for violations of basic rights related to the presumption of innocence and self-blame. incrimination). Based on the contents of Article 37 and Article 37 A as well as their explanations, a pure reverse proof system can be applied. However, according to Article 37 A paragraph (2), if the defendant is unable to prove the origin of his wealth, the Public Prosecutor still has the obligation to prove his charges.[22]

In a limited and balanced reverse proof system, the information given by the defendant to prove his innocence cannot be used as evidence for the defendant's statement, while in the pure reverse proof in Article 37 of Law no. 21 of 2001, the defendant's statement can be used as the basis for making a decision by the judge. However, considering the provisions of Article 189 paragraph (1) of the Criminal Procedure Code, the information given before the trial is as evidence of the defendant's testimony.

Although in the provisions of Article 189 paragraph (4) it is stated that in passing his decision, the Judge in addition to using legal foundations and philosophical foundations, the values that exist in society can also be used as a legal basis. Given the provisions of Article 27 of Law no. 4 of 1970 in conjunction with Law no. 4 of 2004 which states "Judges as law and justice enforcers are obliged to multiply, follow and understand the legal values that apply in society. The role of the reverse proof system in imposing judges' decisions on corruption crimes will be increasingly influential because it is in accordance with the opinion of Evi Hartati SH who said "in the examination of special criminal acts of corruption, special rules and special institutions are used, that the defendant's statement alone is not enough.[23]

In formal criminal law, a criminal act that is suspected of a person needs to be supported by evidence in accordance with the alleged criminal act. Based on the theory, there are several proofs, including: First, the theory of proof based on the law positively (positive wettelijke bewijs theory). In this theory, if an act has been proven in accordance with the evidence stated in the law, then the judge's conviction is not needed at all. This system is also known as formal proof theory (formele bewijstheori).[24] Second, the Free Evidence Theory, in this theory the judge is not bound by valid evidence where there is a belief in the judge about the defendant's guilt based on reasons that can be understood and justified by experience.

Third, the theory of evidence based on the judge's belief on logical grounds (La Confiction Raisonnee). According to this theory, the judge can decide someone is guilty on the basis of his belief. This belief must be based on the evidence bases accompanied by a conclusion based on certain written evidence rules. Fourth, the theory of evidence according to the law is negative. It means that a judge may not impose a crime on a person unless there is valid evidence, as stipulated by law and he must gain confidence that a criminal act has actually occurred and it is the defendant who committed the act.[25]

Reverse Evidence is a type of evidence that is different from the criminal procedure law regulated in the Criminal Procedure Code. This type of evidence requires the Defendant to prove that he is not guilty or to prove negatively (on the other hand) against the charges of the Public Prosecutor. Although the Defendant is burdened with the burden of proof, this does not eliminate the obligation of the Public Prosecutor in accordance with Article 66 of the Criminal Procedure Code, namely to prove given the "balanced" nature of Reverse Evidence in Indonesia. The Reverse Evidence System has long been implemented in several countries in Asia and one of them is our neighboring country, Malaysia.

In Malaysia, the Anti Corruption Act (ACA) in Article 42 states that all gratifications to civil servants or state officials are considered bribes unless proven otherwise by the Defendant. The purpose of this provision is that the Public Prosecutor only proves one core part of the offense, namely the

[22] Martiman Prodjohamidjojo, *Penerapan Pembuktian Terbalik Dalam Delik Korupsi (UU No. 31 Tahun 1999)*, Bandung: CV. Mandar Maju, (2001): p.98-108.
[23] Evi Hartanti, 2007, *Tindak Pidana Korupsi*, Jakarta: Sinar Grafika, (2007): p.70.
[24] Andi Hamzah, Korupsi di Indonesia, Jakarta: PT Gramedia, (1986): p.269.
[25] Atang R, *Hukum Acara Pidana*, Bandung: Tarsito, (1983): p.113.

existence of a gratification, the rest is considered automatically unless proven otherwise by the defendant, namely first, the gift is related to his position (in zijn bediening), second is contrary to his obligations (in strijd met zijn pliejht). The reverse evidence system in Indonesia can be said to be a semi-reversed evidentiary system because the Public Prosecutor and the Defendant/Legal Counsel for the Defendant are trying to prove the indictment or to prove negatively the indictment. If the Defendant cannot prove otherwise, this inability can be used to strengthen the Prosecutor's evidence.[26]

3. Juridical Analysis of Legal Sanctions for Criminal Acts of Corruption Conducted Together Supreme Court Decision Number 1054 K/Pid.Sus/2019

Based on the decision of the supreme court that the defendant has been legally proven to have committed a criminal act of corruption together. However, according to the author, the Supreme Court's decision has been wrong in its application of the law. That the defendant's actions have committed a criminal act of corruption jointly and continuously. The defendant's actions fulfill the elements of a subsidiary charge. Article 3 in conjunction with Article 18 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) 1 in conjunction with Article 64 of the Criminal Code. The elements are as follows: Everyone; With the aim of benefiting oneself or another person or corporation; Abusing the authority, opportunity or facilities available to him because of his position or position; May be detrimental to state finances or the state economy; Those who commit, order to do or participate in doing the deed; Performing several related actions in such a way that they should be viewed as one continuous action.

Judex juris has mistakenly applied article 2 paragraph (1) to the defendant, in the author's opinion the difference between article 2 and article 3 of Law 31 of 1999 concerning the Crime of Corruption, namely in Article 3, the perpetrator can be charged if he has the authority, while Article 2 , everyone referred to in the article is broader and more general. The element of each person in Article 3 of Law 31 of 1999 is the one who has the authority. So someone's actions can be against the law, but not necessarily abuse of authority. So the condition for a person to be imposed in article 3 is that he must have the authority or position or position, so that position gives him authority, so that authority is misused.

It can be proven that the Defendant Luanna Wiriawaty as Director of PT Djaya Bima Agung who was appointed as the winner of the auction for the Procurement of KB II Batang Triennial implants Plus Inserter T.A 2014 at the Directorate of Family Planning Health Development through the Government at the Deputy for Family Planning and Reproductive Health BKKBN, together -with witness Yenny Wiriawaty as President Director of PT Triyasa Naga Mas Farma and shareholder of PT Djaya Bima Agung and witness Karnasih Tjiptaning, S.Kom. MPH as Commitment Making Officer, between May 2014 and December 2014 or at least at certain times in 2014, and together with witness dr. Surya Chandra Surapaty, MPH., Ph.D as Head of the Central BKKBN, and as Budget User for Procurement Activities for Procurement of KB II/Three Years Implants Plus Inserter for Fiscal Year 2015 and Witness Dr. Sanjoyo as KPA (the power of attorney for the Budget User of the Deputy for Family Planning and Reproductive Health, (each with a separate prosecution), between July 2015 and December 2015 or at least at a certain time in 2015, located at the Office Central BKKBN Jalan Permata No. 1 Halim Perdanakusuma, East Jakarta.

M. Yahya Harahap said that “evidence is provisions that contain guidelines and guidelines on ways that are justified by law to prove the guilt that has been charged against the defendant.

T.A 2014 and 2015, with the aim of benefiting oneself or another person or a corporation, namely the defendant Luanna Wiriawaty as Director of PT. Djaja Bima Agung, the executor of the procurement of Implant KB II/Three-Yearly Implants Plus Inserter for the 2014 and 2015 fiscal years, abused the authority, opportunity or facilities available to him because of his position or position.

The defendant as Director of PT. Djaya Bima Agung who was appointed as the winner of the auction for the Procurement of KB II Batang Tiga Annual implants Plus Inserter T.A 2014 and 2015, has a conflict of interest because the shares of PT. Djaya Bima Agung is 99.52% owned by witness Yenny Wiriawati who is also the President Director of PT Triyasa Naga Mas Farma and the manufacturer of

[26] M. Edo Rezawan Prasetia, et.al. Sistem Pembuktian Terbalik Dalam Pembuktian Perkara Gratifikasi, Jurnal Verstek 2, No. 2, (2014): p.186.

PT Djaya Bima Agung, the two defendants participated in influencing and conspired with other providers of goods/services by participating in the conditions in such a way that There was an unhealthy competition, namely against PT Trijaya Medika Farma as the distributor of PT Catur Dakwah Crane as well as PT Phyto Kemo Agung which was finally under the control of witness Yenny Wiriawaty and the defendant in the procurement of KB II Batang Tiga Tahunan implants Plus Inserter T.A 2014 which was contrary to Presidential Regulation No. 54 of 2010 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 70 of 2012 and contrary to the procurement document for Implant KB II/Three-yearly Implants Plus Inserter for the 2014 fiscal year, which can harm the State Finance or the state economy, a number of countries amounting to Rp. 72,452,764,842.60 (goal uhty-two billion four hundred fifty-two million seven hundred sixty-four thousand eight hundred forty-two rupiah and sixty cents) for 2014 and a total of Rp.38,808,533,312.24 (thirty-eight billion eight hundred eight million five hundred thirty-three thousand three hundred and twelve rupiahs and twenty-four cents).

In this decision, the defendant related to the corruption crime committed by more than one person even though in separate files. In Article 55 Paragraph (1) 1 of the Criminal Code explains "Punished like the perpetrator of an act that can be punished by anyone who commits, orders to do or participates in doing". In the above formulation there are 3 (three) forms of participation, namely those who do (pleger), those who order to do (doen pleger) and those who participate in doing (mede pleger).

The defendant's actions have also abused the authority, opportunities or facilities available to him because of his position or position because it is contrary to Article 118 paragraph (1) letter b of Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 70 of 2012 which stated that "conspired with other providers of goods/services to regulate the Bid Price outside the procedures for the implementation of the procurement of goods/services, thereby reducing/inhibiting/minimizing and/or eliminating fair competition and/or harming other people"

According to Prof. Ruslan Saleh explains about participation, among others, as follows: "But it should not be interpreted that in terms of participating in doing this, each participant must carry out an act of execution, the main thing is that in carrying out the criminal act there is close cooperation between them. This presumably can be determined as the nature of participating in doing; If participating in doing is the existence of close cooperation between them, then to be able to determine whether there is participating in doing or not, we do not see whether there are actions of each participant individually and as a unit with the actions of the other participants ". Thus, a person is included as a person who participates in committing an act if there are 2 (two) or more perpetrators who commit acts together in such a way as to create a conscious cooperation between them to commit a criminal act and is also realized without the role of one of the people involved in committing the crime. participate in the crime, the intended criminal act will not be realized.[27]

The defendant's actions have abused the authority, opportunities or facilities available to him because of his position or position because it is contrary to the explanation of Article 83 paragraph (1) letter e of Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 70 of 2012 namely , "Indications of conspiracy between providers of goods/services must be fulfilled at least 2 (two) indications as follows: First, there are similarities in technical documents, including: work methods, materials, tools, analysis of technical approaches, unit prices, and/or specifications goods offered (brand/type/type) and/or technical support; Second, All offers from the Provider are close to HPS; Third, the participation of several providers of goods/services is under 1 (one) control.

Whereas the author thinks that the judex juris has been wrong by not applying article 64 of the Criminal Code, according to the author in the aquo case the defendant has fulfilled the elements of the act of having committed or participated in the act, several crimes are related in such a way that they must be viewed as one continuous act, namely the defendant as Director of PT Djaya Bima Agung as the executor of the Procurement of KB II Batang Triennial implants Plus Inserter T.A 2014 and 2015.

Whereas as a result of the actions of the Defendant, there has been a causal relationship in a juridical manner which resulted in state financial losses for the 2014 Fiscal Year amounting to Rp72,452,764,842.60 (seventy-two billion four hundred fifty-two million seven hundred sixty-four

[27] Ruslan Saleh, *KUHP dengan Penjelasan* , Yogyakarta: Yayasan Badan Penerbit Gajah Mada, (2009): p.11.

thousand eight hundred four twenty two rupiahs and sixty cents), and the 2015 Fiscal Year amounting to Rp 38,808,533,312.24 (thirty eight billion eight hundred eight million five hundred thirty three thousand three hundred and twelve rupiahs and twenty four cents) according to the results of the Internal Audit. the framework for Calculation of State Financial Losses Number: SR-985/D5/1/2017 dated November 1, 2017. With the total losses mentioned above, the author is of the opinion that the criminal fine of Rp. 200,000,000.00 (two hundred million rupiah) is too light. From a microeconomic analysis point of view, articles 2 and 3 of the law on eradicating corruption are not in line with the maximization principle, as described below:[28]

1. Whereas the perpetrators of corruption are seen as "a rational actor-an immoral person", so that the slightest violation that can or has caused state financial losses has been calculated/calculated the "benefits and risks".
2. The formulation of the provisions of the two articles is abstract because it does not determine the exact and measurable value of state financial losses, so that the value of state financial losses, however low, can still be prosecuted as a criminal act of corruption. The pattern of the formulation of this provision is contrary to distributive justice which requires sanctions according to actions
3. This results in inefficiency and is not optimal because the actual amount of state financial losses is evidence of the seriousness of a criminal act of corruption and can be used as a parameter to determine the penalty and the amount of state financial losses that must be returned by the defendant.
4. The provisions of the two articles still use a causal relationship between unlawful acts, intentionally, and state financial losses so that a pattern of reasoning is formed which logically has a causal relationship and there should be sufficient evidence to determine the guilt and responsibility of the perpetrators. With the formulation of articles 2 and 3, the fulfillment of the elements mentioned above, it must be proven again, whether there is a result of state financial losses from the fulfillment of the elements mentioned above. The formulation of the two provisions, in fact, is detrimental from the point of view of maximization and the state's financial losses are not determined with certainty, which can lead to injustice between actions and their consequences.
5. Even though the formulations of the two articles are different and inefficiency because the aim is to recover state financial losses and create a deterrent effect, a way to achieve that goal must be devised, namely Article 2 and Article 3. It is efficient if it is formulated in 1 article only.

Sanctions given to perpetrators of criminal acts must have a deterrent effect. The purpose of retribution/retaliation. The theory of retribution views that punishment is a retaliation for mistakes that have been made so that it is action-oriented and lies in the occurrence of the crime itself. This theory puts forward that sanctions in criminal law are imposed solely because people have committed a crime which is an absolute consequence that must exist as a retaliation to people who commit crimes, so that sanctions aim to satisfy the demands of justice.

The theory of retribution imposes and provides punishment based only on "rewards". Criminals should receive the punishment they deserve, taking into account the seriousness of their crime. This theory assumes that we all know right from wrong, in addition to being morally responsible for our actions. In the author's opinion, the decision of the Supreme Court regarding the abolition of the replacement money charged to the defendant was correct, this was based on the fact that the defendant Luanna Wiriawaty had made the refund as Director of PT. Djaya Bima Agung in the amount of Rp. 5,500,000,000.00 (five billion five hundred million rupiah).

C. Conclusion

Corruption crimes committed jointly are regulated in Article 3 of Law 31 of 1999 in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code. The mechanism of reverse proof in criminal acts of corruption in Indonesia is that the defendant is given the obligation to provide information about all of his property, the property of his wife, or husband, children, and the property of any person or corporation suspected of having a relationship with the case in question. The Supreme Court has wrongly

[28] Romli Atmasasmita & Kodrat Wibowo, *Analisis Ekonomi Mikro Tentang Hukum Pidana Di Indonesia*, Jakarta: Kencana, (2016): p.206-207.

applied article 2 paragraph (1) to the defendant in the aquo case, in the author's opinion the difference between article 2 and article 3 of Law 31 of 1999 concerning the Crime of Corruption, namely in Article 3, the perpetrator can be charged if he has the authority, while Article 2, everyone referred to in the article is broader and more general. The element of each person in Article 3 of Law 31 of 1999 is the one who has the authority. So someone's actions can be against the law, but not necessarily abuse of authority.

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