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**CONSIDERATION OF THE JUDGES AGAINST CRIMINAL CORRUPTION
PERPETRATORS GRATIFICATION IN THE PROCESS OF AUCTION PROCUREMENT
OF GOODS/SERVICES IN THE
GOVERNMENT REGENCY OF PESAWARAN**

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Abstract

Corruption impacts the state's financial losses and inhibits national development. As a result of the corruption crimes that occur so far in addition to the financial harm of the country or the country's economy, it also inhibits the growth and continuity of national development that demands high efficiency. The research methods used in this paper are juridical normative, and empirical approaches. The data used is secondary data and primary data. Data analysis using qualitative analysis of juridical. The judges were corrupt that the granting of criminal sanctions against gratuities had to be more severe because the defendant's actions were a form of error to be taken into account, no justification or excuse that eliminated criminal liability for the defendant. The judge must provide a fair criminal verdict for the defendant meaning that it is intended to provide a deterrent impact on the perpetrator of the crime, so as not to repeat the occurrence of the same crimes and expected for law enforcement officials especially judges in the sanction of defendants, judges can explore the legal values contained within the community. It is intended to create a sense of fairness towards society. It is expected that governments and academics and legal practitioners conduct periodic discussions/seminars to discuss attempts to address corruption.

Keywords: Consideration of Judges, Perpetrators of Corruption Crime, Gratification, Auction, Pesawaran Regency

I. INTRODUCTION

Corruption is one of a criminal offence and acts against the law by a person or corporation for the purpose of self-benefit or corporation, by abusing the authority, opportunity or means inherent in its position and impacting financial and economic losses of the country. According to the provisions of article 2 paragraph (1) of Law No. 31 of 1999 as amended to Act No. 20 of 2001 on Corruption crime Eradication (UUPTPK)

mentioned: "Every person who is against the law commits the act of enriching themselves or another person or a corporation that can harm the country's finances or the country's economy, sentenced to life imprisonment or imprisonment for the shortest 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200.000.000 (two hundred million rupiah) and at most 1 billion,-(one billion rupiahs)."

Based on the definition of corruption in article 2 paragraph (1) above, it is known that there are three elements of corruption crime that is against the law doing the act of enriching oneself or others or a corporation that can harm the country or the country's economy. Ideally, every perpetrator of corruption crime must be maximally convicted as stipulated in article 3 of the Act No. 31 of 1999 Jo Act No. 20 of 2001 on changes in law number 31 year 1999 concerning the eradication of corruption, i.e. any person with the purpose of benefiting oneself or any other person or corporation, abusing the authority, opportunity or means thereof because of office or position that could harm the state's finances or the country's economy, sentenced to life imprisonment or imprisonment for the shortest 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 at most Rp. 1,000,000,000.00 (one billion rupiahs).¹

Criminal acts of corruption impact on the state's financial losses and impede national development, thus must be to eradicate in order to realize a fair and prosperous society based on Pancasila and the Constitution 1945. As a result of corruption crimes that occurred in addition to the financial harm of the country or the country's economy, also inhibits the growth and continuity of national development demanding high efficiency

The increased crime of uncontrolled corruption will bring disaster not only to the life of the national economy but also in the life of the nation and State in general. Widespread and systematic corruption crimes are also a violation of social rights and economic rights of society, and therefore all criminal acts of corruption can no longer be classified as ordinary crimes but have become a tremendous crime (extra ordinary crime), therefore required comprehensive law enforcement.²

The Government of Indonesia in its effort to realize the rule of law, has laid a strong policy foundation in the effort to fight corruption crime. These policies are contained in various laws and regulations, such as the decree of the Consultative Assembly of the Republic of Indonesia No. XI/MPR/1998 on the provider of clean and free State corruption, collusion and nepotism. Law No. 28 of 1999 on clean and corrupt state organizer, collusion and nepotism and Law No. 31 of 1999 on

¹ Act No. 31 of 1999 Jo Act No. 20 of 2001 on changes in law number 31 year 1999 concerning the eradication of corruption

² Eddy Mulyadi Soepardi. 2009. *Memahami Kerugian Keuangan Negara sebagai Salah Satu Unsur Tindak Pidana Korupsi*. Ghalia Indonesia, Yogyakarta, hlm. 3.

corruption eradication as amended by Law No. 20 of 2001 on amendment to Law No. 31 year 1999 on the Eradication of corruption crime.³

Efforts to ensure law enforcement should be implemented properly, fair, no arbitrariness, no misuse of power, there are some principles that must always appear in every law enforcement, i.e. the principle of impartiality, the principle of honesty in examining and disconnecting (fairness), the principle of true conduct (procedural due process), the principle of properly implementing the law that guarantees and protects the substantive rights of seekers of justice and social interests, the principle of free assurance of all pressures and violence in judicial proceedings. The criminal justice system as the implementation and enforcement of law consists of several agencies, the police, prosecutors, courts and correctional institutions, which are interconnected among one another.⁴

Every perpetrator who proved to commit corruption crimes must account for their actions in the law, in accordance with the provisions of the law. Every citizen is obliged to uphold the law, but in the daily reality the existence of citizens who are negligent/deliberately do not carry out its obligations so as to harm the community, it is said that the citizen who violates the law because the obligation has been determined by law. A person who violates the law must account for his or her actions in accordance with the rules of law.

Based on verdict No. 20/Pid. Sus/TPK/2017/PT TJK year 2017 is known that the defendant Ujang Mursalim Bin Madras the younger brother was proven legally and convinced guilty of committing a criminal offense "corruption carried out jointly" as mentioned in the indictment of breach of article 5 and article 12 of Law No. 20 of 2001 on changes in law number 31 year 1999 concerning the eradication of corruption; To impose a criminal offence to the defendant therefore to imprisonment for 4 (four) years and a fine of Rp. 200.000.000,-(two hundred million rupiah), provided that the penalty is not paid in the case of a criminal confinement for 3 (three) months; Impose additional criminal to the defendant to pay a substitute amount of Rp. 169.780.982,- (one hundred sixty nine million seven hundred eighty thousand nine hundred eighty two rupiahs), longest within one month after this ruling the legal force remains, if not pay then the goods are seized and auctioned by the prosecutor to cover the substitute money with provisions if the convicted has no sufficient property of goods then sentenced to imprisonment for 1 (one) Year 6 (six) months.⁵

³ *Ibid*, hlm. 3.

⁴ Andi Hamzah. 2001. *Bunga Rampai Hukum Pidana dan Acara Pidana*. Ghalia Indonesia, Jakarta, hlm. 22.

⁵ *verdict No. 20/Pid. Sus/TPK/2017/PT TJK year 2017*

Based on the background exposure above, there are three main problems that will be discussed, namely:

- a. What is the cause of perpetrators to commit criminal corruption gratuities in the auction process of procurement of goods/services in the District government Commissioner by article number 20/Pid. Sus/TPK/2017/PT TJK?
- b. What is the consideration of the judge of the appeal against perpetrators of corruption crimes gratification in the auction process of procurement of goods/services in the district government, based on article No. 20/Pid. Sus/TPK/2017/PT TJK?
- c. How the state's refund efforts by the perpetrators of the corruption criminal corruption gratification in the auction process of procurement of goods/services in the district government, based on article number: 20/Pid. Sus-TPK/2017/PN. TJK?

The research methods used in this writing are normative, and empirical approaches. The data used is secondary data and primary data. Data analysis using qualitative juridical analysis.

II. DISCUSSION

A. The cause of perpetrators to commit criminal corruption gratuities in the auction process of procurement of goods/services in the District government Commissioner by article number 20/Pid. Sus/TPK/2017/PT TJK

Factors that cause criminal or crime will generally show many variations and various aspects that can support the occurrence of a crime. The theories of the crime-causing factor are very much expressed by scholars, where the opinion of each other are different, it arises from a review with different backgrounds. However, among these theories there are elements that in principle indicate the equation so that if classified then from the difference and the equation can be drawn broadly the factors that are very decisive against a crime. The cause of perpetrators to commit crimes gratuities is caused by several factors:

1. Moral factor or evil inner attitude

This factor is caused that in the perpetrators there are symptoms to do the action Pidana seen from the work of the perpetrator, behavior of the person who showed that the perpetrator knows his actions are a criminal act and the actions can be imposed criminal sanctions. The perpetrators are aware of the law that it abuses but because of the low moral or evil inner attitude of the perpetrators (internal) causes the perpetrator to commit a criminal act of corruption.

2. Personal interest factor

Corruption crimes are also caused by personal interest factors which are essentially detrimental to other parties in order to fulfill self-interest. This self-selfishness is

very closely related to the change of social behavior as well as the demands for a sufficiently high standard of living today, in this case the personal interest factor is not only related to economic factors as mentioned above, but also closely related to the psychological condition of the perpetrator who can be considered not responsible for the authority given to him. So, in this case the personal interest factor in the crime of gratification, the personal interest of the perpetrator takes precedence over its responsibilities or obligations towards the management of the state's finances.

3. Opportunity Factor

A crime can happen when there is an opportunity factor even if the perpetrator already has intentions but if there is no chance a criminal offence will not occur. The factor of a person's chances on criminal gratification is very affecting, because the perpetrator is empowered to perform the financial management of the State, so that someone with his position and authority can commit a gratification criminal.

Based on the explanation above, it can be analyzed that the cause of perpetrators do criminal acts gratification as the verdict number: 20/Pid. Sus-TPK/2017/PN.Tjk. Due to several factors such as moral factor or evil inner attitude, personal interest factor, opportunity factor. In addition to the factors that cause the perpetrator to perform a gratification criminal act as a matter of economic necessity to fulfill the needs of his life, the opportunity factor is greater because the perpetrator has the authority and position given by the State to perform the financial management of the country Through the authority and position of the perpetrators can conduct beneficial acts of oneself or others.

B. Consideration of the judge of the appeal against perpetrators of corruption crimes gratification in the auction process of procurement of goods/services in the district government, based on article No. 20/Pid. Sus/TPK/2017/PT TJK

Freedom of the judges impose the verdict in the criminal justice proceedings contained in article 3 paragraph (1) and (2) Act No. 48 year 2009 on judicial Power stating: Subsection (1): in dropping its duties and functions, the constitutional judge shall maintain the independence of the judiciary. Subsection (2): Any intervention in judicial affairs by the other party outside the judicial authority is prohibited, except in the matters referred to in the Constitution 1945. The contents of the article are further emphasized in article 5 paragraph (1) of law number 48 year 2009 concerning judicial power which states: "Judges and constitutional judges must dig, follow and understand the legal values and sense of justice that live in society.

Judge appeals in the decision to impose a gratuity against corruption of gratification in the auction process of procurement of goods/services in the government of the district Pesis considered based on the facts that were revealed to be a direct vote to prove and

consider the second alternative indictment where the defendant allegedly violated article 3 Jo. Article 18 of the Law number 31 year 1999 concerning the Corruption criminal act as amended by Law No. 20 of 2001 on amendment of Law No. 31 of 1999 on the Eradication of corruption crimes Jo Article 55 paragraph (1) of the 1st criminal CODE and Law number 8 year 1981 concerning criminal events Law, the Tribunal judges consider the following:

1. Everyone's element

Considering that the 1st element in the Subsidair indictment is equal to the 1st element in the Primair order so that the element of the person in the order of Primair has been considered and fulfilled, thus the element of each person in the subsidation has been fulfilled as well.

2. Beneficial elements of oneself, others or a corporation

Considering that although the defendant has learned that the procurement of plant activities still there is a shortage of mangrove seed volume, area of the plant does not fit the contract, there is no suitable planting distance there are not in the planting of an IR based on the findings of the PHO, but the defendant still apply for payment request submitted by CV. Panca Buana Abadi Himgga can be realized payment of CV. Panca Buana Abadi until payment can be realized by 95% to the defendant so that the defendant has benefited himself in addition, the defendant also gave money of Rp. 45 million (forty-five million rupiah) to the witness Ir. Sayuti, SN as a gift related to the rehabilitation of Mangrove Forest on the island of Kelagian in 2014 in the Department of Plantation and Forestry District Pesiya. Thus, the tribunal argued that the substance of self-benefit, others or a corporation has been fulfilled.

3. Element misused authority, opportunity, or means to him due to position or position

Considering that with the receipt of power from the director of CV. Panca Buana Abadi Then the defendant has the obligation to carry out the rehabilitation of mangrove forest activities thoroughly, because the defendant did not perform the work not in accordance with the RAB specified in the contract, then the defendant has been used to use the authority, thereby elements misuse the authority, opportunity or means to him because the position or

4. Elements that could harm the country's finances or state economy

Considering that in the work of the defendant does not work as the items that have been agreed and contained in the contract and based on the results of the examination team PHO there is a shortage of seed volume and land area in the area but the work is still paid in full and not in accordance with the achievement of the work so that the audit decreased the state financial losses of Rp 214,780,982.-(two hundred fourteen million seven hundred eighty thousand nine hundred eighty two Rupiahs), thus the tribunal argued that the detrimental element of state finances or state economy has been fulfilled.

5. The element of the person who performs, commits and participates in the ACT

Considering that conducting or participating in the Act is deemed as perpetrators of criminal acts if they commit an act resulting in or violate the prohibition or necessity

prohibited by law. That other people who participate in crimes can be considered as perpetrators if physically there is cooperation among their fellow with the realization that each of them has done cooperation to do a deed in other words to be classified as a participation and the required "Physieke samen werking" and "Bewuste semen werking".

Considering that from the fund that has been paid to the defendant Ir. Sayuti SN has obtained an indoor amount of Rp. 45 million.-So the tribunal judges argue the element of people who do, to do and participate in doing the deeds have been fulfilled.

Based on the above elements, the assembly of judges in the trial did not find anything that could eliminate the criminal liability, either as a reason for the excuse and or excuse the forgiving, then the defendant must respond to his actions, where the defendant is able to be responsible, then must be convicted and sentenced. In order to impose a criminal against the defendant, it is necessary to consider the incriminating circumstances and that relieve the defendant, namely:

1. Incriminated circumstances
 - a. The defendant does not endorse government programs in the eradication of corruption crimes;
 - b. The defendant's deed has detrimental to state finances and state economy;
 - c. The defendant did not acknowledge his deeds.
2. Relieving circumstances
 - a. The defendant was never punished;
 - b. Defendants have Family liabilities;

Based on the explanation above it can be concluded that, the judge in dropping the ruling on considering the juridical factor, namely the law and theories relating to the case or the matter and the Non juridical factor, that is looking from the environment and based on the conscience of the judge itself. Furthermore, the elements in the deed of the perpetrators, namely: the element of each person, elements benefit oneself, other people or a corporation, elements misuse the authority, opportunity, or means that there is because of the position or position, elements that can harm the finances of the country or the country's economy, elements of people who do, to conduct and participate in the act.

The judge should not impose a lower penalty than the minimum threshold and also the judge should not impose a higher penalty of the maximum limit of predetermined punishment, then the Tribunal declares the defendant to have proven lawfully and convince guilty of the Corruption criminal act jointly and dropped the imprisonment against defendant Ujang Mursalim Bin Madras sister for 2 (two) years and a fine of Rp. 50.0000.000 ,-(fifty million rupiah) if the fine is not paid then replaced with a confinement for 2 (two) months and dropped the additional criminal in the form of payment of a substitute amount of Rp. 169,780,882 to the State treasury.

C. Perpetrators efforts to pay losses to the country due to criminal corruption of gratification in the auction process of goods/service procurement in the District government, based on article number : 20/Pid.Sus-TPK/2017/PN.Tjk,

The financial return of the corruption criminal result is already a stand-alone norm, with the legal principle that the perpetrator of the corruption criminal may not be entitled to a profit from corruption. In the context of criminal acts perpetrated by criminal acts, the Seizor asset deprivation of corruption results can be used to improve the condition of damage and degradation of the economy and the quality of economic and welfare of communities affected by the perpetrators of corruption crime.

Based on the current legislation, the provisions on the country's losses are mentioned in Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the Information of Corruption Act (hereinafter referred to as PTPK) and Law No. 1 year 2004 concerning the State treasury. In the PTPK LAW, there are two articles and explanations that contain the element of state loss. Read more both articles and explanations are as follows:

Article 2 paragraph (1) of PTPK LAW

Every person who is against the law commits the act of enriching themselves or another person or a corporation that can harm the finances of the state or economy of the country, is sentenced to life imprisonment or imprisonment of maximum 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200 million (two hundred million rupiah) and at most Rp 1.000.000.000 (one billion

Article 3 PTPK LAW

Every person with a purpose to benefit oneself or another person or a corporation, misuse the authority, opportunity or means thereof because of positions or positions that could harm the finances of the state or economy of the state, are sentenced to life imprisonment or imprisonment of the shortest 1 (one) year and maximum of 20 (twenty) years and or a fine of at least Rp. 50 million (fifty million rupiah) and at most Rp. 1 billion (one billion rupiahs).

Based on law number 31 year 1999 Jo Act No. 20 year 2001 Challenge corruption crime is described as follows: In the case of perpetrators of corruption crimes referred to in article 2 and article 3 have fulfilled the elements of the article, then the financial loss of the State or economy of the country, did not eliminate the criminal against the perpetrator of the criminal. The return of the country's financial loss or state economy is only one of the alleviating factors.

The explanation of Article 4 gives assurance that the return of state losses can relieve its punishment/Pidananya. This is set out in the explanation of article 4 of the Act No. 31 of 1999 as amended by Act No. 20 of year 2002 "The refund of the country's financial loss or state economy is only one of the alleviating factors".

Based on the implementation of article 4 "The state's financial refund of the country or economy is only one of the alleviating factors", practitioners of law are the prosecution in demanding defendants/perpetrators of criminal acts of corruption, and the judges in disconnecting a criminal offence which has no refund of the state's financial losses to consider the fulfillment of the sense of justice by paying attention willingness or i'tikad good and the fairness of the process of settlement of damages of the country/region either through TP-TGR process (Treasury demands and indemnity claims), or not through through the process of TP-TGR.

The country's refund of corruption crimes through substitute money is one of the most important attempts at the eradication of corruption crimes. The return is not easy because the corruption crime is an extra ordinary crime that the implementation comes from intellectual circles and has an important position. In the Eradication Act the Corruption criminal Act has been arranged three (3) attempts to be made in the settlement of the arrears of substitute money: foreclosure and auction of the convicted property and its heirs after the court ruling has a permanent legal force, through the verdict of a prison criminal subsidiary, through civil lawsuit and financial administration.

Elements of Corruption Criminal Act article 2 paragraph (1) are as follows: (1) each person; (2) against the law; (3) Enriching oneself, others or a corporation; (4) may harm the country's finances or the country's economy. While the Elements of Corruption criminal Act article 3 are as follows: (1) every person; (2) For the purpose of benefiting oneself or any other person or corporation; (3) Misuse the authority, opportunity or means thereof because of office or position; (4) may harm the country's finances or the country's economy.

At this time, the government's financial statements were felt still lack transparent and accountable because it has not been fully compiled following government's accounting standards in line with the internationally accepted public sector accounting standards. The Government's accounting standard complies with the provisions of article 32 of law number 33-year 2004 concerning state finance to be a reference for the central government and all local governments in drafting and presenting financial statements

The effort to return the resulting corruption is still lacking and not enough to eradicate the crime. This is due to some constraints, among others (1) Corruption occurs systemically and (2) abuse of power.

State refund efforts by perpetrators of criminal corruption gratification in the auction process of procurement of goods/services in the district government, based on article number: 20/Pid. Sus-TPK/2017/PN. TJK has been returned to the state but the defendant remains subject to a fine stipulated in the ruling Amar of Rp. 50 million (fifty million rupiah).

III. CONCLUSION

Based on the above analysis results it can be concluded that:

1. Factors causing the perpetrator to commit crimes gratification due to several factors such as Moral factors or evil inner attitudes, Personal interest factor, Opportunity factor, and Economic needs to meet the needs of his life.
2. Judgment of the judges against the decision of the perpetrator of corruption criminal gratification in the process of auction procurement of goods/services in the district government, based on article number: 20/Pid. Sus-TPK/2017/PN. TJK assembly judge in dropping the ruling on taking into consideration the juridical factor, which is the law and theories relating to cases or causes and Non-juridical factors, namely looking at the environment and based on the conscience of the judge itself. Furthermore, the elements in the deed of the perpetrators, namely: the element of each person, elements of self-benefit, other people or a corporation, elements misuse the authority, opportunity, or means that exist on him because of office or position, elements that can harm the finances of the country or the country's economy, elements of people who do, to conduct and participate in the ACT
3. State refund efforts by perpetrators of criminal corruption gratification in the auction process of procurement of goods/services in the district government, based on article number: 20/Pid. Sus-TPK/2017/PN. TJK has been returned to the state amounting to Rp. 169,780,882 but the defendant remains subject to a fine that has been set in the ruling Amar of Rp. 50 million (fifty

Based on the results of the above studies the authors may suggest the following:

1. To the judges of the Criminal acts of corruption in order to grant criminal sanctions against the criminal corruption of gratification must be heavier because the defendant's deed is the form of a mistake to be accounted for, there is no reason for the defendant or excuse to eliminate criminal liability for the accused.
2. Should the judge give a fair criminal verdict for the defendant it means that its intended to give a deterrent impact on perpetrators of criminal acts, so as to not repeat the occurrence of the same crime and be expected to law enforcement officials, especially the judge in sanctioned the defendant, judges can dig the legal

values contained in the society. This is intended to create a sense of justice towards society.

3. It is expected that the government and the academics and legal practitioners conduct discussions/seminars periodically to discuss the efforts to counteract corruption.

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