Effectiveness of corruption court in corruption eradication in Indonesia

Joko Setiyono
Faculty of Law, Diponegoro University, Semarang, Indonesia
Email: jsetiyono@gmail.com

Abstract. The light decisions (verdict) of the Judges of Regional Corruption Courts to the perpetrators of corruption, both imprisonment and restitution, are not proportional to the amount of loss to the state. In addition, the presence of red-handed catch (OTT) by the Corruption Eradication Commission (KPK) against the judges of the Corruption Criminal Court showed the presence of crucial problems in its formation as a Special court. An examination was conducted on the basis of the main problems: first, the condition of the resources at the Corruption Courts; second, the main problems causing the ineffectiveness of Corruption Courts; three, in relation with the supervision and control of the Corruption Courts in corruption cases in Indonesia. The research method is juridical empirical based on the primary and secondary data related to the subject matter. There are several conclusions from the research results. First, the condition of the Corruption Court's resources must pay attention to the system of recruitment, the judge's control over the formal and material legal sources related to the Corruption Court, and the integrity of the Judge. Second, the main cause of ineffectiveness of the Corruption Court is due to the accumulation of cases, the overworked judges, the difficulties of the prosecutor to present witnesses, and related to the large operational costs of the trial. Third, the supervision and control of the Corruption Court involve free and light decisions, negative behavior, and saving the Judge.

Keyword: Effectiveness of Corruption Court, Corruption Eradication, Indonesia

1. Introduction

The Law No. 46 of 2009 on the Corruption Court was issued and mandates that all trials to corruption cases should be carried out in a Special Court, namely the Corruption Court. Corruption Court is a special court dealing with corruption cases, which was initially initiated only in Jakarta, Bandung, Semarang and Surabaya. In its development, based on the Decree of the Chairman of the Supreme Court of the Republic of Indonesia (SK Chairman MA RI) No. 022/ KMA/ SK/ II/ 2011 in conjunction with No. 153/ KMA/ SK/ X/ 2011, 33 Corruption Courts have been established in the provincial capitals of Indonesia.

Similarly, before the establishment of the Corruption Courts in several areas, the performance of the Corruption Courts which previously was only in Jakarta, is very much different. The verdicts and sentences upheld by the Corruption Judges were considered to have the deterrent effect against corruption criminals as stated in Law no. 31 of 1999 in conjunction with Law No. 20 of 2001 (Juntho, Emerson, 2011). Based on the mapping of ICW, a total of 71 defendants had been released by the Anti-Corruption Court in regions, i.e.: 26 people in Surabaya, 15 in Samarinda, 7 in Semarang, and 7 people in the Corruption Court of [1]. Moreover, the success of the Red-Handed Catch Operation (OTT) by the Corruption Eradication Commission (KPK) against law enforcement officers in general and the Judges of the Corruption Courts in particular indicated a crucial problem in the establishment of the Corruption Court as the Special Court. Related to the problem, great corruption cases can be transferred to the Corruption Court in Jakarta because the Supreme Court has the authority to dispose the Regional Corruption Court to the Corruption Court in Jakarta [2]. Therefore, the human resources of judges at the Regional Corruption Courts need a clear concept and must qualify in the recruitment process. The Regional Corruption Courts should be evaluated in terms of management and human resources, and it requires special attention from the judicial supervisory agency.
Based on the brief description above, it is necessary to conduct a research entitled "Effectiveness of Corruption Court in Corruption in Indonesia", in which the research results may provide recommendations regarding the main problems of the research as follows: 1) the condition of the resources at the Corruption Courts; 2) the main problems causing the ineffectiveness of the Corruption Courts; and 3) the supervision and control of the Corruption Courts in Corruption in Indonesia. This study aims to solve these three (3) main issues in the research.

2. Methodology

The approach method in this research was juridical empirical to find how the legal relationship with the community and the factors affect the implementation of law in society, as the primary data [3]. The secondary data were obtained indirectly through library research [4]. The research’s specifications was descriptive analysis to describe the applicable laws associated with the concept of law and positive law concerning the main research problems. Based on the primary and secondary data, identification, classification, and validation; qualitative data analysis were conducted, and the results were presented in a research report.

3. Literature Review

Law enforcement must have a high effectiveness in order to ensure its deterrent effect for the offender, particularly in the field of corruption which incidentally is an extraordinary crime. According to Soerjono Soekanto, the factors that influence the effectiveness of law enforcement are: legal factors, law enforcement officers, facilities and infrastructure, community, and culture [5]. Therefore, an ideal judicial system should be autopoietic with the following characteristics: self-producing, self-organizing, self-referential, and pressure groups. With judicial independence and judge freedom for the intervention of external pressure factors, it is expected to be able to avoid "trial by the press" [6].

Criminal offense is an act which the perpetrator is liable to punishment [7]. Concerning the elements of a crime, the things to consider include: action element; which is met in the formulation of legislation; and the element which is against the law. It is also stated that the errors and abilities to be responsible of the perpetrator is not included as an element of crime because they are attached to those who commit it. The elements of strafbaarfeit are: the presence of human actions; punishable; against the law; carried out with an error; and done by people who can be responsible.

There are many opinions regarding corruption as presented by the experts. One of them is Martiman Prodjohamidjojo who states that the term corruption is derived from from the other word of "coruptio" or "corruptus" which means the damage or decay [8]. Under Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, there are 33 kinds of corruption which are divided into seven groups: first, the corruption associated with state financial loss; second, the corruption related to bribery; third, the corruption related to embezzlement in office; fourth, the corruption related to extortion; fifth, the corruption associated with cheating; sixth, the corruption associated with the conflict of interest in procurement; and seventh, the corruption associated with gratification.

The Law No. 4 of 2004 does not provide a definition of what is meant by Special Court, but it only mentions the kinds of courts that can be categorized as the Special Courts with the Corruption Court as one of them established under Law No. 46 of 2009 which was in General Courts. The Corruption Court has the authorities to examine, hear, and decide the cases of: corruption; money laundering which is a criminal offense originated from corruption; and the criminal offenses as expressly stated in any other law defined as corruption.
4. Findings

4.1. Resources of Corruption Court

4.1.1. Structural Resources of Corruption Court. The evaluation on the effectiveness of the Corruption Courts in terms of the availability of resources is associated with the field of legal structure, and the criteria are: whether the tangible resources of the institution that exists today has met the institutional, administrative, and management criteria or not; whether the tangible resources of the institution that exist today have run the standardized mechanisms, processes, and procedures or not; whether the tangible resources of the institution that exist today have performed national coordination and cooperation with the institutions in other criminal justice system or not since it has been common that judiciary institutions as part of criminal justice system should have inter-agency coordination and cooperation; concerning the possibility of regional and international cooperation that support the effectiveness of the Corruption Courts; and whether supporting facilities and infrastructures for the sake of the improvement of the Corruption Courts have been available or not [9].

The reform of legal structure includes the bodies of: investigator, prosecutor, judiciary, and sentence execution. The development of the scope of the reform of legal structure includes: legal institution or law enforcement agencies; judicial structure and mechanism or judicial system; and legal implementation and enforcement system.

4.1.2. Cultural Resources of the Corruption Courts. The evaluation of the effectiveness of the Corruption Courts in terms of the availability of resources is associated with the field of Legal Culture with the criteria of: whether the existing resources today have competence in the field of philosophy of law and national legal science or not; whether the existing resources today have a high level or quality legal awareness and law-abiding behavior or not; whether the Corruption Courts provide quality legal libraries, publishing and legal informatics or not; whether the existing resources today qualify as legal profession or not; and whether the existing resources today have studied law with the minimum graduation requirements of Master Degree (S2) in field of law sciences.

The Effectiveness of the Corruption Courts that should be reviewed in terms of the availability of resources associated with the scope of the reform of the criminal law system includes: the morality of the offenders, legal education and criminal law science (criminalities). The development of the scope of legal culture reform includes: cultural or value system of living or developing in the community; law sciences or knowledge; and public legal awareness. Thus, there is no reason for law enforcement officers, particularly judges, to use other legal basis. Every decision must be based on laws and legal values living in the community.

4.1.3. Recruitment of the Judges of the Corruption Courts. Recruitment of the Corruption Court Judges, in particular the Ad Hoc Judges, did not seem to be well-planned so that it made incompetent and low quality judges with poor track record pass the selection. Often, the process of recruitment turned into job search arena for the judge candidates. It was proved when there were some candidates who had failed several times but finally passed the selection [10]. In order to find qualified Judges for the Corruption Courts, there are two aspects that must be considered; the eligibility of candidates and the recruitment process. From the aspect of the requirements, the judge candidates should meet the formal requirements in Law No. 46 of 2009, must understand the corruption law and the criminal judicial system to corruption cases, and have good integrity. From the aspect of recruitment, the selection should involve all existing stake holders in the Supreme Court (MA), the Judicial Commission (KY), the Corruption Eradication Commission (KPK), and public participation.

4.1.4. Human Resource Quality of Corruption Court Judge. The resources of Ad Hoc Judges which actually had the background of non-judge given a few weeks of training on the substance of corruption and judicial technique were frequently met with obstacles in trial practices, particularly, at the beginning of their duties as ad hoc judges. In order to make adjustments and to get
a trial examination skill, introduction and preparation of trial documents, it takes no longer than 1 year. On the other hand, to be a general judge, a candidate of judge must take a training period of 2 years before appointed as a Judge. The quality of the Corruption Court Judges is also a particular problem. Even though having the background of Bachelor of Law, many of them apparently do not understand the formal and material laws on Corruption.

4.1.5. Integrity of the Judges of the Corruption Courts. The Indonesian Corruption Watch (ICW) did a search of track records in 14 provinces using the parameters of administration, integrity, and quality. In terms of administration, the majority of Ad hoc Judges was troubled by not fulfilling their obligation of the State Official’s Wealth Report (LHKPN) to the Corruption Eradication Commission (KPK) and Career Judges did not renew their LHKPN and not independent. In terms of integrity, there was a fact that some ad hoc judges still practiced as Advocate and Career Judges had meetings with the lawyers of defendants. In terms of quality, a few quality issues were found, such as lack of judge’s carefulness in examining and deciding cases, looking for favorable legal judgments against the defendants, trying to find the material truths, passive, and not attempting to explore the emerging facts at trials [11].

4.1.6. Judge’s Approaches in Examining and Deciding Cases. Judges are required to meet the three areas of legal enforceability which include: philosophical, dogmatic, and sociological enforceability of law. Each of the enforceability of law is based on three different basic values; justice, certainty, and utility [12]. The relation between law and society is characterized by two basic components. The first component consists of two main themes, namely the idea that the law is a mirror of society, and the idea that the function of law is to maintain social order. The second component consists of three elements: custom/ consent; morality/reason; and positive law. To understand the law and how to arbitrate can no longer be approached by three classical approaches, such as philosophical, normative, and socio-legal approaches. It requires the fourth approach called legal pluralism approach. Legal pluralism approach relies on the linkage between the state (positive law), social aspects (socio-legal approach), and natural law (morality/ ethics /religion).

4.2. Operation of Corruption Court

Several issues on low performance of Corruption Court are: excessive workload of the Judges and Registrars; the technical issues related to the prosecutors who have difficulty in presenting witnesses from out of town; the Judges and Registrar of the Corruption Court who also carry out the trials at general courts; the difficulties in regulating the composition of Career Judge and Ad Hoc Judge. In addition, some of the issues that strike the Corruption Court are: the Corruption Courts were considered ineffective because they often acquitted the accused of corruption; extra costs are needed for PH, the prosecutor, and the defendant's family for the Corruption Courts which are located in the provincial capitals; the accumulation of cases, and the trials were held until late at night. The judges were exhausted, and their concentration and accuracy decrease when investigating cases so that it can impact on the quality of examination and judgment [13]. Consequently, the truth was not revealed, substantive justice was not achieved, and many cases of bribery occurred to the judges of the Corruption Courts in several areas.

The obstructions in the implementation of rapid judicial principle in corruption cases at the Corruption Courts were caused by sick defendants, so the trials were delayed. In addition, the prosecutor could not present the witnesses for several trials because the witnesses resided out of town, and some witnesses were civil servants so that they could not leave their works to testify at the trials. Besides, one member of the judges could not attend the trials because of temporary unavailability and/ or performing other tasks out of the jurisdiction of the District Courts [14].

4.2.1. Workload of Corruption Court. The decentralization principle for corruption case investigations in every capital of the province with the authority to hear all criminal offenses that occur in each district/ city results in the accumulation of cases, an imbalance between the number of
cases and the number of judges and registrars, overload workload for judges and registrars. All the
problems occurred due to a huge number of corruption cases, and Career Judges and Registrars also
still had other cases out of corruption concurrently. The principle of decentralization also poses
problems of trial supervision or the activities of judges and registrars in trials. The limited number of
Judges and Registrars and the existing cases force the dual task. Technically, it creates difficulty in
setting trial time and managing the judges and registrars in the examination of cases, so the trials were
frequently held until late at night.

4.2.2. Quality of Corruption Cases Filed to the Courts. Law enforcers seemed to pursue the
target and to bestow corruption cases to the Corruption Court although the cases were not worthy sent
to trials. Many cases were delegated with weak power of evidence. Law enforcement officers
appeared to merely satisfy formal requirements in filing cases with two items of evidence regardless
of the strength of the evidence. As a result, public prosecutors could not hold their opinions in the
proof, so they could easily be broken by the Advocate’s arguments and ended with acquittal. In
addition, many cases were handed over to the Corruption Courts with very small losses, while large
cases with more public attention did not receive good treatment, resulting in the accumulation of
cases.

4.2.3. Inter-Agency Coordination. Examination of criminal cases is not only related to
judiciary but also to other agencies, such as police, courts, and prisons. Trials may begin during the
day because prisoner can be out of the prisons in the afternoon. Witness examinations could not be
performed because the prosecutors could not present the witnesses from out of town which was
located far from the courts. The authority to extend detention and the place of detention were
frequently the problems. In addition to internal problems, the performance of the Corruption Courts
was disrupted with technical problems to call the witnesses from out of town by the prosecutors. It
was common that a trial was ready but the witnesses did not attend. The prosecutors were not able to
present the witnesses because the place was far from the Corruption Court and there is not any
transportation fund for the witnesses.

4.3. Supervision and Control of Corruption Court

4.3.1. Supervision and Control of Acquittal and Light Verdicts. Effectiveness is not
determined by the number of acquittals, but it is determined by the justice of the verdicts. The
existence of presumption of innocence indicates that not all of the accused should be punished, unless
proven guilty. There is a stigma as if every defendant was required to be found guilty and convicted
referring to the performance of the Corruption Eradication Commission (KPK). It certainly cannot be
equated with the corruption cases handled by other law enforcement agencies because the
Commission has outstanding authority, adequate budget, and excellent human resources of
investigator and prosecutor. Meanwhile, the other law enforcement agencies do not necessarily have
good resources as well as the ones owned by the Commission. Judge verdicts which tend to be low or
light occurred because there was a fear of judges to perform legal discovery. Judges tend to have a
comfortable life which is free from the news of media and the examination by the Judicial
Commission (KY). Therefore, the judges preferred to play it safely by following the norms of Law
No. 31, 1999 in conjunction with Law no. 20 of 2001 on Corruption Eradication.

4.3.2. Supervision and Control of Judge Attitudes. Poor performance of the Corruption
Courts may also be caused by a lack of supervision by the Supreme Court and the Judicial
Commission (KY) to regional judges, considering the number of the Corruption Courts and the vast
area of Indonesia. Therefore, public participation, involvement, and relevant stakeholders are essential
to be involved in monitoring the behavior of Judges. Besides, as a key element in democratic process,
judiciary and the press world must work together. Independent press and judiciary are the
cornerstones of democracy. Good press can serve as a control tool to the course of the judicial system
to bring justice and verdict efficiency and legitimacy. Therefore, the news as a function of social
control and news reports that result in trial by the press should be understood by both the press and the public in general.

5. Conclusion

The weakness of the Ad Hoc Judge recruitment system is that the selection was held only to meet the formal requirements for the candidate of Judge and paid less attention to the aspect of credibility, morality and integration of the candidates for Judge as well as for the involvement in public participation. Even though all the Judges had the background of Bachelor of Law, many of them did not understand the formal and material laws on Corruption, lacked the skills of case examination, inaccurate in examining and deciding cases, and less active in exploring facts that may emerge in the trials. The majority of Ad Hoc Judge was troubled by not fulfilling the obligation to report the State Officials Wealth (LHKPN) to the Corruption Eradication Commission and the Career Judges did not renew their LHKPN, they were not independent, and there were some ad hoc judges who were arrested due to bribery.

Some operational issues that resulted in ineffective Corruption Courts were: The accumulation of cases since the Corruption Courts only existed in the provincial capitals and had the overflow of corruption cases from various districts/cities. Overwork; in addition to corruption cases that must be heard, Judges and Registrars were still burdened by the trials of other cases. Prosecutor's difficulties to bring the witnesses from out of the city; the witnesses could not attend because they were in government and there were obstructions in the coordination of Prison Institution. Prosecutors, PH, and the defendant's family from districts/ municipalities must pay huge operational costs and budgets since the trials were held in the courts located in the provincial capitals away from the districts/ cities.

With regard to the number of acquittals and light judgments that injured public justice, it is necessary to conduct public examination by the Courts, Universities, or NGOs so that academic and juridical evaluations can be made to objectively assess decisions. The low integrity of the Corruption Court Judges may be due to weak supervision by the Supreme Court and Judicial Commission against the Judges in the regions. The Supreme Court (MA) and the Judicial Commission (KY) have difficulties in supervising maximally considering the large number of Corruption Courts that will be supervised and the area of Indonesia, so public and the press participations are also required.

6. References

[1] Fauzi A 2012 Masa Depan Pengadilan Tipikor
[2] Santoso T 2011 Urgensi Pembenahan Pengadilan Tindak Pidana Korupsi Dalam Mewujudkan Good Governance (Jakarta: BPHN)
[3] Muhammad A 2004 Hukum dan Penelitian Hukum (Bandung: Citra Aditya Bakti)
[4] Amiruddin A Z 2014 Pengantar Metode Penelitian Hukum (Jakarta: Raja Grafindo Persada)
[5] Soekanto S 2002 Faktor-Faktor Yang Mempengaruhi Penegakan Hukum (Jakarta: Raja Grafindo Persada)
[6] Luhman N 2005 Teori Sosiologi Modern In: Ritzer G, Goodman DJ, editors, Teori Sosiologi Modern (Jakarta: Kencana)
[7] Sudarto 2009 Hukum Pidana I (Semarang: Yayasan Sudarto)
[8] Prodjohamidjojo M 2009 Penerapan Pembuktian Terbalik Dalam Delik Korupsi UU No. 20 Tahun 2001 (Bandung: Mandar Maju)
[9] Soponyono E 2013 Efektifitas Pengadilan Tipikor dari Aspek Ketersediaan Sumber Daya (Semarang)
[10] Pujiyono 2013 Reevaluasi Pengadilan Tindak Pidana Korupsi Dalam Penegakan Hukum Tindak Pidana Korupsi (Semarang)
[11] Fariz D, Juntho E and Diansyah F 2012 Resume Hasil Judge Profiling Hakim Pengadilan Tindak Pidana Korupsi Di 14 Provinsi (Indonesian Corruption Watch)
[12] Suteki 2013 *Faktor-Faktor Penentu Efektivitas Bekerjanya Hukum Di Pengadilan* (Semarang)
[13] Utama Y J 2013 *Efektifitas Pengadilan Tipikor dan Manajemen Pengadilan* (Semarang)
[14] Sawardi 2012 *Pelaksanaan Asas Peradilan Cepat Dalam Pemeriksaan Tindak Pidana Korupsi* (Pontianak)