The Judgment of Judge Against Intention in Determining Criminal Responsibility of Corruption’s Perpetrators to Seek Material Truth

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Abstract—Understanding the intention factors in the perpetrators of corruption is an ability that should be possessed by judges to gain or at least approach to material truth. The lack of judges’ knowledge in digging intention influences the quality of judges’ decisions. Purposes of research to determine the proportionality of criminal responsibility of perpetrators in the context of seeking material truth. This research used a normative juridical approach, analytical descriptive, secondary and primary data types, data collection through literature study and document study, data analysis, qualitative normative. The judge has assessed intentions as the basis for determining the heaviness of criminal responsibility for perpetrators of corruption through a judgment of mental attitudes and exploration from aspects of A (Attitude Toward Behavior), aspect of B (Subjective Norms) and aspects of C (Perceived Behavior Control). However, realistically, the lowest score judge was not able to consider to what extent the ability and opportunity possessed by a criminal to commit or not commit corruption (aspect C), and a high-score judge has also not conducted an optimal exploration yet related to psychological aspects. Judges should consider intentions by using scientific approaches to forensic psychology to analyze intention factors clearly which can help judges seek or at least approach to material truth.

Keywords—intention; criminal liability; corruption; material truth

I. INTRODUCTION

The process of understanding the intentions within a corruption’s perpetrators requires the activeness of the judge in analyzing every fact and evidence that appears in court because the criminal procedural law in Indonesia aims at seeking and finding material truth. This means that the essential truth must be found by the judge himself and to find out the material truth, of the judge does not depend on what is stated by the public prosecutor or by the law advisor of defendant. The judge is actively seeking the truth based on the "facts", not based on what was stated by the public prosecutor or law advisor of defendant.

The material truth is the complete truth of a criminal case by applying the procedural law in an honest and appropriate manner, with the aim at finding who the perpetrator can be charged with a law violation to be asked for an examination and court decision to determine whether a crime has been proven and whether the person charged can be blamed.

Material truth can be found if the judge is actively looking for actual legal facts through intuition, experience, and scientific approaches. Analyzing intentions in the perpetrators not only requires an active attitude from the judge, but also requires skills in psychology disciplines which have not been factually understood so far by most judges in the Corruption Court. As a result, the judges cannot measure to what extent the intentions encourage someone to commit or not commit corruption. The judges’ lack of intention knowledge empirically influences judgments in judges’ decisions and affects the emergence of a wide disparity in criminal sanctions between convicts.

The issue of urgency to be examined in this paper is that there are currently many cases of corruption handled by law enforcement and successfully brought to court to be tried and held accountable for criminal justice fairly and proportionally. However, the fact is that corruption criminal justice in Indonesia practically have a variety of non-equal court decisions. Each judge has his own consideration. The existence of various different decisions raises the disparity of criminal sanctions and tends not to provide a sense of justice for both victims and the community at large [1].

Criminal disparity is one of the important topics in criminal law. Discrimination disparity means that there are differences in the amount of punishment imposed by a court in cases with the same characteristics. The existence of criminal sanction disparity in the decision of the corruption criminal court raises a question whether all the judges at the corruption criminal court have explored the aspect of intention of the perpetrator in depth and to what extent the judge considers the position of intention in determining the heaviness of criminal responsibility for the perpetrator of corruption.

The emergence of a wide enough disparity between convicts in corruption cases indicates that the judge is not sufficiently able to consider the intention factor and is not so active in seeking the actual legal facts. This means that judges depend more on the facts and evidence presented by the public prosecutor and law advisor of defendant.
II. IDENTIFICATION OF PROBLEMS

- How does the judgment of judge consider the position of intention (motive) in determining the criminal responsibility of the perpetrators of corruption?
- What are the judgments that should be applied by the judge in making decisions for the perpetrators of corruption to seek and find material truth?

III. METHOD

The approach used in this research was a normative juridical approach with a criminal psychology approach. The nature of research was descriptive analytical. Data collection techniques used documentation study techniques. The data analysis method used qualitative because it did not use formulas and numbers.

IV. RESULTS AND DISCUSSION

A. The Fundamental Judgment of Judge Considering the Intention Position in Determining the Heaviness of Responsibility of Corruption’s Perpetrators

The judge's decision is the crown and culmination of a case that is being examined and tried by a judge. Therefore, of course, the judge in making the decision must pay attention to all aspects in it, starting from the need for prudence, avoiding a bit of inaccuracy, both formal and material until the technical ability to make it [2]. If these negative things can be avoided, of course, it is expected that in the judge’s characteristic can emerge, grow and develop the attitude or nature of moral satisfaction if the decision made then can be a benchmark for the same case, or can be a reference for theorists and law practitioners and conscience satisfaction if the decision is strengthened and no higher court is canceled [3]. The judge will feel more relieved when the decision can give satisfaction to all parties in a particular case, by giving reasons or considerations in accordance with the values of truth and justice [4].

Before the judge makes a decision in a criminal case, including a case of theoretical corruption, according to Moeljatno, there are several stages that must be passed by the judge, namely [5]:

1) Analyzing criminal acts: Criminal acts are prohibited and threatened acts with criminal sanction for anyone who violates the prohibition. When the judge analyzes whether the defendant committed a criminal offense or not, the considered primary thing is in terms of the community in the sense that the act appears to be a detrimental act that should be done or not. If the defendant's actions fulfill the elements in a particular criminal article, the defendant's actions are declared as a criminal act.

2) Analyzing criminal responsibilities: The next stage is that the judge will analyze whether the defendant can be held responsible for criminal acts. A criminal liability, then the judge will investigate whether the defendant is able to account for his actions or not. To make someone to become a criminal, he or she must meet two conditions. First, the actions committed by the defendant are wrong in criminal acts that are against the law. Second, the actions taken by the perpetrators can be accounted for as a mistake.

3) Determination of criminal phase: When a judge enters the stage of determining the prosecution, he or she will actually consider the intention factor which in criminal law is called intention. Intention in the discipline of psychology known as someone's motivation to do something that is realized in the form of action. To determine the heaviness of sanctions to be imposed on the perpetrators of corruption, the judge will analyze (consider) the extent to which the perpetrator knows and wants the realization of intentions in the form of deeds. Here the judge must consider the position of intention because it relates to the heaviness / severity of the sanctions that will be received by the perpetrator [6].

To determine the position of intention in determining the criminal responsibility of the perpetrators of corruption, the author presents the primary data in the form of a questionnaire from the judges who served in the Bandung Corruption Court as follows:

| TABLE I. DATA ON JUDGE KNOWLEDGE QUESTIONNAIRE ON INTENTION |
|-----------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Subject        | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 001            | 4 | 2 | 3 | 3 | 3 | 4 | 2 | 4 | 3 | 4 | 2 | 1 | 1 | 1 | 1 |
| 002            | 3 | 3 | 3 | 3 | 2 | 2 | 3 | 2 | 3 | 3 | 4 | 3 | 3 | 3 | 3 |
| 003            | 3 | 3 | 3 | 3 | 4 | 4 | 3 | 3 | 3 | 4 | 4 | 4 | 4 | 4 | 4 |
| 004            | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 3 | 4 | 3 | 4 | 4 | 4 |
| 005            | 4 | 2 | 3 | 4 | 3 | 3 | 4 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 4 |
| 006            | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 2 | 4 | 3 | 3 | 1 | 2 | 2 | 2 |

Source: Questionnaire Results of Judges at the Bandung Corruption Court, 2017.

Based on the assessment conducted at the time of collecting the questionnaire, the description of the results of individual judges' measurements is as follows:

a) First judge: Based on the measurement results, the first judge's has the lowest value of 37. This value is included in the medium assessment category which shows that the first judge has been able to see the intention of the perpetrators of corruption.

The acquisition of these values was spread in the acquisition of several different aspects. Where aspect A or attitude toward behavior was in the medium category, this showed that the judge has been able to see to what extent the suspect's belief sees corruption as a good or bad action to do.
Meanwhile, the aspect B or subjective norms were in the high category, this showed that the judge has made an optimal effort to see who is influential in the suspect’s environment so that he is able to commit acts of corruption. As with the aspect C or perceived behavior control, which is in the low category, this indicated that the judge did not use evaluations and information previously obtained related to the resources and opportunities that the suspect has to use as a basis for judges’ consideration in taking criminal decisions.

b) Second judge: Based on the results of measurements made to see the extent to which the judge considers the intention or intention of the perpetrator of a crime in committing corruption, the second judge was in the second lowest order compared to other judges, with a value of 43. The value is included in the assessment category that showed that the second judge has been able to consider the intentions of the perpetrators of crimes against corruption.

The acquisition of these values was spread in the acquisition of several different aspects. Where aspect A or attitude toward behavior is in the medium category, this showed that the judge has been able to see to what extent the suspect’s belief sees corruption as a good or bad action to do. In the aspect B or subjective norms are in the medium category, this shows that the judge was able to see who is influential in the suspect’s environment so that he is able to commit acts of corruption. Meanwhile, the aspect C or perceived behavior control is in the high category, this indicated that the judge has made optimal efforts to utilize evaluations and information previously obtained related to the resources and opportunities held by the suspect to be used as a basis for judges’ consideration in making criminal decisions.

c) Third judge: Based on the results of measurements made to see the extent to which the judge can consider the intention or intention of the perpetrator of a crime in corruption, the third judge was in the order of the second highest value compared to other judges, with a value of 52. The value is included in the category a high assessment that showed that the third judge has optimally considered the intention of the perpetrator of the crime against corruption.

The acquisition of these values was spread in the acquisition of several different aspects. Where aspect A or attitude toward behavior is in the medium category, this indicated that the judge has been able to see the extent to which the suspect’s belief considers corruption as a good or bad action to do. In the aspect B or subjective norms in the high category, this showed that the judge has optimally explored who is influential in the environment of suspects and beliefs such as what is formed in the suspect so that he is able to commit acts of corruption. Meanwhile, the aspect C or perceived behavior control is in the high category.

d) Fourth judge: Based on the results of measurements made to see how far the judge can consider the intention or intention of the perpetrator of a crime in committing corruption, the fourth judge was in the highest value compared to other judges, with a value of 55. The value is included in the assessment category high indicating that the fourth judge has optimally considered the intention of the perpetrator of the crime against corruption.

The acquisition of these values was spread in the acquisition of several different aspects. Where aspect A or attitude toward behavior is in the high category, this indicated that the judge has been digging up information optimally to see how far the suspect's belief considered corruption as a good or bad action to do. In the aspect B or subjective norms in the high category, this showed that the judge has optimally explored who is influential in the environment of suspects and beliefs such as what was formed in the suspect so that he was able to commit acts of corruption. Meanwhile, the aspect C or perceived behavior control is in the high category, this indicated that the judge has made optimal efforts to utilize evaluations and information previously obtained related to the resources and opportunities held by the suspect to be used as a basis for judges’ consideration in making criminal decisions.

e) Fifth judge: Based on the results of measurements made to see how far the judge can consider the intention or intention of the perpetrator of a crime in committing corruption, the fifth judge was the third highest value compared to other judges, with a value of 50. The value is included in the assessment category high indicating that the fifth judge has optimally considered the intention or intention of the perpetrator of the crime against corruption.

The acquisition of these values was spread in the acquisition of several different aspects. Where aspect A or attitude toward behavior is in the high category, this indicated that the judge has tried to explore information optimally to see how far the suspect's belief considers corruption as a good or bad action to do. In the aspect B or subjective norms in the high category, this showed that the judge has optimally explored who is influential in the environment of suspects and beliefs such as what was formed in the suspect so that he is able to commit acts of corruption. Meanwhile, the C aspect or perceived behavior control is in the high category, this indicated that the judge has made optimal efforts to utilize evaluations and information previously obtained related to the resources and opportunities held by the suspect to be used as a basis for judges’ consideration in making criminal decisions.

f) Sixth judge: Based on the results of measurements made to see how far the judge can consider the intention or intention of the perpetrator of a crime in corruption, the sixth judge was the highest fourth rank compared to other judges, with a value of 47. This value is included in the assessment category high indicating that the fifth judge has optimally considered the intention or intention of the perpetrator of the crime against corruption.

The acquisition of these values was spread in the acquisition of several different aspects. Where aspect A or attitude toward behavior is in the high category, this indicated that the judge has tried to explore information optimally to see how far the suspect's belief considers corruption as a good or bad action to do. In the aspect B or subjective norms in the high category, this showed that the judge has optimally explored who is influential in the environment of suspects and beliefs such as what is formed in the suspect so that he is able to commit acts of corruption. Meanwhile, the aspect C or
perceived behavior control is in the low category, this indicated that the judge does not use evaluations and information that has been obtained previously related to the resources and opportunities of the suspect to be used as a basis for judges' consideration in taking criminal decisions.

B. The Considerations that Should Applied to Determine a Decision for Corruption’s Perpetrators to Seek and Find Material Truth

Criminal punishment is a process and before the process runs, the role of the judge is very important. The judge concludes the criminal sanctions contained in a regulation by imposing a penalty on the defendant in a particular case. In imposing criminal sanctions, there are a lot of things that influence it and can be used as consideration for determining criminal decisions either contained in or outside the Act [7].

In considering a case of corruption, theoretically the judge will use several approaches, namely [8]:

- Balance approach means the balance relating to the community, the interests of the defendant and the state as victims of corruption;
- An art or intuition approach means that the judge has a discretion in imposing a penalty, in which the judge will use discretion to adjust to the circumstances and criminality that is reasonable for the corruption’s perpetrator;
- Experience approach means that the experience of a judge will help him in drawing up considerations and knowing how the impact of the decision is imposed;
- The ratio decidendi approach means that the balance of judges must be based on fundamental philosophy and consider all aspects related to the subject matter and that consideration must be based on clear motivation to uphold the law and justice;
- Scientific approach means that criminal imposition must be carried out systematically and carefully, especially in relation to previous decisions and guarantee the consistency of the judge's decision. Scientific approach is a kind of warning that in deciding a judge's case may not be solely on the basis of intuition but must equipped with legal knowledge and other scientific insights that help judges consider and make decisions.

A judge in considering the decision is required to use these 5 (five) approaches but the interesting thing to be discussed in relation to the issue raised is that there is a demand of the judge to give consideration based on the scientific approach. According to this approach, a judge may not decide on the basis of intuition or instinct only, but must also be equipped with legal knowledge and scientific insight of the judge and face a case. This means that judges are required to master various sciences, both legal science and other sciences, so that their decisions can be accounted for in terms of theories in science related to cases that are examined, tried and decided by a judge.

This scientific approach will guide the independence of judges in mastering various theories in legal science or knowledge of other scientific theories that determine the decisions that will be handed down by judges. For this reason, judges are required to continue to study and learn science related to law in particular and other sciences in general.

In the practice of trial, judges often ask for information from experts who are competent in their fields, except in examining, adjudicating and deciding that judges serving in the Corruption Court are supposed to study other sciences. It help judges to publicly expose corruption cases being tried. In the case of corruption, judges often find it difficult to explore things that are inherent in the nature of the perpetrators (psychological aspects). Therefore, they do not explore them deeply so the consideration is only based on the intuition approach on the evidence presented at the trial [9].

To explore the intention, the judge cannot rely solely on intuition because the judge as an ordinary human being is influenced by physical and spiritual circumstances that sometimes place instincts or instincts into something that is not true. There is a mistake or error in the verdict that is made so that the consideration will be wrong and produce a wrong or misguided decision and cause a prolonged polemic in society which ultimately results in more harm than good. Therefore, judges should apply considerations based on the approach of psychology and not only rely on intuition.

The interaction of psychology and legal science has long been happening. Both of these sciences try to find the role played in each discipline. The integration of psychology and law originates from a philosophical belief which states that in viewing science it should not be seen as a separate and distinct entity but related to one another. This philosophy encourages psychology to interact more with other sciences including legal science, especially in understanding and solving human behavior problems.

On the basis of this opinion, a judge as the spearhead of law enforcement who holds a hammer of justice applies legal considerations in the decision of corruption which is based on scientific studies of psychology. This condition is because with the help of the science the judge can find out the full intention (motive) of the perpetrator not just seeing from a handful of aspects that have the potential for error. By knowing Attitude Toward Behavior, Subjective Norms, Perceived Behavior Control the judge will know clearly how the description of personal attitude, social strength (environment) in influencing someone to commit or not commit corruption and how the perpetrator uses the opportunity to abuse the authority in the form of an act corruption.

To apply legal considerations based on scientific studies, psychology disciplines first, judges must study the principles of psychology about human behavior, especially criminal behavior (crime), how the origin of motivation, and build intentions that end in an action (action) [10]. These aspects need to be studied and understood by judges in preparing a legal consideration of a corruption case decision.
To seek and find out the material truth of the judge does not depend on what is stated by the public prosecutor or by the law advisor of defendant. The judge is active in seeking the truth according to the actual "facts" not according to what was stated by the public prosecutor or law advisor of defendant.

The judge's active attitude in seeking and finding material truth is realized by the act of analyzing criminal conduct, criminal responsibility and criminal determination. In the analysis phase of criminal responsibility and criminal determination of judges, it is very necessary to help forensic psychology to examine the personality of the perpetrator, because to find the material truth of the judge does not depend on what the prosecutor or the defendant's lawyer advises. The use of forensic psychology is the process of building a judge's conviction about the construction of a corruption case he handled so that the judge got the information openly.

Seeking and finding material truth in corruption cases is not an easy matter, a judge in the judicial process cannot be passive, the activeness of a judge is needed especially in the verification stage. At this stage, the judge must use a variety of approaches namely balance approach, intuition approach, experience approach, ratio decindendi approach and scientific approach. Forensic psychology helps the activity of judges find or at least approach material truth to find facts that do not depend on the statements of the prosecutor and legal counsel of the perpetrator. Analytically there are a number of benefits obtained by judges when they find material truth built on the study of forensic psychology disciplines in corruption cases, namely:

1) Accelerate the judicial process: Mastery of forensic psychology discipline for a judge can be carried out by conducting various tests, especially personality tests which are the basic tests to find out the basic characteristics of individuals who commit corruption. Therefore, the judge does not need to present a forensic psychologist to know the psychiatric picture of the whole person. The judicial process will run faster because it does not need to present experts and does not drag on.

2) Avoiding criminal disparities or fair disparities (justified): Basically, the independence and freedom of judges in preparing considerations in corruption cases in addition to requiring adequate criminal guidance also requires mastery of aspects of scientific psychology because with these disciplines judges are able to measure a person's personality in determining the good and bad of an act and assessing the actor in building an inner attitude (intention) to commit or not commit a crime [11]. This means that the judge can find out that the corruption was carried out intentionally (planned) or as a result of negligence / inadverstence (culpa). Psychology can also help judges learn about social pressure (environment) to influence perpetrators to commit or not commit corruption and to use existing opportunities (Attitude Toward Behavior, Subjective Norms, Perceved Behavior Control).

3) Creating a fair decision: When the judge makes a decision on the sentence, the sentence must contain the value of justice. Fair criminal justice means that a criminal sanction must be proportional to the level of wrongdoing of the offender because error is an important element in determining the severity of criminal liability charged to the defendant. Furthermore, the basis of the denunciation is based on the willstheorie theory put forward by Von Hippel and (voorsterlingstheorie) by Frank is to know and want (will en weten) the perpetrator to know and want the consequences that occur after the crime is completed. Sactohid Kartanegara opzet willen en weten (known and desired) is someone who commits an act deliberately must (will) the act and must realize or understand (weten) the consequences of the act [12].

Corruption results in the loss of the state that is known and desired (willen en weten) by the perpetrators by unlawful means to enrich themselves and / or others so that it should be theoretically burdened with punishment that is worth the error. To find out the mistake, the judge needs to explore the inner attitude of the offender (intention). With the knowledge of mistakes in the form of intentions or negligence the judge can analyze the criminal liability that will be imposed on the perpetrators.

V. CONCLUSION

- Judges in conducting judicial duties empirically have placed intentions as a subjective element which must be proven to determine the weight of criminal responsibility for perpetrators of corruption through an assessment of mental attitudes and exploration from aspects of A (Attitude Toward Behavior), aspect B (Subjective Norms) and aspects C (Perceived Behavior Control) but the reality shows that judges who get the lowest score are unable to consider the extent of the ability and opportunity of the opponent to be able to commit or not commit corruption (aspect C) and high value judges have not performed optimally yet related to aspects psychological aspect. Weak considerations and exploration of judges on aspects of intentions in the perpetrators lead to legal considerations in the judge's decision do not able to display the psychological aspects that are the determining factors for the implementation of criminal acts of corruption and lead to unfounded criminal sanctions.

- Considerations that should be applied by the judge in examining and deciding cases of corruption are using a scientific approach to forensic psychology systematically to examine or analyze the intention factors that attach themselves to individual perpetrators of criminal acts clearly and precisely. Applying the considerations built on forensic psychology studies will help judges find or at least approach material truth and provide 3 (three) benefits in the form of (a) faster the judicial process (b) avoids criminal disparity or reasonable disparity (justified) and ( c) create fair decisions.
REFERENCES


