

Legal Analysis of Dismissal of State Civil Apparatus Found Guilty of Corruption in Relation to Justice and Human Rights

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ABSTRACT

Law of the Unitary State of the Republic of Indonesia Number 5 of 2014 concerning State Civil Apparatus clearly explains that as state civil apparatus who uphold Pancasila and the 1945 Constitution whose duty is to serve the community, civil servants must be accountable for their actions and performance to the community. In this case, if a State Civil Apparatus commits a criminal act, then the State Civil Apparatus must be accountable for his actions to the public, namely by following the legal process and accepting dishonorable dismissal. The purpose of this study is to determine how the legal construction of the dismissal of state civil servants who are found guilty of committing corruption by a court decision is related to justice and human rights and whether the reasons for the dismissal of state civil servants who are found guilty of committing corruption by a court decision do not violate human rights. This research was conducted using the Normative Legal research method, meaning analyzing the relationship between applicable laws and regulations with legal theories and the practice of implementing positive law concerning the problems discussed. Dishonorable dismissal is a consequence received by ASN for committing a criminal act of corruption which is a crime in his position or authority. However, dishonorable dismissal must be based on the principles of justice that do not violate the basic rights of the ASN. One of them is a fair trial process in terms of process and substance.

Keyword: State Civil Apparatus, Dishonorable Dismissal and Criminal Acts

1. Introduction

The State Civil Apparatus has an important role in running the country and providing public services to the community. In Law Number 20 of 2023 concerning the State Civil Apparatus, it is stated that State Civil Apparatus Employees, hereinafter referred to as ASN Employees, are civil servants and civil servants with contract workers who are appointed by the public affairs development official and the tasks assigned. hold government positions or are entrusted with other state functions and are given income in accordance with statutory regulations.¹

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¹ Presiden Republik Indonesia, 'Undang-Undang Republik Indonesia Nomor 20 Tahun 2023 Tentang Aparatur Sipil Negara', 202875, 2023, pp. 1–44.

government positions or are entrusted with other state functions and are given income in accordance with statutory regulations.² Placement in various sectors makes ASN the backbone of government in the implementation of National Development. For the success of National Development, of course, ASN must work based on the principle of good governance, namely the implementation of government that has good governance, namely solid and responsible, where decision making or actions are transparent, participatory, accountable, fair, and sustainable.

Good governance can be a means of automatically preventing corruption, which is rampant among public officials or individuals in government. In fact, the possibility of criminal acts of corruption by government officials will no longer occur. The principle of good governance emphasizes the importance of society prioritizing the interests of individuals, groups, and the welfare of others. The principle of good governance ensures that the government and its members maintain a healthy balance of performance in their respective roles. Efforts to realize good governance in Indonesia are being given high priority. This aims to create conditions in which society, the nation, and the state can live more prosperously without the practices of corruption, collusion, and nepotism.

However, with the great authority held by ASN, there are often opportunities for abuse of authority to commit corruption. Usually in budget management, licensing, and public services, the lack of transparency and weak supervision become opportunities for ASN to commit corruption. Of course, violations related to corruption result in significant financial and economic losses for the country. This is also a major obstacle in efforts to advance national development, therefore efforts to realize a government free from corruption cannot be abandoned. Action against ASN who commit corruption is very necessary, both from actions based on criminal law and ethical code actions. Therefore, apart from criminal penalties, ASN dismissal can be carried out in a reasonable or unpleasant manner, depending on the severity of the violation committed and how the violation is handled by the officials involved. Over time, corruption has been very detrimental to the country's finances and economy, and has hampered the progress of national development.

Regarding criminal acts of corruption committed by ASN in Riau Province, law enforcement must be strengthened to achieve good governance. Based on information obtained by the author from the 2018 data summary, in Siak Regency, 16 individuals were recorded as being dishonorably discharged due to involvement in corruption, while in Indragiri Hilir Regency, from 2018 to 2020, there were 24 people, and in Indragiri Hulu Regency during the same period, 24 people were also recorded. In Pekanbaru City, the number reached 22 people during the period 2018 to 2020.

The data relates to employees who were dishonorably discharged for contributing to

² Muhammad Ansori Lubis, Ria Sinta Dhevi, and Muhammad Yasid, 'Penegakan Hukum Terhadap Aparat Sipil Negara Yang Melakukan Pelanggaran Hukum Dalam Mewujudkan Good Governance', *Jurnal Darma Agung*, 28.2 (2020), p. 269, doi:10.46930/ojsuda.v28i2.649.

corruption under Riau Province law. Regarding the large number of civil servants (PNS) who were found guilty of corruption and have permanent legal force (inkracht), the Minister of Home Affairs (Mendagri) Tjahjo Kumolo requested that they be immediately dismissed based on these reasons. The dismissal process was carried out by the regional government after the issuance of the Joint Decree of the Minister of Home Affairs, the Minister of State Apparatus Empowerment and Bureaucratic Reform, and the Head of the State Civil Apparatus Number 182/6597/SJ, Number 15 of 2018, and Number 153/Kep/2018 concerning the application of the law for civil servants who are found guilty based on a court decision with permanent legal force for certain criminal acts in their functions.

The revocation of ASN status related to corruption is carried out after a general decision is made, even though regulations already exist and are reinforced by government regulations to revoke ASN involved in corruption. This is one of the cases studied regarding the application of administrative sanctions in the form of dismissal in the case of criminal decision Number-18/Pid.Sus-TPK/2021/PN.Pbr.

In decision Number 18/Pid. Sus-TPK/2021/PN Pbr, the corruption case committed by state civil servants involved Imam Gojali ST. MT Bin Umar as the Head of the PUPR Service Commitment Committee of the Kampar Regent for corruption in the Kampung Pinang - Teluk Jering Road repair project, Tambang District by the Kampar Regent in the context of PUPR services in the 2019 budget year, which resulted in his dismissal. The Attorney General charged him based on the Primary indictment in accordance with Article 2 paragraph (1) in conjunction with Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which has been revised by Law No. 20 of 2001.

Based on Article 55 Paragraph 1 Ke-1 of the Criminal Code, he was sentenced to eight years and six months in prison and a fine of Rp 500,000,000. If the fine is not paid, the defendant must serve an additional three months in prison. The judge sentenced him to three years in prison and a fine of Rp 50,000,000, with the provision that if the fine is not paid, it will be replaced with a one-month prison sentence.

2. Research Method

This research is a normative research conducted by reviewing legal documents. Secondary research or research based on recorded standards is also called library research. For types of legal principles such as general principles of state administration, it refers to legal norms contained in laws and regulations related to the title of this scientific work.³

Because the type of research used is normative legal research that discusses legal principles, the method of collecting legal documents used by the author is library

³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (PT. Raja Grafindo Persada, 2019).

research. In this study, the author requires primary legal materials, namely legal regulations and secondary legal materials in the form of books or other research results.

3. Result and Discussion

3.1 Legal Construction of Dismissal of State Civil Apparatus Found Guilty of Corruption by Court Decision

The current management of the state civil apparatus needs to be arranged, because the state civil apparatus has an important position and role in managing development to achieve the state's goals as stated in the state's goals. In the Opening of the 1945 Constitution of the Republic of Indonesia, the state's goals include protection, welfare, intelligence and peace, as well as the main goal of a just and prosperous society.

Among the elements of a just and prosperous government, it is necessary to achieve the goals of the state in carrying out the tasks given by the state through the law, so that the position of the state civil apparatus is something very important. needed to carry out state management. Civil servant management is civil servant management that aims to train professional civil servants with core values, professional ethics, free from political interference, free from acts of corruption, collusion, nepotism. Therefore, in carrying out the function of the State Civil Apparatus must avoid criminal acts of corruption, collusion, and nepotism (KKN).

Termination of employment of ASN can be done for various reasons depending on the form of termination. In Law Number 5 of 2014, termination of employment is classified into three forms of classification, namely:⁴

- 1) Honorable dismissal, namely due to a) death, b) at one's own request; c) reaching the retirement age limit; d) organizational downsizing or government policy resulting in early retirement or; e) being physically and/or mentally incompetent so as to be unable to carry out duties and obligations.
- 2) Dishonorable dismissal due to a) Committing a violation of Pancasila and the 1945 Constitution; b) Being sentenced to prison or detention based on a court decision that has permanent legal force for committing a crime of office or a crime related to office and/or general crime; c) Being a member and/or administrator of a political party; or d) Being sentenced to prison based on a court decision that has permanent legal force for committing a crime of imprisonment for at least 2 years and a crime committed with planning.
- 3) Temporarily suspended, due to a) being appointed as a state official; b) being appointed as a commissioner or member of a non-structural institution; or c) being detained as a suspect in a criminal act.

⁴ Republik Indonesia, 'Undang-Undang Republik Indonesia No.5 Tahun 2014 Tentang Aparatur Sipil Negara', 2014, pp. 1-104.

From the qualifications above, we know that there is dishonorable dismissal as a consequence of ASN who commit a crime. Dishonorable dismissal is an action taken by a government agency to end the employment relationship with a state civil servant (ASN) from his position due to a violation of the rules or code of ethics committed by the ASN, so that the ASN.⁵

Regarding the large number of civil servants (PNS) who have committed corruption and have permanent legal force (*inkracht*), the Minister of Home Affairs (Mendagri) Tjahjo Kumolo asked them to be immediately dismissed due to evil motives. The request was conveyed by the Minister of Home Affairs through Circular Letter (SE) Number 180/6867/SJ. concerning the Implementation of the Law on Handling State Civil Apparatus Who Commit Corruption dated September 10, 2018 and sent to regents/mayors throughout Indonesia. The basis for the legal instrument in the form of policies and decisions is because there are still many cases of criminal acts committed by ASN, many of which already have permanent legal force but have not been followed up with administrative sanctions.⁶ This is also reaffirmed in the Constitutional Court Decision Number 87/PUU-XVI/2018 dated April 25, 2019 which confirms that Civil Servants (PNS) who based on a decision with permanent legal force (*inkracht*) commit acts related to their positions such as corruption, bribery, and others should be immediately dismissed with dishonor, the Ministry of Home Affairs (Kemendagri) asked the Regional Government (Pemda) to immediately implement the decision. against the Constitutional Court decision which strengthens the General Decree (SKB) to accelerate the dismissal of civil servants convicted of corruption (*Tipikor*).

In fact, the sanctions for ASN who commit corruption can be more severe than other crimes. In which case, dismissal without warning due to committing corruption is further regulated in the State Civil Service Agency Regulation Number 3 of 2020, namely in Article 17 (13) to paragraph 17 (15), namely:⁷

Article 17 paragraph 13 states that specifically for the dishonorable dismissal of a civil servant due to committing a crime of office as referred to in paragraph (10) letter b, the length of the prison sentence or detention that has been decided by a court that has permanent legal force is not taken into account.

Article 17 paragraph 14 states that criminal acts of office crimes are criminal acts committed by civil servants in ASN positions because they are carrying out their official duties which are based on a court decision that has permanent legal force, proven to have violated the provisions of laws and regulations governing corruption

⁵ Yuki Muhammad Firdaus et.al, 'TINJAUAN ASPEK KEADILAN DALAM PEMBERHENTIAN TIDAK DENGAN HORMAT ATAS APARATUR SIPIL NEGARA', *Jurnal Yustisi*, 11.2 (2024), pp. 122–36.

⁶ Nurmalita Ayuningtyas Harahap, 'Revitalisasi Manajemen Aparatur Sipil Negara Melalui Pemberhentian Tidak Dengan Hormat Bagi Pegawai Negeri Sipil Yang Terlibat Tindak Pidana Korupsi', *Jurnal Panorama Hukum*, 3.2 (2018), pp. 155–70, doi:10.21067/jph.v3i2.2737.

⁷ Pemerintah Republik Indonesia, 'Berita Negara', *Peraturan Menteri Kesehatan Republik Indonesia Nomor 4 Tahun 2018*, 151.2 (2018), pp. 10–17.

that is detrimental to state finances/the state economy and are subject to imprisonment and/or fines in accordance with the provisions of laws and regulations.

Article 17 paragraph 15 states that criminal acts related to office are criminal acts committed by civil servants not in their ASN positions but because they are carrying out additional duties or duties in other positions given by authorized officials, and based on a court decision that has permanent legal force, it is proven that they have violated the provisions of laws and regulations governing corruption that is detrimental to state finances/the state economy and are subject to imprisonment and/or a fine in accordance with the provisions of laws and regulations.

Then according to S.F Marbun, in the law on the eradication of criminal acts of corruption, the provisions regarding crimes in office are in fact crimes whose nature or quality of perpetrator is not only in the position of a civil servant or state administrator, but also a corporation. Therefore, the material of the crime of the perpetrator being in the position of a part of administrative law is made, because the nature of the perpetrator or the quality of the perpetrator is in the position of a civil servant or state administrator.⁸ So we can understand that corruption is a criminal act in terms of abuse of office, therefore dishonorable dismissal of ASN who commit corruption, regardless of the length of imprisonment or confinement given to him. The Corruption Eradication Law in the provisions regarding criminal acts related to the implementation of power is actually combined with criminal acts whose creators or creators are not only civil servants or state administrators, but also a company. The expansion of the definition of civil servants is also in line with the definition of state finances, including all state assets, in all forms, both individually and not, which are under the control, management, and responsibility of civil servants and community/regional organizations, legal entities and companies with public capital.

Every Civil Servant cannot be separated from all legal acts committed in connection with legal acts that give rise to responsibility for every Civil Servant that must be carried out. Violations of this law that cause losses to oneself or the state must be accounted for before the law. Responsibility according to the definition of responsibility is the obligation to be accountable before the law is enforced and to repair the losses caused by the law. The responsibility given to public officials is used in the term accountability. Accountability means the responsibility of civil servants to carry out their duties and functions in accordance with laws and regulations, thus taking into account the responsibility arising from their mistakes that can harm the state's finances themselves. This sanction is a mandatory legal action so that legal entities can carry out their obligations properly. According to Hans, legal entities that are subject to sanctions are called "responsible" or legally responsible for the violation.⁹

According to the Head of the Riau Province Civil Service and Manpower Office, we as the organizer of the Riau Province Civil Service Agency reject the state civil apparatus,

⁸ S.F. Marbun, *Hukum Administrasi Negara II* (UI Press, 2013).

⁹ Hans Kelsen, *Pure Theory Of Law*, Cetakan ke (Penerbit Nusa Media, 2008).

we also refer to Law Number 5 of 2014 concerning the State Civil Apparatus. State Apparatus and Civil. In addition, you also refer to government regulation no. Regulation Number 11 of 2017 concerning the Management of State Civil Apparatus. On the basis of this law, we take legal action against perpetrators of violations involving public officials. Good Governance Good governance is currently the most important center of public administration. According to the author, the implementation of the law on the dismissal of state civil servants is a process of efforts to dismiss with honor or dishonor in order to fulfill a regulation or implement norms effectively in relationships in community and state life. With law enforcement by eliminating state civil servants, the principle of good governance can be achieved.

3.2 Reasons for Dismissal of State Civil Apparatus Found Guilty of Corruption by Court Decisions That Do Not Violate Human Rights

One of the reform agendas in the field of law and government is to make efforts for good governance, especially eradicating corrupt criminal practices that have so far failed to be optimally implemented by the New Order regime. Therefore, the arrangement or governance of ASN management, including dishonorable dismissal due to committing a crime, must be carried out properly based on the values of fair law enforcement and paying attention to Human Rights. The inclusion of Human Rights values in law enforcement is an important factor that aims to make the law itself not a disaster for the people, but the law exists with the aim of leading humans to a just, prosperous and happy life.¹⁰

As we understand that dishonorable dismissal for ASN who commit corruption is a consequence of the crime committed. This is in accordance with Law Number 5 of 2014 which provides reasons for dishonorable dismissal because a) Committing abuse of Pancasila and the 1945 Constitution; b) Sentenced to imprisonment or confinement based on a court decision that has permanent legal force for committing a crime of office crime or a crime related to office and/or general crime; c) Becoming a member and/or administrator of a political party; or d) Sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime of imprisonment for at least 2 years and a crime committed with planning and is emphasized again in the State Civil Service Agency Regulation Number 3 of 2020 which in essence states that dishonorable dismissal due to a crime related to a crime does not see the length of the sentence given.

Therefore, dishonorable dismissal due to committing a criminal act of corruption is also a form of law enforcement, so the process of fair dishonorable dismissal must be in line with the process of fair law enforcement and acts of violating human rights. Fair law enforcement is law enforcement that is legitimate in the process and evidence. One of the things to create fair law enforcement is the principle of legality. Indonesia as a

¹⁰ Sahat Maruli Tua Situmeang, 'Kebijakan Kriminal Dalam Penegakan Hukum Mewujudkan Keadilan Dalam Perspektif Hak Asasi Manusia', *Res Nullius Law Journal*, 1.1 (2019), pp. 91–116, doi:10.5749/j.ctt1pwt7kj.6.

country of law has placed the law as the commander in all government actions and one of the foundations of the rule of law is the principle of legality. Based on the principle of law, the eradication of criminal acts of corruption must be based on a solid law or legal framework. To eradicate or eliminate the practice of criminal corruption, the government has established a number of laws and regulations as a legal basis. The issue of law enforcement related to criminal acts of corruption is clearly not only a matter of law and law enforcement, but also a matter that has direct relevance and a major impact. However, it is also specifically necessary to emphasize the abuse of authority in the legal instrument for eradicating criminal acts of corruption and the abuse of authority in the legal instrument of state administration. Because Law No. 30 of 2014 concerning Government Administration has provided a mechanism for the emergence of a prohibition on abusing authority, namely in Article 17 paragraph 2 which emphasizes that it is not permissible to abuse authority to exceed the limits of authority, collaborate interests and authority and carry out other actions that violate the Law.¹¹ Meanwhile, in the construction of the law on the eradication of criminal acts itself, it also regulates the element of abuse of authority. The problem is that these two concepts enter a dimension that is difficult to distinguish. Furthermore, these two concepts that apply in different legal domains cause difficulties in their application.¹²

As we understand above, the reason for dishonorable discharge for committing a criminal act of imprisonment must be based on a decision that has permanent legal force. Here it means that the perpetrator of the crime must go through a fair law enforcement process through the judicial institution first until a decision that has permanent legal force is obtained. But of course in the legal process, it must prioritize substantial truth properly and fairly. Propriety and justice are rational feelings in the public space, their existence goes beyond procedural law; or procedural law which is often a tool to hurt the sense of propriety and justice. Therefore, it is time for the law to prioritize substantive truth in law enforcement.¹³ Therefore, dishonorable dismissal for committing a criminal act of corruption does not violate human rights as long as the law enforcement of the criminal act of corruption is based on the principles of justice and equality.

4. Conclusion

The development of laws and regulations on the dismissal of civil servants who are proven to have committed corruption based on a court decision is linked to the purpose of imposing sanctions, namely to demonstrate the quality of service,

¹¹ Mario Agritama S W Madjid and Muh. Ilham Akbar, 'Kerugian Keuangan Negara Atas Penyalahgunaan Wewenang Dalam Instrumen Hukum Administrasi Negara', *Sanskara Hukum Dan HAM*, 2.02 (2023), pp. 66–79, doi:10.58812/shh.v2i02.268.

¹² Arma Dewi, 'Penyalahgunaan Wewenang Dalam Perspektif Tindak Pidana Korupsi', *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia*, 1.1 (2019), pp. 24–40.

¹³ Dwi Prasetyo and Ratna Herawati, 'Tinjauan Sistem Peradilan Pidana Dalam Konteks Penegakan Hukum Dan Perlindungan Hak Asasi Manusia Terhadap Tersangka Di Indonesia', *Jurnal Pembangunan Hukum Indonesia*, 4.3 (2022), pp. 402–17, doi:10.14710/jphi.v4i3.402-417.

administration, and implementation of the duties and functions of the state civil apparatus. The ASN Law has legitimized the dishonorable dismissal of ASN for committing a crime. Joint Decree of the Minister of Home Affairs, the Minister of State Apparatus Autonomy and Administrative Reform and the head of the government. State Civil Service Number 182/6597/SJ, Number 15 of 2018, Number 153/Kep/2018, and the Decision of the Constitutional Court Number 87/PUU-XVI/2018. Then this was reinforced again in the State Civil Service Agency Regulation Number 3 of 2020, which in essence ASN who were dishonorably dismissed for committing a crime related to abuse of authority did not see the length of the criminal sentence imposed. The reason for dismissal with honor for committing a criminal act of corruption must be carried out based on the principles of justice and equality. In particular, there needs to be a decision with permanent legal force. ASN who are perpetrators of criminal acts must go through a fair trial process, not only fair in terms of procedural law but also fair in terms of substantive truth. One thing that needs to be done is to emphasize the limits of abuse of authority in legal instruments for eradicating criminal acts of corruption and abuse of authority in legal instruments for state administration.

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