

Criminal Accountability Against Illegal Civil Servant Salary Receipt in Criminal Acts of Corruption

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Abstract: *The current study draws attention to analyze the right to salary of Civil Servant (PNS) undergoing legal proceedings and to analyze the qualifications of criminal act of corruption within the scope of the State Civil Apparatus. This study was an empirical legal research. The findings showed that the right to salary and benefits of Civil Servant undergoing legal proceedings was regulated in Article 281 of Law No. 11 of 2017 concerning Management of Civil State Apparatus that Civil Servant who were temporary dismissed due to detention of a suspect shall not be entitled to receive salary, but shall receive temporary dismissal pay. The amount of temporary dismissal pay is 50% (fifty percent) of the last salary as civil servant before being temporary dismissed in accordance with the laws and regulations. Temporary dismissal pay shall be received in the following month since the stipulation the temporary dismissal. On this basis, a comprehensive regulation is needed relating to supervisory oversight mechanism who made an omission against her subordinate civil servants who have committed disciplinary violations, especially those who were suspected of committing criminal act.*

Keywords: *State Civil Apparatus; Corruption; Criminal Liability*

INTRODUCTION

In order to realize reliable, professional and moral civil servants (PNS) as government administrator, civil servants as an element of the state apparatus are required to be loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the

Republic of Indonesia, and the Government, be disciplined, honest, fair, transparent and accountable in carrying out their duties.¹

In relation to the performance of Civil Servants, corruption case is the crucial problem in national life. If a

¹ General Explanation of Law No. 53 of 2010 concerning State Civil Apparatus Discipline

civil servant commits a criminal act of corruption, then all forms of public service will be interrupted which eventually lead to the decline of the nation.² Corruption in the sphere of government often occurs due to opportunities to corrupt, such as the use of government budget for personal or certain group needs (nepotism and collusion). The perpetrator in a criminal act of corruption is that anyone can be an individual and a corporation can consist of:³

1. Those who do;
2. Who ordered to do;
3. And take part in doing;
4. As well as advocates;
5. Those who provide assistance at the time the crime is committed;
6. Those who deliberately give opportunities, means to commit crimes.

This is a disturbance and obstacle in carrying out development in a region. Corruption is an interesting case for investigators, especially corruption investigator because corruption is detrimental to the finances of the state or the economy

of the state. Article 3 of Law No. 31 of 1999 concerning Criminal Act of Corruption (Law on Corruption) clearly states that “due to rank or position in such a way that is detrimental to the finances of the state”. This means that anyone who has a rank or position in the government is prone to commit criminal act of corruption due to his/her opportunity and intention to abuse authority that is potentially detrimental to the finances of the state.⁴

Public Prosecutor Office of Soppeng, South Sulawesi found the abuse of authority, facilities and other means due to her rank or position that is detrimental to the finance of the state, where the perpetrator was a Head of Department of Food Crops and Horticulture of Soppeng Regency, Ms. Ir. Yuliana, M.Si.

Regarding the corruption case, Ms. Yulianti as the Head of Department made an omission as she remained to give salaries to her three civil servant subordinates involved in corruption case. In fact, Article 24 of

² Hartini, Sri., et al. (2008). *Hukum Kepegawaian Di Indonesia*. Jakarta. Sinar Grafika. p. 36

³ Simajuntak Josner (2018) *Policy and Corruption*. **Papua Law Journal**. Vol.2 Issue 2, May. p.130

⁴ Nurhayati, R., & Gumbira, S. W. (2017). *Pertanggungjawaban Publik dan Tindak Pidana Korupsi*. **Journal of Law and Justice**. Vol. 6 No. (1). 41-66.

Government Regulation No. 53 of 2010 states that: (1) before civil servants are imposed penalties for disciplinary violation, each direct supervisor shall inspect the civil servant suspected of committing disciplinary violation, (2) the inspection as referred to in paragraph (1) is carried out in closed manner and the result is stated in the minutes of inspection as referred to in paragraph (2), the authorized parties to impose disciplinary penalty on the civil servant are: a. direct supervisor, the direct supervisor is obliged to impose disciplinary penalties, b. higher officials, the direct supervisor is obliged to report in a hierarchy accompanied by minutes of inspection.

Furthermore, Article 2 paragraph (1) of Government Regulation No 4 of 1966 concerning Permanent or Temporary Dismissal of Civil Servants states that for the sake of justice, a civil servant suspected to commit a crime/violation of the related position or rank shall be subjected to temporary detention. Then, Article 4 paragraph (1) states that a Civil Servant is subject to a temporary dismissal according to

Article 2 paragraph (1) of this regulation: a. If there are sufficiently convincing indications that he has committed a violation as indicted against him starting the following month after he is dismissed, and shall receive 50% (fifty percent) of the last salary, b. If there are no clear indications regarding the violation that has been indicted for him, then starting from the following month, he shall be dismissed and receive 75% (seventy five percent) of the last salary.

However, the direct supervisor did not inspect on the three civil servant subordinates involved in corruption case so that they continued to receive salaries while undergoing legal proceedings. As a consequence, the act of omission was classified as an act causing the state finance loss. The amount of state finance loss found by the Soppeng public prosecutor's investigator was Rp. 198,084,000. Ironically, this was not the first case, there have been similar cases in several regencies in Indonesia.

METHOD

This study was an empirical legal research. Data analysis was carried

out by Descriptive-Qualitative method by describing the real situation related to the phenomenon of corruption among civil servants. The results of interview and literature study were processed and analyzed quantitatively to generate descriptive data.

Right to Salary of Civil Servants Undergoing Legal Proceeding

Disciplinary violations by Civil State Apparatus are often found in various government bodies. The act of indiscipline of civil servants can be seen from the fact that there are civil servants who are late to work, leave the office early, are outside the office area during working hours, even are involved in criminal act. The low quality of the discipline and work ethic of civil servants is the root cause of poor quality public services. This has an impact on the emergence of deviant behavior among civil servants (such as corruption, collusion and nepotism), so that it can result in the nonaccountable and intransparent quality of public services.⁵

One of the factors causing this indiscipline was because the current

guidance, supervision and sanction were not optimal. The weak discipline, supervision, and sanction as well as favoritism in the workplace cause the corps of civil servants to undermine the existing regulations. This is possible because performance assessment indicators among civil servants are not objective, so that they are far from the expectation and professionalism, are not strict and are indicated to commit corruption, collusion and nepotism.

In order to improve the discipline of civil servant as the servant of the state and society, continuous guidance and supervision are needed. The Government through Government Regulation No. 53 of 2010 concerning Civil Servant Discipline gradually carries out the appointment, placement, education and training, transfer, award, and dismissal as referred to the applicable code of ethics and disciplinary regulations. This is carried out to optimize the performance of human resources of the apparatus.

The enforcement of discipline shall be the core of state apparatus in carrying out their duties and functions, with clear measurements as

⁵ Ermasyah Djaja. (2010). *Memberantas Korupsi Bersama KPK*. Second Edition. Jakarta: Sinar Grafika, p.21

parameters of assessment. With the indicators set, reward and punishment can be applied consistently. In this case, supervision is needed not only from direct supervisor, but also from other stakeholders. With the enactment of Government Regulation No 53 of 2010, civil servants can no longer make an excuse and the discipline is not negotiable. "The government has prepared parameters for apparatus performance assessment. As a consequence, the penalties have been set according to the level of errors committed. In addition, supervision of work discipline of civil servant shall be improved. For this reason, any government agency needs to develop a work culture in their respective environments. Changes in mindset and improvement in work culture are basically the core of bureaucratic reform. Human resources of state apparatus must prioritize obligations rather than rights, prioritize the roles instead of authority and to serve, not to be served.⁶

⁶ Prabu, Anwar Mangkunegara. (2004). *Manajemen Sumber Daya Manusia Perusahaan*. Bandung: Remaja Rosdakarya. p. 35

At the normative level, civil servant who is a suspect of committing offense shall not be entitled to receive income in the form of salary, but shall only receive temporary dismissal pay by 50% of last salary of the civil servant. This is different from the regulation in Government Regulation No. 4 of 1966 concerning Permanent or Temporary Dismissal of Civil Servants which classifies the types of violations related to civil servants suspected of committing an offense in which the provisions of Article 4 of Law No. 4 of 1966 state that:

- a. If there are convincing indications that he/she has committed a violation as indicted against him/her, then in the following month, he/she is dismissed and shall receive 50% (fifty percent) of the last basic salary;
- b. If there are no clear indications of violation as indicted against him/her, then in the following month, he/she shall be dismissed and receive 76% (seventy five percent) of the last basic salary.

The considerations in the regulation of temporary dismissal in Government Regulation No. 11 of 2017 concerning Management of Civil Servant are no longer used, the only indicator is that the civil servant

is detained for being a suspect of criminal offense. Thus, there are 2 (two) elements to be fulfilled in the formulation of these provisions, the first is a suspect, and the second is detention. In the event that a civil servant is a suspect and detention is not carried out, then the civil servant shall remain to be entitled as civil servant and receive employment rights in the form of salary.

According to the author by seeing the regulatory clause, the temporary dismissal is carried out if the person is detained, then it can be concluded that the legislator limits the right of civil servant to salary, not because the person is a suspect, but because the detained person is unable to carry out his duties and functions in accordance with the laws and regulations. Therefore, the salary shall be stopped, and temporary dismissal pay shall be paid.

The proposal for temporary dismissal is carried out hierarchically by staff development officer and can additionally be carried out based on delegation of authority. In relation to the determination of staff development officer in each agency, Staff Development Officer (PPK) has

the authority to impose disciplinary penalties against civil servants who are seconded beyond their parent institutions occupying the structural position of echelon II and below and certain functional positions of primary group and below as well as general functional positions of group IV/e and below, civil servants employed or seconded to the Representatives of the Republic of Indonesia abroad and civil servants employed or seconded to other countries, or international bodies, or overseas assignments.

Furthermore, in addition to staff development officer, Regency/City Regional Secretary has the authority to impose disciplinary penalty on civil servants in the environment who hold positions of:

- a. Echelon II structural officials in their environment;
- b. Echelon III structural official, certain functional officials, Young Expert and Supervisor, and general functional official of group IIIc and group III d in their environment.
- c. Echelon IV structural official, certain functional officials, First Expert and Advanced Executive, and general functional official from group IIc to group IIIb in their environment.

In addition to Civil Servants in their environment, a Regency/City Regional Secretary can impose disciplinary penalty on:⁷

- a. Civil Servants employed or seconded in their environment occupying echelon III structural official, certain functional officials, Young Expert and Supervisor, certain general functional officials of group III/c and group III/d; and
- b. Civil Servants seconded in their environment occupying echelon IV structural official, certain functional officials, the First Expert and Advanced Executive, certain general functional official of group II/c and group III/b.

Echelon II structural official stipulates the imposition of disciplinary penalty on:

- a. Civil Servant who occupy echelon III structural official, certain functional officials, Young Expert and Supervisor, and general functional official of group III/c and group III/d in their environment;
- b. Echelon IV structural official, certain functional officials, the First Expert and Advanced

Executive, and general functional officials from group IIc to group III/b in their environment;

- c. Civil Servants employed and seconded in their environment who occupy echelon III structural official, certain functional officials, Young Expert and Supervisor, and general functional officials of group III/c and group III/d;
- d. Civil Servants seconded in their environment who occupy echelon IV structural official, certain functional officials, the First Expert and Advanced Executive, and general functional officials from group II/c to group III/b;

Echelon III structural official stipulates disciplinary penalty on:

- a. Echelon IV structural official, certain functional officials, the First Expert and Advanced Executive, and general functional official from group II/c to group IIIb in their environment;
- b. Echelon V structural official, certain functional officials, executive and beginner

⁷ Hardijanto. (2003). *Pembinaan Kepegawaian Dalam Sistem Administrasi Negara Kesatuan Republik Indonesia*. Jakarta: This paper has been presented at Diklatpim Level II. LAN.

- executive, and general functional officials of group II/a and group IIb in their environment;
- c. Civil Servants employed and seconded in their environment who occupy echelon IV structural official, certain functional officials, the First Expert and Advanced Executive, and general functional officials from group II/c to group III/b;
 - d. Civil Servants seconded in their environment who occupy echelon V structural official, certain functional officials, Executive and Beginner Executive, and general functional officials of group II/a and group IIb.
- b. General functional officials from group I/a to group I/d;
 - c. Civil Servants employed or seconded in their environment who occupy echelon V structural official, certain functional officials, Executive and Beginner Executive, and general functional officials of group II/a and group II/b; and
 - d. Civil Servants seconded in their environment who occupy general functional officials from group I/a to group I/d.

Echelon V structural official and equivalent officials stipulate the imposition of disciplinary penalty on:

- a. Civil Servants who occupy general functional officials from group I/a to group I/d in their environment; and
- b. Civil Servants employed or seconded in their environment who occupy general functional officials from group I/a to group I/d.

Echelon IV structural official and equivalent officials stipulate the imposition of disciplinary penalty on:

- a. Echelon V structural official, certain functional officials, Executive and Beginner Executive, general functional officials of group II/a and group II/b in their environment;

Based on the data above, it can be seen that there are 6 (six) types of position that can stipulate the disciplinary penalties for Civil State Apparatus in regional bodies, namely:

1. Regency/City Staff Development Officer;
2. Regency/City Regional Secretary;
3. Echelon II Structural Official;
4. Echelon III Structural Official;
5. Echelon IV Structural Official; and
6. Echelon V Structural Official.

Each of the above positions can stipulate disciplinary penalties for regional civil servants in accordance with the type of penalties set out in the Regulation of the Head of State Civil Service Board No. 21 of 2010 concerning Implementation of Provisions of Government Regulation No. 53 of 2010 concerning Discipline of Civil Servants.⁸ Based on these provisions, it can be seen that the imposition of penalties including reporting related to violation committed by the subordinate shall be imposed penalties by direct supervisor and is mandatory. In the event that the supervisor makes an omission to her subordinates who commit disciplinary violations, then the supervisor can be subject to the same penalties. This is regulated in

⁸ Malayu, S.P Hasibuan. (2002). *Manajemen Sumber Daya Manusia*. Jakarta: Bumi Aksara. p. 11

the provisions of Article 21 of Law No. 53 of 2010 concerning Discipline of Civil Servants as follows:

- (1) Official who has the authority to punish shall impose disciplinary penalties on civil servants who commit disciplinary violations.
- (2) In the event that the official who has the authority to punish as referred to in Paragraph (1) does not impose disciplinary penalties on civil servants who commit disciplinary violations, then the official shall be imposed disciplinary penalties by his supervisor.
- (3) Disciplinary penalty as referred to in paragraph (2) is the same as the type of disciplinary penalty that shall be imposed on civil servants who commit disciplinary violations.
- (4) Supervisor as referred to in paragraph (2), also imposes disciplinary penalty on civil servants who commit disciplinary violations.

The provisions of Article 22 of Law No. 53 of 2010 stipulate that in the event that there is no official who has the authority to punish, then the authority to impose disciplinary penalty shall be the authority of a higher official. This indicates that the omission of violations committed to subordinates and the omission of the rights granted to subordinates that

suppose to be limited, is the responsibility of her direct supervisor. In relation to a case where a civil servant who is detained as a suspect of a criminal offense remains to receive a full salary, the supervisor who does the omission can be held accountable.

Qualification of Criminal Act of Corruption Against Supervisor Who Do Not Stop the Process of Receiving Salary

Corruption is an extraordinary crime often committed in a planned and systemic manner and is a violation of the social and economic rights of the wider community, damages the life of the national economy and demeans the dignity of the nation in international forums. Therefore, the eradication of criminal acts of corruption must be carried out extraordinarily and the prosecution of perpetrator of corruption must be specifically regulated.

According to A. Hamzah, corruption is a term with broad definition. Thus, there are various approaches to the problem of corruption.⁹ Furthermore, according

⁹ Basir Rohrohmana. (2017). *The Element of Unlawful in Corruption (A Study of the Court's Decision of Corruption in the*

to A. Hamzah, the literal definition of criminal act of corruption is:¹⁰ decay, badness, depravity, dishonesty, can be bribed, immoral, deviation from chastity, insulting word or uttering or word to slander.

From the definition above, the criminal act of corruption is not limited to an act of an official, but also includes moral issues and problems of one's utterance. According to Leden Marpaung, the definition of criminal act of corruption in broad sense is: A person's act that is detrimental to the finance of the state and makes the government apparatus to be ineffective, inefficient, unclean and not authoritative.¹¹

From several definitions of criminal act of corruption above, according to Husein, the criminal act of corruption has the following characteristics:¹²

District Court Class IA Jayapura). **Papua Law Journal**. Volume 1. Issue 2: 203-219.

¹⁰ A. Hamzah. (2005). *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. Jakarta: Raja Grafindo Persada. p. 4-5.

¹¹Laden Marpaung. (1992). *Tindak Pidana Korupsi Masalah Dan Pemecahannya*. Jakarta: Sinar Grafika.. p. 149.

¹²Martiman Prodjohamidjojo. (2001). *Penerapan Pembuktian Terbalik dalam Delik Korupsi (UU No. 31 Tahun 1999)*. Bandung: Mandar Maju. p. 12.

- a) Corruption always involves more than one person.
- b) Corruption is generally committed secretly.
- c) Corruption involves the elements of obligation and mutual benefits.
- d) Corruption with various reasons takes cover behind legal justification.
- e) Those involved in corruption are those who want decisive decision and they can influence decision.
- f) An act of corruption contains fraud whether to public agency or society.
- g) Any form of corruption is a betrayal of trust.
- h) An act of corruption violates the norms of duty and responsibility in the society.

By having an element of corruption placed in the laws and regulations, any behavior or act of a corporation that meets the formulation of the above offense shall be subject to penalties in accordance with the applicable provisions. In practice, there are 2 (two) forms of corruption, namely:

a. Administrative Corruption

Everything carried out by people is in accordance with applicable regulations. However, certain individuals may enrich themselves. As an illustration, in the recruitment process for civil servants, a selection test is carried

out starting from administrative selection to the knowledge or ability test. However, certain people have been determined by the authorized individual to pass the tests. Likewise, in the winning of tender, candidate for governor, mayor or regent during the New Order, where the selection seemed to be held, but the winner had already been determined.

b. Against The Rule Corruption

Against the rule corruption means the corruption committed is entirely in conflict with the law. For example, bribery, abuse of position to enrich himself or other persons or a corporation. The formulation of corruption according this regulation is grouped into two parts, namely:

1. Any act committed by anyone for his own interest, other persons' interest, or corporation's interest that directly or indirectly causes state finance loss or economic loss.
2. Any act committed by an official who receives a salary or wage from a corporation receiving assistance from state

or regional finances, but abuses the authority or facilities granted to him by direct or indirect position in order to gain financial or material benefits.

According to the formulation from Article 2 to Article 17 and from Article 21 to Article 24 of Law No. 20 of 2001 concerning Amendment to Law No. 31 of 1999 concerning Eradication of Criminal Act of Corruption, the perpetrator of criminal act of corruption is: “anyone which means an individual or corporation”. In the Penal Code, individual is formulated as Whoever.

H. Setiyono in his book states that:¹³ “Corporation is a term commonly used by criminal law and criminology experts to refer legal person and legal body in the other legal fields, especially in the field of civil law. Furthermore, Chaidir Ali in his book states that:¹⁴

“The meaning of legal body or corporation can be determined from the answer to the question “what is legal subject?”, the definition of legal subject is essentially human and everything based on the demand of

community needs, which is recognized by law as a supporter of rights and obligations. The second definition is called Legal Body”.

According to Law No. 20 of 2001 concerning Amendment to Law No. 31 of 1999 concerning Eradication of Criminal Act of Corruption, corporation is an organized group of people and/or assets, whether in the form of legal body or non-legal body. Legal body in Indonesia consists of Limited Liability Company (PT), Foundation, Cooperatives and *Indonesische Maatschappij op Andelen* (IMA), while group of non-legal body consists of Firms (Fa), and *Commanditaire Vonnootschap* (CV).

Any employee is categorized as either private employee or public servant. Definition of Civil Servant in Article 1 paragraph (2) of Law No. 31 of 1999 concerning Eradication of Criminal Act of Corruption amended by Law No. 20 of 2001 concerning Amendment to Law No. 31 of 1999 concerning Eradication of Criminal Act of Corruption, including the explanation of Article 2 of Law No. 5 of 2014 concerning State Civil Apparatus, state that: “Apparatus

¹³ Setiyono H. (2003). *Kejahatan Korporasi*. Jakarta: Bayumedia Publishing. p. 2

¹⁴ Chaidir Ali. (1991). *Badan Hukum*. Bandung: Alumni. p. 18

Civil Servants, hereinafter referred to ASN Employees are civil servants and government employees with employment agreement raised by the staff development officer and was assigned to public office or entrusted with the task of other countries and are paid based on the legislation.

1. Definition of Civil Servant according to the Penal Code in Article 92 is:

- a) All the persons who have been elected in elections (members of MPR/DPR, DPRD level I and DPRD level II).
- b) All the persons appointed to be members of Legislative Body.
- c) Members of Government Body.
- d) House of Representatives
- e) *Waterschap* Board Members
- f) Head of native Indonesian People
- g) Head of Foreign East Group
- h) Supervisor and Observer Judge
- i) Administrative Judge (P4P/P4D, Taxation Council, BAPEK and others).
- j) Chief/Member of Religious Court.
- k) All Members of Indonesian National Armed Forces (Army, Navy and Air Forces)

2. Persons who receive salary or wage from State or Regional Finance.

3. Persons who receive salary or wage from a corporation that receives State and Regional Financial Assistance.

4. Persons who receive salary or wage from other corporations that use capital or facilities from the State or society.

In the provisions of Law No. 20 of 2001 concerning Amendment to Law No. 31 of 1991 concerning Eradication of Criminal Act of Corruption, in addition to Civil Servant, those who can become perpetrator of criminal act of corruption are State Administrators. According to Article 1 paragraph 1 of Law No. 28 of 1999 concerning State Administrators Clean and Free of Corruption, Collusion and Nepotism, State Administrators shall be State Officials performing executive, legislative, or judicial functions, and other officials whose functions and main duties are related to state governance in accordance with the provisions of prevailing laws and regulations.

Reviewing the case related to the omission committed by a civil servant supervisor who continued to provide full salary to her subordinate who was being held as a suspect in criminal act, the author examined the case as a criminal act of corruption as stipulated in Article 3 of Law No. 31 of 1991 as has been amended in Law No. 20 of 2001 as follows:

Anyone with the intention of enriching himself or other persons or a corporation, abusing the authority, the facilities or other means at their disposal due to rank or position in such a way that is detrimental to the finances of the state or the economy of the state, shall be liable to life imprisonment or a prison term of not less than 1 (one) year and not exceeding 20 (twenty) years and/or a fine of not less than Rp 50,000,000 (fifty million rupiah) and not exceeding Rp 1,000,000,000 (one billion rupiah).

Element of “Anyone”

The element of “anyone” contained in Article 3 of Law No. 31 of 1999 refers to rank or position element which is not contained in Article 2. The perpetrator of a criminal act of corruption is an individual who holds a rank or position, while a corporation cannot commit the criminal act according to

Article 3.¹⁵ Thus, the element of anyone contained in Article 3 has its own speciality, which is not contained in Article 2 paragraph (1) of Law No. 31 of 1999. Accordingly, in accordance with the principle of speciality, if general provisions and special provisions are met in the same time, place and object, then special provisions shall apply.

Based on the descriptions above, if it is associated with the status of personality, in this case the civil servant supervisor who gave salaries to civil servant subordinates who were not entitled to receive salary, then in the case, the supervisor can be qualified as anyone as stated in Article 3 of Law No. 31 of 1999 as amended in Law No. 20 of 2001.

Element of “With the intention of enriching himself or other person or a corporation”

The element of “with the intention of enriching himself or other person or a corporation” means alternative. The word “or” in the second element above means that it has the same capacity in fulfilling the element, when one element is

¹⁵ R. Wiyono. (2005). *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*. Jakarta: Sinar Grafika Publisher. p.37

fulfilled, whether enriching himself, or other person, or a corporation, this means that it fulfills the element. “With the intention” means a will in the mind or inner realm of a person intended to enrich himself or other person or a corporation. Enriching means to gain or increase wealth from the existing one.¹⁶ Enriching has similar meaning to gain profit, the income earned is greater than the expenditure, regardless of the further use of the income.

Thus, the meaning of “enriching himself or other person or a corporation” is to gain profit for himself or other person or a corporation.¹⁷ Based on the Supreme Court Jurisprudence of the Republic of Indonesia No. 813K/PID/1987, dated June 29, 1989, its legal considerations states that enriching himself or other person or a corporation is judged from the fact occurred or is related to the defendant’s behavior in accordance with his authority or position.

¹⁶ Adami Chazawi. (2005). *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*. Bayu Malang: Media Publishing, p. 54

¹⁷ Sugiantari, A.A.P. (2017). *Penanggulangan Tindak Pidana Korupsi dalam Perspektif Penggunaan Wewenang oleh Pejabat Publik*. **Journal of Legal Advocacy**. Vol. 7 No. (1).

Abusing the Existing Authority, Facilities or Other Means Due to Rank or Position

“Abusing the existing Authority, Facilities or Other Means due to Rank or Position” is to use the authority, facilities, or other means inherent in a rank or position occupied by the perpetrator of a criminal act of corruption, for other purposes other than the real purpose of granting the authority, facilities or other means, to unlawfully enrich himself or other person or a corporation as stated in Article 3. There are ways to be alternatively taken by the perpetrator of corruption, namely:

1. By abusing the authority in the rank or position of the perpetrator of corruption.
2. By abusing the facilities in the rank or position of the perpetrator of corruption.
3. By abusing the other means in the rank or position of the perpetrator of corruption.

In general, “the abuse of facilities” is a result of the weakness of the provisions concerning work procedure and the intention to misinterpret these provisions.

Elements “That are Detrimental to the State Finance or the State Economy”

These elements are alternative in nature, meaning that it does not need to prove everything. There are two indicators that shall be proven in the a quo case, namely: 1) elements that are detrimental to the State Finance and the State Economy. Detrimental means to harm or to cause a loss of something, so that the elements “that are detrimental to the State Finance” means element that harm the State Finance or causing the State Finance loss, (2) the elements that are detrimental to the State Economy or State Economy. The general explanation of Law No. 31 of 1999 defines the state finance as all state’s wealth, in any form, whether separated or unseparated, including any parts of the state’s wealth and any rights and obligation arises because of:

- a) Under mastery, management, and accountability of state organ officer, whether central or regional.
- b) Under mastery, management and accountability of State Owned Company (BUMN), regional Owned Company

(BUMD), foundation, legal entity, and company which invest state capital or invest third party capital based on agreement with state.

CONCLUSION

The rights to salary and benefit of civil servants who are undergoing legal proceedings are regulated in Article 281 of Law No. 11 of 2017 concerning Management of Civil State Apparatus stating that civil servant who is temporarily dismissed due to detention of suspect shall not receive salary, but receives temporary dismissal pay. The amount of temporary dismissal pay is 50% (fifty percent) of the last salary as civil servant before being temporarily dismissed in accordance with the provisions of law and regulation. The temporary dismissal fee is given in the following month after the stipulation of a temporary dismissal.

On this basis, a comprehensive regulation was needed relating to supervisory oversight mechanism that made an omission against civil servant subordinates who have committed disciplinary violations, especially those with suspected criminal offenses. For supervisor who

carried out the criminal act of omission, more severe penalty than subordinate disciplinary penalty shall be imposed. The party authorized to conduct an inspection of a civil servant suspected of committing a criminal act is expected to coordinate with the supervisor of civil servant, not only regarding matters relating to the investigation of criminal acts committed by civil servants, but also related to the temporary dismissal of their employment rights.

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