

# LAW ENFORCEMENT OF CORRUPTION CRIME OF REGIONAL HEADS IN WEST JAVA PROVINCE IN REGIONAL AUTONOMY

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## ABSTRACT

*Regional autonomy in Indonesia provides an opportunity for regions to carry out direct regional head elections. The direct regional head election has made the regional heads to return the money spent during the campaign period for them to win the election. The obligation to recoup the money spent has encouraged the regional heads to take shortcuts by committing crimes of corruption. Corruption is an extraordinary crime. The corruption perpetrated by the regional heads included illegal levies, convoluted procedures, ineffective tax collection units, massive corruption in the procurement of goods and services, and very poor public services, which can result in losses to the country. Law enforcement must be carried out progressively to serve as a deterrent effect and a lesson for future regional heads.*

**Keywords:** Law Enforcement, Corruption, Regional Head

## INTRODUCTION

Corruption is rampant in Indonesia. The eradication of corruption by the Corruption Eradication Commission (KPK) in various regions in Indonesia has not deterred regional heads from committing corruption. In the West Java Province in particular, ten regional heads have committed corruption crimes in the last seven years, starting from 2014 to 2021. Among them are the regional heads of Karawang Regency, Bekasi Regency, Subang Regency, Bogor Regency, Cianjur Regency, Sumedang Regency, West Bandung Regency, Cirebon Regency, Indramayu Regency, and Cimahi City. Crime is not only a humanitarian problem, they are also a social problem. They are even declared as the oldest social problem (Ravena & Kristian, 2017). The great losses caused by corruption are increasingly discussed by the public. The community talks a lot about the need to eradicate all actions that harm the public interest that occur in local government.

Preventing corruption can help increase local government revenues, improve services for citizens, and build public confidence in local government. The acts of regional heads to carry out illegal levies, apply complicated procedures, create and use ineffective tax collection units, commit massive corruption in the procurement of goods and services, and provide very poor public services are categorized as crimes of corruption as they misuse the regional heads' authority which harms the state's finances (Adnan, 2020).

The movement towards decentralization, accountability, and democracy-based forms of government at the local level is increasing. Regional autonomy as a framework for governance has a vision that can be formulated in three interconnected main scopes, namely (a) the political field which serves as a process to open a space for the birth of democratically elected regional government heads; (b) the economic sector; regional autonomy on the one hand must ensure the smooth implementation of national economic policies in the regions and on the other hand, must

encourage the opening of opportunities for regional governments to develop regional policies to optimize the utilization of economic potential in their region; (c) social and cultural fields; regional autonomy must be directed at managing, creating and maintaining social integration and harmony (Ubaidilah & Rozak, 2012).

Corruption crimes committed by regional heads in the regional autonomy system in Indonesia will have implications for state losses. Therefore, corruption crimes committed by regional heads must be prevented by law enforcement so as not to become a bad example in the future. The problem is how to enforce the law on corruption by regional heads in West Java Province in regional autonomy.

## RESEARCH METHOD

The research has employed normative juridical and analytical descriptive method. The normative juridical method is an approach that is based on the main legal material in which theories, concepts, legal principles and legislation related to the research were examined. Descriptive analytical method is a problem-solving procedure for the problems investigated. By using descriptive analytical method, we describe the state of the subject or object, which can be in the form of people, institutions, communities and others at the present time based on the facts that appear or what they are at present.

## LITERATURE REVIEW

The evidence that eradicating corruption is a priority of the government can be seen from the timespan the government has taken to eradicate corruption. The struggle to eradicate corruption has reached more than half a century since the independence was proclaimed by Soekarno-Hatta. The struggle to eradicate corruption does not recognize the order of government, starting in the 1950s and has gone through four amendments to the laws and regulations and various presidential instructions specially formed to eradicate corruption. That corruption has threatened the foundations of the country's economy can be well-seen in the report of the Chairman of the Supreme Audit Agency (BPK) at each plenary session of the House of Representatives (DPR) which reports cases of corruption that have harmed the state. Corruption does not only occur in the central government, but has also penetrated into the regions, both in the executive and legislative institutions (ibid).

A governance structure filled with leaders with corrupt mentality will create and increase systemic corruption whose scope will expand. If this condition was left without a comprehensive and sustainable policy, corruption can be classified as a violation of the economic and social rights of all Indonesian people. In the end, rampant, massive and systematic corruption will form a very corrupt community group. The birth of a corrupt culture can form a corrupt area (ibid).

West Java Province is a province that has 18 regencies and 9 cities, bordered by the Central Java Province in the east, DKI Jakarta and Banten Province in the west, the Java Sea in the north and the Indian Ocean in the south.

There have been approximately eleven corruption crimes in ten districts/cities in West Java Province during the last seven years (2014-2021). The following is a list of eleven Regents/Mayors in Regencies/Cities in West Java Province:

**Karawang Regency:** there was a corruption case in 2014 in Karawang Regency. The regent of Karawang Ade Swara and his wife were caught in corruption and money laundering cases related to the PT Tatar Kertabumi Land Management Statement Letter (SPPL). In accordance with Article 11 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the

Eradication of Crimes of Corruption in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, both were found guilty of accepting bribes:

- 1) **Bogor Regency:** There was a corruption case in 2014 in Bogor Regency. The regent of Bogor Rachmat Yasin was proven to have accepted bribes in the case of forest function conversion related to the management of the Bogor, Puncak and Cianjur (Boponjur) General Spatial Planning (GSP) permits;
- 2) **Sumedang Regency:** In 2016 the regent of Sumedang, Ade Irawan was proven to have violated Article 3 of the Corruption Crime Act. Ade Irawan was proven guilty of corruption in the official travel of Cimahi City Regional House of Representatives in 2010 and 2011;
- 3) **Cimahi City:** In 2016 the mayor of Cimahi City, Atty Suharti and her husband, former Cimahi City Mayor Itoch Tochja, were proven to have received bribes for the permit for the second phase of the Pasar Atas Baru Cimahi construction project. The project is worth Rp. 57 billion;
- 4) **Bekasi Regency:** In 2018 there was a corruption case in Bekasi Regency. The regent of Bekasi Neneng Hasanah Yasin received around seven billion bribes in the licensing process for the Meikarta development project;
- 5) **Cianjur Regency:** In 2018 there was corruption case in Cianjur Regency. The regent of Cianjur Irvan Rivano was caught in the corruption case of accepting or withholding payments of Cianjur Regency Special Allocation Fund (SAF) for Education in 2018;
- 6) **Subang Regency:** In 2018 there was corruption case in Subang Regency. The regent of Subang Imas Aryumningsih was caught in the corruption case of receiving gifts or promises in environmental licensing within the Subang Regency government. Prior to Imas' corruption case, there were two former Subang regents who were also caught in corruption case;
- 1) **West Bandung Regency:** In 2018 there was a corruption case in West Bandung Regency. The then regent of West Bandung Regency Abu Bakar was caught in a corruption case of "*bancakan*" money (corrupted money shared among different people) from the Regional Apparatus Performance Unit (SKPD) of the West Bandung Regency Government. The judge stated that in accordance with the first indictment of Article 12 letter A of Law Number 31 of 1999 concerning the Eradication of Crimes of Corruption as amended by Law Number 20 of 2011 concerning the Crime of Corruption in conjunction with Article 55 paragraph (1) of the 1st KUHP in conjunction with Article 65 paragraph (1) of the Criminal Code, Abu Bakar was proven guilty. In 2021 there was another case of corruption committed by Aa Umbara, the regent of the same regency who replaced Abu Bakar after he won the regional head election. Aa Umbara was tried and found guilty in the procurement of social assistance goods for COVID-19. Aa Umbara was judged to have violated the cumulative charges 1 and 2, namely Article 12 letter i and Article 12 letter B of Law Number 31 on the Crime of Corruption. The judge imposed a seven-year sentence reduced by the detention time spent and a fine of Rp. 300 million with the option of (subsidiary) six months in prison
- 2) **Cirebon Regency:** In 2017 there was a corruption case in Cirebon Regency. The regent of Cirebon Regency Sunjaya Purwadisastra received bribe money of IDR 51 billion from various sources;
- 3) **Indramayu Regency:** In 2019 there was corruption case in Indramayu Regency. The regent of Indramayu Regency Suspendi was suspected to receive bribe money of Rp. 3.6 billion as a gift or promise related to project arrangements within the Indramayu Regency Government.

The difficulty of enforcing the law in corruption crimes committed by public officials is exacerbated by the conditions of government that are not well-organized nor well-supervised, a weak system of checks and balances from the legislative, executive, and judicial power, corrupt law enforcers, and overlapping authority between law enforcers (Halwa & Setiadi, 2016).

The legal approach required by the legal basis to eradicate corruption in Indonesia is adequate, because a number of anti-corruption laws and regulations have been enacted, including (ibid):

- 1) Law Number 28 of 1999 concerning the Implementation of a State that is Free from Corruption, Collusion and Nepotism;
- 2) Law Number 11 of 1980 concerning the Eradication of Bribery;
- 3) Law Number 31 of 1999 concerning Eradication of Crimes of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999;
- 4) Government Regulation Number 30 of 1980 concerning Civil Servant Discipline;
- 5) Presidential Instruction Number 5 Year 2005.

Actually, there is no obstacle for law enforcement officers to prosecute corruption cases. As the government has expressed its political will regarding the eradication of corruption, it is then up to the professionalism and integrity of the law enforcement officers to implement the mandate given to them to eradicate corruption. Good law with bad implementing apparatus will produce bad thing, but bad law with good apparatus will produce something good (ibid).

Many elements of society have voiced pressure to the law enforcers put in their best effort to eradicate corruption in various regions, both through street demonstrations and through official forums, but law enforcement against the perpetrators is still unsatisfactory. The problem of eradicating corruption is actually not a domestic problem of a country, because corruption is a serious threat to the stability and security of national and international society and has weakened democratic institutions and democratic values, the values of justice, and endangered sustainable development and law enforcement (ibid).

Principally humans have a purpose in life and are endowed with a sense to distinguish between right and wrong (Toynbee, 2017). As humans always want to enrich themselves, they sometimes resort to the wrong ways, including committing crimes of corruption.

The difficulty of eradicating corruption and the number of corruption cases that have been decided by the courts but do not satisfy the public's sense of justice stem from weak law enforcement. There are factors that cause law enforcement to be weak. There are three factors in law enforcement that must be considered, namely legal factor, quality of implementers, and social environmental factor. Among these three factors, the quality of implementers (law enforcement officers) is the determining factor (Soekanto, 1987).

There are various conditions that must be met for fair and just law enforcement. *First*, a fair or just rule of law will be achieved if the law to be enforced is true and fair; *Second*, law enforcement officers. Law enforcement actors are the main key to fair law enforcement because in their hands, abstract legal rules become concrete, applicable to justice seekers. Third, the social environment as a place where the law applies (Manan & Setiadi *op.cit*).

Law enforcement is the detection and punishment of violation of the law. This term is not limited to enforcement of criminal law (Gunner, 1999). According to Ashiddiqie, law enforcement is the process of enforcing or making legal norms work as behavioral guidelines in traffic or legal relations in social and state life (Ashiddiqie, 2002).

Law enforcement for the crimes committed by regional heads has not actually created a deterrent effect for them. To deal with the issue, the writers suggest that the Unitary State of the Republic of Indonesia (NKRI) applies death penalty for perpetrators of corruption as a solution to prevent losses to the state.

## DISCUSSION

Death penalty is a solution to prevent corruption. It has been considered one of the oldest and most controversial type of punishment in the world and in the history of human civilization. In addition, death penalty is also considered the cruelest punishment as it concerns one's life (Zein, 2012).

It is not surprising then that this type of punishment is regarded by some people as an old in age but remain young criminal institution. This means that death penalty has always been a hot topic of discussion among moralists, theologians, philosophers, law scholars, sociologists, psychiatrists, criminologists, from then until now and it will still be in the future. So long as it has not been abolished; it will always be debated (ibid).

Death penalty or capital punishment has been the most controversial issue because there are two views on it. These two views derive from the same point but end at opposing result. Death penalty is also controversial in the sense that there are two distinctly different or contradictory

rationales. It is controversial because there has never been an agreement on the means of implementing the penalty. History recognizes several ways of carrying out the death penalty, namely:

- (1) Beheading; it is a punishment done by cutting off the head of the convict;
- (2) Electric shock; it is a punishment done by seating the convict on a chair which is then electrified by high voltage;
- (3) Punishment by hanging on the gallows;
- (4) Death injection; it is a punishment by injecting drugs that can kill to the convict;
- (5) Shooting punishment is a punishment by shooting the convict's heart. In this punishment usually the convict must close his/her eyes so as not to see;
- (6) Stoning is punishment by stoning the convict to death (ibid).

The debate on death penalty is related to the right to live, which in international legal instruments and in the 1945 Constitution, is included in the category of rights that cannot be reduced under any circumstances (non-derogable rights). However, international legal instruments, in particular the ICCPR, do not at all prohibit death penalty, though, restrict its application. Regarding death penalty ICCPR has several articles that regulate it; Article 6 paragraph (1) does not prohibit death penalty but Article 6 paragraph (2) and paragraph (6) lie some restrictions on its application. There are five specific restrictions to the death penalty that can be identified from the provisions of Article 6 paragraph (2) and Article 6 paragraph (6), namely:

- (1) The first limitation is that death penalty cannot be applied except for the most serious crime and should be in accordance with the punishment in force at the time the crime took place. So, although Article 6 of the International Covenant on Civil and Political Rights (ICCPR) does not abolish the death penalty, the ICCPR limits its role to the most serious crime;
- (2) The second limitation is that the death penalty in Article 6 of the ICCPR requires that there be no deprivation of life that is contrary to the provisions of the covenant. This means that there must be a guarantee of a fair examination; there must be no discrimination in severe punishments; and that the method of execution does not constitute torture or cruel, inhuman or degrading punishment;
- (3) The third limitation is that the death penalty can only be carried out in accordance with the final decision handed down by the competent court;
- (4) The fourth limitation is that anyone sentenced to death has the right to seek for pardon or legal remission;
- (5) The fifth limitation is that the death penalty cannot be imposed on adolescents under the age of 18 and on pregnant women (ibid).

In the context of Indonesia, this is confirmed in the Constitutional Court Decision Number 2-3/PUU-V/2007. Regardless of the opinion of the Constitutional Court regarding the non-confliction of the death penalty with the 1945 Constitution for certain crimes in the Narcotics Law that is requested for review in a quo petition, the Constitutional Court decision states that by considering and taking into account the irrevocable nature of the death penalty, the Constitutional Court is of the opinion that in the future, in the context of reforming the national criminal law and harmonization of laws and regulations related to the death penalty, the formulation, application, and implementation of capital punishment in the criminal justice system in Indonesia should pay serious attention to the following:

- 1) The death penalty is no longer a principal punishment but a special and alternative punishment;
- 2) The death penalty may be imposed with a probationary period of ten years which if the convict behaves commendably can be changed to life imprisonment or 20 years;
- 3) The death penalty cannot be imposed on minors;
- 4) The execution of the death penalty against a pregnant woman and a mentally ill person is suspended until the pregnant woman gives birth and the mentally ill convict recovers (ibid).

Actually, there is no guarantee nor a necessity for two thoughts that depart from the same point will lead to the same conclusion. This is because it is possible that other variable factors will play a role in the next thought process. These variable factors can be responded to and interpreted differently so that the results and conclusions are likely to change (ibid).

Indonesia is one of the countries that still maintains and recognizes the legality of the death penalty as a way to punish criminals although there have been pros and cons of death penalty for a long time in Indonesia. In fact, death penalty in Indonesia is likely to continue in the future because in the Draft of Criminal Code, death penalty is one of the punishments that is maintained to punish the perpetrators of crimes. Article 87, Article 90, and Article 87 state that death penalty is imposed as alternatively a last effort to protect the community. The procedure for implementing the death penalty is regulated in Article 88 paragraphs (1) – (4), namely:

- (1) The death penalty is carried out by shooting the convict to death by a firing squad;
- (2) The implementation of the death penalty as referred to in paragraph (1) is not carried out in public;
- (3) The execution of the death penalty against pregnant women or mentally ill people is postponed until the woman gives birth or the mentally ill person recovers;
- (4) The death penalty can only be carried out after the request for clemency for the convict is rejected by the President.

Article 89 states that:

- (1) The execution of the death penalty may be postponed with a probationary period of 10 (ten) years, if:

- a) The public's reaction to the convicts was not too great;
- b) The convicts show remorse and hope for improvement;
- c) The position of the convicts in the participation of the crime is not very important; and
- d) There are mitigating reasons.

(2) If the convicts during the probationary period as referred to in paragraph (1) show a commendable attitude and action, then the death penalty can be changed to a life sentence or a maximum imprisonment of 20 (twenty) years by a Decree of the Minister who is responsible for the field of law and human rights.

(3) If the convicts during the probationary period as referred to in paragraph (1) do not show commendable attitudes and actions and there is no hope for improvement, then the death penalty can be carried out on the orders of the Attorney General.

Article 90 states that, if the application for clemency of the convicts sentenced with death penalty is rejected and the death penalty is not carried out for 10 (ten) years, not because the convicts escape, the death penalty can be changed to life imprisonment by a Presidential Decree.

Principally, all countries must have a goal to create a life that is prosperous and fair for their citizens. One of the things that holds it back is the crimes committed by some of their own citizens. Therefore, in order to prevent the increase of the crime perpetrators each country must make efforts to prevent and eradicate the crimes. One of the efforts to eradicate the crimes is to impose and threaten crime perpetrators with punishment for every crime they commit. At first the punishment imposing aims to deter the crime perpetrators and to scare the citizens from committing crimes. Later it in its development the punishment imposing is directed to make and educate the criminal to be a good citizen.

The change in the meaning and form of punishments, in fact, depends on the change in view of life that supports it. When it concerns human life, we have body and soul as the principal property. To deter the crime perpetrators from committing crime again and to scare other members of society death penalty is introduced and imposed, in addition to corporal punishment, as the main punishment

## CONCLUSION

The crime of corruption committed by regional heads in West Java Province during the regional autonomy period for the last seven years (2014-2021) have resulted in great losses to the state. To prevent the corruption from being committed again by regional heads, progressive law enforcement is needed. This can be achieved through the implementation of the death penalty for corruptors which will serve as a deterrent effect for the corruptors and a warning for others not to do such crime.

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