

Review of the Validity and Legal Justice of the Prosecutor's Demands in the Corruption Case Number: 2/Pid.Sus.TPK/2023/PN.Mks

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Abstract

The validity and fairness of the law against the charges are very important to be considered by the Public Prosecutor. The prosecution process by the public prosecutor begins with the study of the investigation file, then from the results of the public prosecutor's research can identify what evidence and the evidentiary strength is fulfilled, then for the inherent weaknesses known in the case file to prepare the juridical—accurate facts to anticipate problems that arise in the effort to prove in court. The problem in this paper is the basis for the Public Prosecutor's consideration regarding the Corruption Crime case and how to review the aspects of legality and legal justice against the Public Prosecutor's demands in case Number: 2/Pid.Sus.TPK/2023/PN.Mks. This paper uses a type of normative juridical method with the consideration that the problem being studied is relevant to the regulations and how to handle it in judicial practice. From the results of the research carried out, it can be concluded as follows: first, the Public Prosecutor in his Indictment in the form of an "alternative indictment" has been read out in the trial on January 13, 2023, filing an indictment against the defendant Eltinus Omaleng with the First Indictment Article 2 paragraph (1) Jo Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes Jo Article 55 paragraph (1) 1 of the Criminal Code Jo Article 64 (1) of the Criminal Code and the Second Indictment of Article 3 Jo Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption Jo Article 55 paragraph (1) 1 of the Criminal Code Jo Article 64 (1) of the Criminal Code. Second, the indictment and demands of the Public Prosecutor in case Number: 2/Pid.Sus.TPK/2023/PN.Mks do not have legal validity and justice, because all elements of the articles charged were not proven at trial.

Keywords: Legal Validity; Legal Justice; Prosecutor's Demands; Corruption Crimes

Introduction

The term corruption comes from the Latin language, namely *corruptio*. In English it is *corruption* or *corrupt*, in French it is called *corruption* and in Dutch, it is called *coruptie*. Presumably, it was from the Dutch language that the word corruption in Indonesian was born (Hamzah, 1991). According to Subekti, Corruption is a criminal act that enriches oneself and harms the country's finances and economy (Subekti, 1977).

Corruption is a very serious problem and includes major crimes because corruption can have a bad impact on all elements of the State (Rahma, 2022). Be it in the fields of politics, economy, or social development, even the worst can damage democratic values and the moral values of the nation because corruption can become a culture. The culture of corruption that is difficult to eliminate is to meet the ambitions of corruptors who are not satisfied with what they have (Prabowo, 2020).

The government has made various efforts to eradicate perpetrators of corruption crimes. The Prosecutor's Office of the Republic of Indonesia is one of the law enforcement agencies that plays a role in upholding the rule of law, protecting the public interest, enforcing human rights, and eradicating corruption, collusion, and nepotism (KKN) (Hasan et al., 2024). The Prosecutor's Office is an institution in the field of prosecution that has been regulated in the law and has an important role in conducting prosecutions (Saragih et al., 2019).

Prosecution of an event or criminal act, including corruption is a function carried out by the Prosecutor's Office, in this case, the public prosecutor (Gusfira & Hafiz, 2021). According to the Criminal Procedure Code, prosecution is an act by the public prosecutor to transfer a criminal case to the competent district court in the case and in the manner regulated in the Criminal Procedure Code with a request to be examined and decided by a judge at the court session (Sham et al., 2023).

Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, hints that the Prosecutor's Office is in a central position with a strategic role in strengthening the nation's resilience because the Prosecutor's Office is on the axis and is a filter between the investigation process and the examination process in court as well as the implementer of court determinations and decisions (*Executive Ambtenaar*). So that the Prosecutor's Institution is the controller of the criminal case process (*Dominus Litis*), this is because only the Prosecutor's institution can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Law (Wahyudi et al., 2021).

The success of the prosecution is highly dependent on the public prosecutor in presenting evidence and proving that the defendant is guilty of committing a criminal act and it is true that the defendant can be held accountable for his actions (Alfianda et al., 2024). The success of the prosecutor's office is very large depending on the role of the public prosecutor, which starts from the pre-prosecution stage or case file research to the evidentiary stage at the court session later. With the ability of the public prosecutor to be able to prove that a defendant is guilty of committing a criminal act and supported by a case file that has met the formal and material requirements, it is hoped that the judge will be confident that the defendant has committed the criminal act that has been charged by the public prosecutor (Hasan et al., 2024).

The demands of the public prosecutor are also the basis for the judge's consideration in determining whether or not a person will be prosecuted through an indictment (Santosa & Laba, 2019). One of the cases handled by the prosecutor is a corruption case committed by a state official, the case is registered at the Corruption Court at the Makassar District Court with the following Number: 2/Pid.Sus.TPK/2023/PN.Mks. The handling of corruption cases carried out by the Prosecutor's Office has been one of the main missions and the main task that must be carried out in line with the demands of reform in the field of law enforcement in Indonesia (Azwarman et al., 2021).

However, there are still some public prosecutors in carrying out prosecutions that act arbitrarily and do not reflect the values of justice (Adinda et al., 2024). The Prosecutor as the Public Prosecutor in the criminal system will be considered by the convict not to respect the law even though respect for the law is one of the criminal objectives, both directly and indirectly will have an impact on the community and tend to be apathetic to the law (Saragih et al., 2019).

This situation continues to cause inconsistencies in judicial decisions and is contrary to the concept of the *rule of law* which is embraced in the Republic of Indonesia, the government is organized based on the law and supported by the existence of a judicial institution, namely a judicial institution to enforce the law (Firmansyah et al., 2024). It doesn't stop there, the concept that everyone is equal before the law (*equality before the law*) which is one of the characteristics of the State of law still needs to be questioned related to the existing reality (Dewi et al., 2023).

Based on this background presentation, this study analyzes the basis for the Public Prosecutor's consideration in the prosecution of corruption cases committed by state officials and related to the review of the validity and legal justice of the Public Prosecutor's demands in the corruption case Number: 2/Pid.Sus.TPK/2023/PN.Mks which is tried at the Corruption Court at the Makassar District Court.

Research Methods

The method used in this study is the normative legal method (Soekanto & Mamudj, 2001), which is an assessment based on legal materials from the literature. The Statute Approach and the case approach are reasons that can be found by paying attention to material facts (Marzuki, 2009).

The legal materials in this study were obtained from literature research, namely; Primary legal materials obtained from the regulations faced and the problems currently being researched and Secondary materials that provide insight into primary legal materials, the most important of which is the opinion of legal experts.

Data collection is carried out by inventorying books and laws and regulations following the problems discussed (N. K. Putri et al., 2024). Analyze the data. This research uses a descriptive method, by arranging legal materials that have been selected systematically to form a scientific work (Efendi et al., 2024).

Results and Discussion

Basis for Public Prosecutor's Consideration in Compiling Indictments Related to Corruption Crimes Committed by Regional Officials

In determining the indictment, the basis of the indictment used by the Public Prosecutor is guided by the provisions of Article 143 of the Criminal Procedure Code to make an indictment. For the Public Prosecutor, the indictment is the basis for proof or juridical reasons, criminal prosecutions, and the use of legal remedies, while for the defendant, the indictment is the basis for knowing clearly and completely the criminal acts accused against him, so that the defendant can prepare his defense to be submitted in court (Pangaribuan, 2017). In the process of making an indictment or P-29, the indictment must meet the formal requirements and material requirements under the provisions of Article 143 of the Criminal Procedure Code.

The Public Prosecutor in his Indictment in the form of an "alternative indictment" was read out in the trial on January 13, 2023, filing an indictment against the defendant Eltinus Omaleng with the First Indictment Article 2 paragraph (1) *Jo* Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption *Crimes Jo* Article 55 paragraph (1) 1 of the Criminal Code *Jo* Article 64 (1) of the Criminal Code and the Second Indictment Article 3 *Jo* Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption *Jo* Article 55 paragraph (1) 1 of the Criminal Code *Jo* Article 64 (1) of the Criminal Code.

Furthermore, the Public Prosecutor in the trial on May 31, 2023, submitted a criminal charge (*requisitoir*) which requested that the Panel of Judges of the Corruption Court at the Makassar District Court decide as follows:

1. Declaring that defendant-I Eltinus Omaleng and defendant-II Marthen Sawy have been legally and convincingly proven guilty of committing the crime of corruption jointly as per the Second Alternative Indictment;
2. Imposing a criminal sentence against defendant-I Eltinus Omaleng in the form of imprisonment for 9 (nine) years with an order that defendant I remain in custody and a fine of IDR. 500,000,000,- (five hundred million rupiah), a subsidy of 6 (six) months of imprisonment;
3. Imposing a penalty on defendant-II Marthen Sawy in the form of imprisonment for 5 (five) years with an order that defendant I remain in custody and a fine of IDR. 200,000,000 (two hundred million rupiah), subsidy 3 (three months of imprisonment);
4. Imposing an additional penalty on defendant-I Eltinus Omaleng to pay

compensation to the state in the amount of IDR. 2,500,000,000 (two billion five hundred million rupiah), and if defendant-I does not pay compensation within 1 (one) month after the court decision that has obtained permanent legal force, his property can be confiscated by the prosecutor and auctioned to cover the compensation, If it is not enough, it will be sentenced to imprisonment for 3 (three) years

5. Imposing an additional penalty on defendant-I Eltinus Omaleng in the form of revocation of the right to be elected to public office for 4 (four) years after the defendant has completed serving the main penalty;
6. Stipulating that defendant-I and defendant-II each pay a case fee of IDR. 10,000 (ten thousand rupiah).

The basis for considering the charges was not based on the facts as revealed in the trial examination. Many witness statements, including the defendant's statement, were written, but this was not the case as explained by the witness and the defendant when giving testimony at the trial. Likewise, the evidence or evidence of the letter submitted by the Public Prosecutor at the trial is often quoted not in accordance with the content intended by the evidence/evidence of the letter.

The dictum regarding the length of the prison sentence, the amount of compensation, and the fine to defendant-1 seems emotional and baseless when compared to the practice so far and based on the facts of the trial. There is a disparity in the length of imprisonment between defendant-1 and defendant-2 and the amount of compensation and fines as well as subsidy claims both show a striking difference between defendant-1 and defendant-2.

The Public Prosecutor lists the basis or incriminating things for defendant-1, one of which is "*Not frankly admitting his actions and not regretting his actions*". Meanwhile, for defendant-2, it is considered to be "*frank about his actions against the actions of other perpetrators*". In fact, at the trial, when the three defendants were asked by His Excellency the Panel of Judges, "Did the three defendants admit to the acts charged and regret them?". The three answered compactly, namely "Do not admit it and do not regret it".

The description of the factual analysis and juridical analysis of the Public Prosecutor's Letter of Demand is subjectively oriented towards one purpose, namely to declare the defendant proven guilty and prosecute Defendant-1 with the heaviest punishment, without considering the side of justice and legal certainty based on the facts revealed at the trial.

Review of the Validity and Legal Justice of the Public Prosecutor's Demands

Validity can be interpreted as an action that is in accordance with the rule of law or the validity of a legal decision/policy (Idrus, 2017). Justice is a central point in the law (Yunanto, 2019). Although Plato argued that justice is something beyond the

ability of ordinary human beings (Helmi, 2015). Therefore, justice has become one of the basic values of human life and is a classic problem that has never been completely solved (Wijayanta, 2014).

Justice in law is an equality of rights and obligations in the law. Rights in law can be called an authority. Everyone has the same right, namely to obtain protection from the law and to obtain a defense within the law. Every human being has the rights that must be fulfilled. Meanwhile, everyone's obligation is to obey and submit to the applicable laws in Indonesia, carry out existing regulations, and not violate these rules. Between people's rights and obligations, it must be fulfilled and must be balanced so that justice can be created (K. D. A. Putri & Arifin, 2018).

This juridical analysis will examine the element of "*Against the Law*" and the element "*to benefit oneself, another person, or a corporation*" in the First Indictment, as well as the element of "*Abuse of authority, opportunity or means available to him because of his position or position*" and the element "*to benefit oneself, another person or a corporation*" on the Second Charge. In addition to discussing other elements of the offense, namely the element of "*Can Harm State Finance or the State Economy*" contained in the First Indictment and Second Indictment. Therefore, the discussion of the elements of the offense, both contained in the First Indictment and the Second Indictment of the Public Prosecutor, is sufficiently focused on the discussion of the elements of the offense based on a review of the aspects of legality and justice.

Theoretically and practically to declare Defendant-1, Eltinus Omaleng proven guilty of the charge, then the acts accused of Defendant-1 must meet the elements of delik (*actus reus*) in the formulation of the articles charged and the act is blamed (*mens rea*).

There are several irregularities in the elements of the prosecutor's demands against Defendant-1 so that they have an impact on the aspects of legal validity and justice, which are as follows:

1. The element "*which to benefit oneself, another person or a corporation*". The phrase 'with a purpose' in the formulation of the delicacies is often replaced by the phrase 'knowing' as in the formulation of Article 220 of the Criminal Code. Therefore, the formulation of the phrase 'with a purpose' in Article 3 of the PTPK Law contains a definition of *deliberate delictum*. Intentionality is related to mistakes and mistakes are related to criminal liability because there is no criminal liability without fault. The phrase 'with a purpose' means that the defendant knows from the beginning that the act he committed is aware that it will provide an advantage to himself or another person or a corporation as the initial purpose of committing an act of abuse of authority. However, based on the facts of the trial, the allegation that the defendant Eltinus Omaleng was not legally proven to have received *fees* from PT. Waringin Megah or PT. KPPN.

2. The element of "*enriching another person or a corporation*". In his demands, the public prosecutor did not elaborate on this. The public prosecutor said that defendant-1 received *fees* from several parties with different nominals. However, based on the facts revealed at the trial, the public prosecutor's opinion was rejected by the Legal Advisor for several reasons. This is corroborated by the list of evidence used by the Public Prosecutor, none of the evidence is directly related to defendant-1 because the evidence is the result of submission or confiscation from other defendants or other parties. Based on the 1st and 2nd considerations, the element of "*to benefit oneself or another person or a corporation*" is not fulfilled and therefore it is not proven according to law.
3. The element of "*blaming the authority, opportunity or means that exist on him because of his position or position*". In the indictment and demands, according to the Public Prosecutor, this element is fulfilled because the actions of defendant-1 include giving disposition of approval to the proposal of the *Waartsing* Foundation related to the plan to build the Need for Houses of Worship (Church). According to defendant-1's testimony at the trial, defendant-1's disposition is not absolute to be carried out by the intended official but requires further review and consideration for the official intended for the disposition. Especially considerations regarding the success of the application and the availability of assistance funds in the budget post. In the traffic of the local government bureaucracy, the provision of such disposition by the Regent is a natural and administratively legitimate thing. Likewise, based on witness statements, Agustuna Sakil of the Church Development Committee has made and submitted in writing an accountability report on the use of the funds to the local government of Mimika district.
4. Basically, the main legal issue at issue in the Public Prosecutor's indictment is related to the implementation of the construction work of the Kingmi Mile 32 Phase-1 church using the Mimika Regency APBD budget for FY 2015 amounting to IDR. 46,034..988,000.00 run by PT. Waringin Megah and/or PT. KPPN as the implementing contractor. Therefore, the issue of providing assistance and using grant assistance funds in the amount of IDR. 15,000,000,000.00 by the Regional Government of Mimika Regency to the Committee for the Construction of the Permanent Building of the Kingmi Church of the Marthen Luther, Timika Church, in principle, has nothing to do with the indictment of the Public Prosecutor in this case. It was revealed at the trial that the land where the church building was built and its yard stood on a plot of customary land belonging to the Amungme Tribe which was controlled and managed for generations. Therefore, based on these

considerations, the element of "*blaming the authority, opportunity or means that exist on him because of his position or position*" is not fulfilled.

5. Elements "*that can harm the state finances or the country's economy*". Based on tests conducted by experts from the Public Prosecutor, there is a lack of volume that is not in accordance with the contract specifications on the work items and there is a lack of quality of stage-1 concrete. The shortfall is suspected to have harmed the state's finances by IDR. 17,563,582,243.42. That despite the difference of views/opinions of the two construction experts regarding whether or not there is a lack of quality of concrete in the Kingmi Mile 32 church building. As well as the debate between the factual results of the geometrical volume counting examination conducted by Dr. Ir. Sangriyadi Setio from ITB and the testimony of the witness Gustaf Urabanus Patandianan and the witness Wahyudi Susilo, in principle the difference of opinion is not directly related to the main functions and duties of defendant-1, Eltinus Omaleng as the Regent at that time

Therefore, based on the matters described above, the author concludes that the element of "*Abuse of authority, opportunity or means available to him because of his position or position*" and the element of "*Benefiting oneself, another person or a corporation*" are not proven according to the law in the defendant-1, Eltinus Omaleng. Thus, the defendant should be acquitted of the First Indictment and the Second Indictment of the Public Prosecutor's indictment.

Because the element of the second indictment, namely the element of "*abusing the authority, opportunity or means available to him because of his position or position*" and the element of "*benefiting himself, another person or a corporation*" is not fulfilled, then Defendant-1, Eltinus Omaleng must be declared not legally and convincingly proven to have committed a criminal act as charged in the Second Indictment. And because the two elements of the offense in the Second Indictment are also the same elements contained in the First Indictment, the First Indictment is also not proven according to law, therefore Defendant-1, Eltinus Omaleng must also be declared not legally and convincingly proven to have committed a criminal act as in the First Indictment.

Conclusion

After describing the problems in this article, the author concludes that the Public Prosecutor in his Indictment in the form of an "alternative indictment" has been read out in the trial on January 13, 2023, filing an indictment against the defendant Eltinus Omaleng with the First Indictment Article 2 paragraph (1) *Jo* Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption *Crimes Jo* Article 55 paragraph (1) 1 of the Criminal Code *Jo* Article 64 (1) of the Criminal Code and the Second Indictment of Article 3 *Jo* Article 18 of Law No. 31 of 1999 concerning

the Eradication of Corruption Jo Article 55 paragraph (1) 1 of the Criminal Code Jo Article 64 (1) of the Criminal Code. However, all charges in the prosecution submitted have no legal basis and are not proven at trial so they have no validity and are not in accordance with legal justice. This is because all elements of the articles charged against the defendant are not proven and have no legal basis and can be refuted by the defendant's legal counsel.

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