

Pertimbangan Unsur Kesalahan sebagai Dasar Pertanggungjawaban Pidana; Studi Kasus Penerapan Pasal 2 dan Pasal 3 Undang-Undang Pemberantasan Tindak Pidana Korupsi pada Putusan Pengadilan Tindak Pidana Korupsi = Consideration of Intentionality as a Basis for Criminal Liability; Case Study of the Application of Articles 2 and 3 of the Corruption Eradication Law at the Corruption of Court

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Abstrak

Sudah banyak orang diputus besalah dan dipidana sebagai tindak pidana korupsi Pasal 2 dan Pasal 3 UU PTPK. Namun, apakah pengadilan Tipikor telah mempertimbangan unsur kesalahan secara komprehensif pada pertanggungjawaban pidana. Penelitian ini mengkaji tiga permasalahan hukum, yaitu (1) Bagaimana pengadilan Tindak Pidana Korupsi mempertimbangkan unsur kesalahan pada Pasal 2 dan Pasal 3 UU PTPK dalam putusan-putusannya; (2) Bagaimana perkembangan penafsiran unsur kesalahan dalam rumusan tindak pidana korupsi Pasal 2 dan Pasal 3 UU PTPK; dan (3) Bagaimana parameter untuk menilai unsur kesalahan sebagai dasar pertanggung-jawaban pidana pada Pasal 2 dan Pasal 3 UU PTPK. Metode yang digunakan adalah “Yuridis Normatif” untuk menggali norma hukum dan keputusan pengadilan berdasar ‘library based-study”, dan dilakukan melalui “analytical and critical approach”. Penilaian dan pengujian berdasarkan asas dan teori kesalahan, dan dilakukan melalui model penalaran moralitas “Natural Law”. Hasil penelitian menunjukkan, bahwa pengadilan Tipikor cenderung memidana terdakwa tanpa pertimbangan secara komprehensif unsur kesalahan. Lebih kepada keadaan objektif daripada keadaan objektif dan subjektif, yaitu suatu perbuatan yang tidak mengikuti standar dan prosedur administrasi yang dipersyaratkan, dan belum menyentuh pada suatu perbuatan yang bersifat melawan hukum (wederrechtelijkheid) dan “dengan sengaja” untuk menguntungkan atau memperkaya diri sendiri, orang lain atau suatu korporasi, sehingga negara dirugikan. Meskipun ada hakim menyebutkannya secara eksplisit atau pun implisit dalam pertimbangan hukumnya, akan tetapi belum digali hubungan antara unsur “sengaja” dengan perbuatan yang dilakukan terdakwa, sehingga menimbulkan kerugian keuangan negara. Dengan demikian, asas dan teori Kesalahan yang dikolaborasi dengan model penalaran moralitas “Natural Law” dapat menjadi model ideal (parameter) untuk menilai unsur kesalahan sebagai dasar pertanggungjawaban pidana Pasal 2 dan Pasal 3 UU PTPK. Sebab keadaan objektif dan subjektif menjadi syarat pertanggungjawaban pidana, dan pada model penalaran moralitas “Natural Law” tidak melepas pengujian validitas normatif Pasal 2 dan Pasal 3 UU PTPK guna memperoleh kebenaran dan keadilan.

.....Many people have been convicted and sentenced for criminal acts of corruption in Article 2 and Article 3 of the PTPK Law. However, the Corruption Court has not been able to comprehensively consider the elements of guilt for the crimes committed. This study examines three legal issues, namely (1) How the Corruption Court considers the elements of guilt in Article 2 and Article 3 of the PTPK Law in its decisions; (2) How is the development of the interpretation of the element of guilt in the formulation of the criminal act of corruption of Article 2 and Article 3 of the PTPK Law; and (3) What are the parameters for examining and evaluation of the element of guilt as a basis for criminal responsibility in Article 2 and Article 3 of the PTPK Law. The method used is Doctrinal legal research methodology, also called "black letter"

methodology, which focuses on the letter of the law to compose a descriptive and detailed analysis of legal rules found in primary sources (cases and regulations). The purpose of this method is to gather, organize, and describe the law; provide commentary on the sources used; then, identify and describe the underlying theme or system and how each source of law is connected or explore legal norms and court decisions based on library-based studies. The analysis is based on the principles and theory of Criminal Responsibility through the analytical and critical approach to avoid liability without fault and to ensure that "committed intentionally" is the main element used in decision-making regarding corruptor sentencing. Examining and evaluating are based on the "Natural Law" morality reasoning model. This study shows that the judge's decision is more about proving objective facts than subjective facts - or "intentions" of the perpetrators. The corruption court tends to punish defendants without comprehensively considering the elements of guilt or more to an act that does not follow the required administrative procedures and standards and has not yet touched on the concept of an unlawful act and "intentionally" that contributes to losses of the state finances. Even though some judges mentioned it explicitly or implicitly in their legal considerations, however comprehensively consider the elements of guilty yet. Therefore, the principle and criminal responsibility, and collaboration with the models of moral "Natural Law" can become an ideal model of legal reasoning for examining and evaluating the element of guilt as a basis for criminal responsibility under Article 2 and Article 3 of the PTPK Law. In this case, objective and subjective conditions are to examine the validity of Articles 2 and 3 of the PTPK Law to obtain truth and justice.