Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Legal Review of Corruption Crimes Committed By Chief Justice of the Constitutional Court Akil Mochtar

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ABSTRACT

The defilements within legal executives took center stage. It seems impossible for law enforcement agencies to become a shield for justice seekers. However, it seems that crimes can also occur in judicial institutions, and judges in institutions such as the Constitutional Court are even involved in these crimes. Because Akil Mochtar is a Constitutional Judge, the professional justice system or code of ethics is different from the formal law that applies to judges. The aim of this research is to determine the nature and scope of responsibility of Constitutional Court judges who commit criminal acts of corruption and to examine Supreme Court Decision 336 K/Pid.Sus/2015. The research method used in writing this scientific work is normative juridical . This research is descriptive, meaning it only describes the condition of objects or events without the aim of drawing general conclusions. Based on the results of this research, it was revealed that Constitutional Court Judges were involved in the crime of accepting bribes when handling several regional election disputes. This is regulated in Article 3 of Law Number 20 of 2001 concerning Corruption Crimes which states that every person who with the intention of enriching himself or another person or a particular corporation abuses the authority, opportunity or means available to him because of his position or position which can be detrimental. state finances or the state economy will be subject to criminal sanctions. In the decision on Case No: 336 K/Pid.Sus/2015 by the Panel of Judges of the Supreme Court, the element of criminal aggravation was not included because as state officials they must maintain the integrity of the law completely and well.

Keywords : Constitutional Court, Judges, Criminal Responsibility

INTRODUCTION

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

In Indonesia, corruption is out of control. Various corruption cases began to emerge. Not only that, many corruption cases involve high-ranking state officials and spread to all circles. Corruption Cases in Indonesia According to a number of surveys, Indonesia is one of the most corrupt countries in the world. Corruption on various scales, from large, medium to small, continues in every area of society. The criminal law of corruption in Indonesia does not provide obstacles for the perpetrators, causing corruptors to continue committing acts of corruption. Moreover, the law in Indonesia is easy to buy. This can be seen from the number of legitimate officials involved in bribery cases.

From a legal perspective, the definition of corruption has been clearly explained in 13 articles in Law no. 31 of 1999 which has been amended by Law no. 20 of 2001 concerning Eradication of Corruption Crimes. Based on these articles, corruption is formulated into 30 forms/types of criminal acts of corruption. This article explains in detail the actions that can be subject to criminal sanctions due to corruption. These thirty forms/types of criminal acts of corruption can basically be grouped as follows:

1. State financial losses
2. Bribery
3. Embezzlement in office
4. Blackmail
5. Fraudulent acts
6. Conflict of interest in procurement
7. Gratification

One of the state institutions involved in corruption cases is the Constitutional Court. The Chairman of the Constitutional Court, Akil Mochtar, abused his position to commit criminal acts of corruption. The process of arresting Chairman of the Constitutional Court Akil Mochtar (AM) began with a KPK investigation carried out around early September 2013. During the investigation process, the KPK received information regarding plans to hand over money to Akil at his residence in the Widya Chandra Complex, Jakarta.

The Constitutional Court is one of the actors of judicial power as intended in the 1945 Constitution of the Republic of Indonesia. This means that the Constitutional Court is bound by the general principle of exercising independent judicial power, free from the influence of

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

the power of other institutions in upholding law and justice. The Constitutional Court based on Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia has the authority to:

1. examine the law against the 1945 Constitution of the Republic of Indonesia;
2. decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia;
3. decide on the dissolution of political parties;
4. decide disputes over general election results; And
5. give a decision on the DPR's opinion that the President and/or Deputy .

The Third Amendment to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) mandates the establishment of a judicial institution other than the Supreme Court (MA), namely the Constitutional Court (MK). Regulations regarding the MK are contained in Article 24 paragraph (2) and Article 24C paragraphs (1), (2), (3), (4), (5), paragraph (6), and Article III of the 1945 Constitution Transitional Rules. to ensure that the 1945 Constitution is truly implemented and enforced in day-to-day State administration activities. The formation of the Constitutional Court as a state institution was due to the need for a court that specifically reviews laws that conflict with the 1945 Constitution.

With this incident, the State also experienced quite large material losses in this case. These losses impact democracy, the economy, and the overall welfare of the country. Recently, there has been a lot of discussion among the public regarding corruption cases. The corruption case involving the Lebak Regency Election dispute, Banten involved the chairman of the Constitutional Court, Akil Mochtar. Apart from this case, Akil was also linked to 14 other bribery cases. Various cases were recorded. The KPK prosecutor has never charged a judge with 15 counts of bribery against a judge before. During a search of Akil's office in the Constitutional Court building, KPK officers found drugs and powerful drugs. Apart from that, showing that the Chief Justice of the Constitutional Court can carry out corrupt practices does not reflect a responsible leader.

Considering the importance of the Constitutional Court's existence, constitutional judges are needed who have capacity and integrity. So different indicator requirements are needed in filling the position of constitutional judge compared to filling positions in other

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

state institutions. We can see this difference in the requirements to become a supreme judge at the Supreme Court and the requirements to become a constitutional judge at the MK.

If the requirements to become a constitutional judge are no longer met, then Law Number 24 of 2003 concerning the Constitutional Court regulates the dismissal of constitutional judges. Where in Article 23 of the a quo law states that a constitutional judge can be dismissed honorably and can be dismissed dishonorably. So, to supervise and dismiss constitutional judges, the Honorary Council of the Constitutional Court (hereinafter referred to as MKMK) and the Ethics Council emerged. These two instruments were formed to maintain and uphold the honor, dignity and Code of Ethics of Constitutional Judges. 4 This supervision is also related to how constitutional judges perform in carrying out their duties and authority. The dismissal of constitutional judges serves to maintain the dignity and performance of constitutional judges.

Regarding the case involving Akil Mochtar, the MKMK assessed that Akil Mochtar violated the code of ethics and behavior of judges as stated in MK Regulation Number 9 of 2006 concerning the Implementation of the Declaration of the Code of Ethics and Behavior of Constitutional Judges. In the a quo Constitutional Court Regulation, there are seven Principles for the Declaration of the Code of Ethics and Behavior of Constitutional Judges, namely:

1) Principle of Independence;
2) Principle of Impartiality;
3) Principle of Integrity;
4) Principles of Appropriateness and Politeness;
5) Principle of Equality;
6) Principles of Proficiency and Accuracy; And
7) Principles of Wisdom and Wisdom.

MKMK members, Mahfud MD and Abbas Said, regarding the alleged violation of the code of ethics by Akil Mochtar, said that Akil Mochtar's departure to Singapore on 21 September 2013 without notification to the MK Secretariat General was behavior that violated the fourth ethical principle, namely Politeness and Appropriateness. Then Akil Mochtar, who while serving as Chief Justice of the Constitutional Court, ordered the

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Registrar directly to postpone the decision without the approval of the judge's deliberation meeting, which was deemed to have violated the second principle, namely Impartiality. On this basis, the MKMK considers that Akil Mochtar deserves to be given sanctions in the form of dishonorable dismissal. Where the MKMK decided to dishonorably dismiss Akil Mochtar on Friday, November 1 2013 because he was proven to have violated the judge's code of ethics.

Formulation of the problem

Based on the background above, several problem formulations can be formulated as follows:

1. What is the legal review of the corruption case carried out by Akil Mochtar?
2. What is the government's role in handling the corruption case involving Akil Mochtar?

RESEARCH METHODS

The research method used in writing this scientific work is normative juridical with a statutory approach. Normative juridical is a legal research method from an internal point of view, where the object is legal norms. Normative legal research is also known as doctrinal research, where law is defined as what is written in statutory regulations (law in books), and can be carried out on legal systematics in certain regulations or written law. This research is descriptive, meaning it only describes the condition of objects or events without the aim of drawing general conclusions. To obtain data that is accurate, relevant and accountable, data collection tools are used in the form of documentation studies or literature searches from secondary data sources. The data collected in this research was grouped based on research themes and evaluated for validity. Then, the data is selected and processed in accordance with applicable regulations to analyze existing patterns or trends. Data analysis was carried out qualitatively, including drawing conclusions, so it is hoped that it can provide solutions and answers to the problems discussed in this research.

RESULTS AND DISCUSSION

A. Review of Case Law Corruption which Done by the Head of the Constitutional Court

Corruption or bribery (Latin: corruptio from the work term corrumpere which

means rotten, corrupt, shake, turn back, bribe) is the action of public officials, both politicians and state officials as well as other parties involved in the action who improperly and illegally abuse public trust that is entrusted to them to obtain one-sided profits.

From a legal perspective, criminal acts of corruption are generally of a general nature elements as following :

- Defiant action law,
- Actions include authority, chance, or means,
- Enrich self Alone, person other, or corporation.
- Harm finance country or economy country.

Various types of criminal acts of corruption include:

- Giving and receiving present or promise (bribery),
- Embezzlement in position,
- extortion in position,
- follow as well as in procurement (for employee country / organizer country), And
- receive gratuities (for civil servants / state administrators).(wikipedia, 2014) .

Corruption is defined according to the Law of the Republic of Indonesia Number 28 of 1999 concerning the Implementation of a State that is Clean and Free of Corruption, Collusion, And Nepotism Chapter 1 Paragraph 3 is follow criminal as referred to in the provisions of the laws and regulations governing the action criminal corruption.

Corruption in Indonesia is growing systematically. For many people, corruption is no longer a violation of the law, but just a habit. In all comparative studies of corruption between countries, Indonesia always ranks last. This situation may cause the authorities to increase their efforts to fight corruption in Indonesia. The development of corruption in Indonesia has contributed to the eradication of corruption in Indonesia. However, the eradication of corruption in Indonesia so far has not shown a positive side because this country's ranking is still low when compared with the level of corruption between countries .

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Dr. HM Akil Mochtar, SH, MH (born in Putussibau, Kalimantan West, October 18, 1960; aged 53 years) served as Chairman of the Constitutional Court of the Republic of Indonesia in 2013 and as Judge of the Constitutional Court from 2008 to 2013. Previously he served as Member of the Republic of Indonesia DPR from 1999 to 2004, after which he was re-elected as Deputy Chair of Commission III of the DPR Republic of Indonesia in the field of (Law, Legislation, Human Rights and Security) from 2004 to 2006. He became a constitutional judge in 2008, and was elected as Chief Justice of the Constitutional Court in April 2013 replacing Mahfud, MD (Okezone, 2013).

Everyone understands how upheaval the legal world in this Republic is due to the case of Akil Mochtar, the former chairman of the Constitutional Court (MK) who manipulated so many cases with the aim of making money. Since the initial trial, at least several accusations have been made against Akil, namely regarding the judge accepting gifts or promises. In fact, he knew or reasonably suspected that the gift was to influence the case he was trying. Apart from that, extortion carried out by state officials also involves receiving gifts or promises. In fact, it is known or reasonably suspected that the gift was due to power or authority related to the position and charges related to the crime of money laundering. What Akil did was related to dozens of regional elections handled by the MK.

First, of course how to treat Akil's case. The Corruption Eradication Commission (KPK) has a very big responsibility in this case. Of course, legally, Akil can still be sanctioned even though it is not explained in detail who gave the bribe, because the articles regarding bribe givers and bribe recipients are placed differently. However, it would be difficult to accept common sense if the bribe giver did not receive legal sanctions. We all reject what happened in the Gaius case some time ago. Gaius was sanctioned for accepting bribes, but until now the company that gave the bribes has disappeared without a trace.

In this case, of course regional head candidates who play with Akil must be pursued. They have become part of destroying law and democracy in this country. Including the bribery intermediaries, some of whom are party figures and whose names

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

have been scattered in the evidence held by the Corruption Eradication Committee and revealed in the media. Including lawyers whose modus operandi is bribery to win cases at the Constitutional Court. The KPK must be able to catch up with everything. They are cancer cells for law enforcement and democracy which, if they cannot be pursued and amputated, will at any time become an actual danger to this country.

It's simple, if someone bribes billions of rupiah to take the position of regional head, it is easy to imagine what will happen to the wealth of the region he leads. Logically, there is a hint of a massive effort to rob regional wealth to recover the costs he incurred when fighting in the regional elections, including bribing Akil.

The KPK's obligations are not only to areas where Akil's games have been revealed, but also to other areas where there are disputes over election results at the MK when Akil was still a MK judge. Data shows that there were dozens of other regional election cases that were brought to the Constitutional Court at that time. I am one of those who do not believe that only a dozen areas were 'played' by Akil. It is very possible that many other areas also play with Akil. Therefore, the Corruption Eradication Commission must be able to reveal it to the fullest. When failing to target other areas that are also playing the game, it is the same as allowing them to remain enthroned in the area incorrectly and returning to what was written above, it is easy to imagine the possibility of robbery in the area they lead.

Second, the Constitutional Court is obliged to reflect on the Akil case. This means that there are building processes for implementing the Constitutional Court's authority that still need to be given bold line notes. For example, the issue of efforts to organize a more adequate panel of judges. Cases in certain areas that have similar backgrounds to certain judges must be avoided, including applicants who have backgrounds in certain parties and are close to the party that previously supported the Constitutional Court judge must also be avoided. Akil's diligent handling of certain party cases that are close to his background, as well as several areas close to Akil's origin, prove that the Constitutional Court has not yet developed a way to maximally avoid conflicts of interest.

The Constitutional Court can certainly argue that Constitutional Court judges are

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

statesmen who can differentiate between personal and national interests. However, it is wrong to only rely on individual qualities without establishing principles and mechanisms that can avoid conflicts of interest. Moreover, it is not the Constitutional Court that determines the status of statesmanship in the Constitutional Court, but the institutions that support the Constitutional Court judges, namely the President, the People's Representative Council (DPR) and the Supreme Court (MA). The Constitutional Court only gets candidates who the president, DPR and Supreme Court think are statesmen.

Moreover, the Constitutional Court has made a blunder by allowing for possible conflicts of interest for candidates from political parties who do not have to sever ties with the party several years before becoming a Constitutional Court judge in Constitutional Court Decision No. 1-2/PUU-XII/2014 concerning Review of Law No. 4 of 2014 concerning Determination of Perppu No. 1 of 2013 which amends several provisions of Law No. 24 of 2003 concerning the Constitutional Court (can be called the Perppu on Saving the Constitutional Court). As a result, the MK will likely be flooded with an exodus of politicians who can enter through the doors of the president and the DPR. Of course we can say that the Constitutional Court's decision was wrong, but as soon as it was decided it became binding law. Therefore, efforts to build supporting things so that it does not happen again is an important part. The Constitutional Court is obliged to build it because there are no regulations regarding suppressing this conflict of interest.

Not only institutionally, but personally, Constitutional Court judges must also show an attitude that avoids things that are not appropriate. The persistence of one of the Constitutional Court judges, for example, who visited the Corruption Eradication Committee when Akil was arrested, and even being present at Akil's initial trial can have a double meaning. It could be based on friendship and moral support, but it could also be given another meaning, for example supporting Akil's actions. People would easily think that what was going on between Akil and this MK judge? If it is a matter of friendship and moral support, can it be said that the other seven judges are not friendly and do not provide moral support to Akil if they do not visit Akil? Things that could have been

much more avoidable if moral support did not need to be translated into enthusiasm for coming to Akil.

Shouldn't a good statesman not only think about the romance of his friendship, but should also think about the public's anger at corrupt behavior?

Third, the president and DPR in order to encourage candidates for constitutional justice. Logically, the consequences of pushing for and accepting the Perppu to Save the Constitutional Court, the president and the DPR have accepted that Constitutional Court judges should be selected better by them, including sterilizing them from political parties with at least 7 (seven) years without the smell of a party. When the president offers this idea, and then the DPR collectively accepts it, it should be said that they strongly agree and want to implement it. Even though the MK later canceled it, at least the passion for improvement should still be able to be demonstrated by appointing people who are truly free from party odors and by carrying out a more transparent, accountable and participatory process.

This is where it is strange when they have just accepted and pushed for the substance of the Perppu, but then it is these people who encourage candidates who are still very party-oriented to enter the Constitutional Court. The question is simple, what kind of reflection did they do when initiating or when accepting the perppu? There should be similarities between the thoughts and actions carried out when intending to make a perppu and when accepting it as an effort to 'save the Constitutional Court'. Maybe it's true that what is being discussed by several parties is that the initiation of the Perppu is not legal substance, but is just a political gimmick. Including those who ratify the Perppu into law not based on legal substance considerations, but only political interests.

Fourth, it is this country that must save the regional elections in particular and democracy more broadly. The state is all the components of this country. The party must be improved so as not to make regional head candidates into 'cash cows' to buy 'boats'. Having spent money in advance to buy a boat made them even more brave to spend money in the final process at the Constitutional Court in order to win the contest which had been very expensive to pay from the start.

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Of course the trial process is a good thing. However, another thing that must be managed at this time is how to combine and look at Akil's case in order to create a recipe in the form of a map of improvements and changes. Because without efforts to make a remedy, the second or even third volume of the Akil case could easily be presented to this country. If anything, it will further erode so many aspects of law enforcement and democracy in this country.

The chronology and form of criminal charges in the M. Akil Mo c htar case are categorized on a case by case basis depending on the charge sheet filed against M. Akil Mo c htar. Without a doubt, Akil is facing five charges in different cases.

Supreme Judge Suhadi also said that Akhil Mochtar 's actions could also be classified as a corporate crime because there was a flow of funds from the company and the company could be classified as a legal entity.

As has been explained , the Supreme Court judge also issued a cassation decision. In other words, it strengthens the decision of the Central Jakarta District Court which declared the defendant M. Akil Mochtar legal and proven right. According to the law of guilt he was charged with committing a crime. By committing a criminal act of corruption in Article 12 letter c of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by the Republic of Indonesia Law Number 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts Corruption in conjunction with Article 55 paragraph (1) to (1) of the Criminal Code in conjunction with Article 65 paragraph (1) of the Criminal Code.

On Wednesday, October 2 2013, Akil was arrested at his residence in Jakarta by the Corruption Eradication Commission (KPK) on charges of accepting bribes from regional heads of Gunung Mas Regency, Central Kalimantan, and Lebak Regency, Banten. The following day, the KPK officially identified five other people as suspects. One of these five people is Chairun Nisa, a member of the DPR RI from the party faction Golkar, the Regent of Gunung Mas, Hambit Bintih, Tubagus businessman Chaeri Wardana who is also the younger brother of the Governor of Banten Ratu Atut Chosiyah and the husband of the Mayor of South Tagerang, Airin Rahmi Diani. On October 5,

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

President Susilo Bambang Yudhoyono officially dismissed Akil Mochtar as chairman of the Constitutional Court after holding a meeting with the heads of several high-ranking state institutions (Metrotvnews, 2013).

KPK investigators found drugs and strong medication when searching Akil's office at the Constitutional Court Building. The evidence was immediately submitted and processed by BNN (Kompas, 2013).

In total there are 15 charges of post-conflict regional election bribery and hundreds of billions of rupiah in corruption proceeds which are said to have been laundered by Akil since becoming a member of the DPR. Many records were created. This is the first time that the KPK prosecutor has filed 15 bribery charges against a judge at once. In general, the Corruption Eradication Committee only uncovers one or two bribery cases. Interestingly, the amount of bribes known to the parties amounted to Rp . 57 billion, the highest compared to other alleged bribery cases. Another note that may be interesting is the amount of money that Akil allegedly laundered through corruption proceeds from around 2002 to 2013, when he was still a member of the DPR, namely assets worth IDR 181 billion. It does not match Akil's salary profile at the Constitutional Court or DPR (Datiknews, 2014).

Money laundering offenses are also part of the sentence that Akil Mochtar must bear. In fact, Akil Mochtar was charged with two money laundering laws, the first is the Money Laundering Prevention and Eradication Law Number 8 of 2010. The second is the Money Laundering Crime Law Number 15 of 2002.

B. Role Government in Handle Corruption Akil Mochtar

The government plays an active role in managing the country to achieve community welfare, especially related to the problems faced by Indonesia, and the government must be able to provide solutions and overcome the challenges faced. Corruption is one of the important tasks of the government to resolve and overcome the self-enrichment orientation carried out by the State Apparatus so that it can be minimized or even eliminated.

Police, Attorney, Commission Eradication Corruption (KPK), And The court is an institution that has the authority to eradicate corruption cases. Among these four

institutions, the Corruption Eradication Commission (KPK) has a special role in eradicating corruption cases. It is also possible that certain parties among the four institutions are involved in corruption cases. Because we have to understand that corruption is not personal, but corporate or group. It is unlikely that corruption can be carried out by just one person, there must be other parties too. Accelerate reviews of people involved in corruption cases and cases that deviate from regulations.

The aim of establishing the Corruption Eradication Commission is to increase the efficiency and effectiveness of efforts to eradicate criminal acts of corruption. The Corruption Eradication Committee was formed because of institutions (Police, Prosecutor's Office, Judiciary, Political Parties and Parliament) Things that should prevent corruption do not work, instead they are destroyed and consumed by corruption. The eradication of criminal acts of corruption has not yet been achieved optimally. Therefore, the eradication of corruption must be improved professionally, intensively and continuously. Because corruption has damaged public finances and the national economy and hampered national development. In Indonesia, corruption is so serious that it is classified as an extreme crime.

The fight against corruption must be extraordinary. Therefore, the Corruption Eradication Commission (KPK) was formed with such great authority that it is called a super institution in the legal world. Eradication commissions and courts require greater coordination and synchronization to ensure legal certainty and the possibility of continued irregularities. We must realize that there are opportunities for corruption by public officials in every department.

Conclusions and recommendations

A. Conclusion

Corruption is the unwarranted and unlawful abuse of public trust placed in them by public officials, such as politicians and civil servants, as well as other parties involved in such activities, to obtain unilateral benefits. The underlying causes of corruption are weak law and order, the legal profession, low salaries of staff, and excessive campaign spending to create the perception that money will be recovered through corruption. The

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Akil Mochtar case is the biggest corruption case in Indonesia. The corrupt position of the Chief Justice of the Constitutional Court reflects the leader's irresponsibility. Corruption crimes committed by Constitutional Court judges are considered detrimental to the status of the state. His status as head of the highest government institution, which is considered the 'guardian of the constitution', means that it is a serious punishment that must be imposed. Because, as a public official, he must maintain his legal authority and must not use his position to commit corruption. Therefore, there is a need for a more optimal government role in handling corruption cases in Indonesia.

B. Suggestion

This work was written by the author. I hope this karil is useful for you. Especially to fellow students who study corruption cases. Considering the limitations of this professional writer and editor, if there are errors or mistakes in the writing process, please criticize and suggest as a writer.

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Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

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