ISSN: 0975-833X

Available online at http://www.journalcra.com

International Journal of Current Research
Vol. 10, Issue, 11, pp.75769-75771, November, 2018
DOI: https://doi.org/10.24941/ijcr.33070.11.2018

INTERNATIONAL JOURNAL OF CURRENT RESEARCH

RESEARCH ARTICLE

THE APPLICATION OF LAW IN JURISDICTION IN THE CRIME SETTLEMENT OF TRANSNATIONAL CORRUPTION CRIMINAL IN INDONESIA

***Putu Sunarcaya**

Faculty of Law Udayana University, Bali, Indonesia

ARTICLE INFO

Article History:
Received 14th August, 2018
Received in revised form
17th September, 2018
Accepted 29th October, 2018
Published online 30th November, 2018

Key Words:
Corruption;
Harming the local country;
Transnational offenses.

ABSTRACT

The crime of corruption today is not only done by officials or citizens of a country but also done by foreign nationals who are present in a country to run its business activities that can harm the local country, it is time for Indonesia to anticipate the occurrence of criminal acts that are cross-state by engaging in bilateral agreements be it extradition treaties or mutual legal assistance agreements in the criminal matter with other countries. In addition, in the wider International level, Indonesia is supposed to immediately ratify international treaties that can bring Indonesia to combat corruption crimes.The type of research used for analysis of this journal is using normative legal research. The problem this article is what are the forms of extradition agreements in international cooperation in resolving transnational corruption cases. Transnational crime is difficult to catch but police and other agencies must work together to capture the corruption.

Copyright © 2018, Putu Sunarcaya. *This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.*

***Citation: Putu Sunarcaya*, 2018.** "The application of law in jurisdiction in the crime settlement of transnational corruption criminal in Indonesia", *International Journal of Current Research*, 10, (11), 75769-75771.

INTRODUCTION

Increasing uncontrolled corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. The criminal act of corruption can no longer be classified as a common crime but has become an extraordinary crime. Because conventional methods that have been used proved unable to solve the problem of corruption in the community then in handling also must use extra-ordinary ways (extra-ordinary) (Chaeruddin, 2008, p. 38). The development of science and technology has changed the pattern of community life becomes more dynamic. The interaction of people's lifestyles, no longer limited to the linkup of one country's territory, but has expanded to the scope of the inter-national fusion as the international community. This condition will certainly have implications for the form and type of crime that was previously conventional and individual or limited group, becoming organized crime with organized modus operandi which is increasingly complicated and widespread, its *locus delicti* is no longer in one country, but has spread in various countries (transnational crime). Therefore, efforts to overcome and eradicate corruption is also the effort of all nations in the international world. The international concern is evident from the frequent discussions in various international forums, although with various expressions or titles among others included as a form of Crime as bussines, economic crime, white collar crime, official crime or as a form of abuse of power.

****Corresponding author:*** **Putu Sunarcaya**
Faculty of Law Udayana University, Bali, Indonesia

International cooperation is something that we can not avoid especially the problems that concern the inter-state or the world's problems. Issues concerning the interests of a State against another country that allows two or more countries to create an attachment in togetherness, not apart from the criminal matters committed by one or more citizens who committed crimes in other countries or in other words transnational crime (Andi Hamzah, 2004, p. 32). In response, in Indonesia itself there are two forms of cooperation with other countries in connection with efforts to combat the occurrence of corruption crimes that are cross-country or transnational. The two forms of cooperation are cooperation in the field of extradition and cooperation in the field of mutual assistance in criminal matters or better known as mutual legal assistance (MLA) (Ira Sharkansky, 2006, p. 10). This is very important to be observed given the relationship between the state is limited by the jurisdiction of each country and the sovereignty of a country. So that without the agreements between countries will make it difficult for a country to hunt down the perpetrators of corruption that run away or hide other countries including efforts to hunt for assets of wealth as a result of his crimes. Therefore, there is a strong desire from the government to apply various international agreements in the form of cooperation in order to eradicate corruption, as stated by Mochtar Kusumaatmadja that the eradication of corruption must be increased in order to secure and save the financial and the state's wealth (Mahrus Ali, 2004). In each study should require a method for a study that can be accounted for properly later. This study used normative legal research by employing statute approach, conceptual approach (Dharmawan, 2018, p.

127).According to Abdulkadir Muhammad this normative legal research is a legal research based on or directed to the written law of various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation and article of the article, but it does not underlie the applied aspect of its implementation, normative law research is often called "dogmatic legal research" or theoretical law research (Abdulkadir Muhamad, 2004, p. 101). In this research, the type of approach to the problem in this research will be done with 4 (four) approaches, namely the statue approach, the analytical and conceptual approach, and the comparative approach. In the legislation approach, this legal concept analysis approach is conducted to analyze legal theories and legal concepts related to research on the application of law within jurisdiction in the settlement of transnational corruption crime cases in Indonesia, as well as the comparative approach of this law, laws against laws relating to money laundering to let us know whether within the law the existence of blank norms and ambiguity of the norm.

RESULTS AND ANALYSIS

Application of State Jurisdiction in Settling Transnational Corruption Crime Cases: In independent international relations, all countries have equal positions, have equal sovereignty and can not interfere in the affairs of other countries. The principles of international law are derivations of the principle of *"par in parem non habetliberum"* in international law meaning that the same state of seats in international law has no jurisdiction over other countries. Based on this principle, a country has jurisdiction (Muladi & Barda Nawawi Arief, 2007, p. 112). According to Hans Kelsen the principle *"Par in parem no habetliberum"*implies that first a state does not exercise jurisdiction through its judgment against all other state acts except for the consent of that country. The two international Courts established under international treaties shall not be able to adjudicate a State which does not participate in the treaty and shall not be entitled to assess the validity of another country conducted in its territory. Jurisdiction contains an understanding of the authority or jurisdiction of the state against the person or object and the legal event occurring in his country. It is on this basis that each country will make rules which must be followed up with an agreement with other countries through the form of cooperation. So that every country in finishing transnational crime does not crash into the legal system prevailing in other countries. In exercising the judicial powers of a state against legal subjects that violate its laws and regulations (especially in transnational criminal law) generally countries in the world recognize some principles such as territorial principles, the principle of active nationality, passive nationality and universal principles. This principle is then seen as the basis of the enforcement of criminal law rules against transnational criminal events.

This principle states that a country may enforce its criminal law against its citizens who commit transnational crimes, even if the perpetrator of this crime is within the jurisdiction of another country. Emphasized in this principle are the nationality of the perpetrator not on the *locus delicti* or the victim of a crime. Of course, also respect the legal system of other countries where the perpetrators of the crimes are located (Kimberly Ann Elliot, 1999, p. 53). International law is not limiting but explicitly limits the jurisdiction exercised by a country unless such restriction is determined by international law. But if the exercise of jurisdiction of a country violates the jurisdiction of another country then the country must be able to prove the existence of a violation. In order to avoid violations of jurisdiction, there must be a partnership through an extradition treaty or a mutual crime agreement (MLA).

Constraints to Combating Transnational Corruption

Extradition treaties and mutual assistance agreements in criminal matters or better known as mutual legal assistance (MLA) can not be maximized to be able to touch transnational corruption actors, let alone the assets of criminal proceeds. This is because in the MLA agreement it is more emphasized on the hunt for the perpetrators of corruption, but not entirely to the process of return of assets resulting from his crime (for what people can be brought home, but the assets can not be withdrawn at all). In addition, the extradition treaty states that its execution may withdraw for up to 15 years, but MLA is able to withdraw the assets of corrupt applicants from the date of signature, which is the question why it happened?

Another obstacle is the existence of different legal systems in each country so to be able to apply the results of such cooperation agreement will be hampered when having to make adjustments to the legal system. Moreover, it is certain that every country always wants to take advantage in every international cooperation including in making the agreement both extradition treaty and MLA agreement. This tendency can be felt by the lack of number of international or bilateral agreements concerning extradition and MLA conducted by the state of Indonesia. Evidenced by the existence of four MLA agreements and seven extradition treaties, in its application has not appeared maximum results (Huala Adolf, 2002, p. 133). Another obstacle in the MLA procedure problem is when the central authority is the Minister of Law and Human Rights, so it is certain that there will be formal procedures (administration / bureaucracy) that must be taken by KPK, Attorney and Police. It was not mentioned whether the request for assistance would be immediately proceeded or whether the Minister of Law and Human Rights could first select the request for assistance. This suggests that among the three agencies it is necessary to have a certain agreement at least the same commitment on the importance of requests for assistance. Similarly, the fact with the cooperation agreement in the field of extradition, where Indonesia is always difficult to get the perpetrators of transnational crime even though the state has already made extradition treaty with the state of Indonesia. In addition to the constraints of regulatory and legal system arrangements, it is also a matter of the interests of each country which in this case is protected by the existence of the jurisdiction of the country. And that also must be considered that the provision of extradition of a country also there is a provision to reject the wishes of other countries to extradite. Especially for countries that have not cooperated specifically, it will be very difficult if there is a country's interests against the perpetrators of crime, unless the country has no interest at all with the perpetrators criminals then the horror of the perpetrators can be implemented in accordance with international law such as cooperation international police that is universally applicable. According to Romli Atmasasmita, in his Introduction to the International Criminal Code, in general the constraints in the implementation of this extradition treaty include "Judicial" constraints and "Procedural (Diplomatic)" constraints. Judicial constraints concerning the process of

determination by the courts of the state requested for extradition and require careful proof that require a short time and some conditions that must be met by the extradition requesting country in accordance with the provisions of internationally recognized extradition treaty, while the constraints which is diplomatic in nature is the implementation of extradition treaties which in fact often lead to sensitivity of diplomatic relations between the two countries involved in the implementation of extradition. Each country has its own jurisdiction which of course should not conflict with other state jurisdictions. So every law enforcement effort that involves inter-state must pay attention to jurisdiction factor through mutual adjustments between the two countries or more. Regarding the principle of state sovereignty is definitely to be considered because the sovereignty of the state is an important factor so that any law enforcement process involving other countries does not harm the state's honor and sovereignty. While the different legal systems in each country must be addressed through intensive meetings bilaterally or multilaterally, so that later in the implementation of the field by each law enforcement officers do not collide each other which if it happens it will complicate the investigation of any subsequent transnational crime (Sudarto, 2002). Another constraint is if there is an exception to the process of international agreement through a cooperation between countries or more. An exemption is exempted from the existence of a state that has the power so that it will act arbitrarily against the jurisdiction of another country, while the country can not do much when its interests are disrupted. An example of the existence of an American State of Sertikat who always assumes it is easy to work off the perpetrator not a crime that has harmed his country against the nations even though there is no extradition treaty or MLA with other countries. And on the contrary for a country that happens to be hunting down the perpetrators of criminal acts that are hidden in the United States, it is not as easy as resolved even though the country already has some sort of agreement especially if the country has never made bilateral agreements before (Budhy Munawar Rachman, 1999).

Conclusion

Because the crime of corruption today is not only done by officials or citizens of a country, but also done by foreign nationals who are present in a country to run its business activities that can harm the local country, it is time for Indonesia to anticipate the occurrence of criminal acts that is cross-border by engaging in bilateral agreements whether extradition treaties or mutual legal assistance agreements in criminal matter with other countries. In addition, in the wider International level Indonesia is supposed to immediately ratify international treaties that can bring Indonesia to combat corruption crimes. Indonesia's current corruption is already in a very severe and deeply rooted position in every joint of life. The development of corruption practices from year to year has increased, both from the quantity or the amount of financial losses of the state and in terms of quality increasingly systematic, sophisticated and the scope has been widespread in all aspects of society.

Suggestion

International cooperation in the form of extradition agreements or Mutual Legal Assistance (MLA) with other countries has not been widely expected to be able to resolve various cases of transnational corruption. In theory, we should be optimistic that these two forms of cooperation are the best way to prevent and even eradicate the emergence of transnational corruption, at least enough to provide a solution and an alternative, although there are constraints and obstacles due to different legal systems in each country . Every country in the world should have good faith to make MLA and global extradition so that the perpetrators have no room to escape to create a peaceful world. Indonesia must be more assertive against the crime of corruption and obstacles in its eradication because for the long term if it is not affirmed the Indonesian economy will be destroyed by a handful of corrupt individuals. transnational crime is difficult to catch but police and other agencies must work together to capture the corruption.

REFERENCES

Abdulkadir Muhamad, 2004, *Hukum dan Penelitian Hukum*, Bandung: Citra Aditya Bakti

Andi Hamzah, 2004. “Korupsi di Indonesia Masalah dan Pemecahannya”. Jakarta: Gramedia

Budhy Munawar Rachman. 1999. *Dari Keseragaman Menuju Keberagaman*, Lembaga studipersdanpembangunan, diaksespadasitus: http://www.prasko.com/2012/09/ pengertian-kriminalisasi.html, diaksestanggal 16 Juni 2018.

Chaerudin, 2008, Strategi Pencegahandan Penegakan Hukum Tindak Pidana Korupsi, Bandung: Refika Aditama

Dharmawan, N. K. S., Kasih, D. P. D., Kurniawan, I. G. A., &Samsithawrati, P. A. 2018. The Guiding Principles on Business and Human Rights: National Action Plans Toward Corporation Responsibility. *Hasanuddin Law Review*, *4*(2), 123-145.

Huala Adolf, 2002, Aspek-aspek Negara dalam Hukum Internasional, Jakarta: Raja Grafindo Persada

Ira Sharkansky “*Policy Analisis in Political Science”* dalam William N Dumm, University of Pitsbergh, Editor by Muhadjar Darwin 2006, Yogyakarta : penerbit Hamindita

Kimberly Ann Elliot, 1999, Corruption and the Global Economy (terjemahan), Jakarta: YayasanObor Indonesia

Mahrus Ali, 2011. *Dasar-dasarHukumPidana*. Jakarta: Sinar Grafika, diaksespadasitus: http://handayaniputribungsu. wordpress.com/2012/11/16/hukum-pidana/, diaksestanggal 16 Juni 2018.

Muladi dan Barda Nawawi Arief, 2007, Bunga Rampai Hukum Pidana, Bandung: Alumni

Sudarto, 2002, *Hukumdan HukumPidana*, Bandung Alumni, diaksespadasitus: http://hadzaminfadhlirobby.com/2012/ 02/kebijakan-legislatif-dalam.html, diaksespadatanggal 16 Juni 2018.

****