

The Role of Public Prosecutors in Corruption Crimes Originating from Time Saber Pungli

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Abstract: *Illegal levies are a form of corruption that occurs widely in the public service sector, both at the center and in the regions. The government has formed a Task Force for Clearing Illegal Charges to eradicate illegal levies with the authority to carry out caught in the act (OTT) operations. This study tries to examine the problems: the legal regulations of the illegal levies sweeping task force in carrying out caught red-handed operations, the inhibiting factors for caught red-handed operations and the law enforcement policy for caught red-handed operations in decision number 58/Pid.Sus-TPK/2017/PN MDN. The method used in this study is a normative and empirical research method. The nature of the research is descriptive. The type of data used is secondary data sourced from primary, secondary, and tertiary legal materials. Secondary data was collected using library research techniques and field studies with data collection tools in the form of interviews. Furthermore, these data were analyzed using qualitative analysis. The results of the study indicate that the legal regulations of the task force for sweeping illegal levies in carrying out operations caught in the act have been regulated in Presidential Regulation Number 87 of 2016 and Decree of the Governor of North Sumatra Number 188.44/181/KPTS/2018. Meanwhile, the inhibiting factors encountered were limited funds, facilities, information that was difficult to obtain, lack of community participation, lack of socialization, and cultural problems. Regarding the policy of law enforcement operations caught red-handed in case number 58/Pid.Sus-TPK/2017/PN MDN, an analysis of the chronology of the case, prosecutor's indictment, prosecutor's demands, legal facts, judge's considerations, judge's decision and case analysis was carried out. Based on the analysis of case number 58/Pid.Sus-TPK/2107/PN MDN, there is an inappropriate application of the law. The prosecutor charged the defendant ESS with Article 11. According to the analysis of this case, the defendant should have been prosecuted and decided using Article 12 letter e, namely the crime of extortion.*

Keywords: Illegal Levies, Corruption and Operations Caught Red-Handed

1. Background

The crime of corruption has caused damage in various aspects of the life of the community, nation, and state so that it requires extraordinary handling. In addition to preventing and eradicating criminal acts of corruption, it is carried out continuously and sustainably and needs to be supported by various resources, both human resources and other resources such as increasing institutional capacity and increasing law enforcement that fosters awareness and attitudes of anti-corrupt community actions. Corruption is very detrimental to state finances or the country's economy and hampers national development so that it must be eradicated in the context of realizing a just and prosperous society based on Pancasila and the 1945 Constitution.

In the criminology literature, corruption is a type of crime or white-collar crime committed by people who are perceived by the public as well-known or well-known people, but they are the ones who make people wrong.¹ Seeing the condition of the people's welfare which is still unequal where the elite state administrators earn more than enough, but always try to inflate their coffers both legally and illegally. These actions are common and visible in front of the people who are not educated can think that the act is a category of corruption.²

At the present time, corruption has become a growing culture among the upper and lower classes of society. Moreover, after the implementation of regional autonomy, it was alleged that corruption occurred not only at the central level but also at the regional level and even penetrated to the smallest levels of government in the regions. The more rampant and widespread corruption in all aspects of life is caused by various interrelated causes that cannot be separated from each other and it is difficult to find out which cause triggered it first³

Corruption involves moral aspects, rotten nature and conditions, positions in government agencies or apparatus, abuse of power in office due to gifts, economic and political factors, as well as placing families or groups into service under the authority of their positions. Abuse due to position authority is very visible in the case of bribery or the provision of facilitation payments, is one of the most commendable behaviors.⁴ Pelican money occurs everywhere in the world, sales made, both to governments, large and small companies, and to retail traders, are basically the same, namely people who give orders or large orders expecting and receiving bribes or facilitation money.⁵ One of the criminal acts of corruption that often occurs in everyday life is illegal levies (pungli), in which illegal levies are a

³Surachmin and Suhandi Cahaya, *Corruption Strategies and Techniques*, (Jakarta, Sinar Graphic. 2013), p. viii.

⁴Evi Hartanti, *Second Edition of Corruption Crimes*, (Jakarta, Sinar Grafika, 2007), p.9

⁵SuhandiCahaya and Victor Kristian, *Corporate Crime*, (Jakarta, Allright Reserve, 2013),p. 34

¹Teguh Sulista and Ari Sumetri, *Criminal Law New Horizons Post-Reformation*, (Jakarta, Raja Grafindo Persaja, 2011), p.63

²Evi Hartanti, *op. cit.*, p.6

social phenomenon that has existed in Indonesia, since Indonesia was still in the colonial period and even long before that. However, the naming of the act as an act of extortion was only introduced nationally in September 1977, when Kaskopkamtib, acting as the head of orderly operations together with the Menpan, aggressively launched orderly operations (OPSTIB), whose main target was illegal levies.⁶

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The regulation regarding extortion is regulated in Presidential Regulation Number 87 of 2016 concerning the Illegal Charges Clean Sweep Task Force. This regulation regarding extortion is a form of anticipation of the impact caused by extortion. Extortion is an act that is already familiar to the public. Although in the Criminal Code (KUHP) nothing is found regarding criminal acts of extortion or extortion offenses, but implicitly it can be found in the formulation of corruption in Article 12 Letter e of Law Number 20 of 2001, derived from Article 432 of the Criminal Code which is referred to in Article 1 paragraph (1) letter c of Law Number 3 of 1971, and Article 12 of Law Number 31 of 1999 as a crime corruption, which was later reformulated by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

In the Presidential Regulation of the Republic of Indonesia. Number 87 of 2016, the operation of criminal acts of illegal levies is carried out by a Joint Team formed by the government both at the central and regional levels, from the results of the operation of the joint team through the Yustisi task force (article 3 PERPRES 87 of 2016) recommends whether the operation of the crime of illegal levies is has an aspect of a Corruption Crime or not, the recommendation is submitted to the competent authority (Article 4 PERPRES 87 of 2016), in this recommendation it is very important to have the role or position of the prosecutor in the field of justice to determine whether the illegal levy operations carried out contain aspects of criminal acts of corruption that can be delegated or brought to the prosecution level (articles 1 points 6 and 7 of the Criminal Procedure Code), and to avoid any differences in perception between the operations team and the competent agency in this case investigators.

Against perpetrators of Corruption Crimes with the mode of carrying out illegal levies (Pungli) when law enforcement efforts are carried out by applying the provisions of Article

⁶ Halim. Corruption Eradication. (Jakarta. Rajawali Press. 2004). p. 46.

⁷ Eddy Mulyadi Soepardi, Understanding State Financial Losses as One Element of a Corruption Crime, (Yogyakarta, Ghalia Indonesia, 2009), p. 3.

12 letter e of Law 12 letter e of Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crimes as amended and added to the Law in Law of the Republic of Indonesia Number 20 of 2001, but in practice the Public Prosecutor has difficulty in proving the existence of an element of coercion committed by perpetrators of criminal acts. The obstacles and difficulties faced have made law enforcement officers who handle cases of Corruption Crimes with the mode of committing illegal levies (Pungli) have to think more critically to make breakthroughs in layering new articles that are suspected of being perpetrators, no longer limited to Article 12 letter e as mentioned above.

Corruption uses a systematic mode and technique, the consequences of which are parallel crimes and damage the entire system of life, both in the economic, political, socio-cultural and even to the moral and mental damage of the community.⁸The damage to the economic life system is detrimental to the state, which can disrupt the country's economy. The state in this case does not only concern the state within the scope of the Central Government, but also concerns the Regional Government, this happens because it cannot be denied, that power both at the center and in the regions tends to be easier to corrupt (Power tends to corrupt) but absolute power corrupts absolutely.⁹which means that power tends to corrupt, but excessive power results in excessive corruption as well. The practice of extortion is a form of corruption, generally carried out by parties who have important positions in government, including by public service implementers.¹⁰

Corruption in terms of abusing one's position, authority and power to enrich oneself or others in a way that is against the law so that it can harm state finances or the state economy. Perpetrators of criminal acts of corruption hold a position or position. Then the position or position automatically has authority. Thus the abuse of authority, opportunities and facilities that exist because the position or position uses the authority, opportunity or means attached to the position or position occupied by the perpetrator of a criminal act of corruption for other purposes than the purpose of granting the authority, opportunity or means.¹¹ There are three impacts that will be caused by the extortion. First, extortion that occurs in agencies and institutions will disturb and burden the community. Second, in the context of the business world, it can also affect the investment climate. People who want to invest in Indonesia, but with this extortion disorder, where every time they manage something becomes complicated, it will take a long time if they are not given tribute and this can reduce the interest of investors. Third, the rampant extortion will affect the decline in the authority of the law.¹²

⁸Mien Rukmini, Aspects of Criminal Law and Criminology, (Bandung, Alumni, 2010), p. 111.

⁹Romli Atmasasmita, Around the Problem of Corruption, National Aspects and International Aspects, (Bandung, Mandar Maju, 2004), p. 75.

¹⁰Eddy Mulyadi Soepardi, op.cit, hlm. 3.

¹¹E. Setiadi, Criminalization of Policies and the Operation of Criminal Law, (Bandung, Bandung Islamic University, 2010), p. 4.

¹²Eddy Mulyadi, op.cit, p. 4

Criminal acts of corruption can only be carried out by people who have the character of civil servants. In order for a crime committed by civil servants to be called a crime of office, the crime must be carried out by the civil servants concerned in carrying out their respective duties.¹³ Crimes committed by unscrupulous civil servants, civil servants as state servants and public servants who are fully loyal and obedient to Pancasila, the 1945 Constitution of the Republic of Indonesia, the State and the government in carrying out government and development tasks and are obliged to maintain unity and the unity of the nation in the Unitary State of the Republic of Indonesia.

Every perpetrator who is proven to have committed a criminal act of corruption, especially the crime of illegal levies committed by civil servants must be held accountable for his actions before the law, in accordance with the provisions of the law. Every citizen is obliged to uphold the law, however, in everyday reality there are citizens who neglect/deliberately do not carry out their obligations to the detriment of society, it is said that these citizens violate the law because their obligations have been determined by law.

A person who violates the law must be held accountable for his actions in accordance with the rule of law.

Based on literature research, research related to illegal levies has been carried out by several authors including:

- 1) Wahyu Ramadhani, with the title of research on Law Enforcement in Overcoming Illegal Charges on Public Services,¹⁴ the Face of Services in Indonesia "still looks bad, there are still many things that need to be improved regarding service problems to the public. By using this study using an empirical juridical approach, it is known that the general picture of services in Indonesia is still tainted by illegal levies, convoluted services, unfriendly service providers and corrupt practices that are still often found.
- 2) Mino Putramin Hasibuan, with the research title, Criminal Liability for Illegal Charges in Corruption Crimes (Study of the Medan District Court Decision No. 121/PID.SUS/TPK/2017, using normative juridical research research methods it is known that basically the criminal responsibility system is the main requirement that must be met to convict someone who commits a criminal act. Accountability in criminal law is based on the principles of criminal law. In criminal law, a person can be held criminally responsible if the person has fulfilled 3 (elements) namely mistakes, ability to take responsibility and there is no excuse for forgiveness. Mistakes are the basis for criminal liability.¹⁵
- 3) Ramadhani with the title Analysis of the Effect of

¹³PAF Lamintang and Theo Lamintang, Special Offenses for Occupational Crimes and Crimes in Certain Positions as Corruption Crimes, (Jakarta, Sinar Graphic, 2011), p. 1

¹⁴Wahyu Ramadhani, Law Enforcement in Tackling Illegal Charges on Public Services, Samudra Justice Law Journal, Volume 12, Number 2, July-December 2017, p. 263

¹⁵Mino Putramin Hasibuan, Criminal Liability for Illegal Fees in Corruption Crimes (Study of the Medan District Court Decision No. 121/PID.SUS/TPK/2017, Journal, University of North Sumatra, Medan, p. 106

Illegal Levy Activities on Freight Forwarding Truck Transportation Costs (Case Study of PT. RodaMustikaJayaTbk).¹⁶

The purpose of this study is to see the optimization of law enforcement in tackling illegal levies (extortion) so that the government hopes to establish professional, modern, reliable law enforcement can be realized. The data used in this study is primary data which is a qualitative research. The analytical method used for this research is empirical juridical and the analytical tool used is Library Research. The result of this study is that the position of the community is very vulnerable to being victims of illegal fees because of their low bargaining power. People are "forced" to hand over additional money due to the absence of an effective supervisory agency to force bureaucrats who often carry out illegal levies. The public also does not get a bona fide complaint agency because of the low public trust in the image of the bureaucrats. In addition, public complaints often do not get an adequate response from the inspectorate as an internal supervisor Presidential Regulation of the Republic of Indonesia. Number 87 of 2016 concerning criminal acts of illegal levies essentially aims to fix overlapping/convoluted rules regarding licensing in the business world carried out by stakeholders in other words simplification of licensing services, therefore not all criminal acts of illegal levies must followed up with sentencing or entering the aspect of corruption (article 3 and article 4 of the Presidential Regulation of the Republic of Indonesia No. 87 of 2016).

Based on the circular letter of the attorney general of the republic of Indonesia number B-2479/F.3/Ft.111/2017 which explains that because the evidence of the money confiscated is small, it is included in the extortion case in a general criminal case so that it is transferred to the district court for trial, but by the court The country was rejected and asked to be tried in a corruption court because extortion has been included in a corruption case.

The settlement of cases of criminal acts of corruption in accordance with their jurisdiction is carried out by the District Attorney as an authorized institution in the field of prosecuting cases of criminal acts of corruption, this is regulated in Article 137 of the Criminal Procedure Code where the public prosecutor is authorized to prosecute anyone accused of committing a criminal act within his jurisdiction. by delegating the case to a court of competent jurisdiction.

Thus, pre-prosecution is the authority of the public prosecutor to give instructions to investigators in the context of completing the case file. The implementation of the pre-prosecution in the investigation process is:¹⁷ (1) The investigator shall notify the commencement of the investigative action. In Article 109 paragraph (1) it is stated

¹⁶Ramadhani, Analysis of the Effect of Illegal Levy Activities on Freight Forwarding Transport Expeditionary Trucks (Case Study of PT. Roda Mustika Jaya Tbk), Journal of the Islamic University of Indonesia Yogyakarta, 2019, p. 12

¹⁷Leden Marpaung, Criminal Case Handling Process, (Jakarta, Sinar Graphic, 1992), p 12

that "In the event that the Investigator has started to investigate an event which constitutes a criminal act, the Investigator shall notify the Public Prosecutor of the matter". Based on the article, the investigator should notify the public prosecutor that the status of the investigation has been upgraded to an investigation.

Since the investigator has started to carry out an investigative action, the investigator concerned is obliged to immediately notify the public prosecutor of the commencement of the investigation, which is commonly called the Notification of the Commencement of Investigation (SPDP) accompanied by attachments in the form of a Police Report/Complaint Letter and an Investigation Order. After receiving the SPDP from the investigator, the Head of the District Attorney assigns one or several Public Prosecutors to follow the progress of the investigation and examine the case files resulting from the investigation in accordance with the laws and regulations and the administrative provisions of special criminal cases by issuing a warrant for the appointment of a public prosecutor to participate in the investigation. progress of investigation of corruption cases (P.16). After carrying out the investigative action, the investigator must complete the investigation process in accordance with the provisions of the Criminal Procedure Code and delegate the case file to the Prosecutor's Office if the investigation has been deemed sufficient and complete.

The crime of illegal levies in addition to the three cases handled, this crime has actually happened very often before, but to carry out law enforcement efforts there are still several obstacles, namely the high level of service uncertainty as a result of long and tiring service procedures which are the cause of the increasing number of illegal levies. people who give up on public services, so it is the people themselves who cause illegal levies. This is one of the factors that causes people to tend to be more tolerant of the practice of illegal levies.

Based on this background, the authors are interested in conducting research with the title The Role of the Public Prosecutor in the Crime of Corruption, which begins with the Crime of Illegal Fees.

1.1 Formulation of the problem

Based on the background above, the authors formulate the problem in this study as follows:

- 1) What is the role of the public prosecutor in completing the files for criminal acts of illegal levies in corruption crimes?
- 2) How is the prosecution process in uncovering aspects of criminal acts of corruption that begin with illegal levies?

1.2 Research Purposes

The objectives of this research are as follows:

- 1) Knowing and analyzing the role of the prosecutor in the process of proving corruption, which began with illegal levies.
- 2) Knowing and analyzing the role of prosecutors in prosecuting corruption crimes that began with illegal

levies.

1.3 Benefits of research

Based on the background and problems and objectives to be achieved, it is hoped that this research can provide the following benefits:

1) Theoretical Benefits

Theoretically, this research can contribute to the development of legal science and broaden the author's horizons for the application and development of the studied legal science.

2) Practical Benefits

Practical Benefits The results of this study are expected to provide information on thoughts about the role of prosecutors in prosecuting criminal acts of corruption that begin with illegal levies.

2. Theoretical and Conceptual Framework

2.1 Theoretical Framework

a) Criminal Theory

The theories of punishment are directly related to criminal law in a subjective sense. Because these theories explain the basics of the state's right to impose and carry out a crime. Approximately after the 19th century, emerging theories of renewal regarding the purpose of punishment. These theories are retaliation theory, goal theory, and combined theory. Jan Rummelink said that apart from the three theories, he also mentioned the covenant theory.

By nature, it is natural that someone who commits a crime will receive back the appropriate response, against such natural provisions, the individual is considered to have submitted to the basis of the authority of the authorities to impose a crime on the contract between the individual and the state. Often it is constructed as a social contract. For example, Fichte argues that through the crime he commits, a criminal breaks the contract which is the basis of his attachment as a member of society. In that way he breaks with society, so that he no longer has rights or peace. In such a view, crime is a privilege by which citizens buy back their membership (in society) and end their status without rights (as non-citizens). However, before the emergence of these theories, previously there were two main schools, namely the flow of retributivism and the flow of utilitarianism.

Stream of Retributivism

This school justifies the law on the basis that the convicted person deserves to be punished for a proven mistake, which he consciously committed. This flow has a weakness, in the form of not being able to believe socially that every punishment will bring positive consequences to society.

Utilitarianism

This school justifies punishment on the basis of the principle of expediency, namely that punishment will have a positive impact on society. The weakness of this theory is that it cannot admit that the punishment is solely due to one's fault and that the punishment is commensurate with retribution.

The conflict between the two theories is not resolved. Legal philosophers believe that there must be a middle way, namely in the form of a merger between the two. H.L.A:Then

there are three reform theories regarding sentencing, namely:

The Theory of Retaliation (Absolute)

The theory that emerged at the end of the 18th century requires that every act against the law must be retaliated. The purpose of the crime as retaliation in general can create a sense of satisfaction for people by imposing a punishment commensurate with their actions. Retaliation in the imposition of a criminal has two directions, namely:

- Aimed at the culprit (subjective angle of retaliation);
- Aimed at fulfilling the satisfaction of feelings of resentment among the people (objective angle of retaliation).
- There are several kinds of basis or reasons for consideration of the necessity for the holding of retaliation, namely:

From God's point of view

This view is shared by Thomas van Aquino, Stahl, and Rambonet. According to this view, law is a rule that is rooted in God's rule which is revealed through the state government as God's representative in the world. Therefore, the state is obliged to maintain and implement the law by retaliating in kind for every violator of the law.

b) From an ethical point of view

This view comes from Immanuel Kant, who is known as the "de ethischevergeldings theory". Based on this view, according to the ratio, each crime must be followed by a crime. Imposing a criminal is something that is demanded by ethical justice, which is an ethical requirement. The state has the right to impose and carry out crimes in the context of fulfilling these ethical demands.

c) From the Dialectical Mind Realm sudut This view comes from Hegel

According to him, absolute punishment must exist as a reaction to every crime. Law and justice are a reality (these). If someone commits a crime, it means that he is denying the fact of the existence of the law (anti these). Therefore, it must be followed by a crime in the form of injustice against the perpetrator (synthese) to return it to justice or the law to uphold (these).

d) From an aesthetic point of view

This view comes from Herbart, who is known as the "de aesthetica theory". According to this theory, if the crime is not repaid it will cause a sense of dissatisfaction in society. In order for satisfaction to be achieved, from an aesthetic point of view, it must be repaid with an appropriate punishment.

e) Goal Theory (Relative)

Based on the stance and the principle that the rule of law needs to be considered, as a result the purpose of the crime is to prevent the occurrence of crime. Criminal law is a tool to enforce order (law) in society, and to enforce order

requires acriminal.

To achieve the goal of public order, the crime has three types, namely: a. Frightening (afschrikking); b. Corrective (verbetering/ reclasering); c. It is destructive (onechadelijkmaken). This theory is divided into two, namely:

f) General Prevention (Preventie General)

Pure in nature, all theories of punishment must be aimed at scaring everyone from committing a crime, by carrying out criminal acts that are on display. This theory was widely adopted by countries in Western Europe before the French Revolution (1789-1794). However, later this theory was widely opposed, including by Beccaria (1738-1794) and Von Feuerbach (1775-1833).

Beccaria wants the death penalty and torture, which are cruelly carried out, to be abolished and replaced with crimes that pay attention to humanity. The punishment in the form of suffering should not exceed the suffering caused by the actions of the convicted perpetrator. Meanwhile, Von Feuerbach with his theory "psychologischezwang", stated the frightening nature of the crime, not in the imposition of a crime but in the rules of criminal threats that are known to the general public. Criminal threats can cause psychological pressure or influence for everyone to be afraid to commit a crime. This theory reappears on the principle of legality, because it was Von who issued the phrase "nullumdelictum, nullapoena sine praevialegepoenali". However, this theory has several weaknesses, namely: For perpetrators who have or several times committed crimes and are sentenced and live them, the feeling of fear of the criminal threat becomes little or even disappears. The pre-determined criminal threat may not be in accordance with the crime committed. Because it is so difficult to determine in advance the limits of the severity of the punishment that is threatened, so that it is in accordance with the actions that are threatened with the crime.

Against people or criminals who are petty (stupid) or who do not know about the criminal threat, then the nature of fear becomes weak or does not exist at all. The weakness of this theory has resulted in the emergence of a general prevention theory that focuses on the nature of fear in imposing concrete crimes by judges on perpetrators, which was pioneered by Muller. With the aim of giving fear to the perpetrator, the judge is allowed to impose a sentence whose severity exceeds the severity of the criminal threat. This means that other perpetrators will be shocked and then become aware that their actions can be subject to more severe penalties.

g) Special Prevention (Preventie Special)

Aims to prevent the bad intention of the perpetrator (dader) from repeating his actions or preventing the violator from carrying out the evil he planned. This goal can be achieved by imposing a criminal, which there are three kinds, namely: frighten him; Fix it, and make it helpless The proponent of this theory is Van Hamel (1842-1917), who holds that general prevention and retaliation should not be the goal and reason for the imposition of a criminal, but that retaliation will arise automatically as a result of the crime and not the

cause from crime.

Van Hamel makes a description of punishment that is special preventive in nature, namely, Criminal is only for special prevention, namely to frighten people who can be prevented enough by scaring them through the imposition of the punishment so that they do not commit their evil intentions; If it can no longer be intimidated by the imposition of a crime, then the sentence must be able to improve itself (reclaring); If it can no longer be corrected, then the criminal imposition must be destructive or render it powerless; The sole purpose of the criminal is to maintain the rule of law in society.

h) Combined Theory

The objections to the theory of retaliation and the theory of purpose gave birth to a third theory which is based on the idea that punishment should be based on the objectives of the elements of retaliation and maintaining order in society, which is applied in combination by focusing on one of its elements without eliminating the other elements. as well as on all existing elements.

Vos explained that in the combined theory there are three schools, namely, a theory that focuses on retaliation, a theory that focuses on the rule of law, and a theory that considers the two equal.

i) A theory that focuses on revenge

The supporter of this theory is Pompe, who holds the view that crime is retaliation against the perpetrator, as well as to maintain the rule of law, so that the public interest can be saved and protected from crime. Punishment of a retaliatory nature can be justified if it is useful for the defense of order (law) in society. Meanwhile, Zevenbergen believes that the meaning of every crime is retaliation, but has the intention of protecting the legal order. Because the crime is to restore and maintain obedience to the law. Therefore, a new sentence is imposed if there is no other way to maintain the legal order.

- A theory that focuses on the rule of law to the proponent of this theory, Thomas Aquino, the basis of the crime is the general welfare. For the existence of a crime, there must be an error on the part of the perpetrator, and the error (schuld) is only found in acts that are carried out voluntarily. The retaliatory nature of the criminal is a general nature of the crime, but it is not a criminal goal, because the purpose of the crime is the defense and protection of public order.
- Combined Theory: The combined theory that emphasizes the same between retaliation and the protection of the interests of society its adherents are De Pinto. Furthermore, Vos explained, because in general a crime must satisfy the community, criminal law must be structured in such a way as a just criminal law, with the idea of retaliation that cannot be ignored either negatively or positively. Meanwhile, Simons uses the idea that in general prevention lies in the threat of punishment, and in special prevention lies in the nature of the criminal being frightening, repairing and destroying and then absolutely the punishment must be adjusted to the legal awareness of members of the community.

The criminal system and criminal structure in WvSNederlandse are influenced by the flow of special prevention. This is as stated by Pompe in Handboekv.h. Ned. Strafrecht 1959. Contrary to the opinion of Hazewinkel Suringa, he stated that WvSNederlandse had a compromise goal. According to the literature on the Criminal Code (Law No.1 of 1946) by looking at the system and composition that has not changed from the main legal material (WvS Ned.) it can be said to have a criminal objective with a compromising flow or combined theory covering all aspects that develop in it.

In Indonesia, the purpose of sentencing is never explicitly regulated in the criminal law, but in the Draft Criminal Code it can be found, namely: Preventing the commission of criminal acts by enforcing legal norms for the protection of the community; Carry out corrections to convicts and thereby make them good and useful people, and able to live in society;

3. Theory of Proof

Proof in a criminal case is different from proof in a civil case. In proving a criminal case (criminal procedural law) is aimed at finding the material truth, namely the true or actual truth, while proof in a civil case (civil procedural law) is aimed at seeking formal truth, meaning that the judge must not exceed the limits proposed. by the litigants. So the judge in searching for the formal truth is enough to prove it with "preponderance of evidence", while the criminal judge in seeking the material truth, then the incident must be proven (beyond reasonable doubt).

- Proof in language (terminology), according to the Big Indonesian Dictionary is a process of action, a way of proving, an attempt to determine whether the defendant is right or wrong in a court session.
- In this case, evidence is one of the important elements in criminal procedural law which determines the guilt or innocence of a defendant in a trial.

According to Martimanrodjohamidjojo, that proof is containing the intent and effort to state that the truth is an event, so that it can be accepted by reason for the truth of the event. In criminal procedural law, the procedure of proof is in the context of seeking material truth and the Criminal Procedure Code which establishes the stages in seeking the true truth, namely through:

- Investigation
- Prosecution
- Examination in court
- Implementation, observation, and supervision So that the procedure of proof is only one phase or procedure in the implementation of the criminal procedural law as a whole as regulated in the Criminal Procedure Code.¹⁸

According to J.C.T. Simorangkir, that proof is "an effort from the authorities to present to the judge as many things as possible relating to a case with the aim that it can be used by the judge as material for making decisions such as this case". Meanwhile, according to Darwan, that proof is "proof

¹⁸Martiman Prodjohamidjojo, System of Evidence and Evidence Tools, (Jakarta: Ghalia, 1983), p. 12

that it is true that a criminal event has occurred and it is the defendant who is guilty of doing it, so they must be held accountable for it.¹⁹

According to SudiknoMertokusumo, using the term prove, by giving meaning, as follows²⁰

- a) The word prove in a logical sense, meaning to give absolute certainty, because it applies to everyone and does not allow any other evidence.
- b) The word prove in the conventional sense, namely proof that provides certainty, only not absolute certainty but relative or relative certainty, its nature has stages:
 - Certainty based on mere feelings, this certainty is intuitive and is called conviction in time.
 - Certainty based on reasoning is called conviction rationale.
 - The word prove in a juridical sense, namely evidence that gives certainty to the judge about the truth of an event that occurred.

The law of evidence is part of the criminal procedural law which regulates various types of evidence that are legal according to the law, the system adopted in proof, the requirements and procedures for submitting the evidence and the authority of the judge to accept, reject and evaluate a proof. The sources of legal evidence are as follows: a. law b. Doctrine or teachings c. Jurisprudence²¹.

The power of proof in criminal procedural law lies in Article 183 of Law Number 8 of 1981 concerning the Criminal Procedure Code, which reads: a judge may not impose a crime on a person unless with at least two valid pieces of evidence he obtains the belief that a crime has been committed. actually happened and that the defendant is guilty of doing it.” Based on this provision, a judge in deciding a criminal case must be based on at least two valid pieces of evidence. Otherwise, the defendant cannot be sentenced for his actions.

According to AndiHamzah, the theory in the proof system is as follows:

- a) System or theory based on the law in a positive way (positive wettelijkbewijstheorie)
- b) System or theory of evidence based on the judge's belief only (conviction in time)
- c) A system or theory of evidence based on the judge's belief on logical grounds (laconvictionraisonnee)
- d) Negative system or theory of evidence based on law (negative wettelijkbewijstheorie)

The further discussion of the four theories in the criminal procedural law evidentiary system, as explained by criminal law experts, is as follows:

- a) Proof according to the law is positive (positive wettelijkbewijstheorie). According to Simons, that the system or theory of proof is based on the law in a

positive way (positive wettelijkbewijs theory), to get rid of all subjective judgments of judges and bind judges strictly according to strict evidentiary rules²²

- b) Evidence based on the judge's conviction only (conviction intime) It is a proof in which the processes to determine whether or not the defendant is guilty are solely determined by the judge's assessment of the conviction. A judge is not bound by the various types of evidence available, the judge can use the evidence to gain confidence in the guilt of the accused, or ignore the evidence by only using the beliefs concluded from the testimony of witnesses and the confession of the defendant²³.
- c) Evidence based on the judge's belief logically (conviction raisonnee) That a proof that emphasizes the belief of a judge based on clear reasons. If the conviction in time proof system gives a judge the breadth without any restrictions on where the belief comes from, while the conviction raisonnee proof system is a proof that limits a judge's belief, it must be based on clear reasons. The judge is obliged to describe and explain for each of the reasons what constitutes his belief in the guilt of a defendant²⁴.
- d) Negative proof based on the law (negative wettelijkbewijstheorie) This is a mixture of positive conviction rationale and the legal proof system. The formulation of this evidentiary system is, whether or not a defendant is wrong is determined by the judge's conviction based on methods and with valid evidence according to the law²⁵.

The legal evidence as stipulated in article 184 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code, namely as follows: a. Witness testimony b. Expert statement c. Letter d. Instructions e. Defendant's statement The five pieces of evidence have the same evidentiary power in criminal proceedings.

there is no difference between each of the evidence from each other. The order as regulated in the article is only the order as in the trial examination.

4. Law Enforcement Theory

In law enforcement, corruption does not see any differences in status, be it rank, position, type of case and so on. This is in accordance with the principle of equality before the law (all are seen as equal before the law) which is always upheld by law enforcers.

Law enforcement is the process of carrying out efforts to enforce or actually function legal norms as a guide for actors in traffic or legal relations in social and state life. Law enforcement is an effort to realize the ideas and legal concepts that are expected by the people to become a reality²⁶. Law enforcement is a process that involves many

¹⁹Andi Sofyan, Criminal Procedure Code An Introduction, (Jakarta: Prenadamedia group. 2014), p. 242.

²⁰Ibid, p. 242.

²¹Hari Sasongko and Lili Rosita, Law of Evidence in Criminal Cases for Students and Practitioners, (Bandung: Mandar Maju, 2003), p. 10

²²Andi Sofyan, op.cit, p. 245

²³Tolib Effendi, Basic Laws of Criminal Procedure (Developments and Updates in Indonesia), (Malang: Setara Press, 2014), p. 171

²⁴Ibid, p.171

²⁵Ibid, p.171

²⁶ShantDellyana, The Concept of Law Enforcement,

things. Law enforcement is an attempt to bring the ideas of justice, legal certainty and social benefits into reality. So law enforcement is essentially a process of embodiment of ideas.

Shant cites Joseph Goldstein's opinion, distinguishing criminal law enforcement into 3 (three) parts, namely²⁷:

- 1) Total enforcement, namely the scope of criminal law enforcement as formulated by the substantive law of crime. Total enforcement of criminal law is not possible because law enforcers are strictly limited by the criminal procedure law, which includes the rules for arrest, detention, search, confiscation and preliminary examination. Besides, it is possible that substantive criminal law itself provides limitations. For example, a complaint is required in advance as a condition for prosecution of complaint offenses (klachtdelicten). This limited scope is referred to as the area of no enforcement.
- 2) Full enforcement, after the total scope of criminal law enforcement is reduced by the area of no enforcement in law enforcement, law enforcers are expected to enforce the law to the fullest.
- 3) Actual enforcement, according to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the necessity of discretion and the rest is what is called actual enforcement.

In a systemic process, the enforcement of criminal law manifests itself as the application of criminal law (criminal law application) which involves various structural sub-systems in the form of the police, prosecutors, courts and prisons. This includes, of course, legal advisory bodies. In this case the application of the law must be viewed from 3 dimensions:

- 1) The application of law is seen as a normative system, namely the application of the entire rule of law that describes social values supported by criminal sanctions.
- 2) The application of law is seen as an administrative system (administrative system) which includes the interaction between various law enforcement officials who are the sub-judicial system above. The application of criminal law is a social system, in the sense that in defining a criminal act, various perspectives of thoughts that exist in society must also be taken into account.

Based on Soerjono Soekanto's theory of law enforcement, the factors of law enforcement or better known as law enforcement are²⁸:

- 1) The legal factor itself, namely the prevailing laws and regulations in Indonesia.
- 2) Law enforcement factors, namely the parties that form and apply the law.
- 3) Factors of facilities or facilities that support law enforcement.
- 4) Community factors, namely the environment in which

(Yogyakarta, Liberty 1988), p 32

²⁷Ibid, p. 39

²⁸Soerjono Soekanto, Factors Affecting Law Enforcement, (Jakarta, Rajawali Pers, 2008), p. 21.

the law applies or is applied.

- 5) Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.

Law enforcement of criminal acts of corruption is a crime that is very detrimental to society and the state, and does not show any decline but continues from time to time both in regional and central governments. In addition to the above theory, a theory that explains the role of social structural factors in supporting the emergence of crime is also used, namely²⁹:

Criminology is the science that studies crime. According to Topo, the name criminology was discovered by P. Topinard (1830-1911), a French anthropologist. Literally criminology comes from the word "crimen" which means crime or criminals and "logos" which means science, so criminology can mean the science of crime or criminals.³⁰

To find out the factors that cause corruption, abuse of authority in government positions, the author uses the theory put forward by Abdul Rahman Khaldun which states that the main cause of corruption is the desire to live in luxury in the ruling group or the ruling group which causes economic difficulties³¹. This gives rise to unlimited abuse of power. There are 4 (four) factors that encourage someone to commit acts of corruption, according to Gone Theory, among others³²:

- a) Greed (Greeds)
Greed here is a greedy behavior that is potentially in everyone
- b) Opportunity
Of course, in this case, it greatly influences someone to commit corruption. Without opportunity, one cannot commit corruption.
- c) Needs
Relating to the factors needed by individuals to support a normal life.
- d) Disclosures (exposures)
Relating to the actions or consequences faced by the perpetrators of fraud if the perpetrators are found to have committed fraud.

Corruption is related to power because with that power it can abuse authority for personal, family, or cronies interests. It can be emphasized that corruption always starts and develops in the government (public) sector and state-owned companies. With tangible evidence with that power, public officials and state-owned companies can suppress or extort people who need services from the government or state-

²⁹Romli Atmasmita, Theory and Capita Selecta Criminology, (Bandung, PT. Repika Aditama, 2010), pp. 23-49.

³⁰Topo Santoso and Eva Achjani Zulfa, Criminology, (Jakarta, Rajawali Pers, 2012), p.24

³¹Rohim, Modus Operandi of Corruption Crimes, (Jakarta, Pena Multi Media, 2008), p.4.

³²Eddy Mulyadi Soepardi, Role of BPKP in Handling Cases with Indications of Corruption Procurement of Consultancy Services for Government Agencies, Jakarta, 22 June 2010 downloaded from <http://www.inkindo-jateng.web.id/wp-content/uploads/Seminar/06.pdf> dated November 10, 2019

owned enterprises. Starting from this, law enforcement of corruption crimes committed by officials is not an easy matter to do, this is related to the procedures for investigating corruption cases involving officials and also the government administration system that prioritizes confidentiality and secrecy.

The provisions of the law require the need for permission from the competent authority before conducting an examination of certain state officials. The background and consideration of the provisions of the law that regulates inspection permits, among others, are to maintain the authority, dignity and position of state officials in carrying out their duties. This provision provides different treatment (discrimination) between certain state officials and ordinary citizens, so that it is not in accordance with the principle of equality before the law and is contrary to the 1945 Constitution and other statutory provisions.

The principle of equality before the law (equality before the law) is a key element of the conception of human rights, which must be implemented in tandem with the principle of a fair trial. These two principles are interrelated and become a benchmark for upholding human rights³³. Equality before the law must be enforced within the framework of a democratic rule of law to uphold and protect human rights³⁴.

When a state official has to face a legal process, either as a witness or as a suspect, he must be treated equally, regardless of his economic status, position or position. This provision is also not in accordance with the principle of a quick and simple trial. A person suspected of being involved in a criminal act must immediately receive an examination in order to provide legal certainty to the person concerned, and the investigation of the case proceeds smoothly. However, to examine an official is certainly not easy, this can happen if there is a refusal from the official and the refusal can come formally from the authorized official for the permit submitted by the investigator. The form of refusal to grant a permit is carried out by not issuing an inspection permit for a long period of time without clear reasons. The length of the grace period for issuing permits without a definite time limit and the length of the bureaucratic flow of filing for examination permits affect the course of investigations of criminal acts of corruption. The delay in granting permission from the authorized official has resulted in delays in the examination of the person concerned, so that in the end the settlement of the alleged corruption case involving the official is also delayed or even unable to proceed."

5. Conceptual Framework

To facilitate and prevent misunderstandings below will be explained some concepts, namely:

³³OC Kaligis, Occupational Crime in the Integrated Justice System, (Bandung, Alumni, 2014), p. 47

³⁴Surachmin and Suhandi Cahaya, Principles and Principles of State Administration Law, (Jakarta, Gema Yudistia Indonesia Foundation, 2010), p. 93

1) Role

Role is defined as a set of behavior that is expected to be owned by people who are domiciled in society. Position in this case is expected as a certain position in society that may be high, moderate or low. Position is a container whose contents are certain rights and obligations, while these rights and obligations can be said to be roles. Therefore, someone who has a certain position can be said to be a role occupant. A right is actually an authority to do or not to do, while an obligation is a burden or a duty³⁵.

Role is a dynamic aspect of the position (status) owned by a person, while status is a set of rights and obligations that a person has if someone performs the rights and obligations in accordance with his position, then he carries out a function. In essence, the role can also be formulated as a series of certain behaviors caused by a certain position. A person's personality also affects how that role should be carried out. The role played is essentially no difference, whether played/played by top, middle or lower level leaders will have the same role.

Sociologically, the role is a dynamic aspect in the form of actions or behavior carried out by someone who occupies or holds a position and carries out the rights and obligations according to his position. If a person performs this role well, he will naturally expect that what is carried out is in accordance with the wishes of his environment. The role in general is the presence in determining a process continuity³⁶.

According to Soerjono Soekanto³⁷, the role is a dynamic aspect of position (status), if a person carries out his rights and obligations according to his position, then he carries out a role. From the above, we can see another opinion about the role that has been previously defined as the normative role. As a normative role in relation to the duties and obligations of the transportation service in law enforcement, it means total law enforcement, namely full law enforcement³⁸.

The role is a dynamic of static or the use of parties and obligations or is called subjective. A role is defined as a task or assignment to a person or group of people. The role has the following aspects³⁹.

- The role includes the norms associated with the position or person in society. Role in this sense is a series of rules that guide a person in community life.
- Role is a concept of things that can be done by individuals in society as an organization.
- Role can also be defined as individual behavior that is important to the social structure of society.

2) Authority

Authority is defined as the power to make decisions, govern, and delegate responsibility to others; functions that may not

³⁵ R. Sutyo Bakir, Complete Dictionary of the Indonesian Language, (Tangerang: Karisma Publishing Group, 2009), p.348

³⁶Soerjono Soekanto, Sociology An Introduction, (Jakarta: Rajawali Press, 2002), pp. 242

³⁷ Ibid, p. 243

³⁸ Ibid, p. 220

³⁹ Ibid, p. 242

be performed⁴⁰.

Authority is what is called formal power, power comes from legislative power (given by law) or from executive administrative power. Authority, which usually consists of several powers, is power over a certain group of people or power over an area of government⁴¹.

In the literature of political science, government science, and law, the terms power, authority, and authority are often found. Power is often equated with authority and power is often used interchangeably with the term authority, and vice versa. Even authority is often equated with authority. Power usually takes the form of a relationship in the sense that "there is one party who rules and the other is ruled" (the rule and the ruled)⁴².

Authority is what is given by law, while authority is only about a certain "onderdeel" (part) of authority. Within the authority there are powers (rechtsbevoegdheden). Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions (bestuur), but includes authority in the context of carrying out tasks, and providing authority and the distribution of the main authority is stipulated in the legislation⁴³.

Juridically, the notion of authority is the ability given by legislation to cause legal consequences.

6. Research Methods

6.1 Approach Type

- This study uses a normative juridical approach. Research with a normative juridical approach, namely research on legal principles carried out on legal norms in society, which is a benchmark for behavior. Such research can be carried out on primary legal materials and secondary legal materials as well as tertiary legal materials containing legal norms. Not all articles in a legislation contain legal norms, there are articles that only provide limitations or definitions, for example those that are usually determined in the chapter on general provisions in a legislation.⁴⁴
- This legal research is also called library research or document study because this research is mostly carried out on secondary data in the library such as existing theories and expert opinions which aim to find and get answers to the main problems that will be discussed in more detail⁴⁵. carry on. Such literature research can also be said to be the opposite of empirical research (field

research).

- This research uses a conceptual approach method. Conceptual approach (conceptual approach)⁴⁶, this approach is carried out because there are no or no legal rules for the problems at hand, this conceptual approach departs from the views and doctrines that develop in the science of law, thus giving birth to an understanding of law and legal principles. relevant to the problem at hand.

6.2 Nature of Research

The analytical perspective is knowing the actual facts or circumstances, it will guarantee the correctness of the decisions taken in the face of a case or moral dilemma. When a discussion is conducted to solve a problem or case, the analysis of facts and needs occupies a central position. This means that moral decision-making can only be carried out based on facts. Systematic analysis of purpose, consequences and causal general relations also emerges as a central issue in the discussion. Arguments gain an important position.

6.3 Data Source

The type of data in this study is data obtained from library materials. Data collection is done by studying documents relevant to this research in the library and identifying existing data or cases. The data obtained through the literature research will then be sorted in order to obtain articles and be related to the problems being faced and systematized so as to produce a classification that is in line with the problems in this research. Furthermore, the data obtained will be analyzed inductively qualitatively to arrive at conclusions, so that the main problems studied in this study can be answered⁴⁷.

The data sources and data collection techniques are by carefully tracing legal and library materials obtained through library research or documentation studies.

Secondary data include:

- Primary legal materials, namely: Law no. 3 of 1971 concerning the Crime of Corruption. Law No. 28 of 1999 concerning the Implementation of a Government that is Clean and Free of Corruption, Collusion and Nepotism. Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law no. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Law No. 30 of 2002 concerning the Corruption Eradication Commission. Law No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003) Becomes Law, Law no. 8 of 1981 concerning the Criminal Procedure Code, Law no. 2 of 2002 concerning the Indonesian National Police and Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.
- Secondary legal materials, namely: materials that

⁴⁰Ibid, p. 713

⁴¹Prajudi Atmosudirjo, State Administrative Law, (Jakarta, Ghalia Indonesia, 2001), p. 78

⁴²Miriam Budiardjo, Fundamentals of Political Science, (Jakarta, Gramedia Pustaka Utama, 1998), p. 35-36

⁴³Ibid, p. 78

⁴⁴Roni Hanitijo Soemitro, Legal Research Methodology and Jarimetry, (Jakarta, Ghalia Indonesia, 1998), p. 15

⁴⁵Soerjono Soekanto, Introduction to Legal Research, (Jakarta, UI-Press, 1986), p. 45.

⁴⁶Johnny Ibrahim, Normative Legal Research Theory & Methodology. (Bayumedia Publishing, Malang, 2007), p. 306

⁴⁷Ibid, p.195-196

provide an explanation of primary legal materials, such as: the results of seminars, or other scientific meetings even personal documents or opinions from legal experts relevant to this research.

- d) Testier legal materials, namely: supporting legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, such as general dictionaries, theses, dissertations, scientific journals, newspapers and articles free from the internet.

6.3.1 Method of collecting data

This research was conducted in an effort to find secondary data (library), namely legal materials that are binding on the issues to be studied consisting of primary legal sources, secondary legal sources and tertiary legal sources. Bibliography search to obtain legal materials in the form of books of scientific works of law scholars related to research. According to Suryabrata⁴⁸, library research is an effort to obtain data from literature searches, laws and regulations, court decisions, articles, journals, and other sources relevant to the research. With library research, data are collected, read, and study library materials related to the title and research problems.

6.3.2 Data analysis method

Lexy J Moleong stated that content study is a research methodology that utilizes a set of procedures to draw valid conclusions from a document and then draw a conclusion so that the main problems studied and studied in this study can be answered⁴⁹.

Data analysis was carried out in a qualitative descriptive manner, namely the selection of theories, principles, norms, doctrines and articles in the most important laws relevant to the problem. Creating a systematic from these data so that it will produce a certain classification in accordance with the problems discussed in this study. Qualitatively analyzed data will be presented in the form of a systematic description, then all data are selected, processed and then expressed descriptively so that they can provide solutions to the problems in question.

Secondary data and primary data as in descriptive analytical research with a normative juridical approach, then the data analysis is carried out qualitatively, meaning that the data that has been obtained is compiled systematically and completely and then analyzed qualitatively, so it does not use statistical formulas⁵⁰.

7. Writing System

To facilitate the writing of the thesis, the author divides it into 5 chapters consisting of:

- Chapter I. Introduction consists of Background, Problem Formulation, Research Objectives,

⁴⁸SumandiSuryabrata, Research Methodology, (Jakarta, PT. Raja Grafindo Persada, 1998), p. 16

⁴⁹Lexy. J. Moleong, Quantitative Research Methodology, (Bandung, PT. Remaja Rosda Karya, 2000), p.163

⁵⁰Ibid, p. 61

Thinking Framework, Research Methods, Approach Methods, Research Specifications, Data Research Techniques, Data Analysis Methods, Research Authenticity and Writing Systematics.

Chapter II. The literature review

Consists of illegal levies, causes of external levies on the definition of criminal acts of corruption, Corruption Crimes Policy, Law Enforcement of Corruption Crimes and Investigation of Corruption Crimes.

Chapter III. The research method

Consists of research type, research nature, research data sources, primary legal materials, secondary legal materials, tertiary legal materials, data collection methods and data analysis methods.

Chapter IV. The Role of Public

Prosecutors in Illegal Charges in Corruption Crimes This chapter answers the first problem, namely the role of the public prosecutor in perfecting the file for illegal levies in corruption crimes and the second problem, namely the prosecution process in uncovering aspects of criminal acts of corruption that began with illegal levies. .

Chapter V. Closing consists of conclusions from research results and suggestions that can be given related to the problems studied.

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