

The Law Enforcement of Corruption Crime Abuse of Hospital Medical Devices by State Civil Apparatus

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Article Info

Article history:

Received Maret 2023

Revised Maret 2023

Accepted Maret 2023

Kata Kunci:

Korupsi, Kesehatan, Polisi dan
Kejaksaan.

Keywords:

Corruption, Health, Police, and
Attorney.

ABSTRAK

Penelitian ini bertujuan untuk mengetahui (1) Kebijakan Hukum Pidana Korupsi terhadap Penyalahgunaan Alat Kesehatan Rumah Sakit oleh Aparatur Sipil Negara. (2) Peran pemerintah dalam penindakan tindak pidana korupsi penyalahgunaan alat kesehatan rumah sakit yang dilakukan oleh aparatur sipil negara. Penyusunan tesis ini menggunakan pendekatan hukum empiris, dimana penulis melihat hukum dalam arti sebenarnya dan mengkaji bagaimana hukum bekerja dalam masyarakat. Dengan penelitian ini disimpulkan bahwa: Peran hukum pidana dalam menangani tindak pidana korupsi berupa penyalahgunaan alat kesehatan rumah sakit yang dilakukan oleh aparatur negara terdapat dalam Pasal 8, 9, 10, 11, 12, 12B, dan Pasal 23 UU Tipikor (yang mengadopsi Pasal 421, 422, 429, dan Pasal 430 KUHP). Tindak pidana korupsi bagi pegawai negeri dan/atau penyelenggara negara merupakan tindak pidana korupsi yang hanya dapat dilakukan oleh orang yang memenuhi syarat sebagai pegawai negeri atau penyelenggara negara. Peran aparat penegak hukum dalam penegakan tindak pidana korupsi penyalahgunaan alat kesehatan rumah sakit diawali dengan penyampaian laporan yang berasal dari perorangan, organisasi masyarakat dan lembaga swadaya masyarakat, lembaga negara dan lembaga pemerintah, serta laporan informasi dari internal kepolisian, yang kemudian akan dilakukan proses penyidikan dengan dibantu pihak kepolisian dan Kejaksaan Agung. Apabila berkas perkara yang diserahkan oleh penyidik dianggap lengkap dan perkara tersebut dapat dituntut oleh penuntut umum, maka penuntut umum kemudian membuat surat dakwaan.

ABSTRACT

This study aims to determine (1) the Corruption Criminal Law Policy on the Misuse of Hospital Medical Devices by State Civil Apparatuses. (2) The role of the government in prosecuting corruption crimes involving the misuse of hospital medical devices carried out by state civil apparatus. The preparation of this thesis uses an empirical legal approach, in which the author looks at law in its real sense and examines how the law works in society. With this research, it is concluded that: The role of criminal law in dealing with criminal acts of Corruption in the form of abuse of hospital medical devices committed by the state apparatus is contained in Articles 8, 9, 10, 11, 12, 12B, and Article 23 of the Corruption Law (which adopted Articles 421, 422, 429, and Article 430 of the Criminal Code). Corruption for civil

servants and state administrators is a criminal act that can only be committed by people qualified as civil servants or state administrators. The role of law enforcers in the enforcement of corruption crimes in the abuse of hospital medical devices begins with the submission of reports originating from individuals, community organizations and non-governmental organizations, state institutions and government institutions, and information reports from the internal police, which an investigation process will then carry out with the assistance of the police and the Attorney General's Office. If the case file submitted by the investigator is deemed complete and the public prosecutor can prosecute the case, then the public prosecutor makes an indictment.

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1. INTRODUCTION

It is common knowledge for legal academics, law students, and even law enforcers in Indonesia that the legal system currently in use is a legal system that has a legal positivistic view, in the sense that in enforcing the rule of law, it always refers to the context of what written rules form the text of the law, and that is what must be implemented without the need to consider whether the laws and regulations to be applied are fair or not. Law as an embodiment of values implies that its presence is to protect and promote values upheld by the community. For him, the law is a well-organized and orderly set of rules that binds society. And Plato began to propose the rule of law as an alternative to a better system of government with his concept of a state of justice that is run based on written norms or laws. Every sovereign country must have legal provisions to regulate national and state life. Consisting of engaging in the implementation of a global order based on freedom, perpetual peace, and social justice; defending the whole Indonesian country and all of Indonesia's bloodshed; advancing public welfare; educating the population; and;

Indonesia is a constitutional state where all disputes will be settled through the legal system to provide justice and advantages for all Indonesians. There are so many corruption cases in Indonesia that are stacking up, and some of this is because the rules controlling Corruption are not very tough, making it rather commendable if it is withdrawn. How can Corruption not slowly and systematically exploit and seize forcibly the rights that should be obtained by the people for their welfare and prosperity, instead using them to enrich themselves to demonstrate greed in their own country?

The criminal Corruption that has taken place so far has delayed national progress, which necessitates high efficiency, in addition to costing the government money or harming the nation's economy. Internal reasons for Corruption in Indonesia also heavily rely on moral character and personal integrity. The society's attitude toward corrupt activities is the primary factor contributing to Corruption in Indonesia. Generally, what is widely reported and known by the public is

Corruption committed by government officials such as governors and mayors. Still, the times demand that all fields, both technology and the health sector, experience significant developments.

What is the role of law enforcement in taking action against criminal acts of Corruption in the form of abuse of hospital medical devices carried out by the State Civil Apparatus? How is the criminal law policy applied in dealing with criminal acts of Corruption in the form of hospital medical device abuse carried out by the State Civil Apparatus?

2. RESEARCH METHODS

It is clear from the issue formulation and the research goals that the sort of study employed in the creation of this thesis was empirical legal research. The authors of this study used a statutory method in which they looked at all laws and rules associated with the legal issues under consideration. Study and examine the relevant rules and regulations to determine a logical ratio and ontological foundation for their creation. Data collection techniques for primary data in this study were carried out using documentation studies. In contrast, the research tools used in this research were library studies or document studies on library materials. A data search was carried out by searching for legal materials in the literature or the internet.

3. DISCUSSION

3.1 Criminal Law Policy in Handling Corruption Crimes in the Form of Misuse of Hospital Medical Devices by State Civil Authorities

Criminal law procedures for handling corrupt crimes committed by the State Civil Apparatus involve exploiting hospital medical equipment. So immoral things develop, funds that should have been allocated for people's welfare are corrupt, and now there are also health funds that should be intended for corrupt health services and facilities. There were at least 107 instances of Corruption in purchasing medical devices handled by law enforcement authorities over five years, with a loss worth IDR 543 billion. According to Article 28 H of the 1945 Law, the legal foundation for health insurance is that every person has the right to social security, which enables their ability to support themselves, as well as the right to live in physical and spiritual prosperity, have a place to call home, and receive health services. Everyone has the right to facilities and special treatment to obtain equal opportunities and benefits for equality and justice.

The results of ICW's monitoring of Corruption in the health sector in 2010–2016 found 219 cases of health corruption. State losses and bribes from these cases reached IDR 890 billion and IDR 1.6 billion, with 519 suspects being named. Meanwhile, the highest-corrupt object during 2010–2016 was still the Medical Devices Fund (Alkes). There were at least 107 cases with a state loss of IDR 543.1 billion related to this fund corruption case. There are at least five institutions that become the locus of Corruption. These agencies are the Health Service with 97 issues, the Hospital with 89 points, the Ministry of Health with 12 cases, the Regional Population and Family Planning Agency (BKKBD) with seven topics, and the DPRD with five instances. Meanwhile, North Sumatra and West Java provinces became the regions with the most corruption cases, with 36 and 15 issues, respectively.

Of the 519 suspects, civil servants (PNS) dominate as corrupt actors. 56.8 percent, or 295 people, have PNS or State Civil Apparatus (ASN) status. ICW also noted that at least two ministers of health, one governor, five regents, one mayor, one deputy mayor, six directors, and employees of BUMN and BUMD were involved in corruption cases in the health sector. These facts are not encouraging. Health is a fundamental right that the state must provide. This obligation is clearly stated in the Constitution of the Republic of Indonesia. The budget has been misused when the health

budgets, both the APBN and APBD, have increased yearly. As a result, the health programs provided are ineffective.

ICW notes that there are several causes of Corruption in the health sector. One of them is poor health budget management. Disclosure of procurement documents is still low, as are violations of laws and regulations, especially in procurement procedures. In addition, the corruption cases that have occurred show that bureaucratic reform is still not adequate. This can be seen from the involvement of echelon 1 to echelon 4 officials in corruption cases. These cases also show the lack of integrity possessed by public officials.

1. The amount of political pressure (political financing) makes the health budget prone to Corruption. This happens because political actors in government use the health budget as a source of political funding.
2. Poor health governance Transparency is still low, especially regarding openness regarding procurement documents (KAK, HPS, technical specs, contracts, BATS, etc.)—violation of laws and regulations, especially procurement procedures, and lack of public participation.
3. Bureaucratic reform has also not been effective because there are still many echelons (1–4) involved in corruption cases. Pressure from superiors (state administrators) on ASN and integrity remains low.
4. The government's internal control and internal control system have not been effective.

Discipline violations are defined as "any words, writings, or actions of civil servants who do not comply with obligations and violate the prohibition of civil servant disciplinary provisions, whether carried out inside or outside working hours," according to Article 1 Number 3 of PP No. 53 of 2010. According to Article 7 paragraph 1 of PP No. 53 of 2010, "mild disciplinary penalty; moderate disciplinary punishment; and severe disciplinary punishment" will be applied if ASN violates one of the particular provisions in Articles 3 and 4 of those documents.

Then, more particularly, it is only logical that the disciplinary punishment takes the form of dishonorable dismissal because the crime of Corruption is directly tied to offenses related to the office. According to the standards of the ASN Law before the Constitutional Court's decision No. 87/PUU-XVI/2018, Article 87, paragraph 4, letter b, states that "PNS is dishonorably discharged because they are sentenced to prison or confinement based on a court decision that has permanent legal force for committing a crime of rank, a crime related to office, or a general crime." When an ASN is held as a suspect in a crime, in addition to receiving an examination by the police and adequate initial proof, they will be temporarily discharged from custody. Those subject to temporary dismissal for government officials who have been found guilty of Corruption based on court judgments with permanent legal effect will later be liable to a dishonorable discharge. This complies with the ASN Law's Article 87, paragraph 4, letter b.

Laws Number 31 of 1999 and Law Number 20 of 2001 concerning Criminal Acts of Corruption list the elements of Corruption in Article 2 paragraph (1), which reads: "Any person who unlawfully commits an act of enriching another person or a corporation that can harm the state's finances or the country's economy shall be punished with life imprisonment or imprisonment for a minimum of four (four) years and a maximum of twenty (twenty) years and a fine of at least Rp. 200,000." Corruption is a crime that involves intentionally hurting the economics and finances of a nation to profit oneself.

Only those competent to serve as civil servants or state administrators are permitted to engage in the criminal conduct of Corruption for polite employees and state administrators. In other words, the illegal conduct was explicitly created for state employees or administrators. The Corruption Law defines this civil servant offense in Articles 8, 9, 10, 11, 12B, and Article 23. (Which adopted Articles 421, 422, 429, and Article 430 of the Criminal Code). This corrupt act is a component of a crime of office, also known as a crime of a particular office. While this happens, general office offenses are included in the Criminal Code's Chapter XXVIII, Book II, and aren't changed into crimes of Corruption.

There are two different sorts of crimes under Law No. 31 of 1999 and Law No. 20 of 2001 about Amendments to Law No. 31 of 1999 on the Eradication of Corruption Crimes, namely primary and supplementary crimes. Articles 2 through 16 of Law No. 20 of 2001, which amends Law No. 31 of 1999 about eradicating corruption crimes, and Law No. 31 of 1999 concerning consuming corruption crimes. The part played by law enforcement in stopping corrupt behavior that takes the shape of State Civil Apparatus exploitation of hospital medical equipment.

3.2 The Role of the Government in the Enforcement of Corruption Crimes in the Abuse of Hospital Medical

Devices Carried Out by State Civil Apparatuses

Law enforcement officials, in this case, the police, must locate the conduct or the start of the act being committed before implementing an investigation method. The Standard Operational Procedure for Public Complaints About Allegations of Corruption contains regulations. As opposed to this, Government Regulation Number 71 of 2000, covering Community Involvement in the Eradication of Corruption Crimes, has set forth the guidelines for implementing community participation and presenting rewards for preventing and eradicating criminal acts of Corruption.

To encourage public engagement in campaigns to end criminal acts of Corruption, the Directorate of Corruption Crimes (Dittipidkor) Bareskrim Polri offers several options for reporting, including:

1. Submission of reports on alleged corruption crimes (TP Corruption) directly;
2. Submission of information on suspected corruption crimes not now by post, email, facsimile, or SMS;
3. Submission of reports on alleged corruption offenses from other directorates within the scope of Bareskrim Polri

The handling of reports on suspected corruption crimes from the public by the Dittipidkor Bareskrim Polri is mainly carried out for:

1. Receive information on alleged Corruption and check the completeness of the report;
2. Verify reports of suspected Corruption, namely checking whether statements received from the public constitute Corruption or not;
3. Sort, develop, collect materials and information, and carry out case building on the report before proceeding to the investigation stage;
4. Determine the most appropriate follow-up if public reports are not followed up on with investigations or investigations;
5. Continuing the study's findings, which are deemed to have satisfied the investigator's preliminary evidence on the alleged corruption crime,

The parties at the Dittipidkor Bareskrim Polri who were directly involved in handling the alleged corruption crime report were:

1. The Community Complaints Unit (Dumas) Dittipidkor Bareskrim Polri is the central system that handles reports of alleged corruption crimes from the public.
2. The Dittipidkor Bareskrim polari's Operations Section (Bag Ops) is the controller of the implementation of investigations and investigations at the Directorate of Corruption Crimes;
3. The Planning and Administration Section (Bag Renmin) uses Dittipidkor Bareskrim Polri as a support system for handling documents relating to submitting reports on alleged corruption crimes.

The source of the alleged corruption crime report that will be handled is:

1. Individual;
2. community organizations and non-governmental organizations;
3. State institutions and government institutions;
4. Internal police information reports

Then, from the incoming report, it is processed following applicable operational standards, which will then be explained as to whether the information is the beginning of an alleged criminal act of Corruption in the health sector. If it is known that the report submitted is precise and detailed and alleges an illegal act of Corruption, it will be escalated to the investigation process.

A. Inquiry

To ascertain whether or not an investigation may be conducted per the procedure outlined in the Criminal Procedure Code, the analysis is a sequence of investigative acts to search for and identify an incident suspected of being a crime.

I referred to the Regulation of the Director of Corruption Crimes Number 2 of 2013 About the Investigation in the police investigation procedure. The execution of which is carried out by investigators at the Directorate of Corruption Crimes (Dittipidkor) Bareskrim Polri, that the Investigation of Corruption is fundamentally a component of law enforcement activities in the context of eliminating Corruption. For the implementation of investigations into criminal acts of Corruption to take place in an appropriate, systematic, and effective manner, a Standard Operating Procedure (SOP) that governs the procedure of investigating criminal acts of Corruption carried out by Investigators of the Dittipidkor Bareskrim Polri is necessary.

The operations that fall within the purview of this standard operating procedure include pre-investigation planning, investigation execution, administration, monitoring, control, and post-investigation activities. By speaking with relevant persons directly, investigators can coordinate with connected authorities (LKPP, BPKP, BPK, etc.) with the case under Investigation. At the same time, initial coordination with specialists can be carried out depending on the kind of suspected corruption case in this Investigation into purchasing commodities.

1. Goods and services procurement expert for government agencies: LKPP
2. Goods procurement technical expert (if needed):
 - a) Land acquisition: BPN, appraisal (price estimator);
 - b) procurement of ships;
 - c) aircraft procurement;
 - d) Procurement of medical/laboratory equipment: BPPT Technology Audit Center;

- e) procurement of vehicles;
- f) Procurement of research and technology

If the occurrence included a corrupt act, a probe would be carried out to ascertain if the Dittipidkor Bareskrim was in charge. Polri or Polda Ranks; if the event weren't a crime other than a corruption offense, the National Police Bareskrim Dittipideksus, Police Bareskrim Dittipidter, or Police Bareskrim would get the information.

B. Investigation

The Investigation is a set of investigative steps used following the guidelines outlined in the Criminal Procedure Code to discover the suspect and gather evidence on what happened.

1. INVESTIGATION PREPARATION
 - a) issuing a police report (LP)
 - b) preparation of an investigation plan
2. Implementation of the Investigation
 - a) NOTICE OF THE BEGINNING OF AN INVESTIGATION
 - b) Summary and Examination
 - c) ARREST
 - d) DETENTION
 - e) SEARCH
 - f) FOR EFFICIENCY
 - g) COORDINATION
 - h) Investigation Technical Assistance
 - i) CASE DEGREE
 - j) Investigation advancement
 - k) RECONSTRUCTION
 - l) PRE-TRIAL
 - m) Settlement and Submission of Case Documents
 - n) Delivery of cases
 - o) JOINT INVESTIGATION
 - p) supervision and control

In terms of coordination, the investigation process is carried out in collaboration with various parties, including:

1. Public Prosecutor
2. BPK/BPKP
3. Corruption Eradication Commission
4. as well as related government institutions or government agencies.

Investigations into Corruption may not always get to the prosecution phase. An investigation termination order is issued if any of the elements are not supported by evidence or if there are legal grounds for forgiveness because the nature of the offense is not established (SP3). Suppose the Investigation is concluded and evidence has been gathered about the crime that took place as a consequence of the inquiry. In that case, the Investigation's findings are documented in the case file.

The inquiry will go on to the prosecution phase if the case under Investigation is well-supported by the available evidence. Typically, a presentation is given before the decision to escalate

an issue to the prosecution stage or DISP3. This presentation made clear the Investigation's conclusions. It is advised that concise information has been provided before being exposed to assist the presentation's attendees in quickly grasping the Investigation's findings. Each component and every piece of amassed evidence may be seen this way.

Suppose the public prosecutor does not provide the inquiry's findings within seven days or notify the investigator that the case file is finished earlier than that. In that case, the Investigation is considered to be completed. The public prosecutor will create an indictment and then conduct a prosecution based on the Investigation's results if the inquiry is finished and the file is given to them.

C. Prosecution Stage

The public prosecutor should issue an indictment as soon as feasible after receiving the case file from the investigator and concluding that it is comprehensive and ready for prosecution. The Criminal Procedure Code defines prosecution as "the act of the public prosecutor to transfer a criminal case to the appropriate district court in issues according to the procedure provided in this Law with a request that is considered by a judge in court," as stated in Article 1 Point 7 of the code. A "public prosecutor" is a prosecutor with the power to bring charges, according to Article 13 of the Criminal Procedure Code.

The public prosecutor reviews the case file received from the investigator before drafting the indictment; if it lacks information, the prosecutor sends it back to the investigator for completion. When the public prosecutor receives entire case files from the investigators, they are promptly assessed to see if they satisfy the criteria for being sent to the court. The public prosecutor can take two actions regarding the case file: either prosecute or drop the case.

4. CONCLUSION AND SUGGESTION

Conclusion

The Corruption Law's Articles 8, 9, 10, 11, 12, 12B, and Article 23 deal with the use of hospital medical equipment for illegal purposes. These corruption crimes are committed using the State Civil Apparatus (which adopted Articles 421, 422, 429, and Article 430 of the Criminal Code). Only those competent to serve as civil servants or state administrators are permitted to engage in the criminal conduct of Corruption for polite employees and state administrators.

The submission of reports by individuals, community organizations, non-governmental organizations, state institutions, and government institutions, as well as information reports from the internal police, is the first step in law enforcement's role in enforcing corruption crimes against the abuse of hospital medical devices. This is followed by an investigation and investigation process with the help of the police and the attorney general's office. The public prosecutor then issues an indictment if the investigator's case file is accepted as complete, and the public prosecutor may pursue the matter.

Suggestion

It is better if the criminal sanctions in Law Number 20 of 2001 concerning the eradication of corruption crimes and the administrative sanctions in Law Number 5 of 2014 concerning state civil apparatus and Government Regulation Number 94 of 2001 concerning the discipline of civil servants are intensified so that they become a deterrent factor for civil apparatus. The state commits acts of Corruption. In carrying out enforcement, it is hoped that the Police and the Attorney General's Office will work together well to establish good relations, and the law enforcement process related to Corruption in the Health sector in Indonesia is optimal.

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