RINGKASAN

ASAS KELAYAKAN DALAM PENYELESAIAN PERKARA TINDAK PIDANA KORUPSI YANG BERSIFAT RINGAN DI LUAR PERSIDANGAN

Ahmad Hajar Zunaidi

Persoalan ironi keadilan, yang sering dinyatakan dengan kalimat hukum tumpul ke atas namun sangat tajam ke bawah, bukan hanya terkait disparitas sanksi pidana yang dijatuhkan, pelaku tindak pidana yang bersifat ringan dipidana dengan sangat berat, sedangkan pelaku tindak pidana yang berat dipidana dengan pidana yang ringan, namun juga terkait proses penyelesaian perkara tersebut. Tindak pidana yang bersifat ringan diselesaikan dengan mekanisme yang sama seperti tindak pidana yang berat, adalah salah satu bentuk ironi keadilan. Untuk mengurangi persoalan ironi keadilan tersebut, beberapa negara telah mengembangkan berbagai mekanisme penyelesaian perkara di luar persidangan untuk perkara-perkara yang bersifat ringan.

Pasal 82 KUHP memungkinkan penyelesaian perkara pidana di luar persidangan namun hanya untuk tindak pelanggaran saja, sehingga untuk mengadopsi mekanisme penyelesaian perkara tindak pidana di luar proses persidangan bagi perkara tindak pidana korupsi, masih ada beberapa persoalan yang dikaji dalam penelitian ini, antara lain sebagai berikut :

1. Filosofi penyelesaian perkara tindak pidana korupsi yang bersifat ringan di luar persidangan.

2. Pengembangan asas kelayakan (*expediency)* sebagai landasan penyelesaian perkara tindak pidana korupsi yang bersifat ringan di luar persidangan.

Tipe penelitian disertasi ini adalah penelitian yuridis normatif karena penelitian ini difokuskan untuk mengkaji dan menemukan filosofi mekanisme penyelesaian perkara pidana di luar persidangan dalam penanganan perkara tindak pidana korupsi, dasar pendapat bahwa tidak semua delik korupsi adalah *extraordinary crime,* dan pengembangan asas *expediency* berupa kebijakan dan perwujudan normanya dalam sistem peradilan pidana, serta kriteria-kriteria tindak pidana korupsi yang dapat diselesaikan dengan mekanisme penyelesaian di luar proses persidangan. Pendekatan masalah yang digunakan untuk memahami dan menemukan jawaban atas permasalahan-permasalahan dalam penelitian ini adalah pendekatan perundang-undangan (*statute approach*), pendekatan konsep (*conceptual approach*), pendekatan perbandingan (*comparative approach*), dan pendekatan kasus (*cases approach*).

Hasil penelitian ini menunjukkan bahwa solusi atas persoalan ironi keadilan karena tindak pidana korupsi yang bersifat ringan harus diselesaikan dengan mekanisme yang sama seperti tindak pidana korupsi yang tergolong *extraordinary crimes* adalah dengan menerima asas kelayakan yang mewajibkan penuntut umum untuk benar-benar memperhitungkan apakah kepentingan publik masih menghendaki adanya penuntutan terhadap pelaku, apabila harus dilakukan penuntutan maka mekanisme yang layak dengan sifat ringannya tindak pidana korupsi adalah mekanisme penyelesaian perkara pidana di luar persidangan.

Dengan demikian, salah satu perwujudan asas kelayakan adalah mekanisme penyelesaian perkara pidana di luar persidangan.

Analisis *ontological* penyelesaian perkara tindak pidana korupsi ringan di luar persidangan menunjukkan bahwa hakikat mekanisme penyelesaian perkara korupsi ringan di luar persidangan adalah norma-norma hukum pidana formil yang diterima oleh masyarakat dan diwujudkan dalam bentuk kelembagaan secara resmi dalam suatu sistem yang secara rasional sangat koheren dan mampu memenuhi kebutuhan standar tertib ideal manusia untuk mencapai keadilan. Mekanisme penyelesaian perkara korupsi ringan di luar persidangan dapat diterima sebagai suatu sistem yang secara rasional sangat koheren mampu memenuhi kebutuhan standar tertib ideal manusia untuk mencapai keadilan karena mekanisme tersebut menyederhanakan dan mempercepat penjatuhan sanksi pidana dalam penyelesaian suatu perkara korupsi ringan secara adil melibatkan semua kepentingan para pihak yakni pelaku, korban, dan masyarakat. Makna dibalik ide atau pemikiran mekanisme penyelesaian perkara korupsi ringan di luar persidangan adalah nilai moralitas yang terkandung di dalam mekanisme penyelesaian perkara tindak pidana korupsi ringan di luar persidangan yakni nilai kasih sayang (*compassion)* serta nilai adil dan baik (*the equitable and the good* atau *aeguum et bonum*). Nilai moral *compassion* tersebut mendasari dan masuk dalam mekanisme penyelesaian perkara tindak pidana korupsi ringan di luar persidangan melalui norma-norma pasal yang mengatur tentang percepatan dan penyederhanaan proses penyelesaian perkara yang menghindarkan pelaku pelaku dari stigma negatif. Selain itu, korban dan masyarakat juga dapat merasakan

manfaat kebaikan melalui pelaksanaan poin-poin kesepakatan secara cepat dan sederhana dalam pelaksanaan penyelesaian perkara pidana di luar persidangan. Nilai moral adil dan baik (*the equitable and the good* atau *aequum et bonum*) juga menjadi dasar dan masuk dalam mekanisme penyelesaian perkara tindak pidana korupsi ringan di luar persidangan melalui norma-norma pasal yang mengatur penambahan jenis sanksi pidana yang dapat digunakan sehingga sesuai dengan kesalahan pelaku dan kepentingan korban dan masyarakat secara luas sehingga tercipta keadilan dan kebaikan bagi semua pihak. Analisis *epistemological* menunjukkan bahwa mekanisme penyelesaian perkara tindak pidana korupsi ringan di luar persidangan sebagai suatu entitas memiliki dasar kebenaran hakikatnya sebagai suatu mekanisme yang penuh dengan nilai-nilai manfaat dan secara rasional koheren untuk memberikan keadilan, dan mekanisme penyelesaian perkara tindak pidana korupsi ringan di luar persidangan yang lahir dan tersusun dalam hubungan sosial yakni lahir dari persoalan ironi keadilan dalam kebijakan pidana pemberantasan tindak pidana korupsi, dapat diketahui kebenarannya berdasarkan keselarasan tujuan mekanisme penyelesaian perkara tindak pidana korupsi ringan di luar persidangan dengan asas kelayakan (*expediency principle*), asas oportunitas, asas peradilan cepat, sederhana, dan biaya ringan, dan asas *ultimum remedium*, dan relevan pula dengan pemikiran *restorative justice*. Berdasarkan analisis *axiological*, maka dapat disimpulkan bahwa berbagai nilai manfaat mekanisme penyelesaian tindak pidana korupsi ringan di luar persidangan adalah menjamin kelayakan sanksi pidana dan hukum acara pidananya dengan tingkat kesalahan pelaku, mengurangi *overcriminalization,* dan mempersingkat

proses penanganan perkara. Selain itu, mekanisme penyelesaian tindak pidana korupsi ringan di luar persidangan juga memiliki nilai manfaat mengurangi beban sistem peradilan pidana dan mengefektifkan penggunaan anggaran.

Karakteristik tindak pidana korupsi ringan yang dapat diselesaikan dengan mekanisme penyelesaian perkara pidana di luar persidangan adalah kecilnya nilai tindak pidana korupsi, keterlibatan pejabat publik atau politisi yang berpengaruh, modus tindak pidana yang menggambarkan niat jahat atau derajat ketercelaan tindak pidana korupsi, dampak kerusakan terhadap anggaran, kriteria pelaku meliputi status residivis, bagaimana kondisi dan sikapnya pada sebelum, sesaat, dan setelah tindak pidana korupsi. Jika pelaku adalah badan hukum, maka sikap kooperatif manajemen dan keterbukaan memberikan informasi yang relevan dalam tahap penyidikan, langkah-langkah represif seperti pemecatan para pihak yang terlibat dan pembatalan kontrak yang diperoleh secara tidak sah, serta langkah-langkah pencegahan seperti reformasi struktur perusahaan, pembentukan tata kelola baru yang lebih meningkatkan derajat kepatuhan dan pencegahan tindak pidana korupsi, serta kemungkinan proses-proses hukum selanjutnya baik terhadap pelaku sendiri ataupun pelaku-pelaku lainnya. Pemikiran di balik kriteria-kriteria tersebut adalah untuk memastikan kondisi perkara tersebut telah memenuhi beberapa tujuan pemidanaan yakni *punitive, deterrent*, dan *rehabilitative.*

Berdasarkan analisis terhadap lima putusan kasasi perkara tindak pidana korupsi yang bersifat ringan, maka terlihat *ratio decidendi* lima putusan kasasi

tersebut, menunjukkan hanya berada pada posisi sebagai dasar argumen benar salahnya tindakan pelaku dan patut dipidananya tindakan tersebut, belum sampai pada pemikiran kelayakan sanksi pidana yang dijatuhkan dengan berbagai tujuan pemidanaan dan menunjukkan masih belum diterimanya faktor kepentingan publik sebagai realisasi asas kelayakan untuk menjadi pertimbangan dalam menjatuhkan sanksi pidana. Penerimaan faktor-faktor kepentingan publik untuk dipertimbangkan dalam suatu putusan, dapat menjadikan putusan tersebut lebih rasional, sangat koheren dengan tujuan pemidanaan dan lebih mampu mendekati pemenuhan kebutuhan standar tertib ideal manusia.

Pengembangan asas kelayakan dalam penyelesaian perkara tindak pidana korupsi dapat dilakukan dengan empat cara sebagai berikut :

a) Pengembangan asas kelayakan dalam hukum pidana formil yakni menerima teori Subsosialitas (*subsociality*) dalam doktrin hukum pidana formil.

b) Mengadopsi asas kelayakan sebagaimana tercantum dalam Pasal 167 ayat (2) Sv. dan Pasal 242 ayat (2) Sv. ke dalam hukum acara pidana Indonesia.

c) Mengembangkan kriteria-kriteria yang dapat diterima sebagai faktor kepentingan publik, sebagai parameter derajat ringannya tindak pidana korupsi.

d) Mengadopsi mekanisme penyelesaian perkara tindak pidana korupsi di luar persidangan.

Berdasarkan kesimpulan penelitian diatas, maka dapat disampaikan rekomendasi bahwa asas kelayakan perlu segera diterima dalam sistem peradilan pidana di Indonesia dengan cara mengadopsi asas kelayakan sebagaimana tercantum dalam Pasal 167 ayat (2) Sv. dan Pasal 242 ayat (2) Sv. ke dalam hukum acara pidana Indonesia, Pasal 9a Sr.(teori *subsociality*), serta mengadopsi mekanisme penyelesaian perkara tindak pidana korupsi di luar persidangan dalam bentuk transaksi dengan model komposisi, dengan disertai adanya modifikasi penambahan pokok-pokok pemikiran adaptasi bagi sistem hukum Indonesia.

SUMMARY

THE EXPEDIENCY PRINCIPLE IN THE OUT OF COURT SETTLEMENT OF MINOR CORRUPTION CASES

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The problem of the irony of justice, which is often expressed with a sentence that law was blunt upward but very sharp downward, is not only related to the disparity of criminal sanctions imposed, minor crime offenders are severely punished, while the perpetrators of serious crimes are lightly punished, but also related to the settlement process of the case. A minor criminal offense must be settled by the same mechanism as a serious criminal offense, is one of the forms of the irony of justice. To reduce the problem of ironic justice, some countries have developed a variety the mechanism of settlement outside the court.

Article 82 of the Criminal Code allows for the settlement of criminal case outside the court but for misdemeanor only, so to adopt the mechanism of settlement outside the court for corruption cases, there are still some problems that must be analysis in this research, that are :

1. The philosophy of the settlement mechanism of minor corruption cases outside the court.
2. The development of the expediency principle as the basis for the settlement mechanism of minor corruption cases outside the court

The method of this research is normative juridical research because this research is focused to examine and find philosophical reasons of mechanism of settlement

of corruption case outside the court, base of opinion that not all corruption delict is extraordinary crime and expediency principle development in the form of policy and its norm manifestation in the criminal justice system, as well as criteria for criminal acts of corruption that can be resolved by mechanism of settlement outside the proceedings. Problem approaches used to understand and find answers to the problems in this research are statute approach, conceptual approach, comparative approach and case approach.

The results of this research suggest that the solution to the problems of the irony of justice due to the minor corruption cases must be resolved by the same mechanism as the corruption cases classified as extraordinary crimes is to accept the expediency principle which requires the prosecutor to really take into account whether the public interest is still desirable the prosecution of the perpetrator, if the prosecution should be done then the appropriate mechanism with the minor corruption cases is the mechanism of settlement of criminal cases outside the court. Thus, one of the embodiments of the expediency principle is a mechanism for settling criminal cases outside the court.

Ontological analysis of the settlement mechanism of minor corruption cases outside the court indicates that the nature of the settlement mechanism of minor corruption cases outside the court is the norms of formal criminal law accepted by the public and manifested in official form of institution in a system that is rationally very coherent and able to meet the need for an ideal standard of human order to achieve justice. The settlement mechanism of minor corruption cases

outside the court can be accepted as a system that is rationally very coherent capable of meeting the needs of the ideal standard of human order to achieve justice because the mechanism simplifies and accelerates the imposition of criminal sanctions in the settlement of a minor corruption case in a fair manner involving all the interests of the parties namely the perpetrator, the victim, and the community. The meaning behind the idea or thought of the settlement mechanism of a minor corruption case outside the court is the morality value contained in the settlement mechanism of a minor criminal corruption outside the court namely the value of compassion and fair and equitable value (*aequum et bonum*). The moral value of the compassion underlies and is included in the settlement mechanism of minor criminal corruption cases outside the court through article norms which regulate the acceleration and simplification of the process of settlement of cases that prevent the offender perpetrators of negative stigma. In addition, victims and communities can also benefit from the good through the implementation of the points of agreement quickly and simply in the implementation of the settlement of criminal cases outside the trial. The fair and equitable moral values (*aequum et bonum*) are also the basis and are included in the settlement mechanism of minor criminal corruption cases outside the court through article norms regulating the addition of types of criminal sanctions that can be used so as to fit the error perpetrators and the interests of the victims and the community at large to create justice and good for all parties. Epistemological analysis shows that the settlement mechanism of minor criminal corruption cases outside the court as an entity has its basic truth as a mechanism which is full of

benefit values and rationally coherent to provide justice, and the settlement mechanism of minor corruption cases outside the court which was born and composed in social relations that is born from the problem of irony justice in criminal policy eradication of corruption crime, can be known truthfulness pursuant to alignment of objective of the settlement mechanism of minor corruption case outside court with expediency principle, opportunity principle, principle of fast, simple, and low cost, and the principle of *ultimum remedium*, and relevant to restorative justice thinking. Based on the axiological analysis, it can be concluded that the various benefits of the settlement mechanism of minor corruption cases outside the court is to ensure the suitability of criminal sanctions and criminal procedural law with the level of offender's mistake, reduce over criminalization, and shorten case handling process. In addition, the settlement mechanism of minor corruption cases outside the court also has the value of reducing the burden of the criminal justice system and streamlining the use of the budget.

Characteristics of minor corruption cases that can be resolved by settlement mechanism outside the court are the small amounts of corruption, the involvement of influential public officials or politicians, the mode of crime that illustrates malicious intent or degrees of corruption, the damage to the budget, the culprits of the perpetrators include the status of the recidivist, how the conditions and attitudes are before, immediately, and after the criminal act of corruption. If the perpetrator is a legal entity, the cooperative attitude of management and transparency provides relevant information in the investigation stage, repressive

measures such as dismissal of the parties involved and the unlawful cancellation of contracts, as well as preventive measures such as corporate structure reform, new governance that further enhances the degree of compliance and prevention of corruption, as well as the possibility of further legal proceedings against the perpetrators themselves or other actors. The idea behind these criteria is to ensure that the conditions have met several punishment, deterrent, and rehabilitative purposes.

Based on the analysis of five verdicts of corrupt case cassation, it is seen that the *decidendi* ratio of five verdicts shows that they are only in the position of the argument of the wrongdoing of the perpetrator and the crime should be punished, not to the expediency of criminal sanction imposed with various purposes of crime and indicating the unacceptable public interest factor as the realization of the expediency principle to be considered in imposing criminal sanctions. Acceptance of the factors of public interest to be considered in a judgment can make the verdicts more rational, coherent with the purpose of punishment and more able to approach the fulfillment of the standard needs of human ideal.

The development of the expediency principle in settling cases of corruption can be done in four ways as follows:

a) Develop of the expediency principle in the formal criminal law in a way of adopting the norm of Article 9a Sr., which mean of accepting the theory of sub sociality in the doctrine of formal criminal law.

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b) Adopt the expediency principle which state of Article 167 § 2 Sv. and Article 242 § 2 Sv., into Indonesian criminal procedure law.

c) Develop acceptable criteria as a factor of public interest, as a parameter of the degree of lightness of criminal acts of corruption.

d) Adopt a mechanism for settling cases of corruption outside the court.

Observing the conclusions of the above research, it can be submitted a recommendation that the expediency principle needs to be immediately accepted in the Indonesian criminal justice system by adopting the expediency principle which state of Article 167 § 2 Sv. and Article 242 § 2 Sv., into Indonesian criminal procedure law, Article 9a Sr. (subsociality theory), and adopting a mechanism for settling cases of corruption outside the court in the form of transactions with the composition model, with the accompanying modification of additional points of adaptation for the Indonesian legal system.

ABSTRACT

THE EXPEDIENCY PRINCIPLE IN THE OUT OF COURT SETTLEMENT OF MINOR CORRUPTION CASES

Problems of ironic justice can occur because a minor crime must be settled by the same mechanism as an extraordinary crime. The effort to reduce problems of ironic justice, some countries have developed various mechanisms for settling criminal cases outside the court. Article 82 of the Criminal Code allows for the settlement of criminal case outside the court but for misdemeanor only, so to adopt the mechanism of settlement outside the court for corruption cases, there are still some problems that must be analysis in this research, that are the philosophy of the settlement of corruption cases outside the court and the development of the expediency principle as the basis for the settlement of corruption cases outside the court. The type of this research is normative juridical research with approach of legislation, concept approach, comparison approach, and case approach. The results of this research suggest that the solution to the problems of the ironic justice is to accept the expediency principle which requires the prosecutor to really take into account whether the public interest is still desirable the prosecution of the perpetrator, if the prosecution should be done then the appropriate mechanism with the minor corruption cases is the mechanism of settlement of criminal cases outside the court. Ontological analysis of the settlement mechanism of minor corruption cases outside the court indicates that the nature of the settlement mechanism of minor corruption cases outside the court is the no rms of formal criminal law accepted by the public and manifested in official form of institution in a system that is rationally very coherent and able to meet the need for an ideal standard of human order to achieve justice. The Recommendation of this research that the expediency principle should be readily accepted in the criminal justice system in Indonesia by adopting the expediency principle which state of Article 167 § 2 Sv. and Article 242 § 2

Sv., into Indonesian criminal procedure law, Article 9a Sr. (subsociality theory), and adopting a mechanism for settling cases of corruption outside the court in the form of transactions with the model composition, accompanied by modifications to the addition of adaptation thinking points to the Indonesian legal system.

Keywords: expediency principle, criminal case settlement, minor corruption