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Criminal Law Corruption Mode of Allocation of Village Fund

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ABSTRACT

ADD (allocation of village funds) fraud is a form of corruption. This is based on the formulation of corruption acts as formulated in the law. What are the problems in writing this thesis are: 1. What are the factors that cause the mismanagement of Village Fund Allocation? 2. What is the form of corruption in the village funds budget? The research method in this paper is empirical normative research. Normative legal research is legal research that examines written law from aspects of theory, history, philosophy, comparison, structure and composition, scope and material, general explanations from article by article. Empirical research is an unwritten positive law research on the behavior of community members in the relationship of community life. The results of the study show that, the Factors That Cause the Disruption of Village Fund Allocation Management are, not the involvement of the community in the planning and supervision of village funds. Limited competence of village heads and village officials. Not optimal role of village institutions, directly or indirectly. High political costs due to the competitive arena of village head elections. The form of corruption in the village fund budget is, mark up prices, false reports, borrowing village funds, deducting village funds, fictitious business trips, mark up honorariums, mark up office stationery payments, tax evasion, purchasing personal office inventory, budget cuts public, do "kongkalingkong", make fictitious projects whose funds are charged from village funds.

Keywords: allocation of village fund, village head, corruption

1. INTRODUCTION

One of the reform agendas in Indonesia is decentralization, decentralization initiatives were born from the spirit of development, the principles of local democracy which were ignored during the New Order with the issuance of the Number 23 of 2014 concerning Regional Government which was previously in effect the Law Number. 22 of 1999 concerning Regional Government supersedes the Act that was in effect before, namely Number. 5 of 1974 concerning Government in the Region. The most important change with the existence of Law No. 23 of 2014 is the delegation of the authority of the central government to the regions concerning the public service sector.[1]

Effective decentralization started in 2001 is an alternative solution to innovative challenges faced. The Regional Government is required to give greater attention to the quality of the implementation of public services and to increase independence in carrying out development.[2]

The administration of government in accordance with the provisions of Article 18 of the 1945 Constitution is not centralistic, but with vertical equalization of authority which gives birth to regional government. Moving on from the provisions of Article 18 of the 1945 Constitution it appears that the State of Indonesia as a Unitary State adheres to the principle of decentralization in the administration of

government by providing opportunities and authority to the regions to carry out regional autonomy. Unitary State the division of authority vertically is the division of authority between the Central Government and the Regional Government carried out by way of attribution or delegation.[3]

Decentralization has the meaning of surrendering or acknowledging the right to authority to manage regional households themselves, in this case the regions are given the opportunity to carry out their own policies. This recognition is a form of people's participation in decision-making which is characteristic of a democratic country. Decentralization is the delegation of authority in making decisions and policies at the lower levels of an organization.[4]

Village Government is the smallest form of government in the country. The area of the village is usually not too wide and inhabited by a number of families. The majority of the population works in the agricultural sector and the level of education tends to be low. Because the population is so much, usually the kinship between the people is strong. As the smallest part of the government system in Indonesia, the village plays an important role especially in relation to developments that directly touch the community.

The assistance is given directly through the village to be channeled directly to the community so that the community cultivates it. However, in reality these assistance is channeled to the community, some are not arrived, but are used by certain groups. The large amount of government assistance allocated

4 for village development is one form of local government attention to the village. (Government Regulation) PP No. 72 of 2005 also explained that at least 10% of the regional revenue sources received by the District were received from provincial and regional balancing funds, then proportionately 30% for operational costs and 727 for community empowerment activities. . Meanwhile in the Minister of Home Affairs Regulation (PERMENDAGRI) Number 37 of 2007 concerning Village Finance Management Guidelines, it was stated that, Village Revenues consisted of:

- a) Village Original Income (PAD desa);
- b) Regency / City Tax Revenue Sharing;
- c) Part of Regency / City Retribution;
- d) Village Fund Allocation (ADD);
- e) Financial Assistance from the Government, Provincial Government, Regency / City Government and other Villages;
- f) Grants; and
- g) Third Party Donations.

The number of Village Fund Allocation (ADD) received by the Village Head is very small and not 19 comparable with the responsibilities of the Village Head who is expected to be able to organize village development. Moreover, the culture of deduction of ADD by bureaucracy so that what is received by the Village Government becomes small. Whereas Village Original Income (PAD) 7ly relies on the village's only wealth is Bengkok land owned by the village government. This forced the village government to make as many infrastructure project proposals as possible to the District Government.

At least the Village Fund Allocation from the Regency government, this is compounded by the many elements, both from the Village and the sub-districts who use ADD without rights and authority. The potential for diversion 4 village finance is clearly very large, this is inseparable from the weakness of supervision by district government officials on the flow of funds flowing. Besides that, it is equally important that human resources from the village government officials themselves are generally weak.

Although local is becoming a more open locus of corruption, 28 centralization also has other implications, namely the strengthening of civil society groups at the local level. Since the implementation of the decentralization policy is the development of civil society organizations and the mass media which are increasingly free and open, even though it does not mean that the development is followed by increasing the capacity and political role of the organization at the local level. From LP3ES records in 2003 alone it was estimated that there were 450 NGOs that actively carried out various issues in the community. If calculated with various newly established NGOs, this figure is very likely to increase several fold given that there is no obligation to formally register or establish state agencies.[5]

The government has disbursed village funds in the amount of Rp 127.74 trillion since it was first released in 2015. Villages 25 have received the funds are 74,910 with details in 2015 of Rp 20.76 trillion, 2016 Rp 49.98 and 2017 Rp 60 trillion. President Joko Widodo (Jokowi) said that each village in the first year could get Rp. 300 million, the second year Rp. 600 million, the third year Rp. 800 million. According to President Jokowi, of the approximately 74,000 villages that received the Village Fund, this year there were approximately 900 villages that had problems, the village head was arrested, for misusing the Village Fund. For this reason, Jokowi requested that he carefully use this fund. "Please use it to build infrastructure please, please use the village road for embung please, used for

small irrigation please, used to stem the small river please. The most important thing that should not be, only one, no one saves for personal gain "This is not allowed," stressed President Jokowi.[6]

2 The allowances provided by the central government to village governments to manage the Village Fund bring many benefits, especially in the development of the village. However, this authority, if not balanced by legal awareness, would bring difficulties 2 to the village officials, and also cause losses to the villagers. Though the village is the forerunner of the formation of society and government in Indonesia. Long before modern nations were formed, social groups like villages or indigenous peoples and so on, had become an important part of a state order.[7]

2 Village fund management must be in accordance with existing regulations so that the objectives of 10 Village Fund can be targeted and not cause legal cases. Village Funds are funds sourced from the state's income and expenditure budget that are intended for villages that are transferred through the district / city regional income and expenditure budget and are used to finance government administration, implementation of development, guidance, community and community empowerment.[8] The lack of village income is an obstacle for the Village Government to organize village governance well. Although the Village Fund is a balance fund received 22 by the Regency / City, the funds are highly anticipated by the Village Government, because the Village Fund is very helpful for village finance. Managing village finance is the authority of the Village Head who can be partially authorized to the village apparatus.[9]

1 Recognition of village existence in Law Number. 23 of 2014 concerning Regional Government as amended both time 16 by Law Number. 9 of 2015, affirmed in Article 2 which states that:

1. The Unitary State of the Republic of Indonesia is divided into provinces and the Province is divided into Regency and City Regions.
2. The Regency / City Region is divided into Districts and Subdistricts divided into Kelurahan and / or 33 villages.

Likewise, in Article 371 paragraph (1) of Law Number 23 Year 2014, it is reaffirmed that:

1. Villages can 23 formed in regencies / cities.
2. The village as referred to in paragraph (1) has the authority in 39 accordance with the provisions of the legislation concerning the Village.

Thus the village is recognized and has original authority that originates from the origin. The consequence of the recognition of genuine autonomy is that the Village has the right to regulate and manage its own household based on the origins and local customs (self governing community).

Basically, development in the State of Indonesia is supported by development at the national and provincial levels, as well as the progress of the development in the province can not be separated from development in the districts below. And of course the progress of the Regency's retreat depends on the development of the kelurahan and villages under its administration. Likewise, the rate of economic growth in a region, both Regency and province, is inseparable from the progress of economic development in the villages.

If we understand from the legal construction of the structure of village governance, actually still using legal construction that has been applied so far. We can trace this from the legal text in article 1 number Law Number. 6 of 2014 stating that the Village Government is the administration of government affairs

and the interests of the local community in the system of government of the Unitary State of the Republic of Indonesia. Villages are customary villages and villages or what are called by other names, hereinafter referred to as Desa, are legal community units that have territorial boundaries that are authorized to regulate and manage government affairs, interests of local communities based on community initiatives, origin rights, and / or traditional rights which is recognized and respected in the system of government of the Unitary State of the Republic of Indonesia. Based on the formulation of article 1 point 1, it is answered, that the village has the authority to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and / or traditional rights that are recognized and respected. So what is meant by the administration of government affairs is "to regulate", to take care of government affairs, the interests of the local community.

So the authority are the village government, namely the Village Head is assisted by village officials, as an element of village administration. This means that besides the village head and village officials there are other elements of the village administration. Another element, namely the Village Consultative Body or what is referred to by another name is an institution that carries out a government function whose members are representatives of the Village population based on regional representation and democratically determined.

2 BACKGROUND

This research is an empirical normative research. Normative legal research is legal research that examines written law from the aspects of theory, history, philosophy, comparison, structure and composition, scope and material, general explanation from article by article, formality and strength binding a law but not binding on applied aspects or implementation [10]. Empirical research is an unwritten positive law research on the behavior of community members in the relationship of community life.[11].

2.1 Factors that Cause the Misuse of Management of Village Fund Allocation

According to Sarundajang [12] "Regional government is a logical consequence of the differences in ethnic, linguistic, religious and social institutions of various local groups in a country".

Through the principle of autonomy, the regions are given the freedom to organize policy management mechanisms with greater authority over the regions. The implementation of decentralization will bring effectiveness in government, because the territory of the country generally consists of various regional units (what is meant by the words "area" here is part of the territory of the country), each of which has its own special characteristics caused by geographical factors (soil conditions, climate, flora, fauna, customs, economic life, subject / language, level of education / teaching, etc.).[13]

In Article 14 paragraph (1) of Law Number 32 Year 2004, it is stated that mandatory affairs which are the authority of regional government for regencies / cities are regency / city scale affairs including:

- a. Development planning and control.
- b. Planning, utilization, and spatial supervision.
- c. Organizing public order and peace of society.
- d. Provision of public facilities and infrastructure.

- e. Handling the health sector.
- f. Organizing education.
- g. Overcoming social problems.
- h. Employment services.
- i. Development facilities of cooperatives, small and medium enterprises.
- j. Environmental control.
- k. Land service.
- l. Population services and civil records.
- m. Government general administration services.
- n. Investment administration services.
- o. Organizing other basic services, and
- p. Other mandatory affairs mandated by legislation.

Of the authority delegated by the government to the regional government, of course, it must definitely reach the rural areas, because the spearhead of development is in the countryside. Therefore all development programs must start from rural areas, so that the development can be felt by all parties.

There are four causes of corruption in village funds that are prevalent today, including:[14]

1. The main contributing factor is the lack of involvement of the community in the planning and supervision of village funds. "Community access to information on village fund management and active involvement in planning and management in practice is limited." In Article 68 of the Village Law it regulates the rights and obligations of village communities to gain access and be involved in village development. The involvement of the village community is the most basic factor because the villagers know their needs the most and directly witness how the development in the village.
2. The second factor is the limited competence of village heads and village officials. This limitation is particularly concerning the technical management of village funds, procurement of goods and services and the preparation of village financial accountability.
3. The third factor is the lack of optimal role of village institutions, both directly and indirectly. Village institutions, do not play an important role in community empowerment and village level democracy, such as the Village Consultative Body or BPD.
4. The fourth factor that is no less important to note is the high political costs of disease due to the competitive arena of village head elections. "Increasing village budgets are accompanied by increasing interest in many parties to advance in village head elections without the agenda and commitment to build villages."

2.1 Form of corruption mode for village budget fund

From the results of the research conducted, there are several activities of village heads and village officials that can be categorized as corruption as follows:[15]

1. Creating a draft budget above the market price. This can be anticipated if procurement is carried out openly and uses the potential of local villages. For example, procurement of building materials in building shops in the village so that they can carry out

- joint checks regarding the certainty of costs or prices of items needed.
13. 2. Responsible for financing physical buildings with village funds even though the project is sourced from other sources. This mode can only be seen if the supervisor understands the funding allocation by the village. This mode is mostly done because it is relatively hidden. That's why the APBDes is open so that all citizens can supervise it.
 3. Temporarily borrowing village funds for personal use but not returned. This is also very much happening, from personal interests to paying for S2 fees. The *ewuh-prakewuh* culture in the village is one of the obstacles in cases like this so it is difficult to anticipate.
 4. Collection or deduction of village funds by individual sub-district officials or districts. This also happens a lot with various reasons. Village officials should not hesitate to report cases like this because the village is the one most disadvantaged.
 5. Make fictitious official trips to the village head and his staff. Many travel cases for training and so on turned out to be more intended for pleasure.
 6. Marking up payment of honorarium for village officials. If this mode passes, village officials whose inflated honorarium should report cases like this. The problem is if it's not, it's the same as they are considered tasting the illegitimate money.
 7. Marking up of office stationery payments. This can be seen physically but must also understand what allocations have been prepared.
 8. Collecting village tax or retribution but the results of levies are not deposited into the village treasury or tax office. Supervisors must understand the flow of funds regarding income from this tax sector.
 9. Purchase office inventory with village funds but for personal use. Again, *ewuh-prakewuh* has become one of the obstacles to this case, so that it often happens.
 10. Public budget cuts are then allocated to the interests of village. The public must know the allocation of village funding so that this case does not need to occur
 11. Conducting games (*kongkalingkong*) in projects funded by village funds. Can be traced since the Village Conference was held and the rules regarding the prohibition of using outside contractor services.
 12. Making fictitious activities or projects whose funds are charged from village funds.

3. CONCLUSION

Factors of misappropriation of village funds are the lack of participation of the community, limitations of village human resources, malfunctioning village institutions and high political costs. allocation of village funds.

The district / sub-district as a government authority can supervise, provide assistance / training and check quarterly reports for each village head who is in the legal area of the district / sub-district he is assisted.

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