



Efforts to Prevent Bureaucratic Corruption Based on the Piercing Principles of the Governance Veil in Realizing Good Governance and Clean Governance in Indonesia

Junaedi

Government Science, Faculty of Social and Political Sciences, University of Muhammadiyah Makassar, Indonesia

Corresponding Author: Junaedi



Article Info

Article history:

Received 08 April 2020

Received in revised form 18 April 2020

Accepted 24 April 2020

Keywords:

Corruption Prevention

Piercing The Governance Veil

Good Governance

Clean Governance

Abstract

The purpose of this study explains the principle of piercing the governance veil can support the realization of good governance and clean governance in order to prevent the misuse of corruption. The research method is a normative legal method with a statutory approach), concepts and cases. The results of this study can be explained that the principle of piercing the governance veil supports the realization of good governance and clean governance in order to prevent abuse of the power of the authorities (governors / regents / mayors) so as to prevent unlawful acts carried out by the executive as the holder of the people's mandate. The governance veil principle can limit or prevent illegal actions carried out by the government and its staff for personal gain or enrich oneself and its cronies. The conclusion of this study is that due to the legal principles of the governance veil, it can lead to KKN and the occurrence of abuse of authority, resulting in state losses, then criminal penalties based on Law No. 20 of 2001 concerning criminal acts of corruption.

Introduction

Corruption is Extraordinary Crime which means extraordinary crime or in other words is an inhumane crime and violates human rights. Corruption is also an act that kills the survival of a country. Even so, acts of corruption as a culture that is considered normal. Welfare as a key to a country's prosperity will not be achieved if there are still many corrupt behaviors. Various types of people have been involved in corruption, both from the central government, regional governments, businessmen, entrepreneurs, teachers, prosecutors, and even judges Corruption is not Culture but Disease (Syahroni & Sujarwadi, 2018). Sadly corruption is carried out by people who are educated as people's representatives. These people should have brought Indonesia to be more advanced, not committing a criminal act of corruption.

The impact of corruption is not only felt one side, but related to one another, such as the falling dominoes. It is not only development that has problems, but all of the nation's building factors are also problematic. Indonesia Corruption Watch (ICW) In 2018 ICW found there were 454 corruption cases handled by law enforcement. The total number of suspects is 1,087 people with various professional backgrounds. The number of state losses that were found by law enforcement was IDR5.6 trillion, the amount of bribes was IDR134.7 billion, the amount of illegal payments was IDR6.7 billion, and the amount of money laundering was IDR91 billion.

This is because corruption causes problems not only in one area within the government, but in other fields also in trouble.

Regional Government is the administration of government affairs by the regional government and regional people's representative councils according to the principle of autonomy and the task of assistance with the broadest principle of autonomy in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia. This objective explains the principle of piercing the governance can support the realization of Good Governance in order to prevent abuse of power from shareholders (the community as the owner of sovereignty) who have expressed confidence in the governor / regent / mayor who has given trust to the community through the elections.

Methods

The research method is a normative legal method with a statutory approach), concepts and cases. The results of this study can be explained that the principle of piercing the governance veil supports the realization of good governance clean governance in order to prevent abuse of the power of the authorities (governors / regents / mayors) so as to prevent unlawful acts carried out by the executive as the holder of the people's mandate.

The theoretical framework in this study is Stakeholders Theory of The Modern Corporation that the basic obligation of company management is not to maximize the financial success of the company, but to ensure its survival and balance the conflicting demands of various stakeholders. Company management (executive) must be notified by law to manage the company in the interests of stakeholders (Snoeyenbos et al., 2001).

The main teachings of Freeman (2001) namely Good Governance is defined as a governance that has been managed properly and correctly and is based on the principles of fairness, accountability, responsibility, transparency. With this principle the company's value in the long run will rise without ignoring the interests of other stakeholders. The application of the principles of good corporate governance is an important step in building and restoring public confidence in the government (Miraza, 2000).

Results and Discussion

Corruption is a criminal act regulated outside the Criminal Code, which includes deviations or special provisions of general law (KUHP) Legislation is a manifestation of the political law of state institutions designed and ratified as laws to eradicate corruption. Partially, it can be concluded that the government and the Indonesian people are seriously fighting and eradicating criminal acts of corruption in this country. Selective logging. That is the opinion of some practitioners and legal observers on the government's move in handling corruption cases lately.

Factors that cause corruption

According to Klitgaard (1988) corruption is a violation committed by people who have certain positions in the form of status or money irregularities which solely seek personal or group gain. The factors causing corruption are divided into two. The first factor is internal originating from within the perpetrators, the second comes from outside the perpetrators of corruption in the form of the surrounding environment (Truex, 2011).

Internal factors begin with the greedy attitude of worldly wealth. Moral as the basic foundation of human behavior began to break down, the order of norms became dysfunctional because almost everyone committed corruption in different fields. The external factors that are very powerful in encouraging corruption are the culture of the community who view corruption as a normal thing due to lifestyle and relationships, therefore anti-corruption education is

important (Budiman, 2017). Ads on social media foster consumerism among the public. When lifestyles push to support consumerism, even though employee salaries are very small, corruption develops rapidly as the demands of the times (Rose-Ackerman, 1998).

Corruption Behavior

Corruption is the behavior of private individuals and government officials who deviate from the responsibility for personal and group interests (corporate / crony). Piercing veil comes from English: piercing the governance veil is a legal decision to consider the rights or obligations of a government as the rights or obligations of the trustee or the people as voters, who are fully responsible for performance in realizing good governance and clean governance.

In other words Piercing the governance veil is a doctrine or theory which is interpreted as a process to impose responsibilities on the shoulders of people (heads of provincial / district / mayor) who act for and on behalf of regional heads.

Literally, Piercing the corrective veil means tearing / tearing the curtains or veil of the company. According to firmly established legal principles, separate and distinct from its shareholders. (Barber, 1980; Thompson, 1990).

In fact piercing veils in general are always tricked with the company (corporate) but even so piercing veils have also a relationship with the government system in Indonesia, where it is clearly stated in the Regional Government is the implementation of government affairs by the regional government and regional people's representative councils according to the principle autonomy and co-administration with the principle of autonomy as widely as possible in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia. Currently the regional government is governed by Law Number 23 of 2014 concerning Regional Government. Then what is the relationship between the prevention of corruption with piercing veil theory with the administration of the state (bureaucracy's public service).

The piercing veil link with this research is that in the application of good governance (GG) is not solely for the benefit of the state, but for the benefit of the Indonesian people, because the Characteristics of Corruption is a betrayal of trust, Fraud of government bodies, private institutions or the general public, Deliberately neglecting certain interests, which are carried out in secret, perform contradictory dual functions of actors, involve more than one person or party, the existence of mutual benefits (money / project fee / share distribution), there are activities covered in the form of piercing the governance veil (unveiling the veil of state administrators) according to Sulistiawan (2008) in the form of bribery of money / goods, Fraud & Theft of Natural Resources, Counterfeiting, Extortion, Privatization, Breaking the law / detrimental to the state, Versatile secrecy although done jointly, this is reinforced by ICW who mapped allegations of corruption based on mode which is conducted.

There are 13 modes in which ICW cluster is often used by corruption suspects. The modes include: mark up, budget misuse, embezzlement, fictitious reports, bribery, fictitious activities / projects, extortion, abuse of authority, circumcission / deduction, gratuity, extortion, double budget and mark down.

Tabel 1. Corruption mode and case data

No	Mode	Number of cases	State Loss Value (Billion)	Value of Bribery / Gratification / Value of Illegal Levies (Billion)	Value of Money Laundering (Billion)
1	Mark up	76	Rp. 541 Billion	-	-
2	Budget Abuse	68	Rp. 455 billion	-	-
3	Embezzlement	62	Rp. 441 billion	-	-
4	Fictitious Report	59	Rp. 160 billion	-	-
5	Bribery	51	-	Rp. 67,9 billion	Rp. 57 billion
6	Fictitious Activities / Projects	47	Rp. 321 Billion	-	-
7	Wild Charges	43	-	Rp. 6,7 billion	-
8	Abuse of Authority	20	Rp. 3.6 billion	-	-
9	Circumcision / Cutting	16	Rp. 38.2 billion	-	-
10	Gratuity	7	-	Rp. 65,9 billion	Rp. 34 billion
11	Extortion	2	-	Rp. 80 Million	-
12	Double Budget	2	Rp. 2,7 billion	-	-
13	Mark Down	1	Rp. 1,4 billion	-	-
Total		454	Rp. 5,6 trillion	Rp. 140,8 billion	Rp. 91 billion

Source: ICW Corruption Action Trend report, 2018.

From the description of the table that the most common mode of corruption is carried out by the mark up. There are 76 corruption cases involving 185 suspects. This means that per case involves 2 (two) people who are considered to be corrupt. The value of the state losses incurred due to inflated prices amounted to Rp541 billion. The average value of national losses arising from cases of alleged corruption with a mark up method of Rp2.9 billion per case.

This is where the important role of Piercing the Governance Veil contradicts the community welfare program as stipulated in Article 12 paragraph (1) of the Np Act. 23 of 2014 concerning Local Government stated that: "Obligatory Government Affairs relating to Basic Services as referred to in Article 11 paragraph (2) include: education; health; public works and spatial planning; public housing and residential areas; peace, public order and community protection; and social.

Piercing the governance veil checks the use of APBN/APBD money as stipulated in 1 paragraph (39) and paragraph (40) "Regional Property is all goods purchased or obtained at the expense of the APBD or derived from other legal acquisition. Regionally Owned Business

Enterprise, hereinafter abbreviated as BUMD, is a business entity whose entire or most of its capital is owned by the Region.

Piercing the governance veil From a legal point of view, criminal acts of corruption broadly fulfill the following elements, acts against the law, abuse of authority, opportunity, or means, enriching oneself, others, or corporations, and detrimental to the country's finances or the country's economy.

Types of corruption include giving or receiving gifts or promises (bribery), embezzlement in positions, extortion in positions, participating in procurement (for civil servants / state administrators), and receiving gratuities (for civil servants / state administrators)). This is confirmed in article 2 paragraph (1) and article 3 of Law no. 20 of 2001 amendments to Law No. 31 of 1999 concerning Eradication of Corruption Acts "Every person who unlawfully commits acts of enriching oneself or others who are a corporation that can harm the country's finances or the country's economy, is convicted with life imprisonment or imprisonment for at least 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Any person who aims to benefit himself or another person or a corporation, misuse the authority, opportunity, or means available to him because of his position or position or means available to him because of a position or position that can harm the country's finances or the country's economy, is criminally convicted life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah). From this description the conclusion is drawn that the theory of piercing the governance veil (opening the veil of state administrators) is in accordance with the spirit of the Corruption Act because corruption culture harms Indonesia. Not only the economy will fall, but other fields will also feel the consequences. Politics as the basis of the prevailing policies has declined. The state loses strength and authority to achieve Indonesia's goals. As a result the APBN and APBD are not operating as they should, so that Indonesia's future is bleak.

Why is Indonesia bleak because of a culture of corruption because when the brokrasi system is not transparent, there are illegal levies. Access for poor people to protection is getting smaller. Health services are not optimal due to corruption. The money that should have been used to improve government-owned health facilities such as puskesmas, has decreased, even disappeared. As a result of corruption, poor people who hope that the puskesmas do not get maximum results. When the puskesmas cannot handle it, they must be referred to the hospital. In fact, hospital fees are expensive, so they cannot get maximum health services. The form of state defense has been reflected in the traditional spirit of mutual cooperation. The values of mutual cooperation are very contrary to the values of corruption. But because of social inequalities, people want to get a more decent life. Everything is done to fulfill that desire, including corruption. All only pursue personal and group interests. Since then, people have begun to forget their former identity, where the defense of the state is very strong to maintain and secure the unity of Indonesia.

Corruption eradication strategy

Eradicating corruption is not easy. Need cooperation from all government institutions, NGOs, and the people. The simple thing that needs to be done is to improve existing systems, especially in the field of education. Education as a basis for community resources is formed. Improvements to the system encourage people to be smarter and campaign for anti-corruption.

Anti-corruption measures are carried out systematically and transparently. Anyone can report,

as long as they have clear evidence. The process of handling corruption cases in the form of: reporting, investigation, prosecution and execution. This process must proceed according to existing procedures without interference from unauthorized parties.

The final and fundamental step in an anti-corruption strategy is prevention. A long-term view is achieved by means of transparency and oversight by government institutions. KPK institutions and NGOs as the main role of this activity work optimally. The medium term is to improve public services that are fair in openness. As for the short term, resolve the cases that have already occurred.

Corruption is a complex problem. All aspects of the country will experience problems. Both economic, political, health, defense and security. If the problem is complex, then Indonesia's future is threatened. In fact corruption has become a culture, even though Indonesian culture is very much at odds with corruption. The factors causing corruption are divided into two, namely internal factors originating from the perpetrators themselves, and external factors originating from outside the perpetrators themselves. The KPK, NGOs, and the entire community have a role to play in eradicating corruption. In addition, transparency in government and organizations is needed to form an anti-corruption culture. This needs to be done because corruption threatens the survival and future of Indonesia. Corruption is an urgent problem that must be overcome, in order to achieve healthy economic growth and stretching. Various records about corruption which are daily reported by the mass media both print and electronic, illustrate the increase and development of corruption models.

Anti-corruption rhetoric is not effective enough to stop this deplorable practice. Legislation that is part of legal politics made by the government, becomes meaningless, if not accompanied by seriousness for the manifestation of existing laws and regulations. Political law is not enough, if there is no recovery of the executor or the perpetrators of law. Such constellations reinforce the reasons for legal politics designed by the government to be more than just fulfilling the current stream.

Conclusion

Culture of corruption is detrimental to Indonesia. Not only the economy will fall, but other fields will also feel the consequences. Politics as the basis of the prevailing policies has declined. The state loses strength and authority to achieve Indonesia's goals. As a result the APBN and APBD are not operating as they should, so that Indonesia's future is bleak. Why is Indonesia bleak because of a culture of corruption because when the brokrasi system is not transparent, there are illegal levies. The money that should be used to improve government-owned facilities such as puskesmas, is reduced, corruption is a complex problem. All aspects of the country will experience problems. Both economic, political, health, defense and security. If the problem is complex, then Indonesia's future is threatened. In fact corruption has become a culture, even though Indonesian culture is very much at odds with corruption. The factors causing corruption are divided into two, namely internal factors originating from the perpetrators themselves, and external factors originating from outside the perpetrators themselves. The KPK, NGOs, and the entire community have a role to play in eradicating corruption. In addition, transparency in government and organizations is needed to form an anti-corruption culture. This needs to be done because corruption threatens the survival and future of Indonesia.

References

Barber, D. H. (1980). *Piercing the corporate veil*. Willamette L. Rev., 17, 371.

- Budiman, A. (2017). Pendidikan Anti Korupsi Dalam Perspektif Budaya Melayu. *Jurnal Pendidikan Guru*, 1(2), 16-26.
- Freeman, R. E. (2001). *A stakeholder theory of the modern corporation*. Perspectives in Business Ethics Sie, 3, 144.
- Klitgaard, R. (1988). *Controlling corruption*. Univ of California Press.
- Miraza, B. H. (2000). *Good Corporate Governance*. Medan: Kerjasama Program Pascasarjana Universitas Sumatera Utara, Program Pascasarjana Universitas Indonesia, Universitas of South Carolina, Bursa Efek Jakarta, dan Bapepam,
- Rose-Ackerman, S. (1998). *Corruption and development*. In Annual World Bank conference on development economics 1997 (pp. 35-57). Washington DC: World Bank.
- Snoeyenbos, M., Almeder, R., Humber, J. (2001). *Business Ethics, 3th Ed*. New York: Prometheus Books.
- Sulistiawan B. (2008). *Nilai-Nilai Antikorupsi dalam Pendidikan Islam (Tinjauan Normatif Aspek Kurikulum Pendidikan Agama Islam terhadap Pendidikan Antikorupsi)*. Yogyakarta: FAI-UMY.
- Syahroni, M., & Sujarwadi, T. (2018). *Korupsi, Bukan Budaya tetapi Penyakit*. Deepublish.
- Thompson, R. B. (1990). Piercing the corporate veil: an empirical study. *Cornell L. Rev.*, 76, 1036.
- Truex, R. (2011). Corruption, attitudes, and education: Survey evidence from Nepal. *World Development*, 39(7), 1133-1142.