



Restorative Justice of Corruption in the Villages

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Abstract: The development of village government since the Jokowi period increased dramatically. The budget allocation in the form of village funds and allocation of village funds is so large that the village government can carry out development well. The amount of budget obtained by the village government also brings a bad side to the village apparatus, such as the number of village apparatuses that stumble over corruption cases. Concrete steps need to be sought in an effort to have an effect on corruption in the village. This paper attempts to look at other approaches besides law enforcement to crack down on perpetrators of corruption in the village. Research results show that the cause of the emergence of corruption is due to convoluted administration and lack of human resource capacity. With this consideration, the law enforcement approach to taking action against corruptors in the village needs to be reconsidered. The approach of coaching and mentoring for village heads and village officials is important rather than merely giving the effect of imprisonment to the perpetrators.

Keyword: Corruption, Villages, Restorative Justice

Introduction

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish (United Nations Convention

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Against Corruption, 2004: iii). Indonesia was ratified the UNCAC document and entered into force on 18 April 2006 through Law No. 7 of 2006.

The implementation of government affairs in Indonesia adheres to the principles of decentralization and medebewind. The regional government is involved in helping the affairs of the central government through the delegation of authority and assistance tasks given by the central government. Therefore, there was a flow of money that was previously concentrated in the center to circulate in the regions. Thus, causing many cases of corruption that occurred in the area. This also includes decentralization to the village level, encouraging corruption, which includes bribery. (Wihana Kirana Jaya, Tempo.co, 15 Juli 2020)

Decentralisation has introduced new actors and changed the modus operandi of corruption at the local level, increasing the opportunities/incentives for officials to behave corruptly (Martini, 2012, p. 5). Since 2014, the village has received special attention from the Joko Widodo administration. Various programs and budget allocations are disbursed to the village in the context of developing the State from the village. The village fund is one form of budget policy carried out by the Jokowi government to improve the development and welfare of village communities. The following is an illustration of the allocation of village funds from 2015 till 2019.

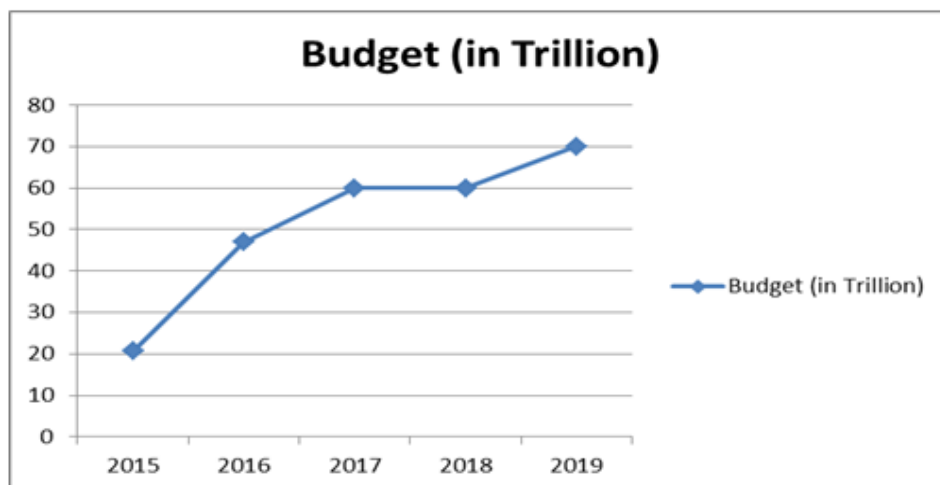


Figure 1. Allocation of Village Funds of 2015 - 2019

Source: processed data, 2020

The amount of budget obtained by the villages leaves various other problems such as corruption that occurs in the villages. One study by the Deputy of Corruption Eradication Commission in 2015 concluded that there four aspects with the potential of corruption on the use of village funds (Deputy for the Prevention of Corruption

Eradication Commission, 2015, p. 1). Potential problem on regulation and institution, 2). Potential problem on management, 3). Potential problem on surveillance, 4). Potential problem on human resource.

Related with village funds policy, BPK stated that there were problems on the management of village funds due to the lack of knowledge and adequate financial reporting, and that there will be a potential chance for corruption (Abidin, 2015, p. 62). ICW stated that there was an increase in cases of corruption in the village during the period of 2015-2017. There were 17 corruption cases in 2015, increased to 41 cases in 2016, and increased to 96 cases (more than 100% increase) in 2017. In total, 154 corruption cases were found (Kadir & Moonti, 2018, p. 434). Indonesian Corruption Watch noted that in 2019 there were 45 village heads as suspects, 48 village government cases involved in corruption, 46 corruption cases from the village budget. (ICW, 2019).

The above conditions led to the emergence of a discretion policy not to take action on corruption carried out by the village apparatus. This is stated in the Deputy Attorney General for Special Crimes Number B-1113/ F/ Fd.1/ 05/2010 dated May 8, 2010 concerning Priorities and Achievements in Handling Corruption Cases. This circular is interpreted by some officials as sufficient to restore the state finances that have been harmed by corruption cases that occur in the village. A similar policy was issued by the Indonesian National Police through the National Police Circular No. SE/ 8/ VII/ 2018 concerning the application of restorative justice (restorative justice) in the settlement of criminal cases. Generally, Indonesian corruption perceptions index can be seen below:

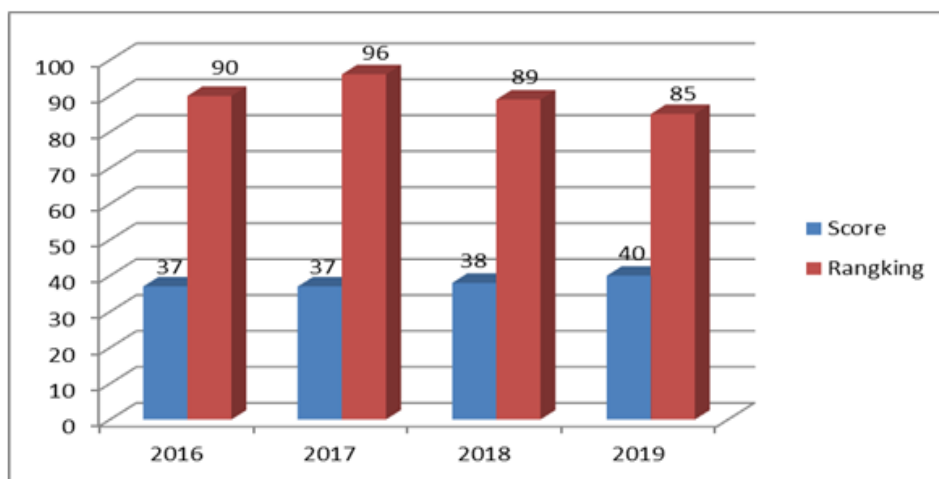


Figure 2. Indonesian Corruption Perceptions Index of 2016 - 2019

Source: Transparency International, 2020

See the above if it is associated with the principle of utility which places the purpose of the law as the greatest good of the greatest number (Betham, 1780), the law should provide maximum benefits (use value) to citizens (soebekti), until the law should pay more attention to social and justice issues (Rahardjo, 2007).

Discussion

Corruption case in Village's

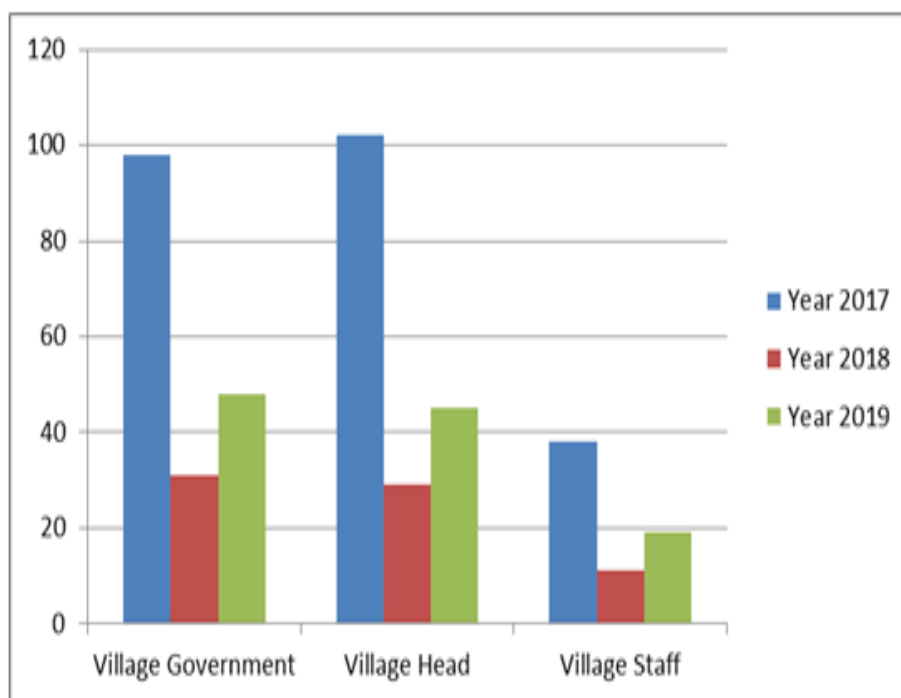


Figure 3. Corruption cases involving the Village Government, Village Heads and Village Apparatus in 2017 - 2019

Source: Indonesian Corruption Watch, 2020

The following are examples of stopping corruption cases in villages and restoring state financial losses.

Table 1. Cessation of Corruption Cases in Villages and Repayment of State Financial Losses

No	Village/ Province	Regency/ Province	Case	Status	Year
1	Bunkate Village, Lombok Regency, Nusa Tenggara Province	Central West Province	-	Country Refunds of Rp. 10.000.000	2016
2.	Lancang Kuning Village, Bintan Regency, Islands Province	Riau	-	Country Refunds of Rp. 158.000.000	2019
3.	Bakalerek Village, Lembata Regency, Nusa Tenggara Province	East Province	Illegal Pipe Procurement	Country Refunds of Rp. 231.000.000	2018
4.	Sekura Village, Regency, West Kalimantan Province	Sambas	Activity of BPD	Country Refunds of Rp. 50.999.000	-
5.	Jeuleupe Village, Regency, Aceh Province	Pidie Province	Personal venture capital	Country Refunds of Rp. 168.000.000	2016- 2017

Source: Field Research, 2020

Law Enforcement

The true, Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity. (UNCAC, 2003).

Law enforcement become an inseparable part of the rule of law, which demands that every action against the law must be sanctioned. Gustav Radbruch in *idee des recht* states that law enforcement must meet the principle of legal certainty (*rechtssicherheit*), the principle of justice (*gerechtigkeit*) and the principle of usefulness (*zweckmasigkeit*) (Fence. & Wantu, 2007, p. 395). Although in practice the three principles above are always debated in every legal decision, but the development of current law enforcement practices leads to greater benefits than law enforcement alone.

Article 4 Law Number 31 of 1999 concerning Eradication of Corruption states “Recovering the financial losses of the state or the country’s economy does not eliminate the criminal offense as referred to in Article 2 and Article 3”.

Regarding the discretion issued by several law enforcement agencies according to Ahmad Muchlis, corruption cases can be stopped only at the investigation stage with due regard to justice, usefulness and legal certainty (2016, p. 368).

Obstacles and Challenges

Corruption is not an innate form of behaviour, but rather a symptom of wider dynamics. It results from interactions, opportunities, strengths and weaknesses in socio-political systems (UKaid, 2015, p. 14).

Obstacles and challenges for village fund management, *first*, The administration of village budget management is complicated. According to Dina et al. (2017) due to the obligation to prepare village accountability reports is not efficient due to overlapping regulatory provisions and the accountability report made by the village has not followed the standard and is prone to manipulation, one of which is due to the lack of clarity in the accounting system to be used. The low level of administrative accountability is the object of corruption by the village head/apparatus (Subroto in Muhammad Zainul Abidin, 2015, p. 73) This becomes very important in the context of legal substance (Frieddman). Efficient administration is the key to reducing corruption (Koh Teck Hin, 2010, p. 127), including corruption in the village.

Second, the human resources of the village apparatus are still low. Suparman (in Irman Nurhakim et al, 2018, p. 44), states that human resource factors influence the process of implementing village funds. The constraints in the implementation of village funds were regulation, human resources, and coordination (Adhayanto, et.al., 2019, p. 135)

Restorative Justice

Corruption is extra ordinary, the impact of corruption is very damaging to the legal joints, development and welfare of the people..

In general, stiffer sanctions, institutional reforms and the passing of new laws are approaches to reducing corruption (Graycar et.al, 2012). But on the other hand, restorative justice has been the dominant model of criminal justice (Braithwaite, 2002, p. 5), didn't exception might be corruption crimes.

With administrative and human resource challenges in the village, the legal approach needs to be reconsidered in order to follow up on corruption committed by village officials, because law enforcement is also influenced by other factors (Soerjono

Soekanto, 2007). Greater utility than just law enforcement and democratic life in the village can be a benchmark in managing a clean and transparent village government. In the context of corruption carried out by the *ultimum remedium* principle village apparatus it needs to be discussed again despite Law No. 31/1999 is repressive.

Legal exclusion is not intended to eliminate the substance for law enforcement, but the approach to the benefit and social impact is more considered for corruption cases committed by village officials, such as case costs that are greater than the value of corruption, the number of cases that accumulate and the time to settle cases relatively long. In the context of the Pancasila state law the application of the second principle is more appropriate to be used as an approach to solving the problem. According to Rahayu Prasetianingsih (2011, p. 553), law enforcement does not only speak at the process of *pro-justisia*, which is precisely placed as a last resort after enforcement of various other legal regulations. It is even possible that the enforcement of *pro-justisia* law is not necessary if non-justification law enforcement has been carried out properly which ensures legal certainty and justice.

The Indonesian Attorney General in the interview said "this is the time for us to provide guidance to them not to be immediately sentenced to a sentence or at least do not do law enforcement there but let's cultivate them so that in the future village funds will be done for good" (<https://tirto.id/eA2d>).

Solution and Recommendation

The success of any anti-corruption strategy depends very much on the moral transformation of the actors (Peter Genger, 2018:34). An approach that involves the parties themselves as well as an active relationship with legal institutions (Marshall, 1999, p. 5) can be an alternative solution for overcoming corruption in the village. Corruption refunds (Husin, 2020, p. 118) to enable offenders to assume active responsibility for their actions (Marshall, 1999, p. 6).

Strengthening the community as a form of community participation is important in overseeing the use of the village budget (Bunga et. al, 2018, p. 457) (Genger, 2018), (Ellectrananda et.al, 2018, p. 208). Specifically for village fund management, community participation is important in determining the effectiveness and efficiency of these funds (Arianto et.al, 2019, p. 146)

On the other hand, highly corrupt countries tend to under-invest in human capital by spending less on education (Rose-Ackerman, 2004), therefore, education and training programs can be a solution for increasing the capacity of village officials

(Alam, 2016, p. 46), (Nara et.al, 2018, pp. 8-9). Research found solutions in the fight against corruption is through education (Dirwan, 2019, p. 1), (Danilet, 2009, p. 102).

Conclusion

The number of village heads and village apparatuses caught in corruption cases has increased in 2019. The cause of the emergence of corruption is due to the convoluted administration and the lack of human resource capacity. With these considerations, the law enforcement approach to taking action against corruptors in the village needs to be reconsidered. The approach of coaching and mentoring for the village head and village apparatus becomes important rather than just giving a prison effect to the perpetrators.

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