

DECONSTRUCTIVE INTERPRETATION AS A JIHAD FORM OF CONSTITUTIONAL JUDGE TOWARDS LEGISLATIVE CORRUPTION

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ABSTRACT: Deconstructive interpretation is an interpretation conducted by a constitutional judge when providing assessment or consideration towards the application of the judicial review of a law requested by an applicant to the Constitutional Court. This judge's interpretation becomes a jihad model of a constitutional judge to correct the legislation product that suspected to be corruptively produced and implemented. This board of legislation or board of lawmakers has the authority to design, discuss, and decides a law. Politicians' power should able to finish the discussion of the law. However, due to the behaviour of politicians, many laws are failed to pass.

KEYWORDS: Deconstructive, Jihat, Corruption.

I. INTRODUCTION

Scholars in the social, political, and legal field surely unfamiliar with the founder of Tendency Theory, Lord Acton. The theory which stated "power tends to corrupt, absolute power corrupts absolutely" interpreted as whoever occupies the position such as legislative, executive, or judicative field tends to corrupt. When power becomes absolute, corruption also becomes absolute. In the power dynamic in any part of the world, mainly Indonesia, this theory is proven. As a reflection, if it is not proven, then Mohammad Hatta will not say that corruption has entrenched, or Sumitro Djojohadikusumo will not state that 30 per cent of the national budget will go to the corrupt people, or some other experts that indicate with a stigma as a country that massively, systematically, and structurally lotted by "thieves in suits".[1]

It is certain that many low-level power elements that have high moral integrity. But if there are many elitist are indicated as a corrupt person, then it is hard not to give the conclusion that a corruptor is a superpower figure or someone that able to show its superiority or has the power that able to flap its superpower feathers in designing itself as an exceptional criminal creator (extraordinary crime). "Whoever the president will be, the corruptor will still be the 'main star'". Quote stated above is a joke of a colleague that diligently writes and research the criminogenic roots of the complicated and the acute nature of corruption in this country. This colleague jokes that way after observes the corruption cases since the Soeharto era until Joko Widodo, in which the "main star" is still the corruptor. This colleague also confirms it with borrowing the term of Luqman Sutrisno, a sociologist: "Welcome to the Republic of Draculas".[2]

The state is indeed has established ad hoc board such as Corruption Eradication Commission (KPK). This anti-corruption special force is intensively conducting surveillance and raid to the corruptor's lairs, which resulted in many arrests of thieves in suits and tie. However, corruptor still shows itself that they are "animals". It is proven by the fact that corruptors can be found everywhere. In a more metaphorical approach, KPK is described as to fulfil the invitation of the corruption that signed "chase me, arrest me, anywhere". KPK has successfully fulfilled this kind of challenge. When KPK flap its wings through "direct-catching: operation (OTT) or outside this haterhaad act, there are always some arrests of officers or some people related to them. [3]

The success of the KPK indicates that this country has not won the battle against corruptors. They still become the strongest in the implementation of national and societal life. A crowded discourse between Denny Indrayana (former minister for Law and Human Rights) entitled "Corruptor is us" and Zainal Arifin Mochtar (from Anti-Corruption Research Centre, Gadjah Mada University) entitled "We are Corruptor", or a term popularised last year by culturist Agus Noor: "Our Beloved Corruptor" at least caused by the powerful, superior, and massive corruption in this country. Due to this type of condition, it is not an exaggeration if Luqman Sutrisno

stigmatised the country as the Republic of Dracula. [4]

Those discourses confirm that Indonesia, besides now is under a severe examination by or tested by the corruptor hands, also unworthy to bear an identity as a law-based and religious state. It also indicates that whoever structural element that has always liked to violate its power, then it will be hard to put aside the corruption as its cure. Inside this person's body, there is a desire to find a "breakthrough" to realise its big dreams such as become a new wealthy person, suddenly rich person, or has a place in the elitist level. In this causality field, which are ambition to enrich themselves, an opportunity of capitalising themselves, their family, and groups in the form of searching and hoarding the wealth as much as possible. [5]

If the "culture" gets worse, then Indonesia as a law state will only be a mere black-over-white statement. Because in reality, many corrupting seeds are growing and eating the basic of the law state, on Article 1 paragraph 3 of the 1945 Constitution. The Indonesian identity of the law state that has embedded in the Constitution should be to emphasise Indonesia as a strong law state, strengthen by every aspect of this nation. However, in spite of shaping law norm to strengthen law state, those elitist are welcoming the legislation corruption. And in most certain, not only in the central government but also on the local government. [6] They plummet themselves in a scandal such as agreeing on a legislation product if there are some profitable consensus. Many legislators are arrested due to this type of cases such as bribery and "exclusive" agreement in the form of "mutual symbiosis".

II. RESULT AND DISCUSSION

1. Interpreting the Talent of Corruption

When the KPK arrests almost all of the member of the Regional Representative Assembly of Malang City, nearly no public elements that did not sneer at them using the sentences such as "why become people's traitor?", "those people are elected by us, why they corrupt in common?", or "why they looted our rights?". This sparks the question of whether they have the same talent, so they are corrupting in unison. The case of Malang is not the first. Legislator community in Sidoarjo or other regions also experienced the same due to corruption. For the critical or public groups that used to understand "naughty" elitist behaviours in legislative, executive, and judicative levels, those groups have the logic that it needs time and their luckiness. When it is not the lucky day, those corruptors will be arrested by the KPK or another law enforcer board. [7]

That logic sentence, in reality, has been deemed as a general and radical critic that shows corruption has already equally spread and embedded in the construction of power implementation in any level or type. The typical corrupting behaviour is just a segment of various corruption cases, a travelling episode, and a dynamics of corruption models that keep updating the agenda of this country's corruption history, in accordance with the talent of an individual or a group in the seat of power. The case also shows that the continuing concern will worsen and becomes a never-ending tragedy in the future if the corrupting talent being identified as a logic implementation of lust for power, that should be experienced by anyone in the seat of power. This means that whoever takes charge in control, then the power will drag the person into a corruptor. When the power is bestowed upon this person, this power is dazzling and potentially dragging the person to choose the corruption option. [8]

Corruption has existed itself as an idolised culture by some elitists. It is proven from the arrest of a person in the level of legislative, executive, and judicative (and their partners) due to the corruption case. Furthermore, the leaders of the abuse of power becomes the representation if the corruption culture stigma had genuinely grounded in this country, so that when the people one day was shocked by the news of their leaders arrested by KPK, the people deemed it as normal and considered that it is abnormal if there are no corruptors arrested. Staquf (2009), presidential spokesman during the era of Abdurrahman Wahid, argues the idealism in the political democracy. If the politic is the art of the possible, then "what has to do" of idealism must be put peace with "what is possible" in reality. The democratic political progress requires a proper pragmatism level, in which its pragmatism is related to money. Hence, the money's status is identical to the wine of power that attracts everyone who lusts on it and plummets them into corrupting option.[9]

This culture of illegal ordaining wealth has dragged the dignity of this law state into its lowest level. People of this country is just like a reflection of a nation that hegemonised in the occupation for power ordain, which its disease is rooted in illegal money hunting. Cicero, the philosopher, has confirmed through his statement, "Nihil tam munitum quod non expugnari pecunia posit", which means that no fortress is stronger if they are conquered with money. Cicero's warning implies that money could be a lethal virus that kills the

smartness of a smart people, the religiousness of a religious people, position ethics of an officer with integrity, and populist commitment of the politicians. In a macro scale, the construction of the law state can lose its judicial supremacy, or state constitution is only black-on-white, due to the money sovereignty such as the exclusive attitude of the elitist that put money as a new predator.[10]

Cicero's warning can be exactly directed to this republic that experiences statesmanship crisis due to positioning money that spreads or accelerates to become a lethal virus that kills or tackles ethics, religion, and ideology of the state. Intellect humans that should be capable of controlling money and winning their intellectuality to answer the nation's problem are also prone to the money's charm. They do not obey their knowledge and reduce their knowledge to fulfil their unlimited spirit of greed. It is quite readable in recent years that intellectuals are easier to find in every part of the country. However, finding a statesman is a hard task. This is proven during leader succession. The main problem is the search for a perfect statesman. [11]

Another proof of that statement is when a public's member become ahead or the administrator of the neighbourhood, many of them are seduced and tangled up in corruption case. The variety of the neighbourhood's funding source has lured them to violate their integrity and sacrifice clean governance. Those conditions cause many leaderless regional government implementations. People suffer from their leaders that too busy to deal with law enforcer due to financial mismanagement. The case shows that generally, local leaders can be a sample of a failed people due to being a predator for people's welfares or switch its roles from the leader to the criminogenic creator in mandate violation. They identically become money lover for themselves, their families, or cronies even though there has been a government initiative to push the growth of rural areas through Village Fund Allocation of 1 billion rupiahs that should be done in supporting empowerment and welfare of the rural areas. [12]

These plummeted executive people in the village is the proof of a dirty heart with the virus of money, which already taken away his conscience. The mandate that must be conducted then violated due to that virus infection. Sometimes the element of the power still preaches loudly about the interest of keeping the people's mandate or protecting the fund for the people. However, the plagued ambition is stronger to win its corruptive talent. The struggle of exclusive interest that puts greed and betrayal on top has degraded and replaced juridical, ethical, and religious norm as controlling power. [13]

Culturist Emha Ainun Nadjib in "Markesot Bertutur" stated that cleanliness has a wide range of meaning, and physical cleanliness is only one of them. Meanwhile, the others are the cleanliness of the soul itself: cleanliness of inter-people relationships, either social, economic, political, or even legal relationship. The statement by Nadjib is a critic of a dirty human's soul. Because of this dirtiness, living construction in various sectors in the government becomes massively demolished. For example, construction of legal and political world becomes readable and vulnerable due to their subjects that willingly let themselves be drowned in ambition such as greed in the form of enriching themselves, families, and cronies. Those people have been a victim of their own positioning as the money lover and power ordainer that sometimes converged or integrated to support and develops it. [14]

Whoever that becomes a part of the power of the hunter and money-absolute person, either from legislative, executive, or judicative that becomes the pupil of Nicollo Machiavelli in the act of het doel heiling de middelen that allows every way to get whatever they need (greedy), then the Indonesia-ness of those people will be plagued, and corruption pattern can be more systematic, accelerative, massive, and absolute because they do not recognise what is essential and fundamental for the people or not. Their thoughts merely focused on how to fulfil their want, as many as possible. [15]

2. Legal Idealism and Corruption of Legislation

Machiavelli's pupils have trapped themselves in becoming an evil figure. They are dragged into pride or organise themselves into infamous criminals. Corruptor itself is that kind of criminals, even though they are educated. But they choose to be a producer of every form of power violation rather than show the commitment to keep the power mandate. Even though they sit in a place that should be fighting corruptor, they still feel happier to engineer their primary role and become a fake role that directly or indirectly support the reproduction, progressivity, and acceleration of corruption. Plato reminds that good people do not require a law to make them act responsibly. Meanwhile, the evil people will always find a loophole in the law. [16]

The statement of Plato implies that one of the most significant problems is the evil character. Someone will always try to form and exist itself a special perpetrator such as corruption. Therefore, no matter how many law

enforcers have established by the state, the law has lost its meaning or its usefulness because the board itself are also contaminating the law. Ubi societas, ibi ius. That statement by Cicero explains that where there is society, there is a law. Or when society's track record becomes more diverse, then the diverse law becomes needed by society, including by an individual or some people that are ambitious to make a considerable profit. There are behaviours related to citizenship, government management, civil code, penal code, and others that require legal organising or responsibility. In which this behaviour also requires legal protection. In this field, the law is identified as an essential product and instrument to smoothen the way to fulfil their needs. [17]

Legal studies and theories also tested through the dynamic and tracked record of the human itself, including the power violators (corruptors). Something done by someone or some people must be traced on its juridical base, in which later because of the existence of interest diversification, this legal product existence made logic as if it has fulfilled the state's expectation, even though the product itself has many flaws that normatively used as a playground to success or smoothened their exclusive interest. In the more modern legal construction, legal authenticity has changed. Modern law, with its characteristics, has altered the position of the law, which previously a complex institution being reduced into something linear, mechanistic, and deterministic. Modern law, in the perspective of problem-solving in the society or state, requires the legal settlement that in accordance with the motto "justice through law", because the justice has been provided by creating positive law. The relationship between the state and people based on regulations and procedure that is impersonal and impartial. [18]

The fact stated that what is required by the law is not always becomes a reality is the law enforcement implementation (there is a gap between normative law ("das Sollen") and sociological law ("das Sein"). Roucoe Pound calls it the difference between law in books and law in action, which means the gap between the stated legal behaviour and real legal behaviour. Murphy provides its view on the aim of the law, which is the universal goodness. Furthermore, it should be taken into account the effectivity of the law in society, either philosophically, sociologically, or juridically. The material of the law must provide the protection function in terms of creating life happiness in society and should reflect protection and respect towards human rights and every dignity of obeying citizens. [19]

Sudikno Mertokusumo stated that in its substance, the law is a form of human interest protection, that formed in a norm. Due to threats and danger that often impacts human, then the human needs protection on its interest so that the human can live peacefully. The protection of interest itself is achieved through forming a living regulation or norm, added with sanctions that are binding and enforcing. One of the legal product that strengthens living in the nation and society is a legal product that enforces or protect human rights such as a legal product that can be an instrument that can welfare its society or keep them away from every threat of those corruptors. Things that are being done by the state in the field of legal product itself is in accordance with George Jellinek's view, which stated that the state becomes a party that has a task and duty (duty bearer) to respect, protect, and fulfil human rights of every individual that lives in their territory as the rights holder. If related with this legal's sacred mission, then what state wants in the general legal formation, its pressure point should be referred to human rights protection from every destructive behaviour such as corruption. [20]

According to Winner, the law is the centre of communication control between individuals that aims to realise justice. The law itself is introduced by power holder or their apparatus, which according to the preceding premise dubbed as the "central organ". The realisation of aim or control itself is done through controlling individual behaviour, conflict avoiding, or by implementing legal sanctions towards a case. Therefore, every individual is expected to behave according to the command and justice can be realised. This real aim of the law is pointed towards justice. One of its realisations is the implementation of people's constitutional rights. Without the implementation, there will be no true legal aims.

3. Deconstructive Interpretation as a Jihad Model of Constitution Judge

The idea of establishing the Constitutional Court (MK) is based on a serious effort to provide protection towards citizen's constitutional rights and the spirit of constitutional enforcement as the ground norm or highest norm, which means that every regulation under it cannot be in contrast to the matters regulated in the constitution. A constitution is a form of people's sovereignty deliverance towards the state. Through the constitution, people build a statement of willingness to give some of their rights to the state. Therefore, the constitution must be controlled and guided. Because every form of violation, either by power holder or legal rules under the constitution towards the constitution is an actual realisation of a breach of people sovereignty. This is the point where the judge with all of his/her ability must control and guide the constitution. The form of controlling and guiding are stated in its authorities and duties. [21]

The authority of MK in monitoring the constitution is stated in Article 24C Paragraph 1 of the 1945 Indonesian Constitution that stated: (1) Constitutional Court is authorised to adjudicate on the first and last level in which its decision is final to test the law towards the constitution, deciding the authority dispute of state boards that its authority is given by the constitution to determine a political party's dissolution, and resolve the dispute on election results. The MK proves this authority with its rationality power and militant thinking in conducting legal interpretation that takes sides on the state and people's importance, which to deconstruct legislation product that implicates to create a loss in the field of the present or the future. [22]

Role of MK is related to the requirement of recognition and the earthing of constitution sacralisation, which by this role will take the nation and state becomes dignified and well-being. Government implementation that causes power violation, which the leaders make the political decision without legislative control is proof of constitution betrayal. The existence of the constitution does not only made as an instrument to justify the exclusive importance of regime's element and not being made as the stepping stone to arrange the construction of nation and society livelihoods. In this particular field, MK judges receive a mandate from the state to become the warrior (mujahid) of the constitution, in which through their performance can make the constitution more "alive".[23]

Notohamidjojo, a legal expert, stated that in general, legal studies, including the constitution, in all field of theory and practice, is the practical study that involves human behaviour. Legal studies require the handler or the executor to judge on two sides: legal regulation and legal implementation even though that Juris work is bound by moral norms, justice, equity, truth, and kindness. The larger he/she feels bounded by those moral norms, the better quality of a Juris he/she gets as a legal authority, and also the more contribution he/she give to the state's legal development. This thought truly stated that no matter the type of the law, it can survive in its dignity if the bearer, especially the judges, implement it in accordance with ethical standards such as enforcing law without being commanded to enforce it, uphold the independency without being commanded, enforce egalitarianism without being protested first, et cetera. Constitutional judges are worth to be called as extraordinary bearer when the command of the constitution is successfully implemented or enforced. Constitutional enforcement can be shown on its success to conduct an examination and decides the application of judicial review towards the law that in this legislation product contains the unconstitutional content. [24]

Reviewed from the struggle in the interpretation of the existence of a suspected unconstitutional legislation product, in which they have to produce the dissenting opinion in the realm of MK judges, then this indicates that at least they try to show the public that there is disability or weakness during the law formulation. This "disability" can be assumed as a conspiracy product or evil agreement (contains corruption) in the circle of parties that feel there is some great importance along with the issuance of the law. Churchill said that there are two things in the world that if people know how it made, they will not consume it: sausages and laws. The work of rolling the political process in the democratic environment always involves actions such as threatening, persuading, and exchanging, and those actions quite often involve money. Hence the disgusting looks from the idealist. This critic is aimed at lawmaker when they are seduced and conquered by money importance. The product quality is decreasing, and the product's aim has deviated from the people's interest in securing or fulfilling some party's importance that has formed an evil alliance with the lawmakers.[25]

In the nature of democracy, in which the ideal is called as the construction of people-based societal and state livelihoods, it is inevitable that every form of political practices in law formulation oriented to reflect or wealth the people is the one that must be prioritised by its makers. Private, crony, party, or any interest that has a great and exclusive economic power that inserted into lawmaking politics is a form of unconstitutional behaviour. Constitutional judges have given examples of legal interpretation models to show the public that the deconstructive interpretation can become a form of jihad in monitoring the constitution so it will not be plagued by corruptive practices or evil agreement in the legal formulation. Deconstructive interpretation usually has the kind of teleologic interpretation (the aim of the lawmaking that take sides with justice and future impact). [26]

The interpretation itself can be read on the considerations (ratio decidendi) constructed by constitutional judges when deciding the Law No. 22 the year 2001 about Oil and Gas that was applied for judicial review. This means the considerations are based on the juridical interpretation that related to people's constitutional rights. MK's monitoring through the act of deconstructive interpretation proves that people have a variety of rights stated in the constitution. This constitution's mandate can protect them from the continuous corruption from the oil and gas corruption syndicate. MK's decision that granted the judicial review of those mentioned law that automatically dissolves the Oil and Gas Regulatory Board (BP Migas) is deemed as a right decision. The dissolution itself is considered as correct because almost all of Indonesia's oil and gas production block is given

to foreign companies such as Mahakam oil and gas block several years ago. [27]

In this particular judicial review, MK judged that its decision is their best choice. This can be viewed from the MK judge's statement, that when BP Migas was in operation, state position is not in the higher place, but rather the same with the contractors. The dissolution can be explained through the economic base indicator such as inefficiency of BP Migas that leads to loss. Two facts contribute the loss: the decreasing gas share towards Indonesian GDP since under the management of BP Migas and BP Migas exporter obedience level is only 30%, far fewer than other exporters. Without accusing corruption in the body of BP Migas, MK and its judges have no right to say that. Therefore, the term of inefficiency is the most sociable and neutral to illustrate the state of BP Migas at that time. BP Migas's contribution to the national budget always decreases. This decrease happened during the 1990s until 2012, from 35% to 12%.

Even though in this case MK judges careful in using the term of inefficiency or corruption, but if it related to the findings of corruption cases in the field of oil and gas that considered as huge, then the deconstructive interpretation of MK judges towards the Oil and Gas law still has to be appreciated as the judge's bravery in realising their constitutional jihad. MK is one of the justice institutions or law enforcement pillars that struggles to build and realise the correct legal ideology by creating the best legal choices for the people or the justice seeker, by testing the legislation product that cannot provide the support for the legal enforcement. Satjipto Rahardjo stated that law enforcement is a normative concept, in which the people just applied to what stated in the law. If the law contains some "order" from the elitist economic groups, for example, then it is identical that law's enforcement or implementation will mainly profit those groups. Meanwhile, people's interest will be inevitably sacrificed. [28]

4. Diapers, Politicians, and Constitutional Judges

De Queiroz, a Portuguese realist writer, stated that "politicians and diapers must be changed often due to the same reason". The quote reflects the critics towards politicians that always puts people's interest aside. This quote later becomes interesting because diapers and politicians are placed in an equal position. This placement is just the same with positioning the politicians in an impermanence realm, or that politicians can be replaced anytime. Why should politicians be replaced? Politicians are a strategic power, which juridically has a fundamental role in citizenship livelihood construction because they determine the realisation of legal reform politics, which may implicate to the people, no matter positively or otherwise.[29]

Law that idealised as an umbrella in a society and nation is not considered strong to face the tremendous force of local and global society change. Quincy Wright reminds that all nations in the world that involved in this globalisation and free trade must create legal standardisation in economic activity. The tremendous extralegal power like this indirectly is an examination challenge for the politicians in Senayan that bears the responsibility in the field of legislative politics. If they submitted to the interest of "customer's" power by manipulating articles or paragraph of the law draft, then this is considered as a corruptive conspiracy.[30]

To change that condition, it is logical if the state requires high-quality officer or politicians who has a high commitment towards people's interest. When they are given the trust to form the juridical norms, then the political pattern will show a face that cares the fundamental popular interest. Otherwise, it is logical that they should be replaced, just like diapers. The allusion itself indirectly remind them that if his track record in the legal formation politics shows their impartiality towards people's interest, then they have to be replaced by political resources that have a better popular and national commitments. The authority of the constitutional judge in the judicial review that conducts deconstructive interpretation towards the legislative product that suspiciously contains corruptive act is an educative reaction that reminds the politicians to show their popular and national political commitment during the law formulation. This kind of judge used to position himself/herself as a hunter (mujtahid) or warrior (mujahid) that has a judicial authority to offer a variety of changes that contains justice.[31]

As a comparative reflection, since the 5th century BC in the city of Athens of the Antique Greek, the longing for high-quality leader has been there. Plato, the writer of "Republic", initiates philosophically-qualified leader as a state controller. According to him, they are a reliable person to lead as a wise leader and expert partners to manage the state. Plato stated that an incompetent person (from wisdom side) must be avoided in taking charge of the state because it will only plummet the state in tyranny. Plato's expectation is a normal expectation of every nation or nation's subject, even though its leader is not automatically a philosophistic one that they need. Judge is a figure that is given the trust to lead in the judicative field, so that superior characteristics as a prime "human" must be attached to him/her.[32]

Indonesia also requires many superior elitist resources, moreover people who are capable and have integrity in managing the country in the judicial field. A constitutional judge has become a representation of the state in the judicial field by providing required justice as great as possible. A deconstructive interpretation that being shown is a form of constitutional jihad to keep the dignity of the constitution.

The dignity itself will be directly felt by the people, state, nation, or especially the justice seeker, when the judges which constitutionally keeping it tries to exert their superior characteristics to maintain the constitutional implementation.[33]

III. CONCLUSION

Corruptor has tightened its claws and hegemonised people in this country. They are easy to spot everywhere from any level such as executive, legislative, and judicative. Ironically, some legislative elements, which given the mandate by the state to produce juridical norm that ideally used as a weapon to protect the national resource, somehow use it as their own instrument to conduct, develop, and preserve corruption. In this kind of area, the MK judges have the role in conducting trial towards the applicant that applied for judicial review using their deconstructive interpretation. They show their constitutional jihad by deciding the unconstitutional matter in a legal product because this product is considered severely harming the country. Natural resources that should be used to prosper the people at least can be protected and realised due to MK judges that considered some articles in the oil and gas law as unconstitutional.

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