

Penghentian Penyidikan dan Penuntutan Tindak Pidana Korupsi di Indonesia (Analisis Pasal 40 Undang-Undang Nomor 30 Tahun 2002 sebagaimana diubah dengan Undang-Undang Nomor 19 Tahun 2019) = The discontinuation of Investigation and Prosecution of Criminal Acts of Corruption in Indonesia (Analysis of Article 40 of Law Number 30 of 2002 as amended by Law Number 19 of 2019)

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Abstrak

Penghentian penyidikan dan penuntutan terhadap tindak pidana korupsi adalah salah satu substansi penting dari perubahan Undang-Undang Nomor 19 Tahun 2019 tentang Komisi Pemberantasan Tindak Pidana Korupsi yang kemudian menimbulkan perdebatan baik di kalangan akademisi maupun praktisi hukum. Diskursus tersebut mengerucut pada persoalan dasar teoritis dan urgensi. Metode penelitian socio legal yang digunakan kemudian menunjukkan bahwa penghentian penyidikan dan penuntutan tindak pidana korupsi dapat didasarkan pada sunrise principle dan sunset principle serta the shield function dan the sword function maupun prinsip realistic prospect of conviction yang dalam implementasinya memiliki dua filter yaitu evidential ficiency dan public interest. Dari perspektif teori, penghentian penyidikan dan penuntutan dapat ditelusuri dari teori integratif yaitu teori yang digambarkan sebagai dasar yang memberikan keseimbangan dalam hukum acara pidana dan bersumber dari hukum adat kebiasaan dan pandangan hidup (way of life) keselarasan, keserasian dan keseimbangan masyarakat Indonesia. Dari segi urgensi, kewenangan penghentian penyidikan dan penuntutan ini memberikan tambahan alternatif bagi KPK dalam penanganan tindak pidana korupsi terutama dalam mewujudkan kepastian hukum dan prinsip speedy trial dalam hukum acara pidana. Negara-negara seperti Hong Kong dan Belanda juga mengenal mekanisme ini. Secara normatif Indonesia dan Belanda mengaturnya dalam beberapa pasal, sedangkan Hongkong, meskipun tidak mengaturnya secara expressis verbis dalam Undang-Undang, mekanisme ini dikenal dalam praktik penegakan hukumnya sebagaimana terlihat dalam skema penanganan perkara yang dipublikasikan oleh Independent Commission Against Corruption (ICAC). Pengaturan tentang penghentian penyidikan dalam tindak pidana korupsi harus tetap dipertahankan sebagai suatu mekanisme kontrol terhadap kemungkinan terjadi kesalahan prosedur penegakan hukum atau karena alasan teknis lainnya.

.....Discontinuation of the investigation and prosecution of corruption crimes is one of the important substances of the amendment to Law No. 19 of 2019 concerning the Corruption Eradication Commission which then led to debates both among academicians and legal practitioners. The discourse focuses on basic theoretical issues and urgency. The socio-legal research method used then shows that the discontinuation of the investigation and prosecution of criminal acts of corruption can be based on the sunrise principle and sunset principle as well as the shield function and the sword function as well as the realistic prospect of conviction principle which in its implementation has two filters, namely evidential sufficiency and public interest. From a theoretical perspective, the discontinuation of investigations and prosecutions can be traced from the integrative theory, namely the theory that is described as the basis that provides balance in criminal procedural law and is sourced from customary law and the way of life of harmony, harmony and balance of Indonesian society. In terms of urgency, this authority to stop investigations and prosecutions provides

additional alternatives for the KPK in handling corruption crimes, especially in realizing legal certainty and the principle of speedy trial in criminal procedural law. Countries such as Hong Kong and the Netherlands are also familiar with this mechanism. Normatively, Indonesia and the Netherlands regulate it in several articles, while Hong Kong, although it does not regulate it *expressis verbis* in the law, this mechanism is known in its law enforcement practice as seen in the case handling scheme published by the Independent Commission Against Corruption (ICAC). Regulations regarding the discontinuation of investigations in corruption crimes must be maintained as a control mechanism against possible errors in law enforcement procedures or for other technical reasons.