Understanding The Typology of Judge’s Behaviour in Handling Corruption Cases in Indonesia

By M. Syamsudin
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1. INTRODUCTION
Some people argue that corrupt behaviour has been part of culture of Indonesian society since ancient period. According to Wijayakusumo's opinion, corruption in Indonesia had been institutionalized since Dutch colonial era. The Dutch recognized family system which valued greatly the action of helping other family members that suffered under unfortunate condition. Americans also recognized similar value which called sholat system. However, they attempted to erase out such value and it took several decades in order to be completely free from such value [1]. Corrupt behaviour has been embedded within mentality and soul of most Indonesians [2]. This behaviour usually occurs in every level and aspect of Indonesian life, such as corruption during administration of birth certificate; marriage registration; ID card registration; building license registration; local government institution procurement project; even happen within judicial institution which is marked by the existence of judicial corruption.

Such corrupt behaviour unconsciously is stemmed from custom which is considered as common practice by society, for example: gratification and bribery for government official that is viewed as thank you payment upon their service. Commonly, this custom is normal practice within culture of eastern society. Unfortunately, this practice eventually evolves into seeds of corruption which later becomes real threats against society [3]. Therefore, such practice is embedded within society life as daily basis, as commented by Moh. Hatta that such situation has become part of national culture [4].

Religious aspect cannot be separated from corrupt behaviour since there are some practices that close related to money politics issue such as *mutya* (gift) and *riyadhah* (bribe) which are provided by certain people who intend to use religious figures as political puppets, *pajriyah* (establishment of monastery or any religious facility) which holds political motives that commonly happen prior to national general election or local government election; promoting political propaganda which hides behind camouflaging of religious doctrine in order to support certain general election candidate, for example: doctrine of prohibition on female leadership, doctrine of leader’s religion requirement and etc. [5].

According to research result which was published by Zakyah, corrupt behaviour also occurs in the entire judicial institution, from the District Court until Supreme Court. Corruption involves almost the entire main instrument of judicial institution, such as judge, prosecutor, police, advocate and registrar. Besides, some people who are not part of judicial institution also play role as case broker during corruption case handling process. Since corruption practice commonly happens during trial process, society then titiled it as judicial corruption. This term refers to corruption practice that happens among judge, advocate and prosecutor along with other involved parties in the court during trial process. It also refers to the conspiracy that occurs during trial process in order to give victory for certain concerned party [6].

Based on recommendation from legal experts of Center for The Independence of Judge and Lawyer (CIL) on biennial conference (on 17-22 September 2000) in Amsterdam, it was concluded that judicial corruption occurs because of some actions that might cause dependency on judicial body and legal institution (police, prosecutor, advocate and judge). It might happen if judge or the court ask for rewards or receive various profit from defendant or give promises to the defendant by abusing judicial power or...
any kind of action, such as bribery, counterfeiting, data or any important document deletion, data change; the loss of public facility or personal belonging; obedience towards external intervention or pressure; threat, negotiation, conflict of interest; negotiation with advocate upon certain case; false consideration on displacement, promotion and retirement; prejudice that might slow down judicial process and obeying government and political party interest.

As the result, most of or even the entire "product" of judicial institution does not represent justice and legal certainty since there is an allegation that case negotiation happens between legal enforcement and the defendant. It would create public distrust towards a judicial institution. Therefore, there is no wonder if vigilant justice practices grow rapidly within society when they have to settle any case.

I think, there are two perspectives that should be proposed in order to analyze such real phenomena. First is the social perspective and the second one is the legal perspective. The former perspective emphasizes on how the increments of the judicial institution (in this context refers to the judge) work based on formal and procedural guidelines as written on regulations. Therefore, if a judge has worked appropriately as stated on regulation and he/she does not violate any formal or procedural regulation, there is no problem with the judge. This perspective stresses on the "regulation" factor in interpreting law. The internal perspective's distinctive characteristics are analytic, logical, mechanical and procedural.

On the other hand, external perspective of law emphasizes on how the law works in practice which does not merely focuses on formal-procedural level. The way of law working first is determined by and limited to formal guidelines as found on various regulations. However, such formal guidelines do not do enough to provide understanding and to explain the behaviour of involved actors since it actually needs to add the elements of behavior. Law enforcement is not free from norms and values. The elements of norms, values, ideas, actions and behavior are closely related to the law enforcement. Such reality was explained clearly by Friedman in his legal culture term. (8)

The second perspective views legal issues and legal facts from wider point of view than merely viewed as written norms. It commonly employs other knowledge outside law such as sociology, anthropology, psychology and etc as theoretical basis for explaining an analyzed legal phenomenon. This is the position I took in order to analyze legal issues and realities.

Since this research used external perspective, it is relevant as well to explain the action theory by using Talcott Parsons' "voluntarism" concept in viewing social realities as stated previously. Parsons had organized scheme of basic unit of social action which is divided into some points based on the characterization as follows: (i) the existence of individual as actor; (ii) the actor is viewed as holder of certain interests and goals; (iii) the actor owns alternative method, instrument and certain technique in order to achieve his/her goals; (iv) the actor encounters various situational conditions which might limit his/her action to achieve ultimate goal, such as certain situation or condition which is uncontrollable by any individual (for example: sex and tradition); (v) the actor is not free from the obstacles which are stemmed from values, norms and abstract ideas that influence him/her to choose and to determine goals as well as alternative actions in order to achieve ultimate goal (for example: cultural obstacle) (9).

Within the context of this paper, the actor refers to the judges who handle corruption cases in the court. The actor or the judge is actually on the situation when they are influenced by norms that lead him/her to choose alternative method and means in order to achieve the goal. Such norms do not decide its choice on certain method or means, instead it is decided by the ability of actor (voluntarism) to choose. Voluntarism is individual ability (judge individual ability) to take action in the sense of deciding certain method or means from various available alternatives in order to achieve the goal (10).

II. STATEMENTS OF PROBLEM

If the hypothesis that any choice of judge behavior is the result of persevering interpretation between values, norms, various abstract ideas and condition to achieve goal is true, the main issue of this paper is: what are kinds of judge behavior in when they handle corruption case? This main question is later divided into more detailed questions, such as: what kind of judge's paradigm of thinking when they are dealing with corruption case? What kind of legal interpretation method which is employed by judge who handled corruption case? What are judge's value orientations when dealing with corruption case?

III. RESEARCH METHOD

This research is categorized as non-doctrinal legal research type which is combined with socio-legal approach. The analyzed object in law which is perceived as meaningful symbol that resulted from human mental construction (in this context refers to the judge) and it is reflected in the form of corruption case verdicts.

Data collection was conducted by doing interview, observation and document research. The interview was conducted towards research subjects (judge) and interviewee. Interviewing activity was done at the same time with the observation activity or field record keeping. Field record keeping is supposed to gain data which can not be obtained through interview, especially the data which is obtained during the progress of corruption case trial. Document research was conducted upon corruption case verdicts, examination results on corruption case verdicts, other previous research results, academic journals, theses/dissertations, magazines, newspaper, relevant articles, and other various references which are relevant to the issues of this research.

Data analysis followed Matthew B. Miles and A. Michael Huberman's interactive analysis model (1999) which consists of data collection, data reduction, data presentation and summarization/verification activities.
IV. DISCUSSION

According to analysis result upon collected data, it showed that there is classification on typology of judge’s behaviour in handling corruption cases. Such classification is divided based on: (1) paradigm of thinking of judge who handled the corruption case; (2) judge’s legal interpretation method; and (3) value orientation of judge. This classification allows us to identify the distinctive characteristics of each typology as explained on Table 1 below.

<table>
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<th>Classification</th>
<th>Judge Typology</th>
<th>The Characteristic of Judge Behaviour</th>
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<tr>
<td>Judge paradigm of thinking</td>
<td>Positivist</td>
<td>- Written regulations as basis and the only source of justice and truth when dealing with any case.</td>
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<td>- Judge is unlikely to pass discretion as legal finding effort.</td>
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<td>- Judge only representative of written regulation.</td>
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<td>- Judge only emphasizes on the level of procedural justice and focuses more on legal certainty.</td>
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<td>- Judge tends to apply deductive logic in order to achieve truth.</td>
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<td>- Written regulation is not the only source of truth and justice when dealing with any case.</td>
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<tr>
<td></td>
<td></td>
<td>- Judge is likely to pass discretion as legal finding effort.</td>
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<tr>
<td></td>
<td></td>
<td>- Judge does not only represents the regulations, but also as law maker.</td>
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<tr>
<td></td>
<td></td>
<td>- Emphasizing on substantive justice level.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Judge tends to apply inductive logic in order to achieve truth and justice.</td>
</tr>
<tr>
<td>Judge legal interpretation method</td>
<td>Textual</td>
<td>- Interpreting public delict in narrow sense as it only violates written regulation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Interpreting public delict in wide sense.</td>
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</table>

| Judge value orientation | Idealist | Much influenced by ideal value of law and justice in handling any case. |
| Pragmatist | Influenced the most by choice of advantageous situation when handling any case. |
| Materialist | Much influenced by material value and profit when handling any case. |

Based on judge’s paradigm of thinking in handling any case, it showed that there are two typologies of judge paradigm, they are: positivist judge and non-positivist judge. The positivist type focuses on formal and textual parameter in interpreting the truth of law. Meanwhile, non-positivist one tends to mix either textual or written regulation and contextual of socio-cultural condition in interpreting the truth of law.

In practice, mostly the judge tends to be legal positivist instead of being "rule breaker" by applying non-legal positivist paradigm. Main characteristic of legal positivist is to make written regulation as the only guideline and ultimate source when handling the corruption case. Judge’s creativity less likely gets concern during their legal finding effort since judge is viewed as representative of written regulation. Written regulation is considered as the only source to find truth, while at the same time unwritten regulation and other factors that remain outside written regulation are unknown to legal positivist. Social sensitivity, empathy and dedication to create justice rarely become part of their consideration. Truth and justice are merely viewed as matter of legal formalism. Such kind of paradigm only put more focus on legal certainty issue than justice and utility of law. In order to find the truth, they employ deductive logic by emphasizing on syllogism.

Legal positivism still dominates judge’s paradigm of thinking in the court. As the result, judge is not allowed to explore substantial truth in order to create impartial justice and law that protect people. Judge’s failure to prove corruption during the trial process in district court level is caused by their deductive logic, while putting aside inductive logic when searching for truth and legal facts [11].

In order to master deductive logic, learning every aspect of certain article in written regulation is the first step. Later, constructing story based on legal facts as found
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During the trial session, this method, the judge, brings negative consequence since it allows the judge to create bias in the verdict. When creating a verdict, judge should begin with legal facts which they acquired from the witnesses and evidence in order to construct the story of an event by using their inductive logic instead of focusing on certain articles in written regulation [12].

In fact, judge starts everything by choosing a certain article in written regulation for cases they handle and later they construct the story of an event based on legal facts they found during trial session. In other words, judge is being a priori. Therefore, choosing a certain article in written regulation without any clear basis brings consequence on low quality of verdict which seem only forcing the story of legal event to be in accordance with the article or regulation they have chose first. Such method is named deductive method which is not appropriate for district court judges who have to examine Trier of fact. The best method for examining Trier of fact is inductive [13].

The typology of judge's paradigm of thinking is actually reflection of judge (ideal) culture to understand the dimension of ontology, axiology, and epistemology. The ontology dimension is related to nature of law, whether it is interpreted as principle of justice and truth, or law as norms that written on regulation or law as sociological behavior on macro and micro scope and etc. [14].

Axiology dimension is focusing on the purpose of law that has to be achieved. The purpose of law might be the justice, legal certainty or legal utility or all of them. Meanwhile, epistemology dimension is related to the method or approach which is employed by certain subject in order to do research on analyzed object. In epistemology context, we learn that logic does not refer to rationality as the only instrument which is employed by subject in order to approach object. There are some instruments that can be employed, such as senses and intuition since in fact the subject is not only a rational being but also an ethical and political one [15].

Typeology of positivist judge and non-positivist judge, in practice, create various patterns of legal interpretation when dealing with corruption case, such as textual and contextual interpretation. This research showed that there is relation between characteristic of judge legal interpretation on corruption with sanction. If judge applies textual interpretation, there is tendency to pass non guilty verdict or even if the judge passes guilty verdict, the sanction is relatively light one. On the other hand, if the judge employs contextual interpretation, judge tend to pass guilty verdict. Sanction level of such guilty verdict is varied which has range from light sanction, moderate one, and heavy sanction. It depend on judge's consideration basis in determining sanction level.

Textual and contextual interpretations on corruption is based on types of corruption which might fall in category of "public deficit" or "abuse of power" that is committed by local government officials who work in legislative or executive institution. Textual interpretation on corruption which falls into category of public deficit and abuse of power is merely underpinned by violation against written regulation basis. Meanwhile, contextual interpretation on corruption that belongs to category of public deficit and abuse of power is underpinned by violation against written and unwritten regulation basis. Unwritten regulation which becomes basis for charging corruption within the context of public deficit is social norm which prohibited any disgraceful action against sense of justice within society. Element of abuse of power can be found on the violation against general principles of good administration as part of unwritten regulation.

The research result indicated that panel of judge's failure to prove elements of crime in corruption case as charged by prosecutor during trial session is caused by textual interpretation on corruption case which applied by most judge. If judge applies contextual interpretation, there is high opportunity to successfully prove elements of crime of corruption case. In other words, application of textual interpretation for corruption case usually leads to non guilty verdict or light sanction (if the defendant receives guilty verdict). Meanwhile, contextual interpretation on corruption case most often produces guilty verdict in which the sanction range is varied from relatively light one until the heaviest one. It depends on judge consideration as a basis in creating the verdict.

Based on research on corruption case verdict, there are non guilty verdict and also verdict with minimum sanction which do not put consideration towards legal facts and they lack of strong legal arguments. It is clear cut evidence that judge's verdict fail to protect society interest, especially for the victim who suffered from massive impoverishment, since corruption is not viewed as crime against humanity. Some judges even take side on the defendant by emphasizing a made-up reason that the defendant had given many good contributions to government. Some judges mostly do not realize that corruption is crime which violates economic rights, social and culture of society. Corrupted national asset has failed to be interpreted as destructive action against social justice. Corruption which was committed by government officials is not considered as the worst crime that represent poor people with weak social status. Meanwhile, corruptors still remain within top structure of government power. They are mandated by public trust to protect and give prosperity for society, yet they intentionally take away people's socio-economic rights [16].

Judge activity when handling a case is close related to the direction of their system of cultural value. The system of cultural value is guidelines that gives direction and provide orientation to judge's life within their cultural environment. It consists of ideas, concepts, and norms and rules that living in judge community realm of mind. This system of cultural value remains within emotional area of psychological realm that being part of respective culture [17].

Based on system of cultural value, research showed that judge's activity in handling a case depends on the influence of their cultural values. Judge always spend their time to have dialogue with system of cultural values that living in their psychological and mental realm. Judge will set priority upon values that they consider important in relation to case they handle [18].
The judge will always take chance to have dialogue with values they embrace when handling a case. If they attempt to deviate from such values, they will feel guilty and such that might bother their entire life. However, such situation will only occur to judge who has strong sense of morality, conscience and justice. On the other hand, judge will be unlikely to suffer from such situation if they do not have any sense of morality, conscience and justice clear their action and decision are merely dominated by desire, greed and pragmatism which only bring advantage to their personal interests [19].

Research showed result that case handling process in the court does not only deal with legal and procedural of the application of law, but it also involves values that every judge embraces. Before passing a verdict, judge will experience contemplation, consideration and having dialogue with values that living within their inner soul realm. Such fact is relevant with Ronald Beiner's comment in Warrick (2007) which stated that judge verdict is "...mental activity that is not bound to rules..." [20].

Judge will choose values that they decide to manifest. Such manifestation and choice upon values in practice are strongly influenced by some factors, such as: personal interest level, education, life basic needs, environment and habit along with their personality. Those factors will provide direction to judge when they make decision in verdict.

Practically, shift on values they choose is likely to occur when shift from basic need values or objective values of law into pragmatic or subjective values which become priority by using any means and opportunity to be used efficiently during certain time and context. It means that judge is not free from their personal interest and interaction is not part of legal aspect when handling any case. Objective condition showed some factors that might influence judge verdict, they are: personal interests and material financial basic needs, dynamics of organization they belong to, external opposition, personality influence, past experiences and old habit. Moreover, judicial corruption also gives influences to judges when they handle case [21].

Normatively, judge has been granted by law with authority and freedom to handle the case independently and free from any intervention. They independently make decision and verdict based on their personal belief and conscience without any interference from any institution outside judicial system. Any intervention on judicial matters which is committed by other parties is prohibited, unless it is stipulated otherwise by law. However, in practice, normative regulation does not show result as what expected.

Practically, some judges cannot run their function well in order to manifest the ultimate objective of law. Legal enforcement function which has purpose to achieve objective of law, as written on the letterhead of verdict "IN THE NAME JUSTICE OF ALMIGHTY GOD", in process, must experience degradation, distortion, dysfunction and malfunction which are caused by legal enforcers, particularly the judge. This situation is labelled as "Judicial Mefioso".

In other words, in handling any case, the judge's decision is bound to values and orientation that they embrace. Ideas and concepts which reside in judge's mind also influence their actions and decisions they have to make, particularly when they have to decide defendant's guilty status and to determine defendant's sanction in verdict. Select on values that judges have to take must affects the quality of judge's verdict.

When dealing with any case, in practice, judges have to encounter many temptation, especially material or financial process. In this context, case handling process can be interpreted as source of opportunity to gain material profit. Therefore, judge's activity in making decision upon a case is vulnerable to any corrupt practice, such as bribery [22].

Regarding to such condition, there are some proposed categories of judge based on their personality. First, greedy judge who actively offers settlement of a case to certain party concerned (defendant) and in return they ask for reward. This type of judge is categorized as materialistic judge. Second type is a willy-willy judge who allows themselves to receive any reward from party concerned, yet they will not do protest if they do not receive such reward. Most of judges belong to this category and they are labelled as pragmatic judge. The last one is honest judge who rejects any kind of reward which is offered by the defendant. This type of judge belongs to idealist type but they are quite few in number [23].

Such condition proves and strengthens a thesis which argued that there are two types of judge when making decision over a case. First type is, before making decision and creating verdict, the judge who only looks for truth and justice on written regulation. After successfully finding the legal basis as written on regulation, they attempt to apply it on real case. However, during this process, they usually ignore the possibility if such written regulation is relevant with sense of justice that resides within society. They think that the aptness between written regulation and legal facts they found on the case is enough to handle every case they take. It means that judge is merely representative of written regulation. Such procedure is embraced by positivist judge.

Second type is judge who looks for the truth and justice from their conscience before making decision and creating verdict. This type of judge will question their conscience firstly upon the execution of decision he is going to make. After conducting such process, they start to find out legal basis in written regulation for case they handle. Afterwards, they are ready to write their final decision on verdict. Verdict which they made does not merely rely on written regulation. This verdict also considers sense of justice that resides within society. This kind of procedure is practiced by progressive judge.

Rahardjo has divided type of judge into two categories, they are: (i) judge who question and listen to their conscience firstly before looking for relevant regulation that support their conscience decision when handling case, and (ii) judge who, when handling a case, consults with their personal interest firstly before looking for relevant regulation that provides legitimation to their personal interest [24].
V. CONCLUSION

Corruption cases handling process which is conducted by judge in the court does not only deal with technical-juridical and procedural application of laws. It also involves social factors that influence judge; they are: (1) judge's paradigm of thinking which creates typology of positivist judge and non-positivist judge; (2) judge's method of legal interpretation that leads to typology of textual judge and contextual judge; (3) judge's orientation of value that produces typology of materialist judge, pragmatic judge and idealist judge.

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[22] Interview with SS, Judge of Yogyakarta District Court.
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