

**PENERAPAN UNSUR MELAWAN HUKUM DALAM PERKARA
TINDAK PIDANA KORUPSI (STUDI KASUS PUTUSAN NOMOR
74/PID.SUS-TPK/2021/PN.BDG)**

ABSTRAK

Dalam Putusan Pengadilan Tindak Pidana Korupsi pada Pengadilan Negeri Bandung Nomor 74/Pid.Sus-TPK/2021/PN.Bdg menyatakan Terdakwa terbukti bersalah dalam dakwaan kesatu subsidair, yakni Pasal 3 UU PTPK karena adanya kewenangan jabatan yang dimiliki oleh Terdakwa sebagai Ketua Koperasi SIPS. Dalam merumuskan pertimbangannya, majelis hakim tidak secara lengkap memasukan pandangan dari Nur Basuki Minarno. Akibatnya majelis hakim keliru dalam menerapkan pasal. Dari hal tersebut timbul pertanyaan, bagaimana konsep dan pengaturan unsur melawan hukum dalam tindak pidana korupsi dan Apakah tepat penerapan pembuktian unsur penyalahgunaan wewenang Pasal 3 UU PTPK dalam putusan perkara Nomor 74/Pid.Sus-TPK/2021/PN.Bdg. Dari hasil penelitian didapati fakta bahwa UU PTPK menganut sifat melawan hukum secara formil yang mana Pasal 2 ayat (1) UU PTPK merupakan *genusnya* sementara Pasal 3 adalah *speciesnya*. Kendati demikian, tidak ada indikator diferensiasi yang jelas antara kedua pasal tersebut sehingga praktik penerapannya berbeda-beda. Penerapan penyalahgunaan wewenang dalam perkara *a quo* tidaklah tepat karena perbuatan Terdakwa dilakukan dalam kapasitasnya selaku pejabat pada sektor privat. Selain itu nilai kerugian keuangan negara yang berada diatas Rp.250.000.000,- (dua ratus lima puluh juta rupiah) membuat Pasal 2 ayat (1) UU PTPK lebih layak diterapkan.

Kata Kunci : Korupsi, Melawan Hukum, Penyalagunaan Wewenang.

**APPLICATION OF UNLAWFUL ELEMENTS IN CORRUPTION CASES
(CASE STUDY OF DECISION NUMBER 74/PID. SUS-TPK/2021/PN. BDG)**

ABSTRACT

In the Corruption Court Decision at the Bandung District Court Number 74 / Pid.Sus-TPK / 2021 / PN.Bdg stated that the Defendant was found guilty in the first charge of subsidair, namely Article 3 of the PTPK Law because of the position held by the Defendant as Chairman of the SIPS Cooperative. In formulating its considerations, the panel of judges did not fully include the views of Nur Basuki Minarno. As a result, the panel of judges erred in applying the article. From this, the question arises, how is the concept and regulation of unlawful elements in corruption crimes and whether it is appropriate to apply the application of proof of elements of abuse of authority Article 3 of the PTPK Law in the decision of case Number 74 / Pid.Sus-TPK / 2021 / PN.Bdg. From the results of the research, it was found that the PTPK Law adheres to a formal unlawful nature where Article 2 paragraph (1) of the PTPK Law is the genus while Article 3 is the species. However, there are no clear indicators of differentiation between the two articles so that the practice of application varies. The application of abuse of authority in a quo case is not appropriate because the Defendant's actions were committed in his capacity as an official in the private sector. In addition, the value of state financial losses above Rp.250,000,000 (two hundred and fifty million rupiah) makes Article 2 paragraph (1) of the PTPK Law more feasible to apply.

Keyword : Corruption, Againts the Law, Abuse of Power.