

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Reconstruction of The Policy for Implementing Criminal Sanctions in Corruption Cases in Goods Procurement for The Development of Justice-Based Social Infrastructure

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Abstract. *Implementation penalty criminal corruption procurement goods To use development infrastructure Not yet based on policy law procurement goods, This make penalty criminal can said only is ornamental, because problem procurement goods should No can in a way direct worn penalty criminal as ultimate remidium, remembering procurement goods arranged with law administration No law criminal, as for threat criminal only as drug final when violation in the realm procurement goods in development infrastructure No under control. Article This use method doctrinal research. Based on results existing discussion can understood that implementation penalty criminal corruption procurement goods To use development infrastructure Not yet based on policy law procurement goods, so penalty criminal his position Still sumir, because problem procurement goods should No can in a way direct worn penalty criminal as ultimate remidium, remembering procurement goods arranged with law administration No law criminal, as for threat criminal only as drug final when violation in the realm procurement goods in development infrastructure No under control, then can said that need perhaps added provision in Law no. 1 of 2004, namely paragraph (25) in Article 1 of Law no. 1 of 2004 which states follow criminal procurement goods is action profitable self Alone in maintenance procurement goods and services available detrimental to the country and/ or individuals and/ or legal entities. Then Article 64A Law no. 1 of 2004 which states that as for type threat criminal as intended in Article 64 consists from*

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criminal imprisonment for a minimum of 4 years and a maximum of 20 years with criminal fine amounting to Rp. 10,000,000,000.00.

Keywords: *Crime; Infrastructure; Policy, Reconstruction.*

1. Introduction

Indonesia is a legal state, This give birth to consequence that all no way every parties in this country must be based on applicable law, views This To use ensure realization ideal state order with based on appreciation and protection Right Asasi Man. In maintenance life nation, government sued For advance well-being fair public social for all over people of Indonesia. Then For realize matter the government obliged provide need people in various form form goods, services, etc development infrastructure. On the other hand, the government also needs it goods and services That in carry out activity government. Fulfillment need goods and services is important part in maintenance government. As a Pancasila law country and a developed country, Indonesia has obligation For carry out the legal system at a time ensure realization equality development, so in one side procurement goods To use development development - oriented infrastructure centrist, but on the other hand this country must also be capable ensure law through mechanism procurement that kind of thing complicated can also be realized.

So that clear that procurement goods To use development infrastructure No capable inseparable with rules law related . Birth system laws and systems mechanism procurement more and more stuff tight, basically caused its height follow criminal corruption in procurement goods To use development infrastructure in this country. Electronic mass media nasinal.kontan.co.id noted that in 2017 it has there is state losses amounting to 1.5 trillion Rupiah as a result exists corruption in procurement goods To use development infrastructure.¹ Then in 2019 the number case corruption procurement goods To use development infrastructure amounting to 174 cases with total perpetrator amounting to 389 people with amount resulting losses amounting to Rp. 957.34 Billion Rupiah.² This matter clear showing that line procurement goods and services related development infrastructure in this country is very line strategic for the perpetrators corruption in operate his crime the. So that policy law criminal

¹nasinal.kontan.co.id, Accessed on 12 December 2020.

² <https://antikorrupsion.org/sites/default/files/document> . Accessed December 12, 2020.

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corruption procurement goods To use development infrastructure own pending position. This matter become base that policy law criminal corruption procurement goods To use development infrastructure need tightened Again . Can known together that arrangement related with penalty criminal to perpetrator criminal corruption procurement goods in development infrastructure Still Lots own gap and have Sufficient sumirity tall . View This can seen in arrangement criminal procurement goods related construction infrastructure in Constitution Number 1 of 2004 Related State Treasury . In Article 62 and Article 64 no explained type criminal in problem procurement goods and services , on explanation Constitution neither does this explained with clear regarding type penalty threatened punishment. Besides Constitution Number 1 of 2004, then in Constitution neither does this formulated with clear the matter in question with criminal procurement goods and services, ambiguity arrangement crime is also visible in regulation executor related. That matter can seen form No arranged provision penalty clear crime to perpetrator crime corruption procurement goods To use development infrastructure in Article 78, Article 79, and Article 80 to Article 81 Regulations President Number 16 of 2018 Concerning Procurement Government Goods /Services. So that part big case procurement goods and services often charged provision Constitution eradication corruption . This matter clear result no justice for public especially the affected parties snare case procurement goods and services related development infrastructure . Remembering party second as provider service often become victims of punishment although has follow existing mechanisms.

2. Research Methods

Type research used in study This is type doctrial research , where research conducted is study related analysis to norms behind text regulation legislation, OK in a way juridical nor philosophical.³

3. Results and Discussion

3.1. Implementation Penalty Criminal In Case Corruption Procurement Goods For Infrastructure Development Moment This

Based on principles ultimate remedium, then pattern eradication corruption with suggest penalty criminal just as long as it lasts This applied not enough effective Because No stop deed

³ Sugiono , *Method Study Quantitative , Qualitative and R&D*, Alfabeta , Bandung, 2009, p . 29.

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corruption committed by others. Punish perpetrator just stop deed corruption committed by the convicted person just. Actions corruption carried out by other people continues walk. Although punish perpetrator with penalty serious and even criminal penalties until with punishment dead as determined in Article 2 paragraph (2) Law Number 31 of 1999 as follows has changed with Law Number 20 of 2001, no will effective For prevent deed corruption. Commission Eradication Corruption (KPK) is special institution formed For eradicate corruption, apparently not yet able to stop rate corruption. The problem Because its eradication only put forward aspect criminal that is punishment just. From the corner theory scare / effect deterrent , indeed severe punishment can slow down rate corruption, however No can stop deed corruption. Implications from put forward and rely on pattern eradication corruption with law criminal just create officials reluctant become official in procurement goods and services Good as PPK or Service Unit Procurement (ULP)/ Committee Procurement. Implications from matter the is in the absorption of the APBN/APBD. This matter resulting in obstruction development consequence exists obstacles to the procurement process goods and services. Constraint This caused dilemma in implementation limited punishment No appropriate target.⁴

This matter because many gap between the parties do corruption or as means drop party against policy power or as means kill character a official. There is fact that case procurement goods often become means someone in policy power can seen with exists fact that post birth system supervision to procurement goods To use development tight infrastructure with involve Commission Eradication Corruption in this country, resulting part official reluctant become Official Maker Commitment or PPK.

Handling case deviation procurement goods and services, it should be started with identify and classify is deviation the including in realm law administration or law civil or law criminal . Identification and classification steps This important For know rule law (rechtsregel) which one will be applied to in concreto cases. Characteristics Act criminal corruption No can equalized with crime conventional other. Corruption always given white collar crime label because his actions always experience dynamic modus operandi from all side so that said as a very invisible crime difficult detected. Therefore that, pattern its eradication No can only done with punish severely or punishment dead course , punishment criminal just ultimate remedium.⁵

⁴ <https://media.neliti.com/media/publications/113690-ID-Pemerantasan-kokerja-dalam-pengadaan-ba.pdf> , accessed on 12 December 2020.

⁵ *Loc, cit.*

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3.2. Reconstruction Criminal Law Policy In Implementation Penalty Criminal Cases Corruption Procurement Goods For Social Based Infrastructure Development Justice

Basically policy law is direction development law that is based on the system law national For reach destination country or the ideals of the state and nation. As for the destination country of departure from ambition public nation has concluded inside fifth Pancasila principles. So that in other words maintenance policy law based on fifth Pancasila principles, namely Almighty Godhead Esa, Just and Civilized Humanity, Indonesian Unity. Democracy led by wisdom wisdom in deliberation / representation, and justice Social Share All Indonesian People. Policy law based on values Almighty Godhead One It means policy law must based on Godly moral values. Policy based law mark Just and Civilized Humanity It means policy existing laws must capable ensure appreciation and protection for rights basic man in a non- discriminatory manner. Policy law must based mark Indonesian Unity means policy law must capable unite all over element nation with all bond primordial each. Policy based law mark Democracy led by wisdom wisdom in deliberation / representation It means policy law must capable create lower state power power people or in other words policy law must capable create a democratic country Where power biggest is in hand people (democracy populist). Then the last one that policy law must based mark Social Justice Share That means all Indonesian people policy law must capable create just society socially capable create justice for circles public weak both in the sector social as well as in sectors economics, so No happen oppression between circles public *full power* with public marginal.⁶

So that it's also clear that policy law must be based on the fourth principles contained in the Fourth Paragraph Opening Basic Law of the State of the Union Republic of Indonesia in 1945. Related with matter Mahfud MD stated that :

In context policy law clear that law is a "tool" that works in system certain laws For achieve the "goals" of the country or the "ideals" of Indonesian society. Because of That discussion about policy law national must preceded with affirmation about country goals.

According to Padmo Wahyono, the Pancasila rule of law is a rooted rule of law from principle where is the family ? interest the most social but still appreciate and acknowledge as well as protect right humanity individual. In line with view Wahyono namely Muhammad Tahir Azhary add return principle harmony in thinking related to the Pancasila legal state which is rooted in

⁶ *Ibid*, p . 16.

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principles kinship. So that life nation and state will still uphold tall mark togetherness and kinship which are things That make life nation and state become One certainty that is not inseparable, so in operate life nation and state will capable materialized effort in maintain unity nation and territorial unity of the Republic of Indonesia.⁷

So that clear that the legal state in Indonesia is a state based on Pancasila law which is different from that based on law is also based on norms highest namely Pancasila. Including inside it law land national as it should be based on Pancasila which aims nothing but materialize things as stated in the Fourth Paragraph Preamble to the 1945 NRI Constitution.

Regarding with Pancasila as source from all source Kaelan's law states that :⁸

Pancasila values as base Indonesian state philosophy in essence is something source from all source law in Indonesia. As something source from all source law in a way objective represent something view life, consciousness, ideals law, as well high moral ideals that include atmosphere psychology, as well character Indonesian nation.

Then related with objective law , Sri Endah state that :⁹

If that is what the law aspires to national is system Pancasila law, then it should be studied and developed containing law Pancasila values means value - oriented law Almighty Godhead Esa, value - oriented law Just and Civilized Humanity, laws based on values Unity, and law imbued with values Democracy Led by Wisdom Wisdom In Deliberation / Representation and values Social Justice Share All Indonesian People.

In line with view from Sri Endah above, Notonagoro state that :¹⁰

Gauge measuring philosophy practical law national Indonesia is Pancasila which is abstraction from values sublime Indonesian society in it contained ambition nation that is a just and

⁷ Sarja , *State of Law Theory and Practice* , Thafamedia , Yogyakarta, 2016, p . 67-68.

⁸Kaelan, *op, cit* , p . 77.

⁹Sri Endah Wahyuningsih , *Principles Individualization Criminal In Islamic Law and Indonesian Legal Reform* , UNDIP , Semarang, 2013, p . 68.

¹⁰ *Ibid*, p . 69.

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prosperous society Good in a way material nor spirituality, and life Indonesian society as a whole.

Barda Nawawi Arief state that :¹¹

Legal development is effort awaken return values that live in society, for Then studied in a way deep as material preparation law national, obviously is obligations of the academic world. Really something very thing ironic if most graduate of faculty law more Lots understand and master values living law among his people Alone. Moreover Again if he feel foreign even in a way No aware has hostile even kill him.

More carry on Barda Nawawi Arief state :¹²

That renewal law in essence is effort reorientation and reevaluation from values socio-policy, socio-philosophical, socio -cultural that underlies and provides fill to loads normative and substantive desired law.

Barda Nawawi Arief state :¹³

System law national side should can support development national and needs association internationally, too sourced or not ignore the values and aspirations that live and develop within society, the values that live within public That can sourced or dug from values law custom or values religious law.

To use operate various type view above so need done reconstruction norm to policy law criminal in implementation punishment in cases corruption procurement goods To use development infrastructur. There are mandatory provisions reconstructed are :

¹¹ Barda Nawari Arief , *Several Aspect Policy Law Enforcement and Development* , University Diponegoro , Semarang, 1984, p . 125.

¹² Barda Nawawi Arief , *Bunga Rampai Legal Policy* , University Diponegoro , Semarang, 2013, p . 32.

¹³ Barda Nawawi Arief , *Several Aspect Policy Law Enforcement and Development* , Citra Aditya Bakti , Bandung, 1998, p . 117.

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Provision Before Reconstructed	Weaknesses	Conditions After Reconstruction
<p>Article 64 of Law no. 1 of 2004:</p> <p>Article 64</p> <p>1) Treasurer , not a civil servant treasurer , and other officials who have set for countries/ regions can charged penalty administrative and/ or penalty criminal .</p> <p>2) Decision criminal No freeing from demands change make a loss .</p>	<p>Provision This No load type threat penalty criminal or not load element deed follow criminal procurement goods .</p>	<p>Input :</p> <p>Need exists provision related element follow criminal procurement goods and types penalty criminal in Law no. 1 of 2004.</p> <p>Reconstruction :</p> <p>Article 1 Law no. 1 of 2004:</p> <p>1) Same</p> <p>2) Same</p> <p>3) Same</p> <p>4) Same</p> <p>5) Same</p> <p>6) Same</p> <p>7) Same</p> <p>8) Same</p> <p>9) Same</p>

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		10) Same
		11) Same
		12) Same
		13) Same
		14) Same
		15) Same
		16) Same
		17) Same
		18) Same
		19) Same
		20) Same
		21) Same
		22) Same
		23) Same
		24) Same
		25) Act criminal procurement goods is action profitable self Alone in maintenance procurement goods

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		<p>and services available detrimental to the country and/ or individuals and/ or legal entities .</p> <p>Article 64A Law no. 1 of 2004:</p> <p>As for types threat criminal as intended in Article 64 consists from criminal imprisonment for a minimum of 4 years and a maximum of 20 years with criminal fine amounting to Rp. 10,000,000,000.00.</p>
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4. Conclusion

1. Implementation penalty criminal corruption procurement goods To use development infrastructure Not yet based on policy law procurement goods , so penalty criminal his position Still unclear, because problem procurement goods should No can in a way direct worn penalty criminal as ultimate remidium, remembering procurement goods arranged with law administration No law criminal, as for threat criminal only as drug final when violation in the realm procurement goods in development infrastructure No under control.
2. So that need added provision in Law no. 1 of 2004 , namely paragraph (25) in Article 1 of Law no. 1 of 2004 which states follow criminal procurement goods is action profitable self Alone in maintenance procurement goods and services available detrimental to the country

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Need exists policy law criminal in a way specifically those who regulate about criminal fail get up in something implementation development country's infrastructure so element formulation offense crime in the sector maintenance service construction building in something project development national can in a way clear formulated. Need exists protection regulated law in a way clear for perpetrator business provider service construction building.

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