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The Formulation of a Special Minimum Criminal Threat System Formulation in the Corruption Law

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Abstract.

This study aims to find out how the policy for formulating a special minimum penalty system in the current Corruption Crime Law, what are the weaknesses of the policy for formulating a special minimum penalty system in the current Corruption Law and how is the policy for formulating a special minimum penalty system in the Criminal Act Future corruption. The research method used is normative juridical. Based on the research, it was concluded that the formulation policy of a special minimum penalty system in the Corruption Crime Act is currently seen as having weaknesses, including, the formulation of a special minimum sentence that is too light is seen as having hurt the sense of justice in society and there is no sentencing guideline in the Act. Current Corruption Crimes. In order to overcome the weaknesses in the formulation of a system of special minimum criminal threats in the Corruption Crime Law in the future. This can be solved by revising the policy formulation of a special minimum penalty system by increasing the minimum penalty and including specific minimum criminal penalties in the Corruption Law.

Keywords: Formulation; Criminal; Corruption; Policy.

1. Introduction

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the state of Indonesia is a constitutional state, it reads after the third amendment was ratified on 10 November 2001, the affirmation of this

constitutional provision means that all aspects of life in society, statehood and government must always by law.[1]

Laws that become control signs can be realized in many forms, such as laws, government regulations, or presidential decrees and have become a general principle in the legal system adopted in Indonesia, that laws have a higher position than other laws and regulations, so that it becomes the strongest controlling sign in regulating the life of the nation and state.[2]

One form of legislation that applies in Indonesia is Act No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Act No. 20 of 2001 concerning Amendments to Act No. 31 of 1999 concerning the Eradication of Criminal Acts Corruption.

Corruption is a type of white collar crime or tie crime. In contrast to conventional crimes involving street criminals (street crime, blue collar crime, blue jeans crime), in white collar crime, the parties involved are those who are respected people in society and are usually highly educated.[3]

The regulations regarding the eradication of corruption alternated, it was always the latter who corrected and added, but corruption in all its forms is still felt to be rampant. The term corruption as a legal term for the notion of corruption is actions that are detrimental to the finances and economy of the State or region or other legal entities that use capital or other concessions from the public, as a special form of acts of corruption.

Therefore, the State views that acts or criminal acts of corruption have entered and become acts of corruption which have been widespread so far, not only causing losses to state and regional finances, but also violating the social and economic rights of society at large. , so that corruption needs to be classified as a crime whose eradication must be carried out in an extraordinary manner.

In conducting an analysis of acts of corruption, 3 (three) approaches can be based on the flow of the corruption process, namely:

- Approach to the position before the act of corruption occurred (Preventive)

[1]Sri Endah Wahyuningsih, (2018), *Model Pengembangan Asas Hukum Pidana Dalam KUHP Berbasis Nilai-Nilai Ketuhan Yang Maha Esa*, Fastindo, Semarang. p. 3.
[2]Romli Atmasasmita, (2001), *Reformasi Hukum, Hak Asasi Manusia dan Penegakan Hukum,* Mandar Maju, Bandung. p. 10.
[3]Jawade Hafidz Arsyad, (2013), *Korupsi Dalam Perspektif Hukum Administrasi Negara*, Sinar Grafika, Jakarta, p. 1.

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- Approach to the position where acts of corruption occur (Deductive)

- Approach to the position after the act of corruption occurred (Repressive)

In Marx's writings, German Ideology, he formulated a basic premise that the economic field determines human thought, Why economics? Because Marx wanted to be consistent with his postulates about the dialectic of matter. For him this material can be identified as economics. The economic condition of a person which then shapes that person's consciousness. So that a person's view of the world is determined by his economic position (Marx: class position). Someone who is in a respectable class certainly has different views and insights from people who are in the lower class.

This difference then creates conflicts such as acts of corruption committed by those in the upper class, giving rise to disputes about values or demands regarding status, power and sources of wealth whose supplies are insufficient so that acts of corruption will occur, because the interests of those in power are definitely different from the interests of weak parties so that there are gaps in opportunities to be able to commit acts of corruption without thinking about those who are below (weak people). The important thing in the first Conflict Theory is Power, where every ability to win one's own will, even if the will itself must conflict with the will of others, such as corruption which cannot be denied anymore that it arises from the concept and lack of power which is always present in a relationship. The second is Interest, society is made up of classes. Classes that certainly have different interests with other classes.

The ruling party has an interest in maintaining what it has, while the lower party will tend to make a change. It is possible for people who commit acts of corruption who are in the upper class to maintain their position and authority while those in the lower class want to make changes to the actions of the upper class who are considered to be abusing power and authority for personal gain, so that the lower party feels the state's justice towards the lower class people are lacking, and this action is considered detrimental to them because the financial rights of the State which should be used for their welfare are embezzled by the irresponsible upper class.

In the context of upholding the rule of law against criminal acts of corruption in Indonesia which are suspected of being white collar crimes or crimes with ties, this has encouraged the birth of the Corruption Crime Act.

What is interesting about the formation of this Corruption Crime Law is that there is a special minimum criminal provision in the formulation of offenses against perpetrators of corruption. This is certainly different from criminal

provisions in general in the Criminal Code (KUHP) which are more familiar with maximum criminal provisions.[4]

According to Barda Nawawi Arief, that in principle a special minimum sentence is an exception, namely for certain offenses which are very detrimental, harmful or disturbing to society and offenses which are qualified or aggravated by their consequences (erfolgsqualifizierte delikte).[5]

The meaning of the special minimum criminal sanctions in the Corruption Law is that the law has set its own maximum and minimum limits for criminal sanctions in a criminal offense. In this case the judge may not impose a sentence below the minimum criminal sanction stipulated by law. This is intended to deter corruptors from committing acts of corruption.

The inclusion of a special minimum sentence in the Corruption Crime Law is not accompanied by a formulation of rules or guidelines for sentencing which is a special rule outside the Criminal Code which includes a special minimum sentence in the formulation of offenses which in turn has the potential to cause juridical problems at the application level.[6]In addition, lawmakers seem inconsistent in formulating specific minimum criminal penalties between Article 2 paragraph (1) and Article 3 of the Corruption Law so that they do not reflect a sense of justice.

Starting from the descriptions above, then the authors are interested in researching the Formulation Policy of the Special Minimum Criminal Threat System in the Corruption Crime Law.

2. Research Methods

The approach method used in this legal research is normative juridical, where law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate.[7] Specifications of this research is descriptive analysis in nature, because in this study describes the object that is

[4]Ismail Rumadan, *Penafsiran Hakim Terhadap Ketentuan Pidana Minimum Khusus Dalam Undang-Undang Tindak Pidana Korupsi*, Jurnal Hukum dan Peradilan Vol. 2 No. 3, November 2013, (http://www.jurnalhukumdanperadilan.org), accessen on 12 April 2021.
[5]Barda Nawawi Arief, (1996), *Bunga Rampai Kebijakan Hukum Pidana*, Citra Aditya, Bandung. p. 141.
[6]Ismail Rumadan, Op. cit.
[7]Amiruddin & Zainal Asikin, (2012), *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta. p. 118.

the problem and then analyzed and conclusions drawn from the results of the research.

The type of data used is secondary data. This secondary data includes legal materials, as follows: 1) primary legal materials, 2) secondary legal materials, and 3) tertiary legal materials. Data processing and analysis methods are data that have been obtained during research by reading library books, journals, internet articles, then analyzed. The analysis used in this research is qualitative data analysis.

3. Results and Discussion

3.1. Formulation of a Special Minimum Criminal Threat System Formulation in the Corruption Law

The results of this study will describe the policy for formulating a special minimum penalty system in the current Corruption Law as regulated and subject to punishment in Article 2 paragraph (1) and Article 3 of the Corruption Law.

Article 2 paragraph (1) of the Corruption Law stipulates that,

"Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR 200,000,000 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah)".

From the provisions of Article 2 paragraph (1) of the Corruption Crime Act above, the policy for formulating a system of minimum threats in particular is imprisonment for a minimum of 4 (four) years and a minimum fine of at least *IDR* 200,000,000.00 (two hundred million rupiah).

In order to be charged with the criminal threat of Article 2 paragraph (1) of the Corruption Law, elements / elements must be fulfilled, namely: 1) there is an actor, in this case "everyone", 2) there is an act in which the act must be carried out "unlawfully", 3) the purpose of the act is to "enrich oneself, another person or corporation", and 4) the result of the act is "can be detrimental to state finances or the country's economy".[8]

[8]Wahyu Beny Mukti Setiyawan, *Peran Hakim Dalam Penerapan Pasal 2 Undang-Undang Tindak Pidana Korupsi Pada Dakwaan Subsidaritas Atau Alternatif*, (https://media.neliti.com) accessed on 7 July 2021.

The element of "everyone" in Article 2 paragraph (1) of the Corruption Law requires that those referred to as perpetrators of corruption are "everyone". The term everyone in the context of criminal law must be understood as an individual (Persoonlijkheid) and a legal entity (Rechtspersoon). In the context of the Corruption Crime Act, corruptors can also be corporations (institutions with legal entities or non-legal entities) or anyone, whether they be civil servants, soldiers, communities, entrepreneurs and so on as long as they meet the elements contained in this article.[9]

The element of "against the law" in Article 2 paragraph (1) of the Corruption Law should be understood both formally and materially. Formally, it means that an act called a criminal act of corruption is an act that goes against/contradicts legislation, such as Act No. 8 of 1981 concerning the Criminal Code, Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning Eradication of Criminal Acts Corruption, Act No. 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism, Government Regulation Number 105 of 2000 concerning Regional Financial Management and Accountability, Government Regulation Number 109 of 2000 concerning the Financial Position of Regional Heads and Representatives to Regions, Regulation Number 110 of 2000 concerning the Financial Position of DPRDs, etc.[10]

While materially it means that an act called corruption is an act which, although it does not conflict with the applicable laws and regulations, if the act is considered disgraceful because it is not in accordance with a sense of justice or the norms of social life in society, then the act can be punished.

The element of "enriching oneself, other people or corporations" in Article 2 paragraph (1) of the Corruption Crime Act. The key word for this element is the word 'enrich'. Literally, the word enrich is a verb that shows an act of every person to get rich or there is an increase in wealth. This means, the word "enrich" can also be understood as an act that makes everyone who is not yet rich or someone who is already rich becomes richer. Given that a person can be called rich, it is very subjective, for example, someone in a big city who has a big house and a car cannot be called rich, while in a village someone who has one TV can be called rich.[11]

[9]Ibid.
[10]Ibid.
[11]Ibid.

The element "Can be detrimental to state finances or the state economy" in Article 2 paragraph (1) of the Corruption Act, namely the point that must be proven in this element/element relating to a criminal act of corruption is:[12]

(a) Can be detrimental to state finances. According to the General Explanation of Act No. 31 of 1999 concerning the Eradication of Corruption Crime, what is meant by state finances is all state assets in whatever form, separated or not separated, including all parts of state assets and all rights that arise due to: First, being in the control, management and accountability of officials, state institutions, both at the central and regional levels. Second, it is under the control, management and accountability of BUMN/BUMD, foundations, legal entities and companies that incorporate third party capital based on state agreements.

(b) State economy. What is meant by the state economy is economic life that is structured as a joint venture based on the principle of kinship or community business independently based on government policies, both at the central and regional levels in accordance with the provisions of the applicable laws which aim to provide benefits, prosperity and welfare to whole people's life.

Article 3 of the Corruption Law stipulates that,

"Anyone who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the state's finances or the state's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years or a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

When referring to the provisions of Article 3 of the Corruption Crime Act above, the policy for formulating a minimum penalty system in particular is imprisonment for a minimum of 1 (one) year and a minimum fine of at least *IDR* 50,000,000.00 (fifty million rupiah).

In order to be charged with Article 3 of this Corruption Law, it is necessary to understand that the so-called perpetrators of corruption are corporations and individuals (Persoonlijkheid). However, if understood carefully, the sentence, "everyone who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position ...", shows that the perpetrators of criminal

[12]General Explanation of the Law on Corruption.

acts of corruption according to Article 3 The Corruption Crime Law must be an individual ((Persoonlijkheid) in this case an official/civil servant.[13]

According to Article 1 paragraph (2) of the Corruption Crime Act, what is meant by a civil servant includes:[14]

(a) Civil Servants as referred to in the Civil Service Act (Law No. 8 of 1974);

(b) Civil servants as referred to in Article 92 of the Criminal Code;

(c) People who receive salaries or wages from state finances;

(d) People who receive salaries or wages from a corporation that receives assistance from state or regional finance;

(e) People who receive salaries or wages from other corporations that use capital or facilities from the state or society.

Elements/elements of abusing one's authority, opportunity or means because of position or position in Article 3 of the Corruption Crime Act basically resemble the elements/elements in Article 52 of the Criminal Code. However, the formulation that uses the general term "abusing" is broader when compared to Article 52 of the Criminal Code which details it in the words, "...because of committing a crime, or when committing a crime uses the power, opportunity or effort obtained from his position... ".

In order to prove that a criminal act of corruption is related to these alternative elements/elements, there are three points that must be examined, namely: a) abusing authority, meaning abusing the power/rights that exist in him because of his position or position, b) abusing opportunities, meaning misusing the time/moments that are available to him because of his position or position, and c) abusing facilities, meaning abusing the tools or equipment that are in his possession because of his position or position.[15]

The word "authority" means having (obtaining) the right and power to do something. That means, someone with a certain position or position will also have certain authority and with that authority, he will have the power or opportunity to do something. This power or opportunity to do something is what is meant by "opportunity". Meanwhile, someone who has a position or position will usually get certain facilities in order to carry out his obligations and

[13]Ibid.
[14]Article 1 paragraph (2) of the Corruption Crime Act.
[15]Wahyu Beny Mukti Setiyawan, Loc. cit.

authority. According to the Big Indonesian Dictionary, the word "means" is anything that can be used as a tool to achieve goals and objectives.

A person with a certain position or position will have certain powers, opportunities and facilities that he can use to carry out his duties and obligations. This authority, opportunity and means are given with certain signs. If then these signs are violated or if the authorities, opportunities and facilities are not used as they should, then there has been an abuse of authority, opportunities and facilities owned because of their position or position.

3.2. Weaknesses in the Formulation of a Special Minimum Criminal Threat System Policy in the Current Corruption Act

Based on the analysis of the policy for formulating a special minimum penalty system in the Corruption Law as described above, there is a fundamental weakness in the policy for formulating a special minimum penalty system in the current Corruption Law, namely weaknesses related to the system formulation policy of specific minimum criminal penalties and weaknesses related to sentencing guidelines.

Weaknesses in the policy formulation of a special minimum penalty system in the Corruption Law can be described as follows:

a. Weaknesses related to the formulation of special minimum criminal threats.

The minimum prison sentence is too far away from the maximum penalty. This is contained in the special minimum criminal provisions of Article 3 paragraph (1) of the Corruption Crime Act, the maximum penalty of which is life imprisonment or 20 years in prison, while the minimum imprisonment is 1 year. Likewise with the criminal provisions stipulated in Article 2 paragraph (1) which is punishable by life imprisonment or 20 years in prison and a minimum of 4 years.[16]

The formulation of a minimum (special) criminal threat that is too light in the Corruption Law is seen as having hurt the sense of justice in society. It is unfair if people who rob people's money (in the form of taxes) in the amount of billions/trillions of rupiah and enjoy the benefits of this corruption are threatened with a light minimum criminal sanction. Meanwhile, on the other hand, the state experienced large material and non-material losses and most of the (small) people who were taxpayers lived in endless poverty, and the state, in

[16]Antonius Sudirman, The Existence of Special Minimum Crimes as a Means of Combating Corruption Crimes,(https://ejournal.undip.ac.id)accessed July 1, 2021.

this case the government, experienced difficulties in realizing development programs in order to improve people's welfare.[17]

This is in line with one of the goals of crime and punishment, namely to achieve justice. Johannes Andenaes emphasized that the main (primary) purpose of punishment according to the absolute theory is "to satisfy the claims of justice", while the beneficial effects are secondary. Meanwhile, Immanuel Kant emphasized that punishment is a demand for decency. Kant views punishment as a categorische imperative, that is, a person must be punished by a judge because he has committed a crime. So punishment is not a means to achieve certain goals but reflects justice (uitdrukking van de gerechtigheid).[18]

Another weakness is that legislators appear to be inconsistent in the formulation of the minimum sentence between one article and another. This is as stipulated in the provisions of Articles 2 and 3 of the Corruption Law, namely that both are punishable by a maximum imprisonment of 20 years, but the minimum threat is different, namely Article 2 is punishable by a minimum of 4 years while Article 3 is punishable by minimum 1 year. Meanwhile, the minimum prison sentence of 1 year is also threatened with a crime which carries a maximum prison sentence of only 5 years, as stipulated in Articles 5 and 12 of the Corruption Crime Act.[19]

b. Weaknesses related to sentencing guidelines

The Corruption Crime Act does not regulate punishment guidelines. While the rules regarding sentencing guidelines are important to operationalize the minimum sentence. This is in accordance with the concept of the New Criminal Code, in certain cases the minimum sentence can be reduced/reduced if there are things that facilitate sentencing. In this case the sentencing guidelines are the basis for the judge in applying the specific minimum sentence.[20]

If the provisions regarding sentencing guidelines are not regulated, judges will find it difficult to decide on concrete cases that are being handled, especially in dealing with cases that have elements of mitigating sentences, both subjective and objective elements. As for the objective elements that reduce punishment, for example the defendant has returned all state losses/finances, or the amount of state financial losses due to corruption is relatively small and not commensurate with the relatively heavy minimum sentence.

[17]Ibid. p. 319.
[18]Ibid. p. 320.
[19]Ibid.
[20]Ibid.

There is a strong suspicion that the various weaknesses in the formulation of specific minimum criminal penalties in the Corruption Law are caused by the following factors:[21]:

a. The members of the legislature do not understand the essence of the specific minimum criminal provisions included in the Corruption Crime Act;

b. It is possible that the formulation of a special minimum sentence in the Corruption Law is part of the "grand design" of legislators. Namely a systematic effort by legislators to protect their interests from legal entanglement. Because they have the potential to violate the Corruption Crime Act. It is impossible for them to make self-defeating rules.

c. The low morality of law enforcement officials. And the weak morality of law enforcement officials (especially judges) can have implications for the emergence of "moral hazard" behavior, in the form of judge decisions that are not in accordance with the community's sense of justice; for example, corruptors are sentenced to imprisonment that is lighter or lighter than the minimum criminal provisions in the Corruption Crime Act. Even the accused was acquitted of punishment. Substantial weaknesses in the special minimum criminal provisions in the Corruption Law which are conditioned by the low morality of law enforcement officials can be put to good use by corruptors to perpetuate corrupt practices. Corruptors do not feel ashamed and deterred from committing corruption because the minimum penalty is too low. The corruptors will make calculations,

3.3. Formulation of Special Minimum Criminal Threat System Policy in Future Corruption Laws

Corruption is an act of self-enrichment that directly harms the country or the country's economy. So, the element in the act of corruption includes two aspects. Aspects that enrich themselves by using their power and aspects of using state money for their interests. The causes include the absence and weakness of leaders, weaknesses in teaching and ethics, colonialism, colonialism, low education, poverty, absence of harsh punishments, scarcity of fertile environments for behavior corruption, low human resources, and economic structure. Corruption can be classified into three types, namely form, nature, and purpose. The impact of corruption can occur in various fields including, in the fields of democracy, the economy, and the welfare of the country.

It has been described above that the policy for formulating a special minimum penalty system as stipulated in Article 2 paragraph (1) and Article 3 of the

[21]Ibid. p. 321.

Corruption Act currently has weaknesses, therefore a policy for formulating a special minimum penalty system is needed. in the Corruption Crime Law in the future as a form of effort to renew the criminal justice system in Indonesia, especially the reform of the Corruption Crime Law in the future.

Whereas in order to analyze the formulation policy of a special minimum criminal penalty system in the Corruption Crime Law in the future, sentencing theory and progressive legal theory can be used.

Regarding sentencing theory, Algra divides sentencing objectives into 3 types, namely: a)absolute theory or revenge theory,b)relative theory or objective theory (doeltheorie), and c) combined theory (gemengdetheorie).According to Algra, absolute theory holds that"the state must hold punishment against the perpetrators because people have sinned".Furthermore, Muladi also expressed his views on the nature or essence of absolute theory. The absolute theory views that: "Crimination is retribution for mistakes that have been committed so that it is oriented to the act and lies in the occurrence of the crime itself.[22]

The relative theory argues that: "the state imposes punishment on criminals as a means to achieve its goals. The purpose of the punishment is to frighten someone from committing an evil deed. This relative theory is divided into 2 (two) teachings, namely the teachings of general prevention and special prevention. In general prevention teachings, a person may become a perpetrator, must be frightened of an evil deed, with the threat of punishment. Special prevention teachings pay attention so that a perpetrator who has been sentenced once, because he has experienced it himself, will not hastily commit an evil deed again.[23]

The combined theory argues that: "punishment usually requires a double justification. The government has the right to punish, if someone commits a crime (if someone commits behavior that deserves punishment) and if it seems that by doing so it will be able to achieve a beneficial goal.[24]

Based on the sentencing theory that has been stated above, the policythe formulation of a special minimum sentence system in the Corruption Crime Law in the future can be carried out by increasing the special minimum sentence in the Corruption Law.

[22]Salim HS and Erlies Septiana Nurbani, 2016, Application of Legal Theory in Research *Dissertation and Thesis*, PT. Raja Grafindo Persada, Jakarta, p. 140-142.
[23]Ibid. p. 143.
[24]Ibid. p. 144.

Furthermore, the basic philosophy of progressive law is an institution that aims to deliver people to a life that is just, prosperous and makes people happy. Progressive law departs from the basic assumption that law is for humans, not the other way around. Departing from this basic assumption, the presence of law is not for itself, but for something broader and bigger, that is why when problems occur in law, it is the law that must be reviewed and corrected, not humans who are forced to be included in it.[25]

Progressive laws that are based on rules and behavior place humans to no longer be shackled by the restraints of absolute rules. That is why, when changes occur in society, when legal texts experience delays in the values that develop in society, law enforcers must not only allow themselves to be shackled by the reins of rules that are no longer relevant, but must look outside the world.), looking at the changing social context in making legal decisions.[26]

Starting from the progressive legal theory above, then policy the formulation of a special minimum criminal threat system in the Corruption Law in the future can be done in a number of ways revise the formulation policy of a special minimum criminal threat system namely includes guidelines for the application of specific minimum criminal penalties in the Corruption Crime Law.

In line with sentencing theory and progressive legal theory in policy formulation of a special minimum criminal threat system in the Corruption Crime Law in the future, Romli Atmasasmita[27]emphasized that the strategy for eradicating corruption in Indonesia must use four approaches, namely the legal approach, the moralistic and faith approach, the educative approach and the socio-cultural approach.

Romli Atmasasmita further emphasized that the legal approach plays a strategic role in eradicating criminal acts of corruption. However, the conventional legal approach is no longer sufficient in dealing with the modus operandi of criminal acts of corruption which are systemic, widespread and constitute extraordinary crimes the interests and rights of individual suspects or defendants.

The legal approach consists of three stages viz[28]: a) the policy stage of criminal determination in legislation by the legislature (formulation policy), 2) the

[25]Satjipto Raharjo, *Hukum Progresif: Hukum yang Membebaskan*, Jurnal Hukum Progresif, Vol. I/No. 1/ April 2005, PDIH Ilmu Hukum UNDIP. p. 5.
[26]Dey Ravena, *Mencandra Hukum Progresif Dan Peran Penegak Hukum Di Indonesia*, Jurnal Ilmiah Hukum Unisba, (https://ejournal.unisba.ac.id.) accessed on 1 May 2021.
[27]Antonius Sudirman, Loc. cit.
[28]Ibid.

criminal application stage by the courts (application policy); and 3) the stage of executing the crime by the criminal executing apparatus (execution policy).

Of the three stages of the legal approach, it can be argued that policy formulation is the most strategic stage because this stage forms the basis, foundation and guideline for the next stages, namely the application stage and the execution stage. Thus, the most important step to be taken and is an absolute requirement to be implemented immediately is the improvement of the regulatory system (condition sine quanon).[29]

Improving the regulatory system (condition sine quanon) regarding the provisions of Article 2 paragraph (1) and Article 3 of the current Corruption Law which are seen as having weaknesses can be done by revising the policy formulation in two ways, namely by increasing the minimum penalty and including guidelines punishment for the application of a special minimum sentence in the Corruption Law.

First, aggravate the minimum prison sentence. In this context, the minimum penalty should be set at ½ or 2/3 of the maximum sentence. For example, for this type of corruption offense which carries a maximum penalty of death penalty or life imprisonment or 20 years imprisonment, the minimum prison sentence is 10 or 15 years imprisonment.

Determination of minimum punishment that is quite severe is not as retaliation but with the aim of preventing criminal diparity and deterring people from committing corruption for the sake of social protection in order to achieve social welfare and create justice or balance in society.

Second, related to sentencing guidelines. The Criminal Code as the main book of all criminal laws and regulations in Indonesia does not regulate this specific minimum prison sentence, so this is an deviation, so that if legislation outside the Criminal Code includes specific minimum prison sentences, it should be accompanied by criminal provisions. .[30]This is due[31]:

a) a criminal threat cannot simply be operationalized/applied simply by including it in the formulation of the offense;

[29]Ibid.
[30]Andi Irawan Haqiqi, Jawade Hafidz, *Kebijakan formulasi Sistem Pemidanaan Tindak Pidana Penjara Minimum Khusus Dalam Pembaharuan Hukum Pidana Di Indonesia*, Jurnal Hukum Khaira Ummah Vol. 12 No. 2 Juni 2017, h. 401 (http://jurnal.unissula.ac.id) accessed on 8 July 2021.
[31]Barda Nawawi Arief, Op. cit. p. 192.

b) in order to be applicable, there must be criminal provisions beforehand;

c) existing criminal law enforcement rules are regulated in the "general rules" of the Criminal Code (as the main system);

d) the general (penal) rules in the Criminal Code are all oriented to the maximum system, not to the minimum system; And

e) there will be a problem if matters regarding trials, assistance, concurs, recedive, and other reasons for mitigating/aggravating sentences, if there are no such sentencing regulations.

In this regard, the Corruption Crime Law should include guidelines for sentencing, so that judges have a formal standard for applying specific minimum sentences, especially if there are mitigating factors. So that in the event that there are mitigating factors for the sentence, either due to objective or subjective considerations, the judge may impose a prison sentence under the minimum penalty.

4. Conclusion

The policy for formulating a special minimum sentence system in the Corruption Crime Law is currently seen as having weaknesses, including the formulation of a special minimum prison sentence system in the Corruption Crime Law which is currently too far away from the maximum prison sentence, the formula for a minimum penalty that is too mild in the Corruption Law is seen as having hurt the sense of justice in society, lawmakers are inconsistent in formulating specific minimum criminal threats between article one and other articles and there is no criminal guideline in the Corruption Law when This. In order to overcome the weakness of the policy formulation of a special minimum criminal threat system in the current Corruption Law, then can be solved by revising the policy formulation of a special minimum penalty system by increasing the minimum penalty and including specific minimum criminal penalties in the Corruption Law.

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