

The Criminal Law Policy in Eradicating Corruption Crimes

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Abstract. *This study aims to identify and analyze criminal law policies in eradicating corruption. This study uses a socio-juridical legal approach and the specifications in this study include analytical descriptive. Based on the results of the study, it shows that criminal law policies in eradicating corruption against perpetrators of corruption carry out several stages in accordance with statutory regulations, namely examination, investigation, investigation and prosecution. Efforts are being made to prevent corruption by means of comprehensive efforts or policies as well as overall administrative reform in the form of privatization, deregulation and decentralization. In addition, facilitation efforts through the TP4D program and through the Civil and State Administrative fields are ways and solutions in an effort to prevent budget leaks which result in losses to state finances. Obstacles to law enforcement against perpetrators of corruption are the complexity of corruption cases, time constraints, the intensity of inspections by limited functional supervisory apparatus, the spread of corruption cases through public policies, and the factor of the relatively low level of public legal awareness. The solution in overcoming obstacles to law enforcement against perpetrators of corruption is the procurement of personnel who have quality as prosecutors in the field of special crimes (corruption crimes), holding special education for assigned prosecutors and technical mastery of special criminal investigations.*

Keywords: Eradication; Corruption; Criminal.

1. Introduction

The problem of corruption is a very serious problem in a nation and is an extraordinary, ordinary crime and can shake the foundations of national and state life. Article 1 paragraph 3 of the 1945 Constitution explains that the State

of Indonesia is a constitutional state which implies that all forms of national, social and state life are based on applicable law.¹

Indonesia was again rated as the most corrupt country in Asia in early 2004 and 2005 based on the results of a survey among entrepreneurs and business people by the Political and Economic Risk Consultancy (PERC) consultancy. The results of a survey by the Hong Kong-based consulting firm PERC stated that Indonesia is the most corrupt country among 12 Asian countries. The title of the most corrupt country is given because Indonesia's score almost touches the absolute number 10 with a score of 9.25 (10 is the highest or most corrupt). In 2005, Indonesia was still among the top three most corrupt countries in Asia. Based on the results of a survey conducted by PERC, the ranking of the most corrupt countries after Indonesia, namely India (8.9), Vietnam (8.67), Thailand, Malaysia and China are in the same position as the fourth cleanest. On the contrary, the country with the cleanest level of corruption is Singapore (0.5) followed by Japan (3.5), Hong Kong, Taiwan and South Korea. Scores range from zero to 10, where a score of zero represents the best position, while a score of 10 represents the worst score position².

According to Act No. 31 of 1999 Jo. Act No. 20 of 2001 Concerning the Eradication of Corruption, there are 30 types of corruption described in 13 articles, Corruption is grouped into seven groups namely Harming State Finances (Article 2 paragraph (1)); Bribery (Article 5 paragraph (1) letter (a)); Embezzlement in Office (Article 8); Extortion (Article 12 letter e); Fraudulent Act (Article 7 paragraph (1) letter a); Conflict of Interest in Procurement (Article 12 letter i); Gratification (Article 12B Jo. Article 12C)³.

Corruption has caused damage to various aspects of social, national and state life so that it requires extraordinary handling. In addition, the prevention and eradication of corruption needs to be carried out continuously and continuously and needs to be supported by various resources, both human and other resources, such as increasing institutional capacity and increasing law enforcement in order to foster awareness and attitudes to follow the anti-corruption society. Corruption in criminology is a type of white collar crime. The

¹ 'Article 1 Paragraph 3 of the 1945 Constitution'.

² Eko Handoyo, 'The Impact of Corruption Through Anti-Corruption Education in Forming a Young Generation of Honesty and Integrity at Semesta High School in Semarang City', *Journal of Abdimas*, Vol. 18.No. 1 (2014), p. 12

<<https://journal.unnes.ac.id/nju/index.php/abdimas/article/view/5721>>.

³ 'Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning Eradication of Corruption'.

term corruption that is familiar in society has shown the increasing public awareness of corruption.⁴

Corruption does not only occur at the central government level, but corruption also occurs at the village government level. Like an octopus, corruption is increasingly wrapped around and gripping the joints of this country. Corruption is what is commonly found in the scope of local government (village). Corruption systematically causes economic losses by disrupting incentives, political costs by weakening government institutions and social costs⁵.

Corruption has an impact on injustice. Justice is a high price that must be fought for. The portrait of law enforcement is likened to being blunt upwards, but sharp upwards. The message to always uphold justice is found in the Qur'an in the letter An-Nisa' Verse 135. Allah says to always uphold justice. Witness for Allah. Act fairly even towards yourself, parents or relatives. If he is rich or poor. There are orders to prohibit corrupt behavior, collusion and nepotism. This verse also calls for not following your passions because you want to deviate from the truth⁶.

The crime of corruption is the basis (illat) of the crime of theft. The crime of theft is included in the Hudud category in Islamic Criminal Law. The threat of sanctions is cutting off hands as stipulated in Al-Qur'an Al-Maidah Verse 38. Strictly speaking, sanctions are a guarantee of survival for other humans. It also aims to provide legal protection and welfare to the community⁷.

Several cases of criminal acts of corruption that ensnared government officials were allegedly caused by a lack of oversight carried out by the Government Internal Supervisory Apparatus (APIP). Efforts to implement good and clean government can be achieved through the application of the principles of good governance (Good Governance). The most important thing that needs to be done related to the performance of the government bureaucracy is how to reduce and eliminate the abuse of authority in the bureaucracy and how to create a good bureaucracy and work culture.⁸

2. Research Methods

⁴ Bruyi Rohman Warsito, 'The Cause Of Corruption Crime On Village Funds And Investigations Process In The Purworejo', Journal of Daulat Hukum, Vol.1.No. 3 (2018) <<http://jurnal.unissula.ac.id/index.php/RH/article/view/3348>>.

⁵ Bruyi Rohman Warsito.

⁶ Ira Alia Maerani, 'Crimes of Corruption in the Construction World', 2019 <<https://suarabaru.id/2019/10/07/tindak-pidana-korupsi-di-dunia-construction>>.

⁷ Ira Alia Maerani.

⁸ Azam Awang, Government Ecology (Pekanbaru: Alaf Riau, 2012), p. 50.

The method used by researchers is a socio-juridical legal approach and the specifications in this study include analytical descriptive. The sources and types of data in this study are primary data obtained from field studies and secondary data obtained from literature studies related to criminal law policy theory. The method used is qualitative analysis and the data is analyzed interpretatively using the theory and positive laws that have been outlined then conclusions are deductively drawn to answer the existing problems.

3. Results and Discussion

3.1. Criminal Law Policy in Eradicating Corruption

One of the articles of the Law on Corruption Eradication, namely Article 2, paragraph (1) of Act No. 31 of 1999 jo. Act No. 20 of 2001 states that: "Every person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the State's finances or the State's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years and a minimum fine of IDR 200 million and a maximum of IDR 1 billion". Based on the provisions above, an individual's actions can be categorized as a criminal act of corruption, if the following elements are met: 1. Everyone; 2. Enrich yourself, other people or a corporation; 3. By way of breaking the law; 4. It can be detrimental to the State's finances or the State's economy.

The threat that will be given to the perpetrators of corruption in the category of Article 2 is imprisonment for a maximum of 20 years or a maximum fine of Rp. 1 (one) billion. As for the investigation according to Article 1 number 2 of the Criminal Procedure Code is a series of investigator actions in matters and according to the methods regulated in this Law to seek and collect evidence which with this evidence makes clear the crime that occurred and to find the suspect.

Law enforcement carried out by the Prosecutor's Office against corruption has its own procedures so that in carrying out a law enforcement against a corruption crime case it must go through several stages in order to create a law enforcement that is clean, fair, honest and has clear legal certainty. These stages show a pattern in the handling of criminal acts of corruption committed by the prosecutor's office as a law enforcement agency which has a very important role in the handling of criminal acts of corruption which is manifested in a strong, planned and systematic foundation or legal basis.

Before an investigation begins with the consequences of using coercive measures, it is first necessary to determine carefully based on all the data and facts obtained from the results of the investigation that an event that was originally suspected of being a crime is actually a crime. So the criminal act that

has occurred can be investigated. Thus the investigation is a follow-up of an investigation. The implementation of investigative tasks is handled by investigating officers or auxiliary investigators, in accordance with their respective authorities as stipulated in Article 7 and Article 11 of the Criminal Procedure Code.

The definition of Corruption is based on Article 2 paragraph (1) of Act No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption jo. Act No. 20 of 2001 concerning amendments to Act No. 31 of 1999 concerning Eradication of Criminal Acts of Corruption is the notion of corruption in general. Meanwhile, the notion of corruption is more specifically spread over 30 articles and is divided into 7 (seven) types as stipulated in law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption jo. Act No. 20 of 2001 concerning amendments to Act No. 31 of 1999 concerning Eradication of Corruption Crimes.

The purpose of law is to realize the common good as social beings. The realization of the common good is closely related to justice. Justice is the goal of law in addition to certainty and expediency. The three purposes of this law can only be realized in the lives of many people, not in living alone on an island. Article 1 Paragraph (2) of the Criminal Code explains that Investigation is: "A series of investigative actions in matters and according to the methods regulated in this law to seek and collect evidence with which evidence makes it clear that a crime has occurred in order to find the suspect."

The implementation of the investigation is a process of investigating Corruption Crimes in accordance with the provisions of the applicable laws and regulations. As a starting point for the Attorney General's Office in carrying out its duties and authorities to carry out investigations and of course also to prosecute criminal acts of corruption referring to Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning amendments to Act No. 31 of 1999 concerning Corruption Crime Eradication as material law and Act No. 8 of 1981 concerning Criminal Procedure Code as formal criminal law, as well as Act No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

Pursuant to Article 26 of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning amendments to Act No. 31 of 1999 concerning the Eradication of Corruption Crimes states that: "Investigations, prosecutions and examinations in court of corruption , must be carried out based on the applicable criminal procedural law, unless otherwise provided for in this law".

One of the important points in efforts to enforce criminal law is the existence of an independent legal structure, namely law enforcement agencies to administer the (criminal) justice system, in addition to the existence of legal substance and legal culture. The legal structure which includes police, prosecutors and court

institutions constitutes a judicial system to uphold a just law for society, with the ultimate goal of creating an orderly, civilized and prosperous society.

The police agency is one of the law enforcement institutions, based on Article 4 of Act No. 2 of 2002 concerning the Indonesian National Police it aims to: "Realize domestic security which includes maintaining security and public order, order and law enforcement, implementation of protection, protection, and services to the community, as well as fostering public peace by upholding human rights.

One of the articles of the Law on Corruption Eradication, namely Article 2, paragraph (1) of Act No. 31 of 1999 jo. Act No. 20 of 2001 states that: "Everyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the State's finances or the State's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years and a minimum fine of IDR 200 million and a maximum of IDR 1 billion".

According to the author's opinion, studied with law enforcement theory, the provisions of the Law on the Eradication of Criminal Acts of Corruption clearly want that corrupt practices in this country be reduced or even completely eliminated without a trace. There is no more corruption or bribery in this country. However, the reality shows otherwise, not that it has decreased, corruption has even increased and even the above regulations do not seem to have a deterrent effect on corruptors, so that the methods and means are used in various forms and forms to deceive law enforcement officials and the public. This is proven by the many cases of corruption that were revealed. Ironically, the majority of the perpetrators of corruption are public officials who often include high-ranking state officials.

This is in accordance with what was said by Prof. Barda Nawawi Arief that, the justice system is essentially synonymous with the law enforcement system, because the judicial process is essentially a process of upholding the law. So in essence it is synonymous with "judicial power system", because judicial power is basically "the power/authority to enforce the law". When focused on the field of criminal law, it can be said that the criminal justice system is essentially a "criminal law enforcement system", which in essence is also synonymous with "a system of judicial power in the field of criminal law".⁹

⁹ Barda Nawawi Arief, *Anthology of Criminal Law Policy* (Bandung: Citra Aditya Bakti, 2005).

Law enforcement efforts have been carried out optimally.¹⁰ However, there is still evidence and facts that are accurate and undeniable about the occurrence of criminal acts of corruption that were intentional and have actually caused losses to state finances, then in these conditions repressive law enforcement will be carried out by the Special Crimes Division decisively and indiscriminately. . Through this, of course, it is hoped that it will be able to have a deterrent effect on the perpetrators of crime as well as become an example for the community not to commit crimes. The corrective paradigm through repressive law enforcement is a final option (*ultimum remedium*), which is implemented according to legal principles and does not cause commotion in implementing development and improving people's welfare.

All this time the handling of corruption has been carried out using a juridical approach in various statutory provisions since 1957. However, it is felt that this formal juridical approach is inadequate. Therefore, in the context of countermeasures and prevention that occurred in Cirebon, the causes and conditions that give rise to criminal acts of corruption must be eliminated and obstacles or obstacles in upholding the rule of law must be eliminated. Comprehensive efforts or policies must be made by the Attorney General's Office to eradicate corruption. Overall administrative reform in the form of privatization, deregulation and decentralization is an urgent step that must be taken. For this reason, it is necessary to have commitment and community values that regard corruption as a very disgraceful act.

Efforts to prevent criminal acts of corruption have two ways in terms of the use of facilities, namely through the means of the criminal justice system (penal) / repressive measures, namely efforts after the occurrence of a crime, and means (non-penal) / preventive actions, namely preventing before the occurrence of a crime. According to the author, based on legal system theory, corruption prevention still occurs massively and systematically. The practice can take place anywhere, in state institutions, private institutions, to everyday life. Seeing such conditions, prevention is worthy of being positioned as the first strategy. Through the prevention strategy, it is hoped that continuous steps will emerge that will contribute to future improvements. Anti-corruption education creates awareness of the dangers of corruption and then rises against it.

3.2. Obstacles and Solutions in Efforts to Eradicate Corruption

Law enforcement is closely related to criminal acts of corruption, in practice it faces various obstacles/obstacles, especially in optimizing the eradication of corruption. This is caused among others by:

¹⁰ Prasetyo, *Restorative, Corrective and Rehabilitative Paradigm-Based Law Enforcement Innovations for the Acceleration of National Development* (Semarang: UNDIP, 2018).



1. The complexity of corruption cases, this requires coordinated handling, but in fact, if it is coordinated with the leader of the party being investigated, the leader concerned is not willing if his work unit is examined.
2. Time constraints, the occurrence of corruption is generally a long time ago so it is difficult to prove. It is also possible that evidence has been destroyed. This will make it difficult for investigators to find evidence and witnesses. So if corruption cases can be found early it will be very helpful in handling them.
3. Limited intensity of inspection by functional supervisory apparatus. The volume and intensity of oversight by both internal and external oversight units at the central and regional levels has so far not provided input to investigators on corruption cases, so that it has not made a significant contribution to the number of corruption cases that can be uncovered.
4. The spread of corruption cases through public policies. The highest modus operandi of corruption today is through public policies, both issued by legislatures, executive agencies and decision-making institutions in BUMN/BUMD, and banking institutions.

In the field of criminal law, the police are law enforcement officers who are tasked with maintaining order and guaranteeing public security, maintaining state safety and public safety including providing protection and assistance and providing and seeking citizen and public obedience to all forms of regulations.

Perpetrators of corruption have certain qualities, both in terms of ability and social position, perpetrators of corruption in general also have qualities as people who have intelligence, have authority and also have opportunities, complex modus operandi carried out with sophisticated techniques. Therefore, corruption is certainly carried out by people who are smart or educated and have authority, then acts of corruption can be covered up for a long time so it is difficult to assess, especially to find the necessary evidence and efforts to return state losses, witnesses and experts are often uncooperative, and perpetrators of corruption deliberately complicate the course of investigations. Obstacles in the process of investigating corruption is regarding evidence.

In dealing with Corruption Crime cases and other criminal acts that follow them, the Attorney General's Office must continue to show sincerity and consistency, an indicator of success can be shown from the number of cases handled, both at the level of investigation, investigation, prosecution which leads to court decisions. In the process of proving a criminal act of corruption, it is related to the relatively long time when the act of corruption occurred, witnesses, evidence that was scattered/not in place, the perpetrator of the crime of corruption died/changed assignments. In addition, it is difficult for personnel who have the

quality as investigators in special crimes (corruption crimes). The problem that arises is that the provision of prosecutor personnel as investigators in special criminal cases is generally very limited in terms of early knowledge of an event suspected of being a criminal act of corruption. Thus, causing a suspect to be able to transfer his assets to another person.

Another obstacle is that the criminal act of corruption is carried out jointly where corruption is never done alone so that there is involvement of related parties who are used as witnesses trying to save themselves, which based on the facts that have occurred are different from those in court. and regarding evidence or in the case of presenting suspects, because in cases of criminal acts of corruption it is very difficult to obtain evidence. Because mostly only certain people know about it because it is confidential in nature, the closed attitude of those around him causes less support for disclosing it.

The Indonesian criminal law system still does not fully recognize that corporations are legal subjects that can be accounted for. Even though there are several criminal law policy products outside the Criminal Code that regulate corporate responsibility, the corporate responsibility system that is adopted still uses the doctrine of vicarious liability, this is the same as not recognizing corporations as subjects of criminal law. Therefore, it is necessary to recommend policy reformulation regarding the corporate criminal responsibility system and include this formulation in the Criminal Code.¹¹

To overcome the obstacles in preventing acts of corruption, efforts or solutions have been made, including:

1. Looking for the whereabouts of the witness and summoning him to provide information about the crime that he heard, saw, and knew truthfully.
2. Procurement of personnel who have the quality as prosecutors in the field of special crimes (corruption crimes).
3. Organize special education for assigned prosecutors and mastery of technical investigations of special crimes.
4. Have a high quality personal.

According to the author, based on the Theory of Islamic Justice, the perpetrators of corruption should not only be sentenced to prison or return losses to the state, but more emphasis should be placed on the perpetrators of corruption

¹¹ Adi Wibowo, 'Substantial Justice in Handling of Child Actors Klith', *Daulat Hukum Journal*, Vol. 2.No. 2 (2019).

being sanctioned for carrying out social activities that are known to the general public. This will be more impactful on the deterrent effect for the perpetrators of corruption. Because so far the public's view of the sanctions given to perpetrators of corruption who are imprisoned is only to change beds, this is evidenced by the comfortable facilities in prison for perpetrators of corruption. In fact, it is not uncommon to find perpetrators of corruption being able to go in and out of jail freely, for example, being able to travel for recreation.

Islamic justice has a deeper meaning than what Aristotle called distributive and final justice; formal justice of Roman law or other human-made conceptions of law. It penetrates deep into the human heart, because everyone must act in the name of God as the source of all things, including motivation and action. The implementation of justice in Islam is based on the Qur'an and the sovereignty of the people or the Muslim community, namely the ummah.¹²

Basically, the success of law enforcement in efforts to eradicate criminal acts of corruption is also influenced by the factors of honesty, skill and high integrity of law enforcement officials (police, prosecutors, judges). This success is also closely related to the government's political will and legal awareness of society as the main potential in actively participating in fighting corruption.

4. Conclusion

The criminal law policies in eradicating corruption against perpetrators of corruption carry out several processes or stages in accordance with statutory regulations, namely examination, investigation, investigation and prosecution. As for the prosecution, in addition to efforts to punish, the perpetrators of corruption also prioritize and optimize the return of state financial losses to be returned to the state treasury. The efforts made by the Attorney in preventing the occurrence of criminal acts of corruption are by means of comprehensive efforts or policies as well as overall administrative reform in the form of privatization, deregulation and decentralization.

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