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Urgency of Justice-Based Sanctions for Corruption Crimes

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Abstract. *The condition of the Indonesian nation in cases of corruption is increasingly rampant, while the punishment does not have a deterrent effect on corruptors, and there is a weakening of the regulation of articles contained in Law Number 1 of 2023 concerning the Criminal Code. The author is interested in analyzing everything related to the regulation of sanctions which are increasingly chaotic and do not guarantee the realization of legal justice for the community. This study uses a library research method, namely research related to library data collection methods, or research whose research objects are explored through various library information (books, encyclopedias, scientific journals, newspapers, magazines, and documents). Which is related to the problem of descriptive analysis techniques and approaches used to analyze the urgency of criminal sanctions in corruption crimes based on justice. With this, to law enforcement officers to implement existing laws, accompanied by considerations on related matters. And for regulators to immediately revise the law on corruption, especially in those articles that make corruptors increasingly rampant and difficult to realize legal justice for the community.*

Keywords: *Corruption; Justice; Sanctions.*

1. Introduction

In various parts of the world, corruption always gets more attention than other crimes. Corruption is a serious problem that can endanger the stability and security of society, endanger socio-economic development, and politics, and can damage democratic values and morality because over time the act seems to become a cultural tradition. As cases of corruption are difficult to reveal because the perpetrators use increasingly sophisticated equipment and are carried out by more than one person in a covert and organized manner. Therefore, this crime is often called while collar crime or white collar crime.

Efforts to eradicate corruption have been carried out in various ways, but the results have not been satisfactory. One of the efforts to eradicate corruption is to use criminal law with its sanctions in the form of criminal penalties. The stipulation of criminal sanctions in the legislation on corruption cannot be separated from one of the objectives to overcome the problem of corruption. On the other hand, corruption is increasingly widespread, which not only harms state finances but also constitutes a violation of the social and economic rights of the wider community.[1]

The weakness of the corruption handling and eradication system causes corruptors to freely carry out their actions without fear of being arrested or tried. Moreover, with the existence of human resources with the strength of faith and morals in an environment related to the law whose credibility is questionable. Given the weakness of the system and institutions that handle and eradicate corruption, it is very important and urgent to form a special agency or commission to handle corruption cases.

Based on the explanation above, it is necessary to carry out criminal law reform (penal reform) which in essence includes the field of penal policy which is part of and closely related to law enforcement policy, criminal policy, and social policy. This means, in the reform of criminal law in essence, as follows:

1) It is part of a policy (rational effort) to update the legal substance in terms of making law enforcement more effective.

2) It is part of a policy (rational effort) to eradicate/deal with crime in protecting society.

3) It is part of a policy (rational effort) to overcome social problems and humanitarian problems in order to achieve/support national goals (namely: social deference and social welfare).

4) It is an effort to review and re-evaluate (re-orientation and reevaluation) the main ideas, basic ideas, or socio-philosophical, socio-political, and socio-cultural values that underlie criminal policies and criminal law (enforcement) policies so far. It is not a renewal (reform) of criminal law if the value orientation of the criminal law that is aspired to is the same as the value orientation of the old criminal law inherited from the colonialists (Old Criminal Code or WvS).

Thus, in the reform of criminal law, a policy-oriented approach and a value-oriented approach must be taken.[2]

[1]Siska Amelya and Fitri Elfiani, Criminal Sanction Policy in Corruption Cases in Indonesia, Journal Of Juridische Analyse, Vol 1 No.2 ,2022, p 45-46
[2] Barda Nawawi Arief (III), "Criminal Law Reform in the Perspective of Comparative Studies", 2005, Bandung: Citra Aditya Bakti, p. 3-4

The renewal of criminal law in Indonesia is based on the following reasons:

1) The Criminal Code is seen as no longer in accordance with the dynamics of the development of Indonesian national criminal law.

2) The development of Criminal Law outside the Criminal Code, both in the form of special criminal law and administrative criminal law, has shifted the existence of the criminal law system in the Criminal Code. This situation has resulted in the formation of more than one criminal law system that applies in the national criminal law system.

3) In some cases, there has also been duplication of criminal law norms between criminal law norms in the Criminal Code and criminal law norms in laws outside the Criminal Code.

In the renewal of criminal law, there has become a very urgent need for fundamental changes in order to achieve the ideals of better criminal law and pay more attention to human rights aspects.[3]This need is in line with the strong desire to realize the fairest possible law enforcement.

So regarding the above, that this research aims to determine and analyze the regulations and urgency of sanctions for criminal acts of corruption in Indonesia from year to year in order to realize justice.

2. Research Methods

1) Approach Method

In compiling this research, the author used the Normative Juridical method.

2) Research Specifications

The specifications in this study use a descriptive analysis method, with the aim of providing a description of what is happening, which is still related to the applicable laws and regulations and various relevant theories.

3) Data Collection Method

In this study, the author uses a data collection method with documentation techniques or library research, which is a single method used in normative legal research.[4]

4) Data Analysis Methods

[3] Sudarsono, S and Surbakti N, "Criminal Law Basics of Criminal Law Based on the Criminal Code and the Draft Criminal Code.", Journal of Legal Science 4 No. 1, 2017, p. 10.
[4]Suratman, Legal Research Methods, Bandung: Alfabeta, 2015, p.123.

After obtaining the necessary data, both primary and secondary data, the data is then analyzed qualitatively using the following methods: analytical descriptive method and content analysis.

3. Results and Discussion

3.1. Regulation of Criminal Sanctions for Corruption in Indonesia

The Criminal Code (KUHP) often lags behind the development of crimes that occur in society so that it must be patched up in order to keep up with these developments. As a result, a law was born that amends and adds to the Criminal Code. However, the Criminal Code is still lagging behind the development of crime. Therefore, in addition to laws that amend and add to parts of the Criminal Code, criminal laws are also made that are spread outside the Criminal Code or what are called special criminal laws such as Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as UUPTPK), in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

Special criminal acts must meet certain criteria as stated by Loebby Loqman that an act must be regulated separately in special criminal law because:[5]

1) If it is included in the codification (KUHP) it will be detrimental to the codification system;

2) Due to certain circumstances such as emergencies and

3) Because it is difficult to make changes or additions to the codification, because in certain cases it is necessary to deviate from the existing system.

As stipulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, it is known that there are specific matters in this law that are different from the Criminal Code. As with the birth of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, in addition to perfecting Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is also motivated by the fact that criminal acts of corruption that have occurred widely in Indonesia have not only harmed state finances, but are also violations of the social and economic rights of the community at large, so that criminal acts of corruption need to be categorized as crimes whose eradication must be carried out in an extraordinary manner.

[5]Abdul Kholiq Nur and Gunarto, "The Concept of Criminal Law for Corruption Crimes, a Corporate Criminal Liability System Based on Justice Values" Vol 4 No 1, Jurnal Daulat Hukum, 2021, page 82

However, government institutions that handle corruption cases have not functioned effectively and efficiently in eradicating criminal acts of corruption.[6]

That in Article 2 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which reads as follows:[7]

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

Meanwhile, Article 3 reads:

"Any person 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 state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/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)."

As in the article, that the imposition of a sentence below the special minimum can cause new problems regarding the existence of the special minimum criminal sanctions threatened in the anti-corruption law. This is because everyone considers justice to be the most fundamental thing, especially when someone experiences legal problems so that justice according to some people can be assumed to be a universal problem.

In this case, the author applies the theory of the legal system according to Friedman that the legal system has the function of responding to the expectations of society towards the legal system, by, among other things, distributing and maintaining values that are considered correct by society, by referring to justice. So justice according to Friedman, is the ultimate goal of the legal system. This theory is in accordance with the current conditions in Indonesia, because if you want to assess the legal system in force in Indonesia, you can use this theory by looking at and analyzing the law from 3 (three) legal components, namelyelements of legal structure, legal substance, and legal culture.[8] In simple terms, the legal structure is related to institutions or institutions that implement the law or can be

[6]Rai Iqsandri, "Dynamics of Corruption Crime Regulation in Indonesia", Andrew Law Journal Vol. 2 Number 2 Year 2023, p. 70

[7] Law of the Republic of Indonesia No. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Jakarta, 2023, p. 2

[8]Lawrience M. Friedman, The Legal System: A Social Science Perspective (New York: Russell Sage Fundation), 1975 p. 6.

said as law enforcement officers. In the case of criminal law, the institution tasked with implementing it is manifested in a criminal justice system, which is essentially a system of power to enforce criminal law consisting of investigative power, prosecutorial power, power to try and pass judgment and the power to implement decisions/criminals by implementing/executing bodies/apparatus.[9]

However, the legal system in force in Indonesia does not yet have a single regulation that contains the purpose of punishment, although there is an important link between the punishment system and the procedure for determining a sanction. Its existence will provide direction and consideration regarding what should be used as a sanction in a criminal act to enforce the validity of the norm.[10]

So the government's efforts in Indonesia to eradicate corruption through the formation of legislation with three amendments until now have not shown an adequate level of success. The failure in question can be seen from four aspects: legal, economic, social, and political aspects. The aspect of legal success is not measured by the number of corruption cases handled by the KPK and the Attorney General's Office each year, but must be seen from the quality of the procedures used in prosecuting and determining someone as a suspect/defendant and the quality of the decisions of the district court, high court, and Supreme Court. The quality of the current procedure still does not reflect legal certainty and justice, as evidenced by the continued existence of discrimination and arrogance of investigators that pollute the institution.

3.2. Urgency of Justice-Based Sanctions for Corruption Crimes

The urgency for criminal law reform can be reviewed from various aspects such as socio-political, socio-philosophical, and socio-cultural aspects or from various other aspects such as social policy, criminal policy and law enforcement policy, which means that criminal law reform is essentially a manifestation of changes and reforms to various aspects and policies that form the basis for reform. [11]

Criminal law reform has become a very urgent need for fundamental change in order to achieve the ideals of better criminal law and pay more attention to human rights aspects.[12]This need is in line with a strong desire to realize a law enforcement that is as fair as possible. As is known, law enforcement is not a

[9]Barda Nawawi Arief, Problems of Law Enforcement and Crime Prevention Policy, Bandung: Citra Adtya Bakti, 2001, p. 28
[10]M. Sholehuddin, Sanctions System in Criminal Law, Jakarta: Raja Grafindo Persada, 2004, p. 42
[11]Candra, S. "Criminal Law Reform: The Concept of Criminal Responsibility in the Future National Criminal Law." Jurnal Cita Hukum 1, No. 1 (2013): p. 8
[12]Sudarsono, S and Surbakti N. "Criminal Law Basics of Criminal Law Based on the Criminal Code and the Draft Criminal Code." Journal of Legal Science 4 No. 1 (2017): p. 10

neutral activity, but has its own social structure, so it differs from time to time, from system to system and from one place to another.[13]

As in the ratification of the new Criminal Code by the President and the Indonesian House of Representatives is an important milestone in the development of the criminal law system in Indonesia. Through this change, it is expected that law enforcement can be more effective, justice can be better upheld and human rights can be better protected. As the ratification of the new Criminal Code is an important step in strengthening the criminal law system in Indonesia. However, effective implementation, monitoring and periodic review remain challenges that need to be overcome.

Therefore, the renewal of criminal law in Indonesia is due to the emergence of problems related to the obsolescence of the current Criminal Code internally and the development of problems that arise in the midst of community life. So there needs to be a renewal of criminal law in the new Criminal Code that is sourced, characterized, rooted, and has a national character in accordance with the contents of Pancasila and the 1945 Constitution and also regulates the existence of legal certainty and justice for the community.

With this, the regulation on corruption in the Netherlands as the origin of our criminal law system, the regulation of criminal acts of corruption is still contained in the Wvs, but the Indonesian House of Representatives has ratified the Draft Criminal Code or RKUHP on December 6, 2022 to become the Criminal Code which will still be enforced for the next 3 years. Therefore, the Criminal Code that was ratified was not a few parties who rejected the ratification of the draft law because it was considered that there were many problematic articles. One of them is the article related to the Corruption Law with the new Criminal Code.

Previously, corruption was an extraordinary crime, so its legal regulations were specifically regulated in the Corruption Law. However, the specificity of corruption was sidelined because it was included in the new Criminal Code. The rules are now stated in Article 603 of the Criminal Code. As Article 603 reads:[14]

"Any person who unlawfully commits an act of enriching themselves, another person, or a corporation that is detrimental to state finances or the state economy, shall be punished with life imprisonment or a minimum of 2 (two) years and a maximum of 20 (twenty) years imprisonment and a fine of at least category II and at most category VI."

Meanwhile, article 604, which reads:

[13]Sudiarawan, Kadek Agus, Putu Edgar Tanaya, and Bagus Hermanto. "Discover the Legal Concept in the Sociological Study." Substantive Justice International Journal of Law 3, no. 1 (2020): p. 94-108.
[14]Republic of Indonesia Law No.1 of 2023 concerning the Criminal Code, Jakarta, 2023, p. 226.

"Any person who, with the aim of benefiting himself, another person, or a corporation, abuses the authority, opportunity, or means available to him due to his position or position which is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI."

In the above explanation, the author applies the Pancasila justice theory according to Prof. Dr. Abdul Aziz Nasihudin, SH, MM, MH et al in his book entitled Pancasila Legal Theory that the view of justice in national law is based on the foundation of the state. Pancasila as the foundation of the state or state philosophy (fiolosofische grondslag) is still maintained until now and is still considered important for the Indonesian state. Axiologically, the Indonesian nation is a supporter of Pancasila values (subscriber of Pancasila values). The Indonesian nation is a godly, humanitarian, united, democratic, and socially just nation.[15]

By using the fundamental norm foundation, namely Pancasila in the formation of good law, Pancasila must always be the main pillar in forming laws and regulations that are in accordance with the spirit of the Indonesian nation that humanizes fair and civilized humans and social justice for all Indonesian people. Therefore, it is necessary to understand the justice of Pancasila in order to provide a common perception of justice that will be the basis for the formation of good law.

Of course, the essence of justice in Pancasila must be described in the form of legal norms that are free from personal or group interests. The realization of the truth of Pancasila into legal norms, of course, Pancasila is able to provide its own value about justice in realizing legal justice for the Indonesian people. Legal justice that originates from Pancasila is expected to be able to provide an understanding of the meaning of the true truth of justice, which comes from our own nation, not a legacy from foreign nations. Justice based on Pancasila must be realized, described, and realized into Indonesian legal norms in order to realize justice that provides protection of rights and obligations for all Indonesian people in the form of laws and regulations.[16]

So it can be seen that Law Number 1 of 2023 concerning the Criminal Code does not reflect the protection of rights and obligations for all Indonesian people, so it is necessary to review or revise the articles that open up opportunities for corruption. Because there is a threat of criminal sanctions in the form of

[15]Prof. Dr. Abdul Aziz Nasihudin, SH, MM, MH et al., Pancasila Legal Theory, Tasikmalaya: CV. Elvaretta Buana, 2024, p. 28
[16]Ferry Irawan Febriansyah, "Justice Based on Pancasila as the Philosophical and Ideological Basis of the Nation", Muhammadiyah Islamic College of Tulungagung, DIH Journal of Legal Studies, Vol 3 Number: 25, 2017, p. 2

imprisonment and fines that are considered light for corruptors. With this, if left alone, there will be demands from the public for the absence of legal justice.

4. Conclusion

As in the discussion above, the author draws the conclusion that what needs to be known is that merging the corruption article into the Criminal Code will actually eliminate the special nature of the crime of corruption. So that corruption is no longer referred to as an extraordinary crime. In the duplication of the article regulated in Article 603 of the new Criminal Code which is a similar form to Article 2 of the Corruption Law. So that the article contained in the Criminal Code actually reduces the minimum threat of imprisonment/corporal punishment which was previously 4 years to 2 years and the fine which was previously imposed at least IDR 200,000,000.00 (two hundred million rupiah) to IDR 10,000,000.00 (ten million rupiah), Although there are several articles that increase the minimum corporal punishment such as in Article 604 which is another form of Article 3 of the Corruption Law, from 1 year in prison to a minimum of 2 years. However, this is certainly not commensurate with the subject regulated in this article, namely for public officials or state administrators. This problem is further exacerbated by the enactment of the Correctional Law for those convicted of corruption cases to receive remission and conditional release without having to pay additional fines and compensation, and without having to become justice collaborators.

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