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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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MODERNIZATION LAW AS A CRIME CORRUPTION VERY EXCEPTIONAL THROUGH ENFORCEMENT OF ETHICS

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ABSTRACT

In this era of modernization of every country are not directly have the same definition that corruption as a form of crime that is extraordinary (Extra-ordinary crime). Similarity orupsi definition of the offenses is one of them motivated by implication posed a systemic nature and sustainability on corruption. However, in practice many countries in the world use the shortcut in conducting countermeasures against corruption which one of them through the efforts of law enforcement or form. Whereas in the practical level, the form of law enforcement in resolving corruption are often not cut the chain of corruption developments actually make corruption is getting stronger. As an alternative enforcement etikan is a right step in which the main principles of ethics enforcement is prevention so that the chain will not be endemic corruption. As a form of penagakan ethical justification for decent doiterapkan given the tendency of ethics violation is a violation of the law, so that through the enforcement of ethical corruption will be lost in such a manner.

Keywords: *Law Enforcement, Corruption And Ethics*

A. INTRODUCTION

The concept of law according to Hart is much more complex and the legal sense menurut John Austin. According to Hart, the primary law is a law that gives rights and obligations. Ie, the rules of criminal law prohibiting and sanctioning a thief, robbers, swindlers, pickpockets, and so forth. Meanwhile, according to Hart secondary law is the rule of the law governing how and who create, enforce, or modify the primary legal rules. Against this secondary law, Hart called it a "legal recognition (rule of recognition), because it is a rule that determines which of the rules in a society that is made with the appropriate legal procedures so that such rules may be regarded as lawful¹

This perception that had been built in understanding the law. Actively, the law is an instrument in bringing about the desired changes. Sometimes aggressive if the law will be patterned after the achievement of expected not to get maximum results. Here, the role of power is always decisive. But considering the power that tends formalities, the law always use a formality appropriate institutions already existing devices.

¹ Munir Fuady 2010, Dynamics of Legal Theory, Ghalia Indonesia, Bogor, p 39

That is the approach that is currently widely used in solving approach of corruption in Indonesia. However, in accordance with the facts in the field of corruption rather than be discharged but instead a culture that developed in the community and among the bureaucrats.

The Corruption Eradication Commission (KPK) in its year-end report by the end of 2013, told reporters in Jakarta, a whole new deal with 70 cases. Whereas in 2012, managed to handle 49 cases. In 2013, the Commission conduct an investigation activities 76, 102 investigations and 66 prosecutions. As for the execution of more than 40 court decisions. Of these activities including performing dozens of hand fishing operations. Commission action in 2013 46 cases of corruption in ministries and state institutions. Cases at the government district and the city is ranked second, 18 cases. Three cases involving mayors, district heads and deputy regent. Then the two governors who are in the list of officials who have to deal with the Commission. Private parties, there were 24 cases. Report of the Commission, noted 51 cases related to bribery. From the report of the Commission end of 2013, the budget used. From \$ 703 billion state budget, the Commission only used Rp 357.6 billion. Until now, the Commission has 987 personnel. KPK chairman Abraham Samad in the year-end report in his office, Jalan Rasuna Said, Jakarta, Monday (12/30/2013). "The return of non-tax revenues (non-tax revenue) on the handling of corruption and graft amounting to Rp 1,196 trillion,". Then in 2013 the Commission activities carried out by using the state budget. From the ceiling of Rp 703.8 billion, the Commission only used Rp 357.6 billion. On the other hand, in a press release dated November 25, 2013 at Bidakara Jakarta, related to corruption cases handled by the police, police chief Sutarmam states; Police deal with 1,363 cases in 2013, up from 187 cases in 2012 were only 1,176 cases. "The completion of the corruption cases in 2013 as many as 906 cases, while in 2012 there was 657 cases. No increase in 249 cases or 27.48 percent, ". Police budget for the treatment of cases is far below the Commission and the operational area is also up to the village level. Sutarmam also been revealed, almost 70% of the police budget received only runs for salaried personnel. "Exactly 67 per cent of the budget allocation,".²

The above facts have illustrated that the formalistic approach in combating corruption through law enforcement agency does not become an alternative to modern

² Faisal Santiago, Corruption Crime Eradication Strategy: Legal Sociological Review, Journal Lex Publica, Vol. 1 No. 1, January 2014, p 55

can be applied in the State of Indonesia which is currently higher by tingkat corruption tersu pattern develops. The formalistic approach, including through judicial pedekatan.

On the other hand, a practice which is applied through the eradication of corruption through legal institutions are run continuously into a polemic considering the process of criminal justice is executed based on the consideration of "transactional" between the parties who have the economic power to control public is penengak law, resulted in the enforcement of criminal law is not unfair and discriminatory. Judicial mafia practices be a bad record to the court for damaging the integrity of the court.³

According to Max Weber, in behavior, people are always tied to habit. Repetition always creates a feeling comford and eventually arises a sense of certainty (certainty). Max Weber distinguishes between formal law with substantial law. This distinction is a process of rationalization of law. Formal law is the whole system and the theory and the theory of law rules are based only on juridical logic without considering factors outside the law. Legal substances focus on factors such as non-judicial political values, ethics, economics and religion.⁴

Such repetition position is that often cause the problems in law enforcement and justice also primarily related to legal certainty in penanggulangan corruption in Indonesia. Penagnggukangan corruption in Indonesia still seem to offer a legal logic as a formal character, which means court spearhead of formality enforcement of corruption over the years.

Departing from it all authors are interested in raising the issue into a major theme of how to do moderinasi pengakan law against corruption through pengakan ethics. It is then very diharapkan inlah today considering the modernization penagakan ethics is a form of space that will not only erase the corruption in Indonesia but break the chain of corruption in Indonesia today.

B. Discussion

Satjipto Rahardjo said that the new developments in the study of law in the 20th century signaled that there is less true in the ways people learn the law so far, namely by limiting itself to the realm of the laws. Developments in the study of law will continue and not stop until the "sociological movement in law". Sociological study of the laws that

³ J. Pajar Widodo, the Criminal Justice System Reform in the Context of Judicial Mafia Handling, Dynamics Law Journal Vol. 12 No. January 1, 2012, pp 109

⁴ Suteki, 2013, the Design Law On Social Lounge, Thafa Media, Yogyakarta, pp 8-9

subvert the analytical positivism only copies or only a symbol only and encouragement to undertake "a study of the law correctly". Behind the sociological study of the law is still lined with others such as anthropology, psychology and economics.⁵

Rahardjo Sadjipto view of the above has made clear shades legal formalities is a view that is rigid and limited to one side. Whereas in the law objectively look at the various aspects and considerations that make it a unified law on a clear objective.

The argument above has been confirmed by Max Weber with legal developments theoretically divide into 4 stages:

1. Stage 1: The emergence of charismatic legal basis through the "law Prophets" by revelation. Khadi Justice.
2. Stage 2: Incidence of law through legal discovery empirically by "legal honoratiorens" melalau precedent system
3. Stage 3: in the form of legal validity of the statement made by the secular power as well as by religious authority (theocracy)
4. Stage 4: Cultivation of the law is systematically accompanied by professional administration of justice by those who have obtained legal pendidikari scientifically in the form of logical and formal⁶

A concrete manifestation of the development of this law which gave birth to the transformation of legal form not only merely as an instrument of discipline, but multidisciplinary. A multidisciplinary approach is what can be interpreted as a form berbilai law is not only formal, but also includes all aspects included in this is the ethics.

Birth legal system can not formal dmungkinkan all. This is confirmed by Roscoe Pound to argue that the law serves to ensure social cohesion and social order changes by balancing the conflicting interests that include:

1. The interests of the individual (private interests and citizens as individuals)
2. The social interests (arising and conditions of the general conditions of social life)
3. The interests of the public (especially the interests of the State)⁷

Thus it is possible modernization paradigm of law through a formal approach in the handling of corruption must be replaced with alternative approaches to ethics as appropriate. The weakness has been due to the law are often the forms that are less able to

⁵ Suteki, 2013, *ibid*, p 29

⁶ Suteki, 2013, *ibid*, p 9

⁷ Muhammad Erwin, 2013, *Filsafat Hukum Refleksi Kritis Terhadap Hukum*, Cetakan Ke 3, Rajawali Jakarta, hlm 237-238

build confidence in the interests of both the individual, social and public. Sedangkan in capacity, more ethical formatted to address the issues in combating corruption.

Ethical approach in the enforcement of corruption as being lahtar behind the birth of the Judicial Commission. Asshiddiqie, mean the establishment of the Judicial Commission in the Indonesian judicial power structure is for citizens outside the official ur strukt parliamentary institutions could be involved in the process of appointment, performance assessment, and possible dismissal of judges. All of this is intended to maintain and uphold the honor, dignity and behavior of judges in order to realize the truth and justice based on the deity Almighty. With honor and dignity nobility, the judiciary's independence and impartiality berifat (in dependent and as impartial judiciary) expected to be realized simultaneously offset by the principle of accountability of judicial power, and a good and legally and ethically. For that, we need independent oversight institutions against these judges themselves.⁸

In handler author attempts to place ethics is a form of modernization of the law. Present law will be aceptabel to the needs through enforcement approach ethical, rather than legal formalities were only regarded as giving the product a power of truth.

Here it should be understood that to date the long-term nature of the problems are more fundamental and should be resolved through the paradigmatic solution paradigm shift in the orientation on the conception of a state of law and rechtsstaat become the rule of law as developed in Anglo Saxon countries. With this paradigm, then any law enforcement efforts will able to escape the pitfalls of procedural formalities and to encourage law enforcement officers to be creative and daring explore the values of justice and to uphold the ethics and morals in society in any settlement of a legal case. This paradigm shift must also be interpreted as an attempt to restore a sense of justice and moral as the soul of the law that will be built for the future of the state of law in Indonesia. To do that paradigm shift, likely at the moment are more open, because the 1945 amendment no longer explicitly mentions "rechtsstaat" as a reference to Indonesian law states. The term rechtsstaat the first official explanation contained in the 1945 Constitution now been withdrawn lagi. Setelab 1945 had four changes (amendments), Explanation of the Constitution was abolished and no longer a part and the Constitution

⁸ Ni'matul Huda, 2015, the Constitutional Law Indonesia, Raja Grafindo Persada, Jakarta, pp 230-231

of 1945. Instead, in Article 1 (3) UUD 1945 state law outlined on fad Indonesia with the sound of the verse "Indonesia is a country of law."⁹

This character is least is also used by judges as a major part of the judicial power in running any law enforcement authority. Natural run judicial power, there are 6 (six) important principles that should be used as a handle for judges in the world as stated in The Bangalore Principles, namely:

1. Independence (Independence Principle). The independence of judges is a guarantee for the enforcement of law and justice, and a prerequisite for the realization of the ideals of a constitutional state.
2. Impartiality (impartiality Principle). Impartiality is a principle inherent in the nature of the function of the judge as a party that is expected to provide solutions to every case brought before it.
3. trite gritas (Integrity Principle). The integrity of judges is an inner attitude that reflects the integrity and balance of personality of the judge as a person and as a state official dalam performing his respective duties.
4. The Deserving and decorum (Propriety Principle). Propriety and modesty is the obscenity of personal and interpersonal moral norms are reflected in the conduct of every judge, both as individuals and as a state official in performing his professional duties, which command respect, dignity and trust.
5. Equality (Equality Principle). Equality is a principle which guarantees equal treatment of all people based on humanitarian fair and civilized without discriminating one another on the basis of differences in religion, race, color, sex, marital status, physical condition, socioeconomic status, age, political views or similar reasons.
6. Skills and validity of the judge (Competence and Diligence Principle) Kecaka pan and similarity judges is an important prerequisite in the administration of justice is good and reliable. Skills are reflected in the professional ability of judges gained from education, training or experience in performing the tasks. While the similarity is a personal attitude of judges who describe austerity, prudence, diligence, perseverance and seriousness in the execution of professional duties of judges¹⁰

Melalui standar etika bagi hakim yang hadir adalah kecederungan penegakan etika telah berimplikasi pada menurunnya pelanggaran hukum yang terjadi pada hakim.

⁹ Moh. Mahfud MD, 2013, debate NegaraPasca Constitutional Amendment Constitutional Law, King Grafindo Persada, Jakarta, p 186

¹⁰ Sirajuddin and Winardi, 2015, the Indonesian Constitutional Law, Press Equivalent (Publishing Instras Group), Malang, pp 141-142

Namun tetap dan tentunya hal ini harus secara objektif dengan melihat pertimbangan penegakan etika utamanya yang dijalankan oleh komisi yudisial sebagai penegak etika secara eksternal maupun mahkamah agung sebagai penagakn etika hakim secara internal.

Indeed we would need to put back on the goals of reform. Asshiddiqie said that the enormous changes in the reform era include two things that open up opportunities for improvement korupsi. Pertama, changes the rules of the system; second, the change of system and state institutions function. Both of these changes lead to anomie and the abandonment of the system anomalies and the old rules, while system and new rules have not been effective so that there is a state without the rule. And, in a situation like this, there is freedom in the irregularities which turned into a source of income for criminals. Therefore, such a situation that encourages good behavior because of corruption or because of malicious intent naivete (ignorance).¹¹

Therefore through moderanisasi agenda of law enforcement corruption as a crime that is extraordinary it was time necessary to put corruption as one that must be fought to be handled through ethical approach. Law enforcement through the enforcement of ethics is then a wrong form of harmonization and synchronization of law in Indonesia appropriately and rationally.

It seems that the reorientation of ethics enforcement in combating corruption is a redefinition of the rule of law which is defined as the activity of harmonizing the relationship values that span the 'hierarchy in the rules, the views are steadily and embody the attitudes, acts as serangkaian translation of the value of the final stage to create peace and social life. Law enforcement can only be done when the various dimensions of legal life always maintain harmony (harmony, balance and harmony) between social morality, the morality of institutions and civil morality of citizens based on actual values in society. Thus togetherness is needed not only to create a national association signs, but also enforcement.¹²

C. Conclusion

Discourse as the law is an instrument that is free from formality nuance in efforts to combat corruption has been necessary to apply today. It departs from a building perception that corruption pengakan formally by the judiciary considered to be the

¹¹ Moh. Mahfud MD, 2013, opcit, p 160

¹² Kusnu Goesniadhie S, Perspectives of Good Moral Law Enforcement, Journal of Law No. 2 Vol. 17 April 2010, p 196

impasse. Often even spawned judicial mafia practices that be a bad record to the court for damaging the integrity of the court.

Moderanisasi law enforcement against corruption as a crime that is extraordinary certainly need to be shifted from the formal approach was replaced by ethics enforcement approach. It can be said later considered appropriate not only eradicate corruption but cut the chain of corruption that has been the culture of the community and bureaucrats. Law enforcement through the enforcement of ethics is then a wrong form of harmonization and synchronization of law in Indonesia appropriately and rationally.

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