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THE APPLICATION OF CORRUPTION LAW TOWARD CRIMINAL ACT IN THE FIELD OF FORESTRY

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ABSTRACT

In the practice occurduringthe handling corruption cases, it can be seen that the public prosecutor often encountered in the letter of indictment often use the Act 31 of 1999 jo Law No. 20 of 2001 to the other criminal offenses as criminal acts in the forestry, Law No. 20 of 2001 on Amendments to the Law No. 31 of 1999 on Corruption Eradication. In Article 14 explicitly states that the provision that: "Any personwho violates the provisions of the legislation expressly declare that the violation of the provisionsof the law as corruption apply the provisions stipulated in this law". It means that such article of the Law on Corruption Eradication can be used to prosecute other crimes as criminal acts in the forestry, criminal acts in the banking, criminal acts in the taxation, and other crimes, as long as a criminal offense in the enactment laws related qualification as criminal offense corruption.

A. INTRODUCTION

The forestry sector is very likely to lead to corruption cases. Various activities in the sector become the critical point of the occurrence of the cases of corruption. Inadequate maps of the forest area, unclear area boundaries, and violations of licensing criteria to cutting outside the block became the source of corruption in this sector. In addition to the availability of maps of forest areas with clear regional boundaries that are easily accessible, it is also expected that there is strengthening of the institution and human resource capacity in the region licensing process to avoid corruption in the forestry sector.

The poor governance concerning the establishment of forest regional boundaries and corruption becomes a vicious circle for the forestry sector; both of which continue to undermine people's right to get the maximum benefit over the forest. It will then impact to; very high level of deforestation, the loss of state forestry sector that can undermine the country's financial, legal uncertainty over the forest areas which cause the occurence of massive license overlapping (the occurence of agrarian disputes, unclear and unclean mines and gardens overlapping).

Over the decades various issues in the policy of natural resources interfere the interests of the state for ensuring the welfare of its people, during the same time, corruption practices hiding therein utilizing these problems, due to the lack of harmony of the regulations, the weak law enforcement, the legal uncertainty of the forest area, the conflict in the concept of mastery of the state, the legal loopholes in planning, natural resources and agrarian conflicts, the issue of decentralization, and the overlapping of management of natural resources.

B. DISCUSSION

The forest area is a specific area designated and / or stipulated by the government to be maintained its presence as the permanent forest.[1] The existence of the forest areas is the result of the inauguration of the forest area, covering the steps ranging from the appointment of the forest area, the establishment of the forest boundaries, the mapping of the forest and the establishment of the forest area. The levels contain the consequences of the law, so, *de jure*, a forest area will exist after an area is designated, at least, by the Minister of Forestry as a forest area including its boundaries even though the limitions are still on the map.

The forest area is a specific area that is designated and or stipulated by the government to be maintained its presence as the permanent forest. From the definition and explanation of the forest area, there are elements which include: a). a particular region; b). the existence or inexistence of forest; c). set by the government (the minister) as the forest area; d). based on the needs and interests of the community.

To determine the legal status of the forest area, the inauguration of the forest is required. There are three phases in performing the inauguration of forests, namely: the designation phase, the inaugural phase, and the determination phase. The determination phase of a forest area is a very important moment in the determination of the legal status of forest areas. The legal status of forest area is issued in a decree of the Minister of Forestry. The decree contains the legal status of the forest area, whether as protected forests areas, production forests, preserved forests, or recreational forests. In addition, it also contains the coverage, boundaries and location of the forest areas.

[1] Law No: 41 of 1999 about Forestry stated that based on the functions, forest areas are categorized as preserved areas, namely: Protected Forest, Nature Reserves consists of: Nature Preserve and Wildlife Reserve: Nature Conservation Area consists of: National Park, Forest Park, Natural Park, Hunting Park. While those that categorized as Cultivation Area are Limited Production Forests, Permanent Production Forest and Production Forest that can be converted.

The existence of the forest areas is the result of the inauguration of the forest area, covering the steps ranging from the appointment of the forest area, the establishment of the forest boundaries, the mapping of the forests and the establishment of the forest area. The levels contain the legal consequences of the forests areas, so, *de jure*, a forest area will exist after an area is designated, at least, by the Minister of Forestry as a forest area including its boundaries even though the limitions are still on the map.

Looking at the inauguration of the forest, up to present, the condition of forests area in Indonesia can be categorized into several levels, among others are forest areas that have not been delineated, forest areas that have been delineated, but are still in the process of approval and commencement, forest areas which some of the limits have been delineated and approved by the Minister of Forestry, and forest areas that have been designated by the Minister of Forestry. Factually, these conditions contain legal consequences of the existence of the forest area in question.

The option of using penal or criminal prosecution in forest management has become a necessity because of the problems of forests and forestry are not all purely related to the administration laws but have entered into the realm of criminal law which is regulated in the positive law, both it is positive law that are very conventional in the Criminal Code and those stipulated in the Law of Forestry. It is not easy to use criminal law in the forestry sector because the element of proof is very dependent on the management administrative procedures of the forest management itself. The current criminal law in positive law in the forestry law was "borrowing" the criminal law as a means of enforcing the administrative law, to prosecute anyone who has committed an offense in the field of the administrative law.[2]

Criminal law enforcement in the forestry sector is highly dependent on how the norms of the administrative law related to the forest management. For example, there are some different interpretation of administrative law on forests, forest areas and the most common one is the confusion of norms / not harmonious norms / conflict of norms that occurred in the field caused by the lack of management of provisions of the legislation in the field of spatial planning, the local government and the law of the forestry.[3]

Failure of criminal law enforcement in the forestry sector actually comes from the bawdy forest management which does not provide any legal certainty. The main problem

[2] Sadino, Mengelola Hutan dengan Pendekatan Hukum Pidana: Suatu Kajian Yuridis Normatif (Studi Kasus Propinsi Kalimantan Tengah), Biro Konsultasi Hukum dan Kebijakan Kehutanan, 2011, page. 3

[3] Sadino, Problematika Penegakan Hukum Pidana pada Pengelolaan Hutan di Indonesia, Biro Konsultasi Hukum dan Kebijakan Kehutanan, Jakarta. 2010.

in the management of forest areas is due to the provisions on the status of the forest area, the boundaries of the forest area which have not been set definitively, thus not ensuring legal certainty in particular about the legitimacy of the forest boundaries. It will thus be a problem and the factors that inhibit the implementation of criminal law enforcement of the forestry.

The question is whether the adoption of the Corruption Law or the Forestry Law, can be applied against violators of forest management considering that until recently most of the forest areas are still indefinite administratively, different interpretations toward forests area between the central government and the regional government. The discussion on the use of criminal law on forest management is very useful to prevent the criminalization of those who are not guilty as a result of the legal confusion.

Today in Indonesia, a lot of legislation was issued after the Criminal Code which regulates the criminal law, in addition to material criminal law contains provisions that deviate from the Criminal Code, it also contains its own procedural provisions that deviate from the Criminal Code Procedure (formal criminal law). The case of criminal offenses such as criminal acts in the field of forestry has been regulated in separate legislation, as well as corruption regulated in separate legislation, although banking criminal offenses have specific law realm, the corruption also has legal regime of its own, however, which restrictions that qualified as a criminal act in forestry and which qualified as corruption still remain in a gray area.

Indonesia recognizes two manifestations of criminal law, namely: First, the criminal law that is collected by way of codification in one book. It is known as the Criminal Code (KUHP).[4] This is called the general criminal laws or (*commune Strafrecht*). Second, the criminal laws which are scattered in a variety of specific legislations. The latter ones usually (as a rule of sanctions) contain the threat of criminal penalties for violations of certain provisions of the legislation concerned. The second type is often referred to as special criminal laws. Included in the special criminal laws are:[5]

a. Laws that are not codified; eg Law on Corruption Eradication, Money Laundering Act.

[4] Sudarto said criminal law "in the true meaning". is the law based on its goal that is to manage the right to give sanction from the state, assurance of law and order. See : Sudarto, *Kapita Selekta Hukum Pidana dalam Bab Kedudukan Undang-undang Pidana Khusus dalam Sistem Hukum Pidana*, Alumni Bandung, 1986, page59.

[5] Lihat : Sudarto, *Kapita Selekta Hukum Pidana, Op.cit.*, page 63-65.

b. Rules of administrative law which include criminal sanctions; for example, Forestry Law, Banking Law.
c. The law contains special criminal (*ius singulare, ius speciale*) which contains offenses for certain groups of people or in relation to a particular act. For example *Wetboek van Militair Strafrecht Voor* Indonesia which then amended and supplemented by Law No. 39 in 1947 and known as the "Army Criminal Code".

In the context of criminal law, there are three measures that become the parameter of a law to be qualified as *lex specialis systematic*. First, the material criminal provisions in the legislation deviate from the existing general provisions. Second, the law stipulates formal criminal law which also deviates from the provisions of criminal procedure in general. Third, the *adresat* or the subject of law in the legislation is specific.[6]

Dynamic doctrine of teaching and principles of the Specialist Lex is highly related to the basic teachings of *Concorsus* and *Deelneming* that when they are confused in the understanding it will then be an indicator of the ability of the law enforcer to comprehend the basics of the criminal law.[7]

According to the Criminal Code system, the principal sentences should only be one kind in the case of only one criminal act is being done, which is one of the principal criminal sentence that alternatively threaten in Article of offenses concerned. It is not justifiable to convict the principal sentence which is not threatened in the Article of offenses concerned.[8]

Article 14 of Law No. 20 of 2001 on the Amendment of Act No. 31 of 1999 on the Eradication of Corruption explicitly state a provision that:

"any person who violates the provisions of the law that expressly states that a violation of the law as corruption prevailing conditions stipulated in this law".

Corruption may also be used to prosecute other crimes related to financial losses of the state and the national economy such as; forest crime, tax crime, capital markets crime and other other criminal acts.

To avoid confusion in the understanding of the principle of *Systematische Specialiteit* (specificity systematic) as the doctrine of academic which was not

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6 Hairiej Eddy O. S, disampaikan dalam diskusi terbatas kegiatan perbankan, Santika Hotel, yogyakarta, 30 Oktober 2008.
7 Indriyanto Seno Adji, *Korupsi dan Penegakan Hukum…, Op. Cit.,* page 171-172.
8 E.Y. Kanter dan S.R. Sianturi, *Asas-asas Hukum Pidana di Indonesia dan Penerapannya*, Alumni, Jakarta, 1982, page 454.

necessarily understood by the public, particularly in the relationship between the administrative penal law and the Criminal Law (Corruption), the Legislator of Act (especially Prof. Dr. Muladi, SH, then as Minister of Justice of the Republic of Indonesia) provided an explicity understanding through Article 14 of Law. No. 31 of 1999.

The provisions of Article 14 of Law No. 31 of 1999 can be said a provision that can expand the scope of the provisions of the Law on Corruption Eradication toward the provisions of other legislations. This provision is a delegation that will be filled by the provisions of other legislations. However, besides as an expansion of the scope, the provision of article 14 is also a limitation of the enactment of the Law on Corruption Eradication hence the corridors of the legal principle of *lex specialist systematic derogate lex generali* must be considered against the expansion of the scope of the Law on Corruption Eradication. Until now there are no other legislations which explicitly refer to violations of the provisions of the law as an act of corruption.

Law on Corruption Eradication set about corruption act in Indonesia which settings included in "criminal acts outside the Criminal Code" or it could be called as "*Lex Specialis*". And the Criminal Code as the "*Lex generalit*". But it is not only the Law on Corruption Eradication which settings are beyond the Criminal Code. As well as the Law on Money Laundering, Banking Law, Tax Law which are products of Administrative Penal Law [9] which contains provisions governing the criminal sanction.

Ajaran *lex specialis* sudah semakin berkembang dalam pemahaman hukum pidana. Ia –asas Lex Specialis- tidaklah sekedar membicarakan lagi mengenai pengesampingan suatu asas umum (*lex generalis*), tetapi telah memberikan suatu solusi-solusi hukum pidana yang demikian kompleksitasnya dan bentuknya, karena telah tersebar perundang-undangan yang bersifat khusus dan ekstra kodifikasi atau berada di luar KUHP.[10]

Lex specialis teachings have been growing in the understanding of criminal law. Lex Specialis basic has not just reviewed about overriding a general principle (*lex generalis*), but it also has granted criminal legal remedies with such complexity and shape, since the law that are special and extra codification or are in outside of the Criminal Code have been spread.

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[9] Administrasi penal law is all legislation products in the form of law (in the coverage of) State Administration which has law sanction.

[10] Indriyanto Seno Adji, *Korupsi dan Penegakan Hukum,* Jakarta, Diadit Media, 2009, page 238.

To determine which Special Law that is applicable, then the principle of *Systematische Specialiteit* or specificity Systematic applies, meaning that the criminal provisions of a special nature when the legislators did intend to enforce the criminal provisions as a criminal provision of a special nature or it will be special of the existing special. For example, the subject of personal, objects of alleged acts, the proof obtained, the environment and the area of *delicti* are in the context of banking, then the Banking Act is enacted, although the other special law (such as the Law on Corruption has an element of the offense that covers that range) is acceptability in the nature.[11]

Violation of the principles of the law of administration such as the Forestry Law, Banking Law and others, not all can be interpreted as a corruptive act, because based on the principle of *Systematische Specialiteit* or specificity systematic, the violations of the act is in the subject of forest crime, not a criminal offense of corruption, these should be the cornerstone of legality to avoid infringement of the principle of *concursus*. All act that deviates the rules of course to be interpreted as a crime, but can not necessarily be interpreted as a corruptive deed. Systematic of specificity is a means to prevent and limit as well as realign the direction of the principle of "act againts the law" and “misuse of authority " in corruption.

C. KESIMPULAN

1. Berdasarkan UU tindak pidana korupsi pasal 14 apabila perbuatan tertentu dinyatakan sebagai tindak pidana korupsi berlaku apabila perbuatan tertentu dinyatakan sebagai tindak pidana korupsi yang memang secara tegas jelas dinyatakan demikian dalam perundangan ekstra undang undang korupsi. Dengan demikian, dalam hal perundangan tertentu tersebut tidak menyatakan demikian, maka yang berlaku bukanlah pelanggaran terhadap Undang Undang Tindak Pidana Korupsi. Jadi, tidak semata-mata UU Tindak Pidana Korupsi dapat menjangkau semua produk legislasi sebagai jaring laba-laba.

D. CONCLUSION

1. According to the Law of corruption Article 14 if certain acts declared as corruption is applicable if certain acts declared as corruption when it is clearly stated so explicitly in the extras legislation of corruption. Thus, in terms of the specific

[11] Op cit, Indriyanto Seno Adji, *Korupsi dan Penegakan Hukum*....., page 239.

legislation does not state so, then the effect is not a violation of the Corruption Law. Therefore, The Corruption Law is not solely able to reach all product of legislation as cobwebs.

2. The crime in the forestry sector subject to the Corruption Law when comply with the elements corruption acts formula such as;
   - ✓ The perpetrator of such offenses is civil servants or state officials or persons who have a legal relationship with the state organizers.
   - ✓ Unlawfully / misuse of authority or violate the rules that have been set by the law;
   - ✓ Enrich oneself, others, or corporation(s);
   - ✓ Causing financial harm to the state or the state's economy but in the tax crime it must meet the administrative procedure first then it may be subject to corruption criminal act.

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