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



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ETHICAL PERSPECTIVE AND THE MAPPING OF NORM IN CORRUPTION ACT Siti Zulaekhah¹

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Corruptive behavior is a despicable act and unacceptable ethically by any nation, including the country Indonesia. As a very theological country (theological based), Indonesia also has a stand against all forms of corruption acts. Through Corruption Act in 1971, 1999 and 2001 following preventive countermeasures be a guideline or reference in law enforcement. This paper aims to examine from the perspective of ethical norms and map of corruption in Law norms above. Setelah mapped, then compared to the possibilities of irregularities against the norms can be studied rationalizations. The study then followed up with an analysis of each norm on every law so the clash of ethical choices and the prevention of possible violations of norms can be explained. This study combines juridical-philosophical and normative juridical approach on the text of Law Corruption has ever been and is still in force in Indonesia.

Keywords: ethical perspective, mapping the norm, corruption

A. BACKGROUND

Indonesian Society was originally a traditional society that still clings to tradition. But, over the time, space divider between countries, especially tribal areas Hudak untenable. Living for mutual need between tribes, regions or countries / other nations is akeniscayaan.Keterbukaan This affects the outlook and rules of behavior practiced by other nations. One of them is the procurement of goods and services for Government (Government Procurement) which is a guideline for the government in meeting the needs of the household. In Indonesia, the higher the demands on the government in the pursuit of development requires the government to determine the mechanism of expenditure. As a public institution, governments are not allowed to shop at will, but must be subject to public expenditure mechanism then get a container of the institution of government procurement. The container has been accompanied by device, a complete legal even due to the rapid development, changes to legislation in the field occur dynamically.

Nevertheless, in implementation of deviations regulations and have a lot of proven acts of corruption committed by the parties involved in the procurement of goods and services, including public officials. In an effort to prevention, eradication, and the prevention behavior of deviant in the procurement of goods and services in the form of corruption, Indonesia actually has legal instruments since 1971 that Act No. 3 of 1971, then the law was abolished and replaced with law No. 30 of 1999 which was then amended again by Act No.

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20 of 2001. even though the law in such a complete and responsive to the changes / development of society, it turns out corrupt behavior still occurs, even the tendency is increasing from time to time.

As a public institution, government becomes increasingly losing trust in the community. As one response to the waning of public confidence in government institutions, the government issued a development policy SABER (mop) red tape which is one form of corruption that is applied simultaneously on all institutions. Based on these descriptions, several critical questions as follows. First, is how the ethical perspective on the prevention of corruption in Indonesia? Second, how mapping norms on legislation Corruption in Indonesia?

B. DISCUSSION

1. Ethical Perspective in the Prevention of Corruption

1.1 Definition of Ethics

As known, the discipline of ethics was originally rooted in religious doctrines, but in its development, along with the development of society, the community also began to think and feel the need for limits good of and bad the behavior of its members. Conditions are good and bad is used as a reference or benchmark in driving the behavior of every citizen. Untuk reinforce this explanation is worth exploring the notion of ethics so that it became clear in capturing the meaning of ethics in this study.

Ethics comes from the Greek "ethos" which means character or customs and origin of the moral word is synonymous with ethics from the Latin word "mos" for singular and plural "mores" which also means custom or way of life. From both these words, ethical and moral show how to do that became customary for agreements or practice group of people. So the moral and morality is used for actions that are being assessed, while ethics used for the system assessment of values or code (M. Said, 1976: 23-24) In view Asshiddiqie, ethics or ethics is a branch of philosophy that thrash about correct behavior (right) and good (good) in life.

Human Philosophy of ethics not only put the matter on the right and wrong, but rather of the cover is good and buruk. Tujuan main issue is the good life is not just life that is always right or never salah. Ethics Development Stage 1.2

As mentioned in point 1.1 above, the first ethics comes from religious doctrine rests on confidence and hence are abstract. But the need for controlling and directing the human need of ethics enforcement changes that are semula hanya appeal through the sermon-

khutbah become apparent through the concrete or reprimand, warning that led to the imposition of sanctions for the irregularities of human behavior.

Historically and development of science, ethics system evolved through five(5) stages (Jimly, 2016: x). The first phase, theological ethics (theological ethics), the origin of ethics derived from doctrine religion. Second, ethics ontological (ontological Ethics), which is stage of the development of religious ethics. Ethics developed from abstract doctrine into the ideas of speculation and made one of the objects of study philosophy .Sebagai one study of philosophy, philosophical system of ethics developed into four (4) sub-system philosophy (Jimly, 2016; 43) in the form of descriptive ethics that ethics pertaining to proper behavior and good as people think, normative or prescriptive ethics that ethics with regard to behavior that is considered should be done, applied ethics that ethics with regard to knowledge about morality and how knowledge is realized in practice, and meta-ethics that discusses about what the is right and good in itself. Third, positive of conduct in the form of a code of conduct (Code of Ethics) and the Code of Conduct (Code of Conduct) that codes of conduct are more concrete. Fourth, ethics functionally closed (close functional ethics) in which the process judicial conducted in an internal ethics community / organization is closed, and the Fifth, ethics functionally open (open functional ethics) in the form of judicial ethics that are open.

1.3 Relationship Between Law and Ethics

The relationship between ethics with the law can be seen from the 3 (three) dimensions, namely the substance and the container dimensions, dimensional relationships breadth of scope and dimension of human reason to obey or break them. The third dimension my quick of an opinion of some legal experts who have a special concern for ethics. Asshiddiqie (2016: xiv-xv) likens the relationship between legal ethics by making a note of religion as the spirit/soul of both of these with illustrations rice packets, the law as the wrapper, rice and side dishes are ethical, and protein substances, vitamins and elements contained more as a religion that is the origin of both (ethical and legal). Dimension The third coverage area over the ethical and legal relationship in which the broader ethics of the law, therefore any violation of law certainly is a violation of ethics, in short, is a violation of ethics law violations. But not vice versa, which is considered behavioral breaking not necessarily unlawful conduct. If ethics is like the ocean, the ship was legal. "Law floats in the sea of ethics" said Supreme Court Chief Justice Earl Warren. This statement splashing question,

when act violating ethics and when to act is unlawful and instate how violation of ethics to break through that turn out to be a violation of law?

Paul Harsono (2009: 21) cited about the third dimension is concerned the position of ethics in which ethics is also related to the law in terms of how humans consider to comply with the rules and obligations; but compliance with laws and regulations and the obligations it not for fear of being penalized, but because self-awareness that laws and regulations and the obligations of good and need to be met by himself.arestill relevant Paul's views to Harsono, in terms of human behavior, ethics serves as a preventive fence on good and bad behavior before perilaku reaching provisions of right and wrong that is a function perilaku fence for the law. Thus, human aberrant behavior must pass an ethical system that serves as a correction and as much as possible do not need to enter mechanisms the legal in the human settlement of deviant behavior.

Associated with ethical behavior stakeholders public offices and professionals who rely heavily on public confidence, control behavior system through ethical should be considered. The reason is,when the settlement issue misbehavior of public officials during this directly using the legal approach, then the organization directly eroded public trust in line with the ongoing legal proceedings. Therefore, the Nations United(UN) through a resolution in December 1996 on "Action Against Corruption" with attachments (annex) the text of the "International Code ofConduct for Public Officials" recommends that all UN member states to build infrastructure in environmental ethics office public officials. Here is shown the annex as stated in its articles as follows:

Article 1

Public institutions as stipulated by laws and regulations of each country which serves as the holder of the trust, in carrying out its obligations must show as institutions government of democratic

Article 2

The public agency must carry out their duties and functions efficiently, effectively and with integrity.

Article 3

The public agency must be full attention, fair, and impartial in public relations.

Article 9

The public agency may not accept, either directly or indirectly, for a gift or other provision, that may affect decision-making.

The code of conduct for public officials in the International was based on full attention of the international community on issues that are very serious due to corruption is very likely to endanger the stability and social security, the decline in the values of democracy and morality and jeopardize social development, economic and political. Public officials are the foundation of trust as to apply the obligation the basis to act in the public interest. Ethics in this context is different from individual ethics and the ethics of intersubjective (courtesy) we know so far. Related ethics officials at public institutions covered by two layers of trust and that the trust of the public institution itself and confidence in the officials within the scope of their duties. ByTherefore, in order that the trust is well maintained control of the behavior of its officials must also be tight. Deviant behavior that may occur prevented by use ethical system by way of enforcing the code of conduct and Code of theConduct. Hopefully, with the implementation of an ethical system that serves to correct the behavior of the officials, then the deviant behavior can be detected as early as possible.

2. Mapping of Norm As Corruption Crime in Corruption Act

Theoretically, in the draft legislation should be contained three (3) base trinity that includes a base philosophical, sociological basis, and juridical basis as stipulated in Law No. 12 of 2011 on the Establishment Regulations Legislation. Philosophical foundation is the foundation of philosophy or views which on the ideals of a problem when poured into legislation.Philosophical basis is very important to avoid conflict of legislation drafted with the essential values and sublime thereof midst society, such as ethics, customs, religion, and others.

Comparative of Philosophical, Sociological, and Juridical Based in Corruption Act Showed in Table 1 below :

Comparative of Philosophical , Sociological and Juridical Based in Corruption Act

<i>List of Corruption Act</i>	<i>Philosophical Based</i>	<i>Sociological Based</i>	<i>Juridical Based</i>
Act No. 3/1971	Act No. 3/1971 deeds of corruption is very detrimental to the financial / economy of the country and hindering development	No.24Prp Act. year. 1960 was not in accordance with the development of society, so that the expected results on the Investigation, Prosecution and Investigation of Corruption insufficient	Article 5, paragraph (1), Article 20 paragraph (1), and Article 24 of the 1945 Law No. 13 years 1961tentang Basic Provisions State Police Law 15 of 1961 on Basic Provisions Prosecutor of the Republic of Indonesia Law No. 14 of 1967 on the Principles of Banking Law No. 18 of 1961 on Basic Provisions of Civil Service Act No. 30/1999
Act No. 30/1999	Embodiment just and society prosperous based on Pancasila and the Constitution of 1945 through the eradication of corruption	Corruption happens financial harm and the national economy as well as inhibit the growth and sustainable development of national legislation that is no longer appropriate to the needs of the community so should be amended	Article 5 (1) and Article 20 paragraph (1) of the Constitution of the People's Consultative Assembly Decree 1945 of the Republic of Indonesia Number XI / MPR / 1998 regarding the State Clean and Free of Corruption, Collusion, and Nepotism.

<p>Act No. 20/2001</p>	<p>Act No. 20/2001 on Corruption very to is detrimental the financial state, a violation of the rights of the social and economic development of the interpretation of the application of the law on corruption crimes that occurred before the 1999 recall of Law No. 30 of 1999 states do not apply to Act No. 3 1971 so that a legal vacuum and happen to unfair treatment in the fight against corruption, therefore the laws that have been there before to be replaced</p>	<p>The development of the interpretation of the application of the law on corruption crimes that occurred before the 1999 recall of Law No. 30 of 1999 states do not apply to Act No. 3 1971 so that a legal vacuum and happen to unfair treatment in the fight against corruption, therefore the laws that have been there before to be replaced</p>	<p>Article 5 (1) and Article 20 (1) of the 1945 Act 8 years 1981 of the Code of Criminal Procedure (State Gazette of the Republic of Indonesia year 1981 Number 76, Supplement to State Gazette No. 3209 Law No. 28 of 1999 on the Implementation of the State Free from Corruption, Collusion and Nepotism (State Gazette of the Republic of Indonesia year 1999 Number 75, Supplement State Gazette No. 3851) 31 Tahun law No. 1999 on the Eradication of Corruption (1999 Indonesia Tahun State Gazette No. 140, State Gazette Nomor.3874) philosophical ground load legal ideals of the draft legislation be to passed, load sociological reflection addressing the reality of a society that became law so that after a legal product issued not cause turmoil for the people concerned. Sociological grounding poured by assessing the reality of a society that includes the legal needs of society, socio-economic aspects, and values that live and thrive (sense of justice). The purpose of this sociological study is to avoid tercerabutnya legislation made from roots its social in the community. The amount of legislation that once enacted subsequently rejected by society, a reflection of legislation that does not have a strong social roots.</p>
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Contains any juridical basis to be adjusted or domiciled as a fence for the rule of conduct and certainly not legally problematic, either the authority of the author, institutional, as well as the suitability of the hierarchy, of laws, both at the level of vertical and horizontal so that the implementation is not experiencing problems juridically. This paper examines the legislation in the field of corruption in Indonesia from 1971 to 2001.

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- M. Said, 1976, *Etik Masyarakat Indonesia*, Jakarta : PT. Pradnya Paramita
- Paulus Harsono, 2009, Perkembangan Ilmu Pengetahuan Ditinjau dari Filsafat dan Etika, dalam kumpulan tulisan “MERENUNG PEMBANGUNAN, Salatiga : Fakultas Teknik Elektro UKSW

Constitution and Legislation Product

- Undang-Undang Dasar Republik Indonesia tahun 1945
- Undang-undang Nomor 3 tahun 1971 tentang Tindak Pidana Korupsi
- Undang-undang Nomor 31 tahun 1999, Lembaran Negara Nomor 184, Tambahan Lembaran Negara Nomor 3874 sebagaimana telah diubah dengan Undang-undang Nomor 20 tahun 2001, Lembaran Negara Nomor Tambahan Lembaran Negara Nomor 4150
- Undang-undang Nomor 12 tahun 2011 tentang Pembentukan Peraturan Perundang-undangan

Others

- Resolusi Perserikatan Bangsa-Bangsa(PBB) Bulan Desember tahun 1996 tentang *Action Against Corruption*, berikut *annexnya* “*International Code of Conduct for Public Officials*” <http://habibisir.blogspot.co.id/2013/01/makalah-legal-drafting-aspek-filosofis.html>, diakses pada tanggal 13 Desember 2016

The action are normed as Corruption Crime (TIPIKOR) are presented in table 2 below:

<p style="text-align: center;"><i>Act. NO. 30 Th.1999</i></p> <p>Act NO. 30 of 1999 deeds as regulated articles of the Criminal Code with reformulation / adjustment formula fined by the net present value Provide assistance, opportunity, means or information for the TIPIKOR treated as perpetrators TIPIKOR TIPIKOR possible death penalty if carried out at the time of disaster national natural or economic crises and monetary</p>	<p style="text-align: center;"><i>Act. NO. 20 Th.2001</i></p> <p>Act NO. 20 Th.2001 Development of the meaning of "specific circumstances" may be possible death penalty if TIPIOR made to funds earmarked for coping with the hazards, social unrest and widespread corruption prevention Doing crime as stipulated in the Criminal Code (the elements of actions fully described below formulation of criminal penalties value) Acceptance of gratuities by civil servants, the value of Rp. 10.000,000,00 (proved by the accused), when more than Rp.10.000.000,00 (evidenced by prosecution) When gratification they will be reported to the Commission, the accused was released from criminal threats</p>
<p style="text-align: center;"><i>Act. NO. 3 Th.1971</i></p> <p>To enrich themselves, people or entities benefit themselves, any person or entity Committing a crime under Article 210, 387, 388.415 sd 420, 423, and 435 Criminal Code Promises or gifts to civil servants Not reporting gifts received Experimenting or conspiracy to commit Corruption</p>	<p style="text-align: center;"><i>DIFFERENCE</i></p> <p>Enrich yourself, the person or entity Profitable yourself, any person or entity doing a crime under Article 210, 387, 388.415 sd 420, 423, and 435 Criminal Code Provides promises or gifts to civil servants not to report the prize was Experimenting or conspiracy to commit Corruption Law No. 30/1999 14/1971 The possibility of capital punishment if TIPIKOR does in certain circumstances the application of several articles of the Criminal Code Adaptation by reformulating fined according to the situation of Law No. Corruption Enforcement 30/1999 as actors when providing assistance, opportunity, means or information leading to the occurrence of Corruption Act No. Law No. 20/2001 30/1999 phrase "under certain circumstances" when converted into TIPIKOR made to funds earmarked for coping with the hazards, national disasters, social unrest is widespread, economic and monetary crisis and</p>

	<p>overcoming corruption</p> <p>UU No. 30/1999 dari UU No. 14/1971 Dimungkinkannya pidana mati apabila TIPIKOR dilakukan dalam keadaan tertentu Adaptasi pemberlakuan beberapa pasal KUHP dengan reformulasi pidana denda sesuai keadaan UU No. 30/1999 Pemberlak uan sebagai pelaku TIPIKOR apabila memberikan bantuan, kesempatan, sarana atau keterangan untuk terjadinya TIPIKOR</p>
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Description of tabel 2:

Elements which is the same in all legislation and has been mentioned in the previous law, it is no longer listed in the table the legislation afterward. The table is read clockwise and starting from the oldest laws.

Philosophical value on legislation Eradication of Corruption is in the interests of economic development in order to guarantee embodied five precepts of Pancasila namely, Social Justice For All People Indonesia and 1945 can be achieved through the development Among the three legislation, Act No. 30 of 1999 was the most emphatic include the philosophical basis of achieving just and prosperous society based on Pancasila and the 1945 Constitution Basic sociological on legislation combating Corruption shows, development of the situation or the reality of a society is the of background the publication of the law on combating corruption based on tables 1 developed in accordance with the era. In the era of 1971, corruption is still regarded as the cause of the loss/state finances and hamper development. national In the era of 1999, the reality of people deemed to be the same as the era before. Reality changed drastically in 2001 that requires renewal Law on Corruption Eradication law No. 30 of 1999. As for the change is the widespread corruption which is not only detrimental to the financial countries and hamper development, but also a violation of the rights of the social and economic society at large. Widespread corruption could be caused because of the era 1999 to 2001 era changes in government policy, in this case, the policy of regional autonomy so that corruption also extends to the regions. Sociological grounding is what is the reason de etre of its changes to legislation in the field of Combating Corruption. Law No. 3 of 1971 put Article 5, paragraph (1), Article 20 (1) and Article 24 of the 1945 Constitution as a legal basis. Law No. 30 of 1999 jo Law No. 20 of 2001 to reduce the juridical basis of Article 24 that need to be examined critically. Juridical basis both articles (Articles 5 and 20) relating the to position of President and Parliament in legislation so that it become essential for any drafting legal products should be subject to the mechanism. Reasons reduction Article 24 UUD 1945 was because its article has own domain.