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CRIMINAL LAW POLICY IN OVERCOMING CORRUPTION CRIMES

Sa'idatunNafilah, Pujiyono
Diponegoro University

ABSTRACT : The crime of corruption is a special crime that is considered an extraordinary crime, because the crime not only harms state finances but has an impact on all development programs created by the government. The problem of losses arising from criminal acts of corruption requires crime prevention from a criminal political and global macro perspective, so there is a need for an integral approach. This research applies empirical juridical methods by analyzing legal events that occur, how criminal law policies work in dealing with crimes committed by individuals that harm the state. Based on this research, it can be concluded that dealing with corruption crimes must prioritize prevention rather than punishment with a non-penal approach.
KEY WORDS:*Corruption crime; Criminal politics; State losses; Non-penal approach.*

I. INTRODUCTION

The Corruption Eradication Commission's Directorate of Public Reporting and Complaints Services (PLPM) said in a press conference that the number of reports in 2022 from the public in the first semester regarding corruption that had been received by PLPM was greater than in 2021, this has been verified by the Corruption Eradication Commission as many as 2,069 reports.[1] The increasing number of these reports proves that criminal regulations or policies in dealing with corruption crimes as outlined in the Law on eradicating corruption crimes have not been able to accommodate the carrying out of their function, namely deciding on criminal acts of corruption or reducing the number of corruption cases. This is an urgency that needs to be followed up in dealing with the increasing number of corruption crimes, so there are several normative provisions which are a point of weakness or the legal actions taken by the Corruption Eradication Commission in carrying out its functions are not based on the provisions that apply systematically.

This problem makes it necessary to improve an integral approach in handling corruption cases which are increasingly widespread, how rationally these cases can decrease and not become more widespread which will cause the next generation to follow this criminal act. In fact, corruption cases are part of the culture that is often encountered in various public administration matters or in the world of justice, which makes the justice mafia increasingly rampant, so the question is always whether the system or regulations are to blame. In fact, the provisions regarding criminal acts of corruption are always undergoing changes regarding policies that are deemed to lack the values of justice, expediency, legal certainty and even human rights.

Discussions about criminal law policy certainly have a connection with criminal law politics, in political terms criminal law can also be called criminal law policy. Terms in foreign literature on criminal law politics include "penal policy", "criminal law policy", or "strafrechtpolitiek" which in essence is how criminal law can be formulated properly and provide guidance to legislators and the implementation of criminal law.[2]According to Marc Ancel, there are three main study components in criminal law, namely criminal law, criminology and penal policy. The three components included in criminal politics or criminal law politics are penal policy. However, the opinion expressed by Marc Acel was further developed by Sudarto who provided three definitions related to the politics of criminal law, namely: first, the understanding in the narrow sense, namely the overall principles and methods underlying reactions to legal violations in the form of judgment; second, understanding in the broadest sense, namely the functions of all law enforcers who are included in the bodies of the criminal justice system, and third, namely understanding in the broadest sense all policies carried out through laws and official bodies which aim to enforce norms. central norms of society.[3]

[1]https://www.suarasurabaya.net/kelanakota/2022/kpk-menerima-2-173-laporan-dugaan-korupsi-selama-semester-i-2022/accessed December 11, 2022
[2]Hanafi Amrani, Politics of Criminal Law Reform, (UII PRESS: Yogyakarta, 2019), p. 4
[3]Ibid,p5

The political understanding of criminal law conveyed by Sudarto and Marc Ancel in their views regarding the policies contained in regulations must be that every policy can work well to achieve the objectives of establishing the policy in accordance with its function. From a criminal law policy perspective, in dealing with corruption crimes, the following approaches can be taken:

a. The penal approach (criminal law), namely the application of criminal law or Criminal Law Application, that is, if someone commits a criminal act of corruption, in dealing with it the focus is more on repressive nature.[4] namely eradication, oppression and extermination after the crime of corruption is committed;
b. Non-penal approach (non-criminal law), namely the application of criminal law in the form of coaching and/or other non-formal educational efforts that focus more on preventive properties[5] namely prevention, deterrence, control before crime occurs;
c. Integrated approach, namely the application of criminal law combined from penal and non-penal approaches.

Even efforts to prevent criminal acts of corruption were also discussed at the 6th UN Congress in 1980 in its resolution on "Crime trends and crime prevention strategies" which were put forward in three concepts, namely:

a. That the problem of crime impedes progress towards achieving an adequate quality of life for all;
b. That crime prevention strategies must be based on eliminating the causes and conditions that give rise to crime;
c. That the main causes of crime in many countries are social inequality, discrimination, low living standards, unemployment and the existence of illiteracy among large groups of the population.

Corruption crimes that occur in society are increasingly widespread and growing, so there is a need for efforts to overcome these crimes, as in the opinion of G.P. Hoefnagels quoted by Barda Nawawi, if crime prevention can be achieved with three efforts, namely:[6]first, application of criminal law; second, prevention without crime and third, influencing people's views regarding crime and punishment through mass media. This was conveyed by Barda Nawawi as a form of overcoming non-penal crimes, seeing that so far the performance of law enforcers in carrying out their role in eradicating criminal acts of corruption has always put aside non-penal efforts and prioritized penal efforts as a form of carrying out their duties and functions.

II. RESEARCH METHODS

The method used in this research is empirical juridical, which examines secondary data first rather than primary data,[7] so that the approach used is to see in practice the penal and non-penal efforts in cases of criminal acts of corruption carried out by the Corruption Eradication Commission in eradicating criminal acts of corruption. This research is related to Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. The secondary data referred to in this research is the theoretical basis in the form of doctrine and other information from various agencies in the form of formal provisions such as court decisions, laws and regulations, etc. Meanwhile, primary data in this research is the results from the field. So it is appropriate, the research method used in this research is empirical juridical.

III. RESULTS AND DISCUSSION

1. Integral Approach

If we can trace the development of the objectives of punishment to date, there are three theories of punishment, namely:[8] First, the absolute theory or theory of retribution; Second, relative theory or goal theory, and third, punishment theory. Herbert L. Packer stated that there are only 2 (two) objectives of punishment, namely, regarding the appropriate suffering of criminals and the prevention of crime.[9] The suffering given to someone should have a beneficial value, as stated by Jeremy Betham, who is a classical figure, that there are three benefits of punishment, namely: First, punishment will be very useful if it can increase self-improvement in criminals. Second, punishment must eliminate the ability to commit crimes. Third, punishment must provide compensation to the injured party.[10]

Punishment has so far been seen as a form of retaliation for the perpetrator not committing the crime he committed, but the fact that this occurs, the theory of retaliation cannot break the chain of criminal acts of

[4]Soedarto,Capita Selecta Criminal Law, (Bandung: Alumni, 1986), p. 188
[5]Ibid
[6]Barda Nawawi Arief, An Anthology of Criminal Law Policy, (Fajar Interpratama: Semarang, 2011), Pp. 45..
[7]Ronny HanitijoSumitro, Legal Research Methodology, (Ghalia Indonesia: Jakarta, 1994), Pg 3.
[8]AbintoroPrakoso, Penitentiary Law, (AswajaPressindo: Yogyakarta, 2019), p 30
[9]Ibid, p 43
[10] Ibid, p 28 - 30

corruption which is currently growing. Criminal legal sanctions should be a remedy (remedium) to eradicate the disease that attacks (crime), so it can be concluded that criminal sanctions are not a causative treatment but only a symptomatic treatment.[11]

It was hoped that the imposition of sanctions could be used as a form of deterrence to convey to the public not to participate in these criminal acts considering the threat of punishment that would be received, but the haraon turned out to be part of the revidis and the public imitated these actions so that the aim of the punishment failed. Seeing this problem, there is a need for an approach that makes crime prevention a medicine that can eliminate disease (crime) so that the approach taken by law enforcers is only penal, but the need for crime prevention is integral, namely a penal and non-penal approach. The main target in the non-penal approach penal, namely dealing with conducive factors that cause crime to occur which are centered on problems or social conditions either directly or indirectly that can give rise to crime, these efforts have a strategic position and play a more effective key role in overcoming crime,[12] especially criminal acts. crimes that are considered ordinary crimes or extraordinary criminal acts.

The Corruption Eradication Committee (KPK) has released a statement on its official website stating that during the first semester of 2022 it has carried out 66 inquiries, 60 investigations, 71 prosecutions, 59 inkracht cases, and executed decisions on 51 cases.[13] Looking at the report submitted in the statement on the official Corruption Eradication Committee page, it is a part that needs to be followed up because the execution process that was carried out apparently did not stop the perpetrators of criminal acts of corruption and even made these criminal acts more fertile. Crime prevention carried out by the Corruption Eradication Commission (KPK) so far only refers to a penal approach, so the main task has been conveyed in the consideration of Law Number 19 of 2019 concerning amendments to Law Number 30 of 2002 concerning the Corruption Crime Commission which is stated in letter c namely "that the implementation of the tasks of the Corruption Eradication Commission needs to continue to be improved through comprehensive and synergistic strategies for preventing and eradicating corruption without neglecting respect for human rights in accordance with the provisions of laws and regulations."

2. Rationalization of Corruption Crime Prevention

Fraud Triangle Theory (TFT) is a theory developed by Donald R. Cresseyb (1950) and published in the book entitled Other People's Money: A Study in the Social Psychology of Embezzlement. Where in the results of research conducted on 200 prisoners for fraud, the results showed that the fraud occurred due to three main factors, namely pressure, opportunity and rationalization. Based on the pressure exerted in criminal acts of corruption, it is certainly a result of pressing financial factors so that fraud is necessary to occur. Other fraud is the existence of opportunities that enable someone to commit criminal acts of corruption. Furthermore, rationalization in criminal acts of corruption is a form of justification. Looking at the Fraud Triangle Theory, of course there is a need for rational crime prevention that can be followed by the public so that this does not happen. This problem means that the role of the Corruption Eradication Committee should be more active in eradicating criminal acts of corruption in terms of prevention with education delivered to the public through regional government programs. to prevent the emergence of the seeds of criminal acts of corruption on a small scale. This prevention is certainly more rational than having to make arrests which does not have a deterrent effect on the perpetrators, in fact the public sees this as part of the culture in Indonesia.

Apart from that, as stated by G.P. Hoefnagels, quoted by Barda Nawawi, the role of the mass media is very important in voicing the prevention of criminal acts of corruption, especially among young people in today's digital era, so social media has an active role in voicing the prevention of criminal acts. . This approach is part of the rationalization for overcoming criminal acts of corruption.

3. Non-Penal Corruption Crimes

Punishment in a criminal context is not the only method of dealing with crime that must still be maintained in society, it is necessary to look at other methods, namely non-penal measures. There is a UN note on the prevention of crime and the treatment which stated at the congress that social, economic, cultural and societal conditions are considered responsible for the emergence of crime (criminogen). The consequences of such an approach will of course also color crime prevention efforts in society. This means that combating crime

[11]Barda Nawawi Arief, Several Aspects of Criminal Law Enforcement and Development Policy. (Hereinafter referred to as book I). (Bandung: Citra Aditya Bakti, 1998), p. 44 - 45. Symptomatic treatment through criminal sanctions contains many weaknesses so its effectiveness is still questionable. Apart from that, treatment through criminal sanctions itself also contains contradictory (paradoxical) characteristics and negative elements that can be dangerous or at least can cause negative side effects.

[12]Barda Nawawi Arief, Anthology of Criminal Law Policy. (Citra Aditya Bakti: Bandung, 1996), p. 4

[13]https://nasional.kompas.com/read/2022/09/21/01000051/data-kasus-korupsi-di-indonesia-tahun-2022accessed on December 12 2022, at 07.05 WIB

that only uses criminal law which is realized by the criminal justice system will not be able to do so, therefore it is necessary to implement measures that can reach and overcome these criminogenic factors.

In essence, criminogenic factors are social in nature, that is, there is a need to link Criminal Policy with Social Policy, or in other words, criminal politics also needs to be included in social politics. It seems that the types of non-penal actions need to be given more priority in order to support the implementation of criminal law which is realized through the criminal justice system. According to Sudarto, what was proposed by the UN congress really needs our attention. The national development that we are implementing and working together now aims to create a just and prosperous society based on Pancasila. Achieving social justice will clearly reduce the occurrence of crime; So social politics also includes criminal politics.[14]From this description it appears that crime prevention measures inevitably also include planning issues, both regarding the implementation of the criminal justice system and those involving planning for community conditions where problems that can enable the emergence of crime can be reduced in such a way.

A/CONF Document. 121/L/9 concerning Crime Prevention in the Context of Development at the 7th UN Congress in 1985 in Milan, Italy emphasized that efforts to eliminate the causes and conditions that give rise to crime must be a basic crime prevention strategy. This basic crime prevention strategy must be sought to eliminate the causes and conditions that give rise to crime. Finally, in the Guiding Principles produced by the 7th UN Congress, it is emphasized that various policies regarding crime prevention and criminal justice must consider structural causes, including socio-economic causes of injustice, where crime is often only a symptom.[15]

The 8th UN Congress in 1990 which took place in Havana, Cuba, emphasized the importance of the social aspect of development policy which is an important factor in achieving crime prevention and criminal justice strategies. Therefore, social aspects in this development context must receive top priority. The 8th Congress also succeeded in identifying various social aspects which were considered to be conducive factors causing crime as mentioned in the A/CONF Document. 144/L.3, which is as follows:[16]1. Poverty, unemployment, illiteracy, lack of adequate housing and unsuitable education and training systems; 2. The increasing number of people who have no prospects (hope) due to the process of social integration and due to worsening social inequalities; 3. Loosening of social and family ties; 4. Circumstances or conditions that make it difficult for people who immigrate to cities or to other countries; 5. Damage or destruction of original cultural identity, which together with racism and discrimination causes weaknesses in the social sector, welfare and work environment; 6. the decline or decline in the quality of the urban environment which leads to an increase in crime and inadequate services for neighborhood facilities; 7. difficulties for people in modern society to integrate properly within their community, family environment, place of work or school environment; 8. Abuse of alcohol, drugs and other things whose use is also expanded due to the factors mentioned above; 9. widespread organized criminal activity, particularly drug trafficking and the possession of stolen goods; 10. Encouragement (especially by the mass media) regarding ideas and attitudes that lead to acts of violence, inequality (rights) or intolerant attitudes.

The pattern of criminal acts of corruption is based on immoral, unethical and/or unlawful behavior or actions for personal and/or group interests that harm state finances,[17]So to eradicate criminal acts of corruption, in addition to optimizing criminal law,[18]must also use civil law means. The civil process is carried out to recover state financial losses using the civil forfeiture instrument which is a mandate from UNCAC 2003. Civil forfeiture is an excellent alternative if the criminal route is not successful. Even in practice, it was found that the civil forfeiture procedure was considered more effective in retrieving stolen assets, although this procedure was not free from various weaknesses such as slowness and high costs.[19]

Forfeiture is "the state's rights must be returned to the state for the welfare of the people". The successful use of civil forfeiture in developed countries can be used as a discourse for Indonesia because civil forfeiture can provide benefits in the judicial process and to pursue the assets of corruptors. As seen so far, prosecutors often experience difficulties in proving corruption cases because of the high standard of proof used

[14]Sudarto, A description of the main problems in the IV Criminology Seminar is included in Legal Problems, Special Edition, Year XVII (UNDIP Faculty of Law: Semarang, 1987), p. 13

[15] Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. (New York: Departement of Economic and Social Affairs, UN, 1986), hlm 15

[16]Eigth United Nations Congress, on on the Prevention of Crime and the Treatment of Offenders. (New York: Departement of Economic and Social Affairs, UN, 1986), hlm 3

[17]JuniadiSoewartojo, Corruption, Patterns of Activities and Enforcement and the Role of Supervision in Overcoming It, (Balai Pustaka: Jakarta, 1998), p. 5

[18]RomliAtmasasmita, Capita Selecta Criminal Law and Criminology, (Mandar Maju: Bandung, 1995), p. 135

[19] Ibid., p. 7

in criminal cases. Apart from that, often in the process of punishing corruptors, they become sick, disappear or die which can affect or slow down the justice process. This can be minimized by using civil forfeiture because the object is the assets, not the corruptor, so that the illness, disappearance or death of the corruptor is not an obstacle in the trial process.[20]

IV. CONCLUSIONS AND RECOMMENDATIONS

Corruption crime prevention policies must be carried out in an integrative manner. This integrative approach can be carried out through two approaches, namely the penal approach (application of criminal law) and the non-penal approach (approach outside criminal law). The integration of these two approaches was required and proposed at the United Nations Congress on the Prevention of Crime and the Treatment of Offenders. This is motivated by the fact that crime is a social problem and a humanitarian problem. Therefore, efforts to overcome corruption crimes cannot only rely on the application of criminal law alone, but also look at the roots of this crime problem from social problems, so that social policies are also very important to implement.

Penal policy is carried out by evaluating the substance of laws and regulations related to criminal acts of corruption. This evaluation is intended to explore concepts that can be used as input for future updates to the PTPK Law, including the confiscation of criminal assets resulting from criminal acts of corruption in order to recover State financial losses. Apart from that, what is very important in the penal policy against criminal acts of corruption is building a shared vision between the components of the Criminal Justice System (KPK, Police, Prosecutors, Judges and Correctional Institutions). This shared vision is directed at preventing and eradicating criminal acts of corruption by creating coordinative cooperation and mutual understanding. The non-penal policy approach is carried out by building communities of people who are aware of the law and are willing to assist the authorities in dealing with criminal acts of corruption. This collaboration can begin by mapping the factors that can foster corruption, as well as finding efforts to reduce these factors to their roots.

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[20] Ibid., p. 26