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Reconstruction of the Criminal Sanction System in the Eradication of Corruption Based on Justice

Aris Sudarmono[1*], Gunarto[2], Anis Mashdurohatun[2]

[1]Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia
[2]Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

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***Corresponding author:** Aris Sudarmono

Abstract

Corruption is an act that can not only harm the state's finances but can also cause losses to the people's economy. Corruption is a very despicable act, condemned and very hated by most people, not only by the Indonesian people and nation but also by the people of the nations of the world. The problem in this study is to find weaknesses in the application of the criminal sanction system in eradicating corruption and how to reconstruct it based on justice value. This research is using the constructivism paradigm and sociological-Juridical approach. The results of the study are that the weaknesses in the aspect of legal substance are the Law on the Eradication of Criminal Acts of Corruption does not regulate the number of minimum sanctions based on the classification of the amount of money that is corrupted, both for cases of embezzlement, bribery or gratification, and sanctions are also considered less firm. Weaknesses from the aspect of the legal structure are the weak coordination between law enforcement officers that causes the handling of corruption crimes to be hampered by time and bureaucracy. Weaknesses from the aspect of legal culture are the emergence of corruption itself is strongly influenced by the demands of individual and group needs and is supported by a socio-cultural environment that inherits a corrupt tradition. Accordingly, it is necessary to reconstruct Law Number 31 of 1999 concerning the Eradication of Corruption Crimes by adding paragraphs in the article up to Article 3 and Article 5.

Keywords: Reconstruction, crime, corruption, justice.

INTRODUCTION

Indonesia is a state of law (*Rechtsstaat*), which is a state in which all attitudes, behavior, and actions carried out either by the authorities or by its citizens must base on the law [1]. The Indonesian state of the law is a modern state of law. Therefore the main task of the government is the welfare of its people. That is why the modern state of the law is also called the welfare state.

Welfare for all Indonesian people is only a mere ideal if it is not accompanied by real efforts by state administrators in carrying out the constitutional mandate, one of the real efforts is to formulate a law that aims to protect the entire nation and bloodshed from all despotism. including despotism regarding the economic rights of the people.

Protection of all nations and bloodshed through applicable legal instruments is an absolute thing to be realized, there is no meaning in the words "protecting all nations and spilling blood" if it turns out that there is still suffering felt by the people in the form of inequalities in economic rights [2]. This inequality is driven and created by a government system that is not socially just because it still allows government practices in which power is exercised arbitrarily. To realize these noble ideals, which are related to the manifestation of the welfare of all Indonesian people, a guideline for the Implementation of a State that is Clean and Free of Corruption, Collusion, and Nepotism is formulated in Law Number 28 of 1999.

Regarding the practices of Corruption, Collusion, and Nepotism himself, Marzuki Darusman explained, basically, the practice of Corruption and Collusion is the provision of facilities or preferential treatment by government officials/BUMN/BUMD to an economic unit/legal entity owned by the related official, relatives or cronies. So if these practices are allowed to continue, the people as owners of state sovereignty will not get their constitutional rights, namely the right to justice and prosperity.

A more detailed legal elaboration is needed so that the constitutional obligations can be carried out properly, by creating government practices that are open,

transparent, and always responsible for the interests of the wider community, which the endpoint is a real welfare for the wider community based on the guidelines on the principles of social justice.

To realize these noble ideals, which are related to the manifestation of the welfare of all Indonesian people, a guideline for the Implementation of a State that is Clean and Free of Corruption, Collusion, and Nepotism is formulated in Law Number 28 of 1999. contains the principles or principles of legal certainty, Orderly State Administration, Public Interest, Openness, Proportionality, Professionalism, and Accountability.

This key regarding the implementation of a clean and free state of corruption and collusion is become important and indispensable to avoid the practices of collusion, corruption, and nepotism, that not only involve the officials concerned but also their families and cronies.

To further ensure the implementation of a clean and free government of corruption, collusion, and nepotism, the enactment of Law Number 19 of 2019 concerning the Law on the Corruption Eradication Commission which is a renewal of Law Number 31 of 1999 as amended by Law -Law No. 20/2001 on the Eradication of Criminal Acts of Corruption, as a replacement for Law No. 3/1971. The enactment of this law is expected to accelerate the growth of people's welfare, with a countermeasure against the evil nature of corruption.

Corruption is an act that not only harms the state's finances but can also cause losses to the people's economy. Corruption crimes are also described in the Law on Ratification of the United Nations Convention Against Corruption. The international community, including Indonesia, agrees that corruption is a serious crime that can be transnational, both in terms of actors, the flow of funds, and their impact. The cases faced by Indonesia, such as Innospec, Alstom, Rolls-Royce, e-KTP require corruption eradication with a comprehensive strategy as well as international cooperation in law enforcement and corruption prevention. The agreement was then realized in an initiative of the United Nations (UN) through the United Nations Officer on Drugs and Crime (UNODC) to implement an international agreement UNCAC. UNCAC includes a series of guidelines for state parties in carrying out corruption eradication, including prevention efforts, formulation of types of crimes including corruption, law enforcement processes, provisions for international cooperation, and asset recovery mechanisms, especially those that are transnational. The effective implementation of the provisions of UNCAC can be considered as a reflection of a country's strong commitment to eradicate corruption, implement good governance and enforce the rule of law.

Therefore, as a nation with a passion for creating prosperity equitably and fairly, it should be able to recognize and avoid every form of corruption that will only create misery for all Indonesian people. Forms of corruption, especially bribery, are a very acute disease for the Indonesian people because in almost every public service institution bribery has become a common thing, which in the end there are difficulties in detecting and become more difficult to prevent. as a result, corruption continues to grow and spread in every aspect of life.

The development of corruption in Indonesia is still relatively high, while its eradication is still very slow, Romli Atmasasmita, stated that Corruption in Indonesia has been a flu virus that has spread throughout the government since the 1960s [3]. He further said that corruption is also related to power because with that power the ruler can abuse his power for personal, family, and cronies interests.

The intersection between corrupt action and position is also emphasized by John Kaplan, a police organization that may be known as corrupt is also symbolized by a level of organizational strengthening that limits the introduction of the innovative and high dignity of officials who do not protect against corruption and violence following existing regulations [4]. Here it is seen or describes the opportunities and proximity of corruption to a position in government.

This condition seems to be in line with the spirit of the legislators, which is through legislative policy by enacting Law Number 19 of 2019 concerning the Corruption Eradication Commission that is considered to be able to further support police investigators in uncovering and eradicating corruption. With the issuance of this law, it is necessary to clarify the sanctions for criminal acts of corruption in the context of law enforcement in Indonesia in the sense of justice.

The number of corruption cases in Indonesia is inseparable from the lack of sanctions against perpetrators of corruption so that it is considered to injure the sense of justice in the Pancasila norms. An example of a phenomenal corruption case is the E-KTP case by Setya Novanto. The demand for sixteen years of criminal punishment against Setya Novanto can be called "soft". Considering the series of crimes committed and his position in the DPR, as well as what he did to avoid legal snares after he was appointed a suspect, the prosecutor should have demanded a maximum sentence of life imprisonment [5]. The Corruption Eradication Law even provides space for prosecutors to prosecute corruption perpetrators up to the death penalty.

As another example, the Corruption Eradication Commission (KPK) issued SP3 alias Notification Letter for Termination of Investigation of the corruption case of Bank Indonesia Liquidity Assistance (BLBI) which dragged the name of a conglomerate, Sjamsul Nursalim.

The KPK reasoned that SP3 was issued to provide legal certainty. Moreover, one of the defendants in the same case, Syafruddin Temenggung, has been declared acquitted at the cassation level of the Supreme Court (MA). The issuance of SP3 for the Sjamsul Nursalim case is claimed to be following Article 40 of the KPK Law. The BLBI case itself is a corruption case that has been around for a long time but has not yet been completed. This problem is what urges the author to study it further in a research with the main problem as follows:

1. What are the weaknesses in the current application of the criminal sanctions system in eradicating corruption?
2. How is the reconstruction of the criminal sanction system in the eradication of corruption based on justice?

METHOD OF RESEARCH

The author in this study uses the constructivism paradigm, a paradigm that views that legal science only deals with laws and regulations. The research approach used in this study is sociological legal research or commonly called sociological juridical research. In this study, the law is conceptualized as an empirical phenomenon. that can be observed in real life. In addition, this study uses descriptive analysis research types and sources of primary and secondary data are used which include primary legal materials, secondary legal materials, and tertiary legal materials. Methods of data collection using observation, interviews, and literature study, descriptive data analysis method [6].

RESEARCH RESULT AND DISCUSSION

1. Weaknesses in The Current Application of The Criminal Sanctions System in Eradicating Corruption

Sentencing can be seen as a series of processes and policies whose concretization is deliberately planned through the following three stages, namely: the legislative stage. Applicative policy (judicial) and administrative policy (execution). If you have to compare these three stages, then the policy made by the law-making apparatus (the legislative stage) is a strategic stage. That's because the criminal and criminal system policy lines formulated are the legal basis for criminal enforcement officers (judicial officers) and criminal implementing officers (executive/administrative officers). This also means, if there are weaknesses in the formulation of the criminal system, then it will have an impact on the following stages (application stage and execution stage).

The principle of legality is often described in the adage "it says there is no action, which can be punished without the regulations that precede it". The principle of legality provides limitations on state power so that the state cannot arbitrarily determine that an act of a citizen is a criminal act and punish them. Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UU Tipikor) do not meet the *lex certa* principle (must be formulated clearly and not have multiple interpretations). The article has multiple interpretations so it does not reflect the existence of legal certainty. That is related to the element "can harm state finances" which does not have uniformity, meaning that there is no synchronization and harmonization between other applicable laws.

The formulations of Article 2 and Article 3 of the Anti-Corruption Law have the same objective, which is the return of state financial losses and provide a deterrent effect, besides that the enriching element in Article 2 and the beneficial element in Article 3 of the Anti-Corruption Law have the same (identical) [7] meaning, namely the purpose of increasing their own wealth, another person or a corporation. The difference is in the legal subject and elements of unlawful acts in Article 2 and abuse of authority in Article 3 of the Anti-Corruption Law. However, in practice, it is often confused, where the judge justifies the Public Prosecutor's demands against people who are not state administrators who are charged with violating Article 3, and conversely, an organizer is charged with violating Article 2, as in the corruption case Andi Malaranggeng who is a state administrator was charged with Article 2 (Primary) and Article 3 (Subsidiary) which should be Article 3 as the primary indictment. The difference in legal subjects and the objectives of the two articles were not considered by the panel of judges [8].

Thus, Article 2 and Article 3 of the Anti-Corruption Law will be more efficient if they are formulated in one article, besides it can prevent law enforcement from misunderstanding the essence of the two articles. Weaknesses in the provisions of Article 2 and Article 3 of the Anti-Corruption Law are proven by law enforcers, including the Supreme Court (MA) who still misunderstand Article 2 and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (UU Tipikor). In this case, the panel of judges emphasizes the element of loss to the state rather than the element of enriching oneself. The method of proof is supposed reversed, which is proving the element of enriching oneself first, then proving the element of loss to the state. This misunderstanding certainly results in legal uncertainty. Legal certainty is one of the objectives of the enactment of the law, in this case, the provisions of Articles 2 and 3 of the Anti-Corruption Law, have several weaknesses in terms of the formulation of the elements of the reason, which still creates legal loopholes and arbitrariness in interpreting the provisions of the article, because a certainty regarding the provisions of the Article was still unfulfilled, as explained above. As is well known, this provision is a material offense that requires a consequence so that it can be classified as meeting the elements of the article, but in practice, the provisions of

the article are often interpreted differently, so that it does not achieve legal certainty.

Substantially, the weaknesses of eradicating corruption are as follows:

a. The Law on the Eradication of Criminal Acts of Corruption does not regulate the minimum amount of sanctions based on the classification of the amount of money that is corrupted, whether for cases of embezzlement, bribery, or gratification.
b. The Law on the Eradication of Criminal Acts of Corruption does not regulate the accumulation of the amount of money that is corrupted by perpetrators of criminal acts of corruption.
c. The threat of fines regulated in the Law on the Eradication of Criminal Acts of Corruption is quite low when compared to the state losses incurred.
d. There are several rules that are considered to have multiple interpretations and have the potential to cause a disparity in sentences by judges.
e. The Law on the Eradication of Criminal Acts of Corruption does not have any rules regarding relatives of state officials who take advantage of the position of a state official for personal gain.
f. The threat of criminal sanctions for private companies is not regulated in the Corruption Eradication Act.
g. The threat of capital punishment in the Corruption Eradication Act is considered to be less detailed and firm.

In addition to the weakness of the aspect of legal substance, if we look at the aspect of the Legal Structure. The sentence decided by the Corruption Court judge varies greatly with the type of sentence imposed. This has an impact on the memory of the judge's decision which will set a bad precedent for law enforcement of corruption in the future. The judge's decision should be part of the government's efforts to reduce the number of corruption from year to year, it can be minimized as an effort to take action and Law Number 3 of 1971 concerning the Eradication of Corruption Crimes was amended to become Law Number 31 of 1999 and then amended again to become Law Number 20 2001. From the several amendments to the Law, there are no criminal charges against corporations that commit criminal acts either in "*certain circumstances or not*".

The weakness of the formulation of the death penalty in Article 2 Paragraph (2) of Law Number 31 of 1999 is not seen as a problem, which should be corrected by Law Number 20 of 2001. Amendments to previous laws are only editorial changes. Although the movement to abolish the death penalty is very intensive, there are still many countries that recognize and apply the death penalty. Currently, 68 countries still apply the practice of the death penalty, including Indonesia. Apart from the controversy when corruption is perceived as a very serious threat, the maximum punishment is considered the most effective way to scare corruptors. Therefore, the courage to impose a maximum sentence is always awaited.

The weakness of the legal structure aspect is that the weak coordination between law enforcement officers causes the handling of corruption crimes to be hampered by time and bureaucracy. So there must be improvements both from the elements of investigators, prosecution, to court decisions and strengthened KPK institution.

The Weakness from different aspects is Legal culture that is the atmosphere of social thought and social forces that determine how the law is used, avoided, or abused. Legal culture is closely related to public legal awareness. The higher the legal awareness of the community, a good legal culture will be created and can change people's mindsets about the law so far. In simple terms, the level of community compliance with the law is one indicator of the functioning of the law.

Legal culture is a human attitude including the legal culture of law enforcement officers towards the law and the legal system. No matter how well the arrangement of the legal structure to carry out the stipulated legal rules and no matter how good the quality of the legal substance that is made without the support of legal culture by the people involved in the system and society, law enforcement will not run effectively.

If the concept of legal culture is used to look at the handling of corruption, it will appear that the meaning of corruption itself will be largely determined by the values behind corruption itself. From the various definitions of corruption that have been stated, it appears that corruption is an act that is contrary to the values and norms of honesty, society, religion, and law. However, the emergence of corruption itself is strongly influenced by the demands of individual and group needs and is supported by the socio-cultural environment that inherits the corrupt tradition. In addition, the legal culture of the ruling elite does not respect the rule of law but is more concerned with the social, economic, and political status of the corrupt. The internal legal culture of law enforcement itself also does not support the eradication of corruption, which is indicated by the practice of corruption in the judicial process (judicial corruption).

2. Reconstruction of The Criminal Sanction System in The Eradication of Corruption Based on Justice

Justice is generally defined as a fair act or treatment. While the fair is impartial, unbiased, and on the side of the right. Justice according to the study of philosophy is when two principles are fulfilled, namely: firstly, it does not harm a person and secondly, the treatment of every human being is what is their right. If these two can be met then it is said to be fair. In practice, the meaning of modern justice in handling legal problems is still debatable. Many parties feel and consider that the judiciary has been unfair because it is

too procedural, formalistic, rigid, and slow in giving a decision on a case. It seems that these factors cannot be separated from the judge's perspective on the law which is very rigid and normative-procedural in carrying out legal concretization. Ideally, judges must be able to become living interpreters who can capture the spirit of justice in society and are not shackled by the normative-procedural rigidity that exists in statutory regulation, no longer just as *la bouche de la Loi* (the mouthpiece of the law).

The opinion expressed by Moelyatno, which clearly distinguishes "can be convicted of an act" (*de strafbaarheid van het feit or het verboden zjir van het feit*) and "can be convicted of a person" (strafbaarheid van den persoon), and in line with that he separates the meaning of "criminal act" and "criminal responsibility" (criminal responsibility or criminal liability) [9].

Accountability in criminal acts of corruption certainly has legal aspects and legal regulations regarding justice based on the theory presented in the previous chapter. Accountability based on the theory of justice in Islamic legal philosophy can be carried out in the form of realizing benefits for all elements both within the corporation and the welfare of its surroundings. In the matter of criminal sanctions for perpetrators of criminal acts of corruption, the author argues that every person who enriches himself means he takes property, money, or another party's property for his possession. This act can be called stealing. However, considering that stealing according to *jinayat fiqh* is included in the area of *jarimah hudud* along with six other types of *jarimah*, namely adultery, accusing people of adultery, drinking *khamr* (liquor), rebelling, robbing, and apostasy [10], the legal sanctions for corruption cannot be equated with theft or robbery sanctions.

Because equating corruption with stealing means making an analogy in the field of hudud. Whereas according to M. Cherif Bassiouni, as stated by Andi Hamzah, that hudud, which are codified in the Quran, requires a rigid application of the principles of legality crime, hudud as jarimah which has been stated explicitly in the Al-Quran is carried out standardly firm or as is following the principles of legal validity. Hudud is strictly and not analogy, it is strictly forbidden to use an analogy in hudud, in contrast to qisas and takzir in which analogies can apply [11]. In the Qur'an, there are only provisions for cutting hands for thieves, not for perpetrators of corruption.

In addition, there is a fundamental difference between stealing and corruption. Stealing, property as the object of theft is beyond the power of the perpetrator and has nothing to do with the position of the perpetrator. While corruption, property as the object of corruption is under its control and has something to do with the position of the perpetrator. It could even be that the perpetrator owns shares or at least has the right, no matter how small, to the property he has corrupted.

The view of justice in national law is based on the state. Pancasila as the basis of the state or state philosophy (*fiolosofische grondslag*) is still maintained and is still considered important for the Indonesian state. Axiologically, the Indonesian people are supporters of Pancasila values. An Indonesian nation that has a belief in God, which is humane, that is united, who is democratic, and who has social justice.

Social justice concerns the interests of society by itself, individuals with social justice must set aside their freedoms for the interests of other individuals. National law only regulates justice for all parties, therefore justice in the perspective of national law is justice that harmonizes public justice among some of the individual justices. This justice focuses more on the balance between the individual rights of the community and the general obligations that exist within the legal community group.

Therefore, based on the description above, the reconstruction as intended by the author is as follows:

a. Law no. Number 31 of 1999 concerning the Eradication of Corruption Crimes needs to be reconstructed by adding Article 3 Paragraph to the article that reads:

Paragraph 1:
"Any person who, intending to benefit himself or another person or a corporation, abuses the authority, opportunity, or facilities available to him because of a position that can harm the state finances or the state economy, shall be sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

Paragraph 2
"If the act in paragraph (1) is carried out during a pandemic and/or famine, the punishment is life imprisonment and a minimum social sanction of 1 (one) year and a maximum of 3 (three) years, as well as a sanction of impoverishment and the return of state finances from a number of corruption values that done."

b. Article 5 Paragraph 1 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption needs to be reconstructed by adding one sub-letter that reads:

Article 5
Paragraph 1:
"Sentenced to a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiahs) and a

maximum of Rp 250,000,000.00 (two hundred and fifty million rupiahs) for each person who:

a. give or promise something to a civil servant or state administrator with the intention that the civil servant or state administrator act or does not do anything in his position, which is contrary to his obligations.

b. give something to a civil servant or state administrator because or related to something contrary to the obligation, done or not carried out in his position."

Paragraph 2:

"For civil servants or state administrators who receive gifts or promises as referred to in paragraph (1) letter a or letter b, shall be subject to the same punishment as referred to in paragraph (1)."

Paragraph 3:

"If paragraph (2) is repeated, the sentence is life imprisonment and/or the death penalty as well as social sanctions for a minimum of 1 (one) year and a maximum of 3 (three) years, as well as sanctions for revocation of political rights for life."

CONCLUSION

1. Weaknesses of the current sanctions system in eradicating corruption are:
   Weaknesses from the aspect of legal substance are The Law on the Eradication of Criminal Acts of Corruption does not stipulate minimum sanctions based on the classification of the amount of money that is corrupted, whether for cases of embezzlement, bribery or gratification, as well as sanctions that are considered less strict and the fines that are regulated, are quite low. Several rules are considered to have multiple interpretations and cause no disparity in punishment by judges. In addition, there are no rules regarding relatives of state officials who use state officials for personal gain or criminal threats for private companies. And the death penalty is considered less detailed and firm. The weakness of the legal aspect is that the lack of coordination between law enforcement officers causes the handling of corruption crimes to be hampered by time and law. So there must be improvements from investigators, prosecution, to court decisions. The same goes for the KPK. The Weakness from the legal culture aspect are The emergence of corruption itself is strongly influenced by individual needs as well as individual and group needs and is supported by a traditional socio-cultural environment. In addition, the legal culture of the rulers does not respect the law but is more concerned with the social, economic, and political status of the corrupt. The legal culture of law enforcement itself also does not support the eradication of corruption, which is indicated by the practice of corruption in the judicial process (judicial corruption).
2. The reconstruction as intended by the author is as follows: (1) Reconstruction of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption by adding a paragraph to the article (2) Article 3 Paragraph 2 and Reconstruction by adding one sub-letter to Article 5 Paragraph 1 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes

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