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Concept of Prosecution Law to Eradicate Corruption as an Attempt to Punish Perpetrators of Corruption

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Abstract: Indonesia is one of the countries with a large number of corruption cases. Criminal acts of corruption in Indonesia have been pervasive and have entered into all walks of life. Its development continues to increase from year to year, in the number of cases that occur and the amount of state financial losses and regarding the quality of criminal acts of corruption carried out more systematically that has entered aspects of community life. Increased uncontrolled corruption will bring impacts that are not only limited to the life of the national economy but also to the life of the nation and state in general. This study uses a normative and empirical juridical approach. Normative research is carried out on the theoretical matters of legal principles relating to law enforcement in the case of corruption in Indonesia. This research method uses several approaches to produce a reasonable conclusion. The strategy of prosecuting policies in certain crimes must pay attention to the nature of the problem. If the nature of the problem is more on economic or trade issues, it should take precedence over sanctions for action and/or fines. The formulation of sanctions between Article 2 and Article 3 of this Law is contrary to the general provisions concerning sanctions regulated in the Criminal Code. In the Criminal Code determines if an act is carried out because of position and violates the authority. It is a criminal weight, while in this law in Article 3 which is an act as stipulated in Article 2 but carried out by misusing the authority, opportunity or means that exists because of the position or position but the threat is lighter than in Article 2. If the special law makes a particular minimum criminal threat, then it must be accompanied by rules/guidelines for its application such as comparative problems between specific minimums and maximal in particular. There should be a unique pattern that should be followed in other Article formulations. For example in Article 2 paragraph (1) the comparison is 1: 4 while in Article 3 the comparison is 1:20. There should be a similar pattern applied in each Article in the formulation of specific minimum provisions.

Keywords: Concept of Criminalization, Corruption Crime, Deterrent Effect.

INTRODUCTION

Criminalization, decriminalization or departmentalization is an effort to overcome crime problems by reasoning policy, or by using criminal law. The Penal policy is one of the strategies to overcome criminal acts (criminal policy), in addition to non-criminal policies (nonpenal policy). The difference is more in that the reason policy approach is more reactive and repressive, while the nonpenal policy approach is more anticipatory and preventive [1].

The basis for using the reasoning policy according to Shagufta Begum is several factors can damage the peace of society. They look like sane people, but sometimes they behave in a way that disrupts community peace. They must be handled in other ways, in the form of criminal imposition. It is where the criminal law function will be seen according to fiqh jinayah, which has a strategic function, in the form of guaranteeing the realization of human benefit as a whole. If the criminal law does not function optimally, then human life will be damaged quickly or slowly [2].

In connection with the reasoning policy, Barda Nawawi Arief stated that the handling of crime by using criminal sanctions is the oldest way, as old as human civilization itself. Whereas Herbert L. Packer [3] argued that controlling anti-social actions by using a criminal to someone who is guilty is a social problem that has an essential legal dimension. It is where the need for formulation of the background or the reason for the use of the crime, or what is commonly referred to as the formulation of the purpose of criminal prosecution.

There are at least three reasons, why need to formulate the objectives of the sentence, namely:

- The purpose of punishment can function to create synchronization that can be both physical and cultural. Physical synchronization is in the form of structural synchronization, and can also be substantial. The form of structural synchronization is harmony in the mechanism of criminal justice administration, while substantial synchronization is related to the applicable positive law, and cultural synchronization regarding living the views, attitudes, and philosophies that thoroughly underlie the course of the criminal justice system [4].
- The formulation of criminal objectives is intended as a control function" and at the same time provides a philosophical basis, clear and directed rationality, and criminal motivation [5]. With the formulation of criminal objectives, it will be known that the supporting functions of the criminal law function, in general, are to be achieved as the ultimate goal in the form of the realization of community welfare and protection (social defense and social welfare).

The Utilitarians' view which states that the purpose of punishment must have beneficial and demonstrable consequences and the view of retributivists which state that justice can be achieved is the purpose of the theological is carried out using a measure of principles of justice [6].

Immanuel Kant views the criminal as "categorical imperative" that a judge must convict a person because he has committed a crime so that the criminal shows demand justice. This absolute demand for justice is seen in Immanuel Kant's opinion in his book "Philosophy of Law" as crime has never been carried out solely as a means to promote other goals/goodness, both for the perpetrator itself and for the community but in all cases must be imposed because the person concerned has committed a crime [7].

Regarding the retaliation theory, Andi Hamzah also gave an opinion as a retaliation theory saying that the criminal did not aim for the practical, such as repairing criminals. The crime itself contains elements of criminal punishment. Criminal punishment is due to a crime. There is no need to think about the benefits of criminal imprisonment [8]. Ir means that the theory of retaliation does not think about how to foster the perpetrators of crime, even though the perpetrators have the right to be fostered and to become human beings that are useful by their dignity. Determining the purpose of prosecution is a dilemmatic problem, especially in determining whether punishment is intended to take revenge for a crime that occurred, or is a worthy goal of a criminal process, namely the prevention of anti-social behavior. Determining the meeting point of these two views if it is not successfully carried out requires a new formulation in the system or purpose of punishment in criminal law [9].

The deterrence theory views that punishment is not in retaliation for the wrongdoers of the perpetrators, but is a means of achieving useful goals to protect the community towards the welfare of society. Sanctions are emphasized on their purpose, namely to prevent people from committing crimes, so it is not aimed at the absolute satisfaction of justice.

This theory is influenced by a utilitarian view, which looks at punishment regarding its usefulness or usefulness where what is seen is the situation or circumstances that want to be produced by the imposition of the criminal. On the one hand, punishment is intended to improve the attitude or behavior of the convicted person, and on the other hand, the punishment is also intended to prevent others from the possibility of committing similar acts.

Referring to the positive law regarding Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, corruption in Indonesia has been legally recognized as a violation of broad public human rights. It is this formal recognition that gives the characteristic that corruption is an extraordinary crime or "extraordinary crimes" so that the handling must also be done in extraordinary ways, including the use of an inverse proof system charged to the defendant, strengthened by the formation and authority The Corruption Eradication Commission, which is bigger than the police and prosecutor's office, is in accordance with Law No. 30 of 2002 concerning the Corruption Eradication Commission (CEC). Moreover, of course through the formulation of clear and firm criminal sanctions against the perpetrators of corruption.

One of the objectives of punishment is to apply and impose penalties for perpetrators through a Judge Decision that aims to restorative justice based on treatment not solely retaliation. The application of imprisonment sanctions will put the perpetrators of narcotics abusers into the Penitentiary. Crime is seen as immoral and immoral in the community. Therefore criminals must be repaid by criminal imposition. Formulation of criminal sanctions against perpetrators of corruption as regulated and formulated in Chapter II Article 2-20 Act Number 31 of 1999 Jo. Law No. 20 of 2001 concerning Eradication of Corruption Crimes which will be the focus of researchers in analyzing this study. Moreover, what will be analyzed includes a system of criminal sanction formulation, both the specific minimum formulation and the severity of criminal sanctions, both principal and additional criminal penalties.

METHODOLOGY

In connection with the problem of objects that are subject to certain sciences such as law, Ronny Hanitijo Soemitro said that: "Every science has its own identity, so there will always be differences. The research methodology applied in each science is always adjusted to the knowledge that is the parent" [10].

This research is normative juridical research that is legal research that aims to find rules, norms or das sollen. The definition of the method, in this case, includes the principles of law, legal principles, legal systems, and concrete legal regulations, especially against all legislative instruments. By the object of study, namely legal norms, this research is based on the availability of secondary legal materials. In this regard, Sudikno Mertokusumo [11] stated that to improve data (legal material) obtained from library research can be supplemented by field research. According to Pieter Mahmud Marzuki, legal materials are official documents in the form of all publications about the law. Publications on law include laws and regulations, government regulations, textbooks, legal dictionaries, legal journals, and comments on court decisions [12]. The legal material is then divided into three groups, namely: primary legal materials, secondary legal materials, and tertiary legal materials. Secondary legal materials are obtained through document study, namely by collecting and analyzing judges' decisions from civil courts. This study uses a normative and empirical juridical approach. Normative research is carried out on the theoretical matters of legal principles relating to law enforcement in the case of corruption in Indonesia. This research method uses several approaches to produce a reasonable conclusion. The main problem in this study is one of the central problems of criminal policy (criminal and criminal matters). Therefore, the approach cannot be separated from a policy-oriented approach. Considering that the primary objective of this research is the problem of legislative policy in determining and formulating criminal supervision, the approach is mainly pursued through a juridical-normative approach. This approach is supported and complemented by a theoretical-doctrinal approach.

RESULTS AND DISCUSSION

Criminal System In Law No. 20 of 2001 Jo. Law No. 31 of 1999 concerning Corruption

Every country has a determination to try to improve the lives of its people so that a safe and prosperous life can be achieved. With the advancement of science and technology today, both developed and developing countries do development in all fields in order to achieve a better life for their people. In line with this effort, efforts to reform in the field of law were made for newly independent countries. The problem of legal reform (Law Reform) is one of the many legal problems, which are mainly faced by developing countries [13].

Legislation in Indonesia up to now does not have a "national criminal justice system" which includes "criminal patterns" and "criminal guidelines." "Criminal pattern," which is a reference/guideline for legislators in the making / drafting legislation that contains criminal sanctions. The term criminal pattern is often also called "legislative guidelines" or "formulation guidelines. Whereas the "criminal guideline" is a guideline for imposition / criminal application for judges ("judicial guideline" / "applicable guideline"). Judging from the function of its existence, this pattern of punishment should exist before criminal legislation is made, even before the national Penal Code was made "Indeed, there is already Law No. 10 of 2004 concerning the Establishment of Legislation, but the substance of this law is more about the principle, process/procedure of preparation, discussion, technical preparation, and enforcement. This law does not mention "punishment," at least matters relating to the type of crime (transport), criteria for the duration of the crime (strafmaat) as well as the method of criminal execution (strafmodus).

According to Sudarto [14], the basis of reform in the field of law is based on three reasons, such as:

- Political reasons, namely the reason based on the idea that an independent State must have its national law, for national pride.
- Sociological reasons, namely the reasons that require the existence of laws that reflect the cultural values of a nation.
- Practical reasons, namely the reasons which, among others, stem from the fact that usually, former colonial countries inherit the laws of the country that colonize them with the original language that is widely used and not understood by the younger generation of the newly independent country.

The country of Indonesia which belongs to the category of developing countries is also developing and trying to renew its law as a whole, both civil law, administrative law, and criminal law. The demand for renewal has become stronger in the reform era, where people like to get a "wind of freedom" to be able to channel their aspirations and demand the realization of laws and legislation that can accommodate a sense of public justice.

Criminal and criminal matters of their existence are always debated. The policy problem of determining the type of sanctions in criminal law is inseparable from the problem of determining the objectives to be achieved in criminal proceedings. In other words, the formulation of criminal objectives is aimed at being able to differentiate while measuring the extent to which the types of sanctions, both in the form of 'criminal' and 'actions' that have been implemented at the legislative policy stage can achieve the objectives

effectively. If in the law eradicating corruption, the purpose of giving sanctions should aim to eradicate corruption.

According to the consequentialism theory "Criminal punishment as an act against an offender can be morally justified not primarily because the convicted person has been proven guilty, but because the conviction has positive consequences for the convict, victim, and also the community."

According to the absolute theory, sanctions are an absolute consequence that must exist as a retaliation to the person who committed the crime, while according to the relative theory, said that the sanction is emphasized on the goal.

According to the Integrative theory, Muladi said that "criminal acts are a disturbance to the balance, harmony, and harmony in people's lives that cause damage to individuals and society, the purpose of punishment is to repair the damage caused by criminal acts."

The application of criminal sanctions in criminal acts of corruption has several aspects or interests that must be considered, first paying attention to aspects of the perpetrator, secondly paying attention to aspects of the victim, and third is the aspect of society, that the interests of the community are not fulfilled due to corruption.

Furthermore, it is viewed from the point of operationalization/functionalization, in the sense of how it manifests and works, criminal law can be divided into three phases/stages, such as:

- Formulation Stage, namely the stage of determining criminal law regarding the types of actions that can be punished and the types of sanctions that can be imposed. The authority authorized to carry out this stage is Legislative / Formulative power.
- Application stage, namely the stage of applying the criminal law, or criminal imposition to someone or corporation by a judge for the actions committed by that person. The authorities in this stage are Applicative / Judicial Power.
- Execution Phase, namely the stage of criminal execution by the apparatus of criminal execution of a person or corporation that has been convicted. Authority, in this case, is in Executive / Administrative Power [15].

Of the three stages mentioned above, the formulation stage or stage of determining criminal law in legislation is the most strategic stage, because in this stage the lines of legislative policy are formulated which also form the basis of legality for the next stages, namely the stage of criminal application by the judiciary and the stage of criminal implementation by the criminal executing apparatus.

Thus regarding the allocation of authority or policy, the formulation policy has the most strategic position in reforming criminal law in Indonesia. About criminal and criminal prosecution, the problem of imposing the desired type of crime (strafsoort), determining the severity of the sentence imposed (strafmaat) and how the crime is carried out is part of a criminal system.

Qualitatively, according to the Criminal Law Science doctrine, certain offenses that are determined as a minimum criminal, especially those with the following characteristics:

- Delicts that are considered very detrimental, endangering or disturbing the public;
- Delicts that are qualified or exacerbated by the consequences.

The main problem in Indonesia is that until now it has not been answered, how far the freedom of authority possessed by the judges (judicial discretion) to "be able" to go down (to a certain extent) below the minimum specific criminal limits in a legislative formulation, so that the implementation of enforcement the just law remains in the corridor of legal certainty. And that is none other than by making a formulation of criminal law / guidelines (regelistraftoemetingsleidraad straftoemetings, or statutory guidelines for sentencing) as criminal sanctions / guidelines in a special maximum criminal pattern that "can" rise (to a certain extent) above the maximum criminal limits in particular, when there are criminal offense factors, such as realist concursus to terren recidive crimes against certain similar crimes. The law does require judges to explore and follow the values that live in society. And the perspective of society, so that the perpetrators of corruption as much as possible with a relatively heavy crime, because if the perpetrators of corruption are punished with a mild crime, let alone free or free from all lawsuits, many people consider the imposition of decisions is unfair.

Prevention and control of crime using "reasoning" is a "penal policy" or "reasoning law enforcement" whose functionalization/operations are carried out through several stages, namely:

- Formulation stage (legislative policy);
- Application stage (judicial policy) and
- The execution phase (executive / administrative policy).

With the formulation stage, the effort to prevent and overcome crime is not only the duty of law enforcement officers but also the duties of the law-making apparatus (legislative apparatus), the even legislative policy is the most strategic stage of the

"penal policy." Its strategic location is because the lines of the criminal system and criminal policies formulated by the legislative apparatus are the basis of legality for the criminal apparatus (judicial apparatus) and criminal executing apparatus (executive / administrative apparatus). It also means, if at this formulation policy stage there are weaknesses in the formulation of the criminal system, the excess of execution in the later stages (application stage and execution stage). In other words, the weakness of "in abstract" criminal law enforcement will influence the weakness of law enforcement "in concreto."

This objective can be realized in the form of a punishment that is worth the weight of the crime committed by the defendant who must be uniform with the sentence imposed on another defendant who committed a similar crime with the same case. Subsequent legislation also argues and states that to eliminate disparity and provide uniformity in punishment can be achieved by establishing it in the law of a fixed number of penalties, which must be applied by the court by the severity of the crime stipulated in the law as well.

Therefore, the Chairperson of the Court in determining the criminal standard cannot do it unilaterally. First of all, he must collect data regarding the punishment that has been imposed for one type of criminal act that has been imposed by Judges in his jurisdiction in the term ("period") of a particular time. Then the data that has been collected is submitted at a panel meeting with all Judges in the court's jurisdiction.

In the assembly meeting, it must be one by one. The judge heard his opinion on aspects related to the purpose of punishment, sense of justice, etc. which all must be "tested" against the data that was collected earlier. If an agreement can be reached regarding the criminal standard, the criminal standard that will be determined by the Chairperson of the Court is a joint decision between all Judges in the court's jurisdiction.

Here it means that what is called the freedom of the Judge, if the conviction standard has become a decision, becomes somewhat limited, in the sense that the Judge can only move between mitigated terms, base terms and aggregated terms only. The real freedom of the Judge is when each Judge expresses his opinion and sense of justice in the assembly meeting when discussing the determination.

Analysis of Criminal Sanctions in Law No. 20 of 2001 Jo. Law Number 31 of 1999 concerning Eradication of Corruption Crimes

Talking about the problem of formulating a criminal act and formulating criminal sanctions in law, we must pay attention to general principles such as:

- The basic principles or general principles that must be considered are: every formulation of criminal provisions in the Law outside the KUHP must remain in the current system of material criminal law (substantive criminal system).
- The material criminal law system consists of a whole system of laws and regulations (statutory rules) which are contained in the Criminal Code (as the main general rule) and special laws outside the Criminal Code.

From the description above, it can be seen that the criminal provisions in special laws outside the Criminal Code are sub-systems of the entire criminal law system. As a sub-system, special laws (including the Law on Eradicating Corruption) are bound to the general provisions contained in the Criminal Code (Book I) (Articles 1-82). In order for such a system to be harmonized and unified, for each special law designer must understand and master the overall system of general rules in the Criminal Code Book I. So there will be no juridical problems in its application. Because as good as any formulation of a norm if at the level of law enforcement is difficult to implement, it will not mean anything.

On another occasion, Sudarto argued that the terms and criminal meanings could not be separated from criminal law, because the criminal is a vital part/component of the criminal law. In the legal system in Indonesia, crimes and acts that are threatened with the criminal law must be stated in the criminal law. It is by the principle referred to as nullum delictum nulla poena sine praevia lege poenali, as stated in Article 1 paragraph (1) of the Criminal Code.

In this case, there are differences regarding punishment and criminal. A criminal must be based on law, while the sentence is broader in meaning because, in the sense of punishment, it includes the whole norm, both norms of decency, decency, decency, and habits. Even so, both terms still have similarities, which are both backgrounds in values, good and bad, polite and impolite, permissible and prohibited, and so on.

Thus, someone who is convicted or convicted is the person who is guilty or violates a criminal law regulation. However, a person may also be punished for violating a provision that is not criminal law. About who has the right to impose a criminal sentence, in general, legal scholars have agreed that the state or government has the right to convict or hold the ius puniendi. However, what is at issue, in this case, is what is the reason so that the state or government has the right to convict. Several articles that can be mentioned to analyze criminal provisions for perpetrators of corruption are as follows:

- Article 2 paragraph (1), Every person who unlawfully acts to enrich himself or another person

or a corporation that can harm the state's finances or the country's economy, shall be sentenced to life imprisonment or a minimum of 4 (four) imprisonment year and no later than 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

- Article 3, Every person who aims to benefit himself or another person or a corporation, misuses the authority, opportunity or means available to him because of a position or position that could harm the state's finances or the country's economy, subject to life or criminal imprisonment a minimum of 1 (one) year imprisonment and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp 1,000,000,000.00 (one billion rupiah).

From the formulation of the two articles, it can be seen that the formulation of sanctions between Article 2 and Article 3 of this Law is contrary to the general provisions concerning sanctions stipulated in the Criminal Code. In the Criminal Code determines, if an act is carried out because of position and violates the authority, it is a criminal weighting while in this law in Article 3 which is an act as regulated in Article 2 but carried out misuse of authority, opportunity or means that exists because of position or position but the threat is lighter than in Article 2.

In Article 2, the threat of a criminal sentence is life imprisonment or imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000 .000,000.00 (one billion rupiah), while in Article 3 the threat of criminal punishment is life imprisonment or imprisonment of at least 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000. 00 (fifty million rupiah) and a maximum of Rp 1,000,000,000.00 (one billion rupiah).

So that the formulation of this Article needs to be reviewed. The proposed strengthening of these Articles can be highlighted from various aspects of criminal law, namely:

- Aspects of Persons or perpetrators of crimes: from the aspect of the perpetrators of the formulation of this Article proposal there is no change from the actual Article formulation, namely every person who is unlawful and in Article 3 the aspect of the perpetrator is that everyone takes office.
- In formulating an Article qualification, the juridical qualifications must be carefully considered because the determination of this juridical qualification will determine its juridical consequences.
- The aspect of Sanction Formulation: In formulating a criminal sanction in law, it must still pay attention to the general principles. Every formulation of criminal provisions in the Law outside the Criminal Code must remain within the corridor of the current material criminal law system (substantive criminal system). The material criminal law system consists of a whole system of laws and regulations (statutory rules) which are contained in the Criminal Code (as the main general rule) and special laws outside the Criminal Code.

General rules of criminal sanctions as referred to in Article 12 of the Criminal Code, such as:

- Prison sentences are for life or for a particular time.
- Imprisonment for a certain period of time is at least one day and a maximum of fifteen years in a row.
- Imprisonment for a certain period of time may be imposed for twenty consecutive years in the case of a crime whose criminal sentence the judge may choose between capital punishment, life imprisonment, and imprisonment for a specified time, or between life imprisonment and imprisonment for a particular time; Likewise, in the case of the fifteen year limit, it is exceeded because of criminal additions due to overlap, repetition or due to being determined by Article 52.
- Imprisonment for a certain period of time may not exceed twenty years.

According to Leo Polak, is the essence, meaning, purpose and size of criminal suffering worthy of being accepted, is an unresolved problem. Against Leo Polak's opinion, Sudarto emphasized that the history of criminal law is necessarily a criminal history and a criminal sentence. A criminal action is also an act (maatregel, masznahme). However, it is an affliction, something that feels uncomfortable to be subjected. Therefore, people have never ceased to look for the basis, nature, and purpose of crime and punishment, to justify the crime itself [16].

The difference between "punishment" (criminal) and "treatment" (the act of treatment) must be seen from its purpose, how far the role of the perpetrator's role is to the existence of a criminal or act of treatment. According to H.L. Packer, the main purpose of treatment is to provide benefits or to improve the person concerned. The focus is not on the past action or the coming, but on the purpose of providing help to him. So, the basis of justification of "treatment is on the view that the person concerned will or may be better. Thus the primary objective is to improve the welfare of the people concerned [17]. While "punishment" according to H.L. Packer, the justification is based on one or two objectives as follows:

- To prevent the occurrence of crimes or actions that are not desirable or wrongdoing (the prevention of crime or undesired conduct or offending conduct);

- To impose appropriate suffering or retaliation on the offender (the deserved inclusion of suffering on evildoers/retribution for perceived wrongdoing).

Thus, in criminal matters, the emphasis is on wrongdoing or criminal acts committed by the perpetrator. In other words, the act has a significant role and is a condition that must exist for the occurrence of "punishment."

CONCLUSION

The strategy of prosecuting policies in certain crimes must pay attention to the nature of the problem. If the nature of the problem is more on economic or trade issues, it should take precedence over sanctions for action and / or fines. The formulation of sanctions between Article 2 and Article 3 of this Law is contrary to the general provisions concerning sanctions regulated in the Criminal Code. In the Criminal Code determines if an act is carried out because of position and violates the authority, it is a criminal weight, while in this law in Article 3 which is an act as stipulated in Article 2 but carried out by misusing the authority, opportunity or means that exists because of the position or position but the threat is lighter than in Article 2. If in a particular law makes a minimum particular criminal threat, then it must be accompanied by rules/guidelines for its application. Comparative problems between specific minimums and maximal in particular. There should be a unique pattern that should be followed in other Article formulations. For example in Article 2 paragraph (1) the comparison is 1: 4 while in Article 3 the comparison is 1:20. There should be a similar pattern applied in each Article in the formulation of specific minimum provisions.

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