P-ISSN : 2656-9744
E-ISSN : 2684-9038
Volume 1 Issue 2, November 2019

THE SANCTION FORMULATION IN CORRUPTION CRIME DUE TO INDONESIAN CRIMINAL LAW SYSTEM TO REALIZE THE PUNISHMENT GOALS

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Abstract
The Formulation of Criminal Sanctions holds a strategic position in an effort to decrease corruption crime. Until now, the application of criminal sanctions in Indonesia has not provided a direction for the occurrence of a significant decrease in corruption. This can be seen from the issued by Transparency International 2017 about the ranking of the most corrupt countries in the world, where Indonesia still in the 5thranks in ASEAN. This research purposes to analyze and to formulate the harmony in the formulation of criminal sanctions for corruption, with the goal of Indonesian criminalizing law system so that the ultimate goal is suppressing the level of corruption in Indonesia can be achieved. This study is used the statute, conceptual and case approach as a method to analyze the legal substances and the results of this research had been shown, there are several weaknesses in the criminal punishment system according to The Act Number 31 on 1999 andThe Act Number 20 on 2001; where, the system of corruption criminalizing is complicated that make the punishment for corruption cannot reach the goal of punishment. For the better law system in the future, it is more appropriate criminal sanctions needed to be formulated, so that the purpose of criminal penalties for corruption can be achieved, used by conducting a plea bargaining in the beginning, that the perpetrator must return state losses and pay fines but still be found guilty through the determination of the judge.

Key word: Corruption, Criminal Sanction, Punishment.

Introduction

Criminal and punishment is one of the main issues in the criminal laws that have always been debatedby experts and criminologists. Criminal and punishment are not only debated in the field of science, which demands answer to what and why they are existed. Itspreads to the

field of philosophy that try toanswer the questions about what the philosophy of criminal and punishment is. Then, it is not surprising thatrequires Herbert L Packer to putCriminal and punishment as one of the main issues in criminal laws. Packer states that the rationale of the criminal laws uses on three concepts: offence, guilt and punishment.The three concepts represent three basic problems of substantive criminal laws including: (1) actions that are determined as a crime; (2)the restrictions or the indicators before someone is convicted of a crime; (3) what must be done with people who have been convicted of a crime.

The Packer's concept on the actions that are determined as crime, in the criminal law is recognized as the doctrine of "*actus reus nisi mens sit rea*" or no criminal without guilt. According to Romli Atmasasmita[3], the doctrine of criminal law should have simplified the problem of what was agreed upon human actions so that easing to ask for criminal liability, and as a result is easing the burden of proof.

Moeljatno acknowledges, in Indonesia's criminal law, the three main problems is considered as prohibited acts, people who commit prohibited acts (criminal liability) and criminal acts.Barda Nawawi Arief simplified them into three main problems in criminal law including (1) problems of criminal acts, (2) problems with guilt or criminal liability, and (3) criminal and punishment.Related to punishment about the formulation of criminal sanctions is holding a strategic position in an effort to tackle criminal acts, including tackling criminal acts of corruption. The argument of Barda Nawawi Arif relating to the criminal system (formulation of criminal sanctions) in Indonesia from time to time is the implementation of the politic of law.

Related to the political law of corruption, the Indonesian government has established various laws and regulations for corruption prevention. Various laws and regulations are set up starting from the Martial Regulations, The Government Regulation in Lieu of Law was formed during the old order, regulations concerning corruption were renewed during the new order, reformation order and post-reformation period. Lastly, it was formed "Law Number 46 of 2009 on the Corruption Court".

The efforts to improve and complete the formulation ofcriminal sanctions by the enactment of Law Number 31 of 1999 amended by Law Number 20 of 2001, Law Number 30 of 2002 on the Corruption Eradication Commission for Corruption, Law Number 46 of 2009 on the Criminal Court are in order to meet the demands of society to prevent corruption in Indonesia.

Basically, law is a system (law) which has purpose (purposive system). The formulation of a criminal and the rules of punishment in a law means to reach the purposes. The purposes of punishment is formulated in the concept as follows:

1. Prevent criminal acts by enforcing legal norms for the society protection;
2. Socializing convicts by applying coaching so they become good and useful people
3. Resolve conflicts caused by criminal acts, restore balance, and bring peace to the community
4. Free the guilt of the convicts.

Functionally and operationally, punishment is a series of processes and policies, in which its concreteness is deliberately planned through several stages. It is started from "formulation" stage by lawmakers (legislative policy stage), then the "implementation" stage by the parties concerned (judicial policy stage), and finally the stage of "execution" by the authorities or court executors (executive policy stage or administrative). In order to be intertwining and integratingthe three stages as a whole system of punishment, the formulation of objectives and guidelines for punishment is critically needed.

One of the most important components to m*ake* laws (*legislation*) is the criminal sanction. The formulation of a criminal sanction against a criminal offender is the entrance to prevent a crime. Criminal sanction is the best ways or means that we posses to deal with criminal acts and to deal with other threats. The formulation of criminal sanctions for corruption based on Law Number 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Crimes includes: 1. basic punishments which consist of : a. death penalty; b. criminal prison: c. criminal penalty. 2. additional punishments which consists of; a. deprivation of certain items; c. penalty of substitute money payment; c. revocation of certain rights; d. company closure.

The purpose of punishment in criminal acts of corruption is to return the states' financial losses, particularly corruption which directly harms state finance. Starting from the purpose of punishment in corruption crime, it is necessary to determine methods, means or actions will be used. Any form of criminal sanctions must be based and oriented on the purpose of punishment.The problems are: (1) how is the regulation of criminal sanctions formulation on corruption in accordance with Law Number 31 of 1999 in conjunction with Law Number 20 of 2001? and (2) is the formulation of criminal sanctions on corruption committed in line with the objectives of punishment?

The conducted study of The Sanction Formulation in Corruption Crime Due to Indonesian Criminal Law System to Realize the Punishment Goals utilized normative juridical research methods. The study approach used was the laws (legislation), concepts and cases. The materials used includes: primary legal materials in the form of legislation, includingdecisions and other legal documents related to criminal acts of corruption; andsecondary legal materials in the form of references to

criminal acts of corruption. The Analysis was carried out through stages of inventory, classification and systematization and interpretation.

Discussion

1. The Sanction Formulation in Corruption Crime as a Corruption Eradication Effort

In Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 concerning the Eradication of Corruption Crimes, there are several types of crimes that judges can impose to those who commit corruption crime including:

1. Death Penalty
   Article 2 section (2), death penalty can be imposed to those who illegally commits an act enriching himself or another person or a corporation that can harm the state's finance or the country's economy as specified in Article 2 section (1), if it is done in certain circumstances. The meaning of "certain circumstances" is if the crime is committed against funds which intended for danger condition prevention, national natural disasters, the prevention of the widespread social unrest, economic and monetary crisis mitigation, and the repetition of corruption crime.
   As long as the enactment of Law Number 31 Year 1999 jo Law Number 20 Year 2001 about death penalty, it has never been implemented. In addition, there is a need to review a death penalty formulation because so far the formulation of death penalty was only the useless letters which did not influence in sociological matter.
2. Imprisonment
   a. Criminal imprisonment for life
      Criminal imprisonment for lifecan be one type of criminal imposition decided by a judge against defendant of corruption crime if it violates
      Article 2 section (1), Article 3, Article 12 and Article 12B Law Number 31 of 1999 in conjunction with Law Number 20 Year 2001 on Eradication of Corruption Crimes.
   b. Criminal imprisonment within a certain period of time
      Criminal imprisonment within a certain period of time contained in Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 concerning Eradication of Corruption Crime, in which the crimes formulation varies as follows:
      1) Article 2 section (1), Article 12, Article 12B
         Criminal imprisonment are for a minimum of 4 (four) years and a maximum of 20 (twenty) years.
      2) Article 3, Criminal imprisonment are for a minimum of 1 (one) year and no later than 20 (twenty) years.

3) Article 5 section (1) and (2), Article 9, Article 11
Criminal imprisonment are for a minimum of 1 (one) year and a maximum of 5 (five) years.
4) 8Article 6 section (1) and (2), Article 8
Criminal imprisonment are for a minimum of 3 (three) years and a maximum of 15 (fifteen) years.
5) Article 7 section (1) and (2), Article 10
Criminal imprisonment are for a minimum of 2 (two) years and a maximum of 7 (seven) years.
6) Article 12A, Article 13, Article 24, Criminal imprisonment are for a maximum of 3 (three) years.
7) Article 21, Article 22
Criminal imprisonment are for a minimum of 3 (three) years and a maximum of 12 (twelve) years.
8) Article 23
Criminal imprisonment are for a minimum of 1 (one) year and a maximum of 6 (six) years.

The implementation of imprisonment for life is quite effective in the case of large-scale corruption cases such as abuse of authority corruption case by The Chief Justice of the Constitutional Court, Akil Muhtar.

The formulation of imprisonment in corruption crimes apply the absolute cumulative system and the relative cumulative system. The duration of the criminal threat uses an absolute system by setting its own quality for each crime, namely by setting a maximum criminal threat and a minimum criminal threat for each crime. In the application of imprisonment, it still raises problems related to the pattern of punishment and guidance on punishment.

3. Criminal penalty
Criminal penalty included in Law Number 31 of 1999 in conjunction with Undang-Law Number 20 of 2001 concerning Eradication of Corruption Crimesis formulated vary as follow:
a. Article 2 section (1), Article 12, Article 12B
Criminal penalty are for a minimum of Rp. 200.000.000.00 (two hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).
b. Article 3
Criminal penaltyare fora minimum of Rp. 50.000.000 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).
c. Article 5 section (1) and (2), Article 9, Article 11

Criminal penaltyare fora minimum of Rp. 50.000.000,00 (fifty million rupiah) and a maximum of Rp. 250.000.000,00 (two hundred and fifty million rupiah).

d. Article 6 section (1) and (2), Article 8
   Criminal penalty are for a minimum of Rp. 150.000.000,00 (one hundred and fifty million rupiah) and a maximum ofRp. 750.000.000,00 (seven hundred fifty million rupiah).
e. Article 7 section (1) and (2), Article 10
   Criminal penaltyare fora minimum ofRp100.000.000,00 (one hundred million rupiah) and a maximum ofRp350.000
f. Article 13, Article 24
   Criminal penalty is for a maximum of Rp. 150.000.000,00 (one hundred and fifty million rupiah).
g. Article 21, Article 22
   Criminal penaltyare fora minimum of Rp. 150.000.000,00 (one hundred and fifty million rupiah) and a maximum ofRp. 600.000.000,00 (six hundred million rupiah).
h. Article 23
   Criminal penaltyare fora minimumof Rp. 50.000.000,00 (fifty million rupiah) and a maximum of Rp. 300.000.000,00 (three hundred million rupiah).
i. Article 12A
   Criminal penalty is for a maximum of Rp. 50.000.000,00 (fifty million rupiah).
   Criminal penalty included in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption have a special minimum limit and a special maximum limit in each penalty, which is a minimum minimum penalty of at least Rp. 50,000,000 (fifty million rupiah) and a special maximum penalty of Rp. 1,000,000,000,00 (one billion rupiah). Similar to criminal imprisonment, criminal penalty do not have neither a pattern of punishment nor a guideline for punishment. In the level of the implementation, criminal penalties can be substituted with imprisonment penalty.

4. Additional Punishment
   Additional punishment included in Article 18 section (1) of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 concerning Eradication of Corruption Crime, as follows:
   a. The deprivation of tangible or intangible, movable or immovable property used for or obtained from corruption crime, including companies belonging where the corruption acts are committed, as well as properties that replace those properties;
   b. The payment of subtitution money as much as with assets that obtained from corruption acts;

c. Closure of all or part of the company for a maximum of 1 (one) year;
d. Revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or being given by the Government to the convicte.

If the convict does not pay the subtitution money in than 1 (one) month after the legal decision of the court, the property can be confiscated by the prosecutor and auctioned off to cover the substitution money (Article 18 section (2). If the convicts dont have sufficient assets to pay for substitution money, then the convicts will be imprisoned that does not 0exceed the maximum threat of the principal is in accordance with Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 concerning Eradication of Corruption and the length of time the criminal has determined in court decisions (Article 18 section (3).

Related with penalty of substitute money payment above, the question arises whether the suspect has returned state losses since the investigation phase of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 in Article 4 which states that "the return of state finances does not eliminate crimes" , need to rethink related to the formulation of this Article 4.

Formulation of criminal sanctions on corruption as formulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 means to tackle the corruption corruption in Indonesia. "The use of criminal law is a response to a symptom and not a solution by eliminating the causes. In other words, criminal sanctions are not "causative treatment", but only symptomatic treatment. Symptomatic treatment through criminal sanctions still contains many weaknesses, so the effectiveness is still questioned.

2. Formulation of Criminal Sanctions on Corruption Crimes in Relation to the Alignment of the Objectives of Criminal Procedure

The formulation of criminal sanctions against perpetrators of corruption is the entrance to prevent a crime. The purpose of punishment is also very important to find the justification of criminal use so that the criminal becomes functional. The formulation of punishment purpose is directed to differentiate and measure to what extent the types of sanctions in form of criminal acts and actions that have been determined at the legislative policy stage can achieve the objectives effectively. The purpose of punishment consists of two main aspects, namely: (1) Aspects of public protection against criminal acts: (2) Aspects of protection / fostering individual offenders.

According to Barda Nawawi Arief, the strategy of criminal punishment policies has to consider to the essence of the problem. If the

essence of the problem is more of an economic matter, then the penalty should be prioritized. Corruption in Article 2 and Article 3 of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 related to cost on state's finances is one of the 7 (seven) categories of corruption. Article 2 and article 3 are acts of corruption that directly affect the finance of the state. Therefore, the purpose of punishment is different one another. In order to protect the law interest, particularly is the state's finance, the purpose of the punishment in Article 2 and Article 3 concerning on how to repay the loss of state's finances.

The results of the research of the Jambi District Prosecutor's Office indicate that the country's financial losses in 2017 reached Rp.7,700,000,000 from 13 cases. The state financial losses that returned through the subtitution money is Rp. 3,656,355,444 while the remaining Rp. 4,04,364,256 were not refundable in four cases. The suspects who return state financial losses are sentenced to an average of 1 year, 1 year 4 months, 1 year 6 months, a maximum of 2 years (one case), while the suspects who do not return state finances losses are sentenced to 1 year, 1 year 4 months, the highest 1 case is 8 years. The ability of a criminal sanction with a system of cumulative imprisonment and penalty of substitute money payment to tackle the corruption crime, will be determined by the ability of the criminal penalty to fulfill the purpose of punishment. Crime in essence is only a tool to reach the goal. Based on the results of the study, the pay of substituon money as a corruption penalty is not fully optimized because penalty of substitute money payment cannot be totally returned.

Adly argues "The regulation of criminal penalty and substitute money payment against corruption in Indonesia in terms of regulation of substitute money payment is actually more complete in Indonesian law than in Malaysian law, but in fact it has not been able to return all state losses decided by the court. Adly's opinion is accepted, but the authors views that the formulation of criminal sanctions in corruption crime in Indonesia is quite complicated. The formulation of criminal penalties as principal and substitute money payment as an additional punishment makes it difficult to implement. The return of state's finances does not remove the criminal. It can only be a detrimental matter.

In comparison, in Malaysia, it does not specifically regulate penalty of substitute money payment as an additional punishment, but the provision of penalties determines a minimum limit of five times the bribe value. It can automatically return the value of state financial losses. Referring to the Malaysian state, the formulation of criminal sanctions in corruption crime in Indonesia must be renewed. The purpose of punishment must accommodate two aspects, the protection of the community and protection of individuals. The concept of Plea Bargaining in a country that adheres to the comman law legal system can be adopted

mainly on corruption that is detrimental to state finances. This plea bargaining can be done at the stage of investigation. If the plea bargaining is successful, then the results are determined through court determination. This kind of judicial process can be carried out quickly and at a low cost, the legal objective can be achieved in providing legal certainty, expediency and legal justice.

Conclusion

1. The strategy of the criminal punishment policy in corruption must consider to the essence of the problem. If the essence of the problem is more about economic problems, the penalty sanctions should be prioritized, especially on corruption that is detrimental to state finances. Formulation of criminal sanctions in corruption crime is currently more complicated. Thus it makes it difficult to implement.
2. The formulation of criminal sanctions in corruption cases currently do not run well with the objectives of the punishment.

Suggestion

Appropriate criminal sanctions need to be formulated so that the purpose of punishment in corruption can be achieved. It is formulated by conducting Plea Bargaining, the same with countries that adheres the Common Law System. Here, the suspects must return the state's losses and pay a penalty, but the suspect remains guilty through judge's decission.

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