

## **CRIMINAL POLICY IN COUNTERMEASURES CORRUPTION IN INDONESIA**

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### **Abstract**

The criminal policy has an important role because it aims in the formation and abolition of legislation to respond to the dynamics of society. The criminal policy of establishing a criminal law system in Indonesia is based on Pancasila as the basic law aimed at realizing justice, certainty, and expediency. based on this matter, in this paper will be discussed how criminal policy in corruption crime in Indonesia and whether the criminal policy is running quite effective in the eradication of corruption crime in Indonesia. This paper aims to find out and provide constructive feedback in the eradication of corruption in Indonesia. This paper uses a socio-legal approach, a legal science approach that uses the help of social sciences derived from interdisciplinary science. The conclusion is that criminal policy can run well and effective even though there are still shortcomings, were not all criminal policies that can answer all the problems in the community. Therefore there should be synergic efforts between law enforcement agencies, both the police, prosecutors and the corruption eradication commission (KPK) to implement the mandate of the law in accordance with existing authorities.

**Keywords:** Corruption, Criminal Policy, Indonesia, Law.

### **1. INTRODUCTION**

Indonesia is idealized and aspired as the State of law by the founding fathers' as a State of law (Rechtsstaat or the Rule of Law). Even in the fourth amendment of the 1945 Constitution Article 1 Paragraph (3) it is affirmed that "the State of Indonesia as a State of Law", which until now still continues to seek a codification of national criminal law and made on the basis of the minds of the Indonesian nation to adapt to the increasingly complex age , therefore, the President in this case the government together with the Parliament as a legislative body can discuss a law that will be made to achieve the state goal which is legal policy in the life of nation and state. In early 1998, a wave of student-led demonstrations emerged with total reforms in all sectors of social, economic, political and legal sectors. The demand was so swift that the Suharto regime collapsed and former President Soeharto resigned on Thursday, May 21, 1998, leading to widespread cleansing in all sectors of the elements of Collusion and Nepotism Corruption. Even now the initiative to reform the law actually came not only come from the legislative institution but at the urging of students and society. In the field of law, reforms will be made to the provisions that are deemed to be incompatible with the

conditions of the developing country, undemocratic and not upholding the desire of a clean government which is a law on combating corruption and non-corruption. The law is a code of criminal law that is categorized as a normative provision of a special nature, meaning that it contains substantive rules that undergo a shift from the general sense that exists rather than contains rules that are contrary to human rights. Changes in state policy from a regime or government in a country can not be separated from the legal politics of the regime in power. Regarding the politics of law in the prosecution and prevention of corruption offenses from a regime always changing according to the demands and policies adopted by the ruling power holder at that time which is adjusted to the dynamics of the progress of the times, because the corruption problem seems to be unfinished since the establishment of the Republic of Indonesia until now.

According to Artidjo Alkostar Since the period of independence and the old order, corruption has occurred much, even though the Indonesian government implements several sets of rules of law. Similarly, in the era of the New Order regime, the anti-corruption law was enacted but at the same time, the new order government did feudalization of the law. Corruption in Indonesia reaches its peak because of the predicate of the most corrupt countries in the world. Rampant corruption during the New Order regime correlated with prevailing legal ideology and law enforcement ideology. In the post-reform era of 1998/1999, the prevailing legal system and its law enforcement system has not only changed, so corruption crimes remain rampant. In addition, there is incoherence between what is specified in the domains of the cosmos, nomologos, and teknologos. This inconsistency shows the phenomenon of a half-hearted corruption eradication effort, not serious and does not have a clear strategy (Artidjo Alkostar, 2008, p.381-382).

Lately, the corrupt behavior seems to have penetrated into various sectors, even decentralized to areas involving local officials. Unfinished legal action against officials in budget corruption, as well as the completion of judicial and tax mafia cases involving unscrupulous law enforcement officers and foreign officials have reappeared cases involving legislators both at the central and regional levels (D.Andhi Nirwanto, 2013, p. 82).

A large number of officials in the areas that are being carried out for the prosecution of various corruption cases further adds to the length of the action against corruption cases by law enforcement agencies, whether in the investigation, investigation or prosecution phase. There is almost no sector or field that is immune from the disease of corruption, in fact, in reality, has spread to all aspects of human life. From the above explanation, discuss about the history of corruption eradication becomes important and interesting, in this paper the author wants to raise the title with the theme: "Criminal Policy in Penanggulangan Corruption in Indonesia". From the above problems, can be formulated as follows: 1.) what is the criminal policy in eradicating corruption in Indonesia? and 2.) Are corruption laws effective in combating corruption in Indonesia?

## **2. DISCUSSION**

In writing this paper to understand and will provide an information picture that provides benefits, input and critical review of criminal policy in corruption law, in order to realize the development of law or legal reform in Indonesia in accordance with the ideals of the Indonesian nation as a state law of Pancasila for creating a prosperous society fair life in the life of nation and state as stated in the opening of the 1945 Constitution and the Constitution. The criminal policy in corruption law is a very urgent policy, because it concerns the interests of the nation and the State, including the interests of society (public interest). This is in order to save the assets or finances of the State and include the interests of the community.

### **2.1. Criminal Policy in Political Legal Perspective.**

Criminal policy or also called criminal law politics is a State policy in criminal law, which involves penal policy and nonpenal policy. According to Mahfud MD in his book entitled Political law, found that legal politics is a "legal policy or line (policy) official about the law that will be enforced either by new manufacture or with old law enforcement in order to achieve state goals". Thus legal politics is the choice of the laws to be applied as well as the choice of laws to be revoked which are all intended to achieve the objectives as stated in the Preamble of the 1945 Constitution (Moh.Mahfud.MD, 2009, Edisi revisi, p. 1-2). So then the politics of criminal law or called criminal policy in the view of Mahfud MD is about the making and change or substitution in criminal law.

The definitions advanced by some other experts indicate a substantive equation. According to Padmo Wahjono said that legal politics is the basic policy that determine direction, form, and legal content be formed (Padmo Wahjono, 1986, p.160). In another article, Padmo Wahjono clarifies the definition by saying that legal politics is the state policy of what is used as criteria to punish something within which includes the

establishment, implementation and enforcement of the law (Padmo Wahjono, 1991, p.65). According to Teuku Mohammad Radhie defines the politics of the law as a declaration of the will of the state authorities regarding the laws prevailing in its territory and on the direction of development of established law. According to Satjipto Raharjo defines the politics of law as the activity of choosing and the means to be achieved to achieve a social goal with certain laws in society whose scope includes answers to some fundamental questions, namely 1) what goals are to be achieved through the existing system; 2) which ways and which are best perceived to be used in achieving that goal; 3) when and how the law should be changed; 4) Can a standard pattern in deciding the process of choosing goals and ways to achieve those goals well (Satjipto Raharjo, 1991, p.352-353). According to Soedarto argued that legal politics is a state policy through the state bodies authorized to establish the desired rules that are expected to be used to express what is contained in society and to achieve what is aspired to (Soedarto, 1979, p.15-16; Soedarto, 1983, p.20). Then in 1986, Soedarto argued that legal politics is an attempt to realize good rules according to circumstances and situations at a time (Soedarto, 1986, p.151). From the above opinion, the law is positioned as a tool to achieve state goals. Associated with this Sunaryati Hartono argued about "law as a tool" so that practically legal politics is also a tool or means and steps that can be used by the government to create a national legal system in order to achieve the ideals of the nation and the purpose of the state (C.F.G.Sunaryati Hartono, 1991, p.1).

The rationale of such definitions is based on the fact that our country has a goal to achieve and that the effort to achieve that goal is done by using the law as its instrument through the enforcement or non-existence of laws in accordance with the stages of development faced by society and the state we (Moh.Mahfud.MD, 2009, Edisi revisi, p. 3).

From the definition of the experts above defines that criminal policy substantially is State policy in criminal law which aims to make and change the criminal law in order to realize the orderly and law-abiding society, in order to create a safe and peaceful country to reach a just and prosperous society.

## **2.2. Criminal Policy in Corruption Law in Indonesia**

### *2.2.1. The Enactment of the Corruption Laws of the Old Order Regime*

The criminal law which until now is used and disclosed in Indonesia is indeed a legacy of the Dutch colonial period of centuries-old ruling in Indonesia, namely the Criminal Code law authorized by the Government of the Dutch East Indies in 1886, the *Wetboek van Strafrecht voor Nederlandch Indie* which was imposed in 1915 and since 1946, *Weetbock van Strafrecht voor Nederlandch Indie* has been enacted through Law No.1 of 1946 on Criminal Law applied in Indonesia. It was only through Act No.73 of 1958, precisely dated September 29, 1958, declared the passage of Law No.1 Year 1946 for all Wila → Indonesia, so since then apply Criminal Law (Criminal Code) (Wiryono Prodjodikoro, 1986, p. 11).

One of the objectives of such a special arrangement is to fill the shortcomings and legal vacuum that are not covered by its regulation in the Indonesian Criminal Code, but with the understanding that it is still within the limits permitted by both Formal and Material Criminal Laws. In fact, there are some arrangements in the Criminal Code was drawn into a part in a corruption act, so that between the Criminal Code itself with the law that regulates Corruption Crime complement each other. The rules in the Criminal Code must always follow the times, as also K. Wantjik Saleh (K. Wantjik Saleh, 1983, p. 19- 20):

"What is contained in the Criminal Code must not be able to keep up with the times. There is always a variety of actions that the Criminal Code does not mention as acts of pidiness, but society perceives it as an act that harms society and is against the law ". Thus, the Authority / Government may issue a regulation or Act stating that an act is a crime. Because the act is not within the Criminal Code, it is usually referred to as Criminal Acts outside the Criminal Code ".

In fact, according to Loebby Loqman, the rules of corruption act as a companion of the Indonesian Criminal Code, both in the sense of both the Criminal Law and the Formal Criminal Law, as (Loebby Loqman, 1991, hlm. 5)

"From the time of the drafting of the Anti-Corruption Eradication Act it is recognized that the Act is a Special Criminal Law. That is the Criminal Law which also regulates the substance and procedural law outside the Criminal Code (Penal Code) and the Criminal Procedure Code (KUHAP). As a Special Criminal Law in the field of Corruption, the law can be regarded as a counterpart to the existing legislation, namely the provisions contained in the Criminal Code. Because it is considered that the existing provisions are less able to eradicate corruption thoroughly, quickly and efficiently".

The history of the prevention of corruption in Indonesia after independence in 1945, began in the period of

the old order regime, ie by the issuance of Military Rule No: Prt / PM / 06/1957 dated April 9, 1957, Military Ruling Regulation No: Prt / PM / 08/1957 dated 27 May 1957, and the Military Rule No: Prt / PM / 011/1957 dated 1 July 1957. The three rules were subsequently replaced by the Central War Rulers No: Prt / Perpu / 013/1958 dated April 16, 1958. Two years later were replaced with Perppu No.1 Year 1960 (State Gazette No.3 Year 1961) has established Perppu no.24 of 1960 it becomes Law no. 24 Prp Year 1960 on Investigation, Prosecution, and Examination of Corruption. All of these laws have functions to support and enforce the Criminal Code (KUHP) (Muhammad Najih, 2014, p.100).

In Article 1 letter (a) of Law No. 24 Prp of 1960, there is no "unlawful" element as an act to enrich themselves, others, or a body. There is a very difficult element restriction in its proof, the element of "committing a crime or offense" which must be proved first, before further proving the element of "Enriching oneself, others or a body". Mentioned in Article 1 letter (a) of Law no. 24 Prp Year 1960, namely: "The act of a person who with or for committing a crime or violation enrich himself, another person or entity that directly or indirectly harms the financial or economic State or Region or harms a body of other laws that use capital or concessions from the State or society ". Apparently, in the implementation of this corruption eradication, the use of Article 1 letter (a) of Law No.24 Prp Year 1960 effectiveness is not as original expectations because it is very difficult to prove the element of "committing crime or violation" it first.

The difficulty is possible when it is recalled Muladi's opinion that the acts of the actual perpetrator, as in corruption, are Low Visibility, which is difficult to see because it is usually covered by regular, regular work activities involving professional skills and complex organizational systems and hence very difficult problem verification. Inadequate by this law, as described above, because of the placement of elements "committing a crime or offense" which must be proven in advance to further prove the element of "enriching yourself, others, or the body". Andi Hamzah stated about the existence of keha-rusan to prove in advance the element of "committing a crime or offense", namely (Andi Hamzah. 1991, p. 38):

"Thus, in order to fulfill the above mentioned first element, there must be a crime or violation committed first, then fulfill the following elements, namely the self-enriching element, another person or an entity that directly or indirectly harms the financial or economic State or Territory or harming an Agency which receives assistance from States or other Legal Entities which consume capital and social concessions."

### *2.2.2. The Law on Corruption in the New Order Regime*

During the New Order regime, the Minister of Justice R.I. (then served by Oemar Seno Adji) submitted a proposal of the Corruption Criminal Act, by letter No.JS5 / 6/17 dated July 11, 1970. With the approval of the then President, the Minister of Justice of the Republic of Indonesia, on behalf of the Government, filed the draft Law on Corruption to the House of Representatives of Gotong Royong (abbreviated "DPRGR"). Then the Gotong Royong People's Legislative Assembly approved the Ranagrams of the Act on 29 March 1971 which was subsequently stipulated as Law no. 3 of 1971 on the criminal act of corruption as well as revoke the Law no. 24 Prp Year 1960 on Investigation, Prosecution, Corruption Criminal Investigation.

In Article 1, paragraph 1, (a) of Law No.3 of 1971, it is found that there is a strict definition of the "unlawful" element that is very different from the textual from the old law which only recognizes the element " violations. "Mentioned in Article 1 paragraph 1 letter (a) of Law No.3 of 1971 that:"

"Convicted of Criminal Acts of Corruption: Any person who is unlawfully commits to enrich himself or another person or a person who directly or indirectly harms the finances of the State or the economy of the State or is known or reasonably suspected by him that such conduct is detrimental to the State's finances or the economy of the State ".

The "unlawful" element of article 1, paragraph 1 (a) of Law no. 3 of 1971 contains a broad definition, meaning as a substitute of the element of "committing a crime or violation" of Article 1 letter (a) of Law no. 24 Prp ta-hun 1960, then the element of "against the law" of Law No.3 of 1971 includes the notion of action against hu - mum in the material sense. The purpose of the expansion of the "unlawful" element of action, which not only in the formal sense, but includes the law's unlawful matters, is to facilitate its proof in the hearing, so that an act which is regarded by society as unlawful as materially or disgraceful of his actions, the perpetrator can be punished for a criminal act of corruption, although his actions are not illegal in a formal way. It is concluded that the definition of lawlessly materially in a positive sense would constitute a violation of the principle of legality in Article 1 paragraph 1 of the Criminal Code, meaning that although a material deed is an act against the law, if there is no written rule in the criminal law , such conduct shall not be imposed. One of the justification reasons set forth in Law no. 3 of 1971 is on the provisions regulating the Statement of Defendant Defendants in accordance with Article 17 paragraph 2 which states that (R. Wiyono, 1986, p. 52):

"A description of the proof set forth by the defendant that he is not guilty as referred to in paragraph (1) may only be permitted in the case of: 1. where the defendant explains in the examination that his conduct is in accordance with reasonable conviction does not harm the State's finances or the economy of the State, or 2. if the defendant explained in the examination, that his actions were done in the public interest".

### *2.2.3. The Enactment of the Corruption Law in the Post-Reform Era of the Regime:*

After the fall of the New Order regime, the president Soeharto put his post in 1998, the MPR held Special Siding. One of the most important decisions taken by the MPR is the stipulation of MPR Decree No.XI / MPR / 1998 on the administration of a clean and free State of corruption, collusion, and nepotism. Then the House of Representatives together with the President in 1999 ratified Law no. 28 of 1999 on the Government of the Republic of Indonesia which is clean from KKN. The deed contains the criminalization provisions of Corruption and Nepotism in the 21st article and 22nd article as a new crime in the Act. Then to implement the Decree of the People's Consultative Assembly, the enactment of Law No.31 of 1999 on the limitation of corruption, which abolished the Act No. 3 of 1971. In addition the government then made the implementation of anti-corruption laws such as Decision Presidential Regulation on State Inspector Procedures, Presidential Decree on State Property Inspection Commission (KPKPN), then in 2001 enacted Law No.20 of 2001 on Eradication of Criminal Criminal Amendment of Amendment to Law No.31 of 1999, which is intended to correct the shortcomings of Law No.31 of 1999 (Muhammad Najih, 2014, p.101).

In 2002, KPK was established based on Law No.30 of 2002 on Corruption Eradication Commission. That the establishment of the commission is to strengthen existing law enforcement agencies, namely the Police of the Republic of Indonesia and the Attorney General of the Republic of Indonesia in eradicating corrupt acts. That up to now the problem of corruption is still happening and increasingly tend to increase and the mode of metamorphosis increasingly sophisticated, although the action taken by the three institutions is very active, has many officials from the center until the area of entangled corruption cases and up to now still much in the process investigations, investigations and prosecutions are also those that have been executed. so the problem of corruption is still a priority agenda in every government regime. Indonesia as State Ratified the United Natio Convention Against Corruption in 2003, the harmonization of national legislation related to the eradication of corruption crime is a priority.

In relation to criminal procedure law in practice, it is often left behind with the development of information technology, for example, the use of teleconference facilities, electronic evidence, wire tapping is not yet regulated in criminal procedure law. In practice during this period related to these matters is based on special rules in various laws and regulations eg terrorism law, corruption law, money laundering law, ITE law. The reality proves that Law No.8 of 1981 on KUHP should have been revised in accordance with the demands and progress of the times (Andhi Nirwanto, 2013, p. 88-89).

That the eradication of corruption in Indonesia runs quite effectively, so that the eradication of criminal acts of corruption which, in the past period, has not or can not touch the perpetrators who have access to great power, have economic power, have political power, the law can now be enforced, this cannot be separated by the new criminal policy in Indonesia.

## **3. CLOSING**

That the criminal policy in the Act is not criminal corruption in Indonesia from the old order regime, the new order up to the post-reform regime has undergone important and quite effective changes in the eradication of corruption, however the existence of a regulation is not enough to answer the problem that exists in the community because speaking of law enforcement will not be separated by the legal system consisting of the existence of legal substance, the existence of legal structure and the existence of legal culture. That there is a conflict of interest in law enforcement that leads to unhealthy competition even endanger the agenda of eradicating corruption itself. Because the legal politics related to the eradication of corruption in the future should be oriented in order to strengthen the KPK, the Attorney and Police agencies as the front guard in the eradication of criminal acts of corruption are increasingly massive and entrenched so as to require a criminal policy in order to realize the supremacy of the law of the authoritative, the existence of legal certainty and contains benefits for all citizens. Therefore, the three state institutions, namely the police, prosecutors and KPK must synergize and continue to work together to complement each other in order to implement the mandate of corruption eradication law in Indonesia.

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