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Criminalization of Corruption Actors as Prevention Efforts Corruption

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Abstract:
Criminal in Absolute Theory is not just to take vengeance to the person who has committed a crime, but have certain goals that are beneficial. This theory is often called the theory of objective (utilitarian theory). That penalty was as revenge for the criminal offense committed by a person. At first sentence at the time of the birth of this theory is contrary to humanely and in practice have the intent to frighten or deter others. Execution such as the death penalty carried out in public in order to be known by the public. On the Theory of Relative or relative, the penalty imposed to a person is based on guaranteeing the rule of law and order in society. The purpose of punishment is: repressive goal is to recover the losses suffered by the community as a result of the crime. Preventive purpose is to prevent the crime in order not to happen again. While preventive purposes can be divided into 2 parts: generale preventie, namely the threat of punishment aimed at the general public so that they do evil; speciale preventie, namely that the threat of punishment is addressed to the inmate in order not to repeat such actions.
The number of lighter punishment verdict in the appeal of the prosecutor's demands as has been undisputed. This tendency does not only occur in ordinary criminal cases in the general court, but also in the special courts such as the corruption court that in several decisions the punishment also tend to be lighter than the demands of the public prosecutor. Various ways have been done to restore the image of Indonesia in the eyes of the law, but these efforts have not been able to boost the image of the law. Factors considered by the judges as a guide in determining the severity of the crime is the mention of the duration of the criminal in the demands that psychologically affect and direct the criminal past will be decided the judge, the judge is less digging and consider the aggravating and things lighten the acts committed and the life of the accused, the judge wants the case to get it over and not be appealed and the judge's perception and thinking to achieve balance through the verdict.

Keywords: *Corruption Actor, Prevention, Effort Corruption*

1. Introduction

In general terms corruption is defined as the act relating to the public interest or the general public for personal gain or a particular group. Specifically, there are three phenomena are covered in terms of corruption, namely bribery (bribery), extortion (extraction), and nepotism (nepotism). In essence the crime of corruption, including in the economic crimes, which when compared to the anatomy of economic crime are:

1. Incognito or hidden nature of evil intent and purpose (disguise of purpose or intent).
2. Confidence perpetrator against the victim of ignorance and thoughtlessness (reliance upon the ingenuity or carelessness of the victim).
3. Concealment offense (concealment of the violation).

The seriousness of the government to discuss and tackle corruption is borne Act No. 20 of 2001 on the Amendment of Law No. 31 of 1999 on the Eradication of Corruption (UUPTPK), which brings a change that gives legal certainty, eliminate various interpretations / interpretation and equitable treatment in discussing Corruption Act. Judging from the material side cargo, bringing substantial changes, so philosophical, sociological and juridical force are expected to provide a strong power, in an effort to realize the law enforcement based on justice, truth and the rule of law. UUPTPK basically refers to the provisions contained in the Criminal Code, so that the legal framework used as the basis for the prosecution perpetrators of corruption as a criminal act using the legal norms of the Criminal Code (lex generalis). Provisions governing in UUPTPK only a few chapters from the formulation of the manufacturer's own UUPTPK (lex specialist), while the other is pulled from the formulation of the Criminal Code. The chapters were, among others, Article 1,2,3,4,13,18,19,20,21,22,41,42 and 43. However, Article 21, 22 and 24 is not about corruption in the sense of material and financial, because the three chapters of the acts that complicate the proceedings at the level of investigation, prosecution and court examination siding upfront. Crime in the material sense and finance as stipulated in Article 2 and 3 UUPTPK.

Article 2 (1) determines:

Everyone who is against the law acts to enrich themselves or another person or a corporation that can be detrimental to state finance or economy of the state, shall be punished with life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20

(twenty) years and a fine of at least Rp. 200.000.000, - (two hundred million rupiah) and maximum Rp. 1.000.000.000, - (one billion rupiah) ".

The provisions of this article requires some characteristic elements of the crime of which one of them is an act against the law in its application be problems in the practice of the judicial system of corruption, especially concerning tort materially. Conception of tort material in essence has been known in the criminal justice system in Indonesia but is not effective and less attention to the judicial system in Indonesia with the following considerations: First, tort originally defined formally (wederrechttelijk) has undergone a shift and which is considered a breakthrough in criminal law, because of the nature of the act is now interpreted also as material which includes any act that violates the norms of decency society or any act that is considered reprehensible by society, resulting in a change in the sense of being wederrechtelijk, particularly acts against material law in criminal law. Secondly, wederrechtelijk got a very strong influence on the definition of tort clearly in civil law through Cohen-Lindenbaum arrest on 31 January 1919. Law No. 3 of 1971 on the Eradication of Corruption, in particular Article 1, paragraph (1) letter an and the Company generally closely related between the application of tort doctrine materially CohenLindenbaum arrest.

Based on the theories of punishment are various ideas, which traditionally can generally be divided into two (2) groups of theories, namely:

1. Absolute theory or the theory of retaliation
2. The relative theory or theories purposes.

According to the theory of absolute punishment imposed solely because the person has committed a crime or a criminal offense (quiea peccatumn east). Crime is the result of an absolute that must exist as a retaliation against the person who committed the crime. Thus, the justification of crime lies in the existence or occur crime itself.

According to the theory of relative convict not to satisfy the demands of absolute justice. Retaliation is defined as something that has no value but only as a means to protect the public interest. Crime in this theory is not just to take vengeance to the person who has committed a crime, but have certain goals that are beneficial. This theory is often called the theory of objective (utilitarian theory).

Associated with the implementation of imprisonment as a form punishment by upholding human rights, within the framework of this theory will only be delivered and effort criminal theory that takes into account factors related to human rights. Theory purpose of punishment, integrative (Humanitarian system Pancasila) the right to be applied in Indonesia, said that today the problem of punishment becomes very complex as a result of efforts to pay more attention to the factors that become Human Rights, and make the criminal operational and functional,required a multi-dimensional approach that is based on the impact of punishment, both concerning the impact of an individual nature or impact of a social nature. This approach resulted in the necessity to choose the unifying theory of the purpose of punishment that affects its function within the framework of the damage caused by a criminal act. According to this theory the purpose of punishment is to improve individual and social damage caused by a criminal act. In the concept of the draft Penal Code of 2004 contained the purpose of punishment is:

1. Preventing doing crime by enforcing the rule of law for the sake of the community shelter.
2. Promoting convicted by conducting coaching that makes people good and useful.
3. Resolving the conflict posed by crime, restoring balance and bring a sense of peace in society.
4. Freeing guilt to convict.

2. Discussion

2.1. Definition of Punishment

Crime can happen everywhere, that is not limited by space, time, and the race of a nation. This crime has a close connection with the laws or regulations in the field of criminal law, which applies in a positive way. A person who committed the crime will be processed and brought to trial and sentenced or criminal. Crime is an uneasy feeling (miserable) imposed by the judge with verdict to those who have violated criminal law legislation. Furthermore Ruslan Saleh, said that the criminal offense and is a reaction to this tangible a sorrow that intentionally inflicted on a state offense maker.

Barda Nawawi Arief, the upgrading criminology Force III at Andalas University in Padang, said that seen in the functional and operational, punishment is a series of processes and policies that deliberately planned concrete through several stages. Starting from the stage of "formulation" by legislators, then the stage of "application" by the competent authority and finally the stage of "execution" by competent authorities and finally the stage of "execution" by authorities / agencies executing criminal. "

Based on the above understanding, we can know that the punishment is a series of processes and policies. Where the stage of making laws by legislators. Later stages of the application or the embodiment of the law by law enforcement officials, including the courts and later stages of execution by other law enforcement agencies, which in this case is in the hands of the prosecutor's office itself. This execution can only be executed after the judge's decision that has been fixed.

2.2. Objective Punishment

If you look at and talk about the purpose of punishment, not off to do with discussing the theories of punishment were:

1) The theory of the Absolute, or absolute, that every crime should be followed by a criminal, may not be so and the purpose of punishment is revenge. This theory is known and adhered to scholars such as Immanuel Kant, Van Bemmelen, Van Hattum, and Hegel.

2) Theory of Relative or relative, that is to say that crime does not absolutely have to be followed by a criminal, where the purpose of punishment is that the crime committed was not repeated again and also to improve the villain.
3) Combined Theory is a combination of both the above theory, adherents are Pompe, Hugo de Groot and Rossi.

If you look at the theories mentioned above, it can be seen that the penalty is retaliation for a criminal offense committed person. Where was originally sentenced at the time of the birth of this theory is contrary to humanely and in practice have the intent to frighten or deter others. For the implementation of the death penalty as punishment carried out in public in order to be known by the public.
On the Theory of Relative or relative, the penalty imposed to a person is based on guaranteeing the rule of law and order in society. The purpose of punishment is based on this theory is:
a. Repressive goal is to recover the losses suffered by the community as a result of the crime.
b. Preventive purpose is to prevent the crime in order not to happen again. While preventive purposes can be divided into two parts:
1. Generale preventie, namely the threat of punishment aimed at the general public so that they do evil;
2. Speciale preventie, namely that the threat of punishment is addressed to the inmate so that he is no longer doing evil in the future.

Relating to the merger theory is a combination of theory Relative Absolute theory. The emergence of this theory due consideration:
a. Theory of retaliation may lead to acts of unfair, because of the problems that predispose a person to commit a crime, are not taken into account by this theory;
b. Relative theory or the theory of relative also considered biased by a combined theory, because by improving the criminal nature alone is not enough, because thus the legal awareness than the general public or the community was not given steadiness. According to the theory must also take into account the combined considered against the inmate.

2.3. Criminal Liability
A person who committed the crime recently punish if the offender should be able responsibility closely related to error, because of the principle of accountability which states unequivocally "a criminal act can be held accountable in criminal law have errors.
Criminal liability leads to the removal of the perpetrator, if it has been determined by law. Judging from the occurrence of the illicit act, then the only person able to be responsible are held accountable. In general, a person is said to be responsible can be seen from several things:
1. The state of soul.
   a. Not bothered by continuous or temporary illness.
   b. No defect in the growth / naive, idiots, insane and so on.
   c. Not perturbed by surprise (hypnotism) rage overflow and so on.
2. Ability soul
   a. Can realize the essence of his act.
   b. Can determine his will on such measures, implemented or not.
   c. Recorded can know of such action.

- According doctrinaire in order to determine the ability of responsible should be two things:
  1. The ability to distinguish between good deeds and bad in accordance with the law and contrary to the right.
  2. The ability to determine the will according to conscious about good or bad deeds done.

Code of Criminal Law does not provide restrictions, only puts it negatively that require a person was not able to give an account for the deeds done in accordance with the provisions of Article 44 paragraph (1) one cannot demand accountability on actions for two reasons, namely:
1. His soul is flawed in its growth.
2. His soul was disturbed because of illness.

Ability is the element responsible for the error, so that the element of accountability must also be proven in a follow-criminal. However, to prove the existence of the elements responsible for the ability was very difficult and takes time and costs, which are applied in practice is that each person considered capable responsible unless there are signs that show the others. Thus the criminal responsibility is the ability to accept the risk of actions in accordance with the law. Someone should be convicted defendant if it turns out that it is the actions taken against law and the defendant is able to be responsible. According to Ruslan Saleh, for the errors that led to the defendant (accountable), the defendant must:
1. Conducting a criminal act.
2. Able to be responsible.
3. Deliberately or Alpa.
4. There is no reason for forgiving.

Among the criminal acts with the person doing the criminal act there is a close relationship. People may not be accounted for in criminal law. Although a person commit a criminal act is not necessarily the person is convicted. It is impossible to be accounted for in criminal law if it does not commit a criminal act. Although commit a criminal act is not necessarily well if being the person sentenced which means that even though it happened a criminal offense but may not him that misconduct was, or could be the person doing the act but after investigation carefully, it turns outhis act it is not a crime , People who are able to responsible must meet three (3) requirements are:
1. can realize as real meaning of his actions.

2. be able to realize that his actions cannot be considered inappropriate in the association community.
3. is able to determine the intentions or desires in the commission.

Of the three terms it is known that in order to determine their ability to be responsible, there are two factors to consider, namely, intellect and the will factor. Intellect is able to distinguish between actions that are not the gathered. The will that is able to adjust his behavior to the conviction of which is collected and what is not allowed.
Are people who usually have high intellectual, sympathetic and educated. In money laundering is not possible person who disturbed state of his soul (mad), unconscious, defective in growth, idiot and so on, can do money laundering so modern and a large part is done by using financial information systems and banking systems / service providers finance-oriented advanced technology.
Criminal acts of money laundering which seeks to place, transfer, pay or spend, grant, conceal or disguise the proceeds of crime in the provision of financial services, it is not possible for offenders who have a mental disorder / state of his soul disturbed. Thus, it is almost certain that the perpetrator was a healthy mind and thoughts. Similarly, regarding the Traffic offenders to realize actions essence actions no longer need to be questioned, whether he is able to realize it or not, because of course perpetrators of money launderers realize the nature of his actions, namely to conceal / disguise the origin of the wealth gained from criminal acts and hopes that the law enforcement community or difficult to prove and trace that such property is derived from criminal acts. Thus, any person committing a money laundering offense elements meet the elements contained in the Act can be said to be able to account TTPU his act which of course can be responsibility for his actions without the need to prove.
Sometimes a person does some act at once (joint criminal offense), which is often called same loop van strafbaar feiten, or concurus. Moeljatno translate combined criminal acts, namely:
a. When someone does an act and by doing an act that violates several criminal laws.
b. When someone does some a criminal act that each stand alone, and against one of these actions have not been sentenced on the judge's decision is then judged at once.

2.4. Criminal Law Enforcement
Direction of policy in the field of law include: Developing a culture of law in all walks of life the creation of awareness and legal compliance within the framework of the rule of law and the rule of law state. Reforming the national legal system a comprehensive and integrated, acknowledge and respect Religion Law and Customary Law as well as renew the legacy of colonial legislation and national laws discriminatory, including gender injustice and incompatible with the demands of the reform through legislation.
Enforce the law consistently to ensure legal certainty, justice and truth, the rule of law and respect human right. Continue ratification of international conventions, particularly with regard to human rights in accordance with the needs and interests of the nation in the form of law. Increase moral integrity and professionalism of law enforcement officers, including the Police of the Republic of Indonesia, to grow with the community trust boost welfare, support facilities and infrastructure of law, education, as well as effective monitoring.
The law is for humans, then the implementation of the law or law enforcement must provide a benefit or usefulness to society. Society is very concerned that in the implementation or enforcement of the law, the justice noted. Relating to the enforcement of this law, B. Arief Sidhartha said that the legal order that operates in a society is basically an ideal embodiment of the law adopted in the relevant community into the rules of positive law, legal institutions and processes (the behavior of the government bureaucracy and citizens).
In the enforcement of criminal law there are four (4) aspects of public protection that should receive attention, namely:
"A. Society requires protection against anti-social acts that harm and endanger the public. Starting from this aspect it is only natural that law enforcement aimed at crime prevention.
b. Society needs protection against the harmful nature of a person. Naturally, if the enforcement of the Criminal Law also aims to improve offender crime or trying to change and influence its behavior in order to re-comply with the law and be good citizens and useful.
c. Society needs protection also against the abuse of sanctions or the reaction of law enforcement and of citizens in general. Naturally, if the criminal law enforcement also must prevent the conduct or actions that arbitrary extrajudicial.
d. Communities require protection of balance or alignment of the various interests and values are disrupted as a result of the crime. Naturally, if the criminal law enforcement also must be able to resolve conflicts caused by a criminal act, can restore balance and bring a sense of peace in society. "
Enforcement of criminal law is essentially a policy enforcement through several stages:
"A) the formulation stage, the stage of law enforcement agencies in abstracto by legislators;
b) the application stage, example the stage of implementation of the Criminal Law by law enforcement officers from the police to the court. This stage can also be called the stage of judicial policy;
c) the execution phase, the implementation phase of the criminal law in concrete by the officers for executing the criminal. This stage can also be called executive or administrative policy stage. "
Law has the components, namely: a. substantive component, in the form of rules that have relatively constant nature; b. Spiritual component, in the form of values that has a tendency to dynamic; c. Structural components, consisting of layers ranging from customs, habits, laws and regulations; d. cultural components, such as the order of human life that have aligned with the nature of the environment. In this regard, the Code of Criminal Procedure dual function, namely on the one hand trying to find and discover the real truth about the criminal act so that the question can be convicted as a reward for his actions, on the other hand is to the extent possible to avoid an innocent person in order not to be sentenced criminal.

Equality before the law (equality before the law) meant that all citizens are equal before the law, the same submission of all groups to "ordinary law of the land" held by "ordinary court". This means that no one is above the law, both state government officials as well as ordinary citizens, shall have obligation to obey the same law. The rule of law in this sense that the state officials are not free from the obligation to obey the laws governing ordinary citizens or from the jurisdiction of the ordinary courts. Not known judicial state administration in the Anglo-Saxon system. In the Common Law system, such as the US and UK, issues administrative exposed to regular courts (ordinary courts), with independent judges, to maintain one of the most important elements of the rule of law. In understanding the rule of law, constitutional law is not the source but is a consequence of individual rights formulated and affirmed by the courts. Dicey view is said to be pure and narrow view, because of the three delivered basic understanding of the rule of law, the point is "Common Law" as a basis for the protection of individual freedom against arbitrary authority. Protection of Common Law can only extend to certain personal freedoms such as freedom of speech, but cannot "assure the citizen's economic or social well-being" (guarantee the economic prosperity or social citizens) such as the protection of good physique, have a decent home, education, administration social security or decent environment, all of which require complex arrangements. An important issue of the rule of law is to prevent the misuse of discretionary powers. The Government banned

2.5. Criminalization in Corruption

Judge is the central figure that determines how the proceedings are run even in the hands of judge out a decision that will determine the further fate for a man who committed a crime. But from the beginning until now it has become a sort of habit (habit) in the practice of criminal justice in Indonesia over the years, where the criminal judge "often" (if it cannot be said to be almost always) ruled punishment especially criminal kind of prison, jail or fines with criminal past or fines are lighter in appeal or penalties petitioned the public prosecutor (prosecutor) in its demands. The number of lighter punishment verdict in the appeal of the prosecutor's demands as has been undisputed. This tendency does not only occur in ordinary criminal cases in the general court, but also in the special courts such as the corruption court that in several decisions punishment also tends to be lighter than the demands of the public prosecutor of the Corruption Eradication Commission. Various ways have been done to restore the image of Indonesia in the eyes of the law, but these efforts have not been able to boost the image of law in our country. The many areas of law that exist in Indonesia, it can be said that the field of criminal law (including the criminal justice system) ranks first that did not get the spotlight, but also got tremendous reproach in the appeal other legal fields. Factors considered by the judges as a guide in determining the severity of the crime is the mention of the duration of the criminal in the demands that psychologically affect and direct the criminal past will be decided the judge, the judge is less digging and consider the aggravating and things lighten the acts committed and the life of the accused, the judge wants the case to get it over and not be appealed and the judge's perception and thinking to achieve balance through the verdict. The attitude of the prosecutor responded to the verdict sentencing by judges who tend to be milder than the demands is to accept or reject the decision because after the decision of the prosecutor was given time to think about it in advance for seven (7) days in accordance with Article 233 Paragraph (2) Criminal Procedure Code. Accept the verdict if the verdict sentencing by the judge in accordance with the criminal acts committed by the defendant, the prosecutor may immediately accept the decision sentencing them or refused if the judgment sentencing by the judge is not in accordance with the criminal offense committed by the offender, the prosecutor will make an appeal.

In order for law enforcement and application of the law, particularly regarding the provision of crime in the future to work well and effectively then it should be the provision of the criminal (ballast and light) not only for the reasons set out in the Criminal Code and the provisions of the criminal but also need reasons beyond Criminal Code and other penal provisions. Scientific equipment such as state police, prosecutors and the judiciary also know and understand about the basic concepts of punishment. In the criminal provision should need to also consider the benefits, ballast and light criminal and do not just look and emphasizes punishment for mistakes and also the human side.

3. Conclusion

1. Criminal Absolut in theory is not just to take vengeance to the person who has committed a crime, but have certain goals that are beneficial. This theory is often called the theory of objective (utilitarian theory). On the Theory of Absolute, that penalty was as revenge for the criminal offense committed by a person. Where was originally sentenced at the time of the birth of this theory is contrary to humanely and in practice have the intent to frighten or deter others. For the implementation of the death penalty as punishment carried out in public in order to be known by the public.

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