Practice of Criminal Actions in Criminal Acts of Corruption

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Abstract. Attempting to commit a criminal act is a complete and independent offense. Attempts to commit new corruption are at the stage of intention or preparation. Attempted corruption is punishable by the same punishment as committing a criminal act of corruption. The purpose of this study is to examine the regulation of trial of criminal acts in Indonesian positive law and the practice of trial of criminal acts in corruption. The approach used in this research is the law approach and the case approach. This research data collection technique was carried out through conventional and online literature searches. The data analysis technique used in this study is qualitative because the data is presented in a narrative-descriptive manner. The results of the study show that the law only provides provisions regarding the terms of the trial of a criminal act as to what can be punished. Arrangements on trials are regulated according to Article 53 and Article 54 of the Criminal Code. The trial is not a completed offense and is not a stand-alone offense. It is proven that the experiment is regulated in the Criminal Code. If someone is accused of carrying out an experiment, an article must be charged against the desired act. The conditions in an attempt to commit a criminal act of corruption must be the same as the provisions of Article 53 of the Criminal Code, namely that there must be an intention, the beginning of implementation, and the act is not completed not solely because of its own will. The criminal threat is the same as for other corruption offenses. Legislation concerning the eradication of corruption, which contains many elements of trial, is a criminal act of bribery, both active bribery and passive bribery, and constitutes gratification. This crime will involve bribery actors from the private sector and bribe recipients from civil servants or state officials

Keywords: Corruption, Attempt

1. Introduction

Attempting to commit a criminal act is a complete and independent offense. The law basically does not provide a definition of the purpose of an experiment, but only provides provisions regarding the conditions for probation for a criminal offense that can be punished. The experiment itself can be said as an action towards something but does not arrive at the intended thing or it can also be said to want to do something and it has started but has not been completed as a crime. There are 3 (three) elements in a probationary crime that must be fulfilled, namely the intention, the beginning of the implementation and the act not being completed against the will of the perpetrator[1,2].

Criminal law arrangements for attempted criminal acts are different from criminal law arrangements for criminal acts or completed crimes. Arrangements for trial in the Criminal Code are regulated in Articles 53 and 54. However, determining a trial for a criminal offense is not as easy as it seems. The Criminal Code does not provide a clear definition of trial but only provides a form of trial that can be convicted and a form of trial that cannot be criminalized, such as trials in Article 53 of the Criminal Code and trials in Article 54 of the Criminal Code[3,4].

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Looking at the provisions in the Criminal Code, it can be seen that the probationary actor can only be sentenced to a criminal if the criminal act he is trying to commit is categorized as a crime even though the punishment is not up to the maximum limit in accordance with what is specified in the legal article that has been violated, whereas if the criminal act he is trying to commit is categorized as a violation, then the perpetrator is not punished. In other words, trying to commit an offense is not punishable[5,6].

The provisions of the Criminal Code have a relationship or connection with criminal provisions in laws and regulations outside the Criminal Code which also include not a few of which regulate trials. As in the Law on the Eradication of Criminal Acts of Corruption, there are several criminal provisions that contain an element of trial. People who are proven to have attempted to commit corruption according to one of the articles in the Law on the Eradication of Criminal Acts of Corruption may be subject to imprisonment for a maximum of life or a minimum of one year in prison and a fine of at least Rp. 50 million and a maximum of Rp. 1 billion rupiah[7,8].

The sentencing of an attempt to commit a criminal act of corruption in the Law on the Eradication of Criminal Acts of Corruption is equated with a completed criminal act, while the trial in the meaning of the Law on the Eradication of Criminal Acts of Corruption is only at the level of intention or in the stage of preparation, but has not yet materialized in the act of implementation or in other words. On the other hand, an attempt to commit a criminal act of corruption is an imperfect crime.

The trial regulated in Article 53 of the Criminal Code has a different characteristic from the trial in a criminal act of corruption. The trial offense in the criminal act of corruption as an offense is completed so that it is a deviation committed by the legislators. Reading the provisions of Book I of the Criminal Code (general provisions), it is clear that for laws and regulations outside the Criminal Code that regulate criminal provisions, they must still be guided or refer to the provisions of Book I of the Criminal Code. This should also apply to the Corruption Eradication Act.

The punishment imposed for attempted criminal acts in the Criminal Code is one-third of the principal punishment threatened, while the trial for corruption is punished with the same punishment as the principal sentence which is threatened without being reduced by one-third. The measurement of the existence of an experiment in the context of a criminal act of corruption still refers to the general doctrine in criminal law so that it is very possible to happen especially in a hand arrest operation, money or something that is used as the object of a bribe does not necessarily reach the recipient of the bribe.

The basic difference from an attempted criminal act under Article 53 of the Criminal Code with an attempt to commit a criminal act of corruption in the Corruption Eradication Law is the concept of trial according to Indonesian criminal law based on the Criminal Code which only provides an understanding of the attempt to commit a criminal act. The trial is not the focal point of the discussion because the intended experiment is an attempt to commit a criminal act that is qualified as a completed offense, so that the background and concepts underlying the arrangement of an attempt to commit a criminal act of corruption need to be given further explanation. The probationary law institution (trial offense) only threatens punishment for those who are proven to have committed a crime. The formulation of the problem in this research are How is the trial of a criminal offense in Indonesia's positive law?, and How is the practice of trying criminal acts in corruption?

2. Method

This type of research is library research. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature[9,10].

3. Result & Discussion

3.1. Arrangements for Trial of Crimes in Indonesian Positive Law

Basically the law does not provide a definition of what is meant by probation, but only provides provisions regarding the terms of probation for what kind of criminal act can be punished. Literally the experiment itself can be said as an action towards something but does not arrive at the intended thing or it can also be said to want to do something and it has started, but is not finished. Because the Criminal Code itself does not provide a definition of what is meant by an attempted criminal act, but an explanation is given regarding the conditions for a crime to be said to be a trial and can be subject to punishment, namely:

1. The existence of an intention or voornemen in the sense that the person must have an intention or a voornemen to commit a certain crime.
2. There has been a start of execution or a start van uitvoering in the sense that the person's intention has been manifested in an initiation to commit the crime he wants.
3. The execution to commit the crime that he wanted was later not completed due to problems that did not depend on his will, or in other words the incomplete execution of the crime he had started must be caused by problems that were beyond his will alone.

There is a question about the boundary between the preparatory act and the execution act, when an act is a preparatory act and when it is an implementation which is an element of an experimental offense. The explanatory memory states that the problem cannot be solved or determined by law, but is left to judges and science to implement the principles stipulated in the law. Always try to solve the problem in science which is usually associated with the opinion on the criminal basis of strafbare poging.

Attempts to commit a crime in Dutch literature are considered an unfinished offense. Attempts to commit a crime are considered a special offense. This means that another offense is regulated in the second book of the Criminal Code. The opinion that an attempt to commit a crime is referred to as an unfinished offense can be expressed in several opinions in the Dutch decision. D.Hazewinkel-Suringa in Satohid's book says that the criminal penalty is reduced by one third in a trial. It may give the impression that the reduction of the sentence is carried out for reasons that mitigate the sentence. Such an opinion is not true because then people assume that an offense has been completed, but it is carried out in the case of a criminal offence.

Trial is not a criminal act that stands but is only a form of it, namely a form of offense that does not have an ending. The article on trial does not extend the formulation of the offense. So not an ausdehnungsgrund tatbeststands. Nor does it expand on the people who are responsible for the offense. The article regarding probation is only given by an ausdehnungsgund staff, namely that the punishment specified in the formulation of the offense can also be imposed on perpetrators who are unsuccessful in their efforts to resolve the crime. The confinement of probation means an extension of the punishment for an offense, even though the act has only been partially carried out.

Trial is not a stand-alone offense. It is proven that the experiment is regulated in the Criminal Code. So that if someone is accused of carrying out an experiment, an article must be charged against the desired act. Because the article has not fulfilled all of its elements due to the unfinished business of the act, the article on trial is an article that must be included in the indictment. Thus proving that the article on trials contained in the Criminal Code cannot be indicted independently. Of course, the indictment of the experiment was followed by the crime the perpetrator wanted, namely the crime contained in the Criminal Code.

Furthermore, regarding the incapacity experiment, it is an experiment that is impossible to cause a complete offense. There are two criteria for an inability experiment, namely inability because of the object (for example, someone tries to kill but turns out the person is already dead) and unable because of the tool (for example, someone tries to kill using poison, but turns out the poison is sugar). In general, the arrangements for trials are regulated according to Article 53 of the Criminal Code which states:

1. Attempts to commit a crime shall be punished, if the intention for that has been evident from the beginning of the execution, and the execution was not completed solely due to one's own will.
2. Maximum principal penalty against a crime, in the case of probation reduced by one third.
3. If the crime is punishable by death or life imprisonment, a maximum imprisonment of fifteen years shall be imposed
4. The additional penalty for probation is the same as a completed crime.

There are things to pay special attention to in the above translation. There is the word allen in the original text which means it is translated by word alone. The word allen which literally translates to only, in the Indonesian Criminal Code is translated as "solely". The problem of the word only or "solely" becomes important when discussing the unfinished execution of a crime in an experiment.

What exactly does the legislator want by including the word "only" in the formulation of Article 53 of the Criminal Code above. This problem will be discussed again when discussing the conditions of an experiment. If you pay attention to the first sentence of Article 53 of the Criminal Code above where it says "attempting to commit a crime is punishable", it shows that what can only be convicted is an experiment on the type of crime offense, which means that carrying out an attempted offense offense cannot be punished. The above is reinforced by Article 54 of the Criminal Code whose original text reads "poging tot overtrending is niet strafbaar" which means "trying to commit an offense is not punishable".

The problem now is why trying to commit this type of offense is not punishable. However, before getting to the question of why trying to commit a type of offense cannot be punished, it is still a question why it is not possible to punish an attempted violation which is explicitly stated once again in an article, namely Article 54 of the Criminal Code. In the first sentence of Article 53 of the Criminal Code, it can be concluded that carrying out an attempted type of offense is not a criminal offense. This is because the legislators want to avoid that legislators who are lower than the Criminal Code "do not deviate from the general provisions contained in the Criminal Code". Thus, it is hoped that the legislators will not make provisions that can convict an attempt to commit a type of offense. Although in practice it turns out that in certain cases, especially in the violation of the law, an action can be taken.

It is not possible for this type of offense to be punished, because it is considered that there is so little interest in the law being violated or the legal consequences that will be caused by an experiment. Criminal law is a law that has the nature of giving suffering to violators. Criminal

law has a cruel nature, so it should not always be imposed on every violator of the provisions in the law that is caused by a small amount, on the contrary, the perpetrator is not punished.

The word "only" or "solely" in the formulation of Article 53 of the Criminal Code is to emphasize that a person cannot be convicted of having carried out an experiment if the implementation is not completed, it must be caused "only" by a voluntary resignation from the perpetrator. The slightest factor originating from outside the perpetrator that causes the perpetrator to be forced to undo the intention, must be considered not as a voluntary resignation from the perpetrator. So the only reason not to convict a person who has initiated the implementation of his intention is the will to resign voluntarily.

It can be seen in Article 53 of the Criminal Code that the intention and the beginning of the implementation are formulated in one breath. So that it is important to start this implementation in determining whether there has been an attempt to commit a crime or not, from the start of a person having an intention to the goal of the desired action usually consisting of a series of actions.

3.2 The Practice of Trial Crimes in Corruption Crimes

Theoretically, the penalties imposed on the perpetrators of the probationary offenses are not as severe as the penalties for the offenses which have been carried out perfectly, such as murder, theft, mistreatment and others. Article 53 Paragraph (2) of the Criminal Code explicitly states that the maximum principal penalty for crimes, in the case of probation, is reduced by one third. The same applies to assistance (medeplichtigen). The conditions for attempting to commit a criminal act of corruption must be the same as the provisions of Article 53 of the Criminal Code This means that there must be an intention, the beginning of the implementation, and the act is not finished not solely because of one's own will. The punishment that will be imposed on the perpetrator of a trial of a criminal act is the same as that of a criminal offense that will be carried out perfectly as stated in the provisions of Article 2, Article 3, Article 5, to Article 14. Article 53 of the Criminal Code also contains an understanding that in order to impose a crime on a new person trying to commit a crime has a strong legitimacy basis, then all the conditions stated in the article must be fulfilled.

The condition of corruption in Indonesia is already so severe. It is common knowledge that almost all lines of life in Indonesia today, must be resolved with bribes and various other facilitation payments. Corruption will foster other types of crime in society, through corruption, ordinary people, state officials, bureaucrats, even law enforcement officers can bend the law. Corruption in Indonesia must be seen as an extraordinary crime (extraordinary crime), systemic in nature, and has become an epidemic with a very wide impact.

The presence of the Criminal Code with its codified characteristics is basically an embodiment of the principles of the Continental European legal system which emphasizes the importance of written legal rules for the creation of legal certainty, legal simplification, and legal unity. The Criminal Code itself contains many weaknesses and is not always able to cover all legal problems that occur in society. Not all of the crimes that occurred could be resolved using the Criminal Code, so that legislation outside the Criminal Code emerged that tried to cover the weaknesses of the Criminal Code in responding to these crimes. Materials regulated in legislation outside the Criminal Code can be in the form of modifications to the Criminal Code or can also be new provisions, for example a trial offense in a criminal act of corruption even though it is adopted from the provisions of Article 53 of the Criminal Code but the arrangement in the Law on the Eradication of Criminal Acts of Corruption is the result of modification of the legislators, where the criminal sanctions are the same as those of those who commit a final offense in a corruption crime.

Provisions regarding trial offenses in corruption crimes are an extension of the number of corruption crimes because previously this provision was not contained in previous regulations. The criminal threat is the same as for other corruption offenses, even though what the maker intended has not been achieved. With this provision, it can be concluded that the view of the legislators is that corruption is indeed a very serious crime. The assessment of the severity of a criminal act can be measured from the criminal threat imposed by the legislators.

Almost all criminal provisions in the corruption law stipulate specific minimum criminal penalties, including provisions regarding probationary offenses (Article 15). Qualitatively, according to the scientific doctrine of criminal law, certain offenses determined by the minimum punishment are those characterized by offenses deemed very detrimental, dangerous or disturbing to the public, and offenses that are qualified or aggravated by their consequences (erfolgsqualifizierte delikte). For offenses with these characteristics, especially those that have the potential to threaten the foundations of state life, criminal law must appear as a premium remidium.

Attempts to commit a criminal act of corruption are regulated in Article 15 of the Corruption Eradication Law. This article does not equate the completion of a corruption crime with an experiment, or equate the maker (dader) who fulfills all the elements of a criminal act with an assistant or between those who have completed a corruption crime perfectly and a person who has just committed an evil conspiracy to commit corruption. The provisions of Article 15 are provisions that equate criminal threats between people of such quality and individuals (dader) who commit criminal acts of corruption.

Article 15 does not mention the definition of an attempt to commit a criminal act of corruption, there is only an explanation that the provisions in Article 15 are special rules because the criminal threat for trial and assistance in a criminal act is generally reduced by 1/3 (one third) of the criminal threat. When the corruption law does not explain the meaning of trial, then automatically what applies is the definition of trial in Book I of the Criminal Code.

The concept of probation (poging) as regulated in Article 53 of the Criminal Code and Article 54 of the Criminal Code has a different characteristic from an attempt to commit a criminal act of corruption, because according to Article 54 of the Criminal Code it is stated that an attempt to commit a violation is not criminalized. The concept of trying to commit a criminal act of corruption can actually be punished, because of the background, the concepts adopted in eradicating corruption in Indonesia requires special handling, even the crime of corruption has been made as an extraordinary crime (extra ordinary crimes) in Indonesia.

Several criminal acts of bribery in the Criminal Code have been included as provisions in the eradication of corruption, which are differentiated into passive bribery and active bribery. Legislation concerning the eradication of corruption, which contains many elements of trial, is the crime of bribery, both active bribery and passive bribery, and constitutes gratification (receiving gifts and/or promises). This crime will involve bribery actors from the private sector and bribe recipients from civil servants or state officials.

The problem of bribery is one of the problems that has occurred in society for a very long time. In general, bribes are given to influential people or officials to do or not do something related to their position. People who give bribes usually give bribes to achieve their wishes, either in the form of certain benefits or to be free from punishment or legal process. So it is not surprising that the most bribed are officials in the government bureaucracy who have an important role in deciding something, for example in granting permits or granting government projects. Bribes are often given to law enforcers such as police, prosecutors, judges. Likewise for customs, tax officials and officials related to the granting of permits, whether in the form of business permits, building permits and others.

It appears that the element of the crime of bribery as part of corruption does not have to contain directly the element of harming state finances or the state economy. What is despicable in bribery is the abuse of power, discriminatory behavior by giving privileges on the basis of financial benefits and other rewards, breach of trust which is an element of democracy, mental breakdown of officials, dishonesty in competition, danger to human security, and so on.

Most cases of corruption use the mode of bribery. Based on data on corruption crimes handled by the Corruption Eradication Commission from 2004 to December 2020, a total of 1,071 cases were recorded, consisting of 704 cases of bribery. So the crime of bribery which is a criminal act of corruption, the number is more than half the number of cases of corruption that have occurred during the last 16 years handled by the Corruption Eradication Commission, this indicates that bribery behavior becomes a picture that occurs around our lives in society when managing its importance. Meanwhile, other cases handled by the Corruption Eradication Commission from 2004 to 2020 were the procurement of goods and services as many as 224 cases, budget misuse as many as 48 cases, money laundering crimes 36 cases, licensing 23 cases, extortion 26 cases, and obstructing the Corruption Eradication Commission's prosecution process 10 case.

Regarding the element of the act of giving or promising something, from the nature of the act of giving to an object, both tangible and movable, the bribery of giving an object is a criminal act of impure formal corruption or impure material, because there is an act of giving, if someone receives a gift. that thing. That is, the act of giving (something) occurs completely or when the crime of giving bribes is completed, when the object of the object has transferred its power to the civil servant who received it.

Corruption promising something is a pure formal corruption crime. For the realization of a promising act, it is sufficient to fulfill the promising conditions. It doesn't matter whether the promise is accepted or not. The crime of promising something has happened when the act of promising something has been said or written, while in corruption by giving something object (eg a gift), the gift must have been received.

The discussion of Article 5 of the Law of the Republic of Indonesia Number 20 of 2001 has shown an example that the criminal act of corruption by promising something is a completed offense. In the proof, it is very important to prove whether there is a promise in the form of speech (oral) or written between the parties (the legal subjects), and when it is proven that there is a promise made or written, it is automatically proven to have committed a criminal act of corruption. Regarding whether the promise was fulfilled or not, it is not an important part of the proof.

The granting of a promise according to Article 5 of the Law of the Republic of Indonesia Number 20 of 2001 is a completed offense. Because what is proven is only formal proof. The promise according to Article 5 of the Law on the Eradication of Criminal Acts of Corruption can be punished because it is a selective offense.

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4. Conclusion

The law does not provide a definition of what is meant by probation, but only provides provisions regarding the terms of probation for what kind of criminal act can be punished. In general, the arrangements for trials are regulated according to Article 53 and Article 54 of the Criminal Code. The trial is not a completed offense and is not a stand-alone offense. It is proven

that the experiment is regulated in the Criminal Code. If someone is accused of carrying out an experiment, an article must be charged against the desired act.

The conditions for attempting to commit a criminal act of corruption must be the same as the provisions of Article 53 of the Criminal Code. This means that there must be an intention, the beginning of the implementation, and the act is not finished not solely because of its own will. The criminal threat is the same as other corruption offenses, even though what the maker intended has not been achieved. Legislation concerning the eradication of corruption, which contains many elements of trial, is a criminal act of bribery, both active bribery and passive bribery, and constitutes gratification. This crime will involve bribery actors from the private sector and bribe recipients from civil servants or state officials

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