Formulation of Criminal Law Policy on Corruption Crimes Committed by Regional Officials

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Abstract. The formulation of the Criminal Law policy in the framework of handling corruption in the future has been attempted, namely through the formulation of the Corruption Crime Eradication Bill (August 2008 Manuscript). The concept of the Corruption Crime Eradication Bill refers to the 2003 UNCAC Convention. The criminal system formulation in the Corruption Crime Eradication Law No.31 of 1999 Jo. Law No. 20 of 2001 regulates the elements and groupings of criminal acts of corruption, there is no formulation regarding the criminal system which specifically regulates corruption crimes committed by regional officials, there is only a qualification for criminal acts of corruption that fulfill elements the subject is a Regional Official. Because punishment is related to the maximum specified for perpetrators of corruption whose subject qualifications are regional officials, it is only in the form of imprisonment for a maximum of 20 years or life imprisonment, not subject to the death penalty or other special maximum alternative sanctions. It is ironic. Bearing in mind that in Article 2 of the Law on the Eradication of Criminal Acts of Corruption No. 31 of 1999 Jo. Law No. 20 of 2001, whose subject qualifications are not regional officials/state administrators, regulates capital punishment.

Keywords: Formulation; Legal Policy; Criminal; Corruption; Local Officials.

1. Introduction

The Republic of Indonesia is a protected state (rechtsstaat), to be specific a state in which all mentalities and conduct, and activities, whether committed by the specialists or by its residents, should be founded on regulation.[1] Law and order points fundamentally to give legitimate assurance to individuals. Philipus M Hadjon expressed that legitimate insurance for individuals against government activities depends on two standards, to be specific the guideline of basic freedoms and the standard of a law and order.[2]

Acknowledgment and insurance of basic freedoms have an essential spot and can be supposed to be the objective of a law and order. Because of a rule of law state, there must be guarantees for state agencies as a tool of state government to be able to run the government and law. Reasonably, legitimate insurance for individuals for government activities incorporates preventive lawful security and harsh lawful assurance. In preventive lawful security, individuals are permitted to submit protests (inspraak) or suppositions before an administration choice gets a conclusive structure.[3]

Different endeavors have been made by the public authority in destroying defilement by laying out different public systems. In the change period, this methodology was cherished in Official Guidance Number 5 of 2004 concerning the Speed increase of Debasement

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Annihilation, the Public System and Activity Plan for Defilement Destruction (Stranas PPK) 2010-2025, Official Guidance Number 9 of 2011 concerning the Activity Plan for the Speed increase and Destruction of Defilement 2011, Official Guidance Number 14 of 2011 concerning the Speed increase of Execution of Public Improvement Needs of 2011, Official Guidance Number 17 of 2011 concerning Activity for the Speed increase and Destruction of Defilement in 2012, and the Public Technique for Counteraction and Destruction of Debasement Long haul (2012 - 2025) and Medium Term (2012 - 2014).

The formulation of the criminal punishment system in the Law on the Eradication of Corruption Crimes No. 31 of 1999 Jo. Law No. 20 of 2001 regulates the elements and groupings of criminal acts of corruption, there is no formulation regarding the criminal system which specifically regulates corruption crimes committed by regional officials, there is only a qualification for criminal acts of corruption that fulfill elements the subject is a regional official. This should be visible in Article 3, Article 5, Article 6, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 15, and Article 22 of the Debasement Annihilation Regulation No. 31 of 1999 Jo. Regulation No. 20 of 2001.

This is indeed by existing criminal principles, both regarding elements of criminal acts, elements of criminal responsibility, criminal elements, and sentencing, as well as how to formulate criminal sanctions. However, regarding the sentencing, the drafting team for this law has not yet prepared properly. related to the formulation of special maximum sanctions in this case is in the spotlight. Because punishment is related to the maximum specified for perpetrators of corruption whose subject qualifications are regional officials, in this case, it is only in the form of imprisonment for a maximum of 20 years or life imprisonment, not subject to the death penalty or other special maximum alternative sanctions. This is really amusing. Remembering that in Article 2 of the Law on the Annihilation of Criminal Demonstrations of Defilement No. 31 of 1999 Jo. Regulation No. 20 of 2001, whose subject qualifications are not regional officials/state administrators, regulates capital punishment. It will lead to negative opinions about officials, bearing in mind that in the formulation stage of formulating laws in the DPR RI the role of officials themselves is very important in carrying out their functions, namely as legislators' functions, it can be assumed that officials "protect" themselves by not imposing sanctions special maximum in the form of criminal sanctions

To form a special criminal law, certain criteria must be met as follows: a demonstration should be managed independently in an extraordinary criminal regulation on the grounds that:

1. If remembered for the codification (KUHP) it will harm the codification framework;
2. Due to specific conditions, for instance, a crisis; And
3. Due to the trouble of making changes or increases to the codification, in specific cases a deviation from the current framework is wanted.

From the models above, it connects with Regulation no. 31 of 1999 related to Regulation no. 20 of 2001, it is realized that there are extraordinary things in the law that are unique in relation to the Crook Code, for instance, issues of preliminary, help, and connivance to carry out criminal demonstrations, are subject to the same punishment as those imposed on the perpetrators of the offense.[4]

With the progress of reform, the enthusiasm to eradicate corruption which has existed for a long time has been re-ignited because it has been proven that efforts to eradicate criminal acts of corruption that have been done were not able to erode the disease. It is understandable because efforts to deal with criminal acts (criminal policies) in general, especially corruption, can be pursued by using penal ways and non-penal means in an integrated manner because penal means alone have a limited ability to beat crime due to certain causes. identified as follows:[5]

a. the reasons for violations that are so perplexing are past the span of criminal regulation;

b. criminal regulation is just a little part (sub-arrangement) of a method for social control which is difficult to resolve the issue of wrongdoing as an extremely perplexing helpful and cultural issue (as a socio-mental, socio-political, financial, socio-social issue, etc);
c. the utilization of criminal regulation in handling wrongdoing is just a "fix a side effect", thusly criminal regulation is just a "suggestive treatment";
d. criminal regulation assents are just a cure, which is disconnected/dumbfounding in nature and contains negative components and secondary effects;
e. the discipline framework is fragmentary and individual/individual, not primary/useful;
f. limitations on the kinds of criminal authorizations and the framework for planning criminal endorses that are basic in nature; g. the activity/working of criminal regulation requires more differed supporting offices and requests significant expenses.

From a series of legal bases, it is known that criminal charges against corruption suspects carried out by Regional Officials lack a deterrent effect if only charged with imprisonment, with a maximum imprisonment of 20 (twenty) years, and not the death penalty. Considering that there must be a strict legal formulation, as well as containing a deterrent effect, on this occasion the author wishes to conduct research by taking the title: "Criminal Law Policy Formulation on Corruption Crimes Committed by Regional Officials".

2. Research Problem

The problem in this paper is “how is the Formulation of Criminal Law Policy on Corruption Crimes Committed by Regional Officials?”

3. Method and Approach

3.1. Method

The strategy utilized recorded as a hard copy this applied paper is the illustrative logical technique, to be specific by utilizing information that obviously portrays the issues straightforwardly in the field, then, at that point, the examination is completed and afterward closed to tackle an issue. Techniques for information assortment through perception and writing study to acquire critical thinking in the readiness of this paper.

In line with the research objectives to be achieved, the realm of this research is included in the realm of qualitative research, thus a qualitative approach method will be used. According to Petrus Soerjowinoto et al., the qualitative method is a method that emphasizes the process of understanding the researcher on the formulation of the problem to construct a complex and holistic legal phenom[6]

3.2. Approach

Observational juridical methodology, specifically a methodology that doesn't go against composed positive regulation (regulation) as optional information, however from genuine way of behaving as essential information acquired from field research areas (field research).[7] This study portrays what is going on of the article under study, specifically zeroing in on the Detailing of Criminal Regulation Approach on Debasement Wrongdoings Perpetrated by Local Authorities as the execution of Regulation no. 31 of 1999 jo. Regulation No. 20 of 2001 concerning Defilement practically speaking.

4. Discussion

4.1. Criminal Law Policy in Combating Corruption Crimes committed by Current Regional Officials.

One kind of criminal demonstration of debasement figured out in Regulation no. 31 of 1999 jo. UU no. 20 of 2001 concerning the Destruction of Criminal Demonstrations of Debasement is a Defilement Wrongdoing that is hindering to state funds or the nation's economy, implying that state misfortunes are one of the components in the demonstration of defilement.[8] The formulation of the criminal punishment system in the Law on the Eradication of Corruption Crimes No. 31 of 1999 Jo. Law No. 20 of 2001 regulates the elements and groupings of criminal acts of corruption, there is no formulation regarding the criminal system which specifically regulates corruption crimes committed by regional officials, there is only a qualification for criminal acts of corruption that fulfill elements the subject is a regional official. This can be seen in Article 3, Article 5, Article 6, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 15, and Article 22 of the Corruption Eradication Law No. 31 of 1999 Jo. Law No. 20 of 2001. This is indeed by existing criminal principles, both regarding elements of criminal acts, elements of criminal responsibility, elements of crime and sentencing, and how to formulate criminal sanctions. However, regarding the sentencing, the drafting team for this law has not yet prepared properly. related to the formulation of special maximum sanctions in this case is in the spotlight. Because punishment is related to the maximum specified for perpetrators of corruption whose subject qualifications are regional officials, in this case, it is only in the form of imprisonment for a maximum of 20 years or life imprisonment, not subject to the death penalty or other special maximum alternative sanctions.

The application of a maximum prison sentence of 20 years or life imprisonment is ironic. Bearing in mind that in Article 2 of the Law on the Eradication of Criminal Acts of Corruption No. 31 of 1999 Jo. Law No. 20 of 2001, whose subject qualifications are not regional officials/state administrators, regulates capital punishment. This will lead to negative opinions about officials, bearing in mind that in the formulation stage of formulating laws in the DPR RI the role of officials themselves is very important in carrying out their functions, namely as legislators' functions, it can be assumed that officials "protect" themselves by not imposing sanctions special maximum sanctions, namely in the form of imposing death penalty sanctions or other special alternative maximum sanctions. Whereas in this case the regional official should be a leader who besides having the responsibility of the people also has a moral responsibility as a leader who should provide good behavior in behavior. And bearing in mind that one of the goals of eradicating corruption is for the sake of the implementation of fair and clean government to create an advanced and sustainable National Development, the provision of alternative specific maximum criminal sanctions needs to be reviewed to create a deterrent effect and prevent new actors from appearing again, as well as causing the loss of state finances is not small.

From the clarification of the State misfortunes above, it is extremely certain that the absence of cash, the genuine protections which have been decreased from the past sum, for instance by corruptors removing State cash, by accomplices expanding project costs paid for by the State depository, etc. This misfortune is alluded to as a genuine State misfortune. Conversely, if using a sentence can harm the state, then even though the perpetrator's actions do not ultimately cause state losses, because it turns out that there is a return of state money, by the perpetrator, the perpetrator's actions can already be partially qualified as being able to harm

state finances, conversely, if the perpetrator's actions do not potentially harm state finances and it turns out that there is a return of state finances after maturity, so the perpetrator's actions cannot be qualified as being detrimental to state finances. So what has the potential to be detrimental to state finances and actions that are not potentially detrimental to state finances?

The assumption stating that the criminal act of corruption is a formal offense, therefore, does not need to be proven as a result that occurs in the form of causing losses to the State, it is sufficient if the elements of Article 2 of Law Number 31 of 1999 have been proven such as the existence of an illegal act and the existence of enriching oneself or others, then it is certain or by itself, the element that can harm the State's finances has been fulfilled. This opinion is groundless because it can harm the state's finances not solely as a result of material offenses but rather as the goal of the perpetrator to commit the act. From this goal, motives and intentions emerge, namely to enrich oneself or other people whose consequences are detrimental to state finances. Therefore, it must be proven whether the perpetrator intends to enrich himself to the detriment of state finances. If there is no state loss then the perpetrator had no intention of committing corruption.[9]

4.2. Criminal Law Policies in Combating Corruption Crimes Committed by Upcoming Regional Officials

Talking about the right to sue, our attention is directed to the term *subjectief strafrecht (just peniendi)*, in which *recht* does not mean "law", but "right", namely the right of the state, represented by its tools, to punish someone who violates the law criminal.[10]

The arrangement for figuring out the corrective framework later on in managing criminal demonstrations of defilement perpetrated by local authorities can obviously allude to the reformatory framework strategy that has been formed by the 2012 Lawbreaker Code Idea. Some problems regarding the penal system which are felt to still require improvement in the future are matters that need to be considered to create better legislation. In the draft Criminal Code of 2012 there has been no formulation of an article related to the criminal system which specifically regulates criminal acts of corruption committed by regional officials, there is only a qualification for criminal acts of corruption which fulfills the subject element, namely a regional official. What is contained in Article 663, Article 664, Article 666, Article 669, Article 670, Article 674, Article 688, Article 691, Article 696, and Article 699, This is the same as the provisions in Law No. 31 of 1999 Jo. Law No. 20 of 2001.

It's only that in the 2012 Lawbreaker Code Bill there is one article that as of now controls the arrangement of explicit greatest approvals in regards to criminal demonstrations of debasement perpetrated by local authorities, specifically in article 699 passage (2) of the Crook Code Bill where the death penalty can be forced for authorities who carry out defilement in specific conditions for instance in a catastrophic event. However, the death penalty can only be imposed in certain circumstances, such as natural disasters. Major corruption cases that have nothing to do with certain circumstances, such as natural disasters, such as the Century Bank corruption case, the BI governor's traveler's check case, the bribery of tax officers, such as Gaius Tambunan and Dhana Widyatmika, have demonstrated to be hindering to the state's funds in trillions of rupiah, and as a matter of fact ought to be dependent upon exceptional most extreme approvals, in particular as capital punishment or other extraordinary greatest elective assents to make an obstacle impact. If the formulation of sanctions alone cannot create a deterrent effect, it is only natural that corruption thrives in Indonesia.

Meanwhile, the TIPIKOR Bill, still with the same study, found articles related to corruption where the subjects (perpetrators) were regional officials, these articles include Article 2, Article 4, Article 5, Article 6, Article 7, Article 9, Article 10, Article 11, Article 12

and Article 22. In my opinion, there are at least some weaknesses in the TIPIKOR Bill, related to dealing with criminal acts of corruption committed by regional officials. These weaknesses include the following: Several articles reduce the length of sentencing, as well as abolishing the minimum penalty and even eliminating the threat of the death penalty, with lighter sanctions, when enacted later, this regulation is very risky to become a legal umbrella for efforts to eradicate corruption in Indonesia.

The explanation is, when Regulation No. 31 of 1999 concerning the Annihilation of Defilement executed capital punishment (article 2 of Regulation No. 31 of 1999 related to Regulation No. 20 of 2001), the treatment of defilement in Indonesia is still very concerning. As an outline, the defilement cases dealt with by the Debasement Destruction Board are being uncovered step by step and new players are in any event, arising. This isn't in accordance with one of the objectives of discipline in Indonesia, which is to make an obstruction impact for the culprits so they are supposed not to rehash the wrongdoing being referred to. (defilement).

The detailing of the Criminal Regulation strategy in the structure of dealing with defilement later on has been endeavored, to be specific through the definition of the Debasement Wrongdoing Annihilation Bill (August 2008 Original copy). The idea of the Debasement Wrongdoing Annihilation Bill alludes to the 2003 UNCAC Show and is stressed in the preface which states:

"that with the ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003) with Law Number 7 of 2006, then Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 needs to be adjusted to the 2003 United Nations Convention Against Corruption."

The Draft Regulation on the Destruction of Debasement Violations gives definitions or utilization of terms in regards to specific matters in Part I (general arrangements) as follows:

article 1

In this Law what is meant by:

1. Corporation is a gathering as well as resources that are coordinated either as a lawful substance or not as a legitimate element.
2. Public Authorities are:
    a. any individual holding a regulative, legal, or top dog who is for all time or briefly selected or chose is paid or neglected no matter what that individual's status;
    b. any individual who does public capabilities including to help a public office or public organization or one that offers public types of assistance in light of legal guidelines;
    c. any individual assigned as a public authority in legal guidelines.
3. Foreign Public Officials are:
    a. any individual holding a leader, regulative, or legal office of an outside country either by arrangement or by-political decision, including all levels and portions of its administration
    b. any individual carrying out a public role to help a far off country, including an unfamiliar public organization or public organization; or
    c. any official or delegate of a public worldwide association.
4. Officials of Public Worldwide Associations are any global government employees or any individual approved by the association to follow up for the benefit of the association.

5. Wealth is resources of any sort, whether corporate or non-corporal, versatile or steadfast, substantial or immaterial, and archives or legitimate instruments demonstrating the right or interest in said resources.
6. Confiscation is a progression of moves by a specialist to make over as well as hold under his influence mobile or relentless, substantial or elusive items for examination, indictment, and preliminary.
7. Confiscation is the extremely durable confiscation of resources by a court choice or other skilled power.
8. Predicate Wrongdoing is any wrongdoing that outcomes in the consequence of a wrongdoing that turns into the object of another wrongdoing.
9. Proceeds of a Lawbreaker Act are any abundance gotten straightforwardly or in a roundabout way from a wrongdoing.
10. Gift or Commitment is any structure that gives advantages or pleasure to the beneficiary.

The definition or utilization of the term, particularly in regards to the expression "public authority" as referenced above, is basically an abnormal term to use in juridical terms, on the grounds that in Indonesian regulation these terms are not perceived. In view of the regulations in Indonesia, a few juridical terms are known, for instance, "State Coordinators", the term contained in Regulation Number 28 of 1999 concerning the Execution of a Clean and sans kkn Express, the expression "Community worker" contained in Regulation Number 31 of 1999. 1999 related to Regulation Number 20 of 2001 Concerning the Annihilation of Debasement Violations. So the expression "Public Authority" is a general term and not a juridical term, so it should be changed first with the goal that it turns into a juridical term.

Notwithstanding the utilization of the terms referenced over, the plan of criminal demonstrations of debasement in this bill additionally is by all accounts acclimated to the publication in the UNCAC Show which is directed in the accompanying articles:

Section 2

(1) Any individual who commitments, offers, or gives straightforwardly or by implication to a Public Authority an ill-advised advantage to support the authority himself, others, or the Partnership, so the authority does or doesn't accomplish something in completing his obligations.
(2) A Public Authority who demands or gets straightforwardly or by implication an ill-advised advantage to support the authority himself, someone else, or the Enterprise, with the goal that the Public Authority does or doesn't accomplish something in completing his obligations.

The detailing of criminal demonstrations of debasement as portrayed above, there is definitely not a solitary plan of criminal demonstrations of defilement that spotlights on the component of "hurtful to the nation's funds or economy". This is not the same as the detailing of criminal demonstrations of debasement contained in Regulation Number 31 of 1999 jo. Regulation Number 20 of 2001 which is as of now still active.

The shortfall of the component "hurtful to the state's funds or economy" in the plan of criminal demonstrations of defilement specified in the Debasement Annihilation Bill shows that monetary or state financial misfortunes "in view of the UNCAC Show are not outright things. This has likewise been said by Romli Atmasasmita that as indicated by the counter debasement show, misfortunes don't have a place with the state yet additionally to individuals. It ought to be perceived that, despite the fact that the component of misfortune to the state isn't outright, the accentuation on "hurting the nation's funds or economy" in the definition of debasement is vital, since, in such a case that there is a misfortune to the "state's funds or

economy", the state will encountering troubles or bringing about impediment of the state in satisfying administrations for the public interest, which likewise implies that the state can't do its commitments in that frame of mind of society, which is its established commitment.[11]

5. Conclusion

The application of a maximum prison sentence of 20 years or life is not the justice that society wants. Bearing in mind that in Article 2 of the Law on the Eradication of Criminal Acts of Corruption No. 31 of 1999 Jo. Law No. 20 of 2001, whose subject qualifications are not regional officials/state administrators, regulates capital punishment. It leads to negative opinions about officials, bearing in mind that in the formulation stage of formulating laws in the DPR RI the role of officials themselves is very important in carrying out their functions, namely as legislators' functions, it can be assumed that officials "protect" themselves by not imposing sanctions special maximum sanctions, namely in the form of imposing death penalty sanctions or other special alternative maximum sanctions. Whereas in this case the regional official should be a leader who besides having the responsibility of the people also has a moral responsibility as a leader who should provide good behavior in behavior. And bearing in mind that one of the goals of eradicating corruption is for the sake of the implementation of fair and clean government to create an advanced and sustainable National Development, the provision of alternative specific maximum criminal sanctions needs to be reviewed to create a deterrent effect and prevent new actors from appearing again, as well as causing the loss of state finances is not small.

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