The Convergence of State Administrative Law and Criminal Law in Prevention of Criminal Act of Corruption that is Detrimental to the State Finances in Indonesia

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Abstract. The convergence between criminal law and state administration law in the settlement of state officials who harm the state finances or the state's economy is very closely. On the one hand, the Law Number 31 of 1999 Jo. Law Number 20 of 2001 on the Eradication of the Criminal Act of Corruption has stipulated that the State Officials' actions that harm the state finances, which benefit themselves and other people against the law are criminal acts. Consequently, many state officials are hesitant to take policies as they are concerned about being trapped in Criminal Act of Corruption.Therefore, prevention of the criminal act of corruption detrimental to the state's finances or economy and carried out by state administrative officials must be conducted through two approaches i.e., state administration law or criminal law. The ideal model of prevention policy of the Criminal Act of Corruption that is detrimental to state finances and/or economy is to make changes by distinguishing mistakes of criminal offenses explicitly in Article 2 and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 on Eradication of the Criminal Act of Corruption.

Keywords: Criminal Act of Corruption, Administrative law, state finance

1 Introduction

Indonesia's Corruption Perception Index in 2019 according to Transparency International obtaines 40 points from the range of points 1 – 100, point 1 indicates highly corrupt while 100 is very clean. This data indeed rises compared to 2018 by having 38 points and 2017 with 37 points. However, with a score of 40, it means that corruption in Indonesia is still very high compared to other countries. The high corruption directly and indirectly affects the business climate and has an impact on population productivity and per capita income of its population.

Corruption is an extra ordinary crime. It can be viewed from the hazards generated enormously, ranging from direct or indirect impacts. Direct impacts for example related to the development of infrastructure, health, and education, if there are corrupt actions in one of the development projects, the impact is immediately perceived. The unfinished development of infrastructure or the finished ones but the quality is not in accordance with the standard, unqualified education, and disrupted health services. Indirect impacts for example with massive corruption, it indirectly leads to poverty, hunger, unhealthy business, and political system.

Wicipto Setiadi (2018) stated that the impact of corruption is extremely complex, starting from the impact of individuals and community, devastation of younger generation, the damage to economic development of a nation, and the impact on inefficient bureaucracy. [1] Considering the consequences and dangers caused by the corruption, every country is competing to make criminal policy efforts. Efforts to prevent this crime are very massive in various countries. The United Nations issued several guidelines in the form of an anti-corruption convenant, which was ratified by member countries including Indonesia.

Indonesian countermeasures have existed since the beginning of independence, starting with the issuance of Law no. 24 Prp. 1960 on the Investigation, Prosecution, and Examination of the Criminal Acts of Corruption, then during the New Order era, Law Number 3 of 1971 on the Eradication of the Criminal Acts of Corruption was issued. At the time of the reform, Law Number 31 of 1999 on the Eradication of

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the Criminal Acts of Corruption was issued, which was amended by Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on the Eradication of the Criminal Acts of Corruption.

In addition to material law, efforts to eradicate corruption are also conducted by establishing an independent institution outside the mainstream Criminal Justice System, which is the Corruption Eradication Commission, of which duties are starting from investigation to prosecution. This institution is not perfunctorily equipped with the authority for tapping and other powers that other institutions do not have in the criminal justice system.

The approaches taken by the government in tackling corruption tend to be repressive through a criminal approach. Prevention and other legal approaches are ruled out. Even though the actions of state officials that cause state losses do not necessarily have evil intentions, but it could be due to negligence, which is basic human nature.

Many cases are such as only mistaken signature and are considered inaccurate, a state administrator is sentenced to criminal sanctions, which should be approached through other legal mechanisms, i.e. state administrative law. Several corruption cases that are considered to have violated public justice are corruption cases involving Dahlan Iskan, a former SOE (BUMN) minister, including (1) cases of alleged criminal acts of corruption in the construction of 21 substations in Java, Bali, and Nusa Tenggara in 2011-2013, (2) allegations of criminal acts of corruption in the sale of assets belonging to PT Panca Wira Usaha (PWU), (3) alleged corruption in the procurement of 16 electric cars in 2013 (https://www.bbc.com/indonesia/indonesia-38851898).

The cases ended in which the pretrial was granted, and the last one was the Supreme Court's acquittal verdict related to the PT. PWU. All Dahlan Iskan's actions began with policies that were considered to violate procedures and benefit other parties as well as harm the state finances. If policy making cases continue to be criminalized, it is not surprising that in Indonesia, state administrators only work monotonously and dare not to make policy breakthroughs. It clearly makes them frightened in case that they are trapped in criminal acts of corruption. Vice President for the period 2014-2019 Jusuf Kalla stated that many countries have lost trillions of rupiah as the officials are frightened to make decisions to execute government programs, it is because they fear being accused guilty of corruption (“Vice President Calls Many Afraid to Make Decisions Due to Corruption Accusations,” 2019). Therefore, it is important in contributing to the eradication of corruption on the one hand and on the other hand, the occurrence of development in Indonesia, so there is a special formula in efforts to eradicate corruption.[2]

2 Method

This research used the approach of qualitative with sociological juridical method. According to Mukti Fajar. [3] sociological juridical research is research based on normative legal science (laws and regulations) but does not examine the system of norms in such laws and regulations but observes how the reactions and interactions occur when norms work in society. This method is not the same as the normative juridical method where the law is conceptualized as an independent and autonomous phenomenon, so that there is no connection between law and society in normative juridical research. [4]

3 Result and Discussion

3.1. Convergence between State Administrative Law and Criminal Law in Efforts to Combat Criminal Acts of Corruption that Harm the State Finances and/or Economy

State administrative law and criminal law are essentially public law. State Administrative Law (SAL) in French is called *Droit Administrative*, in Dutch it is called *administrative recht* or *Bestuursrecht'*, while in English it is called *Administrative Law*, in Germany it is called *Verwaltung recht*, which means state administrative law or government law. [5]

3. 1.1 State Administrative Law

Definition of state administrative law is a set of legal regulations regarding administration in a country, in which the relationship between citizens and their government can run well and safely. This state administrative law is public law. [6]

Other definitions of state administrative law have been put forward by several experts, including [6] (Febrianti, 2019): a) Van Vollenhoven provides an understanding of State Administrative Law, which is a provision that binds higher and lower entities in the event that those entities use their given authority to them by the Constitutional Law; b) Prajudi Atmosudirjo stated that State Administrative Law is the law

concerning government and its most important officials, i.e. State Administration from the various limitations of understanding of the State Administrative Law; c) Muchsan defines State Administrative Law as the Law concerning the structure and function of the State Administration; d) J.H Logemann defines the State Administrative Law as the law regarding the correlation between one position and another as well as the legal relationship between state and citizen positions.

Therefore, in simple terms, it can be stated that the state administrative law is a set of regulations that allow the state administration to carry out its functions, which at the same time also protects citizens against acts of state administration and protects the state administration itself. State Administrative Law has two aspects, i.e., the legal rules governing the manner in which the state apparatus performs its duties and the legal rules governing the legal relationship between state or government administrative apparatus and its citizens [4]

3.1.2 Criminal Law

While criminal law is a set of rules containing actions that can be sanctioned against people who violate them, the rules for giving sanctions and its implementation. Other definitions of criminal law according to several experts include [7] (Sudarto, 2013: 13-15) as follows:

a) Mezger

Criminal law is a set of legal rules that bind to an act, which meets certain conditions in the form of a crime. From this definition, criminal law contains 2 (two) things, i.e. actions that meet certain conditions, and sanctions in the form of criminal.

b) Simons

Simons defines criminal law that includes 3 (three) aspects, i.e. (1) Criminal law is the entire prohibition or order that the state is threatened with misery, which is a penal in case of anyone violates it, (2) the entire regulation that stipulates the conditions for imposing a criminal, (3) all of the provisions that provide the basis for imposition and application of a crime.

c) Van Hamel

Van Hamel defines criminal law as the entire basis or state regulation that contains prohibited acts and imposes criminal sanctions for those who violate it.

Criminal law is divided into 3 (three) types, i.e material criminal law, formal criminal law and penitent criminal law. Material criminal law is criminal law that regulates what actions are included in criminal acts, who can be accounted for and what witnesses can be given. Formal criminal law is a set of criminal law rules that regulate the procedures for how material criminal law is enforced. While the penitent criminal law is a set of rules that regulate how criminal sanctions are carried out by authorized officials.

The main source of material criminal law is the Criminal Code, as formal criminal law is the Criminal Procedure Code. Meanwhile, the penitent criminal law has no legal codification as the main source. It is just that the penitent criminal law regulation is included in material criminal law.

The criminal law regulated in the Criminal Code and the Criminal Procedure Code can be stated to be general criminal law, while there are several criminal acts that are self-regulated outside the Criminal Procedure Code and the Criminal Procedure Code, which is special criminal law. Special Criminal Law is a set of criminal law rules outside the main criminal law that regulates both its formal and material. Such as Law Number 31 of 1999 on Eradication of the Criminal Act of Corruption, Law Number 8 of 2010 on Eradication of the the Criminal Act of Money Laundering.

Based on the above definition, there are 3 (three) main problems in material criminal law, i.e. criminal act, criminal liability, and penal, this division can be described in the following table:

Table 4.1. Elements of Criminal Law

No	MAIN PROBLEMS OF CRIMINAL LAW		
	Criminal Act	**Criminal Liability**	**Penal**
1	Fulfilling the Formulation of Law (MRU)	Liability (KBJ)	Basic Penal (Imperative)
2	Unlawful (SMH)	Dolus/Culpa	Subsidiary Penal (Facultative)
3	No Justification	No Excuses	-

Every act that fulfills the 3 elements of criminal act, i.e. fulfilling the formulation of law, an unlawful act and no justification for the act, is referred to as an act that is qualified as a criminal

act. Acts qualified as criminal acts will be subject to criminal sanctions if the perpetrator of crime has criminal liability, i.e. the ability to be responsible, intentional or negligent and for the person who commits the crime there is no excuse for forgiveness.

3.2 Juridical Overview of Policies for Combating Criminal Act of Corruption That Are Harmful to State Finances and/or Economy

The criminal act of corruption is regulated carefully and clearly in Law Number 31 of 1999 Jo. Law Number 20 of 2001 on the eradication of criminal acts of corruption. In the book of *Understanding to Exterminate: A Guidebook to Understanding Criminal Act of Corruption* published by the Corruption Eradication Commission, there are 13 articles, which are definitions of corruption. Based on these articles, criminal act of corruption is formulated in thirty forms/types of criminal act of corruption. From the 30 types, they are summarized in 7 forms of corruption. The descriptions of these 7 forms of corruption are as follows:

Table 4.2. Forms of Criminal Acts of Corruption

No	Forms of Criminal Acts of Corruption	Article
1	Loss of state finances	Article 2, Article 3
2	Bribery	Article 5 paragraph (1) letter a, Article 5 paragraph (1) letter b, Article 6 paragraph (1) letter a, Article 6 paragraph (1) letter b, Article 6 paragraph (2), Article 5 paragraph (2), Article 11, Article 12 letter a , Article 12 letter b, Article 12 letter c, Article 12 letter d, Article 13
3	Embezzlement in Position	Article 8, Article 9, Article 10 letter a, Article 10 letter b, Article 10 letter c
4	Extortion	Article 12 letter e, Article 12 letter g, Article 12 letter h
5	Tort	Article 7 paragraph (1) letter a, Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter c, Article 7 paragraph (1) letter d, Article 7 paragraph (2), Article 12 letter h
6	Conflict of Interest in Any Circumstances	Article 12 letter i
7	Gratification	Article 12B

Related to the first form, the criminal acts of corruption that harm the state's finances is a scourge for state officials. This criminal act of corruption in the form of actions that harm state finances is contained in Articles 2 and 3 of Law Number 31 of 1999 juncto Law Number 20 of 2001 on the Eradication of Criminal Act of Corruption.

Article 2:

(1) Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and maximum of Rp. 1,000,000,000.00 (one billion rupiah).

(2) If the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.

Article 3:

Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities, or facilities available to him because of a position or position that can harm the state finances or economy, shall be sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

The formal definition of this article about state losses has caused many public officials to be frightened when they will take policy. This fear of public officials, on the one hand is a positive thing, but

on the other hand it is very detrimental to the public interest. The positive impact is that the officials will be careful in making policies so as to minimize the opportunity for leakage of the state budget, while the negative impact is that the policies cannot be taken based on the interests and benefits of the community, only based on plans that have been prepared in the state budget, it is inflexible, and often make such policy is not necessarily taken even though it is intended for the public interest.

3.2. Ideal Policy Model for Combating Criminal Act of Corruption That Harm State Finances and/or Economy

The ideal model of the policy of combating criminal act of corruption that is detrimental to state finances and/or economy, after observing the real cases occurred, there must be improvements to articles 2 and 3 of the Criminal Act of Corruption Law.

Criminal law reform, both in terms of legal substance, legal structure and legal culture. First, substantially, it is necessary to update the formalization of article 2 and article 3.

Conceptually, there are 2 approaches to be taken in preventing and eradicating corruption that is detrimental to the state's finances without frightened the policy makers and ultimately policies are not taken, thus it is certainly detrimental to the community. Those approaches include:

1. Administrative Law Approach

It can be applied to any act that is detrimental to the state's finances, but solely because of an administrative mistake and the person who causes state losses does not take any profit for himself and his family. If there are benefits going to him and his family then it is a state of unintentional negligence. For this kind of action, an administrative approach can be taken in the form of refunding state losses, and other administrative actions as state officials who are negligent in their duties. Such acts must be excluded from criminal acts, so that there is decriminalization in the article.

2. Criminal Law Approach

It can be taken against one who commits a criminal act of corruption that intentionally harms state finances by benefiting themselves or others. In all its aspects, whether intentionally aware by purpose, aware of certainty or possibility. Being aware of this possibility includes intentional negligence.

4 Conclusions

The conclusion in this research will be divided into 3 conclusions among others:

1. The convergence between state administrative law and criminal law in the efforts to reduce criminal act of corruption that harm the state’s finances and/or economy is highly related, thus the prevention of criminal act of corruption, which is detrimental to state finances and committed by the state administrative officials must be carried out with the approach of State Administration Law or criminal law.
2. The Critical Legal Studies against Criminal Act of Corruption Policy, which is detrimental to state finances and/or economy is the implementation of formality to the application of Article 2 and Article 3 will not solve problems in eradicating criminal act of corruption, but there are some negative impacts that make the community loss.
3. The ideal model of the prevention of Criminal Act of Corruption, which is detrimental to state finances and/or economy is renewing Article 2 and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 on Eradication of Criminal Act of Corruption. The amendment is based on enthusiasm if the act that harm state finances are committed by a person in an unconscious, negligence state or without benefit for themselves and their families. Conversely, if one commits a detrimental act to the state finances and substantively there are benefits flowing in his/her personal and family benefit, thus the criminal law approach is carried out.

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