

The Essence Of The Legal Culture In Achieving The Purpose Of Criminalization For Corruptor

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Abstract: Nowadays, efforts to eradicate corruption become a global problem and not only as a national or regional issues. For a developing country like Indonesia has almost become a condition sine qua non. This research reviews the role of legal culture in formulating the legal awareness of the public in an effort to prevent corruption. This research is a sociological research leading to search ontologically. The type of research combines the empirical and normative studies. The outcomes of the research indicate that as an extraordinary crime, corruption cases should be carried out in an extraordinary way. The consequence, it is not only the financial loss of state but a crime that violates the rights of social and economic at large and systemic. Observing the criminal sanctions applicable in the law of corruption linked to the purpose of criminalization against perpetrators of corruption (corruptor), it can be seen that the essence of criminalization is intended as an attempt to eradicate corruption. But these efforts to date cannot be said to achieve its goals, because that looks just taking measure have not been effective to minimize corruption. Criminalization efforts have not actually created the state's role in protecting people against the corruption.

Index Terms: Corruption, Criminalization, Legal Culture

1 INTRODUCTION

In the preamble of Act No. 31 of 1999 regarding Corruption Eradication, related to the development of corruption is stated that due to the corruption that occurred during this, in addition to the loss of state financial, also inhibits the growth and sustainability of national development that demands high efficiency. In fact, the corruption is already causing huge losses to the state, which in turn lead to a crisis in many areas of life. Insistence that corruption eradication is done radically, making us think what is wrong in law enforcement? It is based on the ratio of the growth of corruption is much higher than its eradication. Prominently in the news in press and other media seen that corruption continues to grow rather than diminish but has even entered into a level very hard to believe. Of course, phenomena recorded in a series of news are hit conscience of the people, as you can imagine to the tomb hole too, the problem of corruption has huge spread. Values taken may be relatively small for some people, but for the grave digger who depend on the budget is certainly very large. Although still have to put forward the principle of presumption of innocence, the people shocked with the arrest of the Chairman of the Constitutional Court with the alleged bribery. As an institution established by the constitution, of course, these incident are subjective and will require further research whether the sequence of incident can change the public's expectations related to the law enforcement and public awareness of the law. These facts indicate that corruption has become common knowledge and widely implicated in the people's lives. There is no area of life that is not polluted corruption, both in small and large scale from the central government down to the

village/sub-village, includes government and private institutions, the actor is not just in the executive and entrepreneur, but also conducted by legislators even to the judicial environment. Scenery every day presented by media to the public related to the eradication of corruption, as well as the background of corruption act and the behavior of corruptor and his family, as a routine spectacle, how people respond to it surely becomes interesting to study, particularly when associated to the change of community's legal awareness in efforts to prevent corruption in the future. Indeed, the eradication of corruption has become one of the main agenda in the context of law enforcement. It is a most difficult and complex issue. Many cases of corruption exposed by media, but what this incident raises the people's expectations for corruptor severely punished and even the death penalty. Refer to the background described above, the issues of research that will be studied in this paper, how far the role of legal culture in formulating the legal awareness of the public in an effort to prevent corruption?

2 METHOD OF RESEARCH

This research is a socio-legal research leading to search ontologically. The type of research combines the empirical and normative studies, hence the analysis is primarily intended to study the essence of criminalization for corruptor and see its relevance to the legal culture of people and problems that arise in it. The research location chosen by the author is Surabaya and Bulukumba cities, Indonesia. The main reason to choose this sites in two cities, because the author believes that the two cities mentioned above have been able to represent the legal culture of people in seeing the corruption in Indonesia and can contribute to search the essence of criminalization for corruptor in order to provide solutions related to the prevention in the future. Surabaya as urban city with which represents a fairly complex conditions of local communities, while Bulukumba especially Kajang represents a strong indigenous areas and have not been so affected modernization. Analysis of primary data is done by using a model analysis of the research theme (theme analysis). This theme analysis, the idea rests on the assumption that the whole of the results of research and data analysis is something more than just the number of parts, so it can be used as primary data parameters. Thus, the result of study as a qualitative analysis describing the problems of relevance

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between the essence of legal culture in achieving the purpose of criminalization to the corruptor and its relevance to the legal awareness of people..

3 RESULTS AND DISCUSSIONS

3.1 The Essence of Criminalization in Eradication of Corruption

Although in UNCAC and the Statute Rome 2002, corruption is not categorized as an extraordinary crime, but in the preamble of Act 31 of 1999 jo Act No. 20 of 2001, corruption is an extraordinary crime that its handling should be carried out in an extraordinary way. Its cause is not only the financial loss of state but also as a crime that violates the rights of social and economic at large and systemic. Therefore, it is proper that in Article 2 paragraph 2 of Act No. 31 of 1999 jo Act No. 20 of 2001, a corruptor was sanctioned to death with a limitation when the qualification in Article 2 paragraph 1 is conducted in "certain circumstances", a condition which can be used as a reason weighting criminalization for perpetrators of corruption i.e when the crime made to the funds earmarked for coping with the hazards, natural disasters, overcoming widespread social unrest, economic and monetary crisis and the eradication of corruption. However, if the crime system like that was enough to make the criminalization for perpetrators of corruption has been reached? When we refer to the data obtained from the Attorney General for Special Crimes Division in 2015, it is obtained a fact that the handling of corruption have been carried out as follows:

Table 1. The handling of corruption crime by the attorney

No	Year	Investigation	Prosecution
1.	2011	1.729 Cases	1.499 Cases
2.	2012	1.401 Cases	1.511 Cases
3.	2013	1.530 Cases	1.933 Cases
4.	2014	1.365 Cases	1.756 Cases

Source: Primary data, 2015 (edited)

Referring to the data can be analyzed that the current criminal system is not effective to minimize the occurrence of corruption, in the High Court of East Java per-16 April 2015 the handling of corruption cases at the investigation stage has reached 120 cases. As for the High Court of South Sulawesi on March 2015 the handling of cases at the investigation stage reached 48 cases. A large number when we see how the government made efforts to eradicate corruption. Based on the interviews with a corruptor, obtained the fact that their backgrounds were involved in corruption cases is due to the permissive culture in the work environment as the abuse of authority as a usual something. Moreover, according to the corruptor that their actions are not related directly to the financial losses of countries/regions. The courage to engage in corruption can also occur because the actions in the work environment as a common practice, like not doing control of work with a strong control when the position of perpetrator are in observer status, or diligence in approving the disbursement of work when progress of work has not yet reached the reported results with the purpose of disbursement system was nearing the end of the year. In the corruption crime in the banking sector, modes of actions can also be seen that the courage to conduct this crime is increasingly evident, includes

not checking into the field comprehensively for collateral conditions and capability of borrowers who will receive credit, so that when the investigation process is carried out related to the corruption in the banking sector is found that the debtor is not eligible for credit in terms of both collateral/guarantee, company's capability is not feasible, a fictive financial statements and with these condition between the debtor and the banks conspired to streamline the loan approval. The several modes behind the perpetrator to doing a corruption, is not only related to the system prevailing in financial governance or governance, but there is also a fact that the boost in self-perpetrators to commit acts that can be categorized as corruption is due to intent, as in this study, the author also got the fact that the background of perpetrator in a criminal act of corruption is also due to the impetus to carry out acts against the law or abuse of authority for him because the position or status or means available to him happened because the perpetrator was aimed at gaining wealth or advantage because the opportunity to perform due to lack of supervision and control functions that seem loose. The advantage of this goal is not only in money, but can also to get a higher trust of leader that will get a higher position. Observing the criminal sanctions applicable in the law of corruption linked to the purpose of criminalization against perpetrators of corruption, it can be seen that the essence of criminalization is intended as an attempt to eradicate corruption. But these efforts to date cannot be said to achieve its goals, because that looks just taking measure and not effective to minimize corruption. Criminalization efforts have not actually created the state's role in protecting people against the corruption. Talk about the eradication of corruption, then there is no doubt it will be linked also to the role of law enforcement officers who are members of the criminal justice system, i.e police agencies, prosecutors, courts and prisons.

3.2 The Role of Law Culture in Formulating the People's Legal Awareness

A case study as happened in Surabaya, when the Siami's family trying to bring the truth, and consequently he was even expelled from his village, obtained a phenomenon in which a social function as a means of control as if turned into a form of means of imposition that if the truth touched directly into the life, the movement to survive even stronger. Inversely, when the corruption occurred and as if not touched directly with the life, permissive action even more visible so that the spectacle just like the theater alone. The sadness that occur in the phenomenon of Siami, when linked to the public awareness rise to pessimism whether the criminalization that has been done to the perpetrators of corruption can minimize the occurrence of corruption in the future, because in essence the corruption are related to dishonesty in managing authority. On the other hand, when the writer interviewed Amma Toa, a prominent indigenous figure of Kajang tribe in Bulukumba South Sulawesi, tribe famous for black clothes told that the black color for Kajang tribe is a symbol of honesty and should be adhered to as a message of ancestors must be followed. The black color is also believed to harmonize with its natural beings and meaningful simplicity, so it can be meaningful equality without any distinction. Message in the language of Kajang referred to as "Pasang" must be obeyed because if not adhered to then the actor will receive the curse of the God. As described above can be presented that a good leader is a leader who has the value of simplicity, sincerity and decency,

because the leader is not a power's leader but as a leader who is able to accommodate the welfare and prosperity of its people, so it is not just the measures taken, but also the virtue to do. Kajang tribes know the kinds of criminalization that is to get sick, have to pay a fine, expelled from Tana Toa or disposed from Tana Toa. But before the criminalization was given then to go through the customary court by collecting family, examine witnesses under oath, and generally people feel mistake will be confess their mistake. The basis of Amma Toa to gain confidence of a mistake by using the inner eye. In the *Pasang* delivered by Amma Toa see the phenomenon of corruption in this country, that should be state officials or individuals in performing their duties must have a strong belief and still follow heart sound and do not want to be controlled by lust, so in life than do always endeavor also infuse honesty. Then, observing *Pasang* delivered, in an effort to formulate public awareness and to prevent corruption can be restored to the status of customary law that live in the community, because the fact that customary law was actually alive in the conscience of every individual and it can be used as elements in law enforcement efforts. By placing the values that live in common law it will be able to influence the behavior of legal values. Because customary law, cites the opinion of Snouck Hurgronje in his book *De Athejer* mention the term of customary law as *adat recht* is to give a name to a social control that live in Indonesian society (Pide, A.S.M, 2014:1). As stated by Suryono Sukanto when a habit is accepted as the norm, then the habit has become a power binding code of conduct, since the code of conduct would be a means to monitor people's behavior. Citing the opinion of A. Suriyaman Mustari Pide that customs decision is not only a decision on a formal dispute, but also the social conflict that can be resolved based on the values of wisdom that live according to the spiritual nature and social life members of the alliance, in this case the indigenous communities. Customary law as a system of social control has given its role in order to create social order. This is the importance of the existence of customary law as a system of social control so that members of the people are expected to adhere to societal norms so as to create harmony in social life. Thus, to obtain legal awareness of people that ultimately led to the observance of legal, then the most important need is the authority of legal itself. Because the legal of life is recognized by the community because it can be beneficial, fair and are uncertain. Legal has a strategic and dominant position in the life of society, nation and state. Legal as a system can play a role in society properly if enforced consistently and consistently. The legal system according to Friedman consists of sub-legal system that is legal substance, legal structure and legal culture. Mechanism between the sub-system is then able to act in order to determine whether or not a law enforcement work, because the legal substance is related to the law or regulations, legal structures regarding personnel, facilities and legal infrastructure, while the legal culture regarding the behavior of society. Thus, if only to focus on the legal substance and legal structure by forgetting the legal culture like a fish lying dead in the basket. So the local wisdom that contain noble moral values can be transformed to the legal substance and structures to get substantial work with conscience.

4 CONCLUSION

Corruption is an extraordinary crime that its handling should be carried out in an extraordinary way. The consequence, it is not

only the financial loss of state but a crime that violates the rights of social and economic at large and systemic. Observing the criminal sanctions applicable in the law of corruption linked to the purpose of criminalization against perpetrators of corruption (corruptor), it can be seen that the essence of criminalization is intended as an attempt to eradicate corruption. But these efforts to date cannot be said to achieve its goals, because that looks just taking measure have not been effective to minimize corruption. Criminalization efforts have not actually created the state's role in protecting people against the corruption. The current criminalization system can be reconstructed not only related to the physical criminal, but can grow to the social/psychological and economic crimes. The author is currently providing prevention alternatives into three strategies, namely: First, a) a comprehensive understanding of corruption; b) self-control for behavior that can lead to the corruptive behavior; c) joint commitment as social control. Second, a) applying the principle of honesty in both tasks and authority; b) the use of the principle of accuracy in every completion of tasks and authority; c) the use of principles of purity in purpose so as to achieve the goal does not justify any means; d) applying the principle of balance in their policy. Third, a) placement positions as the capacity; b) election of officers with integrity; c) the law enforcement personal must neutral/independent in decision making and free from intervention, so that they can act objectively as evidence can be accountable by the law.

REFERENCES

- [1] Suriyaman Mustari Pide, *Hukum Adat Dahulu, Kini dan Akan Datang*, Prenadamedia Group, Jakarta, 2014.
- [2] Ahmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Kencana Prenada Media Group, Jakarta, 2009.
- [3] Andi Hamzah, *Korupsi Di Indonesia Masalah dan Pemecahannya*, PT. Gramedia Pustaka Utama, Jakarta, 1991.
- [4] Barda Nawawi Arief, *Masalah Penegakan dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta, 2007.
- [5] G. Larry Mays dan L. Thomas Winfree Jr., *Contemporary Corrections, Second Editions* (Belmont: Wadsworth/ Thomson Learning, 2002).
- [6] H.L.A. Hart, *Prolegomenon to the Principles of Punishment*, dalam Stanley, E. Group.
- [7] Henry Campbell Black, *Black's Law Dictionary, Fifth Edition*, St. Paul Minn, West Publishing Co, Boston, 1979.
- [8] Howard Jones, *Crime in a changing society*, translated by: Sudarto, *Hukum Pidana dan Perkembangan Masyarakat: Kajian Terhadap Pembaharuan Hukum Pidana*, Bandung, Sinar Baru, 1983.

- [9] John A. Gardiner and David J. Olson, *Theft of the City, Reading on Corruption in Urban America*, Indiana University Press, London, 1974.
- [10] Leden Marpaung, *Tindak Pidana Korupsi, Masalah dan Pemecahannya*, Sinar Grafika, Jakarta, 1992.