

# Policy for Formulating Criminal Law in the Indonesian Criminal Justice System

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**Abstract--** This study aims to analyze the policy of reformulating corruption law in Law No. 20 of 2001 concerning changes and additions to Law No. 31 of 1999 concerning the eradication of Corruption in Indonesia, and the policy on the formulation of corruption law needed to accelerate the eradication of Corruption Crimes in Indonesia can be carried out. This research is descriptive, using a normative approach, by analyzing the law. No 20 of 2001 which amended and added Law No. 31 of 1999, saw the renewal made compared to Law No. 3 of 1971 before, then analyzed qualitatively to find out weaknesses that still needed to be improved or revised with the formulation policy in the future. The study concluded that 1) Corruption Crime regulation policy in Law No. 31 of 1999 which has been amended and supplemented by Law Number 20 of 2001, is better than the existing regulation in Law No. 3 of 1971 concerning the Eradication of Corruption Crimes; 2) After being in effect for 18 years, there are some things that have not been regulated which are very much needed in eradicating Corruption Crime in Indonesia, and there are also a number of provisions whose arrangements require further certainty so that in practice it does not cause problems.

**Keywords--** Law Reformulation Policy, Corruption Crime, Indonesia

## I. INTRODUCTION

The legal system according to Friedmann is composed of a legal sub-system in the form of legal substance, legal structure, and legal culture, where these three elements must work together so that the desired goal can be achieved. These three legal subsystems really determine whether a legal system can work well or not. The legal substance usually involves aspects of legal or statutory regulation. The legal structure is more to the apparatus and the legal facilities and infrastructure itself, while the legal culture concerns the behavior of the community [1].

The above is attributed to Marc Ancel's opinion, in Barda Nawawi Arief, that each organized society has a criminal law system which consists of: (a) criminal law regulations and sanctions, (b) a criminal law procedure,

and (c) an implementation mechanism (criminal) [2]. In line with that, according to Radbruch, that construction and systematization in the processing of legal material are carried out in two ways, first, collegially displaying the law as the realization of legal concepts and legal categories as its components. Second, teleological describes the law as the realization of the ideals of the law itself [3].

In connection with the legal system above, corruption is an extraordinary crime, so it requires extraordinary enforcement and extraordinary measures. Corruption in Indonesia which is believed to be widespread and deep-rooted will eventually erode and destroy its own society (self-destruction). This is a violation of social rights and economic rights of society, and therefore corruption can no longer be classified as an ordinary crime but has become an extraordinary crime. According to Transparency International Indonesia: in 2015 Indonesia's Corruption Perception Index scored 36, which means an increase of 2 points (19 ratings) in 2015. This score is still 4 points adrift of the ASEAN average (including Singapore) but is promising if the trend positives that exist can be maintained even improved [4].

The legal substance governing corruption has undergone several changes and improvements since the regulation in the Criminal Code, then Emergency Law of 1960, Law No. 3 of 1971, Law 31 of 1999 last with Law No. 20 of 2001 which amended and added Law No. 31 the Year 1999. But in reality, there are still a number of things that have not been regulated and the arrangement is still not firm, making it difficult to enforce the law [5]. The policy of formulating criminal law, especially regarding the formulation of current corruption, has a number of fundamental weaknesses [6]. Especially with the ratification of UNCAC, it seems that there are still a number of points from UNCAC that have not been accommodated in the legal provisions of corruption in the Indonesian criminal justice system.

Therefore, for the acceleration of corruption eradication, in the ninth point of Presidential Instruction No. 5 of 2004, a study is needed to improve regulations relating to the corruption that apply in Indonesia's current positive law, to see existing weaknesses so that concepts can be found for improvement. future settings. So that the concept of legal products is needed in the form of legislation as needed. Activities of authorized institutions

can approach the legal system to make efforts and actions to eradicate corruption [8].

Judging from the legal substance of the regulation of corruption in Indonesia, it still requires changes and additions, both regulated and not regulated at all, according to what is expected in the UNCAC which has been ratified into Indonesian positive law. This is needed so that the acceleration of eradicating corruption in Indonesia can be carried out well.

## II. METHOD

This research is descriptive research, seeks to explain the problem of the policy formulation of corruption law in the Indonesian criminal justice system. Using a normative juridical approach, more specifically the Law approach and legal hermeneutics approach by interpreting Law Number 20 Year 2001 concerning changes to Law Number 31 Year 199 concerning Eradication of Corruption Crime, as primary legal material, then supported with material secondary law in the form of the results of previous research and the opinions of experts in the relevant legal literature, as well as tertiary legal materials through library research. The analysis is carried out qualitatively by returning the existing research problems to the prevailing legislation on corruption in Indonesia.

## III. RESULTS AND DISCUSSIONS

### A. *Changes in Law No. 20 of 2001 concerning Law No. 31 of 1999*

Amendment to Law No. 20 of 2001 concerning Law No. 31 of 1999 is as follows: 1) Corporate affirmation (a collection of people and / or assets that organize, both legal entities and non-legal entities (article 1 paragraph (1) yo paragraph (3) Law No.31 of 1999 jo Law No. 20 In 2001) as perpetrators of corruption other than people; 2) The definition of "against the law" is interpreted by the lawmakers as "formal" and "material", that is, even if the act is not regulated in legislation, but if it is considered disgraceful because it is not in accordance with a sense of justice or norms of social life in society, then it can be punished; 3) Threats of imprisonment / criminal penalties by using the "special minimum time span and maximum 2,3,5,6,7,8,9,10,11,12,21,22 and 23) and can be subject to additional criminal penalties as regulated in the Criminal Code and article 18); 4. The return of state finances or the country's economy does not abolish criminal offenders. In the investigation found and argued that one or more elements of criminal acts of corruption did not have enough evidence, whereas in reality there had been stated financial losses, a civil suit could be made, even though the free verdict was imposed by the corruption court (articles 4 and 32 paragraph (1) and (2); 4) Civil lawsuits can be carried out by Prosecutors. State lawyers against the heirs of suspects/defendants of corruption crimes died at the time of investigation/trial, there were state losses

(art. 33, and art. 34 of Law 31/1999); 5) Reverse proof is limited or "mutually evident" between the defendant and the Public Prosecutor; 6) Possible existence of justice in absentia; 7) Crime of corruption that is difficult to prove, a joint team with Corn coordination was formed so that it is efficient and continues to realize the protection of human rights of suspects or defendants. For example corruption in the field: banking, taxation, capital markets, trade and industry, commodity futures, monetary, and financial that are cross-sectoral in nature, carried out with advanced technology carried out by State Administrators (Law no.28 / 1999); 8) Community participation. recognized, expected, and possible in terms of prevention and eradication of corruption, as well as the establishment of the Corruption Eradication Commission (KPK) (Article 41, and 43 of Law 31/1999); 9) KPK's duties and authorities, coordinate and supervise, investigate, investigate and prosecute, their membership consists of elements of the government and community elements, regulated by law.

### B. *Changes that must be made to the Corruption Law in Order to Accelerate the Eradication of Corruption Can Be Implemented in Indonesia*

The preparation of legal regulation has a very important position and function in the life of the nation and state because the product of the arrangement will give birth to legislation. Not only serves as an initiative for drafting laws but also granting approval [9]. As stated by Hans Kelsen that, in a system of legal norms, there is a hierarchical hierarchy, which stipulates that the norms below are valid and have behaviors when formed by or based on and derived from higher norms. Theory of Hans legal norms This Kelsen was inspired by his student Adolf Merkl, who put forward the theory of the legal stage (die leh vom Stufenbau der Rechtsordnung), according to law a hierarchical order, a legal system that conditions, conditioned and legal actions. The conditioning conditions contain conditions for making other norms or actions [10]. Law is a hierarchy of normative legal relations, not a causal relationship, and its essence lies in what should be (ought) and that which is "is" (sollen and sein). In reviewing the law, it must look at its elements, its interrelationship, its legal order as a whole, the structure of the different legal arrangements, and the unity of law in a pluralistic positive legal order.

To eradicate corruption requires a science as well as art which in the end has a practical purpose to enable positive law regulations to be better formulated and to provide guidance not only to lawmakers but also to courts that implement laws and also to administrators or implementers of court decisions [ 11]. a change in culture, especially through the legal arrangement to influence the community with a regular and planned system [12].

Whatever the main legal task is to divide the rights and obligations between individuals in society, share authority, regulate ways to solve legal problems, and maintain legal certainty [13]. Changes that need to be made include:

1. Amendment to the Regulation, which consists of
  - a) Article 2 paragraph (1) and Article 3 Corruption currently does not fulfill the *lex certa* principle. This article has multiple interpretations that endanger legal certainty. Especially concerning the phrase "can be detrimental to state finances" in both articles. The word "can" shows that the offense is formally constructed on the deed, not the result that arises. Proof of the element of state financial loss does not have to be real, enough with the potential loss of state finances;
  - b) Criminal Law policies in the case of corruption currently do not provide juridical understanding or limits regarding "conspiracy", "criminal acts in terms of assistance" (*medeplichtige*) and "repetition of criminal acts" (*recidive*);
  - c) Criminal law policy in terms of eradicating non-corruption, is still spread in several laws and uses sanctions based on different laws, this can cause problems especially in aspects of justice;
  - d) Look at existing weaknesses;
  - e) The procedural law that regulates this reverse proof has not yet been regulated, so that in its implementation it creates difficulties [14];
  - f) Determination of the threat of more severe sanctions, namely at least 6 years and a maximum of capital punishment against perpetrators of corruption that are applied in an absolute preventive manner [15]. Because the imprisonment of at least 4 years has not been able to make the perpetrators deterred from committing corruption;
  - g) Formulation of strict sanctions against the corporation;
  - h) Renewal of policies regarding coordination between institutions to eradicate corruption needs to be emphasized in the context of legal certainty for law enforcement officials relating to eradicating corruption.
2. Addition of Arrangements consisting of a) Private Sector. Conceptually the difference between bribery in the private sector and bribery in the public sector lies in the involvement of the parties. If bribery in the public sector involves the role of public officials, bribery in the private sector is not at all the position held by public officials [16]. Indonesia long before UNCAC had regulated this matter in Law No. 11 of 1980 concerning Bribery Crimes, but the enforcement of the law was still pending, therefore a more explicit regulation was required by including it in the corruption law; b) Asset Recovery. The assets of the corrupted country not only harm the country narrowly, but also harm the state and its people [17], the eradication of corruption is not enough to punish the perpetrators, but must be balanced with efforts to cut off the flow of proceeds of crime, so as to eliminate the motivation of the perpetrators or continue his actions, because the purpose of enjoying the proceeds of his crime will be hindered or become

futile [18]. Asset return theory is a legal theory that explains the legal system of returning assets based on the principles of social justice that provide capabilities, duties, and responsibilities to state institutions and legal institutions to provide protection and opportunities for individuals in society to prosper. Efforts to restore assets to state losses can be realized through civil law rather than criminal law because in this process the State Attorney can conduct a civil suit to save assets even if the conditions are not proven to be criminal, the defendant has died or the defendant has been acquitted. So that when the State becomes a victim of criminal acts of corruption, the losses can still be recovered. The author agrees with this because proof of an element of a criminal offense is not something that is easy and requires considerable time so that it is possible for the perpetrator to eliminate assets during the process; c) Strengthening influence, enriching oneself; and d) Disclosure of criminal acts involving the beneficial owner [19].

#### IV. CONCLUSION

The Corruption Crime regulation policy in Law No. 31 of 1999 which has been amended and supplemented by Law Number 20 of 2001, is better than the existing regulation in Law No. 3 of 1971 concerning the Eradication of Corruption Crimes. After being in effect for 18 years, there are some things that have not been regulated which are very much needed in eradicating Corruption Crimes in Indonesia. Then there are also some provisions whose settings require further assertion so that in practice it does not cause problems. So the suggestions from this article are: a) to the legislature and the Government, it is expected that serious attention will be made to make changes to the provisions of this corruption act, so that changes can accommodate all the needs to fill the existing shortcomings, so that produced can provide legal certainty in the future eradication of corruption in Indonesia; b) To law enforcement officials related to the eradication of corruption, in order to implement the policy of formulation of the corruption law as well as possible in order to create justice in the process of examining corruption cases.

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