

Criminal Law Politics: Corruption Eradication Strategy Through an Integrative Approach

Karlina Apriani

Magister of Law of Law Faculty
University of Mataram

Email : karlinapriani45@gmail.com

Ahmad Raji Hidayat

Magister of Law of Law Faculty
University of Mataram

Email : ahmadrajihidayat@gmail.com

Rato Eko Hendriyadi

Magister of Law of Law Faculty
University of Mataram

Email : ratoeko269@yahoo.com

Wahyu Hamdani

Magister of Law of Law Faculty
University of Mataram

Email : Wahyuhamdhani@gmail.com

Surawijaya

Magister of Law of Law Faculty
University of Mataram

Email : Sura301013@gmail.com

ABSTRACT

The purpose of this research is to examine the politics of criminal law deeply in eradicating criminal law of corruption through an integrative approach. The method using is normative legal research. Normative legal research methods or library research methods in legal research by reviewing existing legal materials. The integrative approach in overcoming corruption crime can be made integrally through two approaches, namely first, awareness between criminal politics and social politics directed to achieve particular objectives of the socio-political policies that have been set in order to achieve social welfare. Second, integration of efforts to tackle crime with penal and non-penal approach due to the reality of national law and the political facts of international law for enforcement on a national, regional, and global scale.

Keywords: Politics of Criminal Law; Corruption; Integrative Approach.

INTRODUCTION

The blurred portrait of corruption eradication in Indonesia appears in the increase of corruption in various lines of administration. We can see on the legal stage of corruption

eradication, played by the police, prosecutors, and the KPK, which is enough to send a message that corruption has occurred in all areas of the profession, in the executive, legislative, and judicial powers. For this reason, it is no exaggeration to say that corruption has plagued and touched all spheres. As for the facts related to this matter can be seen in the data tabulation :

Table 1. Tabulation of Corruption Actors by Profession/Position in 2011-2019

Jabatan	2011	2012	2013	2014	2015	2016	2017	2018	2019
DPR and DPRD members	5	16	8	9	19	23	20	103	10
Head of Institution/Ministry	0	1	4	9	3	2	0	1	2
Ambassador	0	0	0	0	0	0	0	0	0
Comisioner	0	0	0	0	0	0	0	0	0
Governor	0	0	2	3	3	1	1	2	1
Mayor/Regent and vice regent	3	3	3	12	4	9	13	30	14
Echelon I / II / III	15	8	7	2	7	10	43	24	14
Judges	2	2	3	2	3	1	3	5	0
prosecutor	2	0	0	0	0	3	1	0	3
Police	0	1	1	0	0	0	0	0	0
Lawyer	0	0	0	0	2	1	0	4	1
Private	10	16	24	16	18	28	28	56	49
Others	1	2	8	8	3	21	13	31	32
Corporation	0	0	0	0	0	0	1	4	1
Total number	38	49	60	61	62	99	123	260	127

Source: Processed from the KPK Annual Report.

Refers to the tabulated data above, the portrait of corruption outbreaks has spread in various regions involving regional government officials such as governors, mayors, regents, echelon I/II/III. Likewise, in legislative starting from DPRD members at the regency/city, provincial level, to the DPR RI. Even worse, this outbreak of corruption has spread to the village government, as the results of the monitoring of the Indonesia Corruption Watch (ICW) in 2015-2017 cases of criminal acts of corruption in the village has increased. In 2015, corruption cases reached 17 cases and increased to 41 cases in 2016. Jump more than doubled then occurred in 2017 with 96 cases. Total corruption cases were found in 154 cases.¹

When referring to empirical data about the level of Indonesia corruption, it is also reflected in the consistent ranking of the Indonesian Corruption Perception Index (CPI), which has not shown a significant decline. This is based on the 2018 Indonesian GPA, which ranks 89th out of 180 countries. The value obtained by Indonesia is 38 on a scale of 0-100, meaning that the lower the value, the more corrupt the country, and vice versa. When compared with 2017,

¹ Indonesia Corruption Watch (ICW). (2018). Outlook Dana Desa 2018 Potensi Penyalahgunaan Anggaran Desa di Tahun Politik. Available from : https://antikorupsi.org/sites/default/files/outlook_desa_2018_-_icw.pdf. [Accessed Des 20, 2019].

Indonesia ranks 96th with a value of 37². An increase of 1 (one) point in the CPI does not make law enforcement in the eradication of maximum corruption even in terms of increasing position. Therefore, this condition needs to be evaluated for developing a strategy to eradicate corruption

Normatively, the politics law on corruption eradication has regulated in various laws and regulations, including The Act Number 20 Year 2001 on Amendment to The Act Number 31 Year 1999 on Eradication of Corruption and The Act Number 19 Year 2019 concerning Second Amendment The Act Number 30 Year 2002 on the Corruption Eradication Commission. The regulation of criminal acts of corruption in both sufficient to ensnare corruptors. But it still needs to evaluate to attention the international developments regarding the provision of criminal acts of corruption. Whereas in The Act Number 20 year 2001 on Amendments to The Act Number 31 Year 1999 on Eradication of Corruption, the emphasis is more on repressive approaches, while The Act Number 19 Year 2019 on Second Amendment to The Act Number 30 Year 2002 on the Corruption Eradication Commission uses a repressive and preventive approach. While the United Nations Convention Against Corruption (2003), which has been ratified by Indonesia by issuing Law Number 7 of 2006 concerning Ratification of the United Nations Convention against Corruption, 2003 uses preventive, repressive, and restorative approach. Therefore, it is necessary to have an integrated crime prevention policy.³

This integrative approach to be pursued through two policy approaches in the sense of, firstly, the awareness between criminal politics and social politics. Second, cohesiveness between efforts to tackle the crime with a *penal* approach and *nonpenal* approach⁴. The necessity in efforts to tackle crime with this integral approach is because, in addition to the attention of various social aspects and the negative impacts of development and development of crime, it also looks at crime victims. Based on that, this paper aims to examine more deeply the politics of criminal law in combating criminal acts of corruption through an integrative approach.

METHOD

The type of research in this research is normative legal research. The approach method using are statute approach and conceptual approach. Sources of legal materials needed in this were taken from the literature in the form of primary legal materials and secondary legal materials. The legal materials are obtained through document study or literature study.

ANALYSIS AND DISCUSSION

Approach between Criminal Politics and Social Politics in Eradicating Corruption in Indonesia

Efforts and the policies to create a good rule of criminal law that essence can not separate from the purpose of crime prevention. The policy or politics of criminal law is part of criminal politics. Therefore, when viewed from the perspective of criminal politics, the politics of criminal law for the eradication of criminal acts of corruption is identical to the meaning of policies to tackle corruption with criminal law.

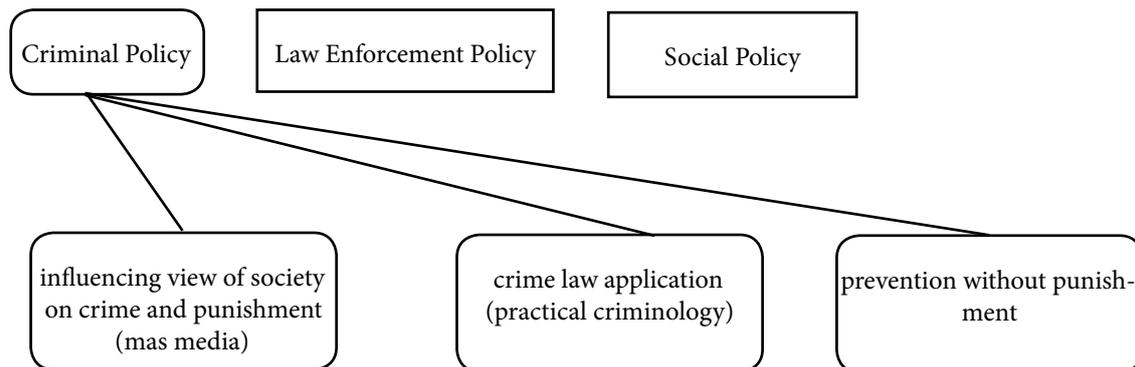
2 Indeks Persepsi Korupsi .(2018). Indeks Persepsi Korupsi Indonesia. Available from: <https://www.transparency.org/cpi2018>. [Accessed Des 28, 2019].

3 Romli Atmasasmita. (2012). *Teori Hukum Integratif*. Yogyakarta : Genta Publishing. p. 98.

4 Barda Nawawi Arief. (2016). *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*. Jakarta: Prenadamedia Group. p.6.

Thus, the relationship between criminal politics and social politics on corruption eradication cannot be separated from the efforts to tackle the criminal as a part integral to get social defense and social welfare. Therefore, as we conclude, the criminal politics law on corruption eradication also as a part of integral policies and social politics, as mentioned as reasonable efforts to get social welfare.

G. Peter Hoefnagels mentioned, "Criminal policy as a science of policy is part of a large policy: the law enforcement policy. The legislative and enforcement policy is turning part of social policy".⁵ Based on G. Peter Hoefnagels, criminal politics also as a part of the law enforcement policy, legislative policy, and law enforcement as essential from the policies or social policy. Schematically can be described as follows:



Affirmation of necessity for criminal prevention that integrated with social policy and national development planning, Sudarto also stated that "when criminal law is involved efforts to overcome the negative aspects of community development/modernization, then it should be seen the overall relationship of criminal and social politics. Defense planning, and must be an integral part of the national development plan"⁶. Therefore, in tackling crime, it needs to be pursued with the policy in as cohesiveness (integrality) between criminal politics and social politics.

Relation of the crime of corruption, the response cannot be separated from the integral concept between criminal policy and social policy or national development policy aimed at achieving specific objectives of the socio-political policies that already determined to achieve social welfare.

Integral Approach between Penal Policy and Non-Penal Policy in Eradicating Corruption in Indonesia

The term of policy in this paper is taken from the English "policy" or the Dutch "politiek". This term in Indonesian is often translated with the word "Politik". Starting from that term, the criminal law policy also taken with the politics of criminal law⁷. Marc Ancel defines the politics of criminal law as a science as well as an art which ultimately has the practical goal to enable positive legal regulations formulated properly and provide guidance not only to legislators but also to the organizers or executors of court decisions⁸. As is the "regulation of positive law" in the definition of Marc Ancel, certainly is legislation criminal law.

5 H. Dey Ravena dan Kristian. (2017). *Kebijakan Kriminal*. Jakarta : Kencana. p. 91.

6 Barda Nawawi Arief, *Loc.cit.* p. 6.

7 Nisa Yulianingsih dan R.B. Sularto. (2014). "Kebijakan Hukum Pidana Dalam Tindak Pidana Korupsi Pengadaan Barang dan Jasa". *Jurnal Law Refrom* 1(1).p. 63.

8 John Kenedi. (2017). "Kebijakan Hukum Pidana (Penal Policy) dalam Negara Hukum Indonesia: Upaya Mensejahterakan Masyarakat (Social Welfare)". *Jurnal Pemerintahan dan Politik Islam*, 2 (1).p.20.

While, A. Munder stated in detail about the scope of the politics of criminal law that the politics of criminal law was a line of policy to determine, (a) how far the applicable criminal provisions needed to be changed or updated; (b) what can be done to prevent crime from occurring; (c) how to investigations, prosecutions, trials and the criminal conduct must be carried out⁹. Based on the political understanding of criminal law put forward by A. Munder, the scope of the criminal law policy actually covers a fairly broad problem, which includes evaluating the substance of criminal law that is in applicable for the renewal of the content of criminal law in the future and how to apply it. Criminal law through the components of the criminal justice system, and equally important is the prevention of crime.

The criminal prevention policy (including corruption) through two approaches, penal approach (application of criminal law) and the non-penal approach (non-criminal approach). The integration of both approaches is proposed in the United Nations on the Prevention of Crime and the Treatment of Offenders¹⁰. It's motivated by the fact that crime has a social and human dimension. Therefore efforts to tackle crime must be carried out with an integrated approach between penal policy and non-penal policy, consider the application of criminal law alone has various limitations so that efforts to tackle crime with a penal approach must be followed by non-penal approach which is a form of prevention without using criminal law and efforts to influence the public's view of crime through mass media.

The penal approach in eradicating corruption has in fact been regulated in various laws and regulations, including The Act Number 20 Year 2001 on Amendment to The Act Number 31 Year 1999 on Eradication of Corruption and The Act Number 19 Year 2019 concerning Second Amendment The Act Number 30 Year 2002 on the Corruption Eradication Commission. The regulation of criminal acts of corruption in both acts sufficient to ensnare corruptors. But, it still needs to be evaluated by taking into remark the political realities of international law for law enforcement on a national, regional and global scale. Because the development of world challenges today shows a paradigm shift where the world today is not free from threats and cannot be overcome by only a country, even if it is a strong country.

Indonesian Administration ratified the United Nations Convention Against Corruption on April 18, 2006. Post-ratification of the convention, it will have an impact on corruption prevention and eradication strategies in Indonesia. So far, the handling of corruption has focused on repressive approaches and lacks consideration of preventive and restorative approaches. In the 2003 the substance of United Nations Convention Against Corruption, a change in perspective towards multi aspects of corruption can be seen, including¹¹:

- a. The problem of corruption has multiple elements, the legal issues, Human Rights, sustainable development, poverty, and security
- b. Conventional proofing systems do not always well in eradicating corruption, so the burden of proof is reversed a potential alternative solution

In the context of international corruption prevention and eradication, the most fundamental thing in the 2003 UN convention has made a significant breakthrough aimed specifically at returning custodial state assets to the country of origin. These breakthroughs included in Chapter V regarding asset recovery. The new legal policy, which is a breakthrough, is a new strategy in the prevention and eradication of cross-border corruption that has been agreed by the international community, which will undoubtedly have an impact on legal policies and

9 Barda Nawawi Arief. *Op.cit.* p. 27.

10 Mahmud Mulyadi. (2018). "Pendekatan Integratif dalam Penanggulangan Tindak Pidana Korupsi" *Jurnal hukum Samudra Keadilan*, 13(1).p. 6.

11 I Gusti Ketut Ariawan. (2016). "Urgensi Ratifikasi United Nations Convention Against Corruption 2003 dalam Kerangka Penegakan Hukum dan Kebijakan Regulasi Pemberantasan Tindak Pidana Korupsi di Indonesia" *Kerta Gosa Jurnal hukum program studi Doktor ilmu hukum program Pascasarjana Universitas Udayana*, 2(1).p. 19

strategies to prevent and eradicate corruption in the country (Indonesia) in particular. The implementation of the provisions of the 2003 UN Convention specifically regarding the return of assets from corruption into the national criminal law system still requires a comprehensive study to find out the legal implications of the applicable national criminal procedure system, so the results of the study will lead to the establishment of laws in the prevention and eradication of corruption in this is the politics of criminal law prevention and eradication of corruption¹².

In addition to using a penal approach to the prevention and eradication of corruption also backed by non penal approach. Among the models of the burden of proof reverse in Article 31, paragraph 8 of the 2003 UN convention, which has been equipped with a model of confiscation/expropriation of assets of wealth through the approach of non penal or without charge, using civil or civil-based conviction set forth in Article 54 paragraph (1) letter c.

In Indonesia, the provisions on how to reverse the burden of proof and confiscation of corruption assets included in Article 37 of the Act Number 31 year 1999 jo. Article 37A and Article 38 C of the Act Number 20 Year 2001. The civil prosecution model stated carried out by the Attorney General through the Deputy Attorney General for civil and administrative. However, to strengthen the return of assets resulting corruption through civil courts, the Act Number 20 Year 2001 on Amendment to the Act Number 31 Year 1999 on Eradication of Corruption Crimes needs to be equipped with the laws on the seizure of criminal assets to accommodate the implementation of the provisions of Article 37 paragraph 8 and Article 54 paragraph 1 letter c 2003 UN Convention.

Also, non-penal approach carried out by emphasizing the corruption prevention efforts directed to minimizing opportunities for corruption, and it is necessary to strengthen anti-corruption commitments through consolidation and collaboration between the public sector, the legislative area, the judiciary sector, the private sector, social organizations, and other related parties to jointly carry out the eradication of corruption effectively and efficiently, as well as to formulate provisions relating to the implementation of government ethics and the integrity of public officials and building the nation's character with integrity.

CONCLUSION

The policy to countermeasures the corruption carried out integrally. This integrative approach pursued through two policy approaches in the sense that, firstly, the awareness between criminal politics and social politics directed to achieve specific goals of the socio-political policies determined to achieve social welfare. Second, integration between efforts to tackle with penal and non penal approach. Penal policy is carried out with due regard to the reality of national law and the political facts of international law for enforcement on a national, regional and global scale relating to the formation of laws in the prevention and eradication of corruption. And supported by a non-penal approach carried out by strengthening anti-corruption commitments through consolidation and collaboration between the public sector, the legislative sector, the judiciary sector, the private sector, community organizations and other relevant parties to carry out corruption eradication jointly.

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