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The extraordinary legal policy for Corruption Crimes in shifting the formulation of attempted crimes as perfect crimes.

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Abstract: The regulation of criminal acts of attempt is known in the Criminal Code, especially in article 53, which states "attempting to commit a crime will be subject to punishment if it is clear that there has been an initial act and the act is not completed not because of one's own will." In the concept of the Criminal Code, attempted action is an action that is declared to have not been completed because something was not completed because it was not the intention of the perpetrator. In the law on eradicating corruption, the concept of an offense or attempted criminal act is not recognized because every crime that occurs in connection with corruption will be considered completed or complete as long as there has been an initial act or acts. This can be understood considering that the criminal act of corruption is a special criminal act whose mode changes and develops, is very neat, covert and organized. Often criminal acts of corruption begin with initial actions in the form of promises and agreements while observing the situation, then the implementation will be carried out later to disguise the act, which is why criminal acts like this are often difficult to catch if the Criminal Code concept of attempted criminal acts is used as a measure. Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption contains several articles whose concept is different from the Criminal Code, where in eradicating corruption an initial action is deemed to have completed corruption. This research is normative research in which the author examines the collected library materials consisting of primary, secondary and tertiary legal materials followed by in-depth observations of the phenomena that occur. The data obtained is then processed systematically by carrying out grammatical interpretations that will be used in discussing existing problems. The results of the research show that there are differences in the concept of trials regulated in the Criminal Code and trials regulated in the Corruption Law, where in this law the element of initial action has been proven that there has been an attempt or act of corruption, so that the criminal act/delict is considered complete and the perpetrator can be convicted of committing a criminal act of corruption.

Keywords: Corruption Crime, Initial Action, Attempted Criminal Act.

INTRODUCTION

1.1 Background

Corruption is a criminal act that is seen as an act that is massively detrimental to the state, even the impact is felt not only now but also in the future. Corruption causes state losses that can affect the welfare and quality of life of citizens. Even so bad the consequences of corruption are called corruption is likened to rottenness, ugliness, depravity, dishonesty, can be bribed, immoral, deviation from holiness, insulting and slanderous words. There are so many bad expressions about corruption because corruption is a criminal act that is universally recognized in agreement as a crime that must be fought by nations. The agreement was then realized in a UN initiative through the UN Convention Against Corruption or the United Nations Convention Against Corruption (UNCAC) which was signed on December 18, 2003 in Merida, Mexico. UNCAC includes a series of guidelines in implementing the eradication of corruption, including prevention efforts, formulation of types of crimes that include corruption, law enforcement processes, provisions for international cooperation and asset recovery mechanisms, especially those that are cross-border.

As a manifestation of the seriousness of the Indonesian state in combating the crime of corruption, Indonesia has stated that the crime of corruption is an extraordinary crime, so that in handling and enforcing it, extraordinary legal efforts are also needed, including the formation of laws and regulations on the Eradication of Criminal Acts of Corruption as a form of extraordinary legal policy.

Corruption in Law no. 31/1999 in conjunction with Law no. 20/2001 is formulated in articles 2,3,5,6,7,8,9,10,11,12,12B,13,15,16,21,22,23 which adopt several provisions in the Criminal Code, namely articles 5,6,7,8,9,10,11,12 and article 23 while the others are formulated separately during the formation of Law no. 31/1999. Of the several articles formulated, there are several articles that contain elements of an attempt, meaning that the literal history of the crime is still being planned and has not been completed, so that all of its actions have not been fulfilled because they have not been completed. However, in the Criminal Act of Corruption because it is viewed as an extraordinary crime, its formulation also differentiates it from the Criminal Code where the criminal act in the Criminal Code is viewed as an attempted crime, but in the Criminal Act of Corruption it is considered a perfect crime. Example of Acts give or promisingsomething Which known as Gratification is part Which close very the relationwith attempted crime.

Draft test committing a criminal act of corruption can actually convicted, because of the background, concept- draft Which adopted in eradication act criminal corruption in Indonesia requires special handling, even act criminal corruption has made into as crime outside regular/ *extra ordinarycrimes*) in Indonesia . There are a number of criminal provisions Which contains elements of experiment including Article 5 of the LawInvite No. 20 Year 2001 show example that act criminal corruption with “promising something” is a completed crime. In in the proof very important For proven whether there is a good promise in the form of speech (oral), or written between the party (the subject the law), and when proven there is a promise spoken or written with by itself proven do act criminal corruption. in a way firm And clear It is stated that in the Law on the Eradication of Corruption, carrying out an attempted crimecorruption is a criminal act and by therefore can be punished. In this Law, attempted crimes are crimes that its formulation in a way formal, so that determined on beginning (beginning) element act criminal good promising (gift) spoken (oral) or written, not determined on consequence or achievement Meaning giving promise/gift. Based on this, there is a shift in the formulation of attempted criminal acts contained in the Criminal Code with criminal acts with elements of attempted criminal acts in the Law on the Eradication of Corruption.

1.2 Formulation of the problem

1. How is the formulation of Attempted Criminal Acts regulated in the Criminal Code?
2. How does criminal law policy formulate attempted corruption as a perfect crime?

METHOD

This study uses a normative (doctrinal) legal research method with a descriptive analysis approach. The type of data used is secondary data as the main data and supplemented by primary data, namely interviews. Secondary data as the main data consisting of primary, secondary and tertiary legal materials. The secondary data collection technique is carried out by inventorying various provisions of laws and regulations and literature related to the issues discussed later, then enriched with interviews and discussions to clarify secondary data.

RESULTS AND DISCUSSION

1.3 How is the formulation of Attempted Criminal Acts in the Criminal Code?

Attempt (poging/attempt) is an unfinished/non-stand-alone crime, that Attempt is a "strafausdeh-nungsgrund". With the existence of Attempt (Poging/attempt) does not increase the number of crimes, but expands (adds) the number of people who are threatened with punishment, that people who have carried out all their evil intentions are punished; and people who have only partially carried out their evil intentions are also punished. Proponents of this view include Van Hamel and Zevenbergen. They argue that an attempt is to expand the punishment. Memorie van Toelichting (MvT) which is an explanation of the Criminal Code (KUHP) describes an attempt as having begun but not/not yet completed the act of carrying out a crime, or having stated the intention to commit a certain crime with the beginning (act) of implementation. Memorie van Toelichting (MvT) which is an explanation of the Criminal Code (KUHP) describes an attempt as having started but not/not yet finished the act of carrying out a crime, or having expressed the intention to carry out a certain crime with the start (act) of carrying it out. Article 53 (1) of the Criminal Code states:

Attempting to commit a crime is punishable if the intention to do so is evident from the commencement of the execution, and the failure to complete the execution is not solely due to one's own will.

This provision does not provide an understanding of the attempt, but rather provides a number of conditions for the attempted crime to be punished. If the act of committing a crime has not been completed, then he can be punished for attempting a crime, and the punishment is lighter when compared to a completed crime. Likewise in the provisions of the National Criminal Code where attempted actions are regulated as follows:

Article 17 of the National Criminal Code:

(1) An attempt to commit a crime occurs if the perpetrator's intention is clear from the start of the implementation of the intended crime, but the implementation is not completed, does not achieve results, or does not cause prohibited consequences, not solely due to his own will.
(2) The commencement of implementation as referred to in paragraph (1) occurs if:
    a. The act committed was intended or aimed at committing a crime;
    b. Actions that are carried out directly have the potential to give rise to the intended crime.

Attempt in this case is an attempt to achieve something, if what is desired is achieved then the attempt is successful, in the context of a criminal act it is considered.

Successful act to make a perfect crime. From the articles regulating the attempt, it can be understood that an attempt to commit a crime can still be punished but the punishment is much lower than a crime that has been perfected. The limitation of a criminal act can be said to be an attempt if the crime is committed with intent, there is an initial action but the action has not been completed not because of the perpetrator's desire. This means that the action is considered imperfect, not finished according to its purpose. An example can be given, for example, someone is going to take a motorbike, then an effort is made to spy, enter the fence of the house and damage the motorbike lock but when trying to take the motorbike the owner finds out so that it is certain that there is no loss because the motorbike was not successfully taken. Therefore, the perpetrator did not succeed in taking the motorbike according to his intention to steal, but there was already an initial action, namely entering the house, damaging the motorbike lock, then this action is considered an attempted theft and is punished as an attempt not as theft, because the crime is not yet perfect. The reason for the attempted perpetrator to be punished according to Jonkers and Bemmelen in his book Topo Santoso, there are two theories, namely subjective and objective. Subjective theory states that the perpetrator of the attempted crime deserves to be punished because of the factor of his evil intention in committing the crime with the commencement of the crime. Subjective theory views that the attempt can be punished because it is contrary to the noble norms that contain evil and dangerous intentions. While the objective theory sees that the perpetrator has committed an attempted crime, then there are already dangerous consequences from the act, the act has endangered the interests of the law.

In the Criminal Code, the concept of a criminal perpetrator is someone who has committed a crime in its entirety, while in the context of an attempted exception, it seems that the crime cannot be completed for a reason other than the perpetrator. The failure or failure to complete the crime is not due to the perpetrator, meaning that in the example of the motorbike theft case above, the perpetrator failed not because he gave up his intention but because he was caught by the motorbike owner. This would be different if the perpetrator suddenly gave up his intention when he was about to steal because he was afraid of being caught or suddenly realized the consequences of stealing and thwarted his action because of his awareness, then this crime cannot be punished. The punishment for the attempted perpetrator is reduced by 1/3 of the threat of a perfect crime and if the threat is life or death, the maximum sentence is 15 years. This concept is different from the crime of corruption where the formulation of an attempted crime in a corruption crime has actually been considered a perfect crime, even though the crime has not been realized, and there has not even been any state loss.

1.4 How the policy shifts the concept of attempted crime to a perfect crime

The history of corruption eradication began since the military ruler's regulation, which was stated in the Military Regulation PRT/PM/06/1957 issued by the Army Military Ruler and applicable to the Army's area of authority. Then Law No. 3 of 1971 concerning the Eradication of Corruption was formulated and then changed to Law No. 31 of 1999 where the regulation of Corruption Crimes among others adopted the provisions contained in the Criminal Code. Draft arrangement in a number of chapter Criminal Code Then made into articles on regulation act criminal corruption according to Constitution No. 31 Year 1999 about Eradication Action Criminal Corruption Which amended by Law no. 20 years 2001, is take draft from Criminal Code Then made into articles in Law- No. 31 Year 1999 about Eradication Criminal act Corruption.

A number of provision in Criminal Code Actually is a number of provision Which become origin will from terms and conditions criminal acts of corruption. But the important point and

historic in the eradication of corruption in Indonesia, started when its implementation Central War Rule Chief of Staff Regulations Force Land date 16 April 1958 No. Prt/Perpu/013/1958 along with Regulation its implementation And Regulation The ruler War Center Head Staff Force Sea No. Prt/ZI/I/7 April 17th 1958.

In Constitution No. 3 Year 1971 on the Eradication of Criminal Acts of Corruption, withdrawn a number of chapter in Criminal Code as part And scope act criminal corruption. Chapter 1 Constitution No. 3 Year 1971, state “Punished Because act criminal corruption" is:

a) Whoever with oppose law do action enrich self yourself or another person or body, which directly or indirectlyharm finance Country And or economy Country, or knownor worthy allegedly by him that the act is detrimental to finances Country or economy Country.
b) Whoever with the aim of profitable self Alone or person another or an agency, misusing authority, chance or means Which There is to him Because position or position, Which in a way direct or No direct can harm finance Country or economy Country.
c) Whoever do crime listed in Articles 209,210, 387, 388, 415, 416, 417, 418, 419, 420, 423, 425 and 435 of the Criminal Code.
d) Whoever give present or promise to civil servants as referred to in Article 2 with something in mind inherent power or authority on his position or his position or by the giver present or promise considered attached on position or that position.
e) Whoever without reason Which reasonable in time Which as short as possible after accept giving or promise Which given to him like Which referred to in Articles 418, 419 and 420 The Criminal Code does not report the giving or promise to Which authorized.

Substance regulation legislationabout prevention And eradicationcorruption in Indonesia show changefundamental for example some provisions in Criminal Code adopted And made into provision- provision in regulation legislation eradication corruption Which started since enactment of Law no. 3 of 1971 on the Eradication of Criminal Acts of Corruption, which in Article paragraph (1) Sub c, states “Punished Because act criminal corruption Whoever do crime listed in Articles 209,210, 387, 415, 416, 417,418, 419, 420, 423, 425 And 435 Criminal Code.”

A action give present or promise to a employee country is act criminal bribery as Which meant in Chapter 209 paragraph (1) Criminal Code, emphasized again in Article 2 paragraph of the Law Invite No. 31 Year 1999 Which according to provision Chapter 5 Constitution No. 20 Year 2001 threatened with criminal prison shortest one year and maximum five years and/or criminal fine most A little five tens of millions of rupiah and a maximum of two hundred fifty million rupiah, good for those who give and also Which accept.

Since coming into effect Constitution No. 3 Year 1971 about Eradication Action Corruption Crimes which include the 13 Articles Criminal Code as act criminal corruption, the provisions of the 13 Articles also entered And made into Articles in Constitution No. 31 Year 1999 about Eradication Action Criminal Corruption, namely Chapter 209 Criminal Code become Chapter 5, Chapter 210 The Criminal Code becomes Article 6, Article 387 and Article 388 The Criminal Code becomes Article 7, Article 415 of the Criminal Code becomes Chapter 8, Chapter 416 Criminal Code become Chapter 9, Chapter 417 Criminal Code become Chapter 10, Chapter 418 Criminal Code become Chapter 11, Chapter 419, Chapter 420, Chapter 423, Chapter 425, or Chapter 435 Criminal Code becomeArticle 12 Constitution No. 31 Year 1999 about Eradication Action Criminal Corruption. The provisions of the Criminal Code have a relationship orin relation to criminal provisions in regulation legislation in outside the Criminal Code, of which

there are also quite a few arrange test. As example, in Law no. 31 of 1999 jo. LawInvite No. 20 Year 2001 about Eradication Action Criminal Corruption, there is a number of criminal provisions Which contain element test.

A number of act criminal bribery inCriminal Code has entered as provision- provisions in the eradication of criminal actscorruption, Which differentiated on bribe passive And bribe active. Regulation legislation abouteradication act criminal corruption Whichcontains many experimental elements, namely act criminal bribery Good bribe active or passive bribery and constitutes gratification (Receive) present and/or promise).

The crime of corruption is accepting bribes (bribery) passive) for example as regulated in Article 5 paragraph- the verse from Constitution No. 20 Year 2001, state as following:

1. Convicted with criminal prison most short 1 (One) year And most long 5(five) years and/or a maximum fine A little Rp. 50,000,000.00 (five tens million rupiah) And most Lots Rp. 250,000,000.00 (two hundred five tens millionrupiah) every person Which:
    a. Give or promising something to employee country ororganizer country with Meaning so that employee country ororganizer the do or not doing anything in his position, which is contrary tohis obligations, or
    b. Give something to civil servants or state administrators because or relate with something Which contradictory with obligation, done or No done inhis position.

For employee country or organizerthe country that receives the gift or promise as referred to in paragraph (1) letter a or letter b, convicted as meant in verse (1) . Against element "deed give orpromise something," from the nature of the act give something good to an object tangible or movable, then corruption briberygive a object is act criminal formal corruption is not pure or material pure, Because There is action give, if there is someone who receive gifts object the. It means, action give (something object) happen finished in a way perfect, or finished also act the crime of giving bribes, when the object is an object has move his power on employee the country that accept.

Whereas corruption promising something is act criminal corruption formal pure. For realization action promising just fulfill the promising requirements. No important, whether promise That accepted or No.Action criminal corruption promising somethinghas occurred when the action is promising something has spoken or written.

Discussion to Chapter 5 Law- Invite No. 20 Year 2001 the, has show example that act criminal corruption by “promising something” is a crime that is considered perfect or completed and it is not a problem whether the promise is realized or not . In the proof is very it is important to prove whether there is a promise either in the form of speech (verbal) or written between the parties (the legal subjects), and while proven There is promise Which spoken and also written with by itself provendo act criminal corruption. Regarding whether promise That achieved or No, No become part important in the proof. Discussion about giving promise like This only proven whether promise according to Article 5, it is said (verbally) or written, Which usually difficult very For proven by Because for perpetrator understandas well as provisions regarding eradication act criminal. No A little effort Commission Eradication Corruption (Corruption Eradication Commission)obtain sufficient evidence through tapping talks, follow And monitor activities until on realization of a promise such as giving a sum of money in caught red handed form. Gratuities as regulated in Article 12, Article 12A, Article 12B, and Article 12C, are also closely related with the element "gift or "promise" and the subject is "employee country" or

"organizer country," is Passive Bribery which includes corruption of civil servants receiving gifts promises (Chapter 12 Letter a), corruption employee country accept present Which it is known as the consequences of doing or not doing something in his position Which contradictory with obligations (Article 12 Letter b), corruption bribery employee country accept gratification (Chapter 12B).

From the discussion above, it can be understood why there is a difference in the concept of attempted criminal acts in the Criminal Code and the National Criminal Code compared to Criminal Acts regulated in the Law on the Eradication of Corruption, where attempted acts in the form of bribery or gratification in the form of promises are considered as perfect criminal acts without considering whether the promise has been realized or not. This is because promises have been included in the material formulation in the Law on the Eradication of Criminal Acts of Corruption as a form of extraordinary criminal law policy in formulating the elements contained in its articles in order to facilitate law enforcement in efforts to eradicate criminal acts of corruption considering that criminal acts of corruption are serious criminal acts categorized as Extraordinary crimes so that they are handled in extraordinary ways, both extraordinary legal efforts and in extraordinary legal policies.

CONCLUSION

Constitution about Eradication Action Criminal Corruption in a way firm And clearstate offense test in phrase promising Which If associated with the provisions of Article 53 of the Criminal Code, then the crime has not yet been finished or not yet perfect, whereas in act criminal corruption No required the proof whether promise Which spoken even written come true or No, Already is per made do do act criminal corruption, And can convicted. This is a shift in the understanding of the trial adopted in the Criminal Code and this is one form of extraordinary effort in the form of formulating articles in the law on the eradication of corruption because the crime of corruption is an extraordinary crime, so it is necessary to carry out an extraordinary legal policy.

Suggestion

Corruption is a serious crime that is categorized as an extraordinary *crime* , therefore extraordinary legal actions and efforts are needed, including shifting the attempted crime to a perfect crime, but it is also necessary to review other articles that still allow for legal loopholes so that law enforcement for perpetrators is more effective. In addition, prevention and efforts are needed by increasing sanctions in articles and additional penalties by confiscating assets and high fines with calculations of losses that arise can be multiplied according to threats or demands, for example, where the amount is adjusted to the size of the losses suffered by the state.

REFERENCES

Allen, Michael J Textbook on Criminal Law , in Abdussalam, SIK. Penetration Law, Jakarta, PTIK, 2003

Bambang Poernomo, Potential Crime Corruption in Indonesia, Build Script, Mold First, Jakarta, 1983.

Chazawi, Adami 2018. Criminal Law of Corruption in Indonesia, Jakarta. Rajagrafindo.2018

Hamzah, Andi. Corruption in Indonesia, Jakarta, Sinar Grafika. 2005

Mike McConville & Wing Hong Chui, Research Methods for Law, (Manchester, Edinburgh University Press, 2007

Lamintang , PAF And Theo Lamintang, in Zaid Samatea, 2008

Santoso, Topo.Principles of Criminal Law.Jakarta.Rajagrafindo.2023

Samatea, Zaid Attempted criminal act as a completed crime, Jurnal Lex Crimen Vol.IV/No.6/Ags/2015

Soekanto, Soerjono and Sri Mamudji, Normative Legal Research: A Brief Objective , Jakarta, Raja Grafindo Persada, 2006

Soesilo, R, Book Constitution Law Criminal, (Criminal Code) As well as Comment- His comments Complete Chapter For the sake of Chapter, Politeia, 8th Printing, Bogor, 1985.

Wignjosoebroto, Soetandyo in Valerine, JLK, Legal Research Methods (Collection of Reading Materials for Masters & Doctoral Programs, 2010

Book Constitution Law Criminal Law No. 8 Year 1999 about Implementation Country Which Clean And Free Corruption, Collusion, and Nepotism.

Constitution No. 31 year 1999 about Eradication Action Criminal Corruption.

Constitution No. 20 Year 2001 about Change on Constitution No. 31 1999 on the Eradication of Criminal Acts Criminal Corruption.

Constitution No. 7 Year 2006 about Validation United Nations Convention Against Corruption, 2003 (Convention Union Nations Anti Corruption, 2003).

Constitution No. 5 Year 2014 about Apparatus Civil Country (ASN)

Instructions President No. 2 Year 2014 about Action Prevention And Eradication Corruption Year 2014.