

Alternative Sentencing for Criminal Acts of Corruption as the Form of Progressive Legal Enforcement to Ensure Criminal Action to Guarantee the Process of Sustainable Development

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Abstract— Almost every day The Media of both print and electronic are filled with news of Red Handed Arrest Operations (OTT) carried out by officers of the Corruption Eradication Commission (KPK) against public officials from low-ranking officials to the leadership level such as regents, mayors or governors. As usual, the captures will be covered or reported by various mass media, especially television media. For the people who are pro-corruption eradication efforts to KPK will feel satisfied with the performance of KPK which is without compromising when targeting anyone involved in corruption in discriminately. The KPK's "courage" had caused the reaction of "Corruptors fight back" when there was allegation of a discourse to "weaken" the KPK from some politicians in Parliament. That is at least from the perspective of the KPK leaders who are concerned that the integration of the articles concerning corruption into the articles of the Criminal Code which are still in the form of a draft will affect the loss of specification of acts of corruption and at the same time reduce or annihilate the authority of the KPK. Along with the ongoing polemic regarding the issue of integrating corruption into the Draft of Criminal Code, it was recently revealed that most of the "mega corruption" perpetrators who were shocking at the time of their arrest again shocked the mass media, but this time because of the allegation that Sukamiskin prison turns out to be an "apartment" for corrupt convicts who can continue their luxurious life in prison which should be a place to "torment" the perpetrators of corruption in order to be able to introspect and correct themselves in order to be prepared when they return to society after the end of their sentence. Based on the description above, the author assumes that the current conventional imprisonment system will not be able to stop or break the cycle of corruption in Indonesia, so that it will have an impact on massive corruption, which in turn will affect the sustainable development process. In this paper the author wishes to offer the need for alternative prosecutions in lieu of conventional crimes in the form of imprisonment for perpetrators of corruption. Therefore the theme of this conceptual writing is "Alternative punishment for perpetrators of corruption as a form of progressive law enforcement of criminal acts of corruption to ensure a sustainable development process". This paper will be qualitative using the concept of Progressive Law of Satjipto Rahardjo.

Keywords—*Alternative Sentencing, Corruption, Progressive Legal Enforcement, Sustainable Development*

I. INTRODUCTION

Indonesian Pluralistic society is characterized by horizontal and vertical characteristics. Horizontal features are seen in fact that there are social units based on differences in ethnicity, religion, customs and regionalism, while vertical features are another description of the structure of Indonesian society in the form of social layers between the upper and lower layers [1].

Furthermore, it is said that this subtle coating is seen in a number of people based on their economic, political and scientific abilities and mastery, which clearly shows differences and social degrees so that they have the potential to be a source of conflict. One of the conflicts that occurred was related to the rampant corruption cases of the elite in this country. Almost every day, both mass media and electronic media are filled with news of hand arrest operations carried out by officers of the Indonesia's Corruption Eradication Commission (KPK) against KPK officials from low-ranking officials to the courage of KPK had caused the reaction "Corruptors fight back" when there was a discourse to make KPK weaker by the politicians in Senayan. At least from the perspective of the KPK leaders who are concerned that the integration of the articles on corruption into the articles of the Criminal Code which are still in the form of a draft that will result in the loss of specific corruption and at the same time reduce the authority especially KPK.

Along with the polemic about the corruptor integrity to the KUHP Design, it is revealed that most of the biggest and famous corruptor who surprised the nation at the time they're arrested, recently they surprised again by the shocking news which explain that the prison they occupied was made luxurious so they were comfortable. Eventhough the prison should be a miserable place for them.

Based on the explanation above, the author assumes that the current conventional imprisonment system will not be able to

stop or break the cycle of corruption in Indonesia so that it will have an impact on massive corruption, which in turn will affect the sustainable development process. That is why alternative punishment is needed for perpetrators of corruption as a form of progressive law enforcement of criminal corruption acts to ensure a sustainable development process.

From the description of the background above, in this paper will discuss how alternative punishment for perpetrators of corruption acts as a form of progressive law enforcement of criminal corruption acts to ensure the ongoing process of development.

II. DISCUSSION

The problems and practical legal studies in understanding a case will at least be confronted with three problems as follows: differences in the interpretation of the text of the regulation because of unclear regulations, differences in interpretation of facts, and vacancies in the rule of law. What is produced, whether it has led to progressive or conventional law, this will be influenced by various factors as follows:

A. Factors that influence law enforcement in court

The influence of social forces on law enforcement. Law enforcement is a process to realize legal objectives, legal ideas come true. The objectives or ideas of lawmakers are realized in law enforcement. Success in law enforcement is strongly influenced by the legal system. According to Lawrence M. Friedman, the legal system are consist of three element, they are:

- Structural component
- Substantial component
- Cultural component [2]

From the components above, structural become the most important component in law enforcement. In a social perspective, the court is a social institution in carrying out its duties to be influenced by social, political, economic, cultural, and so forth forces.

B. Factors that influence judges in deciding case

According to William J. Chambliss and Robert B Factors that influence judges in deciding things are consist of seven, they are [3]: 1) The way in which the issues are presented; 2) The sources of theory; 3) The Personal attributes of the judge; 4) The professional socialization of Judges; 5) Situational pressures on the judge; 6) Organizational pressures on him; 7) The alternative Permissible Rules of Judges. Principles of judges in deciding case as follows:

In deciding the case the judge must pay attention to the legal values as stated by Radbruch as a legal basis. The three basic values are:

- Justice, it means that in deciding a case the judge must be fair in accordance with the facts.

- Benefit means that the judge in deciding a case must be able to solve the problem.
- Legal certainty, meaning that there is a rule. If the judge's decision to decide on matters based on the value of benefits, legal certainty, and fairness conflicts and raises the problem then the value of justice is preferred, because of the law for justice[4].

C. Constraints of conventional law enforcement

Conventional law enforcement is procedural and formal law enforcement. procedural and formal Law enforcement is law enforcement in accordance with judicial procedures and the judicial process that uses law (formal) in solving problems. The law used by the judges in completing a case with its jargon for legal certainty (legality).

According to Satjipto Rahardjo, in idea of progressive law stated that the willingness to free oneself from the ideology of the status quo. The idea of self-liberation is closely related to psychological factors or the spirit that exists in the legal actors, namely courage (dare). The inclusion of the courage factor broadens the map of the way of law, which is that not only puts forward the rule, but also the behavior. Laws become not only textual, but also involve personal predisposition (Rahardjo, 2004). Courageous legal actors are not just talk or something abstract, but something that really exist in society.

The birth of progressive law in the repertoire of legal thought, is not something born without cause and not something that falls from the sky. Progressive law is part of the process of the truth-seeking process that never stops. The law with progressive character is assumed that the law is for humans, not the opposite of humans for law. Progressive law is born from the empirical reality of the operation of law in society, in the form of dissatisfaction and concern for the performance and quality of law enforcement in Indonesia.

The idea of progressive law enforcement arises as a logical consequence of the progressive law concept. When progressive law is elaborated at a practical level, progressive law has an agenda to free the law enforcement culture that has been in power, which is considered to hamper efforts to resolve the problem and its already no longer sufficient. So the concept of progressive law enforcement was born against the concept of conventional law enforcement.

The concept of progressive law enforcement arises amidst the turmoil of the Indonesian nation's peak which culminated in the reformation period, including the crisis of law enforcement. Therefore, comprehensive thinking is needed to find a way out of adversity. Law enforcement in conventional ways does not help efforts to get out of the legal crisis, even law enforcement as if going on the spot. Therefore, extraordinary efforts are needed to eradicate Indonesia from the crisis of law enforcement, namely progressive law enforcement.

The idea of progressive law enforcement requires law enforcement not only to carry out laws and regulations, but to capture the legal will of the community. Therefore, when a regulation is deemed to be shackling law enforcement, creativity is demanded by the law enforcers themselves in order to be able to create a legal product that accommodates the

will of the community that rests on the existing values in society. Therefore the idea of progressive law enforcement is an outbreak of a stagnant law enforcement situation or experiencing independence.

In its implementation in Indonesia, in fact we have a lot of examples of law enforcement who have such progressive visions. Call it Baharudin Lopa who also one of the founders of Unkhair who was very progressive during his time as a prosecutor, besides that there were other law enforcers in the corners of the country and were not known by the public. Because they are only "small law enforcers", then if they dare to act outside the command line, they are easily moved to other remote places. Now that it has begun to be practiced by KPK, the Jakarta Corruption Court and several Supreme Court Justices at the Republic of Indonesia Supreme Court, the KPK has made progressive breakthroughs in handling corruption in Indonesia, KPK since being led by the Abraham Samad period created a new perspective that where is a crime of corruption there is a crime of money laundering. Whereas even there is a tendency for an increase in the crime of money laundering both in terms of quality and in terms of quantity, the result is that money laundering cases are mostly revealed from criminal acts of corruption.

At the Supreme Court, we know one of the most progressive supreme judges, Artijo Alkostar, he was a very good vision in the enforcement of corruption criminal acts, this is evidenced by his decisions that greatly satisfy the sense of substantial justice of the community, every cassation filed at the table he must have been severely broken from the previous ruling, this was what made the KPK Prosecutor in every decision of the Jakarta Corruption Court which decided the case below from the prosecutor's demands immediately did not think long to appeal to Mahkamah Agung because there were progressive judges there. In addition to Artijo Alkostar, there are other names of supreme judges namely Surya Jaya and several progressive supreme judges known as scary frightening for corruptors whose files are appealed.

Understanding of the concept progressive of law is inseparable from the conditions of legal thinking that are the background of the progressive law born. Legal understanding according to progressive law confirms that the law is an institution that aims to bring people to a just, prosperous life and make people happy [5]. In the concept of progressive law, the human position is the main center in judging the law whether good or bad, right or otherwise.

Along with the changing times and the changing conditions of society, in reality this paradigm gave rise to a stagnation in the 20th century when it was unable to provide a solution in the postmodernism era [6]. The implication is when humans in each process of development are always changing according to the needs of their lives the law must follow these changes (the law must be responsive). This is the fundamental difference between progressive law and positivist law that has been applied in Indonesia. If all this time the law has always been far behind the development of community needs, then progressive law is more open and responsive to change and not bound to written law. In this case the law must be placed in the overall humanitarian problem. Thus the legal role guarantees the

fulfillment of people's needs for justice and prosperity. This means that the existence of the law should reflect the standard of what is good and not good, fair and unfair. Regarding this in the context of Indonesia, it cannot be separated from national identity which is reflected in Pancasila. Pancasila values are the values of the nation that are accepted by all levels in society, all generations and even all cultures so that they are worthy of being the main standard in the legal life of the nation and state.

Considering the legal provisions that always left behind by the needs and development of the community, it becomes a necessity for judges to conduct a comprehensive legal study called legal interpretation. Judge's conception in interpreting the law can be divided into 2 (two) theories, namely heteronomous legal discovery theory and autonomous legal discovery theory [7]. The heteronomous legal discovery theory places the judge as the mouthpiece of the law (*la bouche de la loi*) while the autonomous legal discovery theory places the judge on the freedom to understand and link the law according to the development of society. The fundamental difference between the two theories lies in the extent to which the judge is bound to the written legal provisions.

The use of legal-positivism thinking, in an elitist legislative situation, will cause gaps (economic inequality) and poverty to expand, because the congestion of democracy that occurs under the pressure of Neoliberalism, will result in laws that result from the legislative process will tend to favor elite interests and ignore the justice and welfare of the people.

According to progressive law, legal actors must have sensitivity to crucial issues in terms of human relations, including human restraint in oppressive structures; both political, economic and socio-cultural. In this context, progressive law must appear as an emancipator (liberating) institution. Progressive law requires liberation from the tradition of obstruction, has a resemblance to Roscoe Pound's thinking about law as a means of social engineering. Social engineering business is considered as an obligation to find the best ways to advance or direct the community [8].

The presence of lawyers who are wise, visionary, and creative is very necessary to guide creative meaning towards such rules. The application of progressive law, which is basically directed at the perpetrators of this law, is expected to be able to direct the law produced by the legislative process, which tends to be elitist, to lead to the interests of justice and prosperity of the people at large. The entrance to the application of progressive law in court practice in Indonesia has been formally granted by the Judicial Power Law which affirms that the judicial power is in charge of enforcing law and justice. In this context, judges required to explore the legal values and justice that live in society [9]. This means that the judge is not just in charge of implementing the rules as they are, but how they can achieve justice. Here the creativity of the judge becomes very decisive.

Community needs the role of law in providing benefits, legal certainty and the ninth are far from reality, given the many legal issues that are not resolved properly. The number of corruption cases that were revealed in the public but did not get satisfactory solutions became the main trigger for the emergence of progressive legal thinking. The public's trust in

the law is fading so that the law is no longer regarded as a commander in every matter that befalls this nation. It is very ironic for a country that bases itself on the law but cannot enforce the law because there is no public trust.

Alternative crimes in addition to imprisonment should continue to be encouraged in the draft Criminal Code which is currently being discussed by the Parliament. This is part of an effort to shift the paradigm of punishment that is revenge to be corrective or rehabilitative. Alternative criminal application should be arranged in detail. A criminal alternative to prison, such as social work, is a breakthrough in the Criminal Code Bill. Alternative forms of crime need to be encouraged by paying attention to the severity of criminal acts committed by citizens. Social work is a new thing in Indonesia because previously we did not know of such alternative crimes. Ideally, criminal social work is carried out in a society that has a high level of shame because its goal is to cause a deterrent effect.

The drafting of Criminal Code has not sorted out minor, moderate and severe crimes because almost all of them ended in imprisonment. Reduction in portion of prison sentences emerged as one solution to reduce the density of prisons. From the 180,000 prisoners and prisoners throughout Indonesia, 60 percent are narcotics inmates, who actually need more care and rehabilitation. The burden of fines or impoverishment for corruptors may be a deterrent to perpetrators than they are imprisoned for a long time, but when they get out they are still wealthy and can even enjoy life even though they are in prison because they are able to pay to get the facilities / luxuries in the occupied prison.

Besides having progressive law assumptions, spirit, also has a progressive character in the following matters:

- Aims for human well-being and happiness, therefore the law is always in the process of becoming (law in the making).
- Be sensitive to changes that occur in the community, both locally, nationally and globally.
- Refusing the status quo when it creates a decadence of a corrupt atmosphere and very detrimental to the interests of the people, thus creating resistance and rebellion which leads to a progressive interpretation of the law.

III. CONCLUSION

The public's trust to the law is fading so that the law is no longer regarded as a commander in every matter that befalls

this nation. Alternative crimes other than imprisonment should continue to be encouraged by paying attention to the severity of criminal acts committed by citizens. The burden of fines or impoverishment for corruptors may be a deterrent to perpetrators than they are imprisoned for a long time, but when they get out they are still wealthy and can even enjoy life even though they are in prison because they are able to pay to get the facilities / luxuries in the occupied prison.

IV. SUGGESTION

Going forward for the Law enforcement officers (Judges) can apply the discovery of progressive law while still basing themselves on the values of Pancasila as the basic value of Indonesian national and state life.

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