

The Effect of Legal Culture Toward Criminal Policies of Bribery in Indonesia

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Abstract

This research aims to analyse the influence of legal culture on criminal policies of bribery in Indonesia. As a new weapon in the prevention and eradication of corruption, Indonesia has ratified the 2003 United Nation Convention against Corruption (UNCAC), which stated that corruption is a common enemy in the international community. Criminalisation towards bribery as a part of corruption is not only against domestic public officials but also foreign public officials and officials of international organisations. Furthermore, bribery in the private sector is also categorised as corruption. This research used juridical-normative data analysis methods. The results of the study concluded that law as a cultural product was strongly influenced by non-legal factors such as values, norms, attitudes, and views of society as a reference in criminal acts of bribery that pay attention to the substance of law, legal structure, and emphasise legal culture to foster public awareness of their rights and obligations as citizens in the context of upholding law and justice.

Keywords: *legal culture, criminal policies, bribery*

1. INTRODUCTION

The legal system in Indonesia adheres to the concept of the rule of law sourced from the 1945 Constitution and Indonesia is a state based on the law (*Rechtstaat*), not based on mere power (*machtsstaat*). [1] Bribery is a problem that has been happening for a long time in society. Bribes are generally given to influential people or officials to do or not do something related to their position.

Law enforcement against bribery in Indonesia is inseparable from the ups and downs. There are government's preventive efforts in the context of eradicating bribes, namely the existence of the criminalisation of bribes which is basically done in the Criminal Code (*KUHAP*). Furthermore, these developments appear in the reform era as a systematic effort to actualise the basic values of democracy that have been regulated in the constitution, where one of the reform agendas is to create a government that is clean and free of corruption, collusion, and nepotism (*KKN*).

In addition, to create a clean and *KKN*-free state administration, the Government of Indonesia has made regulations such as MPR Decree No XI / MPR / 1998 and Law No. 28 of 1999, Law No. 31 of 1999 jo Law No. 20 of 2001 concerning 5 Eradication of Criminal Acts Corruption, Law No. 15/2002 jo Law No. 25/2003 concerning Money Laundering, Law No. 30/2002 concerning the Establishment of the Corruption Eradication Commission. In fact, Indonesia has ratified the 2003 UNCAC, including an emphasis on prevention, broader criminalisation, international cooperation, and

arrangements for asset restoration institutions to return assets from overseas.

Bribery is an act against the law that has an impact on the economic, legal, social and political sectors that damage the government order, hinder development and poverty alleviation, distort business competition, erode a sense of justice, and castrate human rights. In this way, corruption, both directly and indirectly, can be detrimental to the country's finances, which in material terms are deemed as acts that are contrary to the values of public justice.

For example, Indonesia has a complicated corruption problem. The corruption of e-KTP procurement shows that the behaviour of corruption seems to have exceeded the cultural status, and even has become ingrained in the perpetrators. [2]

Furthermore, Bribery criminal based on 2003 UNCAC is a. act or refrain from acting in the execution of his official duties; b. influence trading; c. influence misappropriation; d. abuse of functions; and f. illicit enrichment. [3]

The substance in the 2003 UNCAC text emphasises on bribery, then the development of Indonesian constitution No. 20 of 2001 concerning Amendments to Indonesian constitution No. 31 of 1999 concerning Eradication of Corruption shows that the term of gratification is discovered as an extension of meaning in bribery.

The cultural aspect of the law has a very important role in the enforcement of criminal law in Indonesia, which then starts from the social conditions in society and social justice as determination factors how the law runs in society. Law

enforcement by ignoring cultural elements leaves the legal system itself powerless. The cultural elements include opinions, habits, ways of thinking, and ways of acting in law enforcement against bribery. Moreover, state official must be a role model for not violating the rule of law in bribery, so the legal culture will reduce bribe.

The problem is about the influence of the legal culture towards the criminal policy of bribery in Indonesia. Related to the criminal law system, many opinions refer to Friedman's theory which mentioned the existence of three elements of the legal system namely substance, structure, and culture. However, there are also those who develop it into more than three elements, for example, the Indonesian Broad Outlines of State Policy (*GBHN*) at the end of the new order era mentioned four elements of legal system namely content, apparatus, culture, and infrastructure. [4]

2. RESEARCH METHOD

The research used a juridical-normative method by analysing and reviewing the legal approach which carried out by examining all laws and regulations relating to the effect of legal culture on criminal policies of bribery criminal actions in Indonesia.

3. RESULTS AND DISCUSSION

3.1. The influence of legal culture towards criminal policy

Culture is an integrative pattern of individual behaviour that arises in the thoughts, words, actions and artefacts of people, all of them depends on cultural socialisation programs and the ability of the individual to learn, internalise and obtain incentives and disincentives in spreading knowledge to neighbour or the next generation. [5]

Legal culture is one of broad human culture. The legal culture shows the pattern of individual behaviour as members of the community, as well as the overall culture of a particular society as a unity of attitudes and behaviours that describe the same response (orientation) to the legal life lived by the community concerned. Legal culture can be interpreted as a pattern of knowledge, attitudes, and behaviour of a group of people towards a legal system.

Ubi Societas Ibi Ius (Adigium of Cicero) theory reveals that the law cannot be separated from society. The legal order can work effectively if justice in the community has been functioning effectively, and the legal objective achieves the existence of peace and justice.

The law cannot be separated from the community and culture; the two elements are dual in the legal culture element that has an important influence in the operation of a large system, called the legal system. The existence of legal awareness in a nation is inseparable from the influence of culture which is the source and binding force of the law. This is reflected in the awareness and legal compliance in the community, thereby increasing the degree of civilized and humane legal culture.

Sociologists view the law as a cultural product. Law is meaningless if it is not made with an awareness of its urgency and sincerity to carry it out. The law will only be a joke if the one who makes it is the lawbreaker, and who implement it is a lawless civilized nation. Lawrence Meil Friedman has an interesting anecdote about this, "Without legal culture, the legal system is a dead fish lying in a basket, not a living fish swimming in its sea". [6] The law in this country is undoubtedly helpless, like a dead fish, if it is not supported by the nation's own legal culture.

Law is for humans which mean that a rule of law cannot be separated from the human aspect. [7] In fact, it is centred on humans because its essence and existence are centred on humans (anthropocentric). It embraces human's will, motives, ideals, and concerns. It was made by humans and formulated in human language that can only be understood by humans. It is run by humans and serves human's interests. This basic belief does not see the law as something central in law, but human beings are at the focal point of the rotation of the law. [8]

The influence of legal culture is very important in criminal policy, besides the legal structure and substance of the law; the legal culture can work in law enforcement in Indonesia. The most important is the legal awareness of the community must be in line with the legal awareness of the authorities. It began with the slogan campaign "Daring to Be Honest"; a sentence that marks the existence of education with integrity which carried out and built by the Corruption Eradication Commission (*KPK*), so it becomes "culture" in society.

3.2. Criminal Policy of Bribery in Indonesia

Indonesian Law No. 11 of 1980 concerning bribery stated that whoever gives or promises something to someone with a view to persuading that person to do something or not to do something in his duties that are contrary to his authority or obligations concerning the public interest is punished for giving a bribe. Whereas in Indonesian Law No. 20 of 2001 concerning Amendment to Law No. 31 of 1999 concerning Eradication of Corruption and also regulated in Law No. 30 of 2002 concerning *KPK* explained that Bribery is anyone who receives something or promises, while he knows or deserves to suspect that giving something or promise is intended so that he does something or does not do something in his duties, which contrary to its authority or obligations concerning the public interest is punished for accepting bribes.

G. Peter Hoefnagels (1976: 56), who introduced the term criminal politics in functional theory, stated that criminal law enforcement can be dogmatic juridical, namely by attempting penalties or by functional means, namely non-penal. Prevention of crime by using the penalty line focuses more on "repressive action" (suppression/eradication/suppression) after the crime occurs, while the non-penalty line focuses on "preventive action" (Prevention/Deterrence/Control) before the crime occurs.[9]

Law enforcement against criminal acts of corruption is very different from other criminal acts. It indicates that

there are several regulations both inside and outside the *KUHP* together with a large number of institutions authorised to undertake judicial processes against criminal acts of corruption considers corruption as an extraordinary crime.

Furthermore, considering the efforts to tackle bribery via "non-penal" channels are more of a preventative measure for the occurrence of crime, the main objective is to deal with the conducive factors to the cause of crime. The favourable factors focus on social problems or conditions which can directly or indirectly cause or grow the fertility of crime.

Furthermore, the legal system paradigm (legal system) of Lawrence M. Friedman (1984: 3) was a theory that can be used as a knife analysis which stated that: "... other elements in the system are culture. These are the values and attitudes which bind the system together and determine the place of the legal system in the future of society as a whole. What kind of training and habits do the lawyers and judges have? What do people think of law? Do groups or individuals willingly go to court? For what purposes do they use other officials and intermediaries? Is there respect for the law, government, traditions? What is the relationship between class structure and the use or non-use of legal institutions? What social control information exists in editions to or in places of formal ones? Who prefers which kind of control, and why? These aspects of the law - legal culture- influence all of the legal system. However, they are particularly important as the source of the demands made on the system. Is the legal culture, that is the network of values and the attitudes, relating to law? Which determines when, why and where people turn the law, or to government, or turn away."

Community contribution is an important role in law enforcement efforts to measure the success of criminal politics against bribery. The law cannot run if the culture in the community always "tribute culture", give some money, bribe, or give gifts to government officials and law enforcement officials. Therefore, corruption becomes very difficult to prevent or eradicate, since the mental attitude of both parties who want to get rich instantly. Corruption is considered normal, taking bribes is also considered normal without any guilt and shame.

4. CONCLUSION

The criminal policy in bribery must synergise with the existence of a legal culture that influences the substance and legal structure to create legal awareness and compliance within the framework of the rule of law and the establishment of a rule of law based on noble values in Pancasila.

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