

# Reform Against Criminal Corruption

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**Abstract**—In the development of law enforcement in Indonesia recently that massive against corruption began the results. However, in the past few years the total absorption of budget revenue and expenditure and areas in Indonesia is far from optimal, many obstacles to the absorption of the budget should certainly be able to be overcome by the government, it can decreased left forecast for economic growth. One is considered a bottleneck in the budget absorption it is the fear of the stakeholders at the regional and central levels in running projects that have been planned, the fears is because the officials of power holders are afraid to take that step would later in connection with the acts of corruption. The purpose of this thesis, namely; First, to determine the causes of delays in development projects in relation to Article 3 Constitution No. 31 of 1999 Jo Constitution No. 20 of 2001 on Corruption Eradication, Second, to find out ideally Article 3 Constitution No. 31 of 1999 Jo Constitution No. 20 of 2001 on Corruption Eradication if it is associated with impaired development projects. The method used in this research is a kind of normative juridical research. From the research, based on two formulation of the problem can be inferred. First, the cause of inhibition of development projects in relation to Article 3 Constitution No. 31 of 1999 Jo Constitution No. 20 of 2001 on Corruption Eradication is, the reluctance of the state apparatus that has an important role in accelerating the development program to implement or make policy and discretion in order to accelerate the development process. This arises because the number of policy and discretion made by aparatu countries brought into the realm of criminal law corruption that led to criminal penalties. Second, ideally Article 3 Constitution No. 31 of 1999 Jo Constitution No. 20 of 2001 on Corruption Eradication if it is associated with impaired development projects is, in its application to prioritize administrative process if the state is doing an offense in terms of making a policy, making it clear which is the criminal corrupt administration and which is an administrative violation.

**Keywords:** *reformulation, crime, corruption, absorption, finance, state*

## I. INTRODUCTION

The rule of law requires, among other things, guarantees equality for everyone before the law. Guaranteed equality of all Indonesian people before the law has also been stated in the contents of the Constitution of the Republic of Indonesia in Article 27 paragraph (1) which reads, all citizens are at the same position in law and government and are obliged to uphold the law and government without exception.

The purpose of the law is justice for balance, certainty for accuracy, expediency for happiness [1]. To achieve the objectives of the law, of course there is a need for law enforcement. Law enforcement is meant an effort to implement the law as it should, oversee its implementation so that no violations occur and if there is a violation there are other efforts to restore the violated law so that it is upheld again [2]. In carrying out law enforcement there are 3 elements that must be considered, namely: legal certainty, expediency, and justice [3].

To be able to organize a state of law in accordance with the provisions of the 1945 Constitution requires a set of laws that uphold human rights and ensure that every citizen is at the same position in law and government and must uphold the law and government with no exception [4].

Law enforcement according to Soerjono Soekanto is an activity that combines the relationship of values expressed in sound and enduring rules and attitudes as a series of end-to-end value chains to create, maintain and maintain the peace of life [5].

There are a number of years behind the total absorption of the state and regional budget in Indonesia far from the maximum, this is considered as an obstacle in the development and development of Indonesia in the future. The many obstacles in the absorption of the budget must of course be overcome by the government immediately, because if these obstacles are allowed to cause a decline in projected economic growth in Indonesia.

One of the perceived obstacles to absorption of the development budget is the fear of policy makers at the regional and national levels in carrying out the planned development projects, the fear of the policy makers because the officials in power are afraid to take steps in the future it will be related to corruption [6].

In his interview with Kompas, the Minister of Finance also said that local and central policy makers were reluctant to carry out development in the background because the officials were afraid of being involved in corruption.

What then becomes a problem is when public officials use their discretion in issuing a policy in order to accelerate development achievements, from various legal perspectives, this public policy issue can be seen from the aspects of state administrative law, and criminal law aspects.

### A. Problem Solving

In light of the background of the issues that the authors have presented above, the authors conclude that the main issues discussed in this study are as follows: What is the ideal Article 3 of Law Number 31 of 1999 Jo of Law Number 20 of 2001 concerning Eradication of Corruption if related to a delay in development projects?

### B. Purpose and Use of Research

1) *Research purposes*: To find out the causes of development projects being hampered if they are related to Article 3 of Law Number 31 of 1999 Jo of Law Number 20 of 2001 concerning Eradication of Corruption

2) *Use of research*: It is hoped that this research can provide a thought contribution and at the same time benefit the development of criminal law knowledge in general and corruption in particular.

## II. THEORETICAL FRAMEWORK

### A. Criminology Theory

According to Williams III and Marilyn Mcshane, criminological theories are classified into 3 groups [7]:

- Abstract theory or macro theories (macrotheories). In principle, the theories in this qualification describe the correlation between crime and the structure of society. Included in these macrotheories are anomie theory and conflict theory.
- Micro theories (microtheories) that are more concrete. This theory wants to answer why a person / group of people in a society commits a crime or becomes a criminal (criminal etiology). Concretely, these theories are more biased towards psychological or biological approaches. Included in these theories are social control theory and social learning theory.
- Beidging theories that do not fall into the category of macro / micro theories and describe social structures and how a person becomes evil. But in fact, the classification of these theories often discusses the epidemiology that explains the rates of crime and the etiology of the perpetrators of crime. Included in this group are subculture theory and differential opportunity theory.

With regard to criminal law, criminology can function as a review of applicable criminal law, and provide recommendations for updating criminal law. For the criminal justice system, criminology is useful as a means of control for the running of the judiciary, because if only using positive legal means, then the course of the trial will stagnate.

### B. Theory of Liability

There are two terms that refer to accountability in the legal dictionary, namely liability and responsibility. Liability in criminal law or criminal liability is a central concept known as the teaching of error. An act does not make another person

guilty unless the person's thoughts or thoughts are evil. The mens rea doctrine is based on *actus non facit reum nisi mens sit rea*, which means that action does not result in someone guilty unless the person's mind is evil [8].

The element of error is a key element in the criminal response. According to Roeslan Saleh, in the sense of criminal acts it does not include accountability. Criminal acts only point to prohibited acts. Whether the person who committed the act was later punished depending on whether or not he committed the crime was wrong, if the person who committed the act was guilty then the goods would have been punished [9].

## III. RESEARCH METHODS

### A. Type of Research

Legal research is a scientific activity that is based on certain methods, systematics, and thoughts that aim to study one or several specific legal phenomena by analyzing them, and an in-depth examination of the legal facts is also undertaken to seek a solution to the problems faced by the law. Arises in the relevant symptoms [10].

The type of research or problem approach that will be used in this research is normative juridical, that is, research conducted by examining secondary legal materials or research based on standardized rules that have been recorded is also called library research [11].

### B. Data Sources

The data sources that the authors use in this study are:

1) *Data primer*: Namely materials sourced from library research obtained from the Act include Act Number 31 of 1999 concerning Eradication of Corruption, Act Number 20 of 2001 concerning Eradication of Corruption, Government Regulation Number Year.

2) *Data seconds*: Namely research materials derived from literature and the results of research by scholars in the form of books relating to the subject matter and the internet.

3) *Tertiary data*: Namely research materials obtained from encyclopedias and the like that function to support primary and secondary data such as the Big Indonesian Dictionary.

### C. Data Collection Techniques

The data collection method used to obtain the materials needed in this study is the method of literature study, which studies literature that has a correlation with the problem being studied in the library and related books. And the study of documents by studying, analyzing and analyzing various literatures related to the problem under study.

### D. Data Analysis

In this normative study the data were qualitatively analyzed. Qualitative analysis means that data is not analyzed by using statistics or the like, but rather by analysis by describing the data obtained in sentences as well as refining the logic so that the data can be understood by all parties.

#### IV. RESULTS AND DISCUSSION

##### *A. The Cause of Development Projects is Hampered If Related to Article 3 of Law Number 31 of 1999 Jo of Law Number 20 of 2001 Concerning Eradication of Corruption*

Development is a process of change that takes place consciously, planned and sustainable with its main goal is to improve the welfare of human life or the community of a nation. This means that development always moves from an unfavorable condition or condition of life to a better life in order to achieve the national goals of a nation. National Development aims to realize a just and prosperous society that is evenly material and spiritual based on the Pancasila and the 1945 Constitution of the Republic of Indonesia and runs the economy and creates social welfare. In essence, national development is the development of complete Indonesian people and the development of Indonesian society as a whole.

Of the many challenges that pose obstacles to the development process, corruption is considered to be one of the biggest challenges, this is because corruption can be a barrier to development in all sectors planned by the government, corruption is always seen as a contagious disease, and can multiply in certain networks, do not stop at one network, but move from one network to another network until the entire network is destroyed.

In order to realize national development that can work and have a positive impact on economic development and the progress of the nation going forward, the Indonesian government has laid a strong policy foundation in the fight against corruption. These various policies are set out in various laws and regulations, including the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI / MPR / 1998 concerning State Administration that is Clean and Free of Corruption, Collusion and Nepotism, and Law Number 31 of 1999 concerning Eradication Corruption Acts as amended by Act Number 20 of 2001 concerning amendments to Act Number 31 of 1999 concerning Eradication of Corruption.

In the provision of Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption, every person who for the purpose of benefiting himself or someone else or a corporation abuses his authority, opportunity or means because of a position or position that can be detrimental to the country's finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah) [12].

The meaning of corruption in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption is too broad, in that article a policy that is detrimental or has the potential to harm a country that can benefit itself or other parties can be categorized as a criminal act of corruption, this of course has a

very big impact for policy makers or officials reluctant to make a policy in running the government.

According to JP. Wind does not have a written provision that (can) regulate all aspects concretely, only the outline is regulated, to anticipate the necessary policies for the existence of a vacuum or empty space in assessing an issue. Therefore, for the principle of legality at the operational stage to be carried out dynamically, effectively and efficiently, discretion is needed (Beleid) [13].

Discussing public policy needs to be drawn up in history and its development towards 1992-1997 what is called the post bureaucratic paradigm which is different from the bureaucratic which is widely criticized, namely the bureaucratic paradigm that emphasizes public interest, efficiency, administration, and contracts, then the post bureaucratic paradigm emphasizes the results which is useful for society, quality and value, products and attachment to norms, while the bureaucratic paradigm prioritizes the function of authority and structure, the post bureaucratic paradigm prioritizes mission, service and the final result (outcome). If the bureaucratic paradigm assesses costs, it emphasizes responsibility) [14].

The post bureaucratic paradigm emphasizes giving value to society, building accountability, and strengthening working relationships. Whereas the bureaucratic paradigm prioritizes obedience to regulations and procedures, the post bureaucratic paradigm emphasizes the understanding and application of norms of identification, and problem solving, and the process of continuous improvement.

The bureaucratic paradigm emphasizes the operation of administrative systems, the post bureaucratic paradigm emphasizes the separation between service and control, building support for norms, expanding customer choices, encouraging collective activities, providing incentives, measuring and analyzing results, and enriching government feedback must facilitate, Empowering the community, encouraging competitive spirit, mission-oriented, prioritizing results and not methods, prioritizing customer interests, entrepreneurial spirit, always trying to prevent problems or anticipatory, decentralized, and market-oriented.

The public officials' policy paradigm shows that there has been a change in the orientation of public administration. The failure experienced by a country has been realized as a result of its failure to respond to changes in the paradigm of public administration.

Therefore, special attention is not only given to the important role of public administration, but also the speed and accuracy in responding to paradigm changes whose size is determined by the ultimate goal whether or not it meets the public interest, because in terms of the authority of the actions of public officials even though the facts are detrimental but useful for wide community [15].

According to Soedarto, the decision to criminalize and decriminalize must be based on certain policy factors that consider various matters as follows [16]:

- The use of criminal law must pay attention to the goals of national development, namely to realize a just and prosperous society that is equally material and spiritual based on Pancasila. In connection with this, (the use of) criminal law aims to tackle crime and to make a codification of the countermeasures themselves for the welfare and protection of the community.
- Acts that are endeavored to be prevented or overcome by criminal law must be undesirable actions that is actions that cause harm (material and spiritual) to the community members.
- The use of criminal law must also take into account the principle of cost and results (cost benefit principle).
- The use of criminal law must also pay attention to the work capacity or capability of law enforcement agencies, that is, there must be no over blasting workload.

## V. CONCLUSION AND SUGGESTION

### A. Conclusion

The cause of development projects is hampered if related to Article 3 of Law Number 31 of 1999 Jo of Law Number 20 of 2001 concerning Eradication of Corruption Crimes is the reluctance of state apparatuses who have an important role in accelerating development programs to implement or create policies and discretion to accelerate the development process. This arises because of the many policies and discretions made by the state apparatus that are brought into the realm of criminal law of corruption which ends in criminal penalties.

### B. Suggestion

The government should clarify the meaning of the criminal acts of corruption contained in article 3 of Law number 31 of 1999 in conjunction with Law number 20 of 2001 concerning the eradication of corruption, so that there are no more

understandings of criminal acts of corruption too broad, which can lead to many perceptions about the meaning of corruption itself.

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