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Criminalization of Policies Into Corruption Crimes Towards State Administration Officials
(A Case Study Of Corruption Crimes in South Sulawesi)

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ABSTRACT
This study aims to describe the legal qualifications between policies that harm state finance, including criminal offences and policies that are not offences, and to analyze the effect of criminalizing policies on state administration officials in policymaking. The location of this research was carried out at the Makassar District Court. The research method used normative-empirical. The results of this study found that; first, the legal qualifications policies of state administration officials, which include criminal offences that harm state finances, are the actions of the individual (person) of the state administration officials itself, while for the policies of state administration officials who are not offences or non-criminal offences is legal actions of state administration officials based on their authority that detrimental state finances. While the effect of criminalization of legal actions of state administration officials gives an impact on absorption Regional Government Budget.

***Keywords**: Criminalization, State Administration, Corruption Criminal Act.*

1. INTRODUCTION

The problem of criminalization of public policies, official policies, and regional head policies in Indonesia is polemic. Those who disagree think that the policies of state administration officials should not or cannot be punished because they are in the administrative jurisdiction area. In principle, errors in policymaking or decisions cannot be punished because, according to administrative law, criminal sanctions are not known. The sanctions known in the administrative law such as verbal and written reprimands, demotion, and release from the position, are even fired with disrespect from office [1]. Meanwhile, those who agree think that if the administrative officer's policy indicates that there is a fraud motive, a conflict of interest motive, there is an element of tort law (wedderrechtelijk) and there is an intention to make mistake (gross negligence), then they can be punished because they are in the area of criminal law or corruption criminal act [2].

Criminalization is the process of determining an act committed by a person as an act that can be punished. In the Black's Law Dictionary[3], criminalization concerns the legislative domain, if an act has been declared as a criminal offence, then the logical consequence is that criminal sanctions can be imposed (the rendering of an act criminal and hence punishable by government in proceeding in its name). This is the same as the provisions on Article 1 paragraph 1 of the Indonesia Criminal Code state that no act can be punished without the act previously designated as a criminal offence in law[4]. Furthermore, it is considered necessary to understand what is the basis for criminalizing an act as a criminal act? As for, there are several indicators used as the basis for determining an act as a criminal act, namely, actus reus is a mistake and against the law, mess rea is such acts can be criminally accounted for[5], the act is immoral, detrimental to the interests of the people, contrary to cultural values, deviant behaviour and anti-social acts that bring damage to society [6].

State administration officials are given discretionary authority (freies ermessen), namely the authority to make decisions and/or actions that are determined and/or carried out to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, incomplete or unclear, and/or stagnation of government while still upholding the general principles of good governance (algemene beginselen van behorlijk Bestuur) [7][8]. Thus, administrative officials get guaranteed legal protection to carry out the authority that is given to them.

In practice, policymakers are legally processed and determined as suspects, convicts or released from punishment because they are not proven to have committed a crime. For example, the case of Ir. Akbar Tanjung, in the decision in South Jakarta District Court and DKI Jakarta High Court, stated that he was proven to commit corruption. However, by the Supreme Court through its decision Number 57 K/Pid/2003, Akbar was declared to have exercised for his discretionary authority (freies ermessen) as a Ministry of State Secretariat so that he was not proven to commit corruption and he has not proven to abuse his authority[9].

Based on this reality, it is deemed necessary to investigate further research related to corruption cases in South Sulawesi, particularly the criminalization of policies into criminal acts of corruption against state administration officials. As for, the focus of this research are: What are the legal qualifications between policies detrimental to state finances, which are criminal offences and policies that are not criminal offences and What is the effect of criminalizing policies towards state administration officials in policymaking?.

2. METHOD

This research was conducted at Corruption Court Makassar. This research method was normative-empirical, used to examine the criminalization of administrative officials' policies indicated in the corruption criminal act. The normative method used to review the laws and regulations related to the criminalization of policies, namely the Criminal Code[4], Law of the Republic of Indonesia Number 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption[10] and Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration[8] and Law of the Republic of Indonesia Number 15 of 2006 concerning Financial Audit Board[11]. Meanwhile, the empirical method used to examine the judges' decisions of the Makassar District Court who already have permanent legal force (Inkracht van gewisjde). In collecting data, the researchers conducted in-depth interviews with interviewees selected by purposive sampling, namely judges of the criminal act of corruption in Makassar District Court. Furthermore, a document study was carried out on judges' verdict on Makassar District Court, which had permanent legal force (Inkracht van gewisjde), namely judges' verdict Makassar District Court Number 9/Pid.Sus-TPK/2018/PN MKs, and Number 37/Pid.Sus-TPK/2017/PN MKs and some kinds of literature about the law that is relevant to this study. The data were analyzed qualitatively by the researchers, the researchers also done data triangulation and then interpreted, described, explained, compiled research data systematically based on research objectives.

3. RESULTS AND DISCUSSION

3.1 Legal qualifications between policies detrimental to state finances include criminal offences and policies that are not criminal offences

The difference in identifying a state administration official's policy that causes the state losses financial as a criminal offence legally in criminal law provisions is related to the formulation or content of the criminal law provisions that formally regulate this matter. State financial losses can occur if the legal policies of state administration officials fulfil the elements of the formulation of a corruption offence.

Legal policy due to a legal authority given to an administrative office that is detrimental to state finances, but is carried out based on and under the legal regulations that form the basis of the official's authority, cannot simply be included in the terminology of corruption offences.

The main difference in the legal policies of state administration officials that harm state finances and can be included in the formulation of criminal acts of corruption depends on individual actions that benefit the officials themselves, other people, or corporations.

The legal policy of a state administration official as an act in a sense of criminal law cannot be related as a corruption offence if the act is not intended as an act that is which benefits the personal of the state administration official itself, another person, or a corporation. State financial losses, as referred to in the criminal article on corruption offences, cannot reach a legal policy of a state administration office where the person is not aware that his act is intended to take some benefits, other people, or corporations.

Those descriptions are confirmed through the Court judgement at Makassar District Court as follows:

First, the case: the court judgement at Makassar District Court Number 19/Pid.Sus-TPK/2018/PN MKs. Position of the defendant: Burhanuddin Baharuddin as Regent in Takalar, South Sulawesi Province period 2012-2017. **Primary indictment**: Article 2 paragraph (1) Jo. Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Article 55 paragraph (1) Jo. Article 64 paragraph (1) of the Criminal Code. **First subsidiary indictment:** Article 3 Jo.Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Article 55 paragraph (1) Jo. Article 64 paragraph (1) the Criminal Code. **Second subsidiary indictment:** Article

12 letter E Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Article 55 paragraph (1) Jo. Article 64 paragraph (1) of the Criminal Code. **Verdict:** to declare that a defendant above has been legally and convincingly proven guilty of committing a criminal act of corruption as stated in the first indictment of a subsidiary of the public prosecutor.

Therefore, the defendant will be punished with imprisonment for three years and eight months, pay a fine of Rp. 500,000,000 (five hundred million rupiahs), a subsidiary for three months imprisonment because the defendant is legally and convincingly proven committed corruption, namely having committed tort law, enriching oneself or another person or a corporation that can harm state finances or the state economy [12]. Second, the case: the Court Judgement at Makassar District Court Number 37/Pid.Sus-TPK/2017/PN MKs. The position of the defendant: Mukhlis Isma, as Head of Regional Office of Manpower and Transmigration Department on Sinjai Regency. Primary indictment: Article 2 paragraph (1) jo. Article 18 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes has been amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Article 64 paragraph (1) of the Criminal Code. Subsidiary indictment Article 3 jo. Article 18 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Article 64 paragraph (1) of the Criminal Code. Verdict: state that the defendant is not validly proven and convincingly committing a criminal offence which is charged to him as in the primary and subsidiary indictments. Therefore, the defendant was declared free of charges because he is not proven legitimately and convincingly innocent of committing a criminal act of corruption [13].

3.2 The effect of policy criminalization on state administration officials in policymaking

The practice of criminalizing the policies of state administrative officials by law enforcement officials for legal actions issued policies carried out to exercise their arbitrary authority based on the authority that exists on him has a significant influence, namely:

First, state administration officials tend to be more cautious, worried, hesitant to take public policy for fear of being entangled in corruption. Second, the delay in the national development acceleration program. Third, the slowing down or reduced absorption of Regional Government Budgets, thus affecting the availability of public services, including facilities and infrastructure needed by the community. The function of government is to carry out government administration which includes service, development, and empowerment functions.

In this context, Financial Audit Board plays an important role in conducting an investigative audit of the management and financial responsibility of the state conducted by the local government [11] to reveal indications of state economic losses. According to Priyatno [14], investigative audits consist of proactive and reactive investigations. The proactive investigation is aimed at entities that have a risk of deviation, but the entity at the initial audit process has not been preceded by information on indications of irregularities with potential state losses. Meanwhile, the reactive investigation is an audit by searching and collecting evidence. It aims to support the initial allegations of irregularities that cause state financial losses.

In addition, the law enforcement process for officials suspected of committing criminal acts of corruption with the type/form of state financial losses related to the use of freis ermessen-discretionary power must first use the legal norms used by officials when carrying out their activities, namely, administrative law that conceptually has principles, norms, and characters that are different from criminal law [15].

Thus, the discretionary actions of government officials are not easily criminalized and do not weaken the body and/or government officials in making innovations in the administration of government.

4. CONCLUSION

Based on the results of the discussion, it can be concluded as follows: First, the legal qualifications of the policies of state administration officials, which include criminal offences that harm state finances, are the actions of the individual of the state administration officials itself, while for the policies of state administration officials who are not offences or non-criminal offences are legal actions of state administration officials based on their authority that detrimental state finances. Second, the effect of criminalizing legal actions of state administration officials based on the legal authority of the officials caused the state losses finances gives an impact on the absorption of the Regional Government Budget, including, in this case, the amount or cost of law enforcement in eradicating corruption is greater than the amount of compensation for corruption.

AUTHORS' CONTRIBUTIONS

1. Firman Umar as the head of the research implementer is responsible for coordination and research ideas and Corresponding author
2. Muhammad Akbal as a member I, acted as the initial problem analysis at the research site and helping data analysis and finalizing article manuscripts
3. Author II dan III acts as a data collector in the field and writing report

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