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DEVELOPMENT OF CRIMINAL CONCEPTS AND CRIMINAL IN CORRUPTION CRIMINAL CASES IN INDONESIA

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ABSTRACT
This study aims to discover the concepts of crime and punishment in corruption cases in Indonesia today along with their problems and to provide suggestions for new criminal and punishment concepts in Indonesia for the future seen from the development of criminal and sentencing theories. Corruption in Indonesia is better known as a crime that is detrimental to the country's finances and economy. That it has an impact on hampering the growth and continuity of national development, so severe eradication must be carried out so that it has become necessary to establish appropriate criminal and criminal concepts in dealing with criminal acts. Corruption crime. This research is normative-juridical legal research that emphasizes statutory and conceptual approaches. In this study, it was concluded that the crimes and punishments contained in corruption crimes are currently ineffective in achieving the desired sentencing goals, so it is necessary to make changes to them by looking at the development of criminal and sentencing concepts that have developed at this time. This is important so that the goals of sentencing that have been aspired to can be achieved.

Keywords: corruption, development, punishment, sentences.

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INTRODUCTION

The criminal act of corruption needs to be taken seriously because it is a serious crime that has a broad impact on the economic and social rights of society and the nation (Makawimbang, 2014). This criminal act of corruption is a crime that is very detrimental to the country's finances and economy, which among other things, can result in slowing economic growth in a country, decreased investment, increased poverty, and increased income inequality (Batabyal & Chowdury, 2015). Therefore, the handling of this criminal act of corruption must be carried out in a complex manner and aimed at preventing and overcoming the consequences of this criminal act of corruption.

The handling of this criminal act of corruption is carried out not only to punish the perpetrators of the crime (corruptors) but also to restore state financial losses caused by the actions of the corruptor. In Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (from now on referred to as the PTPK Law), if we examine it again deeper, the real goal to be achieved by legislators is how to optimize the work of law enforcement officials to cover or restore state financial losses (Zumhana & Sh, 2016). The most relevant theory of punishment used for perpetrators of corruption is a combined theory because there are elements of retaliation and prevention to provide a deterrent effect and prevent the crime from occurring. (Putra et al., 2020) .

The Law on the Eradication of Corruption Crimes in Indonesia has various types of criminal sanctions, which have determined both the maximum and minimum sanctions for imprisonment and fines, as well as for additional penalties (Syafira & Effendi, 2015). In addition, the PTPK Law in Indonesia still includes the death penalty, namely in Article 2 paragraph (2), which states that if the criminal act of corruption referred to in paragraph (1) is committed under certain circumstances, the death penalty can be imposed. In this case, certain circumstances are defined as circumstances in which the act is committed if the country is in a state of danger, for example, during an economic crisis.

The concept of crime and punishment like this if it creates several problems, such as due to the rigid nature of fines (determined by the maximum and minimum amount) applied in Indonesia, many perpetrators of corruption who still get 'benefits' from these actions and the proportionality of the punishment becomes was not achieved and resulted in the country still losing money. Apart from that, the stipulation of imprisonment for a long time will cost a lot of money to 'maintain' convicts of corruption in prison for the entire time, which will only make the state lose more and more. If we look at the goals legislators want to achieve regarding this law, namely to optimize the work of law enforcement officials to cover or return state financial losses, the things mentioned above make this goal difficult to achieve (Abdurrifai, 2021).

Talking about crime and sentencing, at this time, there have been many developments which were initially only as sorrow or suffering for the perpetrators of criminal acts with retributive goals (retaliation); now, there are paradigm shifts about this. This can be seen from the purpose of punishment, which has been regulated in the new national Criminal Code (from now on referred to as the Criminal Code) in Article 51, which states that punishment aims to prevent the occurrence of criminal acts by enforcing legal norms in order to protect and protect society. Socialize the convict by providing coaching and mentoring so that they become excellent and valuable people, resolve conflicts caused by criminal acts, restore balance, and bring about a sense of security and peace in society; and also foster a sense of remorse and release the guilt of the convict (Widianto & Ibrahim, 2023). With this, it can be seen that there has been a paradigm shift in terms of crime and sentencing, where initially the purpose of punishment was more to suffer, now it has developed into a more complex variety of objectives to generate benefits not only for the perpetrators of the crime itself but also for the state and society. This paradigm shift makes criminal theories (including corruption crimes) increasingly developed.

With the development of criminal and sentencing theories that develop in these corruption crimes in this case, the author wants to analyze the development of criminal and sentencing theories that develop in these corruption crimes so that later they can provide suggestions regarding the criminal and sentencing concepts that are for the future in criminal acts of corruption so that the aspiring criminal goals can be achieved.

METHODS

The research method used in this research is juridical-normative research, focusing on primary, secondary and tertiary legal materials (focusing on laws and regulations). This study uses a statutory approach (statute approach) and a conceptual approach (conceptual approach).

RESULTS AND DISCUSSION

The Concept of Criminal and Punishment in Cases of Corruption Crimes in Indonesia and Their Problems

Penalties that can be imposed in corruption crimes in terms of the major crimes are of the same type as the main crimes stipulated in Article 10 of the old Criminal Code (death penalty, imprisonment and fines). However, the PTPK Law also recognizes additional types of crimes stipulated in Article 18 paragraph (1) UUPTPK.

The PTPK Law in Indonesia has various criminal penalties, where imprisonment and fines have been determined with maximum limits. The criminal sanction of fines in acts of corruption is generally accompanied by additional penalties in the form of money-for-money crimes as stipulated in Article 18 letter b of the PTPK Law, which states that the payment of replacement money is the maximum amount equal to the assets obtained from criminal acts of corruption; which means that the payment of replacement money is the same as the corrupted assets and may be less than the corrupted assets.

Indonesia still applies the death penalty in its laws and regulations, especially the PTPK Law. Article 2, paragraph (2) states that if the criminal act of corruption referred to in paragraph (1) is committed under certain circumstances, capital punishment can be imposed if the act is committed when the country is in a state of danger. One way to deal with such corruption problems is to apply severe punishments such as the death penalty (Nainggolan, 2022).

In addition to the PTPK Law, the new Criminal Code has also included articles on corruption in the Criminal Code, namely Articles 603 to 606, where there is an increase in the number of fines, namely by setting a maximum category VI fine for violators of Article 603. and 604 which constitutes a criminal act of corruption resulting in a state loss of IDR 2,000,000,000.00 (two billion rupiahs).

From the concepts of crime and punishment in corruption cases explained above, several problems cannot be avoided. The social costs that must be paid are enormous in dealing with criminal acts of corruption. The social costs of corruption are processed from Brand and Price's theory, in which the social costs are divided into three: the costs of anticipating corruption, the costs due to corruption and the costs of corruption reactions. (Spora, 2015) . The state bears all these costs. The costs due to corruption it is divided into two, namely the costs due to explicit corruption (the amount of money corrupted so that in this case, the costs due to corruption can be said to be the amount of state financial losses in a corruption case) and the costs due to implicit corruption (iopportunity costs resulting from acts of corruption) corruption). The costs due to this explicit corruption have been covered by additional criminal compensation money paid by the perpetrator to the state. However, there is no precise criminal arrangement to cover other social costs, even though it is also essential to consider the return to optimize the return on costs that the state has incurred in dealing with criminal acts of corruption.

In imposing criminal acts of corruption, judges still make imprisonment the major crime to punish perpetrators of corruption even though the social costs caused by imprisonment are enormous, including building costs, maintenance, the salary of prison staff and opportunity costs that are lost to the productivity of the convicts as well as the cost of living for each inmate in prison (Spora, 2015).

In addition, regulations on fines in Indonesia tend to be rigid because a minimum and maximum amount have been set. Many coruption cases cost money in a much more significant amount than the maximum fine that has been set. Fines are also minimally used to punish corruption. In contrast, in implementation, fines are usually accompanied by a substitute punishment in the form of confinement which makes corrupt convicts prefer to undergo a substitute crime in the form of confinement than paying a fine. Becker and Posner stated that fines bring more significant benefits than prison sentences because they can reduce the social costs needed to maintain prisons and avoid unnecessary detention. This ultimately causes many perpetrators of corruption to continue to "benefit" from their actions so that the deterrent effect is not achieved. In addition, the proportionality of sentencing still needs to be achieved, resulting in the state losing money.

The current development of criminal and sentencing theory has brought several paradigm shifts in which the purpose of punishment is not only retributive but also restorative and reparative, so if we look at the problems that have been described above, the purpose of punishment it has not been fully achieved so if necessary renewal of it.

Proposals for the Concept of Criminal and Punishment in Corruption Crimes in Indonesia for the Future Seen from the Development of Criminal and Punishment Theories

The term "criminal" can be interpreted more specifically as a sanction in criminal law. According to Roeslan Saleh, punishment is a response to an offence in the form of suffering deliberately inflicted by the state on the perpetrators of crimes. Criminal imposition, however light, is a deprivation of human rights, so its use must be based on philosophical, legal and social reasons.

In the development of sentencing, three groups of sentencing theories are commonly used: the fundamental theory or the theory of retaliation, the relative theory and the combined theory. The fundamental theory says punishment is not intended for practical purposes such as improving criminals (Hamzah, 2017). The commission of a crime is the reason for imposing a sentence, so in this case, there is no need to think about the benefits of imposing a sentence because a sentence is imposed because of a crime.

Fundamental theory, also known as fundamental theory, means that punishment is released from any purpose because punishment does not have any purpose but the crime itself (Santoso, 2020). Crime is something that is forbidden to do, so when someone violates the prohibition, then he should be punished. The essence of a crime, in this case, is retaliation.

The relative theory carries the concept that punishment should not be imposed absolutely because of the commission of a crime. However, punishment should also consider the future, where punishment must have goals and benefits for all parties, be it perpetrators, victims or society. The combined theory bases punishment based on retaliation while also basing it on the defence of social order, where this combined theory makes a combination or combination between the theory of retaliation and relative theory.

These sentencing theories continue to develop so that they have several paradigm shifts. This shift in the sentencing paradigm gave birth to new concepts or streams in sentencing, such as restorative justice and abolitionist schools.

In this case, restorative justice presents as a paradigm shift from punishment initially focused on punitive justice to restorative justice (remedial). According to Wesley Cragg, the theory of

retaliation is less effective in suppressing crime because the losses victims suffer cannot be recovered. Therefore, restorative justice was created (Satria, 2018). Restorative justice views violations as crimes defined by one person against another, which focuses on problem-solving, is future-oriented and is closely related to restitution.

Restorative justice focuses on the role of victims and community members so that perpetrators can be responsible for their victims by conducting dialogue between perpetrators, victims and the community to recover the losses suffered by victims materially and emotionally (Satria, 2018). This can be a solution to the process of the criminal justice system in Indonesia, which so far has not taken into account the recovery of losses suffered by victims (Wulandari, 2021).

In addition, in developing criminal and sentencing theories, a school of punishment was also born, namely the abolitionist school. The abolitionist school is a school that criticizes criminal law and the criminal justice system, which tends to be repressive, which makes this school develop to abolish coercive penal means and change them to reparative means. From a criminal model that is physical to a psychological criminal (Arief, 2010). This movement considers that the criminal justice system is a social problem because a) SPP causes suffering, b) SPP tends not to work as it should, c) SPP is difficult to control, and d) The approach used by SPP suffers from fundamental flaws. This school is known for its movement to remove physical means of punishment, namely the death penalty and imprisonment, and replace them with more reparative means.

Let us look at the theories on crime and prosecution described previously. We can see that the most relevant theory of punishment used to deal with perpetrators of corruption is the combined theory because it has elements of retaliation and prevention (Putra et al., 2020). However, if we look at the existing problems regarding the concept of crime and punishment in the PTPK Law, which have been explained previously, the aim of sentencing that aspires to has not been achieved, so the concept of crime and punishment for corruption crimes should be renewed by looking at developments regarding existing criminal and sentencing theories.

Criminal, in this case, aims to give sorrow or suffering to the perpetrators of criminal acts. However, in the PTPK Law, the handling of this criminal act of corruption is carried out not only to punish the perpetrators of the crime (corruptors) or as a means of retaliation (retributive) but also to return state financial losses caused by the actions of the corruptor. Coupled with the existence of a clear purpose of punishment in the new Criminal Code, the punishment must also aim to provide benefits not only for the perpetrators of criminal acts but also for the state and society.

As previously stated, acts of corruption generate significant social costs and apart from costs due to corruption (explicit), which have been covered by criminal compensation, other social costs cannot be covered because there is no regulation regarding returns. In order to optimize the recovery of costs incurred by the state for criminal acts of corruption, it is appropriate to consider the inclusion of the calculation of the social costs of corruption into the sentencing mechanism. In addition to providing benefits to the state and society, this can also provide a prevention and deterrent effect for perpetrators of corruption because they have to pay at the same time the social costs resulting from their crimes to the state.

Recovering the social costs of corruption can be included in the criminal fines scheme because the social costs of corruption are paid through the APBN, and fines will eventually be included in the APBN. So according to the author, there is no problem if the social costs of corruption are included

in the criminal fines scheme. However, the problem in this case is the rigid regulation of our fines. So the author suggests that the fines be as flexible or elastic as possible.

Many options can be used to eliminate the rigidity of fines, for example, by using multiplied fines or unlimited fines (Febriana & Salsabila, 2020). In addition, fines can also be regulated with two layers of rules; wherein the first layer, the minimum and maximum amounts are regulated, whereas if a case occurs which cannot be punished by the maximum amount of fines that have been determined, then the second layer can be used where the full provisions of the penalty can be waived (as provided for in the US Foreign Corrupt Practices Act). In this case, apart from being effective in returning state losses, it can also create prevention efforts and a deterrent effect on perpetrators of corruption. So that with this, the criminal objectives adhered to by the PTPK Law and the new Criminal Code can be achieved.

In addition, judges in deciding corruption cases still prioritize imprisonment for their punishment, even though imprisonment logically requires more costs in its execution. Becker said that the prison sentences imposed on the convicts, apart from failing to provide compensation to the victims, this prison sentence also forced the victims to pay for the prison sentences because, logically, the victims had to pay taxes which would later be used to finance the convict's operating costs in prison (Ramadan, 2016). Prisons cost money to pay for guards, monitoring personnel, buildings, food for convicts, etc. In this context, the state pays all of these costs so that it, which has previously suffered losses, will lose even more because it has to pay more to finance corrupt convicts in prison.

Therefore, the suggestion that the author can convey regarding this matter is to start reducing the duration or length of imprisonment. This can save costs that the state must incur for imprisonment. Criminals with economic characteristics, such as fines and replacement money, should be prioritized to deal with economic corruption crimes (Yudistira, 2022).

Furthermore, Indonesia still applies the death penalty in its laws and regulations, especially in this case, the PTPK Law, where corruption is committed in certain circumstances. Let us look at it from the perspective of the abolitionist school. This thought can be used as a basis for shifting the paradigm of sentencing from initially emphasizing physical emphasis to shifting towards psychic if this can be applied to criminal acts of corruption, especially the death penalty, which is still regulated in the PTPK Law.

Like imprisonment, the death penalty for perpetrators of corruption is less relevant if used as a punishment for criminal acts of corruption. In this case, the death penalty is regulated to provide a deterrent effect and as a preventive measure. However, let us look at the reality, even though capital punishment has never been applied in corruption cases. There are still many perpetrators of corruption who violate these provisions (commit corruption in certain circumstances). Genoveva Alicia, a researcher in criminal law from the Institute for Criminal Justice Reform (ICJR), stated that no study had provided a statement regarding the correlation between the effectiveness of the death penalty and its deterrent effect. In addition, Dio Ashar Wicaksana, another criminal law researcher from the Indonesia Judicial Research Society (IJRS), explained that based on data from the Death Penalty Information Center in 2015, from 2008 to 2014, states in the United States that are no longer imposing the death penalty even has a lower crime rate than states that still apply the death penalty (IJRS, 2022). With this in mind, it can be said that efforts to prevent and provide a deterrent effect

by setting the death penalty seem to be ineffective in its application because these crimes are ongoing and repeated.

Not to mention, the execution of the death penalty also requires much money. If calculated, the funds needed to carry out capital punishment for one convict is Rp. 247,112,000, which was distributed from the preparation stage, the preparation of vehicles, ammunition and weaponry, the cost of the firing squad (10 people), the support team, the team escorting officials to the execution site and the ending costs for the body and burial. Even though one of the objectives of criminal prosecution of corruption in Indonesia is to optimize the recovery of state financial losses, if capital punishment is still regulated and implemented, it will cause the state to finance the implementation of the death penalty so that the state will lose even more.

If the death penalty is abolished, the state can save more and return to state finances optimally. In addition, with the death penalty, judicial errors can occur in it, where mistakes can occur in imposing sentences on certain people who may not be guilty. James Liebman, Jeff Fagan and Valerie West researched this subject by reviewing various courts in 34 countries over 23 years, and they found that nearly 7 out of 10 sentences were convicted of severe wrongs, requiring 2,370 retrials. For the cases whose results were known, 82% of those sentenced to death who were retried did not deserve the death penalty, and 7% of them were innocent.

Suppose the death penalty has been carried out, and it turns out that the person is not guilty of the said act. In that case, it is no longer possible to 'turn on' the person so that, in this case, justice cannot be upheld. In this case, it can be seen that the negative side of the death penalty is more prominent than the positive side, so the author's suggestion in this regard is to abolish the death penalty in corruption crimes in the future.

Regarding restorative justice in acts of corruption, the author considers that RJ is lacking or even cannot be carried out in handling corruption crimes. In the criminal act of corruption, for the offence of loss of state finances, the victim is the state, so in this case, dialogue cannot be carried out between the perpetrators, victims and members of the public. As for the offence of bribery, in this case, there is no victim (victimless crime), so it is impossible to do restorative justice for corruption.

CONCLUSION

The conclusions that can be drawn from the research results above are. First, the PTPK Law in Indonesia has various criminal penalties. The problem that arises with the concept of crime and punishment is the rigidity of criminal arrangements (especially in fines), which has the potential to make perpetrators still benefit from the deeds they did. In addition, setting imprisonment for a long time will cost a lot of money to 'maintain' convicts of corruption in prison for the entire time, which will only make the state lose more and more. Second, to overcome these problems, the author proposes to start applying new concepts that have developed in crime and sentencing, including suggesting that fines be optimized by making arrangements that are not as rigid as they are today. The author also proposes that prison sentences which are currently regulated for very long periods, in the future can be reduced to only short-term imprisonment because prison sentences are not so relevant to economic-based criminal acts, and this is also to save state costs for 'maintaining '

perpetrators of corruption. Then, departing from abolitionist thinking, the author proposes abolishing the death penalty to regulate corruption.

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