IOSR Journal of Humanities And Social Science (IOSR-JHSS)
Volume 26, Issue 8, Series 1 (August. 2021) 36-40
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

The Nature of Sentencing Against Private Legal Subjects as Perpetrators in Corruption

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Abstract:
Background: The mode of criminal acts of corruption is growing, such as using private legal subjects such as legal entities to commit corruption crimes. This creates difficulties in law enforcement, especially in determining the legal subject of the perpetrator and criminal responsibility. This study discusses (a) What is the nature of punishment for private law subjects as perpetrators of corruption; (b) How are the restrictions on private legal subjects as perpetrators of corruption crimes; (c) What is the ideal concept of limitation on the limitation of private legal subjects as perpetrators in the criminal act of corruption.
Materials and Methods: This research is a normative legal research using a statutory approach, an analytical approach and a legal conceptual approach to cases that are relevant to the research object being studied. The data used in this study is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The theory used in this study is the Theory of Legal Authority, Theory of Legal Functions, Theory of Approach Models in the Integrated Criminal Justice System and Theory of Law Enforcement.
Results: The results of this research indicate that (a) The essence of punishment in criminal acts of corruption based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 is cumulative punishment which includes corporal punishment, refund of state losses, confiscation of goods originating from criminal acts. corruption (primary punishment and additional punishment), while the nature of punishment for private law subjects is in addition to corporal punishment and refund of state financial losses, also administrative sanctions in the form of revocation of permits and certain rights against corporations (b) Setting restrictions on private legal subjects as perpetrators of criminal acts of corruption by taking into account the principles of governance of private legal entities to find out the party who committed the act and is responsible for the act. (c) The ideal concept of limitation on the limitation of private legal subjects as perpetrators in corruption crimes is to pay attention to the principle of error (culpability principle) which is a partner of the principle of legality in accordance with the principles of governance of private legal entities.
Conclusion: Therefore, the limitation of private legal subjects as perpetrators in corruption crimes should be stated explicitly in laws and regulations so that certainty in law enforcement takes into account the principles of governance of private legal entities. Thus, Public Officials must be guided by the principles of good governance in order to avoid mistakes and comply with the application of the principle of legality, namely the principles of governance of private legal entities that result in losses to state finances or the state economy.
Key Word: corruption, legal subjects, private, criminal liability.

Date of Submission: 01-08-2021 Date of Acceptance: 15-08-2021

I. Introduction

In essence, the issue of corruption is one form of crime that is very disturbing to the community, so disturbing that it is not wrong if there are people who think that corruption can wreak havoc. When the catastrophe comes, it is man who bears the risk, both to himself and his property.

Referring to the divine (philosophical) concept of corruption, at least it can be used as a reference for the prosecution and eradication of corruption by stating that there is no justification for corruption in the archipelago. Adhering to the principles of prosecution and eradication of criminal acts of corruption, so that the types of forms and types of criminal acts of corruption have sufficient legal grounds to be dealt with firmly, eradicated and scraped down to their roots by dragging the corruptors to the front of the court to account for their mistakes.

The implementation of prosecution and eradication of criminal acts of corruption is not carried out immediately. However, it must be in accordance with norms or with applicable legal rules, and with respect for the human rights of the corrupt. Even the prosecution and eradication of criminal acts of corruption should be carried out as far as possible by referring to the principles of good governance. The application of the principles of good governance (good governance) in the context of prosecution and eradication of criminal acts of corruption, with a hope that is by creating legal objectives (justice, benefit, and legal certainty).[1] In line with the development of human progress as well as the mode of development of the criminal act of corruption, it develops with a mode that disguises the actions of the parties or perpetrators with a legal action as if it were a pure civil act or the actions of the perpetrators were in the realm of private law.

Based on this description, this paper will discuss how to regulate the restrictions on private legal subjects as perpetrators in criminal acts of corruption. This study aims to analyze and find the nature of restrictions on private law subjects as perpetrators of corruption.

II. Material And Methods

This research is a normative legal research using a statutory approach, an analytical approach and a legal conceptual approach to cases that are relevant to the research object being studied. The data used in this study is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The theory used in this study is the Theory of Legal Authority, Theory of Legal Functions, Theory of Approach Models in the Integrated Criminal Justice System and Theory of Law Enforcement.

III. Discussion

1. The nature of crime and punishment in the Criminal Code (KUHP) and Law no. 30 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption Crimes

a. The Nature of Crime and Sentencing in the Criminal Code (KUHP)

At first the Criminal Code was seen as the parent and as a form of codification and unification. However, in subsequent developments, the Criminal Code is seen as incomplete or unable to accommodate various problems and dimensions of the development of new forms of crime, less in accordance with socio-philosophical, socio-political, and socio-cultural values that live in society, not in accordance with the development of thoughts/ideas and aspirations for the demands of the community (national/international) and does not constitute a complete criminal law system, because there are articles that have been revoked. Therefore, a new law has emerged outside the Criminal Code which regulates special offenses and special rules, including in the eradication of corruption crimes committed based on Law no. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Criminal Acts of Corruption.

Criminal liability in the Criminal Code is based on the premise of monodualistic balance, that the principle of error (culpability principle) is a partner of the principle of legality which must be formulated explicitly by the law. Explicitly the principle of no crime without guilt, which does not exist in the Criminal Code. With this principle, a person may not be convicted, unless he is proven guilty of committing a crime, either by committing (active) or non-committing (passive) actions that are punishable by criminal law. A person is said to be guilty of committing a criminal act, if he does it intentionally (dolus) or due to negligence (culpa) of all kinds. So the formulation related to criminal liability is criminal liability based on errors, especially limited to acts committed intentionally (dolus). A criminal offense of culpa can only be an exception if it is explicitly determined by law, while being responsible for certain consequences of a criminal act for which the law imposes a criminal threat is only imposed on the defendant if he cannot reasonably suspect the possibility of a consequence. that is if at least there is an omission. So it does not adhere to the doctrine of purely bearing the consequences, but is still oriented to the principle of error. Criminal liability is a very important substance along with the problem of regulating criminal acts.

Criminal responsibility is the implementation of the idea of balance, among others as follows: The existence of the principle of no crime without error (the principle of culpability/principle of geen straf zonder schuld) which is the principle of humanity as a partner of the principle of legality which is a social principle. The two conditions or principles are not viewed as rigid and absolute conditions. In certain cases, it is possible to apply the principle of strict liability, the principle of vicarious liability, and the principle of forgiveness or pardon by judges (rechterlijk pardon or judicial pardon).[2]

The existence of the judicial pardon principle is motivated by the idea or main idea to (a) avoid the rigidity/absolutism of punishment; (b) provide a safety valve/valve (veiligheidsklep); (c) the form of judicial corrective to the legality principle; (d) implementation/integration of values or paradigms of wisdom in Pancasila; (e) implementing/integrating the purpose of sentencing into the terms of sentencing (because in granting forgiveness/pardon the judge must consider the purpose of sentencing); (f) so that the conditions or justification for punishment are not only based on the existence of a crime (legality principle) and error (culpability principle), but also on the purpose of sentencing. The judge's authority to forgive (rechterlijk

pardon) without imposing any criminal sanctions/actions is also balanced with the culpa in causa principle (or actio libera in causa principle) which authorizes judges to remain accountable for the perpetrators of criminal acts even though there are reasons. criminal eraser, if the perpetrator deserves to be blamed (reproached) for the occurrence of the circumstances that became the reason for the criminal eraser. So the judge's authority to forgive (not to convict) is balanced with the authority to continue to convict even though there is a reason for eliminating the crime.

Within the framework of this criminal responsibility, in addition to the criminal liability of natural persons, in general, corporate criminal responsibility is also regulated on the basis of identification theory, given the increasing role of corporations in criminal acts, both in the form of profitable crime for corporations. corporations or in the form of corporate criminals, namely corporations formed to commit crimes or to accommodate the proceeds of crime. in this case the corporation can be accounted for together with the management (by-punishment provision) if the corporate management (natural human) who has key positions in the corporate management structure has the authority to represent, make decisions and control the corporation, commit criminal acts for the benefit of the corporation acting either individually or on behalf of the corporation). So there is a power decision and a decision accepted by the corporation as a policy of the corporation. In this case, the mens rea of the natural man of the management is identified as the mens rea of the corporation. [3] A criminal act is committed by a corporation if it is committed by people who have functional positions in the organizational structure of the corporation acting for and on behalf of the corporation or for the benefit of the corporation, based on a work relationship or based on other relationships, within the scope of the corporation's business, either individually or together. This is the latest development regulated in Law no. 30 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption where corporations are the subject of criminal acts of corruption which can be subject to criminal sanctions that are not regulated in the previous legislation to eradicate corruption, namely Law No. 3 of 1971. Corporations as subject of criminal law in corruption is confirmed in Article 20 of Law no. 30 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which states: (1) In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and or its management; (2) A criminal act of Corruption is committed by a corporation if the crime is committed by people, either based on a work relationship or based on other relationships, acting within the corporate environment, either alone or jointly; (3) In the event that a criminal charge is made against a corporation, the corporation is represented by the management; (4) The management representing the corporation as referred to in paragraph (3) may be represented by another person.

The basis for formulating the purpose of punishment is based on the idea that punishment is essentially only a tool to achieve goals. The identification of the purpose of sentencing is based on a balance of two main targets, namely "protection of the community" including victims of crime and "protection / development of individual perpetrators of criminal acts". Starting from the balance of the two main targets, the terms and nature of sentencing also depart from the monodualistic balance of thought, between the interests of the community and the interests of the individual; between objective and subjective factors. Therefore, the terms of punishment are also based on two very fundamental pillars in criminal law, namely "the principle of legality" (which is the principle of society) and "the principle of error/culpability" (which is the "principle of humanity"). In other words, the main idea of punishment is closely related to the main idea of criminal acts and criminal responsibility as stated above.

Sentencing must be oriented to the "person" factor (the perpetrator of the crime), so the idea of criminal individualization also lies behind the general rules of punishment. Criminal individualization results in flexibility for judges in choosing and determining what sanctions (criminals/actions) are appropriate for individuals/criminals. So there is a need for flexibility or elasticity of punishment, even though it is still within the limits of freedom according to law. Starting from this thought, it is determined that the available sanctions are in the form of a criminal, namely the main and additional penalties, as well as actions. In its application, judges can impose various alternative sanctions as follows: imposing only the main punishment or imposing the main and additional penalties. The Criminal Code has determined the types of criminal sanctions in general are regulated in Article 10 of the Criminal Code which consists of the main punishment consisting of (a) death penalty, (b) imprisonment, (c) imprisonment, (d) fine, (e) criminal cover; and additional penalties consisting of (a) revocation of certain rights, (b) confiscation of certain goods, and (c) announcement of judge's decision. In this case, the main punishment can be given independently while the additional punishment cannot be imposed independently without the main punishment because its nature is only an addition to the main punishment so that the purpose of the sentence can be achieved. When associated with Law no. 30 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption does not specifically regulate the types of principal crimes so that the principal punishments refer to Article 10 of the Criminal Code which consists of the main punishments consisting of (a) capital punishment. , (b) imprisonment, (c) confinement, (d) fine, (e) convict punishment, but the main punishment for corporations is only in the form of a fine as regulated

in Article 20 paragraph (7) of Law no. 30 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which states "The main punishment that can be imposed on corporations is only a fine, with the maximum penalty being added 1/3 (one third)".

With regard to additional penalties, Law no. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, specifically regulates additional types of crime apart from additional penalties in Article 10 of the Criminal Code as regulated in Article 18 of Law no. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, namely: a. confiscation of tangible or intangible movable property or immovable property used for or obtained from a criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as from the goods that replace the goods; b. Payment of replacement money in the maximum amount equal to the property obtained from the criminal act of corruption; c. Closure of all or part of the company for a maximum period of 1 (one) year; d. Revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be granted by the Government to the convict. As stated above, although the sanctions imposed already have a permanent legal decision, in its implementation it is still possible to make changes / review / readjustments.

In connection with this punishment, there is a utilitarian view and an integrative approach. As long as the purpose of punishment is stated, the objectives of sentencing are: a. prevent the commission of criminal acts by enforcing legal norms for the protection of society: b. socialize the convicts by conducting coaching so that they become good and useful people, and are able to live in society: c. resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace in society; and d. release the guilt of the convict

Furthermore, it is stated that punishment is not intended to suffer and is not allowed to degrade human dignity. In this connection the term punishment must be interpreted in a broad sense including action. A discussion of the nature of the purpose of punishment and the meaning of punishment is very important to provide justification for the application of the types of crimes and actions (strarafsoort) in a criminal code of law. This will be more appreciated if the opinion of H.L. Packer who stated that: "Punishment is a necessary but lamentable form of social control. It is lamentable because it inflicts suffering in the name of goals whose achievement is a matter of chance." [4]. Further stated by H.L. Packer, that understanding the ambiquity of crime and sentencing will require us to (1) not make criminal institutions a tyrannical and destructive tool, (2) always conduct careful research on criminal institutions and the criminal justice process, especially research and assessment of strengths and weaknesses as a means of preventing crime, and (3) always carefully considering the measures to determine an act as a crime.

In relation to the formulation of the purpose of punishment in the draft Criminal Code concept, Sudarto stated that in the first objective the view of social defense and general prevention was concluded, while in the second objective the rehabilitation and resocialization of the convict was contained. The third goal is in accordance with the view of customary law regarding the Reactie custom to restore the balance of the cosmos because crime is considered to have shaken the balance, while the fourth goal is spiritual in accordance with the First Precepts of Pancasila. The evaluation of the set of sentencing objectives above will result in a generalization that what we are adhering to is the Utilitarian theory because it is clear that the criminal is prospective and forward-oriented. In addition, the purpose of punishment is to focus on prevention with the ultimate goal of social welfare.[5] In order to give a more humane meaning, that utilitarian characteristic must also emphasize the orientation of punishment both to the act and to the perpetrator as well as the use of science, both social science and natural science to support its effectiveness. Thus, the theory of retaliation which is retributive on the basis of backward-oriented "moral guilt" will no longer have a place in the future Criminal Code.

IV. Conclusion

The results of this research indicate that (a) The essence of punishment in criminal acts of corruption based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 is cumulative punishment which includes corporal punishment, refund of state losses, confiscation of goods originating from criminal acts. corruption (primary punishment and additional punishment), while the nature of punishment for private law subjects is in addition to corporal punishment and refund of state financial losses, also administrative sanctions in the form of revocation of permits and certain rights against corporations (b) Setting restrictions on private legal subjects as perpetrators of criminal acts of corruption by taking into account the principles of governance of private legal entities to find out the party who committed the act and is responsible for the act. (c) The ideal concept of limitation on the limitation of private legal subjects as perpetrators in corruption crimes is to pay attention to the principle of error (culpability principle) which is a partner of the principle of legality in accordance with the principles of governance of private legal entities. Therefore, the limitation of private legal subjects as perpetrators in corruption crimes should be stated explicitly in laws and regulations so that certainty in law enforcement takes into account the principles of governance of private legal entities. Thus, Public

Officials must be guided by the principles of good governance in order to avoid mistakes and comply with the application of the principle of legality, namely the principles of governance of private legal entities that result in losses to state finances or the state economy.

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Jabal Nur. "The Nature of Sentencing Against Private Legal Subjects as Perpetrators in Corruption."*IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(08), 2021, pp. 36-40.