International Journal of Psychosocial Rehabilitation, Vol. 24, Issue 06, 2020
ISSN: 1475-7192

Implementation Effect of Criminal Minimum Penalty into Eradication of Corruption in Makassar

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ABSTRACT--- *The purpose of this study is to understand, analyze and find out the implementation effect of minimum criminal penalty into the eradication of corruption in Makassar Indonesia. The type of research that will conduct is descriptive research with the kind of normative legal analysis. This research will include the type of study uses a normative-empirical method of the judicial case study category, which source from primary and secondary data analyzed qualitatively descriptive. The results of the research that show, it was concluded that that could be carrying out the legislative order, the judge may impose a minimum crime because this stipulates in the law. The judge is in charge of carrying out the act. Furthermore, minimal criminal imposes concerning efforts to tackle corruption does not create a deterrent effect for corruptors. It cannot be a useful tool to prevent crime both of a particular (Special Prevention) and general nature (General Prevention).*

Keywords--- *Eradication of Corruption, Criminal Minimum Penalty*

I. INTRODUCTION

In several countries, such as Indonesia is paying attention to corruption efforts. There are various definitions of corruption in theory field have mentioned. The most widely used definition is "corruption is taken to be the abuse of public office for private benefit", which has pointed out the nuclear connotation of corruption. According to different studying objects and purposes, the precise definition and measurement could distinguish between various issues. According to Ermansjah Djaja (2010) argues, like a disease, corruption in Indonesia has developed in three stages, namely elitist, endemic and systemic. In the elitist stage, crime is still a typical social pathology within the elite/officials. At the endemic stage, corruption reaches the reach of the wider community. Then the critical step is when crime becomes systemic, that is when the disease of corruption reaches every individual in the system. Perhaps the condition of criminal in this nation has reached the systemic stage [1]

Also, Andi Hamzah (2008) illustrates that from year to year since the fifties, the problem of corruption in Indonesia has never been devoid of discussion, debate, and efforts to improve legislation. Even a sense of despair arose to eradicate it. Law enforcers seem to have lost their minds in thinking where to start an action. The more experienced and traced, the more real is like discovering a long rope which in the end amazes everyone that at the end of the line turns out to be caught by almost all political elites, business people, and legal officials. It turns out that those who have been diligent in suing corruptors are involved in the range of corruption tornadoes as well [2].And then, Romi Atmasasmita (2004) describes the crime of corruption. Corruption in Indonesia is already a flu virus that spreads throughout the entire government body so that in the 1960s, the eradication steps were still faltering until now. Corruption is also related to power because, with that power, the authorities can abuse their power for personal, family or crony interests. It was later emphasizing that corruption always starts and develops

Received: 22 Sep 2019 | Revised: 13 Oct 2019 | Accepted: 15 Jan 2020

in the public sector with clear evidence that with that power, public officials can suppress or blackmail justice seekers or those who need government services [3].

In an effort to realize the eradication of criminal acts of corruption and the supremacy of the law, then the Indonesian government has laid the foundation of the policy contained in various laws and regulations, including the stipulation of the MPR Number: Xl / MPR / 1998 concerning the Implementation of a Clean and Corruption Free State, Collusion and Nepotism, Law Number 28 of 1999 concerning State Administrators that are Clean and Free of Corruption, Collusion and Nepotism and Law Number: 31 of 1999 concerning Eradication of Corruption, as amended by Law Number 20 years 2001 concerning, Amendments to Law Number 31 of 1999 concerning, Eradication of Corruption Crimes. The shift in eradicating criminal acts of corruption from the old paradigm in Law Number: 3 of 1971 to the new standard of eradicating corruption in Law Number: 31 of 1999 in conjunction with Law Number: 20 of 2001, gives great hope to the government and Indonesian people to eliminate corruption. It certainly can be achieved if the new paradigm implemented optimally and consistently.

Therefore, Law Number 31 of 1999 jo Law Number 20 of 2001 concerning Eradication of Corruption Crimes in lieu of Law Number 3 of 1971 is expected to be able to meet and anticipate the development of community legal needs in order to prevent and eradicate more effective any form of criminal acts of corruption that is very detrimental to the country's finances or the country's economy in particular and society in general. The strategy to eradicate corruption in Indonesia must use 4 (four) approaches, namely, a legal procedure, a moralistic and faith approach, an educational approach and a socio-cultural approach. The legal strategy plays a very strategic role in combating corruption. However, the conventional legal approach is inadequate in dealing with the modus operandi of fraud that is systematic and widespread and constitutes extraordinary crimes. A new legal strategy is needed that places the interests of the nation and state or the economic and social rights of the people above the interests and rights of individual suspects or defendants [4]-[5].

The new legal approach is in line with the provisions of Article 29 of the Universal Declaration of Human Rights of the United Nations. It affirms that limitation of individual human rights can be justified as long as it aims to protect broader human rights as long as it is regulating in the form of law. The success of this approach is not only measuring by the success of the legislation product but must also be accompanied by consistent law enforcement measures that are both preventive moralistic and proactive repressive. The moralistic and faith approach is the limiting signs of straightening the course of law enforcement and strengthening the integrity of state administrators to always uphold and uphold justice based on the Almighty God in carrying out their law enforcement duties against corruption.

The educational approach complements the two methods above and functions to mobilize and improve the reasoning power of the community so that they can comprehensively understand the background and causes of corruption and its preventive measures. The socio-cultural approach functions to build a culture of the society that condemns criminal acts of corruption by carrying out public campaigns that are widespread and equitable throughout the country. Empowering public participation aims to foster an anti-corruption culture among the community, starting from the level of kindergarten education to the level of higher education. These four approaches are the key to success in eradicating corruption, which must implement synergistically. This research is focusing on the study of judges' decisions that impose minimum criminal sentences. The judicial case study in

this study is focusing on answering the problem formulation, is the impact of the implementation of criminal prosecution minimal in eradicating criminal acts of corruption?

II. METHODOLOGY

a. Research Design

This research will include in the type of study uses a normative-empirical method of the judicial case study category, which is the source from primary and secondary data analyzed qualitatively descriptive.

b. Theoretical Basis

According to Ahmad (2002) and Adami (2002), put forward the action objectives as follows [6][7]:

1. Absolute Theory or the theory of retaliation (Vergeldings Theorien)

Kant and Hegel introduced this theory. This theory based on the idea that crime does not aim to be practical, like fixing criminals. It is a crime itself that demands that the criminal handed down to the lawbreaker. Criminal is an absolute demand, and it is not only something that needs to be dropped but becomes a necessity, in other words, the nature of a conviction is retaliation.

According to Kant (Ahmad Ferry Nindra, 2002**)** stated that "Retaliation or an act against the law is an absolute requirement according to law and justice, capital punishment for criminals who commit premeditated murder handed down".

Furthermore, Stahl (Adami Chazawi, 2002) argues that "Law is a rule that bases on God's rules. Which passed down through the state government as God's servants or representatives of God in this world?. Therefore, the state obliged to maintain and implement the law in a way to Law violation, it must be commensurate with the crime of the violation".

2. Relative Theory or Objectives (Doel Theorien)

This theory provides the fundamental premise that the legal basis of a crime lies in the criminal purpose itself. Therefore, it has specific goals; in addition to other objectives, there are also primary objectives in the form of maintaining public order. Regarding how to achieve that goal, there are several understandings which are the streams of goal theory that are particular interventions and general conventions. Individual prevention is crime prevention through punishment to influence the behaviour of the convicted person not to commit another crime. The influence is on the convict himself in the hope that the convict can turn into a better and more useful person for the community. Whereas the general convention that the influence of crime is to influence the behaviour of community members not to commit a crime

The theories intended in general prevention theory are as written by Lamintang (Ahmad Ferry Nindra, 2002) as follows [6]:

1. This theory that can deter people, which aims to prevent people from all citizens of the community so that they do not commit crimes or violations of criminal law methods [8]-[9].
2. The teachings on psychological coercion that have been introduced by Anslm Fuerbach. According to him, the threat of punishment must be able to prevent the intention of people to commit a crime, in the sense that if people commit a crime, they must be subject to criminal sanctions. They will think to discourage them from committing crimes.

As according to Van Hamel (Adami Chazawi, 2002) makes a picture of punishment that is individual prevention [7], namely:

1. Criminal is always for personal prevention, that is to scare people who can sufficiently prevent by scaring them through criminal deterrence so that he does not carry out his intentions.
2. However, if he cannot be frightened by imposing a crime, then the criminal sentence must be self-repairing (replastering).
3. If criminals cannot remedy, criminal convictions must be destructive or make them distrustful.
4. The sole purpose of crime is to maintain the rule of law in society.

c. Combined Theory (Vereniging Theorien)

The combined theory is a combination of absolute and relative approaches. The approach requires that punishment is in addition to providing physical suffering as well as psychological and the most important thing is giving penalty and education. With objections to the theory of retaliation and the method of purpose, a third flow emerges based on the way of thinking, that crime should be found on the meaning of retribution and maintain order in society. Which apply in combination with an emphasis on one of the elements without eliminating and Other items. According to Adami Chazawi (2002), the combined theory can classify into two broad groups [7] and [9], namely:

1. A combined approach that prioritizes retaliation, but that embalming must not exceed the limits of what the community order must be maintained.
2. The mixed theory that prioritizes the protection of public law, but the suffering of the crime must not be more severe than the actions of the convicted person.

III. RESULTS

There are 2 (two) Judges of the Makassar District Court whose authors will describe those who impose a minimum crime, namely:

a. Decision Number 57 / Pid.Sus / 2014 / PN.Mks, defendant Haji Hidayat, S.T Bin Haji Since; which has been proven legally and convincingly in violation of Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendment of Law Number 31 of 199 concerning Eradication of Corruption. The Judge's Decision, in this case, is a 1 (one) year criminal and a fine of IDR 50,000,000 (Fifty Million IDR).

In Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption. It is as amended by Law Number 20 of 2001 concerning Amendment of Law Number 31 of 1999 concerning Eradication of Corruption. It clearly that everyone with a beneficial purpose self or another person or a corporation, misusing authority, or position, that can harm the state finances or the economy. Also, the state punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a maximum fine of IDR 1,000,000,000.00 (one billion IDR). Concerning the provisions of Article 3 of the Corruption Law above, the Judge's Decision, in this case, applies a minimum criminal sentence, namely imprisonment of 1 (one) year and a fine of IDR 50,000,000 (Fifty Million IDR).

b. Decision Number 57 / Pid.Sus / 2014 / PN.Mks, the defendant Haji Hidayat, ST Bin Haji Since, which has been proven to be violently valid and convincingly violates Article 3 in conjunction with Article 18 paragraph (1) letter e of Law Number 31 Year 1999 concerning Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption in conjunction with Article 55 paragraph (1) of the Criminal Code. The defendant sentenced to 1 (one) Year Prison and a fine of IDR 50,000,000.00 (Fifty Million IDR) as for the threats mentioned in Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication Corruption is a life sentence or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a minimum fine of IDR 50,000,000.00 (Fifty Million IDR) and a maximum of IDR 1,000,000,000.00 (One Billion IDR). Concerning Article 3 of Law Number 31 of 1999, which has been amended by Law Number 20 of 2001, the Judge's Decision, in this case, applies to a minimum criminal sentence, namely a 1 (one) year prison term and a fine of IDR 50,000,000.00 (Fifty Million IDR).

Next, the author will present data on corruption cases from 2015 to 2018, which was trying in the Makassar Corruption Court in Table 1.

Table 1: Data on corruption cases that were trying in courtMakassar Corruption Crime
The year 2015 - 2018

No.	The Year	Number of Case	Minimal Verdict	Free Verdict
1.	2015	119 Case	62 Case	3 Case
2.	2016	105 Case	44 Case	8 Case
3.	2017	98 Case	36 Case	8 Case
4.	2018	104 Case	14 Case	3 Case

Source: PN Makassar, May 2019

From the data above it shows that corruption cases that were trying in the Corruption Court in Makassar District Court were quite large, namely in 2015 with 119 cases, in 2016 with 105 cases, in 2017 with 98 cases and 2018 with 104 cases. The above data also illustrates that from year to year there is always a Judge's Decision which decrees a Minimum Crime, namely in 2015 there were 62 cases of minimal decisions, in 2016 there were 44 cases of insignificant choices, in 2017 there were 36 cases of minimal decisions, and in 2018 there were 14 cases of decisions minimal. The minimum criminal sentence concerning efforts to tackle corruption does not have the effectiveness to deal with corruption. Corruption Crimes shows an increased quality of cases number and also several state losses and in terms of quantity. It can namely corruption committed systematically and has entered all aspects of public life, including ways and forms of corruption that also continue to develop coupled with the courage of the perpetrators who are continually looking for new ways of crime.

Based on the data previously presented by the author, it appears that the perpetrators of corruption judged in the Makassar District Court increased from year to year. That is a corrupt actor that can be known, not including

the corruption that is common but not revealed (hidden crime). Sometimes, corruption crime described as an iceberg in the middle of the ocean (model of the ice). From the description of the iceberg in the sea, it can understand that the perpetrators of corruption can be known and prosecuted and tried. Likewise, in criminal cases, it is minimal compared to those who have not arrested or whose claims are unknown. Therefore, in efforts to tackle corruption, a discordant/cynical tone is always heard that eradicating corruption is done by selective logging. Minimal criminal imposes in efforts to tackle corruption, aside from having no effectiveness, can also be a new motivation for increasing crime. It is possible for a person who is not corrupt to be motivated for corruption and may even not want corruption to become corrupt because of the minimum criminal sentence. Illegal imprisonment can at least be compared to as fertilizer to foster corruption.

So the contribution or contribution to increasing corruption both in quality and quantity is included by decisions that prosecute crime and impose minimal penalties, even impose penalties below the minimum and free penalties. Against Judges who impose criminal both minimal and maximum criminal, we should give appreciation as a tribute to the Judges who have carried out their noble duties. To Judges who impose penalties above the minimum and even maximum penalties, we must give a thumbs up to him because the judge has performed the repressive function of Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 concerning Eradication Corruption Crime.

If it is associated with minimal criminal offences against corruptors with criminal theory (absolute theory, relative theory, and combined theory, it can be concluded that the implementation of a minimum crime against corruptors is not effective in dealing with corruption. The preventive function to deal with the crime is not achieving. In principle, the view that criminal conviction for the perpetrators of the crime is as a tool to make excellent benefits for the guilty people so that they commit crimes, as well as benefits for other people or the community not to the crime, individual prevention or general nature (general prevention).al

It is clear from this criminal theory that punishment is a way to prevent or reduce crime. A criminal action is an act that causes suffering for the convicted person and the truth of this principle if it is proven that the conviction of a criminal will have a better effect than not being imposed by a criminal against a criminal. Starting from the conviction theory, it is clear that the minimal impose of a criminal case on corruption certainly does not fix the perpetrators and does not prevent others from committing the crime. The increasing number of corruption perpetrators proves this from one year to the same time while the Corruption Eradication Law has amended several times, it turns out that corruption cannot be overcome, including it cannot be minimized. Crime is never devoid of talks, arrest operations against corruptors at any time is carried out, debates, efforts to improve legislation, remain warm and even understandable when a sense of despair arises to eradicate it.

Andi Hamzah (2008) is correct in saying that good law enforcers seem to lose their minds in thinking about where to start an action. The more experienced and traced, the more real is like discovering a long rope which in turn astonishes all parties that at the end of the line turns out to be caught by almost all political elites, business people and legal officials. It turns out that those who have been diligently suing corruptors are involved in the range of putting downs in corruption [4]-[5].

IV. CONCLUSION

According to the discussion that has explained in the previous that can be carrying out the legislative order, the judge may impose a minimum crime because this stipulates in the law. The judge is in charge of carrying out the act. However, minimal criminal imposes concerning efforts to tackle corruption does not create a deterrent effect for corruptors. It cannot be a useful tool to prevent crime both of a particular (Special Prevention) and general nature (General Prevention). Also, in the point to create a deterrent effect for corruptors, the Judges who should try corruption should be motivated to impose more substantial penalties in their decisions. Because corruption is an extraordinary crime (extraordinary crime), then enforcement is needed unusual ways, including imposing sanctions for perpetrators of the crime (exceptional enforcement).

V. ACKNOWLEDGMENT

The author would like to state appreciations to the Universitas Kristen Indonesia Paulus (UKI-Paulus) in Makassar, Indonesia for supporting to publish this article

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