Political Law Revitalization on Law of Corruption Eradication Commission

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***Abstract*— The efforts to eradicate corruption experienced a new chapter with the repeal of Law No. 3 of 1971 which was considered to be no longer in accordance with the development of legal needs in society so that it needed to be replaced with a new law that was more effective in preventing and eradicating criminal acts of corruption. This research uses a normative juridical approach and analytical descriptive nature. The results of this study relate to the application of legal politics in Eradicating Corruption according to RI Law No. 30 of 2002 concerning the Corruption Eradication Commission is the need for a legal political system that supports efforts to eradicate corruption, both from an understanding of the legal political system and understanding of socialism that prioritizes public authority, can be accommodated properly, especially both of them lead to the same effort, namely the achievement of Indonesia as a prosperous state of law. Then it is also necessary to revitalize the eradication of corruption in Indonesia, including evaluating the status and functions of the Corruption Eradication Commission as an independent *ad hoc* institution that is expected to be able to carry out the trigger mechanism function on the performance of the police and prosecutors.**

Keywords: **Political law, corruption eradication commission, revitalization, corruption**

I. INTRODUCTION

Political law is "legal policy or official guideline about the law that will be enforced either by making new laws or by replacing old laws, in order to achieve the objectives of the state".[1] Thus, legal politics is a choice of laws that will be enacted as well as choices about laws that will be revoked or not enacted all of which are intended to achieve the objectives of the state as stated in the Preamble to the 1945 Constitution.

The definitions that have been put forward by some other experts indicate that there is a substantive similarity with the definitions which were stated by Moh. Mahfud MD. Padmo Wahjono said that legal politics is a basic policy that determines the direction, form and content of the law to be formed [2].

Corruption Eradication in Indonesia actually began in the 1960s, and was strengthened by Law No. 3 of 1971 concerning Eradication of Corruption [3].

Efforts to eradicate Corruption experienced a new chapter with the repeal of Law No. 3 of 1971 which was considered to be no longer in accordance with the development of legal needs in society so that it needed to be replaced with a new law that was more effective in preventing and eradicating criminal acts of corruption [4].

In its development, widespread criminal acts of corruption not only harm the country's finances, but also constitute violations of social rights and economic rights of society at large. Therefore, criminal acts of corruption need to be classified as crimes whose eradication must be carried out in extraordinary ways [5].

Law No.31 of 1999 was later changed to Law No. 20 of 2001 concerning Amendment to Law No.31 of 1999 concerning Eradication of Corruption Crimes. Significant changes in this development, including the provision of evidentiary law which was originally based on the principle of "*negative wettelijkebeginsel*" is changed to a reversed and limited proof (limited reversal of burden of proof), strengthening Corruption Eradication Institutions with the establishment of the Corruption Eradication Commission (KPK) based on article 43 of Law No.31 of 1999. The mandate for the formation of the Corruption Eradication Commission was carried out based on Law No. 30 of 2002 concerning the Corruption Eradication Commission which was promulgated on December 27, 2002.

The KPK has carried out its duties and authorities for approximately thirteen years, and was last by the leadership of the KPK for the period of 2011-2015. In the course of its development and performance, the KPK has succeeded in carrying out significant enforcement functions, among others, from 2010 to 2014 as many as 371 (out of a total of 1.397). Corruption cases committed by the state have been sentenced. Nevertheless, the KPK has not been able to carry out tasks that are in accordance with the KPK Law and have not been updated, but a comprehensive improvement system in efforts to prevent and control acts of corruption, both professionally and quantitatively.

Law and development are the keywords in providing an assessment of the development of developing countries in building bureaucratic reforms through improving good governance. Corruption eradication is one of the agenda of every country in the world to strengthen bureaucratic reform so that eradication of corruption is and includes an inseparable chain of comprehensive law enforcement, starting from upstream to downstream bureaucracy activities.

II. METHODS

This study uses a normative juridical approach method, namely by examining and reviewing secondary data in the form of positive law related to the subject matter under study.

This research is analytical descriptive because this research describes the situation or event being studied and analyzes it based on facts in the form of primary data obtained from interviews with the informants concerned, while secondary data is obtained from primary legal materials, secondary legal materials and tertiary legal materials.

III. RESULTS AND DISCUSSION

a. The application of Legal Politics in Eradicating Corruption according to Republic Indonesia Law No. 30 of 2002 concerning the Corruption Eradication Commission

Various laws and regulations governing aspects of corruption eradication have been implemented. Therefore, only with the commitment and consistency of implementation, efforts to eradicate corruption can be carried out in an orderly and orderly manner so that a just and prosperous society can be achieved.

In facing the challenges of change today, especially in eradicating corruption, Atmasasmita [6], argued that the law is not enough just with the norm ystem as stated by MoctarKusumaatmadja, and the norm system as stated by Mochtar Kusumaatmadja, and the behavior system as stated by SatjiptoRahardjo, but also needs to be integrating community Value Systems. The value system is sourced from Pancasila as the soul of the nation, hereinafter referred to as the Theory of Integrative Law.

Law is not just a collection or addition of rules that each stand alone, but is a legal system or a unit consisting of elements that interact with each other functionally and work together to achieve certain goals [7]. The legal system according to Friedmann, consists of legal substance, legal structure, and legal culture [8].

In law enforcement in Indonesia, especially in eradicating criminal acts of corruption, the view of Integrative Legal Theory is very relevant because the eradication of criminal acts of corruption is seen from macro optics, which not only covers legal aspects only, but also other aspects, namely economic and political aspects.

The different concepts, scope, approaches and objectives of eradicating criminal acts of corruption illustrate the development of the political view of law in eradicating criminal acts of corruption. This change of view reflects that the eradication of corruption can no longer be understood solely by the legal aspects, but rather must be understood more comprehensively including social and economic aspects [9]. Based on this understanding, the part considers (a) Law 20/2001 Amendment to Law No. 31 of 1999 emphasized that "Corruption is a violation of people's economic and social rights." This consideration is in accordance with the existence of Article 2 and Article 3 of Law 31 of 1999 which emphasizes the element of state financial losses or the state economy is a constructive element that determines whether or not a criminal act of corruption is proven. The elements of state financial losses or the country's economy can only be measured based on the economic approach parameters based on the principle: maximization, efficiency and balance [10].

Besides that, the eradication of corruption in a broad sense includes prevention strategies, in addition to enforcement. Prevention strategies have been regulated in Law No. 28 of 1999 with the aim of creating a clean-free government from corruption, collusion, and nepotism.

That strategy is borne by the State Administering Assets (hereinafter referred Komisi Pemeriksa Harta Kekayaan Penyelenggara Negara or "KPKPN"). The KPKPN was finally liquidated through Law No. 30 of 2002 concerning the Establishment of the Corruption Eradication Commission. The KPK then continued the prevention strategy of the KPKPN, completing the enforcement strategy. The KPKPN was finally liquidated through Law No. 30 of 2002 concerning the Establishment of the Corruption Eradication Commission. The KPK then continued the prevention strategy of the KPKPN, completing the enforcement strategy.

The scope of eradicating corruption with changes to the law is included in the article, but is not limited to the expansion of norms regarding corruption, but also to acts of state administrators who obtain undue advantages, such as provisions regarding gratification and acts active bribery and passive bribery. Apart from these changes, acts against the law include means to "enrich oneself" or "other people" or a "corporation", both legal and non-legal entities [11].

Another provision that expands the scope of corruption eradication is the obligation of the defendant to provide information about the source of his wealth. So, if there is wealth that is out of balance with his income or if there is additional wealth, these things can be used to strengthen the testimony of other witnesses that the defendant has or has not committed a criminal act of corruption. In amendment of Law No. 20 of 2001 has proposed the provisions of a system of reversing and limited evidence (limited revearsal of burden of proof) that is different from the system of negative evidence (*negative wettelijkebeginsel*), as stated in Law No. 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred as *Kitab Undang-Undang Hukum Acara Pidana* or "KUHAP").

Changes in the direction of corruption eradication politics as outlined shows that the prevention function is as important as the enforcement function, and these two functions must still be equipped with a restorative function or recovery of state financial losses.

In the context of state finance, as stipulated in Law No. 17 of 2003 and the KUP Law 1983-2009, it is clear that legal politics in the field of state finance seeks to maximize state revenue from PNBP. These objectives are strengthened by Law No. 1 of 2004 concerning the State Treasury, namely the restoration of state financial assets through the application of administrative sanctions which are considered more

efficient and effective in terms of time and costs that must be incurred by the state.

Referring to the different characters and objectives in the law, it can be concluded that the goals and targets of state revenue from taxes, among others, are also caused by the imbalance between clusters of legislation related to State Finance (State Finance Law, State Treasury Law, and KUP Law) with the Corruption Act. The un-synchronization is also caused by differences in the application of sanctions, while the Corruption Act applies criminal sanctions (punishment) [12].

Conflict of laws and regulations in the context of eradicating corruption on the one hand, and increasing state revenue from taxes and PNBP on the other hand are found in Article 2, Article 3 and Article 4 of Law No. 31 of 1999 and Article 3 and Article 5 of Law No. 8 of 2010. The core of the conflict is, on one hand the government is committed to significantly increasing state revenue from the tax sector, but on the other hand the results of corruption are the object of the Anti-Corruption Law and the TPPU Law, where returning the proceeds of corruption without criminal conviction is an act that is prohibited based on both of these laws.

These circumstances and problems reflect that the politics of law in eradicating corruption has not been comprehensively studied in relation to its "cost and benefit ratio" for the purpose of creating a prosperous rule of law.

b. Implementation of revitalization of RI Law No. 19 of 2019 concerning Amendments to the KPK Law

Revitalization has the connotation of evaluation and includes recommendations regarding the direction of eradicating corruption in the future, both in terms of the legislation and the institutional side.

An evaluation of the anti-corruption law should be conducted once in 5 (five) years, especially with Law No. 31 of 1999, most recently amended in 2001, has exceeded the due diligence deadline. Evaluation of these laws is a necessity.

In addition to the matter of time limit, in this case it is also related to the views of the Indonesian and international community in the legal effort to eradicate corruption. Especially with regard to the UN Anti-Corruption Convention 2003 which was ratified by RI Law No. 7 of 2006. The initial evaluation is aimed at two very principle matters, firstly, whether the characteristics of the object of this law are still extraordinary crimes or actually are ordinary crimes, and secondly as a consequence of the first answer, how is the existence of law enforcement agencies in the eradication of corruption today including the KPK and external control institutions such as National Police Commission, Indonesian Prosecutors Commission and the Judicial Commission. The exceptionalness of the object of Indonesia's anti-corruption law and where it is located is the question that is often asked in the legal community.

However, it seems that there is still no comprehensive answer so that the position of the object of the law is still being debated between conservative opinion and progressive opinion. Conservative opinion is based on the understanding of legal positivism which adheres to the view that law as a system of norms and rejects the character of corruption as extraordinary crimes. This view only recognizes two points of view in seeing a crime, which is solely placed on individual morality in the form of elements of deliberate (*dolus*) and negligence (*culpa*). Whereas progressive views view law as a system of behavior and part of social morality.

The progressive view actually justifies that the extraordinary of a crime must also be seen from the situation and condition of the social system including the political and economic systems. The condition is positioned as *causa nexus* as well as *prima factie* evidence of a country's social, economic and political collapse. Progressive views are reflected in Article 2 and Article 3 of RI Law No. 31 of 1999 which has been amended by Law No. 20 of 2001, and Article 12 B with reverse burden of proof. Other provisions reflect a conservative-classical view.

There has not been a maximum effort in the conditions of eradicating corruption before and after the ratification of the UN Anti-Corruption Convention in 2003. RomliAtmasasmita wrote that almost 99% of corruption cases were prosecuted and decided based on Article 2 and Article 3 of Law 1999/2001. As such, it is as if only found in the two articles. And it seems that the verification procedure is easier compared to other articles. Even the reverse proof provisions which simplify the verification procedures have never been applied on the grounds that there is no show law.

This practice reflects that the eradication of corruption no longer considers two important principles in a rule of law (*fundamental normen des Rechtsstaat*), namely the principle of proportionality and the principle of subsidiarity. The first principle is analogically, Jan Remmelink explained that subjective *overmacht* is based on the assumption that humans generally do not need to act as heroes or fanatics. Even *Guterabwegung* (about choosing and considering the material / legal interests of each other) implies the application of the principle of proportionality [13]. The first principle is often said "there is no need to burn barns just to catch mice".

And the second principle requires that law enforcement in implementing criminal provisions must consider alternative legal solutions that at least pose a risk so that the objectives of certainty and justice are achieved in a balanced manner. This request is not easy in practice because law enforcement in Indonesia until now "heavy adherents" view of legal positivism.

In terms of the success of the implementation of the two articles, it is also not optimal to recover state financial losses. The dissertation research found that the amount of state money that had been saved by the police, prosecutors

and the KPK in 2003-2008 was worth approximately Rp. 5 trillion.

IV. CONCLUSIONS

Corruption is a common enemy to fight and does not get a place in the political system of any law. The need for a legal political system that supports efforts to eradicate corruption, when available figures, rules, functional institutions, mechanisms to eradicate Corruption, Collusion and Nepotism, and growing public support. Thus, the Indonesian legal political system based on the 1945 Constitution and Pancasila clearly mandates the importance of eradicating corruption, both from an understanding of the legal political system and an understanding of socialism that prioritizes public authority, can be properly accommodated, especially both of them aiming at the same effort, namely the achievement of Indonesia as a prosperous law state.Revitalization of corruption eradication is needed in Indonesia, including evaluating the status and functions of the Corruption Eradication Commission as an independent *ad hoc* institution that is expected to be able to carry out the trigger mechanism function on the performance of the police and the attorney general's office.

The concept of law in the process of building a government system must always be "escorted" by law without exception, so that the process of law in the making can be realized towards the development of the nation that we want to achieve through escort by law. The most important thing is the mental attitude factor that needs to be improved so that the national development process to achieve the goal of creating people's welfare can be realized in accordance with the 1945 Constitution and Pancasila.

Revitalization of the proposed eradication of corruption is the main task and function of the KPK in the future should focus on investigations, investigations and prosecutions of bribery and corruption in law enforcement by the police, prosecutors, judges, and focus on bribery/ corruption cases by politicians. Besides that, the integrity of legislation through revitalization of other laws and regulations that are directly or indirectly related to efforts to eradicate corruption such as the Criminal Code, Corruption Law, TPPU Law, KUP Law, including regulations at the level of Government Regulation, Ministerial Regulation, Ministerial Decree, along with Regional Regulation, must be done dynamically and directed at the maximum benefit and welfare of the community.

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