International Journal of Economic, Technology and Social Sciences
url: https://jurnal.ceredindonesia.or.id/index.php/injects
Volume 2 Number 1 page 55-61

Review of Criminal Policy on Countering Economic Crimes

Abdurrahman Harits Ketaren

Email: harisketaren@yahoo.com
Fakultas Sosial Sains, Universitas Pembangunan Panca Budi

ABSTRACT
The purpose of this study is to find out the development of economic crimes. Legal materials obtained in the study of literature, laws and regulations, and articles, are described and linked in such a way that it can be presented in a more systematic writing to answer the research problems that have been formulated. There is an international tendency today to pursue policies that prioritize or put forward criminal law in tackling certain crimes as a means of deterrent. Thus, the position of criminal law in anticipating violations related to administrative law can be used as 'ultimum remedium' and in certain cases certain acts can also be applied as 'primum remedium'. justification for criminalization for an offender, but still should not eliminate his human power in achieving new values and new adaptations. Therefore at the same time, the offender must be directed through various 'improvement efforts' to achieve a fuller form as a human being.

Keywords : Law, Criminal Policy, Economic Crimes

INTRODUCTION

One of the interests that often ride the law in its implementation is political interests. The field of criminal law is now 'best practiced' to be used to wrap up certain political interests. Strictly speaking, criminal law is often used as a political tool to ensnare political opponents among those who are involved in politics and government. This actual phenomenon by the committee is called penal politization (politicization of criminal law) which then became the central theme in this national seminar.

In other forms, the issue of 'politicization of criminal law' was also mentioned by Dionysios Spinellis when presenting about 'Top hat Crimes' in the General Report of the International Congress of Criminal Law XV year 1994. He explained that the most important characteristic of crimes committed by public officials or 'Top hat Crimes' is to take advantage of the opportunities gained from the capacity of his office. And they are sure that his crimes will not be discovered. Even if found out, for a number of reasons they are sure they will not be convicted. Their high self-confidence was supported by the neutralization techniques of his actions through what Spinellis called the 'politicising of the criminal proceedings' or the politicization of the criminal justice process.

From this initial explanation, it is to be stated that law enforcement against violations or even crimes committed by 'public officials' is loaded with various issues related to their duties and functions and authorities attached to them. Therefore, the sub theme that the committee decided to me as in the title of this paper is very relevant. why? because the issue of law enforcement is one aspect of criminal policy in a broad sense, including law enforcement related to malpublic administration.

There are three main issues that can be derived from the title of this article. First, what is the position of criminal law in the matter of malpublic administration. Second, when criminal

International Journal of Economic, Technology and Social Sciences
e-ISSN 2775-2976
International Journal of Economic, Technology and Social Sciences
url: https://jurnal.ceredindonesia.or.id/index.php/injects
Volume 2 Number 1 page 55-61

law can be applied in cases of malpublic administration. Third, what criminal policies are needed in order to prevent the occurrence of malpublic administration. The first issue concerns the position of criminal law in anticipation of violations occurring in the field of public administration. While the second problem concerns the functionalization of criminal law in the field of public administration. The third problem relates to efforts to address the practice of public administration irregularities.

METHODS

This study uses research methods that utilize qualitative data and are described as descriptive. Qualitative descriptive research types are often used to analyze events, phenomena, or social circumstances. This research method uses certain forms and processes of approach that are divided into 3 parts, namely:

First, Typology and Research Approach. As one legal study, used one of the research methods called using available legal data. That is, the research process will trace the data that is already available in the form of legal materials that have been written. This type of legal research is often referred to as normative juridical research. With the consideration that the starting point of the research that will be conducted is an analysis of criminal policies to counter economic crimes in Indonesia and the laws and regulations that are the basis of the implementation of the policy, the approach used is the approach of legislation (statute approach) and conceptual approach (conceptual approach).

Second, Legal Materials. In normative juridical research, researchers can trace (explanatory) concepts, traditions or doctrines of law that have existed in the history of law. Therefore, in research using available data, the data to be reviewed will not be limited to the provisions explicitly stated in the written law only but also the concepts, traditions or doctrines of law that have existed in the history of law. The data is categorically referred to as secondary data that can be distinguished into three forms of legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials.

Third, Processing and Analysis of Legal Materials. Legal materials obtained in the study of literature, laws and regulations, and articles, are described and linked in such a way that it can be presented in a more systematic writing to answer the research problems that have been formulated. In the process of further research data (legal materials) will be analyzed and interrogated based on forms of interpretation that are prevalent in research using available data. The way of processing legal materials is done deductively, which is to draw conclusions from a problem that is common to the concrete problems faced. Furthermore, the existing legal materials are analyzed to find out the juridical aspects of the problem being examined.

RESULT AND DISCUSSION

Criminal Law As Ultimum Remedium and Primum Remedium

Criminal law is said to be a special sanction law because of its type and form of sanctions that are harsh and depressing. So harsh are the sanctions contained in criminal law that it is often claimed that 'criminal law slices its own flesh'. There is another opinion that says, 'criminal law is like a double-edged sword'. On the one hand, criminal law aims to protect the interests

International Journal of Economic, Technology and Social Sciences
e-ISSN 2775-2976
International Journal of Economic, Technology and Social Sciences
url: https://jurnal.ceredindonesia.or.id/index.php/injects
Volume 2 Number 1 page 55-61

of the law and human rights violated. On the other hand, criminal law attacks and can degrade the dignity of humanity through its harsh sanctions system.

Quite a number of criminal law and criminology experts have warned about the use of criminal law because of its paradoxical nature. In a not much different opinion, they agreed that criminal law should be used carefully and rationally. From various views it can be captured one sense, seyogyanya the field of criminal law (sanctions) has only been used or applied after the other areas of law (sanctions) including the field of public administration law is not sufficient. Van Wijk Konijnenbelt and P. De Haan et al stated that administrative law is a juridical instrument that allows the government to control people's lives and allows people to participate in such controls for the purpose of providing legal protection. The definition is in line with the paradigm shift of governance from the paradigm of 'rule government' to 'good governance' which encourages people to be involved in the administration.

Related to the law of public administration in which contained 'public space' with its norms that are public, so to maintain the norms it is necessary to 'check &balances' according to the principles of 'clean &good governance'. Check &balances is one form of government supervision in the broad sense of the implementation of public administration. If supervision goes well, then criminal law can only be used as 'ultimum remedium' or borrow the term 'Model Law' created by the 'Organization for Economic Co-operation and Development (OECD) called 'ultima ratio principle', i.e. criminal law is prepared as the last means of criminal policy. This kind of thing when viewed from the policy aspect of legislation, aims to avoid the occurrence of 'overcriminalization' and 'overbelasting'.

There is an international tendency today to pursue policies that prioritize or put forward criminal law in tackling certain crimes as a means of penjera. In other words, criminal law is used as 'primum remedium' in the event of a particular criminal offence. For example, an act that is seen as able to generate considerable economic benefits and actions that can cause financial losses to the state, such as corruption.

In the context of 'malpublic administration', corruption is an incarnation or form of disregard of the law. Thus, the position of criminal law in anticipating violations related to administrative law can be used as 'ultimum remedium' and in certain cases certain acts can also be applied as 'primum remedium'. This is also given the position of administrative law as an 'intermediate law' in the midst of private law and criminal law. Wf. Prins has also stated that almost every regulation under administrative law ends with a number of criminal provisions (in cauda venenum).

Functionalization of Criminal Law in Administrative Law

If we identify, quite a lot of legislation policy products that use criminal law as a means to enforce the norms contained in administrative law. The embodiment of the functioning of criminal law into administrative law when connected with the framework of public administration is a guarantee of legal certainty and a sense of public justice to any public policy made and implemented. That is, in the administrative legislation that contains also the law (sanctions) criminal, not only is the arrangement of public services, but more than that regulates the ruler. This is the real duty of criminal law juridists, as implied in Peters' statement that "The juridical task of criminal law is not policing society but policing the police".

International Journal of Economic, Technology and Social Sciences
e-ISSN 2775-2976
International Journal of Economic, Technology and Social Sciences
url: https://jurnal.ceredindonesia.or.id/index.php/injects
Volume 2 Number 1 page 55-61

However, there is also administrative legislation that does not strictly regulate the provisions of criminal law (sanctions) against 'public officials' who commit violations in terms of their duties, functions and authorities as stipulated in the legislation. In other words, criminal law is not functioned because legislators want to regulate the means of law enforcement only through the system of administrative sanctions. The question is, can criminal law be applied to violations of administrative legislation that only contain administrative sanctions? The answer is of course, 'No!'. There are two fundamental arguments below:

First, the principle of formal legality that confirms that the first requirement to crack down on a despicable act is the existence of a provision in criminal legislation that formulates the despicable act and imposes a sanction against it. This principle requires that judges be bound by law and criminal proceedings must be conducted in the manner set forth in the law. The deepest meaning of this principle of legality is the guarantee of legal certainty. Therefore, the principle becomes the focus of criminal law and criminal procedural law.

Second, the Lex Certa Principle that requires the formulation of statutory provisions is carried out as carefully as possible. A law must sharply and clearly limit the authority of the government to its people because the "juridical duty of criminal law is not to regulate the community, but also to regulate the ruler", as Peters has stated above. The two fundamental principles in criminal law are contained in Article 1 paragraph 1 of the Criminal Code, in addition to the next two principles, namely: AsasLex temporis delicti and Asas Non-retroactive.

Based on the above two arguments, theoretically it can be asserted that a law in the field of administrative law that does not expressly contain the type of criminal law sanctions, if there is a violation of the administrative legislation, then the application of sanctions is only administrative. Thus, there should be no 'legal leap' from the field of administrative law to the field of criminal law, in order to protect or ensure legal certainty.

The use or application of criminal law in matters related to the malpublic administration, still refers to three main issues in criminal law. First, whether the forms of 'malpublic administration' have been formulated into criminal acts (criminalization process). Second, who is the subject of the law that can be accounted for the 'malpublic administration'. Third, what types and forms of sanctions can be applied to the perpetrators of the 'malpublic administration' (the process of realization).

The three points of reference above become important when questioning the functionalization of criminal law in administrative law because the notion of 'malpublic administration' is closer to ethical issues. Namely deviant behavior from administrative ethics or an administrative practice that distances itself from the achievement of administrative objectives. According to Nigro &Nigro in Darwin Muhadjir there are 8 forms of 'malpublic administration', namely: dishonesty, unethical behaviour, disregard of the law, favoritism in interpreting the law, unfair behavior towards employees, gross inefficiency, cover-up of wrongdoing and failed to show initiative.

The eight ethical values are more abstract which questions 'good' and 'bad' about human attitudes, actions and behaviors in dealing with others. While criminal law should be formulated on concrete matters that question 'right' and 'wrong' about one's attitudes, actions and behaviors. That is, to apply criminal law in the case of 'malpublic administration', the form of ethical values

International Journal of Economic, Technology and Social Sciences
url: https://jurnal.ceredindonesia.or.id/index.php/injects
Volume 2 Number 1 page 55-61

must be formulated in the form of concrete acts, such as 'corruption' is a concrete form of the values of 'dishonesty' and 'ignorance of the law'.

Criminal Policy on 'Malpublic Administration'

In 1965 Marc Ancel once formulated the short definition of 'Criminal policy' as "the rational organization of the control of crime by society". From this definition, in 1969 G.P. Hoefnagels added that "Criminal policy is a rational total of the responses to crime". Around the end of 1980 Sudarto asserted from that definition that criminal policy is a rational effort of society in tackling crime. Rational effort here means making choices about the ways that are considered most appropriate to tackle crime. That means, the means that can be used not only with the use of criminal law, but also other non-criminal law facilities that are considered the best and the most functional to overcome crimes. As has been said before, that the malpublic administration deals with ethical issues. Therefore, the utilization of treatmentetics may be more functional in tackling the malpublic administration. In relation to the use of ethical means, there are three important things that need to be considered.

First, an ethical treatment must depart from the introduction and appreciation of the virtues of the value of a person's task. That is, one must be directed to the introduction as well as the appreciation of the "glory" of the task assigned to him. Second, ethical treatment should also be directed at awareness of the importance of objectives, motives, and consequences of each action in carrying out the task. Here applies the principle: every task must depart from a noble purpose/ motive, and at the same time must produce good consequences. Borrow stuart mills, the greatest one for the greatest number. A delay can be said to be good, if it is intended and has the effect of bringing the most good to as many people as possible.

Third, ethical treatment should be aimed at fostering responsibility on one's self. The responsibility here means that it must be prepared to accept all risks for the execution of the task it has performed. One must not flee from responsibility, or must not seek scapegoats. Dare to accept the task, must also be accompanied by readiness to accept the risk of the task. In my opinion, many crimes in the scope of office are precisely rooted in the lack of knowledge and passion of the ethics of duty. Not infrequently, the degree of morality/ethics of public servants in this country is still at its level, borrowing Kholberg-Gilligan, pre-conventional morality. Childish morality, A law-abiding personality, not seen as a liability, but for fear of being punished. When there is no punishment, he commits a crime.

He goes about his duties, not knowing that that's an obligation, but driven by a motive for reward. He's diligent about big rewards. It's a small reward. In short, public officeholders, ideally should already be at the level of conventional morality. A morality based on an awareness of the obligations and glory of its duties. For those who are in this morality, abstain from doing despicable acts that can harm their noble duties. In fact, he is prepared to take risks due to loyalty to the task at hand. If this is the case, then the criminal law in the issue of 'malpublic administration' is only the status of ultimum remedium, not as 'primum remedium'.

History records that thousands of years ago, 3 (three) community groups identified as westia, tropica, and egalia have tried to exchange commodities to meet their needs.1 In the Weatia community for example, with climate conditions that estrim result in natural resources available very limited both in number and type, but these limitations actually encourage the

International Journal of Economic, Technology and Social Sciences
e-ISSN 2775-2976
International Journal of Economic, Technology and Social Sciences
url: https://jurnal.ceredindonesia.or.id/index.php/injects
Volume 2 Number 1 page 55-61

community to be more independent and strive to meet the needs of his life. This condition is different from what happens in tropica communities that have abundant natural resources but are less able to process them so that some of the people are in poverty.

In the current era of globalization commodity exchange to meet human needs has been framed in the form of economic activity. Economic activities include all human activities to meet the needs of life, which are generally grouped into three activities, namely, production, distribution, and consumption activities. The rapid development of the economy and business world, coupled with advances in science and technology, has triggered irregularities in economic activity that factually presents various forms of crime that are violations of criminal law.

One of the impacts of economic globalization that is vulnerable to legal problems, for example, is the implementation of cross-border funds transfer services, involving a variety of currencies in nominal amounts and large volumes and complex nature. Generally, the request for funds transfer is motivated by an activity between the sender and the recipient (underlying transaction), such as buying and selling, installment payments, bills and so on, namaun is not uncommon for such transaction activities to be used as a means of hiding the proceeds of crime into the normal activities of the business.

On the other hand, the process of transferring funds is also vulnerable to economic turmoil. When the transfer process fails to be carried out, it is certain that economic activity will be disrupted. Such conditions will trigger a variety of problems among the parties in the economy. Furthermore, when viewed from the side of the parties involved in it, fund transfer activities involve many parties. With many parties involved in it, in the event of failure or delay in delivery of the transfer due to business crimes, it can have an impact on the inability of banks or other funds transfer agencies in completing the transfer of funds, then this condition has the potential to systemically cause one or more parties to suffer losses.

When there is turmoil in the economy, people often think it is solely the government's fault in taking policy in the economic field. In fact, the bank customers who were victims of the liquidation of several banks, considered the government to be the cause, this was also used by the leader of the bank in question to find the scapegoat. The development of economic crimes, demanding the existence of criminal policies from the government to create accommodative economic conditions or situations. Enforcement of economic criminal law is essentially a mixing of two values, namely the purpose of criminal law and the purpose of creating conducive economic conditions, therefore criminal law must be able to balance and align the two values and at the same time act as ultimum remedium.

CONCLUSION

As the end of this paper, I want to redecontaminate Albert Camus's philosophy of existentialism in the context of criminal policy. Camus recognizes the justification of criminalization for an offender, but still must not eliminate his human power in achieving new values and new adaptations. Therefore at the same time, the offender must be directed through various 'improvement efforts' to achieve a fuller form as a human being.

International Journal of Economic, Technology and Social Sciences
e-ISSN 2775-2976
International Journal of Economic, Technology and Social Sciences
url: https://jurnal.ceredindonesia.or.id/index.php/injects
Volume 2 Number 1 page 55-61

REFERENCES

Barda Nawawi Arief , *Bunga Rampai Kebijakan Hukum Pidana*, PT Citra Aditya Bakti, Bandung, 1996.

_____, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, PT Citra Aditya Bakti, Bandung, 1998,

_____, makalah Seminar Nasional*Kewenangan Penyidikan dalam Sistem Peradilan Pidana*, FH-Undip, Semarang, 20 Desember 1997.

Dionysios D. Spinellis adalah seorang Guru Besar Hukum Pidana dan Kriminologi di *'Pantenion' University*, Athena, Yunani.

G.P. Hoefnagels, *The Other Side of Criminology*, Kluwer-Deventer, Holland, 1973

J.M. Van Bemmelen, *Ons Strafrecht 1: Het Materiele Strafrecht Algemeen deel*, H.D. Tjeenk Willink, Alphen aan den Rijn, Holland, 1979, h. 16. Lihat juga Muladi, *Lembaga Pidana Bersyarat*, Alumni, Bandung, 1985.

Joko Widodo, *Good Governance; Akuntabilitas dan Kontrol Administrasi Pada Era Desentralisasi dan Otonomi Daerah*, Insan Cendekia, Surabaya, tt,

Lutfi Effendi, *Pokok-Pokok Hukum Administrasi*, Bayumedia Publishing, Malang, 2003.

M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana; Ide Dasar Doble Track System dan Implementasinya*, PT RajaGrafindo Persada, Jakarta, cetakan kedua, 2004.