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Prevention of *mens rea* corruption of prospective legislators in Indonesia from a psychological perspective

Prevención de la corrupción mens rea de los posibles legisladores en Indonesia desde una perspectiva psicológica

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ABSTRACT

The purpose of this study is to analyze how to prevent *mens rea* corruption candidates for legislators in Indonesia with a psychological approach with the concept of conformity. The results showed that there were legislative candidates who had received permanent verdicts as corruptors but nominated themselves as legislative members. Psychology approach emphasizes the aspect of *mens rea*. Simultaneously in addition to a juridical approach in the form of punishment, also a psychological approach in the form of inculcation of local cultural values, and to be effective, real cooperation is carried out between the government, business activists, and academics.

Keywords: Corruption, Cultural Values, *Mens Rea*, Personality.

RESUMEN

El propósito de este estudio es analizar cómo prevenir los candidatos de corrupción *mens rea* para legisladores en Indonesia con un enfoque psicológico con el concepto de conformidad. Los resultados mostraron que había candidatos legislativos que habían recibido veredictos permanentes como corruptores, pero se nominaban a sí mismos como miembros legislativos. El enfoque psicológico enfatiza el aspecto de *mens rea*. Simultáneamente, además de un enfoque jurídico en forma de castigo, también un enfoque psicológico en forma de inculcación de valores culturales locales y, para ser efectivo, se lleva a cabo una cooperación real entre el gobierno, los activistas empresariales y los académicos.

Palabras clave: Corrupción, *Mens Rea*, Personalidad, Valores Culturales.

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1. INTRODUCTION

What causes some people to commit the crime? This is a fundamental question that has not been answered well by the study of legal psychology. Crime is often interpreted as a violation of the rule of law as a result as a person can be charged with punishment. Punishment for the crime can occur when someone violates the law directly or indirectly, or a form of negligence that can result in punishment (Sung & Chu: 2003). In this legal perspective, criminal behavior seems to be active in committing criminal acts and the intended criminal acts have also been carried out prevention and action measures (Farrell: 2010, pp. 40-66).

Long before the Unitary State of the Republic of Indonesia was established on August 17, 1945, the phenomenon of corruption has penetrated various strata of governance life. Similarly, the condition of corruption after the Unitary Republic of Indonesia was established, as evidenced by the statement of the First Vice President of the Republic of Indonesia, Bung Hatta, that corruption in Indonesia has been entrenched (Kolstad & Wiig: 2009, pp. 521-532). In a formal juridical perspective, the Government of Indonesia has eradicated corruption eradication efforts by issuing several laws. Among these laws are as follows:

1. Military Authorization Regulation issued April 9, 1957, Part/PM/ 06/1957 Number, May 27, 1957, Part/PM/03/1957 Number, and July 1, 1957, Part/PM/011/1957 Number. This shows that immediately after independence, corruption has arisen and endangered the State, including what happened in the military environment;
2. Corruption Eradication Rule Central War Rule No. prt/Perpu/013/1958 dated April 16, 1958. This regulation shows the existence of military steps through pirate legal regulations to eradicate corruption;
3. Decree of the Chief of Naval Staff Number Z / 1/7/7 April 17, 1958. Based on the Central War Rulers Corruption Eradication Regulation No.prt/Perpu/013/1958 on April 16, 1958, the Navy was also determined to eradicate corpse;
4. Law Number 24 Prp of 1960 concerning the Investigation and Examination of Corruption;
5. 5. Law Number 3 of 1971 dated March 29, 1971, concerning Eradication of Corruption Crimes.

The efforts of the Government of Indonesia to issue a set of laws need to be appreciated considering that there is a relationship between fighting corruption and development. Appreciation is meant based on the assumption, that national development will be stalled, it will even stop if the wealth/money of the State that should be used to finance development both supra and infrastructure are taken under various pretexts only to enrich a handful of people or groups of people (Kunicová: 2006, pp. 140-160). In this regard, to create a just prosperous society based on the Pancasila and the 1945 Constitution of the Republic of Indonesia, efforts to eradicate corruption are professionally, intensively and sustainably improved because corruption has harmed state finances, the country's economy, and hamper national development.

After the Reformation Era, new legal frameworks have been issued to correct various weaknesses both at the regulatory level and at the implementation level. Among the legal grounds referred to are:

1. TAP MPR No. XI / MPR / 1998 concerning the Implementation of a Clean and Corruption-Free, Collusion and Nepotism State;
2. Law Number 28 of 1999 concerning State Administration that is Clean and Free of Corruption, Collusion, and Nepotism. This law is a juridical consequence of the MPR TAP;
3. Law Number 31 of 1999 dated 16 August 1999 concerning Eradication of Corruption Crimes;
4. Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption;
5. Law Number 30 of 2002 concerning the Corruption Eradication Commission. This provision has been contained in article 43 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 which states that a Corruption Eradication Commission will be established;
6. Law Number 20 of 1999, relating to Law Number 30 of 2002 also mentions the Corruption Court;

7. Law Number 7 of 2006 concerning Ratification of the 2003 United Nations Convention Against Corruption. With the enactment of Law Number 7 of 2006 meaning Indonesia is legally bound and committed to implementing the United Nations Convention Against Corruption 2003 with the enactment of all its legal provisions and consequences.

Indeed, the existence of the Corruption Eradication Commission established was based on Law Number 30 of 2002 very calculated by people who intend or are currently or have committed corruption as things that would interfere with their interests and their groups. If calculated since this institution was established until now, this commission has been aged 17 (seventeen years) and during that time the state institution carrying out its duties and authorities has sent corruptors who have various socio-economic and political status, to jail both central and regional politicians, central and regional bureaucrats.

While for those who have not yet been kissed by law enforcement officers, the possibility of them builds a barricade of horses to fight against the performance of law enforcers, even trying to undermine the existence of law enforcement agencies such as the Corruption Eradication Commission (KPK) by terrorizing employees, and investigators. The existence of the KPK is feared not only by corruptors, or those who intend to corrupt, are forced to rethink, but also state administrators are afraid to take risks on development projects within the ministry which is their responsibility (Lambsdorff: 2007; Ramos: 2007; Martínez, Ramos y Annia: 2019).

The implications of efforts to eradicate corruption that emphasize the aspect of repression carried out by the KPK, give a strong impression. The KPK has broad authority as a super body institution as part of its action to make the situation of governance. Political and legal organizers have intentions. Corruption has felt threatened. (Piga: 2011, pp. 141-181; Annia, Villalobos, Romero, Ramírez & Ramos: 2018). Such conditions seem counter-productive with the aim of eradicating corruption so that in the author's view the facts of the KPK's enforcement action create a strong impression in addition to drowning out preventive efforts, which have also been regulated in Article 6 in conjunction with Article 13 of Law No. 30 of 2002 concerning the Corruption Eradication Commission.

2. MATERIAL AND METHODS

Reviewing the prevention of corruption that has been legally regulated in Law No. 30 of 2002, It is important to consider the success of the KPK. It cannot only be measured by the number of people included in the pro-Justicia process (investigation, prosecution, and imprisonment), but also measured the amount of potential corruption decreased from year to year (Van Rijckeghem & Weder: 2001, pp. 307-331; Laureano et al.: 2018, pp. 4-7). But what happens, corruptors do not decrease even done by politicians and political party leaders, for example, the e-KTP case involving the Chairman of the Work Group. Several other cases, including the bribery case for the allocation of special autonomy funds in Aceh, Bribes of Kalapas Sukamiskin, Bribes for Meikarta licensing, Bribes for special allocation funds for education in Cianjur Regency and many other cases throughout 2018. Based on the KPK performance report in 2018, there were 30 cases of OTT (Operations Catch Hands), with a total of 121 suspects.

Those arrested came from various professions, including 21 regional heads, 46 private persons, 4 Judges, 3 Advocates, as well as several DPR and DPRD members, and from various echelons 1, 2, and 3. Even in the elected legislators who took place in 2019, there were legislative candidates who had previously been dismissed as corruptors by the court. However, those with various excuses that the ban on them violates human rights, are still nominate as a legislative candidate who would sit on the honorable council, the House of Representatives People of the Republic of Indonesia. This illustrates that there are personal problems in the candidate concerned that are not covered by a set of existing rules. For this reason, research studies involving the intention (mens area) of individuals in a psychological perspective are important to do.

Based on the background above, it means that crime starts from the intention (mens rea), then the

psychological question is why the prevention of corruption at the intention stage is important, how can it be prevented so that there is no intention to commit a crime. To answer this we need the concept of conformity known in psychology.

3. RESULTS

According to Aidt (Aidt: 2009, pp. 271-291), 8 internal factors cause corruption. These factors are tradition, freedom/non-attachment to rules, love to take risks, get appreciation from others, have power, perform conformity, give priority to self-security, and emphasize pleasure (hedonism). Anderson and Tverdova research state that prevention of corruption can be more effective if it does not only rely on law enforcement considering the factors that can be related to corruption are moral disengagement, counterfeit self, implicit self-theory, ethical mindset and moral emotion (Anderson & Tverdova: 2003, pp. 91-109; Pakdel & Ashrafi: 2019; Kalogeropoulos et al.: 2020).

In addition to moral disengagement, there are several other related dimensions such as moral justification, euphemistic labeling, displacement of responsibility, distortion of consequence and dehumanization (Barr & Serra: 2010, pp. 862-869). Seeing this dimension, one can put aside his morals when he starts to justify his behavior, give a new label/understanding that seems more positive, minimize personal responsibility, and reduce the feeling of discomfort by convincing himself that his corruption does not sacrifice other people. That is, no corruption is done suddenly, there is a process of considering the advantages and disadvantages and consequences that can occur on him, alleviating conflicts of interest within oneself until the individual finally decides to commit corruption or not (Kenny: 2006).

Also, successively put forward important crime theories that are well known and relevant to explain why crimes of corruption occur. First, crime occurs when evil intentions meet opportunity. Second, crime is produced by the dynamics of society itself (Treisman: 2000, pp. 399-457; Mohammadi & Yekta: 2018, pp. 1-7). That is, the intended crime was realized because there was an opportunity in the community, when someone who has evil intentions to take advantage of opportunities that exist in society, then crime occurs. Thus, this is also relevant in the context of criminal acts of corruption; there are three main elements, (1) an element of intention in individuals, (2) society, and (3) an organized society such as the State (Tanzi: 1998, pp. 559-594; Nooradi: 2017, pp. 71-75).

3.1 Data of Corruption Actors Who Re-Run as Legislative Members

Although a person has received the label of a corruptor as a result of his behavior in party activities, not all corruptors stop, instead they want to gain power through their nomination as candidates for legislative members of their party. Based on additional data from ex-corruption legislative candidate members released by the General Election Commission (KPU), it shows that from two releases, 30 January 2019 and 19 February 2019, there were 81 candidates for ex-corruption legislative members. "The number consists of 72 candidates for Provincial DPRD and Regency / City DPRD, and 9 DPD RI," said KPU Chairman Arief Budiman at the KPU RI Office, Menteng, Central Jakarta, Tuesday (19/2). The following is complete data (see table) of parties whose candidates are ex-corruption convicts, along with their constituency regions, which are compiled based on KPU RI data.

No	Origin of the Party	Number of people	Regional Options
1	Gerindra	6	DKI 3, North Sulawesi 1, North Maluku, East Belitung 1, East Belitung 2, Tanggamus 4.
2	PDI Perjuangan	2	West Papua Province 2, Pesisir Barat Regency 3
3	Golkar	10	Maluku Utara 3, Banten 6, Banten 9, West Papua 2, Pandeglang 1 Pandeglang 5, Tojo Una Una, Blitar 4, Lampung Province 7, Waropen 1
4	Garuda	2	Nias Selatan 1, Nias Selatan 1
4	Berkarya	7	North Sulawesi 2, North Maluku 4, Ende 1, Bulukumba 3, South Sulawesi 3, Pasaman Barat 1, Talaud Islands 3
5	Keadilan Sejahtera	2	Mamuju 2, East Okut 1
6	Perindo	4	Gorontalo 6, Kota Pagar Alam, east Lampung 1 Kota Parepare 1
7	Partai Amanat Nasional	6	Jambi 2, east Belitung 1, Lingga 3, Kota Cilegon 2, Lampung 7, Pagar Alam 2,
8	Hanura	11	North Maluku 3, Central Jawa 4, North Maluku 3, Blora 3, Rembang 4, North Maluku 3, Kutai Kartanegara 1, Ogan Ilir 4, Pinrang 1, 10. Banjarnegara 5, Simalungun 4
9	Demokrat	10	Pagar Alam 3, Cilegon 1, Central Lombok 5, Manado 4, Bengkulu 5, West Pesisit 2, Ogan Komering Ilir 4, Bolaang Mangondo 1, Luwu Utara 1 Simalungun 4
10	Bulan Bintang	3	Jambi 1, Bengkulu 5, Kepulauan Bangka Belitung 1
11	PKPI	4	Toraja Utara 4, Poso 3, Indragiri Hulu 1, Indragiri Hulu 3
12	PPP	3	Musi Banyuasin 4, Central Bengkulu 1, Lubuklinggau 3
13	PKB	2	Pesawaran 2, North Morowali 1

Table 1: Party, Number of People, and Origin of Selected Regions in Indonesia

3.2 Prevention Model

3.2.1 Normative Prevention

So far, corruption prevention has been carried out using the normative method, namely Law number 30 of 2002, Article 6 letter (d) that the Corruption Eradication Commission carries out the preventive actions referred to in article 13 that in carrying out the preventive tasks as referred to in article 6 letter d, the Corruption Eradication Commission has the authority to carry out the following preventive measures or measures: a) Register and examine the report on the assets of the State; b) Receive reports and determine graphite status; Carrying out anti-corruption education programs at every level of education; c) Design and encourage the implementation of a socialization program to eradicate corruption; d) Carry out anti-corruption campaigns to the general public; and e) Conduct bilateral or multilateral cooperation in combating corruption.

Such a normative approach is not sufficient as illustrated in the background and the table above. They even give an argument, there is not a single rule that prohibits that people who have obtained prison law due to acts of corruption have not allowed running for legislative candidates. The same thing was conveyed to the KPU which forbade former Corporal criminal convicts to nominate as candidates for legislative members, besides violating human rights. For this reason, another approach that focuses on the individual level of the legislative candidate is needed, namely the psychological approach.

3.2.2 Psychological prevention

The intention is a person's inner desire to do something. Likewise, the intended ill will exist in, and it is born from the mind of an individual or group. In the context of crime, the intended evil intention is born, lives and grows in a person's mind when influenced by the reality of daily real needs, which according to his subjective calculations, do not fulfill. Someone commits a crime, in the writer's view, influenced by internal and external conditions. In the context of criminal behavior, such behavior can be referred to as crime only if it has 2 factors: 1) mens rea (the intention to conduct the behavior), and 2) actus reus (behavior carried out without coercion from others). Prevention when someone's intention to do corruption.

First, internal conditions are referred to as evil intentions that are born from within oneself (the real needs internally). Certainly not only every individual but also includes corporations as referred to in Article 1 (3). Individuals in the sense of Law 30 of 2002, namely the state administrators as referred to in Article 2 of Law number 28 of 1999 concerning State Administration that is Clean and Free of Corruption, Collusion and Nepotism, while the corporation referred to as referred to in Article 1 (1) that the corporation is a collection of people and/or assets that are organized either a legal entity or not a legal entity.

The prevention model, in such conditions where the intended individual is a public servant or state administrator, the remuneration model, education, and health insurance can be used as a positive choice to prevent the intention of a person or group of people to realize Mens rea evil. In other conditions, there are indeed evil intentions not because real needs are not met but because of greed (greedy), luxurious lifestyle (glamor alife style). Model of prevention, Carry out registration and examination of the Report of Assets of State Assets both at the center and in the regions; Receive reports and determine graphitization status both at central and regional levels; Second, the external conditions in which evil intentions are born because they are told to, forced, lured. This condition illustrates that they are not met economically but because of pressure from outside. This means that remuneration is not the only one so that at this point, the ease of public services for the wider community can be used as a prevention model, for example, One-Stop Service. This also has not touched on the personal aspect.

From a psychological perspective, crimes committed by individuals (individuals) can be carried out in the following steps: 1). the formation of an anti-corruption character indeed needs to be formed from an early age; 2). Build an assertive and independent personality, because corruption often occurs because there is a feeling of discomfort when not being part of a group; 3). Forming habits takes precedence over obligations rather than rights. 4). Implanting moral values, so that it can create a strong contradiction when the individual finds a situation that allows him to commit corruption. The inculcation of moral values can be done by exploring the values of Indonesian culture, for example the Culture of Siri 'Na Pacce. Siri means shame (self-esteem), whereas Pacce or in the Bugis language is called Pesse which means: poignant or stingy (hard, sturdy establishment).

So Pacce means a kind of emotional intelligence to share in the pain or distress of others. There is a proverb of Siri'ji nanimmantang attalasa 'RI linea, punna tenamo siri'nu matemako kaniakkangngami angga'na olo-oloka which means, only because of our shame can we live in this world if the shame is gone then it is better to die because of you no longer at all even animals are more valuable than you. This philosophy is strongly held by the people in South Sulawesi, especially the Bugis, Makassarese, Mandarese, and Toraja ethnic groups. Humans are synonymous with "forget". Therefore, we need a system that can be a reminder of the dangers of corruption. Individuals need to be reminded regularly; therefore it can be done by building a system of education and training that must be followed by every citizen in his journey as a student or worker (Kunicová & Rose-Ackerman: 2005, pp. 573-606).

4. CONCLUSION

Learning to eradicate corruption cases in Indonesia, for example when the work system has been improved, even the perpetrators are published in the media, but not automatically; the perpetrators of corruption are reduced significantly. Corruption is a complex problem, not only juridical, sociological, political, but more basic psychological aspects concerned. Safeguarding anti-corruption values is needed because those values can be a barrier for someone intending to make the wrong decision. The recommendation, indeed, internalizing strong values requires a long and ongoing process. But to make effective it requires good cooperation with the government, business movers, educational institutions to the smallest system, namely the family.

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