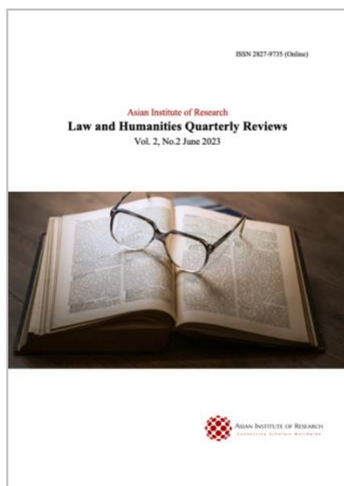

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State Criminal Return Policy Against Corruption

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Abstract
The Anti-Corruption Law was ruled out by Criminal Agency STR, here according to the author the law is not ruled out, but if the state's losses are returned then the criminal act will stop at the investigation level. There is a gap in understanding in legal references between investigations which should be interpreted as investigations but because the Criminal Procedure Code separates the functions of investigation and investigation, this study will follow a positive law pattern, where investigations are divided into two, namely investigation and investigation. The investigation is not yet pro-justiciar in nature, while the investigation is already pro-justiciar with all its legal consequences. In line with the special characteristics of corruption compared to other criminal acts. With this STR and the recovery of losses the state can stop investigations, thus contradicting Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, that returning state financial losses or the state's economy does not abolish the punishment of perpetrators of criminal acts as referred to in Articles 2 and Article 3. The purpose of this research is to examine criminal policies regarding the recovery of state financial losses against corruption. The method used is normative legal research. Based on the research results it is known that the criminal policy that has been implemented by the government through various laws does not eliminate the unlawful nature of corruption even though there is compensation for state financial losses by the defendant. This return is because Article 4 of the PTPK Law states that returning state financial losses is only one of the reasons to alleviate punishment and does not abolish punishment for perpetrators who violate the provisions of Article 2 and Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Although many corruptors have been charged with Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and sentenced to prison for being proven detrimental to state finances, in practice the application of the element of harming state finances in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes The handling process Cases of criminal acts of corruption often cause problems, namely violations/deviations of the provisions of Article 4 in law enforcement practices of criminal acts of corruption.

Keywords: Criminal Policy, Crime, Corruption

1. Introduction

The provisions contained in Law Number 2 of 2002 concerning the Indonesian National Police require the concept of settling criminal acts by setting aside the criminal process for the benefit of Harkamtibmas and the public

interest through the concept of restorative justice. And this is the juridical basis of Bareskrim Telegram Letter Number ST/206/VII/2016 dated 24 August 2016 concerning Handling Corruption Crimes in Recovering State Financial Losses.

In this letter it is explained that the reason for stopping the Investigation is based on Telegram Kabareskrim Polri Number: ST/206/VIII/2016 dated 25 July 2016, if, during the Investigation process, there is a return of state financial losses to the state. treasury so that the investigation does not escalate to the level of Investigation.

Investigators complete the Administration of Termination of Investigation based on the Circular of the Chief of Police Number: SE/7/VII/2018 dated 27 July 2018 Concerning Termination of Investigation, make an SP2HP report to the reporter, and write to the police.

According to Nurdjana (2009), Corruption which is an extraordinary crime has a more complicated complexity compared to conventional crimes or even other special crimes. Especially in the investigation stage of this corruption crime, several investigative agencies are authorized to handle the investigative process of perpetrators of crimes related to this corruption crime. Including various PPNS institutions when associated with various criminal acts that contain elements of corruption in their respective fields of work and by the laws and regulations which form the legal basis of each.

The Law on the Eradication of Criminal Acts of Corruption specifically stipulates its procedural law for law enforcement against perpetrators of corruption, in general, it is distinguished from the handling of other special crimes. This is because corruption is an extraordinary crime that must take precedence over other crimes (Nurdjana, 2009).

In addition, one of the causes of rampant corruption is ineffective law enforcement. There is already an ideal concept of eradicating corruption from principle to norm, but in reality, corruption is still rife. One of the things that need to be put forward in law enforcement is the existence of a principle that forms the basis for the prosecution of criminal acts of corruption. Compliance with these principles is important in law enforcement, especially in the context of eradicating corruption which is seen as an extraordinary crime.

Telegram Letter of the Head of the Criminal Investigation Agency Number ST/206/VII/2016 dated 24 August 2016 concerning Handling Corruption Crimes in the Context of Recovering State Financial Losses associated with Law Number 31 of 1999 confirms that the settlement of corruption is when state losses are returned specifically For cases carried out in Ministries, Provincial Government Institutions, Regional Governments if the state losses are returned it will only be resolved by the Police, this is a form of public demand that wants to change at this time.

The Anti-Corruption Law was ruled out by Bareskrim STR, here according to the author the law is not ruled out, but if the state's losses are returned then the criminal act will stop at the investigation level. There is a gap in understanding in legal references between investigations which should be interpreted as investigations but because the Criminal Procedure Code separates the functions of investigation and investigation, this study will follow a positive law pattern, where investigations are divided into two, namely investigation and investigation.

The investigation is not yet pro-justiciar in nature, while the investigation is already pro-justiciar with all its legal consequences. In line with the special characteristics of corruption compared to other criminal acts.

Thus, from the background of the problems described above, the authors are interested in conducting research with the title "CRIMINAL POLICY FOR RETURNING STATE LOSSES TOWARDS CRIMINAL ACTS OF CORRUPTION".

2. Research Method

Research is the main tool in the development of science. This is because research aims to reveal the truth systematically, methodologically, and consistently. Through this research, an analysis and construction process was carried out on the data that had been collected and processed.

To improve the writing of this research, a study was carried out to complete the data that must be obtained to be accounted for as correct which will be used as material for writing and objective answers (Soekanto and Mamuji, 2011).

The type of legal research is normative juridical which is supported by primary and secondary data in the form of written legal norms. The written law used is Law Number 31 of 1999 which was later amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

This research is descriptive in nature, according to Hadari Nawawi this descriptive research method has two main characteristics, namely:
A. Focusing attention on problems that existed at the time the research was conducted (currently) or actual problems.
B. Describe the facts about the problem being investigated as it is accompanied by rational interpretation.

Furthermore, it is also said that the implementation of the descriptive method is not limited to collecting and compiling data, but includes analyzing and interpreting the meaning of data.
The method of data collection used in this research is through the collection of legal material useful for writing which is obtained using document studies or library materials (documentary study), namely the technique of collecting legal materials by studying library materials or written data. , especially related to issues that will be discussed and then analyze the data (Nawawi, 2003).

Based on the data obtained, is analyzed juridically and presented qualitatively, meaning that it describes the results of the research using sentences so that the results of the research can be easily understood. If there is quantitative data, the author will include it in the research results for the completeness of the information relating to the problem under study or as supporting data.

3. Results and Discussion

State Criminal Recovery Policy Against Corruption Crimes

Corruption Crimes in Indonesian Laws and Regulations

The long history of eradicating corruption in Indonesia shows that eradicating criminal acts of corruption does require extra hard handling and requires enormous and serious political will from the ruling government. The politics of eradicating corruption itself is reflected in laws and regulations issued during certain government periods. The birth of a law that specifically regulates the eradication of criminal acts of corruption is not enough to show the government's seriousness or commitment. It is necessary to do more than just produce statutory regulations, namely implementing the provisions stipulated in the law by encouraging law enforcement officers who are authorized to eradicate corruption in ways that are firm, courageous, and indiscriminate.

The existence of an anti-corruption law is only one of the many serious efforts to eradicate corruption. In addition to strong laws and regulations, public awareness is also needed in eradicating corruption. Public awareness can only arise if the public has knowledge and understanding of the nature of corruption as stipulated in the law. For this reason, the socialization of anti-corruption laws, especially regarding criminal acts of corruption regulated therein, needs to be carried out simultaneously and consistently. Public knowledge about corruption is necessary

considering that ignorance of the existence of laws and regulations cannot be used as an excuse to avoid legal responsibility.

Various efforts to eradicate corruption have been carried out by the government since independence, both by using existing laws and regulations and by establishing new laws and regulations that specifically regulate the eradication of criminal acts of corruption. Among the laws and regulations that have been used to eradicate criminal acts of corruption are:

Corruption offenses in the Criminal Code.

3.1. Central War Commander Corruption Eradication Regulation Number Prt/Peperpu/013/1950

1. Law Number 24 (PRP) of 1960 concerning Corruption Crimes.
2. Law Number 3 of 1971 concerning Eradication of Corruption Crimes.
3. TAP MPR No. XI/MPR/1998 concerning State Organizers who are Clean and Free from Corruption, Collusion, and Nepotism.
4. Law Number 28 of 1999 concerning State Organizers who are Clean and Free from Corruption, Collusion, and Nepotism.
5. Law Number 31 of 1999 concerning Eradication of Corruption Crimes.
6. Law No. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes.
7. Law Number 30 of 2002 concerning the Corruption Eradication Commission.
8. Law Number 7 of 2006 concerning the Ratification of the 2003 United Nation Convention Against Corruption (UNCAC).
9. Government Regulation no. 71 of 2000 concerning Community Participation and Giving Awards in the Prevention and Eradication of Corruption Crimes.
10. Presidential Instruction No. 5 of 2004 concerning the Acceleration of Corruption Eradication.
11. The number of corruption laws and regulations that have been made and are in force in Indonesia is interesting to examine separately to find out and understand the birth of each of these laws and regulations, including knowing and understanding the advantages and disadvantages of each.

The Criminal Code which has been in force in Indonesia since January 1, 1918, is a legacy of the Netherlands. Is a codification and unification that applies to all groups in Indonesia based on the principle of harmony, which was promulgated in the 1915 Staatblad Number 752 based on KB 15 October 1915.

As an adaptation of Wetboek van Strafrecht Nederland 1881, it means that it took 34 years for unification based on the principle of this concordance. Thus, the Criminal Code was not new at the time it was born. In practice, many adjustments are needed for the enforcement of the Criminal Code in Indonesia, bearing in mind that as a legacy from the Netherlands, many provisions are not to the legal needs of the Indonesian people.

Although it does not specifically regulate criminal acts of corruption in it, the Criminal Code has regulated many acts of corruption, the arrangements of which have been followed and imitated by legislators against criminal acts of corruption to date. However, there is an open way to apply criminal law that is appropriate and in harmony with the lives of Indonesian people, considering that the Criminal Code that we have is old and often branded with colonialism.

In its journey, the Criminal Code has been amended, supplemented, and corrected by several national laws such as Law Number 1 of 1946, Law Number 20 of 1946, and Law Number 73 of 1958, including various laws on eradicating corruption. which regulates more specifically several provisions in the Criminal Code.

The criminal acts of corruption contained in the Criminal Code include delicts of office and offenses related to delicts of office. By the nature and position of the Criminal Code, the criminal act of corruption regulated in it is still an ordinary crime.

3.2. Corruption Eradication Regulation of the Central War Commander Number Prt/Peperpu/013/1950.

Opinions stating that corruption is caused by, among other things, bad existing regulations have been known for a long time. Thus the opinion that improving anti-corruption regulations will reduce corruption is still a matter of debate.

The regulation that specifically regulates the eradication of corruption is the Corruption Eradication Regulation of the War Authority Center Number Prt/Peperpu/013/1950, which was then followed by the Military Authority Regulation dated 9 April 1957 Number Prt/PM/06/1957, 27 May 1957 Number Prt/ PM/03/1957, and dated July 1, 1957 Number Prt/PM/011/1957.

What is important to note from the above regulations is that for the first time, there has been an attempt to use the term corruption as a legal term and define the definition of corruption as "an act that is detrimental to the country's finances and economy".

What is interesting about the provisions of this Central War Commander Regulation is that corruption is divided into 2 actions:
A. Corruption as a crime;
Corruption as a crime is explained as,
1) The act of a person with or because of committing a criminal act or delict enriches himself or another person or entity which directly or indirectly harms the finances or the economy of the state or region or harms an entity that receives assistance from state finances or another party. legal entities that use community capital and concessions.
2) The act of someone who due to or because of committing a crime or violation enriches himself or an entity and is carried out by abusing his position or position.
3) Crimes are listed in Articles 41 to Article 50 of this Pepperpu and Articles 209, 210, 418, 419, and 420 of the Criminal Code.

B. Corruption as another act;
Corruption as an act, not a crime or other action, is explained as follows:
1) The act of someone who due to or because of committing an unlawful act enriches himself or another person or entity which directly or indirectly harms state or regional finances or harms the finances of an entity that receives assistance from state or regional finance or other legal entity that uses capital or concessions from the community.
2) The act of someone who, because of or because of committing an act against the law, enriches himself or another person or an entity and is committed by abusing his position or position.
3) The differentiation of corruption into these two divisions invites a lot of criticism and reactions among legal scholars, although it must be admitted that the Central War Authority Regulation also has various advantages such as provisions that can undermine bank secrecy.

3.3. Law Number 24 Corruption Crimes (PRP) of 1960 concerning Corruption Crimes

From the outset, it can be seen that the Central War Commander Regulation on Corruption Eradication is emergency in nature, temporary in nature, and based on the Emergency Situation Law. Under normal circumstances it requires adjustment. Based on considerations to adjust to the situation, Law Number 24 (Prp) of 1960 concerning the Eradication of Corruption was born, which was originally in the form of a Government Regulation instead of a Law.

The main change from the Central War Commander Regulation to this Law is the change in the term act to a criminal act. However, this law turned out to be considered too lenient and favored the defendant considering that proving was more difficult.

3.4. Law No.3 of 1971 concerning Eradication of Corruption Crimes

History does not record many cases of corruption in the 1960-1970 period. It is not known whether the 1960 law was effective or because in other periods after that, the quantity and quality were greater.

In the 1970s, the President formed Commission 4 with the intention that all efforts to eradicate corruption could run more effectively and efficiently. Commission 4 consists of several people, namely Wilopo, SH, IJ Kasimo, Prof. Ir. Johannes, and Anwar Tjokroaminoto. Commission 4's duties are:
1) Conduct research and evaluation of policies and results that have been achieved in eradicating corruption.
2) Provide consideration to the government regarding policies that are still needed in eradicating corruption.

In its preparation, Law Number 3 of 1971 went relatively smoothly without experiencing any obstacles except for a few things such as the thought of imposing the principle of proof to be reversed and the desire to include provisions that apply retroactively.

3.5. TAP MPR No. Xi/MPR/1998 concerning State Organizers who are Clean and Free from Corruption, Collusion, and Nepotism

Along with the reform movement that arose as a result of public dissatisfaction with the New Order government for nearly 32 years, the desire to develop a new order of life for civil society developed in Indonesia. The desire to formulate a new order that prioritizes civil society began with the formulation of laws and regulations which were considered to prioritize the interests of the people as a demand for reform that had removed Suharto from the presidency.

Through the holding of the MPR Special General Session, TAP No. XI/MPR/1998 concerning State Organizers who are Clean and Free from Corruption, Collusion, and Nepotism. This TAP MPR contains many mandates to form laws that will oversee the development of the reform order, including a mandate to resolve legal issues against former President Suharto and his cronies.

3.6. Law Number 28 of 1999 Concerning State Organizers who are Clean and Free from Corruption, Collusion, and Nepotism

Law Number 28 of 1999 has the same title as TAP MPR No. XI/MPR/1998, namely about state administrators who are clean and free from corruption, collusion, and nepotism. The birth of this law introduced a new terminology regarding crime or criminalization in the sense of collusion and nepotism.

This law regulates the notion of collusion as a criminal act, namely agreements or cooperation unlawfully between state administrators, or between state administrators and other parties, which harm other people, society, and or the state. Meanwhile, the crime of nepotism is defined as any unlawful act by state officials that benefits the interests of their family and/or cronies above the interests of the community, nation, and state.

Along the way, this law is of little use. Some of the reasons for the unpopularity of this law are the too broad provisions on criminal acts regulated in it and the need to use more specific and strict statutory provisions, namely laws that specifically regulate the eradication of corruption.

3.7. Law Number 31 of 1999 concerning Eradication of Corruption Crimes.

The background to the emergence of the Law on the Eradication of Corruption Crimes Number 31 of 1999 was due to 2 things, namely first, as the reform order was progressing, it was deemed necessary to provide new values in efforts to eradicate corruption, and the two previous laws, namely Law No. 3 of 1971 is considered too old and no longer effective.

What is regulated as a criminal act of corruption in Law Number 31 of 1999 is not a new thing because legislators still use many of the provisions contained in the previous law. However, it is believed that the spirit and spirit of reform which is considered the spirit of the formation of this new law will give birth to breakthroughs, especially with the mandate to form a commission to eradicate criminal acts of corruption as a new instrument. for eradicating corruption.

The public's expectations for this new law to be firmer and more effective are enormous, however, the legislators made several fundamental mistakes which resulted in the need for amendments to Law Number 31 of 1999. Some of the weaknesses of this law include:
1) Withdrawal of certain acts from the Criminal Code as criminal acts of corruption by revoking the article number. This repeal poses a risk that if the Criminal Code is amended it will result in the provisions of the new Criminal Code being out of sync with the provisions for criminal acts of corruption originating from the Criminal Code.
2) There is a regulation regarding the reasons for imposing capital punishment based on certain circumstances which are considered excessive and not by the spirit of law enforcement.
3) There are no transitional rules that explicitly bridge between the old law and the new law, which causes a legal vacuum for a certain period or situation.

3.8. Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes

Law Number 20 of 2001 is a law that was born solely to correct the weaknesses and shortcomings of the previous law. As mentioned above, some of these weaknesses were later revised in the new law.
Weakness revisions to Law Number 31 of 1999 are:
1. The repeal of certain acts of the Criminal Code as acts of corruption are carried out by adopting the contents of these articles as a whole so that changes to the Criminal Code do not result in disharmony.
2. Determination of the reasons for imposing capital punishment is based on acts of corruption committed on funds used to deal with certain situations such as emergencies, national disasters, and monetary crises.
3. Inclusion of transitional regulations that explicitly bridge the gap between old laws that are no longer valid and new, so that they no longer pose a risk of a legal vacuum that could be detrimental to eradicating corruption.

3.9. Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (UNCAC) of 2003

Corruption is rampant not only in Indonesia but also in almost all parts of the world. This is evidenced by the birth of the United Nation Convention Against Corruption or UNCAC as a result of the Merida Conference in Mexico in 2003. As a form of world concern for the epidemic of corruption, through the UNCAC it was agreed to change the world order and strengthen cooperation in eradicating corruption. Some of the new things regulated in UNCAC include mutual legal assistance, transfer of punishment persons, corruption in the private sector (corruption in the public sector), asset recovery, and others.

The Government of Indonesia, which is promoting the eradication of corruption, feels the need to participate in strengthening the UNCAC because, through Law Number 7 of 2006, its ratification (conditional) exempts the provisions of Article 66 paragraph (2) concerning Dispute Resolution. Submission of Reservations (requirements) against Article 66 paragraph (2) is based on the principle of not accepting the obligation to submit a dispute to the International Court of Justice except with the approval of the Parties.

3.10. Presidential Instruction No. 5 of 2004 concerning the Acceleration of Corruption Eradication

Presidential Instruction No. 5 of 2004 was born against the background of the desire to accelerate the eradication of corruption, bearing in mind the situation at the time the issuance of the Presidential Decree on corruption eradication experienced obstacles and a kind of resistance/backlash from corruptors.

Through this Presidential Instruction, the President feels the need to provide special instructions to assist the KPK in carrying out reports, registration, announcements, and examination of LHKPN (State Officials Wealth Report). The President issued 12 special instructions in the context of accelerating the eradication of corruption. The instructions were also specifically addressed to certain ministers, the Attorney General, the National Police Chief, including Governors and Regents/Mayors, according to their respective roles and responsibilities.

Along with the development of laws and regulations on eradicating corruption that already exists and is in effect in Indonesia, certain institutions have also been established, both those specifically dealing with eradicating corruption and institutions related to eradicating corruption. corruption crimes such as the State Officials Wealth Examination Commission (KPK). KPKPN) which was formed based on Presidential Decree No. 127 of 1999.
In its development, considering that the formation of the KPKPN was only through a Presidential Decree, this resulted in the institution's position not being strong enough. With the promulgation of Law Number 31 of 1999 which mandated the formation of a corruption eradication commission, the idea emerged to integrate the KPKPN into the eradication commission.

In the end, with the enactment of Law Number 30 of 2002 concerning the Corruption Eradication Commission and the formation of the KPK, the KPKPN merged and integrated with the KPK.

Corruption is an act that has a very big impact on society and its civilization. However, this is not well understood by the public, especially in Indonesia. In Indonesia, corruption is very widespread and has entered all levels of society. The development of this criminal act of corruption continues to increase from year to year, given the number of cases that have occurred and the large loss of state finances, as well as the increasingly systematic corruption that has entered all aspects of people's lives. in terms of quality (Djaja, 2009).

Corruption in Indonesia is no longer under control. even in various surveys, Indonesia is included in one of the lists of the most corrupt countries in the world. Various kinds of corruption cases ranging from large, medium to small cases occur from year to year continuously without stopping. Light punishment is the main reason for corruptors to continue their actions.

If you look at the three perspectives in legal theory as a social engineering tool, then Islamic law can be used as a form of regulation applied in Indonesia in the formation of corruption laws and regulations to provide sanctions for perpetrators of corruption. There are several reasons underlying this as explained in this book.

First, Islamic law as social control is one of the most widely used concepts in social science, because the majority of Indonesian people are Muslims. In this perspective, the main function of Islamic law in an integrative manner is intended to regulate and maintain the social order of Indonesian people who are mostly Muslim in a well-organized legal system. In this case, it is the integration of Islamic law into positive law in Indonesia, namely against criminal acts of corruption. For example: in the fiqh analogy with robbery, namely, corruption is carried out with strength and power and the person who is corrupted has reached one mishap/minimum limit, then the law is subject to cutting off the hands crosswise at the wrists. (The mishap of gold weighs 93.6 grams, in 2011 the price of 1 gram of gold was Rp. 400,000.00, so the nishab = Rp. 38,520. 000.00). Whereas for perpetrators who have repeatedly committed acts of corruption, based on the Ijtima Nahdlatul Ulama (NU), corruptors can be sentenced to death if they have repeatedly committed acts of corruption. And in Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Corruption, the maximum sentence imposed is 20 years in prison.

Second, Islamic law as social engineering which is a review can be used by officials (legal official perspective) to explore what sources of power can be mobilized by using Islamic law as the mechanism. This is because the crime of corruption in Indonesia is very heavy and the punishment received by the perpetrators of corruption in Indonesia is also very light. The criminal act of corruption is indeed a crime, even though there are strict and compelling laws and regulations, the fact is that corruption will always exist at any time. So this is where the role of the government apparatus both as policymakers and as supervisors and regulators of a legal product must make a policy or legislation which can later become social engineering for all people in Indonesia. One of them is in making the product of the legislation itself it is necessary to pay attention to legal sources that live in society, one

of which is Islamic law. In connection with criminal acts of corruption that occurred in Indonesia, even though the Corruption Law contains articles regarding the death penalty, the fact is that in the application of sanctions, there is no death penalty. Why is there a need for the death penalty? Because corruption is also a form of extraordinary crime or known as extraordinary crime, such as terrorism and drugs. Ijtima' Nahdlatul Ulama (NU) once issued a fatwa allowing the death penalty for corruptors. According to the fatwa, corruptors can be executed if they have repeatedly committed corruption. Wahbah Zuhaili in Al-Fiqh al-Islami wa Adillatuh concluded that the death penalty could be given to people who commit crimes very often, are alcoholics (especially narcotics), criminal supporters, and perpetrators of subversive acts that threaten national security or for example. Corruptors can be included in this type of category. 30 From the fatwa and the views of the fiqh experts, it can be applied in the laws and regulations in Indonesia, so that the application of sanctions for criminal acts of corruption for those who commit acts of corruption repeatedly (recidivist) can be subject to a maximum penalty of death. As for the criminal act of corruption which is carried out jointly (corporation) for those who are proven to have committed an evil conspiracy by jointly harming the state, alcoholics (especially narcotics), supporters of crime, and perpetrators of subversive acts that threaten national security or for example. Corruptors can be included in this type of category. 30 From the fatwa and the views of the fiqh experts, it can be applied in the laws and regulations in Indonesia, so that the application of sanctions for criminal acts of corruption for those who commit acts of corruption repeatedly (recidivist) can be subject to a maximum penalty of death. As for the criminal act of corruption which is carried out jointly (corporation) for those who are proven to have committed an evil conspiracy by jointly harming the state, alcoholics (especially narcotics), supporters of crime, and perpetrators of subversive acts that threaten national security or for example. Corruptors can be included in this type of category. 30 From the fatwa and the views of the fiqh experts, it can be applied in the laws and regulations in Indonesia, so that the application of sanctions for criminal acts of corruption for those who commit acts of corruption repeatedly (recidivist) can be subject to a maximum penalty of death. As for the criminal act of corruption which is carried out jointly (corporation) for those who are proven to have committed an evil conspiracy by jointly harming the state, 30 From the fatwa and the views of the fiqh experts, it can be applied in the laws and regulations in Indonesia, so that the application of sanctions for criminal acts of corruption for those who commit acts of corruption repeatedly (recidivist) can be subject to a maximum penalty of death. As for the criminal act of corruption which is carried out jointly (corporation) for those who are proven to have committed an evil conspiracy by jointly harming the state, 30 From the fatwa and the views of the fiqh experts, it can be applied in the laws and regulations in Indonesia, so that the application of sanctions for criminal acts of corruption for those who commit acts of corruption repeatedly (recidivist) can be subject to a maximum penalty of death. As for the criminal act of corruption which is carried out jointly (corporation) by those who are proven to have committed an evil conspiracy by jointly harming the state.

Third, the perspective of the emancipation of Islamic society in Indonesia towards the law (legal culture). This perspective is a legal view from the bottom up, law in this perspective includes objects of study such as legal capacity, legal awareness, law enforcement, and so on. The Indonesian people suffer greatly from the many cases of corruption that are always repeated and occur continuously in Indonesia, even corruption cases have also become entrenched at the smallest level of government in Indonesia. Here the perspective of Muslims in Indonesia also needs to be considered by the government. Muslims in Indonesia no longer trust government officials. For example, in the management of community E-KTPs in villages, according to a presidential regulation, the E-KTP arrangements are free of charge. Not yet at the central government, there are indications of leakage of funds for making E-KTP which was proclaimed nationally, it was also abused for personal or group interests. The KPK is still investigating the misappropriation of state funds in the E-KTP project. Referring to the example of this case, the views of the people in Indonesia, especially Muslims, agree that perpetrators of corruption can also be given the punishment of cutting off their hands. 31 This is because corruption can be equated with the crime of theft in Islam which is regulated in the Qur'an. . However, in the conception of Islamic law it is very difficult to categorize corruption as a syrah (theft) crime. This is due to the various corruption practices themselves which are generally not included in the meaning of tariqah (theft). then the views of the people in Indonesia, especially Muslims, agree that perpetrators of corruption can also be given the punishment of cutting off their hands. 31 This is because corruption can be equated with the crime of theft in Islam which is regulated in the Qur'an. . However, in the conception of Islamic law it is very difficult to categorize corruption as a syrah (theft) crime. This is due to the various corruption practices themselves which are generally not included in the meaning of tariqah (theft). then

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Based on the results of research from Umi Kalsum (2009) states that as a crime that endangers social life, corruption is always associated with the culture or social conditions of society. According to Robert Klitgaard, the main cause of corruption is gift giving which has become a habit. In line with this opinion, Umi Kulsum argues that corruption in Indonesia is an act that is rooted in various aspects of human life, so it seems as if it is considered a culture.

As a crime, corruption is essentially the result of a learning process, according to Sutherland through his well-known theory, namely the differential association theory which emphasizes that a crime (including corruption or in the language of white collar crime) is an acquired crime. by knowing, by nine propositions. . First, criminal behavior is learned. Negatively, this means that criminal behavior is not inherited. (Criminal behavior is negatively informed behavior meaning it is not inherited). Second, criminal behavior is learned in interactions with other people in the communication process. This communication is in many ways verbal but also includes "signal communication". (behavior observed in interactions with others in the communication process. Such communication can mainly be done verbally or using sign language). Third,
Negatively, this means that the agents of interpersonal communication, such as movies, and newspapers, play a relatively insignificant role in the origins of criminal behavior. (The most important part of the criminal behavior process takes place within intimate personal groups. Negatively, this means that communication is impersonal, and relatively unimportant in crime cases).

Fourth, when criminal behavior is learned, the learning includes (a) the techniques of committing the crime, which is sometimes very complex, sometimes very simple. (B) the specific direction of motives, drives, rationalizations, and attitudes. (The behavioral entity that investigates what is pursued includes (a) techniques of committing a crime, (b) certain motives, actions, and justifications including attitudes). Fifth, the specific directions of motives and drives are studied from the definition of the legal code as favorable to unfavorable.

In some societies, a person is surrounded by people who always define a code of law as rules that must be obeyed, while in other societies he is surrounded by people whose definition supports violating the code of law. (The direction of motives and intelligence is known through the definition of rules. In society, sometimes people see what is regulated in the rules of law as something that needs to be considered and obeyed, but sometimes it is people) who see the rules of law as something that allows threatening crime).

Sixth, a person becomes delinquent because of the excess of the favorable definition of lawlessness over the unfavorable definition of lawlessness. (a person becomes naughty because of access to a mindset that sees the rule of law as an opportunity to commit crimes that sees law as something that must be considered and obeyed).

Seventh, Differential Associations may vary in frequency, duration, priority, and intensity. (Differential Associations vary in frequency, duration, priority, and insensitivity).

Eighth, the process of learning criminal behavior related to criminal and anti-criminal patterns includes all the mechanisms involved in other learning. (the process of crime committed by crime is obtained through the relationship with crime and anti-crime patterns based on all that usually occurs in each learning process in general).
Ninth, while criminal behavior is an expression of general needs and values, it is not explained by these general needs and values because non-criminal behavior is an expression of the same needs and values. (While criminal behavior is an expression of general needs and values, it is not expressed by those general needs and values, because behavior that is not a crime is also an expression of the same needs and values) (Hadisuprapto, 2008).
To ward off corruption as a crime that endangers people's lives, a cultural change (social engineering) or a social engineering tool is needed, however, cultural change is a very big change and not an easy job, even according to Satjipto Rahardjo (2009) these changes require study and study. thorough. However, These changes can also be made through amendments or rearrangement of the criminal law system which regulates criminal acts of corruption, which are expected to influence the attitude of the Indonesian people without exception.

Changing the culture through legal regulation by Soerjono Soekanto is called social engineering or social planning, namely ways to influence society with an orderly and planned system. Social engineering is closely related to the function of law, namely certainty and law enforcement. According to D. Schaffmeister (1995), the law has a creative function if legal norms deviate from social norms and thus humans will behave differently from before. To create social change through structuring the legal system, good social engineering is needed, where the law to be used must reflect the protection of the public interest. As an illustration, according to Andi Hamzah, in Australia, the formulation of corruption offenses focuses more on the public interest, so the public always comes first and wins. For this reason, efforts are needed through a penal policy. (Hamza, 2005)

Apart from being adapted to the situation and conditions in Indonesia, this conception is also linked to Northrop's cultural philosophy and the policy-oriented views of Laswell and McDougal. The law that is used as a means of renewal can be in the form of law or jurisprudence or a combination of both, as previously stated, in Indonesia the most prominent is legislation, jurisprudence also plays a role but not much. The results of the writings of Lili Rasjidi and Thania Rasjidi (2002) conclude that for the implementation of laws and regulations aimed at renewal to work as they should, the laws and regulations formed must be following what is at the heart of the thinking of the sociological school of jurisprudence, namely good law must comply with with the laws that live in society. Because if not, as a result, these provisions will not be implemented and will face challenges. Some examples of laws that function as a means of renewal in the sense of changing the mental attitude of traditional society towards modern ones, for example, the prohibition on the use of koteka in Irian Jaya, the obligation to issue land certificates, and so on.

In this case, with the function of law as a means of community renewal, it can also be interpreted that law is used as a tool by agents of change who are pioneers of change, namely a person or group of people who gain public trust as leaders of one or more social institutions. These pioneers emphasized social system change, influencing society with a pre-planned system called social engineering or planning or as a social engineering tool. (Dirksen, 2009)

Law as a social engineering tool can also be interpreted as a means aimed at changing the behavior of citizens, by predetermined goals. One of the problems faced in this field is when there is what Gunnar Myrdal calls soft development, namely when certain laws that are formed and implemented are found to be ineffective. Symptoms like that will appear if certain factors become obstacles. These factors can come from legislators, law enforcers, justice seekers, or other groups in society. It is these factors that must be identified because weaknesses occur when only goals are formulated without considering how to achieve these goals. (Soekanto, 2009)

If the law is the means chosen to achieve that goal, then the process does not only stop at selecting law as a means, but a strong knowledge of the nature of law also needs to be known to know the limitations in using law as a

means. to change or regulate the behavior of citizens. Because existing means limit the achievement of goals, while goals determine which means are appropriate to use.

According to Raharjo, Law in today's modern society has a prominent feature, namely its use has been carried out consciously by the community. Here the law is not only used to strengthen existing patterns of habits and behavior in society, but also to direct it to the desired goal, eliminate habits that are deemed no longer appropriate, create new patterns of behavior, and so on. This is what is called the modern view of the law which leads to the use of law as an instrument, namely law as a social engineering tool.

This conscious use, namely the use of law as a tool to change society or as a tool to renew society, can also be referred to as social engineering by law. The steps taken in social engineering are systematic, starting from identifying the problem to how to solve it, namely first, getting to know the problem at hand as well as possible. This includes carefully identifying the people one wants to target for cultivation. Second, understanding the values that exist in society, is important in terms of social engineering that will be applied to society with various sectors of life, such as traditional, modern, and planning. At this stage, it is determined which sector value is selected. Third, make a hypothesis and choose which one is most feasible to implement. Fourth, The relation with existing legal products in Indonesia is how these legal products can integrate with people's lives, or how the law continues to show its superiority in society as a tool to change society, but this law also does not bring misery to society. Quoting Satjipto Raharjo's opinion, the application of existing law in society does not have to look at the legal product, but how a product can be interpreted and practiced as much as possible by the needs of society to achieve justice.

From the opinions above, both Pound and Satjipto think that the purpose of law formation must be studied to achieve the maximum limit of fulfilling human needs. Therefore, in the formation of a legal product, it must be overhauled by establishing another basic framework that takes into account the wider recognition of the needs, demands, and interests of the community.

Law as an institution that works in society has at least 3 (three) perspectives from its function (legal function) as according to AG Peters in Ronny Hanitijo Soemitro (1998), namely: First, as social control over the law which is one of the most common concepts most widely used in the social sciences (Peters, 1998). In this perspective, the main function of a legal system is integrative because it is intended to regulate and maintain social regulations in a social system. Therefore, Berger said, that no society can live forever without social control from the law as a means (Berger, 1992). Furthermore, according to Parsons, for the law to carry out its control function, he stated that there are 4 (four) functional prerequisites for a legal system, namely the basic issue of legitimacy, which concerns the ideology that forms the basis for law. structuring the rule of law; the issue of the rights and obligations of the community which is the target of the legal process of laws and regulations; the problem of sanctions and institutions that apply these sanctions; and the issue of enforcement authority of the rule of law (Campbell, 1994). The second is social engineering which is the legal perspective that is most widely used in reviews to explore what sources of power can be mobilized by using law as the mechanism. Following the views of proponents of the perspective of social engineering by law, Satjipto Rahardjo (1977) stated that there are 4 (four) basic conditions that must be met for a rule of law to be able to direct society, namely by having a good picture of the situation at hand; assessment analysis and determine the level of value; hypothesis verification; and measuring the effectiveness of applicable law.

The three perspectives of community emancipation towards law. This perspective is a legal view from the bottom up, law in this perspective includes objects of study such as legal capacity, legal awareness, law enforcement, and so on.

The problem of law enforcement is a problem faced by every society. Although each community has its characteristics, it can provide its pattern of problems within the framework of law enforcement. However, every society has the same goal, to achieve peace in society as a result of formal law enforcement.

The main task of law is social engineering (law as a tool of social engineering, Roscoe Pound). The law is not only formed based on the interests of society but must also be enforced in such a way by legal experts as an effort to control society in a broad sense whose implementation is oriented towards the desired changes.

Therefore, heavily influenced by non-legal components, law enforcers in carrying out their main legal duties must correctly understand the logic, history, customs, customs, correct code of conduct so that justice can be upheld. Fair legal decisions can be used as a means to build society. The main task is a means of renewal of society in development.

Legal life as social control lies in the practice of implementing or applying the law. The judge's task in applying the law is not only understood as an effort to formal social control in resolving conflicts but at the same time designing the application of the law as a social engineering effort. The judicial task of judges is no longer understood as merely applying the law to concrete events (in the form of various cases and conflicts) or merely as a mouthpiece for law (buncha de la loi) but also as a driving force for social engineering. Law administrators must pay attention to the functional aspects of law, namely to achieve change, by making changes to the law, always using all kinds of interpretation techniques (functional law theory).

"Law is a tool of social engineering" is what Roscoe Pound says about law. As Mochtar Kusumaatmadja said, the law is the overall principles and rules that govern society, including the institutions and processes to realize that law. These two jurists have the same views on the law.

The interests of the state must be the highest/highest because the state has national interests. National interests must protect the interests of the state, the will of the state is the will of the people. Because the law is not as stated by positivist theories, the law is closed. Law is heavily influenced by ideology, politics, economy, society, and culture. It's not just the government's wish. Logic is open, and the development of community needs greatly influences the growth of law in society. Politics greatly influences the growth of law in society.

One of the problems faced is finding a law enforcement system and implementation that can properly realize legal functions such as the social control function, the dispute resolution function, the integration function, the facilitation function, the function of Updates, welfare functions, and others. At present, the difference in the function of law is often an element that encourages differences regarding the purpose of applying the law. Some place more emphasis on the function of social control, the function of change, and so on. If each party demands according to their wishes, what arises is a legal issue, not a legal settlement. It even creates conflicts that connote blaming each other, accusing each other, and so on. The main function of law is to protect the interests that exist in society. As discussed in the previous topic in the context of interests according to Roscoe Pound. The details of each of these interests are not an absolute list but change according to the development of society.

4. Conclusion

The criminal policy that has been implemented by the government through various laws does not eliminate the unlawful nature of corruption even though there is the restitution of state financial losses by the defendant. This return is because Article 4 of the PTPK Law states that returning state financial losses is only one of the reasons to alleviate punishment and does not abolish punishment for perpetrators who violate the provisions of Article 2 and Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Even though many corruptors have been charged with Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and sentenced to prison terms because they have proven to be detrimental to state finances, in practice,

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