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Reintegrative Shaming: Strengthening of Punishment in the Criminal Policy of Corruption in Indonesia

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ABSTRACT--Statute, 20 of 2001 about Amendment of Statute, 31 of 1991 about Eradication of Corruption emphasizes criminal policy in punitive model, as imprisonment, fine, penalties for repayment of state losses and additional penalties. The punitive model cannot be used as a deterrent and shock therapy factor in the criminal policy in Indonesia. It reality, the Corruption Eradication Commission's Annual Report shows that corruption in the form of gratuities increased in 2018 to 2,349 from 2017 to 1,897 and to 2016 by 1,948 cases. The Annual Report of the Indonesia Supreme Court shows that corruption cases in District Court in 2018 was 1,896, in 2017 there were 2,198 and in 2016 there were 2,362 cases. This gap underlies the formulation of problems related to weaknesses in punitive models and reintegrative shaming conceps as additional models in strengthening criminal policy for corruption. Based on the sociological legal approach with the use of secondary data (primary legal material) and analysis using the use of sociological theories, it shows that punitive model contain weaknesses in the form of criminal disparities and do not cause shame to the offenders, so the punitive model cannot be used as a shock therapy factor and entrapment. On the other hand, the reintegrative shaming is in the form of announcements of the offenders in the mass media and social services at the same time and does not cause criminal disparities. Based on this analysis, it is recommended to recommend a reintegrative shaming concept as an abstract reinforcement in the criminal policy of corruption, so there is a need for a revision of the corruption law.

Keywords: corruption, criminalization. criminal policy, reintegrative shaming

I. INTRODUCTION

Corruption is an extraordinary crime in Indonesia, with indicators of increasing corruption, in the form of gratuities in 2016 amounted 1,948 cases, in 2017 amounted 1,897 cases, and in 2018 amounted 2,349 cases, The Annual Report of the Indonesia Supreme Court, shows that high handling corruption cases in the District Court amounted to 2,362 (2016), 2,198 (2017) and 1,896 (2018). State administrators in 2016-2018 were 1,166 (86.56%) of 1,347 actors, large state losses and violate social rights of the people. Statute, 20 of 2001 concerning Amendment of Statute, 31 of 1999 about Eradication of Corruption has not been able to significant influence for attitudes and behavior the people not to commit corruption. One factor the Statute that has not been able to significantly prevent corrupt behavior, namely criminal sanctions, both strafmaat, strafsoort and straf modus.

Various criminal punishment models, both the retributive / punitive criminal penalties model and the resocialization (utilitarian) criminal code model used in the Indonesian law on corruption eradication are not capable of deterring perpetrators and reducing corruption criminality. This model of punishment does not make the shame of the perpetrators in carrying out criminal decisions, because convicted of criminal acts of corruption directly "hiding" in a penitentiary. Even criminal relief and or reduction that makes smiling perpetrators of criminal acts of corruption displayed and given by law enforcement and the government, both application of lighter articles, punishment reduction on religious and state holidays, clemency and or amnesty by the President. The punishment model attaches stigma (evil stamp) to the perpetrators, so that they will easily repeat the crime. John Braithwaite said that stigmatization from the closest group, such as family, school and community sub-culture will influence the perpetrators of crime not to commit a crime.

Indonesia needs to find a new criminal punishment model to reconstruct criminal and retributive / punitive retribution and criminal justice (utilitarian) which is unable to realize the deterrence and shock factors of corruption perpetrators, and has not been able to reduce the level of criminal acts in criminal statistics, and reduce anxiety society against corruption. There is a reintegrative shaming criminal model read by the author in his John Braithwate book entitled Crime, Shame and Reintegration (1989), which is interesting and underlies the authors conduct an analysis with a legal sociological approach, that the reintegrative shaming criminal model has the potential to be used as an aditional criminal model in preventing corruption in Indonesia.

II. FINDINGS AND DISCUSSION

A. Reintegrative Shaming Model

Reintegrative shaming consists of two basic words, namely reintegrative which means the restoration of part to the whole after separation, and shaming, as a social process manifested in the expression of disapproval, so that the offender regrets. Shaming related sanctions, then shaming is a criminal sanction designed to stigmatize or embarrass a convicted offender. In terminology, reintegrative shaming is a punishment

designed to bring the perpetrators back by giving shame. John Braithwaite said that reintegration shaming as an attempt to reintegrate actors into a law-abiding society through recognition and forgiveness which states the offender returned.

Reintegrative shame is better than stigmatization in the form of punishment because it can minimize risk of entering the crime sub-culture. Next, John Braithwaite said that Reintegrative shaming is not necessarily weak; it can be cruel, even vicious. Reintegrative shaming as a model of punishment, is different from the model of resociative (utilitarian) punishment which has been used in Indonesia as a "substitute" from the retributive / punitive punishment model. However, the resociative (utilitarian) criminal model still contains a retributive / punitive punishment model or can be said to only change "clothes". Theoretically, the two criminal models have different criminal objectives, one is perpetrator oriented and the other is oriented towards perpetrators, victims and the community, but pragmatically both have the same goal, namely criminal politics, community protection.

The resociative (utilitarian) criminal model prepares to return the convicted person in the community after undergoing 2/3 (two-thirds) of the main criminal period in prison and 1/3 (one third) of the convicted person integrates with the community without the burden of shame. John Braithwaite said most shaming is neither associated with formal punishment nor perpetrated by the state, but shaming are important. The reintegrative shaming model is an expression of community disapproval, as a mild to severe reprimand, as an effort to obey the law. reintegrative shaming emphasizing moral culture, as happened in Japan, that shaming as a feature of Japanese culture, obtained from families, schools and companies. Ordinary Cuban and Chinese citizens verbally denounce someone's mistakes as part of the trial process.

Those reintegrative shaming concept is not oriented into a penalization, but it creates a sense of shame for the violations committed by the offender through polite remarks, condemnation, mild reprimands, and through a formal ceremony in accordance with the cultural community, even in the Republic of Rome by burning the door and parading offenders in closed clothes. From a cultural aspect in Republican Rome, humiliating offenders by leaving their doors to be burned, and people being persecuted following their offenders wearing mourning clothes and disheveled hair The reintegrative shaming model can be realized in the form of social work, by means of, inter alia:

a. Providing security services
b. provide social services according to their competence (orphans, elderly, health, infrastructure, economy and others)
c. clean public facilities
d. teaching and or entertaining at school, and or
e. apologies to families, certain communities and the community through visits and or mass media

The reintegrative shaming criminal model has a usefulness, which is to inspire the convict's heart / mentality about the loss of the community for the crime committed by the convict and remind the convicted, that there are social rights of the community taken by the convicted person.

B. INDONESIAN CRIMINAL SYSTEM

Article 2 of Statute,12 of 2011, as amended by Statute, 15 of 2019 about Amendment to Statute, 12 of 2011 about the Regulations Formation, states that Pancasila is the source of all sources legal. Pancasila as an ideological basis for the nasitional development of criminal law and law enforcement, but lawmakers and law enforcers are still not able to make or harmonize the substance of legislation (corruption) with the values of Pancasila, so that the retributive / punitive punishment model, which has been replaced by a model of resociative (utilitarian) criminal justice into justification in abstracto and in concreto national law. The deepening and understanding of the values of the Pancasila as legal principles in Indonesia have not yet become the basis for policy making or legal decisions, so that punishment as a revenge is justification. The legalistic paradigm (law) dominates the thoughts of Indonesian law enforcement officials, what the law says, that must be followed and implemented, and justice only becomes an endless dream. J.E. Sahetapy in his article entitled "Legal Reform Must Embody the Pancasila" states, that:

> Court decisions at all levels indicate how judges have not been pure white like snow. Justice continues to be mocked in dirty ways, so that there are winged expressions all can be arranged, can be bought, bribed, squeezed or "power by remote control." There is no fear of God by cursing God, even though the verdict is pronounced with " justice is based on a supreme divinity" If Pancasila is the source of all sources legal, then the court should decide for justice based on Pancasila, bearing in mind that in addition to the divine precepts, there are also humanitarian precepts and social justice precepts.[5]

The phrase "power by remote control" indicates that criminal justice has been controlled by evil forces or interests, both inside and outside criminal justice, both in the institutional and individual sense. So that a criminal justice apparatus is needed that is clean and brave and has progressive thoughts based Pancasila principles. Progressive thinking, which explores the values of Pancasila as principles law enforcement becomes hope of law enforcers and the community in realizing just justice. One progressive thinker is Satjipto Rahardjo who said, that:

In an atmosphere oppressed by corrupt practices that gnawed at the nation, why don't we dare to look for another way? Here we choose a progressive court with partisan judges. Judges like that do not come with empty enthusiasm, but are full of determination, commitment, and dare (courage) to defeat corruption. Are partisan judges not an anomaly in the midst of today's "legal civilization"? No, as an independent nation, we have the right to make choices about what is good for the nation. If

"liberal judges" are less successful in eradicating corruption, now is the time to choose "partisan and progressive judges". This is one of Indonesia's choices to wake up from adversity.

Satjipto Rahardjo wishes that there will be judges who have progressive thinking in upholding the law, including the courage of judges in laying out additional decisions in the form of reintegrative shaming criminal justice. The retributive / punitive punishment model is manifested in a judge's decision that is dominated by a sentence of imprisonment for a specified period of time and additional fines and penalties in the form of restitution of state finances and revocation of political rights within a certain time. The judge never used his authority to impose additional criminal rulings with reintegrative shaming. Judges are shackled by the normative provisions of sanctions in Criminal Law and Corruption Law, and the Judge does not dare to take progressive actions, while the progressive value has been formulated in Law, 48 of 2009 about Judicial Power in Article 5 Paragraph (1) determine that judges must explore, follow and understand the legal values and a sense of justice that lives in the community, and Article 10 (1) The court must examine, try and decide on a case. Suteki, his article entitled "Oriental Culture and Its Implications for the Method of Punishment Perspective of Progressive Legal" states that:

Method of law that only relies on positive law with rules and logic and its rule bound will only lead to a deadlock in the search for substantive justice. Non enforcement of law in the search for perfect substantive justice (perfect justice) will only be born through a legal pluralism approach. Legal pluralism is a new approach strategy that must be mastered by law enforcement in order to be able to make legal breakthroughs through the non enforcement of law. This is because this approach is no longer imprisoned by legal formalism provisions but has jumped towards consideration of living law and natural law.

The retributive / punitive punishment model is formulated in the cumulative criminal formulation system in Article 2 (1), Article 3, Article 5, Article 6, Article 9, Article 10, Article 12, Article 12A (2), and Article 12B (2), and the alternative criminal formulation system with severe penalties in Article 2 (1), Article 3, Article 12, Article 12 B (2), as well as the cumulative-alternative combined criminal formulation system in Article 5, Article 7 and Article 11 of Law, 31 of 1999, which has been amended by Law, 20 of 2001 about Amendment to Law, 31 of 1999 about Eradication of Corruption. The retributive/punitive penalties model does not succeed in realizing the philosophical and criminal objectives in article 54 the Criminal Law Concept determines, that criminal law aims prevent offenses, promoting offenders becomes a good and useful person, resolving conflicts, restoring balance, and bringing a sense of peace in society, and Free the guilt of convicted person. Punishment is not intended to narrate and demean human dignity.

The purpose of the punishment will not be realized, if in criminal acts of corruption still use the retributive / punitive criminal model, so an aditional criminal model is needed in the criminal politics of corruption, namely reintegrative shaming

C. REINTEGRATIVE SHAMING: ADITIONAL CRIMINAL MODEL

Theoretically, a retributive / punitive or retributive criminal punishment model by formulating the threat of severe criminal sanctions in Indonesia's corruption eradication laws is needed as an effort to prevent corruption. As in Singapore, The Singapore Corruption Practices Investigation Bureau (CPIB) states that there are several ways to eradicate corruption, namely effective law enforcement and severe penalties. Likewise in the United States, Konnie G. Kustron explained the purpose of punishment in the United States, that: Preventing the offender from committing another crime and imposing a sentence is goal of punishment.

In the Six Regional Anti Corruption Conference for Asia-Pasific has recommended corruption as serious crime, but also the application must be in accordance with their actions, said:

> apply strict and effective enforcement, and impose severe penalties, so that it can be a preventative factor for others. in fact, there is a lot of corruption in the private sector, the punishment of which is comparable to corruption committed by public officials.

In comparative study, formulation criminal act against corruption in Indonesia is same as a crime in China, where the application of the criminal act against corruption as retaliation. In China, the application of harsh sentences and capital punishment is retaliation, because corruption is classified as a serious crime in substantive criminal law.," Suhariyono AR said, that the threat of punishment specified in a law, generally lead to psychological coercion for those who will or have committed criminal violations. The theory of psychological coercion is intended that the threat of punishment must be able to prevent the intention of people to commit a crime, in the sense that people must realize that if they committed a crime they would definitely be convicted. Thus, the main purpose of crime is to force the population psychologically so that they do not commit acts that are illegal.[3]

On the other hand, a retributive / punitive or retributive criminal punishment model with a severe crime will give birth to an evil stigma, which can affect the occurrence of criminal acts (recidivist), resulting in failure in efforts to prevent corruption. In order to anticipate prevention and repetition corruption, an effective criminal model is needed. The reintegrative shaming criminal model, as an aditional criminal model, returns or integrates the convicted person in the community by giving shame to the convicted criminal corruption is very appropriate.

Statute, 31 of 1999 amended by Statute, 20 of 2001 about Amendment to Statute, 31 of 1999 about Eradication of Corruption formulates (a) basic crimes, including capital punishment, imprisonment, fines and penal incarceration, (b) additional penalties, as formulated in Article 10 letter b of the Criminal Law Code, includes the revocation of certain rights, the seizure of certain goods and the announcement of a judge's decision, and Article 18 (1) of Statute, 31 of 1999 about Eradication of Corruption includes confiscation of movable or immovable property, payment of replacement money, company closure and revocation of certain rights or the elimination of certain profits. The formulation shows the use of retributive / punitive retribution punishment model which is oriented towards criminal offender. The reintegrative shaming model has not been formulated in the two laws mentioned above. In the Draft Book of the Criminal Law the social work criminal has been formulated as the main crime, whose function as a substitute criminal imprisonment that will be imposed no more than 6 (six) months or a criminal fine of no more than a criminal fine of Category I. Criminal social work as the substitute principal can not be applied in a criminal act of corruption, because the criminal sanction in a criminal act of corruption uses a special minimum criminal sanction, which is heavier than that required for the application of social work criminal in the Draft Book of the Criminal Law, so that social work criminal can be used as reintegrative shaming. Susan Rose-Ackerman in her article about "Corruption and Criminal Law" said that the criminal law can deter corruption with substantive criminal law re-examined.[7] Reintegrative shaming, then the study of criminal law is carried out on criminal and criminal, both aspects straafsoort, straafmaat, dan straafmodus.

From the aspect of straafsoort, social work criminal as a form of reintegrative shaming criminal model and does not cause criminal disparity, if social work criminal as a basic criminal is independent, not as a substitute main criminal, it means that social work criminal is applied to all criminal acts of corruption and criminal acts that are related to corruption. If the social work crime as a principal criminal substitute for imprisonment and fines applied in a criminal act of corruption will widen the criminal disparity.

From the straafmaat aspect, indicators of the severity of (old) social work criminal acts as a form of reintegrative shaming criminal punishment model are based on the calculation of the state loss intervals, as the concept of calculating these intervals is in the table below.

Table 1
Long Criminal Social Work and State Losses

category	State Losses (Rp)	Criminal Social Work Period (Hours)				
		80	120	160	200	240
I	≤ 500.000.000	√				
II	>500.000.000-1.000.000.000		√			
III	>1.000.000.000-1.500.000.000			√		
IV	>1.500.000.000-2.000.000.000				√	
V	>2.000.000.000					√

Source: Processed

Based on Table 1 above, the maximum benchmark of 240 hours of social work crime is in accordance with the Concept of the Criminal Code, intended for convicts with state losses of over IDR 2,000,000,000 (two billion rupiah) and the lowest is 80 hours of social work for convicts with state losses of IDR 500,000,000 (five hundred million rupiah) and below.

From the straafmodus aspect, social work penalties, imprisonment and fines are applied cumulatively, while additional penalties are facultative. The cumulative criminal system shows that all convicted with any state loss will receive a social work crime, so there is no criminal disparity.

Based on the straafsoort, straafmaat and straafmodus, it is necessary to reconstruct criminal sanctions in Statute, 31 of 1999, which has been amended by Statute, 20 of 2001 about Amendment to Statute, 31 of 1999 about Eradication of Corruption, by including social work criminal in every article provision. In the reintegrative shaming criminal model, social work crime is needed as a principal criminal that is independent in corruption, as an effort to inspire the convict's heart / mentality, so that he feels ashamed and will grow awareness and concern for the community, because criminal acts of corruption are endemic, as opinion of Peter deLeon, that: Corruption is endemic as long as there are scarce resources juxtaposed against allocation mechanisms that are vulnerable to the vagaries of political manipulation (or, more benignly, choice). Corruption criminal acts that are endemic can be cured by touching or inspiring the convict's heart or mentality over the impact of his actions through social work crime, so that the reintegrative shaming criminal justice model becomes a solution in criminal politics of criminal acts of corruption.

III. CONCLUSION

The reintegrative shaming model is an aditional model strengthening criminal policy penalties for corruption, in form social work criminal acts that are independent, not as a substitute for imprisonment and fines. Strengthening the penalties does not remove the retributive / punitive and retributive criminal models, because corruption as extra ordinary crime still requires the application of extra ordinary crime (cumulative) criminal sanctions. Therefore, the law on corruption eradication must be revised to accommodate social work criminal acts as a form of reintegrative shaming criminal justice.

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