CRIMINAL POLICY NON-PENAL AS EFFORTS TO PREVENT AND OVERCOME CRIMES ROBBERY-MOTOR VEHICLE THEFT BY INVOLVING CHILD OFFENDERS

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ABSTRACT

The number of crimes robbery-motor vehicle theft has tended to increase in recent years. The type of crime in which the perpetrator is not only committed by adults, but also involves child offenders. The relationship between children and crimes robbery-motor vehicle theft is influenced by various non-legal factors including environmental factors, namely wrong relationships and economic factors due to the deteriorating economic conditions of the family due to structural poverty and the impact of the Covid-19 Pandemic. Therefore, the implementation of criminal policies through the prevention and handling of criminal crimes cannot only rely on the application of penal policies, but needs to be accompanied by a non-penal policy approach that relies more on the role and synergy of local governments in the prevention of illegal crimes that encourage the role and function of local government as planner, implementer, and supervisor of the implementation of non-penal policies. Non-penal policy efforts should be carried out in a sustainable manner to strengthen and build the stability of people's lives in the economic sector. In time, it will stimulate and accelerate the elimination or disappearance of the factors that trigger the emergence of such crimes involving child offenders.

Keywords: Criminal policy non-penal, efforts to prevent illegal crimes robbery-motor vehicle theft, involving child offenders

INTRODUCTION

Efforts to prevent and overcome crime can be pursued in two ways, namely by means of a repressive penal policy implemented by law enforcement officials such as the police, prosecutors and courts. Meanwhile, preventive non-penal policies are policies implemented by local governments in order to reduce the factors that have the potential to cause crimes or Ravena (2017).

The prevention of crime includes all efforts made by the government (state) as well as the public against the possibility of a crime, both those that have the potential to commit crimes or those who have committed crimes. Perpetrators of crimes are also not necessarily committed by adults, even from the age of children and adolescents many have been caught in criminal cases, one of which is the crimes robbery-motor vehicle theft. This phenomenon is influenced by external factors, such as deviant associations and family economic problems. Another factor that is more dominant is the increase in the number of crime-related crimes, which is indicated by the impact of the Covid-19 Pandemic which made a lot of workers, especially young workers laid off or rested by companies or their places of work. As a result, the unemployment rate has increased dramatically, while household needs continue to demand and become an obligation to be fulfilled every day, Nandang Sambas (2011).

This jobless condition was exacerbated by the issuance of a controversial policy issued by the Ministry of Law and Human Rights for the expenditure of prisoners and children in the midst of the Covid-19 Pandemic faster than normal through policies of assimilation, parole, leave before release, and conditional leave for prisoners and children in the context of prevention and tackling the spread of Covid-19 which was carried out starting at the end of March 2020 in prisons/children prisons (LPKA)/detention centers through assimilation and integration, which are expected to minimize repetition of violations and avoid unrest in the community, so that conditions in society are increasingly triggered by an increase in criminals, including child offenders. who are more urged and dare to commit such crimes.

Moral crimes committed by children are usually carried out in sadistic and brutal ways by mercilessly killing the victim. This sadistic method is a characteristic of Lampung's typical robbery crimes, including those committed in Jabodetabek, where police officers who chase the perpetrators always coordinate with the Lampung Regional Police. Therefore, it is very necessary and urgent to take the efforts to prevent and overcome the crimes committed by child perpetrators and urgently be carried out with two policies simultaneously and at the same time, namely by using penal and non-penal ways/means/ efforts simultaneously.

Currently, the application of an approach that puts forward the penal policy by using criminal law as an effort to deal with illegal crimes is considered ineffective. Penalties, including those that are quite serious, are still considered unsuccessful to reduce and have a deterrent effect on the perpetrators, it is proven that the crime rate that occurred in Lampung reached 6,685 cases that occurred until December 31, 2019. The number of criminal crimes continues to increase in 2020, so it can be concluded that the implementation of penal measures through criminal law enforcement is seen as unsuccessful, still unsuccessful, not of high quality, and not yet effective as a means of dealing with morbid crimes.

Based on this background, it is deemed necessary to conduct research with the title “Criminal Policy Non-Penal as Efforts to Prevent and Overcome Crimes Robbery-Motor Vehicle Theft by Involving Child Offenders”. The formulation of the problem is as follows: (1) how can the criminal policy non-penal as an effort to prevent and overcome crimes robbery-motor vehicle theft by involving child offenders? (2) whether the application criminal policy non-penal as an effort to prevent and overcome crimes robbery-motor vehicle theft by involving child offenders can be implemented effectively?

TYPES AND RESEARCH METHOD

The approach to the problem in legal research is determined and limited by the scientific tradition that develops in legal science, which according to Bruggink is based on existing ideas (denkbeelden) and approaches (in the sense that it is limited by the scientific tradition in which legal scientists are located), or in Kuhn's terminology, by prevailing paradigms in legal science, Bruggink (1999). According to Marzuki (2005), the first step of this research is based on doctrinal research using a statute approach, an analytical approach, and a conceptual approach.

The data collection technique used is documentation. Legal materials are collected through procedures for identification, inventory, and classification of legal materials according to research problems. Then the legal materials/data are recorded or cited using a card system. Field data (for socio-legal research), were collected in the following ways: (1) In-depth interviews; and (2) Direct Observation.

Analysis of legal materials is also carried out descriptively-analytic, namely examining legal concepts, legal principles, legal norms, and legal systems related to criminal law enforcement against corruption crimes. From the aspect of dogmatic jurisprudence, the analysis of legal materials is carried out by means of exposure and analysis of the content (structure) of the applicable law, systematization of legal symptoms that are presented and analyzed, interpreted, and judgments of applicable laws. The methods of legal interpretation used include grammatical interpretation (language), systematic interpretation, authentic interpretation, and comparative interpretation. While the field data were analyzed following the Miles and Huberman model, namely data reduction, data presentation, and drawing conclusions or verification.

RESULTS AND DISCUSSION

Types of Criminal Sanctions That Are Effective Against Corporations as Perpetrators of Corruption Crimes

The characteristics of a legal entity as a subject of criminal law are individuals who are the founders, have separate assets separate from the assets that establish them and their managers, have rights and obligations in addition to the rights and obligations of the founders and their managers. The essence of the corporation has differences in the legal subject of people. People who are subject to law have an inner soul and attitude; corporations do not have an inner attitude (mens rea). The soul and inner attitude of the corporation reside in the management who acts for or on behalf of the corporation. Mens Rea is a provision that must be contained in corporate accountability. According to Ni Kadek and Kadek Agus (2020), corporations cannot attend in person at the trial. This is what makes the difference between natural legal subjects (humans) and corporate legal subjects.

The corruption law enforcement model currently applied is a model that prioritizes the corruption law enforcement system enforced in the police, such as conducting investigations and investigations. The corruption law enforcement model is different from handling / prosecuting other cases. Of course, there are differences because corporations are seen as legal subjects that have no similarity with personal human subjects, so their handling is different, considering that corporations cannot be subject to criminal sanctions in the form of body confinement, so the treatment of law enforcement is different, as regulated in Law No. 40 of 2007 concerning Limited Liability Companies and Law Number 5 of 1999 concerning Unfair Business Competition.

Corruption law enforcement exists or does not have a direction that makes corporations the subject of criminal acts of corruption. The interviewee's answer stated that the corporation has been accepted as a legal subject, so in Article 2 of the UUTPK, it is stated that the corporation can be subject to punishment when the corporation is used as a tool to commit criminal acts of corruption.

Making a corporation the subject of a criminal act of corruption will experience many difficulties in handling / prosecuting the case. There are so many because it is not as easy as in practice when determining a corporation as a suspect because it is easier for investigators to see the wrongdoing factor of the perpetrator than the corporation. It is very difficult to measure corporate error because the corporation is also controlled by the board of directors. If there is no board of directors, the corporation will not work, therefore it is more effective to punish the perpetrators, namely individuals, than corporations.

According to Jeane N. Saly (2015), in the development of criminal law education in Indonesia there are two schools of teachings. First (monistic), argues that criminal responsibility (as a subjective element in the perpetrator) is attached to the act against the law (objective element), while the second opinion (dualistic) separates it. In fact, the face of criminals in Indonesia has undergone significant changes since 1955, when the economic crime law was declared valid in Indonesia. In other words, in development during the Old Order period 1955-1967) and the New Order (1967-1998), where corporations played an important role in the quality of crimes that occurred in our country, including today during the Reformation Era that was already running.

Making corporations the subject of criminal acts of corruption is considered important and urgent to do. Everything that is related to criminal acts is urgent and must be acted upon, so there is no gap for crime, let alone corruption crimes that harm the state. The police view that making corporations the subject of criminal acts of corruption, then eradicating corruption crimes is more effective. In fact, it is effective considering that the human resources of law enforcers are still limited in implementing law enforcement against corporations and also the procedural law that regulates corporations does not exist, so for now it is not yet effective.

Based on the research of Patricia Garcia (2019), that corporations are used as the subject of criminal acts of corruption with zero or very little numbers compared to individual subjects because they are more effective in imposing sanctions on perpetrators in the form of people than corporations considering that criminal sanctions are more effectively applied to people because there is a body sentence / imprisonment which is different from that of corporations which are only subject to administrative sanctions.

Seeing the unbalanced condition, it is necessary or not a police chief policy to encourage and make corporations the subject of criminal acts of corruption. Of course, the legal breakthrough will definitely be carried out, but the police cannot arbitrarily have regulations in place first. In 2016 the Supreme Court of the Republic of Indonesia issued Supreme Court Regulation 13/2016 on Procedures for Handling Criminal Cases by Corporations. This regulation encourages and enforces corporations as subjects of criminal acts of corruption.

Based on the explanations that have been put forward by research sources and relevant reading materials / sources, it shows that the application of the corruption law enforcement model is that of the police, especially the Criminal Investigation Unit (corruption) applies a repressive model. A model that emphasizes the use of penal / criminal aspects. Criminal aspects that are suffering / devastating / oppressing / destroying powerfully and repressively are regulated in material criminal law. Criminal law which regulates the elements of a criminal act, criminal offense / responsibility as well as criminal and convictions.

However, the policies of the police and police officers have not effectively placed and enforced corporations proportionally as perpetrators of corruption. The police apparatus argued that corporations have different characteristics from individual legal subjects, it is difficult to prove the element of error and there is no criminal procedural law provisions that regulate the accountability of corporations as perpetrators of corruption. Another reason is that the different nature of corporations from humans makes the choices / forms of criminal sanctions limited.

The View of Criminalization on Corporations as Perpetrators of Corruption Crime

According to resource person Erna Dewi (2018) that corporations as subjects of criminal acts of corruption at the formulation / formulation stage (in abstracto) of legislation can be seen in Article 20 UUTPK. Resource persons Maroni (2018) stated that the provisions regarding corporations as subjects of corruption in UUTPK are deemed incapable of overcoming the modus operandi of corporations as perpetrators of corruption, for example the hidden practices of corporate business activities that harm state finances, but who can not be regulated responsible criminally. Law enforcement practices should be able to make corporate managers their legal targets.

Furthermore, the second question is asked which is still related to current criminal law enforcement policies concerning corporations as the subject of the criminal act of corruption at the application / application stage (in concreto) of the formulation / formulation of criminal acts of corruption. According to Erna Dewi, at the application stage the corporate management tends to be less than optimal. In corporations in Indonesia there are only a few court decisions. If counted less than 3 (three) court decisions, while in Maroni's opinion it is stated that the UUTPK has not explicitly regulated who is responsible if the corporation commits a criminal act of corruption. Law enforcement practices are only aimed at corporate management, while the suitcase itself is not affordable, an example of a case is a case involving Indosat, Ida and Iketut, (2020).

Based on the description above, it can be said that the criminal regulations regarding corporate criminal responsibility in the criminal act of corruption have been regulated in the laws and regulations on corruption, but are rarely applied in practice. The public prosecutor's reluctance to bring corporate perpetrators to court, because the punishment to be imposed on corporations is only in the form of fines which have less deterrent effect than capital punishment or imprisonment for individual perpetrators and difficulties in proving corporate “guilt” as part of an element against the law rather than proving. individual mistakes. Criminal experts still have different opinions, some state that it is only people (humans) who have faults, while others argue that corporations can also have mistaken.

The issue of corporate responsibility in criminal law has emerged, because so far, the responsibility for perpetrators of criminal acts in the Criminal Code has only been to people. According to Bismar Nasution (2011), crime can be identified by the incidence of harm, which then creates criminal liability. What then raises a debate is corporate liability considering that in the Criminal Code, only individuals with natural biological connotations (naturlijkee persons) are considered as subjects of criminal law. If if the activities or activities carried out for and on behalf of a corporation are proven to cause losses and must be given sanctions, who will be responsible? Is it the corporation itself or the management?

The formulation of corporate responsibility in UUTPK is not easy to apply, because by making a corporation (a legal entity) the subject of a criminal act, the criminal system and its punishment should also be corporate-oriented. This means that there needs to be a reformulation of criminal regulations:

1. When did the corporation commit a criminal act and when was it accounted for. Because so far there have been policies that have formulated and some have not formulated them in statutory regulations.
2. Who can be accounted for, some formulate it and some are not. For the future, the legislative policies regarding who can be accounted for in the corporation must be strictly regulated.
3. Types of sanctions must be reformulated clearly and in detail, including the types of penalties in the form of basic crimes, additional penalties and disciplinary measures as well as the types of sanctions from these crimes. Including the choice of punishment model, namely whether the punishment imposed on corporations is regulated differently from the type of sanction for the subject of a criminal act in the form of "human" or whether it will be separated, meaning that special punishment for corporations is regulated separately.
4. The formulation of sanctions must also be clear and consistent, so that they can be applied to corporations.
5. If in the future, corporations are subject to criminal acts in general, and are regulated in the Criminal Code, it is necessary to have criminal regulations that apply in general to corporations, Dwidja (2012).

The logical consequences of the position of the corporation as a legal entity, have an effect on criminal acts that can be committed by the corporation, there are several exceptions. In this regard, Barda Nawawi Arief (1990) states, although in principle corporations can be held accountable to the same as individuals, there are some exceptions, namely:

1. In cases which by nature cannot be committed by a corporation, for example bigamy, rape, or perjury.
2. In cases where the only punishment that can be imposed may not be imposed on the corporation, for example imprisonment or capital punishment.

In the Netherlands it is stipulated that a legal entity in criminal law can commit a criminal act, therefore it can be prosecuted and sentenced, but through three stages regarding the recognition of a legal entity as a subject of criminal law:

1. First Stage: This stage is characterized by efforts so that the nature of the criminal act committed by a legal entity is limited to individuals (naturlijk persoon), so that if a criminal act occurs within a legal entity environment, a criminal act is deemed to have been committed by the law enforcement officials. In this stage, the principle of "non-potest delinguere university" applies, namely that a legal entity cannot commit a criminal act. Accountability here is only related to the obligation to maintain that is carried out by the management.
2. Second stage: This stage states that a legal entity cannot commit a crime, but the responsibility has been borne by the management of the legal entity. The specific formulation for said legal entity is: If a criminal act is committed by or because of a legal entity, the criminal charges and criminal penalties must be imposed on the management. So in this case people take the attitude that it is as if a legal entity can commit a real permanent criminal offense, the person who commits the act is a human being as its representative.
3. Third Stage: This stage is the beginning of the direct responsibility of a legal entity, cumulatively, legal entities can be accounted for according to criminal law in addition to them as the giver of their orders who as the giver of orders or givers of leadership who have actually played a role in the crime. This happened first for "ondering strafrecht", namely the decision to control prices from 1941 tofu, then in "Wet op de Economische Delicten" (the 1950 Economic Crime Law).

CONCLUSIONS AND SUGGESTION

Types of criminal sanctions that are effective against corporations as perpetrators of criminal acts of corruption against corporations as perpetrators of criminal acts of corruption must include options for criminal sanctions and / or disciplinary action as additional crimes which alternatively and or cumulatively can be imposed against the corporation. Liability for corporate crimes in Indonesia is not regulated in the Criminal Code, but is scattered in various laws. The Criminal Code that was in effect at that time (in the Dutch East Indies) was the 1886 KUHP which was Wetboek van Strafrecht voor Nederlandsch Indie, also in effect in the Netherlands as a substitute for the Penal Code that was in effect previously. According to the founder at that time, it was best for the Dutch East Indies to apply only one KUHP, which applied jointly to the European and Indonesian (Bumiputera) and East-Foreign groups. This means that the perpetrators of criminal acts of corruption committed by corporations are crimes that are systematic in nature and can have a mass victim impact. Therefore, corporate accountability will benefit from creating a deterrent effect on corporations not to be involved in criminal acts of corruption.

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