In Criminal Law Formulation Policy Management of Corruption Criminal in Indonesia

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Abstract: Indonesia as a sovereign state, has the ideals of creating general welfare as the primary basis for any policy makers, including legislative policy to constantly seek to improve people's lives. This is a constitutional right of every citizen, however, the desired goals rather late diterjal corruption that become mental illness menghempit Indonesian society. And these days continues to grow very rapidly, to damage the joints of the nation. Corruptions are not only detrimental to the finances or the economy of the country, but also damage the economy of the people, as well as being a threat to national and international stability. Therein required for the formulation of policies specifically in the field of law to tackle criminal crimes occurring in the present. On this condition, this study focused on two main points: how the policy formulation of the law against the rules of criminal law on corruption issues as stipulated in the legislation sdang current and pembaharuanya the legal system in force in the future.

The study on this issue using normative juridical approach, with the conceived law as the rule of the norm and the basis for human behavior, and the main source is a matter of legislation in force, because the life when viewed from the juridical, sociological and normative for the prevention of corruption in Indonesia, there are still weaknesses side. This study is required in order to reform the existing legal system in order to suppress criminal acts that could harm the state. The element of "harming the state". Implies a state's rights protected by the state in which all citizens are in it, the conception of thought is directed to harmonize rules of criminal criminalize corruptions both the Criminal Code as a primary source and rule of law that regulates the crime of corruptions , It is considered necessary for the improvement of our existing system for the life of the upcoming legal institutions.

Keywords: policy formulation, for the Prevention, corruption

I. INTRODUCTION

The establishment of an Indonesian state with a noble purpose, namely to encourage the creation of public welfare in the umbrella of the Unitary State of the Republic of Indonesia based on Pancasila. The objectives and ideals are reflected in the opening of the 1945 Constitution of the Unitary State of the Republic of Indonesia in the fourth paragraph (four) mentioned, then than that to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice, Welfare for all people is the main foundation for every policy maker, including legislative policy being its main task. The aim is to improve the standard of living of the people, which is basically a constitutional right of every Indonesian citizen. The welfare of the people of Indonesia today, is merely a dream, without being accompanied by real efforts by state administrators in carrying out the mandate of the constitution. One of the concrete actions is by formulating a good legislation, aimed at protecting the entire nation and spilling blood from all abuses including arbitrariness of people's economic rights.

Protection of all nations is an absolute thing, but followed by a good foundation and legal framework, then the applicable law is absolutely realized, not only with the words "protecting the whole nation and spilling blood" if it turns out that there is still suffering felt by the people in the form of imbalances in economic rights and reflecting the inhumanity of all the people of Indonesia. This condition of disability is created by a system of government that is not socially just for all the people of Indonesia, because it still allows for the existence of government practices in which power is exercised arbitrarily and does not take sides with the people. It is necessary to elaborate in more legal detail, so that the constitutional obligations are truly carried out properly, by creating government practices that are open, transparent and always responsible for the interests of the community at large, which is the real prosperity for the wider community based on the principles of social justice based on the Almighty Godhead. Thus protecting all of the Indonesian people and all of Indonesia's bloodshed can also mean hard and real efforts for the liberation of all the Indonesian people from real suffering. To realize these noble ideals, what is needed is a good legal system for the eradication of criminal acts of the corruption that manifests as the welfare of all Indonesian people, for a renewed legal system, a guideline for the Implementation of a Clean and Corruption Free Country, Collusion and Nepotism as desired in Law Number 28 of 1999.

In the law contains the principles or principles of legal certainty, the Order of State Administration, Public Interest, Openness, Proportionality, Professionalism, and Accountability, as described in the explanation of Article 3 as follows: (1) Principle of legal certainty, namely the principle a legal state that prioritizes the basis of legislation, propriety and fairness in every policy of the State Administration; (2) The Principle of Orderly State Administration, namely the principle that becomes the basis of order, harmony and balance in the control of State Administration; (3) Principles of Public Interest, namely principles that prioritize public welfare in an aspirational, accommodative and selective manner; (4) Principle of Openness, namely the principle that opens itself to the right of the community to obtain correct, honest and non-discriminatory information about the administration of the state while taking into account the protection of personal rights, groups and state secrets; (5) Principle of Proportionality, namely the principle that prioritizes the balance between the rights and obligations of the State Administrator; (6) Principles of Professionalism, namely principles that prioritize expertise based on a code of ethics and the provisions of applicable laws and regulations; (7) Accountability Principle, which is the principle which determines that every activity and end result of the activities of the State Administrator must be accountable to the public or the people as the highest holder of state sovereignty in accordance with the applicable legislation.

Guidelines regarding the Implementation of a Clean and Corruption-Free Country Collusion Nepotism is important and very necessary to avoid the practices of Collusion, Corruption and Nepotism not only involving officials but also their families and cronies, which if left unchecked, the Indonesian people will be in a very disadvantaged position. According to Marzuki Darusman, the spread of Corruption, Collusion and Nepotism has become so widespread that it can be said to be a corrupt radical. The practices of Corruption, Collusion and Nepotism itself are the provision of facilities or preferential treatment by government officials / State-Owned Enterprises / Regionally-Owned Enterprises to an economic unit / legal entity owned by related officials, relatives or cronies. So if these practices remain allowed, the people as the owners of state sovereignty do not get their constitutional rights, namely the right to justice and prosperity. To better guarantee the implementation of clean and free corruption, collusion and nepotism, the Law Number 31 of 1999 was established as updated by Law Number 20 Year 2001 concerning the Eradication of Corruption Crime, in lieu of Law number 3 of 1971.

The birth of this law is expected to accelerate the growth of people's welfare, with a response to the evil nature contained in corruption. Corruption is an act that can not only harm the country's finances but also can cause losses to the people's economy. Barda Nawawi Arief argues that corruption is a very despicable act, damned and highly despised by most people; not only by the people and nation of Indonesia but also by the peoples of the nations of the world. Therefore, it should be, as a nation that has the spirit to create prosperity equally and fairly able to avoid any form of corruption. Simple and unconscious forms of corruption often carried out by certain people are expected to be a common enemy that must be suppressed and eliminated from the surface of Indonesia. The forms of corruption intended by Syed Hussein Alatas as quoted by Nyoman Serikat Putra Jaya have divided them into 7 types of corruption, namely:

1. Transactive corruption (transactive corruption). Here shows the reciprocal agreement between the giver and the recipient for the benefit of both parties and actively pursues the benefits of both;
2. Extortive corruption is a type of corruption where the giver is forced to bribe to prevent losses that are threatening him, his interests, or the people and things he values;
3. Investment corruption is the behavior of victims of corruption with extortion. Corruption is in the framework of self-defense, such as the provision of goods or services without direct linkages with certain benefits, in addition to the benefits imagined to be obtained in the future;
4. Nepotistic corruption is the unauthorized appointment of friends or relatives to hold positions in government, or actions that give treatment that prioritize in the form of money or other forms, to them, in contravention of the norms and regulations apply;
5. Defensive corruption here the giver is innocent but the recipient is guilty. For example: a businessman who cruelly wants someone's property, does not sinfully give to the ruler a portion of the assets to save the rest of his assets;
6. Autogenic corruption is a form of corruption that does not involve other people and the perpetrators are only alone;
7. Supportive corruption here does not directly involve money or other forms of compensation. The actions taken are to protect and strengthen existing corruption.

These forms of corruption, especially in the form of bribery, are a very acute disease for the Indonesian people, because almost every bribery of public service institutions has become commonplace, which in the end there are difficulties in detecting corruption, and prevention is also increasingly difficult, and corruption continues to grow, spreading in every aspect of life. It should be noted and pondered what Habib-ur-Rahman Khan said that "the modern world is fully aware of this acute problem.

II. RESEARCH METHODS

The method used in this study is empirical juridical research with the nature of descriptive research that uses primary and secondary data sources with library research techniques using primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material is legal material whose contents are related to government regulations or other institutions that have authority. Secondary legal sources are materials in the form of books and other printed materials, as well as software, which are the needs of this research.

III. RESULTS AND DISCUSSION

A. legislative policy for the Eradication of Corruption Crimes

The development of corruption in Indonesia is still high, while the eradication is still very slow, Romli Atmasasmita stated that corruption is also related to power because with that power the authorities can abuse their power for their personal, family and crony interests. Agreeing with Romli Atmasasmita, Nyoman Serikat Putra Jaya explained that it must be acknowledged, currently Indonesia in accordance with the results of research conducted by Transparency International and Political and Economic Risk Consultancy based in Hong Kong, always occupies a vulnerable position as far as corruption is concerned. It is recognized that corruption in Indonesia has been systemic and endemic so that it not only harms state finances, but also violates the social and economic rights of the community at large. Further said by Nyoman Serikat Putra Jaya, corruption in Indonesia has seeped into all aspects of life, to all sectors and all levels, both at the central and regional levels, the cause of which is that corruption has been allowed to take place decades ago without adequate action taken from legal eye. So it seems clear, both expert opinions directly or indirectly that corruption cannot indeed be released from power. Robert Klitgaard by basing Webster's Third New International Dictionary states that corruption is an invitation (from a political official) with undue considerations (such as bribery) to commit violations.

Evi Hartanti emphasized that, corruption is a symptom in which officials, state agencies misuse authority with bribery, forgery, and other irregularities. Here is illustrated the opportunity and closeness of corruption with a position in the government. Because corruption is very much related to power, corruption can cause a very detrimental effect on the people. Robert Klitgaard details a number of things caused by corruption including:

1. Bribery causes funds for the construction of low-cost housing to fall into the hands of the unauthorized.
2. The Commission for those responsible for the procurement of goods and services for the regional government means that the contract falls into the hands of a company that does not meet the requirements.
3. The police often because they have been bribed pretend not to know if there is a crime that should be investigated.
4. Local government employees use community facilities for personal gain.
5. To obtain permits and licenses, residents must give facilitation payments to officers and sometimes even have to give bribes so that the permit or license can be issued.
6. By giving bribes, citizens can do whatever they want to violate the rules of work safety, health regulations, or other regulations that pose a danger to the rest of the community.
7. Local government services are provided only if residents have paid an additional amount of money outside the official fee.
8. Decisions regarding land use in cities are often influenced by corruption.
9. Tax officers extort citizens, or more conspire with taxpayers, provide tax breaks to taxpayers in exchange for bribes.

This condition seems to be very in line with the spirit of lawmaking, namely through legislative policy by stipulating law number 31 of 1999 as amended by law number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in which materiel. This is as formulated in a general explanation which confirms that in order to reach various modus operandi of state finance deviations or increasingly sophisticated and complex state economies, the criminal acts regulated in this law are formulated in such a way that includes actions that enrich themselves or other people or a corporation "against the law" in formal and material terms. With this formulation, understanding against the law in criminal acts of corruption can also include despicable acts which, according to the feeling of justice, must be prosecuted. In addition to basing on unlawful nature, law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Corruption Crime also formulates acts of corruption as Formil offenses, namely offenses whose formulation is emphasized on prohibited acts . The formulation of the formal offense can be seen in the word "can" before the phrase harms state finances or the economy of the country, this shows that the existence of a criminal act of corruption is sufficient to fulfill the elements of action which are formulated not with the emergence of consequences. So corruption does not always wait for an effect, but as long as there is a potential for the state to be harmed by actions that are against the law, it can be said that there is a criminal act of corruption.

The affirmation of the formal offense is also reflected in Article 4, which affirms the return of state financial losses or the state's economy does not eliminate the criminal perpetrators of criminal acts as referred to in Article 2 and Article 3. However, the awareness of the importance of violating the material law must fail through the Constitutional Court ruling Number 003 / PUU / 2006, which states that the unlawful nature of the material contradicts Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, so that the material against the material law is considered not to have binding legal force. In addition to the issue of the Constitutional Court's ruling, the formulation of criminal acts of corruption is still partial and spread in several laws, while the imposition of sanctions such as the death penalty is only aimed at certain circumstances. With the aforementioned problems, it is necessary to consider the formulation of criminal law policies in the context of overcoming corruption.

B. The Need for Penal Policy to Prevent Corruption Crime

As a crime that endangers social life, corruption is always associated with the culture or social conditions of the community. According to Robert Klitgaard, the main cause of corruption is the giving of gifts which are already customs. Along with this opinion, Umi Kulsum argues that the crime of corruption in Indonesia is an act that has taken root in various aspects of human life, so that it seems as if it is considered a culture. The term prize which later developed into bribery (as if it were cultured) is a very dangerous thing for further corruption development, so then there is an adage "if a person is suspected of corruption and then examined by law enforcement, the law enforcer has started corruption when the examination is carried out, because on the inspection there was a bribe against the examiner.

This is suspected as a culture that grows due to the mental state officials who are not good. The condition is certainly not without reason, because according to Koentjoroningrat, one of the mental characteristics of Indonesian people is the attitude to achieve goals as soon as possible, without much willingness to try step by one step It is this mental attitude which then encourages state administrators or precisely law enforcement to carry out non-commendable actions, namely bribery. This definition shows that corruption as an evil behavior is not a culture, it can even be said that corruption is essentially an anti-cultural act (anti good habits that should be behavior that can be inherited from generation to generation). As a crime, in essence corruption is produced from a learning process, according to Sutherland, through his famous theory, namely the theory of differential association which confirms that a crime (including corruption or in the language White collar Crime) is a crime obtained by studying, with propositions:

a. Crime behavior is negatively learned behavior which means that this behavior is not inherited).
b. Crime behavior is learned in interaction with others in a communication process. communication can mainly be verbal or use sign language).
c. The most important part of the process of studying this crime behavior occurs in intimate personal groups. Negatively, this means that communication is not personal, relatively does not have an important role in terms of the occurrence of crime).
d. If crime behavior is learned, what is learned includes (a) the technique of committing a crime, (b) certain motives, impulses, justification reasons including attitudes).
e. The motives and encouragement are learned through the definitions of legal regulations. In a society, sometimes someone is surrounded by people who simultaneously see what is regulated in a legal regulation as something that needs to be considered and obeyed, but sometimes he is surrounded by people who see the rule of law as something that gives an opportunity to commit crime).
f. a person becomes a delinquent because of access to thought patterns that see the rule of law more as an opportunity for crime to be committed than those who see the law as something that must be considered and obeyed).
g. Differential Association varies in terms of frequency, time period, priority, and incensity).
h. the process of studying the behavior of crimes obtained through relations with patterns of crime and anti-crime involving all the mechanisms that normally occur in each learning process in general).
i. Meanwhile crime behavior is a statement of general needs and values, but this is not explained by the general needs and values, because non-crime behavior is also a statement of the same needs and values)

Further developments, corruption is not only a crime that can be committed by the White collar Crime but also by professionals, which according to Muladi, includes accountants, engineers, legal counsel, doctors and so on and this criminal category always involves his expertise in action, both in form of intentional, negligence, dolus eventualis (a kind of recklesness), or in the form of disciplinary violations. Furthermore, according to him, this crime is very interesting because several dimensions of thought are as follows: (1) perpetrators of crime are members of legitimate professional organizations. (2) by other members of the organization, their actions are considered beyond the pale and unacceptable forms of behavior. (3) however, their actions are often carried out conspiring with other professions. (4) perpetrators always consider themselves (self concepts) not criminals, because they carry out services to legitimate and commendable public interests. (5) crimes committed are usually difficult to detect or if prosecution can be detected it requires proof that is not easy in addition to its nature as an ambulance case. (6) often members of other professional organizations in certain cases are ambivalent.

To ward off corruption crimes as a crime that is dangerous for social life, a culture change is needed, however, cultural change is a very big change and not an easy job, even according to Satjipto Rahardjo these changes require careful study and research. These changes can also be made through a restructuring of the criminal law system which regulates corruption, which is expected to be able to influence the attitude of the Indonesian people without exception.

Changes in culture through structuring the law by Soerjono Soekanto are referred to as social engineering or social planing, namely ways to influence the community with a regular and planned system. Social engineering is closely related to the function of law, according to D. Schaffmeister that the law has a creation function if the legal norms deviate from social norms and thus humans will behave differently than before. To create social change through structuring the legal system, good social engineering is needed, where the law to be used must truly reflect protection against the public interest. As an illustration, this is why efforts are needed through reasoning policy. According to Marc Ancel, reasoning policy is a science that has a practical purpose to enable positive legal regulations to be better formulated and to provide guidance not only to legislators, but also to courts that apply laws and also to administrators or implementers of decisions. court.

This definition is very identical with the meaning of "straf rechts politiek" defined by A. Mulder as a policy line to determine: a). how far the applicable criminal provisions need to be changed or renewed; b). what can be done to prevent criminal acts. In line with the opinion of A. Mulder, Sudarto formulated the politics of law as an attempt to realize the rules that are good in accordance with the situation and situation at a time. Barda Nawawi Arief also emphasized that, studying criminal law policies basically studies the problem of how best criminal law should be created, structured and used to regulate / control human behavior, especially to combat crime in order to protect and prosper society.

In connection with changes or legal reforms aimed at the welfare of the community, it is inseparable from efforts to criminalize, namely the process of determining a person's actions as an act that can be punished. This process ends with the formation of a law in which the act is threatened with a sanction in the form of criminal. According to Sudarto, the criminalization must have criteria:

a. the use of criminal law must pay attention to the objectives of national development, namely to create a just and materially and spiritually prosperous just society based on Pancasila; In connection with this, (the use of) criminal law aims to combat crime and impose a counter-action on the remedy itself, for the welfare and protection of the community
b. actions that are attempted to be prevented or dealt with with criminal law must be "undesirable actions", namely actions that bring harm (material and or spiritual) to citizens;
c. the use of criminal law must also take into account the principle of "costs and results";
d. the use of criminal law must also pay attention to the capacity and capability of the work force of law enforcement agencies, namely that there should be no oversight of duties.

In line with what Sudarto said, according to Bassiouni, the decision to criminalize and decriminalize must be based on certain policy factors that consider various factors, including: 1) the balance of the facilities used in relation to the results to be achieved; 2) cost analysis of the results obtained in conjunction with the objectives sought; 3) assessment or assessment of the objectives sought in relation to other priorities in allocating human resources; 4) the social influence of criminalization and decriminalization related to (in terms of) secondary effects.

Thus, the ultimate goal of legal renewal is to tackle crime and public welfare, for which the placement of public interests or community interests must be a top priority, with reasoning policy there will be "legal smoothing" which according to Scholten legal refinement aims to use provisions that are public more precisely and fairly. Moreover, the issue of corruption greatly affects the economic interests of the community, so justice is something that must be realized in the interests of the public or the public. In line with this, Baharudin Lopa states that preventing collusion and corruption is not so difficult, if we consciously place public interest above personal and group interests.

Good legal arrangement through reasoning policy or legal politics by taking into account the criteria for criminalizing as described above, it is hoped that social inequality will no longer occur. According to Indriyanto Seno Adji, that the quality and typology of crime is increasing in a country due to economic development and development Of course this increase in development is also a development that is not well planned so as to cause social inequality. These social inequalities then give birth to social injustices felt by society in general and ultimately give birth to crime. In order for social order to run in accordance with the foundation of social justice, it is necessary to have changes to the formulation of criminal acts concerning corruption as stipulated in Law No. 31 of 1999 jo. Law 20 of 2001 insofar as it meets the needs of the community and aims to create public welfare or public welfare. In essence, public welfare will be easily achieved if corrupt behaviors can be prevented through better legal arrangements.

C. Policy on Criminal Law Formulation in the current Corruption Crime Response

1. Formulation of criminal acts of corruption and its scope based on the Indonesian Corruption Eradication Act

The policy on the formulation of criminal law for efforts to tackle the current criminal acts of corruption has actually experienced various changes in which the changes were made in view of the rapid development of corruption. In fact, according to some criminal or criminology experts or lawyers as previously explained, corruption is described as a disease which in its development not only damages or harms the country's finances and economy, but has exceeded those limits which are detrimental to the people's economy.

The development of corruption, especially in the scope of abuse of power and bribery, has mastered every aspect of people's lives, which in the end each society is faced with difficulties when dealing with state officials who should be able to serve every need of the community without having to pay to these officials. Such conditions then lead to legal policies regarding the corruption of developments in the direction of criminalization and decriminalization. Changes in criminal law policy for the prevention of criminal acts of corruption, thus developing rapidly in accordance with the needs of the community aimed at improving social welfare, are illustrated in the consideration of several laws regarding the eradication of criminal acts of corruption, for example as follows:

1. Consideration of Law Number 3 of 1971: a) that acts of corruption are very detrimental to the financial / economic state and hamper national development; b) that Law No. 24 Prp. In 1960 concerning Investigation, Prosecution and Corruption Criminal Investigations related to the development of the community was insufficient to be able to achieve the expected results, and therefore the law needed to be replaced.
2. Consideration of Law Number 31 of 1999: a) that criminal acts of corruption are very detrimental to the State's or the country's economy and hamper national development, so that it must be eradicated in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution; b) that the consequences of criminal acts of corruption that have occurred so far in addition to harming the state's finances or the country's economy, also hamper the growth and sustainability of national development that demands high efficiency; c) that Law Number 3 of 1971 concerning the Eradication of Corruption has no longer been in line with the development of legal needs in the community, because it needs to be replaced with the new Law on the Eradication of Corruption, so that it is expected to be more effective in preventing and eradicating criminal acts corruption.
3. Consider Law No. 20 of 2001: a) that corruption that has been widespread has not only been detrimental to state finances, but has also been a violation of the social and economic rights of the community at large, resulting in corruption it needs to be classified as a crime whose eradication must be done extraordinarily; b) that in order to better guarantee legal certainty, avoid the diversity of legal interpretations and provide protection for the social and economic rights of the community, as well as fair treatment in combating corruption, it is necessary to amend Law Number 31 of 1999 concerning Eradication of Criminal Acts Corruption; c) that based on the considerations as referred to in letter a and letter b, it is necessary to establish a Law concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. The consideration of the need for the formulation of criminal acts of corruption, as expressed in the considerations in the above legislation, shows the existence of concerns over criminal acts of corruption that have harmed state finances and hampered national development. then changes in the formulated corruption can be seen from the formulation of criminal acts of corruption in Article 1 paragraph (1)
4. Law Number 3 of 1971 as follows: a) the person who is against the law commits an act of enriching himself or another person, or an Agency, which directly or indirectly harms the state's finance and or the country's economy, or is known or it should be suspected by him that the act is detrimental to the state's finances or the country's economy; b) whoever has the purpose of benefiting himself or another person or an Agency, who misuses the authority, opportunity or means thereof because of his position or position, which can directly or indirectly be detrimental to the country's finances or the country's economy.

The formulation of corruption in Law No. 3 of 1971 laid corruption as material offenses. The consequence of this formulation is that corruption must be proven in advance whether it has harmed the country's finances or not. The formulation with this model resulted in the ineffectiveness of the handling of criminal acts of corruption, especially those carried out by state officials. The ineffectiveness of eradicating corruption was based on the formulation of material offenses, then gave birth to a new corruption eradication policy by formulating corruption as a formal offense. The principle of forming a law for the eradication of criminal acts of corruption also seems to be encouraged by the movement of criminal acts of corruption which not only harm the country's finances or economy but have damaged social rights and economic rights of the people. this condition then changed the criminal law policy, in which the criminal acts of corruption which were originally formulated based on material offenses were changed to formal offenses. This can be seen in Article 2 and Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crime acts as follows: Article 2 paragraph (1): Every person who violently violates an act enriches himself or another person or a corporation that can harm the state's finance or the country's economy. Article 3 Any person who aims to benefit himself or another person or a corporation, misuses the authority, opportunity or means available to him because of a position or position that can harm the state's finance or the country's economy.

Both formulations place corruption as formal offenses, where acts of corruption remain punished even if there is no loss to the country's finances or economy. This is in accordance with the explanation of Article 2 paragraph (1) of Law No. 31 of 1999 that the word "can" before the phrase "detrimental to the financial and / or economic state shows that criminal acts of corruption are formal offenses, namely the existence of criminal acts of corruption sufficiently fulfilled the elements of action which have been formulated not with the emergence of consequences. Corruption acts as formulated in Law Number 31 Year 1999 jo, Law Number 20 Year 2001, there are several scope of corruption, and according to Hendarman Supandji the scope is divided into 5 (five) groups, namely: 1). offense relating to losses of state finances. 2). Delegation groups related to bribery and gratuity. 3) Delegation groups related to embezzlement in office, 4). Delegation groups associated with extortion in office, 5). Delegation groups related to chartering, suppliers and partners . In detail, these groups can be seen in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 of 2001 concerning Eradication of Corruption Crime, as follows:

1. Groups of offenses in the event of loss of State finances, This group is as confirmed in Articles 2 and 3 (as described above).
2. Delegation groups related to bribery and gratuity.

Included in this group are as outlined in: Article 5 paragraph (1) letter a) give or promising something to civil servants or state administrators with the intention that the civil servants or organizers of the state do or do not do something in their positions, contrary to their obligations, b) give something to public servants or state administrators because or relating to something that is contrary to obligations, carried out or not done in his position.

Based on Article 5 (paragraph 2) For civil servants or state administrators who receive gifts or promises as referred to in paragraph (1) letter a or letter b, Article 6 paragraph (1); a), giving or promising something to the judge with the intention of influencing the case decision handed over to him to be tried; or b). give or promise something to someone who, according to the provisions of legislation, is determined to be an advocate to attend a court hearing with the intention of influencing the advice or opinion to be given in connection with a case submitted to the court for trial. Article 6 paragraph (2) For the judge who receives the gift or promise as referred to in paragraph (1) letter a or the lawyer who receives the gift or promise as referred to in paragraph (1) letter b, shall be punished with the same criminal offense as referred to in paragraph (1)

Article 11 A state employee or state official who receives a gift or promise even though it is known or reasonably suspected, that the gift or promise is given because of the power or authority related to his position, or in the mind of the person giving the gift or promise is related to his position. Article 12 civil servants or state administrators who receive gifts or promises, even though it is known or reasonably suspected that these gifts or promises are given to mobilize to do or not do something in their position, which is contrary to their obligations; a) a civil servant or state administrator who receives a prize even though it is known or reasonably suspected that the gift is given as a result or caused by having done or did not do something in his position that is contrary to his obligations; b) a judge who receives a gift or promise, even though it is known or reasonably suspected that the gift or promise is given to influence the case decision handed over to him for trial; c) someone who according to the provisions of the legislation is determined to be an advocate to attend a court hearing, receive a gift or promise, even though it is known or reasonably suspected that the gift or promise to influence the advice or opinion to be given, in connection with the case submitted to the court for tried.

Article 12 B Every gratuity to a civil servant or state organizer is considered as giving a bribe, if it relates to his position and which is contrary to his obligations or duties. Article 13 Every person who gives gifts or promises to civil servants bearing in mind the power or authority attached to his position or position, or the giver of the gift or promise is deemed to be attached to the position or position.

3. The offense group associated with embezzlement in office

The offense in the scope of embezzlement in office is formulated in the following articles: Article 8 civil servants or persons other than civil servants who are assigned to run a public office continuously or for a while, deliberately embezzling money or securities held for their position, or allowing money or securities are taken or darkened by other people, or help in carrying out these actions. Article 9 Civil servants or persons other than civil servants who are given the task of running a public office continuously or for a while, deliberately falsifying books or lists specifically for administrative examinations. Article 10, civil servants or persons other than civil servants who are given the task of running a public office continuously or for a while, intentionally: a) embezzling, destroying, damaging or making usable goods, deeds, letters, or lists that are used to convince or prove before an authorized official, who is controlled because of his position; or b) allowing other people to eliminate, destroy, damage or make use of these items, deeds, letters or lists; or, c) help other people eliminate, destroy, damage or make use of these items, deeds, letters or lists.

4. Delict groups related to acts of extortion in office

Extortion in the position as referred to in the law on corruption, is formulated in the following article: Article 12, a) Civil servants or state administrators with the intention of benefiting themselves or others against the law, or by abusing their power forcing someone to give something, pay, or accept payment by piece, or to do something for himself; b) civil servants or state administrators who at the time carry out their duties, request, receive, or deduct payments to other civil servants or state administrators or to the general cash, as if the public servants or other state administrators or the general cash have debts to them, even though it is known that this is not a debt; c) civil servants or state administrators who, when carrying out their duties, ask for or accept jobs, or hand over goods, as if they were a debt to themselves, even though it is known that this is not a debt;

5. Delict groups related to chartering, suppliers and partners

Regarding criminal acts of corruption relating to chartering, suppliers and partners, formulated in Article 7 and Article 12, which confirms that: Article 7, a). contractor, a building expert who at the time of building, or a building material seller who, at the time of submitting building materials, commits fraudulent acts that could endanger the security of people or goods, or the safety of the state in a state of war; b) every person in charge of supervising the construction or surrender of building materials, intentionally allows fraudulent acts as referred to in letter a; c) any person who at the time of delivering goods for the needs of the Indonesian National Army and / or the National Police of the Republic of Indonesia commits fraudulent acts that could endanger the safety of the state in a state of war; or d) everyone who is in charge of supervising the supply of goods for the Indonesian National Army and or the National Police of the Republic of Indonesia deliberately allows fraudulent acts as referred to in letter c. Article 7 paragraph (2) For people who receive the surrender of building materials or people who receive the delivery of goods for the Indonesian Armed Forces and or the National Police of the Republic of Indonesia and allow fraudulent acts as referred to in paragraph (1) letter a or c, be punished with criminal offenses the same as referred to in paragraph (1). Article 12 civil servants or state administrators who, at the time of carrying out their duties, have used state land on which they have the right to use, as if in accordance with laws and regulations, have disadvantaged the rightful person, even though he knows that the act is contrary to the laws and regulations; or a) civil servants or state administrators, directly or indirectly, deliberately participate in chartering, procurement, or leasing, which at the time of the act, for all or part of them is assigned to manage or supervise it. In more detail, Barda Nawawi Arief details the scope of the criminal acts of corruption as follows:

1. Law Number 3 of 1971: Article 1: (1) a), Whoever: is against the law; enrich yourself, others, or a body; which directly or indirectly harms the country's finances and or economy; or it is known or deserved to be suspected by him that the act is detrimental to the country's finances or economy. b) Whoever: for the purpose of benefiting themselves, others, or a body; misusing the authority, opportunity, or means available to him because of a position or position that directly or indirectly can be detrimental to the country's finances and or economy. c) Whoever: commits a crime in Article 209, 210, Article 387, 388, Article 415 up to article 420, Article 425 and Article 435 of the Penal Code; d) Whoever: gives a gift / promise; to Civil Servants in Article 2; keeping in mind the power or authority attached to his position or position, or the giver is deemed inherent in his position or position. e) Whoever: without reasonable reason; in the shortest possible time after receiving a gift or appointment; given to him as mentioned in Article 418, 419, and Article 420 of the Criminal Code; not report the gift or promise to the authorities. f) Anyone who conducts an experiment or agreement to commit a crime is in paragraph (1) a, b, c, d, e, f of this article.

2. Law Number 31 of 1999: Corruption Crime (Chapter II, Article 2 to Article 20); 1) Article 2 (derived from Article 1 sub-article 1a of Law Number 3 of 1971): Everyone: who is against law, committing acts enriching oneself, others or corporations, which can harm the country's finances or economy. 2) Article 3 (originating from Article 1sub 1b of Law Number 3 of 1971): Everyone: for the purpose of benefiting himself, another person, or a corporation, misusing the authority, opportunity or means available to him because of his position or position, can harm the country's finances or economy. 3) Article 4 (new article): the return of financial or economic losses to the state does not eliminate the punishment of Article 2 and Article 3. 4) Article 5 (originating from Article 1 sub 1c of Law Number 3 of 1971 jo. Article 209 of the Criminal Code). 5) Article 6 (originating from Article 1sub 1c of Law Number 3 of 1971 jo. Article 210 of the Criminal Code). 6) Article 7 (derived from Article 1 sub-section 1c of Law Number 3 of 1971 jo. Article 387 and Article 388 Criminal Code 7) Article 8 (derived from Article 1 sub 1c of Law Number 3 of 1971 jo. Article 415 of the Penal Code). 8) Article 9 (originating from Article 1 sub-section 1c of the Act Number 3 1971 jo. Article 416 of the Criminal Code). 9) Article 10 (originating from Article 1 sub 1c of Law Number 3 of 1971 jo. Article 417 of the Criminal Code). 10) Article 11 (derived from Article 1sub 1c of Law Number 3 of 1971 jo. Article 418 of the Criminal Code. 11) Article 12 (derived from Article 1 sub-section 1c of Law Number 3 of 1971 jo. Article 419, Article 420, Article 423, Article, 425 and Article 435 of the Penal Code). 12) Article 13 (originating from Article 1 sub-section 1 of Law Number 3 of 1971): 13) Article 14 (new article): violation of the provisions of a law expressly declared as Corruption Crime, the provisions of this law apply (Act -Anct Number 31 of 1999). 14) Article 15 expansion of Article 1 sub 2 of Law Number 3 of 1971, namely not only "trial" and "bad agreement" but also "assistance is punished with the perpetrators of Corruption Crime. 15) Article 16 (new article): every person outside the territory of the Republic of Indonesia; who gives assistance, opportunities, facilities, or information for the occurrence of a Criminal Act

3. Law Number 20 Year 2001, Changing the formulation of Corruption Crimes in Article 5 up to Article 12 of Law Number 31 Year 1999 by not referring to the articles of the Criminal Code, but directly mentioning the elements of the offense concerned, Inserting / adding articles -new article into Law No. 31 of 1999: 1) Article 12 A (1) Criminal provisions in Article 5 to Article 12 do not apply to Corruption Crimes which are worth less than Rp 5,000,000.00 (five million rupiahs)) (2) Corruption Crime, which is worth less than Rp. 5,000,000.00 (five million rupiahs), shall be sentenced to a maximum of 3 (three) years of imprisonment and a fine of a maximum of Rp. 50,000,000 (fifty million rupiahs). 2) Article 12 B (gratuities) :(1) Gratification to a Civil Servant / State Operator is considered giving a bribe, if: related to his position, and contrary to his obligations / duties with the following provisions: a. the value is Rp. 10,000,000.00 (ten million rupiahs) or more where proof (as not a bribe) is with the recipient (defendant); b. the value is less than 10,000,000.00 (ten million rupiahs), then proof (as a bribe) in the public prosecutor.

The scope of corruption is quite extensive, as stipulated in Number 31 of 1999 jo. Law Number 20 of 2001, in its essence is quite good. However, the Law still has juridical problems in the formulation of criminal acts of corruption, where the problems make it difficult for the operation of the Criminal Code as the parent system in bridging the eradication of criminal acts of corruption. These problems include: 1). Law Number 31 Year 1999 jo Law Number 20 Year 2001 concerning Corruption Crime has not yet been formulated juridical boundaries or juridical understanding regarding criminal acts of corruption concerning conspiracy, while the evil consensus contained in the Criminal Code Article 88 is a term regulated in Chapter IX is impossible to operationalize considering Article 103 of the Criminal Code requires that the provisions in Chapters I to Chapter VIII apply to acts which are subject to criminal provisions under other laws. Likewise regarding the term "assistance" which is a juridical term, it has not been regulated in this law. 2). Law Number 31 Year 1999 jo Law Number 20 Year 2001 concerning Corruption Crime does not include offense qualifications whether as "violations" or "crimes" so that the Criminal Code cannot be operationalized against corruption in particular regarding trial offenses, because in the Criminal Code only trials against crimes that can be punished.

In addition to these juridical issues, according to Barda Nawawi Arief, in the Law the eradication of acts of corruption makes the crime of money laundering a crime of corruption. This assertion was conveyed at the National Seminar "to welcome the renewal and establishment of a law to eradicate corruption, collusion and nepotism", in cooperation with the Faculty of Law, General Sudirman University and Bappenas, in Baturaden, Purwokerto, January 30, 1999, when discussing plans to amend the Number Law. 3/1971 (which later became Law Number. 31/1999), and at the National Seminar on "Eradicating and Mitigating Corruption with the Reversed Proof System", Seblas Maret University Law School, Quality Hotel, Surakarta, July 10, 2001, while discussing the Draft Act Amendment to Act Number. 31/1999 (which later became No. 20/2001). According to him that: In the Number Law . 3/1971 and Law No. 31/1999 there are only two groups of corruption acts, namely: the TP-K group (Corruption Crime) and the TP-BDK group (Corruption Related Corruption). So there is no third group, which I call the term "Crime After Corruption" (abbreviated as "TP-SK"). In this third group it is proposed the inclusion of money laundering.

Based on the thoughts of Barda Nawawi Arief, corruption is not only in the case of acts or initial crimes, but also acts related to corruption and further actions, namely acts after corruption is committed, or the results of acts of corruption. Regarding the money laundering crime, it has been formally formulated in Article 2 of Act Number 25 of

2003 concerning Crime of Money Laundering, with the formulation as follows: The proceeds of a crime are Wealth Assets totaling Rp 500,000,000.00 (five hundred million rupiah) or more or equivalent value, which is obtained directly or indirectly from a crime: a. corruption; b. bribery; c. smuggling of goods; d. labor smuggling; e. immigrant smuggling; f. banking; g. narcotics; h. psychotropic; i. slave, female and child trade; j. illegal arms trade; k. kidnapping; l. terrorism; m. theft; n. referee

In the formulation, it is stated that assets totaling at least Rp. 500,000,000.00 (five hundred million rupiahs) or equivalent resulting from criminal acts of corruption and bribery (letter ad. B) as acts of money laundering. Corruption is essentially a form of financial crime. As an inter-crimes crime, money laundering will almost certainly be carried out or at least money laundering must be done immediately. Between corruption and bribery with money laundering there is a series of crimes, where corruption and bribery can be said as predicate offense while money laundering is a follow-up crime. Crimes and proceeds of these crimes can be categorized as a series of corruption that should be included in corruption.

Even further, UNCAC recommends that Money Laundering be included in the legislation of corruption, as reflected in the following Article 14 and Article 23: Article 14. Measures to Prevent Money Laundering), 1. Each State Party obligatory): (a) Establish a comprehensive internal regulation and supervision regime for banks and non-bank financial institutions, including individuals and legal entities that provide official or non-official services for remittances or value and, where appropriate, other bodies that are especially vulnerable to money laundering, within their authority, to detain and detect all forms of money laundering, which regime is obliged to emphasize the requirements for the customer and, as appropriate, identification of the recipient of the rights, document storage and reporting of suspicious transactions) (b) Without ignoring Article 46 of this Convention, ensuring that bodies are authorized g in the administrative, regulatory, law enforcement, and other fields aimed at eradicating money laundering (including, where appropriate under national law, judicial bodies) have the ability to cooperate and exchange any information at the national and international levels with conditions which is determined by its national law and, for that purpose, must consider the establishment of a financial intelligence unit that functions as a national center for the collection, analysis and dissemination of information about money laundering that may occur). 2. States Parties shall consider taking appropriate measures to detect and monitor the movement of cash and securities instruments that cross their borders, are subject to safeguards to ensure reasonable use of information and without blocking any legitimate capital movements. Such actions can include the requirement that individuals and business entities report large amounts of cross-border cash transfers and appropriate securities instruments). 3. States Parties shall consider carrying out reasonable and appropriate measures to require financial institutions, including money senders): (a) To include in forms for electronic transfers of funds and messages - related messages, careful and valuable information about their origin); (b) To store such information throughout the payment sequence; and) (c) To apply high accuracy to the transfer of funds that do not include complete information about their origins). Article 23. Washing of the Results of Crime regulates:

1. Each State Party must take, in accordance with the basic principles of its national law, legislative and other measures deemed necessary to establish criminal offenses, if done intentionally: (a) Conversion or transfer of wealth, knowing that (i) the wealth is the proceeds of the crime, for the purpose of hiding or disguising the origin of unauthorized wealth or helping people who are involved in carrying out the original crime to avoid the legal consequences of their actions); (ii) Concealment or disguise of the nature, source, location, release, movement or actual ownership of or rights relating to wealth, knowing that the wealth is the proceeds of crime). (b. Based on the basic concept of the legal system: (i) the acquisition, ownership or use of wealth, knowing, at the time of receipt that the wealth is the proceeds of crime); (ii) Participating in, relating to or conspiracy to commit, attempts to commit and assist, conspire, facilitate and encourage the implementation of any crimes committed in accordance with this Article).
2. For the purpose of implementing or applying paragraph (1) of this Article): (a) Each State Party shall endeavor to apply paragraph (1) of this Article in the broadest sense of original crime); (b) Each State Party shall include as origin crime at least a comprehensive series of criminal offenses established in accordance with this Convention); (c) For the purposes of sub-paragraph b above, original crimes include crimes committed both inside and outside the jurisdiction of the State Party concerned. However, crimes committed outside the jurisdiction of a State are original crimes if the act constitutes a criminal offense based on the national law of the State where the action is carried out and is a criminal offense under the national law of the State Party implementing or implementing this Article when such action carried out there); (d) Each State Party must submit a copy of its law that applies this Article and subsequent changes to the law or an explanation thereof to the Secretary General of the United Nations); (e) If required by the basic principles of the national law of a State Party, it can be determined that the crimes referred to in paragraph (1) of this Article do not apply to people who committed an original crime).

The affirmation of the UNCAC Convention in articles 14 and 23 is a sign that criminal law policy related to criminal acts of money laundering will be more effective if it is included as a criminal act of corruption which is a comprehensive series of crimes (comprehensive range of criminal offenses). These include those who participate, conspiracy, trials, assistance, advocacy (Participation in, association with or conspiracy to commit, attempts to commit and proceed, abetting, facilitating and counseling the commission of any offenses).

D. Spread the formulation of criminal acts in various laws and regulations in Indonesia.

In addition to juridical issues as outlined above, there are also problems regarding the scope of corruption that is spread in other legislation outside of Law Number 31 Year 1999 jo. Law Number 20 Year 2001 concerning Eradication of Corruption Crime, namely:

1. Law Number 11 of 1980 concerning Bribery Crime The nature of criminal acts of corruption is bribery as stipulated in Law Number 11 of 1980, in this law it was formulated that: Article 2, whoever gives or promises something to someone with the intention of persuading so that the person does something or does not do something in his duty, which is contrary to his authority or obligations concerning the public interest. Article 3 Anyone who accepts something or promises, while he knows or deserves to be able to guess that the giving of something or an appointment is intended so that he does something or does not do something in his duty, which is contrary to his authority or obligation concerning public interest. After the enactment of Law Number 31 Year 1999 jo. Law Number 20 of 2001 concerning the eradication of acts of corruption, practically the law regarding criminal acts regarding bribery is not operationalized, because every bribery is always subject to sanctions as stipulated in the law on combating corruption. Seeing the effectiveness of this law should be revoked, so as not to create the impression of bribery as stipulated in Law No. 11 of 1980, is a criminalization that does not have the meaning of a real criminal act, or with other words of criminalization of bribery in law. the law is only a political need, not a legal arrangement as an answer to the legal needs of the community.

2. Law on banking.

   The formulation of criminal acts in Law Number 10 of 1998 concerning Banking is contained in Article 49 paragraph (2) which states that "Members of the Board of Commissioners, Directors, or bank employees intentionally: request or accept, permit or agree to receive a reward , commissions, additional money, services, money or valuables, for personal gain or for the benefit of his family, in order to obtain or attempt to obtain for others in obtaining advances, bank guarantees, or credit facilities from banks, or in the context of purchasing or discounting by the bank on money orders, promissory notes, checks, and trade papers or other proof of liability, or in the framework of giving approval to others to carry out withdrawals of funds that exceed their credit limit at the bank; The formulation of Article 49 paragraph (2) letter a states that members of the board of commissioners, directors, or bank employees who "request or accept, allow or agree to receive a reward, commission, additional money, service, money or valuables, for their personal benefit or for the benefit of his family ". If examined more closely, the formulation is a form of corruption in the scope of bribery, or gratification as stated in the law on corruption.

3. Law concerning taxes
   The formulation of criminal acts in the taxation environment is set forth in Article 36A of Law No. 16 of 2000, affirming that "If the tax officer in calculating or stipulating tax is not in accordance with the applicable tax law so that it is detrimental to the state, the tax officer concerned may be sanctioned according with the provisions of the applicable legislation. "Explanation of Article 36A of Law Number 16 Year 2000, states that:" In order to improve services to taxpayers and improve the ability of tax officers to tax officers who calculate or determine tax that is not appropriate with the tax law to cause state losses, be subject to sanctions in accordance with the provisions of the applicable legislation "The formulation as outlined in Article 36A of Law Number 16 Year 2000, is identical to the formulation of criminal acts of corruption, in which the elements mentioned a it is "detrimental to the state", Along with the development and needs of the community, then Law Number 16 Year 2000 concerning Taxes is amended by Law Number 28 of 2007. In Article 36.A undergoes the following changes: (1) Tax officials are due to negligence or intentionally calculating or stipulating taxes not in accordance with the provisions of tax laws subject to sanctions in accordance with the provisions of legislation. (2) Tax employees who in their duties intentionally act outside of their authority stipulated in the provisions of tax laws and regulations , can be filed with an internal unit of the Ministry of Finance that has the authority to carry out inspections and investigations and if proven to do so is subject to sanctions in accordance with the provisions of legislation. (3) Tax officials who are proven to have extorted and threatened taxpayers to benefit themselves against the law dian cam with the criminal as referred to in Article 368 of the Criminal Code (4) A tax official with the intention of benefiting himself illegally by abusing his power forces someone to give something, to pay or receive payment, or to do something for himself itself, threatened with criminal as referred to in Article 12 of Act Number 31 of 1999 concerning Eradication of Corruption and its amendments.

Amendments to Article 36A of Law Number 28 of 2007 only confirm that only paragraph (4) is a criminal act of corruption, so that Article 12 of Law Number 31 Year 1999 jo. Act No. 20 of 2001, wherein the law This law constitutes a criminal act of extortion in a position regulated in Article 12 letter (e) which affirms that: "a civil servant or state administrator which is intended to benefit himself or others against the law, or by abusing his power forces someone to give something, pay, or accept payment by piece, or to do something for themselves. "It is very unfortunate that Article 36A paragraph (1) is not affirmed as a criminal act of corruption, even though the element of" negligence "or" intentional "in tax calculation can result in losses in "Financial or economic state", which is a criminal act of corruption.

Article 36A paragraph (1) of Law No. 28 of 2007 should maintain the formulation of Article 36A of Law Number 16 of 2000, where the element "detrimental to the state" becomes an essential element, this is intended to avoid multiple interpretations of the formulation so that it can avoiding contradictions regarding whether or not sanctions can be applied in accordance with Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, even though the law on the eradication of criminal acts of corruption as intended can be applied for tax violations in accordance with Article 36A paragraph (1) Law Number 28 Year 2007, where Article 14 of Law Number 31 Year 1999 jo. Law No.

20 of 2001, affirms that "Everyone who violates the provisions of the Law which expressly states that violations of the provisions of the Act as acts of corruption apply the provisions stipulated in this Law".

E. Policy on Criminal Law Formulation in the Prevention of Future Corruption Crimes

The policy on formulating the Criminal Law in the context of the coming up of corruption in the future has actually been pursued, namely through the drafting of a law on the Eradication of Corruption Crime (August 2008 Manuscript). which was confirmed in the consideration stating that "the ratification of the United Nations Convention Against Corruption, 2003 (United Nations Anti-Corruption Convention 2003) with Law Number 7 of 2006, then Law Number 31 of 1999 concerning Eradication of Corruption Crimes has been amended with Law No. 20 of 2001, it is necessary to adapt it to the 2003 United Nations Anti-Corruption Convention. "The draft law on the Eradication of Criminal Acts of Corruption provides definitions or use of terms regarding certain matters in Chapter I (general provisions) as berkut: Article 1 In this Act what is meant by:

1. Corporations are organized groups of people and / or wealth, both legal entities and non-legal entities.
2. Public Officials are: a. every person who holds a legislative, judicial or executive position appointed or elected permanently or temporarily paid or not paid regardless of the seniority of that person; b. everyone who carries out public functions including for the benefit of a public agency or public company or one that provides public services based on legislation; c. every person designated as a public official in the laws and regulations.
3. Foreign Public Officials are: a. every person who holds the executive, legislative or judicial office of a foreign country either based on appointment or election, including all levels and parts of his government, b. any person who performs public functions for the benefit of a foreign country, including public agencies or foreign public companies; or c. every official or representative of an international public organization.
4. Officials of the Public International Organization are any international civil servants or any person authorized by the organization to act on behalf of the organization.
5. Wealth is any form of assets, whether corporate or nonporporal, movable or immovable, tangible or intangible, and legal documents or instruments that prove the rights or interests of these assets.
6. Foreclosure is a series of actions by investigators to take over and / or save under the control of movable or immovable objects, tangible or intangible for the purpose of investigation, prosecution and justice.
7. Deprivation is the permanent takeover of wealth with the decision of a court or other authorized body.
8. Origin Crime is any crime that results in a criminal act that is the object of another criminal offense.
9. The Result of Criminal Actions is any wealth obtained directly or indirectly from a crime.
10. Gifts or Promises are any form that provides benefits or pleasures for those who receive.

The meanings as stipulated in Chapter I (general provisions) above seem to adjust to the editorial of the 2003 UNCAC Convention as follows: Article 2 Use of Terms for the purposes of this Convention: (a) Public officials "means: (i) everyone holding a legislative, executive, administrative, or judicial office of a State Party, whether appointed or elected, either permanently or temporarily, whether paid or not paid, regardless of the person's seniority; (ii) everyone carrying out public functions, including for a public institution or public company, or providing public services, as referred to in the national laws of the State Party and as applicable in the appropriate legal field of that State Party; (iii) each person referred to as a "public official" in the national law of the State Party.

For the purposes of certain efforts listed in chapter II of this Convention, "public official" may mean any person carrying out public functions or providing public services as referred to in the national laws of the State Party and as applicable in the appropriate legal field of that State Party. (b) Foreign public officials "means everyone who holds a legislative, executive, administrative, or judicial office from a foreign country, whether appointed or elected, and every person who carries out public functions for a foreign country, including for public institutions or public company;) (c) every international civil servant or every person authorized by the organization to act on behalf of the organization;) (d Wealth "means any form of asset, whether corporate or non-corporal, moves or does not move, is tangible or intangible, and legal documents or instruments that prove the rights or interests in these assets;) (e) proceeds of crime "means any wealth originating from or obtained, directly or indirectly, through the implementation of a crime;) (f) freezing" or " seizure "means the temporary prohibition of transfer, conversion, release or transfer of wealth, or temporary supervision or control of wealth based on an order issued by a court or other authorized body;) (g) Deprivation" which includes imposition of fines if applicable, means permanent seizure of wealth by order of the court or other authorized body;) (h) Prosecution tan origin "means any crime by which the results obtained can be the subject of a crime.)

The definition or use of the term specifically concerning the term "public official" as mentioned above is essentially an odd term if used in juridical terms, because in Indonesian law these terms are not known. Based on legislation in Indonesia, several juridical terms are known, for example "State Administrators" term which contains Law Number 28 of 1999 concerning the Implementation of Clean and Free Community Service, "Civil Servants" the term contained in Law Number 31 Year 1999 jo Act No. 20 of 2001 concerning the Eradication of Corruption Crimes. So the term "Public Official" is a general term and not a juridical term, so it needs to be adjusted first so that it becomes a juridical term. In addition to the use of the aforementioned terms, the formulation of corruption in this bill also seems to be adapted to the editors of the UNCAC Convention which are regulated in the following articles: Article 2 (1) Any person who promises, offers, or gives directly or indirectly to Public Officials an undue advantage for the benefit of the official itself, another person, or the Corporation, so that the official does or does not do something in carrying out his job duties, (2) Public Officials who request or receive a direct or indirect benefit improperly for the benefit of the official himself, another person, or the Corporation, so that the Public Official does or does not do anything in carrying out his office duties.

The formulation of criminal acts in Article 2 of the Draft Law on the Eradication of Criminal Acts above constitutes editorial adjustments in Article 15 of the UNCAC Convention, the editorial of which is as follows: (a) Promises or offers to public officials, directly or indirectly, improper benefits, to public officials in the capacity of their official duties or other persons or bodies so that the official acts or stops acting in carrying out their official duties); (b) Requests or receipts by public officials, directly or indirectly, undue benefits, for such public officials in the capacity of their official duties or for other persons or entities so that the official acts or stops acting in the execution of official duties).

Article 3 (1) Any person who promises, offers, or gives directly or indirectly to a Foreign Public Official or Public International Organization Officer an undue advantage for the benefit of the official himself, another person, or the Corporation, the official acts or do nothing in carrying out his office duties, or to obtain, retain business or other unauthorized profits related to international business, (2) Foreign Public Officials or Public Public Organization Officials who request or receive directly or indirectly an undue advantage for the benefit of the official himself, another person, or the Corporation, so that the official does or does not do anything in carrying out his office duties. Article 3 of the Draft Law on the Eradication of Corruption Crime above is an adjustment of the editorial of Article 16 UNCAC: (1). If done intentionally, promises, offers or gifts to foreign public officials or officials of public international organizations, directly or indirectly, the benefits improperly for the public official in the capacity of his official duty or other person or body so that the official acts or stops acting in carrying out his official duties, to obtain or maintain business or other improper benefits related to the conduct of international business), (2) . if done intentionally, requests or receipts by foreign public officials or officials of international public organizations, directly or indirectly, undue benefits, for those officials in the capacity of their official duties or for other persons or entities, so that the official acts or stops acting in the implementation of tug their official duty).

Article 4 (1) Any person who promises, offers, or gives directly or indirectly to a Public Official or other person an improper advantage, so that the official or other person misuses the influence because of his position, with the aim of obtaining an undue advantage from government agencies or public authorities, (2) Public Officials or other people who request or receive directly or indirectly an undue advantage so that the official or another person misuses the influence due to his position, with the aim of obtaining an undue advantage from the agency government or public authority.

The formulation of the above article is an adjustment from the editorial of Article 18 UNCAC regarding "trading influence", as follows: if done intentionally: (a) promises, offers or gifts to public officials or anyone else, directly or indirect, undue benefits that public officials or such persons misuse their real or perceived influence with the intention of obtaining from the administrative or public authority of an undue benefit State Party for the benefit of the actual agitator of the action or for others who also;) (b) Requests or receipts by public officials or anyone else, directly or indirectly, undue benefits for themselves or for others so that public officials or such persons misuse their influence that is real or deemed to exist in order to obtain from administrative or public authorities from a State Party, an undue benefit.)

Article 5 Public officials who misuse their function or position do or do not do something that is in its function against the law, with the intention of obtaining an undue advantage for the benefit of themselves, others, or the Corporation. The formulation of Article 5 of this bill is an editorial adjustment of Article 19 of the UNCAC Convention concerning "Abuse of functions" as follows:....if done intentionally, misuse of function or position, namely, implementation or failure to implement actions, which violate the law, by public officials in carrying out their functions, with the intention of obtaining an undue benefit for themselves or for another person or entity.). Article 6 Public officials who enrich themselves in the form of significantly increasing their wealth and unable to prove improvement it was obtained legally.

The formulation of the article above is an editorial adjustment of Article 20 of UNCAC regarding "Illicit enrichment" (Illicit enrichment), as follows: ... if done intentionally, actions enrich themselves, that is, a significant increase in the wealth of public officials who cannot naturally explained in relation to his legal income.). Article 7 (1) Anyone who in an economic, financial or commercial activity promises, offers, or gives directly or indirectly to someone who occupies any position in the private sector an undue advantage for the benefit of himself or others, so that the person acts or does not do something that is contrary to his obligations, (2) Public Officials who request or receive directly or indirectly from someone who occupies any position in the private sector an undue advantage for the benefit of himself or for another person so that he do or do not act contrary to their obligations.

The formulation of the Article above is an editorial adjustment of Article 21 UNCAC regarding "Bribery in the private sector" as follows: If done intentionally in the context of economic, financial or trade activities :) (a) Promises, offers or giving, directly or indirectly, undue benefits to anyone who manages or works, in any position, to a private sector body, for himself or for someone else, so that he, by violating his duties, acts or stops acting;), (b) Requests or receipts, directly or indirectly, of undue benefits to anyone who manages or works, in any position, to a private sector body, for himself or for someone else, so that he, in violation of his duties his duty, act or stop acting.).

Article 8 Every person in any position in the private sector conducts embezzlement of wealth in any form, private funds, securities, or other valuable items entrusted to him based on his position. The formulation of the Article constitutes an adjustment of Article 22 of the UNCAC Convention concerning "Darkening of Wealth in Private Sector", as follows: ..... If carried out intentionally, in the context of economic, financial activities or trade, embezzlement by someone who manages or works, with any position, on a private sector body, for any wealth, private funds or securities or any other valuable item entrusted to him based on his position.)

Formulation of corruption as described above, there is no single formulation of corruption that focuses on the element of "detrimental to the country's finances or economy". This is different from the formulation of corruption in the Law Number 31 Year 1999 jo. Law No. 20 of 2001 which is currently still in effect. The absence of an

element of "detrimental to the country's finances or economy" in the formulation of corruption in the Draft Law on the Eradication of Corruption Crimes shows that the state's financial or economic losses based on the UNCAC Convention are not Romli Atmasasmita said that according to the anti-corruption convention, losses are not absolutely state-owned but also belong to the community.

It needs to be understood that, even though the element of loss to the state is absolute, the emphasis on "harming the country's finances or economy" in the formulation of corruption is very important, because if there is a loss to "state finances or economies" the country will experience difficulties or cause delays countries in fulfilling services to the public interest, which means that the state cannot carry out its obligations in the welfare of society, which is its constitutional obligation.

In addition to the problems described above, the Draft Law on the Eradication of Corruption Crime still has problems similar to Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, namely: a) no affirmation of "corporation" as subject to offense, b) there are no specific provisions regarding probation, assistance, and evil negotiations; c) there is no determination of offense qualifications (as "crime" or "violation"). As a criminal law policy step in dealing with corruption, the 2006-2008 Criminal Code Concept, formulates criminal acts of corruption in Chapter XXXII concerning corruption, with editorial as following:

a. Scope of Bribery

Article 680 (a) Giving, promising something, or giving gratuity to a civil servant with the intention to do or not do something in his position that is contrary to his obligations; or (b) Giving something to a civil servant because of or relating to something that has been done or not done in his position that is contrary to his obligations.

Article 681 (1) Every person who gives, promises something, or gives gratuity to the judge with the intention to influence the verdict of the case being examined (2) If the award or promise as referred to in paragraph (1) is carried out with the intention that the judge impose a sentence. Article 682 Any person who gives or promises something to a foreign public official or a public official of an international organization with the intention of obtaining or maintaining a trade business or other improper profit in relation to international trade.

b. Scope of Abuse of Authority that Harms State Finance

Article 683 Anyone who unlawfully commits an act enriches himself or another person or a corporation that can harm the country's finances and economy. Article 684 Every person who benefits himself or another person or corporation misuses his authority, opportunity, or means to him because of a position or position that could harm the country's finances or economy. Article 686 The return of state finances or the economy of the country does not erase the participation of the maker of a criminal act as referred to in Article 683 and Article 684.

Article 687 Any person who gives gifts or promises to a civil servant by remembering the power or authority inherent in his position or position, or by the giver of a gift or appointment is deemed inherent in his position or position. In other parts of the category as a criminal act of corruption, it is also regulated in the 2006-2008 Criminal Code Concept concerning Criminal Offices regulated in CHAPTER XXX as follows: Article 655 Civil servants or other people assigned to run a public office permanently or temporarily, which embezzling money or securities deposited because of his position, or allowing to be taken or darkened by others.

Article 658 Civil servants who receive gifts, promises or gratuities even though it is known or reasonably suspected that the gifts, promises or gratuities are given because of the power or authority related to his position or according to the mind of those who give gifts, promises or gratuities related to his position . Article 659 Civil servants who:

a. accept gifts, promises or gratuities even though it is known or reasonably suspected that gifts, promises, or gratuities are given to mobilize to do or not do something in his position that is contrary to his obligations; or
b. accept gifts, promises, or gratuities even though it is known or reasonably suspected that gifts, promises, or gratuities are given as a result or caused by having done or not done something in a position that is contrary to their obligations.

Article 660 Judges who: a). accept gifts, promises or gratuities even though it is known or reasonably suspected that gifts, promises, or gratuities are given to influence the case decisions submitted to their consideration; or b). receive gifts, promises, or gratuities with full awareness that gifts, promises, or gratuities are given to him in order to impose a sentence on the opponent of the gift giver or promise in the case that is left to his consideration.

Article 662 Civil servants are against the law with the intention of benefiting themselves or others, forcing someone to misuse their power in order to give something, make a payment, receive payment by being partially deducted, or do something for personal needs. Article 663 Civil servants are unlawfully with the intention of benefiting themselves or others, and by abusing their power, using state land on which there is a right to use the land.

Article 664 Civil servants who directly or indirectly participate in chartering, procurement of goods, or leasing rights, even though they are required to take care of and supervise part or all of the time when this is done. In essence the formulation of criminal acts of corruption with the scope formulated in the 2006-2008 Criminal Code Concept is sufficient to provide deterrence or countermeasures against criminal acts of corruption, especially for the White collar Crime involving state officials, including law enforcers, as outlined in Article 660 of the Criminal Code Concept. Even in the case of receiving a gift or gratuity "can" be imposed before or after the act is carried out, this is confirmed in Article 659 of the Criminal Code Concept, with the formula: "accept gifts, promises or gratuities even though it is known or reasonably suspected that gifts, promises or gratuities given to mobilize to do or not do something in his position that is contrary to his obligations; or accept gifts, promises, or gratuities even though it is known or reasonably suspected that gifts, promises, or gratuities are given as a result or caused by having done or not done something in a position that is contrary to their obligations ".

The formulation will be able to reach the application of criminal law in preventing criminal acts of corruption committed by White Collar Crime through its functions both in special prevention and general prevention. The formulation will also make it easier for the public to exercise social control, against irregularities both carried out by society in general, and by state servants or public servants in their capacity as civil servants. On the other hand, the formulation will be able to show clearly the boundaries given by the law to the authorities in carrying out or carrying out their duties and functions inherent in their positions. Noting the formulation that has been regulated in the 2006-2008 Criminal Code Concept as described above, and seeing the increasingly difficult challenges in tackling future criminal acts of corruption, where corruption can be said to always develop from time to time, then criminal law policy in the context of overcoming acts corruption, should make the 2006-2008 Criminal Code Concept a criminal law policy for eradicating corruption that will come. The concept of the Criminal Code in 2006-2008 as a criminal law policy in the upcoming handling of corruption is expected to not conflict with the aspirations of the people, especially in terms of answering the legal needs of the community in dealing with corruption, on the other hand the KUHP Concept 2006-2008 is the result of legal ideas based on national cultural values (which is certainly different from the current conditions of the Criminal Code), and in accordance with what is meant by the reasoning policy which is interpreted by Marc Ancel, as a science as well as an art which ultimately has a practical purpose to enable positive law regulations to be better formulated and to provide guidance not only to legislators, but also to courts that apply laws and also to administrators or implementers of court decisions.

IV. CONCLUSION

1. The policy on the formulation of criminal law, especially concerning the formulation of criminal acts of corruption at this time, has a number of fundamental weaknesses, thus affecting the effectiveness of corruption eradication which includes; weaknesses in the formulation phase (in abstracto) of the law and at the application stage and execution (concret).
2. Weaknesses in the formulation of corruption currently are: a) criminal law policy by not qualifying a case as "offense" or "crime". In addition, it does not provide a juridical understanding or limitations on the consequences that must be received in consequence b) criminal law policies in terms of eradicating non-corruption, are still spread in several laws, this can cause problems especially in aspects of justice. The absence of rules/guidelines regarding minimum criminal provisions specifically and substitute for criminal penalties for companies.
3. Due to the weakness of the case handling system, there should be a criminal law policy on corruption in the future, taking into account the following: a) the formulation of corruption should still emphasize the element of "financial or economic disadvantage" providing a juridical understanding of "The consensus of a prisoner not to repeat his actions. b) makes money laundering a criminal act of corruption, including criminal acts of corruption, especially in the context of" bribery "and extortion carried out by law enforcement against cases of lawsuits being examined.

V.RECOMMENDATIONS

Based on the conclusions of this study, the authors recommend the following:

1. criminal law policy in terms of eradicating future criminal acts of corruption, qualifying violations is needed, and providing an understanding of the juridical limits of "bad agreements", and accepting the consequences that must be accepted.
2. Formulation of acts of corruption still emphasizes the element "financial or economic loss of the country, in order to save the country's assets.
3. Include criminal charges within the scope of "bribery" and "extortion in the office environment".
4. Making money laundering a criminal act of corruption.
5. The concept of the 2006-2008 Criminal Procedure Code was immediately used as a criminal law policy to become the basis for eradicating corruption.

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