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Rematerialization Of Criminal Actions From The Loss Of State Finance In Indonesia

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Abstract

The regulations governing state finances are the state finance law and the state treasury law which delegate the dominant criminal acts in the corruption law in the form of state financial losses, bribery, embezzlement in office, extortion, fraudulent acts, interests, gratuities, other crimes related to corruption. The purpose of this article is to reconstruct criminal acts against state finances, through philosophical approaches, sociological approaches, conceptual approaches, statutory approaches and constitutional approaches. In the constitution there is a rematerialization of the law which is essentially to restore state finances, the reconstruction of the law on corruption in minimizing state financial losses is always carried out to obtain an effective model in restoring state finances. Including the imposition of receivables as an additional crime for Entrepreneurs who carry out government projects from the state revenue and expenditure budget and/or regional revenue and expenditure budget and then commit a criminal act of corruption.

Keywords: Legal Rematerialization, Construction, Accounts Receivable Encumbrance, Crime, State Finance.

1. Introduction

The legal construction of state finances is formulated in the constitution as the highest legal norm that the state budget for revenues and expenditures as a form of state financial management is determined annually by law and is carried out openly and responsibly for the greatest prosperity of the people (Article 23 paragraph 1 of the 1945 Constitution of the Republic of Indonesia). This definition is implicitly limited to the State Revenue and Expenditure Budget, then in another formulation it is stated that other matters concerning state finances are regulated by law (Article 23C of the 1945 Constitution of the Republic of Indonesia).

State financial management is part of the implementation of state government. Officials tasked with managing state finances should pay attention to and apply the underlying legal principles. This is intended so that the official is able to improve services in the management of state finances. Service improvement is a form of service while still adhering to the principles of state financial management (Saidi, 2014). So, based on the constitutional mandate, the enactment of laws that become a strong legal basis regarding State finances, namely Law Number 17 of 2003 concerning State Finance (hereinafter abbreviated as UUKN), Law Number 1 of 2004 concerning State Treasury (hereinafter abbreviated as UUPN).

There is a criminal law policy on the two regulations, by Barda Nawawi Arief, the term criminal law policy, also called criminal law politics, or criminal policy. So the understanding of criminal law politics can be seen from the perspective of legal politics or criminal politics (Arief, 2010). The politics of criminal law formulated in the UUKN and UUPN are very simple. Criminal provisions in UUKN can be seen in Chapter IX regarding criminal provisions, administrative sanctions, and compensation, namely state officials in the form of

Ministers/Heads of institutions/Governors/Regents/Mayors who are proven to have violated the policies stipulated in the law on the revenue budget and State expenditures / Regional Regulations concerning regional revenue and expenditure budgets are threatened with imprisonment and fines in accordance with the provisions of the law (Article 34 paragraph (1) UUKN). Furthermore, the Head of Organizational Units of State Ministries/Institutions/Regional Apparatus Work Units who are proven to have deviated from budget activities that have been stipulated in the law concerning the State revenue and expenditure budget/Regional Regulations concerning regional revenue and expenditure budgets are threatened with imprisonment and fines in accordance with provisions of the law (Article 34 paragraph (2) UUKN).

The criminal provisions in the UUPN can be formulated that the imposition of state/regional compensation on the treasurer is determined by the Supreme Audit Agency (Article 62 paragraph (1) of the UUPN). If in the examination of state/regional losses as intended, criminal elements are found, the Supreme Audit Agency will follow up on it in accordance with the laws and regulations (Article 62 paragraph (2) of the UUPN). further provisions regarding the imposition of state compensation on the treasurer are regulated in the law regarding the audit of state financial management and responsibility (Article 62 paragraph (3) of the UUPN).

Criminal provisions In the UUKN and UUPN are intended for all criminal law laws and regulations, both in the Criminal Code and the Law governing criminal acts as well as the chapter on criminal provisions. For example, violating Article 372 of the Criminal Code regarding embezzlement, or violating Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (hereinafter abbreviated as Corruption Act). As in the United Nations convention against corruption as an effort to eradicate corruption and is held to suppress and eradicate corruption globally (Carr & Lewis, 2010). Then Indonesia ratified the United Nations Convention Against Corruption in Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption of 2003, and harmonized the legal politics of national development in the context of eradicating corruption (Harrison, 2007).

This article focuses on the reconstruction of criminal acts against state finances related to the Corruption Law because there is a view that corruption is categorized as an extraordinary crime (Ifrani, 2018). As well as many corruption crimes that occur in developing countries will damage the economy, social life, politics, and morality (Argandona, 2007). In addition, there is a legal rematerialization of the Anti-Corruption Law after the Constitutional Court Decisions Number 003/PUU-IV/2006 and Number 25/PUU-VIX/2016. The two decisions of the constitutional court provide a shift in the meaning of corruption which is very closely related to state financial losses. The current rematerialization of formal law to material law will be tested for its effectiveness over the next 5-10 years, if it cannot save state finances, then legal rematerialization will be carried out again from material law to formal law. The legal substance of criminal acts against state finances, especially corruption, has changed both in its substantial meaning and in the process of law enforcement. So that the construction of criminal acts against finance in the law governing state finances related to the corruption law after the constitutional judge's decision Number 003/PUU-IV/2006 and Number 25/PUU-VIX/2016 also changed the meaning of substance and meaning of law enforcement. This article aims to reconstruct criminal acts against state finances in national law in Indonesia. Therefore, it is necessary to carry out further study and analysis.

2. Literature Review

The implementation of the element of harming state finances to law enforcement on corruption in accordance with the Constitutional Court Decision Number 003/PUU-IV/2006 related to the word “can” in Article 2 and Article 3 of the Anti-Corruption Law is a formal offense concept. So, the crime of corruption emphasizes more on prohibited acts, not with the emergence of consequences. The implementation of the element of "detriment to state finances" in the Anti-Corruption Law towards law enforcement of

criminal acts of corruption often creates problems, including: a. It is only regulated in Article 2 and Article 3 of the Corruption Law; b. There are different perceptions regarding state finances; c. Different understanding of formal offenses and material offenses on elements of state financial losses; d. Difficulty executing replacement money to cover state losses; e. The element of state (financial) losses is still limited to the financial aspect; f. Returning state losses can stop the handling of corruption cases (Fatah, et al., 2016).

In the decision Number 003/PUU-IV/2006 in the formulation of the phrase "against the law" is an act that is only contrary to written law, while unwritten law is no longer included in it because unwritten law creates uncertainty due to different conditions and people's understanding -different and changing from time to time so that it will be different in every time and place.

This change is considered to narrow the space for judges to explore and find the law so that judges are only mouthpieces of laws or written laws. According to Abdul Latif (2016), the unlawful element of the Anti-Corruption Law is a means to enrich oneself or another person or corporation. The legal consequence of the formulation of the Anti-Corruption Law is that even though an act has "damaged the State Finances or the State Economy", but if it is done not against the law, then the act of enriching oneself or another person or a corporation is not a criminal act of corruption. The decision of the Constitutional Court is not clear that the function of teaching against material law does not have binding legal force. Practice shows that the decisions of the Constitutional Court may be distorted by judges or other law enforcement officers in cases of corruption in Indonesia (Latif, 2016).

The results of the research of Prima Sophia Gusman's thesis that the position of teaching against material law in a positive function in the Elucidation of Article 2 paragraph (1) of the PTPK Law against Article 28 D paragraph (1) of the 1945 Constitution can be understood as a juridical construction that does not contradict each other. Because both of them are intended to administer justice in law enforcement practices in an effort to prevent and eradicate criminal acts. Second, the teaching of the nature of being against the material law in a positive function towards efforts to eradicate corruption with the Constitutional Court Decision Number 003/PUU-IV/2006 still has legal force to be applied. Therefore, law enforcers in resolving corruption cases use all legal provisions by paying attention to legal doctrine, not only the Constitutional Court Decision (Gusman, 2007).

Meanwhile, the decision of the Constitutional Court Number 25/PUU-VIX/2016 revoked the phrase “can” in Article 2 paragraph (1) and Article 3 of the UUPTPK. This Constitutional Court ruling interprets that the phrase "may harm state finances or the state economy" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law must be proven by real state financial losses (actual loss) not potential or estimated state financial losses (potential loss). The Constitutional Court's decision shifted the substance meaning of corruption offenses from formal corruption offenses to material offenses so that there was a rematerialization of formal law into material law. Previously in the decision Number 003/PUU-IV/2006 the phrase “can” was rejected.

Law in society must be understood from the "dimension of modern legal rationality". There are three parameters, namely justification of law (legal rationality), external function of law (system rationality), and internal structures of law (internal rationality) (Teubner, 1982). The law must pay attention to society in all its aspects. Legal changes do not only pay attention to internal aspects or dynamics of the law, but also consider external dynamics. Changes in law without regard to external dynamics, such as a law with aut society (Teubner, 1982).

The result of the thesis research from Sayonara that the decision of the Constitutional Court shifted the meaning of the offense in the provisions of the Article formulation that was tested materially in the Anti-Corruption Law which was originally formulated to include acts "against the law" formally and materially, then only became a material offense, even though the explanation for the Anti-Corruption Law was formulated as a formal crime. so that after the decision of the Constitutional Court it made the eradication of corruption even more difficult, and was a bad precedent for the creation of a clean

Indonesia free from corruption, collusion and nepotism (Sayonara, 2018). The law is always reflected so that there is rematerialization as an effort to refresh law enforcement to get another point of view on the settlement of criminal acts of corruption as part of modern law.

According to Gunther Teubner (1982) that modern law shows the dominance of the state as an influence on the one hand and improves the welfare of the people on the other, causing the birth of the concept of a welfare state and a regulatory state. However, there is a problem experienced by modern law today, namely a crisis of formal rationality or otherwise a crisis of material rationality. Therefore, it is necessary to re-materialize the law. The emergence of legal rematerialization is due to a crisis of formal rationality in modern law or vice versa, a crisis of material rationality. The crisis of formal rationality in the Anti-Corruption Law is that the law cannot adapt to changes in society that undergo a paradigm shift in solving various kinds of problems related to criminal acts and crimes in society. So that in some countries then change the purpose of punishment.

The results of the thesis research from Nike Beauty Lavenia, that the Constitutional Court's decision interprets that the phrase "can harm state finances or the state economy" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law must be proven by real state financial losses (actual loss) not potential or estimated state financial losses (potential loss). The decision of the Constitutional Court shifts the meaning of substance to corruption offenses, the emergence of legal uncertainty in formal corruption offenses so that they are converted into material offenses; therefore, serious attention is needed among all legal observers, especially law enforcers regarding the concept of state financial losses (Lavenia & Pujiyono, 2017). This shows that there is a rematerialization of formal law into material law. Teubner's view is in line with that expressed by Eugan Ehrlich, the pioneer of the sociological jurisprudance flow (Anwar & Adang, 2008) that good law is law that is in accordance with the laws that live in society.

The development of society is also influenced by developments as well as developments in information and technology, the state as a victim of criminal acts of corruption as well as being the dominant perpetrator as well as state administrators and entrepreneurs, so that a new formula is needed in the form of charging receivables to perpetrators of criminal acts of corruption, especially to entrepreneurs who work on government projects from the state revenue and expenditure budget and/or regional revenue and expenditure budget.

3. Method

The method used is a philosophical approach to find the essence of criminalization of state finances, a sociological approach to see the law enforcement process and public reactions, a conceptual approach to examine and find renewable legal concepts, a legislative approach to examine norms and politics. the law in the regulation referred to, a constitutional approach to reviewing the decisions of constitutional judges. The analysis was conducted using a descriptive method that explains legal construction, legal rematerialization and legal decriminalization as a form of modernizing criminal acts against state finances. Data were collected from various literatures, to obtain relevant legal instruments along with secondary research sources, such as books, national or international journals, etc., and then analyzed qualitatively.

4. Results

4.1. Construction of Crimes Against State Finances in Indonesian National Legislation

The construction of the State Finance law in the UUKN is what is then formulated for criminal acts in the Law. Regarding criminal acts in UUKN, it can be seen in Chapter IX regarding criminal provisions, administrative sanctions, and compensation as formulated in Article 34 paragraph (1) that state officials in this case the Minister/Head of institutions/Governor/Regent/Mayor who are proven to have committed irregularities policies that have been stipulated in the state revenue and expenditure budget or regional revenue and expenditure budget are threatened with imprisonment and fines in accordance with the provisions of the law governing criminal provisions. These provisions do not directly

describe the types of criminal acts accompanied by elements of criminal acts and the types of sanctions, but only the threat of imprisonment and fines for state officials who are proven to have violated the policies stipulated in the law on the state revenue and expenditure budget. Regional Regulation on regional revenue and expenditure budgets.

Types of criminal acts that can be imposed in the event of a deviation are referring to other criminal law laws and regulations, both criminal acts in the Criminal Code, for example violating Article 372 of the Criminal Code, namely the crime of embezzlement. As well as state officials who deviate by violating criminal acts outside the Criminal Code in the form of criminal law legislation and laws and regulations governing criminal provisions. criminal act legislation, for example, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (UU Tipikor).

Whereas in Article 34 paragraph (2) of the UUKN, namely the Head of the Organizational Unit of State Ministries/Institutions/Regional Apparatus Work Units who are proven to have deviated from budget activities that have been stipulated in the law on state revenue and expenditure budgets/Regional regulations concerning regional revenue and expenditure budgets. threatened with imprisonment and a fine in accordance with the provisions of the law.

Likewise in Article 34 paragraph (1), paragraph 2 also does not directly describe the types of criminal acts accompanied by elements of criminal acts and the types of sanctions but only threats of imprisonment and fines for state officials, namely the Head of the Organizational Unit of the State Ministry/ Institutions/Regional Apparatus Work Units proven to have deviated from budget activities that have been stipulated in the law on state revenue and expenditure budgets/Regional regulations concerning regional revenue and expenditure budgets. So, the type of crime that can be imposed in the event of a deviation is also referring to other criminal law laws and regulations, both criminal acts in the Criminal Code, for example violating Article 372 of the Criminal Code or violating criminal acts outside the Criminal Code in the form of criminal law legislation, for example, the Anti-Corruption Law.

The description of criminal acts for violations of UUKN in the form of violations of the Corruption Law as formulated in UUKN can be explained that in Law No. 31 of 1999 it can be seen that the definition of corruption is formulated as a formal offense, namely the punishment of the perpetrator of a criminal act of corruption because the act committed is not based on the consequences, but the fulfillment of elements -elements of offenses in the law concerned. This is emphasized in the explanation of the law, that: "with this law, corruption is expressly formulated as a formal offense. This is very important in a series of efforts to prove corruption crimes. With the formal formulation adopted in this law, even though the proceeds of corruption have been returned to the state, the perpetrators of corruption are still brought to court and are still being punished."

The policy of criminalizing an act as a criminal act of corruption in Law No. 31 of 1999 can be seen in the provisions in Article 2, Article 3, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, and Article 16. In several parts of the Law, it is felt that it is no longer adequate in supporting the government's program to eradicate corruption. For this reason, the law was amended with the promulgation of Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes. In the preamble of this Law, among other things are explained: that the widespread crime of corruption has not only harmed the state's finances, but has also constituted the socio-economic rights of the wider community, so that the criminal act of corruption needs to be classified as a crime whose eradication must be carried out in an extraordinary manner.

In addition, the promulgation of Law no. 20 of 2001 is intended to better guarantee legal certainty, avoid diversity of legal interpretations and provide fair protection of social and economic rights of the community, as well as fair treatment in eradicating corruption, it is necessary to amend Law no. 31 of 1999 concerning the Eradication of Corruption Crimes.

The enactment of Law no. 20 of 2001 since November 21, 2001, only 2 (two) articles in Law no. 31 of 1999 which was withdrawn as a corruption offense, starting from Article 5 to Article 12. The amendment is not to mention the Articles of the Criminal Code in the formulation of the Law, but to directly formulate the elements of the Articles of the Criminal Code, which are also regulated in Article 5 until Article 12 of Law No. 20 of 2001. The construction of criminal acts against state finances as intended in UUKN can refer to the Criminal Code and the laws and regulations governing criminal acts and legislation, one of the chapters on criminal provisions relating to the management and use of state finances and/or regional finance. So that in this study the author examines the relationship between eradicating corruption as stated in the Corruption Act and the will in the formulation of criminal acts in the UUKN.

Regarding criminal acts in the UUPN, it can be seen in Article 62 (1) that the imposition of state/regional compensation on the treasurer is determined by the State Audit Board. Furthermore, in paragraph (2), namely If in the examination of state/regional losses as referred to in paragraph (1) a criminal element is found, the Supreme Audit Agency will follow up on it in accordance with the applicable laws and regulations. As well as paragraph (3) which states that further provisions regarding the imposition of state compensation on the treasurer are regulated in the law regarding the audit of the management and responsibility of state finances.

The UUPN as UUKN does not directly describe the types of criminal acts accompanied by elements of criminal acts and the types of sanctions, but only mandates the Supreme Audit Agency if in the process of examining state finances a criminal act is found, the Supreme Audit Agency must report to law enforcement in This is the police for general crimes, such as embezzlement or special crimes, such as corruption, or reported to the prosecutor's office regarding corruption and the Corruption Eradication Commission for corruption.

Of course, the type of criminal offense that can be imposed if a criminal element is found refers to the criminal law legislation, both formal criminal law, material criminal law also applies. Likewise, UUKN, then in the description of criminal acts for violations of the Corruption Law in the UUPN also has the will and correlation with eradicating corruption as stated in the Corruption Law.

The criminal act of Corruption as formulated in the Anti-Corruption Law according to a legal perspective, the definition of corruption is clearly in 30 articles in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. Based on these articles, corruption is formulated into the form / type of criminal act. corruption. These articles explain in detail the actions that can be subject to imprisonment for corruption, namely state Financial Losses (Articles 2 and 3), bribery Bribery (Articles 5,6,11,12 and 13), embezzlement in office (Articles 8,9,10a,b,c), extortion (Article 12 e,g,f), cheating (Article 7 paragraph (1) a, b, c, d, 7 paragraph (2, 12 b), establishment of interest (Article 12 i), gratification (Article 12 b and 12 c) and other criminal acts related to corruption.

Other criminal acts related to corruption are contained in Articles 21, 22, and 24 of Chapter III of Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which consists of some articles. Article 21 is about obstructing the process of examination of corruption cases. Article 22 in conjunction with Article 28 is about not giving information or giving incorrect information. Article 22 in conjunction with Article 29 is about banks that do not provide the suspect's account. Article 22 in conjunction with Article 35 is about witness or expert who does not give information or gives false information. Article 22 in conjunction with Article 36 is about persons who hold position secrets do not provide information or provide false information. Article 24 in conjunction with Article 31 is about witness who discloses the identity of the reporting party. Criminal acts in the UUPN are also delegated to other laws, both those that regulate formal law and material law.

The philosophical reason as stated in the UUPTPK is that corruption is very detrimental to state finances or the country's economy and hinders national development, so it must be eradicated in order to create a just and prosperous society based on Pancasila and the 1945 Constitution. corruption, namely harming state finances or the country's economy, obstructing

national development, must be eradicated and realizing a just and prosperous society

This philosophical value is to be achieved, namely the acceleration of national development that creates a just and prosperous society, through law enforcement. Law enforcement is carried out not absolutely punishing the perpetrators of corruption, but progressive and reflexive law enforcement, namely the law is enforced firmly and fairly but taking into account economic growth and investment, opening up space for creativity and courage of state administrators in issuing policies, and increasing budget absorption to accelerate development. national.

Criminal law enforcement must follow the development of legal science, legal theory and legal norms in general and in particular the development of criminal science and theory and changes in criminal law norms from the executive and legislative branches, as well as judicial products in the form of jurisprudence from the Supreme Court and the decisions of the Constitutional Court on legal legislation. crime and punishment.

The development of science and theory of criminal law and punishment has developed. These changes have an effect on changing the purpose of punishment and the sanction system, the purpose of punishment develops from the purpose of revenge developing into prevention, developing into revenge as well as prevention continues to develop with remedial actions and then develops again into improving perpetrators and protecting the community and developing again into the goal of forgiveness and forgiveness. The effect of punishment has changed along with the change in the sanction system, namely a change from the previous single track system, namely there were only criminal sanctions that developed into a double track system, namely in addition to criminal sanctions, there were action sanctions which then developed again in the 21st century, known as the Trisis of criminal law. The three criminal law sanction systems (Trisisa) (Rahawarin, 2017) which consist of criminal sanctions in the form of primary and complementary crimes, action sanctions in the form of corrective actions for perpetrators and community protection, and reward sanctions in the form of abolition fees and reduction rewards.

Changes in criminal law have shifted in response to changes in society and development, criminal law can contribute to economic improvement and investment, as a form of legal certainty but does not create doubts and fears for investors and decision-making officials in issuing their policies. Several articles in the Anti-Corruption Law are formulated as elements of being against the law and are described as being against the law in the elaboration of the Law. In the Anti-Corruption Law, the nature of being against the law is described explicitly or implicitly. And in this writing, what the writer wants to study is the element of being against the law.

Theoretically, there are two types of unlawful nature in criminal law, namely: first: the unlawful nature of the formal law, namely an act is qualified as unlawful if the act is contrary to the applicable laws and regulations and the unlawful nature of the act can only be removed with justification reasons. which have been formulated in the legislation. So the unwritten law is not recognized.

Meanwhile, the second nature is against the material law which consists of the nature against the material law in its positive function and the unlawful nature in its negative function. The nature of violating material law recognizes unwritten law as part of criminal law in addition to the applicable laws and regulations. The nature of against material law in its positive function emphasizes that unwritten law can be used as a basis for actualizing an act as against the law if an act is deemed inappropriate or contrary to the sense of community justice and therefore can be punished.

Going against positive material law is seen as contrary to the principle of legality as formulated in Article 1 paragraph (1) of the Criminal Code. Meanwhile, the negative nature of material unlawfulness emphasizes that unwritten law can be used as a basis for eradicating the unlawful nature of an act that has fulfilled the formulation in the legislation. Unwritten law can serve as a justification. This negative material does not conflict with the principle of legality or Article 1 paragraph (1) of the Criminal Code because what is prohibited in

Article 1 paragraph (1) of the Criminal Code is to use unwritten law as a basis for punishment, while the nature of violating material law in its negative function, unwritten law only used as a basis for abolishing the criminal. Therefore, our criminal law only adheres to the teachings of the nature against material law in its negative function.

Elucidation of Article 2 paragraph (1) of the Anti-Corruption Law states that what is meant by "unlawfully" includes acts against the law in a formal sense "as well as" in a material sense, i.e. even though the act is not regulated in laws and regulations, if the act is considered reprehensible, because it is not in accordance with the sense of justice or the norms of social life in society, then the act can be punished. The word "nor" in the explanation means that the article follows two alternative teachings of unlawful nature, namely; first, the teachings of the nature against the formal law; and the two teachings of the nature against the material law.

The Constitutional Court in its decision dated July 25, 2006 Number 003/PUU-IV/2006, in its ruling decided that stating the Elucidation of Article 2 paragraph (1) of the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (Gazette Republic of Indonesia Year 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150) along the phrase which reads, "what is meant by 'unlawfully' in this Article includes acts against the law in a formal sense as well as in a material sense, i.e. even though the act is not regulated in laws and regulations, but if the act is deemed disgraceful because it is not in accordance with the sense of justice or the norms of social life in society, then the act can be punished "contrary to the 1945 Constitution of the Republic of Indonesia.

It based on the Elucidation of Article 2 paragraph (1) of the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (Gazette Republic of Indonesia Year 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150) along the phrase which reads, "what is meant by 'unlawfully' in this Article includes acts against the law in a formal sense as well as in a material sense, i.e. even though the act is not regulated in laws and regulations, but if the act is deemed disgraceful because it is not in accordance with the sense of justice or the norms of social life in society, then the act can be sentenced to "not having binding legal force.

The Constitutional Court's decision states that the first sentence of the explanation of Article 2 paragraph (1) which states: "what is meant by "unlawfully" in this article includes acts against the law in a formal sense as well as in a material sense, i.e. even though the act is not regulated in the law. laws and regulations, but if the act is considered a disgraceful act, because it is not in accordance with the sense of justice or the norms of life, social and community, then the act can be punished" is contrary to the 1945 Constitution and therefore has no binding legal force.

The decision confirms the principle of formal legality as stated in the formulation of Article 1 paragraph 1 of the Criminal Code and at the same time rejects the positive nature of violating material laws. Meanwhile, the negative material nature of the law still applies because it does not conflict with the principle of legality. This Constitutional Court decision then provides a new legal construction for the management of state finances based on the UUKN, UUPN, as well as the legal construction of criminal acts against state finances after this Constitutional Court decision, because the actions of state administrators on the management and use of state finances are Administrative errors are no longer a crime. But it became an administrative error which was resolved administratively.

The existence of decriminalization of the Anti-Corruption Law for the phrase against the law, even though the act is not regulated in the legislation, but if the act is considered a disgraceful act, because it is not in accordance with the sense of justice or the norms of life, social and community, then the act can be punished. ” is contrary to the 1945 Constitution and therefore has no binding legal force. The existence of this decision has an effect on the

decisions of state officials in the management and use of state finances.

5. Discussion

5.1. Rematerialization of Formal Law into Material Law in the Decision of the Constitutional Court Number 25/PUU-VIX/2016

In order to reach various modus operandi of irregularities in state finances or the state economy which is increasingly sophisticated and complicated, the criminal act of corruption is formulated in such a way as to include acts of enriching oneself or another person or a corporation "unlawfully" in the formal and material sense. In order to reach the modus operandi of irregularities in state finances, Law Number 31 of 1999 jo. Law Number 20 of 2001, in which the criminal act of corruption is clearly formulated as a formal crime, which is very important for proof, because with the formal formulation adopted by this law, even though the proceeds of corruption have been returned to the state the perpetrators of criminal acts of corruption are still brought to court and are still sentenced.

In addition to the philosophical reasons described above, the sociological reasons in the Anti-Corruption Law as stated in the preamble consider that the consequences of corruption that have occurred so far in addition to harming state finances or the state economy, also hinder the growth and continuity of national development which demands high efficiency. There are two social phenomena faced by the state as a result of corruption, that is harming state finances or the country's economy and inhibiting the growth and sustainability of national development which demands high efficiency.

The first phenomenon is to harm the state's finances or the state's economy. then the loss must be real (actual loss) not potential or estimated state financial losses (potential loss). The second phenomenon is inhibiting the growth and continuity of national development which demands high efficiency, this happens when the first phenomenon occurs, namely state money is robbed or corrupted which results in real financial and economic losses, it will also affect the second phenomenon.

However, in the formulation of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, the sentence that can harm state finances is included with the phrase "can" so that it reads it can harm state finances, this sentence then makes these articles a formal offense, resulting in state losses. it doesn't have to be real and have a direct impact. So that these articles provide full discretion to law enforcers to subjectively determine state losses. As a result of this formulation, state officials are afraid to take a progressive decision.

The phrase "can" was before the Constitutional Court Decision Number 25/PUU-XIV/2016, the phrase "can" had already been tested in the Constitutional Court. However, the Court rejected the applicant's application regarding the phrase "can". As stated in the decision of the Constitutional Court Number 003/PUU-IV/2006. In its consideration, the court is of the opinion that Article 2 paragraph (1) of the PTPK Law contains the following elements: (a) elements of an unlawful act; (b) the element of enriching oneself or another person or a corporation; (c) elements can harm state finances or the state economy;

There was a rejection of the applicant's petition regarding the phrase "can" based on the decision of the Constitutional Court Number 003/PUU-IV/2006, until 10 years later the phrase "can" was re-submitted to the Constitutional Court for another review of the Constitution. So interestingly, the decision of the constitutional court then annulled the previous decision with the Constitutional Court's Decision Number 25/PUU-XIV/2016 which had revoked the phrase "can" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law.

As in the decision of the Constitutional Court, it was decided that to state the word "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law No. Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150) is contrary to the 1945 Constitution of the

Republic of Indonesia and has no binding legal force.

The Constitutional Court's decision interprets that the phrase "can harm state finances or the state economy" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law must be proven by real state financial losses (actual loss) not potential or estimated state financial losses (potential loss).). As in its considerations, the court is of the opinion that Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law have been requested for review and have been decided by the Court in Decision Number 003/PUU-IV/2006, dated July 25, 2006, so that in this case the provisions of Article 60 of the Law apply. The Constitutional Court, namely that with respect to the content of paragraphs, articles, and/or parts of a Law that has been tested, a re-examination cannot be requested, unless the content of the 1945 Constitution which is used as the basis for review is different. For this reason, it is necessary to first consider whether the petition is a quo ne bis in idem or not.

Whereas the basis for testing the application Number 003/PUU-IV/2006 is Article 28D paragraph (1) of the 1945 Constitution, while the a quo petition also uses Article 1 paragraph (3), Article 27 paragraph (1), Article 28G paragraph (1), and Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution, so that there are differences in the basis of constitutionality testing with application Number 003/PUU-IV/2006. Based on these considerations and related to Article 60 paragraph (2) of the Constitutional Court Law, the Court considers that the a quo petition is not ne bis in idem so that the Court will then examine the main points of the a quo petition.

The consideration of the Constitutional Court shifted the meaning of the substance of the corruption offense, namely:

a) Constitutional Court Decision Number 25/PUU-XIV/2016 overrides Constitutional Court Decision Number 003/PUU-IV/2006 regarding the phrase “can”;
b) Changing formal corruption offenses into material offenses;
c) Harmonization between criminal law in the Anti-Corruption Law and the administrative approach in Law Number 30 of 2004 concerning Government Administration (UU AP); and
d) The existence of decriminalization of the State Civil Apparatus (ASN) by eliminating the phrase "can harm state finances or the state economy" in the Anti-Corruption Law. So that state officials are expected to have the courage and creativity in issuing policies.

Constitutional Court Decision Number 25/PUU-XIV/2016 revoked the phrase "can" in Article 2 paragraph (1) and Article 3 UUPTPK. This Constitutional Court ruling interprets that the phrase "may harm state finances or the state economy" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law must be proven by real state financial losses (actual loss) not potential or estimated state financial losses (potential loss). So that the construction of criminal acts against state finances turns into a material offense.

5.2. Charge of Receivables as Additional Criminal

The loading of receivables is a new concept as well as a solution to recovering state financial losses as well as state financial benefits. The essence of the enforcement of criminal acts of corruption is the return of state financial losses, so that the idea of impoverishing corruptors arises so that there is a deterrent effect as well as special prevention for perpetrators or general prevention for the community not to commit similar acts. In addition, a special law enforcement agency was formed, namely the corruption eradication commission to deal with corruption, but there is no deterrent effect and no fear of committing criminal acts of corruption. This, in fact, makes businessmen without hesitation influence state officials to jointly commit corruption.

The development of the concept of eradicating corruption has focused on recovering state losses, in this case the state does not want to lose. There is a rematerialization of formal law into material law and vice versa, namely the rematerialization of material law into formal law as the result of the decision of the Constitutional

Court which shows that law enforcement has advanced because it is in accordance with the purpose of punishment, namely improving the perpetrators and protecting the community while at the same time applying restorative justice, namely the recovery of victims in cases of In this country as a victim, there must be a restoration of state losses, even in the concept of charging receivables, the state appears to be benefiting.

The change from formal offenses to material offenses in the Anti-Corruption Law shows that the state is more dominant in saving state finances. The change in the orientation of the government that is formed in formal rationality towards strengthening the existing sub-systems in society (substantive rationality) is realized that it must be done through rematerialization of law as an alternative way out which is mostly done in overcoming the situation known as rematerialization. Legal Crisis (Tuebner, 1982). So the concept of charging receivables is a concept of a combination of economics with the legal field to not only return state losses, but to give the burden of receivables to corruptors to become state receivables to the perpetrators and the perpetrators become debts to the state as much as 1 times the amount of money that was corrupted.

Charges for receivables can be paid periodically or in 1-time installments of the amount of money that was corrupted, all of the money from corruption is returned and a certain amount of money is returned from the proceeds of corruption with payments in installments as well as the perpetrators are subject to criminal penalties, especially to entrepreneurs who carry out government projects from the state revenue and expenditure budget and/or regional revenue and expenditure budget. This is because entrepreneurs are more prone to influencing state officials to commit corruption or entrepreneurs easily follow requests from state officials to bribe them to get permits or projects from the government.

The loading of these receivables is carried out through an agreement between the entrepreneur and law enforcement when the entrepreneur gets a project from the government, that if in the future it is found that a criminal act of corruption has been committed by the entrepreneur, the person concerned in addition to obtaining the basic criminal law will also receive additional punishment in the form of refunding the loss. state and the imposition of receivables as a consequence of criminal acts against state finances.

6. Conclusion

Reconstructing criminal acts against state finances, namely the construction of criminal acts against state finances in national laws and regulations contained in the formulation of UUKN and UUPN which delegated to the Anti-Corruption Law. formally after the decisions of the Constitutional Court number 003/PUU-IV/2006 and number 25/PUU-VIX/2016, the implementation of the two decisions within a period of approximately 5-10 years to determine their effectiveness. Then, legal rematerialization can be carried out again if the intended legal rematerialization goal is not achieved. Reconstruction that can be carried out is also in the form of additional criminal charges in the form of charging receivables to entrepreneurs who commit criminal acts of corruption from the state budget and/or regional revenue and expenditure budget projects.

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