

PREVENTION AND ERADICATION OF WHITE-COLLAR CRIMES USING POLICY AND VALUE APPROACHES

Riswan Erfa

riswan.erfa@gmail.com

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ABSTRACT

Based on today's factual condition, the corruption perceptions index of Indonesia is still very poor. Corruption, as part of white-collar crimes, is considered as one of non-conventional crimes which are difficult to overcome using conventional counter-measures. The qualification of the perpetrators who have high socio-economic strata often complicates the law enforcement process, especially in terms of proof. Therefore, it requires a new paradigm that prioritizes policy approach and value approach. And both of the approaches should be done simultaneously. It is also necessary to understand the types of white-collar crimes to support the implementation of policy approach and value approach. In addition, this study also discusses non-penal efforts that can maintain the views of integrity, morality, and professional responsibility of the people who have the potential to engage in white-collar crimes, primarily through the internalization of local wisdom that supports the eradication and prevention of criminal acts of corruption.

I. INTRODUCTION

1.1 Background

Crime model continues to evolve, starting from conventional crime to non-conventional or new model crime.¹ New types of crimes that harm and disrupt the legal balance are responded through arrangements in criminal provisions, both in material criminal law and in formal criminal law.² This is aimed at maintaining order in society.

¹ Mien Rukmini, in her book entitled "*Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai)*", explains that after Indonesia suffered a slump in the field of development (especially in economy, social, and politics), the magic word of development which has been used to lullaby people is no longer working now. In such times or conditions, life becomes very vulnerable. Various crimes sprang up everywhere, marked by the emergence of new crime patterns, whether conventional or non-conventional, Bandung: Alumni. 2009. (see pages 79-80)

² Andi Hamzah, in his book entitled "*Hukum Acara Pidana Indonesia*" (see

The arrangement of crime into material criminal law, in which the implementation of its criminal case settlement is generally regulated in the Criminal Code, is a form of conventional crime prevention. The development of crime, from conventional to non-conventional, basically also requires non-conventional measures to handle it. In this context, it will be difficult to resolve the root of the new problem by using the current criminal justice system approach

The development of crime, from conventional to non-conventional, should be interpreted not only as a new type of crime model, but also as an increasingly diverse type of crime. Criminal acts are no longer being secured by economically marginalized or under-developed people, but also people with good access to welfare. This model of crime is then known as white-collar crime.

White collar crime is a crime committed by someone who has the ability and high social status in occupation or work.³ Such crime is easy to find in the present condition, for example the criminal acts of corruption⁴ committed by people who have high social status, such as legislative members or regional head.⁵ Corruption is difficult to commit by

page 4), quoting from Pompe, formulates a material criminal law as a whole of the rule of law which indicates which deeds that should be penalized and where they should be incarnated. Meanwhile, formal criminal law is defined as the law governing how the state through its instruments exercises the right to convict and impose criminal sanctions. Jakarta: Sinar Grafika. 2012

³ Frank E. Hagan, “ *Kriminologi (Teori, Metode, dan Perilaku Kriminal)*”, (Jakarta: Kencana, 2013) page 430

⁴ Mien Rukmini, in her book entitled “*Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai)*”, explains the position of corruption as a white-collar crime. She says that it cannot be denied that corruption is a white-collar crime, with the ever-dynamic operation from all sides. So, it is said the invisible crime because it is very difficult to obtain the model of proof. It often requires a ‘system approach’ to its eradication efforts

⁵ It is recorded that throughout 2016 there were 11 Regents and Mayors processed by law for alleged corruption. This suggests that corruption is part of a white-collar crime that has its own dimensions because it is done by people with high socio-economic status. So, it needs new approaches and new ideas in

people who do not have access to power, expertise, and jobs in high economic strata.

White-collar crimes need special remedies, because the motives of perpetrators who commit such crimes are different from the crime motives, such as torture, murder, theft, and other conventional crimes. Therefore, it requires new methods or approaches to tackle such crimes. There are two interesting approaches to be analyzed in the crime prevention process: policy approach and value approach (including local wisdom values). The aim is to find the ideal form of white-collar crime prevention, such as criminal acts of corruption.

The study of white-collar crime prevention (including corruption crime) through policy approach and value approach is important to do considering the factual condition that the corruption perception index in Indonesia is still very poor. Transparency International, an institution that concentrates on corruption eradication studies, has released the results of corruption perceptions index in many countries. In 2017 this institution released corruption perceptions index in 176 countries. From the data, Indonesia’s corruption perception index is at a score of 37 or ranked 90 out of 176 countries. This is a low score that must be responded well so that corruption crime can be overcome more comprehensively.

1.2 Formulation of the Problem

Based on the description above, the problems can be formulated as follows:

1. Are policy approaches and value approaches ideal ways to overcome white-collar crimes, including corruption?
2. What are the types of white-collar crimes, including corruption, that can be overcome using policy approach and value approach?

handling this crime. (see:<http://www.google.co.id/amp/s/app.kompas.com/amp/nasional/read/2017/01/19/09221721/korupsi.kepala.daerah.masih.jadi.tantangan.bagi.kpk>) (accessed on August 8, 2017)

II. LITERATURE REVIEW

2.1 The Paradigm of Crime

Initially, crime was considered as a private matter, in which the victim of the crime sought the compensation or retaliation by himself. Through its evolution, it was only the disservice done to the king and the king's family and followers that was considered as a crime. As compensation began to develop, fines were levied on behalf of the king (state) and this made the state become a disadvantaged party. In addition to being defined by statutory law, crime can also be interpreted by common law.⁶

Crime is a part of life and social life. It is inseparable from daily human activities. Robbery, rape, mugging, fraud and other forms of crime exhibit social dynamics, a normal form of social life. Evil behavior can arise because of social, political, and many other influences. For example, a person is considered evil because he does not obey certain rules or because his actions do not please a certain group of people. However, there are many evil behaviors that are not seen as crime, or so-called *secret deviance*.⁷

According to Dionysios Spinellis, one's behavior in an organization is called *Top Hat Crime*. It has two characteristics: the penalization of politics and the politicizing of criminal proceedings. The term white-collar crime was first proposed by Sutherland to describe the crime in business, corporations, and conglomerates. The rise of this type of crime is a product of the ruling regime. Crimes in the field of economy and business have resulted in a lot of harm to the people, with the victim of millions of lives and possessions.⁸

The expansion of the notion of crime, including the changes of other basic features of criminology, has turned criminology to crimes

that are actually harmful to society. Manuel Lopez Ray points out non-conventional crimes that increasingly become the subject to criminological concerns. "A great number of crimes are committed under cover of official and an official position; for ideological, revolutionary and nationalistic reasons; act of terrorism supported or encouraged by government or perpetrated by special governmental groups and organization; corruption violation of human rights committed by political organizations, etc."⁹

2.2 Definition and Types of White-Collar Crime

The concept of white-collar crime was first proposed by Edwin H. Sutherland in a presidential speech to the American Sociological Association in 1939. In his speech he defines white-collar crime as a crime committed by someone who has ability and high social status in occupation or work. White-collar crimes incur greater losses than other crimes. The difference between white-collar crime and other common crimes lies in the implementation of the criminal law that separates administratively between white-collar crime and other crimes. White-collar crime is more sociological than legal. The concern is on the status of the offense rather than on the legal uniqueness of the crime.¹⁰

Other terms proposed for white-collar crime include vocational crime, corporate crime, economic crime, elite deviance, criminal elite, occupational crime, professional crime, and upper-word crime. These terms can be said as the types of white-collar crime. For example, occupational crime can be interpreted as a personal offense committed for the benefit of oneself during the legitimate work. In addition, corporate crime can be interpreted as a crime

⁶ Frank E. Hagan, "*Kriminologi (Teori, Metode, dan Perilaku Kriminal)*", (Jakarta: Kencana, 2013) *Op. Cit.*, page 16

⁷ Yesmil Anwar and Adang, "*Kriminologi*", (Bandung: Refika Aditama, 2013) page. 186

⁸ *Ibid*, page 186 - 187

⁹ *Ibid*, page 190

¹⁰ Frank E. Hagan, "*Kriminologi (Teori, Metode, dan Perilaku Kriminal)*", (Jakarta: Kencana, 2013) *Op. Cit.*, page 430 - 431

committed by business or office, conducted on behalf of the organization.¹¹

One of the types of white-collar crime was proposed by Edelhertz. He presented two types of white-collar crime. The first type is a crime committed during work by a person operating in business, government, or other institution in violation of duties and loyalty, and compliance with a superior or client. For example, corruption committed by auditors and government officials, banking violations committed by bank officials, etc. The second type is incidental crime in business operations, but not the offense against the main purpose of business, such as tax violations, trade espionage, labor violations, etc.¹²

Types of white-collar crime according to Edelhertz are as follows:

- a. Crime committed by people operating individually (eg. tax violations, credit card fraud, bankruptcy fraud).
- b. Crime committed while working by those operating within businesses, governments or other institutions, in violation of duties and compliance with their superiors or clients (eg embezzlement, employee fraud, forgery).
- c. Incidental crime in business operations, but not violations of business objectives (eg antitrust violations, commercial bribery, food and beverage violations).
- d. White-collar crime as a business activity or a major activity, referring to activities such as fraud in medical and health sector and fraud in payroll.

The motive of white-collar criminals is simply interpreted not merely economic or profit motive.¹³ According to Ormewod,

¹¹ *Ibid*, page. 432

¹² *Ibid*, Page 444 - 445

¹³ Steven Box, as quoted by Yesmil Anwar and Andang in their book entitled "*Kriminologi*" explains that crime often arises more from power than from weakness, from wealth than from poverty, and from privileges by describing many actions to make victims criminally, committed by members of head-

in general no matter how good a person's economic condition, it cannot eliminate a person's behavior to commit a criminal act, because criminal act is not merely due to economic reasons.¹⁴

2.3 Policy Approach and Value Approach

Two central issues in crime policy by using penal law are:

- a. What actions that should be categorized crime;
- b. What sanctions that should be used or imposed on the offender.

Criminal law policy, including the policy of dealing with these two central issues, should also be conducted with a policy-oriented approach. The problem of a policy-oriented approach is the tendency to be pragmatic and quantitative and not to allow for the inclusion of subjective factors, such as values, into the decision-making process.¹⁵

Nevertheless, Bassiouni argues that policy approach should be considered as a "scientific device" and used as an alternative to the emotionally laden value- judgment approach, most of which is followed by the legislature.¹⁶

With regard to policy approaches relating to the values to be achieved and protected by criminal law, Bassiouni adds that the objectives to be achieved by criminal law are generally manifested in social interests, in which the social interests have the content of values that need to be protected. According to Bassouni, the social interests include:¹⁷

- a. Maintaining public order;
- b. Protecting the citizens from crime

quarters and prison services against those who should be under "court protection". Such a problem raises a hidden crime that is difficult to prove, not even knowing whether it is a crime or not

¹⁴ Yesmil Anwar and Adang, "*Kriminologi*", (Bandung: Refika Aditama, 2013) *Op.Cit.*, page 192

¹⁵ Muladi and Barda Nawawi Arief, "*Teori – Teori dan Kebijakan Pidana*", (Bandung: Alumni, 2010) page 160

¹⁶ *Ibid*, page 162

¹⁷ *Ibid*, page 166

and unjustifiable harm committed by others;

- c. Re-socializing the law violators;
- d. Maintaining the integrity of certain basic views of social justice, human dignity and individual justice.

More pragmatic policy-oriented approach and value-oriented approach are needed in conducting criminal law policy. A rational approach is an approach that should be attached to every policy move. This is a logical consequence that in implementing politics or policy, people make an assessment and selection of alternatives to be used in the face of problems. Thus, criminal politics through criminal law policy must be based on a deliberate and conscious effort.¹⁸

J. Andenaes argues that if someone bases the criminal law on the conception of the protection of society, the next task is to develop it as rationally as possible. Maximum results should be achieved with minimum costs for society and a minimum costs for individual suffering.¹⁹ Thus the idea proposed by J. Andenaes is related to the rationality of the policy with the economic approach.²⁰

III. DISCUSSION

3.1 Policy Approach and Value Approach in Tackling White-Collar Crime

White-collar crime, which is defined as a form of crime committed by a person who has a high work position or social status, continues to grow. This kind of crime is difficult to overcome. It is not only because the people who commit crimes are those who have special

abilities (or power), but also because the crimes they commit are not easy to prove.

Poor welfare access, low levels of education, and a state of frustration or strain are not the motives of white-collar crimes. Therefore, it is necessary to have a special policy, particularly in criminal law policy, to overcome such crimes.

Criminal law policy is interpreted as a form of crime prevention effort. According to Barda Nawawi Arief and Muladi, the two main issues of criminal law policy are related to what actions that should be categorized as crime and what sanctions that should be used or imposed on the offender. With regard to the two principal issues of criminal law policy, it is necessary to examine appropriate sanctions that will be imposed on the offender as an effort to prevent white-collar crimes. The issue of sanctions is related to not only the form of sanction, but also the pattern or process in the imposition of such sanctions

It can be understood that the current criminal sanctions imposed on white-collar criminals have not been effective. The effectiveness of the imposition of sanctions can be measured by at least two measures. First, whether the perpetrator sanctioned is successfully rehabilitated by not committing the same case again. And second, whether the person feels afraid of committing crime because there is criminal sanction. In the context of the second measure, it can be said that the sanctions for crimes which are categorized as white-collar crimes have not been effective. This can be confirmed by the low corruption perceptions index in Indonesian.²¹ In order to maximize or streamline white-collar crime prevention, a policy approach is needed. This policy approach cannot be based solely on rational efforts and put aside the value approach.

¹⁸ *Ibid*, page 164

¹⁹ *Ibid*, page 165

²⁰ The economic approach is not only related to the cost consideration that is used in making the criminal law policy with the results to be achieved, but also related to the consideration of the effectiveness of the criminal sanctions. Ted Honderich suggests that a penalty can be called an economical deterrent if it can meet the following conditions: a. The penalty can really prevent; b. The penalty does not result in a more harmful situation than when the penalty is not imposed; c. No other penalty that can effectively prevent the harm caused

²¹ Transparency International, 2017. *This institution released corruption perception index scores in 176 countries. From the data, Indonesia's corruption perception index score was 37 or ranked 90 out of 176 countries.*

This is in line with Bassiouni's statement that the policy approach should be considered as a scientific device and used as an alternative to the emotionally laden value-judgment approach, which is mostly followed by the legislature.²²

The policy approach and value approach are measured by looking at the social interests. As mentioned above that white-collar crime is more harm than conventional crime, so the policy taken in efforts to optimize sanctions should pay attention to social interests.

The social interests in the context of the criminal law policy using the value approach, according to Basouni, include:²³

- a. Maintaining public order;
- b. Protecting the citizens from crime and unjustifiable harm committed by others;
- c. Re-socializing the law violators;
- d. Maintaining the integrity of certain basic views of social justice, human dignity and individual justice.

Thus, in addition to paying attention to the four factors of social interests mentioned above, the prevention of white-collar crimes using policy approach and value approach should at least also pay attention to the economic value. For example, to cope with white-collar crime in the form of corruption committed by state officials and by corporations, the policy taken should be to strive to restore the integrity of certain basic views of social justice, human dignity and individual justice, as well as economic value approach.

The policy taken to deal with such cases is not only to imprison corruptors, but also to reimburse the state money that has been stolen by corruptors. In addition, the state financial loss recovery efforts must also be done as efficient as possible, for example by executing the convicted assets with low cost.

²² Muladi and Barda Nawawi Arief, "*Teori – Teori dan Kebijakan Pidana*", (Bandung: Alumni, 2010) *Op.Cit.*, page 162

²³ *Ibid*, page 166

Coping white-collar crime using policy approach should also be done using a non-penal policy, such as by providing an understanding of the views and basic values of integrity, morality, and professional responsibility. The provision of such understanding can be done using policies existing in each government agency, professional organizations, or others.

Attempts to internalize these basic values must also be done massively and become a national movement throughout Indonesia. The efforts undertaken may vary depending on the local wisdom of each region, for example, through education, in which the local content of the material should instill the basic value of local wisdom that leads to anti-corruption attitudes. So, the efforts done are cross-sector efforts. All parties must be willing to work to instill basic values that can prevent criminal acts of corruption.

Local wisdom is a view of life and science as well as various life strategies in the form of activities undertaken by local communities in answering various problems to fulfill their needs. Local wisdom is also local knowledge or local genius.²⁴ Local wisdom simply can be observed from the principles of the local community depicted from a proverb of a region. For example, in South Kalimantan there is a proverb "*Menyisir sisi tapih*" which can be interpreted to remind to always do self-introspection. Thus, the policy and value approach in this context is a policy that can assist the internalization process into the individuals in South Kalimantan society to always be introspective in all actions taken. Internalization using this approach is expected to be an instrument to prevent corruption, because every individual will be careful in acting because he always does self-introspection in order to do the best.

²⁴ Ulfah Fajarini, "*Peranan Kearifan Lokal Dalam Pendidikan Karakter*", (Jakarta: Jurnal Sosio Didaktika: Vol. 1, No. 2 December 2014), page. 123-124

In all regions in Indonesia, local wisdoms can be highlighted as an effort to prevent and combat corruption. For example, in West Nusa Tenggara there are local values, such as *Tatas, Tuhu, and Trasna* (knowledge, morals/ethics, and community), in South Sulawesi there are local values of Bugis people who hold the principle of *Rebba Sipatokkong* (to remind each other, mutual respect, or mutual advancement), and in Ambon there are local values that can be internalized, such as *gendong beta – gendongmu jua* (your pain is also my pain). Through socializing and internalizing these values to each individual, it is expected to foster a sense of embarrassment when committing a criminal act of corruption.

3.2 Types of White-Collar Crime Tackled using Policy Approach and Value Approach

As described earlier, basically there are two types of white-collar crime which are divided into various forms of crime. The first type is a crime which is committed during work by a person operating in business, government, or other institution by breaching duty and loyalty, and compliance with a superior or client, such as corruption committed by auditors or government officials, banking violations committed by bank officials, etc. The second type is incidental crime in business operations, but not the offense against the main purpose of business, such as tax violations, trade espionage, labor violations, etc.²⁵

Policy approach and value approach can be undertaken by understanding the types of white-collar crime. Policy approach and value approach are efforts to overcome the crime by trying to see the root of problems so that it can be understood what actions that can be punished and what sanctions that are effective to be imposed. In addition, it is necessary to understand the social value and economic value

so that the policy making in handling crime can be more comprehensive and optimal.

However, there are different policies taken to tackle white-collar crimes, depending on the type of the crime itself. For example, the white-collar crime with the type of incidental crime in business operations but not a violation against the main purpose of the business should be observed whether criminal law policy in the form of criminalization is appropriate in this context, or whether it needs criminal provisions for the case of commercial espionage (as one example of this type) or not.

The criminal law policy to prevent corruption, which is part of white-collar crimes, should look at the basis of the problem, such as less optimal internalization of local wisdom values into a generation. Thus, criminal law policy should be focused not only on the optimization through penal media, but also on the optimization through non-penal media that can support it. As stated earlier, criminal law policy should also be focused on ensuring positive values in each region, every individual, and especially the next generation.

IV. CONCLUSION AND SUGGESTION

4.1 Conclusion

1. Policy approach and value approach are ideal enough to be used to prevent white-collar crime as long as these two approaches are implemented simultaneously. Policy approach and value approach will be able to anticipate and overcome the increasingly varied white-collar crimes.
2. In general, any types of white-collar crime can be addressed by using policy approach and value approach. However, the policy-making can be different depending on the types of the white-collar crime.

²⁵ Frank E. Hagan, “*Kriminologi (Teori, Metode, dan Perilaku Kriminal)*”, (Jakarta: Kencana, 2013) *Op. Cit.*, page 444 - 445

4.2 Suggestion

The institutions in charge of making criminal provisions should immediately conduct an in-depth review to find appropriate criminal law policies for the each type of white-collar crime, related to the arrangement of either its criminal elements or its sanctions. In addition, the institutions should also continue to make non-penal efforts that can maintain the view of integrity, morality, and professional responsibilities of the people who have the potential to commit white-collar crime, mainly through the internalization of local wisdom that supports the eradication and prevention of criminal acts of corruption.

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