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RESEARCH ARTICLE

NON-PENAL POLICY IN MANAGING CRIMINAL ACTS OF BRIBERY AND NEPOTISM CORRUPTION

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Abstract

Preventive crime prevention policies using non-penal means (outside criminal law), are considered a strategic effort, because they can eliminate conducive factors that cause crime, including in overcoming corruption. The purpose of this paper is to find a form of non-penal policy preventive measures in dealing with corruption, BRIBERY AND NEPOTISM. The research method in this writing is normative juridical using secondary data sources in the form of legislation, literature, journals. The results of the study show that the forms of corruption are: Transactive Corruption (a form of bribery in which the giver and the receiver cooperate to obtain mutual benefits) and Nepotistic Corruption (Types of corruption are related to the giving of economic rents or the appointment of public office to family or friends) is a corruption crime that often occurs in Indonesia, as often caught by the Corruption Eradication Commission (KPK)'s Hand Catch Operation (OTT). Non-penal policies to prevent the occurrence of Transactive Corruption and Nepotistic Corruption need to be carried out, namely by conducting strict and intensive supervision in government goods and service procurement projects that are vulnerable to bribery. This effort is mainly to prevent the occurrence of Transactive Corruption. Meanwhile, to prevent Nepotistic Corruption, it can be done by means of strict and intensive supervision, especially in the process of determining job transfers, both rotations and promotions at government agencies, both at the central and regional levels.

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Introduction:-

The criminal act of corruption that has taken place systematically and massively. The damage caused is not only a national economic disaster but also disrupts the credibility of the government in the international arena. Therefore, it is a good thing if the corporation eventually becomes an extraordinary crime

According to Mohammad Ghalib, the losses caused by corruption in people's lives can be viewed from several aspects or points of view, namely:

From a political perspective:

1. For educated people, corruption can reduce the credibility of the government

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2. From an economic perspective:
3. Corruption can harm the finances and economy of the state and society.

From a cultural perspective:

Can eliminate the state itself because it can damage the character and moral values of the nation, and in the end it becomes a cultural problem [1].

Regarding the condition of corruption in various parts of the world, including in Indonesia, Saldi Isra also stated that: "Today, corruption is a serious problem in many Asian countries. Seriously, the development of corruption has threatened the stability and security of national and international society, weakened the institutions and values of democracy and justice, and endangered sustainable development and law enforcement. In Peter Eigen's view, to some extent, corruption not only threatens the environment, human rights, democratic institutions, but also hinders development and exacerbates the poverty of millions of people around the world" [2].

The practices of criminal acts of Corruption, Collusion and Nepotism (KKN) are apparently not only carried out by state officials but also involve other parties such as cronies, families, and businessmen, so that KKN crimes tend to experience a sharp increase and spread to almost all agencies. Countries that have corruption resulted in enormous state financial and economic losses, and hampered national growth.

In addition, with the widespread of criminal acts of KKN in almost every state institution and government agency, both at the center and in the regions, BUMN, BUMD, as well as private institutions and entrepreneurs who establish working partners with the state, have led to very alarming conditions, and damage the joints of lives, and endanger the existence of the state.

Many forms of corruption that occur in Indonesia, as often caught by the Corruption Eradication Commission's (OTT) arrest operation, include the following forms of corruption: together) and NepotisticCorruption (types of corruption related to the provision of economic rents or the appointment of public office to family or friends).

Crime prevention can be done through efforts or means of penal policy and non-penal policy, including tackling corruption.

Efforts to tackle corruption in a non-penal manner (non-penal policy)one of them is the prevention of crime.This needs to be done to avoid greater losses due to corruption, so that non-penal corruption prevention policies that are preventive in nature (prevention policies) can be said to be a very strategic effort.

Formulation of the problem

The problems that will be discussed in this research are What are the forms of preventive measures in non-penalty policies that are considered strategic in dealing with corruption, bribery and nepotism?

Research Methods:-

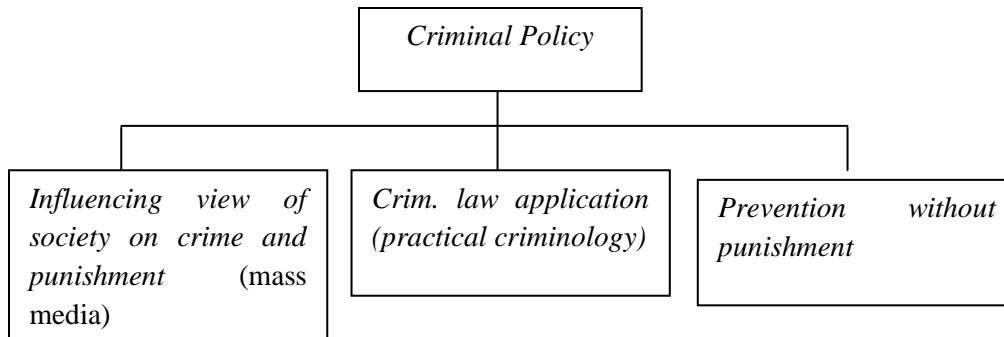
The juridical-nofmative approach method. Secondary data is taken by means of literature study. The results of the study were then analyzed by qualitative methods

Discussion:-

The emergence of corruption cannot be separated from a habit which is then responded to as a natural thing and in the end it becomes an entrenched act. Dishonesty and selfish interests are the root of corruption. Even thanksgiving that is done by giving gifts and giving opportunities to officials or public service providers becomes a habit that has the potential to cause corrupt behavior. Even if it's just a gift, it can create personal bonds and become unhealthy in professional relationships.

The word corruption can be used to designate a rotten state or act. Corruption is mostly attributed to someone's dishonesty in the financial sector [3]. In essence, corruption does not have a positive meaning, but in the meaning of bad deeds and not only in the financial sector but also various acts of abuse of authority or position attached to a person. This means that corruption is not only pursued for personal gain, but also for its strategic position that can benefit others.

Strategies in eradicating crime are generally used scientific and artistic approaches, namely what is often called criminal politics (criminal policy) or criminal policy. The scope of "Criminal policy" as described by G. Peter Hoefnagels is as follows:



Crime prevention efforts based on the above scheme can be taken, among others, through:

- a. criminal law application
- b. prevention without punishment
- c. influencing views of society on crime and punishment/mass media [4].

Based on the above, crime prevention can be divided into two, namely through the "penal" (criminal law) and "non-penal" (outside criminal law). Points (b) and (c) above are non-penalizing efforts.

"Non-penal" efforts are "preventive" in the context of deterrence or control or prevention before a crime occurs. In contrast to penal efforts that are repressive in nature, namely efforts made in the context of eradicating or suppressing crimes. However, basically repressive measures can be seen as preventive measures in a broad sense.

It can be noted that so far the focus of overcoming crimes that are extraordinary crimes has been more on penal efforts. However, the reality is that crimes that are extraordinary crimes are actually getting worse. Starting from money laundering, corruption, and even the implementation of the death penalty for narcotics criminals, it is not able to provide a preventive effect for other perpetrators.

There are other problems where the number of extraordinary crimes including corruption is not proportional to the number of personnel of the Corruption Eradication Commission and the Prosecutor's Office. You can imagine how much spread the use of the state and local finance funds has the potential to be misused. In the end, not all corruption cases can be revealed, this is related to the limited number of human resources in the Corruption Eradication Commission and the Prosecutor's Office.

Therefore, through "non-penal" crime prevention, the main target is to deal with the conducive factors that cause corruption. Conducive factors centered on problems or either directly or indirectly can cause or foster crime. Therefore, in criminal politics, non-penal efforts have a strategic role [6].

Criminal acts or crimes of corruption which are currently regulated in Law Number 31 of 1999 in conjunction with Law no. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, there are 30 (thirty) articles on corruption. Of the thirty forms of corruption, it can be summarized into 7 (seven) forms of corruption, namely:

1. Corruption crime of State Financial Loss; (Article 2 and Article 3 of Law No. 31 in conjunction with Law No. 2001);
2. The Crime of Corruption Bribery; (Article 5 Paragraph (1) a; Article 5 Paragraph (1) b; Article 13; Article 5 Paragraph (2); Article 12 letter a; Article 12 letter b; Article 11; Article 6 Paragraph (1) letter a; Article 6 Paragraph (1) letter b; Article 6 Paragraph (2); Article 12 letter c; Article 12 letter d).
3. Crime of embezzlement in office (Article 8; Article 9; Article 10 letter a; Article 10 letter b; Article 10 letter c).
4. Corruption Crime of Extortion (Article 12 letter e; Article 12 letter g; Article 12 letter f).
5. Criminal Acts of Corruption, Cheating (Article 7 Paragraph (1) letter a; Article 7 Paragraph (1) letter b; Article 7 Paragraph (1) letter c; Article 7 Paragraph (1) letter d; Article 7 Paragraph (2); Article 12 letter h).
6. Corruption Crime of Conflict of Interest in Procurement (Article 12 letter i).
7. Corruption Crime of Gratification (Article 12 B in conjunction with Article 12 C).

Of these types of corruption, the most common and handled by the Corruption Eradication Commission (KPK) is bribery. Indonesia itself has Law Number 11 of 1980 concerning the Crime of Bribery, however, its regulation is related to the public interest and the subject of the offense does not include corporations. Therefore, the issue of bribery, involving state officials and corporations is regulated in Law Number 20 of 2001. At the international level, a regulation has been made namely UNCAC of 2003. The problem is that even at the national and international levels there are regulations that regulate threats criminal acts for perpetrators of corruption, but this cannot suppress the growth of corruption in Indonesia. The existing criminal threats do not seem to be able to have a deterrent effect and prevent other perpetrators.

Even the threat of capital punishment for perpetrators who commit corruption during a national emergency, in fact, does not discourage the perpetrators from doing so. This is like the case of the implementation of the Covid-19 social assistance which involved former Social Minister Juliari Peter Batubara with his employees and the private sector who became the supplier.

It should also be noted that various kinds of methods or *modus operandi* with the aim that these acts are not revealed by law enforcement officers. has) switch to a more modern system of transfer and communication via telephone. However, in its development, it is not uncommon for perpetrators to return to conventional methods so that they cannot be tracked.

Therefore, the KPK has carried out various ways to uncover and arrest perpetrators of corruption, one of which is through the Hand Catch Operation (OTT). This bribery corruption case was revealed from the frequent occurrence of the KPK conducting OTT against state officials or administrators as well as private parties. In 2019 until 2021, at least the KPK conducted 16 OTTs, here is a list of the 16 OTTs of the KPK:

1. Regent of Sidoarjo

On January 7, 2020, the KPK arrested the Regent of Sidoarjo Saiful Ilah. This OTT is related to infrastructure projects in Sidoarjo Regency.

2. KPU Leader

On January 8, 2020, KPU Commissioner Wahyu Setiawan was arrested by the KPK. This OTT is related to the bribery case for determining the interim replacement (PAW) for members of the 2019-2024 DPT involving PDIP politician Harun Masiku.

3. East Kutai Regent

On July 2, 2020, the KPK secured the Regent of East Kutai Ismunandar related to allegations of corruption in infrastructure work from 2019 to 2020.

4. Minister of KKP

On November 25, 2020, the KPK conducted an OTT for the Minister of Maritime Affairs and Fisheries Edhy Prabowo over the alleged permit to export shrimp seeds.

5. Mayor of Cimahi

On November 27, 2020, the KPK arrested the Mayor of Cimahi Ajay Muhammad Priatna in the alleged bribery case for a hospital construction permit in Cimahi, West Java.

6. Banggai Laut Regent

7. Ministry of Social Affairs

8. Governor of South Sulawesi

9. Regent of Nganjuk

On May 10, 2021, Firlis arrested Nganjuk Regent Novi Rahman Hidayat.

10. Regent of Probolinggo

On August 30, 2021, Probolinggo Regent Puput Tantriana Sari was arrested by the KPK along with her husband, who is also a Nasdem politician, Hasak Aminudin. Both are suspected of corruption, bribery, buying and selling positions within the Probolinggo Regency Government.

11. Regent of Musi Banyuasin

In October 2021, the KPK arrested the Regent of Musi Banyuasin Dodi Reza Alex Noerdin

12. Regent of Banjarnegara

On September 3, 2021, the KPK arrested the Regent of Banjarnegara, Budho Warsono, who was suspected of accepting bribes totaling Rp. 2.1 billion for the procurement of infrastructure development projects.

13. Mayor of Bekasi

In early 2022, the Corruption Eradication Commission (KPK) arrested Bekasi Mayor Rahmat Effendi for the alleged bribery

14. Regent of North PenajamPaser

15. Regent of Langkat

The KPK conducted an OTT against the Regent of Langkat, the Warringin Plan was published. He is suspected of being the recipient of bribes for goods and services for the project.

16. PN Hamkim in Surabaya

On Wednesday (19/1), the KPK arrested Registrars, Lawyers, and Judges in Surabaya, East Java. They are suspected of being involved in a corruption crime of giving and receiving money related to a case at the

Referring to the data above, the crime of corruption affected by OTT is a type of bribery corruption. There are several views that bribery in the private sector is not considered a corruption because meanwhile in the law there is an element of "financial loss or state economy".

Referring to the provisions of Article 5 paragraph (1) the meaning of eradicating corruption by individuals and corporations (national and foreign) in the private sector should not see elements of state losses, because they have committed deliberate and disgraceful actions, which are for their business interests, has bribed to do or not to do something attached to state administrators or civil servants, and can broadly affect the country's economy.

In the opinion of Syed Hussein Alatas, there are seven typologies:

1. Transactive corruption is related to a reciprocal agreement
2. Nepotistic corruption is related to the abuse of power and authority for personal or family interests or close people.
3. Extortive corruption is related to corruption carried out by means of coercion and threats or pressure to one of the parties
4. Investive corruption, related to the provision of goods or services for future profits.
5. Deversive corruption, relating to those who become victims because they are forced or trapped to be involved in it.
6. Outogenic corruption, related to corruption committed individually (single fighter),
7. Supportive corruption is the no involvement of other parties[7].

Based on the above-mentioned typology of corruption, particularly corruption in the form of transactive corruption and nepotistic corruption, which has recently occurred frequently in Indonesia, it can be concluded that in transactive corruption, which often occurs in the organizers of government goods and services procurement activities, including the import process of basic goods implemented by the government, the conducive factor is mainly due to the weak control and supervision of the Government's Internal Supervisory Apparatus and the community (social control). The same applies to the type of corruption, Nepotistic Corruption.

Thus, if strict and intensive supervision is carried out on the implementation of procurement of goods and services as well as the procurement process for imports of basic necessities by the government, it is predictable that those involved in the procurement process will act more openly and honestly because it is difficult to conspire to gain personal gain that is detrimental to the state or people's finances. Similarly, in nepotistic corruption, especially bribery in the transfer of positions, with strict supervision from both the government and the public, it is difficult to carry out a conspiracy to buy and sell positions.

Conspiracy of buying and selling positions became an iceberg phenomenon, something that actually happened but not everyone reported the existence of the conspiracy. People tend to react only to report if the conspiracy is detrimental to them. As long as it doesn't harm him, he tends to be more apathetic. This certainly injures professionalism and the culture of Nepotistic Corruption will take root.

Many people do not care to build a professional atmosphere in working relationships. People still feel bad so they tend to give gifts for a service, give more opportunities to people they know in a tender, and look for opportunities for inherent opportunities.

Then the ironic thing is that people who actually qualify as witnesses who know that there is an unusual personal relationship that causes bribery transactions are actually apathetic, don't want to interfere, don't want to get into

trouble, and in the end did not want to report. This results in the non-operation of the whistleblowing system in an agency.

Without strict supervision, corruption eradication only depends on penal efforts, namely disclosure and law enforcement. However, as explained earlier, there is a limited number of KPK and prosecutors' personnel in revealing corruption, so that disclosure and enforcement of punishments must use a priority scale. For people who have not been revealed and processed legally, they will consider the modus operandi to be successful and will continue to commit corruption.

The community actually has a strategic role in preventing corruption. Moreover, a lot of corruption is carried out together, so that information will be more easily obtained by the public. Therefore, corruption can be prevented if there is a monitoring system from various layers. Strict, intensive and multi-layered supervision can interfere with a person's courage to commit acts of corruption and can increase embarrassment if caught by the surrounding environment. This can encourage the realization of a professional working relationship atmosphere.

Based on the above understanding, non-penal efforts to tackle corruption crimes against corruption in the form of transactive corruption and nepotistic corruption are carried out by means of intensive strict supervision, both by the Government's Internal Supervisory Apparatus and the community (social control).

Referring to this optimizing monitoring strictly can not only build professional relationships but also streamline the whistleblower reporting system so that everyone feels monitored by each other and prevents the occurrence of transactive corruption and nepotistic corruption.

Conclusion:-

Non-penal policies in tackling corruption, especially Transactive Corruption in the form of bribes where those who give and those who receive cooperate with each other to obtain mutual benefits and Nepotistic Corruption (corruption related to the provision of economic rents or the appointment of public positions to family or friends) in the following way:

1. To prevent Transactive Corruption, strict and intensive supervision must be carried out in government goods and service procurement projects starting from the auction registration process until the handover of the work;
2. To prevent Nepotistic Corruption, it can be done by means of strict and intensive supervision, especially in the process of determining job transfers, both rotations and promotions at government agencies.

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