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Recommendations for The Implementation Of Social Sanctions In Health Sector Corruption Cases

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Abstract. Law Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes was made separately from the Criminal Code (Weetboek van Straftrecht) to make social sanctions an alternative to the imposition of other basic sanctions, but the technical implementation is still not yet clear. Based on this, researchers focus on recommendations for implementing social sanctions in cases of corruption in the health sector. The method used is normative juridical, namely through an approach and analysis of the relevant laws and regulations, the results of which can then be used as recommendations in the form of SOPs. The research results found that the Criminal Reform Policy Analysis in the New Criminal Code provides a better scope than the previous Criminal Code because the variety of contents in the new Criminal Code provides many choices of basic criminal sanctions. Recommendations for the application of social work punishment are part of the theory of legal objectives and a form of justice for victims, as well as criminal alternatives as supplements for perpetrators of criminal acts. Alternative social work criminal sanctions, which have just been included in the New Criminal Code through Law Number 1 of 2023, can be applied to corruption crimes in the health sector in the form of additional social criminal sanctions.

Keywords. Social Work Crimes; Corruption; Health Workers; New Criminal Code

1. Introduction

Corruption crimes continue to increase and enter several areas, including the health sector [1]. The development of corruption is grouped into 3 stages, the first is the elitist stage, the second is an endemic stage, and the third, and the systemic stage. The elitist stage was originally only in elite groups or officials where corruption was only carried out by certain people who had great authority at the top level, the second stage of corruption spread to various groups of society and became entrenched and spread massively uncontrolled at the systemic stage where at this stage, corruption It's getting worse considering that corruption has become a chronic problem [2].

The government's responsibility to eradicate corruption forms an important history in government in this country [3]. However, corruption continues to spread to various state institutions; from the executive, legislative, judiciary, immigration, tax, and customs to the health sector. [4]

The impacts felt are of course tens of millions of people living in poverty, millions of children under five affected by malnutrition, millions of children have dropped out of school, tens of millions of poor people do not have access to cheap and adequate health care, and various other blurry portraits. All of this is a result of the development budget being corrupted by those holding positions and power in this country. Corruption is an act of crime against humanity, therefore it is very inappropriate for big-time corruptors to receive leniency in their sentences. [5]

Furthermore, as the focus of research is on health corruption, it also has an impact on public health, including human lives, poor health services, bad medicine and disease, and high death rates. Of course, corruption in the health sector is part of a crime against humanity. [6] The problem of corruption in the health service sector must be realized that the root of the problem of corruption has "hardened" and like a tumor must be quickly taken "surgical action". [7]

Corruption is an extraordinary crime so it should also be handled with extraordinary methods. The Judicial Institution, as the last bastion for efforts to eradicate corruption, should have judges who think progressively. When it comes to corruption issues, judges should no longer just rely on official readings, but should also always consider the benefits and sense of justice for citizens. The judge's legal theory is only used as a guide or guide and is not the only tool for making legal decisions. [8]

To overcome corruption, law enforcers who think progressively are needed. Quoting Teverne's popular opinion "Give me good judges and prosecutors, so that even with bad rules I can make good verdicts".

These words seem to emphasize that even with perfect regulations if their implementation is carried out by people with poor ethics and morals, the results will not be good and will disappoint many parties.

The Judicial Institution cannot provide citizens with a sense of justice in handling criminal acts of corruption, there are still parties who try to find loopholes in the law and justify various ways to influence the Court so that the practice of bribery and "flirting" is no longer something that is a secret from the world of justice. The term judicial corruption emerged because the majority of defendants succeeded in buying off law enforcers (especially judges) so that the verdict was very profitable for the defendant. [9]

On the one hand, the current penal system is seen as still needing to be improved in a more humane direction, such as the prison system that is still available, the situation is not much different from the colonial era where prisoners were placed in cells that did not match the capacity and prison conditions were still inadequate. a decent standard of living, plus there are still "special" prisoners who play whatever they want by bribing prison wardens. The shift towards a more humane direction will still take place slowly following the economic conditions and social progress of the Indonesian nation. [10]

Prison punishment is currently facing a "crisis period" because it is one of the "less popular" types of punishment. This criminal model of deprivation of liberty has been widely criticized both for its effectiveness and other negative consequences associated with deprivation of liberty. This sharp and negative criticism is directed not only against the deplorable nature of traditional revenge but also against the goals of modern detention, which is more humane and emphasizes the elements of the sought reform (reformation, rehabilitation, and resocialization) of the perpetrator. [11]

In one of the reports of the fifth UN Congress in 1975 in Geneva regarding the Prevention of Crime and the Treatment of Offenders, it was stated, among other things, that in

various countries there is a crisis of confidence in the effectiveness of prison sentences and there is a tendency to ignore the expertise of prison institutions in supporting crime control efforts. During the "crisis period" of prison sentences, there are still many countries that continue to maintain prison sentences in their criminal systems. However, apart from always maintaining prison sentences, it is also balanced with efforts to look for alternative models of prison sentences which are also accompanied by a tendency to avoid or hinder its practice and improve its implementation.[12]

Likewise in Indonesia through the New Criminal Code which still focuses on criminal acts, criminal errors or responsibilities, and criminal and criminal cases. So if mandatory punishment is also oriented towards the "person" aspect (the perpetrator of a criminal act) then the inspiration of "criminal individualization" also pioneers the general rules of punishment in Book I of this concept.

Another aspect of "criminal individualization" is that there needs to be freedom for judges to choose and determine what sanctions (crimes/actions) are appropriate for the individual or perpetrator of the criminal act in question, so there is a need for "flexibility or elasticity of punishment", although always within limits. -limits of freedom according to several new things in the concept of the New Criminal Code, first of all, it is necessary to convey that efforts to create a New Criminal Code to replace the current WvS (KUHP). The Criminal Code itself was ratified on January 2, 2023.

The focus of this study provides an overview of criminal acts of corruption which the researcher tries to analyze with the perspective of the New Criminal Code and the principles of criminal law based on the New Criminal Code as an analytical tool. It is hoped that the analysis can be used as a reference and recommendation for subsequent research.

The focus of this research is to provide an overview of recommendations for implementing social sanctions against perpetrators of corruption in the health sector from the perspective of the New Criminal Code and legal principles so that it can be used as a reference and recommendation for further research.

In this research, an example of a corruption case in the health sector is provided, from the defendant LIA SUSANTI. This case occurred when the defendant Lia Susanti, a health service official, committed corruption in the health mask procurement project which was decided by the Tangerang Banten District Court. However, according to the author, the t-shirt does not reflect a sense of justice, so the author's analysis can be used as a recommendation for the future. The problem of corruption in the procurement of goods took the form of KN79 masks with the defendant LIA SUSANTI, SKM., MKM Binti UNDIN MACHPUDIN as Head of the Program, Evaluation and Reporting Subdivision at the Banten Provincial Health Service, in 2021. With Decision Number 15/Pid.Sus-TPK/2021/PN Srg, thus declaring the defendant LIA SUSANTI, SKM., MKM Binti UNDIN MACHPUDIN legally and convincingly proven guilty of committing a criminal act of corruption as in the PRIMAIR indictment, Sentencing the criminal The defendant is therefore sentenced to imprisonment for 4 (four) years and a fine of Rp. 300,000,000.00 (three hundred million rupiah) with the condition that if the fine is not paid, it will be exchanged for imprisonment for 6 (six) months; Determining that the period of arrest and detention already served by the Defendant shall be deducted in full from the sentence imposed; Determine that the Defendant will always be detained.

From the decision above, it can be seen that the criminal sanctions imposed on defendants/perpetrators of criminal acts of corruption are very minimal, which means that criminal acts of corruption are considered trivial or ordinary without the urgency of maximum criminal sanctions against perpetrators of criminal acts of corruption, especially in the health

sector. where medical equipment at that time was very necessary for the continuity of life and public health at that time.

So in the corruption case above, the legal sentence is lighter than the loss borne by the state, which is Rp. 1,680,000,000 (One Billion Six Hundred and Eighty Million Rupiah), which is only subject to imprisonment for 4 (four) years and a fine of Rp. 300,000,000 (Three Hundred Million Rupiah). [13] then this is very unfair

Based on the background above, the author of this study focuses his research on recommendations for the application of social sanctions in cases of corruption in the health sector.

2. Method

The method used is normative juridical, namely through an approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research, the results of which can then be used as recommendations.

3. Result and discussion

3.1. Analysis of Criminal Reform Policies in the New Criminal Code

The essence of criminal reform is part of criminal law policy or politics. Criminal law reform is closely related to the background and urgency of criminal law reform, which can be viewed from sociopolitical, socio-philosophical, sociocultural aspects or various policy aspects (especially social policy, criminal policy, and law enforcement policy). This means that the meaning and essence of criminal law reform are also closely related to these various aspects.

In implementing criminal reform, there are two approaches, namely the Policy Approach and the Values Approach.

a. The Policy Approach accommodates three activities, namely social policy, criminal policy, and law enforcement policy.

Social policy is an effort used to overcome social problems (including humanitarian problems) to achieve or support national goals (welfare of citizens and so on). Policy. Criminal law reform is essentially part of citizen protection efforts (especially crime prevention efforts). Meanwhile, law enforcement policy and criminal law reform are essentially part of efforts to update legal substance to make law enforcement more effective.

b. The value approach in essence is that criminal law is essentially an effort to review and re-evaluate (reorient and re-evaluate) the socio-political, socio-philosophical, and socio-cultural values that underlie and provide content to the normative and substantive content of criminal law that is envisioned.[12]

However, the essence of criminal reform in its implementation is very difficult to realize because acts of corruption in some state institutions, both central and regional, cannot be sterile from acts of corruption ranging from executive, legislative, judicial, immigration, tax, and customs to the health sector.[5] Corruption is a criminal act that can penetrate elements of the government (executive), legislative, judiciary, and private sector that intend to benefit themselves and others. [14]

Amid the incessant process of investigating, examining, and investigating corruption issues involving officials by law enforcement officials in Indonesia, there is a phenomenon of perpetrators creating new methods to escape because they are suddenly ill and thus obstructing them. The process of executing temporary detention. So if this condition is allowed to continue, it will contribute to the decline in public confidence in the condition of law enforcement in Indonesia

Contents of the New Criminal Code

1. The Systematics of the New Criminal Code consists of two books, namely Book I containing General Provisions, and Book II containing changes to "Criminal Acts" by no longer distinguishing between "crimes" and "violations". Systematics as a recommendation in the field of criminal law at the National Law Seminar I in Jakarta on 11-16 March 1963.

In the seminar "Review of National Legal Reform" held by BPHN on 14-16 June 1982, the opinion of the Criminal Law study group was approved, that in criminal law there are three main related issues: prohibited acts, people who violate the prohibition, and criminal. Book II has another chapter on "Criminal Acts and Criminal Responsibility" (Chapter II) which is separated from the chapter on "Criminals, Actions and Punishments" (Chapter III). Starting from the systematic division between "Criminal Acts" and "Criminal Liability", in Chapter II the articles regarding "criminal acts" are separated from the articles on "guilt". Likewise, the articles regarding "justifying reasons" and "forgiving reasons" are separated.

2. The balance of the principle of legality and the principle of error relies on the principle of balance, in the sense of paying attention to the harmony of the two interests between the interests of citizens and the interests of individuals. This mono-dualistic thinking is usually known as "Daad-dagger Strafrecht". criminal law which pays attention to the objective side of the "act" (Daad) as well as the subjective side of the "person/maker" (Dader). Based on the principle of mono-dualistic balance, the New Criminal Code still maintains two very basic principles in criminal law, namely the principle of legality and the principle of culpability. These two principles can be said to be "social principles" and "humanitarian principles" respectively.

This is in contrast to the current Criminal Code which only formulates the principle of legality. The 1993 Concept formulates these two principles explicitly in Article 1 (for the principle of legality) and Article 35 (for the principle of culpability). The principle of culpability in the 1987/1988 concept is formulated in Article 31, in the 2004 concept it is regulated in Article 35, in the 2005-2012 concept it is regulated in Article 37.

3. The balance of the principles of formal and material legality and the unlawful nature of formal and material law is based on the concept of the expansion and existence of the operation of living law (unwritten law/customary law), as the basis for the appropriateness of an act as long as the act has no similarities or is not regulated. in the Law.

Confirmation of the nature of being against the law is an absolute element of a criminal act, meaning that even though the offense is not explicitly formulated as an unlawful factor, an act that has been formulated as a criminal act in the law must always be considered against the law. So the official formulation of the law must be seen which states that an act is against the law. The official or objective dimension also still needs to be tested, as well as whether the action is truly contrary to the understanding of people's law or the laws that live within the community.

The expansion of the formulation of the principle of legality and the nature of unlawfulness cannot be separated from the basic idea of the principle of balancing (between the interests of people and the interests of citizens, between legal certainty and justice, between formal and material legal criteria/sources). Such thoughts and/or formulations are also relevant when compared with the formulation of the Criminal Code currently in force.

4. Guilt and Criminal Liability

As explained above, the principle of explicit/explicit error only started in the 1993 concept, which is not in the Criminal Code and has not been contained in previous concepts

(1964, 1968, and 1971/1972 concepts). This also states new things/aspects in the concept of the New Criminal Code.

Even though there are strict provisions on the principle of fault, in certain cases it provides the possibility of errors or exceptions as is known in the Common Law System, namely the doctrine of "strict liability" (i.e.: "Liability Without Fault") and "vicarious liability" or "Vicarious Liability" (i.e. "The legal responsibility of one person for the wrongful acts of another"). The adoption of strict liability can be seen in Article 37 and the adoption of Vicarious Liability can be seen in Article 36 (1993 concept). Both formulations of this article are also new because up to now they are not known in the applicable Criminal Code.

There are opinions or comments from Dutch professors (Nico Keizer and Schaffmeister), that the adoption of the doctrine of Strict Liability and Vicarious Liability is contrary to the principle of mensrea (the principle of error). Against such thinking it is necessary to say that exceptions or deviations from a principle should not be seen solely as a contradiction (contradiction) but also seen as a partner or complement (complement) in realizing the balancing principle. Similarly, Article 1 Paragraph (1) contains a non-retroactive principle, but Paragraph (2) allows retroactivity.

In addition to the universal formulation of the principle of culpability as stated above, the concept emphasizes the principle that only criminal acts that are attempted with a plan can be punished. If an act that is attempted with negligence is to be declared a criminal act, then this must be stated explicitly in the formulation of the offense in question, this principle in the 1991/1992 concept is emphasized in Article 40 Paragraph (2), and in the 2005-2012 concept it is regulated in Article 39. With this principle, the concept of considering intent and negligence is essentially a factor of error/criminal responsibility, not an element of a crime.

Because each concept separates "criminal acts" from "guilt/criminal responsibility", it is deemed that intention as the main factor or universal principle of criminal responsibility does not need to be included in the formulation of an offense. Meanwhile, "negligence" and other special forms of subjective factors (behavior in the mind) such as "recognizing", "which one knows", "even though one knows". "while the perpetrator recognizes", are always included in the offense formulation (special rules Book II), so, in essence, the general provisions for liability/mistakes (i.e. intentional) are placed in universal rules, while those of a special nature are placed in special provisions (offense formulation).

Another new thing is the formulation of universal provisions regarding responsibility for consequences (Erfolgshaftung) which currently are not formulated in the Criminal Code but are only known in theory or doctrine.

Even though Article 1 Paragraph (1) of the Criminal Code states that criminal law can only be applied to acts that occur after the existence of the Law, in practice this provision can deviate from or exclude, the exception to the principle of legality appears as found in

Article 1 Paragraph (2) of the Criminal Code states: "If after the act is committed there is a change in the legislation, the rules that are lightest for the defendant are used." This provision can be implemented if two conditions are met:

1. There is a change in the legislation.

To answer the question of changes in legislation, three theories/teachings emerged:

- a. Formal teachings, a change means there is a change in the criminal law itself (Simon), outside the criminal law, not a change as desired by Article 1 Paragraph (2).

- b. Limited Material Teachings, there are changes if there is a change in legal beliefs in criminal law. According to this teaching, this case constitutes a change as desired by

Article 1 Paragraph (2) of the Criminal Code because it was carried out by the legislator. Therefore the perpetrator must be punished.

c. Material Teaching is not limited, there are changes as desired by Article 1 Paragraph (2) of the Criminal Code which can be applied in such a way to any changes in the Law that can benefit the defendant.

2. Some changes are beneficial for the perpetrator.

The definition of lightest/beneficial must be interpreted as broadly as possible, not only regarding the threat of criminal sanctions but regarding everything in the Regulation that influences the assessment of a criminal act. This depends on the concrete circumstances whether there is a complaint or not. If no new rules are used (no prosecution), but if there is a complaint, then the old rules are used because the penalty is lighter. If there are changes but there is no difference in the sanctions, then it will be handed over to the judge. According to Jonkers and Hezewinkel Suringa, this article is better to just delete this because there is no good basis and the deletion of this paragraph will be more beneficial to criminal law. What is better is to use the principle of *lex temporis delictie* as a consequence of the principle of legality. Apart from that, in practice, it causes difficulties and gives rise to feelings of injustice.

In the new Criminal Code, exceptions can be active to retroactively apply to criminal law legislation, not only for issues that are currently in the trial phase but also for issues that already have legal force.

This can be seen as regulated in Article 2 of the Criminal Code.

Paragraph (1)

"If there are changes to the Legislative Regulations after the act occurs, then the most beneficial Legislative Regulations are applied"

Paragraph (2)

"If after the criminal decision has obtained permanent legal force, the act that occurred no longer constitutes a criminal act according to the new laws and regulations, then the implementation of the criminal decision is abolished."

Paragraph (3)

"If after the criminal decision has obtained permanent legal force, the act that occurred is threatened with a lighter penalty according to the new Legislative Regulations, then the implementation of the criminal decision is adjusted to the criminal limits according to the new Legislative Regulations.

The provisions of Article 1 Paragraph (2) of the Criminal Code are provisions that regulate a situation where criminal law legislation is in a transition period, namely that there is a new law that replaces the old law. Thus, Article 1 Paragraph (2) is not merely a provision that regulates whether criminal law legislation can be applied retroactively.

Article 1 of the Criminal Code also regulates new things compared to the WvS Criminal Code, including The imposition of "actions" on violators of criminal law, the use of the phrase "Legislation and Regulations" which means not only laws, and the prohibition on the use of analogies. [10]

In the new Criminal Code, the "objectives and guidelines for punishment" as in Article 51 and Article 52 are based on the following points of view:

1. The formulation of criminal penalties and punishment regulations in the law is only a means to an end, therefore it is mandatory to formulate objectives and guidelines for punishment.

2. Viewed functionally and operationally, punishment is a part of the process and policy which is deliberately planned through a "formulation" process by the lawmaker, an

"application" process by the authorized body/apparatus, and an "execution" process by the apparatus/agency criminal implementers so that there is involvement and compatibility between the three processes as a unified criminal system, it is necessary to formulate objectives and guidelines for punishment.

A criminal system that is based on the idea of criminal individualization does not mean giving complete freedom to judges and other officials without guidance or control. The formulation of objectives and guidelines for punishment is intended as a "controlling or control function" and at the same time provides a clear and structured philosophical basis, rationality, and motivation for punishment.

Corruption is part of Fraud

Legal norms aim to protect human interests so that in society there is order and peace. Law is conceptualized as norms, both written and unwritten, that apply to all society. A criminal act is conceptualized as a criminal act, a criminal act is conceptualized as something that is done which results in the imposition of a crime or punishment. [15]

According to Joseph S. Nye, corruption is defined as deviant behavior in public duties related to 1) private and/or individual (conspiratorial); 2) pecuniary is related to money, profitable actions by breaking the rules with certain work models (private gardening). Bribery of judges); 3) nepotism 4) misappropriation or misuse (illegal or illegal giving of public energy resources that are used for individual matters)". [16]

Corruption is the basis for formulating corruption offenses, while the concept of Fraud has not been included in the offense element but has become part of the action in the corruption element. The Association of Certified Fraud Examiners (ACFE), a reliable organization that operates in the field of checking fraud and aims to eradicate fraud is based in the US and has branches in Indonesia, classifies fraud in Asset misappropriation, namely the misuse/theft of assets or industrial property. or other parties. This describes a form of fraud that is very easy to detect because it is tangible or can be measured/calculated (defined value). [17]

Fraud also includes false statements or false statements or false statements (Fraudulent Statements). Fraudulent statements include actions attempted by officials or executives of an industry or government institution to cover up financial conditions by carrying out financial engineering in the presentation of financial reports to gain profit or perhaps it could be analogous to window dressing.

So returning to cases of criminal acts of corruption (Corruption), it can be concluded that corruption is also a part of Fraud which is very difficult to detect because it involves collaboration with other parties, as in cases of bribery, fraud in corruption is the most common type. This type of fraud often cannot be detected because the parties working together enjoy benefits (symbiotic mutualism). Included in it are abuse of authority/conflict of interest, bribery, illegal receipts (illegal gratuities), and economic extortion. In the case of Lia Susanti, the perpetrator of corruption in the procurement of masks has committed fraud by using dishonest methods to take advantage of other people. Specifically, fraud in health insurance is defined as an act of defrauding or defrauding a health service program using inappropriate methods. [18]

Legal principles related to corruption are divided into two, namely legal principles related to general criminal law, and legal principles related to the implementation of the duties and authority of the National Police the Prosecutor's Office, and the Corruption Eradication Committee. Meanwhile, the legal principles stated in the Criminal Code are divided into three, namely:

1) The principle of legality, no act can be punished except on the strength of the criminal regulations in the Legislation that existed before the act was committed. If after the act is committed there is a change in the norm of the lowest penalty for the defendant (Article 1 Paragraph (2) of the Criminal Code) as well as the principle of no crime without crime, to convict people who have committed a crime, it must be implemented if there is an element of crime in the person's personality. the

2) Territorial principle, meaning that the determination of Indonesian criminal law applies to all criminal incidents that occur in areas that constitute the territorial territory of the Unitary State of the Republic of Indonesia, including Indonesian-flagged ships, Indonesian aircraft, and Indonesian embassy and consul buildings in foreign countries.

3) The principle of active nationality means that the determination of Indonesian criminal law is intended for all Indonesian citizens who commit criminal acts wherever they are, the principle of passive nationality, means that the determination of Indonesian criminal law is intended for all criminal acts that harm the interests of the State of Indonesia. [14]

The implementation of a guideline for implementing a criminal threat formulation system is also intended, among other things, to provide a non-rigid nature to avoid the rigid/imperative nature of a series of criminal threat formulations, both single formulations and alternative formulations. The implementation of the instructions is also intended as a supporting tool to inform the principles or ideas behind the creation of the New Criminal Code, namely:

1. The principle of subsidiarity in targeting types of criminal sanctions (in the implementation of which this principle is sometimes forgotten)

2. Call for criminal individualization;

3. Invitation to utilize non-custodial forms of punishment or alternative forms of non-imprisonment punishment except for deprivation of liberty to avoid/limit the implementation of imprisonment (selective and limitation policies);

4. Invitation to utilize a combination of forms of sanctions that have a "criminal" character (starft/punishment) with forms of sanctions that have a more "action" character (maatregel/treatment), even though it is realized that there is ambiguity regarding the boundaries of these two forms of sanctions, an invitation to remove access from a short sentence. [10]

Theoretically, there are 3 (three) forms of theory in criminal law that explain the direction of crime, namely, absolute theory, relative theory, and combined theory. However, in line with the progress of the times, contemporary theories regarding criminal direction have emerged. The absolute theory was born in the Classical School of criminal law.

Based on absolute theory, retaliation is the foundation of punishment. Therefore, the absolute theory is often referred to as the theory of retribution (*lex talionis*). The theory of retaliation includes subjective retaliation and objective retaliation. Vos said that subjective retaliation is subjective *vergelding* is *vergelding van de sculd van de dader, vergelding naar mate van het verwijt* (subjective retaliation is retaliation for the perpetrator's mistakes, retaliation against the despicable perpetrator), while objective retaliation is objective *vergelding* is *vergerlding naar mate van dat, wat de dader door zijn toendoen* (objective retaliation is retaliation for the actions, actions that have been carried out by the perpetrator).

The relative (utilitarian) theory explains that the purpose of crime is to enforce public order and to anticipate crime. This theory is also known as relationship theory or goal theory. Anticipation of crime is divided into general prevention and special prevention. Prevention in general is aimed at ensuring that everyone no longer commits crimes.

According to von Feuerbach, this general theory of deterrence is known as *psychologische Zwang* or psychological coercion, meaning that imposing a crime on someone will cause fear in other people to commit a crime. Prevention is specifically aimed at preventing perpetrators from committing their crimes again. According to van Hamel, the main direction of prevention is specifically to scare or repair.

Apart from the relative theory and absolute theory, there is a third theory that touches on the purpose of crime, namely the combined theory which is a mixture of retaliation and public order. Vos believes that the main focus is the same as crime, namely retribution and protection of society. [19]

Relative theory argues that criminal imposition and its implementation must at least be oriented towards efforts to prevent crime (special prevention), reducing crime again in the future, as well as preventing the wider community in general (general prevention) from having the freedom to increase good crimes such as crimes that have been committed by the perpetrator./convicted of corruption or other crimes.

In Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes which states Article 2 paragraph 1 of the Corruption Law mentions:

"Any person who unlawfully carries out an act of enriching himself or another person or a corporation which could harm the state's finances or the state's economy shall be punished with life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) year and a very small fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

The World Bank limits the definition of corruption to "Utilization of power to obtain personal gain." Corruption includes three elements of corruption (Corruption, Collusion, and Nepotism). This is following what Lord Acton stated, power tends to corrupt, and absolute power corrupts absolutely. [20]

3.2. Analysis of corruption cases at the Tangerang Banten District Court

If we look at the criminal case of corruption in the procurement of goods and services in the health sector in 2021, in the form of purchasing medical equipment (KN79 masks), with the defendants LIA SUSANTI, SKM., MKM Binti UNDIN MACHPUDIN, according to the author the sentence is still stiff because basically, Penalty is a punishment for actions that have been committed by the perpetrator/defendant, so a punishment/criminal is needed that has a deterrent effect on the perpetrator/defendant. So that in the end, it does not result in a repeat criminal act.

As is the case in the criminal act of corruption in the procurement of goods and services in the health sector, in the form of purchasing medical equipment (KN79 masks) which is precisely at the Banten Provincial Health Service. the source of the funds is from the Banten Province Unexpected Expenditure (BTT) funds for the 2020 Fiscal Year, with the defendant LIA SUSANTI, SKM., MKM Binti UNDIN MACHPUDIN who was appointed as Head of the Program, Evaluation and Reporting Subdivision at the Banten Provincial Health Service in accordance with the Governor's Decree Banten Number: 821.2/ KEP.46-BKD/2015 dated 30 January 2015, as well as Decree of the Head of the Banten Provincial Health Service Number: 821/0220/Kes-Set dated 29 November 2019 concerning the Appointment and Determination of Commitment Making Officers (PPK) at the Department Banten Province Health for the 2020 Fiscal Year was charged with primary charges and is subject to criminal penalties in Article 2

paragraph (1) in conjunction with Article 18 of Republic of Indonesia Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended and supplemented by Republic of Indonesia Law Number 20 of 2001 concerning Amendments on Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) 1st of the Criminal Code, and subsidiary charges namely violating Article 3 in conjunction with Article 18 of Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Republic of Indonesia Law Number 20 of 2001 concerning Amendments to Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) 1 of the Criminal Code. In Decision Number 15/Pid.Sus-TPK/2021/PN Srg, thus declaring the defendant LIA SUSANTI, SKM., MKM Binti UNDIN MACHPUDIN As shown in the PRIMAIR indictment, the defendant was sentenced to imprisonment for 4 (four) years and a fine of Rp. 300,000,000.00 (three hundred million rupiah). provided that unpaid fines will be replaced with 6 (six) months in prison. The period of detention and custody of the Defendant will be deducted from the fine imposed. The defendant will remain in custody. [13]

From the example of the decision above, criminal corruption cases only impose sanctions in the form of imprisonment and fines. According to researchers, criminal sanctions in the form of deprivation of liberty and confiscation of wealth imposed on those convicted of corruption cases are still considered ineffective in providing a deterrent effect on perpetrators of criminal acts of corruption, especially in the health sector.

With the reform of the Criminal Code which of course will also change the criminal sanctions, the criminal sanctions will be more reflective of the character and culture of the Indonesian nation.

The New Criminal Code eliminates the term "National Criminal Code" because every law produced by the law-making body in Indonesia (at the central level) is essentially national, even though it originally came from the colonial era.[19]

3.3. Analysis of Criminal Sanctions in the New Criminal Code

According to pure normative criminal thought, discussions about crime will always collide at a paradoxical point of contention, namely that on the one hand, crime is carried out to protect the interests of the state, but on the other hand, it turns out that the perpetrator is enjoying himself because of the losses that have been experienced by the state, so Therefore, theoretically, a criminal sanction means the following elements and characteristics:

1. In reality, punishment is a gift of sorrow, pain, or other unpleasant consequences.
2. The punishment is distributed intentionally to people or bodies who have power (authorized authority).
3. The penalty is given to a person or legal entity (corporation) who has committed a criminal act according to the law.

According to the concept, the form of basic criminal punishment is no more different from the current Criminal Code (WvS), in the control of basic criminal law new types of criminal law are regulated in the form of supervision criminal law and social work criminal law, which is more or less visible is the inclusion of "Social Work Crime" which until now has not been known in the Criminal Code (WvS), considering its character as social work (for example in hospitals, social institutions, orphanages), the application of this social work crime must not contain matters of a commercial nature.

Criminal sanctions for social work should never have been known in the legal system in Indonesia. Social work punishment is a form of punishment that must be served by convicts outside the institution by carrying out social work. This social work sentence is not paid because it has a criminal character (works as a penalty). Criminal sanctions for social work are better known in countries that use a common law legal system. In Indonesia itself, it adheres to a civil law legal system. In several countries such as Russia, France, the Netherlands, and Portugal, social work criminal sanctions have been implemented in the Criminal Code that applies there. Criminal social sanctions are part of the concretization of restorative justice. The urgency of implementing restorative justice is currently considering the effectiveness of criminal sanctions in Indonesia which tend not to have a deterrent effect on perpetrators. Through social work criminal sanctions, it will create a sense of shame for the prisoners and a feeling of guilt for the behavior they have committed. By providing psychological pressure on the perpetrator through social work sanctions, it is hoped that the perpetrator will be able to realize his actions and not continue his behavior again. This is where recovery will be seen for the perpetrator.

The order of the main types of punishment determines the severity of the punishment (strafmaat). Judges are free to choose the types of penalties (strafsoort) that will be imposed, although, in the second book of the Criminal Code, only three types of penalties are formulated, namely imprisonment, fines, and death penalties, while the types of cover-up penalties, supervision penalties, and social work penalties are essentially a method of carrying out the crime (strafmodus).

According to relative theory, punishment is not to comply with the absolute demands of justice. Crime is more aimed at protecting society and reducing the flow of crime. The basis for justifying punishment according to this theory lies in the fact that people are unable to commit crimes or ward off crimes. The criminal direction to prevent this crime can be selected between the terms special prevention and general prevention or special deterrence and general deterrence. Relative theory is based on the direction that is to be obtained from giving punishment, namely to generate a deterrent effect so that no more crimes occur in the future. Plato stated, "nemo prudent punit, quia peccatum, sed ne peccetur" (a wise person does not punish because of sin, but so that no more sin is committed). Based on this view, in reality, the theory focuses relatively on prevention of crime prevention. This prevention is divided into two, namely, general prevention and special prevention. General prevention theory explains that crime is aimed at providing rewards to the wider community so that they do not commit criminal acts. This prevention theory is divided into two, namely, afschrikking-theorieen which is aimed at rewarding citizens so they don't make mistakes, and De Leer Van de Psychologis which means mandatory criminal threats can ward off people's intentions to commit mistakes. Meanwhile, special prevention theory is aimed at preventing criminals from overcoming their mistakes by correcting them. According to Van Hammel, punishment in this theory has a mixed direction, namely to punish, correct, and crime must be destroyed. Grolman believes that the direction of punishment in this theory is to protect society by making criminals harmless or deterring them. [10]

According to Simons, the primary foundation of crime is general deterrence and the secondary foundation is specific deterrence. In the sense of primary crime, it is aimed at general deterrence which lies in the criminal threat in the law. If this is not strong enough or ineffective in terms of general deterrence, then special deterrence is implemented which is aimed at intimidating, correcting, and rendering criminals powerless. In this case, it must be remembered that the punishment given must be following the law, or based on the laws of society. Meanwhile, according to Vos, the frightening power of punishment lies in general deterrence,

namely not only in the threat of punishment but also in the actual imposition of punishment by the judge.

Hoefnagels further emphasized that the imposition of sanctions is a process of generating enthusiasm (encouragement) and criticism (censure) to get a person to orient or conform to a norm or applicable law.

According to Chepi Ali Firman, the concept of punishment that was previously used is no longer a measure of punishment or retribution, but the concept used now is the concept of guidance or rehabilitation. Therefore, the goal of civilization has shifted from retaliation to civilization and to determine the success of the development process, measurable indicators need to be established. According to Eka Juarsa, measuring criminal effectiveness is often linked to the goals or results to be achieved, so it is the same as determining the effectiveness of the legal system in general. Meanwhile, the result to be achieved in punishment is to return prisoners to the social system as good citizens (resocialization) and protect society so that they do not repeat their criminal acts.

Through social work criminal sanctions as contained in Article 85 Paragraph 1 of Law Number 1 of 2023 concerning the Criminal Code, hereinafter referred to as the new Criminal Code, which reads: "social work penalties can be imposed on defendants who carry out criminal acts that are punishable by imprisonment of less than 5 (five) years and the judge imposed a maximum prison sentence of 6 (six) months or a very large fine in category II."

The meaning of the word "can" after the words social work crime, implies that social work criminal sanctions are intended for criminal convicts who have been sentenced to less than 5 (five) years, and as a new offense that is carried out or not a recidivist, that means that It is not intended to be used as an alternative crime and it is a basic crime that must be implemented in providing criminal sanctions to perpetrators of corruption, especially in the health sector.

If Article 85 Paragraph (1) is truly applied to perpetrators of criminal acts of corruption, especially officials in the health sector who harm many people, it will trigger feelings of shame for perpetrators of criminal acts of corruption and feelings of guilt for the acts they have attempted. By providing psychological pressure on the perpetrator through social work criminal sanctions, it is hoped that the perpetrator will be able to realize his actions and not repeat his actions. From this, recovery will appear for the perpetrator.

This is different from the theory of retaliation which is considered less effective, so it is very necessary to guide perpetrators of criminal acts of corruption, such as providing social work sanctions.

In principle, Article 52 (RKUHP) states that the purpose of punishment is to prevent crime, foster crime, resolve conflicts, and foster a sense of guilt.¹

The application of social work sanctions can be used and serves to increase the sense of justice for society, because apart from receiving criminal sanctions and fines which may not provide maximum benefits, the concept of social sanctions becomes a compliment as a form of regret and apology to the victim, in corruption cases, of course, the victim is society where state losses should be used for development and welfare of society, then feelings of regret and

¹ Pasal 52 RKUHP : mencegah dilakukannya tindak pidana, dengan menegakkan norma hukum demi perlindungan pengayoman masyarakat;

- a. memasyarakatkan terpidana dengan mengadakan pembinaan dan pembimbingan agar menjadi orang yang baik dan berguna;
- b. menyelesaikan konflik yang ditimbulkan akibat tindak pidana, memulihkan keseimbangan, serta mendatangkan rasa aman dan damai dalam masyarakat; dan
- c. menumbuhkan rasa penyesalan dan membebaskan rasa bersalah pada terpidana

forgiveness towards victims can be implemented in the form of social work that is beneficial to the wider community. The RKUHP stipulates Article 65, where social work punishment is part of the main punishment but is special [19]. The main crime of Article 65 letter A consists of:

1. imprisonment;
2. criminal cover-up;
3. criminal supervision;
4. fine; And
5. social work crime.

Of the 5 criminal provisions, the severity and lightness of the crime have been determined as in paragraph 1 in determining the imposition of fines. Category II criminal fines referred to in the new Criminal Code are regulated in Article 79. The forms of criminal fine categories are in the following table:

No	Kategori	Besaran
1.	Category I	Rp. 1,000,000.00 (one million rupiah)
2.	Category II	Rp. 10,000,000.00 (ten million rupiah)
3.	Category III	Rp. 50,000,000.00 (fifty million rupiah)
4.	Category IV	Rp. 200,000,000.00 (two hundred million rupiah)
5.	Category V	IDR 500,000,000.00 (five hundred million rupiah)
6.	Category VI	Rp. 2,000,000,000.00 (two billion rupiah)
7.	Category VII	IDR 5,000,000,000.00 (five billion rupiah)
8.	Category VIII	Rp. 50,000,000,000.00 (fifty billion rupiah)

From this table, it can be seen that social punishment is only applied to minor actions between Category I and Category 2 with a threat of under 5 years and a fine of IDR 10,000,000. So this very minimal fine would certainly be unfair if only imprisonment and a fine of 10,000,000 were applied considering that losses due to corruption are certainly very detrimental and the victims are the wider community due to money that should be for the community but is enjoyed by the corruptors.

So the concept of social sanctions will certainly bring a little sense of justice to victims, in this case, society. where social sanctions can be used as a complementary crime apart from imprisonment and fines, it is necessary to add social sanctions which can be used as a form of forgiveness to society and a form of regret by carrying out activities that can benefit society. In cases of health crimes, such as the case in Tangerang, Banten, the perpetrator should, in addition to being punished by imprisonment and a fine, be punished with additional social criminal sanctions, such as providing health facilities needed by the community or helping to serve at the local health service for a time determined by the court.

The regulations themselves stipulate that by prioritizing humanitarian and human rights missions, Article 85 paragraph (2) of the Draft Criminal Code states that: "In imposing social work penalties as referred to in paragraph (1), judges are obliged to consider:

1. the defendant's confession of the crime committed;
2. the defendant's workability;
3. the defendant's consent after being explained regarding the purpose and all matters related to social work punishment;
4. social history of the defendant;
5. protecting the defendant's work safety;
6. the defendant's religious and political beliefs; And
7. the defendant's ability to pay criminal fines."

The provisions of Article 85 have harmonized the spirit of nationalism and human rights and are limited by clear provisions in other articles related to social work crimes in the new Draft Criminal Code.

So if we pay attention to the values of Pancasila, it is clear that the goals and aspirations of the Indonesian nation are to create a just, prosperous, and prosperous society, of course, it cannot be built without real efforts from the government together with the community to create synergy. For this reason, commitment from a highly dedicated government and quality human beings who are not corrupt-minded are needed

The author believes that the new Criminal Code should focus more on repairing or reconciling criminal acts by considering the perpetrator's actions, so that the Indonesian legal order as a whole is expected to change in the future with the reform of the Criminal Code, especially in terms of criminal sanctions which should prioritize humanitarian aspects but are limited by certain conditions.

The provisions in the New Criminal Code include basic criminal sanctions, namely "Social Work Crimes" contained in Article 65, which are currently not known in the Criminal Code (WvS). Social sanctions can of course be given a broad meaning, namely an action or activity that does not seek profit. or social functions such as social work.

Social work, in the world of health, can be assumed to be seen in hospitals, social institutions, and orphanages, so the implementation of this social work crime must not contain anything of a commercial nature. [21]

Social work criminal sanctions are certainly an option to resolve the above problems. In its implementation and concept, social work criminal sanctions always pay attention to the public aspect so that the public interest is not harmed by changes in the aspects of social work criminal sanctions. This social work criminal sanction is certainly expected to be a method to change the personality of criminal law as a sanction law, even though there is clear peace between the parties. [22]-[23]

For example, social work crimes in Malaysia (community service), the Netherlands, and Portugal. In these three countries, the implementation of social work crime has been going on for a long time and its implementation has been integrated with judicial institutions. The implementation and mechanism of social work punishment have become an integral part of the legal panel's verdict and are based on clear legal clauses. [19]

Crime is not just for retaliation or compensation for people who have committed a crime but has certain useful purposes. Retaliation itself has no value but is only a means of protecting the interests of society. The basic justification for criminal law lies in its aim being to reduce the frequency of crime. Punishment is imposed not because people commit crimes, but so that people do not commit crimes. This theory is often also called goal theory (utilitarian theory). [24]

According to relative (utilitarian) theory, the purpose of crime is to maintain public order and prevent crime. This theory is also called relationship theory or goal theory. (utilitarian theory)

Analysis from a normative legal perspective in the new Criminal Code of course cannot be separated from aspects outside of Criminal Law.

The integration and combination of normative and empirical aspects need to be studied to become a force in resolving corruption issues.

Actions to prevent corruption in the health sector can be prevented if stakeholders in the health sector are willing to implement the provisions following their commitments. Important provisions that should be implemented include:

Firstly, transparency, this system requires accounting and reporting on the use of funds, both government aid funds, donors, and funds generated and managed by medical services in each stratum (smallest clinics up to international standard hospitals), so that accountability for medical services can be measured.

Second, Supervision, this provision must be implemented at the central and regional levels, both from the Ministry of Health itself and by collaborating with special institutions responsible for monitoring and evaluating the work and performance of medical services and other related parties (for example health insurance and companies pharmacy).

Third, openness of information. This provision provides space for openness and balanced supervision aspects to minimize fraud by one of the parties, for example, a doctor is the one who keeps medical records, but the contents belong to the patient, in practice, it is very difficult for patients to obtain medical records from health services for various reasons. And if something goes wrong, people will become victims because the evidence is only owned by one party.

Fourth, "Role model". This provision is part of integrity towards one's duties and position. Good integrity must be carried out by anyone in carrying out a task and set a good example by setting an "attitude" especially, including in the field of medical services such as medical personnel. or doctors. Developing an understanding of medical ethics is very much needed. The medical ethics curriculum is aimed at changing the character of prospective doctors, not just knowing and understanding medical ethics. Unless from the start of selection for medical school an integrity test has been carried out for each medical student candidate.

These five Quality Control provisions are certainly very important considering that health services are not kept up with the same standard quality of goods and services regarding how procedures and systematic handling of medical services and the procurement of goods and services which are sometimes sensitive or prone to corruption can be monitored and controlled. Transparency between health service institutions, doctors, and the pharmaceutical industry as well as procurement of medicines to be used or given to patients. Patients understand the drugs they are taking based on accurate information, from doctors, health service institutions, and the pharmaceutical industry. [25]

It turns out that many of the five provisions mentioned above are being deviated from and are indicators of corrupt actions, including health services, which cannot be separated from human life, especially in the health sector.

4. Conclusion

Criminal Law Reform Policy Analysis in the New Criminal Code has provided better space compared to the previous Criminal Code, so that the commitment of law enforcers must continue to be pursued and willing to enforce the law through the provisions in the New

Criminal Code so that it is truly implemented. In the future if the New Criminal Code can be used as a basis. According to the law, criminal sanctions for corruption can be imposed under Article 85 Paragraph (1), if the sentence imposed is less than 5 (five) years. Therefore, judges and public prosecutors must be truly optimal and have an anti-corruption spirit, so that the sentences imposed on corruptors/perpetrators can have a deterrent effect.

The application of social sanctions in cases of corruption in the health sector can be an alternative crime because it uses legal principles and sanctions provisions in addition to sanctions and real benefits for society. Analysis of social criminal sanctions against perpetrators of criminal acts of corruption, especially in the health sector, through social work sanctions, it is hoped that perpetrators will be aware his actions and not repeat his actions. This is where recovery and responsibility will emerge in the form of good deeds and retribution for the evil acts committed by the perpetrator.

In contrast to the theory of retaliation which so far seems less effective, it is very necessary to provide guidance to perpetrators of criminal acts of corruption, such as providing social work sanctions that follow the theory of relative objectives, namely upholding public order and preventing crime. This theory is also known as relationship theory or goal theory. Crime prevention is divided into general prevention and specific prevention. Prevention in general is intended to ensure that everyone no longer commits crimes. Special prevention is aimed at perpetrators so that they do not repeat their actions. According to van Hamel, the purpose of prevention is specifically to scare or correct.

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