

Corruption and Money Laundering Perspective of Criminal Law and Criminology

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Corruption and Money Laundering Perspective of Criminal Law and Criminology

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Abstract

Criminal acts of corruption and money laundering are increasingly complex, neat and sophisticated, carried out by educated people with the positions of Members of the DPR, DPRD, Heads of Institutions/Ministries, Governors, Mayors/Regents and Deputy Echelon I/II, judges, and private parties with various ages and come from different regions. The mode is through procuring goods and services, licensing, bribery, levies, budget abuse and money laundering. Social factors that encourage perpetrators to commit crimes can be explained through social exchange theory which shows that there is an abuse of office, doing something contrary to obligations and bribing bribes that lead to crimes in the field of corruption and money laundering. This fact is very close to the change in value orientation in the social life of everyone, whether it is law enforcement officers, state officials, or community members.

Keywords

Corruption, Criminal, Money Laundering

1. Introduction

Corruption and money laundering are crimes that are considered “extra ordinary”. The modus operandi of committing this crime is through the procurement of goods and services, licensing, bribery, levies, budget abuse and the crime of money laundering, which can be found in Table 1.

Table 1. Modus operandi of corruption cases in 2015

Modus Operandi	2015
Procurement of goods and services	14
Permissions	1
Bribery	38
Charges	1
Budget abuse	2
Money Laundering	1
Amount	57

Source: KPK Annual Report 2015

For money laundering crimes, PPATK reported that throughout 2015 there were 289 analysis results (HA) submitted to original investigators such as the Police, Attorney General's Office, KPK, BNN, Directorate General of Taxes, and Directorate of Customs and Excise. Of the parties who received the results of the analysis from the PPATK, there were 81 proactive ones and 208 reactive ones with indications of money laundering and or predicate crimes based on the provisions of Article 44 paragraph (1) of Law No. 8 of 2010 concerning Prevention and Eradication of Acts Money Laundering.

To be able to explain the causal relationship between the crime and its mode, it is necessary to have auxiliary science for legal science, specifically material and formal criminal law and even social sciences such as sociology, anthropology, political science, psychology, and criminology (Reksodiputro, 2009). Based on the thoughts above, this study raises the questions: 1) What are the efforts to prevent corruption and money laundering from the perspective of the Corruption Eradication Act and criminology? and; 2) What are the factors that encourage perpetrators to commit crimes of corruption and money laundering?

2. Theoretical Frameworks

2.1 The Perspectives of Criminology

Early criminology studies explain the causal relationship of crime through biological, social, psychological and cultural approaches, such as those carried out by Reksodiputro (2009).

Several theories of criminology can be put forward, among others. Sutherland et al. (1992) are famous for their *Differential Association*, that people commit crimes because they learn crime through the relationship between the diversity of criminal behavior patterns and anti-criminal behavior patterns. In his book *Principles of Criminology*, Sutherland et al. (1992) write that the age of a person's crime is reached in the learning process. A child raised in an environment with a high crime rate has a high tendency to commit a crime.

However, unlike environmental theory, Lombroso (1896) explains that people commit crimes because they are born evil, as known in his book "*L'uomo delinquente*". A person becomes evil because the traits of his previous ancestors will be passed down to the next generation; this thought is known as the doctrine of atavism, or evil has an underlying factor (Newburn & Jones, 2007). This means that a person becomes evil because he has a criminal gene that comes from his ancestors.

Contrary to the previous opinion, Vold (1958) tends to see crime from a multicausal perspective. Crime can be explained by three (3) things, namely 1). Theories centred on individual

idiosyncrasies or abnormalities; 2) Theories centered on the group and cultural influences; and 3). A theory based on a new criminological view. The various theories put forward above have become references to explain the causal relationship of crime and contributed to the development of legal science to understand the nature of human actions that commit crimes.

2.2 The Perspectives of Criminal law

The government's efforts to tackle crimes that rob the people of economic, civil and political rights, such as corruption and money laundering. Efforts to strengthen through the provisions of the law in the form of Law 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Presidential Regulation No. 16 of 2018 concerning the Procurement of Goods and Services, Presidential Instruction No. 10 of 2016 concerning Actions for Prevention and Eradication of Corruption in 2016 and 2017.

Institutional strengthening through establishing the Corruption Eradication Commission (KPK) with Law No. 30 of 2002. The duties and authorities of the KPK are as follows:

1. Coordination with Agencies authorized to eradicate corruption, among others:
 - a) Coordinate investigations, investigations, and prosecutions of criminal acts of corruption;
 - b) Establish a reporting system in activities to eradicate corruption;
 - c) Requesting information on activities to eradicate corruption from the relevant agencies;
 - d) Conduct hearings or meetings with institutions authorized to eradicate corruption;
 - e) Requesting reports from relevant agencies regarding the prevention of criminal acts of corruption
2. Supervision of institutions authorized to eradicate corruption, among others:
 - a) It has the authority to supervise, research, or review the agencies carrying out their duties and authorities relating to the eradication of criminal acts of corruption and agencies that carry out public services.
 - b) Take over the investigation or prosecution of perpetrators of corruption crimes that are being carried out by the Police or the Prosecutor's Office.
 - c) In the event that the KPK takes over the investigation or prosecution, the Police or the Prosecutor's Office is obliged to hand over the suspect and all case files along with the evidence and documents required within 14 working days, starting from the date of receipt of the KPK's request.
3. Conducting investigations, investigations, and prosecutions of criminal acts of corruption, The KPK takes over the investigation and prosecution for the following reasons:
 - a) Public reports regarding corruption are not followed up;
 - b) The process of handling corruption crimes is protracted or delayed without justifiable reasons;
 - c) The handling of corruption is aimed at protecting the real perpetrators of corruption;
 - d) The handling of corruption crimes contains elements of corruption;
 - e) Barriers to the handling of criminal acts of corruption due to interference from the executive, judiciary or legislature; or

- f) Other circumstances which, according to the police or the prosecutor's office, are difficult to carry out properly and can be accounted for.
- 4. In carrying out its duties, the KPK is also authorized to carry out investigations, investigations and prosecutions of corruption crimes;
 - a) Involving law enforcement officers, state administrators, and other people who are related to criminal acts committed by law enforcement officers or state administrators;
 - b) Get the attention that is troubling to the public and/or;
 - c) Regarding state losses of at least IDR 1,000,000,000 (one billion rupiahs).
- 5. Take measures to prevent corruption. The prevention efforts carried out by the KPK are as follows:
 - a) Register and examine the state administrator's wealth report (LHKPN);
 - b) Receive reports and determine the status of gratification;
 - c) Organizing anti-corruption education programs at every level of education;
 - d) Designing and encouraging the implementation of a socialization program to eradicate corruption;
 - e) Conduct anti-corruption campaigns to the general public;
 - f) Carry out bilateral or multilateral cooperation in eradicating corruption crimes
- 6. Monitor the implementation of the state government, namely:
 - a) Conduct an assessment of the administrative management system in all state and government institutions;
 - b) Provide advice to the leadership of state institutions to make changes if, based on the results of the assessment of the administrative management system, there is a potential for corruption;
 - c) Report to the President, DPR Ri and BPK if the KPK's suggestions regarding the proposed changes are not heeded.

PPATK has the duty and authority to prevent and eradicate money laundering as regulated in Law No. 8 of 2010, including: 1

- 1. Request and obtain data and information from government agencies and/or private institutions that have the authority to manage data and information, including from government agencies and/or private institutions that receive reports from certain professions;
- 2. Establish guidelines for identifying suspicious financial transactions;
- 3. Coordinate efforts to prevent money laundering crimes with relevant agencies;
- 4. Provide recommendations to the overnment regarding efforts to prevent money laundering;
- 5. Representing the Government of the Republic of Indonesia in international organizations and forums related to the prevention and eradication of money laundering;
- 6. Organizing anti-money laundering education and training programs; and
- 7. Organizing socialization on the prevention and eradication of money laundering crimes.

3. Research Methods

This study uses a socio-legal approach. Socio-legal research is a legal study that uses social science to analyze. This study is qualitatively processed and analyzed to reveal or describe the data obtained from the perspective of criminal law and criminology regarding the crime of corruption and money laundering.

4. Discussion

Tracing who is the perpetrator of a crime can use the ideas of the pioneers of criminology, as stated by Hagan (2012) that criminals are people who have evil ancestral traits, which traits are passed back to people who commit crimes. Meanwhile, according to Sutherland (1992), criminals are people who commit crimes because they have various associations between criminal and anti-criminal behavior patterns.

By observing this understanding of Wibowo (2018), the perpetrators of corruption and laundering, as mentioned in the data above, seem to have the characteristics or traits of evil ancestors, which later descended back into them. However, this theory has a weakness because it cannot explain that education and the social environment can change a person's behavior. Therefore, by following Wibowo (2018) thinking above, people who have good behavior are caused by good genes or traits from their previous ancestors, not because of education and the environment (Shariff & Norenzayan, 2011).

Criminals are people who commit crimes because they have various associations between criminal and anti-criminal patterns of behavior. From this understanding, the perpetrators of corruption and money laundering in the table above commit these acts because they have various relationships with criminal behavior, such as abuse of office, carrying out policies that are detrimental to the state in the environment where they work, and even these perpetrators do not understand the values moral values, philosophy or philosophy of faith in life (Rafter, 1997).

Based on Sutherland et al. (1992) explanation, the perpetrators of the crime of corruption and money laundering above seem to have committed a crime because through learning in the environment in which they work and have never been in contact with moral values, philosophy or philosophy of life that teaches about goodness in life. If we trace the following data, Sutherland's explanation has a weakness because it seems that the environment in which the perpetrators work is an environment that supports people to commit crimes, as shown in Table 2.

Table 2. Perpetrators of criminal acts of corruption based on position

No	Position	2015
1	Members of the House of Representatives and Regional People's Representative Assembly	19
2	Head of Institution/Ministry	3
3	Ambassador	
4	Commissioner	
5	Governor	4
6	Mayor/Regent and Deputy	4
7	Echelon I, II dan III	7
8	Judge	3
9	Private	18
10	Etc.	5
	Amount	63

Source: KPK Annual Report 2015

To minimize the increase in corruption and money laundering crimes, the KPK and PPAT, though their duties and authorities in the field of prevention, ask state administrators to be able to report their assets (LHKPN). This wealth reporting is very important to see and analyze the existence of an unnatural acquisition of official assets meaning that it does not match the official's profile.

Table 3. Officials reporting their assets (LHKPN)

No	Field	Mandatory Reports	Reported Assets	Compliance Rate
1	Executive	219.464	156.128	71.14 %
2	Legislative	13.326	3.628	27.22%
3	Judicial	11.449	10.079	88.03%
4	State-Owned Enterprises & Regional Owned Enterprises	26.034	20.722	79.60%
	TOTAL	270.273	190.557	70.51%

Source: KPK Annual Report 2015

In addition to implementing a state administrator's asset reporting system, gratification reporting is also regulated based on the field, as shown in Table 4.

Table 4. Gratification Reporting by Sector

No	Field	Agency	Amount
1	Legislative	a. People's Consultative Assembly / House of Representatives	6 19
		b. Regional People's Representative Assembly	0
		c. Regional Representative Council	
2	Executive	a. Presidency	0
		b. Ministry of State Secretary	0
		c. Coordinating Ministry	4
		d. Ministry	446
		e. Ministry of State	4
		f. Ministry level	11
		g. LPNK	35
		h. Extra Structural Institutions	2
		i. local government	156
3	Judicial		16
4	Independent agency		69
5	State-Owned Enterprises & Regional Owned Enterprises		805
Total			1573

Source: KPK Annual Report 2015

Table 5. Gratification reporting based on gratification ownership status

No	Status	Amount
1	State owned	453
2	Belongs to recipient	62
3	Part of state property	84
4	Process	253
5	Non-Decision Letter	721
Total		1573

Source: KPK Annual Report 2015

According to Wibowo (2018), efforts to prevent and eradicate money laundering are through supervision of the financial sector through regulations relating to the principle of knowing your customer (know your customer-kyc), the establishment of the Financial Transaction Reports and Analysis Center (PPATK) or the Financial Intelligence Unit (FIU). Other efforts are strengthening cooperation between institutions both domestically and abroad as well as strengthening the legal framework in the form of expanding predicate crimes from 15 types to 26 types, expanding the definition of suspicious financial transactions and reducing the reporting period for suspicious financial transactions from 14 days to 3 days, additional provisions for mutual legal assistance and arrangements for reversing the burden of proof.

Based on the 2015 Corruption Eradication Commission Report above, the authors state that the perpetrators of corruption and money laundering have high positions, namely 16 people's representatives, 3 heads of institutions/ministry, 4 governors, 4 mayors/regents and deputy's heads. There are 7 echelons I, II and III officials, 3 judges and 18 private parties and 5 others.

The high position should provide a basis for understanding moral values or philosophy of life that is stronger and more mature in carrying out his position because the people have chosen him to carry out his position.

Based on the analysis above, the writer can formulate the following proposition:

1. The higher a person's position, the higher the opportunity for corruption and money laundering. The position that gains power, which means a person's ability to be free without the will of others even though that person does not want it.
2. The higher a person's education, the higher the public's trust in the person concerned. Position obtained from the dimensions of power attached to the position.

Thus, the author believes that the current perpetrators of corruption and money laundering are people with education and legal positions, are of various ages, and come from different places of origin.

Table 6. KPK report for perpetrators of corruption 2015 based on region

No	Region	Amount
1	Central government	205
2	Nangroe Aceh Darussalam	6
3	North Sumatra	26
4	South Sumatra	9
5	Riau and Riau Islands	32
6	Bengkulu	7
7	Jakarta Capital Special Region	28
8	Banten	14
9	West Java	44
10	Central Java	18
11	East Java	12
12	Bali	4
13	Lampung	3
14	South Kalimantan	1
15	East Kalimantan	11
16	North Sulawesi	5
17	South Sulawesi	5
18	Central Sulawesi	5
19	West Nusa Tenggara	7
20	East Nusa Tenggara	2
21	Papua	15
22	Malaysia	6
23	Singapore	3
Amount		468

Source: KPK Annual Report 2015

The author will explain the role of social science in the form of social factors that cause people to commit crimes of corruption and money laundering through the social exchange theory proposed by George Homans, which has a view of a more dynamic phenomenon that adapts to developments (1958). Norms that exist in society influence people's behaviour in committing crimes.

Poloma (1992) suggests that the exchange of behavior to obtain a reward is a basic principle in every simple economic transaction. A person can exchange his services for a weekly wage. With this wage, a person will try to fulfill all other needs, both material needs or what are called basic needs, as well as psychological and social needs. Or another example, as stated in the 2015

KPK annual report above, the perpetrators of corruption crimes based on the positions of Members of the DPR, DPRD totaling (19) people, Heads of Institutions/Ministries totaling (3) people, Governors amounting to (4) people, Mayors/Regents and Representatives totaling (4) people, Echelon I/II amounted to (7) people, judges amounted to (3) people and private parties amounted to (18) people and others amounted to (5) people offering their status, position and power to obtain money which for them is more valuable than the position, status and power they have.

Poloma illustrates that with the money he receives as wages, the person may buy kitchen necessities, pay house rent or sports fees, etc. So far, all these exchanges are still economical. However, according to Homans, economic behavior contains not only economic potential but also other social dimensions. For example, work provides extrinsic rewards in wages and intrinsic rewards in friendship satisfaction and enhancing self-esteem or social status. It also allows workers to avoid negative views of being unemployed or poor.

The description of Homans's view above has not explained how and what conditional factors encourage people to persist or be motivated to participate in a relationship or exchange, both social, economic or social and economic exchanges, as well as other social exchanges that can lead to crime.

To answer this question, Poloma (1992) put forward the following propositions which he took from Skinnerian psychology (The propositions consist of the proposition of success, stimulus, value, lack of advantages, aggression and praise and the proposition of rationality.

The success proposition reads, "in every action, the more often a certain action is rewarded, the more often it will perform that action."

Based on this proposition, we can explain that the behavior of members of the DPR, DPRD, Heads of Institutions/Ministries, Governors, Mayors/Regents and Deputy, Echelon I/II, judges and the private sector has the potential for recurrence because their behavior always gets the reward they expect, namely money.

Reinforcing the success proposition, Homans put forward the stimulus proposition. This proposition reads, "If in the past the occurrence of a particular stimulus, or set of stimuli, was an event for which a person's actions were rewarded, then the more similar the current stimuli to the past ones, the more likely a person is to perform similar or somewhat similar actions."

Based on this proposition, we can explain that the behavior of members of the DPR, DPRD is (19) people, Heads of Institutions/Ministries are (3) people, Governors are (4) people, Mayors/Regents and Deputy are (4) people, Echelon I/II totaling (7) people, 3 judges and 18 private parties is not an accidental and temporal behavior, but rather a habitual behavior. This means that deviant behavior by state officials has become a habit.

In addition to the propositions above, Homans proposes a value proposition. This proposition reads, "The higher the value of an action, the happier someone is doing that action."

In other words, this proposition assumes that if a job is rewarded with a high value, people will be happier doing that action. This proposition teaches that the cost given to someone because of a job he does cannot be considered as a mere cost but must also be considered as an investment that can accumulate capital. Because everyone who works who is rewarded with a high score will be happier doing his job and will even continue to maintain his good performance because he hopes that in the future he will get even higher grades, or in other words, Homans argues that the

greater the benefits received as a result of an action, the more likely someone is to carry out the action. Or in other words, there are 19 members of the DPR, DPRD members, (3) heads of institutions/ministry, (4) governors, (4) mayors/regents and representatives, and (7) echelon I/II. 3 people, (3) judges and 18 private parties will not engage in deviant behavior if the rewards they receive for their work satisfy them, or vice versa, they perform deviant actions because they are not satisfied with the rewards (salary or remuneration) they receive from the state.

The last two Homans propositions that need to be stated here are the praise-aggression and rationality propositions. This proposition is actually a reinforcement of the value proposition as stated above. The aggression-praise proposition reads,

“when a man’s actions do not get the reward he expects or receive a punishment he does not want, then he will be angry; he will become highly inclined to exhibit aggressive behavior, and the results of such behavior become valuable to him...When a person’s actions get the rewards he expects, especially the rewards that are greater than expected, or do not get the punishments he expects, then he will feel happy; he will be more likely to carry out the behavior he likes, and the results of such behavior will be more valuable to him.”

According to Homans as described by Poloma (1992), the situation in society and social institutions or legal institutions has undergone social exchange, which is influenced by developments or technology, urbanization, capitalism which causes changes in the orientation of values and norms in society. This can be illustrated that the government acquires its power in exchange for ensuring the welfare of individuals; law enforcement officers will maintain order in society and earn a living in exchange for the time used to enforce the law, or in an education system complete with the positions of teachers and teaching staff, exchanging their services to obtain school fees transferred in the form of salaries. Homans admits that rewards can be material and immaterial.

5. Conclusion

Based on the explanation above, it can be concluded that the development of criminal acts of corruption and money laundering, which are increasingly complex and sophisticated, are currently carried out by educated people with the positions of Members of the DPR, DPRD, Heads of Institutions/Ministries, Governors, Mayors/Regents and Deputy, Echelon I /II, judges, and private parties with various ages/age and come from different regions. The mode is through the procurement of goods and services, licensing, bribery, levies, budget abuse and money laundering.

Based on the proposition put forward by Homans, the social factors that encourage perpetrators to commit crimes can be explained through social exchange theory which shows that there is the abuse of office, doing something that is contrary to obligations and bribing bribes that lead to crimes in the field of corruption and money laundering. This reality is very close to the change in value orientation in the social life of everyone, whether it is law enforcement officers, state officials, or community members.

The development of social change in society causes changes or exchanges in society. The development of capitalism drives this social change, technological progress, urbanization, and the increasingly complex division of labor in society, have changed the characteristics of crime

from being biological or through learning and others towards characteristics that view crime as a crime rational action; this dimension appears along with these social changes (Sutherland et al., 1992). Therefore, criminology must also continue to be more flexible in explaining the symptoms of crime in society. The theory of social exchange that I put forward above is only one opportunity that can be used by law students studying criminology to explain the symptoms of crime that exist in today's society.

References

- Hagan, J. (2012). *Who are the criminals?*. Princeton University Press.
- Lombroso, C. (1896). *L'uomo delinquente*. Рипол Классик.
- Reksodiputro, M. (2009). *Sekilas Pintar Perkembangan Kriminologi Sebagai Ilmu, Profesi, Aplikasi, Keahlian dan Kesarjanaan, dalam Menyelaraskan Pembaharuan Hukum*. Jakarta: Komisi Hukum Nasional.
- Poloma, M. M. (1992). *Sosiologi kontemporer*. Jakarta: Rajawali Pers.
- Sutherland, E. H., Cressey, D. R., & Luckenbill, D. F. (1992). *Principles of criminology*. Lanham: Altamira Press.
- Newburn, T., & Jones, T. (2007). Symbolizing crime control: Reflections on zero tolerance. *Theoretical criminology*, 11(2), 221-243.
- Rafter, N. H. (1997). *Creating born criminals*. University of Illinois Press.
- Shariff, A. F., & Norenzayan, A. (2011). Mean gods make good people: Different views of God predict cheating behavior. *The International Journal for the Psychology of Religion*, 21(2), 85-96.
- Vold, G. B. (1958). *Theoretical criminology*. Oxford: Oxford University Press
- Wibowo, M. H. (2018). Corporate Responsibility in Money Laundering Crime (Perspective Criminal Law Policy in Crime of Corruption in Indonesia). *Journal of Indonesian Legal Studies*, 3(2), 213.
- Homans, G. C. (1958). Social behavior as exchange. *American journal of sociology*, 63(6), 597-606.

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