Regulation of private sector bribery as a crime of corruption

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ABSTRACT

Bribery is a form of corruption, but under Indonesian corruption law, bribery from private actors and other private actors (private to private) is not categorized as a criminal act of corruption. The purpose of this study is to analyze the regulation of bribery as a criminal act of corruption in the future. This research applies normative legal research, using a normative juridical approach, using legal material analysis techniques obtained from the research, examined, to be compiled systematically and presented in descriptive sentences. The results of the study indicate that based on the economic analysis of the law theory approach, it can be seen that Law No. 11 of 1980 has not been able to provide harmony between economic principles and the objectives of the law itself, in economic principle, the existence of Law No. 11 of 1980 1980 does not have the value of efficiency, balance and maximum so that sanctions against perpetrators who commit this crime need to be renewed so that they can get legal benefits with the existence of these corruption legal norms. With the conceptualization of the corruption law, there is a renewal of criminal law related to corruption where there is no longer a difference between private bribery and public actors in the future, thus the accountability carried out by public to private, or private to public actors will be a means to prevent criminal acts of corruption, using the theory of economic analysis of law from Richard Phosner indicates that there are severe sanctions resulting in private-to-private actors prefer not to take bribes, because they are seen as corruption so that there is a fear of loss of profits for themselves both present benefits and future benefits, thus this law becomes the optimal legal norm for preventing private sector corruption.

Introduction

Corruption is an act of criminalization. The purpose of the criminalization is in principle related to the administration of a state that is free from Corruption, Collusion and Nepotism (KKN). In Indonesia, the concept of a clean implementation of KKN is stated in Law no. 28 of 1999 State Administrators that are Clean and Free from Corruption, Collusion and Nepotism. The concrete form and implication of the desire for a state that is clean from KKN is the promulgation of Law No. 31 of 1999 concerning the Eradication of corruption where there is no longer a difference in descriptive sentences. The results of the study indicate that based on the economic analysis of the Anti-Corruption Law No. 11 of 1980 has not been able to provide harmony between economic principles and the objectives of the law itself; in economic principle, the existence of these corruption legal norms. With the conceptualization of the corruption law, there is a renewal of criminal law related to corruption where there is no longer a difference between private bribery and public actors in the future, thus the accountability carried out by public to private, or private to public actors will be a means to prevent criminal acts of corruption, using the theory of economic analysis of law from Richard Phosner indicates that there are severe sanctions resulting in private-to-private actors prefer not to take bribes, because they are seen as corruption so that there is a fear of loss of profits for themselves both present benefits and future benefits, thus this law becomes the optimal legal norm for preventing private sector corruption.

The concept of private sector corruption since it was agreed as a UN convention in 2003, then gradually according to the legal system of each participating country and then applying it to the material law of corruption from each of the participating countries, there are countries that include it as a criminal act. Specifically outside the Criminal Code, but there are also countries that incorporate the provisions of private sector corruption into their Criminal Code (KUHP).
On April 18, 2006 with the ratification of the United Nation Commission Against Corruption 2003 through Law No. 7 of 2006 Indonesia gave a statement of submission to the UN Convention Against Corruption. This is clearly stated in the explanation of Law Number 7 of 2006 in point B, that one of the important meanings of UNCAC ratification for Indonesia is in the context of harmonizing national laws and regulations in preventing and eradicating corruption in accordance with the UNCAC Convention.

The contents of UNCAC in 2003 are compared with Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended and added to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 (Corruption Act) in classifying corruption, the authors find that several provisions in the UNCAC have not been or have not been regulated in the Anti-Corruption Act. These private acts or private acts are provisions that are not contained or are not regulated in the Anti-Corruption Law, which relates to bribery of foreign public officials and officials of public international organizations, trading of influence, acts of bribery in the private sector (Hiariej, 2019).

In the Anti-Corruption Law, criminal responsibility for private actors exists when the corruption act is carried out by private actors by involving elements of state administrators or state/regional financial managers, therefore private actors in their accountability by the Anti-Corruption Law only place private actors as a party categorized as "participating" in committing a criminal act of corruption, as regulated in Article 55 and Article 56 of the Criminal Code, as a result, corruption committed by the private sector cannot stand alone which cannot be done by private actors alone, both individuals. In the sense of person with person, as well as person with other private legal entities. This is because the law places criminal subjects as an obligation (condition sine quanon) by including the role of the public, namely civil servants or state administrators or state/regional financial managers (Yusrizal, 2015).

Among the acts that are categorized as criminal acts in UNCAC 2003 that are of concern to the authors which in the Corruption Act are not categorized as criminal acts of corruption are related to the crime of bribery in the private sector. The act is in the form of a promise, offer or giving, directly or indirectly, undue benefits to a person who leads or works, in any position, for a private sector body, for himself or for another person, so that he, in violation of his duties, acting or not acting The request or receipt, directly or indirectly, of an undue benefit by a person who leads or works, in any position, in a private sector body, for himself or for another person, so that he, in violation of his duties, act or not act. Based on the above provisions, the author views that the scope of regulation of Corruption in Indonesia has lagged far behind the development of anti-corruption regulations that are universally applicable today. The root of the current problem stems from the ambiguity of regulations regarding the legal subjects (perpetrators) of criminal acts of corruption committed other than the government, state administrators or state financial administrators as stated in article 2, article 3 and article 11, 12 of the Corruption Act, giving rise to multiple interpretations. The norm illustrates that every private actor who commits a criminal act of corruption must have the involvement of state officials in committing the criminal act of corruption, beyond that it cannot, even though the state financial loss or state economic loss that appears is very large (Firmansyah, 2020).

There are other regulatory provisions outside of the corruption law, such as Law No. 11 of 1980 concerning the crime of bribery, Law No. 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition, Law no. 8 of 1995 concerning the capital market, Law Number 40 of 2007 concerning Limited Liability Companies actually causes a blur in the meaning of corruption itself. This can be seen from the views and interpretations of judges when deciding cases involving the actions of private actors (Suryo, et a. 2013). The mode of criminal acts by public actors, the consequences in the form of state financial losses exist, but the subject is private to private actors, the judge will acquit or release from the charge of corruption crimes proposed by the public prosecutor. This is what the author calls a form of vagus of norm (Suhartono, 2019).

Based on the description above, the author finds the philosophical problems of the Anti-Corruption Law ontologically on what is the meaning of corruption in the private sector and the limits of state losses. The juridical problem in the author's view is that there is a Vague of norm (vagueness of norms) against bribery (bribery) committed between private actors and private actors. Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Corruption has created legal uncertainty, especially in the case of perpetrators who are subjects of corruption crimes who bribe the private sector. This legal uncertainty is suspected to have a wide impact on aspects of the economic life of the country and society as parties who feel the justice, and it will result in not achieving the conditions envisaged by Law no. 31 of 1999 concerning the Eradication of Corruption Crimes.

Furthermore, the theoretical problems on the concept of state financial limits and private sector corruption, which the authors find that there are acts of corruption committed by the private sector which are not in the current corruption law, but in other laws regulate the acts of corruption in the private sector. These other laws do not take into account the aspects of state economic losses as an element of the fault of the private actors, even though there have been losses to the state economy, so in this case the legal concept must really be carried out in order to realize the framework for the orderly passage of people's lives.

Based on this description, this study aims to find out how the regulation of bribery in the private sector as a criminal act of corruption in the future in the Corruption Crime Act?

**Conceptualization of the Regulation of the Criminal Acts of Bribery in the Private Sector as an Element of Corruption Crimes**

Corruption as a criminal act that originates from human behavior, among these forms of corruption is bribery. The act of bribery by Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption is categorized as a
criminal act. On the other hand, not all bribes are categorized as criminal acts of corruption, because many acts cannot be declared as criminal acts of corruption, where such acts of bribery are contained in several laws that regulate fraud by regulating separately in the law.

Bribery behavior that is not included in the corruption law is normalized in Law No. 11 of 1980 concerning the crime of bribery, the bribery law regulates the limitation of bribery as an act that is committed other than the corruption law and the law on bribery. Political parties, it can be concluded that the bribery norm contained in Law No. 11 of 1980 concerning the crime of bribery is not a criminal act of corruption, but a criminal act of bribery only. The existence of the obscuration of the meaning of bribery as corruption from Law No. 11 of 1980 concerning the crime of bribery resulted in the occurrence of a vacuum of norms from the act of bribery itself, the existence of 2 (two) laws that are the same and have the same elements, where bribery is seen as an element of unlawful acts that result in harm to the public interest, but by lawmakers divide the bribe into a separate legal norm.

The author is of the view that in order to achieve legal certainty in corruption, the Law on the Crime of Bribery and other criminal acts related to economic crimes must be harmonized with Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the eradication of criminal acts. corruption in the event that there is a criminal act of corruption which results in the same law as regulated in the corruption law. The alignment requires a reconceptualization of the meaning of corruption by adopting the norms of corruption that have been practiced by international law which has been ratified in Law no. 7 of 2006 concerning the ratification of UNCAC, 2003 so that it becomes a complete guideline for corruption norms that should be applied by Indonesia as a party to the anti-corruption convention.

Reconceptualization of the meaning of acts of corruption in the corruption law will also be a means to prevent corruption, using the economic analysis of law theory from Richard Phosner indicating that there are severe sanctions resulting in private-to-private actors preferring to use the law, not taking bribes, because it is seen as corruption so that there is a fear of loss of profits for him, both present benefits and future benefits, thus this law becomes the optimal legal norm for preventing corruption in the private sector.

To reconceptualize this meaning, it is necessary to expand the meaning of the perpetrators of corruption crimes as legal subjects who are responsible for acts of corruption, then the meaning of the objects of corruption crimes must be further clarified where the losses from corruption crimes experienced by private actors are not only in the form of state losses, but in the case of corruption carried out by private to private then the state losses are interpreted as state economic losses. The economic losses can be guided and taken from the applicable legal doctrines.

“Actions against the law” and “abuse of authority” in the norms of corruption are elements that support the fulfillment of criminal acts of corruption. In Law No. 31 of 1999 concerning the eradication of criminal acts of corruption, the phrase “acts against the law and abuse of authority” is contained in Article 2 and Article 3. Norms of corruption are called detournement de pouvoir or abuse de droit. The author views that both wederechtelijk and detournement de pouvoir both have the meaning of violating the written rules. Violation of the legislation in the view of legal certainty, is the existence of formal legality made by the state as a corridor to comply with an act, deviation from the rule is seen as against the legislation.

As formal legality, the phrases “acts against the law” and “abuse of authority” are the core offenses that are clearly stated in the corruption law, in the view of “unlawful acts” and “abuse of authority” are acts of irregularities, and such deviations in the business field are fraud in business actions. The forms of fraud include bribery. In Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, that there are 15 prohibitions on corruption regulated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, furthermore there are 8 articles that specifically regulate acts of bribery and gratification and extortion.

Thus, half of the content of elements against the law in Law no. 31 of 1999 regulates the crime of bribery. The form of the crime of bribery was taken over from the elements contained in the articles of the Criminal Code contained in the first revision of Law No. 31 of 1999 by taking over the elements of the articles of the Criminal Code as a whole into elements of offenses for criminal acts of corruption. Thus, the meaning of bribery into corruption has the meaning as the core of a corruption offense, namely as an act against the law.

According to the author, Law No. 31 of 1999 concerning the eradication of corruption, using the theory of economic analysis of the law is in line with efforts to achieve optimal legal goals. The author agrees with Fadjar Sugianto's opinion, he states that the optimal punishment is being able to provide optimal deterrence and improvement through optimal punishment. In this case, the current development of bribery has used a new method in line with the development of business models and patterns, so that not all bribes can be directly identified as bribes. Bribes are only an indication of the convenience and privileges provided by the recipient of the bribe, because in principle the bribe is an act that is deliberately concealed and secret.

Therefore, because bribery is a secret act and it is difficult to prove, then for bribery that is difficult to prove, bribes that are difficult to prove, the author's opinion does not need to be proven by law enforcement. It is sufficient for law enforcers to prove the unlawful acts committed by the perpetrators who violated Articles 2 and 3 of the Anti-Corruption Law.

The provisions of Article 2 and Article 3 of Law No. 31 of 1999 concerning the eradication of corruption are not contained in Law No. 11 of 1980. The provisions of Law No. 11 of 1980 concerning the Crime of Bribery only contain 2 (two) criminal rules regarding bribery, namely in Articles 2 and 3 of Law No. 11 of 1980. The element of offense contained in Law No. 11 of 1980 concerning the
crime of bribery, does not mention the element of "unlawful acts" as an element of the offense, Law no. 8 of 1980 only mentions the active bribery element, namely "giving or promising something to someone with the intention of persuading that person to do something or not to do something in their duties, which is against their authority or obligation" and also passive bribery element "receiving something or a promise, while he knows or should be able to suspect that the giving of something or a promise is intended so that he does something or does not do something in his duties, which is contrary to his authority or obligation.

The author is of the opinion that by using the knife of economic analysis against the law, there are weaknesses in the provisions of articles 2, 3 and the explanation of article 2 in Law No. 11 of 1980 regarding the crime of bribery, related to 'what is meant by 'authorities and obligations' including the authorities and obligations assigned to them, determined by the professional code of ethics or determined by the respective organizations”, which should have been incorporated into the provisions of Article 2 of Law No. 31 of 1999 concerning the eradication of corruption, because bribery as a violation of the code of ethics is a form of disgrace., the act of bribery according to public justice must be punished.

Therefore, by using an economic analysis approach to the law, the criminal policy against bribery as a criminal act of corruption must be carried out by revoking the provisions of Articles 2 and 3 of Law No. 11 of 1980, and then combining the meaning of violating the code of ethics in the explanation of Article 2 Law No. 11 of 1980 is incorporated into the provisions of Articles 2 and 3 of Law No. 31 of 1999. This criminal policy will provide optimization in preventing corruption because perpetrators will not dare to commit corruption considering that criminal sanctions against corruption are very heavy and very detrimental. The perpetrator in the case of a criminal act of corruption is known by law enforcement. The reconceptualization of Law No. 31 of 1999 concerning the eradication of criminal acts of corruption provides benefits in the context of maximizing the expected benefits (maximization expect utility) where the corruption law becomes a better means for the purpose of eradicating corruption.

In simple terms, the author defines that the perpetrator is any person who commits, orders to do, participates in doing an act, recommends an act and helps to carry out an act that is prohibited by law, either in the form of violating the law or abusing authority, so that it is considered to know and experience criminal event. This definition is found in the provisions of Article 55 and Article 56 of the Criminal Code, So that every criminal actor must be related to the event that is criminally responsible.

In the articles of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the eradication of Typhoon, it is one of the elements that must exist in the elements of the article, the phrase used is the words "everyone". Basically, the legal subjects in Law Number 31 of 1999 have been more adapted to the development of criminal law, the element of "everyone" is not only interpreted as a person (naturlijk person), but also a legal entity (recht person). Article 1 point 3 of Law No. 31 of 1999 concerning the eradication of corruption, states that "everyone is an individual or including a corporation". Thus, both natural and recht persons are deemed to be criminally liable in terms of committing criminal acts of corruption, but the law does not explain further about matters that explain people and legal entities that commit corruption crimes, so that with the development of thinking about the perpetrators of corruption refers to UNCAC 2003, it is necessary to reconceptualize the meaning of the legal subject, so that with this reconceptualization, the corruption law becomes more optimal.

**Conceptualization of the Meaning of "Object" of Corruption in the Private Sector**

The corruption law determines that there are 2 (two) objects of corruption, namely as contained in Article 2 and Article 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the eradication of criminal acts of corruption, namely the first loss country or secondly the country's economy. Both state finances and the state's economy are elements of offense. The provisions in article 2 and article 3 of Law No. 31 of 1999 concerning the eradication of corruption, in the qualification of offenses are included in formal offenses.

Lamintang (2013) states that the difference between formal offenses and material offenses is that “Formal offenses are offenses that are considered to have been completed by carrying out prohibited acts and threatened with punishment by law, meanwhile, material offenses are offenses that are considered to have been completed by causing prohibited consequences and are threatened with punishment by law. Thus, the author argues that the element of the object of a criminal act which is the result of the criminal act of corruption must be a part that must be proven to exist, because it is an element of a corruption offense.

This is confirmed by the decision of the Constitutional Court Number: 25/PUU-XIV/2016 which says that "in addition, in order not to deviate from the spirit of the United Nations anti-corruption convention, when including the element of state losses in corruption offenses, the state losses have actually occurred, or real. This is because the corruption offenses contained in the UN anti-corruption convention have been clearly described, including bribery, embezzlement in office, trading in influence, abuse of office, public officials enriching themselves illegally, bribery in the private sector, embezzlement in private companies, money laundering proceeds, crimes, concealing the existence of corruption crimes, and obstructing the judicial process.

Thus, the provisions of Article 2 and Article 3 of Law No. 31 of 1999 fulfill the elements of a formal offense category. In the author's opinion, in terms of state financial losses, the perpetrators who can commit the crime of corruption are elements of state financial management, be it SOEs, SOE subsidiaries, nigari employees, or officials appointed to manage matters relating to state finances, either incorporated in the APBN or separated from the APBN, so that it is impossible for private to private actors to commit criminal acts of corruption that are detrimental to state finances (Pitu, 2019).
In terms of acts of corruption that harm the country's economy, it is in the field of the country's economy that private actors cause disruption of state stability. Until now there has been no judge's decision that clearly provides an understanding of the country's economy, and the only limits on the country's economy are contained in the general explanation of Law No. an element similar to that element is the state economy, namely the element "related to the public interest", related to the public interest, the state economy is in the public interest, where public here is defined as the interest of the people, and based on the provisions of the 1945 Constitution Article 33 paragraph (2) and paragraph (3) emphasizes that production branches which are important to the state and which affect the livelihood of the people are controlled by the state. Likewise, the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity and welfare of the people.

Based on the historical approach, the author finds the history of several rules that discuss the state's economy that have been and contain elements of "the state economy, one of the regulations is the Regulation of the Military Authority Number Prt/PM/06/1957 dated April 9, 1957, Number Prt/PM/03 /1957 dated 27 May 1957, Number Prt/PM/011/1957 dated 1 July 1957, the first regulation to eradicate corruption was the Military Authority Regulation dated April 9, 1957 Number Prt/PM/06/1957, dated 27 May 1957 Number Prt/PM/03/1957 and July 1, 1957 Number Prt/PM/011/1957. The considerations for the first regulation Number Prt/PM/06/1957 are as follows: "That due to the lack of smooth running in efforts to eradicate acts that are detrimental to the state's finances and economy, which the public calls corruption, it is necessary to immediately establish a work procedures to be able to break through traffic jams in efforts to eradicate corruption............"

These considerations include policies to improve regulations and human resources. Meanwhile, corruption related to the country's economy according to the Regulation of the Military Authority Number Prt/PM/06/1957, namely: Every act carried out by anyone, either for their own interests, for the interests of others or for the interests of an agency, directly or indirectly, causing state financial loss or state economy; This Military Authority Regulation Number Prt/PM/06/1957 is the first attempt to use the term "corruption" as a legal term and provides limitations on the definition of corruption as "acts that harm state finances or the state economy". However, the regulation does not explain the meaning of the country's economy (Hamzah, 2012).

The definition of the state economy has been explained in the general explanation as mentioned above, although this understanding is abstract, general and multi-interpretable, in placing corruption committed by private to private actors it becomes more applicable and can be calculated, because from the history of corruption laws, it can be seen that the country's economy This is based on the state's desire to regulate regulations on companies after the transition from the Netherlands to the Indonesian government.

Therefore, the author is of the opinion that because the state economy has a wider scope than state finances, a clearer explanation is needed regarding the criteria for the country's economy, so that it is easy to calculate as a real and definite calculation. In this case, to make the calculation real and certain, it can be calculated based on the calculation of business losses against fraud, the country's economic losses can be calculated by experts in the field of economy, which is different from the calculation of state financial losses whose calculations are dominated by BPK and BPKP as state auditors.

Law Number 20 of 2001 is an amendment and addition to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The desire to amend Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is a government initiative (executive) in accordance with the mandate of the President of the Republic of Indonesia to the leadership of the DPR RI who submitted a Draft Law on Amendments to Law Number 31 of 1999 concerning Eradication of Acts of Corruption. Corruption crime to be discussed in the DPR RI session to obtain approval as stated in the letter of the President of the Republic of Indonesia Number: R.10/PU/IV/2001 dated April 24, 2001 regarding the Draft Law concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption.

On November 21, 2001 the Draft Law concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which had been approved by the Indonesian Parliament was ratified by the President of the Republic of Indonesia into Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as stated in the State Gazette of the Republic of Indonesia of 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150.

With the ratification of the Draft Law concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption which has been approved by the DPR RI to become Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption Therefore, regarding the meaning of the state economy as referred to in Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, it still refers to the general explanation of the Law. Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, namely what is meant by the state economy is economic life which is structured as a joint effort based on the principle of kinship or an independent community effort based on government policies, both at the central and regional levels in accordance with the provisions of the legislation, applicable laws that aim to provide benefits, prosperity and welfare to all people's lives.
Conclusion

By using the analytical knife in this paper in the form of an economic analysis of the law, the reconception of the meaning of the “everyone” element in Article 1 number 3 of Law No. 31 of 1999 concerning the eradication of criminal acts of corruption is needed to achieve the principle of rationality and the principle of efficiency of the existence of the law. The meaning of the “everyone” element will affect the meaning of “civil servant” in the provisions of Article 1 number 2 of Law No. 31 of 1999, where the definition of civil servants who commit bribes in the bribery articles is only limited to the definition of the provisions of Article 1 number 2 of the Corruption Law. So it is deemed necessary to give a separate meaning to employees from the private sector who commit bribes in the existing provisions of the Corruption Law, it will make it easier for private sector bribes to become corruption by adding provisions for civil servants by providing explanations regarding private sector employees being equated with civil servants, equality This is needed because employees other than civil servants have authority based on the company’s code of ethics and internal rules, and the guidelines for employees other than civil servants are referring to the business judgment rule principle and internal rules in preventing fraud, so that the obligation of civil servants not to bribe is in principle also it is the same obligation for employees other than civil servants not to practice such bribery.

Recommendation

The development of modes and perpetrators of corruption shows that intellectual actors of corruption crimes often arise from forces other than state administrators or civil servants, by using the economic power of business actors. Therefore, it is time for bribery in the private sector to be criminalized as a criminal act of corruption in the corruption law, so that when there is an act of bribery committed by private actors with private actors, the perpetrators can be punished with corruption.

In the event that a legal breakthrough related to bribery in the private sector as a criminal act of corruption is required, it can be done in 2 ways), namely:

i. By directly applying the norms of article 21 of UNCAC into judges' decisions without being changed first or being given a national legal dress, so that it becomes an element of unlawful acts in the current corruption law. Among the cases that occurred in Indonesia was the decision of the Supreme Court of the Republic of Indonesia in a human rights case with the convict Euriko Guterres, former deputy commander of the East Timor integration fighters, where the Supreme Court referred directly to international agreements without relying on national laws and regulations. This is in accordance with the flow of monism, the next case is found in the decision of the Constitutional Court using international treaties in the field of human rights that have not been ratified by Indonesia, such as the 1998 ROME Statute as the basis for consideration in its decision, as contained in the Constitutional Court's decision Number 2-3/PUU-V/2007., the third case is the decision of the Supreme Court Number 1794 K/Pdt/2004. Which strengthens the decision of Judge PT. Bandung Number. 507/PDT/2003/P.T.Bandung and Bandung District Court Decision Number 49/Pdt.G/2003/PN. Bdg, related to the case against the law of the landslide of Mount Mandalawangi, Kadungora sub-district, Garut, in which the judge said that international law with the status of jus cogens can be applied directly under Indonesian law. The Supreme Court judge used the Precautionary Principle, which is contained in the 15th principle of the UN Conference of Environment and Development.

The practices mentioned above prove that international legal norms can be directly applied to the Indonesian legal system, even without any prior ratification, although not all international law can be applied directly to national law, the theory is also called Dualism theory. Dualism theory requires that the law international cannot be applied directly into national law before the legal product is made in the form of law, although in practice it is inconsistent.

ii. Because there has been a ratification of the corruption norms in UNCAC 2003 into the ratification law, normatively there is a lack of norms in Law No. 11 of 1980 concerning bribery and Law No. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the eradication of Corruption, and with the lack of legal norms, of course to create legal certainty for different norms, a change is needed from the current bribery legal norm to adjust to the existing legal norms in Law no. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 as a mandate for harmonization of national laws and regulations in the prevention and eradication of corruption in accordance with this Convention (UNCAC 2003). Thus, it is necessary to add confirmation of certain provisions in Law No. 31 1999 concerning the eradication of corruption, thus providing legal certainty related to corruption against bribery as a criminal act of corruption by formulating it into an article in the current Corruption Law.

It is necessary to add criminal rules related to criminal sanctions against bribery in the private sector by adding a special article related to bribery in the private sector to the Corruption Law, which can be done by taking over all elements of the provisions of Article 21 UNCAC as an element of bribery in the private sector in the new on of Law on Corruption.

There is a need for an increase in the scope of state economic losses in the Law on criminal acts of corruption which can become a criminal norm for private to private corruption, where in the absence of an increase in the scope of state economic losses, the definition of state economic losses remains abstract and difficult to do. As a result, it is difficult to prove private to private corruption, the form of concretizing the scope of the definition of the economy can be done by taking over the norms of the rules contained in the technical
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References


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