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Systematic Specialty Principles within the Criminal Acts of Corruption in Indonesian Capital Markets

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The criminal acts of corruption in Indonesia continuously evolve in line with the rapid development of technology, industrialization and mankind civilization that enters various fields, including the global capital markets. The rules of administration, operations and criminal acts within capital markets are regulated by a special Law No. 8 Year 1995 on Capital Market (hereinafter, UUPM), but the law has not been able to reach out the practice of trading within the capital markets which hurts the state finances. What is the position of UUPM within the systematic principles (systematiche specialiteit)? How is the implementation of systematic specialty principles in corruption cases in the Indonesian Capital Markets? This study uses the approach of juridical normative, i.e. a research that is based on secondary data while the specification research used is descriptive analytical. The sources of data consist of material law as primary data and material laws as secondary data. The results show that UUPM has a strong position within the concept of systematische specialiteit as an administrative law, but it is reduced by Law No. 19 Year2019 on Corruption Eradication Commission. The implementation of criminal act of corruption within cases regulated by administrative penal law, such as those in Capital Market sectors must meet at least two requirements, namely: the illegal acts against UUPM as a means (modus) to benefit oneself or other people or corporations and there is a significant loss to the state finances.

Key words: *Corruption, capital market, systematic specialty.*

Background

In the first quarter of 2020, a lot of Indonesians were stunned by the success of Indonesian Attorney General who managed to investigate a criminal act of corruption (TPK) in the capital markets which suggests to cause a loss to the State-Owned Enterprises (SOE) PT Asuransi Jiwasraya more than Rp16.8 trillion (Halim, 2020)) and successfully carried out a confiscation of enormous assets that is comparable to a loss of state finances (https://republika.co.id/berita/qb1edx396/aset-sitaan-penyidikan-jiwasraya-sudah-mencapai-rp-17-t). Based the author's research, the confiscation set as the largest in the history of TPK cases since the independence of Republic of Indonesia and, at the same time, the first TPK case within Capital Market sectors.

However, there are few Indonesians especially law observers who believe that the cases handled by the Attorney General did not qualify as criminal cases as it lies outside the systematic specialty (*systematiche specialiteit*) principles. The policy of criminal law through the implementation of systematic specialty principles constitutes a harmonization and synchronization between special laws and administration laws that include criminal sanctions (administrative penal law).

Normatively, the UUTPK applies to cases in specific matters regulated in the administrative penal law whose application is based on the systematic specialty principles, specifically stated in Article 14 of Law No. 31 Year 1999 on Corruption Eradication as amended by Law No. 20 Year 2001 on the Amendments of Law No. 31 Year 1999 (hereinafter, UUTPK), which states: "Every person who violates the provisions of law which clearly states that a violation of such provisions is a criminal act of corruption, the provisions stipulated in this law apply."

Article 14 UUTPK is an academic doctrine that is not necessarily understood by the general public, even by some law graduates. The initiation of establishing UUTPK (government) through Prof. Dr. Muladi, SH as the RI Minister of Justice at the time has provided an explicit understanding to avoid any mistakes in understanding the *systematische specialite* principles as an administrative penal law by stating the provisions of Article 14.

Law No. 8 Year 1995 on Capital Market (hereinafter, UUPM) is an administrative penal law which is an addition to other administrative laws such as the laws in Banking, Forestry, and Customs and Excise, Mineral and Coal Mining, etc. that imposes criminal sanctions to offenders. The Capital Market Law was created specifically to regulate the governance and administration within the Capital Market sectors and provide criminal sanctions for the offenders.

UUTPK also covers specific attributes which include legal subjects, i.e. specific criminal acts and criminal directions and acts that qualify as administrative crimes which, as criminal acts of corruption, are still debated and remain in a gray area.

The capital markets play a strategic role in national development as a source of financing for the business world and acts as an investment vehicle for the community. In order for the Capital Markets to develop rapidly, a strong legal basis is required to further ensure the legal certainty for parties who conduct their activities in the market and to protect the interests of investor community from any harmful practices (UU Nomor 5 Tahun 1995). The UUPM provides guarantees by giving warnings against criminal acts for offenders of the legal provisions relating to the implementation of Capital Markets.

The UUPM was promulgated in 1995 which means that it predates the UUTPK which was approved in 1999 replacing Law No. 3 Year 1971. The provisions of Article 14 of UUTPK are completely unknown to the pre UUTPK (Law No. 3 of 1971), it is therefore understandable that the Capital Market Law does not carry any implied senses, even if a violation of the provisions within the Capital Market in certain circumstances may be categorized as a criminal act of corruption.

To ensure the legal certainty, justice and benefit in law enforcement on Capital Market, it is very important to carry out a discussion and research related to the legal validity of UUTPK's enforceability in the capital market sectors.

Problem Formulation

Based on the above background, this study formulates the following problem:

1. What is the standpoint of Capital Market Law in the systematic specialty (*systematiche specialite*) principles?
2. How is the systematic specialty principles in corruption cases in the Indonesian Capital Market sectors implemented?

Literature Review

Capital Market

A capital market is a meeting venue for capital owners or investors with parties who need capital injection for both long-term and short-term (Rechtschaffen, 2009). Black Law Dictionary defines a capital market more limited to only as a market where stocks and bonds are traded with long term maturities (Garner, 2009). According to the provisions of Article 1 No. 13 UUPM, Capital Market is any activities related to Public Offering and securities

trading, Public Companies related to the securities they issue, as well as institutions and professions related to such securities.

Securities are traded in a market commonly known as an exchange, which is a venue where a party organizes and provides a system and/or means of bringing together buying and selling of other parties' offers for the purpose of trading securities among them. Securities issued by companies that require additional capital is called issuers, whose sales process is carried out through an initial public offering (IPO) so a transaction in this market is often referred to as the primary market.

The Black Law Dictionary mentions primary market as "the market for goods of services that are newly available for buying and selling; especially the securities market in which new securities issued by a corporation to raise its capital" (Garner, 2009). Therefore, a primary market transaction is the first transaction of securities, securities issued by an issuer outside a secondary market. The securities transacted on a primary market are not yet listed on the stock exchange.

Securities purchased in a primary market will then be further transacted by investors or securities buyers (investors) on a secondary market commonly referred to as the Stock Exchange. after first going through a listing process on the Stock Exchange (Keputusan Direksi PT BEJ Nomor Kep-305/BEJ/07-2004). This process in the secondary market involves parties and institutions related to the operation of the exchange, which is not the same as in the public offering process. The parties involved in the securities trading process on secondary exchanges in Indonesia are capital seekers (stock sellers), owners of capital or investors (securities buyers), the Indonesian Stock Exchange (IDX), the Indonesian Central Securities Depository (KSEI), the Indonesian Securities Depository. (KPEI), Exchange Members or Securities Intermediaries (Brokers), Custodians (Custodian Banks), Investment Managers and several other parties including the Indonesian Capital Market Supervisory Agency and Financial Institution (formerly known as *Bapepam*) as capital market supervisors, regulators and supervisors.

The secondary market in IDX is divided into 3 (three), namely Regular Market, Cash Market and Negotiation Market. The Regular Market is a market where exchange transactions are carried out based on a bidding process by means of a continuous auction by members of the stock exchange and the settlement is carried out on the second trading day after the transaction (T+2, previously T+3). The Cash Market is also a continuous auction, but the settlement time happens on the same exchange day as the exchange transaction (T+0). (Peraturan KPEI II-5, 2012)

Negotiation Market is a market where an exchange transaction is carried out based on a direct individual bargaining and not by means of a non-continuous auction market, and the settlement is based on an agreement between the transacting parties. The exchange transaction clearing process will generate a Clearing Result List (DHK), which will be sent to the clearing member as a bill on transactions that have been made and must be completed according to the settlement period (Peraturan KPEI II-5, 2012).

Mas Rahmah observed the following types of Capital Market violations and crimes: (Rahmah, 2019)

1. Fraud; act to deceive or mislead other parties, participate in cheating, make false statements with the goal to influence other parties to buy or sell securities.
2. Market manipulation; use manipulative means to influence market prices. There are several types of market manipulation:

a. Concerning to market, namely buying securities in large quantities and holding them back so a party can dominate the market.
b. Market to close, namely manipulating the bid and offer price of securities at or near the close of a trade with the goal to set an opening price on the next trading day.
c. Pooling trading, is an agreement by a group of investors who grants a delegation to managers to buy and sell certain securities at a certain period in their group, thereby encouraging other investors to buy and sell transactions which in turn increase the price of the securities.
d. Painting the tape, trading between securities and other securities that are still in control of the securities account holder or have a relationship so as to create fake securities trading and form a certain price for the securities.
e. Wash selling, is a sale and purchase of securities in which the seller and buyer are the same person so that there is no change in securities ownership, but it can create a certain price for the securities.

3. Insider trading is securities transactions conducted by insiders based on insider information that has not been disclosed to the public.

The UUPM has two types of sanctions, namely administrative sanctions stipulated in Chapter XIV on Administrative Sanctions Article 102 paragraph (1) and (2) and criminal sanctions in Chapter XV on Criminal Provisions Article 103 to Article 109.

Corruption

Based on the principles of etymology, the term corruption derives from a Latin word *corruptio*. The English term is corruption or corrupt, in French is corruption and in Dutch is *coruptie*. It seems that the current term used in Indonesian language derives from the Dutch (Hamzah, 1991). Corrupt means rotten, bad; likes to accept bribes (using power for own

benefit and so on) (Poerwadarminta, 1982). Corruption is a bad act (such as embezzlement of money, receiving bribes, etc.) (Poerwadarminta, 1982). Thus, in terminology, corruption can be interpreted as all bad, despicable actions using power or authority for personal interest but harming other parties.

The international community agrees that corruption is a common enemy. The seriousness of problems and threats posed by corruption to the stability and security of societies, undermine the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law (General Assembly Resolution Number 58/4 of 31 October 2003), hence the United Nations Convention Against Corruption (UNCAC) in Chapter I General Provisions Article 1 letter *a* is committed to "To promote and strengthen measures to prevent and combat corruption more efficiently and effectively".

According to Law No. 28 Year 1999 on the Implementation of State that is free from Collusion, Corruption and Nepotism, corruption is a criminal act as referred to the provisions of laws and regulations on corruption, so juridically, the meaning of corruption includes all acts that meet the formulation of articles. The articles of corruption (violation) in UUTPK are:

1. Acts against the law or abuse of authority, a position or title that is harmful to state finances or the economy, Article 2 paragraph (1) and Article 3.
2. Acts of giving something, gifts or promises (bribes) to State Officials, Government Officials, Article 5 paragraph (1) letter a and b, Article 13, Article 5 paragraph (2), Article 12 letter a and b, Article 11, Article 6 paragraph (1) letter a and b, Article 6 paragraph (2) and Article 12 letter c and d.
3. Acts of embezzlement in office, Article 8, Article 9, Article 10 letters a, b and c.
4. Acts of extortion, Article 12 letter e, f and g.
5. Acts of fraud, Article 7 (1) letter a, b, c, and d, Article 7 paragraph (2), Article 12 letter h.
6. Acts on conflict of interest penalty in procurement, Article 12 letter i.
7. Acts on gratification, Article 12 letter B jo Article 12 letter C.

Research Method

The research method used in this paper is a normative juridical approach with descriptive analytical research specification, namely a research method through collecting data in accordance with the actual data. Afterwards, the data is compiled, processed and analyzed to provide an overview of the existing problems (Sugiyono, 2008). Secondary data obtained will be presented in the form of descriptions arranged systematically as a complete series therefore the method used in writing this law is a qualitative method which means that the data obtained is arranged systematically in the form of descriptions or explanations to describe the results of the research (Soekanto, 1986)

Analysis and Discussion

The Position of Capital Market Law in the Systematic Specialty Principles (Lex Systematische Specialiteit)

The development of administrative laws with criminal sanctions cannot be separated from the crime policy. According to La-Patra, a criminal law policy will be effective if it can reduce crime, both in the sense that it can prevent crime to happen (prevention of crime) and improve the lives of criminals (rehabilitation of criminals) (Muladi and Barda, 1998). To achieve this goal, the notion of criminal law is to strengthen or complement the enforcement of administrative law. Criminal law is manifested in administrative legislation in the form of articles on criminal threats, such as fines, imprisonment or sentences (administrative penal law).

Administrative criminal law is criminal law within violations of administered law violations (Arief, 2003). The scope of administrative law includes various topics within community life which include the economic sector such as Capital Market which is regulated by Capital Market Law. This means that UUPM is one form of administered criminal law in Indonesia.
In terms of content, the administrative nature of the UUPM can be understood from its preamble, namely regulating the governance of Indonesian Capital Markets to play a maximum role in national development, as a source of financing for the business world and an instrument for community to invest, to ensure a solid legal foundation, legal certainty for parties that carry out activities in the Capital Markets and to protect the interests of investor community from any harmful practices.

Further, the nature of Capital Market Law administration is also understandable from its administrative sanctions regulated in Chapter XIV Article 102 paragraph (1) and (2). The official authorized to impose administrative sanctions is Bapepam (now, OJK), which concerns violations of licensing, approval and registration of parties involved in the operation of the Capital Market. Administrative sanctions consist of written warnings, fines, namely the obligation to pay a certain amount of money, restrictions on business activities, suspension of business activities, revocation of business licenses, cancellation of approval and cancellation of registration.

The criminal attributes of UUPM includes criminal sanctions stipulated in Chapter XV of Criminal Provisions from Article 103 to Article 109 and the investigative authority by Bapepam through Civil Servant Investigators (PPNS) within Bapepam (Article 101 UUPM).

The provisions of Article 103 through Article 109 are broadly classified as follows:
1. Article 103: Capital Market Activities without an authorized permit.
2. Article 104: Fraud, market manipulation and insider trading.

3. Article 105: Giving gifts to an Investment Manager that affects the buying or selling of mutual funds.
4. Article 106: Violations in a public offering that are not committed by the issuer are registered with Bapepam.
5. Article 107: Deceive or harm other parties or mislead Bapepam, eliminate, destroy, delete, modify, obscure, hide, or falsify records of parties who have received permission, approval, or registration, including Issuers and Public Companies.
6. Article 108: Influence the occurrence of a crime Article 103 to 107.
7. Article 109: Failure to comply with, hinder Bapepam from conducting investigations of parties suspected of committing or being involved in violating laws.

The principle of *lex systematische specialiteit* derives from the principle of *lex specialis derogat lege generali. Lex specialis* does not merely discuss the waiver of a general principle (*lex generalis*); it provides a complex solution to criminal law because laws that are specific and extra codified are available or are outside the Criminal Code (Seno Adji, 2009).

In order to determine which specific law shall be applied, the *systematische specialiteit* or systematic specialty principles apply, meaning that the criminal provisions are specific if the legislators intend to impose the said criminal provisions as a special criminal provision or will be of a special nature of an existing specialty. An example of a subject, an object of alleged violation of an act, the evidence obtained, the environment and the area of violation are within the banking context, then the Banking Law that shall be applied, even though other specific laws (e.g. Corruption Crime Law has an violation element that may include such provisions) is acceptability in nature (Seno Adji, 2009).

With reference to the subject above, the object of any alleged violations of the act, the evidence obtained, the environment and the area of violations, UUPM as an administration law has its own specificities. In any case, the statute of UUPM is addressed to parties related to the implementation of Capital Markets and its participation (*deelneming*), the violation imposed is specifically regulated in the Capital Market Law and the area of violation in certain issues, namely the Capital Markets. This means that the UUPM has a strong position in the application of criminal law related to the systematic specialty principles; therefore any violation that fulfills the formulation of criminal articles in the UUPM shall be regarded as capital market crimes.

Violations within UUPM are prone to create a debate related to the application of systematic specialty, especially in Article 104, namely violations of Article 90, Article 91, Article 92, Article 93, Article 95, Article 96, Article 97 paragraph (1), and Article 98 related to "fraud, market manipulation and insider trading". Broadly speaking, the crimes regulated in Article

104 can be classified into three categories, namely fraud, market manipulation and insider trading. The actions that are prohibited in Article 104 UUPM can be summarized as follows:

a. Committing fraud and market manipulation with the intention of benefiting or avoiding own loss or other parties or with the goal of influencing other parties to buy or sell securities (Article 90).
b. Taking action with the goal of creating a false or misleading picture of trading activities, market conditions, or the price of securities on the Stock Exchange (Article 91).
c. Conducting 2 (two) or more securities transactions, either directly or indirectly, causing the price of securities on the Stock Exchange to remain, increase, or decrease with the goal to influence other parties to buy, sell, or hold securities (Article 92).
d. Making a statement or providing information that is substantially untrue or misleading to influence the price of securities on the Stock Exchange if at the time the statement is made or information is given: the related party knows or should have known that the statement or information is materially untrue or misleading; or the related party is not careful enough in determining the material truth of the statement or description (Article 93).
e. An insider of Issuer or Public Company who has information regarding making purchases or sales of securities putting transactions with the Issuer or Public Company concerned (Article 95).
f. Insiders influencing other Parties to purchase or sell securities or to provide inside information to any party who they reasonably believe can use the information to make a purchase or sale of securities (Article 96).
g. Attempting to obtain information from insiders against the law and then obtaining it and not be provided by the Issuer or Public Company without restriction (Article 97).

Capital Market activities related to fraud or market manipulation are known as "stock cornering" or pump-and-dump. "stock cornering" is one of the capital market crimes by promoting shares or issuers through various fraudulent ways to generate interest towards the shares, causing the price to rise and after the shares reach a certain price, the shares are sold back to the public so the perpetrators will receive certain profit.

As with the Capital Market corruption cases with the defendant Benny Tjokrosaputro (BT) held in the Corruption Court in the Central Jakarta District Court, the Public Prosecutor outlined the facts in the indictment as follows:

- HR (the Managing Director of PT. Asuransi Jiwasraya/source: the author) agreed with HP (the Finance Director of PT Asuransi Jiwasraya/source: the author) and JHT to approve all management arrangements for PT AJS stock investment and mutual funds carried out through stock transactions that were previously arranged by the defendants BT and HH through JHT.

The goal was the shares purchased by PT AJS were not liquid stocks nor stocks of healthy fundamentals…and so on"

- With the approval of HR together with HP and SY handed over the management of investment shares and mutual funds of PT. AJS, the defendants BT and HH through JHT arranged the share price and the number of shares to be purchased by PT. AJS, whose price had been increased in practice, which was generally higher than the stock exchange market price, because the sale and purchase of shares was carried out at JHT's instructions by taking advantage of the negotiated stock market, through the timing of purchases and counterparties affiliated with the defendants BT and HH (Surat dakwaan, 2020).

- In the implementation of share purchase and sale transactions which were the underlying products of OFEF Mutual Funds and OMEF Mutual Funds at PT OMI was controlled by the defendants BT and HH through JHT and MM.

- Then MM instructed the pre-determined securities brokerage regarding the type of shares, volume, price, settlement time and counterparty securities brokerage. Purchase and sale of underlying stock transactions using 18 counterparties affiliated with the defendants BT and HH. Counterparty accounts were managed and controlled by PR and JHT. (Surat dakwaan, 2020)

- On 25 November 2015, HP gave instructions to Bank BNI as the Custodian Bank which ordered the purchase of MTN AK 2015 by PT. AJS in the amount of Rp. 200,133,333,335 (two hundred billion one hundred thirty-three million three hundred thirty-three thousand three hundred and thirty-five rupiah) from PT. IJU through PT. LS, which was later received by the defendant and used to pay for land in Maja, for the purchase of shares, and for PO S which was the nominee of Defendant BT

- In August 2015 BT ordered DH as a legal staff of PT. HANI, Tbk to buy or create new companies that seemed not affiliated with PT. HANI, Tbk, namely PT. PIK, PT. RBS, PT. SAM, PT. BUP, and PT. LMP by way of inserting names of company directors that are not recorded in the population data (fabricated). (Surat dakwaan, 2020)

Based on the facts from the case file formulated in the indictment, it is clear that the description fits an act of fraud or market manipulation in stock trading. The defendant's actions include increasing the price of shares with bad fundamentals before sold to PT Asuransi Jiwasraya through joint arrangements with a counterparty affiliated with the defendant and using a nominee so the share price increased abnormally (inconsistent with the fundamentals of the issuing company). The description details the act of *painting the tape*, or

at least *wash selling* so the owner was successful in creating the target or wanted price and then sells it to the public.

Normatively, the actions of the defendant BT and his friends in creating the desired price for shares constitute a capital market crime. These facts have brought the actions of the defendant BT and friends to the element formulation of Article 90, Article 91 and Article 92 as accommodated in the violation of Article 104 of the Law. The Capital Market violation was fulfilled at this point (*voltooid*) and becomes another problem if, after the share price has increased, then sold to other party with money that does not belong to the owner (for example, granted the authority to buy) and the other party participates with BT in creating a price for the purpose of personal gain. This is certainly harmful to capital owners if the purchased shares price declines because the previous price increase was illegally engineered. Because the criminal means in UUPM did not accommodate the loss, therefore the case may be seized using other criminal laws that include a formula for the loss.

Several facts in the indictment that stood out in the corruption case at PT Asuransi Jiwasraya were the collaboration between BT, HH and HR as the President Director of PT Asuransi Jiwasraya and HP as the Finance Director of PT Asuransi Jiwasraya. Hence, a direct purchase of shares took place in a negotiation market or as an underlying mutual fund from BT and HH which was concocted in such a way that the share price increases unnaturally (Surat dakwaan, 2020).

At a certain point due to an unnatural increase in share prices while the fundamentals of the company issuing shares were not in good health, the share price drops to the lowest price/penny stocks (*saham gocap* or Rp50) so PT Asuransi Jiwasraya as one of SOE s SOE creates a significant loss of Rp16,807,283,375,000.00 but benefited to BT, HH and parties from PT Asuransi Jiwasraya (Surat dakwaan, 2020).

The Implementation of Systematic Specialty Principles in Corruption Cases within the Indonesian Capital Market Sectors

In the context of criminal law, there are three parameters on whether a law can qualify as a systematic *lex specialis*. First, the material criminal provisions in the law deviates from the general provisions. Second, the law regulates formal criminal law which deviates from the provisions of criminal procedure in general. Third, the *adresat* or the legal subject in the law is specific. (Hiariej, 2008)

If we compare the three requirements for systematic *lex specialis*: First, UUPM regulates the provisions for administrative sanctions in Article 102 of Company Law), UUTPK regulates the provisions for criminal compensation money, confiscation of assets and their subsidiaries

(Article 18 UUTPK) and a special minimum/maximum system for sentence (Article 2 - Article 13 UUTPK) which is not recognized in the Indonesian Criminal Code system. Second, UUPM does not specifically regulate different procedural laws except the imposition of administered penalties (Article 102 UUPM); UUTPK regulates additional evidence (electronic evidence) which deviates from the provisions of Article 184 of Indonesian Criminal Code (Article 26A UUTPK) and the reversal burden of proof is enacted. The reversal burden of proof is limited or balanced (Article 37 UUTPK). This is different from the system in the Criminal Code (the obligation of proof rests with the Public Prosecutor). Third, the legal subject of UUPM is "every party" i.e. individual, company, joint venture, association, or organized group (Article 1 number 23 UUPM), while UUTPK applies a legal subject as "everyone" which includes individuals and corporations which is different from the Criminal Code system, namely an individual (Article 1 point 2 UUTPK).

Based on these comparisons, both UUPM and UUTPK have similarities compared to general criminal rules. In fact, the Author believe that UUTPK is thicker in particular than the general criminal rules (*lex generali*), it's just that UUTPK is not classified as an administered law.
The application of the systematic specialty principles in the UUTPK is stated in Article 14 that, "Every person who violates the provisions of the law which explicitly states that a violation of the provisions of the law is a criminal act of corruption shall apply the provisions regulated in this law". This provision has two meanings, namely as a barrier to the effectiveness of UUTPK for criminal violations in the field of administration that have criminal sanctions, but can also be interpreted as an extension of the application of UUTPK in administrative penal law as long as the administrative law provides a clause for that.

The author finds it difficult to identify whether there is an administrative penal law in Indonesia that explicitly recognizes the meaning stated in Article 14 of the UUTPK, in the sense that every act in the field of administration regulated in this law if it fulfills the UUTPK formulation is considered a criminal act of corruption. This condition often creates debates, such as in the implementation of cases of corruption in the capital markets, especially Article 2 paragraph (1) and Article 3 UUTPK, the elements of which reads as follows:

Article 2 paragraph (1):
"Every person who illegally commits an act of self-enrichment or another person or a corporation that may harm the state finances or the economy of the state".

Article 3:
"Anyone who, with the goal of self-benefit or other person or a corporation, misuses their authority, opportunity or means because of his position or position which may harm the state finances or the state economy".

The main elements of the two articles mentioned above that are the differentiator from the criminal provisions in the UUPM article, especially Article 104 are:

a. Enriching oneself or another person or a corporation/with the goal of benefiting oneself or another person or a corporation.

This element is not recognized in the Capital Market Law even though fraud or market manipulation in the sale and purchase of shares has the motive for personal gain. Therefore, the elements of Article 104 of the Capital Market Law have been completed (*voltooid*) if the facts of acts against the law that violate the provisions of Articles 90, 91, 93, 95, 96 and Article 97 of the Capital Law are fulfilled. If it is proven that there is a loss by another party, the UUPM in Article 111 provides a solution "can" sue for civil compensation from the offender. It is different from the provisions of UUTPK, therefore the facts related to the purpose of these profits must happen and if in fact there is a loss to the state finances, forced efforts are made through seizure of goods obtained from criminal acts of corruption and payment of replacement money (Article 18 paragraph (1) letter a, b and paragraph (2) UUTPK.

b. May harm the state finances or state economy. (Berdasarkan putusan MK Nomor 25/PUU-XIV/2016)

This element requires that there are facts of financial or economic loss to the state. The definition of state finances is broadly interpreted including finance sourced and/or managed by SOE (Putusan Mahkamah Konstitusi Nomor 48/PUU-XI/2013), including the finances of PT Asuransi Jiwasraya. Elements like this are not recognized by UUPMA hence if there are fraud and manipulation of share prices or securities exist in the Capital Markets harmful to SOE, the UUPM may not be able to nail them. Even though there are provisions in Article 111 of the Capital Law, these efforts are voluntary in nature with a separate process through civil lawsuits, while civil suits require relatively long time to arrive at a permanent legal force. This method is certainly contrary to the ideal judicial concept, namely fast, simple and low cost as mandated in Article 2 paragraph (4) of Law No. 48 of 2009 on Judicial Power. If the party suffers the losses due to trading in shares or securities illegally is not state (private), UUTP cannot pin them, so normatively, they must take the methods from Article 111 of the Capital Market Law with all the consequences.

Based on the description above, a common thread can be drawn as a differentiator when a case related to the Capital Markets administered in nature can be drawn into a corruption case, namely:

1. Actions against the law in the Capital Market Law as a means (modus) to benefit oneself or other people or corporations.

From the beginning, the perpetrators deliberately (*mens rea*) intended to raise prices unreasonably by means of fraud or market manipulation to be sold to the state, SOE or BUMD (municipally-owned corporations). In this case the perpetrator wants and knows that the increase in the price of shares/securities will be sold to the state, SOE or BUMD. This process will be easier to know if there is a collaboration with state, SOE or BUMD which aim to collectively get profit personally from the process of buying and selling shares or securities.

2. There is a real loss to the state or the state finances.

As a result of the process of buying shares/securities whose prices are unreasonably increased, there will be actual and quantifiable financial losses for the state, SOE or BUMD. State financial losses are calculated based on the difference in the purchase price of shares that have been pumped and dumped minus the real price at the time of the lowest price decline (penny stock).

Normatively, the provisions of Article 14 UUTPK have actually been adopted into Article 9 of Law Number 19 of 2019 on the Corruption Eradication Commission (abbreviated as UUKPK) which reads as follows:

"*In carrying out the monitoring duties as referred to in Article 6 letter c, the Corruption Eradication Commission is authorized to*:

a. Conduct an assessment of the administrative management system in all state institutions and government agencies;
b. Provide advice to leaders of state institutions and government agencies to make changes if based on the results of the assessment, the administrative management system has the potential to cause Corruption Crime".

From the provisions of Article 9 of the UUKPK, there is an implied meaning that the management of administration in certain fields including the Capital Markets, which incidentally each has its own law and has criminal sanctions for criminal acts of corruption. This means that the repressive concept of UUTPK can be applied in fields that have been regulated in the administrative penal law.

M Yahya Harahap emphasized that the principle stated in the consideration of enforcement of criminal procedural law is a harmonious balance between protection of human dignity and

protection of the interests and public order. At any time, law enforcement officers must be aware and able to serve and have the obligation to maintain social interest (community interest) and individual protection, namely upholding human dignity and protection of individual interests (Supardi, 2018). Seizing the proceeds of crime from capital market crimes that are harmful to the state is an implementation of social interest and this can be done quickly, economically and at low cost, one of which is through the construction of UUTPK. Meanwhile, the fulfillment of rights of perpetrators in criminal proceedings is a reflection of protecting the interests of perpetrators of Capital Market crimes.

Retrieving the proceeds of crime is rooted in the fundamental concept of justice, wherein a crime should not provide benefits to the perpetrator (crime should not pay). No person should be allowed to take advantage of a crime they committed. In line with this, Peter Alldridge said "to profit made by the crime, is said to be justified by a principle that people, in general, should not profit from unlawful activity and from crime in particular is frequently said to be deeply ingrained in to the law". (Peter, 2001)

The purpose of law as initiated by Gustav Radbruch is to create justice, benefit and certainty. The application of UUTPK in the Capital Market sectors reflects more justice for the community and actors, provides faster benefits for the state or society and better legal certainty as there will be no more processes related to disputes over assets acquired from Capital Market crimes.

Conclusion and Suggestion

Conclusion

Based on the description above, the following matters are concluded:

a. As an administrative law with criminal sanctions, UUPM stands a strong position in the concept of *systematische specialite*. However, the systematic specialty principles have been normatively reduced when UUKPK (Article 9) was promulgated; hence the legality of UUTPK to penetrate matters regulated under administrative penal law becomes even stronger.
b. The implementation of UUTPK within sectors regulated in administrative penal law such as the Capital Market sectors must meet at least two conditions, namely:

- Acts against the law within the Capital Market Law as a means (modus) self-benefit or another person or corporation.
- Proof of significant losses to the state or the state finances.

Suggestions

a. According to Article 14 of UUTPK, any person violating the provision of the law which clearly states that violations against the provisions of the aforementioned law shall be regarded as corruption shall be liable to the provisions of this law. It seems that this article only exists on paper because there is no other law that refers to this provision. To eliminate any differences of opinion in interpretation and in practicing the law, it is recommended that the provisions of Article 14 UUTPK be emphasized in accordance with the meaning stated in Article 9 of UUKPK.
b. To achieve the objectives of law, namely justice, benefit and certainty, every law enforcement apparatus must be confident to apply UUTPK within the Capital Market sector as long as it meets the requirements outlined above. In addition, it is suggested to all related stakeholders to understand the essence of law enforcement in the Capital Market sector which may harm the state finances so as to stop the on-going disagreements.

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