TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 14, 2020

A new decade for social changes

www.techniumscience.com

ISSN 2668-7798

TECHNIUM SOCIAL SCIENCES JOURNAL

Technium Social Sciences Journal
Vol. 14, 266-274, December, 2020
ISSN: 2668-7798
www.techniumscience.com

Legal Politics on Criminal Sanctions in The Article of Fraud 378 Revision of Criminal Code in The Revision of National Criminal Law

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Abstract. Politics in criminal law is one part of a law development plan that is carefully designed with due Regard to the accompanying aspects that Pancasila as the basis of the state becomes a source of Substantive values including the number and sources of law. Criminal law is considered good if it meets and complies with the values community and to fulfill a sense of justice in the community in accordance with the times that one side overrides the principle of legality, but the other side also prioritizes living law. This is evident in the provisions of the criminal sanctions under Article 378 of the KUHP. This article aims to find out the Political Law of Criminal Sanctions Article 378 of the Criminal Code in Reforming the National Criminal Law. Sanctions that are deemed not fulfilling a sense of justice that is only a Maximum of 4 years imprisonment cause socio-biological, philosophical and juridical problems. The results of research on several provisions of Fraud (Bedrog) and fraudulent acts in national legislation as well as the opinions of experts can be concluded that the reformulation of the formulation of sanctions in Fraud (Article 378) in the Criminal Code Law in the future can be put in (Chapter XXV Concerning Fraud) by imposing new sanctions. Namely fines and heavier imprisonment if they meet the new elements that have been formulated.

Keywords. Politic, criminal law, the criminal sanction

Introduction

Politics in criminal law is one part of a "legal planing reform" legal development plan that is carefully designed by taking into account the accompanying aspects. Starting from the foundation of the state as the main source together with its constitution (UUD RI 1945), the political ideology of power, national development policies, then up to legal politics and criminal law politics. From this picture it is clear that Pancasila as the basis of the state is a source of substantive value and a source of law in implementing reform and formation of criminal law nationally.

This need is also in line with the strong desire to be able to achieve fairer law enforcement against every form of criminal law violation in this reform era. An era that urgently needs "openness, democracy, good and clean government (good & clean government), protection of human rights, law enforcement, justice justice or the truth of all aspects of life in the community, nation, and a state (De Hert & Gutwirth, 2006; Sulistia & Zurnetti, 2011; Widodo et al., 2018; Putra et al 2020; Junaedi, 2020).

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Vol. 14, 266-274, December, 2020
ISSN: 2668-7798
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In this case, the draft in the rules of the new national criminal law book aims to replace the criminal law law of the Dutch colonial government with all changes, in the description of criminal law it is intended as an effort in reforming national criminal law. This effort is only carried out so that it is more focused and integrated in order to support the development of national law in the National Law Development Institute in various aspects of legal science, which is needed in legal development, the level of awareness in law and legal flexibility that lives and develops in society (Efendi, 2018). Law is all rules of behavior that apply in a common life that can be enforced with a criminal sanction or punishment. Law enforcement can take place in a formal and peaceful manner, but it can also occur because law violations must be enforced (Mertokusumo, 2003). In this case, it is a criminal act of fraud in the Criminal Code.

In terms of suitability between criminal law and the community where the criminal law is enforced, it is a prerequisite for whether or not criminal law is good. That is, criminal law is considered good if it meets and conforms to the values possessed by society and to fulfill a sense of justice in society according to the times (new crimes are increasing, but the norms of Indonesian Criminal Law in Law No.1 of 1946 do not. set it clearly besides not paying attention to Human Rights (HAM), because in Article 378 concerning Fraud (bedrog), the legal action is to persuade the criminal), whether one side will override the legality principle, but the other side also puts forward the living law.

Fraud (bedrog) is one of the crimes that has an object against property. In the Criminal Code, this criminal offense is regulated in chapter XXV of fraudulent acts from articles 378 to 395, so that in the Criminal Law, the regulations regarding criminal offenses are the most discussed criminal offenses among crimes against other assets. If linked with CHAPTER XXV Criminal Provisions of the Criminal Code Law, the description of the formulation of criminal threats in the provisions of criminal acts of fraud in the Criminal Code can be seen as follows: Article 378, Punishment: Maximum imprisonment of 4 years (1) Doing wits and trickery or lying words or persuading others or fraudulent actions. (2) Using a false name or under false circumstances. (3) Moving people to give goods or give debt or write off receivables. (4) Doing wits and tricks or lying words or persuading others or fraudulent actions to benefit oneself or others illegally.

The interpretation/explanation of article 378 of the Criminal Code regarding fraud according to the explanation (R. Soesilo, 1996). mention that: (1) to persuade is to influence people with cunning, so that the person obeyed him to do something that if he knew what the real case was, he would not do that. (2) Giving the goods in question means that the goods do not need to be given (handed over) to the defendant himself, while those who handover do not need to be someone who was persuaded himself, it could be done by someone else. (3) Benefiting yourself against rights can be interpreted as benefiting yourself with no rights. (4) A fake name is a name that is not his own. The name "Saimin" says "Zaimin" is not a fake name, but when it is written, it is considered a fake name. (5) A false situation can be, for example, confessing and acting as a police agent, notary, priest, municipal employee, mail deliverer, etc. who are not actually the official. (6) Cunning or trickery is a trick so cunning that a normal minded person can be deceived. A ruse is enough, as long as it's cunning enough. (7) A series of lying words is one lie word is not enough, here must be used a lot of lying words arranged in such a way that one lie can be covered with another lie, so that the whole is a story of something that seems true. (8) Regarding "goods" there is no mention of restrictions, that the goods must belong to someone else. So persuading people to surrender their own goods can also be fraudulent, provided other elements are fulfilled.

Seeing the ineffective sanctions against the perpetrators of criminal fraud and a sense of justice for the community, it is necessary to have an in-depth study of the formulation policy

Technium Social Sciences Journal
Vol. 14, 266-274, December, 2020
ISSN: 2668-7798
www.techniumscience.com

on the weighting of criminal sanctions article 378 of the Criminal Code in the perspective of reforming Indonesian criminal law to replace foreign legal ideas/concepts that are inconsistent with the basics the philosophy of Pancasila, so that the principles of criminal law will be created in the new " Criminal Code (KUHP) in accordance with the values of Pancasila" including the value of Almighty God, humanity, unity, deliberation and justice. van strafrecht (WvS) Indonesian wetbook which from 1946 to the present is outdated and does not fulfill a sense of justice with dignity of life and development in society (living law), so there needs to be a weighting of criminal sanctions for perpetrators of criminal acts of fraud (bedrog) against the public interest which is firm in order to fulfill a sense of justice according to its era s and it is necessary to carry out reform (renewal) of criminal law which is of course in accordance with the breath of the socio-political, socio-philosophical, and sociocultural central values of Indonesian society with the unification of criminal law.

Currently the basis for criminal sanctions in the criminal code of the Criminal Code is 4 years imprisonment. In the opinion of the researcher, the criminal sanctions against the criminal code of the Criminal Code are not firm and do not fulfill a sense of justice in the community in regulating the criminal system policy regarding the implementation of criminal sanctions when the offense of fraud is by persuading deceit to congregation people who want to carry out a sacred mission in this case Umrah to Mecca , so that it can create a legal vacuum, where this is a normative legal issue in this study. The meaning of the legal vacuum referred to here is as follows: (1) The norms of criminal sanctions in article 378 of fraud in the Criminal Code only get the threat of imprisonment for 4 years and do not pay attention to the qualification elements of the offense and do not pay attention to the losses/consequences of the criminal offense of fraud, so that it does not fulfill the sense of justice of the community, so it is necessary to reformulate criminal sanctions in the criminal code of the Criminal Code in the reform of Indonesian criminal law by absorbing/exploiting the norms of the death penalty for the perpetrators of criminal frauds of people (congregations) in this case crimes against the public interest. (2) Because the law follows the development of society, and in more modern times, crimes are increasingly new in the world of criminal law, the need for criminal sanctions for fraud against public interests needs to be synchronized or linked with capital punishment with the consideration that the victims of crime are people (many people) with crimes against the public interest.

Methods

Legal research is intended to trace and seek truth (Istanto, 2007). and justice in countering the threat of sanctions against criminal acts of fraud against the public interest in the perspective of reforming Indonesian criminal law. Research according to Gofar (2013) was carried out in order to trace and seek the truth of the philosophy of weighting the threat of sanctions against fraud in the perspective of reforming Indonesian criminal law. Reformulation of criminal sanctions in criminal acts of fraud which is the material of the literature (Soekanto & Mamuji, 2003). or legal materials (Marzuki, 2008). become library materials or primary legal materials supported by an analysis of understanding the meaning of the paradigm and ideology of criminal sanctions that exist in criminal acts of fraud in Indonesia.

Specifically, this research can be referred to as normative legal research, where on the one hand it provides a prescriptive analysis of the qualifications for the weighting of criminal sanctions according to the positive law in force in Indonesia. The other side finds alternative formulations in the weighting of the threat of criminal sanctions in criminal acts of fraud in the perspective of criminal law reform in Indonesia

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Legal research recognizes several approaches, to facilitate the attainment of the truth which is the focus of research. According to (Ibrahim, 2006). divides into 7 (seven) normative legal research approaches, namely: (1) *statute approach,* (2) *conceptual approach* (3) *analytical approach* (4) *comparative approach* (5) *historical approach* (6) *philosophy approach* (7) *case approach.*

Ibrahim emphasized that the approach in normative legal research includes: statutory approaches, concepts and comparisons. The method of approach in legal research is often seen from the perspective of legal science. As a science, logic, understanding, values, morals, justice, ideas, ideals (Sumitro, 1989). become a set of domains that must get its own attention. The more complete the affirmation of the realm in the study of law (Satjipto Raharjo, 1996). the deeper and more thorough the results of the study conducted. This research focuses on examining the basis of the values of Pancasila as the highest source of law as well as being the domain to look deeply and thoroughly about the weighting of the threat of criminal sanctions in the criminal act of fraud against the studied public interest.

Furthermore, in relation to this research, the approach used is as follows: First, the statute approach, namely: the 1945 Constitution of the Republic of Indonesia, particularly Article 1 paragraph 2 and Article 28 I paragraph 4 and paragraph 5; Article 378 Law Number 1 Year 1946 concerning the Criminal Code, Law Number 15 Year 2002 concerning the Crime of Money Laundering, Law Number 8 Year 2010 concerning the prevention and eradication of the crime of money laundering and Law Number 13 of 2008 concerning the Implementation of Hajj. This statutory approach is intended to study the paradigm of the weighting of criminal sanctions, whether the substance is in accordance with the legal ideology of Pancasila (idiil) and Article 28 I paragraph 4 and paragraph 5 of the 1945 Constitution of the Republic of Indonesia (constitutional). The statutory approach is also intended to examine conflicts, obscurity and/or absence of norms in the formulation and reformulation of sanctions for criminal acts of fraud, in this case related to the strengthening of criminal sanctions for criminal acts of fraud.

Second, the conceptual approach is intended to analyze the problems in this study regarding the concept of increasing the threat of criminal sanctions in criminal acts of fraud against the public interest. The concept of the meaning of the principles and provisions regarding the formulation of the criminal act of fraud. Besides that, the conceptual approach is also intended to analyze the meaning of preventing, taking action, safeguarding what is contained in the provisions of the Criminal Code Law which contain a vacuum of norms.

Third, the case approach, the case approach is used to analyze the weighting of criminal sanctions for perpetrators of criminal acts of fraud against the public interest committed by individual citizens in Indonesia and officials who have become court decisions and have permanent legal force. This is done mainly in relation to court considerations (judges) which are the basis for verifying the perpetrators of criminal acts of fraud (bedrog) against the public interest, such as convictions for fraud committed by the Umrah pilgrimage bureau or the public interest. Our DZIKRON is called DZIKRON Bin SULKHAN in Purbalingga. The fraud case does not fulfill a just criminal sanction because it has deceived many people under the guise of the Hajj and Umrah pilgrimage.

Third, the Philosophical Approach (Surbakti, 2012). intended to analyze in depth and thoroughly about the nature of criminal sanctions of fraud, which must be based on the ideological standards of fundamental values of justice (ontology). The spirit of justice theology is a method of preventing, protecting, punishing the perpetrator (dader), and harmonizing the weighting of criminal sanctions for fraud (epistemology). The philosophical approach is also intended to deepen the reformulation of the weighting of criminal sanctions for fraud based on

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Vol. 14, 266-274, December, 2020
ISSN: 2668-7798
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the values of reforming the Indonesian national criminal law based on social justice for all Indonesian people (axiology).

The special character of the study of philosophy from legal science is to seek the essence (Sidharta, 2010). law and justice. This research is intended to seek and discover the nature of law and justice in legal reform in the form of weighting criminal sanctions for fraud. This research will provide a justification prescription that the paradigm of justice in the criminal act of fraud aims at the ideological paradigm in realizing the policy formulation of the threat of sanctions for criminal fraud against the public interest (humanity).

The philosophy of adding a criminal threat to the perpetrator of a criminal act of fraud against the public interest has a legislative rational or clear legal reason. Starting with the question of whether the perpetrator has been penalized with the criminal act of depositing in Article 378 with the perpetrator who committed fraud against the public interest. For example, when the perpetrator who commits a criminal act of fraud in accordance with Article 378 of the Criminal Code is subject to a 4 year criminal sanction, while the perpetrator of a fraud on the pretext of public interest also only receives a 4 year sentence.

In terms of suitability between criminal law and the community where the criminal law is enforced, it is a prerequisite for whether or not criminal law is good. That is, criminal law is considered good if it meets and conforms to the values possessed by society and to fulfill a sense of justice in society according to the times (new crimes are increasing, but the norms of Indonesian Criminal Law in Law No.1 of 1946 do not. set it clearly besides not paying attention to Human Rights (HAM), because in Article 378 concerning Fraud (bedrog), the legal action is to persuade the criminal), whether one side will override the legality principle, but the other side also puts forward the living law.

This need is also in line with the strong desire to be able to achieve fairer law enforcement against every form of criminal law violation in this reform era. An era that urgently needs “openness, democracy, good and clean governance, protection of human rights, law enforcement, justice or the truth of all aspects of life in a social, national and state environment (Sulistia & Zurnetti, 2011).

In this case, the draft in the rules of the new national criminal law book aims to replace the criminal law of the Dutch colonial government with all changes, in the description of criminal law, it is intended as an effort in reforming national criminal law. This effort is only made to be more focused and integrated in order to support the development of national law in the National Law Development Institution in various aspects of legal science, which is needed in legal development, the level of awareness in law and legal flexibility that lives and develops in society (Marwan Efendi, 2014). Law is all rules of behavior that apply in a common life that can be enforced with a criminal sanction or punishment. Law enforcement can take place in a formal and peaceful manner, but it can also occur because law violations must be enforced (Mertokusumo, 2003).

In this case, it is a criminal act of fraud in the Criminal Code. Fraud (bedrog) is a crime that has an object against property. In the Criminal Code, this criminal offense is regulated in chapter XXV of fraudulent acts from articles 378 to 395, so that in the Criminal Law Law, the regulations regarding criminal offenses are the criminal offenses with the longest discussion among crimes against other assets.

So with the increasing number of laws that regulate fraud offenses, it would be better if the Indonesian Criminal Code regulates in more detail and clearly accommodates the provisions of criminal sanctions related to the article of fraud (bedrog) in this case the crime of fraud against the public interest. There are several fraud crimes against the public, such as money laundering, corruption, fraudulent producers/sellers (Consumer Protection Law) and Hajj and

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Umrah fraud. All of them are types of crimes that are included in the criminal act of fraud that is regulated outside the Criminal Code.

If we compare it with these laws, all of them have a penalty of more than 5 years in prison and even the death penalty. Like the crime of money laundering, in accordance with Article 2 paragraph 1 of Law Number 25 of 2003, the criminal acts that trigger money laundering include corruption, bribery, smuggling of goods, smuggling of labor, smuggling of immigration, narcotics, psychotropic drugs, human trafficking. , kidnapping, terrorism, theft, embezzlement, fraud, counterfeiting of money (Dewi, 2013). The legal threat is 20 years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiahs), (Indonesian Constitution, 2010).

Meanwhile, for the criminal act of corruption, the legal sanction is maximum because there is a death penalty clause for the perpetrators of piana corruption (Article 2 paragraph (2)) of Law Number 31 Year 1999 concerning Eradication of Corruption Crimes. The Consumer Protection Law also provides for heavier sanctions when compared to the fraudulent articles in Article 378 of the Criminal Code, namely the threat of imprisonment is a maximum of 6 years in prison and a maximum of Rp. 2,000,000,000.00 (two billion rupiah). This clause on criminal threats is contained in Article 62 paragraph (1) of Law Number 8 Year 1999 regarding Consumer Protection.

As for Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah, the perpetrator as the organizer of the Umrah pilgrimage trip is threatened with being sentenced to imprisonment for a maximum of 10 (ten) years or a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah). Although there are several legal instruments regarding the criminal act of fraud there are already regulated in a separate law outside the Criminal Code. However, the sense of justice and the threat of security, public order and for the benefit of the living are still not represented. This is not without reason, considering that if there is a criminal act of fraud outside the mode that has been stipulated by a special law on a large scale or a crime that is included in the special law, but the scale of the crime is very large and not comparable to the regulated sanctions, it is considered very large. it is necessary to provide ballast sanctions in Article 378 of the Criminal Code. The aim is none other than as a legal instrument for anticipation in the event of a criminal offense of fraud with a new modus operandi or a large scale fraud crime.

More clearly, the meaning of the legal vacuum referred to here is as follows: (1) The norms of criminal sanctions in article 378 of fraud in the Criminal Code only get the threat of imprisonment for 4 years and do not pay attention to the qualification elements of the offense and do not pay attention to the losses/consequences of the criminal offense of fraud, so that it does not fulfill the sense of justice of the community, so it is necessary to reformulate criminal sanctions in the criminal code of the Criminal Code in the reform of Indonesian criminal law by absorbing/exploiting the norms of the death penalty for the perpetrators of criminal frauds of people (congregations) in this case crimes against the public interest. (2) Because the law follows the development of society, and in more modern times, crimes are increasingly new in the world of criminal law, the need for criminal sanctions for fraud against public interests needs to be synchronized or linked with capital punishment with the consideration that the victims of crime are people (many people) with crimes against the public interest.

Meanwhile, the Draft Criminal Code (RKUHP) which is our hope for accommodating heavy sanctions against criminal acts of fraud Article 387 of the Criminal Code has not been absorbed by the draft law. Of course, this is very unfortunate considering that the sanctions for fraud in Article 387 of the Criminal Code are felt to still provide legal loopholes and uncertainties that can erode the sense of justice that exists in society.

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Vol. 14, 266-274, December, 2020
ISSN: 2668-7798
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We can see that Article 378 of the Criminal Code is not accommodated by weighted sanctions against the perpetrators of fraud in Article 378 of the Criminal Code, which only provides for a maximum imprisonment of 4 years in prison. The difference is in this RKUHP there is a category V fine (Rp. 500,000,000.00) for the sanction of fraud, but it is optional with imprisonment. For more details, the following is the criminal act of fraud in Article 498 of the RKUHP:

> "Anyone who with the intention of unlawfully benefiting himself or another person by using a false name or false position, uses deception or a series of lies, moves people to surrender an item, gives a debt, confesses a debt, or writes off a debt. sentenced for fraud, with a maximum imprisonment of 4 (four) years or a maximum fine of category V ".

In this regard, it is necessary to construct or enforce the construction or weighting of criminal sanctions against criminal acts of fraud (Bedrog) against the public interest so that legal criminal sanctions fulfill a sense of justice in society because the "KUHP" is now very outdated because there are many new crimes according to their era. not regulated in the Criminal Code / Criminal Code. In the study of establishing or enforcing criminal sanctions against criminal acts of fraud (Bedrog) against the public interest by linking criminal sanctions that are commensurate with crimes committed by prioritizing the principles of justice, security, order, the interests of many people, legal certainty and values that are contained in Pancasila.

Based on the results of the research as an answer to the first problem, by examining legal materials, among others, the philosophical basis of the legislation in Indonesia and the opinions of experts, reinforces the need for a philosophical basis for the reformulation of the threat of weighting sanctions for criminal fraud Article 378 of the Criminal Code.

These philosophical foundations can be seen from the values contained in the laws and regulations in Indonesia and the opinions of experts which contain several principles, namely: the principle of protection, the principle of welfare, the principle of justice, the principle of equal rights, the principle of legal certainty, the principle of balance and the principle of universality.

The philosophical basis contained in the preamble to Law No.1 of 1946 concerning Criminal Law Regulations contains three basic principles for the formation of the law, namely: the principle of protection, the principle of justice and the principle of legal certainty. Even then, what is explained in the preamble of the law is only legal certainty, while the other two principles are contained in the general explanation of Law Number 1 Year 1946. However, it is still lacking in focus and direction, and is clear. Therefore, the author proposes to use more focused and detailed philosophical concepts, in the form of a formulation of the weighting of criminal sanctions for fraud in the Criminal Code which contains the principles of freedom, principles of protection, principles of welfare, principles of justice, principles of equality, the principle of legal certainty, the principle of universality and the principle of balance. The contents of the preamble to the Criminal Code (KUHP) contained in Law No.1 of 1946 concerning Criminal Law Regulations is that considering that before being able to establish a new criminal law, criminal law regulations are needed to be adjusted to the current circumstances.

Conclusion

The philosophical basis of reformulation of sanctions is reformative, namely those containing the principles of Justice, Certainty, Benefit, Protection, Welfare, Universality, Balance, and Divinity. Meanwhile, the sanctions that are being threatened against the perpetrators of the criminal act of the article of fraud (article 378) at this time have not completely covered these principles, so that the implementation of criminal sanctions has not been felt far from the sense of justice and protection that the community needs. The threat of

criminal sanctions for fraud in Article 378 of the Criminal Code that does not fulfill the sense of justice has had a negative impact on the regulation itself, both juridically, philosophically, and sociologically. Juridically, the sanctions that do not fulfill the perpetrator's responsibility to the victim and their actions on the other hand have resulted in the absence of legal protection and legal certainty for the victim. In relation to the reform of criminal law, it is necessary to reformulate new criminal sanctions for fraud. The results of research from several provisions of Fraud (Bedrog) and fraudulent acts in national legislation, as well as the opinions of experts, can be concluded that reformulation of the formulation of sanctions in Fraud (Article 378) in the Criminal Code Law in the future from the perspective of legal reform penalties can be placed in (Chapter XXV Concerning Fraud) by imposing new sanctions, namely fines and heavier imprisonment if they meet the new elements that have been formulated. The concept of the formula is to add one paragraph (paragraph 2) to Chapter XXV Article 378 of the Criminal Code, namely maximum imprisonment of 20 (twenty) years and/or a maximum fine of Rp. 50,000,000,000.00 (twenty billion rupiahs) provided that the result of the said action / threaten the lives of many people, the interests of the people, the livelihoods of many people, the stability of the state, or make ethnicity, race or religion, the means of carrying out their actions.

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