



RETURN OF STATE MONEY IN COURT DECISIONS AGAINST CRIMINAL ACTS OF CORRUPTION

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Abstract

One of the fundamental issues that is very important and becomes a deeper concern in eradicating corruption is how to recover lost state losses as a result of acts of corruption, whether carried out by individuals or corporations. The phenomenon that has occurred so far is that the eradication of corruption that is carried out can only save 10-15 percent of the total money being corrupted

Keywords: Corruption; Crime; Law.

A. Introduction

Corruption in Indonesia continues to show an increase every year. The results of the Transparency International Indonesia (TII) survey show that Indonesia is the sixth most corrupt country out of 133 countries. The ranking is caused by corruption from top to bottom that is so prevalent in Indonesia. The three sectors most vulnerable to corruption are political parties, the police, and the courts (Evi Hartanti, 2012). The consequences of criminal acts of corruption that have occurred so far are not only detrimental to state finances but can touch various fields of life, including endangering the stability of state security, socio-political development, and destroying democratic values and world morality. Eradication of corruption has become a routine movement in all countries to eradicate it, but corruption is still rampant and gradually this act becomes a culture (Indriyanto Seno Adji, 2009).

One of the fundamental issues that are very important and becomes a deeper concern in eradicating corruption is how to recover lost state losses as a result of acts of corruption, whether carried out by individuals or corporations. The phenomenon that has occurred so far is that the eradication of corruption that is carried out can only save 10-15 percent of the total money being corrupted (Ismansyah, 2016).

Corruption of course gives a loss to state finances. The allocation of funds made by the government for welfare or for the benefit of the people is in vain because it is taken by unscrupulous and irresponsible elements (Ade Paul Lukas, 2010). One of the elements in a criminal act of corruption is the existence of state financial losses (Arifin F, 2019). Against this state financial loss, the Government made laws on corruption, both the old ones, namely Law no. 3 of 1971, as well as the new Law no. 31 of 1999 jo. UU no. 20 of 2001, stipulates that state financial losses must be returned or replaced by perpetrators of corruption.

The Law on the Eradication of Criminal Acts of Corruption has indirectly provided an opportunity for the convict to choose whether to pay a substitute

sentence or choose to serve the sentence specified in the judge's decision. This can be seen in the formulation of Article 18 paragraph (1) letter b of the Law on the Eradication of Criminal Acts of Corruption which states "besides the additional crime as referred to in the Criminal Code, as an additional crime is b. payment of replacement money in the amount of assets objects obtained from criminal acts of corruption" (Evi Hartanti, 2012).

Furthermore, in Article 18 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter written as the Anti-Corruption Law) it is stated "if the convict does not pay the replacement money as referred to in paragraph (1) letter b no later than 1 (one) month after the court's decision which has obtained permanent legal force, the assets can be confiscated by the prosecutor and auctioned to cover the replacement money", while Article 18 paragraph (3) of the Anti-Corruption Law states "in If the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, then the convict shall be sentenced to imprisonment for a length of time not exceeding the maximum penalty of the principal sentence following the provisions of this law and therefore the sentence has been imposed. determined in a court decision (Article 18 paragraph (3) of the Anti-Corruption Law).

B. Research Method

The specification of the research used in writing the journal entitled: "Refund of State Money in Court Decisions against perpetrators of criminal acts of corruption", is normative juridical, namely analyzing the relationship between applicable laws and regulations with legal theories and practices of implementing positive law concerning the problems discussed. This study will analyze legal issues, facts, and other legal phenomena related to the legal approach, then obtain a comprehensive picture of the problem to be studied. This research in the form of descriptive analysis will only describe the condition of the object or problem and is not intended to draw or draw generally accepted conclusions regarding the return of state funds resulting from corruption (Soerjono, Soekanto, 2010).

C. Result and Discussion

1. Juridical Considerations of Refunding State Money from Convicts of Criminal Acts of Corruption

The financial return of the proceeds of the crime of corruption is an independent norm, with the legal principle that the perpetrators of the crime of corruption should not benefit from the proceeds of corruption. In the context of criminal acts committed by criminals, the confiscation of assets resulting from criminal acts of corruption can be used to improve the conditions of damage and degradation of the quantity and quality of the economy and improve the welfare of the people affected by corruption (Abdul Razak Musashib, 2022). In this case, what can be confiscated are:

- 1) Wealth obtained from the proceeds of business/corrupt activities.
- 2) Wealth obtained from the proceeds of business or activities resulting from corruption.

- 3) Wealth obtained as a result of business or corrupt activities that generate profits from the act of providing misleading false information, omitting information, destroying information, or providing false information.

Article 1 number 22 of Law Number 1 of 2004 concerning State Finances which states that: "Losses to the state/region are shortages of money, securities, and goods, which are real and definite in amount as a result of legal acts, whether intentionally nor negligent.

Then according to the explanation in Article 32 paragraph (1) of Law Number 31 of 1999 concerning the eradication of criminal acts of corruption that: "There is a state financial loss" is a loss whose amount can be calculated based on the findings of the authorized agency or appointed public accountant."

Refund of state financial losses in a legal perspective, can be interpreted as restoration to the original state of state financial losses by certain processes or methods by authorized institutions through legal instruments, both litigation and non-litigation. The return of state financial losses in practice is still experiencing various obstacles, both at the legal theoretical level and legal procedural level (M. Tuanakotta, 2009).

The pattern of criminal acts of corruption is based on the behavior or immoral, unethical, and/or unlawful acts for personal and/or group interests that are detrimental to finances of the state, then to eradicate the crime of corruption, in addition to optimizing criminal law, must also use civil law means. Law Number 31 of 1999 About the Eradication of Criminal Acts of Corruption which has been changed into Law Number 20 of 2001 concerning the Eradication of Corruption crime does not only provide criminal law opportunities through the confiscation of the perpetrator's property by the investigator Furthermore, the public prosecutor demanded that the judge carry out deprivation, but also provides opportunities through legal instruments of civil law (M. Tuanakotta, 2009).

This stipulative definition of state finance is rooted in the notion of state finance in terms of objects, subjects, processes, and objectives. State finances play an important role and are always related to supporting the tasks of the government to realize the goals of the State.

The definition of state finance as formulated in Article 1 Law No. 17 of 2003 concerning State Finance implies some rights and obligations of the state relating to finance. The government of the state to finance the interests of the state apparatus (routine) and the community (development), is given rights such as monopoly rights to print money, the right to collect taxes, duties, excise, and user charges, the right to produce goods and services that are very expensive. needed by the community and the right to make loans either from at home or abroad (Marbun & Mahfud MD, 2006). These rights are carried out to realize the goals of the state as mandated in the fourth paragraph of the preamble to the 1945 Constitution and to make payments for the rights of third parties who have carried out part of the state's duties with the approval of the appointment of the government. According to Article 1 number 15 of Law Number 15 of 2006 concerning the Supreme Audit Agency, it is stated that state/regional losses are shortages of money, securities, and goods, which are real

and definite in amount as a result of unlawful acts, whether intentionally or not (Law No. 15 the year 2006).

From the formulation according to Article 1 number 15 of Law Number 15 of 2006 concerning the Financial Audit Agency can be obtained the important elements contained therein, namely: Lack of money, securities, and goods; The real and definite number; As a result of legal actions either intentionally or negligently (Law Number 15 of 2006).

One of the elements in a criminal act of corruption is the existence of state financial loss. Against state financial losses This makes the good old Corruption Law, namely Law Number 3 of 1971 as well as the new ones, namely Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, stipulates a policy that state financial losses must be returned or replaced by perpetrators of corruption (Herimulyanto, Agus, 2019).

Based on the definition above, it can be stated that the elements of state losses are:

- 1) State loss is a reduction in state finances in the form of valuable money, state property from the amount and/or value that should be;
- 2) The shortage in state finances must be real and definite in amount or in other words the loss has actually occurred with the amount of loss that can be determined with certainty, thus the state loss is only an indication or in the form of a potential loss;
- 3) The loss is the result of an unlawful act, whether intentional or negligent, the element of being against the law must be carefully proven.

There is another juridical consideration that the return of the corrupted state finances is carried out by means of a civil lawsuit, which alternatively is directed from two sources. Civil lawsuits are very necessary, prosecutors as state attorneys need to increase civil lawsuits if the conditions for carrying out civil lawsuits are already quite fulfilled. The lawsuit made by the prosecutor as a state attorney is of course not only to fulfill the element of suing, but also to fulfill formal and material requirements. In Law Number 31 of 1999 jo. Law Number 20 of 2001 also stipulates the possibility of using a civil lawsuit, namely in Article 32, Article 33, Article 34 and Article 38 letter c, in the event that the defendant or suspect dies or the prosecution cannot continue because there is insufficient evidence even though it has been completed. there is a loss to the State (Law Number 15 of 2006).

Thoughts on setting civil lawsuits in the Law The Corruption Crime Act, which indicates that in order to recover state financial losses due to corruption, it is not enough to rely solely on criminal law norms. If the Anti-Corruption Law is categorized as criminal legislation, then the regulation of civil lawsuits in the Law shows that a statutory regulation can simultaneously contain aspects of criminal law and civil law. The regulation of civil lawsuits is possible in the Anti-Corruption Law, indicating that corruption which is categorized as an extraordinary crime must be handled in an extraordinary way. (Supatmo Eka Iskandar, 2009) said it was possible to regulate civil lawsuits in the Corruption Crime Act based on the following reasons:

- 1) The settlement of criminal cases of corruption does not always succeed in recovering state financial losses, at least in certain circumstances. The limitations

of criminal law make the instrument of criminal law not the only one to solve the problem of returning state finances due to corruption;

- 2) Corruption is an extraordinary crime, which involving state power and loss, the way to handle it is carried out in an extraordinary way, namely in addition to being through the criminal route, it is also carried out through the civil route;
- 3) The purpose of regulating civil lawsuits is to fulfill the public's sense of justice against perpetrators of corruption who hide the results of corruption, so civil lawsuits are arranged to maximize the return of state finances (Supatmo Eka Iskandar, 2009).

Civil lawsuits need to be placed as the main legal remedy in addition to criminal efforts, not merely facultative or complementary to criminal law, as regulated in the Anti-Corruption Law. Regarding the return of state assets through civil lawsuits in criminal acts of corruption, imprisonment is not not completely effective in overcoming the problem of corruption in Indonesia, and does not necessarily recover state losses from these problems. So that this matter needs to be reviewed judicially related to various legal remedies related to this issue. Of course, every institution that has the authority in this matter is also expected to be able to strive so that all assets in the form of state money that have been embezzled are returned and can be used for the benefit of the State (Supatmo Eka Iskandar, 2009).

2. Refund of State Money Proceeds from Corruption does not erase the criminal act.

Referring to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 as follows:

Article 2 of the Corruption Law:

- (1) Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).
- (2) In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.

Article 3 of the Anti-Corruption Law:

"Every person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of a position or position that can harm state finances or the state economy, is sentenced to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of a minimum of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Article 4 of the Corruption Eradication Law: "Refunding state financial losses or the state's economy does not eliminate the punishment of perpetrators of criminal acts as referred to in Article 2 and Article 3". So, corruptors are still being punished even though they have returned state finances.

But the return of the money can relieve him when he was sentenced by the judge. The application of the criminal return of state money is one of the efforts to restore state financial losses. If you look at the existing corruption laws, all apply

substitute money. Criminal arrangements, replacement money in Law no. 3 of 1971, it is regulated that the payment of replacement money is as much as possible equal to the money that was corrupted (Mahmud, Ade, 2020).

The weakness is that the law does not explicitly stipulate when the replacement money must be paid, and what the sanctions will be if the payment is not made. It is only in the explanation section of the law that it is stated, if the payment of replacement money as a refund of the State money cannot be fulfilled, the provisions regarding the payment of fines shall apply.

The legal weaknesses contained in Law no. 3 of 1971 was later corrected in Law no. 31 of 1999. In both laws, the provisions regarding replacement money are more stringent, namely, if it is not paid within 1 (one) month, the convicted person is immediately executed by putting him in prison. The prison sentence has been determined in the judge's decision, the duration of which does not exceed the maximum threat of the principal criminal (Fontial Munzil, et al, 2015).

Basically, there are 2 (two) imposition models that have been applied by judges who decide corruption cases to restore state assets that have been corrupted. The loading model consists of:

1) Joint responsibilities

Joint liability (shared responsibility) which is better known in the realm of civil law, is the way in which an engagement occurs with a large number of subjects. In the context of civil law, it is known that there are 2 (two) forms of joint responsibility, namely active and passive. Joint liability can be said to be active if the number of parties who owe (creditors) is more than one, and conversely, passive joint liability occurs when the number of parties who owe (debtors) is more than one. Under the joint responsibility model, the panel of judges in their decision only stated that the defendants were charged with a penalty of a certain amount of rupiah in exchange for a certain period of time. The Halim Council (the state) did not care at all how the defendants collected the replacement money, whether it was borne by one of the defendants or in a certain portion.

In accordance with the spirit behind the concept of substitute money punishment, the state only cares about how corrupted state money can be returned (Sujono, 2020).

2) Proportional loading

Proportionate imposition is the imposition of a substitute money penalty in which the panel of judges in their ruling definitively determines how much each defendant's burden will be. The determination of the amount of replacement money is based on the judge's interpretation of the contribution of each defendant in the related corruption crime. In practice, the two models above are applied randomly depending on the judge's interpretation. This inconsistency is most likely due to the lack of clarity in the existing rules. Based on the nature of each model, the proportional model is indeed the one that has the least potential problems that will arise (Mahmud, Ade, 2020). Execution of replacement money does not require a separate lawsuit. The penalty for replacement money is an integral part of the criminal decision handed down by the panel of judges. The authority to execute each criminal decision rests with the public prosecutor, including the penalty for replacement money. If the execution of the replacement money uses a separate

lawsuit, it will be contrary to the implementation of the sentence. The new law on eradicating corruption, namely Law no. 20 of 2001 still maintains this additional type of crime. The provisions in Article 18 paragraph (1) letter b state that the perpetrators of criminal acts of corruption may be imposed additional penalties in the form of payment of replacement money in the maximum amount equal to the property obtained from the criminal act of corruption (Mahmud, Ade, 2020).

3) Conclusion

The juridical considerations of returning state money from convicts of criminal acts of corruption, namely: a) State losses are reduced state finances in the form of valuable money, state property from the amount and/or value that should be; b) The shortage in state finances must be real and definite in amount or in other words the loss has actually occurred with a definite amount of loss that can be determined, thus the state loss is only an indication or in the form of a potential loss; and c) The loss is due to an unlawful act, whether intentional or negligent, the element of being against the law must be carefully proven. The return of state money resulting from corruption does not erase the criminal act, juridically refers to Article 4 of the Anti-Corruption Law: "Returning state financial losses or the state's economy does not eliminate the punishment of the perpetrators of criminal acts as referred to in Article 2 and Article 3".

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