

The Prosecutor's Authority to Conduct Investigations into Corruption Crimes Causing State Financial Losses (Case Study in PT. Timah Tbk)

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Abstract. *The performance of the prosecutor's office in eradicating corruption is seen in the case of PT. Timah Tbk. Starting from the alleged corruption of the tin commodity trade system in the Mining Business Permit (IUP) area of PT Timah Tbk for 2015-2022, where the total loss reached IDR 271 trillion. In the process of enforcing the law on corruption in Indonesia, there are investigators from three institutions established by the state in their capacity as law enforcement officers who have been given authority to each investigator through law. The authority of investigation by the prosecutor's office is regulated in Law 16 of 2004 in conjunction with Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. Based on the decision of the Constitutional Court No. 28/PUU-V/2007 states that Article 30 paragraph (1) letter d of the Prosecutor's Office Law which gives the Prosecutor's Office authority other than prosecution, namely to conduct investigations, does not necessarily contradict the 1945 Constitution. Investigations carried out by the Prosecutor's Office are crimes that are difficult to resolve, such as corruption. The obstacles encountered by prosecutors in investigations are the authority held by investigators as regulated in Article 5 paragraph (1) of the Criminal Procedure Code, namely to seek information and evidence. At this stage, investigators must be as capable as possible of seeking and finding assets belonging to perpetrators of corruption.*

Keywords: Authority; Corruption; Criminal; Prosecutor.

1. Introduction

After the enactment of Law No. 31 of 1999 concerning the eradication of criminal acts of corruption until the enactment of the next law, namely Law No. 16 of 2004 concerning the prosecutor's office of the Republic of Indonesia, the authority of the prosecutor as an investigator or the authority of the prosecutor's office in investigating criminal acts of corruption was questioned for its legitimacy due to the existence of a criminal case of corruption against the prosecutor, because

there is a provision in Article 26 of the Law on the Eradication of Criminal Acts of Corruption, which states that investigations, prosecutions and examinations in court against criminal acts of corruption are carried out based on applicable criminal procedural law unless otherwise specified in this law. The Constitutional Court rejected the petition for judicial review of Article 30 paragraph (1) letter d of Law No. 16 of 2004 concerning the Prosecutor's Office, Article 39 of Law No. 31 of 1999 concerning the Eradication of Corruption, and Article 44 paragraphs (4), (5), Article 50 paragraphs (1), (2), (3), and (4) of Law No. 30 of 2002 concerning the Corruption Eradication Commission (KPK) regarding the authority of the Prosecutor to investigate corruption crimes (Evi Hartanti, 2011).

The Attorney General's Office (AGO) has seen a significant decline in corruption prosecutions since 2018, indicating that its performance in handling corruption cases has begun to improve. Furthermore, the majority of those arrested by the AGO are executives, with only a few holding strategic positions. The AGO's performance in eradicating corruption is evident in the PT Timah Tbk case. It began with allegations of corruption in the tin commodity trade within the PT Timah Tbk Mining Business Permit (IUP) area from 2015 to 2022, resulting in total losses reaching IDR 271 trillion, involving senior officials at PT Timah, a company based in Bangka Belitung. This illegal mining, initially disguised as equipment rental and tin smelting, is believed to have been covered up by numerous influential individuals, including prominent businessman Harvey Moeis and former President Director Riza Pahlevi Tabrani.

In this complex illegal tin mining case, a dummy company was established to supply tin ore, the purpose of which was to facilitate the illegal collection of tin ore from the Mining Permit (IUP) of PT Timah Tbk, which is owned by all the suspects. Based on this discussion, the consequences of this corruption, carried out by irresponsible individuals who prioritize their own interests, are highly detrimental to the state, both the environment and the Indonesian people. In the law enforcement process for corruption in Indonesia, investigators from three state-established institutions, acting as law enforcement officers, have been granted authority to conduct investigations through law. The Prosecutor's Office, as one of the law enforcement agencies, is required to play a greater role in upholding the rule of law, protecting the public interest, upholding human rights, and eradicating Corruption, Collusion, and Nepotism (KKN). The prosecutor's authority in the criminal field is also regulated in Article 14 letter (g) of the Criminal Procedure Code, namely that the public prosecutor "conducts prosecution" and letter (h) namely "closes the case in the interests of law" in conjunction with Article 137 of the Criminal Procedure Code, namely "the public prosecutor has the authority to prosecute anyone accused of committing a crime in his/her jurisdiction by transferring the case to a court that has the authority to try it.

Under the provisions of Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, prosecutors have the

authority to conduct investigations, including investigations into corruption. The prosecutor's investigative authority is regulated by Law No. 16 of 2004 in conjunction with Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

2. Research Methods

This research uses normative juridical research and the nature of this thesis's research method is descriptive analysis, namely research that describes, examines, explains and analyzes a legal regulation, in this case related to Corruption Crime, Source The legal materials used in this research are secondary data which is data obtained from official documents, books or any form of research related to research objects and research results in the form of reports, journals, theses, dissertations and statutory regulations. The data analysis technique used is qualitative data analysis, namely a research procedure that produces analytical descriptive data, namely by collecting materials and data as well as applicable regulations and legislation which are then analyzed using logical legal thinking.

3. Result and Discussion

3.1 criminal acts of corruption

The formulation of the crime of corruption as stated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, is divided into two parts, namely:

a. The formulation of the crime created by the makers of the Corruption Crime Law includes:

- 1) Unlawfully enriching oneself or another person (Article 2 of Law 31/1999). The formulation of the Criminal Act of Corruption according to Article 2 paragraph (1) of Law No. 31 of 1999 is any person (individual or corporation) who meets the elements of that article. The elements of Article 2 paragraph (1) of Law No. 31 of 1999 are unlawfully engaging in acts of enrichment of oneself or another person or corporation; such acts directly or indirectly harm state finances or the national economy. The acts committed under the element of enriching oneself or another person or corporation include enriching oneself, another person, and the corporation.
- 2) Abuse of authority, opportunity, or means (Article 3 of Law No. 31/1999). The perpetrator of a crime according to Article 3 of the 1999 PTPK Law is any person, including individuals and corporations, who abuses the authority, opportunity, or means available to them due to their position or position. Therefore, the perpetrator of corruption according to Article 3 must be an official/civil servant. The elements of Article 3 of Law No. 31 of 1999 are as follows (Darwin Prints, 2012):

- a) With the intention of benefiting oneself or another person or a corporation;

- b) The act committed involves misusing the authority, opportunity, or resources available to them because their position or authority implies power/rights. Therefore, the abuse is the perpetrator's power and rights, for example, to benefit their children, siblings, grandchildren, or cronies;
- c) The act itself can be detrimental to the state's finances or economy.

3) Giving gifts or promises to civil servants (Article 13 of Law 31/1999). Article 13 of the 1999 PTPK Law qualifies as a criminal act of corruption any person (individual and corporation) who gives a gift to a civil servant considering the power or authority attached to his or her position or position, or by the giver of the gift or promise being deemed to be attached to that position or position. Article 13 does not qualify the official or civil servant who received the gift or promise as the perpetrator. However, on the contrary, it only punishes people who bribe or bribe the official or civil servant.

b. Crime Formulations Taken from the Criminal Code

The majority of crime formulations in the Corruption Eradication Law (hereinafter referred to as the PTPK Law) are derived from Criminal Code, such as bribery (Articles 209 and 210), embezzlement by civil servants (Articles 415, 416, and 417), extortion in office (Articles 423 and 425), and offenses related to contracting, suppliers, and partners (Articles 387, 388, and 435).

Considering the corruption offenses mentioned above, the factors contributing to corruption, as stated by Andi Hamzah, are (Andi Hamzah, 2005):

- a. Insufficient salaries or income for civil servants compared to the ever-increasing needs.
- b. Indonesian cultural background.
- c. Poor management and ineffective and inefficient supervision.
- d. Modernization.

Other factors include indecisive and inconsistent law enforcement, abuse of power or authority, a lack of an anti-corruption environment, a culture of offering bribes, rewards, and gifts, consequences for arrest that are lower than the enormous profits from corruption, a permissive culture, and a failure of religious and ethical education. Corruption is an activity carried out for personal or group enrichment, where such activity violates the law and causes financial losses to the state. The crime of corruption in Article 2 paragraph (1) of Law No. 20 of 2001 concerning Criminal Acts of Corruption stipulates that, "Any person who unlawfully commits an act of enriching themselves or another person or a corporation that can harm state finances or the state economy, shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR 200,000,000.00 (two

hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

The dominant elements inherent in criminal acts of corruption are as follows (Eko Santoso, 2011).

- a. All corruption stems from delegated power (derived power). Perpetrators of corruption are individuals who obtain power or authority from a company or the state and exploit it for other interests.
- b. Corruption involves contradictory dual functions for the officials involved.
- c. Corruption is carried out for personal, affiliated, or group interests. Therefore, corruption will always conflict with organizational gain, state interests, or the public interest.
- d. Those who practice corruption usually attempt to conceal their actions. This is because every act of corruption inherently contains elements of deception and violates the law.
- e. Corruption is committed consciously and intentionally by the perpetrators. In this case, there is no link between the corrupt act and the perpetrator's rational capacity. Thus, corruption can clearly be attributed to maladministration or mismanagement.

The mechanism for examining corruption crimes is explained as follows (Surrachmin, 2011):

- a. Preliminary examination, in the form of activities which are detailed as preparatory examinations, namely investigative and inquiry actions. An investigation is the initial action in examining a case and other limitations of the investigator's duties.
- b. Prosecution. In the case of prosecution, the Prosecutor prepares or prepares an indictment. An indictment is a letter prepared or prepared by the Public Prosecutor and attached when submitting the case file to the Court, containing the name and identity of the perpetrator of the crime, when and where the crime was committed, and a detailed description clear and complete information regarding the act that is accused of having been committed by the defendant which fulfills the elements of certain articles of certain laws which will later be the basis and starting point for examining the defendant in court to prove whether the act that is accused of being committed was indeed committed and whether the defendant is indeed the perpetrator who can be held responsible for the act
- c. Final examination. At this stage, the indictment, exceptions, examination of witnesses and expert witnesses, testimony from the defendant, evidence, and requisitor or criminal charges are read.

3.2 The Prosecutor's Authority in Investigating Corruption Cases

In investigating corruption crimes, several institutions are authorized to conduct investigations, namely the Corruption Eradication Commission (KPK), the

Prosecutor's Office, and the Police. The KPK is a state institution whose establishment is mandated by Article 43 of Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001. To avoid overlapping authority with other law enforcement agencies, namely the police and the prosecutor's office, in conducting investigations, inquiries, and prosecutions, based on Article 11 of the KPK Law, corruption crimes under the KPK's authority are those that:

- a. Involving law enforcement officers, state administrators, and other individuals unrelated to the corruption committed by law enforcement officers and state administrators;
- b. Receiving public attention; and/or
- c. Involving state losses of at least IDR 1,000,000,000 (one billion rupiah).

Beyond these authorities, the handling of corruption cases is delegated to other law enforcement officials, namely the police or the prosecutor's office. Unlike the Corruption Eradication Commission (KPK), which has expressly defined the scope of its authority for corruption crimes, there is no clear distinction between the police and the prosecutor's office regarding which corruption crimes fall under its jurisdiction. Which police authorities and corruption crimes are part of the prosecutor's authority (Jawade Hafidz, 2011).

Between the police and the prosecutor's office, there is only an agreement between the Attorney General's Office and the Indonesian National Police, namely the agreement between the Chief of the Indonesian National Police and the Attorney General of Joint Regulation Number Pol: 2 of 2006 and Number: Kep-019/A/JA/03/2006 dated March 7, 2006 concerning Optimizing Coordination in Eradicating Criminal Acts of Corruption.

Regarding the authority of the prosecutor's office in conducting investigations after the distinction regarding the dual authority held by the prosecutor's office as investigator and public prosecutor, with the enactment of Law No. 16 of 2004 concerning the Prosecutor's Office, there are regulations regarding the authority of prosecutors in investigating criminal acts of corruption. This authority is stated in Article 30 paragraph (1) letter (d) which reads "One of the duties and authorities of the Prosecutor's Office in the criminal field is to conduct investigations into certain criminal acts based on the law (Soetomo, 2000).

In the Constitutional Court decision No. 28/PUU-V/2007, it was stated that Article 30 paragraph (1) letter d of the Prosecutor's Office Law, which provides prosecutorial authority other than prosecution, namely to conduct investigations, does not necessarily contradict the 1945 Constitution. In addition, the Court also stated that if Article 30 paragraph (1) letter d of the Prosecutor's Office Law is declared contradictory to the 1945 Constitution, it does not mean that it revokes the prosecutor's investigative authority which is held based on other provisions. (Moch Faisal Saïam, 2001) The basis for the Constitutional Court's rejection of the application for judicial review of Article 30 paragraph (1) letter d of Law No. 16 of

2004 concerning the Prosecutor's Office, Article 39 of Law No. 31 of 1999 concerning the Eradication of Corruption, and Article 44 paragraph (4), (5), Article 50 paragraph (1), (2), (3), and paragraph (4) of Law No. 30 of 2002 concerning the Corruption Eradication Commission regarding the authority of the Prosecutor to investigate criminal acts of corruption of government power and the formation of laws (Hibnu Nugroho, 2011)

In addition, regulations regarding the prosecutor's authority to conduct investigations are stipulated in Article 50 of Law 30/2002 concerning the Corruption Eradication Commission (KPK), which states (Ermansjah Djaja, 2011):

- (1) If a criminal act of corruption occurs and the Corruption Eradication Commission has not yet conducted an investigation, while the case has been investigated by the police or prosecutor's office, the agency is required to notify the KPK no later than 14 (fourteen) working days from the date the investigation began.
- (2) Investigations conducted by the police or prosecutor's office as referred to in paragraph 1 must be continuously coordinated with the KPK.
- (3) If the KPK has begun an investigation as referred to in paragraph (1), the police or prosecutor's office no longer has the authority to conduct the investigation.
- (4) If an investigation is conducted simultaneously by the police and/or prosecutor's office and the KPK, the investigation conducted by the police or prosecutor's office must be immediately terminated.

The formulation of Article 50 of Law 30/2002, as stated above, grammatically demonstrates the prosecutor's authority to conduct investigations. This investigative authority applies to cases investigated by the prosecutor's office, both before and after the enactment of Law 30/2002. This is because the Commission's authority to take over investigations conducted by the prosecutor does not specify a time limit for the incident and the implementation of the investigation.

3.3 Investigation into the Corruption Case at PT Timah Tbk, Which Caused State Financial Losses

The corruption case involving PT Timah Tbk represents the largest potential state loss in the history of Indonesian law enforcement, following the court's ruling. Previously, the largest state losses in corruption cases occurred in the Bank Indonesia Liquidity Assistance (BLBI) case, amounting to Rp138.44 trillion; the management of PT Asabri's pension fund, amounting to Rp22.78 trillion; and several other cases, such as Jiwasraya, Base Transceiver Station (BTS), and Century.

In the PT Timah Tbk corruption case, which caused state financial losses, the role of the prosecutor's office in law enforcement is crucial in an effort to recover state

losses resulting from corruption. The prosecutor's office's enforcement of corruption laws has its own procedures, so law enforcement in a corruption case must go through several stages to ensure clean, fair, honest law enforcement, and clear legal certainty. In the PT Timah Tbk corruption case, in decision No. 70/Pid.Sus-TPK/2024/PN.Jkt.Pst against Harvey Muis, the element of causing state financial loss was met, and the panel of judges issued a verdict in addition to imprisonment and ordered the defendant to pay compensation of Rp 100,000,000,000. 210,000,000,000.00 (two hundred and ten billion rupiah) with the provision that if the convict does not pay the replacement money within a maximum of 1 (one) month after the court decision has obtained permanent legal force, then his assets can be confiscated by the prosecutor and auctioned to cover the replacement money, and if the convict does not have sufficient assets to pay the replacement money, then it will be replaced with a prison sentence of 2 (two) years. And the trial evidence will be confiscated for the state and counted as payment of the replacement money.

The investigation into elements that are detrimental to state finances and the state economy in the decision of the Central Jakarta District Court Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst against Harvey Muis, the perpetrator of corruption at PT. Timah Tbk, is seen in the considerations of the panel of judges that:

- 1) The Constitutional Court of the Republic of Indonesia, in its decision Number 25/PUU-XIV/2016, essentially stated that the word "can" in Article 2 paragraph (1) and Article 3 of Law 31/1999, as amended by Law 20/2001 concerning the Eradication of Criminal Acts of Corruption, contradicts the 1945 Constitution of the Republic of Indonesia and has no binding legal force.
- 2) The Constitutional Court's decision assessed that Article 2 paragraph (1) and Article 3 of Law 31/1999, as amended by Law 20/2001 concerning the Eradication of Criminal Acts of Corruption, regarding the application of the element of causing state financial loss, has shifted to emphasizing the existence of consequences (material offenses), so that the element of causing state financial loss is no longer understood as an estimate (potential loss) but must be understood as having actually occurred or is real (actual loss) in criminal acts of corruption;
- 3) The meaning of "harmful" is the same as causing a loss or reduction, so that what is meant by the element of harming state finances is the same as causing a loss to state finances or a reduction in state finances;
- 4) Based on the general explanation of Law 31/1999 as amended by Law 20/2001 concerning the Eradication of Criminal Acts of Corruption, it is stated that what is meant by state finances is all state assets in any form, whether separated or not separated, including all state assets and all rights and obligations arising therefrom;
- 5) In the general explanation of Law 31/1999 as amended by Law 20/2001 concerning the Eradication of Criminal Acts of Corruption, it is stated that what

is meant by the state economy is economic life that is structured as a joint effort based on the principle of family or independent community efforts based on government policies, both at the central and regional levels in accordance with the provisions of applicable laws and regulations and aims to provide benefits, prosperity and welfare to all people's lives;

6) In the explanation of Article 32 paragraph (1) of Law 31/1999 as amended by Law 20/2001 concerning the Eradication of Criminal Acts of Corruption, it is stated that what is meant by real state losses is state losses that can be calculated based on the findings of authorized agencies or appointed public accountants.

Thus, in the context of law enforcement against perpetrators of criminal acts of corruption that cause losses to state finances, this is one of the elements that can be categorized as an act of criminal corruption as stated in Article 2 paragraph (1) and Article 3 of Law 31/1999 as amended by Law 20/2001 concerning the Eradication of Criminal Acts of Corruption.

3.4 Obstacles in the Corruption Crime Investigation Process

Efforts to legally recover state financial losses from corruption can begin with the investigation stage, prosecution stage, and execution or implementation of the court decision.

Regarding the imposition of a penalty in the form of compensation, which can be used as a basis for recovering state financial losses, there are several obstacles that make such a decision seem futile, including:

- 1) The long time span between the act of corruption and the trial process makes it difficult to trace the money or proceeds of corruption.
- 2) The money or proceeds from the corruption have been spent or have been diverted to other forms that are difficult to access by the law.
- 3) The inability of the convict to pay compensation.

Furthermore, the failure to confiscate and auction the convict's assets is due to the prosecutor's difficulty in locating the convict's assets. However, the prosecutor, as the enforcer of the court decision, can execute a prison sentence in lieu of the convict's failure to pay compensation.

In carrying out their duties, the prosecutor's office often faces various obstacles that hinder the effectiveness and efficiency of their work. The main obstacles facing the prosecutor's office and their impact on law enforcement in Indonesia include:

- 1) Lack of government/state support.
- 2) Political interference and corruption.
- 3) Heavy workload.
- 4) Lack of coordination with other law enforcement agencies.
- 5) Rapid legal changes.

The obstacles faced by the prosecutor's office in Indonesia represent a major challenge to effective and fair law enforcement. Overcoming these obstacles requires a collaborative effort from the government, legal institutions, and the public.

4. Conclusion

The authority of the prosecutor's office to investigate corruption crimes that cause state financial losses is regulated in Law No. 16 of 2004 concerning the Prosecutor's Office, Article 30 paragraph (1) letter (d). This delegation of authority is explained in the background of the Prosecutor's Office Law, namely to accommodate several provisions of laws that previously granted the prosecutor's office the authority to conduct investigations. Constitutional Court Decision No. 28/PUU-V/2007 stated that Article 30 paragraph (1) letter (d) of the Prosecutor's Office Law, which grants the Prosecutor's Office authority beyond prosecution, namely to conduct investigations, does not necessarily contradict the 1945 Constitution. The confiscation of a suspect's assets is related to additional penalties in the form of confiscation, which can be imposed simultaneously with the imposition of the principal sentence by the judge, thus facilitating the prosecutor's efforts to recover state losses. However, investigators often prioritize calculating state losses and fulfilling criminal elements, with the goal of recovering the losses through compensation payments to the state. Technical obstacles to recovering state losses experienced by prosecutorial investigators include limited human resources and facilities, political interference and corruption, heavy workloads, lack of coordination with other law enforcement agencies, and rapid changes in legal regulations.

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