

EFFECTIVENESS OF THE IMPLEMENTATION OF THREATS OF ADDITIONAL CRIMINAL SANCTIONS TO RETURNS THE STATE FINANCIAL LOSSES IN CORRUPTION CRIMINAL ACT

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ABSTRACT

This study aimed to describe and to analyze more about the additional criminal effectiveness in the form of returning state losses to corruption and also aimed to find out and to examine the obstacles in the implementation of court decisions related to the return of state financial losses with replacement money. Corruption is now one of the extraordinary crimes that endangers the stability and security and economic development of Indonesia. As a criminal act that has an impact on state losses, the most important essence in eradicating corruption is related to the return of state losses due to criminal acts of corruption. From this view, the question arises whether the application of additional criminal acts in the form of returning state losses can be effectively implemented based on the provisions of Article 18 of Law Number 31 of 1999 Jo. Law Number 20 of 2001.

This research used juridical empirical legal method with the nature of descriptive research used primary and secondary data sources. It also used document study techniques, interviews and reading resources related to existing problems. This study used non-probability sampling technique and used purposive sampling in determining research samples.

Based on the research that has been done, it can be seen that the application of additional crimes in the form of returning state losses has been implemented but cannot yet be effective in an effort to recover state losses due to corruption and suppress the number of corruption in the Semarang District Court. In addition, the number of corruption cases decreased from 149 cases in 2016 to 110 cases in 2017. While for corruption cases in 2016-2017 there is no record of state losses. Constraints in the implementation of court decisions related to the return of state losses are the assets of the convicted person who has changed hands, administration of dual residence, and the length of the trial process until the decision has permanent legal force so that execution can be carried out.

Keywords: effectiveness, additional criminal, returning state losses, corruption

INTRODUCTION

A criminal act of corruption is a dishonest act with the intention of enriching himself and/or others by manipulating or embezzling state finances so as to cause losses to the state's finances. Corruption in Indonesia will have an impact on various aspects of people's lives both in terms of the economy, security and stability of the country.

As one of the crimes classified as white collar crime, corruption are not only fought in Indonesia but have become the attention of the world community. One proof that the fight against corruption is the goal of world countries is stated in the 8th United Nations Congress which formulated the number of consequences resulting from corruption.

One of the countries that is active in eradicating corruption is Malaysia. Malaysia's move in minimizing corruption is by combining 3 laws at the same time, namely Prevention of Corruption Act 1961 (Act 57), Emergency (Essential Power) Ordinance No.22, 1970, Anti-Corruption Agency Act 1982 (Act 271) to become Anti-Corruption Act 1997 (ACA) which is still valid today. Based on the ACA, a *Rasuah* (bribe) Prevention Body was formed to create Malaysia free from corruption.

The criminal act of corruption is one of several special criminal acts that are also regulated outside the Criminal Code. Corruption crimes have special specifications that distinguish them from general crimes, for example in the case of irregularities in procedural law and regulated material in order to reduce the amount of leakage and irregularities in state finances¹. In his writings, Antonius Widjianto stated that corruption in language is simply an illegal act that causes state losses caused by people or groups, resulting in the opportunity for the people to get the development budget to be lost, minimally reduced² Various efforts have been made by the Government of Indonesia to tackle and overcome corruption, one of which is by continuing to update the legislation related to criminal acts of corruption. At present the umbrella law in the enforcement of corruption in Indonesia is Law No. 31 of 1999 concerning Eradication of Corruption in Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The most important essence of combating corruption is an attempt to recover state financial losses due to corruption. The most important essence of combating corruption is an attempt to recover state financial losses due to corruption.

The amount of state financial losses caused by corruption leads to serious handling of the government and law enforcement.

¹ Lilik Mulyadi, 2007, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi*, PT.Alumni, Bandung, page43

² Gupta&Rekan, 2012, *Korup&Orup*, Sinarpada, Bandung, page 83

When viewed from the magnitude of the ratio between the magnitude of the country's financial loss and the amount of return on state financial losses due to corruption deposited in the state treasury, it can be described as follows:

Year	State Financial Losses	Return the state losses
2015	+ 31,077 trillion	Rp.1.542.000.000.000
2016	+ 3,085 trillion	Rp. 720.269.000.000
2017	+ 6,5 trillion	Rp. 250.000.000.000

* large losses of state finances are obtained from the results of ICW's research on allegations of corruption in the year

In line with this, from the 2015 KPK annual report there were still fines, replacement money and court fees that could still be collected in 2015 from cases in 2013 to 2016, so this shows that efforts to maximize the return on state financial losses in criminal acts of corruption still experience various obstacles. Thus, it shows that efforts to maximize the return of state financial losses due to criminal acts of corruption are still constrained. As a law enforcement agency that has special authority in handling corruption cases, it cannot be denied that the KPK also experienced many obstacles. Thus, it can be realized that efforts to eradicate corruption and restore state financial losses due to corruption in the regions also encounter many obstacles. One of them is the handling of corruption cases in the Semarang District Court as an effort to improve the performance of law enforcement agencies given the increasingly widespread corruption cases that occurred in Central Java, then on Tuesday 20 December 2011, having its address at Jalan Dr Suratmo, Kaveling 174, Manyaran, West Semarang was inaugurated Semarang Corruption Crime Court Building under the auspices of the Semarang District Court.

The implementation of repayment of state financial losses due to criminal acts of corruption also does not necessarily just happen. In addition to waiting for payment of compensation from convicted corruption cases that require a long time, the refund can be made directly to the state treasury. This is because there must be a bureaucratic procedure that is passed, so that it takes time to return state losses to the state treasury so that they can be used immediately for the welfare of the people.

In the provisions of the Law on eradicating corruption, efforts to eradicate corruption and restore state financial losses due to corruption are still constrained by many factors. The same thing also happened when the implementation of the court's decision regarding additional crimes in the form of returning state financial losses was still hampered by many obstacles.

PROBLEM STATEMENT

Based on the above background, there are three main issues that will be discussed, namely:

1. How is the application of additional threats of criminal sanctions to restore state financial losses in criminal acts of corruption?
2. What is the constraint in the implementation of court decisions related to additional criminal sanctions for the return of state financial losses with replacement money in corruption?

Is it effective to apply additional threats of criminal sanctions in order to recover state financial losses with substitute money in corruption?

RESEARCH METHODS

This research is a type of empirical juridical legal research. In this case, it is a research concerning the application of additional threats of criminal sanctions in order to recover the loss of state finances in corruption in the Semarang District Court. The nature of this research is descriptive which used primary and secondary data. Primary data were obtained directly from the informant.³ The informants, among others: Semarang District Court Judge, and Attorney at the Semarang District Attorney. Secondary data is obtained from books, scientific works, and legislation relating to research.⁴

RESEARCH RESULTS AND DISCUSSIONS

The application of the threat of additional criminal sanctions is in order to recover the loss of state finances in corruption crimes. Corruption is an unlawful act committed by a state official (civil servant) or corporation with malicious or fraudulent intentions to enrich themselves and gain personal and group interests which causes state losses and the country's economy. Corruption is a threat to the ideals of a just and prosperous society.⁵

What is meant by state loss is the reduction of State assets due to an act of abuse of one's authority due to their position. The term criminal is often interpreted as punishment. The imposition of criminal sanctions is usually carried out by the authorities to someone who is

³ Amirruddin dan H. Zainal Asikin, 2008, Pengantar Metode Penelitian Hukum,

⁴ Ali, Zainuddin, 2011, Metode Penelitian Hukum, Cetakan Ketiga, Sinar Grafika, Jakarta

⁵ Hartanti, Evi, 2007, Tindak Pidana Korupsi, Edisi Kedia, Sinar Grafika, Jakarta

considered to have violated a rule of law.⁶ As an effort to maintain peace and means of community control, criminal sanctions are the punishment most often used to realize this.

The type of threat of criminal sanctions has been regulated in the provisions of Article 10 of the Criminal Code. The threat of criminal sanctions related to corruption is regulated separately in the Corruption Eradication Law. In addition to the principal crimes, the Corruption Eradication Law also includes additional crimes in the form of returning state financial losses contained in the provisions of Article 18 of Act Number 31 of 1999 concerning Eradication of Corruption Crime. Law Number 20 of 2001 concerning Amendments to Law No. 31 of 1999.

The imposition of criminal sanctions for corruptors is to cause a deterrent effect, reverse the loss of state finances, as well as preventive measures so that people are afraid to commit corruption.⁷

In this study more specifically discusses the threat of additional criminal sanctions for the return of state financial losses due to corruption in the form of payment of replacement money stipulated in the Court Decision. In essence, the theory of return on state financial losses is a theory that explains:

The legal system for recovering state losses is based on the principle of social justice where the basic principle is "give to the state what is the right of the state".⁸

State finance according to Geodhart is essentially the entire law stipulated in order to obtain government power to carry out expenditures in certain periods and shows the financing tools needed to cover these expenses¹³ Based on these data it can be seen that the application of additional criminal sanctions to return state financial losses in the Court Semarang has been implemented but not optimal. This is because there is still a demand by the Public Prosecutor who does not include additional crimes.

The application of the threat of additional criminal sanctions in order to recover the loss of state finances in the Semarang District Court cannot be used as a means to prevent the occurrence of criminal acts of corruption, because even though the additional criminal sanction in the form of repayment of state financial losses has not been made the public afraid to commit Corruption.

⁶ 10Jan Rummelink, 2003, Hukum Pidana, Komentar Atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia, PT. Gramedia Pustaka Utama, Jakarta, h.7

⁷ Syamsudin, Aziz, 2011, Tindak Pidana Khusus, Sinar Grafika, Jakarta

⁸ Akil Mochtar, 2006, Memberantas Korupsi Efektifitas Sistem Pembalikan Beban Pembuktian Dalam Gratifikasi, Q-Communication, Jakarta, page38

If viewed from the decision regarding the return of state financial losses due to corruption in the Semarang Corruption Court from 2016-2017 amounting to Rp.73 742 089 305, - (Seventy three billion seven forty two million eighty nine thousand three hundred five rupiah). Because there are still cases in the process of legal proceedings, the return of financial losses to the state of corruption cases that already have permanent legal force (*inkracht*) and should have been able to be executed was Rp. 48 646 930 379, - (Forty eight billion six hundred forty six million Nine hundred thirty thousand three hundred seventy nine rupiahs). Whereas the amount of replacement money that should be deposited into the state treasury from the case from 2016-2017 that has permanent legal force is Rp. 8,415,837,687, - (eight billion four hundred fifteen million eight hundred thirty seven thousand six hundred eighty seven rupiah), which originated from the 2013-2015 case. Meanwhile, until now there is no return of state losses due to corruption in 2016-2017 which can be deposited into the state treasury. This proves that it takes a very long time to get a refund of the loss of state finances with money replacement from the convicts.

Constraints in the implementation of court decisions related to additional criminal sanctions in order to recover state financial losses with substitute money in corruption by prosecutors as executors. Similarly, in the process of implementing a court decision concerning the return of state financial losses with money substituted through the seizure process and auction of property belonging to the convicted person.

Based on the results of an interview with Mr. Triyanto, SH MH, the Prosecutor at the Semarang District Prosecutor's Office, he stated that the main obstacle experienced by the Prosecutor when carrying out the execution of a convicted person in a corruption case convicted of returning the state's financial loss with substitute money is that the convict often hid his property as well as possible. Even sometimes there are convicts who claim not to have any assets that can be confiscated and auctioned to pay a replacement money.

At present, the Prosecutor has the role to trace the property owned by a Defendant. Long legal remedies are also a barrier faced in the process of returning state financial losses due to corruption, even though the most important essence in eradicating corruption is the maximum return of state financial losses due to corruption.

Obstacles to the implementation of the return of state financial losses due to criminal acts of corruption if associated with the legal system theory (Legal System Theory) proposed by Lawrence M. Friedman, which in essence is to state that a legal system consists of 3 (three) components, namely:

- a) Legal Substance (Legal Substance), in this case the meaning of legal substance is the rule or legal norm related to the corruption act, namely Law Number 31 of 1999 concerning Eradication of Jo's Corruption Crime. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, as well as other laws and regulations related to corruption. However, until now there has been no clear regulation regarding the procedure for implementing repayment of state financial losses with substitute money in more detail and separately. Given the urgency of returning state financial losses due to corruption is very important.
- b) Legal Structure is a permanent framework, or body element of an institution in the legal system. In this case the meaning of the legal structure is law enforcement institutions as one of the real elements in a legal system, including institutions that also carry out the rules of law. In the case of repayment of losses in state finances there must be coordination between law enforcement, especially judges in imposing decisions, and prosecutors who later carry out decisions especially related to seizure and auction of assets of corruption cases convicts who do not pay replacement money as a penalty for returning state financial losses.
- c) Legal Culture is a part of culture in general, which can be in the form of customs, views, ways of thinking and behavior that can form a social force that moves closer to the law in certain ways.

Legal culture is the behavior of society in view of the law to be obeyed. The current legal culture of society has experienced a shift towards a more indifferent rule of law. Evidenced by the many cases of corruption that occurs by involving all levels of society, not only from the officials but now has spread the normal society.

The same thing was mentioned by Mr. Triyanto, SH. MH., Semarang District Attorney General's Special Crime Section Section, that if it is related to Soerjono Soekanto's opinion on the 5 factors that influence the effectiveness of a legal system, namely:

- a. The legal factor. The rules governing the replacement money for the return of state financial losses are not yet clear. The current law does not elaborate on the consequences in the field during the execution process. Because there are still many differences between the rules and practices in the field.

- b. Factors of law enforcement, namely parties that form or implement the law. In this case, it is optimizing the duty of the Prosecutor in the formulation of the indictments and demands which will later affect the judge's judgment in making a decision.
- c. Factors of facilities or infrastructure facilities that support law enforcement. In addition to the corruption court, confiscated goods and auctions are also lacking.
- d. Community factors, namely the environment in which the law applies or is applied. The main difficulty in the process of executing the assets of the convicted person because the property has been secured. Community information is very helpful. However, nowadays the public is increasingly reluctant to provide information because they are afraid of being carried away in cases that ensnare convicts.
- e. Cultural factors, namely the work, creativity and taste based on human intentions in the relationship of life. A very strong family culture can also hamper the execution process of a convict's assets because often the results of corruption have been deposited or granted to their families and relatives so that their whereabouts are difficult to trace.

The success of eradicating corruption does not only lie in law enforcement, but also needs to be supported by power holders and politics. It is unfortunate that Indonesia's political development shows that there are many power holders who commit corruption. Apart from the weak political support for law enforcement in handling corruption, the failure to eradicate corruption is also caused by the law enforcement process itself, both at the investigation, investigation, prosecution and trial stages. Even according to Karni Ilyas, it is considered very worrying because law enforcement has been trapped in corruption itself. The number of obstacles faced by prosecutors as executors in executing confiscations and auctions of property belonging to convicts of corruption cases in order to recover state financial losses with replacement money can be summarized as follows:

- a. A long time until a decision has permanent legal force after going through legal remedies until a Judicial Review can be carried out by the Prosecutor.
- b. The domicile of a convicted person is also an obstacle because it cannot be denied that there are currently many people who have multiple identity cards (KTP) to hide their assets resulting from corruption.
- c. The Corruption Eradication Act has not clearly regulated if the convict is only able to pay part of the replacement money.

- d. Most convicts of corruption cases prefer to serve a subsidiary sentence of imprisonment / legal entity rather than pay a replacement money.

If the convict dies, then all claims are considered to be null and void, including the substitute money. If the prosecutor as the state's lawyer file a civil suit to the convicted heir, it takes a longer time.

CONCLUSION

a. Conclusion

The conclusions that can be drawn from the discussion above are:

1. The application of the threat of additional criminal sanctions for the return of state financial losses in acts of corruption in the Semarang District Court has been applied but not optimal. This is because there are still many prosecutors 'demands that do not include additional crimes that affect Judges' consideration in dropping the Decision. As a result, efforts to recover state financial losses due to corruption have not been maximized.
2. Obstacles faced by the Prosecutor as the executor in the implementation of the Court Decision related to additional criminal sanctions in order to recover state financial losses with substitute money in corruption, including: a. Long time until a decision has permanent legal force; b. It's easy to get a double ID card. c. Corruption laws have not clearly regulated if the convict is only able to pay part of the replacement money. d. The number of convicts in corruption cases prefers to serve a subsidiary sentence of imprisonment / legal entity rather than pay compensation. e. If the convict dies, then all claims are considered to be null and void, including the substitute money. If the prosecutor as the state's lawyer files a civil suit to the convicted heir, it will take a longer time.
3. The application of the threat of additional criminal sanctions for the return of state financial losses in corruption in the Semarang District Court has not been effective. It can be seen that there is still a demand by the public prosecutor who has not included additional crimes in the form of returning the state financial losses that affect the judge's decision.

b. Suggestion:

1. In order to make a maximum return on state financial losses due to corruption, it is necessary to establish a Government Regulation related to the procedures for

calculating and the procedure for implementing compensation payments in order to recover state financial losses due to corruption.

2. For all law enforcement agencies and related institutions to be more active in conducting anti-corruption counseling to the public in order to increase community legal awareness regarding the importance of returning state financial losses due to corruption.

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