

Corruption In Corporate Activities Asset Returning

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Abstract. Corporate crime that is increasingly sophisticated in its form or type as well as its modus operandi often transcends national borders (trans border crime) and is also often influenced by other countries due to the era of globalization. The inclusion of corporations as legal subjects shows that Indonesia has begun to adopt the existence of criminal liability against corporations and recognizes that legal subjects are not only humans (Natuurlijk Persoon). This is stated in Article 1 point 1 of The Eradication of Criminal Acts of Corruption Act of 1999 was revised by the Eradication of Criminal Acts of Corruption Act of 2001. The fundamental issue addressed in this dissertation is how the legal concept of corporations surrendering assets to them is construed. This study used a normative juridical approach that combined qualitative data analysis with content analysis tools. Based on the results of the study, it can be concluded: First, the legal instrument for corruption in returning assets resulting from corruption is currently not perfect because it only prioritizes replacement money for the proceeds of corruption crimes from corporate actors. Second, the future legal concept in returning the assets of criminal acts of corruption by corporate actors in the Indonesian legal system must be aimed at improving the laws and regulations that can prosecute not only the perpetrators but also the heirs of the perpetrators of corruption.

Keywords: State Finances; Corruption; Laws

1 Introduction

State financial management is an element of the state government's implementation. State financial management encompasses all activities undertaken by state financial management officials in accordance with their position and authority, including planning, budgeting, and forecasting, implementing, supervising, accountability, and examination of state finances. Officials tasked with managing the country's finances, are very concerned and apply the underlying legal principles. This is intended so that the official is able to improve services in the management of state finances. Service improvement is a form of service while still adhering to the principles of state financial management. [1]

In order to create a good state financial management of course based on the principles of the underlying law. The goal is to create a framework to improve services in the financial management of the state In the framework of state life, the principles of state financial management in Indonesia are developing when making the country's financial law a stepping stone. [2]

In the financial management of the State is often associated with criminal acts of corruption. The criminal act of corruption not only harms the country's finances but violates the norms that live in society. The seizure and return of assets resulting from corruption cannot be done

comprehensively and effectively. The seizure and return of assets resulting from corruption has not been specifically regulated in a law and implementing regulation. So that efforts that can be done include improving and updating the Indonesian legal system on the seizure and return of assets. Establishing cooperative relations with other countries through an agreement or either in mutual legal assistance and extradition regarding the seizure and return of assets as an effort to eradicate and prevent corruption and renew and improve the technological system owned in Indonesia in order to trace assets related to corruption. [3]

The popular crime of corruption referred to as abuse of power for personal gain is basically a matter of social justice.[4] Corruption is a major issue. This criminal act has the potential to jeopardize societal stability and security, as well as socioeconomic and political progress, as well as democratic values and morality, because gradually this act seems to become a culture. Corruption has recently become more widely discussed, both in print, electronic media and in seminars, workshops, discussions and so on. [5]

Corruption hurts the state's finances or economy directly or indirectly, while also damaging the people. The state and the people are both victims of corruption offenses, because corruption reduces and disrupts a country's finances and economy. Corruption makes the government a victim (victim state). The corrupted state assets not only harm the country narrowly, but also harm the country and its people. [3]

Crime now shows that economic progress also gives rise to new forms of crime that are no less dangerous and the magnitude of casualties it causes. Indonesia today has been hit by contemporary criminality that is quite threatening to the Environment, energy sources, and economic crime patterns such as bank crimes, computers, consumer fraud in the form of low-quality production goods that are beautifully packaged and peddled through massive advertisements, and various patterns of corporate crime that operate through penetration and disguise.

Corporate crime that is increasingly sophisticated both its form or type and modus operandi often transcends the boundaries of the country (trans border crime) and is also often influenced by other countries due to the era of globalization. The inclusion of corporations as legal subjects shows that Indonesia is beginning to adopt criminal liability against corporations and recognizes that the subject of law is not just human (Natuurlijk Persoon). This is stated in Article 1 number 1 of Law No. 31 of 1999 on the Eradication of Corruption, as revised by Law No. 20 of 2001. [6]

In line with this, the Supreme Court of the Republic of Indonesia issued Supreme Court Regulation No. 13 of 2016, which confirms that corporations can be held criminally liable in accordance with the requirements of the legislation on corporations. Despite the fact that Indonesia has adopted a system of corporate criminal liability, few firms have been suspected or accused in the law enforcement process, particularly in corruption cases. [7]

Law enforcement and the recovery of criminal assets are two sides of the currency that cannot be separated in the eradication of criminal acts, especially corruption by corporate actors. As a crime based on calculations or calculations (crime of calculation), the management and security of the results of the crime is a fundamental need for the perpetrators of the crime. A person will dare to commit corruption if the results obtained from corruption will be higher than the risk of punishment (penalty) faced. Not even a few perpetrators of corruption by corporate actors who are ready to go to jail if he estimates that during the sentence, his family will still be able to live prosperously from the results of corruption committed.[3]

Return or seizure of assets is a process or activity carried out either through criminal courts or civil courts to find, freeze and return assets obtained from the proceeds of violating the provisions of applicable law. The restitution of public assets seized as a result of the corruption

crime is a traceable act, freezing, confiscation of the proceeds of corruption that must be returned to the State.

From the background that has been outlined earlier, the author focuses the problem on "Return of Assets of Corruption By Corporate Actors".

1.2 Problem Formulation

Based on the problems that have been outlined in the background of the problems above, the problems that are highlighted in this dissertation are:

- a. What are the legal tools of corruption in returning assets resulting from corruption?
- b. What is the legal concept of returning assets for corruption by the Corporation?

1.3 Research Objectives

The objectives to be achieved in writing this dissertation are:

- a. To review / analyze the legal tools of corruption in returning assets resulting from corruption.
- b. To review / analyze the legal concept of returning assets for corruption by the Corporation.

1.4 Approach Method

The way of approach employed in this study is a normative juridical approach that combines qualitative data analysis with content analysis tools. This is with consideration because the starting point in this study is an analysis of Indonesian laws and regulations on corruption by corporate actors.

Juridical research is research that uses a positive legal concept, namely that the law is identical to written norms made and promulgated by authorized state institutions or officials. With the approach of legislation, it is expected that legal products are not just built for empty space. Instead, he appeared to solve the problem as a product of legislation in a legislation.

2 Theoretical Foundation

The theoretical basis for previous research studies with the research i made is very different. For example, hiswandi's dissertation from Andalas University, entitled "return of assets of corruption of perpetrators and their heirs according to the Indonesian legal system". This research explains more about the return of criminal assets of corruption and its heirs according to the legal system in Indonesia.

Furthermore, from desky wibowo whose research title is on "return of state assets in corruption crimes through civil lawsuits." this study focuses on the actions of the prosecutor as an investigator and public prosecutor in obtaining evidence of real state financial losses and illegal acts so that it can be prosecuted make it easier for the state attorney's office to make civil lawsuits.

To achieve the goal of restoring public assets through civil litigation in corruption offences by preparing formal evidence and arguments known as the burden of proof systemic corruption, abuse of power (abuse of power), and the alteration of national legislation are some of the hurdles that law enforcement agents face while trying to return public assets that have been seized as a result of corruption. And Budi Suharyanto's third study, titled "the criminal application of replacement money to corporations in corruption cases for the recovery of state financial losses," examines "the criminal application of replacement money to corporations in corruption cases for the recovery of state financial losses."

This research is more about regulating the criminal replacement money aimed at the restitution of financial losses incurred by the state as a result of corruption. It is unfair if the replacement money criminal is dropped to the management when the results of corruption are actually accommodated by the corporation. Agreements and guidelines are needed to end the polemic among the judges of the tipikor court about the criminality of replacement money imposed on the corporation even without being made a defendant for the recovery of state financial losses.

From the description of the three studies above the research that i made differently, this research is more about "return of assets of corruption by corporate actors". Legal devices the crime returning assets from corruption is not perfect at this time because it just emphasizes money in lieu of the proceeds of corruption crimes from corporate actors.

State loss return theory is a legal theory that describes the legal system for reimbursing state financial losses based on social justice principles that give state institutions and legal institutions the ability, duty, and responsibility to provide protection and opportunities to individuals in society in order to achieve well-being. Authorized legal agencies are in charge of recouping state losses. The Prosecutor's Office is one of the agencies that plays a critical role in recouping these losses. This is specified in article 18 of the Law No. 20 of 2001 on Corruption Eradication.

3 Discussion

3.1 Tools of Corruption Law in Returning Assets Resulting from Corruption.

Attempts to recoup state losses as a result of corruption, means talking about law enforcement efforts in an effort to overcome corruption crimes, especially the ability to restore corrupt state losses. Therefore, a comprehensive effort is needed to overcome it, namely making efforts to develop the legal system, and legal tools because basically corruption is a systemic crime that is closely related to power.

Not only that includes the improvement of all institutions or organs that organize the judiciary so as to minimize the occurrence of corruption. Especially for law enforcement, they must use extraordinary ways in handling corruption cases because corruption is an extra ordinary crime, namely by maximizing investigation and investigation efforts to find state assets corrupted by the accused.

There's no doubting that civil law instruments are still underutilized in efforts to reclaim assets lost due to state financial losses through the courts. This necessitates a thorough examination of the issues that obstruct their use. [1] The return of stolen asset recovery is very important for the development of the country because the return of stolen assets aims to uphold the rule of law where no one person is immune to the law. [3]

There are two things that are fundamentally related to the return of assets (recovery of assets) namely:

- a. Determine what property should be accounted for confiscation;
- b. Determine the basis for confiscation of a property.

The return of state losses can be done with two instruments, namely through civil instruments and criminal instruments. The return of state losses through civil instruments still follows the provisions stipulated in Law No. 31 of 1999, as amended by Law No. 20 of 2001, on Corruption Eradication and the Civil Code or BW. The return of state losses requires first the existence of criminal proceedings. Civil lawsuits are intended to satisfy people's sense of fairness. The terms of the civil lawsuit are stated Articles 32, 33, 34, and 38C of Law No. 20 of 2001 Concerning Amendments to The Republic of Indonesia Law Number 31 of 1999 Concerning Corruption Eradication. [3]

The existence of this Law still does not rule out the possibility of corruption. Some of the inhibiting factors of the corruption criminal process grouped under the Laws and Regulations:

- a. The first obstacle relates to the laws and regulations. Laws and regulations concerning efforts to eradicate corruption have several weaknesses that lie in the substance of laws and regulations, both from the aspect of content and technical aspects of its implementation, thus allowing inequality in the eradication of corruption.
- b. Difficulty of proving against corruption.
- c. Weak enforcement of corruption handling law
- d. There is no "single identification number" or an identification that applies to all community needs (driver's license, tax, bank, etc.) that can reduce the chances of abuse by every member of the public.

Asset recovery for corruption that occurs in Indonesia can be divided into two large groups, namely the recovery of assets from corruption that are in the country and the recovery of assets from corruption that are located abroad. Efforts to carry out asset recovery measures against property hidden by corporate actors abroad are equally important. The act of recovering assets from the proceeds of corruption as an effort to return state money should be a priority step compared to the prosecution of perpetrators as stated in the Court's decision. [8]

3.2 Concept the Law on The Return of Assets of Corruption By Corporations

When the state suffers a state financial loss due to the state's financial management and has been pursued for its return outside the judiciary in the form of demands for state financial damages. The procedure for claiming damages is taken under state financial law is a way of returning state finances as a result of state financial losses without going through the judiciary. In essence, the return of state financial losses without going through the judiciary is more focused on administrative aspects but remains within the corridors of state financial law.

In fact, the return of the country's financial losses without going through the judiciary is very more effective and efficient than through the judiciary. This is dependent on the country's financial losses being repaid without going through the judiciary very quickly because it does not use rigid procedures. The time needed is very short because unknown legal efforts such as appeals, cassations, and judicial review are different from procedures through the judiciary that take a long time. [2]

Based on the use of state financial law instruments, in the event of state losses committed by state officials or civil servants should not be used personal liability in *casu criminal* accountability except in the exercise of authority there are efforts to enrich themselves, others, or corporations may be applied personal responsibility that leads to criminal responsibility. Actually this difference aims to ensure that law enforcement officials are able to Give a fair verdict.

When state financial losses arise as a result of management carried out by the Company and/or Perum and other limited liability companies, the state seeks to recover the country's financial losses. It indicates that the state must pursue settlements based on civil law instruments, including civil procedure law, in order to recoup the state's financial losses through the courts. As a result, the state is the plaintiff in this case the Company, a public company, or other limited liability company that causes state financial losses in its position as the defendant. [2]

If viewed from several explanations about the return of assets that the author described above, then the essence of the return of these assets is that the state has been harmed by the actions of irresponsible parties by committing criminal acts of corruption, then for this action the state can prosecute the parties concerned and can ask for compensation or demand the return

of assets from the party who committed the corruption. If the state will carry out the return or seizure of assets to parties that harm the state then all processes must go through a process according to the law, either criminally or civilly which must be based on laws and regulations. If state losses are studied in legal aspects, then state losses are in the realm of public law, such as administrative law and criminal law, but settlements regarding the return of assets resulting from this corruption can be done criminally and civilly.

Based on Article 27 provisions of According to Law No. 31 of 1999 and Law No. 20 of 2001 on the Eradication of Corruption, if corruption is discovered that is difficult to prove, a joint team might be constituted under the supervision of the Attorney General.[6] Thus, based on the explanation of the restoration of state assets carried undertaken criminally is to be carried out by the Public Prosecutor, according to this article. Meanwhile, Law No. 20 of 2001 concerning the Eradication of Corruption is based on Article 32 paragraph (1), Article 33, and Article 34 of Law No. 31 of 1999 Explained that if the return of state assets is done civilly then it is processed by the State Attorney General.

According to the rules of Article 35 paragraph (1) of Law No. 17 of 2003 on Public Finance, anyone who undertakes any act, including corruption, to the damage of state finances must be held accountable by indemnifying the country. Then, in Article 4 of Law No. 31 of 1999 jo Law No. 20 of 2001 Concerning the Eradication of Corruption, it is apparent that the state's criminal punishments do not end with the recovery of financial losses.

When viewed from the perspective of Indonesian criminal law, the return of assets in general criminal acts is governed by Article 10 letter b of the Criminal Code (KUHP), which uses the language "deprivation of specific commodities." Furthermore, the rules of Article 39-42 of the Criminal Code govern this. The construction of the formulation of norms in the return of assets according to the Indonesian criminal law is an additional criminal that can be imposed by the judge in his ruling together with the principal criminal.

The provisions of Article 39 of the Criminal Code paragraph (1) and paragraph (3) of the Criminal Code read: (Mulyadi, 2020, p. 118)

- a. The items belonging to the convict obtained from the crime or deliberately used to commit the crime, can be seized.
- b. Deprivation can be carried out against the guilty person Only the goods that had been confiscated were handed over to the government.

The result of corruption (asset recovery). The return of assets is one of the goals of the new conviction in the criminal act of corruption. Mentions the basis of return of assets oriented to 4 (four) aspects, namely:

- a. The reason for prevention (prophylactic) is to prevent criminals from having control over illegally obtained assets in order to commit future criminal activities;
- b. The reason for propriety, namely because the perpetrator of the criminal act does not have a proper right to the assets obtained unlawfully;
- c. The reason for the priority or precedence is that the criminal conduct gives the state priority in demanding assets obtained illegally rather than the rights owned by the criminal act's offenders.
- d. The justification for ownership (proprietary), that is, because the asset was gained illegally, the state has an ownership interest in it.

If this path is taken, the nature of the successful return of assets is expected to be relatively higher because the proof of civil law is solely looking for formal truth (*formeele waarheid*). The existence of two actions in the form of asset return in a criminal act of corruption of perpetrators of corruption by through sentencing actions and civil actions is expected that community justice can be achieved.

This aspect must be understood more deeply because the paradigm of corruption in Indonesia is an Exceptional crime, transnational organized crime (transnational organized crime), *primum remedium*, and very serious crime are all terms used to describe crimes that occur on a global scale (the most serious crime) not financial and economic state, but also violation of social and economic rights community needed countermeasures, extraordinary eradication (Extraordinary enforcement and extraordinary measures) until eradication cannot be done partially but is integral. [9]

4 Conclusion

It may be summarized based on the study's findings, first, the legal tool of corruption in restoring assets from corruption is not perfect at current time since it only prioritizes replacement money over the earnings of corporate corruption crimes. Second, the upcoming legal concept in the return of corruption assets by Corporate Actors in the Indonesian legal system should be aimed at improving laws and regulations that can Prosecute not just the offenders of corruption acts, but also their successors.

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