

The Settlement of Corruption Criminal Cases Through the Mechanism of Refusing State Financial Losses

Nurhidayat¹, Azis Budianto², Ahmad Redi³
hidayat5588@gmail.com¹, azis_budianto@borobudur.ac.id², redi.ahmad2010@gmail.com³

Universitas Borobudur^{1, 2, 3}

Abstract. Alluding to Article 33 of Regulation Number 31 of 1999 concerning Annihilation of Defilement (as changed by Regulation No. 20 of 2001), on account of a crook suspect in defilement at the hour of examination, while there has been a huge state monetary misfortune, the specialist Quickly present the case record of the examination to the State Lawyer or submitted to the impeded office for a common claim against his main beneficiaries. Besides being able to be sentenced to the main criminal, the respondent in a defilement case can be condemned to extra violations, as reimbursement of substitution cash. How much substitution installment however much as could be expected is equivalent to the property acquired from debasement. On the off chance that the substitution cash isn't paid, the indicted individual is sentenced with detainment which doesn't surpass the most extreme danger of the principal criminal. In this way, the quantity of state monetary pioneers should be expanded, by seizing and denying the resources/resources of the culprits with the goal that there is an impediment impact.

Keywords: Settlement; Criminal act; Corruption; Loss; Country.

1. Introduction

The Republic of Indonesia is a well behaved state (rechtsstaat), and that implies that residents and rulers the same are expected to act as per the law. [1] The primary objective of the rule of law is to provide people with legal protection. According to Philipus M. Hadjon, the guideline of basic liberties and the standard of law and order are the two establishments whereupon individuals can depend for legitimate security from government activities. [2] The rule of law has as its primary objective the recognition and protection of human rights. State agencies are required as a tool of state government to be able to run both government and the law because of the rule of law.

Legitimate insurance for individuals against government activities can be reasonably separated into two classifications: oppressive lawful assurance and safeguard legitimate security. Individuals are permitted to submit complaints (inspraak) or their perspectives in preventive legitimate security before an administration choice is concluded. [3]

The government has attempted to eradicate corruption in a number of ways by implementing a number of national strategies. In the framework change period, it was resounded in True Direction No. 5 of 2004 on the Speed increase of Defilement Annihilation, the Public System and Debasement Destruction Activity Plan (Stranci PPK) 2010-2025, Official Guidance 9 of 2011 on the Activity Plan for Speed increase and Destruction of Defilement in 2011, Official Guidance 14 of 2011 on the Speed increase of the Execution of Public Advancement

Needs in 2011, Presidential Instruction 17 of 2011 on the Action of Acceleration and Eradication of Corruption in 2012, and the National Strategy for Prevention and Eradication of Long.

Specifically, for criminal acts of corruption, in terms of the perspective of criminal law itself, there is no understanding of corruption or corruption, both in statutory regulations that are no longer valid or positive law at this time. [4] Law No. 20 of 2001, which made changes to Law No. Corruption is also not defined in the Eradication of Corruption Crimes Act of 1999 (Corruption Act), but rather its components are mentioned in the articles. [5]

Based on the Corruption Law, the KPK groups corruption into seven forms/types. The seven types of criminal corruption, are state expenditures lost; bribery; stealing from positions; extortion; act of fraud; procurement conflict of interest; and feeling satisfied. More specifically, the following are the regulations for criminal acts of corruption that are harmful to the finances of the state: [6]

Article 2

"(1) Each individual who violated the law effectively helped themselves, someone else, or a company such that harms the nation's funds or economy and brought about a sentence of life in jail or a sentence of detainment for at least four years and a limit of twenty years, alongside a fine of essentially Rp. 200,000,000.00, or 200,000,000 rupiah, with a greatest measure of Rp. One billion Indonesian rupiah ".

Article 3

"A sentence of life in prison or a minimum of one year in prison and a maximum of twenty years in prison, as well as a fine of at least Rp, was imposed on any person who, with the intention of benefiting himself, someone else, or a corporation, misused the authority, opportunity, or means that he possesses in order to harm the economy or finances of the country. fifty million Indonesian rupiahs."

The impact of corruption is very detrimental to many parties. Therefore, there have been many efforts to overcome and enforce efforts such as contained in the Corruption Law which mandates the formation of special corruption eradication institutions. Using Law No. 30 of 2001, which was created by the Corruption Eradication Commission (KPK) for the purpose of combating corruption. The KPK has extraordinary authority to investigate, investigate, and demand that everyone, including corporations, civil servants, and state administrators, be held accountable for corruption that results in financial losses for the state.

One of the fundamental issues that is very important in eradicating corruption is how to restore state finances that have been lost due to corruption. Given that certain facts and events have occurred so far that the criminal act of corruption committed can only save 10-15 percent of the total corrupted money, it is important to rescue this state money. [7]

The defendant's main criminal in a corruption case can be sentenced to additional crimes, one of which is the payment of replacement money, according to Article 17 Jo Article 18 of the Corruption Act. Criminal payment of replacement money is a result of criminal acts of corruption that "can harm the country's finances or the country's economy," so recouping the loss necessitates legal assistance, specifically in the form of state loss compensation. If it is not replaced, the corrupt property will be seized and auctioned.

The problem in this paper is how is the mechanism for resolving the state financial losses resulting from corruption.

2. Methods and Approaches

This applied paper was written using an analytical and descriptive approach with data that clearly illustrates the direct problem in the field. After that, an analysis was done and a conclusion was made to solve the problem. Information assortment strategies through perception and writing study to acquire critical thinking in the arrangement of this paper.

In line with the research objectives to be achieved, the realm of this research is included in the realm of qualitative research, so a qualitative approach method will be used. According to Petrus Soerjowinoto et al., The qualitative method is a method that emphasizes the process of understanding researchers over the formulation of the problem to construct complex and holistic legal symptoms. [8]

The normative juridical approach is carried out on certain laws and regulations or written laws, relating to the return of state financial losses from corruption. [9] This study illustrates the situation of the object under study, which is focused on the regulation and the implementation of financial returns if there are state losses in the case of corruption in Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning Corruption in Practice.

3. Findings and Discussion

3.1 The refund of state money suspected of being the result of corruption

One kind of debasement wrongdoing formed in Regulation No. 31 of 1999 jo. UU no. 20 of 2001 on the Eradication of Corruption Crimes defines criminal acts of corruption as those that have a negative impact on a nation's finances or economy, resulting in state losses. [10]

Articles 33 and 34 of Regulation 20 of 2001 on the Destruction of Defilement, which managed the presence of suspects or respondents whose activities are not generally represented by criminal regulation since they kicked the bucket during an examination or assessment at a trial, were integrated into Regulation 16 of 2004 with respect to the Indonesian Head legal officer's Office. Despite the fact that there was a genuinely monetary misfortune to the express, this is a lawful occasion that is restrictive so the suspect or respondent can't be dealt with criminally. Regulation Number 20 of 2001 on the Destruction of Defilement Violations managed common claims that could be addressed to the main beneficiaries fully expecting state monetary misfortunes.

The corruption that is indicated to make state losses in terms of taking assets or in the form of unauthorized state assets needs to be proven legally. Corruption must meet the elements of criminal acts in their actions against the law so that the criminal acts of corruption can be submitted to the court and the perpetrators can be punished according to the applicable laws.

Specifically, the Corruption Criminal Act does not explain the understanding and indicators of corruption that can harm the country's finances. The word "can" mean that state losses can occur or potential state losses but can also not occur state losses. Thus, there must be a measuring instrument to determine acts or how it is very potential to cause state losses so that the public prosecutor and the panel of judges are not arbitrarily declaring state losses, or stating state losses have been proven. At the time of prosecution during the court decision, there had not been a state loss because it was still in the process of payment of principal debt installments, interest, and fines.

As indicated by Regulation Number 1 of 2004 concerning the State Depository "State/regional loss is lack of money, securities, and goods, which are real and certain as a result of acts against the law both intentionally and negligent".

From the clarification of the state's misfortunes above, it is unmistakably clear that there is an absence of cash and genuine security that has diminished from the past level. This could have been caused, for instance, by partners who wanted to raise the project's cost and paid for by the state treasury, or by corruptors who were running the state's money. A real-state loss is the name given to this loss. Conversely, if using a sentence can harm the state, then even though the act of the perpetrators ultimately does not cause state losses, because it turns out there is a refund of state money, by the perpetrators, the act of the perpetrators can be qualified partly can harm the state finances, on the contrary, if the actions of the perpetrators do not potentially harm the state finances and It turns out that there is a return of state finances after maturity, the actions of the perpetrators cannot be qualified as can harm the country's finances. Then the potential can harm the country's finances and the act of what is not potential can harm the country's finances.

The assumption states that corruption is a formal offense because it does not need to be proven the consequences that occur in the form of causing state losses if it has been proven element of Article 2 of Law Number 31 of 1999 such as an act against the law and the existence of self-enrichment or others, then it is certain or by itself, the elements can harm the country's finances have been fulfilled. This opinion is unreasonable because it can harm the country's finances not solely as a result of the material offense but precisely as the goal of the perpetrator so that it does the act. This goal gives birth to motives and intentions, namely enriching themselves or others whose consequences are detrimental to state finances because it must be proven whether the perpetrators intend to enrich themselves to harm the country's finances. If there is no state loss, the perpetrators have no intention of corruption. [11]

3.2 The process of returning state money allegedly the result of corruption when the defendant died

The Overall Clarification of the Defilement Regulation expresses that the state funds are all state resources in any structure, which are isolated or indistinguishable, including all pieces of the state resources and all freedoms and commitments emerging on the grounds that (a) are in control, the board, and obligation state foundations both at the central and nearby levels; (b) are under the influence, the executives, and responsibility of State-Claimed Endeavors/Provincial Possessed Ventures, Establishments, Lawful Elements, and Organizations that incorporate state capital or organizations that incorporate outsider capital in light of concurrences with the Express; the expression "State economy" alludes to a monetary life that is gathered as a joint exertion in view of the rule of connection and local area exertion freely founded on government strategy, both at the focal and territorial levels, following.

Each individual who disregards the law by enhancing themselves, others, or a company in a way that could hurt the nation's funds or economy is liable under Article 2 section 1 of the Debasement Act; Moreover, violators of Article 3 of the Corruption Act are guilty of abusing their position's authority, opportunities, or means in order to benefit themselves, others, or a corporation and endanger the country's economy or finances.

National development funds can be saved by Law No. Law No. 31 of 1999, as amended 20 of 2001 is anticipated to be able to prevent state losses and keep the state's administration clean and authoritative, among other things by implementing a replacement derived from criminal acts of corruption. [12] This is as per the arrangements of Article 18 passage (1), letter

b, which expresses that the culprits of defilement might be exposed to extra violations, including the installment of substitution cash that is as near the property as could be expected.

Extra criminal courses of action in the Crook Code as renouncement of specific freedoms; hardship of specific things; and the declaration of the adjudicator's choice. For this situation, the hardship of the thing being referred to is the sentenced merchandise acquired from wrongdoing or deliberately used to perpetrate violations. The seizure of the previously confiscated items was replaced as criminal imprisonment, if the goods were not handed over, or the price according to the estimate in the judge's decision, was not paid. The difference with the Corruption Law is the length of the substitute criminal in the Criminal Code is at least one day and a maximum of six months.

As per Article 270 of the Criminal System Code, examiner's workplaces carry out a court choice that has long-lasting lawful power, specifically the principal jail and criminal Extra as installment of fines and substitution cash, where the charging is in the investigator's office's liability as the agent of the legal decision (agent), in the treatment of debasement cases starting with the examination and going on through the indictment and assessment process at a trial. The prosecutor's office views this condition as an attempt to control prison demand rather than a requirement to pay replacement money. As for the control of the additional criminal demands, according to the prosecutor's demands and based on the Circular of the Indonesian Attorney General Number: 003/A/AJ/2010, concerning Guidelines for Criminal Claims Corruption Crimes in the Appendix. It is stated that the defendant is demanded to be a prison as a substitute criminal is a minimum of half of the demands Principal crimes in the form of imprisonment, demanded by the Public Prosecutor. Specifically, for the implementation of the completion of corruption criminal acts decided by the court based on Law No. 3 of 1971, the Attorney General issued the Republic of Indonesia Attorney General's Regulation (*Perja*) No. PER-020/A/JA/07/2014 concerning Guidelines for Implementing Substitute Settlement Displayed by the Court Based on Law No. 3 of 1971 concerning Eradication of Corruption Crimes. *Perja* was issued because the settlement of replacement money that had to be paid by the convicted was not yet resolved based on Law No. 3 of 1971, which did not regulate sanctions for convicts who did not pay replacement money and were not subsidiaries/ substitutes.

A way to calculate the loss of state finances relating to the criminal money of replacement money can be divided into 4 (four) stages:

- a) The first stage, determining the presence or absence of state financial losses;
- b) The second stage, calculating the amount of state financial losses;
- c) the third stage, establishing state financial losses;
- d) The fourth stage, the decision regarding the presence or absence of state financial losses.

Criminal substitutes and criminal fines are distinct concepts. Criminal Fines as one of the third primary crook types in Indonesian criminal regulation fundamentally must be dropped for grown-ups. As a basic criminal, the threat of criminal fines, either individually or in combination with imprisonment. [13] If the fine is not paid by the convict, it will be converted to additional imprisonment. While the criminal payment of replacement money will be executed civilly by the prosecutor's office in the form of a seizure of the execution of all property of the convicted person who does not heed the ruling to pay all replacement money worth the nominal amount in the verdict. [14].

There are 2 (two) loading models that have been applied by judges who decide on corruption cases to restore the corrupted state assets. The loading model consists of the loading of responsibility and proportional loading.

1. Development of State-religion (shared responsibility).

Better known in the realm of civil law, is the way an engagement occurs with a large number of subjects. In the context of civil law, there are 2 (two) forms of responsibility, namely active and passive. The responsibility can be said to be active if the number of parties who pay (creditors) are more than one, and vice versa, passive responsibilities occur if the number of parties who owe (the debtor) of more than one. With the model of responsibility, the panel of judges in their decision only stated that the defendants were burdened.

2. Proportional Imposition

Proportional imposition is a replacement money criminal offense in which the panel of judges in its definitively determines how much the burden of each defendant. Assurance of how much substitution cash depends on the understanding of the adjudicator to the commitment of every respondent in the connected lawbreaker demonstration of debasement.

In its implementation, the two models are applied randomly depending on the interpretation of the judge. This uniformity is likely to occur because of the unclear rules. Based on the nature of each model, the proportional model is indeed the minimum has the potential for problems that will arise.

4. Conclusion

After going through the analysis and discussion above, the authors can conclude the following matters: In dealing with the instance of the arrival of state reserves coming about because of a lawbreaker demonstration of defilement, the examination ought to be trailed by the indictment and assessment process at the trial. Assuming there is a choice that has extremely durable lawful power, for example, Article 270 of the Examiner's Criminal System Code executing a court choice that has long-lasting legitimate power, like the essential jail and extra wrongdoings as installment of fines and substitution cash, the prosecutor's office should be responsible for billing. There are 2 (two) loading models that have been applied by judges who decide on corruption cases to restore the corrupted state assets. The loading model consists of the loading of responsibility and proportional imposition.

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