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Efforts to Recover State Financial Losses through Asset Blocking as a Corruption Law Enforcement Strategy

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Abstract

One of the elements in the criminal act of corruption is the loss of state finances. Against this state financial loss, the good old Corruption Law, namely Law no. 3 of 1971 and the newer Law no. 31 of 1999 in conjunction with Law no. 20 of 2001, stipulates a policy that state financial losses must be returned or replaced by perpetrators of corruption (Asset Recovery). The application of the law on state financial losses in relation to criminal acts of corruption that must be proven is the existence of state financial losses that have a causal relationship with the actions of the perpetrators of corruption. In this paper, the author uses a descriptive qualitative methodology to describe the conditions as they are, without giving treatment or manipulation to the variables studied.

Keywords
state financial recovery; asset blocking; corruption

I. Introduction

Corruption is a type of white-collar crime or tie crime. In contrast to conventional crimes involving street actors (street crime, blue collar crime, blue jeans crime), against white collar crime, the parties involved are people who are respected in society and are usually highly educated. The modus operandi of white collar crime is carried out in sophisticated ways, mixed with scientific theories such as accounting and statistics. If it is measured by the sophisticated modus operandi, the class of people involved and the amount of funds looted, it is clear that corruption is a high-class crime, which is actually motivated by the erroneous principle that greedy is beautiful (Fuady, 2004).

Corruption comes from the Latin, namely corruption from the verb corrumpere meaning rotten, damaged, destabilizing, twisting, bribing. According to Transparency International, corruption is the behavior of public officials, both politicians/politicians and civil servants, who unfairly and illegally enrich themselves or enrich those close to them, by abusing the public power entrusted to them.

corruption as behavior that deviates from the official duties of a state position because of status or money gains involving personal (individuals, close family, own groups) that violate the rules (Hafidz, 2015).

In January 2021, according to Transparency International (TI), Indonesia re-released the 25th Corruption Perception Index (CPI) for the 2020 measurement year, which puts Indonesia in 102nd place out of 180 countries surveyed with a score of 37/100. Efforts to decrease the ranking as the most corrupt country due to the Political Will from the Indonesian government to eradicate corruption (Musahib, 2015).

Transparency International Indonesia (TII) uses the definition of corruption as: Abusing public power and trust for personal gain. From this definition, there are three elements:

1. Abusing power, entrusted power (whether in the public or private sector);
2. Have business access;
3. material gain, and personal gain (which is not always interpreted only for the person who abuses power, but also family members or friends).

In eradicating corruption, the seriousness of the Indonesian government can be seen by the issuance of various policies that are directly related to the prevention of corruption. The various policies in the form of legislation are: TAP MPR No. XI/MPR/1998 concerning the Implementation of a Clean State, Free of Corruption, Collusion, and Nepotism; UU no. 28 of 1999 concerning the Implementation of a Clean State, Free of Corruption, Collusion, and Nepotism,4 Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption; UU no. 30 of 2002 concerning the Corruption Eradication Commission; UU no. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption 2003; Presidential Decree No. 11 of 2005 concerning the Establishment of a Coordination Team for the Eradication of Corruption Crimes (Team Tastipikor); Presidential Instruction No. 5 of 2004 concerning the Acceleration of Corruption Eradication. In addition, regulations that are not directly issued but are still in the context of eradicating corruption, such as: Law no. 15 of 2002 concerning the Crime of Money Laundering as amended by Law no. 25 of 2003 concerning Amendments to Law no. 15 of 2002, and the Mutual Assistance Act.

The need for policy formulation and concrete action steps, because the procedural asset recovery includes tracking, freezing, confiscation, confiscation, maintenance/management and return of stolen assets/proceeds of crime to victims of crime/the state. In the case of corruption crimes, the return of assets resulting from crimes is the right of the state which is seen as a victim of crime (Widyopramono, 2014).

Punishment alone is not enough, for this reason, with or accompanied by the seizure of assets through confiscation of proceeds of a criminal act, it will have a significant impact and influence significant to potential criminals. They will be afraid that all profits from criminal acts will be confiscated by the State, without having to go through criminal justice (Suhariyono, 2014).

II. Research Methods

This research uses descriptive qualitative writing method. The type of research used in this research is normative legal research, where this research departs from legal issues. Legal research is conducted to produce arguments, theories, or new concepts as prescriptions in dealing with problems faced. Normative legal research is a type of legal research obtained from literature studies, by analyzing a legal problem through legislation, literature and materials more references.

III. Discussion

3.1 Efforts to Return State Assets

The development of corruption in Indonesia, it can be said that it is no longer an ordinary crime, but is already a very extraordinary crime, given its complexity and negative effects.

The return of state assets resulting from criminal acts of corruption is still very far from the expectations of the Indonesian people, so that disclosure efforts must really be made as a benchmark for success.

The corrupted state assets not only harm the state in a narrow sense, but also harm the state and its people. Some corruptors were sentenced to fines, but later preferred to be replaced with imprisonment. This means that state losses are not recovered. Recently, the idea of impoverishment for corruptors has emerged, namely by being sentenced to an obligation to return a number of state losses.

In the era of globalization where efforts to restore/recover stolen state assets (stolen asset recovery) through corruption tend not to be easy to do. The perpetrators of criminal acts of corruption have extraordinary and difficult to reach access in hiding or laundering the proceeds of corruption.

Thus, the role of the prosecutor's office in using civil law instruments related to the return/recovery of state finances due to corruption must be interpreted broadly, including also conducting lawsuits abroad in the context of rescuing and returning/recovering state assets due to corruption (Burhanuddin, 2013).

After the ratification of the Anti-Corruption Convention, in 2003, based on Law Number 7 of 2006, the Government of Indonesia has made important changes, namely the first step in drafting the Anti-Corruption Bill which includes the criminalization of certain (new) acts within the scope of corruption, namely, among others, acts of enriching oneself illegally (illicit enrichment), bribery of foreign public officials or officials of international organizations (bribery of foreign public officials and officials of public international organization), and bribery in the private sector (bribery in the private sector) abuse of authority (abuse of function) (Romli, 2018).

The second step, after the ratification of the Anti-Corruption Convention is the enactment of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering which revokes the implementation of the Law on the Crime of Money Laundering (2002/2003). The law has included provisions for reverse verification in two articles, namely Articles 77 and 78 and Article 81).

The third step, which is very important in terms of asset confiscation, is contained in the Anti-Corruption Bill (2009). In the Anti-Corruption Bill, the method of asset confiscation has been adopted through:

Civil law (in rem forfeiture) but the provisions regulated in Chapter III under the title Confiscation of Assets (Article 23 to Article 25) still contain significant weaknesses from the point of view of protecting the defendant's human rights and from the point of view of the use of authority by the prosecutor. This legislative policy has been strengthened by the government with the completion of the drafting of the 2008 Criminal Acts of Asset Confiscation Bill.

Asset recovery is a process of handling assets resulting from crime which is carried out in an integrated manner at every stage of law enforcement, so that the value of these assets can be maintained and returned completely to victims of crime, including to the state. Asset recovery also includes all preventive actions to keep the asset's value from decreasing. The return of stolen state assets (stolen asset recovery) is very important for the development of developing countries because the return of stolen assets is not only to restore state assets but also aims to uphold the rule of law where no one is immune to the law. .

Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 (UU PTPK) provides threats to perpetrators of corruption in the form of imprisonment, fines and payment of compensation.

As a result of fraud, the state suffers a loss or loses a number of wealth as a result of the act of enriching the maker. In fact, by including the word "can", it means that the state has not suffered real financial losses. The word "can" in the element of being able to harm state finances must be interpreted as potential or the potential alone is sufficient for the occurrence of a criminal act of corruption Article 2 paragraph (1) of the Law on the Eradication of

Criminal Acts of Corruption. This situation proves that there is a potential for harming state finances and the real financial loss has not yet occurred, is considered not an attempted criminal act, but a completed criminal act (Chazawi, 2016).

The existence of laws and regulations regarding the eradication of corruption crimes above, provides an indication that the Indonesian government has seriously implement policies to tackle corruption considering that corruption is a crime that not only harms the country's finances and economy but also harms individuals and other community groups.

Barriers to return on assets can be explained both theoretically and practically. Theoretically, there has been a misunderstanding of the legislators and some criminal law experts and financial law experts in resolving the problem of criminal assets. The first error is the a priori attitude that criminal law which is oriented to the philosophy of retributive justice is seen as the only legal means that is considered appropriate for the purpose of recovering state losses.

3.2 Strategies and Policies for Corruption Law Enforcement through Asset Blocking

The crime of corruption directly or indirectly harms the state's finances or the state's economy, which at the same time harms the people. The victims (victim) of the crime of corruption are the State and the people, because with the crime of corruption, the state's finances and economy will be reduced and disrupted. Corruptors make the state a victim (victim state) (Alkostar, 2008).

Some cases of corruption are difficult to disclose because the perpetrators use sophisticated equipment and are usually carried out by more than one person in a disguised and organized situation. Therefore, this crime is often called a white collar crime.11

Edwin Harland Sutherland argues that white collar crime or a tie crime is an act that falls into the category where the perpetrators are intellectual, educated people who have something to do with their occupation (Setiadi, 2017).

Along with the times, money laundering crimes are increasingly complex with methods that are increasingly complicated and difficult to trace. It becomes one of the reasons why so many people get money from the proceeds of crime to then “launder” the money, so that law enforcement officials cannot find out.

The rise of money laundering crimes has made the government make every effort to prevent and eradicate money laundering. One of them is by making regulations on the prevention and eradication of money laundering, the latest of which is Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (UU TPPU). Although the Money Laundering Law has regulated sanctions against perpetrators of money laundering crimes, this does not necessarily reduce the level of money laundering crimes money laundering crime.

Realizing this, the law enforcement officers began to apply another method, namely asset recovery. With asset recovery, it is expected to provide a deterrent effect to perpetrators of money laundering crimes. Because asset recovery aims to sever the relationship between the perpetrator and the assets he owns from the proceeds of a criminal act, by seizing the assets.

This will make criminals think twice about money laundering, because if caught, not only corporal punishment will be imposed but their assets can also be confiscated. Practices in various countries show that the issue of asset recovery has been integrated into the legal system, and places the prosecutor's office as the main element in it. This legal practice is due to the role of the prosecutor's office as the Center of Integrated Criminal Justice System, and in Indonesia it is appropriate that the prosecutor be the leader in asset recovery (Widyopramono, 2014).

In general, the role of the prosecutor's office and the police is as an institution that takes care of confiscated assets. The assets that have been confiscated then remain the task of the prosecutor and the police to maintain the value of the assets so that they do not decrease. That's why the prosecutor's office and the police formed a work unit, which specifically took care of asset recovery. The unit is the Asset Recovery Center (PPA), the main task and the function of the PPA is to provide services for recovering criminal assets as well as recovering and returning criminal assets to those who are entitled, including the state.

The development of asset recovery arrangements began with the regulation of asset confiscation efforts that have existed in the history of Indonesian laws and regulations, namely the first in the Central War Authority Regulation No. PRT/PEPERPU/013/1958 concerning Investigation, Prosecution, and Examination of Corruption and Ownership. Property.

The regulation means that property other than the proceeds of a criminal act of corruption that can be confiscated is the property of a person or an entity which is intentionally not explained by him or her management, property which is not clear who the owner is, the property of a person whose wealth after investigation is deemed to be disproportionate to the livelihood income (Nasution, 2008).

There are several ways to eradicate corruption, namely substantive in the form of preparing instruments for the rule of corruption law. However, in general, efforts to combat corruption in Indonesia still rely on penal policies, which focus more on repressive nature (Rohrohmana, 2017).

Efforts continue to be made to restore state losses lost due to the corrupt behavior of corruptors. In the formulation of the articles regulated in the Law on the Eradication of Criminal Acts of Corruption, it contains several things regarding state financial losses.

The amount of fines listed can not be classified as small. Nominal fines in Law No. 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption for individuals only, the lowest has reached Rp. 50,000,000.00 (fifty million rupiahs) and the maximum threat of fines for individuals is Rp. 1,000,000,000. , while corporations are threatened with a fine with the provisions of a maximum fine plus 1/3 (one third), then the maximum penalty for a corporation can be up to Rp. 1,000,000,000.00 (one billion rupiah) plus 1/3 (one third). The law turns out to be able to provide solutions to so many impasse problems that cling to the human mind (Hartono, 2020).

The provision of criminal fines, if applied, can certainly lead to a reduction in the assets owned by convicts of corruption. The reason is that in addition to being sentenced to pay replacement money for the assets resulting from corruption, the convict is also still threatened with a relatively high fine. If you look back, this actually has led to an attempt to impoverish the corruptors.

The return of state assets is only wishful thinking because there are still many state assets that have not been detected by law enforcement officials. Acts of corruption, such as hiding the wealth resulting from corruption in several regions or other methods used by the perpetrators to obscure the origin of assets, and many of their whereabouts are still unknown. The process of law enforcement for criminal acts of corruption is not in line with the principles of the formation of a corruption law, considering that some judicial practices have not been able to restore state financial losses through their decisions.

In a criminal case process, especially in cases of corruption, the confiscation of assets suspected of being the result of a criminal act of corruption is very urgent, considering that apart from the purposes of proof in court, the confiscation of evidence is also intended to recover state financial losses resulting from corruption. Thus, confiscation becomes an important beginning in the stages of the corruption case process from the level of investigation, investigation, prosecution and trial in court.

Care must be taken in confiscating goods or objects used in a criminal case. It must be ensured that there is a really accurate correlation between the confiscated objects and the perpetrators of the crime. Because if the investigator cannot explain the relationship of the goods to be confiscated with a suspected criminal act, the confiscation permit may be refused by the Head of the local District Court. There are two fundamental issues related to asset confiscation (asset recovery), namely: 1) Determining what assets must be accounted for for confiscation; and 2) determine the basis for confiscation of an asset.

In general, the theory of social justice which provides a moral basis for the justification of the seizure of assets obtained from the proceeds of crime, as described for the following reasons: 1) Preventive reasons (prophylactic), namely preventing the perpetrators from having control over assets obtained illegally to commit crimes other crimes in the future. 2) Reasons for propriety, because the perpetrator does not have proper rights over the illegally obtained assets. 3) Priority reasons, because criminal acts give priority to the state to sue / sue illegal or tainted assets rather than the rights owned by the perpetrators of the crime. 4) Reason for Ownership (proprietary), because the asset was obtained illegally, the state has an interest as the owner of the asset.

For assets that have been transferred to third parties by perpetrators of criminal acts of corruption, with the aim that these assets cannot be known by law enforcement officials so that crimes cannot be revealed, hereby there are efforts that law enforcement officials can take to take action from these modes. In general and specifically what can be done by perpetrators of criminal acts of corruption, among others, is by tracking and identifying (asset tracking) the assets of suspects and parties involved in criminal acts of corruption, as well as providing data support to investigators in an effort to prepare replacement payments. .

Investigators in carrying out their duties to enforce the law and reveal legal facts, have been given the authority to search and identify assets, both for the need for evidence in court and also for the need for state financial recovery in the form of fulfilling replacement money as a result of corruption crimes. For this reason, investigating officials in conducting investigations and investigations are given the authority to carry out forced efforts in the form of searches and also confiscation of objects related to crimes committed by suspects who are directed to; Detecting from the start all suspicious and unsuspected assets of the suspect and/or family in accordance with the profile that is suspected to be the result of a criminal act of corruption, and the identification results are used in addition to proving a criminal act of corruption as well as to find indications of money laundering.

Regarding the basic understanding of confiscation, it has been formulated in the provisions of Article 1 point 16 of the Criminal Procedure Code, namely: "Confiscation is a series of investigator activities to take over and or keep under their control movable or immovable objects, tangible or intangible for the purpose of proof in investigation, prosecution and Justice".

Because confiscation is included in one of the coercive measures (dwang middelen) that can violate human rights, then according to the provisions of Article 38 of the Criminal Procedure Code, confiscation can only be carried out by investigators with the permission of the Head of the local District Court, but in urgent circumstances, such confiscation can be carried out. Investigators first and then after that must be immediately reported to the Chairman of the District Court, to obtain approval. According to the provisions in Article 39 of the Criminal Procedure Code, objects that may be subject to confiscation are: 1) Goods or claims of a suspect or defendant which are wholly or allegedly obtained from a criminal act or partly the proceeds of a criminal act; 2) Objects that have been used directly to commit a crime or to prepare it; 3) Objects used to hinder criminal investigations; 4) Objects specially made or intended to commit a crime; 5) Other objects that have a direct relationship with the

crime committed. From the description of the provisions of Article 39 paragraph (1) of the Criminal Procedure Code, it is very clear that objects whose acquisition is suspected to be the proceeds of criminal acts, including objects that can be imposed by investigators in revealing facts in a criminal case.

Regarding the confiscated goods as stipulated in Article 39 paragraph (1) of the Criminal Procedure Code, there must be strong evidence that they have a close relationship with the actions of the perpetrator, in this case the ownership stems from a crime. Ownership here can mean that it still belongs to the convicted person when the crime is committed. confiscated goods for the purposes of the judicial process confiscated goods which in the provisions of criminal procedure are also referred to as confiscated goods as regulated in Article 1 point 4 of PP Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. Confiscated Objects become part of Non-Tax Income.

In the Government Regulation of the Republic of Indonesia number 22 Tahun 1997 dated July 7, 1997 concerning Types and Deposits of Receipts Non-Tax State, namely explaining the points of the types of non-tax state revenues applicable to the attorney general's office, including the following: 1) Revenue from the sale of booty. 2) Receipts from the sale of confiscated/confiscated proceeds. 3) Receipt of compensation and criminal acts of corruption. 4) Receipt of court fees. 5) Other receipts, in the form of found money, auction results of found goods and sales of goods. 6) Evidence that is not taken by the rightful. 7) Acceptance of fines.

Legally, the scope of the definition of assets is regulated in Article 499 of the Civil Code, which is called material, namely each item and each right, which can be controlled by property rights. Materials according to their shape are divided into bodily and immaterial objects. Meanwhile, according to its nature, objects are divided into movable objects, namely those that are spent and cannot be spent, and immovable objects. This is in accordance with the definition of assets as regulated in Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, namely: "Wealth is all movable or immovable objects, both tangible and intangible, which are obtained either directly or indirectly". Meanwhile, according to Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Article 18 paragraph (1) states that confiscation is carried out against guilty persons who are handed over to the government, but only on goods confiscated goods. And as regulated in Article 18 of Law no. 31 of 1999 as amended by Law no. 20 of 2001 it is stated that confiscation is one form of additional crime.

So, if we refer to the Civil Code, Law no. 8 of 2010, and Law no. 31 of 1999 as amended by Law no. 20 of 2001, then there are several terms used, namely objects, goods, assets of criminal acts, and assets. For simplification, ideally refer to the provisions in Article 39 of the Criminal Procedure Code regarding the categories of objects that can be confiscated, which includes all or part of what is suspected to be obtained from a criminal act or as a result of a criminal act or what is commonly referred to as an asset. So, confiscation carried out by investigators in connection with the investigation of cases of criminal acts of corruption in accordance with what is stipulated in Article 39 of the Criminal Procedure Code.

Based on a court decision that has permanent power, assets controlled by perpetrators of criminal acts of corruption can be taken by force in accordance with the value of the losses incurred as a result of the corruption crimes committed, as stated in Law Number 31 of 1999 concerning Eradication of Corruption Crimes Article 18 paragraph (1) letter b that the payment of replacement money in the maximum amount is the same as the assets obtained from the criminal act of corruption.

IV. Conclusion

1. Searching for assets resulting from corruption is also intended to minimize the following possibilities:
2. Corruptors in managing the results of corruption do not put it in their own control. The assets resulting from corruption are in the hands of family members or third parties trusted by them;
3. After knowing that he is designated as a suspect, then sells or transfers his corruption-acquired assets to another party to avoid confiscation by investigators or public prosecutors in the future.

The accuracy of law enforcement officers to calculate how much of the proceeds of a crime enjoyed by the perpetrator since the investigation stage also plays an important role when carrying out the execution of court decisions at a later date. In the event that the amount of the proceeds of corruption enjoyed has decreased due to one reason or another, so that it is not sufficient to pay the replacement money, the executing prosecutor may confiscate the property of the convict.

Law enforcement to eradicate corruption has experienced various problems, especially in efforts to restore state losses in the form of transferring assets to third parties or there has been a mixture of assets resulting from corruption with other legitimate sources of income, making it difficult to determine the amount to be returned. Stolen assets stored outside the jurisdiction of Indonesia are protected with the rules of the legal procedure and the bank secrecy act system of the local country, the replacement money is not paid or only partially paid and the rest is subsidiary to imprisonment, the subsidiary punishment (imprisonment) is relatively light and not proportional to the value of the replacement money. These problems are a very influential factor in the success rate of returning assets resulting from corruption.

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