

## Additional Criminal Function in the Strategy for Combating Corruption Crimes

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### Abstract

*The purpose of this study is to analyze additional criminal function in the strategy for combating corruption crimes. This type of research is normative law. The approach method used in this research are legislative, conceptual, and case. This research is normative legal research. Analysis of legal materials is carried out using the method of legal interpretation. The results show that additional criminal function that can be imposed on perpetrators of criminal acts of corruption as stipulated in article 18 of the anti-corruption law consist of additional criminal function confiscation or return of assets for criminal acts of corruption, additional criminal function of substitution, additional criminal function closure of whole or part of the company, and additional criminal function revocation of certain rights perpetrators of corruption crimes.*

### Keywords

criminal; function; strategy; corruption



## I. Introduction

Corruption is a classic problem that has long existed in the history of law in the world. Babylon is recorded as forming the first written legal order known as Code Hammurabi (containing 282 articles) from King Hammurabi in the Babylonian kingdom around 1750 BC has made punishments for corrupt behavior (Fuady, 2013:31-35).

Corruption has occurred since ancient times, and occurs in various parts of the world. This shows that the phenomenon of corruption is not only a problem for a particular country but also a problem faced by all countries in the world including Indonesia.

Corruption in Indonesia has a long history. The birth of the Republic of Indonesia cannot be separated from the practice of corruption which is said to have existed since the kingdom and colonial times. Various efforts and efforts were made as a manifestation of the commitment of the Indonesian government in eradicating corruption. This commitment is actualized in the form of a comprehensive strategy. Efforts to eradicate corruption include preventive and repressive aspects. In reality, the efforts that have been taken both to prevent and eradicate corruption have not resulted in significant changes. Corruption still continues to occur in the midst of people's lives.

Based on the Corruption Perception Index released by Transparency International Indonesia, it can be seen that the level of corruption in Indonesia is still high with the consistent ranking of the corruption perception index in the last 5 years which has not moved significantly. From the data, Indonesia experienced an increase in the Corruption Perception Index in 2019, namely Indonesia was in the 85th position out of 180 countries with a score of 40 (up 2 points from the previous year with a score of 38). At the same time, behind Indonesia's progress in eradicating corruption, various corruption cases have been revealed, which is marked by the decline in Indonesia's Corruption Perception Index

in 2020, which ranked 102 out of 180 countries with a score of 37, down 3 points from the previous year with a score of 40. The state's financial losses have increased when compared to the handling of corruption cases in the first semester of 2016 to the first semester of 2020.

Based on Indonesia's Corruption Perception Index, the annual report of the Corruption Eradication Commission, and the report on monitoring trends in the prosecution of corruption cases in the first semester of 2020 conducted by Indonesia Corruption Watch, it is enough to give a message that corruption has become a serious problem for the Indonesian people. Corruption in Indonesia has occurred so massively, structured and widespread involving various elements of society ranging from the legislative, executive, and judicial parties, and even corruption has penetrated the private sector and caused state financial losses, violated the social and economic rights of the community. Economic actors, basically have very important functions. Because it has two functions at once, namely as a supplier of all the needs of the community, both primary, secondary and tertiary. At the same time, they also function as absorbers of community labor, which can economically increase purchasing power. (Ansari, T. 2019)

Related to legal factors, overcoming corruption by using criminal law instruments is not only done by adding to those who are ensnared by the corruption law, but also those who are ensnared by the corruption law are given maximum sanctions. This maximum criminal sanction is not only intended in the form of imposing an increased length of punishment but also by providing additional penalties.

In relation to the additional criminal arrangements in the Tipikor Law, it is intended to provide maximum sanctions to perpetrators of criminal acts of corruption and to provide sanctions that are far more in line with the need for treatment of perpetrators, recovery from the consequences of crimes caused and at the same time providing protection to the community.

The purpose of this study is to analyze additional criminal function in the strategy for combating corruption crimes.

## II. Research Method

This type of research is normative law. This research is used to identify existing legal concepts, rules, and norms by using existing library materials and applicable laws and regulations (Octiva et al., 2018; Pandiangan, 2018). Normative legal research is research that is focused on examining the application of rules or norms in positive law. Then it is connected with the problems that are the subject of discussion (Asyraini et al., 2022; Octiva, 2018; Pandiangan, 2015).

The problem approach is the process of solving or solving problems through predetermined stages so as to achieve research objectives (Jibril et al., 2022; Pandiangan et al., 2018; Pandiangan, 2022). The approach method used in this research is:

1. Legislative approach, namely an approach that is carried out by reviewing all relevant laws and regulations on the legal issues being handled.
2. Conceptual approach, namely the approach taken by examining legal concepts related to research problems.
3. Case approach, namely the approach taken by examining related cases that have become decisions that have permanent legal force.

This research is normative legal research. In this study, legal materials were collected using document study techniques or literature studies, namely reading, citing, studying and reviewing various literatures in the form of laws and regulations, books, legal research

results, theses, papers, newspapers, articles, magazines. and legal journals as well as the opinions of scholars needed in this research (Octiva et al., 2021; Pandiangan et al., 2021; Pandia et al., 2018).

Analysis of legal materials is carried out using the method of legal interpretation. The interpretation used in this research is futuristic or anticipatory interpretation, which is an anticipatory method of legal discovery that explains the current law (*ius constitutum*) by referring to laws that do not yet have legal force (*ius constituendum*). After the analysis of legal materials is complete, the results will be presented descriptively, namely by describing or explaining what is in accordance with the problems studied. From these results, conclusions are drawn which are the answers to the problems raised in this study (Pandiangan et al., 2022; Tobing et al., 2018).

### **III. Result and Discussion**

#### **3.1 Additional Criminal Function in the Strategy for Combating Corruption Crimes**

Normatively, the legal politics of corruption eradication has been regulated in Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption (hereinafter referred to as the Anti-Corruption Law) which aims to recover state financial losses and provide penalties for perpetrators of corruption. To achieve this goal, the law must be functioned according to certain functions. In this case the law is functioned as a means of social control or a means of social control, the use of law as a means of social control is to determine behavior that is considered from the rule of law. In addition to stipulating sanctions or actions taken by law in the event of such deviations (Ali, 2009:102-103).

The meaning of the function of law as a means of social control or a means of social control, means the existence of criminal provisions in a law as a subsidiary function. Criminal provisions are made if other efforts are inadequate (Suyanto, 2018:17). This is what distinguishes criminal law from other laws. In this case the criminal law is considered as the *ultimum remedium* (last drug) and *primum remedium* (main weapon).

Additional criminal function that can be imposed on perpetrators of criminal acts of corruption as stipulated in article 18 of the anti-corruption law consist of additional criminal function confiscation or return of assets for criminal acts of corruption, additional criminal function of substitution, additional criminal function closure of whole or part of the company, and additional criminal function revocation of certain rights perpetrators of corruption crimes.

#### **3.2 Additional Criminal Function Confiscation or Return of Assets for Criminal Acts of Corruption**

The confiscation or return of assets resulting from criminal acts of corruption is one of the main issues in eradicating corruption. This means that law enforcement efforts are not only focused on aspects of prevention and eradication, but also recovering state losses due to corruption. The strategy of returning assets resulting from corruption is a breakthrough in efforts to combat corruption.

Normatively, provisions for confiscation/return of corrupt assets have been regulated in Article 18 paragraph (1) letter a of the Anti-Corruption Law as an additional crime. In relation to these provisions, the Anti-Corruption Law has regulated the seizure of assets against perpetrators of criminal acts of corruption consisting of criminal law norms and civil law norms. The norms of criminal law are realized through the formulation of



criminal sanctions in the form of confiscation of corrupt assets and the criminal payment of replacement money. Meanwhile, civil law norms include civil lawsuits against heirs if the suspect of corruption dies during the investigation, and civil lawsuits against the convict or his heirs, if in the future it is found that the convict's assets are strongly suspected to have originated from a criminal act of corruption.

The provisions of Article 18 (1) letter a of the Anti-Corruption Law serves as an instrument to provide maximum punishment to perpetrators of criminal acts of corruption that cause state losses, so that these assets can be returned to the state. This means that the return of assets resulting from corruption has an important position in the law enforcement system (Kartika and Saputra, 2021). The legal norm of confiscation of corrupt assets was chosen as an asset recovery strategy for losses suffered by the state, because if the provisions regarding criminal asset confiscation of corruption can be applied effectively, efforts to recover state losses due to corruption will achieve optimal results.

### **3.3 Additional Criminal Function of Substitution**

The term replacement money contains a related meaning not to individual or individual interests, but public interests or even state interests. Therefore, additional punishment in the form of payment of replacement money is a criminal policy that cannot be separated from broader policies, namely social policies consisting of policies to achieve public welfare and policies for community protection. For this reason, the criminal imposition of replacement money in a criminal act of corruption as an additional form of punishment is intended to save state wealth or finances that have been taken by the perpetrators of corruption, so that the state as a victim is restored by the court.

Normatively, the legal basis for replacement money as an additional crime in corruption is regulated in the provisions of Article 17 jo. Article 18 paragraph (1) letter b of the Corruption Law. Based on the provisions in Article 17 of the Anti-Corruption Law, the penalty for paying replacement money can not only be imposed on perpetrators of corruption crimes charged with Articles 2 and 3 which contain elements of state financial losses, but can also be imposed on other articles, namely Article 5 to Article 14 of the Corruption Law.

Meanwhile, the provisions of Article 18 paragraph (1) letter b of the Anti-Corruption Law place special emphasis on the amount of replacement money, i.e. the maximum amount is the same as the property obtained from corruption. Juridically this must be interpreted as a loss that can be charged to the convict is a state financial loss of a real and definite amount as a result of an unlawful act, whether intentionally or negligently committed by the convict. To determine and prove the actual amount of property obtained by the convict of a criminal act of corruption, it should not only be interpreted that the property still controlled by the convict at the time of the court decision, but also the property resulting from corruption which at the time of reading the verdict had been transferred by the defendant to someone else.

Furthermore, in the provisions of Article 18 paragraph (2) of the Anti-Corruption Law, it is regulated that the assets of the convict can be confiscated by the prosecutor and auctioned off to cover the replacement money. The confiscation and auction of the convict's property will only be carried out by the prosecutor as the executor of the court's decision if it turns out that the convict has not or has not paid the replacement money within the specified grace period. If the perpetrator of a criminal act of corruption is unable to pay the additional penalty of paying replacement money, then the provisions for imprisonment will apply (Supardi, 2018:35). This is based on the provisions of Article 18 paragraph (3) of the Corruption Law which regulates the subsidiary-conversion between

the criminal payment of substitute money and the main punishment in the form of imprisonment which can be imposed on the convict if the assets owned are not sufficient to pay the substitute money as referred to in Article 18 paragraph (1) letter b of the Anti-Corruption Law.

### **3.4 Additional Criminal Function Closure of Whole or Part of the Company**

The role of corporations in criminal acts of corruption, explained by Francis Fukuyama, the corruption that wreaks havoc in these countries is a direct consequence of the behavior of multinational companies based in rich industrial countries that do not hesitate to give bribes with pleasure (Satria, 2018 :27). Based on what was stated by Francis Fukuyama, that the problem of corruption committed by corporations can be likened to cancer which, if not treated early, will damage the entire framework and structure and morality of a society. For this reason, the placement of corporations as the subject of criminal acts is based on various rational reasons, namely:

- 1.It turns out that the punishment of the management alone is not enough to carry out repression of offenses committed by or with a corporation. Therefore, it is also necessary to make it possible to convict corporations, corporations and only the management or management.
- 2.Considering that in social and economic life, corporations are increasingly playing an important role.
- 3.Criminal law must have a function in society, namely protecting the community and enforcing the norms and provisions that exist in society. If criminal law is only emphasized on the individual aspect, which only applies to humans, then that goal is not effective, therefore there is no reason to always suppress and oppose the criminalization of corporations.
- 4.The punishment of corporations with criminal threats is one of the efforts to avoid criminal acts against the employees of the corporation itself.

Recognition of corporations as the subject of criminal acts of corruption brings consequences on what forms of criminal sanctions can be imposed on corporations. So far, the form of sanctions imposed on corporations is a fine with a maximum penalty of plus one third, with the rationale of the corporation committing a criminal act of corruption to gain profit. The imposition of criminal fines on corporations is carried out with the aim of reducing the economic rights of the corporation. Profits obtained by corporations as a result of crimes may be confiscated, unlike other corporate profits obtained from other activities.

### **3.5 Additional Criminal Function Revocation of Certain Rights Perpetrators of Corruption Crimes**

An expression stated by Gaius, an ancient Roman jurist, namely *male enim nostro iure uti non debimus* which if freely translated means "indeed, we must not use our rights for bad purposes." This means that the use of a right in the sense of authority solely with the aim of harming others is something that is unacceptable (Marzuki, 2017:155-156). Therefore, every right granted by law to a person of course has a purpose, namely social goals.

The imposition of sanctions in the form of revocation of the rights of perpetrators of criminal acts of corruption in this case will be discussed, namely the revocation of political rights. Political rights in the form of the right to participate either directly or indirectly in the administration of government. The right to participate in government directly, for example, the right to be elected as a member of a political institution, namely the people's



representative institution and a member of the cabinet, the right to become the head of government and regional head (Marzuki, 2017:170).

Revocation of political rights when viewed from the side of the Criminal Code is "the right to vote and be elected in elections held based on general rules". which is basically part of the revocation of certain rights. The revocation of the right to vote and to be elected can be equated with the revocation of political rights as Jimly Asshiddiqie mentions that the group of political rights guaranteed in the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) includes the right to associate, assemble, and express opinions. peacefully, the right to vote and be elected within the framework of the people's representative institutions, as well as the right to be appointed to public positions (Asshiddiqie, 2010:90).

#### IV. Conclusion

The results show that additional criminal function that can be imposed on perpetrators of criminal acts of corruption as stipulated in article 18 of the anti-corruption law consist of additional criminal function confiscation or return of assets for criminal acts of corruption, additional criminal function of substitution, additional criminal function closure of whole or part of the company, and additional criminal function revocation of certain rights perpetrators of corruption crimes.

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