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Problematics Law of Civil Reputation Damages Against Corruption Criminal Acts That Has Been Decided to Free

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Abstract

Provisions of Article 32 Paragraph (2) of Law 31/1999 jo. Law 20/2001 provides an alternative to the filing of a civil suit to recover state financial losses for corruptors even though they have been terminated criminally free. The problem is how to implement the civil lawsuits in returning state finances in law practice. Because legal practice shows that there are legal problems in Article 32 paragraph (2) of Law 31/1999 jo. Law 20/2001 which implies the lack of use of civil litigation instruments in corruption cases.

Keywords: *Legal Problems; Civil Lawsuits; Corruption Defendants; Severed Free*

Introduction

Article 32 paragraph (2) of Law 31/1999 jo. Law 20/2001 has set a civil lawsuit[1] instrument that can be used by the state to make efforts to recover state financial losses. However, this instrument is minimal used by the State Attorney because the norms of this article contain conditional principles. The intent contained in the conditional principle that is a civil suit cannot always be filed in a corruption case. Certain conditions are only open to the possibility of a civil suit being brought against the defendant who is acquitted. In a *contrario*, meaning outside of these conditions, a civil claim cannot be filed. Whether or not this lawsuit is made is also very dependent on the State Attorney. UU 31/1999 jo. Law 20/2001 does not expressly regulate the outcome of civil lawsuits as a form of obligation for the State Attorney. In fact, there are many cases of corruption which are decided to be free, even though there has been a loss of state finances, apparently there has not been a civil suit. That is, during the period of enactment of Law 31/1999 jo. Law 20/2001, based on the results of the author's analysis that the new civil lawsuit

[1] J. Myles Shaver and John M. Mezias, 'Diseconomies of Managing in Acquisitions: Evidence from Civil Lawsuits', *Organization Science*, 2009 <https://doi.org/10.1287/orsc.1080.0378>.

instrument was used in cases of criminal acts of former President Suharto and Tomy Suharto in the case of PT.Goro Bantara Sakti (GBS).

Society and the state[2] have been harmed as a result of criminal acts of corruption. However, it is unfortunate not to use the maximum existence of a civil lawsuit instrument to recover assets from state financial losses. Restoring state financial losses through a civil lawsuit actually shows the country's seriousness to return assets resulting from corruption. Even if a suspect or defendant has died, it is still possible to be prosecuted to recover state financial losses committed through a civil suit against his heirs. The problem is how to implement the civil lawsuits in returning state finances in law practice.

This question is asked, because the practice of law[3] shows that there are legal problems in Article 32 paragraph (2) of Law 31/1999 jo. Law 20/2001 which implies the lack of use of civil lawsuits against defendants who are acquitted. During this time, often prosecutors have difficulty in proving corruption cases because of the high standard of evidence used in criminal cases. Therefore, an appropriate lawsuit formulation is needed so that the lawsuit has a good basis and reason. And in the future it is necessary to have a special regulation on civil lawsuits through *civil forfeiture* that uses the standard of civil evidence, but by using a system of reversing the burden of proof, so that it is easier to carry out proof of the lawsuit filed.

Formulation of the Problem

Based on the background above, problems can be formulated namely:

What is the legal problem in the civil suit for compensation against corruption convicted of a free sentence?

Method

Research uses a statutory and conceptual approach.[4] The legal materials used are primary, secondary and tertiary legal materials which are analyzed using normative / prescriptive analysis.

Analysis

Juridical Problems of Civil Lawsuit Indemnification

Restoring state financial losses through a civil lawsuit actually shows the country's seriousness to return assets resulting from corruption. The problem is how to implement civil lawsuits in returning state finances in law practice. In implementing the practice, there are obstacles faced by the State Attorney.

As a result of the waiting nature of the civil claim for recovering state losses. One of the obstacles in the civil lawsuit faced by the State Attorney in implementing Article 32 paragraph (2) of Law 31/1999 in conjunction with Law 20/2001 is the nature of waiting for a civil suit. This is a characteristic of civil lawsuits adopted and regulated in the provisions of Law 31/1999 in conjunction with Law 20/2001. Civil lawsuits for corruption in Law 31/1999 in conjunction with Law 20/2001 are different from civil lawsuits

[2] Timothy Mitchell, '2. Society, Economy, and the State Effect', in *State/Culture*, 2019 <https://doi.org/10.7591/9781501717789-005>.
[3] Jamison Borek and Anthony Aust, 'Modern Treaty Law and Practice', *The American Journal of International Law*, 2001 <https://doi.org/10.2307/2661430>.
[4] Tomy Michael,'Humanity in the Enforcement of Anti-Corruption Laws',*Jurnal Hukum Bisnis Bonum Commune*,2.2(2019),211.

in general. The characteristics of the civil lawsuit for corruption are filed after a criminal effort is no longer possible, meaning that the recovery of state financial losses through seizure and replacement money has not been successful. Civil lawsuits for criminal acts of corruption thus contain specific characteristics, which are made after a criminal effort is no longer possible to be processed because it is faced with certain conditions such as a free decision by the judge against the defendant. Without a criminal process first, it is possible to make a civil suit for corruption cases.

Such provision raises legal consequences that is due to the nature of waiting for a civil suit to recover state losses, then the civil suit has from the beginning lost the momentum or the right opportunity to attract corrupt assets. The awaiting nature of this civil lawsuit makes there is no guarantee of certainty the loss of state finances can be returned immediately. Whereas one of the principles adhered to in Law 31/1999 in conjunction with Law 20/2001 is the principle of restoring state losses. Eradication of corruption[5] in Indonesia requires the return of state assets, this is the principle that becomes *the spirit of norm* of the provisions contained in Law 31/1999 in conjunction with Law 20/2001.

Civil lawsuit against corruptors obstructed by the evidentiary system;

This condition will technically make it difficult for the State Attorney, especially in terms of proof. The difficulty lies because the State Attorney must follow the evidentiary system regulated in the Civil Procedure Code, which adheres to formal proof. Soehadibroto argues that:[6]

Suing civil perpetrators of corruption on paper is quite easy, but in practice it is difficult. So far, the AGO has rarely used this legal instrument. The prosecutor's step to civilly sue corruption perpetrators is not easy. The perpetrators of corruption are generally carried out by people who are classified as experts (white collar). The use of civil instruments in corruption cases raises civil cases that are fully subject to applicable civil law provisions, both material and formal. The civil lawsuit is difficult. Civil law knows no inverse proof system. If the Prosecutor's Office as a State Attorney (JPN) wants to file a civil suit, the Prosecutor must be able to prove that the defendant has actually committed a criminal act of corruption. In accordance with the concept of civil evidence, the Prosecutor as the plaintiff is obliged to prove the argument for state losses.

From the explanation above, it can be analyzed that the problem is that the State Attorney must submit formal evidence in a civil trial, even though the evidence has been processed in a criminal case and declared to have insufficient evidence or even has been terminated freely. Evidence that has been submitted in a criminal case is not possible to be submitted again as evidence in a civil case.

Consequently state lawyers must find new evidence that has factual value of evidence so that it can support the truth of the lawsuit. If not, it will affect the possibility of the failure of civil lawsuits to recover state finances. Referring to the lawsuit case against Soeharto as an example, the lawsuit by the State Attorney was unsuccessful because in the trial, Suharto's attorney could prove formally that Suharto had been accountable before the MPR and had reported the foundation's financial presence to the board, which was not denied by the proof of the Attorney General's Law So that Suharto was judged that the Court did not do anything against the law.

According Soehadibroto, argued that: "actually, there is one way to strengthen the argument for the occurrence of state losses, namely from expert statements,for example experts from BPKP. But expert testimony is not binding on judges. Thus the judge's conviction is crucial".[7]

[5] A. Mitchell Polinsky and Steven Shavell, 'Corruption and Optimal Law Enforcement', *Journal of Public Economics*, 2001 <https://doi.org/10.1016/S0047-2727(00)00127-4>.

[6] Pendapat Soehadibroto dalam Berita Online, Gugatan Perdata Terhadap Koruptor Terhalang Sistem Pembuktian, https://www.hukumonline.com, diakses tanggal 17 Februari 2020.

In contrast to the opinions of Soehadibroto and Harprileny Soebiantoro above, Remy Sjahdeni criticized that the evidence system was used as an excuse not to hunt down corrupt assets. According to him, it is not too important to prove the occurrence of criminal acts of corruption. Talking about the hunt for the results of criminal acts of corruption should not be merely seen from the perspective of corruption.[8] Corruption in practice is often done by money laundering. Therefore, if the civil law is obstructed by the evidentiary system, the Prosecutor's Office can use the "knife" of money laundering. In the case of money laundering, it is precisely known as reverse proof. The problem is precisely the knowledge and understanding of the Attorney General's Office on various typologies of money laundering. What must be done is to know what forms of corruption assets, where are stored and on behalf of whom.

The practice of handling civil cases is certain to deal with procedural matters;

Another important obstacle that is always experienced in the practice of handling civil cases is certainly dealing with things that are procedural, namely consuming time, energy and costs that are not small. In general, in practice civil cases must go through at least 3 (three) stages. The preliminary stage is the stage of administrative preparation and all the requirements needed for trial hearings. Included in this stage include case registration, payment of case fee verses, determination of court days, summons to litigants, and submission of collateral seizure *(Conservatoir Beslag)*. Determination stage is the stage associated with the proceedings of the case, which starts from the stage of examining events, proving up to the judge's decision. The implementation stage is the stage for realizing the decision of a judge who has permanent legal force *(in kraht van gewijsde)*. In practice, it takes a very long time to arrive at a case that has legal force.

The facts mentioned above indicate that it is appropriate that the handling and settlement of criminal acts of corruption through criminal channels become the last alternative *(ultimum remedium)*. The principle of *ultimum remedium* is a trait that criminal law is applied as a last resort after considering that sanctions given through other fields of law are deemed insufficient to overcome them.[9]

Form of Lawsuit Formulation

Article 32 paragraph (2) of Law 31/1999 jo. The aim of Law 20/2001 is to anticipate the existence of an acquittal which is likely to free the convicted person from all claims of state financial losses, so that the legal provisions of the article constitute a legal umbrella for a civil suit against an acquittal.[10]

But in practice, there have been many corruption cases where the perpetrators have been declared free and have not been brought before a civil suit. The only civil suit because the acquittal has been applied in the case of PT.Goro Bantara Sakti (GBS) which caused the state loss of 94.5 billion registered in the South Jakarta District Court with Registration of Case Number 1228 / Pdt.G / 2007 / South Jakarta PN. The lack of use of civil lawsuits in criminal acts of corruption confronts the formal requirements constraints that form the basis of the demands. The formal requirements referred to are related to the necessity of proof in the form of a criminal decision. If the formal requirements are not met then the lawsuit is threatened to be terminated and declared not accepted *(niet ontvankelijk verklaard).*[11]

[7] Muhammad Arif Sudariyanto, 'Pertanggungjawaban Pidana Korporasi Dalam Bidang Perindustrian', *Mimbar Keadilan Jurnal Ilmu Hukum*, 2018, 50.
[8] Imanuel Rahmani, 'Perlindungan Hukum Kepada Pembeli Dalam Kepailitan Pengembang (Developer) Rumah Susun', *Jurnal Hukum Bisnis Bonum Commune*, 2018 <Https://Doi.Org/10.30996/Jhbbc.V0i0.1758>.
[9] Imam Budi Santoso And Taun Taun, 'Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Pidana Lingkungan Hidup', *University Of Bengkulu Law Journal*, 2019 <Https://Doi.Org/10.33369/Ubelaj.V3i1.4795>.
[10] Bambang Waluyo, 'Optimalisasi Pemberantasan Korupsi Di Indonesia', *Jurnal Yuridis*, 2014.
[11] Tomy Michael, 'Pemberantasan Gratifikasi Dengan Pendidikan', 2014, 61–70.

In order for the lawsuit to have a sound basis and reasons, the provisions of Article 32 paragraph (2) of Law 31/1999 jo. Law 20/2001 must be supported by the provisions of Article 1919 BW which states, "If a person has been acquitted of a crime or an offense alleged against him, then the exemption before a civil judge cannot be advanced to fend off a claim for compensation". On the basis of these provisions, if in a criminal decision that has been declared free, but it contains legal considerations or contains consideration of legal facts that the actual result of the defendant's actions has resulted in losses resulting from his mistakes or as a result of the defendant's lack of prudence, then the decision the criminal act is very strong evidence in settling the proposed civil lawsuit. It can even be used as the main event which is a legal fact that has been proven as the basis for filing a claim.

Special Arrangements for Future Civil Lawsuit through *Civil Forfeiture*

Marwan Effendy,[12] argues that: Corruption in Indonesia seems to be inexhaustible, it is increasingly being dealt with, and its development continues to increase from year to year, both in the number of cases, the number of state losses and its quality. Lately it seems increasingly patterned and systematic, its scope has penetrated into all aspects of community life and across national borders. Corruption is nationally agreed not only as an extraordinary crime, but also as a transnational crime.

Increasing the quantity and quality of corruption cases in Indonesia,[13] to combat corruption, one way to use *civil forfeiture* instruments is to facilitate the confiscation and expropriation of corrupt assets through civil channels. Indonesia has always tended to prioritize settlement through criminal lines which are more focused on punishing perpetrators of corruption rather than returning state financial losses. In reality the criminal line is not "effective" enough to reduce or reduce the number /occurrence of criminal acts of corruption.

The successful use of *civil forfeiture*[14] in developed countries may be used as a discourse in Indonesia because this procedure will provide benefits in the judicial process and to pursue the assets of corruptors. As seen so far, prosecutors often have difficulty in proving corruption cases because of the high standard of evidence used in criminal cases. In addition, often in the process of convicting corruptors, they become sick, disappear or die which can affect or slow down the judicial process. This can be minimized by using *civil forfeiture* because the object is the asset not the corruptor, so illness, loss or death of the corruptor is not an obstacle in the trial process.

Conclusion

To maximize the return on state finances, there is no other choice.The state must continually promote civil remedies. The reason is not only based on the demands of reform, but Indonesia as a rule of law must prioritize the application and enforcement of the law. The prosecutor as a state lawyer quantitatively needs to reproduce the lawsuit in a civil manner, and at the same time must improve the quality of the lawsuit. In order for the lawsuit to have a sound basis and reasons, the provisions of Article 32 paragraph (2) of Law 31/1999 jo. Law 20/2001 must be supported by the provisions of Article 1919 BW. The evidence submitted thus must at least meet the conditions for the existence of a free decision which includes legal considerations of real state financial losses resulting from such actions. The regulation of civil law in the future also needs to consider the civil forfeiture method that uses the

[12] Marwan Effendy, 'Pembalikan Beban Pembuktian Dan Implementasinya Dalam Pemberantasan Tindak Pidana Korupsi Di Indonesia', *Jurnal Hukum & Pembangunan*, 2009 <Https://Doi.Org/10.21143/Jhp.Vol39.No1.201>.
[13] Junaidi I Ketut Patra, 'Korupsi, Pertumbuhan Ekonomi Dan Kemiskinan Di Indonesia', *Riset Akuntansi Dan Keuangan Indonesia*, 2018 <Https://Doi.Org/10.23917/Reaksi.V3i1.5609>.
[14] Jefferson E. Holcomb, Tomislav V. Kovandzic, And Marian R. Williams, 'Civil Asset Forfeiture, Equitable Sharing, And Policing For Profit In The United States', *Journal Of Criminal Justice*, 2011 <Https://Doi.Org/10.1016/J.Jcrimjus.2011.02.010>.

standard of civil evidence, but by using a reversal of the burden of proof system, so that it is easier to carry out proof of the proposed lawsuit.

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