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Indonesia Regulation Authority of the State's Attorney in Efforts to Restore State Financial Losses Due to Corruption Crimes

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Abstract

Indonesia Regulation Authority of the State Prosecutor's Office in Efforts to Restore State Financial Losses Due to Corruption Crimes. Corruption in Indonesia causes huge financial losses to the state. The replacement money regulated in Article 18 of the Indonesia Corruption Eradication Law as one of the additional crimes still leaves problems. This is because if the corrupt convict does not return the replacement money, the convict may be subject to a subsidiary prison sentence whose sentence does not exceed the principal sentence. However, Article 64 paragraph (2) of the Indonesia State Treasury Law states that criminal decisions do not exempt from demands for compensation. Therefore, the replacement money that has not been or is not paid by the corruption convict is still the state's financial receivables. The author sees that there is a limitation in the authority of the state's attorney (the State Prosecutor) in an effort to recover state financial losses due to corruption due to conflict with the provisions in Article 18 paragraph (3) of the Law on the Eradication of Corruption Crimes with Article 64 paragraph (2) of the State Treasury Law. This paper is normative juridical research with a statutory approach, a conceptual approach, and a case approach. The results of this study are the existence of misconceptions in the limited authority of state attorneys in an effort to recover state financial losses due to criminal acts of internal corruption. This has implications for the accumulation of state financial losses in the form of replacement money that is not returned by the convict and becomes state financial receivables. Thus, it is necessary to strengthen the authority of state attorneys through the seizure of assets resulting from criminal acts of corruption through civil proceedings (civil procedure).

Keywords: *Authority; The State's Attorney; The Replacement Money; Corruption Crimes*

Introduction

In essence, corruption is not something that is unique to Indonesia and most countries in the world have been hit by the problem of corruption, and corruption is widespread, both in industrialized and developing countries (World Bank, 2004). Likewise with Indonesia, corruption has plagued this country

for a long time and has almost touched all lines of people's lives, it seems that corruption has reached what Robert Klitgaard calls a "culture of corruption" (Robert Klitgaard, 2005). Of course, what Klitgaard means here is not the essence of the existence of "culture" or that all Indonesians commit corruption, making it difficult to fight in any way, but the conducive situation and pessimistic attitude of society towards corruption causes corruption behavior to develop in the midst of society. So, what is meant by Klitgaard as "culture", because it is considered normal, as, in everyday life, where to speed up a business, someone usually gives "facilitating money" or the habit of giving cigarette money (bakshish system) (Syed Hussein Alatas, 1982), as well as providing facilities and gifts.

This condition continues to develop because so far, the community in these interactions has benefited themselves, this has led to the reluctance of most citizens to report unscrupulous state officials, bureaucrats, conglomerates, and unscrupulous law enforcement officers who commit corruption (Marwan Effendy, 2009). Corruption is a legal case, so law enforcement mechanisms must work. The spirit of law enforcement against corruption cases today is in the right direction, there are no more high-ranking officials who are above the law. Former ministers, Chief Justices of the Supreme Court, Judges of the Constitutional Court, Directors of State-Owned Enterprises, Heads of the Supreme Audit Agency, and many other cases involving high-ranking officials who are examined by legal mechanisms on an equal basis. Law enforcement that is carried out fairly and evenly will certainly provide shock therapy (Achmad Zainuri, 2007).

There are three agencies authorized to carry out efforts to eradicate corruption in Indonesia, namely the Police, the Prosecutor's Office, and the Corruption Eradication Commission (called KPK) (Mujahid A. Latief, et.al., 2007). The three state institutions are trying to take action based on the existing laws and regulations in an optimal and professional manner. As one of the law enforcers in eradicating corruption, the Prosecutor's Office has tried to prevent, take action and execute perpetrators of corruption based on existing provisions.

Replacement money is an additional crime in the maximum amount equal to the property obtained from a corruption crime. The return of money to replace the crime of corruption has problems because the convict no longer has the property to replace the money he has corrupted. If this happens, the Public Prosecutor (called JPU) or the executing prosecutor will submit the case file to the State's Attorney (called JPN) for out-of-court collection or conduct a civil lawsuit against the refund of the replacement money to be deposited or returned to the state treasury as a result from corruption. The provisions of Article 17 of Indonesia Corruption Eradication Law No. 31 of 1999 (hereinafter referred to as Indonesia Law No. 31 of 1999) states that:

In addition to being subject to a criminal sentence as referred to in Article 2, Article 3, Article 5 to Article 14, the defendant may be sentenced to an additional penalty as referred to in Article 18.

Article 18 of the Indonesia Law No. 31 of 1999 provides a stipulation that if the additional penalty in the form of replacement money cannot be paid by the convict, the convict shall be subject to subsidiary imprisonment whose duration does not exceed the maximum threat of the principal sentence. Indonesia Law No. 31 of 1999 aims to be more effective in preventing and eradicating corruption. Indonesia Law No. 31 of 1999 contains criminal provisions that are different from the previous law (Law No. 3 of 1971) in this case regarding the determination of special minimum criminal penalties, higher fines, and the threat of capital punishment. In addition, Indonesia Law No. 31 of 1999 also contains provisions regarding imprisonment for perpetrators of corruption who cannot pay additional penalties in the form of compensation for state losses.

From the provisions above, some problems arise if the convict does not have property anymore (not enough to pay replacement money). The first is regarding the imbalance of additional criminal

penalties in the payment of substitute money for the payment of substitute money with the punishment of its subsidiary. The subsidiary punishment of the replacement money is in the form of imprisonment for a length of time that does not exceed the maximum threat of the principal punishment by the provisions in Article 18 paragraph (3) of Indonesia Law No. 31 of 1999.

The imbalance relates to the large amount of state financial losses incurred by convicts of corruption by being replaced with imprisonment that does not exceed the maximum threat of the main punishment. The payment of replacement money in practice does not protect the economic rights of the community that has been lost over time until the decision has permanent legal force *(inkracht van gewisjde),* the replacement money is only based on the amount obtained by the defendant as a result of a criminal act of corruption (Fontian Munzil, Imas Rosidawati Wr., & Sukendar, 2015).

Another problem in the replacement of money for corruption is that if the convict can only replace half or half of the amount of money that must be replaced, will the subsidiary punishment in the form of imprisonment also be reduced. In addition, if the convict prefers to replace the payment of the replacement money with a subsidiary punishment, this will result in the state experiencing two losses. First, because state financial losses caused by corruption convicts are not returned to the state treasury. Second, convicts are imprisoned for longer periods, so that the state costs for convicts of corruption in correctional institutions are increasing.

Based on the description of the problems above, the authors grouping into several problems which are the basis for this dissertation research. First, the legal problem that arises from these legal facts is that there is a conflict of norms or conflict of norms in Article 18 paragraph (3) of Indonesia Law No. 31 of 1999 with Article 64 paragraph (2) of Indonesia State Treasury Law No. 1 of 2004 (hereinafter referred to as Indonesia Law No. 1 of 2004).

Article 18 paragraph (3) of Law No. 31 of 1999 stipulates that the convict can carry out imprisonment if he is unable to pay replacement money. After serving a prison sentence whose length does not exceed the maximum threat of the principal sentence, the sentence has been completed. However, Article 64 paragraph (2) of Law No. 1 of 2004 states that "Criminal decisions do not exempt from demands for compensation". The provisions in Article 64 paragraph (2) of Law No. 1 of 2004 are contrary to Article 18 paragraph (3) of Law No. 31 of 1999. Even contradictory, because Article 18 paragraph (3) of Law No. 31 of 1999 provides a choice if you are unable to do so. replace/pay replacement money (state financial loss due to corruption) can be replaced with imprisonment by court decisions. Meanwhile, Article 64 paragraph (2) of the State Treasury Law stipulates that a criminal decision (imprisonment that can be served by the convict for not being able to pay replacement money) does not exempt from demands for compensation (state financial losses due to corruption).

When the convict of corruption has served the main sentence and is unable to pay additional punishment in the form of replacement money, the convict is required to replace it with a prison sentence that does not exceed the threat of the principal (subsidiary) punishment Thus, the law enforcement process is complete even though the convict's loss of state finances is not returned.

On the other hand, Article 64 paragraph (2) of Law No. 1 of 2004 states that "Criminal decisions do not exempt from demands for compensation." In this case, as the Supreme Audit Agency (called BPK) as an institution that is given the authority to attribution of Law No. 1 of 2004, state financial losses in criminal acts of corruption are calculated as state receivables and billed to the Prosecutor's Office as the institution that carries out law enforcement.

Within the Prosecutor's Office, there is the State's Attorney (called JPN) who has the authority to file a civil lawsuit against the convict and/or his heirs related to state financial losses. However, in this

case, the author sees that there are limitations in the authority of the State's Attorney to recover state financial losses due to corruption, because it collides with the provisions of Article 18 paragraph (3) of Law No. 31 of 1999.

Research Methods

This paper is normative legal research, namely the process of finding legal rules, legal principles, and legal doctrines to address legal issues at hand (Peter Mahmud Marzuki, 2005). Based on the background of the problem and the formulation of the problem and to achieve the objectives of this study, this research is juridical-normative research which is library research, namely research on primary data, which is in the form of legal materials (Ronny Hanitijo Soemitro, 1998).

The research approach uses a statutory approach, a conceptual approach and a case approach (Johnny Ibrahim, 2011). By the type of research to be carried out, namely normative legal research, the basic legal materials used in this study are library materials, which are classified as secondary data. The use of secondary data will primarily be aimed at secondary data that is public, both in the form of archives and official legal materials in government agencies. This secondary data will include various materials in the form of primary legal materials, secondary legal materials, and tertiary legal materials (Soerjono Soekanto and Sri Mamudji, 1995). After the legal material is grouped, then the legal material is analyzed by prescription analysis.

Research Result and Discussion

Prosecutors are functional officials who are authorized by law to act as public prosecutors and implement court decisions that have permanent legal force and other powers based on the law. One of the other forms of the authority referred to is the authority to act as a State Attorney. The state's attorney is given the authority as actors whose profession is to defend the rights of the state in taking assets or assets that harm the state, is not a new problem or thing because it has become law based on the *Besluit Koninklijk* dated 27 April 1922, the reasons why are not clear until 1977 the function was forgotten.

The duties and powers of the Prosecutor, who acts as the State's Attorney, are clarified in Article 30 Paragraph (2) of Indonesia Prosecutor Law No. 16 of 2004 (hereinafter referred to as Indonesia Law No. 16 of 2004). The Prosecutor's Profession has legal rules based on the Indonesia Law No. 16 of 2004. The question that arises when the prosecutor is given the power to speak in civil cases, legal or not to represent the majority of the interests of the community and the state, based on Indonesia Law No. 16 of 2004 there are 2 articles that regulate the authority of prosecutors in civil cases, namely Article 30 Paragraph (2).

In the field of civil and state administration, the prosecutor with special powers can act both inside and outside the court for and on behalf of the state or government. Meanwhile, the contents of Article 35 point d; File an appeal for the sake of law to the Supreme Court in criminal, civil, and state administrative cases.

Indonesia Law No. 16 of 2004 also regulates and confirms several other roles and duties of prosecutors, among others, supervising the implementation of parole decisions, being authorized as State's Attorney, if the state becomes a party to a civil lawsuit and if a citizen or entity The law asks the State Administrative judge to examine whether the administrative action taken against him by a government official is valid or legal. In the field of civil and state administration, the Prosecutor can act specifically both inside and outside the court for and on behalf of the state, both as a plaintiff and as a defendant.

The facts show that industrialized countries can no longer teach developing countries about corrupt practices because corruption has damaged the socio-economic system in both developed and developing countries. If in rich countries corruption has reached a serious stage, in poor countries corruption has reached the most critical stage (Jeremy Pope, 2008). Corruption is a problem that almost occurs in all parts of the world (Donal Fariz, et.al., 2014). There is hardly a single country in the world, both developed and developing countries that are sterile from corruption (Suharyo, 2014).

In this regard, anti-corruption fighter Dimitri Vlassis revealed that the world community, both in developing and developed countries, is increasingly frustrated and suffers from injustice and poverty caused by corruption (Dimitri Vlassis, without year). The world community becomes resigned and cynical when they find that assets resulting from criminal acts of corruption, including those owned by state officials, cannot be returned because they have been transferred and placed abroad through money laundering which in practice is carried out to eliminate traces.

To eradicate corruption that is increasingly rampant in Indonesia and to prevent the growth of corruption, Indonesia, has finally made a statutory regulation contained in the Indonesia Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999, each article contained in this law regulates one by one acts of corruption accompanied by criminal threats.

Additional penalties are contained in Article 18 of Indonesia Law No. 31 of 1999. One of the additional forms of crime in this article is the additional penalty for payment of substitute money, which reads: "Payment of replacement money in the maximum amount equal to the property obtained from a criminal act of corruption."

The additional penalty of paying replacement money is not a new crime, this crime has existed since 1960, which is stated in Article 16 number (3) of Law No. 24 Prp. of 1960 concerning the Investigation, Prosecution, and Examination of Criminal Acts of Corruption, which reads: "paying replacement money in the same amount as the property obtained from corruption"

If you look at Article 16 as a whole, the perpetrators of criminal acts of corruption are sentenced to imprisonment, all property obtained from corruption will be confiscated, and the convict is obliged to pay replacement money in the same amount as the assets obtained from corruption. But later this rule was replaced with Indonesia Law no. 3 of 1971, even in this law the penalty of paying replacement money is maintained, then this law was renewed again into Law no. 31 of 1999, and even this law still maintains the existence of a criminal payment of compensation.

Then the next question is if the convict is unable to pay the replacement money as decided by the judge and the convict prefers to fulfill the prison sentence, will the replacement money be paid off or will it become a debt? According to the provisions of item 3 of Circular of the Supreme Court of the Republic of Indonesia (called SEMA RI) No. 4 of 1984 was followed in jurisprudence, namely the Supreme Court decision no. 2447 K/Pid/1988, which states that if the replacement money is not paid, it remains a debt borne by the convict which can be collected at any time by the state either directly by selling the auction of the convict's remaining possessions or through civil lawsuits including to his heirs.

So, based on the statement above, the replacement money that is not paid remains a debt, but in the law itself, it is not explained whether the replacement money is debt or paid off. However, if you look at the explanation of Article 18 paragraphs (2) and (3), that is, if you do not pay the replacement money, it will be replaced with imprisonment. This shows that the replacement money has been replaced with imprisonment and is not a debt because there has been a criminal change. But the problem then is if the replacement money is subordinated to imprisonment, then what is the purpose of the criminal payment of replacement money, namely to restore state losses will not be achieved because the perpetrators of

corruption will prefer to undergo a small prison sentence rather than having to spend the considerable cost. In addition, the calculation is only known by the judge, therefore it is hoped that there will be a way out for the implementation of this replacement payment.

The provisions stipulated in Indonesia Law No. 1 of 2004 are also intended to strengthen the foundation for implementing decentralization and regional autonomy. In the context of implementing decentralization and regional autonomy, broad powers have been given to regions, as well as the funds needed to carry out these powers. For the authority and funds to be used as well as possible for the implementation of government tasks in the regions, it is necessary to have rules as signs in managing regional finances. Therefore, Indonesia Law No. 1 of 2004, apart from being the legal basis for the implementation of the reform of the management of State Finances at the central government level, also serves to strengthen the foundation for implementing decentralization and regional autonomy within the framework of the Unitary State of the Republic of Indonesia.

To avoid the occurrence of state/regional financial losses due to unlawful acts or negligence of a person, Indonesia Law No. 1 of 2004 regulates provisions regarding the settlement of state/regional losses. Therefore, in Indonesia Law No. 1 of 2004, it is emphasized that any state/regional losses caused by unlawful acts or negligence of a person must be replaced by the guilty party. With the settlement of these losses, the state/region can be recovered from the losses that have occurred.

In this regard, every head of the state ministry/institution/head of the regional work unit is obliged to immediately file a claim for compensation after knowing that the relevant state ministry/institution/regional work unit has incurred a loss. The imposition of state/regional compensation on the treasurer is determined by the State Audit Board, while the imposition of state/regional compensation for non-treasury civil servants is determined by the minister/head of institution/governor/regent/mayor. Article 64 paragraph (2) of Law No. 1 of 2004 states that "Criminal decisions do not exempt from demands for compensation". Whereas the explanation of the article only gives "sufficiently clear".

Indonesia Law No. 31 of 1999 there are two concepts of the mechanism for organizing asset confiscation in Indonesia which are taken in the process of returning assets resulting from criminal acts of corruption. First, by tracking, then assets that have been successfully tracked and whose whereabouts are known are then frozen. Second, the frozen assets are then confiscated and confiscated by the competent authority of the country where the assets are located, and then returned to the country where the assets were taken through certain mechanisms (Romli Atmasasmita, 2007). An agreement on the return of assets was reached because of the need to recover assets resulting from criminal acts of corruption, as must be reconciled with the laws and procedures of the requested country for assistance.

The importance of returning assets that the crime of corruption has robbed the victim's country of wealth. Meanwhile, resources are needed to reconstruct and rehabilitate communities through sustainable development. In the process of returning assets resulting from corruption, where the perpetrators of criminal acts of corruption can freely cross-jurisdictional and geographical boundaries between countries, while law enforcement is not easy to penetrate the boundaries of jurisdiction and enforce the law in the jurisdictions of other countries. Therefore, international cooperation is needed in the pursuit and return of assets resulting from criminal acts of corruption.

Saving state assets is the main goal of regulating the criminal justice system, especially eradicating corruption cases. Saving state assets is important because one of the basic elements in corruption is the loss of state finances. Consequently, the eradication of corruption is not solely aimed at getting corruptors to be sentenced to prison (deterrence effect), but must also be able to restore the state losses that have been corrupted. In this case, the issue of returning state losses (asset recovery) in the

practice of handling corruption cases has become a serious problem, because based on several facts, many corruption cases have been sentenced, but in terms of the implementation of criminal compensation, it is difficult to materialize (Desky Wibowo, 2017).

According to Indriyanto Seno Adji, in the context of restorative justice, a settlement approach that prioritizes criminal recovery back to its original state is a more appropriate step, rather than merely taking repressive steps in the form of imprisonment (Indriyanto Seno Adji, 2016). Citing the views of Marwan Effendy, Indriyanto Seno Adji stated that in corruption, this approach is currently developing and has been carried out in various countries in North America and Europe as an alternative to repressive policies. This is also in line with the fundamental principle in the Anti-Corruption Convention in 2003 and most recently in Marrakech in 2011 which continues to prioritize efforts to recover corrupted state funds (asset recovery) and then place the use of criminal law as an *ultimum remedium* or as a last resort. by prioritizing a restorative justice approach. As a juridical consequence of this approach, in cases of corruption, the use of civil/private legal instruments is more directed towards efforts to recover assets resulting from corruption, both domestic and foreign assets as *primium remedium* (Indriyanto Seno Adji, 2016).

Thus, the return of state losses due to corruption is a law enforcement system that requires a process of eliminating rights to the assets of actors from the State who are victims of losses, both financial losses and losses of state assets, can be carried out in various ways such as confiscation, freezing, confiscation both incompetence locally, regionally and internationally so that wealth can be returned to the legitimate state (victim) (Indriyanto Seno Adji, 2009). 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 (Aliyth Prakarsa & Rena Yulia, 2017).

The purpose of reconstructing the authority of the state's attorney to recover state financial losses due to criminal acts of corruption in the future *(ius constituendum)* is expected to be able to achieve the objectives of the criminal law policy (penal policy) itself, namely as an effort to realize the legislation. criminal law by the circumstances and situations at a time and for the future. Therefore, carrying out the politics (policy) of criminal law also means holding elections to achieve the best results of criminal legislation, in the sense of fulfilling the requirements of justice and efficiency.

Conclusion and Suggestion

The results of this study are misconceptions regarding the limited authority of state attorneys to recover state financial losses due to corruption in Law No. 31 of 1999, Law No. 1 of 2004, and Law No. 16 of 2004. In each law have the same legal politics to save state financial losses due to corruption through the mechanism of replacement money. However, the problem is when the convict is unable to return the replacement money and chooses to undergo corporal punishment, the state attorney general must make efforts to recover state financial losses through a civil lawsuit mechanism. This is because Article 64 paragraph (2) determines that state financial losses cannot be released even though they have served a criminal sentence (prison or confinement).

The legal implication of the limited authority of the State Attorney to recover state financial losses due to criminal acts of corruption is the accumulation of state financial losses that cannot be returned due to the convict preferring to replace it with corporal punishment. In the end, the burden on the state is getting heavier because it has to bear the costs of the convict is serving his corporal punishment in a correctional institution.

It is hoped that in the future the strengthening of the authority of state attorneys' attorneys through the confiscation of assets resulting from criminal acts of corruption through civil lawsuits (civil procedure) both within the authority of each law, as well as in the exercise of authority in law enforcement practices of corruption.

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