Recovery of State Losses in Corruption Law Enforcement Effort

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ABSTRACT
The Law on corruption which should be a solution to the process of eliminating corruption in Indonesia, turns out to have some problems in its implementation, primarily related to the articles on state losses as referred to in Article 2 and 3 of Law Number 31 of 1999 as amended in Law Number 20 of 2001. The problems arise because there are different interpretations related to the state losses and different opinions regarding the recovery of state losses during the ongoing legal process, as well as the issuance of other laws that regulate the existence of state losses against the Law and its recovery mechanism, particularly in Law Number 15 of 2004 concerning the audits of management and accountability of the state finance and Law Number 30 of 2014 concerning government administration. The dimensions of the corruption problems in Indonesia are vast, such as the existence of overlapping legislation, expensive court costs, general geographical conditions, limitations, and doubts about the accountability of law enforcement officers in Indonesia. Although it still invites polemics, the research found that the process of recovering the state losses administratively was one of the solutions to the Settlement of corruption-indicated cases, which could guarantee legal certainty.

Keywords: *Corruption, Recovery, State loss.*

1. INTRODUCTION

The enforcement of laws and regulations on Criminal Acts of Corruption in Indonesia was performed by the Corruption Eradication Committee (KPK), Public Attorney, and Indonesian National Police (INP) specifically in connection with the implementation of article 2 and article 3 of the Law Number 31 of 1999 as amended in the Law Number 30 of 2001 on the Eradication of Criminal Acts of Corruption with a focus to fulfill the act against law element or arbitrary acts that may harm the country. In this context, corruption crime investigators are very dependent on the result of the state's loss calculation by the Indonesian Audit Board (BPK) or Indonesia's National Government Internal Auditor (BPKP) auditors.

Corruption crime formulation, especially regarding the state's loss as specified in article 2 and article 3 of the Law on the Criminal Acts of Corruption, as of promulgated and implemented in the Indonesian law system, arising debate that until today is not over yet in practitioners or experts' circle. Another opinion related to the implementation of this article, as well as the fulfillment of elements potentially harming the country, so far is discussed in several other perspectives, among others:

a. The country' loss concept in article 2 or article 3 of the Law on the Criminal Act of Corruption, related explicitly to the terminology "may," is a concept overlapping with embezzlement offense as referred to in article 8 and article 9 of the Law on Criminal Act of Corruption. There is a notion that the formulation of these articles 2 and 3 is too broad, potentially causing polemics, the difficulty for law enforcers in the implementation, and promotes misuse in the case adjudicative process 1.
b. Determination of the state's loss element is deemed one of the continuous obstacles for law enforcers in the case handling. The forms, among others, are debates on whose authority serves the right to determine the state's loss calculation and cross-agency coordination that sometimes is too formal, thus consuming law enforcement process time. From this fact, it can be concluded that state's loss method determination becomes one of the crucial variables, hence becoming one of the legal loopholes debated at all times and sometimes becoming an entry to weaken corruption crime prosecution.

Multi interpretation of Law on the criminal act of corruption, especially in the fulfillment of article 2 and

article 3, more specific regarding the state's loss caused and state's loss reimbursement mechanism in its relation with other laws and regulations that cannot be set aside, but can be an opportunity in looking for a new settlement for corruption crime case without prejudice to the perpetrator's or victim's sense of justice in this matter is the country that is financially harmed. Fulfillment of the purpose of Law exists in society.

From the description above, the problems of this study are:

- What are the problems in the implementation of article 2 and article 3 of the Law on the Criminal Act of Corruption?
- How is the state's loss in the state administration concept and its relation with corruption crime?
- How is the implementation of the state's loss reimbursement through sentencing and out-of-court Settlement?

2. METHODS

This study used the qualitative normative juridical method focusing on the studies regarding law principles and norms. The approach used in this study included the law approach with prescriptive descriptive analysis. Data were based on primary law material in various laws and regulations related to the study and secondary legal material as a complement in the form of books related to this study.

3. RESULT AND DISCUSSION

From articles in Law Number 31 of 1999, it could be seen why this Law is mighty and provides almost everything needed by Law enforces to handle corruption crimes and trap corruptors more flexibly. For instance, in article 2 and article 3, even though in the offense formulation, it is clearly stated that an act against Law or abusing power performed by someone can cause harm to the country's finance either formally or materially. It means that the activities within the scope have caused the state's loss or potentially harms the country. This formulation is strengthened in article 4, stating that the state's loss reimbursement does not remove the crime. It can be seen here that the state's loss reimbursement act is not a remover an offense (bestandeel delict) of article 2 and article 3. This is in line with the teaching on fulfillment of opzet element according to Va Hattum elaborating crime acts that can be described from the forms of the act (opzet als oogmerk) or situations accompanying the act (opzet als wetenschap) 2.

In implementing Article 2 and Article 3 containing state's loss elements, law enforcers often met various problems such as pretrial charge or PTUN on which institution authorized to calculate state's loss as a result of Circular Letter of Supreme Court No. 4 of 2016 on the Institution authorized to declare the existence of state's loss which is BPK while other institutions such as BPKP/Inspectorate/SKPD are still authorized to investigate and audit the country's finance management but not authorized to declare the existence of country's finance loss. With the charge, law enforcers must face other problems adding cost, time, thought, and power to themselves.

Another problem is the discrepancy in the Determination of the state's loss calculation method. So far, the state's loss calculation method patterned by Theodorus M. Tuanakotta in his research on corruption cases occurred in Indonesia, by using REAL (Receipt, Expenditure, Asset, Liability) concept adapted from Fraud tree ACFE3 showing various methods in state's loss calculation. In judicial practice, a specific calculation method often is denied by using another method deemed more fit. This will affect the evidentiary process of corruption offense primarily related to the state's loss, forcing examiners, investigators, or auditors of KPK or BPKP to work extra carefully in formulating the form and potential of state's loss arise in a corruption case. From a criminal law perspective, the state's loss problem becomes a block in the law enforcement process. This problem can be seen from another perspective from an administrative aspect. From the administrative aspect, the state's loss concept is specified in Law Number 1 of 2004 article 2 number 22 and Law Number 15 of 2006 article 1 number 15 on Financial Auditor. After this concept, new legislations referring to the state's loss formulation were issued, especially in government administration and management legislation.

The new legislation by Law Number 15 of 2004 regarding State Financial Management and Liability Audit, article 13 on BPK is authorized to disclose state's loss indications or crime elements, and article 22 and article 23 regarding state's loss reimbursement imposition process with its implementation mechanism regulated separately in BPK Regulation Number 3 of 2007 on Settlement Procedure of the State's Loss Reimbursement to the Treasurer. The BPK Regulation is a regulation governing monitoring mechanism related to the state's financial use where the state's loss is found during the monitoring. In this regulation, it is elaborated how to settle the state's loss from the administrative aspect, although the state's loss formulation used is almost the same as the state's loss formulation in Law on criminal acts of corruption, which is due to acts against Law.

Another legislation is Law Number 30 of 2014 on government administration forcing government internal apparatus monitoring or often called as APIP who will provide assessment if in a decision-making process there is an administrative mistake, or administrative error causing state's loss. In this Law, one of the reimbursement principles is in case of administrative error, causing losses to the state; hence, the

reimbursement is no later than ten days as of the issuance of monitoring result from Government Internal Apparatus (APIP).

With various problems in implementing Article 2 and Article 3 and the overlapping legislation to determine the state's loss, Supreme Court issued a circular letter Jampidsus Number B - 1113/F/Fd.1/05/2010 dated 18 May 2010. The circular letter causing polemics is interesting to be studied since this circular letter provides new insight on the Settlement for corruption crimes, also providing evidence that state's loss is an essential bestandeel delict in corruption crime formulation in Indonesia.

The content of this Circular Letter is related to the priority scale preparation process of corruption crime to significant cases from the perpetrator aspect and state's loss value and the possibility that this case is a repeated case. The second point of this circular letter is that the corruption crime perpetrator reimbursing the state's loss in small amounts needs to be considered not processed lawfully. The rationalization of this circular letter issuance is that the cost of corruption handling will be greater than the small amount of the state's loss value. The state's financial reimbursement benefit principle is greater than the perpetrator's punishment. This is normal because sometimes the perpetrator's act is due to negligence (culpa) or uneducated budget-user authority or commitment-making official on budget management aspects, and imitating their predecessors' or seniors' lousy habit or not abiding the budget management principles.

The notion from the Office of Attorney General to implement Settlement of corruption crime outside the court (out-of-court Settlement) as one of the alternatives must be appreciated well since the out-of-court Settlement is a normal thing in criminal justice practice, especially in countries adopting Anglo Saxon law doctrine. Many benefits can be obtained, namely cheap and fast criminal justice, and law enforcement aspect more oriented to benefit principle.

Out of court settlement has been implemented in Indonesia for a long time, namely article 12 B and article 12 C of Corruption Law, where gratification to the city employee is deemed as a bribe if it is related to his/her position becoming invalid if the gratification receiver reports the gratification he/she received to KPK no later than 30 days as of the gratification received.

This circular letter indeed caused polemics. One of the entities giving the strongest reaction was ICW stating that the circular letter potentially weakens corruption eradication efforts, harassing the Law specifically article 4 of Corruption Law, stating that the state's loss reimbursement does not remove the crime. This circular letter is prone to be misused by the prosecutor individual. The criticism indeed emerged due to two problems: ICW distrust in law enforcer integrity presumably will manipulate this process, and law entities in Indonesia are not accustomed to the out-of-court settlement idea proposed in this circular letter.

Polemics regarding this circular letter were restudied by the Office of Attorney General using measurement in theories on law certainty principle and benefit principle, sentencing, and restorative justice purpose. From the study, it was concluded by the Office of Attorney General that the state's loss categorized as small is ranging from fifty million rupiahs to three hundred million rupiahs, it is the basis that if there is corruption with losses under fifty million rupiah, then it will not be followed-up by Judiciary and Police if reimbursement has been given. However, there is an exception, especially in cases concerning public lives such as rice procurement for the vulnerable or school operational fund 4. The second conclusion was that losses above 50 million to 300 million rupiahs would not be directly stopped if reimbursement was given, but it must be investigated further.

Office of Attorney General also concluded that 55.38 respondents agree on the cessation of corruption case with small losses by referring to the clause that the cessation applied does not affect and harm the general public, and cessation of corruption case with small losses is more fitting to be implemented during the investigation because no big-budget charge incurred yet and no pro-justice effort performed or suspect Determination yet, hence facilitating the case cessation process or indicating legal certainty for the perpetrator if the case will be terminated or followed-up. This cessation is also in line with fast, simple, and cost-effective criminal justice system implementation, especially related to the operation cost of corruption crime handling at Police and Public Attorney, considering the vast geographical location of Indonesia making corruption case handling, especially in secluded areas will need high cost.

4. CONCLUSION

In the implementation of article 2 and article 3 of Law Number 31 of 1999 as amended in Law Number 31 of 2001, there are several problems among others which institution is authorized to calculate the state's loss and discrepancy in determining the state's loss calculation method causing pretrial charge or PTUN that add up the cost, time, thought, and power of the law enforcers.

From an administrative aspect, there is overlapping legislation to determine the state's loss, where the Law regulating state's loss reimbursement mechanism becomes a loophole continuously debated and sometimes is made as an entry to weaken law enforcement of criminal corruption act.

With various problems in the implementation of Article 2 and Article 3 of Corruption Law and overlapping legislation to determine the state's loss, the Office of Attorney General issued a circular letter for the

Settlement of corruption cases outside the court (out of court Settlement), especially cases with small loses that have been reimbursed. With the implementation of out-of-court Settlement, many benefits can be obtained, namely cheap and fast criminal justice and law enforcement aspect-oriented to benefit principle. However, monitoring, integrity, capability, and professionalism improvement of the law enforcers are necessary not to misuse the implementation of out-of-court Settlement.

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