



The Role of the Prosecutor in the Confiscation of Evidence of Bad Collectible Credit Guarantees in Investigations in the Criminal Act of Corruption, Misuse of Regional Company Finances BKK Pringsurat Temanggung District

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Abstract. The aims of this study were as follows: Identified and analyzed the role of the prosecutor in confiscating evidence of non-performing loan collateral in cases of corruption and financial abuse at PD BKK Pringsurat Kab. Temanggung. Efforts that taken by the prosecutor when there were a third party (non performing loan debtor) who made a loan return in the process of investigation and prosecution from a corruption case and financial abuse at PD BKK Pringsurat Kab. Temanggung. The methodology approaching used in this research was juridical-sociological research method. The specification in this study was analytical descriptive. Based on the results of this study, the role of the Public Prosecutor in handling evidence of loan collateral in the collectability of non-performing loan in the form of certificates of property rights, vehicle ownership certificate which could not be taken over, confiscated in cases of corruption and financial abuse at PD BKK Pringsurat Kab. Temanggung, and the procedure when debtor made a loan return during the investigation and prosecution of this case. The results of this study indicated that the prosecutor had the authority to investigate criminal acts of corruption and could carry out coercive measures, namely the confiscation of loan collateral in non-performing loan at the Regional Company PD BKK Pringsurat Kab Temanggung. Investigators conducted confiscation in accordance of the Criminal Procedure Code. Based on Article 19 of the Law on the Eradication of Criminal Acts of Corruption, the confiscation of evidence, there are obstacles, namely the confiscation efforts collide with Article 50 of Law no. 1 of 2004 concerning the State Treasury. However, the Investigating Prosecutor based on Article 19 of the Law on the Eradication of Criminal Acts of Corruption may consider a third party who has good intentions to pay off during the investigation and prosecution process which is then the result of the settlement as a rescue of state financial losses.

Keywords: Confiscation · Loan Collateral · Crime · Corruption

1 Background

The phenomenon of corruption has existed since humans began to organize their lives in the form of regular organizations.¹ The intensity of corruption varies in time and place, like other social problems, corruption is determined by various external factors. At first the corruption records pointed to the problem of bribery of judges and the behavior of government officials, which were initially considered to be acts of corruption. As society and state organizations develop, corruption also evolves from one phase of life to another.²

The criminal act of corruption is a part of criminal law besides having certain specifications that are different from special criminal law,³ such as the existence of irregularities in the procedural law and when viewed from the regulated material, direct or indirect acts of corruption are intended to minimize the occurrence of leaks and irregularities in the country's finances and economy. By anticipating these deviations as early and as minimally as possible, it is hoped that the wheel of the economy and development can be carried out properly so that gradually it will have an impact on increasing development and people's welfare in general.⁴

One of the prosecutor's powers as an investigator is to carry out confiscations. Based on Law Number 8 of 1981 concerning Criminal Procedure Code or better known as the Criminal Procedure Code, it contains rules regarding confiscation and management of confiscated objects. Provisions regarding general provisions for confiscation are regulated in Chapter V Part Four of Articles 38–46 of the Criminal Procedure Code. The management of confiscated objects is specifically regulated in Articles 44–46 of the Criminal Procedure Code.

The problem with the management of confiscated objects and confiscated goods or evidence stems from the use of forced measures in the form of confiscation by investigators. The basic principles and legal constructions of confiscation are often not understood comprehensively by investigators, including public prosecutors and judges, apart from primarily in relation to efforts to prove a criminal case in court. Confiscation of an item of evidence related to a crime often does not take into account the impact that arises, even though legally the type of object (to be) confiscated has different methods and consequences. In other words, the problem of managing confiscated objects and confiscated goods is not always due to limited management capabilities but can occur because investigators do not understand the need for confiscation and possession of their goods.

¹ Pricilia Ryana, Aisy Idzati, *Korupsi Dalam Kajian Hukum Dan Hak Asasi Manusia*, *Lex Scientia Law Review*, Vol 2 No 2 (2018), page 177–188.

² Ryana, P., & Idzati, A. “*Korupsi dalam Kajian Hukum dan Hak Asasi Manusia*”, *Lex Scientia Law Review*. Volume 2 No. 2, (November 2018), page 177.

³ Rully Trie Prasetyo, Umar Ma'ruf, Anis Mashdurohatun, *Tindak Pidana Korporasi Dalam Perspektif Kebijakan Formulasi Hukum Pidana*, *Jurnal Hukum Khaira Ummah*, Vol 12, No 4 (2017), page 727–741.

⁴ Lilik Mulyadi, *Tindak Pidana Korupsi (Tinjauan Khusus Terhadap Proses Penyidikan, Penuntutan, Peradilan Serta Upaya Hukumnya Menurut Undang-undang Nomor 31 Tahun 1999)*, Bandung, PT. Citra Aditya Bakti, 2000, page 1, 2.

Confiscation of evidence is always followed by confiscation of goods, namely control over physical evidence.⁵ Confiscation of evidence followed by physical possession often creates problems for investigators.⁶ Problems arise when the evidence confiscated by investigators is securities belonging to regional companies whose business is engaged in banking which was previously used as collateral by the customers of the company to apply for credit, where one of the modus operandi of the suspect is to make fictitious credit and restructuring credit without approval. Customers where if the collateral is confiscated it will be detrimental to the debtor and of course the creditor.

The corruption case handled by the Temanggung District Attorney's Office, namely the case of Misuse of Financial Management at the Regional Company BKK Pringsurat Temanggung caused a loss of state finances of Rp. 114,362,367,700,- (one hundred fourteen billion three hundred sixty two million three hundred sixty seven thousand and seven hundred rupiah) with the convicts Suharno, SE & Riyanto, SE serving as directors, with these losses being categorized as "Big Fish" by At the time of the investigation, the Attorney General of the Republic of Indonesia confiscated 1,113 collateral for loans in bad collectability, but repayment or execution of the collateral could not be carried out because there was no notarial binding (credit granting was not carried out in accordance with SOPs) for the collateral, when the investigation process took place many the customer on the credit took the initiative to make repayment and then the Investigating Prosecutor received money as repayment from the customer with a note to return the collateral pending a court decision with permanent legal force.

2 Research Methods

The approach method used in this study is research with sociological juridical methods.⁷ The sociological juridical approach technique is used to analyze and provide answers to legal issues according to the intended target.

3 Discussion

The results of the investigation into the case of alleged financial abuse of PD BKK Temanggung Regency based on information from 15 people summoned for questioning by the Investigating Prosecutor as contained in the Investigation Report with code (P-5) with number B/M.3.37/Fd.1/05/2018 dated May 28 2018 it was concluded that the Case of Alleged Financial Misuse of PD BKK Pringsurat was a criminal act, therefore the Head of the Temanggung District Prosecutor's Office immediately issued a Print Number Investigation Order; 02/O.3.37/Fd.1/07/2018 dated 11 July 2018.

⁵ Rachmatika Lestari, Nila Trisna, Dara Quthni Effida, Tanggung Jawab Rumah Penyimpanan Benda Sitaan Negara Dalam Pengelolaan Benda Sitaan Dan Barang Rampasan Hasil Tindak Pidana, *Ius Civile: Refleksi Penegakan Hukum dan Keadilan*, Vol 4, No 2 (2020), page 148–162.

⁶ Sulaiman Nandihanta Rezzi Suharso, Andri Winjaya Laksana, Peran Dan Fungsi Jaksa Dalam Pelaksanaan Pemusnahan Barang Bukti Penyalahgunaan Narkotika Di Kota Semarang, *Prosiding Konferensi Ilmiah Mahasiswa Unissula (Kimu)* 3, page 293–309.

⁷ Andri Winjaya Laksana, Sociological Analysis Of Narcotics Circulation Treatment On Students, *Jurnal Pembaharuan Hukum*, Vol 8, No 1 (2021), page 105–117.

The question that then arises is the authority to carry out the confiscation, who has the authority to carry out the confiscation. Confiscation is a legal action carried out at the investigative level. Article 38 of the Criminal Procedure Code that confiscation can only be carried out by investigators, so it is very clear that the Temanggung district attorney's investigator based on Article 38 of the Criminal Procedure Code has the authority to carry out confiscations.

Thus the Temanggung District Prosecutor's Office who was appointed as the Investigator of Corruption Crime Cases of Financial Misuse at PD BKK Pringsurat has the authority to confiscate anything related to criminal acts in accordance with Article 39 of the Criminal Procedure Code.

Of the twenty-five witnesses and three experts who were examined by investigators at the district attorney's office in Temanggung, a legal fact was obtained, namely that PD BKK Pringsurat was founded based on the Decree of the Governor of Central Java dated September 4, 1969, Number Dsa.G dated November 19, 1970, Number Dsa.G and Regional Regulation of the Province of Central Java Number 11 of 1981 which was amended by Regional Regulation Number 2 of 1988 concerning Sub-District Credit Boards which was later amended by Regional Regulation (Perda) Number 4 of 1995 and announced in the Provincial Gazette of the Province of Central Java Number 15 1996 series D Number 13, then amended by Central Java Provincial Regulation Number 19 of 2002 dated December 11, 2002 concerning Regional Credit Agency Companies in the District of PD BKK Pringsurat and received a merger permit with Central Java Governor Decree Number: 539/57/2009 concerning Approval BKK Business Merger Permit, Temanggung Regency. The last amendment to the articles of association with the Deed of Notary BETTY LISTYOWATI, S.H. Number: 6 dated 17 October 2009 concerning Amendment to the Articles of Association of the Regional Credit Agency of the Pringsurat District Company.

Based on the results of the witness statements, both witnesses from PD BKK Pringsurat staff, Intidana Cooperative, Central Java Provincial Government, Temanggung Regency Regional Government plus expert testimony from Chris Hermawan's Public Accounting Firm, and from the Financial Services Authority it was concluded that there were 8 (eight) the *modus operandi* i.e.;

1. Loans are not in accordance with the provisions and in bad collectability
2. Fictitious credit and credit restructuring
3. Placement of funds in the Intidana Cooperative (Loss)
4. Cash Back to Defendant I SUHARNO and Defendant II RIYANTO from the Intidana Cooperative
5. Giving interest above the provisions
6. Tax on deposit interest is the responsibility of PD BKK Principles
7. The difference in the payment of the Directors' and SPPD's salaries with the real financial conditions of PD BKK Pringsurat
8. Financial abuse (fraud) by PD BKK Pringsurat Employees

Through the Temanggung District Attorney's Investigation Warrant No Print-02/Q.3.31/Fd.1/07/2018 dated 11 July 2018 the Temanggung District Prosecutor's Office investigators wanted coercive measures in the form of searches and confiscations. This can be seen in the Plan for Investigation of Cases of Financial Misuse at PD BKK

Pringsurat which contains information on items that must be immediately confiscated, namely:

1. Certificate of Ownership, Proof of Motor Vehicle Ownership, Covernote, Letter of Appointment of employees as collateral for credit along with the Credit Agreement (especially for loans with bad or doubtful collectability). Deposit money for debtor customers at PD BKK Pringsurat.
2. Credit Agreements that are allegedly Fictitious and Credit Restructuring Agreements.
3. Proof of placement of funds from PD BKK Pringsura to the Intidana Cooperative.
4. Savings book of Intidana Cooperative members on behalf of SUHARNO & RIYANTO and proof of transfer from Intidana to SUHARNO & RIYANTO.
5. Letter from the board of directors regarding the determination of deposit rates, list of depositors and approved interest rates.
6. List of tax payments for depositors that are borne by the company.
7. List of directors' salaries and official travel of the directors.
8. Report of the Internal Audit Work Unit regarding allegations of fraud by employees.

The management of confiscated objects and confiscated goods has been regulated explicitly and clearly in Articles 44 and 45 and 46 of the Criminal Procedure Code. The provisions of Articles 44 and 45 specifically regulate confiscated objects from the time they are confiscated until a court decision is issued, while Article 46 specifically regulates confiscated objects after the birth of a court decision, whether those with confiscated status or other status.

As long as there is no state storage house for confiscated goods in the place concerned, the confiscated goods can be stored at the office of the state police of the Republic of Indonesia, at the district attorney's office, at the district court office, at the government bank building and under forced circumstances at another or permanent storage place. Where it was confiscated. From the explanation above, what the investigator did was correct.

The first reason investigators carried out the confiscation was that in this case an audit of the calculation of state financial losses had been carried out by the Public Accounting Firm Chris Hermawan and Partners, the Bad Credit was considered a state loss due to the provision of credit of Rp. 47,832,361,000, - cannot work as it should because there is bad credit (the customer cannot pay) of Rp. 42,041,162,907,-. In April 2018 bad loans amounted to Rp. 42,041,162,907, - could not be resolved by PD BKK Pringsurat by collecting or auctioning credit collateral and the fact was obtained that at the time of granting credit SUHARNO as the Main Director and RIYANTO as the Director of PD BKK Pringsurat did not carry out / violate the provisions of the standard operating procedures for granting credit as regulated in the Decree of the Board of Directors Number: 581/21/BKK/I/2014 dated 2 January 2014.

Credits that are categorized as bad collectibility by PD BKK Pringsurat are then declared by the auditor as a loss to the state on the grounds that these loans cannot be settled by PD BKK Pringsurat by collecting or auctioning collateral loans because on these credits PD BKK Pringsurat does not carry out/violate standard operational provisions procedures for granting credit as stipulated in the Decree of the Board of Directors Number: 581/21/BKK/I/2014 dated 2 January 2014.

This bad credit has resulted in a high Non-Performance Loan (NPL) of PD BKK Pringsurat as of December 31 2017 of 95.05%. In carrying out its business activities, PD BKK Pringsurat has overcome the high Non-Performance Loan (NPL) by carrying out credit renewal (credit restructuring) unilaterally/without any requests for credit restructuring from customers and without conducting a business feasibility assessment of debtors with non-current collectability (doubtful, substandard) and loss) so that the provision of credit restructuring makes the credit appear to have been paid off and new credit appears with the aim that credit plasticity becomes smooth and non-performance loans (NPLs) are low. The details of the PD BKK Pringsurat Credit Restructuring.

1. Credit Restructuring (KPO) Operational Head Office
 - a) Without the knowledge of the customer, a total of 182 credits with a total ceiling of Rp. 15,512,000,000 which were categorized as Loss, then credit restructuring was carried out again so that it became Rp. 14,699,000,000.
 - b) To the knowledge of the customer, 10 customers in the bad credit category have a total ceiling of Rp. 683,900,000 then credit restructuring was carried out to an amount of Rp. 611,000,000.
2. Tretap Branch Credit Restructuring
 - a) Without the knowledge of the customer, the customer totaled 159 credits with a total ceiling of Rp. 3,052,200,000 for the Loss category and then a credit restructuring was carried out again in the amount of Rp. 5,424,000,000
 - b) To the customer's knowledge, a total of 8 credits with a total ceiling of Rp. 53,000,000 Loss category, then a credit restructuring was carried out again in the amount of Rp. 52,700,000
3. Pringsurat Branch Credit Restructuring
 - a) Without the knowledge of the customer a total of 114 credits with a total ceiling of Rp. 5,773,000,000 Loss category, then credit restructuring was carried out again in the amount of Rp. 5,197,233,000
 - b) to the customer's knowledge of 15 credits with a total ceiling of Rp. 761,000,000 for the Loss category and then a credit restructuring was carried out again in the amount of Rp. 625,200,000
 - c) Non-real loan restructuring amounted to 128 customers with a total ceiling of Rp. 5,902,000,000 which was then restructured again to Rp. 5,902,000,000

Investigators in terms of exercising their authority can exercise discretion. Discretion is currently regulated in Law no. 11 of 2020 concerning Job Creation which amended Law No. 30 of 2014 concerning Government Administration but the author will conduct a discretionary analysis of the confiscation using Law no. 30 of 2014 concerning Government Administration because Investigators conducted an investigation into the Case of Financial Misuse at PD BKK Pringsurat in 2018.

As for the conditions that must be met by government officials to be able to use discretion according to Law no. 23 of 2014 is regulated in Article 24 of the law namely:

- a. in accordance with the purpose of Discretion as referred to in Article 22 paragraph (2);
- b. does not conflict with the provisions of laws and regulations;
- c. in accordance with AUPB;

- d. based on objective reasons;
- e. does not cause a Conflict of Interest; And
- f. done in good faith

The case of financial abuse at PD BKK Pringsurat by Defendant I Suharno and Defendant II Riyanto was finally decided in the Corruption Crime Court decision at the Semarang District Court, Number 15/Pid.Sus-TPK/2019/PN Sng, on Monday, 17 June 2019 by ANTONIUS WIDIJANTONO, S.H., as Chief Judge of the Panel, SULISTIYONO, S.H., and ad Hoc Judge ROBERT PASARIBU, S.H., M.H., Ad Hoc Judge AGOES PRIJADI, S.H. and the ad hoc Judge KALIMATUL JUMROH, S.H., M.H respectively as Member Judges, which decision was pronounced on the same day as pronounced in a hearing open to the public where the decision on evidence was in the form of a bad collectibility credit guarantee in the form of a certificate of ownership and BPKB of credit customers who made the payment to be returned to the person concerned and the redemption money was confiscated for the state as a rescue for state financial losses of Rp. 751,863,064 (seven hundred fifty one million eight hundred sixty three million sixty four rupiah), while for those who have not made a loan guarantee, they are returned to PD BKK Pringsurat through Mr. Supriyadi.

What was done by the investigator in receiving the repayment of bad collectibility customer credit in the case of financial abuse of PD BKK Pringsurat was in accordance with the discretion intended by Prajudi Atmosudirdjo, namely exercising discretion without neglecting the principle of legality and the principle of jurisdiction.

The investigator's action is a manifestation of the theory of law enforcement put forward by Satjipto Raharjo who argues that law enforcement is not a definite action, namely applying a definite action, namely applying the law to an incident, which can be likened to drawing a straight line between two points.. Where investigators can apply Article 19 of the Corruption Eradication Law to save state financial losses and protect the interests of third parties, namely customers of bad faith collectibility debtors and PD BKK Pringsurat who then get state loss rescue.

4 Conclusion

The role of the Investigating Prosecutor at the Temanggung District Attorney's Office in handling evidence of bad collectibility credit guarantees in the corruption crime case of Financial Misuse at PD BKK Pringsurat. The Temanggung District Attorney's Office has the authority to investigate the Corruption Crime Case of Financial Misuse at PD BKK Pringsurat which was declared detrimental to state finances by the auditor. One of the activities that is detrimental to the state is providing credit without a notarial binding so that loans that are categorized as bad cannot be executed on collateral. Confiscation of bad collectibility credit guarantees is in accordance with the Criminal Procedure Code. 1 of 2004 concerning the State Treasury is not in accordance with Article 24 of Law No. 11 of 2014 concerning Government Administration, but confiscation is a must because the spirit of eradicating corruption is to return lost state assets. Parties with good intentions do not need to object because Article 19 of Law no. 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes accommodates the rights of third parties with good intentions who are harmed.

Attempts made by the Investigating Prosecutor against credit customers (debtors) who have good faith in paying off the investigation and prosecution of the case of Financial Misuse PD BKK Pringsurat Kab. Temanggung The efforts made by the Investigating Prosecutor against Credit Customers (debtors) in bad collectability at PD BKK Pringsurat based on the audit of the Public Accountant Office Chris Hermawan and Partners are receiving repayment from bad debtors to be considered in a lawsuit based on Article 19 of Law Number 31 of 1999 as Law Number 20 of 2001 concerning the Eradication of Corruption Crimes has been amended as a safeguard for state financial losses.

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