



Efforts of Recovery of Assets Results of Crime of Corruption Through Additional Criminal Payments in Replacement

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Abstract. Corruption is a thing that is detrimental to state finances, so it is necessary to recover corrupt assets through additional payment of replacement money from the proceeds. However, the effectiveness of the implementation of replacement payments is still not optimal due to weaknesses in terms of legal substance, legal structure, and legal culture. Based on the above background, the authors formulate several problems, namely the effectiveness of law enforcement on corruption crimes through the recovery of assets resulting from criminal acts of corruption with additional criminal payments of replacement money based on Law Number 31 of 1999 jo. Law Number 20 of 2001, as well as efforts to recover assets resulting from criminal acts of corruption through additional criminal payments of replacement money in the context of law enforcement of criminal acts of corruption based on the perspective of justice. This study uses a normative juridical approach, with descriptive analytical research specifications. The data used in this study is secondary data obtained through literature study, then analyzed qualitatively using law enforcement theory, law effectiveness theory, and Islamic justice theory. The results of this study are: law enforcement of criminal acts of corruption through the recovery of assets resulting from criminal acts of corruption with additional criminal payments of replacement money has been effective but has not been maximized due to weaknesses, including: legal substance: criminal payments of money substitutes are facultative, Article 18 paragraph (3) UUPTPK is compromising, does not stipulate the calculation of the conversion of imprisonment with replacement money, and there are no technical rules for the execution of substitute money; legal structure: judges subsidize replacement money, difficulties for investigators to track assets, judges are positivistic-legalistic, disparities in substitute imprisonment, judges have difficulty determining corruption assets, and there is no coordination between law enforcers, and legal culture: the convict's bad faith not to pay a substitute sentence, and lack of public legal awareness; efforts to recover assets resulting from criminal acts of corruption through additional criminal payments of replacement money in the context of law enforcement of criminal acts of corruption based on a justice perspective, among others are: legal substance: the existence of guidelines for criminal penalties for subsidiary, renewal the authority of the Attorney General, renewal of the remission policy, legal reconstruction of the defendant's property, legal structure: confiscation of assets, imposition of substitute money without a subsidiary.

Keywords: Additional Criminal · Assets · Corruption · Crime · Recovery · Substitution

1 Introduction

Corruption has become one of the big and serious problems being faced by the Indonesian nation. The high level of corruption in Indonesia indicates that corruption in this country has spread to various areas of public life and has been going on for a relatively long time. Corruption has become a kind of phenomenon of everyday life in Indonesia.¹

As stated by Jeremy Pope that apart from being entrenched in society, corruption has also occurred in all areas of governance, be it executive, legislative or judicial. The label of corruption is not solely reserved for civil servants. TNI, Polri, employees of BUMN/BUMD or members of central and regional parliaments, or officials and practitioners of judicial functions, or conglomerates and members of the public with certain jobs that are directly or indirectly related to the public interest, for example lawyers, public accountants, notaries, and etc.²

As the 2020 Corruption Perceptions Index (CPI) released by Transparency International (TI), Indonesia shows that more than two thirds of countries are under a score of 50, with a global average score of 43. Transparency International gives a score starting from 0 which means very corrupt and 100 very clean. Indonesia got a score of 37 with a ranking of 102 out of 180 countries. This score is down three points from 2019.

This Corruption Perception Index serves as a warning, and a reminder of the condition of corruption in Indonesia which still needs to be addressed. Even though some corruptors have been sentenced to prison terms, these corruption crimes still occur, and the state suffers a lot of losses.

Rohim argued that corruption is generally carried out by people who have power in a position, so that the characteristics of corruption crimes are always related to the abuse of power in the perspective of organized crime. Corruption that occurs in the power environment is illustrated in the adage expressed by Lord Acton, namely power tends to corrupt and absolute power corrupts absolutely.³

For this reason, it is necessary to prevent and overcome corruption through law enforcement policies through legal instruments for recovering assets obtained from corruption, in this case criminal law instruments for payment of replacement money. In general, society recognizes law as rules, norms, guidelines, behavior, or laws and regulations which if violated will be subject to sanctions. This definition is very easy for

¹ Rakhmat Bowo Suharto dan Cipto Dwi Leksana, Implementation of Cooperation Agreement Between the Ministry of Internal Affairs, Police, Attorney General Office (Ago) in Handling and Crime Of Corruption in Indonesia, *Jurnal Daulat Hukum*, Vol. 2 No. 1, Fakultas Hukum Universitas Islam Sultan Agung, Semarang, Maret 2019, Page. 123.

² Jeremy Pope, *Strategi Memberantas Korupsi, Elemen Sistem Integritas Nasional*, Buku Panduan Transparency Interbational 2002, Edisi Pertama, Yayasan Obor Indonesia, Jakarta, 2003, Page. Xxi.

³ Rohim, *Modus Operandi Tindak Pidana Korupsi, Cetakan Pertama*, Pena Multi Media, Depok, 2008, Page. 4 dan 5.

the community to understand, because for people who are wrong or violate the rules must be punished.⁴ Every act or action that is against the law, will be subject to criminal sanctions as stipulated in the criminal law. The essence of criminal law is an imposition of suffering or sorrow or other unpleasant consequences.⁵

Bagir Manan argued that preventing corruption as a preventive action is no less important than eradicating corruption as a repressive action.⁶ Furthermore, according to Satjipto Rahardjo stated that the Indonesian nation is one of the most corrupt nations in the world, but those who appeared legally did not find corruptors. This teaches us about regularity that appears to be disorder.⁷ This statement is related to the current conditions in the handling of non-criminal corruption and should be interpreted as a criticism in law enforcement in corruption cases that are still felt to be selective and not optimal.

The criminal act of corruption is a crime against property or wealth, in this case property or wealth belonging to the state, so that the state suffers losses due to criminal acts of corruption. Therefore, the main thing in eradicating corruption is to recover assets resulting from corruption by returning corrupted state financial losses. Payment of replacement money is expected to be able to recover assets resulting from criminal acts of corruption and take all the proceeds of corruption from perpetrators of criminal acts of corruption.

2 Research Methods

The approach method used in this research is the juridical empirical approach, which is research that examines or traces people's attitudes and attitudes towards the applicable law.⁸ Sources of data used are primary and secondary data. Primary data refers to data or facts and legal cases obtained directly through research in the field, including information from respondents related to the object of research and practices that can be seen and related to the object of research.⁹

⁴ Jawade Hafidz Arsyad dan Dian Karisma, *Sentralisasi Birokrasi Pengadaan Barang & Jasa Pemerintah*, Cetakan Pertama, Sinar Grafika, Jakarta, 2018, Page. 63.

⁵ Sri Endah Wahyuningsih, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Pidana Islam dan Pembaharuan Hukum Pidana Indonesia*, Cetakan Kedua, Badan Penerbit Universitas Diponegoro, Semarang, 2013, Page. 80.

⁶ Bagir Manan, *Sistem Peradilan Berwibawa*, Fakultas Hukum UII Press, Yogyakarta, 2005, Page. 106.

⁷ Ahmad Gunaryo, *Menggagas Hukum Progresif Indonesia*, Sub Judul "Dari Rule of Law Menuju Rule of Social Justice", Pustaka Pelajar, Yogyakarta, 2006, Page. 20.

⁸ Nur Indah Setyoningrum and Anis Mashdurohatun, *Restorative Justice in Children's Criminal Jurisdiction System through Diversion*, *Law Development Journal*, Volume 2 Issue 4, December 2020, Page 573–581

⁹ Agus Irawan Yustisianto, Sri Endah Wahyuningsih, Anis Mashdurohatun, *Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value*, *Scholars International Journal of Law, Crime and Justice*, Vol 5 No. 12, Page 513-519

3 Results and Discussion

Corruption is an act that can cause harm to many parties, and can even affect the existence and development of the progress and welfare of the people of a country.¹⁰ Corruption in this country, deeply rooted and widespread that usually occurs in the center of government, has now penetrated even lower levels such as in the regions and villages. Not only in government, but has reached the courts, corporate, education, all aspects of life.¹¹

Forms of corrupt practices grow and develop over time, both in quality and quantity,¹² and the development of corruption in Indonesia is still relatively high, while its eradication is still very slow.¹³

Since the paradigm of eradicating corruption has shifted not only to punish the perpetrators, but also to chase after the money and assets of the corruption crime, since then various dynamics of confiscating assets have come to the fore. Event after event came and went to color the government's efforts to eradicate corruption. That is why the issue of confiscation of assets is very important and is an indicator of the success of law enforcement in eradicating corruption, as well as providing a big challenge for law enforcement to tackle and bring all corruptors to court to get the punishment they deserve.

In the 2003 Anti-Corruption Convention, return of assets is a basic principle of the Convention. It is important to create and formulate a legal theory called the theory of return on assets, because as Oliver Wendel Holmes said that theory is the most important part of law, just like an architect in building a house, theory gives shape, which according to Rudolf Von Jhering is rooted in the deepest essence of law.¹⁴

Basically, corruption is a crime that takes state-owned assets, thus reducing the state's ability to carry out its obligations and responsibilities.¹⁵ From the point of view of international social justice, the two principles "give the state what is its right" and "give the people what is their right to place responsibility on the country receiving the assets

¹⁰ Hulman Siregar, Rumusan Pidana dan Pemidanaan Tindak pidana Korupsi Yang Merugikan Keuangan Negara Serta Permasalahan Dalam Penerapannya, *Jurnal Daulat Hukum*, Vol. 1. No. 1, Fakultas Hukum UNISSULA, Semarang, Maret 2018, Page. 126.

¹¹ Luk Har Syan'in, Gunarto, dan Widayati, Criminal Investigation Polres Kudus Unit Efforts In The Prevention Of The Corruption In Village Funds Management, *Jurnal Daulat Hukum*, Vol. 2 No. 1, Fakultas Hukum UNISSULA, Semarang, Maret 2019, Page. 69.

¹² Hulman Siregar dan Rakhmat Bowo Suharto, Analysis and Review of The Implementation of Law Enforcement Operations Juridical Capture Corruption in The Criminal Justice System, *Jurnal Daulat Hukum*, Vol. 1 No. 3, Fakultas Hukum UNISSULA, Semarang, September 2018, Page. 844.

¹³ Muhamad Riyadi Putra dan Gunarto, Analysis Of Handling Practices On Corruption Crime By Police (Case Study In Special Criminal Investigation Police Directorate Of Central Java), *Jurnal Daulat Hukum*, Vol. 2 No. 2, Fakultas Hukum UNISSULA, Semarang, Juni 2019, Page. 209.

¹⁴ Teguh Prasetyo, *Kriminalisasi Dalam Hukum Pidana*, Nusa Media, Bandung, 2010, Page. 88.

¹⁵ Yesmil Anwar dan Adang, *Pembaharuan Hukum Pidana, Reformasi Pidana*, Gramedia Widia Sarana Indonesia, Jakarta, 2008, Page. 136.

resulting from corruption to return or help return these assets to the victim country.” corruption crime.¹⁶

Through the stages of the criminal justice system, from the level of investigation to court decisions, it is an important step for law enforcers to restore the people’s trust which has so far faded. The most important thing from these stages is the efforts of the Police and the Attorney General’s Office to bring the perpetrators of corruption to court, which are then sentenced by the Judge. What is highly anticipated is the criminal verdict handed down by the Judge which provides a deterrent effect for corruptors and can return assets resulting from corruption.

As it is known that in the theory of law, one of the goals of law is justice and expediency. According to Gustav Redbruch, the purpose of law consists of justice, benefit and legal certainty. Seeing justice and expediency is one of the fundamental goals in law enforcement, including efforts to eradicate corruption.

Law enforcement of corruption should consider aspects of justice and benefits for the wider community. Returning state financial losses through replacement money is much fairer and more beneficial for society. By returning state financial losses, the government can put them into the state treasury to be re-allocated for development that is oriented towards people’s welfare. Justice and expediency in upholding the law on corruption when viewed from a philosophical perspective will contribute to creating a prosperous state (welfare state). For this reason, it is necessary to prioritize law enforcement to secure and recover state funds that have been lost or reduced due to criminal acts of corruption through replacement money.

Recovering state losses through money crime is more beneficial than having to imprison perpetrators of corruption in Correctional Institutions. Imprisonment sanctions so far have not been able to show a deterrent effect for perpetrators of corruption.

The prison sentence imposed by the judge is still light enough for perpetrators of corruption. In addition, when applied to imprisonment in corruption cases as the most important sanction, it is felt that it is not suitable, considering that corruption is an economic crime, the orientation of the perpetrators is in the calculation of profit and loss. Before committing corruption, state administrators will usually calculate in advance how much it will cost with the money that will be received after the act is completed.

It is believed that implementing asset recovery can provide a deterrent effect compared to imprisonment for corruption crimes and capital punishment for narcotics crimes. Excellent examples come from the United States and several European countries. These developed countries have succeeded in recovering assets from criminal acts of narcotics which have a very large value.

Corruptors in Indonesia can breathe easy and happy after serving their sentences compared to those who committed corruption in China or Japan. Besides the harsh punishments from the state, the moral punishments from the people of the two countries are also very cruel. They are isolated, marginalized from the social environment in which they usually exist. In Indonesia, corruptors who have been released from prison can still get good social and political status in society, especially if they are still laden with wealth resulting from the corruption they once committed. People still surround him because of the wealth he still has.

¹⁶ Jan Rimmelink, *Hukum Pidana*, Gramedia Pustaka Utama, Jakarta, 2003, Page. 600.

4 Conclusion

Enforcement of the law on corruption through the recovery of assets resulting from the crime of corruption with additional criminal payments of replacement money based on Law Number 31 of 1999 jo. Law Number 20 of 2001 has been effective but has not been maximized due to weaknesses, including: the crime of payment of replacement money in Law Number 31 of 1999 jo. Law Number 20 of 2001 is only an additional optional sentence, so there is no obligation to impose it, Article 18 paragraph (3) of Law Number 31 of 1999 jo. Law Number 20 of 2001 is a formulation of compromising norms and provides an opportunity for corruption convicts to avoid paying replacement money, Law Number 31 of 1999 jo. Law Number 20 of 2001 does not regulate the procedure for calculating the conversion of the length of a prison sentence with money to replace a corruption convict who is still in arrears. Efforts to recover assets resulting from criminal acts of corruption through additional criminal payments of replacement money in the context of enforcing the law on corruption based on a justice perspective, establishing sentencing guidelines for substitute money subsidiary crimes, updating laws and regulations related to the authority of the Attorney General to seize the assets of someone suspected of having committed acts of corruption to prevent suspects from trying to divert their assets during the judicial process, renew the policy of granting remissions to convicts of corruption so they do not choose to serve alternative or subsidiary prison sentences by implementing limited and strict or selective remissions.

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