

JURIDICAL STUDY ON THE IMPLEMENTATION OF CONFIGURATION OF PROPERTY OF CRIMINAL OFFENDERS CORRUPTION IN INDONESIA

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Abstract

Current efforts to eradicate corruption are not only focused on arresting and providing criminal sanctions against the perpetrators, but also through efforts to recover financial and economic losses to the state by confiscating assets or property belonging to perpetrators of criminal acts of corruption. Thus, efforts to eradicate criminal acts of corruption are not only follow the suspect, but also follow the money/assets. The objectives of this writing are to: (1) Explain the mechanism for confiscating the assets of perpetrators of criminal acts of corruption. (2) Test whether the confiscation of assets of perpetrators that were not obtained from criminal acts of corruption can also be carried out. This research uses empirical normative juridical research methods. The primary data used is interviews with investigators at the Prosecutor's Office, while the secondary data used is the Law on the Eradication of Corruption Crimes and the Law on Prevention and, the Criminal Procedure Code and the Criminal Code, then the tertiary data is from books and journals. Based on the research results, it can be concluded that the mechanism for confiscating the assets of perpetrators of criminal acts of corruption uses 2 methods, namely: through criminal channels (in personam forfeiture), and through civil channels (in rem forfeiture). Apart from that, confiscation can be carried out on the assets of perpetrators of criminal acts of corruption, even if these assets were not obtained from criminal acts of corruption, as a consequence of the perpetrator's actions who must be held accountable for their actions which have harmed state finances.

Keywords: Confiscation, Perpetrator's Assets, Corruption Crimes

A. INTRODUCTION

Corruption in Indonesia is a very serious problem, which is not easy to eradicate because it is too deeply rooted in our nation, Indonesia. A Special Court institution is needed to be able to resolve the problem of corruption and also to restore state assets that have been lost due to corruption. Therefore, to be able to return or restore the state's financial or economic losses resulting from criminal acts of corruption, it is necessary to provide additional punishment in the form of payment of replacement money accompanied by confiscation of the defendant's assets (assets) which are proven to have been obtained from the proceeds of criminal acts of corruption. According to Eli Laila Kholis, corruption crimes result in direct and indirect losses to the state and people. Repressive efforts against criminal acts of corruption are currently not only focused on arresting and punishing the perpetrators of criminal acts of corruption with imprisonment and imprisonment, but also through efforts to recover financial and economic losses to the state by confiscating and then following up. by imposing additional punishment in the form of confiscation of the defendant's assets through a court decision. In fact, there are also other alternatives which can be taken through civil law by filing a lawsuit against the assets of perpetrators of criminal acts of corruption who have fled, died or defendants who have been acquitted in cases of criminal acts of corruption but there are strong indications that they have caused state losses.

B. FORMULATION OF THE PROBLEM

1. What is the Mechanism for Confiscating the Assets of Corruption Crime Perpetrators?
2. What is the Juridical Study of the Implementation of Confiscation of Assets of Corruption Crime Perpetrators in Indonesia?

C. RESEARCH METHODS

The type of research used in this research is normative legal research methods or library legal research. namely legal research carried out by examining library materials, namely primary and secondary data. These legal materials are arranged systematically to make it easier to draw conclusions from the problems studied. In approaching this problem using the Normative Juridical approach method. This approach is an approach to applicable legislation. The statutory approach is carried out by reviewing all laws and regulations that are related to the content of the law being handled.

The normative juridical problem approach is an approach used to approach statutory regulations (statue approach), this approach examines statutory regulations related to the problem being studied. Apart from that, a conceptual approach is also used to look at legal concepts related to existing problems.

D. DISCUSSION

1. Mechanism for Confiscation of Assets of Corruption Crime Perpetrators

Currently, efforts to eradicate criminal acts of corruption are focused on 3 aspects, namely, prevention, eradication and return of assets resulting from criminal acts of corruption (asset recovery) with the aim of recovering state financial losses. Returning state financial losses through confiscation of assets resulting from criminal acts of corruption has the following objectives:

- a. Return state assets that have been stolen by corruptors.
- b. Prevent corruptors from using the stolen assets to commit other crimes, such as money laundering.
- c. Provide punishment to parties who want to commit corruption.

Provisions regarding the return of the proceeds of crime (criminal acts) in Indonesia are scattered in various regulations. First: the general regulations which are the material basis for the return of the proceeds of crime are the Criminal Code (KUHP) whose procedural law (formal) is regulated in the Criminal Procedure Code (KUHAP). The provisions regulated in the Criminal Code and Criminal Procedure Code are used to cover the confiscation of assets resulting from crime in general crimes. Second: Laws that regulate legal action regarding confiscation of assets obtained from special criminal acts such as: Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law Number 20 of 2001 concerning Amendments to the Law -Law Number 31 of 1999.

- a. Confiscation of Assets in the Criminal Code (KUHP) Confiscation of assets is regulated in Article 10 letter b number 2 of the Criminal Code (KUHP) which is called "confiscation of certain items" which is classified as an additional crime. The location of "confiscation of certain items", which is within additional criminal regulations, gives rise to different characteristics and consequences compared to the main crime itself. According to PAF Lamintang and Theo Lamintang, the difference between basic punishment and additional criminal punishment is: 1) Additional criminal punishment can only be imposed on a defendant accompanied by a main criminal sentence, meaning that additional criminal punishment cannot be imposed separately, but must always be imposed together with a basic crime. There is an exception in Article 40 of the Criminal Code where in this article the judge may impose confiscation of goods

without a principal penalty for the crime of a minor whose decision is to be returned to their parents, guardian or guardian. 2) The additional punishment is facultative, so the judge is free to use or not use this option, meaning that it can be imposed, but not necessarily. 5 In imposing additional punishment in the form of confiscation of certain items, the only items that can be confiscated are certain items, because Criminal law no longer recognizes the confiscation of all the convict's assets, which was previously referred to as general confiscation. Article 39 of the Criminal Code determines in what cases confiscation can be carried out, there are two types of goods that can be confiscated, namely: First, goods belonging to the convict that were obtained due to a crime, such as counterfeit money obtained from the crime of counterfeiting money, money obtained from bribery crimes, and so on. These items are referred to as corpora delicti and can always be confiscated as long as they belong to the convicted person and originate from the crime. Second, items belonging to the convicted person were intentionally used to commit a crime. These items are called instruments of delicti.

- b. Confiscation of Assets in the Criminal Procedure Code (KUHP) The Criminal Procedure Code (KUHP) also regulates provisions regarding the confiscation and confiscation of assets resulting from criminal acts. The provisions of criminal procedural law stipulate that before legal action in the form of confiscation is carried out, the object or goods to be confiscated must first be confiscated by an investigator. Legal action in the form of confiscation relating to assets resulting from criminal acts in the Criminal Procedure Code is regulated in Articles 38, 39, 42, 44 and 45. Meanwhile, confiscation of assets is regulated in Article 46 paragraph (2). Court decisions relating to evidence can be found in Article 46 paragraph (2) and can contain the following provisions: First, if the case has been decided, the objects that have been confiscated and used as evidence will be returned to those who are most entitled to receive them according to the judge's decision. . Second, there is a decision which states that evidence will be confiscated in the interests of the state. This decision can be found in economic crimes, smuggling, narcotics and others, while the confiscated evidence will be destroyed if the evidence is deemed dangerous, and will be auctioned off. If the goods are not dangerous, the auction proceeds will belong to the state.
- c. Confiscation of Assets in Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. Confiscation of assets in cases of criminal acts of corruption is focused on Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Confiscation of property (assets) obtained or originating from criminal acts of corruption is an additional crime and part of efforts to recover state financial losses which are expressly stated in Article 18 Paragraphs (1), (2) and (3) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which reads: 1) Apart from additional crimes in the Criminal Code (KUHP), what can be additional crimes are: a) Confiscation of tangible or intangible movable goods or immovable goods, which are used and obtained from the proceeds of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as the price of the goods that replaced the goods; b) Payment of compensation money in the same amount as the assets obtained from the proceeds of corruption; c) Closing of business or part of the company for a maximum period of 1 (one) year; d) Revocation of all or part of certain rights or removal or part of certain benefits that the government has or can provide to convicts. 2) If the convict cannot pay the replacement money, as intended in paragraph (1) letter b within a maximum of 1 (one) month, then based on a court decision that has permanent legal force, his assets can be confiscated by the prosecutor and auctioned off to cover the replacement money. 3) In the event that the convict does not have sufficient assets to pay replacement money as intended in paragraph (1) letter b, then he will be sentenced to imprisonment for a duration not

exceeding the maximum threat of the main sentence, in accordance with the provisions of the law and the length of the sentence. This has been determined in the court decision. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999, also regulates the method of returning assets using a civil lawsuit mechanism. The mechanism for returning assets by filing a civil lawsuit against the perpetrator or his heirs is carried out when investigators find and are of the opinion that in a criminal case of corruption there is sufficient evidence of real financial losses to the state. So, the investigator can submit the case files resulting from the investigation to the State Attorney or agency that suffered the loss to file a civil lawsuit.

2. Juridical Study of the Implementation of Confiscation of Assets of Corruption Crime Perpetrators in Indonesia

Juridical Study of the Implementation of Confiscation of Assets of Corruption Crime Perpetrators in Indonesia is as follows:

- a. Confiscation of Assets Through Criminal Procedure Implementation of the asset confiscation mechanism is in accordance with criminal procedural law, both as regulated in the Criminal Procedure Code (KUHP) and in the Corruption Eradication Law. This mechanism aims to ensure that the essence of the criminal act committed can be proven that the act is an unlawful act. Before an investigation is carried out, an investigation is carried out by an investigating official with the aim and purpose of collecting preliminary evidence or sufficient evidence so that a follow-up investigation can be carried out, through the criminal justice system, namely: a) Investigation (1) Asset Tracing The definition of asset tracing as stated in the Regulations Attorney General of the Republic of Indonesia Number PER-027/A/JA/10/2014 dated 1 October 2014 is a series of actions to seek, request, obtain and analyze information about knowing or disclosing the origin, existence and ownership of assets. Asset tracing activities need to be preceded by asset tracing planning, namely preparations for carrying out asset tracing activities that are carefully structured regarding everything that will be carried out by the asset tracing implementer, so that valid information and data can be obtained. (2) Blocking To secure assets allegedly obtained from criminal acts of corruption in the form of money deposits in banks, whether in the process of investigation, prosecution or even examination in court, investigators, public prosecutors or judges can ask the bank to block savings accounts belonging to the suspect or accused. which is suspected to be the result of corruption as regulated in Article 29 paragraph (4) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. (3) Confiscation Legal action in the form of confiscation of assets is carried out by investigation by first requesting permission from the Chairman of the local District Court in accordance with the provisions of Article 38 paragraph (1) of the Criminal Procedure Code. However, if it is an urgent situation and only for movable objects, the confiscation can be carried out first before obtaining permission from the Chairman of the local District Court, and for this reason it is mandatory to immediately report it to the Chairman of the Local District Court to obtain approval. Such confiscation procedures are also regulated in Article 47 paragraph (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission. According to the provisions of Article 38 paragraph (1), it is stipulated: "Confiscation can only be carried out by investigators with a permission letter from the head of the local district court."
- b. Implementation of Asset Confiscation Based on Court Decisions in accordance with the implementation of Asset Confiscation in eradicating criminal acts of corruption is very important, so according to Muhammad Yusuf: "based on the experience of

Indonesia and other countries, it shows that uncovering criminal acts, finding the perpetrators and placing the perpetrators of criminal acts in prison (follow the suspect) apparently is not effective enough to reduce the crime rate if it is not accompanied by efforts to confiscate and confiscate the proceeds and instruments of criminal acts." Confiscation of assets originating from criminal acts of corruption through criminal channels (in personam forfeiture/convicted based asset forfeiture) as previously described is an additional crime regulated in Article 18 paragraph (1) and paragraph (2) of Law Number 31 of 1999 concerning Eradication Corruption Crime as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999. Confiscation of assets must be based on a court decision as stated in the verdict with additional criminal provisions for payment of compensation money and confiscation of assets objects belonging to the defendant if the defendant does not pay compensation.

- c. Implementation of Confiscation of Assets Obtained from Criminal Acts of Corruption through Civil Procedure (Lawsuit) Confiscation of assets obtained from criminal acts of corruption through civil action (in rem forfeiture/civil forfeiture) or by civil lawsuit has a specific character, namely that it can only be carried out when It is no longer possible to use criminal measures to recover state losses. Confiscation of assets or assets of perpetrators of criminal acts of corruption through civil law is carried out based on the provisions of Articles 32, 33, 34 of Law Number 31 of 1999 and Article 38 C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Confiscation of the perpetrator's assets which were not obtained from criminal acts of corruption. In principle, confiscation of the assets of perpetrators of criminal acts of corruption involves property obtained as a result of committing criminal acts of corruption. This is stated in several articles as described above. However, it is possible that confiscation could be carried out on property belonging to the perpetrator whose origin is not yet clear, whether it was obtained from a criminal act of corruption or not obtained from a criminal act of corruption. The Law on the Eradication of Corruption Crimes gives the right to prove that the perpetrator (defendant) has not committed a criminal act of corruption, and conversely also gives the perpetrator (defendant) the obligation to prove that part or all of his property, the property of his wife or husband, and children nor other people or corporations are not obtained from criminal acts of corruption. Confiscation of assets belonging to convicts that are not the proceeds of criminal acts of corruption can also be carried out based on the provisions of Article 18 paragraph (2) of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, where the judge gives a decision in the form of an additional criminal payment of compensation in the amount or value of what was enjoyed. by the defendant, accompanied by a determination that the convict's assets be confiscated if the convict does not pay the replacement money within 1 (one) month of the decision which has obtained permanent legal force. So, the convict's property was confiscated by the prosecutor and auctioned off to cover the replacement money. According to Saipuddin Zahri, assets belonging to perpetrators of criminal acts of corruption can be confiscated and auctioned off even though the assets were not obtained from criminal acts of corruption, but because the defendant's actions have caused state financial losses, the defendant must be able to take responsibility for his actions. Saipuddin Zahri further stated: it is possible that the money that was misappropriated or misused by the perpetrator was not used to enrich himself, but to live lavishly, gamble or for the personal interests of other defendants.

E. CLOSING

Conclusion

1. Mechanism for Confiscation of Assets of Corruption Crime Perpetrators

Currently, efforts to eradicate criminal acts of corruption are focused on 3 aspects, namely, prevention, eradication and return of assets resulting from criminal acts of corruption (asset recovery) with the aim of recovering state financial losses. Recovering state financial losses through confiscation of assets resulting from criminal acts of corruption has objectives as follows:

- d. Return state assets that have been stolen by corruptors.
- e. Prevent corruptors from using the stolen assets to commit other crimes, such as money laundering.
- f. Provide punishment to parties who want to commit corruption.

2. Juridical Study of the Implementation of Confiscation of Assets of Corruption Crime Perpetrators in Indonesia from criminal acts of corruption through criminal law channels is carried out in 2 (two) ways, namely: the first method is based on the provisions of Article 18 Paragraph (1) letters a, b, c and d , as well as Article 38 paragraph (5) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which of course means that confiscation is preceded by confiscation during investigation or pre-prosecution or during a trial in court. The second method is confiscation of the perpetrator's assets which were not obtained or derived from criminal acts of corruption. This is done based on the provisions of Article 18 paragraph (2), which is carried out if the convicted person does not pay compensation within 1 (one) month after the court decision. legally binding. Confiscation of assets or assets of perpetrators of criminal acts of corruption through civil law is carried out based on the provisions of Articles 32, 33, 34 of Law Number 31 of 1999 and Article 38 C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Confiscation of assets belonging to the perpetrator that were not obtained or derived from criminal acts of corruption can also be carried out if the perpetrator (convict) does not voluntarily pay the compensation money that has been determined for him based on a court decision. The confiscation of these assets aims to cover state financial losses or restore the state's economy. Confiscation of assets obtained from criminal acts of corruption is a very complicated legal action and involves various institutions, while the mechanism has not been regulated separately in statutory regulations, but is only part of the Law on the Eradication of Corruption Crimes, the Law on prevention and eradication. Money Laundering Crimes, Criminal Procedure Code and so on. Considering the complexity of the mechanism for confiscation of assets, it is necessary to form separate regulations that can regulate in detail the mechanism for confiscation of assets originating from criminal acts.

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