

Return of State Financial Losses in an Effort to Realize Restorative Justice in Corruption Crime

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Abstract. This study aims to find out how the implementation of the return on state financial losses in corruption crimes and to find out how criminal law policies in enforcing corruption crimes in realizing restorative justice. The research method used is normative juridical and by using a statutory approach. The results of the study show that it is the absolute authority of the judge who adjudicates it to determine the existence of state financial losses. As for the settlement of cases of criminal acts of corruption in court, in their settlement, they should apply criminal law as an ultimum remedium. Based on this, it shows that in an effort to realize restorative justice, it is necessary to apply evaluative sanctions so that justice can be realized. Based on this, it is important to carry out reformulation and reconstruction of the provisions for handling criminal acts of corruption. Based on this, it shows that in an effort to realize restorative justice, it is necessary to apply evaluative sanctions so that justice can be realized. Based on this, it is important to carry out reformulation and reconstruction of the provisions for handling criminal acts of corruption. Based on this, it shows that in an effort to realize restorative justice, it is necessary to apply evaluative sanctions so that justice can be realized. Based on this, it is important to carry out reformulation and reconstruction of the provisions for handling criminal acts of corruption.

Keywords: State Financial Losses, Restorative Justice, Corruption

1. Introduction

In social life, it cannot be separated from criminal acts or crimes or criminal acts (*strafbaar feit*). Therefore the existence of law is very necessary. Indeed, the law is the basis, basis, morals, and oversees the achievement of life goals that are aspired together. Of course the law also functions to prevent, reduce and eradicate criminal acts. To overcome this, legal instruments are the official mechanism of the state. Moreover, Indonesia is a country based on law, of course efforts to uphold the law do not ignore the purpose of law. LJ Van Apeldoorn, said that basically the law must achieve its goal. Until now the practice of criminal acts of corruption committed by office holders of State administrators has created a bad stigma in society towards State administrators. [1]

One of the objectives of eradicating corruption in Indonesia is to recover state financial losses for the benefit of society and to anticipate various crises in various fields. Optimizing the recovery of state financial losses is also the basis for formulating criminal penalties against

corporate corruption actors. However, in practice there are obstacles in trying to recover state financial losses through criminal prosecution of corporations who commit corruption both in terms of substance, structure and legal culture.[2]

Every corruption case certainly brings losses to the state, moreover it is exacerbated that the corruption case turns out to be a multi-year project that requires trillions of funds to realize it (MA Decision No. 2427 K/Pid.Sus/2014, 2014:13). For example, in 2012 this case revealed, the Hambalang project was almost halfway underway but had to be stopped and the process closed due to a corruption case that ensnared its initiators. The settlement of corruption cases is certainly never apart from the important role of law enforcement. The role of law enforcers involved in this case must of course be able to consider aspects of saving state finances. One way to save state finances is to reduce losses arising from the actions of this corruption case so that it doesn't get worse, because the state assets stopped working on the Hambalang project. Reducing the impact of state losses from corruption cases that have occurred must also be considered properly in responding to each corruption case, starting from law enforcers who have the right paradigm to save state finances from a progressive approach. Settlement of corruption cases should not only focus on punishing the perpetrators of imprisonment but also need to prioritize saving state finances which is a form of public rights in a progressive approach.[3]

One of the solutions and its application is starting to be considered for optimizing the recovery of state losses caused by corruption is a restorative justice approach. The existence of a restorative justice approach is marked by a change in the principle of eradicating corruption from *primum remedium* to *ultimum remedium*. Criminal sanctions are used after other sanctions in the form of administrative or civil are unable to effectively and efficiently deal with corporate crime and recover the resulting state financial losses. Through restorative justice, it is hoped that corporations will cooperate in returning state financial losses that have been corrupted without having to face prosecution before the court.

A number of other national instruments have also been issued, namely the MPR Decree No. XI / MPR / RI of 1998 and was later followed by other products, including Law Number 28 of 1998 concerning the Implementation of a State that is Clean and Free from KKN, Law Number 31 of the Year 1999 concerning Prevention and Eradication of Criminal Acts of Corruption juncto Law Number 20 of 2001 and TAP MPR No. VII / MPR / RI of 2001 concerning Recommendations for Policy Direction for the Eradication and Prevention of KKN and Law Number 30 of 2002 concerning the Establishment of a Corruption Eradication Commission (KPTPK), which is now better known as the Corruption Eradication Commission (KPK). The National Legal Product aims to realize good governance and free from KKN (Corruption, Collusion and Nepotism). In addition to establishing national law, there is also an international instrument, namely the "UN Convention Against Corruption" which was passed by the DPR on March 21, 2006 to become law. The DPR considers that the ratification of the 2003 UN Anti-Corruption Convention has a strategic meaning because it can be used as a legal umbrella in eradicating corruption, by means of international cooperation. The government stated that the 2003 UN Anti-Corruption Convention contained a breakthrough in dealing with criminal acts of corruption. With the ratification of this convention, international cooperation in fighting corruption and other international crimes will be facilitated. The space for corruptors to hide and flee their crimes to a number of countries is getting narrower.[4]

In its implementation, the implementation of returning state losses after 10 days from the decision, there is also the potential for abuse of authority, which results in law enforcement not going well.[5]

Therefore, this study aims to find out how the application of restitution of state financial losses in criminal acts of corruption and to find out how criminal law policies in enforcing corruption crimes in realizing restorative justice.

2. Method

This research is normative juridical research, thus the data used in this research is secondary data. Research materials are primary materials in the form of laws and other laws and regulations as well as secondary materials in the form of books and other library materials such as articles in journals, both published in book form and those found on the internet. In addition, tertiary materials such as dictionaries are also used. All of these materials were studied carefully and then presented as data in the form of descriptions. Then the data was analyzed qualitatively to answer the problems in the research which ultimately resulted in conclusions and suggestions.

3. Results and Discussion

1. Implementation of State Financial Loss Recovery in Corruption Crimes

Restorative Justice is a reaction to 2 (two) theories in sentencing, namely: a retributive theory that is oriented towards retaliation which is actually reactive to an act, deliberately imposed on an offender, criminal sanctions are focused on the punishment applied to the crime committed, where criminal sanctions sourced from the idea of "why do punishments take place" and neo-classical theory which is oriented towards equality of criminal sanctions and action sanctions. Meanwhile, the action sanction originates from the idea "what is the punishment for?" If in retributive theory the criminal sanction is directed at the wrongdoing of a person through the imposition of suffering (so that the person concerned becomes deterrent), then the action sanction is directed at providing assistance so that he changes.[6] Action sanctions aim to be more educational in nature and oriented towards community protection.[7] If Retributive Justice is seen as a philosophy, a process, an idea, a theory and intervention, Restorative Justice is justice that emphasizes repairing losses caused or related to criminal acts carried out through a cooperative process involving all parties (stakeholders).[8]

Corruption has a massive impact on the economic development of a country. State losses were initially debated because of the unclear understanding of loss to the country's economy (blurred) in UUPTPK, understanding of actual loss or potential loss for calculating state financial losses or the country's economy and which party has the authority to determine (calculate) state financial losses or the country's economy, thus becoming an obstacle in accelerating the eradication of corruption. The verdict number 25/PUU-XIV/2016 states that the word 'can' in Article 2 paragraph (1) and Article 3 of the Corruption Law is contrary to the 1945 Constitution and does not have binding legal force. Corruption Crime. Actual losses arising from acts of corruption should be pursued to restore state losses. Restoring the state's financial condition, or the state's economy and the condition of society, should be the aim of the law enforcement process.[9]

Law enforcement efforts by law enforcement officials in order to achieve peace and tranquility in society and law enforcement officials, one of which is the issuance of a Circular Letter of the Junior Attorney General for Special Crimes Number: B-113/F/Fd.1/05/2010 dated 18 May 2010, one of the points in its contents is to instruct the entire High Prosecutor's Office which contains an appeal that in cases of suspected criminal acts of corruption, people

who are aware of returning state losses need to be considered not to be followed up on the principle of restorative justice. But even though the Deputy Attorney General for Special Crimes Circular Number: B-113/F/Fd.1/05/2010 dated 18 May 2010 was issued to focus on handling corruption crimes with large state losses,[10]

According to B. Arief Sidharta, philosophy of hermeneutics provides a philosophical (ontological and epistemological) basis for the science of law, or the philosophy of science from the science of law. This is because in implementing jurisprudence to resolve a legal issue, for example in a court of law, interpretation is not only carried out on juridical texts, but also on facts that give rise to the relevant legal issues (eg establishing relevant facts and their juridical meaning). Based on the explanation that has been stated above, it can be understood that law enforcement against corruption crimes with losses to the state will continue to the trial stage even though instructions have been issued to prosecutors to rule out corruption crimes with losses, which is contained in SE Jampidsus Number: B-1113/ F/Fd.1/05/2010., because the juridical texts or regulations violated by the perpetrators of corruption and the facts or evidence that have been obtained are very relevant so that even though the corruption causes losses to the state, it continues because it has fulfilled the evidence or facts and actions that violate the law on corruption. Ardi also stated, "Law enforcement of criminal acts of corruption is carried out indiscriminately, meaning that when a corruption case occurs that has fulfilled at least 2 (two) pieces of evidence and elements in the law on eradicating corruption, the perpetrators can be prosecuted. to the trial stage. And on that matter,

2. Criminal Law Policy in Enforcing Corruption Crimes in Realizing Restorative Justice

According to Law no. 31/1999 which was amended by Law no. 20/2001 concerning the Eradication of Corruption, corruption is a crime that is very detrimental to state finances or the country's economy and hinders national development as well as hampers the growth and continuity of national development which demands high efficiency. It is further stated in the consideration section of the law that the criminal act of corruption is said to be a violation of the social and economic rights of society at large, so that the criminal act of corruption is classified as a crime whose eradication must be carried out in an extraordinary way. Therefore, the arrangement of criminal compensation money and fines is one of the efforts to restore state financial losses.

In Law no. 3/1971, for example, the issue of criminal compensation for money has been regulated where the amount of payment for replacement money is as much as possible with the amount of money that has been corrupted. However, this law has a weakness, namely it does not explicitly determine when the replacement money must be paid, and what the sanctions will be if the payment is not made. This law actually weakens the obligation to pay the replacement money. In the elucidation part of the law it is stated, if the replacement money payment cannot be fulfilled, the provisions concerning the payment of fines shall apply. Likewise with Law no. 31/1999 in conjunction with Law no. 20/2001 also regulates the issue of criminal compensation. Article 18 paragraph (1) letter b states that the perpetrators of criminal acts of corruption may be subject to additional punishment in the form of payment of compensation in the maximum amount equal to the assets obtained from criminal acts of corruption. There has been some progress in this law, where the provisions regarding replacement money have become more stringent, namely if it is not paid within 1 (one) month, the convict will be immediately executed by putting him in prison. The prison sentence has

been determined in the judge's decision, the length of which does not exceed the maximum threat of the principal sentence. the convict was immediately executed by putting him in prison. The prison sentence has been determined in the judge's decision, the length of which does not exceed the maximum threat of the principal sentence. the convict was immediately executed by putting him in prison. The prison sentence has been determined in the judge's decision, the length of which does not exceed the maximum threat of the principal sentence.

However, the concept of restorative justice has not been fully implemented in these regulations. Because Law No. 31/1999 in conjunction with Law no. 20/2001 concerning the Eradication of Corruption Crimes stipulates that cases decided on, there is already a one month payment deadline, if the replacement money is not paid then the property can be confiscated by the Prosecutor and the confiscated property can be auctioned off to cover the replacement money which is in accordance with a court verdict that has permanent legal force, and if the convict does not have sufficient assets to pay replacement money, then the punishment shall be in the form of imprisonment for the convict whose duration does not exceed the principal sentence. So that the return of state losses is an additional criminal sanction, not the main criminal sanction.[11]

Financial returns from the proceeds of Corruption Crimes are already an independent norm, with the legal principle that perpetrators of Corruption Crimes may not benefit from the proceeds of corruption. In the context of criminal acts committed by criminal acts, confiscation of assets due to criminal acts of corruption can be used to increase the condition of damage and degradation of the quantity and quality of the economy and people's welfare. Returns of crime are often associated with time. When a return is made before the investigation begins, it is often interpreted as writing off a crime committed by someone. However, if done after the investigation has started, returns do not eliminate the crime. So, there is indeed relevance between returning the proceeds of corruption and the criminal sanctions imposed on officers. On the one hand, returning money from corruption can be a reason for judges to reduce sentences for perpetrators, but not eliminate crimes. According to applicable laws and regulations or customs. Article 1 point 1 Law Number 17 of 2003 concerning State Finance states that state finances are all rights and obligations of the state that can be valued in money, as well as everything in the form of money or in the form of goods that can be used by the state in connection with the implementation of rights and these obligations.[12]

4. Conclusion

The implementation of returning state financial losses in corruption crimes, in law enforcement, continues to the trial stage even though instructions have been issued to prosecutors to rule out corruption crimes with losses, besides that determining the existence of state financial losses is the absolute authority of the judge who tried them. Criminal law policies in enforcing corruption crimes in realizing restorative justice, should apply criminal law as an ultimum remedium. Based on this, it shows that in an effort to realize restorative justice, it is necessary to apply evaluative sanctions so that justice can be realized. Therefore it is important to carry out reformulation and reconstruction of the provisions for handling criminal acts of corruption.

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