

THE URGENCY OF THE ASSET CONFISCATION LAW AS A MEANS OF RETURNING STATE LOSSES RESULTING FROM CRIMINAL ACTS OF CORRUPTION

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Abstract

Indonesia as a developing country certainly requires a lot of fund for its national development in all fields. In this regards there is an interesting phenomenon that has become a culture in almost all level of society, that phenomenon is corruption. Corruption is a frightening thing for the national development of every country in the world, because corruption can hinder national development. One of the impact of corrupt behavior is from the economic aspect namely state losses. To overcome this indonesia needs a regulation that regulates the return of assets because in several countries the existence of assets confiscation law has been recognized, but unfortunately indonesia has not recognized the existence of this law. Even though a lot of assets resulting from criminal acts of corruption are stored abroad.

Keyword : confiscation of assets, state losses, criminal, corruption,

1. INTRODUCTION

The criminal act of corruption, which is included in the category of extra ordinary crime, continues to experience an increasing trend every year. In general, the perpetrators of this crime always try to disguise the origin of the assets obtained as a result of criminal acts in various ways so that the assets cannot be traced and can be used for other purposes. what is halal or haram.

Corruption as a criminal act that is an extraordinary crime has a huge impact on the condition of the country. One of the most real and deeply felt impacts is the massive impact of corruption in the economic sector, where this corruption has caused enormous state losses.¹

The impact of the spread of corrupt behavior in the wider community in the economic sector is sluggish economic growth, decreased community productivity, low quality of goods and services for the public, decreased state income, and increased state debt.²

One effort to overcome the impacts as mentioned above is to return assets resulting from criminal acts of corruption to the state. However, efforts to return assets resulting from criminal acts of corruption in Indonesia are not running optimally due to the absence of specific regulations governing this matter. In fact, the assets resulting from corruption from the perpetrators of these criminal acts are widely spread across various countries

1.1. formulation of the problem

¹ Zico Junius Fernando, Pujiyono, Nur Rochaeti, confiscation of assets of criminal perpetrators from the perspective of human rights and criminal law principles, legal legislation, volume 19, no 1, March 2022, p 84.

² Nanang T Puspito et al, 2011, anti-corruption education textbook, Ministry of Education and Culture of the Republic of Indonesia, Jakarta.

Moving on from the background as explained above, the problem that will be raised in this article is what is the urgency of the asset confiscation law as a means of returning state losses resulting from criminal acts of corruption?

1.2. Metode Penelitian

The research method used in this paper is the normative legal research method, namely research carried out by examining statutory regulations that are intertwined with the legal issues being discussed.³

2. Literature review

2.1. confiscation of assets

Asset confiscation is a legal action by the state to take over control of assets with a court decision in a case based on strong evidence that the assets are strongly suspected to be the result of a criminal act or used to carry out a criminal act.⁴

2.2. state losses

State losses are a shortage of money, securities and goods in real and definite amounts as a result of unlawful acts, whether intentional acts (opzet) or those that occur due to negligence that must be legally accounted for.⁵

2.3. Corruption Crime

Etymologically, the word corruption comes from Latin, namely corruption or corruptus, where the terminology itself comes from the word corumpere, an older Latin word. Next, many terminologies were born in foreign languages for the term corruption, such as corruption, corrupt, and corruptie. Literally, the word corruption has various meanings, namely rottenness, ugliness, depravity, dishonesty, corruptibility, immorality, and deviation from purity.⁶

Next, a new terminology emerged that was previously unknown, where this terminology is a terminology that is specifically known in corruption laws and regulations in Indonesia, namely "criminal acts of corruption. The term non-corruption crime consists of two terms, namely criminal acts and corruption.

A criminal act is a wrongful act that contains the nature of *wederrechtelijkeheid* which is committed by a person who is capable of responsibility and is threatened with sanctions. Meanwhile, corruption is a bad act such as embezzling money, accepting bribes and so on.⁷

In the criminal act of corruption law, a criminal act of corruption is defined as an unlawful act that harms state finances, regional finances, or the finances of agencies that receive assistance from the state.⁸

³ "Understanding normative legal research methods", accessed from <http://Hukumonline.com/>, accessed on 17 May 2024 at 19.10

⁴ Refki Saputra, challenges in implementing asset confiscation without criminal charges (non-conviction based asset forfeiture) in the asset confiscation bill in Indonesia, *integrity journal*, volume 3, no 1, March 2017, p. 119.

⁵ Runi Yasir, Faisal A Rani, Moh Din, authority to determine state financial losses in cases of criminal acts of corruption, *Syiah Kuala Law Journal*, volume 3, no 2, August 2019, p 282

⁶ Andy Hamzah, 2014, *eradicating corruption through national and international criminal law*, Jakarta, Rajagrafindo Persada, p. 4.

⁷ Andy Hamzah, *ibid*, p. 5

⁸ Adami Chazawi, 2016, *Corruption Criminal Law in Indonesia*, Jakarta, Rajagrafindo Persada, p 4
International Conference on Agriculture, Engineering, Social Science and Education 2024

2.DISCUSSION

3. In Indonesia, the legal issue of human rights is an issue that is always hotly studied. Where if we examine it from the perspective of human rights law, these basic human rights are innate rights that humans have had since they were born on earth as a gift from the Almighty God. As stated in the law, "basic human rights are a set of very basic rights that are inherent in humans as creatures created by God and are gifts that must be respected, upheld and protected....."⁹

As a right which is a gift from Almighty God and is inherent in every human being, this right must be respected, upheld and protected by the state, legal norms and the government. The deeper consequence of this is that this right cannot be revoked, set aside, or violated by anyone.¹⁰ Humans as creatures of an all-powerful god carry three absolute rights from birth, namely the right to life, the right to freedom and the right to ownership.

However, basic human rights provisions relating to property rights under certain conditions and based on statutory mandates can be deviated normatively in criminal law. There are several special criminal acts that require the confiscation of property rights owned by someone, one of which is the act of corruption crime.

In general, criminal law norms are contained in a legal codification, namely the criminal law book which consists of three books, namely Book I which contains general provisions (*algemene bepalingen*) which apply to all criminal acts, both general and specific. Book II regulates crimes (*misdrijven*), and book III regulates violations¹¹

The background for regulating criminal acts of corruption in special regulations is because this criminal act is an extra ordinary crime which has a multidimensional impact and results in state losses

Apart from that, looking at the development of corruption cases which are increasingly rampant in Indonesia and linked to the inadequacy of existing criminal law norms, it is necessary for the government to make a new breakthrough in the form of a special law which is normatively intended as an effort to overcome corruption crimes in Indonesia. Corruption is seen as a crime that has robbed people of their social and economic rights, which are part of basic human rights. Therefore, there are rational justifications for classifying corruption as an extra ordinary crime, so that overcoming it needs to be done in an extraordinary way and with special rules.¹²

In connection with dealing with corruption crimes, the government has also formed a special institution, namely the anti-racywah commission. Normatively, what is meant by an anti-racywah commission is "a state institution which in carrying out its duties and powers is independent and free from the influence of any power."¹³

The formation of a special anti-corruption agency carried out by the government is a step forward in tackling the spread of criminal acts of corruption. Apart from that, one thing that can be appreciated about the formation of this institution is that this institution is a new institution that was previously unknown in the state institutional system which was given the main task of eradicating corruption offenses.

The background to the birth of this Institution was due to the increase in uncontrolled acts of corruption which caused major disasters for the life of the nation and state in general. Law enforcement against criminal acts of corruption carried out conventionally by law enforcement officials has been proven to

⁹ Article 1 point 1 of Law No. 39 of 1999 concerning basic human rights

¹⁰ Widiada Gunakaya, 2017, human rights law, Yogyakarta, Andi Publishers, p. 55.

¹¹ Wirjono Prodjodikoro, 2014, principles of criminal law in Indonesia, Bandung, Refika Aditama, p. 4.

¹² Elwi Danil, 2012, corruption: concepts, criminal acts and its eradication, Jakarta, rajagrafindo persada, p.

experience many obstacles. Therefore, a special law enforcement method is needed through the formation of a special body whose powers are distributed according to normative provisions, are independent, and free from influence from any party in order to eradicate criminal acts of corruption which is carried out optimally, professionally and sustainably.¹⁴

However, it is very unfortunate that the implementation of the task of eradicating corruption carried out by this commission has not run optimally. This is caused by the absence of normative provisions that regulate the issue of confiscation of assets resulting from acts of corruption. In fact, the essence of implementing the eradication of corruption is the return of state assets in order to overcome state losses caused by this criminal act.

Talking about asset confiscation as an effort to recover state losses as a result of acts of corruption, there are several ways, namely:

- a. Confiscation of assets through penalty channels
 - i. Asset tracking

Asset tracing is a series of actions to search for, request, obtain and analyze information about the origin, existence and ownership of assets.¹⁵

- ii. Blocking

Blocking is an action to secure assets that are strongly suspected to have been obtained from the proceeds of corruption in the form of money deposits in banks either during the investigation, prosecution, or even at the examination stage in court on the orders of a judge.

- iii. Foreclosure

Confiscation is a legal action to control assets resulting from acts of corruption by first asking permission from the district court.¹⁶

- b. Confiscation of assets based on a court decision
- c. Confiscation of assets based on a lawsuit

3.CONCLUSION

Based on the results of the discussion above, it can be seen that specifically regarding the confiscation of assets resulting from acts of corruption, up to now there are no positive legal norms that regulate it, but the only one that currently exists is the Draft Law on Asset Confiscation. This is a development that should be appreciated. However, it is hoped that the government will immediately ratify the Draft Law into the Asset Confiscation Law. This is important to overcome state losses as a result of acts of corruption that can be recovered.

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¹⁴ Ermansjah Djaja, 2010, eradicating corruption with the Corruption Eradication Commission, Jakarta, Sinargrafia, p. 255.

¹⁵ Republic of Indonesia attorney general regulation no PER-027/A/JA/10/2014

¹⁶ Arizon Mega Jaya, implementation of confiscation of assets of perpetrators of criminal acts of corruption, cepalo journal, volume 1, no 1, July 2017, p 23.
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currently Indonesia does not yet have a national law that regulates this matter, whereas several other countries already have it. This article was written independently for the purposes of an international seminar organized by Palembang University

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