Akun_dari_educationstore99_shopee_look

by 4@turnitin.com 1

Submission date: 27-Nov-2023 06:42PM (UTC+0700)
Submission ID: 2239554760
File name: 347-Article_Text-2708-1-10-20230414.pdf (205.67K)
Word count: 3285
Character count: 17379

IJSSR
International Journal of Social Service and Research

Vol. 03, No. 04, April 2023
e-ISSN: 2807-8691 | p-ISSN: 2807-839X

The Urgency and Mechanism of Asset Return for Corruption Crimes

Adhalia Septia Saputri
Bhayangkara University Jakarta Raya, Indonesia
E-mail: adhalia.septia.saputri@dsn.ubharajaya.ac.id

Article Information
Received: 26 March 2023
Revised: April 10, 2023
Approved: April 11, 2023
Online: April 14, 2023

Keywords
Tipikor, Negra's Financial Losses, Return on Assets

ABSTRACT
Typicality in Article 2 and Article 3 of Law No. 31 of 1999 jo Law No. 20 of 2001 concerning the Eradication of Corruption Criminal Acts (Tipikor Law) is the existence of elements of state financial losses, the Tipikor Law regulates mechanisms or procedures that can be applied in the form of asset returns through criminal channels, and asset returns through civil channels. The return of Tipikor's assets through civil channels is contained in the provisions in Article 32 paragraph (1), Article 34, Article 38B paragraph (2) and (3) of the Tipikor Law. Return of assets from the criminal route is carried out through a trial process where the judge in addition to imposing the principal crime can also impose additional crimes, the return of assets through this criminal procedure can be, (1) Seizure of tangible or intangible movable property, (2) Payment of substitute money, (3) Criminal fines, (4) Determination of confiscation of goods that have been confiscated, (5) Verdict of confiscation of property for the state. This study aims to know, analyze and answer problems regarding the regulation of the return of assets resulting from corruption in positive law, know, analyze and answer the problem of obstacles in the implementation of the return of assets resulting from this criminal act of corruption, and know, analyze and answer problems about the urgency and mechanism of returning assets resulting from corruption in ius constituendum. The Usefulness of Research on the Urgency and Mechanism of Return of Assets Resulting from Criminal Acts of Corruption.

INTRODUCTION

Corruption comes from the Latin "corruptio" or "corruptus", which later appeared in many European languages, English, French "corruption" Dutch "corruptie" which later appeared also in the Indonesian "corruption". In Indonesia, we refer to corruption in one breath as "KKN" (corruption, collusion, nepotism). "Corruption" has always referred to various "illicit or illegal activities" to obtain personal or group benefits. This definition later evolved so that the definition of corruption emphasizes "abuse of power or public position for private gain"(Mahmud, 2020)

The criminal act of corruption is a violation of social rights and economic rights of the community, so that corruption can no longer be classified as ordinary crimes but has become extraordinary crimes. In criminal law theory, the legal sanctions imposed on perpetrators of crimes are not only seen as laws that cause physical and psychological suffering and are limited to the freedom of civil rights and political rights, but it is also expected that perpetrators of crimes feel deterred kapok so that they do not want to do it again. In theory the Indonesian State of Law has based itself as a State of law. As stated in Article 1 paragraph (3) of the Amendment to the 1945 Constitution (UUD 1945) states, "The State of Indonesia is a State of Law". In the concept of the rule of law in general, it is idealized that what must be made the commander in chief in the dynamics of state life is law.(Latifah, 2016)(Saputro & Chandra, 2021)

Given that one of the elements of Tipikor in Article 2 and Article 3 of Law No. 31 of 1999 jo Law No. 20 of 2001 concerning the Eradication of Corruption Criminal Acts (Tipikor Law) is the existence of an element of state financial losses, this element has the consequence that the eradication of Tipikor does not only aim to

https://doi.org/10.46799/ijssr.v3i4.347

deter the Corrupt through the imposition of severe imprisonment, but also recovering state finances due to corruption as affirmed in the general considerations and explanations of the Tipikor Law. Failure to return assets resulting from corruption can reduce the meaning of punishment against corruptors.(Princess & Katimin, 2021)

The Corruption Law regulates mechanisms or procedures that can be applied in the form of asset returns through criminal channels, and asset returns through civil channels. In addition to the Law on Corruption, Law Number 7 of 2006 concerning the Ratification of the Anti-Corruption Convention (UNCAC) 2003 also stipulates that asset returns can be made through criminal channels (indirect asset recovery through criminal recovery) and civil channels (asset recovery directly through civil recovery). Technically, UNCAC regulates the return of assets of perpetrators of corruption crimes can be through direct returns from court proceedings based(Verawati & Yudianto, 2022) on the negotiation system "plea or plea bargaining system" and through indirect returns namely by confiscation process based on court decisions. The return of Tipikor's assets through civil channels is contained in the provisions in Article 32 paragraph (1), Article 34, Article 38B paragraph (2) and (3) of the Tipikor Law. First, the provisions of Article 32 paragraph (1) stipulate that in the event that the investigator believes that there is insufficient evidence on one or more elements of the criminal act of corruption while there has been a real loss of state finances, the investigator immediately submits the case file resulting from the investigation to the State Attorney. The State Attorney's Attorney based on the file submitted by the investigator conducts a civil lawsuit or is submitted to the aggrieved agency to file its lawsuit. Second, strengthening the return of state losses is carried out by requiring perpetrators to prove their property that has not been charged, but is also suspected to be derived from criminal acts of corruption. In the event that the defendant cannot prove that the property obtained is not due to corruption, the judge on the basis of his authority can decide that all or part of the property is confiscated for the state. The three claims for confiscation of property as referred to in paragraph (2) are filed by the public prosecutor(Yusmar et al., 2021) at the time of reading out his charges in the main case. The filing of a civil lawsuit is considered like a very powerful weapon to directly attack the perpetrators of criminal acts in an effort to return assets resulting from corruption in addition to getting criminal penalties. This must be done if the assets mentioned in the previous judgment are found to have other assets that have not been identified as the result of corruption. Civil lawsuits in the context of the seizure of assets resulting from typicality, have a specific character, which can only be carried out when criminal efforts are no longer possible to be used in efforts to recover state losses to the state treasury. Circumstances in which the crime can no longer be used include insufficient evidence; death of suspects, defendants, convicts; the defendant was acquitted; There are allegations that there are corrupt proceeds that have not been confiscated to the state even though the court decision has the force of law. With the civil lawsuit arrangement for asset seizure in the Fraud Law in Articles 32, 33, 34, 38C, the Fraud Law, it can be concluded that without this arrangement, the seizure of assets resulting from the seizure of assets using civil mechanisms cannot be carried out.(Katimin et al., 2020)(Tanthymin, 2023)(Lutfi &; Putri, 2020)

The return of assets from the criminal route is carried out through a trial process where the judge in addition to imposing the principal crime can also impose additional crimes if detailed, additional crimes can be imposed by the judge in his capacity which correlates with the return of assets through this criminal procedure in the form of:(Coal, 2018)

1. Seizure of tangible or intangible movable property
2. Payment of replacement money
3. Criminal fines
4. Determination of confiscation of goods that have been confiscated
5. Verdict of confiscation of property for corruption Remembering that one of the elements of Tipikor in Article 2 and Article 3

Law No. 31 of 1999 and Law No. 20 of 2001 concerning the Eradication of Corruption (Tipikor Law) are elements of state financial losses.

METHODS

The type of research used is normative juridical. This research is a legal research conducted by examining literature materials referred to as secondary data. This study is intended to see developments related to the law against limited liability companies declared in bankruptcy conditions and the implications after being declared bankrupt.

This research data is sourced from secondary data where this secondary data consists of primary, secondary and tertiary legal materials. The primary legal materials used in this case are in the form of legislation, namely:

1.Law Number 40 of 2007 concerning Limited Liability Companies;
2. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

The primary legal material is supported by secondary legal material which is supporting legal material or provides an explanation of the primary legal material. Secondary legal materials in this case are journals, articles, research results and others relevant to the topic discussed. Primary and secondary legal materials will be clarified with tertiary legal materials such as magazines, data from the internet and others.

RESULTS

There are two types of data in a study, namely primary data and secondary data. As for research on "The Urgency and Mechanism of Asset Forfeiture of Corruption Convicted as an Effort to Return State Losses" using primary sources in the form of secondary data or library materials.

A. Regulation on the Return of Assets Resulting from Corruption in Positive Law

Return of assets resulting from corruption in positive law is a law enforcement system carried out by the state as a victim of corruption to revoke, seize, eliminate rights to assets resulting from corruption through a series of processes and mechanisms, both criminal and civil corruption. There are several forms of criminal law enforcement measures that can be directed for the purpose and in order to return assets or assets derived from criminal acts of corruption.5 These steps can be described in detail as follows:(Latukau, 2019)

1. Seizure of Assets Resulting from Corruption

Provisions regarding Asset Forfeiture have long been known in laws and regulations that have been in force in Indonesia. Central War Authority Regulation Number: PRT/PEPERPU/013/1958 concerning Prosecution, Prosecution and Examination of Corruption and Property Ownership (RahmaYanti, 2018) .

2. Reverse Proof in the Context of Optimizing the Return of Assets Resulting from Corruption Crimes

Associated with efforts to optimize the return of assets resulting from corruption crimes, the Corruption Law has a reverse evidentiary instrument. Basically, the Law on Corruption has regulated provisions regarding the reversal of the burden of proof on the acquisition of property. In the event that the accused is unable to prove that his wealth is not proportional to his income or the source of his wealth addition, then such testimony can be used to substantiate existing evidence that the accused has committed a criminal act of corruption (Article 37 (4).(Mahmud et al., 2021)

3. Return of Assets Resulting from Corruption Crimes through Civil Lawsuits

The Corruption Law stipulates that if after a court decision has obtained permanent legal force, it is known that there are still property belonging to the convicted person who is suspected or reasonably suspected to also come from a criminal act of corruption that has not been subject to seizure for the state (as referred to in Article 38 B paragraph (2)), then the state can bring a civil lawsuit against the convicted person and or his heirs (Article 38 C).(RESULTS, n.d.)

4. Criminal Payment of Substitute Money in the Context of Returning Assets Resulting from Corruption Crimes

In addition to regulating fines as part of efforts to punish and imprison perpetrators of corruption crimes, the Corruption Law also regulates additional penalties in the form of payment of substitute money which has the aim of recovering state financial losses caused by corruption. Article 17 of the Criminal Law states that in addition to being able to be sentenced to a crime as referred to in Articles 2, 3, 5 to Article 14. The accused may be sentenced to additional penalties as referred to in Article 18.(Genta &; Suyatna, 2020)

B. Constraints in the Implementation of Return of Assets Resulting from Corruption Crimes

Corruption is no longer a national problem but has become a transnational phenomenon. International cooperation is essential in preventing and eradicating money crime by using effective international transfers. Not a few corrupt public assets have been rushed and stored in financial centers in developed countries that are protected by the legal system in force in the country and by the services of professionals brought by corruptors. The efforts made met obstacles, the obstacles in question were differences in the legal system, the existence of third parties that hindered the return process, and the slow legal processin Indonesia.

The difficulty experienced by investigators is how to trace these assets, because the corruption is carried out not at this time, but in a long time means that it is quite time-consuming. Almost on average, there are no corruption cases that we handle that have only been 1-2 years of corruption, especially in an attempt by corruptors to hide the results of corruption through laundering carried out. Thus creating further difficulties, because the assets have already changed their names, among which they are rushed abroad. Due to the difficulties taken, precisely on World Anti-Corruption Day, December 9, 2004, measures were initiated to secure assets that have been corrupted and optimize the search for convicts. In addition, different legal systems are also obstacles in pursuing convicts and assets resulting from corruption.

C. Urgency and Mechanism for Return of Assets Resulting from Corruption in Ius Constituendum

The existence of corruption causes losses in the financial sector / state wealth which has implications for government programs to improve the welfare of the people to be hampered. The enforcement of corruption

that is now applied by law enforcement in Indonesia only emphasizes throwing perpetrators in prison, not emphasizing the return of assets resulting from corruption crimes.

In detail, the Asset Forfeiture Bill provides for asset seizure in the event that: (a) the suspect or defendant dies, flees, is permanently ill, or his whereabouts are unknown; or (b). The defendant was acquitted of all lawsuits. r asset seizure from both, it can also be done to assets whose criminal cases cannot be tried or have been found guilty by a court that has obtained permanent legal force, and in the future it turns out that there are assets from criminal acts that have not been declared confiscated.

CONCLUSION

Law enforcement through disclosing criminal acts, finding perpetrators, and putting the perpetrators in prison (follow the suspect) alone has not been effective in suppressing the occurrence of criminal acts of corruption Efforts that have been contained in laws and regulations to ensure the recovery of state losses include: 1) seizure of assets resulting from criminal acts of corruption; 2) reverse proof in order to optimize the return of assets resulting from corruption crimes, 3) return of assets resulting from corruption crimes through civil lawsuits, and 4) criminal payment of substitute money in the context of returning assets resulting from corruption crimes.

Efforts that have been accommodated in laws and regulations to maximize the recovery of state losses are constrained by several aspects both from the personal side of law enforcement and regulation. In terms of regulation, regulations related to the seizure of assets resulting from corruption crimes referring to the Criminal Code, Criminal Procedure Code and in the Criminal Procedure Law have not been deemed adequate to provide a basis for the seizure and return of assets. So that the return of assets resulting from corruption in the legal system in Indonesia cannot be enforced and carried out effectively.

Meanwhile, on personal side of law enforcement, there are still misinterpretations. Among them in interpreting Article 18 Paragraph (1) letter a of the Tipikor Law. The provision states that confiscation is carried out on goods used for or obtained from corruption crimes. Therefore, investigat and judges are trapped in these provisions so they are very careful about making seizures. The existence of the provisions of Article 18 paragraph (3) of the Law on Corruption is a loophole to convert the payment of substitute money into corporate crime on the grounds that the convicted person does not have sufficient property to pay the substitute money.

REFERENCES

Coal, S. A. (2018). The urgency of civil forfeiture to increase the return of state financial losses. *Prima Law (IHP)*, *1*(2), 353–363.

Genta, I. N. Y. D., &; Suyatna, I. N. (2020). Application of the Going Concern concept for limited liability companies that have been declared bankrupt. *Acta Comitas*, *5*(2), 252.

RESULTS, P. A. (n.d.). *THE URGENCY AND MECHANISM OF RETURNING ASSETS RESULTING FROM CRIMINAL ACTS OF CORRUPTION*.

Katimin, H., Mulyanti, D., Idaningsih, I. Y., &; Saleh, A. H. (2020). THE URGENCY OF RATIFICATION OF THE MUTUAL LEGAL ASSISTANCE AGREEMENT IN CRIMINAL MATTERS THROUGH A PRESIDENTIAL DECREE ON THE RETURN OF ASSETS RESULTING FROM CORRUPTION CRIMES BETWEEN THE REPUBLIC OF INDONESIA AND THE SWISS CONFEDERATION: Array. *Case Law*, 1(1), 1.

Latifah, M. (2016). The urgency of establishing the Urgency of Assets Recovery Act in Indonesia. *The State of Law: Building Laws for Justice and Welfare*, *6*(1), 17–30.

Latukau, F. (2019). UNCAC's adoption of the return of corrupt assets brought or stored abroad in Indonesian law enforcement. *Belo Journal*, *5*(1), 10–31.

Lutfi, K. R., &; Putri, R. A. (2020). Optimizing the Role of Mutual Legal Assistance in the Return of Assets Resulting from Criminal Acts of Corruption. *Law: Law Journal*, *3*(1), 33–57.

Mahmud, A. (2020). The urgency of progressive law enforcement to recover state losses in criminal acts of corruption. *Legal Matters*, *49*(3), 256–271.

Mahmud, A., Syawali, H., &; Amrulloh, R. (2021). Substantive justice in the process of asset recovery resulting from criminal acts of corruption. *Journal of Legal* Voices, *3*(2), 227–250.

Putri, N. N., &; Katimin, R. H. (2021). The Urgency of Illicit Enrichment Regulation in Efforts to Eradicate Corruption and Money Laundering in Indonesia. *Galuh Justisi Scientific Journal*, *9*(1), 38–61.

RahmaYanti, R. Y. (2018). THE URGENCY OF CIVIL FORFEITURE TO INCREASE THE RETURN OF STATE FINANCIAL LOSSES. *Prima Law (IHP*), 1(1), 44–55.

Saputro, H. J., &; Chandra, T. Y. (2021). The urgency of recovering state financial losses through blocking and asset seizure as a corruption law enforcement strategy. *Mizan: Journal of Islamic Law*, *5*(2), 273–290.

Tantimin, T. (2023). Confiscation of Corruption Proceeds through Non-Conviction Based Asset Forfeiture as an Effort to Return State Losses. *Indonesian Journal of Legal Development*, *5*(1), 85–102.

Verawati, D. E., &; Yudianto, O. (2022). The Urgency of Forfeiture of Assets Without Punishment in Corruption as an Effort to Return State Losses. *Civilia: Journal of Legal Studies and Civic Education*, *1*(2), 29–44.

Yusmar, W., Somawijaya, S., &; Putri, N. S. (2021). The urgency of passing the Criminal Asset Forfeiture Bill as an effort to eradicate money laundering with predicate crime of narcotics crimes. *Galuh Justisi Scientific Journal*, *9*(2), 219–240.

Akun_dari_educationstore99_shopee_look

ORIGINALITY REPORT

14%	11%	7%	7%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

1	garuda.ristekbrin.go.id Internet Source	1%
2	Submitted to National Research University Higher School of Economics Student Paper	1%
3	Submitted to Universitas Negeri Surabaya The State University of Surabaya Student Paper	1%
4	media.neliti.com Internet Source	1%
5	ijrcs.org Internet Source	1%
6	www.nusakonstruksi.com Internet Source	1%
7	www.jurnal.syntaxliterate.co.id Internet Source	1%
8	repository.narotama.ac.id Internet Source	1%
9	Submitted to Flinders University	

	Student Paper	1 %
10	Submitted to Nottingham Trent University Student Paper	1 %
11	ijersc.org Internet Source	1 %
12	Mahdi Muhammad, Kem Nori Alfath, Yusuf Saefudin. "Death Penalty and Right to Life: A Comparison between International Bill of Human Rights and Islam", Kosmik Hukum, 2023 Publication	1 %
13	saudijournals.com Internet Source	1 %
14	Submitted to Universitas Bung Hatta Student Paper	<1 %
15	ejournal.unp.ac.id Internet Source	<1 %
16	Ridwan Arifin, Rodiyah Rodiyah, Fitria Puspita. "A Comparative Analysis of Indonesia's KPK and Hong Kong ICAC in Eradicating Corruption", Jambe Law Journal, 2020 Publication	<1 %
17	Neil Aldrin, Netty Merdiaty. "Effect of job crafting on work engagement with	<1 %

	mindfulness as a mediator", Cogent Psychology, 2019 Publication	
18	estatedocbox.com Internet Source	<1 %
19	islamicmarkets.com Internet Source	<1 %
20	Galih Wicaksono. "Notary Liability for the Sale and Purchase of PT GEI Shares Made Unlawfully (Study of Decision Number 188 PK/Pdt/2020)", Kosmik Hukum, 2023 Publication	<1 %
21	Renti Maharini Kerti, Arif Wicaksana. "Fulfilling the Rights of Housing Consumers As a Result of Developer's Bankruptcy Decision", KnE Social Sciences, 2022 Publication	<1 %
22	www.iiste.org Internet Source	<1 %
23	Herman Suherman. "Criminal Law Policy in Tackling Corruption Crimes in Indonesia Through the Death Penalty is Linked to the Principle of Justice", KnE Social Sciences, 2023 Publication	<1 %

Exclude quotes	Off	Exclude matches	Off
Exclude bibliography	On		