



THE EFFECTIVENESS OF ADDITIONAL EXECUTIONS CRIMINAL WITH REPLACEMENT PAYMENTS CORRUPTION CASES

Bambang Fitrianto

**Lecture Post Graduate Magister Of Law, Universitas Pembangunan Panca Budi Medan
Gatot Subroto Street km 4,5 Medan, North Sumatera, Indonesia**

ABSTRACT

Law enforcement on corruption cases currently still creates problems, especially in the case of prosecutors when they are about to execute recovering state losses, as seen in the handling of a corruption case carried out by I Putu Sudiartana who has been sentenced to a District Court Judge with Decision Number 117 PidSus / 2016 / PN.Jkt.Pst. The District Court Judge decided that the defendant I Putu Sudiartana was legally and convincingly proven guilty of committing a criminal act of corruption. The type of research used is juridical normative, which is a technique or review procedure guided by several legal principles, legal principles, as well as legal principles relating to the substance of general and specific laws and regulations. Sources of data in this study using primary data sources, namely data obtained directly from informants or the public. The primary data source can also be in the form of information from parties related to the problem or object regarding the sociological juridical analysis of the payment of replacement money as an additional crime in the eradication of corruption, which can be obtained from various other supporting aspects, namely informants. Secondary data sources are documents and literature that are by the object of research. Data collection techniques in this study were literature study and interviews. The data analysis technique used is an interactive model analysis technique. Refunds of state money through the criminal payment of replacement money in cases of corruption experience obstacles in its implementation. Perpetrators of corruption usually have placed funds generated from corruption into a financial system, besides that the perpetrator has also separated his assets through several transactions and has combined the results of corruption into a financial system. legal business activities. This makes it difficult for the prosecutor to trace the assets of the perpetrators.

Keywords: Corruption, Additional Criminal, Criminal.

INTRODUCTION.

Legal issues that are discussed and become one of the factors causing corruption are seen from two sides, where one side is the aspect of legislation and weak law enforcement. so that several other things that make law a means of corruption are the problem of legal substance, easy to find discriminatory and unfair rules, unclear and firm formulations that lead to multiple



interpretations, contradictions often occur and overlap with other rules of substance or legal rules, so this problem is the starting point of the law enforcement process (Budiono, 2018).

For this reason, this study discusses the existence of rules that can guide law enforcement officials in carrying out law enforcement duties. Therefore, to some degree "legal quality" will determine the enforcement process. There are a number of issues related to the substance or rule of law, among others, are the required regulations available, whether the formulation of the regulations is clear and firm (*lex certa*), whether there are no contradictions and overlapping between regulations, are there sanctions which is equivalent to the prohibited act and whether the regulation is still in accordance with existing social realities (Kelblerová & Vykydal, 2011).

In many ways the corruptor is a person who is not satisfied with his situation. Opportunity is a system that provides an opportunity to commit corruption which is extended to the state of the organization or society in such a way that there is an opportunity for someone to commit fraud. Need is a mental attitude that never feels enough, always laden with needs that never end. Exposure is the expected punishment imposed on the perpetrators of corruption (Mukharom et al., 2020).

LITERATURE

Law enforcement on corruption cases currently still creates problems, especially in the case of prosecutors when they are about to execute recovering state losses, as seen in the handling of a corruption case carried out by I Putu Sudiartana who has been sentenced to a District Court Judge with Decision Number 117 PidSus / 2016 / PN.Jkt.Pst. The District Court Judge decided that the defendant I Putu Sudiartana had been legally and convincingly proven guilty of committing a criminal act of corruption as in the first indictment, violating Article 12 letter an of Law Number 31 the Year 1999 regarding Corruption Eradication as amended by the Law Number 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning Eradication of Corruption Crime (Nasution et al., 2018).

Sentenced the defendant I Putu Sugiartana to reduced imprisonment of 7 years while the defendant is in detention with the order that the defendant remains detained and a fine of Rp. 200,000,000, a subsidiary of 6 months of substitute imprisonment, burdens the defendant to pay a replacement fee of Rp. 300,000,000 provided that if within 1 month after the court verdict is obtained permanent legal force, the defendant does not pay the assets (Free & Area, 2015).

Responsive Law Journal of the Faculty of Law UNPAB, the object can be confiscated by the prosecutor and auctioned off to cover the replacement money, then he will be sentenced to imprisonment for 1 year.,MImposing an additional sentence to Defendant I Putu Sudiartana in the form of deprivation of his political right to be elected to public office for 5 years after the defendant has finished serving his main sentence The implementation is to recover state losses



amounting to Rp. 300,000,000 (three hundred million rupiah) is still an obstacle to be implemented by the prosecutor as the executor (Sukthankar, 2016).

This study aims to determine the efforts that have been made by the prosecutor's office in implementing/executing additional crimes in the form of replacement money in cases of corruption and to find out the obstacles. the Attorney General's Office in executing additional crimes in the form of compensation payments in cases of corruption (Umar, 2012).

METHOD

The type of research used is juridical normative, namely analysis techniques or procedures guided by several legal principles, legal principles, as well as legal principles relating to the substance of laws and regulations which are general and specific. obtained directly from informants or the public ". Apart from that the source of the data.

The penalty for paying replacement money is a consequence of a criminal act of corruption that can harm the state's finances or the country's economy so that to recover such losses, a juridical means is required, namely in the form of payment of replacement money.

Replacement money is a form of additional punishment (criminal) in a corruption case. In essence, both legally and doctrinally, judges are not always obliged

Even so, especially for corruption cases, it is necessary to pay attention to this. This is because corruption is an act that is contrary to the law which is detrimental or can be detrimental to state finances. In this case the loss to the country must be restored. One of the ways that can be used to recover the state's losses is by requiring the accused who is proven and convincing to have committed a criminal act of corruption to return to the state the proceeds of his corruption in the form of replacement money. Thus, even though replacement money is only an additional punishment, it would be unwise to let the defendant not pay replacement money as a way to recover state losses.

A defendant in a corruption case who has been proven and convinced of committing a criminal act of corruption is exempt from the obligation to pay replacement money if the replacement money can be compensated by the defendant's assets which are declared confiscated for the state or the defendant did not enjoy the money at all, or another defendant has been convicted. pay replacement money, or state losses can still be collected from other parties. The amount of compensation money is the state loss which actually enjoyed or enriched the defendant or because of certain causality, so that the defendant was responsible for all state losses.

RESULT

4.1. Implementation Results By The Parties Prosecutors In The Implementation / Execution Of Additional Crimes In The Form Of Replacement Money In Corruption Cases.



Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption as a strategic means to recover state losses as a result of corruption, so that the additional penalty for paying compensation money must be implemented as optimally as possible. Seeing the material provisions for the criminal payment of replacement money in Law Number 20 of 2001 seem to give high hopes that state losses can be returned, but this hope is dim after seeing the fact that state losses from year to year are increasing due to the increasing number of people. corruptors Based on data from Transparency International Indonesia, the problem of corruption is not well resolved and has placed Indonesia in the 100th rank out of 183 countries in 2011 in the Corruption Perceptions Index. This means that no significant changes have occurred in the eradication of corruption in Indonesia. This perception seems to be shared by 71 percent of MNC Media Research respondents in 10 cities in Indonesia

The amount of replacement money in a corruption case is within 1 (one) month after the verdict is legally enforceable it remains unpaid, the prosecutor's property is confiscated and auctioned off to cover the replacement money.

To carry out additional criminal executions of the payment of replacement money in a corruption case, the court's decision must have permanent legal force. The prosecutor as the executor will carry out the penalty for paying the replacement money. According to Muh Maskuri, the implementation of the criminal verdict on the payment of replacement money will go through several stages of activities, namely

- A. The billing stage.
- B. The auction stage.
- c. The replacement money payment stage.
- d. Civil lawsuit stage

Additional payment penalties replacement money, that is, it should not be an additional punishment, but as an imperative principle or additional punishment. The process of executing the payment of replacement money in a corruption case, which seems to be lengthy, makes prosecutors sometimes hesitant in demanding replacement money in their criminal charges. One of the prosecutors' efforts to restore state finances is based on Article 98 of the Criminal Code, in which this article regulates the merger of civil claims for compensation with ongoing criminal charges, the prosecutor prefers this merger to criminal charges of paying replacement money.

In the implementation of the decision on the additional criminal execution, the payment of replacement money in the corruption case of I Putu Sudiartana was carried out in several stages, namely:

The first stage is given a letter of assignment to carry out an asset reading of the convicted person. In the second stage, the convict is given a fine / replacement money bill. In the verdict, the convict has charged the convict to pay a replacement fee of Rp. 300,000,000 (three hundred million rupiahs) provided that if the fine is not paid, then it is replaced by imprisonment provided that if the replacement money is not paid within 1 (one) month after the Court's



decision is legally binding, the property can be confiscated and auctioned off. To cover the replacement money, and in the case of not having sufficient assets to pay the replacement money, he will be subject to imprisonment for 4 (four) years. In connection with this, the prosecutor will immediately carry out a collection towards fines and compensation money as determined by the Judge at the Central Jakarta District Court.

Then in the third stage, the Public Prosecutor's Office coordinates with the High Prosecutor's Office by sending a letter containing a request for data on the assets of state administrators (LHKPN) on behalf of the convicted person to the Corruption Eradication Commission (KPK). Then at the request of the District Attorney as mentioned above. Furthermore, the fourth stage of the Central Jakarta District Prosecutor's Office has also been carried out.

Submitting a request to obtain data and blocking the convict's assets. In the fifth stage, the State Prosecutor sent a letter to the Head of the Jakarta National Land Agency regarding the request for data and the blocking of the convict's assets.

Efforts to save state financial losses due to criminal acts of corruption have been stated in Article 18 paragraph (1) of Law Number 31 of 1999 in conjunction with Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption, which reads as follows: If the convict does not pay money replacement as referred to in paragraph (1) letter b within 1 (one) month at the latest after the court decision has obtained permanent legal force, the assets can be confiscated by the prosecutor and auctioned off to cover the replacement money. goods are sufficient to pay the replacement money as referred to in paragraph (1) letter b, then shall be punished with imprisonment whose duration does not exceed the maximum threat of the main punishment by the provisions of this Law and the duration of said punishment has been determined in a court decision.

4.2. Results in the prosecution's Constraints in executing additional crimes in the form of compensation payments in cases of corruption.

Corruption is an act that is very detrimental to state finances and society so that it can hinder the course of national development, therefore all kinds of actions that are detrimental to state finances need to be completely eradicated, including by maximizing the working power and coercion of existing laws and regulations through law enforcement.

The perpetrator of the criminal act of corruption is identified as a conspiracy between state officials and the community which is very complex, so that in various developed countries the term political corruption has emerged. Term

This is developing because it contains the concerns of experts and good citizens because this criminal act of corruption substantially reduces public confidence in the government, in addition to increasing the cost of social services and otherwise reducing the quality of social services.



One of the elements in corruption is the loss of state finances. Regarding this state financial loss, the Government made the Corruption Law, both the old one, namely Law Number 3 of 1971 and the new one, namely Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, stipulating policies that state financial losses the perpetrators of corruption must be returned or replaced by the perpetrators of corruption. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes stipulates that what is meant by corruption is "any person who is against the law to commit an act of enriching oneself or another person or a corporation which can harm the State's finances or the country's economy.

According to the Corruption Law, recovering state financial losses can be made through two legal instruments, namely criminal instruments and civil instruments. The criminal instrument was carried out by the investigator by confiscating the property of the perpetrator and the public prosecutor then required that the judge seized it. Civil instruments are carried out by the State Attorney Attorney (JPN) or agencies that are disadvantaged against the perpetrators of corruption (suspects, defendants, convicts or their heirs if the convict dies).

Criminal instruments are more commonly used because the legal process is simpler and easier. In the District Court's decision, apart from the basic punishment, the judge usually decides on additional crimes in the form of compensation for convicted corruption cases. Substitute money penalties associated with the number of prison terms of the convicted person are sometimes not fulfilled by the convicted person, where they prefer additional punishment in the form of body confinement compared to a substitute sentence decided by the judge which can be caused by several reasons. The term replacement money implies that it is related not to individual or individual interests, but to the public interest or even the interests of the state

Based on the results of the research that the author has done, it turns out that the return of state money through the criminal payment of replacement money in cases of corruption experiences obstacles in its implementation. Perpetrators of corruption usually have placed funds generated from corruption into a financial system, besides that the perpetrators have also separated their assets. through several transactions and has combined the results of corruption into legal business activities. This makes it difficult for the prosecutor to trace the assets of the perpetrators.

So that the money that should be returned by the convicted person to the state cannot be fully implemented. In fact, it turns out that there are convicts who have not paid replacement money even though the case has been legally binding for more than 1 month. This could result in the attorney confiscating his property and auctioning it off to cover the replacement money, and in the event that the Defendant did not have sufficient assets to pay replacement money, the Defendant could be sentenced to imprisonment.



CONCLUSION.

Law enforcement of Law Number 31 the Year 1999, aims to restore financial or economic losses to the state as a result of the perpetrators of criminal acts of corruption. If it is viewed from the effectiveness rather than the success in implementing the imposition of the penalty for paying replacement money in a criminal act, it can be said that it has not been effective, especially in the case of the payment of replacement money made by the convicted person. The obstacles faced include, among others, perpetrators of criminal acts of corruption have usually placed funds generated from corruption into a financial system, besides that the perpetrators have also separated their assets through several transactions and have combined the proceeds of corruption in legal business activities. This makes it difficult for the prosecutor to trace the assets of the perpetrators.

Based on these conclusions, it can be suggested, that public participation needs to be increased, especially in providing information to law enforcers on the property of convicted corruption cases, as an effort to streamline the payment of replacement money in criminal acts of corruption, it is necessary to immediately formulate a set of regulations that specifically regulate it. regarding the confiscation/confiscation of assets belonging to convicted corruption cases.

REFERENCES

- Budiono, A. (2018). *Budiono, A. (2018). Ilmu Hukum Sebagai Keilmuan Perspektif Paradigma Holistik. 9(1), 89–99. 9(1), 89–99.*
- Free, A., & Area, T. (2015). *Henry Aspan.*
- Kelblerová, M., & Vykydal, D. (2011). Application of QFD and SPC methods in the processes of design and products manufacturing. *Proceedings of the 2011 12th International Carpathian Control Conference, ICC'2011*, 181–186.
<https://doi.org/10.1109/CarpathianCC.2011.5945843>
- Mukharom, Indah Astanti, D., & Tuti Muryati, D. (2020). Analisis Normatif Terhadap Putusan Praperadilan No. 04/PID.PRAP/2015/PN. Berdasarkan Prespektif Kemanfaatan, Kepastian Hukum dan Keadilan. *Diktum : Jurnal Ilmu Hukum*, 8(1), 1–35.
<https://doi.org/10.24905/diktum.v8i1.89>
- Nasution, M. D. T. P., Siahaan, A. P. U., Rossanty, Y., & Aryza, S. (2018). The phenomenon of cyber-crime and fraud victimization in online shop. *International Journal of Civil Engineering and Technology*, 9(6).
- Sukthankar, S. (2016). *THE INTERNATIONAL JOURNAL OF SCIENCE & TECHNOLEDGE Virtual Software Development Teams - Their Organizational Structure , Management Mechanism Involved , Problem Resolution and Decision Making. 4(11), 47–49.*
- Umar, H. (2012). Pengawasan Untuk Pemberantasan Korupsi. *Jurnal Akuntansi & Auditing.*