

STUDY OF CORRUPTION IN THE PERSPECTIVE OF DIGNIFIED JUSTICE

YB Irpan

Faculty of Law; Universitas Slamet Riyadi Surakarta

Email: irpanyb@yahoo.com

Abstract

Criminal acts of corruption are transnational in nature, adversely affecting the life of the nation and state. The loss of state finances reached hundreds of trillions of rupiah, people's trust in the authorities decreased, economic costs became high, important government projects were abandoned, the cost of higher education was not affordable anymore by ordinary people, so that corruption was called extraordinary crime and therefore the handling of acts criminal corruption must be special. The return of state financial losses due to corruption is very important. The existence of state financial losses must be returned by corruptors because corruption is an act that violates human values. Recovering state financial losses can not only be done through court procedures but can also be done through out-of-court channels. Increasing the strong will of the government, law enforcement and the public in combating corruption in this country indiscriminately so that the recovery of state financial losses can be effective so as to be able to realize a dignified Indonesian nation.

Keywords: Accountability, Corruption; Dignified Justice.

INTRODUCTION

Corruption is often seen as a social disease, considering the impact of corruption is very detrimental to society and the country. Corruption is often associated with corruptors who are none other than the authorities or officials who have misused their positions in order to enrich themselves, so that with these actions these officials have harmed the country.

Corruption in Indonesia cannot be denied. Corruption is a parasite to national development so that its preventive, countermeasures and eradication measures must not be ignored and must get top priority

given the danger to the life of the nation and state.

Corruption is transnational, having a negative impact on the life of the nation and state. The loss of state finances reached hundreds of trillions of rupiah, people's trust in the authorities decreased, economic costs became high, important government projects were abandoned, the cost of higher education was not affordable anymore by ordinary people, so that corruption was called extraordinary crime and therefore the handling of acts criminal corruption must be special.

Corruptors are sentenced as crimes as a form of accountability for their corruption. Criminal responsibility is known to have two teachings namely monistic and dualistic teachings. Judges in convicting generally follow monistic teachings, criminal acts and mistakes are seen as elements of criminal behavior. Mistakes are seen only as a perpetrator's attitude according to psychological theory, in the form of intent or neglect directed at the despicable act which is formulated as offense. After all elements of offense have been proven, the defendant is found guilty and sentenced between the minimum and maximum limits determined by law. The severity of the sentence is absolutely left to the judge. The absolute authority of the judge can cause corrupt decisions, corruption remains rampant, so it is necessary to think of other alternatives in deciding cases, namely by applying dualistic teachings.

According to dualistic teachings, criminal acts are separated from criminal liability. Mistakes as the main determinant of the severity of the sentence imposed include two things, namely pointing to a despicable act or *actus reus*, namely violation of the ethical standards of society that have been formulated in the law as a crime, and criminal liability or *mens rea*, namely mental attitude or psychological state principals are measured according to the values prevailing in society,

which should be done or not done by the actors, but violated.

Countries throughout the world have a strong determination to fight corruption in both repressive and preventive ways, namely by fighting, preventing and overcoming corruption. Corruption in Indonesia is carried out systematically which results in huge losses to the state finances which have an impact on the destruction of the fabric of social life and hampered development resulting in poverty in the community. This is even confirmed in Law Number 31 of 1999 concerning Eradication of Corruption and also in Law Number 7 of 2006 concerning Ratification of the United Nations Against Corruption 2003 (2003 UN Convention on Corruption).

Restoring state financial losses due to corruption is an effort to reform and develop legal institutions that can prevent and eradicate corruption at international, regional and national levels. Efforts to recover assets must be carried out by the Indonesian government, because by taking into account the data on state financial losses, Indonesia is considered a victim of corruption, the corrupted funds are funds that should be earmarked for efforts to improve the prosperity and welfare of the people.

Funds taken by corruptors must be returned as a source of funding for the creation of people's welfare; restitution efforts

as a preventive measure for potential actors. Efforts to recover the financial losses of the state have begun by implementing regulations such as: the Corruption Act, Act No. 7 of 2006, the Law on Money Laundering and the Reciprocal Assistance Act. These efforts can be done through: criminal instruments, civil instruments and cooperating with other countries.

In an effort to create a goal of justice and repayment for state losses from corruption, the judge in imposing additional penalties for returning state financial losses must truly be able to calculate the amount of loss suffered by the state. Do not let the judge in dropping the additional criminal amount results injustice itself. Both justice for the community and justice for the accused of corruption itself. In the sense that the additional criminal sentence resulted in a loss for the convicted person, namely that the return of the loss that must be borne by the convicted person is greater than the state's loss.

Execution of substitute money in criminal acts of corruption is very important in efforts to recover state financial losses. In carrying out the execution of restitution of state financial losses charged to the Public Prosecutor, who is authorized to carry out the prosecution and as the executor. Execution is basically one of the authority of prosecutors

regulated by law to implement the judge's decision. Judges' decisions that can be executed are only those of judges who have obtained permanent legal force (in kracht van gewijsde).

METHOD OF RESEARCH

Author uses a type of normative research. Normative Legal Research according to Johnny Ibrahim is a scientific research procedure to find the truth based on legal scientific logic from the normative side. The scientific logic that is steady in normative legal research is built on the scientific discipline of law whose object is law itself.¹ In connection with the type of research used is normative legal research, in this study the authors used four approaches, namely: (1) statute approach; (2) a case approach (casesapproach); (3) conceptual approach (conceptual approach); and (4) comparative approach.

DISCUSSION

Basically, the existence of state financial losses due to corruption is very important. If explained more systematically, there are several arguments as theoretical, and practical justifications, why the recovery of state financial losses due to corruption is important with a starting point, namely:

Philosophical Justification, In this aspect, the recovery of state financial losses of

¹Johnny Ibrahim, 2010, *Theory and Methodology of Normative Legal Research*, Malang: Bayu Media, p. 57.

corruption can consist of fixed objects or movable objects or can also be in the form of money resulting from corruption both inside the country (Indonesia) and abroad. From this dimension, the *assets* are essentially (ontologically) state funds *in casu* from public funds. By using means / method (epistemologically) reversing the burden of proof and punishment against the perpetrators, the logic is that the perpetrators return the assets resulting from corruption which are expected to have a direct impact / benefit to restore state finances or the state economy which ultimately leads to the welfare of the community (axiologically).

Sociological justification, assessed from the perspective of the provisions of the Corruption Eradication Act, the people's aspirations to eradicate corruption and other forms of irregularities are increasing. The fact that there are acts of corruption has caused huge losses to the state that have resulted in crises in various fields. For this reason, efforts to prevent and eradicate corruption need to be increased and intensified while upholding human rights and the interests of society. In addition, with the eradication of corruption, one of which is through the return of state finances, it will have a wide impact on society. Concretely, the public will see and assess the seriousness of law enforcement on combating corruption by upholding the presumption of

innocence (*presumption of innocent*), the principle of equality before the law (*Equality before the law*) and the principle of legal certainty (*legal certainty*). In addition, this sociological justification is a tangible manifestation of the role and policy of legislation and application to provide wider scope for cooperation between law enforcement officials and community participation as mandated by Article 41 of Law number 31 of 1999 (Law 31 / 1999) *jo* Law number: 20 of 2001 (Law 20/2001). Community participation in the eradication of corruption can be realized in the form of: the right to seek, obtain and provide information on allegations of corruption, the right to obtain services, and the right to obtain answers to questions about the reports provided, as well as the right to obtain legal protection.

Juridical Justification, The Existence of the existing Corruption Eradication Laws that will be enacted in the future should provide space and broader dimensions for law enforcement. Society and all levels to be more complete in dealing with the consequences and effects of corruption. Therefore, legislative policies provide space in the eradication of corruption can be done through criminal action and civil action. In essence, aspects of state financial returns due to corruption through criminal procedures can be in the

form of criminal sentences to perpetrators such as criminal fines or defendants punished for paying replacement money, in addition to these elements, the state financial return can also be through a civil suit in the District Court.²

Therefore, the state's financial loss must be returned by the perpetrators of corruption because corruption is an act that violates human values. In practice, there are two ways that can be used in state procedures (*recovery asset recovery*), namely through out of court and through court.³

Recovering state financial losses can not only be done through court procedures but can also be done through out-of-court channels. The adoption of criminal substitute money into the criminal law system which was originally only known in civil law instruments is basically motivated by the idea that corruptors must be threatened with the greatest possible criminal sanctions so that they are deterrent.⁴ Even so, it still must prioritize the rights of perpetrators of corruption. After all, the perpetrators of corruption are still human beings who are not free from mistakes. So that the perpetrators

continue to be treated as they should (humanize humans). The act of humanizing the perpetrators of corruption is also supported by the theory of dignified justice.

Dignified justice is justice that is based on the values of the Pancasila philosophy. Especially the second principle of Pancasila is fair and civilized humanity. So that justice with dignity is also called justice that humanizes humans.⁵ In justice dignity includes the material aspects (material) and also the spiritual aspects (spiritual).⁶ So by using a dignified justice approach, the imposition of additional criminal money is not only to recover state financial losses but also must pay attention to the rights of perpetrators of criminal acts of corruption. So in the perspective of dignified justice, the dropping of substitute money must also not confiscate the assets of perpetrators who are not part of the proceeds of corruption. So it does not rob the perpetrators of family life or convicted of corruption.

Payment of substitute money in a criminal act of corruption constitutes an additional crime in addition to a crime against his own conviction and a fine. On the other

² Lilik Mulyadi, 2011, *Corruption in Indonesia (Normative, Theoretical, Practical and Problems)*, Bandung: Alumni, p. 103-105.

³ Saidi, MJ 2014. *State Financial Law*, Revised Edition. Jakarta: Rajawali Press p. 119-152.

⁴ Ismansah, 2007, *Application and Implementation of Substitute Criminal Money in Corruption*, Journal of Democracy, Vol. VI No. 2, p. 43

⁵ related to the theory of dignified justice see Teguh Prasetyo, 2015, *Dignified Justice Perspective of Legal Theory*, Bandung: Nusa Media.

⁶ Compare with western justice theories, such as John Rawl's justice theory, Aristotle's justice theory and Jeremy Bentham's justice theory which tends to the material aspects (material).

hand, the criminal payment of substitute money, although there is a similarity in nature with the criminal fine, which is the same in terms of the value of money or rupiah charged to the wealth of the maker or convict, but the substance is really different. According to Posner, the existence of a criminal fine is merely to prevent someone or another person from committing a similar crime (*residive*), but there are social costs that must be borne by the offender as a result of his evil deeds, even the amount of the fine must be constructed with all expenses issued by the government covering losses incurred, the judicial process, and the process of imprisonment in a progressive manner.⁷

Criminal additional money is related to the process of returning state finances through payment of compensation money from perpetrators of corruption after going through the procedure of calculating state financial losses due to criminal acts of corruption. The adoption of substitute criminal penalties into the criminal law system which was originally only known in civil law instruments is basically motivated by the idea that corruptors must be threatened with as much criminal sanctions as possible so that

they become deterrent.⁸ Punishment without additional criminal compensation is apparently ineffective because the public is still gripped by the many concerns that arise relating to the irreversible consequences or losses suffered by victims of crime.⁹

As long as the replacement money fails to be met, then corruption remains at the same level without any recovery for financial losses. This also means that if an additional criminal sanction of substitute money to compensate for state financial losses is not successfully enforced, then the criminal act of corruption in Indonesia will continue to flourish, and the perpetrators continue to enjoy the results of the corrupt crime, while state and public finances remain the parties harmed. The application of additional criminal substitute money in criminal acts of corruption as well as criminal justice in Indonesia has fulfilled three foundations namely philosophical, sociological and juridical.

First, philosophical foundation. The imposition of Criminal additional money in replacement of criminal acts of corruption has fulfilled a philosophical basis. Because in a statutory regulation it is said to have a

⁷ Posner, 1992, *Economic Analysis of Law*, Fourth Edition, Boston, Toronto, London: Little Brown and Company, p. 605.

⁸ Ismansyah, *Op Cit*, p. 44

⁹ See Jeremy Bentham, The Theory of Legislation, translated by Nurhadi, 2006, *Legislative Theory (Principles of Legislation, Civil Law and Criminal Law)*, Bandung: Nusamedia, 2006, p. 317-318.

philosophical basis if the formulations or norms get justification (*rechtvaardiging*) if studied philosophically. So he has reasons that can be justified if thought through deeply, especially philosophy of the *way of life of a nation* that contains the moral and ethical values of a nation.¹⁰ Seinnga in terms of philosophical additional criminal substitute is very relevant to justice with dignity. Dignified justice is justice based on the values or precepts contained in Pancasila.

Dignified justice is justice that humanizes humans. That is a justice that upholds the dignity and full human dignity.¹¹ The imposition of additional criminal compensation money is one of the efforts to prevent and eradicate corruption, even though it still needs to uphold human rights and the interests of the community. In the sense that the imposition of additional criminal replacement money should not cause suffering for families convicted of corruption. In other words, do not let the imposition of additional criminal money substitute for the assets of the corruptor who is not associated with the act of corruption.

Second, from a sociological point of view. Criminal additional money has fulfilled

the elements of sociological foundation, because the provisions regarding additional criminal replacement money in accordance with public beliefs and legal awareness of the community. In the sense that sociologically, additional criminal replacement money is expected to be able to meet and anticipate the development of community legal needs in order to prevent and eradicate more effectively any form of corruption that is very detrimental to the country's finances or the country's economy in particular as well as the community in general.

Third, from a juridical point of view. The imposition of Criminal additional money has fulfilled the juridical basis, because the additional criminal already has a legal basis (*rechtsgrond*) or legality, especially in legislation. Legally, the imposition of additional criminal money has a legal basis in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption. Article 18 paragraph (2) of Law No. 31/1999 Jo Law No. 20/2001 regulates that: "payment of replacement money in the amount as much as the same as assets obtained from criminal acts of corruption".

CLOSING

Conclusion

Return of state financial losses due to corruption is very important. The existence of

¹⁰ Teguh Prasetyo, et al, 2013, *Law and Plantation Law*, Bandung: Nusa Media, p. 35.

¹¹ Teguh Prasetyo and Arie Purnomosidi, 2014, *Building Laws Based on Pancasila*, Bandung: Nusa Media, p. 163.

state financial losses must be returned by corruptors because corruption is an act that violates human values. Recovering state financial losses can not only be done through court procedures but can also be done through out-of-court channels.

Suggestion

Increasing the strong will of the government, law enforcement and the community in combating corruption in this country indiscriminately so that the recovery of state financial losses can be effective so as to be able to realize a dignified Indonesian nation.

BIBLIOGRAPHY

- Johnny Ibrahim. 2010. *Theory and Methodology of Normative Legal Research*, Third Edition, Malang: Bayu Media.
- Jeremy Bentham. 2006. *The Theory of Legislation*, translated by Nurhadi, Legislative Theory (Principles of Legislation, Civil Law and Criminal Law), Bandung: Nusamedia Publisher & Nuansa Publisher.
- Lilik Mulyadi. 2011. *Corruption in Indonesia (Normative, Theoretical, Practical and Problems)*, Second Editon, Bandung: Alumni.
- Posner. 1992. *Economic Analysts of Law*, Fourth Edition, Little Brown and Company, Boston, Toronto, London.
- Saidi, MJ 2014. *State Financial Law*, Revised Edition. Jakarta: Rajawali Press
- Ismansah, 2007, *Implementation and Implementation of Substitute Criminal Money in Corruption*, Journal of Democracy, Vol. VI No. 2.

Teguh Prasetyo. 2015. *Dignified Justice Legal Perspective Theory*, Nusa Media, Bandung

Teguh Prasetyo. 2013. et al, *Law and Plantation Law*, Nusa Media, Bandung

Teguh Prasetyo and Arie Purnomosidi. 2014. *Building Law Based on Pancasila*, Nusa Media, Bandung