

CRIMINAL LAW POLICY ON THE CONFISCATION OF ASSETS DERIVED FROM CORRUPTION IN THE PERSPECTIVE OF JUSTICE AND STATE LOSS RECOVERY

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ABSTRACT

Extraordinary crimes can cause major losses to state finances and hinder national development, one of which is the crime of corruption. The punishment imposed on corruption offenders has not been fully capable of restoring state losses because assets derived from corruption are often transferred, laundered through various modes, and concealed. Therefore, criminal law policy regarding asset confiscation becomes an important instrument in combating corruption. This study aims to analyze criminal law policy on the confiscation of assets derived from corruption from the perspective of justice and recovery of state losses through a study of Decision Number 95/Pid.Sus-TPK/2021/PN.Smg in the name of Asri Murwani. The research method used is normative juridical with statutory and case approaches. The Corruption Eradication Law serves as a comprehensive reference regarding asset confiscation policy in Indonesian positive law, although its implementation still faces obstacles in asset tracing, proof, and execution. From the perspective of justice, asset confiscation not only functions as a form of punishment for perpetrators but also as a means of restoring the rights of the state and society. Therefore, strengthening regulations and optimizing asset recovery mechanisms are necessary to support the effectiveness of corruption eradication in Indonesia.

Keywords: Criminal Law Policy, Asset Confiscation, Corruption, Justice, Recovery of State Losses.

1. INTRODUCTION

A. Background

The problem of crime in a country is highly complex, one of which is corruption, which constitutes a serious issue faced by developing countries, including Indonesia. State financial losses, damage to the governmental system, decreased public welfare, and weakened public

trust are also forms of the impact of corruption. Corruption is categorized as an extraordinary crime because of its broad impact on national and state life.

In developing countries such as Indonesia, corruption crimes have become a major concern because similar cases continue to increase every day, ranging from lower to upper classes, from ordinary citizens to government officials.

The imposition of imprisonment on corruption offenders is insufficient as an effort to eradicate corruption. Corruption offenders often continue to enjoy the proceeds of their crimes after serving prison sentences. Since punishment alone has not fully provided an optimal deterrent effect, criminal law policy is required through mechanisms for confiscating assets derived from corruption crimes.

The asset recovery system, which seeks to recover ill-gotten gains in order to compensate states for their losses, includes asset configuration as one of its key components. Law No. 31 of 1999, as revised by Law No. 20 of 2001, relating to the eradication of corruption crimes, has governed this policy. However, there are still many regulatory and legal hurdles to overcome before this strategy can be fully implemented.

Decision Number 95/Pid is the case that this article examines. This is the subject of Sus-TPK/2021/PN. Asri Murwani's name is on the Smg. As part of its attempt to recover state damages, the court in this instance not only issued the major sentence but also put an asset seizure procedure into motion. This case highlights the significance of criminal law policies that prioritize the restitution of corruptly acquired assets as a means to achieve true justice.

Referring to the explanation above, the author is interested in further examining criminal law policy regarding the confiscation of assets derived from corruption from the perspective of justice and recovery of state losses.

B. Problem Formulation

1. How is criminal law policy regarding the confiscation of assets derived from corruption crimes in Indonesia?
2. How was asset confiscation implemented in Decision Number 95/Pid.Sus-TPK/2021/PN.Smg in the name of Asri Murwani?
3. What is the perspective of justice and recovery of state losses in the policy of confiscating assets derived from corruption?

2. METHODS

The approaches used in this study include:

1. Statutory Approach

This approach is carried out by examining various laws and regulations related to corruption crimes and asset confiscation, such as the Criminal Code (KUHP), Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

2. Case Approach

The case approach is carried out by analyzing the Decision of the Semarang District Court Number 95/Pid.Sus-TPK/2021/PN.Smg in the name of Asri Murwani in order to determine the implementation of criminal law policy regarding the confiscation of assets derived from corruption crimes.

The legal materials used in this study consist of:

1. Primary legal materials, namely laws and regulations and court decisions;
2. Secondary legal materials, namely books, scientific journals, articles, and opinions of legal experts;
3. Tertiary legal materials, namely legal dictionaries and legal encyclopedias supporting the research.

The author also conducted a legal material collection technique through library research, namely by collecting and studying various literatures related to the object of research. Subsequently, the legal materials obtained were analyzed qualitatively using a descriptive-analytical method, namely describing and explaining problems based on applicable legal provisions to then draw conclusions.

3. RESULTS AND DISCUSSION

A. Criminal Law Policy on the Confiscation of Assets Derived from Corruption”

In the context of state legal politics, there is a deeper understanding of applicable legal policies in efforts to overcome crimes that occur. In corruption cases, criminal law policy is not only necessary to punish perpetrators and provide a deterrent effect, but also to restore state losses resulting from such crimes.

The deterrent effect arising against corruption offenders is sometimes only temporary because they still feel benefited despite having been imprisoned. They can continue to enjoy the proceeds of corruption after being released from prison. However, if corruption offenders are impoverished, they are more likely to truly experience a deterrent effect. In addition, the state also gains recovery of losses that have been incurred. The economic impact will also be

more visible when the state obtains such recovery because the wealth acquired by corruption offenders actually constitutes state assets that could generate even greater benefits if they had not been corrupted.

In several cases, criminal law policy regarding the confiscation of assets derived from corruption has been highly effective. State wealth can increase due to financial recovery from corruption proceeds, which in turn will have socioeconomic impacts. For example, if fuel subsidies are not corrupted, the public would receive greater benefits from them.

The legal basis regarding confiscation of assets derived from corruption in Indonesia includes:

1. The Criminal Code (KUHP);
2. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes;
3. Law Number 8 of 2010 concerning Money Laundering Crimes.

Article 18 of the Corruption Eradication Law regulates additional punishments in the form of:

- confiscation of movable and immovable property;
- payment of compensation money;
- closure of companies;
- Revocation of certain rights.

These provisions indicate that asset confiscation is an important instrument in recovering state losses. This policy is also in line with the principle that criminal offenders should not enjoy the proceeds of their crimes.

The following are important points of Article 18 of the Corruption Law:

- **Additional Punishment:** This article constitutes an additional punishment imposed in addition to the principal punishment (imprisonment/fine).
- **Compensation Money:** Paragraph (1) letter b regulates payment of compensation money up to a maximum equal to the assets obtained from corruption.
- **Asset Seizure:** If the convicted person does not pay compensation money within 1 month after the decision becomes final and binding, their assets may be confiscated and auctioned by the prosecutor.
- **Subsidiary Imprisonment:** If the assets are insufficient, it shall be replaced with imprisonment according to the judge's decision.

Nevertheless, in its implementation there are still various obstacles, including:

- Difficulties in tracing concealed assets;

- The use of nominees or third parties;
- Weak coordination among law enforcement agencies;
- Cross-border asset recovery mechanisms that are not yet fully optimal.

Therefore, institutions that truly understand their roles and strengthened regulations are needed to increase the effectiveness of confiscating assets derived from corruption.

B. Case Analysis of Decision Number 95/Pid.Sus-TPK/2021/PN.Smg in the Name of Asri Murwani

In Decision Number 95/Pid.Sus-TPK/2021/PN.Smg, the defendant Asri Murwani was declared legally and convincingly guilty of committing corruption crimes causing state losses. The court imposed principal punishments in the form of imprisonment and fines, as well as additional punishments in the form of payment of compensation money and confiscation of assets related to the proceeds of the crime.

The judges considered the aspect of recovering state losses as an additional punishment as an important part of the objectives of punishment. This was because it not only emphasized punishing the perpetrator but also ensured the recovery of state losses through seizure and confiscation of assets.

Restorative justice, which is also a concept in corruption crimes from the perspective of modern criminal law, aims to restore losses arising from criminal acts. Asset confiscation becomes a strategic instrument to break the chain of economic benefits derived from corruption.

However, the implementation of execution against confiscated assets often faces administrative and technical obstacles. In some cases, assets have been transferred to other parties, making the process of recovering state losses difficult. Therefore, a more effective and integrated asset tracing mechanism is required.

C. Perspective of Justice and Recovery of State Losses

Justice in enforcing corruption criminal law is not only measured by the severity of imprisonment but also by the extent to which the state can recover the losses incurred. In this context, asset confiscation has a strategic function as a means of realizing substantive justice.

Theoretically, the policy of asset confiscation reflects:

1. Retributive Justice, namely imposing punishment on perpetrators according to their actions;
2. Restorative Justice, namely restoring state and societal losses;
3. Preventive Justice, namely preventing perpetrators and other parties from committing corruption crimes.

Asset confiscation also provides a deterrent effect because perpetrators lose economic benefits obtained unlawfully. Thus, corruption eradication does not stop at corporal punishment but also targets the proceeds of crime.

From the perspective of recovering state losses, asset confiscation policy becomes an important step in supporting national development and safeguarding state finances. Therefore, legal policy reforms related to asset recovery need to continue to be carried out so that law enforcement against corruption crimes becomes more effective.

4. CONCLUSION AND LIMITATION

A. Conclusion

1. Indonesia has established various laws and regulations, especially the Corruption Eradication Law, as criminal law policies regarding the confiscation of assets derived from corruption. These policies aim to restore state losses and provide a deterrent effect to corruption offenders.
2. The court implemented additional punishments in the form of payment of compensation money and asset confiscation as a form of recovering state losses as stated in Decision Number 95/Pid.Sus-TPK/2021/PN.Smg in the name of Asri Murwani, which is expected to provide a deterrent effect for the perpetrator regarding the actions committed.
3. Asset confiscation from the perspective of justice not only functions as punishment but also as an effort to restore the rights of the state and society. Therefore, strengthening regulations, coordination among institutions, and optimizing asset recovery mechanisms are necessary so that corruption eradication becomes more effective.

B. Suggestions

1. The government needs to strengthen regulations regarding asset confiscation, including the establishment of an Asset Confiscation Law.
2. Law enforcement officers need to improve coordination in tracing and confiscating assets derived from corruption.
3. International cooperation is required in recovering assets concealed abroad.

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