

Role Of Prosecutor's Laws in Submission of Civil Services Against Submission
of Civil Services in Completion of Stories¹

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Info Artikel	Abstract
<p>Received: 13/04/2020 Revised: 29/07/2020 Accepted: 25/08/2020</p> <p>Keywords: Lawsuit . Substitute for, Prosecutor, Role.</p> <p>Kata Kunci: Peran, Jaksa, Gugatan. Penganti</p> <p>P-ISSN: 1412-310x E-ISSN: 2656-3797</p>	<p><i>Corruption or commonly referred to as "white collar crime" is a crime that can affect a country's economy. The perpetrators of corruption crimes are usually people who have power. With his authority, the perpetrators of corruption act arbitrarily, causing losses to the Indonesian state. Marwan Effendy stated that "Corruption by various groups is now seen as an extraordinary crime (extrardinary crime), therefore the response can no longer be pursued only by conventional means, but requires extraordinary handling. Corruption starts from the investigation process, prosecution until the court requires high costs, often these costs are not proportional to the value of losses incurred due to corruption. Corruption is an organized crime, this is not possible by a single perpetrator of corruption.</i></p> <hr/> <p>Abstrak</p> <p>Kejahatan korupsi atau biasa disebut sebagai kejahatan "white Collar Crime" merupakan kejahatan dapat berdampak pada perekonomian suatu negara. Para pelaku kejahatan korupsi biasanya adalah orang-orang yang memiliki kekuasaan. Dengan kekuasaannya para pelaku korupsi bertindak sewenang-wewenang sehingga menimbulkan kerugian bagi negara Indonesia. Marwan Effendy menyatakan bahwa "Tindak pidana korupsi oleh berbagai kalangan saat ini dipandang sebagai kejahatan luar biasa (<i>extrardinary crime</i>), karena itu penanggulangannya tidak lagi dapat ditempuh hanya dengan cara-cara konvensional, tetapi memerlukan penanganan yang sangat luar biasa (<i>extraordinary measures</i>). Proses penanganan tindak pidana korupsi mulai dari proses penyidikan, penuntutan sampai dengan pengadilan memerlukan biaya yang tinggi. Seringkali biaya tersebut tidak sebanding dengan nilai kerugian yang timbul akibat tindak pidana korupsi. Kejahatan korupsi merupakan kejahatan yang terorganisir, hal ini pelaku kejahatan korupsi tidak mungkin oleh pelaku tunggal.</p>

Introduction

The Republic of Indonesia is a state of law that upholds the rule of law to uphold truth and justice. Law in the rule of law has a supreme position or the main controlling and directing instrument which is the guideline and must be obeyed by every person and or legal subject through law enforcement, the law must be upheld and must be implemented so that human interests are protected as contained in Article 1 paragraph (3) The 1945 Constitution of the Republic of Indonesia which reads "The State of Indonesia is a state of law". In

¹Write the contract number/research decree and sources of research funding.

Example:

This paper is taken from 'Riset Dosen Pemula' research, funded by DIPA Jenderal Soedirman University, No: 1234/UN.23/2017, on March 2017

general, in every country that embraces the rule of law there are three basic principles, namely the supremacy of law, equality before the law, and law enforcement in a manner that is not contrary to the law (due process of law)). Utrecht argues, Disputes and disagreements that are allowed to escalate will result in divisions within society so the role of law is very important in resolving them².

That the law is a collection of instructions for life (commands and prohibitions) that regulate order in a society, and should be obeyed by members of the community concerned³. According to J.C.T Simorangkir, law is coercive regulations, which determine human behavior in the community created by official authorities, violations of these regulations result in taking action, with certain penalties⁴.

Law in the life of society, nation and state has an important position. RoeslanSaleh stated, the ideals of the law of the nation and state of Indonesia were the main ideas contained in the Preamble of the 1945 Constitution, to build an independent, united, sovereign, just and prosperous state. The legal ideal is Pancasila⁵. The process of handling criminal acts of corruption starting from the investigation, prosecution to court requires high costs. Often these costs are not proportional to the value of losses incurred due to criminal acts of corruption. Corruption crime is an organized crime, it is impossible for the perpetrators of corruption by a single perpetrator. The perpetrators of corruption on average are people who have competence and or expertise in their fields. Increasing corruption crime in Indonesia is a form of moral decline in the rulers in this country.

PROBLEMS

1. What are the Failure Factors in Eradicating Corruption in Indonesia?
2. What is the Duties and Authority of the State Attorney in filing a civil suit as an effort to recover state losses due to criminal acts of corruption?

RESEARCH METHODS

According to SoerjonoSoekanto, the Methodology basically provides guidance on the ways in which a scientist studies, analyzes and understands the environments he faces⁶. Research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically and consistently⁷ Methodological means according to or in a certain way, systematic is based on a system, while the consist means not only things that are contradictory in a particular framework. Through the research process it is necessary to carry out an analysis and construction of the data that has been collected and processed.

DISCUSSION

1. What are the Failure Factors in Eradicating Corruption in Indonesia

The process of handling criminal acts of corruption starting from the investigation, prosecution to court requires high costs. Often these costs are not proportional to the value of losses incurred due to criminal acts of corruption. Corruption crime is an organized crime, it is impossible for the perpetrators of corruption by a single perpetrator. The perpetrators of corruption on average are people who have competence and or expertise in their fields. Increasing corruption crime in Indonesia is a form of moral decline in the rulers in this country.

²LaluHusni, 2004, *Penyelesaian Perselisihan Hubungan Industrial Melalui Pengadilan dan di LuarPengadilan*, Jakarta: PT Raja Grafindo Persada, p. 3

³Utrecht, 1996, *Pengantar Dalam Hukum Indonesia*, Jakarta, p.13

⁴J.B Daliyo, 2007, *Pengantar Ilmu Hukum*, Jakarta : Prenhallindo, p. 30

⁵Roeslan Saleh, 1996, *Pembinaan Cita Hukum dan Asas-Asas Hukum Nasional*, Jakarta: Karya Dunia Fikir, p.15

⁶Soerjono Soekanto,2012, *Pengantar Penelitian Hukum*, Jakarta :UI Press, p. 6

⁷*Ibid*, p. 42

The failure factors in eradicating corruption in Indonesia can be caused by several things as follow⁸.

1. There is no overall political support.
2. The application of law against corruptors is ineffective, ambiguous and even allegedly in the corruption justice process there is a legal mafia that "plays".
3. Eradication efforts are not yet focused, there are many pressures, there are no priorities and are not supported by adequate bureaucratic structures between the judicial institutions.
4. Anti-corruption institutions are still considered as ineffective and ineffective organizations and are not in line with community expectations.
5. Judicial institutions are often involved in conflicts of interest with other government institutions, for example presidential permits for corruptors from government bureaucrats are obstacles to handling corruption quickly and effectively.

The judiciary as part of a legal system, its performance is now considered to be at a very extreme nadir. Various complaints both from the community and justice seekers as if it could no longer be a medium of control for the institution to further make significant improvements for the creation of an ideal justice system and in accordance with community expectations. In practice, the theory of justice that has a simple principle, fast, and low cost on the one hand and the creation of a clean, transparent and prioritizing justice values on the other hand seems to have been very difficult to apply and found in the institutions and judicial institutions that exist today. Criminal efforts for those who have committed corruption when they have not been able to recover state financial losses due to corruption. Besides that, the perpetrators of criminal acts of corruption are dominated by people who have power in the government and are also highly educated. So that law enforcement efforts on corruption are constrained by this State financial losses basically have to be returned by corruptors, this is when analyzed from the Utilitarianism school of thought put forward by Jeremy Bentham with his principle The Principle of Utility which states that "The greatest happiness of the greatest number of people (the greatest happiness of the greatest number of people)⁹. The principle of usability is the norm for personal actions or government policy through the formation of law.

2. Duties and Powers of State Attorney Attorney in submitting a civil suit as an effort to recover state losses due to criminal acts of corruption

The Corruption Eradication Act (UU PTPK) stipulates that state financial losses must be returned or replaced by corruptors. It is intended that the balance that is disturbed due to corruption can be restored and the perpetrators cannot enjoy the results of the corrupt crime. Restoring state losses can not only be done through criminal legal instruments but can also be done through civil legal instruments (Civil Procedure). This can be proven by the existence of a Prosecutor's Office in Indonesia regulated in Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the Prosecutor's Office has the following duties and authorities:

⁸Achmad Badjuri, " Peranan KPK Sebagai Lembaga Anti Korupsi di Indonesia", Fakultas Ekonomi Unsoed, Purwokerto, Vol.18, No. 1 Maret 2011, p.86

⁹Bentham berpandangan bahwa tujuan hukum adalah dapat memberikan jaminan kebahagiaan bagi individu-individu. Bentham mengusulkan suatu klasifikasi kejahatan yang didasarkan atas berat tidaknya pelanggaran dan yang terakhir diukur berdasarkan kesushan atau penderitaan yang diakibatkannya terhadap para korban atau masyarakat. (Muhammad Erwin dan Amrullah Arpan, 2007, *Filsafat Hukum*, Palembang: Universitas Sriwijaya, p.27)

1. In the criminal field, the prosecutor's office has duties and authorities:
 - a. prosecute;
 - b. implement the determination of judges and court decisions that have permanent legal force;
 - c. supervise the implementation of conditional criminal decisions, supervision criminal decisions, and conditional release decisions;
 - d. investigating certain criminal acts based on the law;
 - e. complete certain case files and to do so can carry out additional examination before it is submitted to the court which in its implementation is coordinated with investigators.
2. In the field of civil and state administration, prosecutors with special powers can act both inside and outside the court of law for and on behalf of the state or government.
3. In the field of public order and peace, the prosecutor's office organizes activities:
 - a. increasing public legal awareness;
 - b. securing law enforcement policies;
 - c. supervision of the circulation of printed matter;
 - d. supervision of the flow of trust that can endanger the community and the state;
 - e. prevention of abuse and / or blasphemy of religion;
 - f. research and development of criminal law and statistics.

Duties and authorities of the Prosecutor's Office acting inside and outside the court and on behalf of the state or government in the field of civil and state administration, are regulated in Article 24 of the Republic of Indonesia Presidential Regulation No. 38 of 2010 concerning the Organization and Work Procedures of the Republic of Indonesia Attorney General's Office: and State Administration is an element of leadership in carrying out the duties and authority of the Prosecutor's Office in the field of civil and state administration, reporting to the Attorney General. The Attorney General's authority in the field of civil and state administration is regulated in Article 444 of the Attorney General's Regulation Number PER-006 / A / JA / 07/2017 concerning the Organization and Administration of the Attorney General's Office of the Republic of Indonesia, stating:

"Deputy Attorney General for Civil and State Administration has duties including law enforcement, legal assistance, legal considerations and other legal actions to state datau government, state institutions or agencies, institutions and agencies of the central and regional government, State or Regional Government Enterprises in civil and administrative matters to save, restore the wealth of the State, uphold the authority of the government and the state and provide legal services to the public ".

In the implementation of upholding the authority of the government in recovering state losses as stipulated in the Attorney General's Regulation Number Per-025 / A / JA / 11/2015 concerning Guidelines for Implementing Law Enforcement of Legal Aid, Legal Considerations, Other Legal Actions and Legal Services in Civil and Administrative Affairs State, in this Attorney General's regulation, what is meant by:

1. State Attorney Attorney is a Prosecutor who, based on a Special Power of Attorney, conducts law enforcement and legal assistance or based on a warrant to conduct legal considerations, other legal actions and legal services in the Civil Administrative Fund field.
2. Law Enforcement is: the activities of the State Attorney to bring a lawsuit or petition to the court in the civil field as determined by statutory regulations in order to maintain law order, and protect the interests of the State and the Government as well as civil rights.
3. Civil law interests of the State or Government are interests related to saving, restoring and protecting the finances / assets of the State as stipulated in statutory regulations.

4. Legal aid is the provision of legal services in the field of civil law by a State Attorney to a State or Government to act as a legal representative based on Special Power of Attorney both non litigation and litigation in civil court and arbitration as a plaintiff / plaintiff / plaintiff / plaintiff / contender / defendant or defendant / defendant intervention / applicant / contender / contested, as well as providing legal services in the field of State Administration by the State Attorney Attorney to the state and the government as the defendant / respondent in the State Administration court and as a government representative or who is an interested party in the material review case - Law on the Supreme Court.
5. Legal Considerations are: Legal services provided by the State Attorney Attorney to the State or Government, in the form of legal opinions (Legal Opinion / LO) and / or legal assistance (Legal Assistance / LA) in the Civil and Administrative Administration and / or Audit Legal (Legal Audit) in the civil field.
6. Other Legal Actions are: the provision of legal services by the State Prosecutors beyond law enforcement, legal assistance, legal services and legal considerations in the context of saving and restoring state finances / upholding and upholding the Government's authority, among others, to act as conciliators, mediators or facilitators in in the event of a dispute or dispute between the State or Government.
7. Legal services are: the provision of legal services by the State Attorney Attorney in writing or verbally to the public, which includes individuals and legal entities, related to Civil and Administrative matters in the form of consultation, opinion and information.

The Prosecutor's Office in implementing law enforcement through the State Attorney can submit a lawsuit or petition to the Court in the Civil field as an effort to maintain law order, legal certainty and protect the interests of the State or Government against convicted of criminal acts of corruption in returning state financial losses. The return of the corrupted state finances was carried out by civil litigation, which was alternatively directed from two sources¹⁰

1. From the results of corruption which has become part of the assets of the accused or suspect;
2. Replaced with the wealth of the convicted, the accused or the suspect even though there is no result of corruption he has. Corruption in this case benefits another person or a corporation and the convict, defendant or suspect does not take advantage of the corrupted state finances for himself

CONCLUSION

The regulation of civil law in the Corruption Crimes Act indicates that in order to recover state financial losses due to criminal acts of corruption it is not enough to only rely on the norms of criminal law. If the Corruption Crime Act is categorized as a criminal act, then the regulation of civil law efforts in the Law, shows that a statutory regulation can at the same time contain aspects of criminal law and civil law. Setting a civil lawsuit is possible in the Corruption Crime Act indicating that corruption which is categorized as extraordinary crime in handling it is needed in extraordinary ways as well.

SUGGESTION

In order for efforts to recover state losses due to criminal acts of corruption through civil suits to be effective, it is necessary to collect data and confiscate property belonging to the suspect early, namely from the time the investigation is carried out .

¹⁰Pirmawan Sitorus, 2009, "Kewenangan Kejaksaan Sebagai Jaksa Pengacara Negara Dalam Pengambilan Aset Hasil Korupsi", Tesis , Fakultas Hukum , Universitas Sumatera Utara, Sumatera Utara, p.6

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