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Return of state financial losses corruption criminal acts

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Abstract. In the reform era, in 1999 to be precise, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes was formed, which was later amended and added to in 2001 by forming Law Number 20 of 2001 concerning Amendments to Law Number 31 of the Year 1999 (hereinafter referred to as the Corruption Act). The aim of the Corruption Crime Law is to prevent the loss of state money due to unlawful acts by unlawful state officials, or other parties who benefit. The urgency of returning state finances due to criminal acts of corruption, is caused more by losses as a result of the unlawful acts of the perpetrators. Returning state financial losses does not eliminate corruption. By returning state losses, it has actually been stated that there were state losses that occurred before. In *voltooid delict*, state losses have existed or occurred if the state losses were desired by the perpetrators of criminal acts. The intention to harm state finances can be seen from the will of perpetrators criminal acts who wish to gain more profit from activities financed with state funds. This excess profit creates a shortage of work carried out resulting in state losses, namely that the amount of money spent is not in accordance with what is spent or there is a shortage of state money spent.

Keywords. financial; corruption; money

Introduction

In the reform era, in 1999 to be precise, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes was formed, which was later amended and added to in 2001 by forming Law Number 20 of 2001 concerning Amendments to Law Number 31 of the Year 1999 (hereinafter referred to as the Corruption Act). The aim of the Corruption Crime Law is to prevent the loss of state money due to unlawful acts by unlawful state officials, or other parties who benefit. (Rizal Hariyadi, 2019)

The Corruption Crime Law has determined sanctions for perpetrators of corruption, including imprisonment, fines, and restitution of state financial losses. To calculate state losses that must be returned to state assets, other authorized institutions are needed, such as (BPK), PPATK, and also involve the State Finance Law and the State Treasury Law. According to Article 4 of the Corruption Crime Act, the obligation to return state financial losses or the state's economy does not eliminate the punishment of perpetrators of criminal acts as referred to in Article 2 and Article 3 of the Corruption Eradication Law. Then the formulation of the problem that can be taken is the urgency of returning state financial losses resulting from criminal acts of corruption based on the Corruption Crime Act.

Research methods

This type of research is normative legal research.(Novianti & Michael, 2023)

Research result

The Nature of State Losses

Returning state losses is one the concrete manifestations results of enforcement the Corruption Crime Act by law enforcement officials. Corruption itself is an act that is prohibited by law, in this case the Law on Corruption Eradication.(Aziz & Michael, 2020)

As Budimansyah said, that law enforcement can be interpreted as a series of actions carried out by law enforcement officials, and broadly it can also be interpreted as how a good law is produced and how this legal product is applied. State losses are basically state money sourced from the State Revenue and Expenditure Budget (APBN), which will be used to finance development in framework of realizing people's welfare.

The nature of state losses can be understood through the phrase "can" in the provisions of Article 2 paragraph (1) of Corruption Crime Eradication Law, which is formulated: "Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy..." Besides that, it is also contained in Article 3, which is formulated: "Any person who unlawfully commits an act of enriching himself or another person or a corporation that "can" harm state finances or state economy...". The phrase "may" in perspective of legal theory includes unclear norms, meaning that phrase "may" cause state financial losses, state losses do not always occur, but such losses may occur. Therefore, the phrase "can" in Article 2 and Article 3 of Law on the Corruption Eradication is inappropriate.

Phrases can be in legal norms a vague norm, whose meaning must be sought for articulation so that it is clear. Vague norms as the basis for decision-making are multi-interpreted which can lead to injustice in society. Therefore, it is very appropriate that the Constitutional Court through its decision Number: 25/PUU-XIV/2016, decides to remove the phrase "...can" harm state finances..." in Article 2 and Article 3 of Law on Corruption Eradication.

Consideration of the Constitutional Court's decision states that state losses must be real and the amount can be counted. State losses are not just potential losses that cannot be determined with certainty. Decision of the Constitutional Court Number: 25/PUU-XIV/2016P resulted in Article 2 and Article 3 of the Criminal Act becoming a material crime. As a result, the element of state loss in Article 2 and Article 3 must be proven.

In the elucidation of Article 32 paragraph (1) of Law number 31 of 1999 in conjunction with Law number 20 of 2001 concerning the Eradication of Corruption Crimes which states, "What is meant by "obviously there has been a loss of state finances" is a state loss that has been amount is calculated based on the findings of competent authority or appointed public accountant." As for who the authorized agency is, it is not explained further. The decision of Constitutional Court Number 003/PUU-IV/2006 which reviewed Law Number 31 of 1999 as amended by Law Number 20 in 2001 Concerning the Eradication of Corruption Crimes states, "to consider the specific and concrete circumstances related to the criminal acts that occurred, which can logically be concluded that state losses occur or do not occur, must be carried out by experts in state finance, the state economy, as well as experts in analyzing relationship between a person's actions and losses.

Such conclusions must be determined by an expert in the field. An expert in his field as decided by the Constitutional Court is an expert appointed based on a court decision to assess

and determine state losses. However, if expert is requested by investigators or other parties from state institutions/non-ministerial government agencies/public accountants/other relevant institutions, the expert must have public authority or have the competence to determine and calculate state losses.

The Urgency of Recovery of State Financial Losses

The philosophy of returning state financial losses from the proceeds of crime is based on the reason that state financial losses are money used to finance development in order to improve people's welfare. Money from corruption is money obtained by illegal acts. Because the money from corruption is obtained by violating the law, as well as acts abuse of authority or position. State losses must also be linked to a person's intention to commit an unlawful act or abuse of authority or misuse. Therefore, the money from corruption must be returned to state.

Such law enforcement that is avoided by the perpetrators of corruption is what many perpetrators of corruption avoid. The perpetrators corruption do various ways to avoid sanctions that will be imposed. One of the things that was done was by paying compensation claims for findings of irresponsible use of state finances. The perpetrators of corruption think again that it will make the element of state losses unproven. Of course, this assumption is connected with the Constitutional Court decision No. 25/PUU-XIV/2016 which states that state losses must be real and definite in number.

The basis for considering the inclusion obligation to return state finances in the Corruption Eradication Law is sociologically very detrimental to society. The criminal act of corruption which is detrimental to state finances is not only an illegal act, but also a crime against humanity, bearing in mind that the consequences a criminal act of corruption cause massive losses to society. In addition, for officials who are involved in criminal acts of corruption, it is an ethical and moral violation that should be upheld considering that state officials are holders of people's mandate.

In addition, the ratio legislature of returning state financial losses is carried out as a guarantee of legal protection for the people from evil deeds by perpetrators of corruption. The criminal act of corruption also hurts the sense of justice in society, because lifestyle, wealth creates a very wide distance between officials and the public. While there are still many people living below the poverty line, many people are not living properly. Consideration of people's sense of justice, seems to be able to color the ratio legis of the Corruption Crime Law which requires perpetrators of corruption to return state losses, by increasing criminal sanctions if they do not return these losses.

Social inequality due to corruption is also inconsistent with the teachings of John Rawls's theory of justice which aims to create social justice which aims to achieve the stage of social welfare. The legal policy for eradicating corruption should be right on target, so that provisions that require corruptors to return state losses become an appropriate legal policy. By paying attention to the principle of justice from John Rawls, the legal policy of returning state financial losses is one of the right policy options to accelerate efforts to develop people's welfare which requires large funds. Social, economic and political disparities that occur in society are the causes of social injustice. Therefore, criminal acts of corruption must be eradicated to prevent differences in social and economic structures in order to achieve well-distributed justice.(Rawls, 1971)

The legal issue regarding the sanction for returning money obtained from corruption by perpetrators of corruption is related formulation of Article 2 and Article 3 Corruption Eradication Law, specifically the phrase ...“can”, resulting in state losses. This phrase does not

indicate the existence of real losses, as a basis for imposing sanctions on returning state financial losses. Refunds for state financial losses must be proven that state money has been lost as a result of acts against the law. If it is still potential, it means that no state money has been lost yet, so that it cannot be categorized as state loss. Thus losses due to criminal acts of corruption must be seen as real losses that can be calculated.

The juridical reason for returning state financial losses is based on provisions in Corruption Crime Act which threaten sanctions for the obligation to recover state financial losses for perpetrators of corruption. The provisions of Article 4 of the Law on the Eradication of Criminal Acts of Corruption, emphasize that returning state financial losses does not remove criminal sanctions. The provisions of this article can be interpreted that the recovery of state financial losses is not a substitute or substitute for imprisonment. However, interactively, the provisions of article are used as a weight for law on the perpetrators of corruption, with aim of deterring and preventing others from committing corruption. (Supriadi et al., 2020)

Universally, corruption is an act that is forbidden to do. The prohibition of criminal acts of corruption is based on the reason that corruption is an unlawful act that causes harm and even misery to society. Because corruption money generally comes from the state budget which is used for development to improve people's welfare.

The criminal act of corruption not only harms the community, but morally provides bad education for the community, especially for the younger generation who will continue development. Corruption also causes a decrease or even loss of public trust in state administrators and government administrators. Therefore, the legal policy of returning state financial losses is felt to be in accordance with people's sense of justice.

Recovery of State Financial Losses Does Not Eliminate Criminal Sanctions

An interesting discussion in this research is related to the provisions of Article 4 of the Corruption Eradication Law, which is formulated: "Recovery of state financial losses or the country's economy does not eliminate the punishment of perpetrators of criminal acts as referred to in Articles 2 and Article 3", i.e. the pros and cons of the existence of provisions in the article that free convicts who return state financial losses are freed from criminal charges. (Emil et al., 2019)

The provisions of Article 4 became a long debate, although some legal experts stated that the provisions of this article were inappropriate. This opinion said that by returning the proceeds of corruption, the threat of criminal sanctions ended. If the return of state financial losses was carried out, the legal process was carried out. This opinion is of course inaccurate, and contains an element of luck for the perpetrators of corruption. People will use the opportunity to commit corruption wherever possible with the assumption that if it is found out that the proceeds of corruption are returned, and the criminal threat will automatically be abolished.

In the general elucidation of the Corruption Crime Eradication Law, it is written in the sentence "To create a just, prosperous and prosperous Indonesian society, it is necessary to continuously improve efforts to prevent and eradicate criminal acts in general and criminal acts of corruption in particular "... In addition to eradicating criminal acts of corruption is the government's determination, it is also a response to the aspirations of the people, because in reality corruption has caused enormous state losses which in turn can have an impact on the emergence of crises in various fields". (Handoko & Warka, 2019)

In this regard, the eradication of criminal acts of corruption is seen as insufficient if it is only required to return state losses prior to investigation. This certainly will not educate and

deter perpetrators of corruption, while it will also open up opportunities for other people to try to commit the same act in hopes of not being traced, and if it is found that they are quickly returned to the state, then the criminal threat will be removed. It is felt that the state's loss recovery policy is inappropriate if it is used as an excuse for abolishing a crime. However, if the recovery of state financial losses is carried out by the perpetrators of criminal acts at the stage before the investigation, used as a basis for the judge's considerations (*ratio decidendi*) to reduce the sentence imposed, of course it can fulfill the community's sense of justice.

The implication of the Constitutional Court's decision no 25/PUU-XIV/2016 against Articles 2 and Article 3 of the Corruption Crime Law is to change the crime of corruption as referred to in Article 2 and Article 3, to become a material offense. The impact with proving corruption cases is that the element of state loss must be proven first, whether the return for state losses still has state losses or not, and must be declared or declared by the authorized institution, namely the BPK. Based on the method of examining state losses carried out by the Supreme Audit Agency, if the Audit Board states that even though there has been a payment for the loss, the loss has existed since the payment or state money was issued and the implementation is not appropriate, so that the Audit Board declares or declairs that there is a state loss the results of examination of state losses by Audit Board which can be used as documentary evidence to prove the elements of state losses.

Conclusion

The urgency of returning state finances due to criminal acts of corruption, is caused more by losses as a result of the unlawful acts of the perpetrators. Returning state financial losses does not eliminate corruption. By returning state losses, it has actually been stated that there were state losses that occurred before. In *voltooid delict*, state losses have existed or occurred if the state losses were desired by the perpetrators of criminal acts. The intention to harm state finances can be seen from the will of perpetrators criminal acts who wish to gain more profit from activities financed with state funds. This excess profit creates a shortage of work carried out resulting in state losses, namely that the amount of money spent is not in accordance with what is spent or there is a shortage of state money spent.

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