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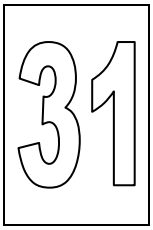

RECONSTRUCTION OF THE REVERSE BURDEN OF PROOF MECHANISM FOR THE RECOVERY OF CORRUPT ASSETS

Ade Onny Siagian, Jaka Santosa, Charine Alya Pratiwi
Universitas Bina Sarana Informatika
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Abstract

Corruption is an extraordinary crime, etymologically derived from the Latin words corruptus and corruption, meaning depravity, deviation from purity, and unlawful acts for personal or other people's benefit. This study aims to analyze law enforcement mechanisms for asset recovery efforts resulting from corruption, which have historically harmed state finances. The research method used is normative juridical, focusing on literature analysis and applicable legal regulations. The results indicate that optimizing the recovery of state losses can be achieved by strengthening the system of shifting the burden of proof. Furthermore, legal instruments in Indonesia allow for asset recovery through two main channels: criminal proceedings, as stipulated in the Corruption Law, and civil proceedings. This study concludes that combining a criminal approach and the effectiveness of the reverse burden of proof is key to achieving maximum and accountable asset recovery.
Keywords: *Corruption, Asset Recovery, Reversed Burden of Proof, Normative Jurisprudence*

Abstract

Tindak pidana korupsi merupakan kejahatan luar biasa (extraordinary crime) yang secara etimologis berasal dari bahasa Latin corruptus dan corruption, yang bermakna kebejatan, penyimpangan dari kesucian, hingga tindakan yang melanggar hukum demi keuntungan pribadi atau orang lain. Penelitian ini bertujuan untuk menganalisis mekanisme penegakan hukum dalam upaya pemulihan aset (asset recovery) akibat tindak pidana korupsi yang selama ini merugikan keuangan negara. Metode penelitian yang digunakan adalah yuridis normatif dengan fokus pada analisis literatur dan regulasi hukum yang berlaku. Hasil penelitian menunjukkan bahwa optimalisasi pengembalian kerugian negara dapat dilakukan melalui penguatan sistem pembalikan beban pembuktian (shifting the burden of proof). Selain itu, instrumen hukum di Indonesia memungkinkan pemulihan aset dilakukan melalui dua jalur utama, yakni jalur pidana sebagaimana diatur dalam Undang-Undang Tindak Pidana Korupsi, maupun jalur perdata. Penelitian ini menyimpulkan bahwa penggabungan pendekatan pidana dan efektivitas pembuktian terbalik merupakan kunci dalam mewujudkan pemulihan aset yang maksimal dan akuntabel.
Kata Kunci: Korupsi, Pemulihan Aset, Beban Pembuktian Terbalik, Yuridis Normatif.

I. INTRODUCTION

Corruption is an extraordinary crime that requires extraordinary legal instruments to eradicate its existence. The reverse burden of proof system is a special regulation established by the government through Law Number 31 of 1999, later amended by Law Number 20 of

2001 concerning the Eradication of Corruption Crimes. Corruption is an ancient problem that has existed since prehistoric times. If examined from the perspective of the relationship between corruption practices and religion, both are closely interconnected. (Handayani, 2019)

Theobald stated that corruption creates a climate of greed, selfishness, and cynicism. Chandra Muzaffar argued that corruption encourages individuals to place their personal interests above everything else and causes them to think solely about themselves. .(Hilmi et al., 2018)

The crisis faced by the Indonesian nation cannot be separated from its failure to develop a state administration and development system that upholds the principles of "good governance" (Rasul, 2012). In fact, various efforts to realize good governance have been implemented, including through the Decree of the People's Consultative Assembly (TAP MPR) Number XI/MPR/1999 concerning a Clean and Corruption-Free State Administration, as well as Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion, and Nepotism (KKN). As stipulated in Article 3 of Law Number 28 of 1999, the principles of state administration include: 1.The principle of legal certainty; 2. The principle of orderly state administration; 3. The principle of public interest; 4.The principle of openness; 5.The principle of proportionality; 6.The principle of professionalism; and 7.The principle of accountability.

These regulations constituted the initial steps of reform in the field of good governance. In addition to these laws, reforms concerning corruption legislation were also carried out through the revocation and replacement of Law Number 15 of 2002 concerning Money Laundering Crimes and the enactment of Law Number 32 of 2002 concerning the Corruption Eradication Commission (KPK).

The commitment to combating corruption was further emphasized through Presidential Instruction Number 5 of 2004 concerning the Acceleration of Corruption Eradication. Government efforts to accelerate corruption eradication have produced significant results in many respects. However, on the other hand, such efforts are still considered insufficient to fully establish a clean government administration. Therefore, all efforts that have been undertaken should serve as the initial stage of legal reform enforcement, which must be followed by sincere implementation and carried out with full responsibility.

II. THEORETICAL STUDIE

Legal Facts

Law enforcement, also referred to as rechtstoepassing, rechtshandhaving, law enforcement, or application, is part of the legal process within society. Purnadi and Soerjono Soekanto define law enforcement as an activity aimed at harmonizing stable value relationships and manifesting behavioral attitudes as a series of value elaborations to create social engineering, maintain social control, and preserve peaceful social interaction. Good law enforcement involves harmonization between values, legal norms, and actual human behavior. The values and norms contained in legislation must be implemented and aligned with real human conduct. Justice as fairness begins with one of the most common choices that people can collectively make, namely choosing the primary principles of justice that regulate further criticism and institutional reform. (Asiva Noor Rachmayani, 2015)

1. Corruption in Legislation

a) Corruption Offenses in the Criminal Code (KUHP)

The norms of corruption crimes should be comprehensively and deeply examined in order to develop the substance of anti-corruption legislation. Therefore, the formulated norms must always be anticipatory and capable of addressing new modes of corruption crimes in the future. This study compares corruption offenses resulting from legislative products with corruption offenses derived through codification and hermeneutic interpretation of existing norms in the Criminal Code (KUHP) (Dr Nurul Gufron, SH., 2020). The codification process is conducted through legal reasoning, both within law faculties and through annotations of court decisions that have obtained permanent legal force.

Throughout its development, the KUHP has been amended, supplemented, and revised by several national laws, such as Law Number 1 of 1946, Law Number 20 of 1946, and Law Number 73 of 1958, including various anti-corruption laws that specifically regulate several provisions within the KUHP. Corruption offenses contained in the KUHP include official misconduct offenses and offenses related to official positions. Based on the nature and position of the KUHP, corruption offenses regulated therein are still categorized as ordinary crimes.

b) Law Number 31 of 1999 concerning the Eradication of Corruption Crimes

Article 21 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes does not explicitly define the meaning of the acts of “preventing, obstructing, or thwarting directly or indirectly.” Consequently, there is a possibility of misinterpreting the meaning of such actions within the provision. (Junianto, 2019)

The acts classified as corruption crimes under Law Number 31 of 1999 are not entirely new because lawmakers still adopted many provisions from previous legislation. Nevertheless, the spirit and values of reform, regarded as the soul of the new law, were expected to create significant breakthroughs, particularly through the mandate to establish the Corruption Eradication Commission (KPK) as a new instrument for combating corruption. Law Number 28 of 1999 concerning a State Administration that is Clean and Free from Corruption, Collusion, and Nepotism also clarified the terminology regarding state administration free from corrupt, collusive, and nepotistic practices.

c) The Impact of Corruption on Economic Growth

Indonesia is one of the developing countries with a relatively low Corruption Perception Index (CPI). Corruption in Indonesia remains high, although in 2015 Indonesia's CPI increased and remained stable in 2016. In 2015, Indonesia ranked 88th with a Corruption Perception Index score of 36, increasing from 32 in 2013 and 34 in 2014. The Indonesian government established the Corruption Eradication Commission (KPK) as an effort to combat corruption. The KPK continues to implement various strategies to eradicate corruption, one of which is the implementation of a national single identity system. A country can be considered successful in combating corruption when its citizens possess a national single identity because integrated data within such a system allows all individual information to be connected, transparent, and resistant to manipulation. (Akman, 2018)

In general, corruption creates several major risks, including:

1. The financial costs, resulting in inequality that burdens the poor more heavily than the wealthy;
2. The degradation of morality as an important foundation for economic development and growth, which eventually leads to legal disobedience and nurtures a culture of corruption;
3. Obstacles to accessing social services such as education, healthcare, food subsidies, and other public services; and
4. The destruction of social culture. In reality, the collapse of social culture poses a greater danger than economic decline itself, even though economic capital remains important.

2. Assets Derived from Corruption Crimes

Regression results indicate that the Corruption Perception Index (CPI), as an indicator of corruption in Indonesia, has a negative and insignificant effect on economic growth. These

findings suggest that corruption does not significantly affect economic growth in Indonesia, contrary to the initial hypothesis. However, the results are consistent with theories demonstrating the insignificant relationship between corruption and economic growth. Several factors underlie this insignificance, one of which is the variation in economic freedom across regions. Indonesia, with its differing regional regulations, also experiences varying levels of economic freedom in different areas. Perpetrators of corruption crimes employ various methods to transfer assets obtained through corruption in order to avoid detection by law enforcement authorities. The transfer of criminal assets is often conducted quickly and easily, causing such assets to disappear from the supervision of law enforcement agencies. (Purbo & Suwito, 2017).

3. Recovery of Assets Obtained from Corruption Crimes (Asset Recovery)

The term "asset forfeiture" differs from "asset recovery." Asset forfeiture refers to the confiscation of assets, while asset recovery refers to the broader process of recovering assets. According to Paku Utama, asset recovery encompasses an entire series of actions consisting of tracing, legal proceedings including confiscation, and repatriation efforts, each of which requires international cooperation. Asset recovery efforts may be conducted both domestically and internationally. Therefore, asset forfeiture constitutes only one part of the broader asset recovery process. (Usman, 2019)

On the other hand, criminal law doctrine and international human rights conventions generally do not recognize reverse burden of proof systems for determining a suspect's guilt. However, reverse burden of proof mechanisms may be applied in determining the confiscation of criminal assets. Since 2000, such mechanisms have been practiced in the United States through civil-based forfeiture or non-conviction based forfeiture (NCB). Traditionally, criminal-based forfeiture systems have long been recognized through court decisions that possess permanent legal force.

4. Results of Asset Confiscation in Corruption Crimes

The Draft Law on Asset Forfeiture defines Asset Forfeiture as a coercive action conducted by the state to confiscate criminal assets based on a court decision without depending upon the criminal conviction of the perpetrator. Efforts to confiscate assets derived from corruption crimes become increasingly difficult when the assets are transferred abroad. Such situations create obstacles in tracing, forfeiting during trial proceedings, and confiscating assets after a legally binding court decision has been issued. (Nugraha, 2020)

From a terminological perspective, concepts closely related to asset forfeiture include asset recovery, which encompasses tracing, freezing, seizure, confiscation, maintenance or management, and the return of assets located both domestically and internationally.

5. Obstacles and Challenges in Recovering Assets Derived from Corruption Crimes

Several challenges must be faced by the government, particularly concerning property rights and fair trial processes. The in rem forfeiture approach shifts the focus from establishing material truth regarding criminal guilt toward merely proving the formal legality of the origin of assets. In implementing the Draft Law on Asset Forfeiture, the government must clearly emphasize that the mechanism does not seek to prove a person's guilt but rather to establish that certain assets are proceeds of crime. (Agustine, 2019)

In practice, efforts to restore state financial losses through asset recovery in corruption crimes continue to encounter obstacles, both procedurally and technically. From the procedural perspective, specific legal instruments are required to correspond with the modus operandi of the crime and the legal object under dispute.

6. The Function of Implementing the Reverse Burden of Proof System in Asset Recovery as an Effort to Eradicate Corruption Crimes

Corruption, as an extraordinary crime (extraordinary crime), obligates the state through its law enforcement institutions to restore the economic losses caused by corruption based on the principle of social justice. The process of shifting the burden of proof is commonly known as the "reverse burden of proof" or "reversal burden of proof." This concept constitutes one of the important substances regulated in Law Number 20 of 2001, which amended Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. (Pokhrel, 2024)

According to the Anti-Corruption Law (UUPTPK), the reverse burden of proof possesses two characteristics. First, regarding the criminal act itself, Article 37 paragraph (1) states that "the defendant has the right to prove that he or she did not commit a corruption crime." This means that when the defendant exercises this right, a limited and balanced reverse burden of proof applies. However, if the defendant does not exercise such right, the conventional burden of proof remains applicable.

Second, Article 37A paragraph (1) of the Anti-Corruption Law states that "the defendant is obligated to provide information concerning all of his or her assets, as well as the assets of the spouse, children, and any person or corporation suspected of having a connection with the charged offense." Therefore, regarding the defendant's assets, a limited and balanced reverse

burden of proof applies between the public prosecutor and the defendant or the defendant's legal counsel. (Hukum & Bhayangkara, 2019)

III. RESEARCH METHODS

This research employs a normative juridical method with a library research approach that focuses on the analysis of legal norms, principles, doctrines, and theories. Using a statute approach, the author examines regulations related to corruption to systematically and constructively address legal issues. The primary focus of this research is to examine the mechanism for stolen asset recovery through a reversal of the burden of proof approach as an effort to hold state officials accountable. Data was collected through a literature review of primary legal materials, books, and scientific journals to identify a theoretical basis and comprehensive legal solutions to the issues studied.

IV. RESEARCH RESULTS

Based on the results of a normative legal analysis, the legal framework for stolen asset recovery in Indonesia currently relies on the Corruption Eradication Law, which generally adheres to a system of asset confiscation through criminal judgment. However, this study finds an urgent need to maximize the mechanism of shifting the burden of proof as an efficient strategy for proving the origins of a defendant's assets. In practice, this doctrine requires defendants to legally prove that their assets did not originate from corruption, which is theoretically based on the classification of corruption as an extraordinary crime. Furthermore, the research results indicate that a reversal of the burden of proof approach is key to overcoming obstacles in tracing assets, which are often hidden through complex schemes. Although current regulations have not fully adopted the concept of non-conviction-based asset forfeiture, the use of a reversed burden of proof in trials could be a legal breakthrough for judges in optimizing the recovery of state financial losses. By synchronizing the anti-corruption regulations and the money laundering crime law, this mechanism not only functions as an instrument of imprisonment for perpetrators, but also as a means of restoring economic justice to the state through the confiscation of assets whose source cannot be proven by state officials.

V. CONCLUSION

Recognizing the complex problems caused by corruption, the United Nations Convention Against Corruption introduced a grand design for the recovery of stolen assets through the Stolen Asset Recovery (StAR) initiative. The Stolen Asset Recovery process begins with the collection of evidence and assets by law enforcement authorities. During this process, the evidence gathered must be secured to prevent interference from various interests

that could damage the legal system. Within civil law jurisdictions, orders concerning the freezing and confiscation of assets fall under the authority of prosecutors and judges. The implementation of the Stolen Asset Recovery mechanism essentially represents a diplomatic relationship involving two or more countries and therefore requires supporting agreements known as Mutual Legal Assistance (MLA) (Pujianti et al., 2020)

The recovery of assets obtained through corruption represents one of the legal breakthroughs in Indonesia, establishing a foundation for asset recovery in developing countries, even though many obstacles continue to hinder its implementation. Furthermore, the reverse burden of proof system in Indonesia is regulated under Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. However, many of its provisions are still not supported by strong theoretical justification and merely function as instruments to simplify the evidentiary process without sufficiently considering the human rights aspects of suspects and defendants as guaranteed under the 1945 Constitution of the Republic of Indonesia.

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