The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.8412829

CONSTRUCTING THE RETURN OF STATE FINANCIAL IN CORRUPTION CASES: AN INTEGRATION CONCEPT OF PROSECUTION INSTITUTIONS

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Abstract

At the practical level, disharmony between investigators and public prosecutors often occurs and cannot be avoided. These differences of opinion sometimes lead to back-and-forth case files and hinder the course of law enforcement. This research is normative legal research using conceptual, philosophical, and comparative approaches. The method of processing legal materials is done deductively. The results show that an ideal sanction against convicted corruption cases in the context of recovering state losses is more related to the principle of restorative justice, namely focusing on efforts to recover losses suffered by the State by prioritizing sanctions for payment of replacement money for the actions of perpetrators whose qualifications are directly detrimental to state finances. The sanction for payment of replacement money is then balanced with imprisonment or fines according to the capabilities of the act committed.

Keywords: Corruption; Fines; Restorative Justice; State Financial Losses

1. INTRODUCTION

Corruption eradication has become a common concern for all countries. Nowadays, the problem of corruption in Indonesia is categorized as acute.[1] This can be seen from so much news about corruption crimes committed by both central and regional government officials. Corruption is carried out not only collectively, but has been carried out systemically by the perpetrators with the hope of enriching themselves and others.[2]

In its journey, law is often unable to answer the real problems that exist in the communities even sometimes it only resembles a beautiful literary work when read but has no use at all in the real world. Sometimes law enforcement officers enforce the law in a rigid way, and when law enforcement agencies have implemented the law in rigid and rigid ways, it can be ascertained that the essence of the purpose of the law on the other hand will be difficult to realize, because the purpose of the law is not only to achieve certainty,[3] but also aims to create concrete order and justice in society.

As a public prosecutor, the author sometimes sees that investigators are too hasty in establishing someone as a suspect in a criminal act, even though in fact there are other ways to be able to resolve a case without going through the mechanism of criminal law, considering the nature of criminal law is a last resort (*ultimum remedium*), and sometimes the author sees that there are

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ISSN 1533-9211
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some legal facts that are covered up by investigators, even legal facts that are covered up by investigators in the case file are only revealed during the prosecution process at the trial conducted by the public prosecutor.[4] The public' view of the public prosecutor becomes not good, as if the public prosecutor cooperated to cover up a legal fact.

The judicial system is a system of handling cases since there are parties who feel aggrieved or since there is an allegation that someone has committed a criminal act until the implementation of the judge' decision. Especially, for the criminal justice system, as a network, the criminal justice system operates criminal law as the main tool, and in this case is in the form of material criminal law, formal criminal law and criminal law enforcement.[5]

At the practical level, disharmony between investigators and public prosecutors often occurs, especially regarding the results of investigations where sometimes the public prosecutor after examining the investigation case file assumes that the results of the investigation made by the investigator are not sufficient for prosecution, while the investigator thinks otherwise.[6] These differences of opinion sometimes lead to back and forth case files and hinder the course of law enforcement.

The Prosecutor Office of the Republic of Indonesia is an institution that is mandated to carry out state power in the field of prosecution and other authorities granted by law. The authority to prosecute is exercised by the public prosecutor which, when interpreted etymologically, comes from the word "*prosecution*" which comes from the Latin *prosecutus*, which consists of the words "*pro*" (before) and "*sequi*" (follow). Referring to the etymological meaning of the word "*Public Prosecutor*" and associated with the role of the Prosecutor's Office in a criminal justice system, the Prosecutor Office should be viewed as *Dominus Litis* (*procuruer die de procesvoering vastselat*) namely controlling the case process from the initial stages of the investigation to the execution of a decision. The prnciple of *Dominus Litis* is universal as contained in Article 11 of the Guidelines on the Role of Prosecutors which was also adopted by the Eight United Nations Congress on the Prevention of Crime at the 8th Crime Prevention Congress in Havana in 1990 and in Indonesia has also been explicitly acknowledged in the Decision of the Constitutional Court No. 55/PUU-XII/2013.

However, in fact, the principle of *Dominus Litis* has been reduced to its meaning and function with the enactment of the Criminal Procedure Code through the principle of functional differentiation which results in the division of the investigation and prosecution subsystem. Even though the Indonesian Criminal Procedure Code does not fully implement the function of the public prosecutor as *Dominus Litis*, the Prosecutor' Office is still given a limited portion to carry out horizontal supervision of the investigation process with the aim of preventing abuse of authority by law enforcement officers that have the potential to violate human rights.

In this regard, according to the author, it would be inappropriate if all the mistakes and violations of the rights of the suspect. On the other hand, if the legal provisions can be implemented consistently by all parties including law enforcement officers involved in it, then it is not impossible, we have long been a dignified nation by providing legal protection guarantees for the rights of suspects in the pre-trial process.[7]

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ISSN 1533-9211
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The effectiveness of the criminal justice system will not be created in Indonesia if it still maintains the criminal justice system based on the current Indonesian Criminal Procedure Code, it is time for the renewal of the criminal justice system to be implemented in order to create effective law enforcement and have a sense of justice in society. Supposedly, no law enforcement agency can close itself off from the control process carried out by other institutions, and in the end the control process leads to the court as an institution that is considered neutral and impartial. Thus, the public' sense of trust in the Indonesian legal system will return to high as before.

2. METHODOLOGY

This research is a normative legal research. It serves to provide juridical arguments that can help if there is a void, ambiguity and conflict over norms. This paper applied the qualitative method and conceptual, historical, as well as comparative approach through a literature review to examine the issue discussed. This paper provides information on the latest trend in research.

3. RESULTS AND DISCUSSION

3.1. Assessing Legal Relationship Between Investigators and Public Prosecutors: The Way Forward

In the perspective of criminal law, corruption is classified as crimes that are very dangerous, both for the community, as well as for the nation and State. Losses to State finances and the economy as a real result are the basis for justifying criminalization of various forms of deviant (corrupt) behavior in criminal law policies.[8] However, the loss of public trust in the government is precisely the consequence that is much bigger and dangerous than just losses from a purely financial and economic point of view.[9]

The context mentioned above can be an indicator of the dangers of corruption if allowed to develop continuously. The dangerous nature of corruption and its widespread effect on the life of the state and society was also emphasized at the 9th United Nations Congress.[10] The results of the congress held in Cairo were then discussed by the Commission on Crime Prevention and Criminal Justice, in Vienna which produced a resolution on actions against corruptions and emphasized that corruption is a serious problem because it can endanger the stability and security of society, undermined the values of democracy and morality and endanger social, economic and political development (jeopardized social, economic and political development).[11]

Therefore, it can be understood that the nature of the extraordinary crime of corruption is that there is a loss of State finances which has an impact on the loss of a nation's economy. In this context, the victims of State financial losses have an extraordinary impact. In addition, the nature of extraordinary crime from corruption can also be seen from the practices carried out. Most show that corruption takes place systemically and is widespread so that losses are not only experienced by the state in the form of state financial losses but also cause losses to rights.

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Many laws and other laws and regulations have been issued to deal with corruption crimes, however, the presence of these various laws and regulations can be assessed as having not provided a deterrent effect for perpetrators of corruption. Data from the Central Statistics Agency shows that *Indeks Perilaku Anti Korupsi (IPAK)* in 2020 in Indonesia is 3.84 on a scale of 0 to 5. This figure is higher than 2019 of 3.70. Index value getting closer to 5 indicates that society is becoming more anti-corruption, whereas this figure is getting closer to 0 indicating that society is behaving more permissively towards corruption. *Indeks Perilaku Anti Korupsi (IPAK)* is compiled based on two dimensions, namely perception and experience. In 2020, the value perception index was 3.68 where this figure decreased by 0.12 points compared to the perception index in 2019 (3.80). In contrast, the experience index in 2020 (3.91) increased by 0.26 points compared to the experience index in 2019 (3.65).[12]

In the context of criminal acts of corruption, the authors assume that the principle of *ultimum remidium* can still be applied because the effort that wants to be carried out is essentially to recover state losses. As defined, corruption is an act of enriching oneself or another person or a corporation that can harm state finances or the country's economy, so the emphasis in this context is efforts to recover state losses suffered as a result of corrupt behavior, both by individuals and by corporations.

An integrated Criminal Justice System is an integrated criminal justice system, whose elements consist of a common perception of justice and the overall and unified pattern of administering criminal cases. The implementation of justice consists of several components such as investigations, prosecutions, courts and correctional institutions. The integrated criminal justice system is an attempt to integrate all of these components so that the judiciary can run as intended.

Indeed, to some extent the Indonesian Criminal Procedure Code has regulated processes and procedures for the use of coercive measures such as: arrests, searches, detentions, and confiscations, but the Indonesian Criminal Procedure Code has not provided a mechanism to test the validity of all instruments. This is because the authority of pretrial judges is still very limited. Then, when viewed from another dimension, the principles that apply in the criminal justice system in Indonesia when referring to the Indonesian Criminal Procedure Code are not yet fully operational. These principles have not been fully implemented in the norms comprehensively.

Equal treatment before the law for everyone (the principle of equality before the law), the scope of its application has not been confirmed. That the same treatment here applies to people with the same capacity. This does not mean that children must be treated the same as adults, and if they give treatment that is in accordance with the feminine nature of female perpetrators, it is as if this principle does not apply. Meanwhile, violations of citizens' rights (arrest, detention, search and confiscation) must be based on law and carried out with a written order, still emphasizing the administrative aspect of the process and not the substance.

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Meanwhile, the presumption of innocence in which misinterprets this principle as if it were a form of arrest, detention, confiscation or search or prosecution, as if it were the implementation of the presumption of guilt. While the provision of compensation and rehabilitation, which is still focused on people who are wrongly arrested and wrongfully detained or are not prosecuted to court even though they have been arrested and detained, but similar things have not become part of the regulation for victims of criminal acts.[13]

The Indonesian criminal justice system designed by the Indonesian Criminal Procedure Code does not yet have a foundation for developing its culture. The legal system has a structure that is likened to a machine, namely the framework of the permanent form of the legal system that keeps the process within its limits. The structure consists of the number and size of courts, their jurisdictions (types of cases examined and the procedural law used), including the structure of the legislative body.

The description above illustrates that from the normative aspect of the reality of the Indonesian criminal justice system, it is still far from what is expected as an integrated criminal justice system that leads to the Due Process Model, namely a fair and proper legal process. According to Anthon F Susanto, the essence of the integrated criminal justice system is actually quite good, namely to prevent and/or institutional interests, so it is hoped that the criminal justice process can run objectively, quickly and fairly, but in reality on the ground it shows that there is still a criminal justice process running halting, institutional egoism, which is still strict, and deviates from the sense of community justice.[14] The purpose of a quick, simple and low-cost criminal case investigation does not mean acceleration in the examination, or a simple one without being accompanied by a legal advisor, or an examination without being careful.

In this case, the process of examining criminal cases which is carried out quickly is meant to avoid all procedural obstacles, in order to achieve work efficiency starting from investigative activities. While the process of examining criminal cases is simple, it can be interpreted as implementing an integrated judicial administration so that the filing of cases from each authorized agency runs in one unit, which does not provide convoluted work opportunities.[15] Meanwhile, the examination of criminal cases at a low cost is to avoid the case administration system and the working mechanism of the officers which result in a disproportionate cost burden for interested parties or the public. Thus, a fast, simple and low-cost criminal justice system actually reflects the values embodied in a fair and proper legal process (*due process model*).

In other concepts that have developed in several countries in the world, there is a concept with a plea bargaining approach that has been implemented in several countries such as the United States, United Kingdom, and several other Common Law countries.[16] In fact, several Civil Law countries have adapted this practice into their country' justice system. According to Febby Nelson, in the Common Law legal system, guilty plea confessions to prove guilt have been known for centuries. Along with the times, a new institution was proposed which was created based on the guilty plea, namely Plea Bargaining. Plea Bargaining itself is a negotiation process in which the public prosecutor offers the defendant to admit his guilt (guilty plea) with his own convictions and awareness. According to Joshua Dressler, plea bargaining is a process in which

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a defendant in prosecution agrees to carry out "self-conviction" with some reciprocity from the public prosecutor (for the benefit of the accused). Gary Holten and Lamar argue that "Plea Bargaining of negotiation between the persecutors and accused, or more precisely, between the prosecuting and defense attorneys".[17]

According to Sara J. Berman, plea bargaining can be divided into 3 (three) types, namely charge bargaining, sentence bargaining, and fact bargaining. Charge bargaining is the negotiation of the charges that the defendant will face at trial. Sentence bargaining is an agreement for the defendant to carry out a guilty plea in return for a lighter sentence. Meanwhile, fact bargaining is an agreement for the public prosecutor not to reveal certain facts in front of the trial that can increase the threat of punishment for the defendant (for example a certain minimum sentence period, or the threat of a heavier sentence).

This affects the implementation of the system in the field. Such a criminal justice system does not exist, and deviates from a fair and proper legal process. In social reality, it is recognized that criminal justice has a non-neutral tendency, often indicating higher status services or more material weight. So it can be seen that the criminal justice system favors the higher class and has more material.[18]

4. IMPLICATIONS AND RECOMMENDATIONS

The arrangement of replacement money against corruption convicts is an attempt to recover State's financial losses due to a corruption. However, the payment of replacement money is only in the nature of additional punishment where this matter could have been ruled out by the judge so that efforts to recover state losses due to acts of corruption by the perpetrators cannot be achieved. Referring to the criminal investigation model in the current Indonesian criminal law, it can be seen that there are differences in the authority given to investigators. These differences will certainly affect the investigative performance of each institution. In conduct the tasks mentioned above, the institutions authorized to do investigations must also be given the same authority, in accordance with the authority of investigators in general as regulated in the Indonesian Criminal Procedure Code, so as to eliminate the sense of difference that will provoke envy or special treatment towards an institution for other investigative institutions, because the crimes examined are both general crimes.

Acknowledgments

The authors acknowledge all contributors involved in this study. The authors declare no conflict of interest and no research funds or grants received.

Declaration of Interest

Authors declare there are no competing interests in this research and publication.

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ISSN 1533-9211
DOI: 10.5281/zenodo.8412829

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ISSN 1533-9211
DOI: 10.5281/zenodo.8412829

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