

Effectiveness of the Implementation of Additional Criminal Execution Replacement Money in Corruption Crimes

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ABSTRAK

Dalam proses pengembalian kerugian keuangan negara, Kejaksaan mempunyai kewajiban untuk mengembalikan keuangan negara akibat tindak pidana korupsi. Tujuan penelitian ini untuk mengkaji pelaksanaan eksekusi pidana tambahan uang pengganti beserta hambatannya oleh Kejaksaan Negeri Aceh Tengah terhadap Perkara tindak pidana korupsi. Jenis penelitian ini adalah penelitian normatif empiris dengan menganalisis data primer dan data sekunder. Teknik pengumpulan data yang digunakan adalah wawancara secara langsung dengan informan dan studi dokumen. Selanjutnya, data yang terkumpul diolah dengan analisis kualitatif. Pelaksanaan eksekusi pidana tambahan uang pengganti oleh Kejaksaan Negeri Aceh Tengah sudah terlaksana secara baik dan efektif. Kendala Kejaksaan Negeri Aceh Tengah dalam pelaksanaan eksekusi pidana tambahan uang pengganti, yaitu : *Pertama*, sulitnya penelusuran harta kekayaan milik tersangka/terdakwa dalam upaya pengembalian kerugian keuangan negara. *Kedua*, Terpidana tindak pidana korupsi lebih memilih menjalani hukuman subsider pidana kurungan/hukum badan dari pada membayar uang pengganti.

Kata Kunci : Efektivitas; Eksekusi; Uang Pengganti; Korupsi.

ABSTRACT

In the process of recovering state financial losses, the Prosecutor's Office has an obligation to return state finances due to corruption. The purpose of this study is to examine the implementation of the additional criminal execution of substitute money and its obstacles by the Central Aceh District Attorney against corruption cases. This type of research is empirical normative research by analyzing primary data and secondary data. Data collection techniques used are direct interviews with informants and document studies. Furthermore, the collected data is processed by qualitative analysis. The execution of additional criminal compensation by the Central Aceh District Prosecutor's Office has been carried out well and effectively. Obstacles to the Central Aceh District Attorney's Office in carrying out additional criminal executions of replacement money, namely: First, the difficulty of tracing the assets of the suspect/defendant in an effort to recover state financial losses. Second, convicts of criminal acts of corruption prefer to undergo a subsidiary sentence of imprisonment/corporate law rather than paying replacement money.

Keywords: Effectiveness; Execution; Payment of Substitution; Corruption.



I. Introduction

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption states that corruption is mentioned as a type of crime that is very detrimental to state finances or the country's economy and hinders national development. Corruption is an organized crime that is carried out systematically, related to power, and also related to the fate of many people because of the state's financial loss, it is appropriate to classify corruption as a special crime (Hiariej, 2016).

According to Sudarto, what is meant by special criminal law is a criminal law that is determined for special groups of people or related to special acts (Sudarto, 2010). It can be said that a special criminal law is a criminal law or criminal law regulated in a separate criminal law (Mulkan, 2022). The crime of corruption is included in the classification of a special crime (*lex specialis*), because of this specificity, it can deviate from the general criminal provisions (*lex generalis*), although then both can also be applied simultaneously (Suhendar, 2019).

Corruption has become a common thing to do. Even corruption in Indonesia can be said to have been "entrenched" long ago, both before and after independence, in the Old and Order era, New Order era, and even continues to this day. On the other hand, corruption has destroyed the culture of shame among state officials so they regard corruption as a tradition (Mulatua & Nggeboe, 2017). If these conditions continue to develop, you can imagine how serious the consequences will be by acts of corruption.

The current crime of corruption as a national problem that must be faced seriously through a balance of decisive steps by involving all the potential that exists in society, especially the government and law enforcement officers (Hartanti, 2007). Eradication of corruption by the government is an agenda that is seriously and urgently addressed as part of a program to restore people's trust and international economic recovery in order



to increase the country's economic growth (Surya, 2018). It is realized that efforts to eradicate corruption are not as easy as turning the palm of the hand.

Many ways have been done by the government of our country in efforts to eradicate corruption. This is evidenced by the existence of 2 (two) statutory provisions that specifically regulate the eradication of corruption. In addition to efforts to eradicate corruption carried out through the stipulation of laws and regulations, other efforts that have been carried out are by stipulating the payment of replacement money which is an additional crime specifically known in corruption.

Additional punishment in the form of payment of replacement money is known in Article 18 paragraph (1) letter b of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. In the process of returning state financial losses, the prosecutor's office has an obligation to return state finances due to corruption, either through fines or through additional penalties in the form of substitute money.

The implementation of the return of state financial losses due to criminal acts of corruption cannot be carried out immediately. In addition to waiting for the payment of replacement money from convicts in corruption cases, which takes a long time, it is not possible to return the replacement money to the state treasury immediately. This is due to bureaucratic procedures that are passed, so it takes time to return state financial losses to the state treasury so that they can be immediately used for the welfare of the people (Yusuf, 2018).

Based on the description above, the problems that will be studied and discussed in this study can be formulated, namely: 1). How is the effectiveness of the criminal execution of additional compensation money by the Central Aceh District Attorney against corruption. 2). What are the obstacles for the Central Aceh District Attorney's Office in carrying out the criminal execution of additional compensation for corruption?



II. Methode

This research was conducted in Central Aceh district. This type of research is empirical normative research by analyzing primary data and secondary data. Data collection techniques used are direct interviews with informants and document studies. Furthermore, the collected data is processed by qualitative analysis.

III. Discussion and Analysis

The Effectiveness of the Criminal Execution of Additional Compensation Money by the Central Aceh District Attorney Against Corruption Crimes

In the theory of legal effectiveness, it is said that the effectiveness of the law will depend on the substance factor (the legal regulation itself), the structural factor (law enforcement officials), and the cultural factor (the people). These three factors together or individually will affect the effectiveness of law (Sunaryo, 2005). According to Barda Nawawi Arief, when discussing the effectiveness of the law to tackle crime (corruption), of course, it cannot be separated from analyzing the characteristics and related variables, namely the characteristics of the object/target and the characteristics of the “tools/means used” (criminal law instruments) (Arief, 2003).

Meanwhile, according to Achmad Ali, the effectiveness of the law is not solely determined by the regulations, but also from the support of several institutions surrounding the regulation, such as human factors, cultural factors, financial factors and so on (Ali, 1990). Therefore, in discussing the problem of the effectiveness of imposing a criminal payment of compensation in a criminal act of corruption, it contains the problem of "how far the existing legal instruments of law enforcement agencies have been effective/influential/successful in the implementation of the criminal payment of compensation in criminal cases corruption.



Payment of replacement money in a criminal act of corruption is an additional crime in addition to the punishment against the convict himself and a fine. Additional penalties for corruption can be in the form of (Mulyadi, 2011):

- 1) Confiscation of tangible or intangible movable property or immovable property used for or obtained from a criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as from the goods that replace the goods;
- 2) Payment of replacement money in the maximum amount equal to the assets obtained from the criminal act of corruption;
- 3) Closure of all or part of the company for a maximum period of 1 (one) year; d. Revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be granted by the government to the convict;
- 4) If the convict does not pay the replacement money at the latest within 1 (one) month after the court's decision which has obtained permanent legal force, his assets can be confiscated by the prosecutor and auctioned to cover the replacement money.

The Prosecutor's Office as the executor of replacement money in criminal acts of corruption, based on the Criminal Procedure Code is regulated in Articles 270 to 276. According to the provisions of Article 270 of the Criminal Procedure Code (KUHP) that "Implementation of Court decisions that have obtained legal force continues to be carried out by the Prosecutor, for which the clerk sends a copy of the decision letter to him". Normatively, the Prosecutor will only execute the decision after receiving a copy of the decision from the court, but in practice it is enough with the excerpt of the decision to be able to carry out the execution decision.

In rescuing/recovering state financial losses, it is very important and strategic, because the settlement of additional criminal compensation is the

responsibility of the Prosecutor's Office to collect it by filing a civil lawsuit against the convict or his heirs as mandated in Article 32 Paragraph (2) of Law Number 20 of 2001. Regarding Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.

In its development, acts of corruption in Central Aceh Regency based on Data from the Central Aceh District Attorney's Office (Kejari) in 2021 amounted to 2 cases which can be seen in the following table:

Table 1.
Number of Corruption Crimes in Central Aceh District
year 2021

No	Case	State Loss
1	Village Fund Corruption	Rp. 194.921.553
2	Land Hoarding Project Corruption	Rp. 449.211.000

Source: Central Aceh District Attorney in 2021

Based on the table above, the number of corruption crimes throughout 2021 was two cases, namely the corruption crime of misuse of village funds which suffered state losses of Rp. 194,921,553 and the criminal act of corruption in the land hoarding project at SD Paya Ilang suffered a state loss of Rp. 449,211,000. Therefore, one way that can be used to recover the state's losses is to require the defendant who is proven and convincing to have committed a criminal act of corruption to return the corruption proceeds to the state in the form of replacement money.

There are several decisions of the Banda Aceh Corruption Court that serve as the object of study for this research. First, Decision Number 55/Pid.Sus-TPK/2019/PN Bna which sentenced the defendant to pay a replacement money of Rp. 449,211,000 (Four Hundred Forty-nine Million Two Hundred Eleven Thousand Rupiah). if within a period of 1 (one) month after the court's decision obtains legal force, the convict still does not pay the replacement money, his assets are confiscated and auctioned to cover the replacement money.



Second, Decision Number 75/Pid.Sus-TPK/2019/PN Bna, which Sentenced the Defendants to pay a replacement fee of Rp. 11,701,683,5 (eleven million seven hundred one thousand six hundred eighty-three point five rupiahs) within one month at the latest after this decision has permanent legal force. provided that if the convicts do not have sufficient assets, they will be sentenced to imprisonment for 1 (one) month.

Based on the decision of the Banda Aceh Corruption Court above, in the process of returning state financial losses, the Prosecutor's Office has an obligation to return state finances due to corruption, either through fines or through additional criminal penalties in the form of substitute money as regulated by Law Number 19 of 2019 Regarding the Second Amendment to Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption.

Based on an interview with Zainul Arifin as the Head of Special Crimes at the Central Aceh District Prosecutor's Office, the execution of additional criminal compensation for corruption is carried out in 2 (two) stages, namely:

- 1) After the inkracht decision, the prosecutor confiscates any assets, aiming to collect the convict's assets in order to fulfill the recovery of assets
- 2) Execution of replacement money in the process of investigation to prosecution, limited confiscation of goods/assets that are directly related to the crime.

Zainul Arifin added that the purpose of the execution of the replacement money carried out during the investigation process was to secure the use of bail for the suspect as evidence of the proceeds of his crime. So in practice, the prosecutor's efforts in maximizing the return of state financial losses as a result of criminal acts of corruption have been carried out since the investigation stage.



Another action that can be taken by the Prosecutor of the District Attorney of Central Aceh Regency to recover state financial losses in the investigation stage is to lobby properly and explain to the suspect family that by returning state financial losses will be one of the indicators that alleviate suspect.

According to Nazamuddin as the Special Criminal Functional Prosecutor of the Central Aceh District, The amount of additional criminal compensation can be requested in full according to the state loss report or the remaining value of the state loss after the defendant returns the state loss in whole or in part during the inion or prosecution process as evidenced by the existence of a deposit deposit slip made by the Police or the Prosecutor's Office or deposited into the Treasury. Country.

For example, the report on the result of calculating state losses by the BPK or BPKP Auditor is Rp. 100,000,000,-, but during the investigation or prosecution process, the Defendant returned the State Loss of Rp. 50,000,000,-, then the additional penalty for compensation requested by the Public Prosecutor to the Defendant in the letter of claim is the remainder of the State Loss, namely Rp. 50,000,000,-.

Namzamuddin added, the amount of the reimbursement bill charged to restore state financial losses in accordance with the results of the corruption carried out, as determined by the court judge's decision, in essence the letter states the ability or inability of the convict to pay the fine and the replacement money, the amount of which has been determined in the decision. court judges who have permanent legal force.

In the description above, it is stated that the effectiveness of the Central Aceh District Attorney's Office in rescuing/recovering state financial losses as a substitute money executor for perpetrators of criminal acts of corruption has been carried out well and effectively. This shows an illustration of the level of success/effectiveness of the Prosecutor's Office in



recovering state financial losses due to corruption that occurred in Central Aceh Regency.

Obstacles to the Central Aceh District Prosecutor's Office in Implementing Criminal Executions Additional Compensation Money Against Corruption Crimes

Corruption is seen as an extraordinary crime because it requires extraordinary efforts to eradicate it. The concept of payment of replacement money aims to provide a deterrent effect for perpetrators of criminal acts of corruption so that they do not enjoy the proceeds of their crimes so that the State can obtain a refund for the money that has been enjoyed by perpetrators of criminal acts of corruption. Under such conditions, it is the duty of the prosecutor to carry out the execution of replacement money in the context of returning state finances in corruption, indicating that the role of the prosecutor as the spearhead in efforts to restore state finances is very large.

The prosecutor as the executor of court decisions as mandated in Article 270 of the Criminal Procedure Code, basically cannot be separated from what has been stated in the indictment that was previously filed during the case examination process in court. The claim is based on the existence of evidence and legal facts revealed in the trial, but it is not uncommon for what has been demanded by the Public Prosecutor to experience difficulties at the time of execution, whether it concerns the execution of the convict, the execution of evidence, as well as additional criminal executions. in the form of payment of replacement money in cases of criminal acts of corruption (Hadipratikto, 2012).

Legal issues that occur in the execution of substitute money in corruption are not a new problem and the execution of substitute money based on Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes still has obstacles in its implementation, even though the payment of replacement money is one of



the objectives to restore state losses as much as the convict has been corrupted.

The obstacles faced by the prosecutor as the executor in carrying out the additional criminal execution of payment of replacement money in a criminal act of corruption at the Central Aceh District Prosecutor's Office are:

- 1) Difficulty in tracing the assets of the suspect/defendant in an effort to recover state financial losses

Asset tracking is a way to find out how much real profit the perpetrator enjoys from his actions, and also to prevent assets resulting from corruption from being transferred to third parties by the defendant (Arjaya, 2016). Asset tracking itself is one of the stages in a series of asset recovery which includes the process of tracing, securing, maintaining, confiscation, returning, and releasing criminal assets or state property controlled by other parties to victims or those entitled to at each stage of law enforcement.

According to Muhammad Jeki as the head of the intelligence section of the central aceh state prosecutor's office, to search the property of the suspect/defendant, the Prosecutor's Office issues a warrant to search the property of the suspect/defendant. This tracing activity continued until the trial process and before thcution, but the availability of facilities and infrastructure was limited so that the Prosecutor's Office was unable to maximize the assets that could, be traced. When the Prosecutor's Office can find the suspect's property, of course it will also calculate the value of the property to be confiscated and auctioned off, if the value is small enough and not comparable to confiscation and auction activities, the Prosecutor's Office will certainly think again to carry out confiscation and the auction process.

The tracing and confiscation of the defendant's property as described above is an obstacle for the Central Aceh District Prosecutor's



Office in returning state money losses to acts of corruption, especially in terms of maximizing the return of state financial losses as an additional crime.

- 2) Convicts of criminal acts of corruption prefer to undergo a subsidiary punishment in the form of confinement

Settlement of arrears in replacement of money in addition to being carried out by confiscation and auctioning the convict's property can also be carried out through demands for subsidiary imprisonment, or corporal punishment. The subsidiary demands for imprisonment as regulated in Article 18 paragraph (3) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, emphasizes that "In the event that the convict does not have sufficient assets to pay substitute money as referred to in paragraph (1) letter b, shall be punished with imprisonment for the duration of which does not exceed the maximum threat of the principal sentence in accordance with the provisions of this law and the length of the sentence has been determined in a court decision.

According to Nazamuddin, based on these provisions, convicts are often used by serving their subsidiary sentences without the need to carry out the obligation to pay compensation. So this is an obstacle for the Prosecutor's Office in carrying out the execution of replacement money.

The same thing stated Fontian Munzil etc, the regulation creates a juridical problem because on the one hand it has the spirit of asset recovery through a policy of paying replacement money, but on the other hand it provides an opportunity for the convict to choose to pay replacement money or undergo a subsidiary sentence (Munzil et.al., 2015).

Based on the description above, the author can conclude that the obstacles faced by the prosecutor as the executor in carrying out additional criminal executions of compensation for returning state losses to convicted criminal acts of corruption are as follows: First, the



difficulty of tracing the assets of the suspect/defendant in an effort to recover state financial losses. Second, convicts of criminal acts of corruption prefer to undergo a subsidiary sentence of imprisonment/corporate law rather than paying replacement money.

IV. Conclusion

The effectiveness of the criminal execution of additional compensation for corruption cases carried out by the Central Aceh District Attorney based on cases that have been handled properly and effectively. However, in its implementation, the Central Aceh District Attorney faced several obstacles, namely: First, the difficulty of tracing the assets of the suspect/defendant in an effort to recover state financial losses. second, convicts of criminal acts of corruption prefer to undergo a subsidiary sentence of imprisonment/corporate law rather than paying replacement money.



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