

The Authority of the Prosperity in Optimizing State Financial Loss Returns Due to Criminal Acts of Corruption Which Associated With Tax Criminal Actions

by Aan Ashpianto

Submission date: 15-May-2023 12:11PM (UTC+0700)

Submission ID: 2093414304

File name: Prosperity_in_Optimizing_State_Financial_Loss_Returns_Due_to.pdf (69.91K)

Word count: 4725

Character count: 25258

The Authority of the Prosperity in Optimizing State Financial Loss Returns Due to Criminal Acts of Corruption Which Associated With Tax Criminal Actions

Aan Asphianto

Universitas Sultan Ageng Tirtayasa

doi: <https://doi.org/10.37745/ijhphr.13/vol11n2816>

Published May 14, 2023

Citation: Asphianto A. (2023) The Authority of the Prosperity in Optimizing State Financial Loss Returns Due to Criminal Acts of Corruption Which Associated with Tax Criminal Actions, International Journal of History and Philosophical Research, Vol.11, No.2, pp.8-16

ABSTRACT : *According to the applicable procedural law, findings of state financial losses due to tax crimes must be delegated to PPNS (Civil Servant Investigators) at the Directorate General of Taxes as the institution authorized to investigate and investigate tax crimes. If the handling of state financial losses due to the two crimes must be separated, by delegating the handling of tax crimes to the Directorate General of Taxes first, then this will actually cause problems and the recovery of state financial losses will not be optimal. To analyze these problems, this research uses progressive legal theory as the grand theory and responsive legal theory as the middle theory. The type of research used is normative legal research or doctrinal research, namely legal research conducted by examining legal materials, whether in the form of doctrines or legal principles in the science of law. Meanwhile, the approach used in this study is the statutory approach, the case approach, and the conceptual approach. The types and sources of legal materials used in this normative legal research consist of Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. The results obtained from the research, that in carrying out his authority as an investigator and as a Public Prosecutor, the Prosecutor must be able to reflect on the rules he is dealing with, so that he does not implement the law statically but can be dynamic, because procedural law/procedure law is not always able to regulate completely, because Therefore, the presence of prosecutors who dare to make breakthroughs is the key to success in optimizing the recovery of state financial losses due to criminal acts of corruption that intersect with criminal acts of taxation.*

KEYWORDS: state losses, criminal corruption, criminal taxation, legal theory, legal handling

INTRODUCTION

In the development of criminal procedural law, the existence of rules and procedures that must be obeyed has created its own problems. This is because procedures or procedural law that are enforced rigidly cause law enforcement to be ineffective, especially with regard to law enforcement in an effort to recover state financial losses that are not optimal, so that it has implications for delays in the implementation of law enforcement due to rigid procedures. As is the case when the Prosecutor handles cases of corruption that intersect with criminal acts of

taxation. When the Attorney General's Office investigated and investigated criminal acts of corruption, it turned out that state financial losses were also found due to criminal acts of taxation.

The locking of law enforcement officials in formal legalistic rules actually results in stagnant law enforcement because these formal rules cannot completely regulate procedures for law enforcement. Sporadically a law enforcement mechanism actually hinders the achievement of the goals of the law itself, because it tends to be mechanical and rigid by not paying attention to one of the fundamental aspects of law enforcement itself.

In this regard, for example: when the Attorney General's Office handles cases of criminal acts of corruption, which matters in handling cases of criminal acts of corruption sometimes also intersect with criminal acts of taxation. In Decision Number 1/Pid.Sus-TPK/2020/PN. Srg (permanent legal force), the prosecutor in his indictment stated that the Defendant Abas Alias Bas Bin (Alm) Ruji as the Head of Klutuk Village, Mekar Baru District, Tangerang Regency for the period 2015 to 2021 was proven to have committed a criminal act of corruption.

As for the criminal act of corruption committed by the defendant, it caused a state financial loss of Rp. 743,426,169 (seven hundred forty-three million four hundred twenty-six thousand one hundred and sixty-nine rupiahs). In addition to losses caused by criminal acts of corruption, it turns out that state financial losses were also found due to criminal acts of taxation, namely that there were tax obligations for taxes that had been collected by the Defendant but the Defendant did not deposit it into the State/Regional Treasury in the amount of Rp. 80,920,767 (eighty million nine hundred twenty thousand seven hundred sixty seven rupiah).

Based on this demand, the panel of judges ordered the defendant to pay compensation in the amount of Rp. 814,346,936.00 (eight fourteen million three hundred forty six thousand nine hundred thirty six rupiah) no later than one month after this decision has permanent legal force, if you do not pay then your property will be confiscated and auctioned off by the Prosecutor to cover the money replacement with the provision that if the defendant does not have sufficient property then he shall be punished with imprisonment for 1 (one) year.

The example cases above illustrate that there is an intersection between criminal acts of corruption and criminal acts of taxation. The intersection in question is when in calculating the amount of state financial losses due to criminal acts of corruption it turns out that state financial losses arising from criminal acts of taxation are also found. Here the prosecutor made a breakthrough in the form of demanding compensation money by accumulating state financial losses due to criminal acts of corruption with state financial losses due to criminal acts of taxation.

In terms of legality, in principle law enforcement against criminal acts of corruption and criminal acts of taxation has a different mechanism. This difference can be seen from the criminal procedural law or procedures for handling corruption and tax crimes. For criminal acts of corruption, investigations and investigations can only be carried out by the Police, the

Attorney General's Office and the Corruption Eradication Commission, while tax crimes can only be carried out by the Directorate General of Taxes.

While the prosecution of criminal acts of corruption and criminal acts of taxation were both carried out by the Public Prosecutor. However, the prosecution by the Public Prosecutor against criminal acts of corruption as an effort to recover state financial losses is generally through demands to pay compensation money. Unlike the case with criminal acts of taxation, demands for recovering state financial losses are more likely to be through criminal prosecution of fines. Thus, based on formal legalistic or according to the applicable criminal procedural law, the handling of criminal acts of corruption and criminal acts of taxation, even though the two criminal acts both occur because of losses to state finances, in practice the handling is different. This means that the handling of the two criminal acts must be separated. Losses to state finances due to criminal acts of taxation which were discovered by the prosecutor when handling corruption crimes must be delegated to the Directorate General of Taxation as the institution authorized to handle criminal acts of taxation.

However, such a mechanism will definitely take a long time and spend a lot of state money to handle it. This separation also causes the recovery of state financial losses to be not optimal. Even though the essence of the occurrence of corruption and taxation is actually the same, namely the existence of state financial losses. Therefore, the important point here is that the right, fast, low-cost, and beneficial method must be implemented in dealing with criminal acts of corruption that intersect with criminal acts of taxation, which aims to optimize the recovery of state financial losses.

This progressive legal theory is to lay a foothold for thinking on criminal law enforcers in tackling crime in general. In the view of progressive law, legal actors must have sensitivity to crucial human problems in relations between people, including entanglements in societal structures such as politics, economics and socio-culture, and in this case progressive law must appear as a liberating institution. 38 Here progressive law wants liberation from the tradition of bondage which is almost similar to Roscoe Pound's thought which says law is a tool of social engineering that must be found to advance society, (Rahrdjo, 2018).

Likewise, the emergence of progressive legal theory initiated by Satjipto Rahardjo was motivated by anxiety in seeing the way law is administered in Indonesia, because there are almost no intelligent breakthroughs in dealing with the crises that occur in law administration, (Bernad, 2019).

Through progressive legal ideas, law must be seen as a whole which emphasizes substantive and transcendental nature based on facts that cannot be separated from ethical, moral, justice and expediency values and not only in the form of written norms. Therefore, according to Satjipto Rahardjo, law enforcement which focuses on aspects of order and identifies it with enforcement of laws and regulations is a wrong assumption, because law must be seen in one system, which creates certain interactions in various elements of the legal system, (Dahlan, 2020) .

When referring to progressive legal thinking on the situation faced by the Prosecutor and Public Prosecutor in handling corruption cases that intersect with the tax crime, the Prosecutor or Public Prosecutor must be able to reflect on the rules that are being faced. That is, it does not only stop at the text of the law, but must be able to make breakthroughs in order to reach the essence of the law itself. As revealed by Satjipto Rahardjo, that law enforcement is carrying out the law not just in black and white from the regulations (according to the letter) but according to the spirit and deeper meaning (to very meaning) of the law or law, (Aron, 2020) . Responsive Legal Theory Approach is the result of creation of society but at the same time it also creates society so that the concept of law is in line with the development of society. 48 People's way of thinking is generally rationalistic and individualistic. In rationalism, people think starting from general ideas, which apply to all individual humans, (Hujiber, 2019).

METHOD

The type of research used is normative legal research or doctrinal research, namely legal research conducted by examining legal materials, whether in the form of doctrines or legal principles in the science of law. Meanwhile, the approach used in this study is the statutory approach, the case approach, and the conceptual approach. The types and sources of legal materials used in this normative legal research consist of Primary Legal Materials, Secondary Legal Materials, and Tertierm Legal Materials, (Ibrahim, 2018).

Legal material analysis techniques are carried out by interpreting, evaluating, and assessing all legal materials, which are then identified to determine patterns or themes in these legal materials in accordance with the focus of the problems specified in this research, (Mamudji, 2021).

FINDINGS AND DISCUSSION

Prosecutor's Authority

In Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia in Article 30 paragraph (1) letters a and c, in the field of crime, the Attorney General's Office has the duty and authority to prosecute and conduct investigations into criminal acts other than that the Prosecutor's Office also as a law enforcement agency has the function of controlling the case handling process (dominus litis).

With the authority to carry out investigations and prosecutions, the Attorney General's Office is one of the law enforcement officers who have authority in the field of eradicating corruption, in addition to the Police and the Corruption Eradication Commission (KPK). Because of this, the Attorney General's Office must be able to take a strategic role in taking action against acts of corruption both at the central and regional levels, so that the actions taken can have the power of date, as well as carry out various preventive efforts to avoid the recurrence of similar incidents in the future, (Muljatno, 2018) .

Table 1. Prosecutor's Authority

No.	Basic Regulation	Notes
1.	Article 26 Law number 31 of 1999 ju law number 20 of 2001;	In case
2.	Article 27 of Law number 31 of 1999 Jo. Law number 20 of 2001;	In case
3.	Article 284 paragraph (2) of the Criminal Procedure Code and its explanations;	In case
4.	Article 17 PP Number 27 of 1983;	In case
5.	Article 30 paragraph (1) letter d of Law number 16 of 2004. (source of the XXI Judicial Variations number 243 February 2006, p. 34).	In case

However, in current developments, the Attorney's authority, both mandated in the criminal procedural law and the Prosecutor's Law itself, in fact raises its own problems in the procedures that must be obeyed. Procedures regarding the authority of the Prosecutor and the Public Prosecutor become rigid and hinder the Attorney's space to move when dealing with corruption cases that also intersect with tax crimes.

With conditions like this, and if only stuck to rigid procedures, it will actually cause law enforcement to be ineffective and the recovery of state financial losses to be not optimal, especially when viewed from the essence of the occurrence of the two crimes are 'same', namely the emergence of state financial losses.

This kind of situation can be seen in Decision Number 1/Pid.Sus-TPK/2020/PN. Srg (permanent legal force). In this decision it was explained that initially the Prosecutor handled the criminal act of corruption committed by the Defendant, but in the course of the investigation it turned out that the Prosecutor also found losses to state finances caused by criminal acts of taxation.

Here the Prosecutor and the Public Prosecutor are required to think progressively. Based on progressive legal thinking, the Prosecutor and Public Prosecutor are required to be able to take extraordinary actions or handling and not dissolve or be embedded in formal regulations which actually have the potential to cause losses to state finances, but must make useful legal breakthroughs, namely optimizing returns on state financial losses. arising from criminal acts of corruption and criminal acts of taxation.

Thus, the Prosecutor or Public Prosecutor is able to reflect on the rules that are being faced. That is, it does not only stop at the text of the law, but must be able to make breakthroughs in order to achieve the essence of the law itself. As revealed by Satjipto Rahardjo, that law enforcement is carrying out the law not just in black and white from the rules (according to the letter) but according to the spirit and deeper meaning (to very meaning) of the law or law.

Claim for Replacement Money

In principle, state finances are strictly regulated in the 3rd Amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI). This arrangement is contained in Chapter VIII, namely in Article 23 and Article 23C, which essentially states that the state revenue budget is determined as a form of state financial management is determined annually by law and implemented openly and responsibly for the greatest prosperity of the people, (Effendy, 2020).

Table 2. Basis of Authority

No.	Right	Duties
1.	Conduct prosecution.	Eligible
2.	Carry out the determination of judges and court decisions that have obtained permanent legal force.	Eligible
3.	Supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions.	Eligible
4.	Conducting investigations into certain criminal acts under the Act	Eligible

The non-fulfillment of the rights and obligations of the state due to intentional and unlawful acts has resulted in losses to state finances. State financial losses referred to here are the loss or reduction of the state's right to collect/receive taxes due to criminal acts of taxation, and the loss or reduction of state obligations for the cost of carrying out tasks in the form of service activities occurs as a result of criminal acts of corruption committed by increasing costs, reducing volume and reduce state financial rights for self-interest, other people, or corporations.

When a loss occurs in state finances, either because rights are not obtained or when the state's obligations over the management of state finances do not work, the loss must be returned. In essence, there are many ways to recover state financial losses without violating state financial laws. Such as through administrative sanctions in the settlement of state financial losses caused by criminal acts of taxation. Then, through criminal charges, namely demands for replacement money which are generally carried out against criminal acts of corruption as an effort to recover state financial losses.

Based on this, law enforcement is an effort and determines as a benchmark the success of the state in optimizing the return of state financial losses caused by a crime. Law enforcement is not merely a logical process, but is full of human involvement in it which makes law enforcement closely related to the behavioral dimension and all the accompanying factors. In relation to state financial losses caused by criminal acts of corruption or criminal acts of taxation, these losses must be compensated by the person who caused the loss. Here law enforcement officials carry out and apply the law to any violations or deviations from the law that result in state financial losses, as an effort to recover these losses. That is why law

enforcement is very decisive in efforts to recover state financial losses.

Procedurally, efforts to recover state financial losses caused by criminal acts of corruption are different from recovering state financial losses caused by criminal acts of taxation. This difference can be seen from the authority of the Public Prosecutor in carrying out prosecutions as an effort to recover state financial losses. However, as the results of the research found a breakthrough made by the Prosecutor and the Public Prosecutor.

The breakthrough referred to here is the Attorney and Public Prosecutor's courage to break through legal procedures that are considered rigid and actually hinder the recovery of state financial losses. As in Decision Number 1/Pid.Sus-TPK/2020/PN. Srg (permanent legal force), in demanding replacement money, the Public Prosecutor accumulates state financial losses caused by criminal acts of corruption as well as state financial losses caused by criminal acts of taxation.

In fact, from the perspective of the law of corruption, in general the Public Prosecutor has the authority to prosecute a defendant who is suspected of committing a crime of corruption by making a charge letter which includes: therefore sentenced to imprisonment for 4 (four) years; Fines, for example: The defendant is legally and convincingly proven to have committed a criminal act of corruption and is therefore subject to imprisonment for 4 (four) years, and a maximum fine of 1,000,000,000.- (one billion rupiah); and Additional Criminal Sanctions, for example: The defendant is legally and convincingly proven to have committed a criminal act of corruption and is therefore sentenced to imprisonment for 4 (four) years, and a maximum fine of 1,000,000,000.- (one billion rupiah) and pays a compensation of Rp. 50,000,000,000 (fifty billion).

In connection with additional criminal sanctions as specified in Article 17 and Article 18 of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001, in detail the framework of thinking "the value of state financial losses" in relation to additional criminal penalties in acts of corruption can be classified as follows: Determination of the value of state financial losses as the basis for determining additional criminal sanctions (criminal responsibility); The amount of state finances that were harmed, proven to enrich, or proven to be enjoyed by oneself (the defendant), other people or corporations; The amount of state financial losses, proven to be profitable, or proven to be enjoyed by oneself (the defendant), other people, or corporations. Additional criminal sanctions related to the confiscation of goods resulting from corruption as payment of replacement money; Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by the convict where the criminal act of corruption was committed, as well as goods that replace these goods; Payment of replacement money in the maximum amount equal to the assets obtained from criminal acts of corruption; closure of all or part of the company for a maximum of 1 (one) year; 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 convicts. If the convict "does not pay the replacement money", no later than 1 (one) month after the court decision which has permanent legal force, then the prosecutor's property can be confiscated

and auctioned off to cover the replacement money. In the event that the convict "does not have sufficient property" to pay replacement money, then he shall be sentenced to imprisonment for a maximum length not exceeding the maximum threat of the principal sentence in accordance with the provisions of the Corruption Crime Law and the duration of the sentence has been determined in a court decision.

Meanwhile, in the case of charges against the defendant for a tax crime, the authority of the Public Prosecutor includes: Criminal sanctions in prison, for example: The defendant is legally and convincingly proven to have committed a tax crime and is therefore sentenced to 4 (four) years in prison; Fine Criminal Sanctions; for example: The defendant is legally and convincingly proven to have committed a crime of taxation and is therefore subject to imprisonment for 4 (four) years, and a maximum fine of 1,000,000,000.- (one billion rupiah). If one looks at the Prosecutor's authority in making efforts to recover state financial losses through his lawsuit, there is a difference in making a lawsuit between corruption crimes and tax crimes. In terms of prosecution for criminal acts of taxation, they are not familiar with demands for replacement money, but only apply fines. However, with regard to these fines, the KUP Law itself does not regulate the implementation of fines, so that their implementation refers to the provisions of the Criminal Code, (Ali, 2020).

On that basis too, even though the criminal fine has been paid or replaced with a prison sentence (has been served), this does not erase the loss of state finances as a result of the tax crime, so this condition is often considered to give rise to uncertainty, because the convict who has served all the crimes committed imposed on him are still billed for state financial losses from tax revenues, which are the debt of the convict, as in Article 13 paragraph (5) of the KUP Law. Moreover, with the issuance of the Tax Cluster Job Creation Law, Article 13 paragraph (5) of the KUP Law was deleted. The abolition of this article raises serious legal consequences, especially on how to recover state financial losses due to criminal acts of taxation. With that, the return of state financial losses due to criminal acts of taxation is carried out through the demands of the public prosecutor, through fines.

The results of the study revealed that such differences were the reason for problems arising in the development of criminal procedural law, namely when the Prosecutor as an investigator and as a public prosecutor handled acts of corruption, which in the investigation also found losses to state finances caused by criminal acts of taxation, which should be these findings must be delegated back to the Directorate General of Taxes as the institution authorized to investigate criminal acts of taxation. However, if this is done, it has the potential to cause problems in the form of losses to state finances due to ineffective law enforcement. Facing such problems, responsive law offers breakthroughs, that is, when an existing rule of law cannot answer a problem due to existing developments not being covered by the rule of law, then the law must be sensitive to accommodate existing developments in order to achieve just and beneficial law. Here, the law is demanded to be an open system in existing developments by relying on the primacy of purpose (the sovereignty of purpose), which aims to provide the benefits to be achieved and the consequences arising from the operation of the law.

CONCLUSION

Based on the discussion and analysis of the description of the previous chapters, the author draws several conclusions in response to the main issues in this study, namely the Prosecutor's Authority in optimizing the return of state financial losses due to criminal acts of corruption that intersect with criminal acts of taxation with a progressive legal approach, therefore the Prosecutor within its authority as a dominus litis not with a normative dogmatic procedural approach but also with a responsive legal approach so that the presence of a prosecutor with a responsive legal approach is the objective of optimizing the recovery of state financial losses due to criminal acts of corruption that intersect with criminal acts of taxation can be achieved. Claims for compensation due to criminal acts of corruption that intersect with criminal acts of taxation that are effective in the future in order to optimize returns for state financial losses can be carried out simultaneously by accumulating state financial losses due to criminal acts of corruption with state financial losses due to criminal acts of taxation. This is a means of responding to existing criminal procedural law provisions by prioritizing accommodation to accept changes to the problems that arise, in order to achieve justice and expediency.

REFERENCES

- Mahrus Ali, *Isu-Isu Kontemporer Hukum Pidana*, Yogyakarta: UII Pres, 2020
- Bernard L. Tanya, *Penegakan Hukum dalam Terang Etika*, Yogyakarta, GentaPublishing, 2018
- Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta: Genta Publishing, 2018
- Dahlan, *Hukum Administrasi dalam Praktik Tindak Pidana Korupsi*, Jakarta: Prenada MediaGroup, 2019
- Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, Malang: Bayu Media Publishing, 2018
- Marwan Effendy, *Kejaksaan Republik Indonesia: Posisi dan Fungsinya Dari Perspektif Hukum*, Jakarta: PT. Gramedia Pustaka Umum, 2020
- Moeljatno, *Asas-Asas Hukum Pidana, Edisi Revisi*, Jakarta: Rineka Cipta, 2018
- Satjipto Rahardjo, *Penegakan Hukum, Suatu Tinjauan Sosiologis*, Yogyakarta: Genta Publishing, 2019
- Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo, 2021
- Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, Yogyakarta: Kanisius, 2019
- Thomas Aaron, *The Control of Police Discretion*, Springfield Charles D.Thomas, 2020

The Authority of the Prosperity in Optimizing State Financial Loss Returns Due to Criminal Acts of Corruption Which Associated With Tax Criminal Actions

ORIGINALITY REPORT

24%

SIMILARITY INDEX

15%

INTERNET SOURCES

16%

PUBLICATIONS

8%

STUDENT PAPERS

MATCH ALL SOURCES (ONLY SELECTED SOURCE PRINTED)

2%

★ www.scilit.net

Internet Source

Exclude quotes On

Exclude matches Off

Exclude bibliography On

The Authority of the Prosperity in Optimizing State Financial Loss Returns Due to Criminal Acts of Corruption Which Associated With Tax Criminal Actions

GRADEMARK REPORT

FINAL GRADE

/0

GENERAL COMMENTS

Instructor

PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9
