

Legal Protection for Debtors in Standard Contracts Related To the Application of the "Cross Default" Clause in Credit

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Abstract: Efforts for stolen asset recovery as a result of criminal acts of corruption are always not an easy task. This is because the corruption offenders have many broad access and they are difficult to reach in terms of hiding or money laundering. Stolen assets recovery from corruption are increasingly difficult to do because the so called safe haven has crossed the country's territorial boundaries and as an organized crime, even corruption often involves corporations as the perpetrator. Method research used normative legal model. Sources of data in this study were secondary data. The data was collected by using literature study and interviews, while the data analysis technique used was qualitative normative methods. The result of this research is that arrangement and position of state attorneys in efforts to recover state assets due to criminal acts of corruption play a very important role. Prosecutors as state lawyers have a role to enforce the law by filing a lawsuit or petition to the Court in the civil field as stipulated by statutory regulations in order to maintain legal order, and protect the interests of the country and government as well as the civil rights of the people.

Keywords: Corruption, Asset, State Attorneys, Recovery

I. INTRODUCTION

Actions to country's stolen assets recovery have occupied a very important position in eradicating corruption[1]. It is based on the fact that the consequence of the criminal act of corruption has stolen country's assets which are very much needed to reconstruct and rehabilitate society through development in all fields[2].

Efforts for stolen asset recovery as a result of criminal acts of corruption are always not an easy task.[3] This is because the corruption offenders have many broad access and they are difficult to reach in terms of hiding or money laundering[4]. Stolen assets recovery from corruption are increasingly difficult to do because the so called safe haven has crossed the country's territorial boundaries and as an organized crime, even corruption often involves corporations as the perpetrator[5]. Even efforts to conceal assets also involve developing or poor countries whose assets are stolen and then hidden in developed countries such as Singapore and Switzerland.

Efforts to take a formal procedural approach through the current criminal procedural law have not been able to recover the country's stolen assets. In fact, the stolen assets are assets that must be saved, so that it must be recovered and can be used for the development of the country[6]. The lack of

success of the Government of Indonesia in eradicating corruption has further exacerbated the Government's performance before the public, which is reflected in the public's distrust of the law. If this is not done meaningfully, then this condition will endanger the nation's sustainability.

Asset recovery is the process of handling the proceeds of crime in an integrated manner at every stage of law enforcement[1], so that the value of these assets can be maintained and fully returned to victims of crime, including the country. Asset recovery includes all preventive actions to ensure that the asset's value does not decrease.

This is where the formulation of policies and concrete steps is needed, because the asset recovery procedure includes tracking, freezing, confiscation, maintenance / management, and the return of stolen assets / proceeds of crime to victims of crime / the country. In the case of corruption crimes, the assets recovery from crimes is the right of the country which is seen as a crime victim.

The assets recovery resulting from criminal acts of corruption is a part of the implementation of the function of the rule of law in carrying out the regulatory function of various criminal acts that harm society and the country. Therefore, the implementation of the function of recovery to the country is presented by the state government, which includes national duties and responsibilities in which the country deals with the international community. In the scope of transnational crimes, a country that collected assets from the corruption has the duty and responsibility to help recover the assets from the corruption to the country.

Efforts to seize assets, as regulated in Article 18 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption, are conviction based assets for feature which means that the confiscation of an asset is very dependent on the success of the investigation and prosecution of the criminal case.

Based on this, all methods of efforts in the context of realizing a more effective mechanism for the state assets recovery, including by presenting a statutory regulation that comprehensively regulates the confiscation of assets resulting from criminal acts in an effort to save country's finances is a must to create a just welfare.

II. METHOD

This study used normative legal method, which is a type of study that is commonly carried out in the development of legal science, in the Western countries, it is also called legal dogmatics (*rechtsdogmatiek*) or positive law or dogmatic law or practical law.[7].

The approaches used in this study were the statute approach, the case approach, and the conceptual approach. Sources of data in this study were secondary data, in the form of primary, secondary and tertiary legal materials. The data was collected by using literature study, while the data analysis technique used was qualitative normative methods

III. RESULTS AND DISCUSSION

Optimization in the effort to recover the country's assets that should be allegedly obtained from the proceeds of criminal acts of corruption is an important matter for Indonesia, since it is not only useful for the development but also showing the work of law enforcement officials in carrying out their duties and functions. However, this effort still faces various obstacles, such as the legal system (common law and civil law, the political system, the absence of developed countries to help, legal instruments, the absence of extradition agreements), in addition to the services of lawyers, accountants, banker services, and organizations to the looters of country's assets. Besides, the crime of corruption in Indonesia has been widespread and carried out systematically

The quality of the criminal acts of corruption committed is also increasingly complex and systematic[8], with a scope that permeates all aspects of public life. This condition is one of the factors inhibiting the success of realizing a just and prosperous Indonesian society as mandated by the 1945 Constitution of the Republic of Indonesia. However, the efforts to take a formal procedural approach through the current criminal procedural law have not been able to recover the country's stolen assets. In fact, the stolen assets are assets that must be saved, so that it must be recovered and can be used for the development of the country[9]. The lack of success of the Government of Indonesia in eradicating corruption has further exacerbated the Government's performance before the public, which is reflected in the public's distrust of the law. If this is not done meaningfully, then this condition will endanger the nation's sustainability.

Asset recovery is the process of handling the proceeds of crime in an integrated manner at every stage of law enforcement[10], so that the value of these assets can be maintained and fully returned to victims of crime, including the country. Asset recovery includes all preventive actions to ensure that the asset's value does not decrease.

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The Attorney General's Office as one of the law enforcement agencies in Indonesia, is a center of criminal justice system. It has specific duty and responsibility to coordinate or control investigations, carry out prosecutions and judges' verdicts that has permanent legal force (*inkracht van gewijsde*), and has responsibility and authority over all evidence that is confiscated both during the prosecution stage for the purposes of proving a case, as well as for the purposes of execution.

In carrying out their duties and powers, the prosecutors are the main elements in the prosecution process. Therefore, it must protect and respect human values and support human rights, because this contributes to ensuring a fair process and the functioning of the criminal justice system.

Filing a civil suit is an effort to directly attack corruption offenders in order to obtain assets from the corruption in addition to receiving criminal penalties. This effort is made if there are still assets mentioned in the previous decision and it is found that there are assets that have not been identified as the assets of a criminal act of corruption[12]. Filing a civil suit in an effort to recover assets from corruption has specific characteristics, namely that it can only be made when the criminal action is no longer possible to be used in an effort to recover the economic loss in the state treasury. Therefore, filing a civil lawsuit by the State Attorney General regarding the assets recovery must be carried out if the criminal attempt is unsuccessful due to certain conditions as regulated in Article 32, Article 33, and Article 34 of Law Number 31 of 1999 concerning Eradication. Corruption Crime, as well as

Article 38C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1991 concerning Corruption Eradication, namely as follows:

- a. After the investigation process was carried out, it was found that there was not enough evidence of a criminal act of corruption, but in fact there had been a loss to the country, the investigator submitted the results of the investigation file to the State Attorney to file a civil suit.
- b. An acquittal decision in a corruption case does not eliminate the right to sue for the country's financial losses.
- c. The suspect died in the investigation process.
- d. The defendant died during the trial process in court.
- e. It is suspected that there are results of corruption that have not been confiscated for the country even though the court's decision has permanent legal force.

Based on the provisions in Article 32, Article 33, and Article 34 of Law Number 31 of 1999 concerning Eradication of Corruption, and Article 38C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1991 concerning Eradication The criminal act of corruption, logically the civil suit was carried out aimed at recovering the country financial losses if in fact there had been losses from country finances, when there was insufficient evidence of corruption, the suspect died during the investigation process, or the defendant died at the time examination in court proceedings and there are still assets that have not been confiscated when the court's decision is legally binding.

In an effort to recover the country's assets from criminal acts of corruption, the mechanism used to make the recovery was successfully returned to each country, so it cannot be determined which is the best mechanism.

The successful recovery of assets from criminal acts of corruption must pay attention to several factors as follows[13]:

1. The perspective on the approach of law enforcement in Indonesia still focuses on punishing the perpetrator (in personam), not seizing their assets.
2. A need for broader national and international legal instruments regulating asset returns. The legal instrument that becomes a framework regarding the steps that must be taken.
3. The integrity of law enforcers to always prioritize public interests is the main prerequisite so that assets are recovered to their original owners.
4. Intensive and continuous cooperation between law enforcement agencies at the national, bilateral and multilateral levels. To recover an asset requires a core team and a task force that has special expertise that functions as the main motor of investigation and prosecution of asset recovery efforts.
5. Consistent political will and strong commitment from the government.

6. International support including support from countries where assets are stored. This support is needed since the preventive stage as a criminal policy.
7. International legal umbrella. Indonesia has ratified the United Nation Convection Against Corrupt (UNCAC), the United Nations Convention Against Transnational Organized Crime (UNTOC), and Asean Mutual Legal Assistance (AMLAT), but Indonesia is not yet a member country of the Organization for Economic Co-operation and Development (OECD).
8. Follow up on bilateral cooperation with certain countries in handling corruption cases, including extradition, assets recovery, and transfer of assets belonging to other convicts.
9. An implementation of automatic exchange of information standards. AEol is a system that supports the exchange of taxpayer account information between countries at a certain time periodically, systematically, and continuously from the country of source of income or the place to store wealth, to the resident country of the taxpayer.
10. Opening up the possibility in Indonesian criminal law to carry out legal settlement outside the court process (*afdoeningbuiten process*) of certain corruption cases.
11. Synchronization and harmonization of laws and regulations. Ratification that is not followed up with harmonization and implementation of the provisions contained in the convention will have an impact on the Indonesian nation in overcoming, preventing and eradicating corruption in Indonesia.
12. Gradually revising and / or replacing applicable laws and regulations to conform with internationally accepted legal standards.

The stolen asset recovery is very important for the development of developing countries because it is not only to recover the assets of developing countries but also aims to uphold the rule of law where there is none who are immune to the law.

IV. CONCLUSIONS

The legal strength of the cross-default agreement is weak because it is made on the basis of an imbalance of legal subjects and is indicated as having no good intentions. From a technical point of view, the procedure of contract drafting there is indeed no coercion, which means there is good faith, but the delivery of standard contracts with standard clauses and exoneration clauses without detailed explanation of the legal consequences is a form of denial of good faith. In addition, in terms of substantive matters, some content material that prioritizes the rights of the company by ignoring the rights of business partners and consumers born without giving the opportunity to make changes to the contract is also a matter of lack of good faith. Fair contract shows that the

agreement is conducted impartially, does not side with the interpretation of one party, only side with the truth, fulfills propriety, and there is no arbitrariness. Thus, fair contract is a contract that treats parties according to the proportion of rights and obligations. The treatment is not carried out in a one-sided manner, but everyone is treated equally according to their rights and obligations.

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