



The concept of follow the money to eradicate corruption in Indonesia

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Abstract

The progress of human civilization, in the fields of science, information technology, communication, and transportation has hit almost the whole world without exception. The development of Science and Technology has various impacts, both positive and negative. One of the negative impacts that hit Indonesia related to the development of Science and Technology is a crime with an economic motive that is rife. The development of corruption in Indonesia is increasing along with the development of Science and Technology (IPTEK). Realizing that the problem of corruption is complex, the Corruption Crime is an important thing to be faced through firm and clear steps. The substantial number of losses experienced by the state raises main questions about where the fantastic flow of funds because of criminal acts leads too. In terms of handling criminal acts of corruption cases, it is necessary to use a follow the money approach. The settlement of corruption cases with a follow the money approach that traces the flow of funds because of corruption is more applicable considering that it is used to trace the losses caused by the existence of the criminal case, compared to only a follow the suspect approach.

Keywords: corruption, criminal, follow the money

Introduction

Indonesia as a state of law (rechstaats) reflects that the law regulates life in society, to achieve justice, benefit, and legal certainty. However, it is common for legal developments from time to time to cause the law to be called a "double-edged sword" because, on the one hand, the law protects the interests of the community, but on the other hand its implementation causes legal suffering (Muhammad Taufiq, 2012) ^[5]. Of course, various existing law enforcement is also more or less influenced by the development of Science and Technology which is increasingly rapid and inevitable. Law is needed for the protection of individuals and society (Muhammad Taufiq, 2014) ^[6]. Globalization in all fields is going so fast that it is not possible for a country to isolate itself politically, socio-culturally, and economically (Dwidja Priyatno, 2018) ^[4]. There is an adage that the poorer a nation, the higher the crime. However, this adage seems to have begun to no longer apply in the era of globalization which is experiencing developments in various fields.

The development of Science and Technology has various impacts, both positive and negative. One of the negative impacts that hit Indonesia concerning the development of Science and Technology is a crime with economic motives that is rife, whether perpetrated by individuals or organizations, or companies within the borders of the country or across the borders of other countries. The development of corruption in Indonesia is growing rapidly along with the development of Science and Technology. The corruption case seems to have never had a word in its development. The history of corruption begins at the beginning of human life in society, namely at the stage when complex social organizations began to emerge. Like other social phenomena, corruption is determined by various factors (Alatas, 1987) ^[1].

Corruption cases in Indonesia are increasing from time to time. According to Hendi Yogi Prabowo, Jaka Sriyana, and Muhammad Syamsudin (2018) ^[12] stated that: "In Indonesia

corruption has been a major problem for decades. It robs the economy of its competitiveness and effectiveness as well as erodes public trust in government) (Hendi Yogi Prabowo, Jaka Sriyana, Muhammad Syamsudin, 2018) ^[12]. Based on these quotes, corruption has been a big problem for the Indonesian people for decades. The damaging effects of corruption itself such as robbing companies of competitiveness and eroding the effectiveness of people's trust. State officials do not only commit Criminal acts of corruption, between countries, but also state administrators with other parties such as families, cronies, and businesspeople, thereby damaging the joints of social life, nation, and state, and endangering the existence of the state (Nyoman Serikat Putra Jaya, 2005) ^[7]. The number of corruption cases that occurred and the number of losses borne by the state are straightforward evidence that corruption is an important problem faced by the Indonesian nation. Cases of corruption do not only occur in big cities, but its development has spread to various regions in Indonesia.

Over time, corruption cases in Indonesia have shown their development from year to year. Seen from the government's attention to this matter then formed a commission to overcome, overcome, and eradicate corruption in Indonesia. This brought a major change in the history of eradicating corruption in Indonesia. In this era of information disclosure, people are increasingly curious and demand disclosure of information regarding the development of handling corruption cases. Information media, in this case, contributes to the delivery of information about corruption that is currently taking place in Indonesia. The effectiveness of law enforcement can be achieved by substantial enforcement of laws and regulations (Muhammad Taufiq, 2018) ^[12].

Realizing that the problem of corruption is complex, the Corruption Crime is an important thing to be faced through firm and clear steps. Eradication of corruption can legally be

conducted by relying on the enactment of the Law on the Eradication of Criminal Acts of Corruption and various related repressive provisions. The law in question is Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, as amended to Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, Law Number 30 of 2002 concerning the Corruption Eradication Commission, and Law Number 46 of 2009 concerning the Corruption Court.

Consistent and integrated law enforcement will also bring benefits to the community, namely the emergence of a deterrent effect so that it can prevent someone who wants to commit corruption. Another benefit is the growth of public trust in law enforcement efforts and law enforcement officials so that public support for law enforcement agencies will be strengthened. On the other hand, if there is inconsistency and incoherence in law enforcement, the public will judge that in the law enforcement process there is a tug of war of interest, so that trust in law enforcement will weaken. The implication is that this will weaken the legal culture and compliance with the law by the community (Bambang Waluyo, 2014) ^[11].

Today, in Indonesia there are many cases of corruption involving high state officials, including the representatives of the people who sit in "Senayan". Proper and accurate handling is needed in dealing with cases of criminal acts of corruption because these crimes are the beginning of the emergence of other criminal acts such as Money Laundering. The considerable number of losses experienced by the state raises big questions about where the fantastic flow of funds because of criminal acts leads to. Of course, it takes a lot of effort to be able to trace the wealth from the proceeds of corruption. In terms of handling cases of criminal acts of corruption, it is necessary to use a follow the money approach, namely an effort to find money/property / other assets that can be used as evidence (objects of crime) and of course after going through an analysis of financial transactions and it can be suspected that the money is the proceeds of the crime. Through the follow the money approach, it is considered more effective in recovering state finances that have been harmed.

Based on the background of the problems described above, the authors develop a problem formulation to be studied more clearly, in detail, and directed in the discussion. The formulation of the problem that can be arranged, among others:

1. How is the follow the money approach applied to corruption cases in Indonesia?
2. What are the advantages and constraints faced in applying the follow the money approach to corruption cases?

Research Method

This research is legal study which is category as normative or doctrinal legal study (Peter Mahmud Marzuki. 2014). This research uses secondary data consisting of primary, secondary and tertiary legal materials. All legal materials obtained in the study will be collected, grouped according to their respective variables, for further qualitative analysis, using several approaches. Some of the approaches used in this research are the statute approach and conceptual approach. The results of this study will be presented in the form of analytical descriptive.

Research Result

1. Application of the Follow the Money Approach to Corruption Cases in Indonesia

Every criminal act has at least three components, including the perpetrator, the crime committed, and the results of the crime. Disclosure of corruption through a follow the money approach needs to be done because corruption is the forerunner of the emergence of other criminal acts such as the Crime of Money Laundering. Thus, the Crime of Money Laundering occurred. Assets or money resulting from criminal acts of corruption are transferred or cleared to eliminate traces. Through the follow-the-money approach, it can be traced where the proceeds of corruption proceeds. Tracing the flow of funds resulting from corruption is particularly important to be conducted in the context of the purpose of impoverishment. Thus, the next focus on tracing the flow of funds resulting from criminal acts of corruption leads to the implementation of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

Based on Article 2 paragraph (1) letter a of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, namely the proceeds of criminal acts are assets obtained from criminal acts of corruption. Thus, there is a correlation that the criminal act of corruption is the forerunner of another criminal act, namely the Crime of Money Laundering. Using the Money Laundering Law, the disclosure of corruption cases can be initiated by tracing the flow of funds or transactions conducted by suspects in corruption cases. Thus, the follow the money approach does not focus on the suspect's confession but investigates development strategy by looking for other suspects where the flow of funds resulting from criminal acts leads too. The follow a money approach is an approach that prioritizes finding the results of the criminal acts that have been committed, compared to looking for the perpetrators of the crime. The proceeds of the criminal act sought are in the form of money or other assets which are the result of a criminal act. Following the money approach in finding the results of criminal acts uses a financial analysis approach. The financial analysis approach uses accounting and related science. The accounting science used is forensic accounting (Amiruddin dan Zainal Asikin, 2003) ^[12].

Managing follows the money approach and uses four primary stages in the investigation process. The investigative process is a reconstructive process that uses deductive reasoning based on specific evidence to establish evidence that a suspect is guilty of a crime committed (Swanson, Charles. R, Neil C. Chamelin and Leonard Territo, 2003) ^[9]. In dealing with cases of corruption in Indonesia, it is necessary to collect specific evidence targeting the flows of proceeds of crime, whether they have not been or have been laundered or cleared (money laundering) in the financial system. The investigative process serves to identify activities that violate the law that gives rise to a new criminal act, namely money laundering. It is because the assets or assets resulting from the criminal act of corruption that has been obtained are cleaned to disguise the traces of corruption as the main crime.

After the investigation process is conducted, an effort is needed to "show" money or assets resulting from criminal acts of corruption by arresting the perpetrators for further questioning, and investigators must identify and trace financial traces by using confiscated documents such as

suspicious transactions, records of property purchases (houses, land, Cars), travel documents, and other supporting documents. Then, it is necessary to enforce the law in the realm of the database in the sense can be accessed by certain public institutions. Commercial databases are in the form of credit and legal bureau reports to obtain information about potential perpetrators. The existence of public records such as company records, social security, and house rental records. Furthermore, an investigation was conducted on the existence of spending habits carried out by the perpetrators, namely an investigation of wealth analysis, which generally has conspicuous assets and sources, and an analysis of targets with conspicuous spending habits.

The results of the financial analysis process are conducted by the Center for Financial Transaction Reports and Analysis. Investigators have not been able to directly confirm the occurrence of a crime because the financial analysis process also does not provide evidence regarding the occurrence of a crime. However, it is the investigator's job to determine after receiving the financial analysis results from the Financial Transaction Reports and Analysis Center. The further investigation process conducted is the confiscation and confiscation of money or assets suspected of originating from the proceeds of criminal acts of corruption.

The defendant was allowed to prove that his assets did not originate from a criminal act in the follow the money approach. Thus, Defendant does not necessarily lose the opportunity to prove the assets being investigated if the assets are not assets originating from a criminal act.

2. Advantages and Constraints in Implementing the Follow the Money Approach in Corruption Crime Cases

The follow the money approach seeks to find money / property / other assets that can be used as evidence (objects of crime), in contrast to the conventional approach which focuses on searching for the culprit directly after finding preliminary evidence (Djoko Sarwoko, 2012) ^[3]. The implementation of the follow the money approach to trace money or property from the proceeds of a crime has several advantages. The advantages of applying the follow the money approach in cases of uncovering criminal acts (especially in cases of corruption) are (Yunus Husein, 2008) ^[10]

1. The follow the money approach has a further reach so that it is felt to be fairer because the follow the money approach has priority to pursuing the results of a crime (criminal act), not prioritizing the perpetrators of the crime. So that by prioritizing the pursuit of the results of a crime, it can be conducted secretly or covertly.
2. The follow the money approach has a smaller risk and is easy to do because it does not deal directly with perpetrators who often have the potential to fight.
3. A follow the money approach that prioritizes pursuing the proceeds of a crime (crime) later the proceeds of a crime will be brought through a legal process and confiscated by the state because the perpetrator is not entitled to enjoy the property from the proceeds of the crime (crime) obtained illegitimately. Through the confiscation of the proceeds of a crime (criminal act), it is hoped that it will become a preventive effort, namely the loss of motivation from someone to commit a crime to seek property through illegal means is reduced or even lost.

Efforts to cut the chain of criminal acts, especially corruption, are easier to do with a follow the money approach. In addition, the motivation of the perpetrators to repeat their crimes is hindered and difficult to conduct. The follow the money approach is highly effective if the state wants to save state assets once it finds out there is a suspicious flow of funds. As a follow-up to the suspicious flow of funds, the legal apparatus can take several anticipatory steps quickly so that the accounts of suspected criminals will be blocked so that the flow of funds can be traced, and assets confiscated.

In addition to having advantages, the follow the money approach has obstacles in its application in uncovering cases of corruption, including

1. Barriers to Identification of Suspicious Financial Transaction Reports and PPATK Analysis Results Reports

PPATK is an agency referred to as the Financial Intelligence Unit (FIU) so that the resulting product in the form of an Analysis Result Report (LHA) is an intelligence product and is not pro-justice, so as to obtain legal facts on transactions that can be used to prove cases of Corruption and/or Money Laundering, Analysis Results Report (LHA) is used as a basis for investigators to look for evidence by examining witnesses/electronic letters/documents, confiscation of documents, blocking accounts/freezing (freezing) and other actions on evidence of suspicious banking transactions. This is difficult to do and becomes an obstacle for investigators because to obtain data without the permission of the perpetrator (account owner), the banking sector tends not to allow it for reasons of privacy (banking secrecy), especially if the banking party is worried if there is a confiscation/blocking of the account which has the potential to result in a capital gain ratio. the bank's health or health at a bank office is down.

2. Time and place barriers

Many problems arise when the case handling process involves cross-country so that the law is enforced in coordinating with the law enforcers of the country concerned. The connection with the follow the money approach is the existence of assets that the criminal results in acts of corruption located abroad. Meanwhile, to be able to trace these assets, a direct investigation of these assets is required. Handling that can be done in this case is Mutual Legal Assistance (MLA). In addition, cooperation with the Ministry of Law and Human Rights and the Ministry of Foreign Affairs is also needed to arrange investigation permits with police abroad. In this case, it becomes a problem handling the process of corruption cases which takes a long time based on the complexity of corruption cases. If within 30 (thirty) days the investigation of a case has not been completed, the perpetrator's account containing assets known to be the proceeds of a criminal act will be withdrawn. This can be a new opportunity for perpetrators to reuse their wealth.

Conclusion

1. The resolution of corruption cases with the follow the money approach is a more effective and efficient approach to implement, compared to only the follow the suspect approach, because it will obtain information about the source of money and where the money flows

are placed, how transactions are obscured and how money is the result of corruption integrated into a business product as in the practices of money laundering. The follow the money approach can reduce the risk of other criminal acts from further criminal acts of corruption such as money laundering.

2. The implementation of the follow the money approach has obstacles in converting information in the identification of Suspicious Financial Transaction Reports (LTKM) and PPATK Analysis Results Reports (LHA) into evidence and the process of identification to become evidence which takes a long time and costs money which is not small, so there needs to be good cooperation between investigators and banking parties with legal instruments or an agreement that makes it easier for law enforcement officers to carry out their duties to trace assets resulting from criminal acts.

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