SANCTIONS FOR THE RETURN OF STATE FINANCES BY CORPORATIONS IN THE SYSTEM OF CORRUPTION JUSTICE SYSTEM

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SALEH
Faculty of Law, Brawijaya University, Malang, East Java, Indonesia, ORCID (0009-0000-9099-275X)
pengacara_muda@yahoo.co.id

I Nyoman NURJAYA
Faculty of Law, Brawijaya University, Malang, East Java, Indonesia

Herman SURYOKUMORO
Faculty of Law, Brawijaya University, Malang, East Java, Indonesia

Setiawan NOERDJASAKTI
Faculty of Law, Brawijaya University, Malang, East Java, Indonesia

Zana ZERLINA
Faculty of Law, Veteran University, Jakarta, Indonesia

Abstract: *The purpose of eradicating corruption in Indonesia is to recover state financial losses and the state economy. In the corruption crime law that regulates the imposition of additional criminal sanctions in the form of restitution payments in corruption cases essentially cannot be applied against corporations, because additional criminal sanctions in the form of restitution payment obligations can be replaced by imprisonment according to the provisions of the Corruption Crime Law, while the main punishment that can be imposed on corporations is only a fine without being replaced (subsidiar) imprisonment sanctions, but the criminal sanction of fines against corporations if they do not make fine payments is not regulated in the Corruption Crime Eradication Law. In the regulation of sanctions for the return of financial losses by corporations in corruption cases, it is still spread sectorally, causing the criminal justice system to run independently, as reflected in several decisions of the panel of judges, which still mixes the imposition of criminal sanctions against the management with the imposition of sanctions against the corporation, so that the return of state financial losses by corporations that commit corruption crimes is not maximized. Thus, a breakthrough is needed to revise the corruption law. This research is legal research, namely research by analyzing laws and regulations, based on legal dogmatics, legal theory, and legal philosophy. The purpose of this research is to examine the provisions of Article 20 paragraph (7) jo. Article 18 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption. By revising the Corruption Eradication Law by the Government and the House of*

Representatives, it is hoped that the recovery of state financial losses in corruption cases by corporations will be maximized.
Keywords: *Sanctions; Return of State Financial Losses; Corruption Offenses.*

Introduction

The purpose of eradicating corruption inIndonesia is to recover state financial losses and the country's economy. Corruption that continues to increase and is not controlled will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. The widespread and systematic criminal act of corruption is also a violation of social rights and economic rights of the community, so that the criminal act of corruption is classified no longer as an ordinary crime but has become an extraordinary crime so that its eradication is prosecuted in extraordinary ways (Supardi, 2018). In its development,according to the provisions of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, corruption can be carried out by any person or corporation. The definition of everyone in Article 1 number 3, everyone is an individual or includes a corporation. A new development regulated in Law Number 31 of 1999 concerning Corruption is the inclusion of corporations as legal subjects of corruption that can be sanctioned, this is not regulated in Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption. The corruption law in which many regulate special material crimes, although not in detail, also regulates the criminal procedure law for corporations that commit corruption crimes as stipulated in the provisions of Article 20 paragraph (1) and paragraph (2). The provisions of Article 20 of the Corruption Eradication Law regulate corporate criminal liability if the corporation and/or its management commits a criminal act of corruption committed for the benefit of the corporation (Sjawie, 2015). The provisions of Article 20 paragraph (1) affirm that if a criminal act of corruption is committed by or on behalf of a corporation, then criminal charges and convictions can be made against the management only, the corporation only, or against the management and corporation. The inclusion of corporations as one of the legal subjects of corruption in the Corruption Eradication Law which states that in addition to the subject of natural human law (naturlijke persoon), corporations or legal entities (rechtsperson) are also referred to as legal subjects like human law subjects who have rights and obligations and responsibilities in every action.

The beginning of the inclusion of corporations as subjects of criminal law in Indonesia has long been regulated in laws outside the Criminal Code or in special criminal laws. The acceptance of corporations as subjects of criminal law in Indonesia was first stated by Emergency Law Number 17 of 1951 concerning Hoarding of Goods, which in Article 11 of the Law states that legal entities can be punished separately from their management. Furthermore, corporations as subjects of criminal law were then strengthened by the issuance of Emergency Law Number 7 of 1955 concerning Prosecution, Prosecution of Economic Crimes (hereinafter abbreviated as TPE Law), which in the provisions of Article 15 of the Law explained that legal entities, companies, associations of persons or foundations are legal subjects that can be criminalized. Based on the above background, there are several very fundamental legal issues juridically regarding the system of imposing criminal sanctions related to the return of state financial losses for corporations that commit

criminal acts of corruption. This has not been clearly regulated in the corruption law related to the return of substitute money and specifically criminal fines against corporations are only regulated in the Supreme Court Regulation whose contents do not prioritize the principle of expediency, so it is necessary to reform the Corporate Criminal Law in Indonesia, especially corruption. In this context, the author is interested in further examining in depth related to the application of criminal sanctions for the return of financial losses committed by corporations in cases of beneficial corruption crimes.

Research method

This research is to find and develop legal knowledge in the field of criminal law, especially those related to the application of criminal sanctions against corporations involved in criminal acts of corruption carried out fairly and prioritize legal expediency. This research on "Sanctions for the Return of State Finances by Corporations in the Corruption Criminal Justice System" focuses on analyzing the philosophical aspects, theories and legal norms resulting from Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes which does not regulate sanctions for the return of state financial losses that prioritize the side of benefit for corporations that commit corruption crimes. so that it will cause innocent victims who not only kill the survival of corporations, shareholders, but also how many thousands of people will lose their jobs who are laid off and the loss of potential state revenue from taxes and the potential for investors to leave the country, so that it will cause innocent victims who not only kill the sustainability of corporate life, shareholders, but also how many thousands of people will lose their jobs who are laid off and the loss of potential state revenue from taxes and the potential for investors to leave the country. This study uses several approaches to understand legal issues. First, the legislative approach, which is a research approach that uses laws and regulations consisting of legislation and regulations both in Indonesia and in other countries. Second, the case approach, which is the approach needed to see the implementation of legal norms and rules in the real practice of law contained in court decisions or jurisprudence. Third, Comparative Approach, in applying comparative legal research, elements of the legal system are used as a starting point.

Result and discussion

Legislation Regulating Sanctions for the Return of State Financial Losses in Corruption Cases Committed by Corporations

The following are some of the laws and regulations that regulate sanctions for the return of state financial losses in corruption cases committed by corporations, among others:

Regulation of Sanctions for the Return of State Financial Losses According to Law Number 8 of 1981 concerning the Code of Criminal Procedure.

The return of state financial losses from acts of corruption can be carried out from the investigation stage to the stage of execution of decisions from judges with permanent legal powers. At the investigation stage, they must first trace or trace the assets of the

convicted perpetrators of corruption crimes, according to the criminal procedure law, tracking efforts are closely related to the investigation and investigation actions listed in Article 1 point 2 of the Criminal Procedure Code. The search for the assets of convicts is carried out to provide information investigators, investigators, and prosecutors identify the assets of convicts, where the storage of assets, evidence related to ownership or assets and their relationship with the actions they commit as an effort to recover losses of state money.

Confiscation must be carried out with permission from the chairman of the local district court unless the suspect is caught committing a criminal offence, then in necessary and urgent circumstances when the investigator must act immediately and it is impossible to obtain permission from the court, the investigator can confiscate movable property but still obliged to immediately report to the chairman of the local district court for approval as stipulated in article 38 of the Code of Criminal Procedure.

The application of execution to recover state financial losses is regulated in the provisions of article 273 of the Code of Criminal Procedure, if a court decision imposes a fine on the convict, a period of one month is given to pay the fine except in the decision of the speedy examination event which must be instantaneous. The period of one month can be extended for another month, if the court decision determines that the evidence was seized for the state, then the prosecutor authorizes the object to the state auction office and within three months for auction sale, the proceeds of which are entered into the state treasury for and on behalf of the prosecutor. And the period as mentioned in paragraph 273 paragraph (3) of the Code of Criminal Procedure can be extended for a maximum of one month and in that extension of time must be maintained so that the implementation of the auction is not delayed. So that the provisions of article 273 of the Criminal Procedure Code can be used as a reference in the context of returning state financial losses or returning assets resulting from corruption crimes.

Regulation of State Financial Return Sanctions in Cases of Criminal Acts of Corruption committed by Corporations according to Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

In particular, the punishment and accountability of corporations as perpetrators of corruption crimes regulates when and in terms of how a corruption crime can be categorized as a corruption crime committed by a corporation, the provisions of article 20 of Law Number 31 of 1999 regulate when and how a corruption crime is committed by a corporation. For corruption crimes committed by corporations, in addition to being subject to additional penalties as stipulated in article 10 point b of the Criminal Code, additional penalties are also imposed as stipulated in article 18 paragraph (1) of the Corruption Law. According to the provisions of Article 20 paragraph (7) of the Corruption Eradication Law, the main crime that can be imposed against a corporation is only a fine, with a maximum penalty plus 1/3. The criminal conviction formulated is singular because there is no other alternative, what if the criminal fine is not paid by the corporation.

Regulation of State Financial Return Sanctions in cases of criminal acts of corruption committed by corporations According to the Circular Letter of the Attorney General of the Republic of Indonesia Number B-036/A/Ft.1/06/2009 concerning Corporations as Suspects/Defendants in Corruption Crimes.

The Attorney General's Circular was issued because the corruption law although it regulates the subject of corporate criminal law, but does not regulate the procedural law on how to conduct investigations and prosecutions. In the investigation process, it is required to confiscate the articles of association and bylaws of the corporation to obtain corporate identity to be included in the case file, for the preparation of an indictment at least containing the identity of the corporation name, the number and date of the corporation deed, the number and date of the deed of establishment of the company, the number and date of the company deed at the time of the criminal event, the number and date of the last change, position or status of establishment and field of business. Additional penalties that can be applied to convicted corporations other than those stipulated in the Criminal Procedure Code are also prescribed in article 18 of the Corruption Law, namely in the form of confiscation of movable goods both tangible and intangible, seizure of immovable property obtained from corruption crimes, payment of substitute money, business closure or partial closure of the company/corporation for a certain time or revocation business rights/licenses and revocation of all or part of certain rights.

The demand for additional punishment in the form of an obligation to pay substitute money cannot be applied to the corporation as a defendant, because the additional penalty in the form of an obligation to pay substitute money can be replaced by imprisonment based on the provisions of Article 18 paragraph (3), while the crime of corruption is only a criminal fine without being replaced (water subsidy) with corporal punishment.

Regulation of State Financial Return Sanctions in cases of criminal acts of corruption committed by corporations According to the Regulation of the Attorney General of the Republic of Indonesia Number: Per- 028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects.

Attorney General Regulation Number PER-028/A/JA/10/2014 regulates corporate actions that can be held accountable. The criteria and actions of corporate administrators that can be held criminally responsible and more importantly corporations that can be criminally prosecuted are additional criminal charges imposed against corporations and corporate administrators in the form of payment of money in lieu of state financial losses, confiscation or elimination of profits obtained from criminal acts, repair of damage resulting from criminal acts, obligations to do what is done without rights, placement of the company under pardon for a certain period of time, closure or freezing of part or all of the company's activities for a certain period of time, revocation of certain rights, revocation of business licenses, seizure of evidence or assets or assets of the corporation and or other actions in accordance with the provisions of the applicable law.

Additional criminal charges in the form of substitute money imposed on the corporation if within 30 days are not paid then the assets or assets of the corporation are confiscated for payment of substitute money and if the corporation does not have wealth then the corporation is charged with additional crimes. And if the fine is not paid, the assets or assets of the corporation are confiscated in accordance with applicable laws and regulations. In the implementation of court decisions that have permanent legal force, if the convicted person only pays part of the criminal amount of the fine, the rest is replaced by confinement in lieu of a balanced fine and the fine is paid for a maximum of one month and can be extended by one month, but if not paid, it is replaced by the seizure of property or assets belonging to the corporation to be sold and auctioned. In the case of confiscation

of evidence or property/assets of the corporation, as far as movable property is concerned, it must be carried out within 3 (three) months from the copy/excerpt of the court decision that has the force of law remains in the Supreme Court. Then in the case of handling assets/assets related to the subject of corporate law at each level of examination and implementation of judgments, it is carried out through cooperation and coordination with the Asset Recovery Center of the Indonesian Attorney General's Office and the objects of handling assets/assets are movable and immovable objects including assets/current assets, long-term investments, assets/fixed assets, assets/intangible assets, deferred tax assets/assets, and/or other types of assets/assets. Thus, the sanction for the return of state money according to Attorney General Regulation Number PER-028/A/JA/10/2014 is implemented in the form of prosecutions, namely in the form of additional criminal charges in the form of substitute money and criminal charges for fines.

Regulation of State Financial Return Sanctions in cases of criminal acts of corruption committed by corporations According to Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

Supreme Court Regulation Number 13 of 2016 regulates the meaning of employment relations which is defined as the relationship between a corporation and its work/employees based on a work agreement that has elements of work, wages, and/or orders. And also regulates other relationships, namely the relationship between the management and/or corporation with other people or corporations so as to make the other party act in the interests of the first party based on agreements, both written and unwritten as stipulated in article 1 number 11 and number 12 of Supreme Court Regulation Number 13 of 2016. Given that the provisions of Article 143 paragraph (2) letter a of the Criminal Procedure Code only regulate the identity of people as legal subjects, article 10 of Supreme Court Regulation Number 13 of 2016 confirms that summons to corporations must contain the name of the corporation, the place of residence, nationality of the corporation, the status of the corporation in criminal cases, the time and place of examination and summary of alleged criminal events related to summons. In line with that, the decision of the criminal court against the corporation must include the identity of the name of the corporation, place, date of establishment and or number of articles of association or deed of establishment or regulations or documents or agreements as well as the latest changes in the place of residence, nationality of the corporation, type of cooperative, form of activity or business and identity of the management representing.

The judge in imposing a crime against the corporation is only in the form of principal and/or additional crimes. The main crime that can be imposed against the corporation is a fine while additional penalties that can be imposed against the corporation are in accordance with the provisions of laws and regulations. In the case of criminal fines imposed on the corporation, the corporation is given one month from the decision with permanent legal force to pay the fine but if it is not paid within one month it can be extended for a maximum of one month and if it still does not pay then the corporation's property can be confiscated by the prosecutor and auctioned to pay the fine as stipulated in article 28 of Supreme Court Regulation Number 13 of 2016, This is not regulated in the original provision 20 paragraph (7) of the Corruption Eradication Law which states that the main crime that can be imposed against the corporation is only a fine, with a maximum penalty plus 1/3. Corporations that are subject to additional penalties in the form of substitute

money, damages, and restitution, the corporation is given a maximum period of one month from the decision with permanent legal force to pay within one month and can be extended for a maximum of one month. If the corporation does not pay the replacement money, compensation and restitution, then the property that can be confiscated by the prosecutor and auctioned to pay the replacement money, compensation and restitution as stipulated in article 32 paragraph (4) of Supreme Court Regulation Number 13 of 2016. Thus, Supreme Court Regulation Number 13 of 2016 has regulated sanctions for the return of state financial losses, namelyin the form of substitute money and criminal fines committed by corporations that commit criminal acts of corruption.

Regulation of Sanctions for the Return of State Financial Losses in cases of criminal acts of corruption committed by corporations According to Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code).

The regulation of corruption in the new Criminal Code, regulated in the provisions of Article 603, namely any person who unlawfully enriches himself, others, or corporations that harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and at most category VI. In addition to regulating the legal subjects of persons, the provisions of Article 604 also regulate the subject of corporas i lawwhich states that any person who with the aim of benefiting himself, others, or the Corporation abuses the authority, opportunity, or means available to him because of a position or position that harms state finances or the country's economy, is punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 2 (two) years 20 (twenty) years and a fine of at least category II and at most category VI. However, according to the provisions of P origin 624 of Law Number 1 of 2023 concerning the Criminal Code, that Law Number 1 of 2023 comes into force after 3 (three) years from the date of promulgation, namely January 2, 2023, then this Law will take effect on January 2, 2026.

In addition to the sanctions stipulated in the old Criminal Code and the new Criminal Code or sectoral regulations, either the Attorney General's Regulation or through the Supreme Court Regulation which regulates procedures for handling cases of criminal acts of corruption committed by corporations, no less important is the authority of law enforcement agencies that will carry out law enforcement, including criminal acts of corruption committed by corporations to recover state financial losses. To achieve the goals of the criminal justice system, it is expected that all elements in the system must work in an integrated manner. In the explanation of the corruption law, it is explained that people's aspirations to eradicate corruption and other forms of irregularities increase because corruption is considered to have caused huge state financial losses whose impact will have an impact on the emergence of crises in various fields. Therefore, the eradication of corruption in order to restore state financial losses is not only carried out by one institution, but is carried out by several law enforcement agencies whose essence is to be able to recover state financial losses for the occurrence of corruption crimes, including those committed by corporations. In order to recover state financial losses, there are several law enforcers who are given the authority to eradicate criminal acts ofcorruption funds.

Here are some authority regulations governing criminal acts of corruption committed by corporations, including:

a. Authority of the Corruption Eradication Commission in the eradication of criminal acts of corruption committed by corporations.

The Corruption Eradication Commission was formed as an answer to the barrenness of handling corruption that has occurred so far. Unlike the previously formed anti-corruption teams, the presence of the KPK in addition to being strengthened in the form of a law, the authority of the KPK is also considered super power, including the authority to wiretap. The authority and role of the Corruption Eradication Commission in addition to being strengthened by Law number 30 of 2002 concerning the KPK, is also strengthened by decisions from the Constitutional Court and the Supreme Court against the KPK Law. Namely, among others; Article 12 of Law No. 30/2002 is a special provision (lex specialis) that authorizes the KPK to carry out its investigation, investigation and prosecution duties. In cases of criminal acts of corruption committed by corporations, since its inception the KPK has never investigated alleged cases of criminal acts of corruption committed by corporations. After the birth of Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, the Corruption Eradication Commission first time the corporation prosecuted by the KPK from the process of determining suspects to prosecution was PT NUSA KONSTRUKSI ENJINIRING, Tbk to as a defendant in court. On January 3 2019 the Panel of Judges at the Criminal Corruption Act Court at the Central Jakarta District Court handed down a verdict as in Decision Number 81/Pid.Sus/Tipikor/2018/PN.Jkt.Pst, the amarnya stated right PT. NKE is guilty of criminal corruption in violating the provisions of Article 2 paragraph (1) jo. Article 18 paragraph (1) letter b Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Criminal Corruption with a criminal fine of Rp. 700..000,000.00 (seven hundred million rupiah), with the certainty that if the fine is not paid within one month after the breaking of the court order is still legal, then the property is confiscated and auctioned off to cover the fine. PT. NKE is also subject to additional criminal charges to pay for the first Rp. 85,490,343,747.00 (eight twenty five billion four hundred ninety nine million three hundred four twenty three thousand seven hundred four twenty seven rupiah) with the stipulation that if the replacement money is not paid within 1 period of time months after the decision was legally enforceable, his assets were confiscated and auctioned off to cover replacement money. Apart from that PT. NKE was also subject to additional crimes in the form of revocation of its right to follow the government auction for 6 (six) months.

b. The authority of the Indonesian National Police in the eradication of criminal acts of corruption committed by corporations.

In the context of eradicating corruption, in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia only has the authority to investigate and investigate like in other criminal cases, even though corruption is one of the criminal acts that requires special handling, so that in an effort to eradicate corruption the National Police requires more specific legal instruments, especially in terms of the authority of the National Police in eradicating corruption. The lack of independence of the National Police in the executive as stated in article 8 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia will cause conflicts of interest in handling corruption cases that occur in the government. The main duty and authority of the National Police is to maintain public security and order. In the first point (a) of Article 13 it is stated that the main duty of the National Police: to maintain public security and order. Security and order

referred to here is a dynamic condition of society as one of the prerequisites for the implementation of the national development process in order to achieve national goals. However, the duties and authorities, as well as the main duties of the National Police are still less persuasive, but still limited to reactive. This means that the National Police only moves if a suspected criminal act is found. In handling corruption eradication, especially at the investigation and investigation stage, it is possible to overlap with other institutions, such as the Prosecutor's Office or even the Corruption Eradication Commission. Especially in efforts to eradicate corruption, the police have a White Collar Crime (WCC)-Police Investigation Corps. In the function of the National Police Investigation, the law functions as one that protects the human rights of citizens in accordance with the rule of law. Detectives carry out repressive police practices from investigation, summons, arrests, searches, searches, seizures to detentions. and in Bareskrim also the mechanism of the justice administration system in the framework of the criminal justice system is implemented.

c. The authority of the Prosecutor's Office in the eradication of criminal acts of corruption including those carried out by corporations.

In its development to ensnare corporations that commit criminal acts, the Attorney General's Officehas issued a Circular Letter of the Attorney General of the Republic of Indonesia Number B-036/A/Ft.1/06/2009 concerning Corporations as Suspects/Defendants in Corruption Crimes and Attorney General Regulation of the Republic of Indonesia Number: Per- 028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects. After the revision of the Prosecutor's Law, namely Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the prosecutor's office has increasingly shown its fangs in making efforts to eradicate corruption so that many cases of corruption crimes have been successfully returned related to state financial losses. This is inseparable from the expansion of duties and authorities as stipulated in Law of the Republic of Indonesia Number 11 of 2021 Article 30A which further strengthens the duties and authorities of the prosecutor's office, namely in terms of asset recovery the prosecutor's office is authorized to carry out trace, seizure, and return of assets obtained from criminal acts and other assets to the state, victims, or those who are entitled. Especially in cases of criminal acts of corruption committed by corporations after the birth of the Circular Letter of the Attorney General of the Republic of Indonesia Number B-036/A/Ft.1/06/2009 concerning Corporations as Suspects/Defendants in Corruption Crimes and Regulation of the Attorney General of the Republic of Indonesia Number: Per- 028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects there are several corporate cases that are prosecuted by the prosecutor's office.

d. The authority of the Audit Board (BPK) in eradicating criminal acts of corruption.

In Law Number 15 of 2004 concerning Examination of State Financial Management and Responsibility, it is also affirmed the duty and authority of the Audit Board to examine the Government's responsibility regarding State Finance, examine all implementation of the State Budget, and is authorized to request information regarding the duties it carries. This is where the role of the Audit Board is to always report the results of its audits to competent institutions for the eradication of corruption. The validity of BPK data can be used as initial data for law enforcement to investigate reported indications of corruption. An accurate

CPC report will also serve as evidence in court. And therefore, the Audit Board should be able to define itself as an institution that is in the first line in the ranks of combating corruption. There must be synergy with other institutions that play a role in eradicating corruption.

e. The authority of the Financial and Development Agency (BPKP) in eradicating criminal acts of corruption.

BPKP's involvement in corruption cases committed by corporations can be seen from the results of BPKP audits presented during the trial on behalf of expert Muqorrobin experts from BPKP for the trial with the defendant PT NUSA KONSTRUKSI ENJINIRING, Tbk. Audit Report on State Loss Calculation issued by BPKP on the Case of Alleged Criminal Acts of Corruption in the Construction Work of the Special Education Hospital for Infection and Tourism of Udayana University T.A. 2009-2010, with Number SR-698/D6/01/2016 dated October 4, 2016. On the basis of the audit results from the BPKP that calculated state financial losses, by Majelis Hakim Pengadilan Tindak Corruption Criminal Pada Pengadilan Negeri Jakarta Pusat was used as the basis for dalam to impose a Verdict against PT. NKE. In its decision No. 81/Pid.Sus/Tipikor/2018/PN.Jkt.Pst, the panel of judges ruled PT. NKE is guilty of criminal corruption in violating the provisions of Article 2 paragraph (1) jo. Article 18 paragraph (1) letter b Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Criminal Corruption with a criminal fine of Rp. 700..000,000.00 (seven hundred million rupiah), with the certainty that if the fine is not paid within one month after the breaking of the court order is still legal, then the property is confiscated and auctioned off to cover the fine. PT. NKE is also subject to additional criminal charges to pay for the first Rp. 85,490,343,747.00 (eight twenty five billion four hundred ninety nine million three hundred four twenty three thousand seven hundred four twenty seven rupiah) with the condition that the replacement money is not paid within 1 period of time months after the decision was legally enforceable, his assets were confiscated and auctioned off to cover replacement money. Apart from that PT. NKE was also subject to additional crimes in the form of revocation of its right to follow the government auction for 6 (six) months.

4.2 The Role of Corruption Courts in the Eradication of Criminal Acts of Corruption

The authority of the Corruption Court is not only to try prosecutions submitted by the Corruption Eradication Commission but also prosecutions carried out by the Prosecutor's Office as well as the provisions of article 1 point 3 of Law Number 46 of 2009 concerning Corruption Courts. The procedural law of the special court regulates the length of time for examination, namely corruption cases are examined, tried, and decided by the Corruption Court of first instance within a maximum of 120 (one hundred twenty) working days from the date the case is transferred to the Acting Court Criminal Corruption. The provisions for appeals and cassation efforts are determined in time, namely the Corruption Criminal Appeal level examination is examined and decided within a maximum of 60 (sixty) working days from the date the case file is received by the High Court. Meanwhile, the examination at the cassation level for the Criminal Act of Corruption is examined and decided within a maximum of 120 (one hundred twenty) working days from the date the case file is received by the Supreme Court. As an extraordinary effort, if a court decision that has the force of law is still requested for review, the examination of corruption cases

is examined and decided within a maximum of 60 (sixty) working days from the date the case file is received by the Supreme Court.

The regulation of sanctions for the return of state financial losses in cases of corruption with the subject of corporate law, was then included in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts in which it regulates the criminal conviction of corporations that commit criminal acts of corruption, which in previous regulations have never been regulated. Corporations are included as subjects of criminal law in the criminal act of corruption as an effort to recover state financial losses stated in the provisions of article 18 of the Corruption Eradication Law. Additional criminal sanctions that can be imposed in the form of confiscation of movable goods both tangible and intangible, seizure of immovable goods obtained from criminal acts of corruption, payment of substitute money, closure of business or partial closure of companies/corporations for a certain time or revocation of business rights/licenses and revocation of all or part of certain rights. The regulation of sanctions for the return of state financial losses through the payment of substitute money cannot be applied to corporations, because the provisions of article 18 paragraph (3) of the Law on Corruption which states that in the event that the convicted person does not have sufficient property to pay the replacement money, then the penalty with imprisonment only applies to subjects of natural law while corporations are not subjects of natural law so they cannot be sentenced to imprisonment.

4.3 The urgency of applying sanctions for the return of beneficial financial losses to the subjects of corporate law in the criminal act of corruption.

Corporations do not have an outward body form, so the criminal sanctions that can be given to corporations are not classic criminal sanctions, except for sanctions related to fines or penalties (Sjawie, 2015). Sanctions are nothing but reactions, consequences and consequences of violations of social rules. Sanctions are a means of coercion so that someone obeys the norms or rules that apply. The nature of sanctions conventionally can be held a difference between positive sanctions which are rewards and negative sanctions in the form of punishment (Thalib, 2012). Sanctions can also be interpreted as the result of an action or reaction from another party carried out by humans or social organizations in the environment. Sanctions for violations of the law that can be imposed and implemented and are coercive come from the government, this is a difference that shows with violations of other orders. The reason for regulating criminal sanctions against corporations as subjects of criminal law as well as those that can be held criminally responsible, is because in economic crimes, the benefits obtained by corporations or losses suffered by the community are so large that they will not be balanced if the crime is only imposed on the management. The inclusion of corporations as one of the legal subjects of corruption in the Corruption Eradication Law which states that in addition to the subject of natural human law (naturlijk persoon), corporations are also referred to as legal subjects like human law subjects who have rights and obligations and responsibilities in every action. The beginning of the inclusion of corporations as subjects of criminal law in Indonesia has long been regulated in laws outside the Criminal Code or in special criminal laws. The acceptance of corporations as the subject of criminal acts in Indonesia was first stated by Emergency Law Number 17 of 1951 concerning Hoarding of Goods, which in Article 11 of the Law states

that legal entities can be punished separately from their management. Furthermore, corporations as subjects of criminal law were then strengthened by the issuance of Emergency Law Number 7 of 1955 concerning Prosecution, Prosecution of Economic Crimes (hereinafter abbreviated as TPE Law), which in the provisions of Article 15 of the Law explained that legal entities, companies, associations of persons or foundations are legal subjects that can be criminalized (Kristian, 2017).

4.4. Application of criminal sanctions against corporations and corporate administrators by the Public Prosecutor and the Panel of Judges.

Criminal punishment isessentially a loss in the form of deliberate suffering given by the state to individuals or people who violate the law, but punishment is also moral education for perpetrators who commit crimes so that in the future they do not repeat their actions again. Corporate penal arrangements (Hiariej, 2016) are regulated in the provisions of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, corruption can be carried out by any person or corporation. According to the provisions of Article 20 paragraph (1) of the Corruption Eradication Law, it is stated that in the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and convictions can be made against the corporation and or its management. Paragraph (2) states that the criminal act of corruption is committed by a corporation if the crime is committed by persons either based on employment relationships or based on other relationships, acting within the corporate environment either alone or together. Paragraph (3) states that in the event that a claim is made against the corporation, the corporation is represented by the management. While paragraph (4) states that the management representing the corporation as in paragraph (3) can be represented by other persons. Finally, paragraph (7) states that the main crime that can be imposed against the corporation is only a fine, with a maximum penalty plus 1/3. Although the imposition of criminal sanctions against corporations has been stated in articles 18 and 20 of the Tipikor Law, in its implementation the Tipikor Law cannot be applied so that Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations was born which separates the punishment of its management and corporations.

4.5 Reform of the law sanctioning the return of state finances in corruption crimes that benefit all corporations.

Funding for corporations perpetrating corruption crimes has 3 paradigms, namely philosophical, sociological and juridical grounds. The philosophical pedestal embodies justice (gerechtigheid), the sociological pedestal embodies the benefit (zweckmassigkeit), and the juridical pedestal embodies the dimension of legal certainty (recht zekerheids). The synergy of the three bases will then give birth to the dimensions of moral justice, social justice, and legal justice in the framework of future criminal law politics, These aspects and dimensions mutatis mutandis are in line with the thoughts of Romli Atmasasmita, the politics of criminal law in the 21st century which is a series of processions of criminal law formation sourced from the results of social, economic, and political evaluations that develop in society with the aim of creating order, certainty, justice, and expediency that is measurable and accurate.

The punishment of corporate perpetrators of corruption crimes from the perspective of philosophical reasons seeks to prevent the occurrence of potential obstacles to the protection of the Indonesian state to protect the entire Indonesian nation, both from internal and external threats. Forms of crimes committed by corporations related to corruption including money laundering, the environment and so on are a serious threat to the resilience of the nation and state. In this case, crimes committed by corporations can cause broad impacts either directly or indirectly. With the punishment of corporate crimes, it is hoped that the state's goals in promoting general welfare will not be hampered. In addition, the impact of corporate crime is greater than that of individuals. The characteristics of corporate crime in the panorama of white collar crime, transnational organized crime, and business crime that cross cross-jurisdictional crimes and punishment of corporations are also carried out in the framework of the mandate of state objectives in supporting world order in line with the 2nd Pancasila Precept and the 5th Precept. Where corporate crime can hinder the implementation of the 5th Pancasila Sila to realize and create social justice for all Indonesian people and corporate crime is also in line with Pancasila Sila-2, which is the embodiment of Just and Civilized Humanity.

The sociological basis for the punishment of corporations perpetrating corruption crimes is an objective description that the regulation is formed from the social community itself to meet the needs of the community in various aspects. Therefore, the sociological basis actually illustrates the existence of empirical facts about the development of problems and needs of society and also the state. The development of corrupt practices in Indonesia with the paradigm as extraordinary crime, transnational organized crime, premium remidium and the most serious crime and has been rooted in all layers of bureaucracy and neglect of corporations as perpetrators of corruption crimes will result in very large losses to the country's finances and economy which will eventually disrupt its own joints of the basic life of the nation and state.

The sociological basis of corporate punishment is studied from the perspective of the provisions of Law Number 31 of 1999 Jo Law Number 20 of 2001, so the aspiration of the public to eradicate corruption and other forms of irregularities committed by corporations is increasing. On the one hand, in reality there are acts of corruption committed by corporations that have caused huge state losses that have an impact on the emergence of crises in various fields. On the other hand, corporations perpetrating corruption crimes get and enjoy the proceeds of crime. For this reason, efforts to prevent, eradicate corruption, make legal instruments that are able to seize all corporate assets from corruption crimes need to be increased and intensified while still upholding the values of justice and the principle of expediency as well as human rights and community interests and thinking about the fate of a corporation that has quite a lot of employees.

4.6 The imposition of Criminal Fines and Compensation Money Against Corporations needs to be revised.

The main crime that can be imposed on the corporation is only a fine, but the criminal penalty for fines against the corporation if it does not pay the fine is not regulated in the Corruption Eradication Law as stipulated in article 20 paragraph (7) of the Tipikor Law. Criminal provisions with the subject of corporate law are included in the provisions of Article 2 of the Corruption Law which states Everyone who unlawfully enriches himself or another person or a corporation that can harm state finances or the country's economy.

As well as Article 3 which states any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of the position or position or means available to him because of a position or position that can harm state finances. The provisions of Article 20 paragraph (1) affirm that if a criminal act of corruption is committed by or on behalf of a corporation, then criminal charges and convictions can be made against the management only, the corporation only, or against the management and corporation. With the inclusion of corporations that commit criminal acts of corruption as subjects of criminal law, it is expected to be able to recover state financial losses as the purpose of the birth of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, namely to recover and restore state financial losses and the state economy.

The imposition of additional criminal sanctions in cases of corruption is included in the form of substitute money as stipulated in article 18 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Additional penalties that can be applied to convicted corporations other than those has been regulated in the Criminal Code only as specified in Article 18 paragraph (1) letter a, c and d of the corruption law. Because sanctions against corporations cannot be substituted, it is necessary to revise the provisions of article 18 paragraph 1 letter b of the Corruption Law. Because it is hindered by the provisions of article 18 paragraph 3 of the Criminal Law, namely in the event that the convicted person does not have sufficient property to pay the substitute money as referred to in paragraph (1) point b, he shall be sentenced to imprisonment whose duration does not exceed the maximum threat of the principal crime in accordance with the provisions of this Law and the duration of the crime has been determined in a court decision. Even though corporations are not natural people who cannot be imprisoned, while the punishment of corporations is different from natural people. Referring to the provisions of Article 17 of the Corruption Eradication Law in addition to being sentenced as stipulated in Article 2, Article 3, Article 5 and Article 14, the accused (including corporations) may be sentenced to additional crimes as stipulated in Article 18 of the Corruption Eradication Law. Meanwhile, additional penalties stipulated in article 18 of the Corruption Eradication Law are in the form of confiscation of movable goods both tangible and intangible, confiscation of immovable property obtained from corruption crimes, payment of substitute money, business closure or partial closure of companies/corporations for a certain time or revocation of business rights/licenses and revocation of all or part of certain rights. The main crime that can be charged against a corporation is a fine, but the criminal fine against the corporation if it does not pay the fine is not regulated in the Corruption Eradication Law. This can cause problems because if the fine is not paid, it will return to the provisions of Article 30 of the Criminal Code, which is replaced by imprisonment in lieu of a fine for 6 months (Priyatno, 2018).

As a result of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts which does not prioritize the resolution of corruption criminal cases committed by corporations in terms of expediency, it not only kills the sustainability of the wheels of corporate companies, but also how many thousands of people lose their jobs the layoffs and loss of potential state revenue from corporate taxes processed through

criminal justice. In addition, in a court decision with the stipulation of corporate assets, both movable and immovable, to be confiscated and then auctioned to cover the state financial losses caused, of course, this further makes corporate punishment very unfair and does not prioritize legal expediency because by confiscating and auctioning corporate assets, it is the same as providing immaterial suffering and huge corporate losses, Where the sustainability of the wheels of the corporate economy will become paralyzed. This is due to the provisions of Article 18 paragraph (1) letter a, c and d of the Law on Criminal Acts which do not prioritize the side of expediency by confiscation of tangible or immovable movable property used for or obtained from criminal acts corruption, including companies owned by convicted persons in which corruption crimes are committed, as well as from goods that injectthese goods, the removal of all or part of the company for a long time of 1 (one) year and the revocation of all or part of certain rights or the elimination of all or part of certain profits, which has been or may be given by the Government to the convicted person (letter d). While the main crime that can be imposed on corporations is only a fine, but the criminal penalty for fines against corporations if they do not pay fines is not regulated in the Corruption Eradication Law as stipulated in article 20 paragraph (7) of the Tipikor Law. Therefore, it is necessary to revise the provisions of article 18 and article 20 paragraph (7) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

Conclusion

Regulations regarding sanctions for the return of financial losses in cases of criminal acts of corruption by corporations are still spread sectorally starting from Law Number 8 of 1981 concerning the Code of Criminal Procedure, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Circular Letter of the Attorney General of the Republic of Indonesia Number B-036/A/Ft.1/06/2009 concerning Corporations As a suspect/defendant in the criminal act of corruption, Regulation of the Attorney General of the Republic of Indonesia Number: Per- 028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with the Subject of Corporate Law, Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. This causes the criminal justice system to run independently, as is reflected in several judges' decisions which still mix a lot between imposing criminal sanctions on administrators which are mixed with imposing sanctions on their corporations. In addition, the provisions of Article 18 paragraph (1) point b concerning additional crimes in the form of the obligation to pay substitute money cannot be applied to corporations that commit criminal acts of corruption, because additional criminal sanctions in the form of obligations to pay substitute money can be replaced with imprisonment based on the provisions of Article 18 paragraph (3) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Also included are the provisions of Article 20 paragraph (7) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts states that the main crime that can be imposed

against corporations is only a fine, with a maximum penalty plus 1/3. This will cause problems at the time of implementation, namely what action can be taken by the judge if the criminal substitute money and criminal fines are not paid by the corporation so that this creates a legal vacuum. The application of the provisions of article 20 paragraph (7) as the main crime and article 18 paragraph (1) as additional crimes occurs inconsistencies, legal vacancies and does not bring benefits to corporations, so it is very important to update the criminal law between the government and the DPR as part of criminal law politics so that the application of criminal sanctions against corporations involved in corruption crimes can be applied in terms of expediency to the corporation.

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