

PUBLIC BENEFIT OF ECONOMIC CONSIDERATION OF ASSET MANAGEMENT FROM CORPORATE CORRUPTION IN INDONESIA

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ABSTRACT

The lack of handling corporate corruption even though the involvement of the private sector in corruption cases in Indonesia is very massive. However, the existence of several studies that justify corporate corruption raises two main problems whose solutions are reviewed based on normative juridical methods by inventorying adequate legal materials. This study aims to analyze the reconstruction of management of confiscation of assets from corporate corruption in Indonesia. This study produces two conclusions. First, the reconstruction of Article 273 paragraph (3) of the Criminal Procedure Code is an urgent matter to be carried out immediately. This is because the formulation of Article 273 paragraph (3) of the Criminal Procedure Code is not in accordance with the development of the community. A sense of justice of benefit and legal certainty for the community is not optimal in the implementation of booty management. Secondly, it is necessary to reconstruct booty management in Indonesia that is not only in the form of legal certainty, but also to the legal justice as a moral consideration for adequate fairness and happiness and to consider public benefit as an economic consideration. Theoretically, the results show that the criminal responsibility of corporate corruption has fulfilled juridical philosophical and sociological aspects to be implemented in the implementation of law in Indonesia, and the need for the reconstruction of criminal liability of corporate corruption which is not only based on errors, but also extends to accountability within the framework of reforming criminal law of corruption to adopt piercing the corporate veil, strict liability, vicarious liability, and secondary liability.

Keywords: Corruption, Corporation, Accountability, Asset Management.

INTRODUCTION

In the amended Constitution of the Republic of Indonesia, it states that the Indonesian state is a law state. Before being amended, the law state was interpreted as the principle of legal certainty. However, after the 1945 Constitution was amended, the meaning of the rule of law was the principle of legal certainty and the principle of justice (Mahfud, 2012). Both of these principles take the concept of prismatic or integrative, namely between *rechstaat* and rule of law. In accordance with five state principles in Pancasila, the state has an obligation to guarantee the protection, treatment and law enforcement in a fair manner for all citizens, including for convicts whose property is confiscated for the state. For example, in corruption cases, goods belonging to the convict who were decided by the judge were seized for the state within 3 months for auction sale, the results of which were put into the state treasury for and on behalf of the prosecutor.

However, the reality is that the booty is difficult to do for sale at auction. In addition, goods sold by auction are difficult to carry out formal legal processes. The meaning of formal legality here is that the process of transferring rights in the form of returning names to immovable property or administrative processes in changing names for movable goods is difficult and complicated.

Therefore, the impact on the costs incurred by the auction winners is greater. This is one reason why the booty is not done. Referring to the data obtained in 2014, the booty was auctioned at 4,726 frequencies. Then in 2015, the spoils which were auctioned were 4,368 frequencies. Finally, in 2016, the spoils were auctioned at 2,203 frequencies. In 2016 there was a decline of more than fifty percent (50%). Then in 2014, money was deposited into the state treasury from the results of a booty auction worth Rp. 80,433 billion. Then in 2015, money was deposited in the state treasury from the spoils auction worth Rp.73,832 billion. Finally, in 2016, money deposited into the state treasury from the results of the booty auction was valued at Rp. 25,443 billion (Indrawati, 2016). This shows that in addition to the side of the amount of spoils which also decreased the value of booty also experienced a significant decline.

Problems of Asset Management from Corporate Criminal Actions

Apart from being seen from the side of state revenue, booty is not only seen as one source of state revenue from non-tax state revenues. However, also, it can be seen from the side of the use of state property. The need for state or regional property that is high in supporting public services to the community is very high. In order to support public services to the public in the Act on the State Budget each year there has been an increase, especially in goods expenditure and capital expenditure. Compared to the realization data in 2008-2017 the change between planning in the state budget and realization was not too significant. Although the type of goods expenditure and capital expenditure cannot present the needs of state property appropriately but the data can show that goods expenditure and capital expenditure increase each year. This is related to the plan for the nation's property needs which are always increasing every year. To realize public services both public goods and public services the state requires a high cost. Plans for state property needs both in number and value each year have increased. However, with a limited budget, not all needs of state or regional property can be fulfilled. In this context, it is more useful if the booty can fulfill the needs of state property rather than having to be auctioned and deposited into the state treasury as state revenue. Therefore, the management of booty needs to be changed in order to protect the entire Indonesian nation and the entire Indonesian bloodshed and to promote public welfare, educate the life of the nation and fulfill its role as a tool for social renewal.

This study attempts to analyze two main problems that are indeed important and urgent to discuss. The first is the implementation of regulations regarding booty in Indonesia and the second is the concept of reconstruction of booty in Indonesia that is just. The urgency of reconstruction Article 273 paragraph (3) of Law No. 8 of 1981 lies in the firmness of the legal regime to implement New Public Management 9 (Ferlie et al., 1996), in addition to also need to pay attention to the concept of office administration according to Max Webber. Max Webber said that bureaucracy and other institutions can be seen as routines of workday life. Bureaucracy forms a routine administrative process that is exactly the same as a machine in the production process. According to Max Webber (Gordon et al., 1987), one of defining rationalities (Mardiasmo, 2002). New public management is an effort on management, evaluating

performance and efficiency, not on policy orientation. The impact on the government by using new public management is the demand for efficiency (Noblet et al., 2006), accountability (Napitupulu et al., 2017), cost cutting with compulsory competitive tendering (CCT) (Painter, 1991). Related to the fair meaning of using justice as fairness, it is not a complete contract theory. For it is clear that the idea of contract can be extended to the choice of all ethical systems, namely to a system that covers the principles of all virtues and not just justice. The main points of John Rawls's (2009) thinking are three things, which are incorrect theories that must be rejected, and unjust laws must be reformed, and existing basic institutions must operate accordingly by giving equal treatment to every member of the community, without discrimination for certain groups or social groups; and balance and feasibility in profit sharing (Rawls, 1958).

Implementation of Asset Management from Corporate Criminal Actions

The state in carrying out the task of managing booty requires authority (Agnew, 2005). State authority is regulated in a law. Authority and responsibility between the state and citizens have a balanced position (Meyer et al., 1997). To realize a religious welfare state (Hidayat, 2017), then the state needs authority to protect and prosper in all aspects of its life (Kersbergen and Manow, 2009). The state in the context of a welfare state, then places citizens as subjects, and no longer places citizens as objects. The state has an obligation, to enter into the life area of its citizens, in order to carry out its functions, to serve and seek welfare (bestuurszorg).

Therefore, in relation to striving for prosperity, the state must protect the rights of its citizens, including those convicted who have been deprived of their property after having permanent legal force (inkracht in gewijsde). This can be seen from the Ministry of Human Rights correctional database system, the potential for BMN management in the form of booty, the meaning of the potential for conflict or key contradictions between the state and convicts. From the above material, there were 76,708 items of confiscated goods in the Jakarta Human Rights Ministry's office, but up to 2016, the sixth booty was 15 items (Table 1).

BS Police	Prosecutor's Office BS	First Level Court BS	BS Appellate Court	BS Supreme Court	Confiscated objects	BR First Level Court	BR Appellate Court	2BR Supreme Court	Booty	No- man's goods	Total
20.294	56.400	-	1	13	76.708	8	-	7	15	8	76.731

Article 273 paragraph (3) of Law No. 8 of 1981 concerning Criminal Procedure Law states that If the court decision also stipulates that the evidence is confiscated for the state. In addition to the exception as stated in Article 46, the prosecutor authorizes the object to the state

auction office and within three months for auction sale, the results of which are put into the state treasury for and on behalf of the prosecutor and can be extended for one month.

Based on the Minister of Finance Regulation No. 8/PMK.06/2018 concerning Management of State Property Originating from Confiscated Goods by State and Gratification Goods, it is explained that the management of state spoils and gratuities is carried out through a mechanism of sale through auction at the State Wealth and Auction Service Office. In this regulation, it is also stated that another form of management of state property originating from booty and gratification is the determination of usage status. For gratification items, the determination of the status of this usage must be preceded by a bidding process of a maximum of 2 times or in the event that it is not sold in the first auction, a re-auction is conducted. Whereas for booty the determination of usage status can be carried out directly without the auction process being carried out with the following conditions:

1. State booty needed for the benefit of the state
2. State booty needed for carrying out the duties and functions of the regional government
3. Items other than land and/or buildings that:
 1. Do not have economic value or economically the value is lower than the cost that must be incurred if the auction process is taken;
 2. Can endanger the environment or trade system;
 3. Forbidden to circulate in general;
 4. State spoils that have been in rotten or weathered conditions can be immediately destroyed.

In its implementation, the management of gratuity goods must be auctioned first, regarding the booty and seizure of the Corruption Eradication Commission (KPK) even though there is already a Minister of Finance Regulation No. 8/PMK.06/2018 stating that the direct use status can be determined without being preceded by the auction process, but lately there have been no booty items that have been immediately determined for their usage status but are still auctioned. The management of this auction was indeed carried out by the KPK in order to avoid suspicion-suspicion regarding booty, even though there were in some cases the items were given to other work units or their status was determined based on requests from other institutions in the interests of the State, but the management process initially remained with the auction mechanism.

Although there are many items that can be used by other ministries and institutions, there are still provisions regarding this. An example is booty in the form of a car, even though the car can be used for the sake of state administration and can save more money, but the vehicle used by the ministry of agencies also has certain categories in accordance with the Standards of Goods Standard Requirements stipulated in the Minister of Finance Regulation Number 248/PMK.06/2011 concerning Standard of State Property Standard Goods in the form of Land and/or Buildings in conjunction with Minister of Finance Regulation Number 7/PMK.06/2016 because usually spoiled cars from the KPK are cars that have specifications and prices high. In addition, in practice, the management of State Property originating from booty by the KPK was partly determined by the Ministry of Law and Human Rights and also the Attorney General's Office (AGO). This is because the booty is used for vehicles in several Detention Houses that support the operational activities of the targeted work unit. However, this management is still a polemic because the process is only carried out internally between the KPK and the requesting

parties, without going through the budgeting process in the State Property Action Plan. Thus, transparency in the appointment of the status of the use of booty can lead to questions.

The description of past business processes was carried out based on Minister of Finance Regulation No. 3/PMK.06/2011 concerning Management of State Property Originating from Confiscated Goods by the State and Gratification Goods. The process of managing the booty, which is regulated in the Regulation of the Minister of Finance (PMK) No. 3/PMK.06/2011, must be done by way of auctioning off booty to get the maximum price. Procedure for PMK No. 3/PMK.06/2011 conforms to the flow of the Criminal Procedure Code. However, then the Minister of Finance Regulation No. 8/PMK.06/2018 concerning Management of State Property Originating from Confiscated Goods by the State and Gratification Goods which revoked the provisions of Minister of Finance Regulation No. 3/PMK.06/2011 that the management process.

Based on Minister of Finance Regulation No. 8/PMK.06/2018, there is a possibility that booty is not sold through auction. the process is seen from the law as a positive value, then there is a conflict between Minister of Finance Regulation No. 8/PMK.06/2018 with the Civil Code. However, since the law is a manifestation of the symbolic meanings of social actors as seen in the actions of social interaction (Manners, 2006), the civil code must be changed with the current social situation. The Criminal Procedure Code is the inherent protection of human rights that is intact, full and cannot be contested by anyone (principle of non-derogable right). In addition, law is a social engineering tool according to Roscoe Pound, which states that law is a process of social engineering, a process of compliance and minimum friction and waste (McManaman, 1958). In line with Roscoe Pound's thinking, the wave of new public management has transformed people's perspectives on the management of state-owned goods efficiently and effectively, including booty (Osborne and Gaebler, 1993).

According to the statement from the head of the Jakarta State Assets Management section 3 which states that we are in compliance with the regulations. Then it was reaffirmed by the implementers in the Jakarta Office section 3 who handled the KPK work unit, which stated that what had been done by the KPKNL Jakarta 3 had only the authority to determine its user status. So that in implementing the provisions in the Minister of Finance Regulation No. 8/PMK.06/2018 requires the authority to carry out analysis based on the needs of the work unit in other agency ministries. The limited authority is due to the unclear clarity of the authority of Article 283 paragraph (2) of the Criminal Procedure Code. This lack of clarity of authority results in implementation (the structure of law enforcement apparatus and institutions involved in enforcement) to deviate from the main purpose of criminal procedural law, namely justice, benefit and legal certainty. After confirmation with the KPK there are some data that have not been synchronized so that it becomes one of the potential abuses of authority. The spoils sold only 11 items out of the total items seized by the state. Of the remaining items that are not sold, 5 items are assigned the status of their use/grant to the local government. The rest is not salable and no one needs it from the work unit, both the central government and the regional government. However, it is inversely proportional to the number of needs for goods to meet service standards for the community (Haswandi, 2017; Suhariyanto, 2018).

Compared with Asset Recovery, which is an execution effort in the form of refunding state financial losses for cases handled by the KPK, measurement of asset recovery is reflected in the percentage of accumulated non-tax revenue realization originating from fines/substitute/booty money compared to the accumulated value of substitute money, booty and fines based on decisions that have obtained permanent legal force after being received in full. In

2016, the KPK set a target for this of 65%. As of December 2016, the realization of non-tax revenues originating from substitute money/spoils/fines/grants/transfer of utilization functions from 2005 to December 2016 was Rp.1,804,504,801,735,-compared to the accumulated value of substitute money, spoils and fines based on decisions that have obtained permanent legal force after being received in full from 2005 to December 2016, namely Rp. 2,766,953,981,655, - are 65.22%.

Up to 2016, the achievement of this KPI was 100.34% (very satisfactory). In 2017 the KPK set this KPI target at 69%, up by 3% from 2016. The realization of this KPI until the end of December 2017 was 67%. This realization comes from replacement/booty/fines/grants/utilization function transfers of Rp 2,112,647,911,420.00 compared to the accumulated value of substitute money, booty and fines based on decisions that have obtained permanent legal force after being received in full, namely Rp. 3,153,000,305,155.00. Up to December 2017 the KPK's asset recovery has managed to achieve 97.10% (Very Satisfactory). When compared with the conditions in 2016, the condition of this achievement has decreased. Comparison of performance conditions in 2016 and 2017 looks like in Table 2.

No.	Year	Target	Realization
1.	2016	65%	65.22%
2.	2017	69%	67%

This reduction in achievement has become a material for the process improvement that must be carried out by the KPK in managing each asset from the law enforcement action that has been carried out. KPK through the DJKN in managing every booty decided by the court. The formulation of Article 273 paragraph (3) of the Criminal Procedure Code should be carried out in the reconstruction of the article formulation. The formulation of Article 273 paragraph (3) of the Criminal Procedure Code should fulfill the value of justice benefit and legal certainty.

CONCLUSION

The principles of justice according to John Rawls are two, first, focusing on securing their freedom to remain equal so they will choose a principle to anticipate it (Oster, 2015). Every person has equal rights to the broadest total system of basic freedoms similar to the same system of freedom for all (Rawls, 1972). Second, social and economic inequality are structured so that they can: a. provide the greatest benefits for disadvantaged parties, according to the principle of fair savings, and b. attached to leadership offices and positions that are open to all people based on conditions of fair equality of opportunity. Contrary to the principles of justice according to John Rawls, John Stuart Mill argues that the greatest benefit or happiness principle states that certain actions are right if the sun enlarges happiness, is wrong if it tends to produce less happiness. What is meant by happiness is pleasure and the absence of pain (Mill, 1957).

With regard to booty, it is necessary to reconstruct the design of optimization of management of State Property (BMN) originating from booty at the KPK. Determination of the status of use from various BMNs to several working units that are needed, is one of the most

carried out efforts. However, the determination of the status of BMN usage itself can only be done after the establishment of a valid court decision (inclusion). This is due to the limitations of the authority of the KPKNL Jakarta III as the authority to manage the goods. In the future, it is better for the role of KPKNL to be increasingly given authority through the reconstruction of Article 273 paragraph (3) of the Criminal Procedure Code. The management of booty needs to be given access to the data on goods needs submitted in an increase where after reading the decision after having permanent legal force (inkracht in gewijsde), the status of the usage can be determined.

Management of State Property comes from booty, which is generally conducted in auction, but unfortunately many items are not sold. Then, a limit value is returned for the item. In general, when the second auction, the goods are sold. If it is not sold, BMN management will be carried out. Unfortunately, the determination of the status of use of these goods is a grant to only certain work units. Examples are the Attorney General's Office, the Police, and the Ministry of Law and Human Rights. To optimize the State Property, a coordination system can be established between the Ministry of Institutions regarding the State Property Needs Plan (RKBMN) of each work unit and data disclosure by the KPK regarding spoils that can be utilized by ministries/agencies in need, so that the BMN is not only intended by certain Ministries/Institutions.

Philippe Nonet and Philip Selznick (2017) stated that the open law always accepts changes in order to reach the justice and the law's purpose. Where the community needs to accommodate justice benefits and legal certainty. This is in accordance with Article 28 D paragraph (1) of the 1945 Constitution. In this Article it is stated that everyone has the right to the recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. This article explicitly recognizes the right of everyone including convicts who have been deprived of their property. The meaning of fair legal certainty is the principle of material justice. To ensure material justice in Article 28 D paragraph (1) of the 1945 Constitution, it is necessary to reconcile the management of booty in Indonesia in the Pancasila-based Indonesian legal renewal system. Article 273 paragraph (3) of Law No. 8 of 1981 concerning the Criminal Procedure Law originally reads "*If the court decision also stipulates that the evidence is confiscated for the state, in addition to the exception as stated in Article 46, the prosecutor authorizes the object to the auction office country and within three months to sell the auction, the results of which are entered into the state treasury for and on behalf of the prosecutor*" so that it needs to change with the phrase "*If the court ruling also stipulates that evidence is seized for the state, in addition to the exception in Article 46, the prosecutor grants to institutions in the central government or local governments who need it after coordinating with the ministry of finance*". Thus, it can be concluded that the reconceptualization of booty management in Indonesia in the Pancasila-based Indonesian legal renewal system has the value of justice for convicts and more benefits.

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