

ABSTRAK

Korupsi merupakan kejahatan yang merugikan keuangan negara, sehingga perlu dilakukan pemulihan aset hasil korupsi melalui pidana tambahan pembayaran uang pengganti oleh terdakwa. Akan tetapi, efektivitas penerapan pembayaran uang pengganti masih tidak maksimal karena adanya kelemahan-kelemahan dalam segi substansi hukum, struktur hukum, dan budaya hukum.

Berdasarkan pada latar belakang di atas, penulis merumuskan beberapa permasalahan, yaitu efektivitas penegakan hukum tindak pidana korupsi melalui pemulihan aset hasil tindak pidana korupsi dengan pidana tambahan pembayaran uang pengganti berdasarkan Undang-Undang Nomor 31 Tahun 1999 *jo.* Undang-Undang Nomor 20 Tahun 2001, serta upaya pemulihan aset hasil tindak pidana korupsi melalui pidana tambahan pembayaran uang pengganti dalam rangka penegakan hukum tindak pidana korupsi berdasarkan perspektif keadilan.

Penelitian ini menggunakan metode pendekatan yuridis normatif, dengan spesifikasi penelitian deskriptif analitis. Data yang digunakan dalam penelitian ini adalah data sekunder yang diperoleh melalui studi kepustakaan, kemudian dianalisis secara kualitatif menggunakan teori penegakan hukum, teori efektivitas hukum, dan teori keadilan Islam.

Hasil penelitian ini adalah : (1) penegakan hukum tindak pidana korupsi melalui pemulihan aset hasil tindak pidana korupsi dengan pidana tambahan pembayaran uang pengganti sudah efektif tetapi belum maksimal karena adanya kelemahan, antara lain : (a) substansi hukum : (i) pidana pembayaran uang pengganti bersifat fakultatif, (ii) Pasal 18 ayat (3) UUPTPK bersifat kompromistis, (iii) tidak diatur perhitungan konversi pidana penjara dengan uang pengganti, dan (iv) tidak ada aturan teknis eksekusi pidana uang pengganti; (b) struktur hukum : (i) hakim mensubsiderkan uang pengganti, (ii) kesulitan penyidik melakukan pelacakan harta, (iii) hakim bersifat positivistik-legalistik, (iv) disparitas pidana penjara pengganti, (v) hakim kesulitan menentukan aset korupsi, dan (vi) belum ada koordinasi antara penegak hukum, serta (c) kultur hukum : (i) itikad tidak baik terpidana untuk tidak membayar pidana pengganti, dan (ii) kurangnya kesadaran hukum masyarakat; (2) upaya pemulihan aset hasil tindak pidana korupsi melalui pidana tambahan pembayaran uang pengganti dalam rangka penegakan hukum tindak pidana korupsi berdasarkan perspektif keadilan, antara lain adalah : (a) substansi hukum : (i) adanya pedoman pembedaan pidana subsider, (ii) pembaharuan kewenangan Jaksa Agung, (iii) pembaharuan kebijakan remisi, (iv) rekonstruksi hukum harta benda terdakwa, (b) struktur hukum : (i) penyitaan aset, (ii) penjatuhan pidana uang pengganti tanpa subsider, (iii) putusan pidana maksimum, (iv) sinergitas antara undang-undang dan aparat penegak hukum, (v) cara luar biasa menangani kasus korupsi, dan (vi) dibentuk kantor Perampasan Aset Kejahatan; serta (c) kultur hukum : (i) hukuman tambahan, (ii) kesadaran hukum untuk melapor penambahan aset kekayaan penyelenggara negara yang berada di lingkungannya.

Kata Kunci : Aset, Korupsi, Pemulihan, Pidana Tambahan, Tindak Pidana, Uang Pengganti

ABSTRACT

Corruption is a thing that is detrimental to state finances, so it is necessary to recover corrupt assets through additional payment of replacement money from the proceeds. However, the effectiveness of the implementation of replacement payments is still not optimal due to weaknesses in terms of legal substance, legal structure, and legal culture.

Based on the above background, the authors formulate several problems, namely the effectiveness of law enforcement on corruption crimes through the recovery of assets resulting from criminal acts of corruption with additional criminal payments of replacement money based on Law Number 31 of 1999 *jo.* Law Number 20 of 2001, as well as efforts to recover assets resulting from criminal acts of corruption through additional criminal payments of replacement money in the context of law enforcement of criminal acts of corruption based on the perspective of justice.

This study uses a normative juridical approach, with descriptive analytical research specifications. The data used in this study is secondary data obtained through literature study, then analyzed qualitatively using law enforcement theory, law effectiveness theory, and Islamic justice theory.

The results of this study are : (1) law enforcement of criminal acts of corruption through the recovery of assets resulting from criminal acts of corruption with additional criminal payments of replacement money has been effective but has not been maximized due to weaknesses, including : (a) legal substance : (i) criminal payments of money substitutes are facultative, (ii) Article 18 paragraph (3) UUPTPK is compromising, (iii) does not stipulate the calculation of the conversion of imprisonment with replacement money, and (iv) there are no technical rules for the execution of substitute money; (b) legal structure : (i) judges subsidize replacement money, (ii) difficulties for investigators to track assets, (iii) judges are positivistic-legalistic, (iv) disparities in substitute imprisonment, (v) judges have difficulty determining corruption assets, and (vi) there is no coordination between law enforcers, and (c) legal culture : (i) the convict's bad faith not to pay a substitute sentence, and (ii) lack of public legal awareness; (2) efforts to recover assets resulting from criminal acts of corruption through additional criminal payments of replacement money in the context of law enforcement of criminal acts of corruption based on a justice perspective, among others are : (a) legal substance : (i) the existence of guidelines for criminal penalties for subsidiary, (ii) renewal the authority of the Attorney General, (iii) renewal of the remission policy, (iv) legal reconstruction of the defendant's property, (b) legal structure : (i) confiscation of assets, (ii) imposition of substitute money without a subsidiary, (iii) maximum criminal verdict, (iv) synergy between the law and law enforcement officials, (v) extraordinary methods of handling corruption cases, and (vi) the establishment of an office for the confiscation of criminal assets; and (c) legal culture : (i) additional penalties, (ii) legal awareness to report additional assets of state administrators in their environment.

Keywords : Additional Criminal, Assets, Corruption, Crime, Recovery, Substitution