

Keywords: Criminal law; Penal; Non-penal

Introduction

Implementation of development in Indonesia is intended to realize the objective of the state as stated in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, namely... to establish an Indonesian State Government that protects the whole Indonesian nation and all of Indonesia's blood, pillar and to promote prosperity general, intellectual life of the nation, and participate in the implementation of a world order based on freedom, eternal peace and social justice...

To achieve the objective of the economic should be supported with adequate State acceptance and the creation of a national leadership capability of additionally required law enforcement agencies which have reliable capabilities. Therefore, the required increase in the role and function of the law enforcement in prevention and the eradication of criminal activities.

Thus a means of development of the country, which the revenue from the state, the State cannot carry out its function for the men and women of the people. From year to year the potential acceptance of State economic continued to increase, On the fiscal year 2012, the state budget reached 78.64 percent or approximately Rp 1.016 trillion of the total BUDGET of the year 2012. In 2013, the acceptance of State budget has been increased in the budget reached Rp 1.178 trillion. The state budget has a role in the mean time to pay criminal activities or corruption in the state or the nation of the public since the emergence of a corruption case committed by a person or a group i.e. Gai Halomoan Tambunan and Dhana Widayana. Both have been open practice of corruption in the state or the nation or during his tenure.

Law enforcement agencies such as Police, Prosecutor, and the Corruption Eradication Commission (KPK) have identified corruption as a national government or prone to the occurrence of the crime of corruption. The third law enforcement institution agreed

indicator and the modality of the occurrence of criminal activities of corruption in the state or the nation. Meanwhile, the law enforcement in Indonesia has always been an object of interest to be examined either during the old order, the order or the order in order to a common referred to in the order of the reform. Specialized in law enforcement against criminal activities of corruption are a series of agencies that have a history of conducting investigations against criminal activities in Indonesia are the police, Prosecutor's Office and the Commission for the eradication of corruption of Corruption.

Law enforcement's role in realizing the eradication of criminal activities of corruption does not work as expected, it can be affected by several factors, among others, quality, professionalism, moral and the moral of the apparatus law enforcement agencies are still low, so that the Commission's role as the keeper of Justice against law enforcement agencies increasingly declining. In addition to weak law enforcement institution of the law enforcement official such as the police, the Prosecutor, the investigation officer (1988) and all professional activities and has no high moral integrity.

Law enforcement against criminal activities of corruption activities

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denial has formed a no ion of the law. Similar in the field of a a en e. he follo ing ill p for h ome de ni a adanced a a ion e per . Adriani [5] in hi book He Bela ingrech pro ide de ni ion ha : noen ik de he ng Bela ing, de o erheid ich aardor door middel an er che middelen d ang j ridi che om de p blicke i ga en eber rijden, l enige pra a ie i ho daar egen o er e ellen

Discussion

Seeing the return of S a e a e of perpetrator of criminal act of a , in fact can be traced to herberbagai legi la ion, hich d m lai of he de rmination of he lo of he S a e i elf. e lo of he S a e a e for h in article 1 poin 15 la n mber 15 Year 2004 a ed ha he lo of he co n r /region i: lack of mone , ec ri ie , and real , and cer ainl in n mber a a re l of or ei her in en ional or negligen . e S a e' lo e ma occ r d e o la le ne and neglec ac ing Trea rer of S a e or ci il er an in he co r e of he admini ra i e a hori ie and b bendaha aran in he frame ork of he implemen a ion of he a hori of he Trea r . Re rn lo of he S a e done oon o need o a e he co n r' eal h i lo or red ced Lo e of he S a e can be fo nd on he ba i of he re l of pemerik an b S a e in i ion and he Go ernmen ha ha he a hori o do he e amina ion.

To de rmine here i no lo of S a e, ba ed on he Pre iden ial Decree N mber 103 Year 2001, concerning he po i ion, d ie , f nc ion , a hori ie , Non Go ernmen al Organi a ion Depar men , a ed ha he ra e/ e ing here i no harm he co n r i he Financial E aminer and he Board of he Financial S per i ion and de elopmen . Ho e er, he de rmination of he calc la ion of he lo of he S a e m be anal ed ca e per ear. e di ad an age of he co n r a a re l of he a crime ha can happen if he criminal o ence a commi ed a oeh a pa er a ella b he a appara . Ta a ion of criminal ac commi ed b he appara or emplo ee a a a ion a a ion i o 64 ba ci il er an ho ld obe he la and reg la ion , incl ding he pro i ion of a legi la ion. Liabili of o rcer of a e in o he con eq ence of he oa h or promi e and a a ci il er an . Ta o rcer are carr ing o d ie and reg la ion perpajalan. erefore he a o rcer hall no commi crime ha lead do iola e he a la .

Criminal ac ma ake he form of a a ion, o ence or crime. Legall he crime being he indica or of a la , beca e he r le iola ion of a la . Crime in he eld of a a ion can be ei her doing or no doing ha compl i h he reg la ion . On hakika m a he pro i ion of legi la ion he legal r le i a a ion became a corridor for doing or no doing. Doing or no doing in he eld of a a ion can be ca egori ed in o crime in he eld of a a ion, hile fl lling he legal a r le form la ion. For e ample, cond c con rar o he r le of a la ha can be ca egori ed a a crime in he eld of a a ion, ch a a pa er do he deed con e ing he ann al no ice, ha i b ance i no r e, incomple e and nclear, or he a pa er pa ac of a for a a period, or for each pe of a .

On hi connec ion, he ic im of crime in he eld of a a ion, no j prie , o he S a e, in he en e ha re l in lo e for he S a e, b he a pa er ma be a ic im of crime in he eld of a a ion. When crime ic im ed on he co n r mean he par ha commi ed a crime i a a pa er or a o rcer . O rcer of he a in q e ion a a a clerk do in or la b ab ing po er, or forcing omeone o gi e ome hing, o pa or recei e pa men , or o rk on ome hing for him i hi o n ac ion or deed ca ed he lo of S a e or S a e re en e. If he ic im i a a pa er, mean he par i crime

melaka kan emplo ee a or a o rcer . For e ample, emplo ee of he a doe no pro ide er ice correc l and o he a pa er a a elf-help em implemen a ion j m a e men , reg la ed in he General pro i ion of he Ordinance of a a ion.

e lo e he S a e i hor of ca h, ec ri ie , and real , and cer ainl in n mber a a re l of or ei her delibera el or negligen (article 1 poin 22 of la No. 1 ear 2004). Elemen of he lo e he co n r /region i: (a) lack of mone , ec ri ie , and real and cer ainl in n mber; (b) in or ; (c) Ca a ion in or la i h a ha occ rred; d. he bjec re pon ible for he lo e .

Abo he ad er e nancial a e la enforcemen agencie ho ld coopera e i h Financial E amina ion or Financial and de elopmen S per i or Agenc hich help in e iga or , calc la e he lo of he co n r . In he de elopmen of he nancial In pec ion Agenc a di re l and he nancial and de elopmen S per i or Agenc la el , i een in he fac ha he re l of he a di ha e alread led o an a di i again he la hich i no a one of a hori . A hori of he agenc or Financial S per i or E aminer Financial and reb ild in he a di i in he one of acco n ing, o far here i no need o look for he e i ence of he or la or no , beca e i i he in e iga ing a hori and he p blic pro ec or.

e nancial lo o he co n r , he con r c ion of article 2 paragraph (1) of Ac No. 31 of he ear 1999 i linked i h la n mber 1 Year 2004 ho ld be ie ed i h kemprehen if, b e aminating he rela ion hip of he S a e i h lo of re rn again he la . each of he nding of he e i ence of he lo e b he S a e Comp roller of a di re l he doe ho ld be repor ed o he rele an a hori ie (POLICE and Pro ec or) o ee if he occ rrence of a lo he S a e re rned I i an ac again he la or no .

If o ee a Article 64 paragraph (1) of la n mber 1 Year 2004 a ed ha he Trea rer, Trea rer in ead of ci il er an and o her o rcer ho had been a igned o indemnif co n rie /region ma inc r admini ra i e anc ion and/or criminal anc ion . clearl be en ha al ho gh he S a e' lo of re rn ha been made hen ill po ible o be proce ed hro gh he criminal. he criminal a pec of e er Financial S per i or a di re l ho ld be repor ed o a hori ed agencie (POLICE and Pro ec or) regardle of he her he lo e he S a e ha alread re rned or no , beca e o ee if he occ rrence of a lo he co n r a bro gh abo he e i ence of he or la or no i he a hori of in e iga or , hich are domini li i e Article 139 Criminal Proce d re Code hich de rmine Pro ec or he her he ma er can be a igned o he Co r .

e link be een he crime and he a a hori i nder ood b he people of Indone ia a ella he in erna ional comm ni , ch a he In erna ional Mone ar Fo nd (IMF) nor he Tran paranc In erna ional (TI). e Uni ed Na ion Con en ion Again Corr p ion (UNCAC) [6], o cia ed i h he criminal o ence of corr p ion, in he en e ha hen he crime a commi ed b a reform a a ion (c), hen hi i corr p ion beca e i done ba ed on he a hori a reform in hi po i ion a a p blic o rcer (a p blic o rcer). P blic o rcer referred o a o-called hema a a hor incl de:

1. e people ho held he po i ion of legi la i e, E ec i e, admini ra i e or j diciar of a co n r , he her appoin ed or elec ed, permanen or emporar , paid or no , regardle of he eniori of he per on;
2. e people ho r n p blic f nc ion , incl ding p blic in i ion or p blic compan , or pro iding p blic er ice

applied in the regulation of the participant's contribution and applied in areas related to participation's contribution;

3. People who are defined as public officials in the legislation of the contribution's participant. However, for the purpose of the people's honor.

The action of criminal acts committed by a public official or apparatus, in essence is criminal act corruption, so there are actions that should be reached, namely: a) prevention and repression. The prevention and repression is the eradication of criminal acts, and repression includes criminal sanctions to perpetrators and immediate seeking of losses. So the loss can be examined in the Financial Transaction Abuse Act in determining the existence of a perpetrator's perpetration or his/her if no foundation evidence.

Return loss of the state through legal means of non penal

The loss of the state of a penal order, basically has become part of the criminal law. The main purpose of the return of the state is derived from criminal acts that are detrimental to the state's honor or reputation. In general, the concept of non-penal return of the state known as Non Conviction Based (NCB) Asset Forfeiture becomes the instrument of a recorder and immediate realization of fair deal. Asset forfeiture is the ordered to describe the return of the state by the perpetrator of a crime or an instrument of crime. NCB Asset forfeiture, is the foreclosure and return of the state through a mechanism in a legal manner. Meanwhile the concept of civil forfeiture is based on a legal doctrine in which a crime is deemed to exist, and a return of the state. It is different from a criminal forfeiture that is a legal return of the state (in personam). Non-criminal forfeiture (civil litigation) is a legal mechanism to an objective action, aimed at the state itself, not the individual [7,8].

Several provisions are stipulated in UNCAC relating to international cooperation between law enforcement authorities, a recorder, technical assistance and information exchange, all a mechanism for their implementation. In addition, one important aspect of UNCAC is the definition of public official including an person holding the legislative, executive, administrative or judicial office of a State Party, or an official of international organization, or a person providing services for a person who bribes public official. In regard, UNCAC is the government's obligation to take action to prevent corruption practices, among others, in the area of:

1. Procedure and ethics in the public sector;
2. Public sector procurement;
3. Public sector finance;
4. Public reporting, access to information, protection of whistleblowers;
5. Commenced cases; and
6. Priority sector standard, including accounting and auditing standard.

Each government (State party) is urged to consider certain activities, including: bribery practices against national public official, bribery of foreign public official and international organization, embezzlement or misappropriation of property of public official, or any other crime in the public sector, in the context of the United Nations Convention against Corruption.

an i-corr p ion in r men , i a manife a ion of an in erna ional con en ha emerged in he earl 1990 o iden if corr p ion a a cr cial problem ha need immedia e addre ing, and in par ic lar req ire a ol ion agreed pon b he in erna ional comm ni . Some of he pro i ion con ained in UNCAC are manda or , hile o her are op ional or b mied o go ernmen policie (S a e Par ie), he her o appl hem or no . S bjec o he e manda or req iremen , S a e par ie are req ired o ake e ec i e ac ion, and a he ame ime o er ario implemen a ion op ion ha are con idered more appropria e o comba corr p ion.

Return of state loss from tax criminal acts through civil lawsuit

In general, ci il i are di ided in o la i of anpre a i and la i again he la . A breach of a defa l i led beca e of a breach of con rac (anpre a i) of ei her par . Since he ba i of a breach of a breach i a breach of he rea , ch a claim co ld no ha e been born i ho prior agreemen . Article 1365 of he Ci il Code ha accommoda ed ha pro i ion, ha e er per on ha he righ o claim compen a ion for an nla f l ac ha harm him. Al ho gh he a deb doe no ari e on he ba i of he agreemen , b he a deb i he deb of an indi id al or en i born of a la req iring a per on o pa a m o he a e rea r , bjec o he condi ion of a a ion (Taa be and), bjec o good j ridical coercion penal and non penal.

To be able o claim compen a ion ba ed on he ac again he la , he condi ion ha need o be me are:

1. e e i ence of deed ;
2. e ac i again he la ;
3. An error;
4. Lo ;
5. e e i ence of ca al rela ion hip (ca ali) be een nla f l ac and lo .

e la i of compen a ion in he e or o repa he a e nance , led a er he criminal ac of corr p ion i no longer po ible beca e i i faced i h cer ain legal condi ion (in r cien crime of e idence, free j dgmen or pec or defendan die). S ch condi ion ill echnicall complica e he S a e A orne General e peciall in he ca e of proof.

S a e lo e ari ing a are l of a crime commi ed b a pa er of per on of ribadi or corpora e a pa er a reg la ed in La no. Article 39 Paragraph (1) le er I and Article 41C paragraph (4) of he General Ta a ion La Ac (UU KUP). Article 28 Paragraph (1) Le er I and Article 41C Paragraph (4) of he General Ta a ion La (UU KUP). e hree article a e he erm of he GenoaGenoaGenoa 9 i of DC (j Td. nla cr n 0 ofral Ta a 4cr cialp(I and Aagraph (4) of he General)0.U

ha can be imposed on the taxpayer can be either administrative or criminal sanction stipulated in the Criminal Law Code, Law no. 31 Year 2001 Jo. Undone ia - Undang No.31 of 1999 on the Eradication of Corruption and Law No. 6 of 1983, Jo. Law No. 10 of 1997, Jo. Law No. 28 of 2007 concerning General Provision and Tax Procedure.

In the practice of law enforcement of a tax the use of non-penal legal means is used through an instrument of imposition of fine in the field of a tax for the purpose of deterrence per Article 44B Number 28 Year 2007 concerning General Provision and Tax Procedure shall be made based on written application submitted by the Taxpayer to the Minister of Finance referred to in the provision of Article 4 of Regulation of the Minister of Finance No. 130 / PMK.03 / 2009 dated August 18, 2009 concerning Procedure for Termination of Criminal Imposition in the Field of Taxation for the Interest of State Revenue, Article 4 PMK 130 / PMK.03 / 2009 (1). In order to obtain the termination of the imposition ended by the Taxpayer, first submitted application to the Minister of Finance by giving a copy to the Director General of Taxation.

The imposition and the copy ended shall be accompanied by a statement containing a plea of guilt and the ability to pay or the amount of a letter formally stipulated in the Attachment of his Regulation of the Minister of Finance which is an integral part of his Regulation of the Minister of Finance.

Furthermore, based on the consideration of budgetary function of the authority to increase revenue, the Minister of Finance submitted a request to the Attorney General to stop the imposition if the Taxpayer has paid the tax payable has not or less paid administrative sanction in the form of fine of 4 (four) paid. If the budgetary requirements are not made, the imposition of criminal offense in the field of a tax is continued until completion of the

from Criminal forfeiture which is a law in personam (law against people) of confiscation and takeover of assets.

Non penal legal means, hereinafter referred to as civilizing, are in rem, or in some criminal law terms known as objective appropriation are actions directed against the asset itself and not the individual. And his actions are independent of the criminal justice process and in its mechanism require proof that the asset / proper indication of the proceeds of the crime. Linda M. Samuel has the purpose of the NCBA forfeiture is to deal with the predicate crime, although it is acquired from or used for a criminal offense. A deprivation practice in the United States are of two types. First, confiscation of criminal in personam forfeiture, here prosecution is committed against the person. Second, non confiscation based (NCB) or Civil in rem forfeiture, here appropriation are directed against good obtained illegally or used illegally, although the defendant is the asset.

The difference between a penal law and a non penal for the return of an offender's asset can be illustrated by the following matrix (Table 1):

In essence, the return of assets in the asset crime, may be done immediately after the end of penal/ criminal and non penal/civil law facilities. It is possible because the object of criminal action of an action has a value of the asset can be a partner or apparatus. The asset of corruption carried out by the perpetrator or a partner, an importer or eradication corruption in the field of an action. The return of assets because of the criminal action of a corruption, the perpetrator are in illegal and have an importation. In the Law on Combating Corruption of Tax Corruption, the order has to be made in the element of arrears of replacement money are: the confiscation and the action of proper of the confiscated person and his heir after the court decision has permanent legal force, although the decision of the criminal prison bid, although the civil and administration. Return of the asset through replacement money is an importation, because the money can be used in the development. The return of assets because of the process of corruption criminal justice generally take a long time, so the confiscation has the opportunity to disappear or hide his property which is derived from the criminal action of corruption. In connection with the Article 18 paragraph (2) of Law Number 31 Year 1999 concerning the Eradication of Corruption amended by Law No. 20 of 2001 stipulate that if the confiscated person does not pay the replacement money referred to in paragraph (1) letter b within a period of one month after the decision of the court has obtained permanent legal force, then his property may be seized by the prosecutor and auctioned to cover the replacement money.

Conclusion

The regulation of the asset of the perpetrator of a

criminal action means of penal and non penal law in the Indonesian legal system, which is stipulated in the law and regulation of the criminal action of an action and the Criminal Procedure Code has no regulation the return of assets is effective and efficient, the effect precedes the action of deprivation, if the court's decision has obtained a permanent legal force.

Return of assets from the asset of the perpetrator of a crime in the Indonesian legal system may be carried out, through penal means of constitutional provisions based on the defendant's wrongdoing in effect, although the return of assets through non-penal legal facilities through civil litigation and by means of confiscation of the perpetrator of crime under monetary law, not a final.

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