

# ENFORCEMENT OF CORRUPTION CRIMINAL LAWS BY THE POLICE IN THE IMPLEMENTATION OF GRANTS FOR THE COMMUNITY

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## ABSTRACT

*Perpetrators of criminal acts of corruption recover state financial losses. Research written with the title Police Responsibility in Law Enforcement for Corruption Crimes in Providing Grants for the Community. With the problem formulation, what are the legal regulations for criminal acts of corruption in administering grants to the community and whether returning the proceeds of corruption before calculating state losses can invalidate the suspect's position as a criminal perpetrator. The results of the research with the first conclusion: the legal regulation of criminal acts of corruption in the administration of grants to the community, namely the Criminal Code, Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law of the Republic of Indonesia Number 20 of 1999 2001 concerning the Eradication of Corruption Crimes, Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 39 of 2012 concerning Amendments to Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance Sourced from Regional Revenue and Expenditure Budgets. Second: returning the proceeds of corruption before calculating state losses can cancel the suspect's position as a criminal perpetrator by issuing an Order to Stop Investigating the Case from the police.*

Keywords: Law Enforcement, Corruption Crimes, Community Grants

## 1. INTRODUCTION

Corruption crimes are not only carried out by state administrators between state administrators, but also by state administrators with other parties such as family, cronies and businessmen, thereby destroying the foundations of social, state and national life and endangering the existence of the state.<sup>1</sup>

Regarding the forms of corruption itself, Syed Hussein Alatas as quoted by Nyoman United Putra Jaya has divided them into 7 typologies of corruption, namely:

1. Transactive corruption. Here it shows that there is a reciprocal agreement between the giver and the recipient for the benefit of both parties and active efforts are being made to achieve profits by both parties.

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<sup>1</sup> Nyoman Serikat Putra Jaya. 2005, *Tindak Pidana Korupsi, Kolusi dan Nepotisme di Indonesia*, Semarang, Badan Penerbit Undip. Hal. 2

2. Extortive corruption is a type of corruption where the giver is forced to bribe in order to prevent losses that threaten him, his interests, or the people and things he values.

3. Investive corruption is the behavior of victims of corruption through extortion. Corruption is in the context of self-defense, such as providing goods or services without any direct connection to certain profits, other than profits that are imagined to be obtained in the future.

4. Nepotistic corruption is the illegal appointment of friends or relatives to hold positions in government, or actions that provide preferential treatment in the form of money or other forms to them, contrary to established norms and regulations. Applies

5. Defensive corruption: here the giver is innocent but the recipient is guilty. For example: a cruel businessman wants someone's property, it is not a sin to give the ruler some of the property to save the rest of the property.

6. Autogenic corruption is a form of corruption that does not involve other people and the perpetrator is alone.

7. Supportive corruption here does not directly involve money or other forms of compensation. The actions taken are to protect and strengthen existing corruption<sup>2</sup>.

Corruption can hinder the development and development of business activities in Indonesia<sup>3</sup>. One way for people to live in prosperity is through overcoming corruption, so that overcoming corruption can be the beginning of resolving various crises in Indonesia<sup>4</sup>. Social Risk is an event or event that can give rise to the potential for social vulnerability borne by individuals, families, groups and/or communities as a result of social, economic, political crises, natural phenomena and natural disasters which if social assistance spending is not provided will worsen further. and cannot live in normal conditions. Grants and social assistance spending are two account codes that are currently receiving a lot of public attention. These two accounts have interests that need to be accommodated, namely helping the government's duties in realizing community welfare, overcoming social ills due to community social risks and also containing political interests in a broad sense. In the course of its management, the grant has experienced various problems in the planning, implementation, accountability and administration stages.

Based on a case study at the Klungkung Police and following up on community reports, it was found that there was a proposal from the applicant from the pig farming group Catur Buana Sari, Dogan Hamlet, Getakan Village, Banjarangkan District, Klungkung Regency. According to the reporter, he felt that he had never attended the inauguration of the pig farming group by submitting a proposal to the Klungkung Regional Government. in the 2015 Fiscal Year, and provided funds amounting to Rp. 150,000,000,- (One hundred and fifty million rupiah) in the 2015 Fiscal Year based on the Decree of the Regent of Klungkung.

The central audit department of the Republic of Indonesia Financial Audit Agency sent a letter stating that in this case there were no State/Regional Losses. The head of the Catur Buana Sari pig group, based on proof of deposit from Bank BPD Klungkung branch, has returned the grant money of Rp. 150,000,000,- (One

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<sup>2</sup> Romli atmasasmita, 2004, *Sekitar Masalah Korupsi, Aspek Nasional dan Aspek Internasional*, Mandar Maju, Bandung, hlm 14-15

<sup>3</sup> Evi Hartanti, 2005, *Tindak Pidana Korupsi*, Sinar Grafika, Jakarta.

<sup>4</sup> I Made Wahyu Chandra Satriana, & Luh Putu Eka Pramestiani. (2020). KEBIJAKAN FORMULASI PENCEGAHAN TINDAK PIDANA TERORISME DI ERA TEKNOLOGI 4.0. *Kerta Dyatmika*, 17(2), 12-22. <https://doi.org/10.46650/kd.17.2.975.13-24>

hundred and fifty million rupiah), the return was made while the investigation was being carried out.

As is clearly regulated in Article 4 of Law of the Republic of Indonesia Number 31 of 1999 as amended and updated by Law of the Republic of Indonesia Number 20 of 2001 concerning the Eradication of Corruption Crimes, it is explained that returning losses to state finances or the country's economy does not erase the criminal punishment of the perpetrator. criminal act. Even though the defendant has returned state losses and has automatically recovered state finances, however, the vagueness of the norm in the words "return of losses to state finances or the state economy" does not eliminate the criminal conviction of the perpetrator of the crime<sup>5</sup>.

The problem discussed in this research is how the legal regulation of criminal acts of corruption in administering grants to the community and returning the proceeds of corruption before calculating state financial losses can cancel the suspect's position as a criminal.

## 2. RESEARCH METHODOLOGY

The research method used is a type of normative research, also called library research or document study consisting of (1) positive law inventory efforts; (2) efforts to discover the principles and philosophical basis (dogma or doctrine) of positive law; and (3) appropriate legal discovery efforts to resolve a particular legal case. The approach method used in this research is legislation, and a conceptual approach. This approach is based more on the fact that there is not a single piece of legislation that specifically regulates the return of state financial losses resulting from criminal acts of corruption. Sources of legal materials used in the preparation of this scientific work include primary legal materials, consisting of the Constitution of the Republic of Indonesia of 1945, the Criminal Code, Law of the Republic of Indonesia No. 31 of 1999 as amended and updated by Law of the Republic of Indonesia No. 20 2001 concerning the Eradication of Corruption Crimes. Secondary legal materials consist of books, legal journals and tertiary legal materials.

The technique for collecting legal materials consists of: first, an inventory is carried out of primary legal materials in which the articles contain the substance of the agreement. Next, the categorization of legal materials is carried out according to the order of applicable legislation. Next, legal norms in legislation are identified, to be compared with theories and legal principles that are relevant to the problems in this research. Second, secondary legal materials, for example doctrines regarding criminal acts of corruption, are analyzed. Third, primary and secondary legal materials are reviewed so that the relationship between the two legal materials can be known to emphasize existing legal theory. Fourth, based on these three stages, an initial idea about the responsibility of the police in regulating criminal acts of corruption in the implementation of grants to the community.

The legal material analysis technique used is: After all the legal materials collected are inventoried, they are analyzed based on a framework of thinking regarding the problems discussed in this research. The analysis is used using legal interpretation methods as commonly used in normative legal research types. Interpretation is a

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<sup>5</sup> A.A. Sagung Ngurah Indradewi. (2020). PENEGAKAN HUKUM TERHADAP PELAKU USAHA AIR MINUM DALAM KEMASAN YANG TIDAK DILENGKAPI IJIN EDAR GUNA MENJAGA KEAMANAN PANGAN. *Kerta Dyatmika*, 17(1), 1-10. <https://doi.org/10.46650/kd.17.1.812.1-10>

method for interpreting unclear legislative texts, so that the legislation can be applied to certain concrete events.

### **3. RELATED RESEARCH/LITERATUR REVIEW**

Based on a literature search, there are differences between this research and previous research. The author emphasizes whether returning the proceeds of corruption before calculating state losses can invalidate the suspect's position as a criminal. So this research is considered to have met the rules of research authenticity. However, if in the future it is discovered that the problems in this research are similar to those previously examined by other researchers, it is hoped that this research can complement other research.

### **4. RESULTS AND DISCUSSION**

#### **4.1. Legal Arrangements Against Criminal Acts Of Corruption In The Implementation Of Grants For The Community**

The legal basis for regulating the criminal act of cursing grants is:

##### **a. Criminal Code in Article 55**

##### **1. Convicted as a perpetrator of a criminal offense:**

- 1) Those who do it, who order it to do it, and who participate in doing it.
- 2) Those who, by giving or promising something, by abusing power or dignity, by violence, threats or misdirection, or by providing opportunities, means or Information, deliberately encourage others to commit acts

##### **2. For the proponent, only actions that are deliberately recommended are taken into account, along with their consequences.**

Article 56 of the Criminal Code

Convicted of being an accessory to a crime:

1. Those who deliberately provide assistance when a crime is committed.
2. Those who deliberately provide opportunities, means or information to commit crimes.

Article 63 of the Criminal Code

1. If an act falls under more than one criminal law, then only one of those rules is subject to it; if different, the one imposed carries the most serious principal criminal threat.

2. If an act is included in a general criminal regulation, it is also regulated in a special criminal regulation, then only the specific one is applied.

Article 64 of the Criminal Code

1. If several acts, even though each of them constitutes a crime or violation, are related in such a way that they must be considered as one continuous act, then only one criminal rule is applied; if different, the one applied contains the most serious principal criminal threat.

2. Likewise, only one criminal law is imposed, if a person is found guilty of counterfeiting or destroying currency, and using the counterfeited or damaged goods.

3. However, if the person who commits the crimes mentioned in articles 364, 373, 379 and 407 paragraph 1, as a continuous act and the value of the losses incurred exceeds three hundred and seventy-five rupiah, then he is subject to the rules the penalties mentioned in articles 362, 372, 378 and 406

- b. Government Regulation in Lieu of Republic of Indonesia Law Number 24 of 1960 concerning Investigation, Prosecution and Examination of Corruption Crimes.
- c. Republic of Indonesia Law no. 3 of 1971 dated 29 March 1971 concerning the Eradication of Corruption Crimes.
- d. Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes.
- e. Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

Specifically for social assistance funds, there are several regulations that regulate them, including:

- 1. Domestic Regulation Number 39 of 2012 concerning Amendments to Minister of Home Affairs Regulation Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance sourced from the Regional Revenue and Expenditure Budget.
- 2. Minister of Home Affairs Regulation (Permendagri) Number 21 of 2011 concerning Second Amendment to Minister of Home Affairs Regulation Number 13 of 2006 concerning Guidelines for Regional Financial Management.

#### **4.2. Consequences Of The Legal Return Of Corruption Proceeds Before Calculation Of State Losses.**

Article 23E paragraph (1) of the 1945 Republic of Indonesia Constitution states that the Financial Audit Agency (BPK) is the only state institution that is given the authority by law to carry out audits of the management and accountability of state finances, as for the implementation of BPK audits, it is carried out based on the Law. law regarding audit of management and responsibility of state finances (Article 6 paragraph (2) Republic of Indonesia Law No. 15 of 2006 concerning BPK).

Basically, an investigative audit by the BPKP is not an audit whose results can be used as a basis for uncovering corruption cases but is more of a preventive internal government monitoring (not inspection) action, namely in the form of an accountability report. This means that BPKP obtains its authority as the government's internal control system. BPKP as an internal supervisor provides early warnings before BPK findings. So BPKP should not, even if it comes to criminal acts of corruption, be a last resort (*ultimum remedium*), after going through the process of demanding compensation or other internal administrative processes.

In fact, there are no special regulations regarding the recovery of state financial losses by perpetrators of corruption crimes carried out before or after an investigation, so the benefits of investigating the case must first be seen, because as per President Joko Widodo's instructions as stated in Presidential Instruction Number 1 of 2016, which must prioritize administrative measures if they do not have criminal implications.

Based on the provisions above, it can be concluded that the BPK's audit results and the authority to monitor the follow-up to the audit results are in principle within the realm of State administrative (administrative) law, so that as long as the BPK's recommendations regarding the audit results have been followed up by the relevant officials, it means that the administrative obligations for the BPK have been fulfilled. completed, thus the return by the parties as stated in the BPK recommendation, means that the state/regional losses in the findings have been recovered.

As has been explained, the investigation can be terminated by the investigator with reasons and considerations in accordance with the provisions of the Criminal Procedure Code and Perkap Number 6 of 2019 concerning Criminal Investigation. Article 109 paragraph (2) of the Criminal Procedure Code states that an investigation can be terminated for the following reasons:

1. Sufficient evidence is not obtained, namely if the investigator does not obtain enough evidence to prosecute the suspect or the evidence obtained by the investigator is insufficient to prove the suspect's guilt.
2. The alleged incident is not a criminal incident.
3. Termination of the investigation by law. This reason can be used if there are reasons for the abolition of the right to sue and the right to carry out a crime, namely because of *nebis in idem*, the suspect has died, or because the criminal case has expired.

An Investigation Termination Order (SP3) is given with reference to Article 109 paragraph (2) of the Criminal Procedure Code, namely:

1. If the person stopping the investigation is a National Police investigator, notification of the termination of the investigation is given to the public prosecutor and the suspect or his family.
2. If the person who stops the investigation is a civil servant investigator, then notification of the termination of the investigation is given to:
  - a. Police investigators, as officials who have the authority to coordinate investigations
  - b. Public Prosecutor

Based on the results of the research, Klungkung Police Corruption Unit investigators have carried out a Calculation of State Losses (PKN) with the BPK RI Bali representative in Denpasar with the result that in this case there was no state loss because the state losses had been recovered based on proof of deposits at Bank BPD Klungkung. So after the results of calculating state financial losses by the BPK which did not find elements of state loss, investigators took the next step against the perpetrators of criminal acts of corruption by issuing an Investigation Termination Order (SP3) as mandated by law.

## **5. CONCLUSION**

Law enforcement against criminal acts of corruption in the administration of grants to the community is regulated by the Criminal Code, UURI No. 31 of 1999 as amended by UURI No. 20 of 2001 concerning the Eradication of Corruption Crimes, Permendagri No. 39 of 2012 concerning Amendments to Regulation of the Minister of Home Affairs Number 32 of 2011 Regarding Guidelines for Providing Grants and Social Assistance Sourced from Regional Revenue and Expenditure Budgets, it turns out that there is a blurring of norms in the regulations regarding the provision of grants to the community.

Returning the proceeds of corruption before calculating state losses can cancel the suspect's position as a criminal. This cancellation was due to the submission of the results of the investigation in the context of PKN (Calculation of State Losses), a return had been made to the regional treasury so that the BPK was of the opinion that there was no state/regional loss. This return was made based on evidence of a Deposit Certificate (STS) from the bank after the return was received, the police issued an Order to Stop Investigation (SP3) of the case.

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