



Criminal Liability to the Heirs for Payment Replacement Money in Corruption Cases

Novan Hadiana^{1*}, Tan Kamellob², Alvi Syahrinc³, Edy Ikhsand⁴

1. Faculty of Law, Universitas Sumatera Utara, Indonesia
Corresponding e-mail: shanty.saleh@law.uad.ac.id
2. Faculty of Law, Universitas Sumatera Utara, Indonesia
3. Faculty of Law, Universitas Sumatera Utara, Indonesia
4. Faculty of Law, Universitas Sumatera Utara, Indonesia

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ABSTRACT

Keywords

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The statutory provisions which regulate corruption is still perceived as not having a deterrent effect. This paper discusses the regulation of criminal liability for heirs and the consequences for heirs who do not want to pay replacement money. This research method is normative juridical, and the results of the study found that additional criminal provisions in the form of substitute punishment in the UUPJK has no preventive properties. It is concluded that in the KUHP, RUU-KUHP, UUPJK, and Perma Number 5 of 2014, has not regulated criminal liability for heirs who do not pay replacement money even though the convict's assets transferred or eliminated by the beneficiary to avoid payment of replacement. The legal consequences for the heirs in court practice can only be subject to civil sanctions in the form of confiscation of assets if the convict's assets are controlled by his heirs. It is hoped that in the future criminal liability is held for heirs who do not want to pay replacement money, because the action is obstructing the law enforcement process, and against the law inappropriately.



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Introduction

The statutory provisions that regulate criminal acts of corruption are still felt to have less effect on prevention and deterrence. There is no criminal rule for heirs if they do not want to pay replacement money even though it is still possible to pay the property or assets of the corruptor, except asset confiscation and/or civil lawsuits. If the replacement money is not paid by the heirs, then it can be replaced with imprisonment for corrupt convicts, while the heirs cannot be criminally prosecuted, except for confiscation of assets and/or civil lawsuits (in rem).

The strict liability doctrine teaches accountability for collective actors even though they have no intention of committing a crime. Even in criminal law, the doctrine of vicarious liability is also known for everyone who is collectively involved in a crime. These doctrines also do not touch the problem of paying replacement money. So that the retributive theory becomes the main alternative to provide a prevention and deterrent effect if the quantity of

corruption is difficult to overcome, particularly to execute court decisions that impose substitute money penalties.

Maximizing the payment of replacement money to corruptors, including to the heirs is an effort to save state money, provide a deterrent and deterrent effect on officials and the public (Honderich, 1979). Because of criminal law does not only apply to people who hinder the investigation process, but also applies to anyone who hinders the law enforcement process when the heirs do not comply with the execution of court decisions to pay replacement money.

Payment of replacement money should be the joint responsibility of the heirs and corruptors. If criminal law is not charged with criminal responsibility to the heirs to pay replacement money, the criminal law itself cannot cause a deterrent effect for corruptors and their heirs who hinder the law enforcement process or transfer the assets of the convict. This is the problem discussed in this paper, what is the criminal liability of heirs who do not want to pay replacement money based on the perspective of criminal law?

Methodology

The method used normative research using secondary data. The primary legal materials used are: the Criminal Code (KUHP), Law Number 31 of 1999 junto Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UUPTPK), and Supreme Court Regulation Number 5 of 2014 concerning Additional Penalty for Substitution in Corruption Crimes and court decisions

Results and Discussion

Additional Criminal Provisions in the Form of Substitute Penalties in Laws Do not Have Preventive Characteristics

The Criminal Code (KUHP) recognizes the terms principal and additional criminals but does not recognize additional penalties in the form of replacement money. Substitution money is one type of additional crime, so it is also commonly referred to as a replacement money crime. The Supreme Court Regulation Number 5 of 2014 also uses the term replacement money crime. This additional type of crime is regulated in Article 18 of the UUPTPK (Atmasasmita, 1989).

The term replacement money in Article 18 UUPTPK as one type of additional criminal, whereas in the Criminal Code that term is not found. Additional penalties are facultative, meaning that not all convicts are sentenced to replacement money, its nature only adds when it is imposed along with the main punishment, and does not stand alone, except in certain cases for the seizure of assets. But there are also additional imperatives, such as in Article 250 bis, Article 261, and 275 of the Criminal Code (Syahrin, 2013).

The UUPTPK and Perma Number 5 of 2014 only contain imprisonment for corruption convicts who cannot pay additional penalties in the form of replacement money (Pinto & Evans, 2008). Replacement money can only be imposed on the defendant. If the convict does not pay the replacement money, then his property can be confiscated to cover the

replacement money. If you don't have property, then the convict must serve a corporal prison sentence whose duration does not exceed the maximum threat of the principal sentence (Rommelink, 2003).

Prevention and eradication of crime must be carried out with an integral approach to balance the means of penal and non-penal. While additional penalties are preventive and special, so that the criminal nature can be lost, while its preventive properties should stand out. There are negative excesses in executing court decisions that impose substitute money penalties, namely the convicted corruptors tend to choose to undergo corporal imprisonment rather than paying replacement money, so that preventive nature does not appear in law enforcement practice (Muladi & Priyatno, 2010).

Provisions for replacement money in the UUPTPK and the Perma are not preventing and deterring the convicts themselves, including his heirs, or his family, to submit to court decisions that impose a replacement money. Including the public and government officials as well as state officials who have not been exposed to corruption cases will not be prevented by itself if the heirs of the convicted person are not threatened with imprisonment.

UUPTPK recognizes criminal forfeiture of assets and ordinary civil lawsuits (in rem), but this method also does not provide a deterrent effect for the heirs and convicts, if they are not threatened with corporal imprisonment for not paying replacement money. They seem not afraid of being subject to confiscation or asset confiscation. The adoption of replacement money punishment into the criminal law system is motivated by the idea that corruptors should be threatened with the most severe criminal sanctions possible in order to be a deterrent. The deterrent effect is one of several reasons for rational punishment as a legal consequence for prevention but it is only a form of method that has the possibility to prevent the occurrence of criminal acts (Hiariej, 2013).

The complexity of collecting replacement payments in corruption cases and the potential for double corruption

Replacement money in corruption cases has never been thoroughly discussed. The complexity of collecting replacement money is the main problem, among others, because the legal rules for that are not yet perfect. The additional penalty in the UUPTPK in the form of replacement money has not provided an adequate solution if the defendant does not pay the replacement money (Arief, 2010).

Confiscation of assets due to unpaid replacement money can actually speed up the execution of replacement payments, however, because the regulations do not regulate this mechanism, it has the potential to cause double corruption if the value of the confiscated assets is greater than the amount of state losses that must be replaced with replacement money. Even the use of civil lawsuits (in rem) takes quite a long time and years (Harahap, 2006).

The purpose of the replacement money is to cover the shortfall in state losses based on the difference between state losses and the perpetrator's property that has been confiscated. If the state loss, for example, is 100 billion, and the assessment of the perpetrator's property that has been confiscated is only 60 billion, then the replacement money is the difference,

which is 40 billion rupiah. The fact that often happens is that the value of the confiscation of assets is far greater than the amount of state losses (Widjojanto, 2012).

The calculation of state losses sometimes includes the immaterial costs lost due to the inappropriate allocation of economic resources. The calculation of immaterial costs due to corruption is part of the financial penalty imposed on the defendant, but has not been able to recover the damage caused by corruption (Nurdjana, 2010).

According to Article 18 paragraph (3) UUPTPK, The convict can no longer be required to pay replacement money if he has served imprisonment as a substitute for replacement money. However, sometimes the application of replacement money is still carried out even though the value of the perpetrator's property is comparable to the state's loss. As a result of the absence of a substitute money limit as a guideline for imposing criminal charges, and with the method of confiscation of assets, so there is the potential for double corruption or embezzlement of state money by unscrupulous officials.

Dilemma for prosecutors in collecting replacement money, for example if a corruption convict is subject to a decision to pay replacement money for state losses of 1 billion subsidiary 1 year, the convict was only able to pay 900 million, while the remaining 100 million cannot be collected because the convict no longer has money or property to confiscate. Administratively, this unpaid replacement arrears is a dilemma for the prosecutor, because this number always appears in every prosecutor's report to the Supreme Audit Agency (Suhariyono, 2012).

Articles 2 and 3 of the UUPTPK are often used as the basis for dealing with corruption cases (Efendi, 2009). Meanwhile, with the current legal conditions, the calculation by the prosecutor of the state losses incurred only takes into account the amount of money enjoyed by the defendant. If the calculation includes immaterial losses, it has the potential to cause double corruption by state apparatus (Ismansyah, 2007).

Contradicting the Concept of Criminal Liability Against Heirs for Payment of Replacement Money in Corruption Cases

UUPTPK has not been proven to be effective for optimally recovering state losses (Adji, 2009). Also does not arrange a solution if the replacement money is not paid in full. Some experts oppose and say, it is unfair if the heirs of the convict must be responsible for paying the debt of replacement money in arrears. According to him, the replacement money is money that is assessed by the court to be charged to corruption convicts, so it is not natural if inherited (Febrian et al., 2013).

As a comparison, for example, Article 99 of the Draft Criminal Code stipulates that in a judge's decision, obligations to the convict can be determined to pay compensation to the victim or his heirs. If the obligation to pay compensation is not fulfilled, then the provision of a substitute imprisonment for a fine shall apply. The provision for replacement money is only charged to the convict if it is not paid.

The solution for those who oppose is to prevent the occurrence of arrears of replacement money through continuous intelligence to find state assets that have been corrupted by the convict and other parties. Payment of replacement money with corporal punishment to the

convict, settlement of arrears of replacement money through civil and administrative efforts. Suggest to abolish the replacement money penalty if asset confiscation has been carried out during the investigation (Ningtias, 2014).

They are still guided by the regulations on the civil liability of heirs as regulated in Article 32 paragraphs (1) and (2), Article 33, Article 34, Article 38 paragraph (5), Article 38 C of the PTPK Law to compensate the state for losses jointly and severally. That is, the heirs are jointly responsible with other heirs to compensate the state. This is a model of civil liability for heirs, not criminal liability for the heirs of convicted corruptors (Pah et al., 2011).

Others view that, payment of replacement money in practice does not protect the economic rights of the community that are lost over time until the decision has permanent legal force, because it is only based on the amount obtained by the defendant (Kholis, 2010). While society has lost opportunities for economic development due to corruption, which they should be able to get the opportunity in order to promote the general welfare (Lukas, 2010).

Criminal Policy To Attract Corrupt Heirs Criminally Responsible Based on Retributive Doctrine

Efforts to recover state losses as a result of corruption can be done by using criminal forfeiture and in rem, and administrative forfeiture. In The United Nations Convention Against Corruption 2003 (UNCAC 2003) mandated a special civil route or called civil forfeiture (without punishment). Neither of these methods can be used to attract heirs to criminal liability for paying replacement money (Yuntho, 2016).

In practice, law enforcement to execute replacement money actually creates new problems, namely: (1) arrears in the amount of replacement money, (2) the tendency of the convict to choose imprisonment rather than paying replacement money, (3) the occurrence of the disappearance / transfer of assets by the heirs or third parties at the same time as the weak supervision of the legal apparatus, and (4) there was double corruption involving the legal apparatus (Sinaga, 2016).

To withdraw criminal liability for heirs, it can be seen from the following doctrine. Criminal liability teaches accountability without fault, namely, the strict liability doctrine and the vicarious liability doctrine. The doctrine of vicarious liability requires indirect criminal liability, the strict liability doctrine requires direct criminal responsibility to the main actor. The doctrine of vicarious liability is liability without fault as a substitute liability, and allows one person to be responsible for the actions of others (Syahrin, 2005).

The doctrine of vicarious liability emphasizes accountability to corporate management (legal entities and non-legal entities) as agents. This doctrine is based on the respondent superior doctrine, employment principle and the delegation principle, the employer or the one who governs is the main guarantor of the actions of the workers/employees who are ordered.

The doctrine of vicarious liability as a substitute liability because it can be charged to someone for the actions of others. If a person is ordered to do an act and it turns out that the act is a crime in a certain relationship, then against him can be subject to criminal liability (Priyatno, 2007).

The doctrine of vicarious liability applies to acts committed by other people within the scope of work or position and is generally limited to cases involving the relationship between employers and workers, assistants, subordinates, or between those who ordered and those who were ordered. Even if a person does not have a fault, he can still be held accountable. In England, this doctrine only applies to certain crimes, for example, offenses that require quality, and the relationship between workers (subordinates) and employers (superiors) (Munzil et al., 2015).

The relationship between convicts of corruption and their heirs or their families or with their friends is related to the relationship between those who give orders and those who are ordered. If the corruption convict orders his heirs to transfer assets to other parties with the intention of eliminating criminal traces are among those who can be accounted for according to this doctrine.

The act of the heirs and/or family of the corruptor who transfers or eliminates assets so that they cannot be subject to acts of confiscation or to cover replacement money is an act against the law, not only violate the law, but also violates the principle of propriety, decency, and appropriateness. Such actions hinder the law enforcement process in terms of executing court judges' decisions to pay replacement money.

The retributive doctrine is influential in determining the purpose of punishment which teaches the purpose of punishment is to avenge the actions of the perpetrator. Retributivism asserts that basically every crime is retaliation (Zulaiha & Angraeni, 2016). Punishing is not because of something bad to the perpetrator, but intended as a reaction to behavior that violates the norm is a proper action. Sentencing must be carried out by legal institutions against law violators in the form of suffering (Suharyo, 2016).

Retributivism in relation to criminal liability to heirs for errors in payment of replacement money, intended so that there is a deterrent effect and a preventive effect on the transfer/disposal of assets to avoid payment of replacement money. This doctrine is very relevant and rational in order to attract the heirs of corruptors to be criminally responsible for committing acts against the law to avoid replacement money, so that it is not repaid or is in arrears due to the transfer / disposal of assets.

The provisions in Article 18 of the UUPTPK do not contain any preventive measures or deterrent effects related to criminal compensation for money, does not prevent the public and public officials as well as state administrators, and does not cause a deterrent effect for the convict or third parties, including the heirs, as well as the convict himself (Dewi et al., 2017).

It is important to hold criminal responsibility for the heirs who do not want to pay replacement money must be regulated in legislation, especially in Article 18 UUPTPK. So going forward, against heirs or their families can be sentenced to imprisonment because the replacement money was not paid.

Everyone will be expected to think twice about committing corruption, because the heirs or their families may at any time be subject to criminal liability to pay replacement money. For families and / or heirs at any time they can be subject to criminal law if the replacement

money is imposed by the court on the corruption convict not paid by the heirs or their families to cover state losses.

Conclusion

Statutory provisions, both in the Criminal Code, The Draft Criminal Code, and UUPTPK, as well as the Supreme Court Regulation Number 5 of 2014, have not regulated criminal liability for heirs who do not want to pay replacement money, or an heir who transfers / eliminates the convict's assets to avoid paying replacement money or confiscation of assets. Legal consequences for heirs in court practice that impose additional penalties in the form of payment of replacement money, can only be subject to civil sanctions and actions, namely in the form of confiscation or confiscation of assets if the assets of the corruption convict are controlled by the heirs of the corruptor. It is hoped that in the future criminal liability for heirs who do not want to pay replacement money can be sentenced to imprisonment, so that it can provide a preventive and deterrent effect on the convict and his heirs or family, including the public and public officials.

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