

INTISARI

KEBIJAKAN FORMULASI MENGENAI PELAKSANAAN PIDANA PENJARA SUBSIDER TERHADAP PIDANA PEMBAYARAN UANG PENGGANTI DALAM TINDAK PIDANA KORUPSI

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Penelitian ini bertujuan untuk mengidentifikasi dan menganalisis kelemahan formulasi mengenai pelaksanaan pidana penjara subsider terhadap pidana pembayaran uang pengganti dalam tindak pidana korupsi. Penelitian ini juga bertujuan untuk mengkaji dan merumuskan reformulasi mengenai pelaksanaan pidana penjara subsider terhadap pidana pembayaran uang pengganti dalam tindak pidana korupsi di masa yang akan datang.

Penelitian ini merupakan penelitian hukum normatif-empiris. Penelitian ini menggunakan data sekunder yang diperoleh dari berbagai bahan hukum, baik primer, sekunder dan tersier. Penelitian ini didukung pula dengan data primer berupa hasil wawancara narasumber. Penelitian ini menggunakan pendekatan perundang-undangan (*statue approach*) dan pendekatan konseptual (*conceptual approach*). Data yang diperoleh dari hasil penelitian dianalisis secara kualitatif dan hasil analisis data disajikan secara deskriptif analitis.

Penelitian ini memiliki dua kesimpulan. Pertama, terdapat kelemahan formulasi dalam Pasal 18 ayat (2) dan Pasal 18 ayat (3) Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi dan Pasal 9 ayat (1), Pasal 10 ayat (2) serta Pasal 11 ayat (4) Perma Nomor 5 Tahun 2014 tentang Pidana Tambahan Uang Pengganti Dalam Tindak Pidana Korupsi. Kelemahan tersebut antara lain adanya frasa “dapat” dan “paling lama dalam waktu 1 (satu) bulan” yang membuat Jaksa mengalami perbedaan pendapat dalam melaksanakan putusan, tidak diaturnya mekanisme sita eksekusi, tidak diaturnya prosedur pembayaran uang pengganti dan tidak diaturnya implikasi pembayaran uang pengganti sebagian terhadap pidana subsider yang dijalani terpidana. Kedua, perlu dilakukan reformulasi terhadap Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi berupa kewajiban bagi Jaksa untuk melakukan pencarian harta benda milik terpidana dan melaksanakan sita eksekusi jika terpidana tidak membayar uang pengganti dalam jangka waktu 1 (satu) bulan dalam Pasal 18 ayat (2), mekanisme sita eksekusi tanpa perlu izin atau persetujuan sita dari Ketua Pengadilan Negeri dalam Pasal 18 ayat (4), pembayaran uang pengganti dapat dilakukan secara bertahap dalam Pasal 18 ayat (5) dan pembayaran uang pengganti sebagian akan diperhitungkan dengan lamanya pidana subsider yang dijalani terpidana dalam Pasal 18 ayat (6). Terhadap Perma 5 Tahun 2014 dilakukan reformulasi pada Pasal 11 ayat (4) berupa kewajiban hakim mencantumkan perintah dalam amar putusan bahwa setiap pembayaran uang pengganti akan diperhitungkan dengan lamanya pidana penjara subsider yang dijalani terpidana.

Kata kunci: Pelaksanaan Pidana Penjara Subsider, Pidana Pembayaran Uang Pengganti, Tindak Pidana Korupsi

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ABSTRACT

CRIMINAL POLICY CONCERNING CRIMINAL EXECUTION OF SUBSIDER PRISONERS ON ADDITIONAL CRIMINALS OF COMPENSATION MONEY IN CRIMINAL ACT OF CORRUPTION

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This legal research aims to identify and analyze the weaknesses of the formulation regarding the implementation of subsidiary imprisonment for the compensation money in the criminal act of corruption. This study also aims to examine and formulate reformulations regarding the implementation of subsidiary imprisonment for the compensation money for criminal acts of corruption in the future.

This research is normative legal research. This study uses secondary data obtained from various legal materials, both primary, secondary and tertiary. This research is also supported by primary data in the form of interviews with sources. This research uses a statue approach and a conceptual approach. The data obtained from the research results were analyzed qualitatively and the results of the data analysis were presented in an analytical descriptive..

This study has two conclusions. First, there are weaknesses in the formulation in Article 18 paragraph (2) and Article 18 paragraph (3) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and Article 9 paragraph (1), Article 10 paragraph (2) and Article 11 paragraph (4) Supreme Court Regulation Number 5 of 2014 concerning the additional penalty of compensation money in the crime of corruption. These weaknesses include the phrases "can" and "within 1 (one) month at the longest" which makes the Prosecutor have different opinions in implementing the court judgement, the confiscation of execution mechanism is not regulated, the procedure for paying compensation money is not regulated and the implications of paying compensation are not regulated art of the subsidiary sentences served by the convict. Second, it is necessary to reformulate Law Number 31 of 1999 in the form of an obligation for the Prosecutor to conduct a search for the convict's property and carry out an execution confiscation if the convict does not pay compensation money within a period of 1 (one) month in Article 18 paragraph (2), the mechanism for confiscation of executions without the need for a permit or confiscation approval from the Head of the District Court in Article 18 paragraph (4), the payment of compensation money can be carried out in stages in Article 18 paragraph (5) and the payment of part of the compensation money will be calculated with the length of the subordinated sentence served by the convict in Article 18 paragraph (6). Supreme Court Regulation Number 5 of 2014 was reformulated in Article 11 paragraph (4) in the form of court judgement to include an order in the verdict that every payment of compensation money will be calculated with the length of the subsidiary prison sentence served by the convict.

Keyword: Execution Of Subsider Prisoners, Additional Criminals Of Compensation Money, Criminal Act Of Corruption

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