

PENERAPAN UNDANG-UNDANG PEMBERANTASAN TINDAK PIDANA KORUPSI DALAM MENANGANI TINDAK PIDANA PERBANKAN PADA BANK BADAN USAHA MILIK NEGARA DALAM RANGKA PEMULIHAN KERUGIAN KEUANGAN NEGARA

Pinos Permana¹ dan Marcus Priyo Gunarto²

INTISARI

Penelitian ini bertujuan mengkaji tentang penerapan Undang-Undang Pemberantasan Tindak Pidana Korupsi dalam menangani tindak pidana perbankan di Bank BUMN dalam rangka pemulihan kerugian keuangan negara khususnya dalam hal kebijakan bank BUMN menimbulkan kerugian keuangan negara kebijakan hukum pidana yang bagaimanakah yang akan diterapkan apakah Undang-Undang Pemberantasan Tindak Pidana Korupsi atau Undang-Undang Perbankan dan kaitannya dengan prosedur pemulihan kerugian keuangan negara menurut ketentuan Undang-Undang Pemberantasan Tindak Pidana Korupsi.

Penelitian ini menggunakan metode penelitian hukum normatif dengan jenis data yang bersumber dari data sekunder. Cara pengumpulan data yang digunakan, yaitu studi pustaka baik bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Pendekatan yang digunakan adalah *statute approach*, *conceptual approach* dan *case approach*. Kemudian data yang diperoleh dianalisis dengan menggunakan logika deduktif dan dianalisis secara deskriptif-preskriptif.

Berdasarkan hasil penelitian dan pembahasan disimpulkan sebagai berikut: *Pertama*, Kebijakan Bank BUMN yang merugikan keuangan negara dapat diterapkan undang-undang pemberantasan tindak pidana korupsi apabila terdapat niat jahat berupa perbuatan yang dengan sengaja melawan hukum atau menyalahgunakan kewenangan, kesempatan atau sarana yang ada padanya dengan tujuan menguntungkan diri sendiri, orang lain atau korporasi sesuai Pasal 2 ayat (1) atau Pasal 3 Undang-Undang Pemberantasan Tindak Pidana Korupsi yang mempunyai hubungan kausalitas dengan timbulnya kerugian keuangan negara tersebut. *Kedua*, terdapat dua jenis mekanisme pemulihan kerugian keuangan negara akibat tindak pidana korupsi menurut ketentuan Undang-Undang Pemberantasan Tindak Pidana Korupsi, yaitu pertama, pengembalian atau perampasan aset secara pidana melalui putusan pengadilan pidana dan kedua, melalui mekanisme gugatan perdata apabila prosedur pidana yang diikuti dengan pengembalian aset tidak dapat dilakukan

Kata Kunci: *Undang-Undang Pemberantasan Tindak Pidana Korupsi, Tindak Pidana Perbankan, Pemulihan Kerugian Keuangan Negara.*

¹ Mahasiswa Program S-2 Magister Hukum Litigasi FH UGM Kampus Jakarta.

² Guru Besar Fakultas Hukum Universitas Gadjah Mada.

**APPLICATION OF LAW GOVERNING ERADICATION OF
CORRUPTION CRIMINAL ACTS IN DEALING WITH CRIMINAL
BANKING ACTS AT STATE-OWNED BANK FOR THE RECOVERY OF
STATE'S FINANCIAL LOSS**

Pinos Permana³ and Marcus Priyo Gunarto⁴

ABSTRACT

The present research is aimed at studying the application of Law governing Eradication of Corruption Criminal Acts in dealing with criminal banking acts at State-owned Banks for the recovery of state's financial loss in particular in the policy of State-Owned Enterprise Banks (= SOE Banks) which causes state's financial loss, and what kind of criminal law policy which shall be applied, whether the Law of Eradication of Corruption Criminal Acts or the Banking Law, and the relationship with the procedure of the recovery of state's financial loss in accordance with the stipulations laid down in the Law of Eradication of Corruption Criminal Acts.

This research uses normative law study method with the kind of data that originally comes from secondary data. The ways being in use for data collection is library study, concerning primary, secondary as well as tertiary law materials. The approach being in use have been statute approach, conceptual approach and case approach. Then, the data acquired are analyzed by using deductive logic and then analyzed descriptively-prescriptively.

Based on the results of the research and of the discussion, the conclusion has been made as follows: Firstly, the policy adopted by the State-Owned Enterprise Banks (= SOE Banks) which causes harm and significant injury to (/or which hurts or ruins) the state's finance, upon the banks concerned that adopts such policy the Law of Eradication of Corruption Criminal Acts can be applied if there exists evil intention in the form of act which is intentionally and against law or misuses authority, opportunity or means, which is at its hand with the intention of making a profit for its self, or for others or corporation as stipulated in Article 2 paragraph (1) or Article 3 of the Law of Eradication of Corruption Criminal Acts which has causality (or the relation of cause and effect) with the occurrence of above-mentioned state's financial loss. Secondly, there are two kinds of mechanism of the recovery of the state's financial loss as the result of corruption criminal acts in accordance with the stipulations in the Law of Eradication of Corruption Criminal Acts; namely: first: the return or the governmental seizure of property in criminal-case way through the judgment of a criminal court, namely a court of law in which criminal cases are tried and determined, and secondly, through the mechanism of a civil action if the criminal procedure followed by return of asset/property is incapable of being carried out.

Key words: Law of Eradication of Corruption Criminal Acts, Banking Criminal Act, Recovery of State's Financial Loss

³ Student of Strata-2 Program, Magister of Litigation Law, School of Law, UGM, Jakarta campus.

⁴ Professor at School of Law, Gajah Mada University.