



Financial Crime In The Perspective of Criminal Law

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ABSTRACT

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This study aims to analyst the Financial Crime in the Perspective of Criminal Law. This study used a survey method and Employees at the Regional Government of the Aru Islands District as the research subject. Data collection techniques used were interview and observations techniques. The data obtained were analysed using qualitative descriptive analysis techniques. The results of this research is that financial crimes often occur within the scope of local government. This is due to a weak internal control system from the leadership on employee performance.

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INTRODUCTION

Today, white-collar crime or what is known as white-collar crime is very common, both in Indonesia and abroad, Muchtar, 2010. The number of losses from this crime is much higher than the number of conventional crimes (Blue-collar crime), because according to Munir Fuady white collar crime it is an act (or not doing) in a specific group of crimes that are contrary to criminal law committed by professionals, both by individuals, organizations or crime syndicates or committed by legal entities. Usually these crimes are closely related to their daily work, with the aim of protecting business or personal interests, or to obtain money, property or services, certain positions or positions.

Financial crime is substantially basically a fraudulent business behavior or also known as fraud. The increase in cases of financial crime along with the development of information technology systems in the digital era, could be due to many business actors who do not understand how close this business behavior is to fraud, Sukardi, 2021. In the reform era, the existence of information is very important for people who are looking for certain information that suits their needs, and the accuracy of the data obtained is a reason for using information and communication technology.

In Indonesia we have Bappepam, but was removed from his position because he was unable to overcome economic and banking problems that were detrimental to the state. This case also became a trigger for a comprehensive corporate reform including the accounting systems and this series of actions took place in a relatively short time, and has even resulted in new, more stringent regulations (Muchtar, 2010).

When compared with the law enforcement system in tackling the development of financial crime that is applied in a country that actually inherited the law for Indonesia such as the Netherlands conceptually the concept of follow the money applied in Indonesia is far behind (Sukardi, 2021). This condition is supported by the development of a legal system that has not consistently accommodated the follow the money concept. Although in several provisions such as the Criminal Procedure Code and the Money Laundering Law, the concept of follow the money has been explicitly stated, at the implementation level, the investigation method has not been

consistently established. Financial crime is not only a crime that occurs in developed countries but also has occurred in Indonesia. Even at the local level there have been many financial crimes. For example, in the islands.

Aru Islands Regency, which is an autonomous region that was expanded based on law number 40 of 2003. Although it is a new autonomous region, the regional head has been hit by a corruption case. Based on data from detik.com news there are some cases of corruption in the Aru Islands Regional Government as an example during the government first district, corruption fund budget 2006-2007. In this case, the regent guilty of misusing his authority among others use the money for estab paid mes jargaria, personal loans and to pay related fee attorney to suit the administrative court (Source: <https://news.detik.com> , accessed on 21 December 2021).

Another phenomenon can be seen in the case of corruption in the 2011 and 2012 PNPM funds carried out by SB which caused state losses of more than 8 billion (ANTARA.NEWS.com, accessed 21 December 2021). In the 2011 and 2012 fiscal years, the Aru Islands Regency received more than 8 billion Rural Mandiri PNPM funds sourced from the National Budget and Regency Budget. The budget should be used to procure various type of materials for infrastructure development in several village. However, various physical works in the field were not in accordance with the disbursement of the budget, causing state losses of 3 billion according to the results of the investigative audit of the BPK RI representative of the Maluku Province. Another financial crime problem that occurred was related to the alleged corruption case of the Wokam ring road, the Aru Islands Regency (rri.co.id, accessed 21 December 2021). However, during the investigation, TK as a suspect has returned the state financial loss based on the findings of the BPK RI to the regional treasury of IDR 4.255.390.305.

Related to the above phenomena, financial crimes committed solely to benefit oneself but have an impact on state financial losses. Financial crimes committed are a form of an individual's greed for profit.

In development to support clean government, law number 17 of 2003 concerning state finances has outlined the basic rules contained in Article 23c of the 1945 Constitution into general principles as a reflection of best practice, namely results-oriented accountability, professionalism,

proportionality, transparency in the management of state finances, financial audits by auditing bodies, free and independent. In addition, in Article 3 paragraph 1 of the law, it is also emphasized that state finances are managed in an orderly manner, complying with laws and regulations, efficient, economical, effective, transparent and responsible with due regard for a sense of justice and propriety.

Article 3 of law number 31 of 1999 states that every person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of a position or position that can harm state finances or the country's economy, shall be subject to criminal sanctions. With life imprisonment or imprisonment for a minimum of one year and a maximum of twenty years and or a fine of at least fifty million rupiahs and a maximum of one billion rupiahs.

Based on the cases that occurred above, it can be said that there is a financial crime in Indonesia, namely abuse of authority that results in state losses and leads to criminal acts. The forms of crimes committed are certainly contrary to the law so that if viewed from the perspective of criminal law, the perpetrators of these crimes must be punished in accordance with the violations committed. The above cases are the background of the author in doing this study.

In relation to the above law, for financial crimes committed for personal gain, the first regent of the Aru Islands Regency was arrested and sentenced to four years in prison and a fine of five hundred million and required to pay compensation of 5.3 billion based on the cassation decision number 161 K/PID.SUS/2012 dated April 10, 2012 (merdeka.com, Accessed, 21 December 2021).

LITERATURE REVIEW

Fraud Pentagon Theory

According to Donald Cressey, three general characteristics that explain why someone commits cheating, namely pressure, opportunity and rationalization. Then Crow's developing the fraud model into five elements, namely pressure, opportunity, rationalization, competence and arrogance which was later called the fraud pentagon theory.

a. Pressure

Pressure is the incentive for people to commit fraud. Pressures that arise not only because of need or financial problems, but also because of greed.

b. Opportunity

Opportunity is an opportunity that allows fraud to occur. Opportunities can occur because of weak internal control, poor management oversight or through the use of positions.

c. Rationalization

Rationalization is an important element in the occurrence of fraud, where fraud perpetrators always seek rational justifications to justify their actions.

d. Competence

Crowe defines competence as an employee's ability to override internal control, develop concealment strategies and control social situations for personal gain.

e. Arrogance

According to Crowe, arrogance or lack of conscience is an attitude of superiority and rights or greed of people who believe that internal control is not personally applied.

Punishment Theory

The theory of criminal law, which we know as the theory of punishment, is directly related to the notion of subjective criminal law. This theory is based on explaining and seeking the right of the state to impose and exercise these rights. Criminal law theory is divided into 3 namely absolute theory, relative theory and combined theory.

Law Number 31 of 1999 Concerning the Eradication of Criminal Acts of Corruption

This corruption law clearly has more weight in the formulation of its criminal articles than the money laundering law with a formulation model such as in the anti-money laundering law, it actually results in a very low sentence.

Financial Crime

Financial crime is substantially basically a fraudulent business behavior or also known as fraud. The increase in cases of financial crime along with the development of information technology systems in the digital era, could be due to many business actors who do not understand how close this business behavior is to fraud (Sukardi, 2021).

METHOD

This research is a Qualitative using primary data.

The population of this study is Employees at the Regional Government of the Aru Islands District. The sample of this study is 10 Employee at the Regional Government of the Aru Islands District. The type of data used in this study is qualitative data obtained from interviews with respondents.

Table 1.
Respondent Data

No	Respondent Name	Position
1	Tn. Yob	Head of BPKAD
2	Tn. Ishak	BPKAD Staf
3	Ny. Yani	BPKAD Staf
4	Tn. Rido	Regional Treasurer
5	Tn. Yamin	Regional Treasurer
6	Ny. Nita	Head of Health Service
7	Tn. Reza	Treasurer
8	Tn. Denri	Treasurer
9	Ny. Sanny	Treasurer
10	Ny. Josephina	Treasurer

Based on the table above, it can be known that the respondents in this study were local government employees working in the finance section consisting of the head of the office and the treasurer.

RESULT AND DISCUSSION

Qualitative Descriptive Analysis

Criminal law policy or also called penal policy is a science as well as an art which in the end has a practical goal to enable positive legal regulations to be formulated better and to provide guidance not only to legislator but also to courts that apply laws and regulations to the organizers or implementers of court decisions.

The forms of financial crimes that occur within the scope of the regional government of the Aru Islands Regency illustrate the non-compliance of certain people or individuals with laws and regulations. Individuals tend to be more concerned with their personal interests for profit without thinking about the legal repercussions that will be received as a result of their actions.

Related to the phenomena above, financial crimes are very much against the laws and regulations seen from the perspective of criminal law. This is clearly seen in the articles in law number 31 of 1999 which state that all forms of actions that are detrimental to the state can be punished and given financial sanctions.

Seeing the development of financial crimes that often occur within the scope of local governments, the enforcement of criminal law on this matter must be seriously considered. Criminal law enforcement within the scope of local government for financial crimes must be objective regardless of the background of the perpetrators of the crime in order to have a deterrent effect on other individuals. To minimize the occurrence of financial crimes in the local government environment a strong internal control system is needed from related parties as well as strict and fair law enforcement to the perpetrators of crime.

CONCLUSION

Based on the results of field research, the researchers concluded that financial crimes often occur within the scope of local governments. This is due to a weak internal control system from the leadership on employee performance and also due to weak law enforcement in Indonesia.

Suggestions to the next researcher are:

1. Using other methods so as to get other scientific views related to financial crimes.
2. Dig deeper related to financial crimes that occur within the scope of local government and the causes of their occurrence.

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