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Criminal Law Policy in an Effort to Make the Criminal Fines Effective

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ABSTRACT --- *Criminal law policy is a political law that aims to enable positive criminal law regulations to be formulated better in terms of substance. Criminal fines are the imposition of financial obligations that must be paid by the convicted to the state. Therefore, the regulation needs to be maximized because the fine is included in Non-Tax State Revenue (PNBP). There is one major weakness in the substance of criminal fine regulation. The formulation of criminal sanctions for fines in criminal law legislation does not have the power of execution yet, so there are many cases of unpaid fines and it always lead to imprisonment in lieu of fines. Therefore, criminal law policy needs to transform the Collateral Confiscation (Conservatoir Beslaag) in civil legal system with the aim that criminal fines will be more effective in their execution. Collateral Confiscation at the investigation level can be implemented because criminal fines are debts to be paid (Article 1311 of the Civil Code) so that all movable and immovable properties belonging to the debtor (convicted) become the collateral of debtor's debt (convicted).*

Keywords-- *The Power of Execution, Criminal Law Policy, Criminal Fines*

I. INTRODUCTION

Criminal Fine is one of the basic punishments that are generally regulated in Article 10 of the Criminal Code, which are threatened in criminal acts both in terms of crime and violations, as well as in criminal law legislation outside the Criminal Code. Criminal fine is an obligation for the convicted person to pay amount of money to the state treasury as a consequence for having committed an unlawful act within the scope of criminal law.

In its formulation by the legislators, a criminal fine is threatened with alternative or cumulative or both types of imprisonment or confinement. The choice of sanctions to be imposed is entirely under the jurisdiction of the judge by certainly considering all aspects related both juridical and sociological. For this reason, a form of guidance for judges is needed to prevent criminal disparities. The arrangement and imposition of criminal fine as an alternative sanction is expected to eliminate stigmatization for convicts as well as criticism of imprisonment. The policy of determining fine as alternative sanction must be applied proportionally to certain criminal acts, minor criminal offenses, and criminal acts that are motivated by property or economy, such as theft, fraud, or embezzlement. (Suhariyono, 2012)

According to Article 30 paragraph (2) of the Criminal Code, if a convicted person does not pay his criminal fines, it can be replaced with a confinement sentence for a minimum of one day and a maximum of six months. The maximum confinement can be aggravated to eight months if a criminal act is carried out in the form of a Joint Crime construction (*Concursus, Samenloop*), Repetition of Criminal Act (recidivism), or with a criminal act as regulated in Article 52 of the Criminal Code. Related to the execution, according to Article 273 paragraph (1) of

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the Criminal Procedure Code, the convicted person is given a period of one month to pay the fine, except in the verdict of a quick inspection which must be paid immediately. However, it is felt that the conversion of criminal fines should be re-adjusted considering the issuance of this Supreme Court Regulation has been lapse of seven years. At least, it is necessary to adjust the currency value so that the deterrence function can be felt by the convicted person, and the judge has a rational option.

In addition, the Supreme Court also issued the Supreme Court Regulation of the Republic of Indonesia No. 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations. In this regulation, it is stressed that the basic punishment that can be imposed on a corporation is criminal fines (Article 25 paragraph (2). In the implementation of criminal fines, the corporation is given a one-month period to pay the fines since the decision has permanent legal force and it can be extended for a maximum of one month (Article 28 paragraph (1) and (2)). The positive criminal law policy is expected to at least be able to make criminal fines effective, so that special preventive and general preventive functions can be achieved, and in the law enforcement, fines can be paid to the state treasury.

Empirical data in the Prosecutor Office of Takalar District of South Sulawesi noted that in 2019 there were 46 cases of special criminal cases (narcotics, health crimes, juvenile crimes, and corruption) which were sentenced with criminal fines, but only one case with criminal fines that was executed namely in corruption case, and 45 conducted by convicts were sentenced to confinement. As in general crimes, a total of 75 cases including criminal acts of persecution, theft, embezzlement, that were threatened with criminal fines alternatively, but in general the judge imposed a criminal sanction of imprisonment. This fact needs to be analyzed in depth by looking at various phenomena that exist.

There are many things that can be studied from the aspect of economic law against the criminal fines phenomenon both from the aspect of the objective of punishment itself, and from the aspect of Non-Tax State Revenue (PNBP) from criminal fines.

According to Bentham (Suhariyono, 2012), criminal penalties must be able to revoke all the profits that result from every crime. To achieve that goal, the criminal law policy approach needs to be done by making rational approaches related to criminal fines. From the aspect of the economic approach to law, the use of economic analysis is needed to study and explain the effects and consequences of the application of certain legal rules, whether the application of the law in question is economically efficient, and predicts what legal concepts need renewal that present the maximum benefits for society without compromising the true function of law (Ibrahim, 2009). Based on the phenomena above, the problem that will be examined in this paper is the extent to which the effectiveness of the execution of criminal fines based on existing rules, and how the policies should be carried out to maximize the execution of criminal fines, so that the benefits of criminal fines for convicted and for the state can be realized effectively and efficiently.

II. METHODOLOGY

This research is a normative legal research that seeks to analyze legal materials related to criminal sanction of fines based on legal norms of laws and court decisions.

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III. RESULTS

Criminal Fines Policy in Legislation Outside the Criminal Code

Article 103 of the Criminal Code confirms that the provisions in Chapter I through Chapter VIII also apply to acts which are otherwise threatened by criminal law, unless otherwise stipulated by the law. Provisions on criminal sanctions for fines as regulated in Chapter II of Article 10, Article 30 and 31 of the Criminal Code also apply to criminal acts as stipulated outside the Criminal Coded that it is not otherwise provided for in the relevant laws. In connection with this, there are several differences in the principles of the criminal sanctions application in the Criminal Code and outside the laws of the Criminal Code, namely:

a. According to the Criminal Code system, the sentence of basic criminal sanctions may only be of one kind, namely one of the criminal sanctions that are alternatively threatened by the relevant criminal acts. Whereas in criminal acts outside the Criminal Code, it is possible to impose cumulative basic criminal sanctions and several article provisions do formulate cumulative basic criminal sanctions (Sianturi, 1986).

b. According to the Criminal Code system it does not regulate specific minimum criminal sanctions, and only regulates specific maximum criminal sanctions. Whereas in special criminal acts outside the Criminal Code generally adheres to a system of special minimum and maximum criminal sanctions.

c. According to the Criminal Code system, if a fine is not paid then it is replaced with a substitute confinement for a maximum of six months, and if there is an element of criminal weight of evidence in the case of recidivism and committing a crime as referred to in Article 52 of the Criminal Code, then a substitute confinement can be imposed for a maximum of eight months (Article 30 paragraph (3) (4) of the Criminal Code). Whereas in criminal acts outside the Criminal Code as regulated in Law No.35 of 2009 concerning Narcotics, Article 148 states that if criminal fines may not be paid by the perpetrators, then the perpetrators shall be sentenced to a maximum of 2 (two) years of imprisonment as a substitute for criminal fines that cannot be paid.

Besides, there is the Supreme Court Regulation of Republic of Indonesia No.13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations that also regulate crimes that can be applied against corporations that commit criminal acts. Article 25 paragraph (2) confirms that the principal penalty that can be applied to corporations is a criminal fine and the corporations is given a period of 1 (one) month after the decision has permanent legal force to pay the fine. Furthermore, if there is a strong reason, the period can be extended for a maximum of 1(one) month. If the corporation does not pay the fine, the corporation's assets can be confiscated by the prosecutor and auctioned to pay the fine (Article 28). However, the Supreme Court Regulation does not provide a solution if the corporation property is no longer available at the time of executorial confiscation.

The results show that out of 46 cases that were sentenced to criminal fines, only 1 case which is corruption case that could be executed with a fine of Rp. 50,000,000 million (2 months confined subsidiary). This illustrates that the judge still prioritizes imprisonment rather than criminal fines which threatened alternatively in the Criminal Code. This is one of the causes of the overcapacity problem in prison. And this problem is experienced by almost penitentiary institutions. The number of residential facilities in penitentiary institutions is not proportional to the number of fostered residents. According to data from the Ministry of Law and Human Rights in the Special Capital Region Office of Jakarta in 2019, it can be concluded that the number of prison residents exceeds capacity. The latest data in March 2019, Cipinang Penitentiary Institution Class I accommodates 4,193 prisoners while the capacity is just 880 (over capacity of 376%). Salemba Penitentiary Class II accommodates 1,660 prisoners while

the capacity is 572 (over capacity of 190%). Jakarta Narcotics Penitentiary Class II A accommodates 2,620 prisoners while the capacity is 1,084 (over capacity of 142%). Jakarta Women's Penitentiary accommodates 389 prisoners while the capacity is 208 (over capacity of 87%) (Sistem Database Permasyarakatan, http://smslap.ditjenpas.go.id/). The increasing number of fostered residents in prison also increases the need for financing budgets. Especially when referring to the Standard Minimum Rules for the Treatment of Prisoners which regulates the separation of prisoners' categorization, accommodation, food security and proper health, it will certainly be far from what is expected. The reality of overcapacity does not only concern the protection of prisoners' rights, but also the problem of a budget deficit that never resolves.

Law is a system and cannot be separated from other sub-systems (social, political, economic, cultural). Theory of Legal Systems from Niklas Luhmann (Azisa, 2015) says that law is a sub-system of the social system, it exists not for itself but to support the complexity of society as well as the basis of its existence. Likewise, it can be said that law is a sub-system of the economic system. The law exists to support economic problems with policy steps that synergize with the objectives of the two sub-systems. The ultimate purpose of law is to bring prosperity and benefit to society. Policies that are not beneficial for the achievement of welfare should be removed and replaced and formulated with new policies that are more effective. At least law needs to consider what policies can reduce the budget deficit in the field of law, and what legal policies can provide financial benefits for the State treasury. In this case, it is to reduce the inmates of the penitentiary by implementing alternative criminal sanction of fines and maximizing their execution.

Therefore, it is time for the criminal law policy to change the paradigm of punishment by providing a judicial basis for judicial conviction so that imprisonment or confinement so far will no longer be the mainstay, and creates alternative types of progressive sanction. At present, the judge's guidelines in applying criminal sanctions for fines are more important than the application of the deprivation of liberty sanction. This is in line with policies to reduce over capacity, reduce the budget and spur the Non-Tax Revenues from the legal sector.

Policy on Formulation of the Criminal Fines Execution through Confiscation

Criminal Law policy (penal policy) is a process of enforcing criminal law in a comprehensive and total manner, starting from the formulation stage to the execution stage which becomes a rounded chain, so that the process of functionalization/operationalization of criminal law can become something fundamental in actualizing social policies and creating social welfare and protection for the community (Kenedi, 2017). For this reason, law as a sub-system of social and economic systems, its policies must be formulated in such a specific way because weaknesses in formulating policies related to criminal fines will greatly hamper its law enforcement policies, this will simultaneously hamper the ultimate purpose of the law itself which is public welfare.

Some of the previous descriptions have been explained about the negative effects of imprisonment both from psychological impacts, social impacts and the budget deficits of penitentiary institutions which on the other hand are inversely proportional to the benefits of alternative criminal sanction for fines. Therefore, it is better if criminal law policies respond to improvements that needs to be done to maximize the application of criminal fines in the future. Analysis related to several provisions of criminal sanction for fines which contain weaknesses, namely:

a. There are no guidelines for judges in imposing criminal sanctions for imprisonment, confinement, or fines that are alternatively threatened. It should also be held within the guidelines that the principle of deprivation of

liberty is a las resort in certain criminal acts. Besides, it is necessary to change the paradigm of judges who have always made imprisonment the most important sanction. Likewise, for investigators and other law enforcers to avoid unnecessary coercive detention efforts at the investigation, prosecution and trial hearings, because it will bring the consequences of forced choice by judges to apply for deprivation of liberty rather than imposing alternative sanction of fines, because the period of detention must be calculated to be reduced in the conviction of deprivation of liberty (concerning imprisonment penalty minus the period of detention). Automatically, in this case, the judge must choose imprisonment to calculate the length of detention that a convict has already served.

b. Criminal fines in the Criminal Code need to be adjusted to the currency value in order to be a strong option for the judge in his decision in addition to imprisonment penalty. The Supreme Court Regulation of Republic of Indonesia No.2 of 2012 does not accommodate the nominal value of fines to achieve detention purposes.

c. Alternative sanctions between undergo criminal fines or confinement in lieu of fines as regulated in Article 30 of the Criminal Code, as if it has become an option for the convicted person to be served. Whereas the criminal law has the compelling nature that the transition of fines to substitute confinement is not necessarily become the choice of the perpetrators, but the fines which have been imposed should first be strived for the execution, and then the final step will lead to a substitute confinement. This is the weakness of the regulation in the Criminal Code.

d. Provisions of special criminal acts committed by corporations regulate the executorial confiscation. The Supreme Court Regulation of Republic of Indonesia No. 13 of 2016 regulates the final solution that if the dispensation of the time of fine payment cannot be paid by the corporation, the corporate property will be confiscated and sold auction to cover the payment of the criminal fines. But this regulation does not provide a solution if corporate assets are no longer available to confiscate on the basis of bad faith towards the corporation itself, which is often carried out by its management by embezzling or transferring its assets before there is a criminal verdict. For this reason, a regulatory policy is needed in changing or replacing an executorial confiscation (confiscate after verdict) as well as collateral confiscation (confiscate before verdict) as an alternative to make the execution of criminal fines more effective.

Arrangements like this also apply in the Draft Criminal Code of 2019 concerning executorial confiscation in the case of criminal fines not being paid. Criminal fines must be paid within a certain time contained in a verdict. The judge decision or verdict can determine the payment of criminal fines by installments. If a criminal fine is not paid within the prescribed period, the convict's wealth or income can be confiscated and auctioned off by the prosecutor to pay off the unpaid fines (Article 81 of Draft Criminal Code of 2019). If confiscation and auction of wealth and income are insufficient or impossible to carry out, the unpaid criminal penalty is replaced with imprisonment, supervision criminal penalty or social work penalty with the provision of the criminal fine does not exceed the criminal fines for category II (Rp. 10,000,000) (Article 82 of Draft Criminal Code of 2019). Provisions in the Draft Criminal Code of 2019 also only regulate the executorial confiscation who cannot anticipate the possibility of bad intentions in the form of transfer of assets to another party before the verdict, so that even though the executorial confiscation is carried out, but it does not produce results.

In judicial concept of civil law, Collateral Confiscation (*Conservatoir Beslaag)* is confiscation which is a legal remedy taken by the court as an action that precedes the examination of the subject matter or precedes the decision.

Collateral Confiscation can be made before the court examines the subject matter or when the process of examining the case is underway before the panel of judges issues a decision (Soeparno, 2018). The purpose of Collateral Confiscation in civil law is to keep the defendant from transferring, embezzling or transferring his belongings to others before a judge's decision is issued regarding his property. So, to maintain the existence and integrity of the objects which are the object of the dispute, the confiscation is carried out during the process of examining the case until the case is decided and has permanent legal force (Soeparno, 2018).

Collateral effort at the investigation stage of the perpetrators' assets is intended as reinforcement or as maximum effort to be able to realize the execution of criminal fines. This step is important to do to fill the legal vacuum to avoid as early as possible the implementation of substitute imprisonment criminal subsidiary if criminal fines are not paid by the perpetrators. Article 227 (1) of HIR states that if there is a reasonable allegation that a debtor, before a judge's decision that overcomes it is dropped or may be executed, seeks reason to embezzle or flee his property, both immovable and immovable; with the intention of removing the item from the creditor at the request of the person concerned, the head of the court may give orders, so that the item is confiscated to safeguard the rights of the person who requires the request; the requester must be informed that he must appear before the next district court hearing to file or to confirm his claim.

Furthermore, Article 261 (1) R.Bg affirms that if there is an allegation based on the fact that a debtor whose decision has not been decided or has lost the case has yet to be implemented, attempt to embezzle or move its movable or permanent property, so that it can be prevented from falling into the hands of creditors, at the request of the interested parties, the head of the district court or if the debtor lives or resides outside the prosecutor's area in the domicile of the district court or if the head the court isn't there, the prosecutor at the debtor's place of residence can order the confiscation of these items in order to guarantee the applicant's rights and at the same time notify him to appear before the district court on the appointed day to file his claim and strengthen it (Azisa, 2015 : 321).

The fine is the most common penalty imposed by criminal courts in Australia and most other high-income countries, with the notable exception of the United States of America (O'Malley, 2009). The adoption of the Collateral Confiscation concept in criminal law related to the execution of criminal fines is not an impossible thing to do considering that criminal fines are obligations to fulfill payments that are worth money (financially) to the state based on a judge's decision. Some civil concepts have been adopted in the field of criminal law, for example the merging of a lawsuit for compensation (Article 98 of the Criminal Procedure Code), the criminal payment of compensation as an additional crime (Law No. 8 of 1998 concerning Consumer Protection, Law No. 22 of 2009 concerning Road Traffic and Transport and other legislation). Likewise, rationally, with the adoption of material civil law concepts, the collateral confiscation procedural law will automatically become a logical thing to apply in criminal law to strengthen its execution power.

The configuration policy of the Collateral Confiscation (Article 227 (1) HIR) in the investigation stage of a criminal case can be carried out on the property of the defendant which does not originate from the proceeds of crime as is done so far for the confiscation of evidence for evidentiary purposes (Articles 38-39 of the Criminal Procedure Code). This can be understood since the two types of confiscation have different purposes. Confiscation according to the provisions of Article 39 of the Criminal Procedure Code can only be carried out on property suspected of having been obtained from a crime, property used / prepared to commit a crime, property specifically made to commit a crime for the purpose of proving criminal cases. Whereas Collateral Confiscation at the

investigation stage is carried out on the property of the defendant which is not the proceeds of crime in the interest of fulfilling the obligations that must be paid in relation to the judge's decision. So that the prosecutor can easily execute the criminal fines to be paid by the convicted person. Regarding collateral confiscation of objects belonging to the defendant that have nothing to do with a criminal offense to be carried out, given that the judge's decision in the form of criminal fines is seen as debt that must be paid as guaranteed in Article 1131 Civil Code that all movable and immovable property belonging to the debtor (convict), both existing and future, to become collateral for debtors' engagements (debts).

The Collateral Confiscation policy is seen as more efficient than the Executorial Confiscation applied in the Supreme Court Regulation of Republic of Indonesia No. 13 of 2016 and the Draft Criminal Code of 2019. Criminal law must be firm and act quickly to take conducive steps to precede the actions of perpetrators with bad intentions. If only the properties subject to confiscation are not sufficient for payment of the full nominal value of the criminal fines, then the criminal law then provides an opportunity to pay off the remaining criminal penalties in installments, and the final solution if the remaining fine is also not paid, the remaining criminal penalties are calculated by subsidized with a substitute imprisonment or replaced with a lighter type of crime (supervision or social work penalties) as applied in the 2019 Penal Code.

IV. CONCLUSION

The execution of the criminal fines based on the criminal law legislation does not work effectively given the absence of guidelines in imposing criminal penalties for judges in the Criminal Code. The change in the paradigm of judges towards imprisonment, the acts of detention by investigators that are not selective, causing the judge to have no choice but to impose criminal sanctions of deprivation of liberty to take into account the period of detention in the verdict which is reduced by the criminal period to be imposed. Criminal sanction of fines does not yet have a coercive power and this seems to be considered as an option for convicted person between paying the fines or undergoing confinement. The absence of power of execution in the Criminal Code for the criminal fines causes judges to always refer to subsidiary penalty of substitute confinement. The Executorial Confiscation as regulated in the law as corporate liability is considered not strong enough to guarantee the payment of criminal fines, especially for convicts with bad intentions. Collateral Confiscation is a solution and a form of criminal law policy that needs to be done to maximize the execution of criminal fines and fill the legal vacuum in the Criminal Code. As well as changing the Executorial Confiscation into Collateral Confiscation in terms of criminal liability for fines against corporations.

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