

KONVERGENSI TANGGUNG JAWAB PIDANA DAN PERDATA DALAM TINDAK PIDANA KERUGIAN NEGARA: KAJIAN PUSTAKA ATAS DUALITAS SANKSI DAN RESTITUSI

Gunawan Widjaja

Senior Lecturer, Faculty of Law Universitas 17 Agustus 1945 Jakarta,
widjaja_gunawan@yahoo.com

Abstract

This article aims to analyse the convergence of criminal and civil liability in criminal offences causing loss to the state through a literature review of the duality of sanctions and restitution. This issue is significant because loss to the state resulting from criminal offences, particularly corruption, requires not only the punishment of the perpetrators but also the tangible recovery of state funds through effective legal mechanisms. The findings indicate that the duality of criminal and civil sanctions constitutes a form of convergence of legal instruments, wherein criminal law serves to establish guilt and impose sanctions, whilst civil law serves to recover state losses through claims for damages, asset recovery, and restitution mechanisms. This study also found that restitution in cases of state losses cannot be narrowly interpreted as mere payment of damages, but rather as part of an asset recovery strategy that links the functions of punishment, recovery, and protection of the public interest. However, the effectiveness of this convergence still faces obstacles in the form of regulatory disharmony, limitations in asset tracing, and weak coordination between law enforcement agencies, meaning that the objective of recovering state losses has not always been optimally achieved. Therefore, there is a need to strengthen harmonisation between the criminal and civil regimes, optimise restitution mechanisms, and reformulate asset recovery policies so that law enforcement against criminal acts causing state losses can achieve justice, legal certainty, and public benefit in a balanced manner.

Keywords: state losses, criminal liability, civil liability, duality of sanctions, restitution, asset recovery.

Abstrak

Artikel ini bertujuan menganalisis konvergensi tanggung jawab pidana dan perdata dalam tindak pidana kerugian negara melalui kajian pustaka atas dualitas sanksi dan restitusi. Permasalahan ini penting karena kerugian negara akibat tindak pidana, khususnya korupsi, tidak hanya menuntut penghukuman pelaku, tetapi juga pemulihan keuangan negara secara nyata melalui mekanisme hukum yang efektif. Hasil kajian menunjukkan bahwa dualitas sanksi pidana dan perdata merupakan bentuk konvergensi instrumen hukum, di mana hukum pidana berfungsi menegaskan kesalahan dan menjatuhkan sanksi, sedangkan hukum perdata berfungsi memulihkan kerugian negara melalui gugatan ganti rugi, pengembalian aset, dan mekanisme restitusi. Kajian ini juga menemukan bahwa restitusi dalam perkara kerugian negara tidak dapat dimaknai secara sempit sebagai pembayaran ganti rugi semata, melainkan sebagai bagian dari strategi asset recovery yang menghubungkan fungsi penghukuman, pemulihan, dan perlindungan terhadap kepentingan publik. Namun, efektivitas konvergensi tersebut masih menghadapi hambatan berupa disharmoni regulasi, keterbatasan pelacakan aset, dan lemahnya koordinasi antarlembaga penegak hukum, sehingga tujuan pemulihan kerugian negara belum selalu tercapai secara optimal. Oleh karena itu, diperlukan penguatan harmonisasi antara rezim pidana dan perdata, optimalisasi mekanisme restitusi, serta reformulasi kebijakan asset recovery agar penegakan hukum terhadap tindak pidana kerugian negara mampu mewujudkan keadilan, kepastian hukum, dan kemanfaatan secara seimbang.

Kata kunci: kerugian negara, tanggung jawab pidana, tanggung jawab perdata, dualitas sanksi, restitusi, asset recovery.