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State administrative assets report as sufficient preliminary evidence in the crime of corruption

Nur Chusniah, Sudarsono, I Nyoman Nurjaya, Abdul Madjid

Faculty of Law, Universitas Brawijaya

nurchusniah.17@gmail.com

Abstract. The type of research used in this research is normative legal research. The State Organizing Assets Report as an administrative document can be used as a legal document as sufficient initial evidence in a criminal act of corruption. Sufficient preliminary evidence is interpreted as a minimum of 2 (two) pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions and statements of the defendant. The State Organizing Assets Report is an extension of documentary evidence considering that the State Organizing Assets Report is made according to the provisions of the law, is required to be reported to the Corruption Eradication Commission and those who don't comply are subject to sanctions and are intended to prove a thing or condition so that it meets the criteria for the instrument documentary evidence as referred to in Article 187 letter d of the Criminal Procedure Code.

Keywords. evidence; corruption

Introduction

Corruption has long been a bad image in the Indonesian government. Corruption that has occurred in Indonesia, not only harms the State Finance or the State Economy, but is also a violation of social rights and the welfare of the Indonesian people.(Dkk, 2016) Not only that, corruption is an extraordinary crime that indirectly hinders the growth and continuity of national development aimed at creating a just and prosperous society.(Bank), 2003) The development of corruption to date has been the result of an uneven governance system in an orderly manner and not properly supervised because the legal basis used contains many weaknesses in its application by law enforcers. Supported by a weak system of *"checks and balances"*, corruption has become institutionalized and is approaching a culture that is almost difficult to eradicate.(Atmasasmita, n.d.)

One of the efforts to prevent corruption and realize a clean and free state administration from corruption, collusion and nepotism by referring to the General Principles of Good Governance is to require state administrators to announce and report assets before, during and after serving to the Corruption Eradication Commission as regulated in Article 6 of Law no. 28 of 1999 concerning the Implementation of a State that is Clean and Free from Corruption, Collusion and Nepotism. However, administrative sanctions are difficult to apply to State Administrators who are state officials, especially those who are elected or appointed through political mechanisms. State officials are not tied to the existing staffing system. Administrative

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sanctions are also difficult to apply to State Administrators who have ended their term of office (retired) even though Article 5 point 2 and number 3 of Law no. 28 of 1999 states that they must be willing to be examined when there are indications of corruption.

The existing legal problem is how the State Administration Assets Report which was originally an administrative document (examination before a person serves as a State Administrator is in the nature of data collection and which is carried out after taking office is evaluation) is then upgraded to a legal document as initial evidence in corruption crimes committed by State Administrators, especially in relation to the use of State Organizing Assets Reports as evidence. Then, how to assess the reported irregularities of the State Administrator's assets, if the increase is significant or not proportional to his income. In the end, the researcher formulated that how the State Organizing Wealth Report as an administrative document can be used as a legal document as sufficient initial evidence in corruption.

Research methods.

The type of research used in this research is normative legal research.(Michael, 2020)

Results and Discussion

The purpose of setting up the State Organizing Assets Report is viewed from the aspect of administrative science, so it is only oriented to fulfilling the obligations to achieve the objectives in this case in the context of preventing corruption.(Peltier-Rivest, 2018) So far, the State Organizing Assets Report has only been used as data collection on sources of income and expenses, the origin of assets including personal debts and taxes for the State Administrators, while the Corruption Eradication Commission as the Commission authorized to conduct audits on the reporting of State Administrators' assets is also data collection concerning the number of State Administrators who are obliged to report, register and report their assets and are used by the Corruption Eradication Commission to disseminate reporting obligations and seek the imposition of sanctions on deviations or non-compliance with these obligations. However, in subsequent practice, the Corruption Eradication Commission has also tried several times to link the reporting of the State Organizing Assets Report to the prosecution of corruption.(Bondarenko et al., 2021)

The State Organizing Assets Report for state officials is required to be reported to the Corruption Eradication Commission as referred to in Article 6 of Law Number 28 of 1999, thus the State Organizing Assets Report is a legal document as an official written statement and binds anyone related to the information. As a legal document (Dadgostari et al., 2021) that is mandatory for state administrators, those who don't comply are subject to sanctions. The State Organizing Assets Report which contains information on the assets owned by the state administrator can then be used as a letter or statement that will be used as evidence if the organizer violates it or to prove that he has complied with it.

The next State Organizing Assets Report is used as a legal document, if the document/letter is made on a certain basis, thus understanding the process and provisions governing it so that the letter/document can be issued as a legal document.(Makarova, 2021) The importance of the State Organizing Wealth Report instrument as a legal document because it is related to other instruments in the discourse of eradicating corruption. So it can be said that asset reporting is not only seen as an instrument in prevention efforts, but to some extent is useful in efforts to take action when corruption has occurred.

As evidence, legal documents must contain evidentiary rules that are included in the law of evidence and are intended to be used in examining a dispute to reach a decision. Regarding the means of evidence in the criminal procedure law, (Paparinskis, 2020) the letter is one of the

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evidence as referred to in Article 184 Paragraph (1) of the Criminal Procedure Code, namely (1)Legal evidence is: a. witness testimony; b. expert testimony; c. letter; d. instruction; e. Defendant's statement.(Adji, 2012)

The State Organizing Assets Report can be used as sufficient initial evidence of the existence of a criminal act of corruption. The term sufficient preliminary evidence can be found in Article 17 of the Criminal Procedure Code which states *"An order for an arrest is made against a person who is strongly suspected of committing a crime based on sufficient preliminary evidence"*. Furthermore, in the Elucidation it is stated that *"Sufficient preliminary evidence is defined as preliminary evidence to suspect a criminal act in accordance with Article 1 point 14"*.

Referring to Article 1 point 14 and Article 17 of the Criminal Procedure Code and its explanation, there is no explicit provision on what is meant by sufficient initial evidence. In Law Number 30 of 2002 concerning the Corruption Eradication Commission Article 44 Paragraph (2) it is stated that *"sufficient preliminary evidence exists if at least 2 (two) pieces of evidence are found, including and not limited to information or data spoken, sent, received or stored normally or electronically or optically.* In line with this, related to several regulations which mention "preliminary evidence", "sufficient preliminary evidence" and sufficient evidence", several interpretations arise, which are then subject to a judicial review at the Constitutional Court. Furthermore, based on the decision of the Constitutional Court Number 21/PUU-XII/2014, it states that institutional conditions are conditional on the phrases “initial evidence”, “sufficient initial evidence” and sufficient evidence” in Article 1 number 14, Article 17 and Article 21 Paragraph (2) of the Book The Criminal Procedure Code as long as it is interpreted at least 2 (two) pieces of evidence in accordance with Article 184 Paragraph (1) of the Criminal Procedure Code.

Based on the above provisions, the function of sufficient preliminary evidence is as a prerequisite to carry out an investigation or investigation and to determine a suspect. Thus, if it is linked to the State Organizing Assets Report as sufficient initial evidence, the State Organizing Assets Report is used as a prelude to conduct an investigation or investigation and also determine the suspect.

In connection with the examination of the State Organizing Assets Report, based on the Corruption Eradication Commission Regulation Number 7 of 2016 concerning Procedures for Registration, Announcement and Examination of State Organizers' Assets, the completion of the State Organizing Assets Report shall be made by *self-assessment* or filled in by the State Administrators or Civil Servants concerning the sources of income, results, assets and other assets owned by the civil servants or state administrators. In the Corruption Crime, it is known as the principle of the reverse burden of proof as stated in Article 37 of Law no.31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which states: (a) Article 37 Paragraph (1); (b) The application of the principle of *reversing the burden of proof (Omkering van het Bewijslast)* is a deviation from the General Principles of Criminal Law which states that whoever sues is the one who must prove the truth of his claim; (c) This is something that is outside the norm in the theory of evidence regulated in the Criminal Procedure Code in general.(Lubach, 2016) This system of reversing the burden of proof is applied in Article 12 B, Article 37, Article 37A and 38B of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The application of these articles is an exception to the principle of presumption of innocence in Article 66 of Law Number 8 of 1981 concerning the Criminal

Procedure Code which reads "the suspect or defendant is not burdened with the obligation of proof".

According to Oemar Seno Adji, as quoted by Indriyanto Seno Adji, this is the system adopted by Law Number 3 of 1971 concerning the Crime of Corruption. This can be seen from the existence of a formulation in the provisions of Article 17 of the *a quo* Law that the Defendant can prove that he has not committed corruption, but the obligation to prove whether or not there is an alleged Corruption Crime is in the hands of the Public Prosecutor. In Article 12A of the Law on Corruption Crimes, the system of Reversing the Burden of Evidence, it has been stated explicitly and clearly the formulation of the offense relating to Article 419 and Article 420 of the Criminal Code.(Adji, 2012) The reversal of the burden of proof is also regulated in Article 37, Article 37A and 38B of Law Number 31 of 1999 concerning Eradication of Corruption Crimes Juncto Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.

The object that must be proven by the Defendant is all of his property and the property of his wife or husband and the property of any person or corporation suspected of having a relationship with the case being accused is not the result of corruption or has nothing to do with the Corruption Crime that is being charged. The trick is to prove that there is a balance between his property and his source of income or a source of additional wealth. Meanwhile, the object that must be proven by the public prosecutor is the crime charged in the main case which *in casu* all of its elements. The public prosecutor is obliged to prove that the Corruption Crime has been accused and committed by the Defendant and the Defendant is guilty of doing.

Conclusion

The State Organizing Assets Report as an administrative document can be used as a legal document as sufficient initial evidence in a criminal act of corruption. Sufficient preliminary evidence is interpreted as a minimum of 2 (two) pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions and statements of the defendant. The State Organizing Assets Report is an extension of documentary evidence considering that the State Organizing Assets Report is made according to the provisions of the law, is required to be reported to the Corruption Eradication Commission and those who don't comply are subject to sanctions and are intended to prove a thing or condition so that it meets the criteria for the instrument documentary evidence as referred to in Article 187 letter d of the Criminal Procedure Code.

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