

Unsur "merugikan keuangan Negara" pada pasal 2 ayat (1) dan pasal 3 undang-undang pemberantasan tindak pidana korupsi ditinjau dari prinsip dual criminality = The element of harm the state finance in article 2 paragraph (1) and article 3 of the anti corruption eradication act from the prespective of dual criminality principle / Aletheia Christy Hutabarat

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Abstrak

ABSTRAK

Tindak pidana korupsi sekarang ini sedang marak terjadi tidak hanya di Indonesia, tetapi juga di banyak negara lain. Dalam beberapa kasus tindak pidana korupsi kadang pelakunya melarikan diri ke luar negeri atau menyembunyikan aset hasil tindak pidana korupsinya di luar negeri sehingga untuk penuntasan kasus diperlukan kerja sama internasional, yang salah satu persyaratannya adalah prinsip dual criminality. Tindak pidana korupsi yang utama di Indonesia memiliki unsur "merugikan keuangan negara". Unsur "merugikan keuangan negara" tidak diatur dalam UNCAC yang telah diratifikasi Indonesia maupun dalam ketentuan tindak pidana korupsi di banyak negara lain. Melalui penelitian yuridis normatif yang didukung dengan wawancara ingin diperoleh jawaban tentang unsur merugikan keuangan negara ditinjau dari prinsip dual criminality. Dari hasil penelitian dapat disimpulkan bahwa keberadaan unsur "merugikan keuangan negara" yang merupakan unsur tertulis dalam ketentuan tindak pidana korupsi di Indonesia, dapat menyulitkan kerja sama internasional, khususnya bila prinsip dual criminality dianut secara mutlak. Namun sejalan dengan semangat pemberantasan korupsi yang telah dianggap sebagai kejahatan transnasional, dual criminality tidak lagi dimaknai secara mutlak. Bahkan UNCAC telah mengatur kerja sama internasional tanpa prinsip dual criminality sepanjang kerja sama internasional dilakukan untuk pencegahan dan pemberantasan tindak pidana korupsi.

ABSTRACT

Corruption is now happening not only in Indonesia, but also in many other countries. In some cases of corruption, sometimes the corruptor s fled abroad or hide the assets from corruption abroad so that for the completion of the case required international cooperation, which one of the requirements is the principle of dual criminality. The main corruption crime in Indonesia has the element of harm the state 39 s finances . The harm the state 39 s finances is not regulated in UNCAC which has been ratified by Indonesia as well as in terms of corruption in many other countries. Through normative juridical research supported by interviews, writer wants to get answers about the elements of harm the state 39 s finances in terms of dual criminality principle. From the results of the study it can be concluded that the existence of the element harm the state finance which is the element written in the provisions of corruption in Indonesia, can complicate international cooperation, especially when the dual criminality principle is embraced absolutely. But in line with the spirit of corruption eradication that has been considered a transnational crime, dual criminality is no longer interpreted in absolute terms. Even UNCAC has arranged international cooperation without dual criminality principle as long as international cooperation is conducted for prevention and

eradication of corruption crime.