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RETURN OF STATE FINANCIAL LOSSES IN THE FORM OF COMPENSATION PAYMENTS BY CONVICTED CORRUPTION OFFENDERS

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Abstract.
This research aims to understand the legal policies regarding the restitution of state financial losses in the form of monetary compensation by convicted corruption offenders and to identify the efforts made by police investigators in addressing the challenges of recovering state financial losses in the form of monetary compensation by convicted corruption offenders. The method used in this research is qualitative, with a primary approach of normative juridical and supporting approaches of empirical juridical. The data sources used in this research were obtained from secondary data as the primary data and from primary data as the supporting data. Furthermore, the data were subsequently processed using qualitative methods. The research findings reveal that the classification of corruption crime penalties and fines has been regulated by Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, which has since been amended by Law No. 20 of 2001. The amount of restitution and compensation is at most equal to the value of the assets obtained from the act of corruption. If the substitute money is not paid, the offender will be punished with additional fines that do not exceed the maximum limit of the principal penalty. Therefore, the compensation for the loss of the national currency is not optimal. The amount of compensation for state losses needs to be linked with the implementation of restitution and compensation for the assets/wealth of the perpetrators. The Asset Recovery Law needs to be established as a legal framework for the recovery of assets from corruption proceeds.

Keywords*: State Loss, Corruption*

A. Introduction

Money laundering crimes, or more commonly known as money laundering, in Indonesia have become one of the unresolved issues that negatively impact the financial system and economy, both globally and nationally. For example, the negative impact on the effectiveness of resource utilization, which is often used for illegal activities, causes a decrease in the optimal use of these resources, resulting in economic losses. This situation occurs because the financial results of investments in countries perceived as having better governance are higher. The trade balance has shifted positively for all countries with good economic performance. The negative impact of money laundering has significantly harmed

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the global economy, but it has also eroded public trust in the international financial system, leading to fluctuations that undermine the value of currencies and contribute to the instability of national and international economies. Context: The negative impact of money laundering on the global economy is significant, but it also undermines public trust in both national and international systems, leading to fluctuations that affect the stability of national and international economies.[1]

The method of money laundering or money whitening is carried out by passing illegally obtained money through a series of complex financial transactions that make it difficult for various parties to trace the origin of the money. Most people believe that derivative transactions are the most favored method due to their complexity and reach, which transcends jurisdictional boundaries. This complexity is then utilized by money laundering experts to carry out the stages of the money laundering process. The Indonesian monetary system, which adopts a free exchange rate system, allows for unlimited free transactions, including through national banking and its banking secrecy laws, which are factors that provide opportunities for money laundering in Indonesia. Money laundering is closely related to crimes, and therefore its eradication also means the elimination of the crimes behind it, especially organized crimes, such as: corruption, embezzlement, misappropriation of goods, labor exploitation, human trafficking, banking, stock markets, insurance, narcotics, psychotropic, human trafficking, arms trafficking, terrorism, extortion, fraud, theft, forgery, money laundering, tax evasion, environmental and living space crimes.

Essentially, in the context of the crime of money laundering, the main focus is on the recovery of assets resulting from the crime for various reasons. First, if the focus is on the perpetrator's behavior, it will be more difficult and risky. Secondly, when compared to tracking the perpetrator, tracking the results of the crime is easier because the perpetrator uses financial instruments, making the transaction records traceable. Third, the wealth obtained from the proceeds of crime serves as a source of livelihood for the perpetrators of money laundering and other primary crimes. If these proceeds of crime can be pursued and confiscated by the state, it will inherently reduce the incentive for committing money laundering crimes.

B. Literature

Law No. 8 of 2020 concerning the Prevention and Eradication of Money Laundering Crimes provides a new direction in terms of the concept of criminal liability for corporations, which is expected to have a deterrent effect on perpetrators of money laundering crimes. Before the emergence of this concept, only individuals were considered subjects of criminal law. After the concept of corporate criminal liability is applied in criminal law, then according to criminal law, in addition to individuals, corporations also become subjects of criminal acts. The emergence of global thinking that corporations, especially those in business, can be held criminally liable is due to the fact that corporations

[1] Andi Hamzah, Sistem Pidana dan Pemidanaan Indonesia, PT. Pradnya Paramita, 1997. Page 65.

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not only have a significant role and contribution to the welfare of society but also because many corporations engage in activities that are highly detrimental to society. Various types of disasters that can be caused by the actions of a company or corporation not only result in financial and material losses but can also lead to the deaths of many people.

The establishment of money laundering as a criminal offense will facilitate law enforcement in taking action against the perpetrators of such crimes. For example, implementing confiscation and seizure of criminal proceeds that are difficult to trace or have already been transferred to a third party. In this way, the pursuit of money from criminal acts can be prevented. The orientation of criminal eradication has shifted from "punishing the perpetrator" to seizing the "proceeds of crime." The declaration of money laundering as a crime also serves as a basis for law enforcement to confiscate assets from third parties who knowingly conceal, disguise the origin, source, location, transfer, or ownership of wealth that they know or should know is the result of a crime, or from parties who receive or control wealth that they suspect is the result of a crime, or from parties who follow and commit conspiracy, assistance, or collusion to commit money laundering, and other parties who are considered to obstruct law enforcement efforts.

The police as protectors, enforcers, and public servants, as well as law enforcement agencies, are tasked with implementing paradigm shifts within the system of universal values. This is also a result of the globalization process that is balanced in an escalative manner across various fields. The new paradigm includes, among others, the supremacy of law, human rights, democratization, transparency, and accountability, which are implemented in the practice of maintaining a clean government, including the maintenance of police functions. The police, as an institution of law enforcement and public service, must embody the values of democracy, transparency, and public accountability in every action.

In addition to being sentenced to imprisonment, the accused in corruption cases can also be subjected to additional penalties, such as the payment of restitution. The article, which is the result of normative legal research with a qualitative approach, examines whether the recovery of state financial losses from compensation payments in corruption crimes can be optimal. In the discussion, the penalty of paying compensation has been regulated in Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law No. 20 of 2001. The amount of compensation payment is at most equal to the assets obtained from the corruption crime. If the restitution is not paid, the convicted person will be sentenced to imprisonment for a duration not exceeding the maximum threat of the principal punishment. Therefore, the recovery of state financial losses cannot be optimal. The amount of compensation for state financial losses needs to be increased, along with the implementation of asset confiscation and seizure against the assets/wealth of the perpetrators. The Asset Forfeiture Law needs to be established as the legal basis for the confiscation of assets from corruption proceeds.

Based on the ICW data, the Attorney General's Office is the law enforcement institution

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that handles the most corruption cases, with 235 cases involving 489 suspects, with a state financial loss of Rp4.8 trillion, a bribe value of Rp732 million, an asset value of Rp3.4 billion, and no money laundering cases. So, on average, the cases handled by the Supreme Court's Office per month are 20 cases with a total state financial loss of Rp20.5 billion per case. From the existing criminal law, there is no definition of corruption or corrupt acts, neither in the interpretation of the laws that are no longer in effect nor in the current positive law.4 Law No. Law No. 28 of 1999 concerning the Implementation of a Clean and Free State from Corruption, Collusion, and Nepotism with the aim of eradicating corruption in accordance with the principles of the rule of law and regulations governing criminal acts of corruption. Meanwhile, Law No. 31 of 1999. 31st Year 1999 concerning the Eradication of Corruption Crimes as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999. 2001 Law No. 20 on Amendments to Law No. 31 of 1999. The 1999 Law on the Eradication of Corruption Crimes (UU Tipikor) does not provide a definition of corruption, but it outlines the elements of corruption in its articles.[2]

Based on the Tipikor Law, the KPK categorizes corruption crimes into various types. The types of corruption crimes are as follows: state financial losses; bribery; embezzlement in office; misappropriation; fraud; conflict of interest in procurement; and gratification. 5 Corruption crimes that harm the financial interests of the state are referred to in Articles 2 and 3. Besides the two types of corruption crimes mentioned, there are still other crimes related to corruption. The types of crimes related to corruption are outlined in Articles 21, 22, 23, and 24 of the Corruption Eradication Law, namely: obstructing the investigation process of corruption cases; failing to provide information or providing false information; banks failing to provide information related to the suspect; witnesses or experts failing to provide information or providing false information; individuals holding state secrets failing to provide information or providing false information; and witnesses who conceal the identity of the reporter.

The impact of corruption crimes causes the process of national development towards a better direction to be hindered, namely the improvement of people's welfare and the eradication of poverty. The current anti-corruption legal regime has established a legal norm that is characterized as extraordinary crimes. Due to the extraordinary nature of criminal law, its enforcement can be accepted as a form of punishment with the understanding that it deviates from ordinary legal principles. Efforts to combat corruption have been undertaken, including the revision of laws regarding the eradication of corruption crimes, the latest being Law No. 31 of 1999 on the Eradication of Corruption Crimes, which has been amended by Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption Crimes, which includes various strategies for combating corruption. The Anti-Corruption Law mandates the establishment of a special institution for combating corruption. Based on Law No. 30 of 2002 concerning the Corruption Eradication Commission, the Corruption Eradication Commission (KPK) was established. The KPK is often referred to by the legal community as a "superbody"

[2] Muladi dan Barda Nawawi Arief, 2005. Teori - teori dan Kebijakan Hukum Pidana. Alumni, Bandung. Hal.86.

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institution because its authority is extraordinarily extensive in investigating, prosecuting, and adjudicating every person, state official, state administrator, and even corporations suspected of committing corruption, thereby causing financial and economic losses to the State.[3]

The imposition of penalties is also part of the efforts to combat corruption crimes. The Anti-Corruption Law includes criminal sanctions that differ from previous laws, including minimum and maximum fines. Article 2 of the Anti-Corruption Law, for example, imposes a minimum fine of Rp200,000,000.00 (two hundred million rupiah) and a maximum fine of Rp1,000,000,000.00 (one billion rupiah) for anyone who, in violation of the law, commits acts that enrich themselves or others or a corporation that can harm the state finances or the state economy. In addition, this Anti-Corruption Law also imposes additional penalties in the form of payment for state financial losses.

Referring to the Circular Letter of the Supreme Court of the Republic of Indonesia No. 12 of 2010 concerning the Imposition of Heavy and Proportional Penalties in Corruption Crimes, dated September 27, 2010. In the aforementioned SEMA, all judges at all levels are requested to impose appropriate and proportional sentences, not only by imposing the minimum penalty, but also by considering the level of the defendant's actions and the potential harm to the state caused by those actions. Based on the above description, the writer is interested in conducting a thorough analysis, the results of which are presented in the research paper with the title: Criminal Law Policy in the Restoration of State Financial Order in the Form of Payment of Compensation by Convicted Corruptors.[4]

C. Methods

The methodology used in this research is qualitative methodology, with normative legal principles as the primary basis and empirical legal principles as the secondary basis. The data sources in this research are obtained from secondary data as primary data and primary data as secondary data. Next, the collected data will be analyzed using qualitative methods.

D. Results And Discussion

1. Criminal Policy in the Restoration of State Financial Losses in the Form of Monetary Compensation by Convicted Corruption Offenders

According to the Anti-Corruption Law, corruption is a type of crime that severely harms the state's finances or the economy of the state and hinders national development. The existence of state financial losses is one of the elements in the crime of corruption, but the Corruption Act does not provide a definition of state financial losses. What exists is only an explanation regarding state finances as provided in the explanation of state finances in the aforementioned regulations, namely: “State finances referred to are all forms of state wealth

[3] Roeslan Salehlm. “Perbuatan Pidana dan Pertanggungjawaban Pidana” dua pengertian dalam Hukum Pidaina” (Jakarta: Aksara Baru, 1983). Hal.45.
[4] Muladi and Barda Nawawi Arief, 2005. Teori - teori dan Kebijakan Hukum Pidana. Alumni, Bandung. Hal.95.

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in any form, whether separated or not separated, including all parts of state wealth and all rights and obligations arising from it. “Context: What exists is only an explanation of state finance as in the explanation of state finance in the explanation of state finances, namely: “State finance as intended is the wealth of the state in any form, whether separated or not separated, including all parts of state wealth and all rights and obligations arising from it:[5]

(a) oversight in the management, administration, and accountability of state institution officials, both at the central and regional levels;
(b) supervision, management, and accountability of State-Owned Enterprises/Regional-Owned Enterprises, foundations, non-profit organizations, and companies that provide state capital, or companies that provide third-party capital based on agreements with the State.

Based on Law No. 1 of 2004, what is meant by state or regional financial losses is: "Loss of money, securities, and goods that are real and certain in amount as a result of actions against the law, whether intentional or negligent. “The same definition is also included in Law No. 15 of 2006 concerning the Financial Audit Agency, which states that "the loss of money, securities, and goods, which is real and certain in amount, as a result of actions against the law, whether intentional or negligent."

Based on the provisions of Article 1, number 22 of Law No. 1 of 2004, it can be understood that the concept referred to is the concept of state finances in a material sense, where an act or action can be said to harm state finances on the condition that there is a state financial loss that is real and tangible. Meanwhile, in Article 2, paragraph (1) of the Anti-Corruption Law, it is explained that state finances in the formal sense are said to "potentially harm state finances or the state economy." However, with the Decision of the Constitutional Court No. 25/PUU-XIV/2016, which removed the meaning of the word "can" in the phrase "can harm the state's finances," the Law No. 15 of 2006, Law No. 1 of 2004, and the Tax Law are consistent and synchronized in interpreting the concept of state finances. Regarding the state's financial assets, both the old law, namely Law No. 3 of 1971, and the new laws, namely Law No. 31 of 1999 and Law No. 20 of 2001, establish the policy that state financial assets must be returned or compensated by corrupt parties (Asset Recovery).[6]

Until the handling of corruption cases in the future, it will no longer be oriented towards the state's financial interests and the financial independence of the state-owned enterprises equally, but will be more focused on the return of state assets. The issue of state asset privatization related to the status of state assets placed through the issuance of shares by the central/regional government in state-owned enterprises (BUMN) still needs to be a legal controversy. Even now, it is not only a public discourse, but there are also several parties who have filed lawsuits to annul the placement of state money in state-owned enterprises (BUMN) as part of state finances in the Constitutional Court. So far, the regulation regarding

[5] Muladi and Barda Nawawi Arief, 2005 Teori - teori dan Kebijakan Hukum Pidana. Alumni, Bandung. Page 28.
[6] Barda Nawawi Arief, Kapita Selekta Hukum Pidana, 2003. Hal.82.

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the status of state funds in state-owned enterprises (BUMN) is based on the provisions of Article 2 of Law No. 17 of 2003 concerning State Finance, which includes the phrase: "...including wealth separated in state/region-owned enterprises" that has deposited state funds in BUMN as part of the state financial regime.

The regulation of the state financial status in SOEs, as stipulated in Article 2 of the State Finance Law, is not separate from the mandate of Article 23 E of the 1945 Constitution which emphasizes the management of state/regional wealth derived from state finances under the audit authority of the Financial Audit Agency. The independence of the judiciary, which is even more important, is in the context of enforcing the law in the society of the Unitary State of the Republic of Indonesia in general and its citizens in particular. The explanation in Article 27 paragraph 1 of the 1945 Constitution, which states: "All citizens are equal before the law and in government and are obliged to uphold the law and government without exception." Law enforcement officers assigned in the country, by carrying out their duties and judicial authority, are expected to uphold the law without regard to skin color, race, or ethnicity. I believe that the rights of every individual are the same in the eyes of the law based on the principle of "Equality before the Law" and do not favor anyone, ensuring the most just judiciary.[7]

The practice of seizing (hand having) items resulting from a crime as evidence (*corpus delicti*) in criminal proceedings often does not align with the purpose of the law itself, which is to obtain proportional justice. Regarding the seizure of goods in the Criminal Procedure Code (KUHAP), Article 1, paragraph 16 of the KUHAP states the definition of seizure. "Seizure is a series of actions by investigators to take control and keep under their authority movable or immovable property, with the aim of serving the interests of the investigation, prosecution, and trial." Seizure is included in one of the coercive measures (*dwang middlein*) that can violate Human Rights, therefore according to the provisions of Article 38 of the Criminal Procedure Code (KUHAP), seizure can only be carried out by investigators with permission from the Chief Judge of the District Court in urgent circumstances. However, if pressed, the seizure must be reported to the Chief Judge of the District Court immediately after it is carried out.

It cannot be denied that in a criminal case, whether it is a general criminal case or a specific criminal case, such as a corruption case, coercive measures are required in the process of presenting evidence. This crime evidence, without proper authority, operational standards, and good management in practice, is often misused by certain parties. Like the disappearance of evidence, the misuse of evidence tools, and other similar actions with various motives and motives. The accusation against someone who has passed away is related to the evidence that was seized by the relevant officials for the purpose of conducting an investigation. The seizure carried out by the relevant authorities against the deceased defendant is limited in scope. The return of state funds essentially proves that the suspicion

[7] Roeslan Salehlm. "Perbuatan Pidana dan Pertanggungjawaban Pidana" dua pengertan dalam Hukum Pidana (Jakarta: Aksara Baru, 1983). Hal. 76.

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of an individual's wealth is the result of corruption. The proceeds of corruption are known to cause harm to the state in corruption crimes, which is a formal offense, namely the act of corruption itself, as long as the elements of the act have been fulfilled.[8]

The series of corrupt activities, not the resulting consequences, are the actions that potentially harm the state's finances. The state's financial losses are addressed in the Anti-Corruption Law, specifically Law No. 31 of 1999 and Law No. 20 of 2001, which stipulate the policy that the state's financial losses must be returned or compensated by the perpetrators of corruption. The Anti-Corruption Law stipulates that the recovery of state financial losses can be carried out through two instruments, namely criminal instruments and civil instruments.

2. Efforts Made by the Police Investigators in Overcoming Obstacles Restitution of State Financial Assets in the Form of Monetary Compensation by Convicted Corruption Offenders

Initially, the purpose of criminal law is to protect the interests of individuals or to protect human rights and the interests of society and the state from criminal acts or wrongful acts that harm individuals, society, and the state, and also to ensure that authorities do not act arbitrarily towards individuals or society. Corruption crimes generally involve a group of people who mutually benefit from the corruption crime. The concern about their involvement as suspects, then among these people, they will mutually support each other. Thus, whether consciously or unconsciously, acts of corruption are carried out in an organized manner within their work environment. For example, embezzling salaries or misusing their rights as employees Corruption in the Indonesian judiciary can therefore be said to have become visibly apparent since the executive branch has been able to intervene in the judiciary for its political interests. This reality began during the old order regime under President Sukarno.[9]

The hope for the improvement of corruption cases will be better and can uphold the value of justice. The strategy for enforcing the law has become increasingly relevant in relation to Presidential Instruction No. 5 of 2004 dated December 9, 2004, concerning the Acceleration of Corruption Eradication. Various difficulties were faced by the authorities involved in eradicating this corruption. These obstacles can be caused by political pressure originating from the interference of the executive or legislative branches, or due to the complexity of bureaucracy in the judiciary. Not only that, it is not uncommon for law enforcement officers to also "play" in protecting the perpetrators of corruption. This is one of the reasons why corruption cases are difficult to eradicate in Indonesia, as they often involve state officials and those in power. We must realize that the increase in uncontrollable corruption crimes

[8] Barda Nawawi Arief, Kapita Selekta Hukum Pidana, 2003. Hal.24.
[9] Nanda Agung Dewantoro, Masalah Kebebasan Hakim dalam Menangani Suatu Perkara Pidana (Aksara Persada: Jakarta, Indonesia, 1987). Hal 59.

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will have an impact not only on the life of the national economy but also on the life of the nation and state as a whole.

The confiscation carried out by officials against the deceased defendant has a limited process. The return of state funds essentially proves that the suspected wealth of an individual is the result of corruption. The result of corruption is known to have elements that can harm the state in the crime of corruption, which is a formal offense, namely the existence of a corruption crime that is fulfilled by the elements of actions that have been committed. The elements of the corrupt act do not only involve the consequences of an act that potentially harms the state's finances. The term 'state financial losses' is used in Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001. There are several sections of this law that include the term ‘state financial losses’ or ‘harmful to the country's finances’.

Factors causing national financial crises include the mismanagement of national finances, which leads to their misuse and results in national crises. Article 2 of Law No. 31 of 1999 regulates the first act of corruption. Based on the provisions of Article 2, the prohibited acts of corruption are enriching oneself, enriching others, or enriching a corporation, acts of corruption which are carried out in a way that contravenes the law. The long history of combating corruption in Indonesia shows that tackling corruption crimes indeed requires extra harsh measures and a very strong and serious political will from the ruling government. The anti-corruption policy itself is closely related to the establishment of regulations that were born during the respective government period.[10]

The enactment of laws that specifically regulate the eradication of corruption crimes is not only aimed at strengthening the authority or legitimacy of the government. It requires more than just the establishment of a legal framework; it necessitates the enforcement of justice as outlined in the laws through the involvement of law enforcement agencies that are committed to eradicating corruption with firm, fair, and impartial methods. The existence of anti-corruption laws is just one of the many efforts to combat corruption with diligence. In addition to strict law enforcement, public awareness is also needed to eradicate corruption. Public awareness can only be fostered when the community possesses knowledge and understanding of the nature of corruption crimes regulated by the law. Therefore, the socialization of laws on the eradication of corruption, especially regarding the criminal acts of corruption regulated within them, needs to be continuously carried out simultaneously and consistently. Public awareness of corruption offenses is absolutely necessary, considering that ignorance of the existence of legal regulations cannot be used as an excuse to evade legal responsibility.[11]

Even though it does not exclusively regulate corruption crimes within it, the Criminal Code has regulated many corruption acts, which were subsequently followed and imitated by the

[10] Moeljatno, 1987. Asas-asas Hukum Pidana. Bina Aksara, Jakarta. Hal.43.
[11] Moeljatno, 1987. Asas-asas Hukum Pidana. Bina Aksara, Jakarta. Hal.72.

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drafters of anti-corruption laws to this day. However, there is a need for a clear path to hope for a criminal law that is appropriate and in harmony with the way of life of the Indonesian people, considering that the Criminal Code we have is old and has been inherited from colonial times. In its development, the Criminal Code (KUHP) has been amended, supplemented, and improved by several national laws such as Law No. 1 of 1946, Law No. 20 of 1946, and Law No. 73 of 1958, including various laws concerning the eradication of corruption that more specifically regulate several offenses in the KUHP. The corruption offenses included in the Criminal Code consist of abuse of power and offenses related to the abuse of power. In accordance with the nature and character of the Criminal Code, the corruption offenses regulated within it are still considered ordinary crimes.

E. Conclusion

Based on the discussion that has been explained above, it can be concluded as follows:

1. Based on the research that has been conducted, it can be concluded that the process of returning state money suspected to be the result of corruption when the defendant has passed away can be carried out based on Article 34 of the Republic of Indonesia Law No. 31 of 1999 in conjunction with the Republic of Indonesia Law No. 20 of 2001 concerning the Eradication of Corruption Crimes through the State Attorney by summoning the family or heirs who control state money, in the court where the defendant resides.
2. In the Anti-Corruption Law, the return of state financial losses is regulated. The stipulation of compensation payment is that for perpetrators of corruption crimes, an additional penalty in the form of compensation payment can be imposed, with the amount being at most equal to the value of the assets obtained from the corruption crime.

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