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Return of State Financial Losses Resulting From Corruption and Money Laundering Crimes

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Abstract

Corruption has become a rampant habit within society. Corruption is a manifestation of greed in people, which they will never feel enough of the wealth they already have. One form of criminal act other than corruption that is common in Indonesian society is the Money Laundering Crime. In this journal, we examine the legal liability and principle of returning state financial losses and the application of asset forfeiture in efforts to return state finances. Under the money laundering law, judges are given the authority to be able to confiscate and expropriate the property of defendants who commit crimes of corruption and money laundering even before the fall of the judge's ruling in court. The recovery of state assets is a concept that is equal with the concept of restorative justice. The deprivation of assets in the recovery of state financial losses is quite important to quell crime with economic motives. This is because so complex are the acts of economic-motivated lending that they are often difficult and complicated for law enforcement to handle.

Keyword: corruption; money laundering; stolen assets; stolen assets recovery

I. INTRODUCTION

In this day and age among the people corruption is rampant, even corruption can be called daily food. Greed is a part of human nature that always makes him feel short of what he already has. This corruption can occur due to greed and dissatisfaction from those who commit these crimes, officials who already have high ranks and abundant wealth, and do not rule out the possibility of committing corruption crimes. Law Number 31 of 1999 concerning Corruption Crimes as amended by Law Number 20 of 2001 concerning the eradication of corruption crimes is a law that regulates the return of state wealth losses caused by corruption crimes. The application of the criminal law mentioned in the Articles of Law Number 31 of 1999 concerning Corruption Crimes Jo Law Number 20 of 2001 refers to the refund of substitute money to the perpetrator. The return of losses suffered by the state can be achieved in several ways, including freezing, expropriation, and confiscation. So that countries with victim status can receive legal returns of losses from assets. The return on assets of corruption actors is vital to restore the country's economy.

The Criminal Cost of Substitute Money is one of the criminal penalties added to the judgment other than the main crime which in principle a must be carried out by the Convicted Corruption Crime as mentioned in Article 18 paragraph (1) letter b of Law No. 31 of 1999 concerning the Crime of Corruption which basically states that the payment of substitute money in the amount of as much as possible is equal to property obtained from corruption crimes (Republic of Indonesia, 1999). The additional criminal amount of

replacement money payments is determined in the indictment, but sometimes in practice there are differences of opinion originating from the Prosecutor and Judge regarding the provision of charges against perpetrators of corruption crimes (Juandra, Din, & Darmawan, 2021). The Defendant is obliged to pay the replacement money within a period of not more than 1 month, and if the Defendant does not pay the replacement money within 1 month after the court's decision that has obtained a permanent law, then the property owned can be confiscated by the Prosecutor to conduct an auction as compensation for replacement costs. However, if the Defendant does not have property or substitute money then as an additional criminal verdict is imposed it can be supplemented by imprisonment whose duration does not exceed the maximum threat of the principal sentence or the brevity of imprisonment can be added (Hikmawati, 2019).

Corruption is not the only means of running *men's rea* irresponsible individuals, the Money Laundering Crime can be said to be one of the well-known criminal acts in the Indonesian people. Money laundering is an act committed to mark or change assets or cash obtained from a crime, so that it can be seen from a convincing source. The Criminal Offense of Money Laundering is formulated in Article 3 paragraph (1), Article 6 paragraph (1), and also Article 7 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. There are many criminal acts that fall into the class of Money Laundering Crimes, namely transferring, spending, transferring, entrusting, exchanging with the currency of another country, exchanging for securities or valuable property, bringing out negeri, or other acts that should be suspected of him as a result of the criminal act of money laundering with the aim of disguising or concealing the origin of the property.

It can be concluded that from the explanation above, the author wants to raise the issue of the Return of State Financial Losses as a result of the Corruption and Money Laundering Crimes as formulated in the formulation of the problem, namely How is the legal liability and principle of returning state financial losses, how to apply asset forfeiture in an effort to return state finances, and how to apply surrogate money in an effort to recover the country's financial losses.

II. METHOD

The research method used is normative juridical with a *statute approach* and a *conceptual approach.* The research technique begins with sorting out the laws and regulations governing corruption and money laundering. The legal provisions in question are Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The provisions of the law will be selected in terms of linkages to legal issues discussed with the importance of how to legally liable and the principle of returning state financial losses, how to apply asset forfeiture in efforts to return state finances, and how to apply substitute money in an effort to recover state financial losses. The suitability obtained will be drawn to assess whether the return of state financial damages in corruption and money laundering crimes is appropriate or not appropriate.

III. DISCUSSION

Theory of Legal Liability and Principles of Return of State Financial Losses from Corruption and Money Laundering Crimes

State Loss Theory

That in the Corruption Crime there are at least thirty types of corruption which are further classified into seven types of Corruption Crimes, including: 1) corruption offenses that cause losses to state finances or the negata economy; 2) bribery offenses; 3) embezzlement in office; 4) *delik* commits extortion; 5) *delik* commits fraud/fraud; 6) conflicts/conflicts of interest in procurement; 7) *delik* receives gifts (gratuities) by civil servants (Ali & Yuherawan, n.d.) . According to Moeljatno, *delik* is a behavior whose regulation is regulated by law which if it is not subject to legal suitability then it is threatened

with criminal (sanctions) (Moeljatno, 2008). The formulation of *delik* in criminal acts is divided into two types, namely formal *delik* and material *delik* (Prastowo, 2006). *Delik* Formil is a *delik* whose reference to acts prohibited by law without waiting for the consequences of the action to occur, *delik* formil is considered a perfect *delik* if a series of actions have been carried out that have been regulated by law, while *Delik* Materiil is a *delik* whose formulation emphasis on certain consequences prohibited by law. Material Review is considered to have been completed if the series of acts have been completed and caused a consequence prohibited by law.

In the context of the Corruption Crime to harm state finances as regulated in Articles 2 and 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes was originally a *delik* without consequences so that there was no need for consequences prohibited by law, but through the decision of the Constitutional Court Number 25/PUU-XIV/2016 amends the formal deliberations in Article 2 paragraph (1) to material deliberations which are required as prohibited by law. The crime of money laundering is closely related to the crime of corruption as a material offense. The criminal act of money laundering is a process of *layering* or disguise the origin of wealth obtained through criminal acts then converted into property as if obtained from legal activities or legal acts (Sutedi, 2008). The Money Laundering Crime occurs due to triggers as contained in Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes where one of the triggers for the occurrence of Money Laundering Crimes is corruption. Corruption crime or is a *predicate* crime closely related to the Money Laundering Crime as or can be known as a follow-up *crime*. *Predicate Crime* or commonly referred to as original crime has the meaning of a criminal act that triggers the occurrence of other criminal acts (Chandra & Okta, 2016). So that it is related to the Corruption Crime, the criminal act that follows is the Money Laundering Crime. The definition of about Finance Nis essentially the entire wealth of the country in any form whether separate or not separate arising from: 1) being in possession in central and regional levels; 2) SOEs/BUMDs, foundations, legal entities, and companies that level the capital of third parties based on state agreements (Republic of Indonesia, 1999). The lossn state finances described in the treasury law means that there is a shortage of assets, both money, securities, and real goods due to unlawful acts (Republic of Indonesia, 2004). In determining financial losses, the state is only entitled to be assessed by the Financial Audit Agency (BPK) by calculating the difference between the supposed expenses and the reality that occurs (Astuti & Chariri, 2015). According to Schepper, cause is objective behavior or based on science in cases that occur and the behavior brings about a factor of change (Lilik Mulyadi, 2007). In the event of a Money Laundering Crime, the perpetrator layers or *disguises* the origin of wealth obtained from the proceeds of enriching himself or others that harm the country's finances or economy based on the formulation of article 2 paragraph (1) so that the act is like the result of his legitimate business.

Liability for Return of State Financial Losses

That with the arising of state losses under the formulation of Article 2 and Article 3 of the Corruption Act, it is possible for the subject of "Everyone" to be held accountable for the acts committed where the element of "Everyone" includes individuals or corporations. In terms of criminal responsibility for corruption, often the perpetrator seeks to recover back the state financial losses that he has done to abolish his criminal liability. However, based on Article 4 of the law on the eradication of corruption, it is stated that efforts made to recover the state's financial losses do not abolish its criminal charges, but only as a mitigating factor (Musahib, 2015). In practice, in the interpretation of Article 4 of the anti-corruption law, corruption is not criminalized Corruption if the perpetrator returns the financial losses suffered by the state before the investigation process, on that basis, the investigator can continue the legal process that was criminalized to him, and if the return of state financial losses is made at the stage of prosecution or trial, it only alleviates the criminal conviction, not abolish the criminal charges against him (Ali & Yuherawan, n.d.) .

Efforts to Recover or Return State Financial Losses can be pursued through civil lawsuits or criminal channels, criminal prosecution through several methods: a) tracing of wealth because by tracing wealth can be identified as to the origin of wealth, regarding the

tracing of the origin of wealth is closely related to the criminal act of money laundering as a follow-up crime or called a follow-up crime of the Corruption Crime as *a predicate crime*; b) Confiscation of Assets/Assets; c) prosecution of payment of surrogate money; d) execution or execution of court decisions (Kabba, Arjaya, & Widyantara, 2021). In an effort to recover losses incurred in state finances that are derived from the proceeds of corruption and money laundering crimes, it is carried out by depriving certain goods obtained from criminal acts committed by the perpetrator. As stipulated in Article 39 of the Penal Code which essentially states that: 1) the goods of a person who has been sentenced to criminal may be subject to deprivation; 2) regarding unintentional and convicted crimes may also be subject to deprivation; 3) deprivation can be carried out by an authorized person (Abvianto Syaifulloh, 2019). The manifestation of the practice of recovering financial losses suffered by the state is contained in Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which explains the main types of crimes contained in article 10 of the Criminal Code (KUHP), which this type of additional crime is new to the main type of crime regulated by article 10 of the Criminal Code (Mustaghfirin & Efendi, 2016). Not only the main criminal, in article 18 paragraph (1) of Law No. 31 of 1999 explains that in addition to additional crimes as referred to in the Criminal Code, as additional crimes, namely: 1) the seizure of movable goods that are tangible and intangible, both movable and immovable objects; 2) payment of money for additional criminal substitutes with a maximum nominal or the same value obtained from the proceeds of corruption crimes; 3) closure for a maximum of 1 (one) year; 4) the revocation or removal of all or some certain rights or (Republic of Indonesia, 1999).

Principles in the return of state financial losses

In an effort to return State Financial Losses in the form of return of assets in corruption crimes, in relation to the act of tracing, freezing, confiscating, expropriation, and ending with the stage of returning corrupted state assets is a concept that is in line with the concept of restorative justice or commonly referred to as *restorative justice* which prioritizes the repair and return of losses caused by the case of a criminal act (Hestaria, Hartono, & Setianto, 2022) . The embodiment of restorative theory, one of which is the return of state assets that have been obtained by the perpetrator from the proceeds of corruption crimes in the form of criminal law actions and civil lawsuits. In restorative theory criminal convictions are not aimed at satisfying absolute demands, retaliation is not the main goal, but only as a means to protect the interests of society (Dr. H.P Panggabean, 2020). The main point of mind in the return or recovery of state financial losses can be viewed from at least three aspects, namely: 1) the juridical aspect, which discusses the legal system in the criminal system; 2) social aspects, which discuss the impact of corruption crimes that have an impact on the lives of the wider community; 3) philosophical aspects which discuss general ethics that display the general sources of the causes of corruption crimes (Dr. H.P Panggabean, 2020). Furthermore, in an effort to recover or recover state financial losses based on the criminal system of corruption, there are principles: a. the *Man Oriented* principle, where there is a legal reason for the judge to sentence the perpetrator to the death penalty; b. the *principle of Act Oriented*, which refers to the existence of positive conversion to be willing to return at least 60% (sixty percent) of the proceeds of corruption so that the penalty for The accused was sentenced to under 5 (five) years in prison (Panggabean;, 2009). The return or recovery of state financial losses is also accommodated in the criminal act of money laundering which gives the judge a basis for confiscating and depriving the defendant of property even before the fall of the judge's ruling in court.

Application of Asset Forfeiture in Efforts to Return State Financial Losses

Currently in Indonesia, the return of assets in an effort to recover financial losses suffered by the state as a result of corruption has become an update in the criminal law which was previously only regulated in the Criminal Code (KUHP), now the provisions regarding the seizure of assets derived from the proceeds of criminal acts, are accommodated in each of the specific arrangements in criminal law. As in Article 18 (a) of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (Tipikor Law), Law Number 35 of 2009 concerning Narcotics, and also regulated in Law Number 8 of

2010 concerning Prevention and Eradication of Money Laundering Crimes (Latifah, 2015) (Latifah, 2015). Here the author will discuss the demands ranging from the legal basis for asset seizure to the obstacles experienced by Law Enforcement Officers in terms of the seizure of typical assets.

Legal Basis for Asset Forfeiture of Corruption Crimes

The basis for expropriating assets can be reviewed from the law derived from Article 18 paragraph (1) of the Tipikor Law which basically explains that additional crimes can be in the form of seizure of tangible movable objects and intangible movable objects including companies owned by convicts where corruption crimes are committed, as well as from objects which replaces these goods (Republic of Indonesia, 1999). From the article, it is clear that the seizure of assets is an additional criminal offense that can be imposed on the Defendant in a corruption case.

In addition to the seizure of assets that are used as demands of the Public Prosecutor, the seizure of assets can also be carried out in accordance with Article 38 C of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which basically explains that if after the decision of a court decision of permanent legal force and it is known that there is still property belonging to the convict sourced from a the result of the crime of corruption but has not been subject to deprivation, then as mandated in Article 38B paragraph (2) can bring a civil suit against the convict or his heirs. In our opinion, this article is an excellent legal breakthrough, which is accommodated by the Indonesian government because it closes the space for convicted corruption cases in terms of hiding their wealth. As we know, the Public Prosecutor is just a human being who cannot be separated from the mistakes in his life, so if the Defendant in a corruption case is able to hide the results of a criminal act, but one day there is still the property of the Corruption Defendant that is suspected or reasonably suspected to be derived from the proceeds of a criminal act, then against the property can be seized by filing a suit, both against the Convict and his Heirs. However, even if it is a good breakthrough, a special mechanism is still needed that regulates in detail how to implement the seizure of assets so as not to cause ambiguity or discretion in practice.

From these two articles, the author can conclude that at this time juridically (*in case*: The Tipikor Law) there are 2 (two) efforts that can be made by law enforcement officials, namely by making additional criminal charges of asset seizure and can also be by filing a lawsuit (deprivation *in brake*), either to the Convict and / or heirs.

Systematics of Asset Seizure Controlled by Corruption Convicts (Jati, 2021)

One, the Asset Tracking Gas Task Force will track down all assets belonging to the suspect or other related parties (at the investigation stage); Second, if all asset data has been found, verification is carried out whether there are indications related to typists and/or TPPU, if so, the investigator immediately conducts a seizure; Thirdly, the confiscated object will be included in the case file for evidentiary purposes by the Public Prosecutor at a later trial which will be included in the claim with the status of being seized for the state; Fourth, after the case is *incraht* the prosecutor immediately executes the implementation of the court's decision by means of if the evidence is in the form of cash or money in the account, it will be directly deposited into the state treasury, while if the evidence In the form of assets, the auction will be carried out first and then deposited into the state treasury. In the event that the assets are not sold for auction, PMK No. 8 of 2018 will be applied which stipulates that the Prosecutor will give a proposal for the assets to be given to APH or other agencies whose nature requires the local government.

Obstacles in the Application of Asset Seizure of Corruption and TPPU Convicts (Nurhalimah, 2019)

The attempt to seize state assets in the case of typical (state financial losses) is considered quite difficult for our current law enforcement officials, the author will divide into 2 (two) scopes of land, namely the criminal and civil scopes. In the criminal sphere, the difficulties are 1) because the corruptors have easy and wide access skills, making them difficult to reach; 2) the place of concealment of a typical object beyond the territorial boundaries where it cannot be touched by law enforcement officials; 3) The suspect was

not found, escaped, or even died; and 4) It has been proved to be a financial loss to the state, but the Public Prosecutor has failed to prove his indictment, leaving the Defendant free from all charges.

Within the scope of a civil suit for the return of state finances, the difficulties are 1) the heirs are not found; 2) the difference between the principles of criminal and civil law, where civil evidence is more towards the truth, while the criminal is material truth. This makes it difficult for the State's Attorney to recover the state's financial losses, because the property allegedly belonging to the convicted corruption convict, will not be seized if it can be proved to be the property of another person,; 3) The civil code provides that the parties have equality of rights, the consequence of which could be that the State's Attorney becomes a Reconvention Defendant, which opens up the possibility that the State's Attorney is potentially defeated and required to pay damages to the Reconvening Plaintiff and pay the costs of the case; 4) Civil litigation proceedings that are prolonged or protracted, from the first stage until judicial review (if the Defendant files a PK); and 5) The Code of Civil Procedure uses the principle that proof is imposed on him who postulates (This has been in accordance with Article 1865 of the Penal Code and Article 163 of the HIR) which is contrary to the reverse burden of proof in the TPPU and TPPU Act.

The Importance of Asset Forfeiture Efforts in the Recovery of State Financial Losses

Indonesia as a country of law (*rechstaat*) is obliged by law in pursuing law enforcement based on the values of justice, with the aim of achieving welfare for all levels of society. Therefore, legal handling of economic-motivated criminal acts must also be carried out by pursuing an equitable approach for all people, namely through the return of the instruments and proceeds of the crime to the state in the interests of the entire community.

If we refer to UNCAC, in international principle the seizure of assets has two purposes, namely; First, so that the perpetrator does not benefit from unlawful acts, in this case the criminal act of corruption. The benefits derived from the proceeds of the crime must be seized and then used to compensate the victims, both the state and each individual. Second, in the step of giving a deterrent effect to perpetrators who are contrary or against the law. The act of expropriation is carried out as a form of certainty that the assets obtained from the proceeds of criminal acts will not be used for subsequent evil acts and also serve as a preventive effort (INDONESIA, 2013).

Efforts to seize assets in the recovery of the country's financial losses are important to eradicate crimes with economic motives because the more complex a criminal act with an economic motive is, the more complex the crime is to be dealt with by law enforcement ("Press Release : The Asset Forfeiture Bill Needs to Be Passed Immediately - CENTER FOR REPORTING AND ANALYSIS OF FINANCIAL TRANSACTIONS," n.d.) . In addition, according to the author, the seizure of assets is considered capable of restoring the state's financial condition because the losses can be returned by convicted corruption acts, considering that usually the nominal of financial losses in corruption cases is not small.

Application of Surrogate Money Costs in Efforts to Recover State Financial Losses

In addition to the act of expropriation in an effort to recover state financial losses, the application of replacement money costs is also one of the steps in the framework of recovering or returning state financial losses. In the imposition of surrogate money costs for the recovery or return of losses to finances suffered by the state, it is often notified in court decisions. In addition to the existence of the main crime, the panel of judges has the right to impose an additional penalty in the form of a substitute money fee due to the Corruption Act (Harahap;, 2009). In the event that additional criminal charges in the form of substitute money can only be carried out in Articles 2 and 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes by referring to Article 17 which basically states that criminal acts are regulated in Articles 2, 3, 5 to Article 14, in addition to being subject to the main crime, additional crimes can also be imposed as stipulated in Article 18 (Alrianto Tajuddin Jurisprudentie & Alrianto Tajuddin, 2015). The criminal payment of surrogate money is essentially aimed at the recovery of state losses due to corruption. Therefore, the determination of the amount must be balanced with the results of corruption obtained by

the convict (Ade Mahmud, 2020). Not only does it contrast to the results obtained by the convict, further according to Fontian Munzil the calculation of the losses suffered by the state must be taken into account in detail by paying attention to the vulnerable time until the convict can return the proceeds from the crime of corruption (Munzil et al., 2015).

However, referring to Article 18 paragraph (1) point b, the replacement money decided to the convict does not exceed the amount obtained in the criminal act of corruption because there is no rule governing the minimum limit so that the amount paid is not related to the amount of state financial losses. So the purpose of applying the cost of surrogate money is to deprive the convict of the profits obtained from through corruption crimes (Genova, Court, & North, 2016). Criminal implementation in the form of payment of replacement money costs is carried out by the Public Prosecutor under Article 270 of the Criminal Procedure Code in which the Prosecutor executes a court decision that has permanent legal force, on that basis the collection is under the responsibility of the executor (Rambey, 2016). In practice, the process of recovering financial losses suffered by the state through the payment of replacement money costs takes a long time due to a series of the legal process starts from the investigation stage until the decision of a case with permanent legal force (Sari, Sudarti, & Monita, 2021) because according to julpadi several obstacles faced by Palam enforcement of replacement money costs include: 1) the perpetrator is not able to pay replacement money; 2) the non-remainder of the convict's property; 3) corruption cases have been running for a relatively long time, making it difficult to trace the wealth obtained from corruption crimes; 4) there is no definite rule yet what if the convict cannot afford the cost of the replacement money (Sari et al., 2021).

IV.CONCLUSION

Corruption Crimes have at least thirty types of corruption which are further classified into seven corruption groups. The path that can be taken to carry out the State Financial Loss Recovery is to use the criminal and civil route. The money laundering law provides for the loss of state finances which gives judges the authority to be able to confiscate and deprive defendants of property that commit crimes of corruption and money laundering even before the fall of a judge's ruling in court. The concept of returning or recovering state assets that have been corrupted can be said to be in accordance with the concept of restorative justice.

The legal basis for the seizure of assets can be seen in Article 18 paragraph (1) of the Typographical Law. In addition to the seizure of assets that are demanded by the Public Prosecutor, the seizure of assets can also be carried out in accordance with Article 38 C of the Typo law. Often law enforcement officials have difficulty in implementing the seizure of these assets, both in the criminal and civil sphere. However, efforts to seize assets in recovering state financial losses are important enough to quell crimes with economic motives. This concept makes it easier for law enforcement to deal with economically motivated crimes.

In addition to the seizure of assets, charging replacement money as a form of criminal punishment as directed to convicts, namely Article 2 or 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes to corruption convicts, is also categorized as a form of efforts to recover state financial losses carried out by criminal path. Criminal charges in the form of surrogate money costs are carried out after the fall of a court decision with permanent legal force and are carried out by the Public Prosecutor, especially the prosecutor as the executor of the court decision. The purpose of applying the cost of substitute money is to deprive the convict of profits obtained from through corruption crimes where the calculation of state financial losses must be carefully considered with time until the state money can be recovered or returned by the corruption convict.

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