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The Imperative of State Financial Restitution in Anti-Corruption Eradication Measures

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ABSTRACT

Corruption is defined as a white-collar crime that mostly affects public authorities. In addition, corruption is categorized as an outstanding crime because it obstructs the people's economy and national development. Uncontrollable corrupt practices will have a comprehensive impact on a country's government system and can serve to further disrupt future governance. Therefore, the restoration and return of state financial losses from corruption is a high priority in upholding legislation and penal law in Indonesia. The objective of this research is examine several corruption crimes in Indonesia, their eradication efforts, and state governments' attempts in restitution of state financial losses caused by corruption offenses. A normative juridical research method was used in this research, combined with legislative approach, case approach, comparison approach, and theoretical approach. The research concluded that corruption offenses are divided into seven categories of offenses that can lead to losses of state finances. The eradication of on Indonesia's corruption has been realized since the New Order until now.

Keywords: *Corruption, Corruption Eradication Comission, State Financial Losses*

INTRODUCTION

Corruption is a type of embezzlement acts that often commit by state officials. Corruption may occur when someone use their position or character on purpose to earn illegal profit, both for themselves and another entity.¹ Corruption is characterized as an outstanding criminal offense because it can cause destruction in many aspects, such as political, social, cultural, financial, equity, morals, and obstruct national growth.² Many approaches have been implemented by the Indonesian government since the Old Order era to eradicate corruption. Corruption eradication in Indonesia is currently centered on eradication, prevention, and restitution of state financial losses.³

Various laws and regulations related to corruption have been passed as a testament to the seriousness of the government in eradicating corruption in Indonesia. One of corruption attempts eradication in Indonesia is the Anti-Corruption Commission (KPK) was developed under Law No. 30/2002 on the Anti-Corruption Commission as mandated by Law No. 31/1999 on Anti-Corruption Eradication. The Corruption Eradication Commission is an independent entity that is not controlled by any interference in performing its functions and authorities. The Indonesian government has amended the law several times to strengthen the Corruption Eradication Commission and attempts to solve corruption cases. These actions aim to retribute the country's monetary losses caused by corruption.

Uncontrolled corrupt practices may affect the government system of a country, and may even immobilize the government in the future. Therefore, efforts to recover and retribute country's financial losses caused corruption are a priority in enforcing legal and criminal rules in Indonesia.⁴ In 2021, it was recorded that state financial losses due to corruption reached IDR 62.93 trillion, increased over the previous year by 10.9% and were the highest in the last 5 years.⁵ State restoration financial losses are crucial to strengthen Indonesia's economic resilience and state position.

According the research of Herman et al described that prosecutors are authorized to retribute state financial corruption losses through penal and perdisional sanctions. The implementation process of state financial restitution involves several processes, such as tracking, blocking, confiscation,

¹ Bambang Waluyo, *Pemberantasan Tindak Pidana Korupsi (Strategi Dan Optimalisasi)* (Jakarta: Sinar Grafika, 2016).

² Adami. Chazawi, *Hukum Pembuktian Tindak Pidana Korupsi* (Malang: Media Nusa Creative (MNC Publishing), 2021).

³ Haswandi, "Pengembalian Aset Tindak Pidana Korupsi Menurut Sistem Hukum Indonesia Dalam Mewujudkan Negara Hukum Kesejahteraan," *Jurnal Litigasi* 1, no. 2 (2015).

⁴ Refi Meidianama and Cholfia Aldamia, "Pengembalian Aset Pelaku Tindak Pidana Korupsi Dalam Hukum Internasional Dan Implementasinya Pada Hukum Nasional Indonesia," *Muhammadiyah Law Review* 6, no. 1 (2022): 54–68.

⁵ Viva Budy Kusnandar, "ICW: Kerugian Negara Akibat Korupsi Rp62,9 Triliun Pada 2021," databoks, 2022.

dispossession, and state loss restoration.⁶ Meanwhile, Rena Yulia's research discovered that the restitution is applied throughout the investigation, during court proceedings, and even after the judgment has been handed down. The restitution of state losses caused the perpetrators received leniency. Unfortunately, the refund is not proportional to the total amount of state losses.⁷ Then, Hariyo Ramdhan et al stated in their research that the prosecutors also have the right to recovery of state losses through criminal proceedings by confiscating assets from corruption offenses. If the suspect is unable to prove that his/her assets did not originate from corruption, the judge is allowed to determine the forfeiture of the assets to the state as stated in Article 38B paragraph (2) of the Corruption Eradication Act. Furthermore, this research is also intended to determine the government's role in recovering state financial losses caused by corrupt crimes.

RESEARCH METHODOLOGY

This research used normative juridical research methods with a primary legal material-based approach. This approach is conducted by examining relevant theories, concepts, legal principles, and legislations. The normative juridical method in legal research is performed by examining library or secondary data as research basics, by collecting relevant regulations and literatures related to legal research topics. The normative juridical approach used in this research consists of secondary data sources, which include legal theories, regulations, and principles. This approach is based on legislative approach, case approach, comparison approach, and conceptual approach.⁸

RESULT AND DISCUSSION

The Different Types of Corruption in Indonesia and Their Eradication

Corruption is actually not a new offense in Indonesia. Law No. 31/1999 on Corruption Eradication as amended through Law No. 20/2001 specifies detailed thirty offenses classified as corruption and may be sanctioned. There are seven main categories of corruption offenses. These acts are categorized as corruption crimes based on their consequences and impacts, where these acts caused the state financial losses, either directly or indirectly. These seven main categories of corruption are described below:

1. State financial loss;
2. Fraud;

⁶ Herman et al., "Kebijakan Aplikasi Pengembalian Keuangan Negara Oleh Kejaksaan," *HaluOleo Legal Research* 5, no. 1 (2023): 76–89.

⁷ Rena Yulia, "Hakikat Pengembalian Kerugian Negara; Sebuah Penghukuman Buat Pelaku Atau Pemulihan Bagi Korban," *Lex LATA: Jurnal Ilmiah Ilmu Hukum* 1, no. 2 (2019), <https://doi.org/http://dx.doi.org/10.28946/lexl.v1i2.485>.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 13 (Jakarta: Kencana, 2017).

3. Occupational malfeasance;
4. Blackmail;
5. Deceptive acts;
6. Procurement potential risk of interest conflicts; and
7. Gratuity.⁹

Since 1999, Indonesia has been classified as one of the top five most corrupted countries around the world out of 146 countries surveyed, reported Transparency International Indonesia (TII). It is not only destructive of the country's basic structure, but also obstructs its efforts in achieving fair and democratic governance.¹⁰ The eradication of corruption is a priority in improving public welfare and strengthening Indonesia's legacy.

In the Old Order era, the Chief of Army Staff AH Nasution took the initiative to issue a positive anti-corruption law through the Military Emergency Ruler Regulation No.PRT/PM/06/1957 concerning Anti-Corruption. In this regulation, authority was given to the Army, including the right to confiscate the assets of corruption suspects. This initiative recorded history as the first time the term corruption was used in a juridical context.¹¹ Furthermore, the military rulers also established an institution called the Coordinating Agency for Property Inspectors, which has the authority to investigate the property of every individual and legal entity, to determine whether there are indications that the property was obtained through corrupt practices.

President Soekarno established the State Apparatus Activity Supervision Agency (BAPEKAN) through Presidential Regulation No. 48/1959. This agency is responsible for supervising, examining, and submitting considerations to the president regarding the activities of the state apparatus as well as receiving and resolving complaints on irregularities in the state apparatus. Later in 1960, the government issued a Substitute of Government Decree No. 24/1960 concerning investigation, prosecution, and judicial proceedings for corruption offenses with consideration of the Criminal Code (Chapter XVIII).¹² During the New Order era, public repeatedly voiced their aspirations through media such as newspapers, magazines, seminars and discussions, emphasizing the urgency of a better corruption eradication. Anti-corruption attempts were implemented through the establishment of Corruption Eradication Team headed by General Prosecutor, who was assigned the responsibility to coordinate investigations into corruption

⁹ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi" (Jakarta, 2001), <https://peraturan.bpk.go.id/Details/44900/uu-no-20-tahun-2001>.

¹⁰ Diliya Mariam Rinjani, "Efektivitas Penegakan Hukum Terhadap Tindak Pidana Korupsi Secara Massal Anggota Legislatif Daerah," *Wacana Paramarta: Jurnal Ilmu Hukum* 19, no. 2 (October 31, 2020): 69–78, <https://doi.org/10.32816/paramarta.v19i2.87>.

¹¹ Denny Indrayana, *Jangan Bunuh KPK Kajian Hukum Tata Negara Penguatan Komisi Pemberantasan Korupsi* (Malang: Intrans Publishing, 2016).

¹² Waluyo, *Pemberantasan Tindak Pidana Korupsi (Strategi Dan Optimalisasi)*.

perpetrators both in military and civilian background through Presidential Decision No. 228/1967.¹³ However, these efforts have not yielded any significant results in corruption eradication in Indonesia. Therefore, in 1971, Law No. 3/1971 on the Eradication of Corruption was issued to address the demands of public justice. This law emphasizes both formal and material legal characteristics, with the aim of simplifying the judicial process and providing a broader definition of civil servants. Thus, there is a tight correlation between effective and efficient law enforcement with the progress of national development.¹⁴ Despite the various regulations and institutions aimed at eradicating corruption, in reality, efforts to eradicate corruption in Indonesia were unable to function effectively at that time. This is due to the lack of an adequate legal framework to address corruption, as well as obstacles that hinder the performance of the institutions that have been established. In the reform era, The Anti-Corruption Law No. 31/1999 was enacted, which was subsequently amended through Law No. 20/2001.

In order to address the corruption issues in Indonesia, the Corruption Eradication Commission (KPK) was established under Law No. 30/2002 on the Corruption Eradication Commission. Corruption Eradication Commission is considered as an independent institution charged with professionally, intensively, and sustainably eradicates corruption. Commission is authorized to mitigate the bureaucratic and prosecutorial processes that are generally performed by the attorney general's office in their efforts to prevent corruption.

The anti-corruption through penal law is considered an important aspect of social defense and social welfare. The politics of law is primarily aimed at protecting society and achieving social welfare.¹⁵ In an effort to eradicate corruption, in addition to imposing prison sentences and fines on perpetrators, confiscation of convicted assets can also be applied as a strategy to diminish their wealth. In the process of proving corruption cases, there is the concept of reversing the burden of proof, which are an extraordinary juridical aspect and an extraordinary legal instrument to maintain the presumption of innocence while respecting human rights in efforts to eradicate corruption in Indonesia.¹⁶

The Indonesian Government's Measures for the Restitution of State Financial Losses caused Corruption Offenses

Solving the problem of corruption is not simply by making laws, as it must consider financial aspects, economic issues, and political issues, all of which are heavily interconnected. Forfeiture and confiscation of proceeds and criminal

¹³ Chazawi, *Hukum Pembuktian Tindak Pidana Korupsi*.

¹⁴ Dwidja Priyatno, *Sistem Pertanggungjawaban Pidana Korporasi Dalam Kebijakan Legislasi* (Depok: Kencana, 2017).

¹⁵ Priyatno.

¹⁶ Lilik Mulyadi, "Asas Pembalikan Beban Pembuktian Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Pidana Indonesia Dihubungkan Dengan Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi," *Jurnal Hukum Dan Peradilan* 4, no. 1 (2015): 111, <https://doi.org/10.25216/jhp.4.1.2015.101-132>.

instruments, especially in corruption cases, have started through several legislations. Asset repatriation from corruption proceeds, under positive law, is law enforcement performed by the state as intended to protect corruption victims.¹⁷ Where corruption has rendered the state unable to perform its functions, the state is obliged to pursue the recovery of ill-gotten wealth through forfeiture of assets.¹⁸

The criminal procedure code stipulates about forfeiture under Article 194 Paragraph 1. The article states that following a verdict of sentencing or dismissal or release from all charges, the court decides that the seized evidence must be submitted to those who are authorized to accept it, as stated in the verdict. Nevertheless, there are exceptions if evidence must be confiscated for the state benefit, as stipulated by applicable regulations, or must be removed or rendered unusable.

Confiscation is a form of coercion (*dwang middelen*) owned by the investigator, and the provisions of this criminal procedural code (KUHP) determine that investigators can only confiscate in accordance with the permission granted by the local District Court Chairman. In situations of extreme urgency, it is important for the investigator to proceed quickly and it is impossible to acquire prior authorization, the investigator may seize movable property. However, in such cases, the investigator is required to immediately report the incident to the local District Court Chairman for further approval.

In its development, there are additional regulations relating to confiscation, especially in cases of corruption. This regulation applies in situations where the defendant passes away before a verdict is issued (*trial in absentia*), and there is adequate evidence that the defendant has perpetrated a corruption offense. Forfeiture decisions by judges in these cases are not subject to appeal, however, any interested party has the right to object to the judgment of the trial court that has issued the decision, and this must be completed within 30 days from the date of issuance.¹⁹

Technically, the United Nations Convention against Corruption (UNCAC) regulates that the return of assets derived from corruption can be achieved in two ways. First, through direct restitution that involves a court process and is based on a plea negotiation or plea bargaining system. Second, through indirect restitution that involves a confiscation process based on a court decision. There are two categories of seized assets associated with recovering assets obtained from crimes, i.e. seized assets through the civil legal mechanisms (*inrem*) and seized assets

¹⁷ Ulang Mangun Sosiawan, "Penanganan Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Dan Penerapan Konvensi PBB Anti Korupsi Di Indonesia," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (December 10, 2020): 587, <https://doi.org/10.30641/dejure.2020.V20.587-604>.

¹⁸ Sosiawan.

¹⁹ Arge Arrif Suprabowo, "Perampasan Dan Pengembalian Aset Hasil Tindak Pidana Korupsi Dalam Sistem Hukum Indonesia Sebagai Upaya Pencegahan Dan Pemberantasan Tindak Korupsi" (Universitas Pasundan, 2016), <http://repository.unpas.ac.id/id/eprint/3720>.

criminally, based on the implementation of the procedures in confiscating assets acquired from crimes. Although both have the same objective, which is to prevent those who violate the law to gain benefits from the offenses they commit, outcomes and the criminal instrument should be seized and used for the benefit of victims (both the state and legal subjects). Moreover, the second asset seizure objectives are to deter law violation by removing all economic advantages of crime and deterring malicious acts.

Restitution of assets obtained from corruption is a crucial factor in efforts to eradicate corruption. The success of corruption eradication is not only decided by the effectiveness of punishment imposed on the corruptors, but also the return of corrupted state assets. The process of asset restitution from corruption is considered an equally important move from the imposition of the heaviest possible punishment against the perpetrators. Efforts in reducing state losses must be implemented from the beginning of legal handling and through cooperation with multiple national institutions.

The restitution of assets derived from corruption and located abroad encounters more complex implementation obstacles. In the perspective of global social justice, a country that protects its assets resulting from corruption in other countries has an external responsibility to exercise sovereignty and maintain relations with the origin country of these assets. The Attorney General's Office has performed its duties and authorities related to the restitution of corrupted assets located abroad by taking several actions, such as forming a special team to both tracking and returning assets, and strengthening relations with other countries which are frequently become asset disposition.

The restitution of state financial losses in corruption cases is still confronted with various obstacles, both in procedural and technical terms. The specific legal instruments required are appropriate to the *modus operandi* of crimes and the legal issues involved.²⁰ Therefore, it is expected that restitution will not only be an additional sanction, but also the main purpose of punishment and eradication of corruption. The legal vacuum related to the restitution of state financial losses, which has not been specifically regulated in the law, requires a policy from the government to fill the legal gap related to corruption crimes, especially those related to state losses that are extraordinary crimes.

CONCLUSION

Acts that can be categorized into corruption are categorized into state financial loss; fraud; occupational malfeasance; blackmail; deceptive acts; procurement potential risk of interest conflicts; and gratuity. Eradicating corruption is a priority in order to improve public welfare and the strength of

²⁰ Yenti Garnasih, *Penegakan Hukum Anti Pencucian Uang Dan Permasalahannya Di Indonesia* (Jakarta: Rajawali Pers, 2019).

Indonesia. Corruption eradication in Indonesia has been implemented since the New Order era. During the reformation period, The Corruption Eradication Commission is an independent entity that is not controlled by any interference in performing its functions and authorities.. In an effort to eradicate corruption, in addition to imposing imprisonment and fines against the perpetrators, confiscation of the convict's assets can also be carried out. Evidence in corruption cases is conducted through reverse proof.

Solving the problem of corruption is not simply by making laws, as it must consider financial aspects, economic issues, and political issues, all of which are heavily interconnected. The restitution of state financial loss is a primary concern of corruption eradication measures in Indonesia. The process of returning wealth that has been misused can be achieved through asset forfeiture, which is the criminal procedure code stipulates about forfeiture under Article 194 Paragraph 1. This confiscation action is a form of forced effort by the investigators. The success of corruption eradication is not only decided by the effectiveness of punishment imposed on the corruptors, but also the return of corrupted state assets. The restitution of state financial losses in corruption cases is still confronted with various obstacles, both in procedural and technical terms

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