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Law Enforcement of Corruption Crimes as an Effort to Recover State Losses

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Abstract. *The law enforcement system and sanctions for criminal acts of corruption do not only involve imprisonment, but efforts must also be made to recover the state losses incurred. The problem in this research is how to study the law regarding the return of state financial compensation in cases of criminal acts of corruption and the factors inhibiting the return of state financial compensation in cases of criminal acts of corruption. This research aims to overcome national losses due to criminal acts of corruption and prevent repetition so that it becomes an illustration so that other people do not commit criminal acts of corruption. In this research, researchers used sociological juridical methods, namely research sourced from interviews and other secondary sources.*

Keywords: *Corruption Crimes; Law Enforcement; State Losses.*

1. Introduction

The provisions of Law Number 31 of 1999 concerning Eradication of Corruption in conjunction with Law Number 20 of 2001 have one of their objectives to restore state losses, therefore law enforcement prioritizes the return of state financial compensation from perpetrators of corruption. The return of state financial compensation arising from the proceeds of corruption is a system of law enforcement that requires a process of removing the rights to the perpetrator's assets from the state as a victim by means of confiscation, freezing, seizure both

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in local, regional and international competence so that wealth can be returned to the legitimate state (victim).

Based on Article 6 of Law No. 8 of 1981 concerning Criminal Procedure / KUHP, an investigator is every police officer of the Republic of Indonesia and / or certain civil servant officials who are given special authority by law.

In addition to police investigators and civil servant investigators, the prosecutor's office also has the authority to conduct investigations as stipulated in Law Number 16 of 2004 but, based on Article 30 of the Prosecutor's Office Law, the prosecutor's office is authorized to investigate certain criminal acts based on the law.

The authority of the prosecutor's office related to corruption is also regulated by Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law No. 20 of 2001. In the General Elucidation of the Prosecutor's Office Law, the prosecutor's authority to investigate certain criminal offenses is intended to accommodate several provisions of the law that authorize the prosecutor's office to conduct investigations. Thus, the prosecutor's authority to conduct investigations is limited to certain criminal offenses, namely those specifically regulated in the Law.

Apart from the Police and the Attorney General's Office, the Corruption Eradication Commission (KPK) also has the authority to investigate corruption crimes. The duties of the KPK according to Article 6 of Law No.30 of 2002 concerning the Corruption Eradication Commission are:

1. Coordination with agencies authorized to eradicate criminal acts of corruption;
2. Supervision of agencies authorized to eradicate criminal acts of corruption;
3. Conducting investigations, investigations, and prosecutions of corruption crimes;
4. Carrying out preventive measures for corruption crimes; and
5. Monitor the implementation of state government.

Based on Article 30 paragraph (1) of Law Number 16 of 2004 concerning the Attorney of the Republic of Indonesia, the authority includes:

1. May conduct prosecution;
2. Implementing judges' decrees and court decisions that have permanent legal force;

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3. Supervise the implementation of conditional sentence, supervision sentence and conditional release decision;

4. Conducting investigation on special criminal offense based on the applicable law;

5. Completing special case files and for this purpose may conduct additional examinations before being submitted to the court, the implementation of which is coordinated with the investigator.

After a court decision that has permanent legal force in the form of an order to the defendant to pay restitution for state financial losses, the prosecutor's office exercises its authority to carry out efforts to recover state financial losses. The problem in this research is how the legal review of the return of state financial compensation in corruption cases, what are the inhibiting factors in the return of state financial losses in corruption cases.

2. Research Methods

The research method used in this research is the juridical sociological research method with the nature of descriptive analysis research and research sources from interviews and secondary data from books and laws and regulations.

3. Results and Discussion

3.1. Return of State Financial Losses Due to Corruption Cases

The return of state financial losses due to corruption is an effort that must be made to restore the state's economy which has hampered national development, but the provisions of the Corruption Eradication Law implicitly provide an opportunity for the convicted person to make a choice whether to pay a substitute sentence or choose to serve the sentence determined in the judge's decision. This can be seen in the formulation of Article 18 paragraph (1) letter b of the Corruption Eradication Law which states: "in addition to the additional punishment as referred to in the Criminal Code, as an additional punishment is the payment of restitution in the amount of property obtained from the criminal act of corruption".

Then in Article 18 paragraph (2) of the Corruption Eradication Law, it is stated: "if the convicted person does not pay the restitution as referred to in paragraph (1) letter b at the latest within 1 (one) month after the court decision that has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the restitution", while Article 18 paragraph (3) of the Corruption Eradication Law states "in the event that the convicted person does not have sufficient property to pay the restitution as

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referred to in paragraph (1) letter b, he shall be punished with imprisonment which does not exceed the maximum punishment of the main punishment in accordance with the provisions in this law and therefore the punishment has been determined in the court decision".

Restitution is one of the additional criminal penalties in corruption cases that must be paid by the convicted person to the state, the maximum amount of which is equal to the property obtained from corruption, if there is an inability of the convicted person to pay the restitution, it can be replaced with corporal punishment as a subside punishment.

The concept of imposing the main punishment is a necessity carried out by the Panel of Judges based on the indictment of the Public Prosecutor and evidence at trial, while the imposition of additional punishment is optional based on Article 18 of the Law on the Eradication of Corruption. The judge imposes additional punishment in the form of payment of restitution, then the amount to be paid depends on the results of the audit of state financial losses adjusted to the facts of the trial regarding the amount of money received by the defendant, whether the proceeds of corruption obtained by the defendant have been returned to the state, and whether the corruption was committed jointly so that the payment of restitution can be imposed jointly on the defendants.

The provisions of Article 270 of the Criminal Procedure Code regulate the execution of court decisions that have obtained permanent legal force by the Prosecutor. The execution of court decisions can only be carried out based on the substance contained in the verdict, the return of state financial losses through penalties for payment of state compensation if the convicted person cannot return it, then the prosecutor can confiscate and auction the property that has been stipulated in the verdict, the confiscation process no longer requires permission or court decision because it has become an integral part of the main case decision, if the assets confiscated and auctioned are insufficient to pay the restitution.

Based on Article 18 paragraph (2) of the Law on the Eradication of the Crime of Corruption, that "his property can be confiscated and auctioned", namely property that is an asset belonging to the defendant that is not obtained from the proceeds of corruption or is not an asset used to carry out corruption crimes, because it is already contained in Article 18 paragraph (1) letter a of the Law on the Eradication of the Crime of Corruption so that the Prosecutor does not need to confiscate and auction based on Article 18 paragraph (2) of the Law on the Eradication of the Crime of Corruption. Furthermore, based on Article 18 paragraph (3) of the Law on the Eradication of the Criminal Acts of Corruption, it is determined that "in the event that the convicted person does not have sufficient property to pay the restitution as referred to in paragraph (1) letter b, then he/she shall be punished with

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imprisonment which shall not exceed the maximum penalty of the principal punishment in accordance with the provisions of this law and the duration of such punishment has been determined in the court decision".

Then the provisions of the article are considered as a subsidiary criminal offense for the convicted person which can only be applied if:

1. The convicted person does not have assets that are sufficient to pay the compensation money, in addition, within 1 month after the court decision obtains permanent legal force, it turns out that he/she cannot provide compensation money and the auction revenue from the property is not sufficient to provide compensation money.
2. The lengthy process of sentencing to substitute confinement does not exceed the maximum sentence of the article stipulated.
3. The length of substitute imprisonment has been determined in the court decision, the determination of the length of imprisonment is intended as an effort to accommodate if the compensation money cannot be paid in whole or in part by the convicted person.

The process of recovering state financial losses can be carried out by the Prosecutor after the Court Decision has been finalized by:

1. Make a bill letter with the subject of collecting compensation money to the convicted person to appear before the executing prosecutor at the local prosecutor's office;
2. The convicted person is summoned and must appear before the Prosecutor to explain his/her ability to pay the state money compensation that has been determined by a court that has permanent legal force. At this stage a statement letter is made containing whether or not the convicted person is able to pay the state money compensation. However, if the convicted person is unable to pay, it must be proven by a statement from an authorized official;
3. At the time of payment of the compensation money, a receipt of the payment of money received from the convicted person must be given and signed by the Head of the local District Prosecutor's Office;
4. At the time of receiving the compensation money from the convicted person, the Head of the local Prosecutor's Office shall order the executing Prosecutor to deposit the compensation money to the convicted person with proof of the form of Non-Tax State Receipt Deposit Letter through the bank.

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3.2. Factors inhibiting the return of state losses

Law enforcement of corruption crimes, especially related to the return of state financial compensation as a risk of corruption crimes, will experience various obstacles as well as influencing factors, this is in accordance with Soerjono Soekanto's opinion, that law enforcement is basically not merely applying the provisions of the legislation, but there are also factors that influence it, namely as follows:

- a. The legal factor itself
- b. Law enforcement factors
- c. Factors of facilities and facilities that support law enforcement
- d. Community factors, where the law applies and is applied
- e. Cultural factors, as a result of copyright, work and culture in the association of life.

Based on these several factors, in reality in the process at the investigation level, there are also several problems in addition to the cleverness of the suspect in hiding assets, although the category of property referred to in Article 39 paragraph (1) of the Criminal Procedure Code which determines that, which can be subject to confiscation are:

- a. The assets or bills of the suspect or defendant, all or part of which are suspected of being obtained from a criminal offense or as a result of a criminal offense;
- b. Objects that have been used directly to commit a criminal offense or to prepare it;
- c. Objects used to obstruct the investigation of a criminal offense;
- d. Objects specifically made or intended to commit a criminal offense;
- e. Other objects that have a direct relationship with the criminal offense committed.

However, the investigators as law enforcers consider the return of state financial losses as a subsidiary criminal offense, therefore in an effort to recover state finances there are no facilities and infrastructure in the form of an adequate budget for conducting civil suits, from the obstacles of the community factor, namely the low legal awareness of the public to report corruption crimes they know, because most of the perpetrators of corruption are people who have a fairly high position, position, education in society. Obstacles from cultural factors also

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affect if law enforcement officials are slow in handling corruption cases, it will become a habit, hindering the process of recovering state losses.

4. Conclusion

State financial losses in the concept of eradicating corruption, are all expenses or uses that become a burden on state finances where the expenditure or use of state money is based on illegal acts, including reduced income or income to state finances based on illegal acts, illegal acts that result in state financial losses must be caused by acts that contain the nature of criminal law and mechanisms regulated under Article 18 of the Corruption Eradication Law. Factors inhibiting the return of state financial compensation in corruption cases can be caused by several factors, including the difficulty of finding all of the convicted person's property for confiscation and seizure and state losses are still considered as subsidiary criminal offenses. There is a need for changes to the Criminal Procedure Law that regulates fast and inexpensive criminal trials, which do not cause state losses in the law enforcement process, which sometimes the cost of law enforcement exceeds the loss of the State itself, as well as the need for asset forfeiture laws against convicted corruption criminals. Suggestion: Law enforcement of corruption crimes as an effort to recover state financial losses, apart from as stipulated in Article 18 of the Law on the Eradication of Corruption, the State should also regulate the recovery of state financial losses in the following ways: a. Changes to the Criminal Procedure Law that regulates fast and inexpensive criminal trials, which do not cause losses to the State in the law enforcement process, which sometimes the cost of law enforcement exceeds the loss of the State; b. Civil lawsuit mechanisms and asset forfeiture laws. c. Law enforcement officers should work optimally.

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Regulation:

Criminal Procedure Code

Law No. 16 of 2004 concerning the Indonesian Attorney General's Office

Law No. 30 of 2002 concerning the Corruption Eradication Commission

Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001

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