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Implications of the Effectiveness of Legal Efforts for Asset Recovery in Corruption Criminal Cases with State Financial Losses

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Abstract. *The influence and pressure in law enforcement of corruption cases is one of the obstacles in the recovery of assets resulting from corruption, so that it can cause law enforcement in corruption cases to experience disorientation, in this case law enforcement that is still focused on arresting and imprisoning perpetrators of corruption only, not on the recovery of assets resulting from corruption to the state. Although several corruptors have been processed criminally and have been sentenced to additional penalties for payment of compensation, the assets obtained from corruption have not been significantly returned to the state, so that the state as the owner of assets or public funds remains the party that suffers losses. The aim of this research is to determine and analyze (1) the legal nature of efforts to recover assets from corruption crimes in overcoming state financial losses, (2) the mechanism for asset recovery in corruption cases that cause losses to state finances, (3) the essence of the effectiveness of the law in efforts to recover assets from corruption crimes to overcome state financial losses. The aproach method used in this study is normative juridical. The specifications of this study are descriptive analytical. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the research and discussion can be concluded: (1) In relation to the regulation of asset return, legally the Indonesian government has issued various regulations that can be used as a basis/foundation in the government's efforts to return state financial losses as a result of corruption. The efforts referred to are regulated in Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption. (2) In terms of criminal procedures, efforts to recover the assets of perpetrators of corruption can be carried out in the following ways: asset tracking, asset freezing, asset confiscation, and asset confiscation. (3) It is necessary to be suported by the existence of a Draft Law on Asset Confiscation, this is because the construction of the criminal law system in Indonesia currently does not place confiscation and confiscation of the proceeds and instruments of corruption as an important part of efforts to reduce the level of state losses.*

Keywords: *Asset Recovery; Corruption; State Financial Losses.*

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1. Introduction

The rolling of reforms that have occurred since 1997 provide hope for changes in all aspects of national and state life, namely politics, economy, and law. In the implementation of state governance, the expected changes are towards a more democratic, transparent, and highly accountable state governance and the realization of good governance and freedom of action.[1] Legal reforms that have occurred since 1998 have been institutionalized through the amendment of the 1945 Constitution. The spirit of the amendment of the 1945 Constitution is to encourage the establishment of a more democratic state administration and structure, as well as guaranteeing legal certainty. Amendments to the 1945 Constitution since the reform have been made four times, namely: First, the first amendment was ratified on October 19, 1999. Second, the second amendment was ratified on August 18, 2000. Third, the third amendment was ratified on November 10, 2001. Fourth, the fourth amendment was ratified on August 10, 2002.

Corruption is a unique crime that is different from ordinary crimes in several ways, including violating formal criminal law or procedural law. Rampant corruption is a type of legal defiance carried out by a handful of groups or individuals who use government resources for their personal gain by hiding behind positions of authority.[2] When everyone realizes how rapidly the economic interests of humans are developing in the new civilization, many people are looking for practical solutions to meet their very high economic needs. Ultimately, the goal seems to be to enrich themselves by exploiting existing power. Corruption is currently a problem in many countries in the world, including Indonesia. This is a very modern aproach to benefit yourself. The crime of corruption is a violation of the social and economic rights of the community, so that the crime of corruption can no longer be classified as an ordinary crime but has become an extraordinary crime, so that in efforts to eradicate it can no longer be done "normally", but "demanded in an extraordinary way" (extra-ordinary enforcement).[3]

From the two definitions of state losses according to Article 1 paragraph (22) of Law Number 1 of 2004 and Article 2 paragraph (1) of Law Number 31 of 1999, it can be concluded that there are two types of state losses, namely state losses that are real or tangible and definite in amount and state losses that can harm state finances. The phrase "can harm state finances" means that an action that has the potential to harm state finances is included in corruption. Although no actual financial loss occurs, there is still a potential risk of loss for the state. In practice, there are often differences in the amount of state losses because there are several ways or methods of calculating state losses. Judging from several definitions of state losses according to the law, state losses are not only related to the reduction of state money or goods, but also to the emergence of government obligations that should not exist. While in

[1]Titik Triwulan Tutik, Civil Law in the National Legal System, Surabaya: Kencana, 2011, p. 1
[2]Gomgom TP Siregar, Asset Recovery for Corruption Offenders, Unes Law Review, 6 (2), December 2023, p. 4561
[3]A. Fatah, & H. Nyoman Serikat Putra Juliani Jaya, Legal Study of the Aplication of the Element of Detriment to State Finances in Law Enforcement of Corruption Crimes. Diponegoro Law Journal, 6 (31), 2017, p. 3

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practice in the field, regarding the determination of state losses themselves, it emphasizes more on tangible losses and does not discuss losses that are potential losses in the future.[4]

In the study of criminal law, state financial losses are one form or type of criminal act of corruption as written in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UU PTPK). By definition, the form of corruption has been explained in 13 articles, specifically regarding the form of state financial losses regulated in Article 2 and Article 3 of the a quo Law. Positive law in Indonesia aplies the paradigm of retributive justice contained in the law governing the Criminal Act of Corruption does not reflect harmony with the main objective in eradicating criminal acts of corruption, which means that it actually hinders efforts to restore state assets by returning state losses in criminal acts of corruption in Indonesia. Wesly Cragg expressed his opinion that retributive justice or the theory of retribution does not work optimally effectively in reducing a criminal act, and the important point is that it cannot cover the losses suffered by victims of the crime. The United Nations Convention Against Corruption (UNCAC) states that every country must resolve cases of criminal acts of corruption by means of asset recovery, and Indonesia has participated in this activity from the first to the seventh trial.

2. Research Methods

The aproach used in this study is normative juridical. The normative juridical aproach is an aproach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This aproach is also known as the literature aproach, namely by studying books, laws and other documents related to this study.[5]

3. Results and Discussion

3.1. Legal Nature of Asset Recovery Efforts for Corruption Crimes in Overcoming State Financial Losses

The social phenomenon called corruption is the reality of human behavior in social interactions that is considered deviant and dangerous to society and the state. Therefore, such behavior in all its forms is condemned by society, including by the corruptors themselves in accordance with the expression "corruptors shout corruptors". Public condemnation of criminal acts of corruption according to the legal concept is manifested in the formulation of laws as one form of criminal act. In Indonesian criminal law politics, corruption is even considered as one form of criminal act that needs to be aproached specifically, and is threatened with quite severe punishment.[6]

[4]Chandra Ayu Astuti and Anis Chariri, Determination of State Financial Losses Carried Out by the BPK in Corruption Crimes, Diponegoro Journal of Accounting, 4, (3), 2015, p. 2.
[5] Soerjono Soekanto. Introduction to Legal Research, Jakarta: UI Press, 1986, p. 14.
[6]Gomgom TP Siregar, Op.Cit, 6, (2), December 2023, p 4563

The problem of corruption is something faced by humans that comes from the bad thoughts of humans themselves towards God where humans doubt or do not believe in good destiny and also the concept of fortune that has been arranged for themselves and their families by God Almighty. Corruption is closely related to bad habits, cheating, falsifying and so on. Of course, corruption is a crime that is related between one human and another. There can be no corruption that stands alone.

Corruption has become a trait that cannot be said to be a good deed from the perspective of the values of national and state life as a whole anywhere. Corruption has influenced the morality of the life of every individual, and the action from that is that each of us wants a movement to return to good morality. The emergence of moral awareness to fight corruption begins with moral awareness and human stance towards it. If viewed from the perspective of morality. That awareness is like "ein ruf aus mid und doch uber mich"[7], like a call that arises from me but overcomes me. Moral living and every moral act is the right response to that awareness and conversely immoral living and every violation of morality is against that awareness.

The fact that there is corruption that is recognized as a bad act has given rise to resistance against this corruption activity. In this life, there are two kinds of reality. First, the agreed reality, which is everything that is considered real because we agree to establish it as reality; reality experienced by others and we acknowledge it as reality. Second, reality that is based on our own experience (experienced reality).[8]This reality is found in corrupt behavior, both agreed-upon realities and realities based on one's own experience.

When we face the law, we first realize that the law must be linked to social life: “law is primarily the arrangement of social life.”[9]This formulation is still very abstract, but precisely because of that it includes various forms of law. The existence of various types of law, among others, is explained by the positivist figure, John Austin (1790-1859). According to Austin, there are various types of law, namely:

1) The law of God, this law is more a moral life than a law in the true sense;
2) Human Law, namely all regulations made by humans themselves.[10]

Legal philosophy must strive to achieve its goal of absolute control over legal life. It must begin by searching everywhere for the various forms of legal manifestation and determining their place in society.[11]

The existence of law as a catalyst when corruption is going to be done then it will function as a tool to prevent bad behavior or corrupt acts that will be done can not be done, and the hope

[7]N. Drijarkara SJ Sparks of Philosophy. Jakarta: PT. Pembangunan, 1978. p. 12
[8]Juhaya S. Praja. Philosophy and Methodology of Science in Islam and Its Aplication in Indonesia. Jakarta: Teraju. 2002, p. 1
[9]Ernst Utrecht, Introduction to Indonesian Law, Jakarta: University Publisher, 1966, p. 39
[10]Ibid, p. 40-41
[11]Soetiksno. Philosophy of law 2. Jakarta: PT. Pradnya Paramita. 1984. p. 52

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is that there will be awareness not to do the corrupt act. This is preventive, then when the corrupt act has been done then the law will play a role as a repressive tool, namely preventing the corruption act from spreading its implementation.[12]This requires the role of all elements of society which will produce people power as a direct controller of corrupt acts.

The general definition of the crime of corruption is a crime related to acts of bribery and manipulation and other acts that are detrimental or can be detrimental to the country's finances or economy, detrimental to the welfare and interests of the people, as defined by Baharuddin Lopa.[13]

The Corruption Eradication Law (Law 31/1999) defines corruption as, "the act of enriching oneself or others unlawfully which can harm state finances or the state economy" or "the act of abusing authority, oportunities or means available to one because of one's position or position with the aim of benefiting oneself or others and can harm state finances or the state economy".

According to Hamdan Zoelva, the elements that constitute the material of corruption itself are as follows:

1) Action;
2) Against the law;
3) Make yourself or others rich;
4) Detrimental to state finances/economy;
5) Abusing the authority, oportunities or means available to him;
6) Benefiting yourself or others.[14]

From the series of elements above, we can define a person's actions whether they are corruption or not. These elements are "shadows" or images of actions that must occur, a fact that must be clearly suported by evidence and witnesses if we want to recognize an action as regulated.

So the function of these elements is as a basis for recognizing and assessing an act. From the real act, we can assess, examine whether the act is corruption or not. If it turns out that the act meets the elements that define it as an act, of course the act can be recognized and placed as an act of corruption.

The next element is “against the law”. This means that an act carried out to enrich oneself or others is an “against the law” act. What is “against the law”?, back to the law itself, law is a rule, regulating human actions, non-compliance with the law is an act “against” the law. The

[12]Nofil Gusfira & Abdul Hafiz, The Role of Law in a Philosophical Perspective on Eradicating Corruption, Maqasadi: Journal of Sharia and Law, 1 (2), 2021, p. 150
[13]Baharudin Lopa, Law on Corruption (Law No. 3 of 1971) with Discussion and Its Aplication in Practice. Bandung: Alumni. 1987
[14]Hamdan Zoelva, Presidential Impeachment: Reasons for Criminal Acts of Presidential Dismissal According to the 1945 Constitution, Revised Ed., 2nd Printing, Jakarta: Konstitusi Press, 2014

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positivist view views law as a legal regulation that has been legally enforced and binds all citizens to the rules without exception, outside of that it is not law. Criminal law provides concrete and very rigid limitations on what is meant by an unlawful act, because it is bound by the principle of "nullum delictum nuela puena sine pravia legi punalli", namely an act cannot be punished unless it has been regulated in positive law.[15]

The expansion of acts formulated as corruption as originally regulated in the Criminal Code, namely Articles 209, 210, 387, 388, 415, 416, 417, 418 and 419, then these articles were included in Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning criminal acts of corruption regulated in Articles 5, 6, 7, 8, 9, 10, 11 and 12, but these efforts are still considered conventional methods, so new methods and ways are needed to be able to stem the spread of corruption.[16]

Observing the reality of what is hapening in Indonesia, obtaining wealth from state finances, whether legal or illegal, can remind many people, even the perpetrators get awards, praise and even higher social status because of their wealth. It can provide social assistance, religious donations and can help families in need and can even help the country indirectly by saving a lot and putting money in the bank which is very useful for advancing the country's economy. Rich people will receive a lot of praise and admiration from society, no matter whether the wealth comes from legal or illegal work. In fact, many members of society dare to die to defend the rich. So it is not entirely true that corruption harms other people and harms the country or is a disgraceful act. We have to see from what philosophy we see it.

Legally, although the Criminal Code does not explicitly use the terminology of corruption in the formulation of the crime, there are several provisions that can be captured and understood in essence as the formulation of the crime of corruption. The provisions of the crime of corruption in the Criminal Code are regulated separately in several articles in three chapters, namely:

1) Chapter VIII on crimes against public authority, namely in Articles 209, 210 of the Criminal Code;
2) Chapter XXI on fraudulent acts, namely Articles 387 and 388 of the Criminal Code;
3) Chapter XXVIII concerning office crimes is in Articles 415, 416, 417, 418, 419, 420, 423, 425 and 435 of the Criminal Code.[17]

The formulation of criminal acts of corruption contained in the Criminal Code can be grouped into four groups of criminal acts (delicts), namely:[18]

Criminal Act	Chapter
Bribery crime group	Articles 209, 210, 418, and Article 420 of the Criminal Code

[15]Ibid, p. 78
[16]Mochammad Rozikin, Op.Cit, 11 (2), November 2017, p. 133
[17]Elwi Danil, Corruption: Concept, Criminal Acts, and Eradication, 1st Ed.; 2nd Printing, Jakarta: Rajawali Pers, 2012
[18]Gomgom TP Siregar, Op.Cit, 6 (2), December 2023, p 4563

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Embezzlement crime group	Articles 415, 416, and Article 417 of the Criminal Code
Greedy criminal group (extortion or blackmail)	Article 423 and Article 425 of the Criminal Code
Criminal groups associated with contractors, leverage and partners	Articles 387, 388, and Article 435 of the Criminal Code

Until now, there are at least 7 (seven) special laws that are still normatively valid, and can be used to prevent and eradicate corruption. These laws include:

1) Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001. (Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption)
2) Law Number 30 of 2002 concerning the Corruption Eradication Commission. (Law Number 30 of 2002 concerning the Corruption Eradication Commission)
3) Law Number 46 of 2009 concerning the Corruption Court. (Law Number 46 of 2009 concerning the Corruption Court);
4) Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism. (Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism)
5) Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. (Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, nd)
6) Law Number 13 of 2006 concerning Protection of Witnesses and Victims. (Law Number 13 of 2006 concerning Protection of Witnesses and Victims)
7) Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003.

Corruption that requires state financial losses is only found in two articles, namely Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the eradication of criminal acts of corruption. One of the important elements in both articles is the element that it can harm state finances or the state economy. Consequently, in order to create justice in society, the aim of eradicating criminal acts of corruption is not only to sentence corruptors to prison but also to be able to return the state financial losses that were corrupted.

Regarding the corruption that is currently hapening, many people assume that corruption is an act that is detrimental to state finances, in order to understand how an act is actually said to have harmed state finances, the following will explain the definition of state losses. State losses arising from the consequences of criminal acts of corruption in question are losses caused to state finances or the state economy.

Based on Article 1 Number 22 of Law Number 1 of 2004 concerning State Treasury, what is meant by state or regional losses is:

"A lack of money, valuables and goods of a real and definite amount as a result of an unlawful act, whether intentional or negligent."

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Fleming stated that regarding asset recovery, there is more emphasis on several things, namely as follows:

1) First, asset return as a process of revocation, confiscation, disapearance;
2) Second, what is revoked, seized, and removed are the results/profits from the criminal act committed by the perpetrator of the crime;
3) Third, one of the objectives of revocation, confiscation, and removal is so that the perpetrator of the crime cannot use the proceeds/profits from the crime as a tool/means to commit other crimes.[19]

There are several important elements in returning assets resulting from criminal acts of corruption:

1) Asset recovery is a law enforcement system;
2) Law enforcement is carried out both through criminal and civil channels;
3) Through these two channels, assets resulting from criminal acts of corruption are traced, frozen, confiscated, seized, handed over and returned to the state that is the victim of criminal acts of corruption;
4) Tracking, freezing, confiscation, surrender and return are carried out on assets resulting from criminal acts of corruption whether placed in or outside the country;
5) The law enforcement system is carried out by the state that is a victim of criminal acts of corruption and is implemented by law enforcement institutions;
6) This system has the following objectives:

a. Refund state losses suffered by victims of corruption crimes caused by perpetrators of corruption crimes;
b. Prevent the use or utilization of these assets as tools or means by perpetrators of corruption to commit other crimes, for example, money laundering, terrorism and other cross-border crimes;
c. Provide a deterrent effect for other parties who intend to commit criminal acts of corruption.[20]

In relation to the regulation of asset return mentioned above, legally the Indonesian government has issued various regulations that can be used as a basis/foundation in the government's efforts to return state financial losses as a result of corruption. The efforts referred to are regulated in: Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption (Corruption Law); Law No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (Anti-Corruption Convention); Law 15 of 2002 as amended by Law No. 25 of 2003 concerning Money Laundering (TPU Law); Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters.

In an effort to save/return state financial losses due to corruption. according to Andi Hamzah's opinion, asset confiscation is usually associated with confiscation as an additional penalty. Andi Hamzah also revealed that the confiscation carried out was not only against other

[19]Matthew H. Fleming. Op.Cit, January 2005
[20]Mahrus Ali, Principles, Theory and Practice of Criminal Law on Corruption, UII Press, Yogyakarta, 2013, p. 84

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perpetrators' assets that were not the result of corruption as preparation for additional penalties of confiscation and payment of compensation.[21]

Article 20 of Law Number 30 of 2014 concerning State Administration stipulates that the responsibility for state losses is divided into administrative and criminal responsibility. However, it seems that administrative responsibility for the recovery of state losses has not been fully implemented. Substantially, asset recovery is an important part of preventing and eradicating criminal acts, especially corruption.[22]

In the Corruption Law, the return of state financial losses can be done through two legal instruments, namely criminal instruments and civil instruments. Criminal instruments are carried out by investigators by confiscating the perpetrator's property that has previously been sentenced by the court with an additional criminal verdict in the form of compensation. Meanwhile, efforts to return state financial losses using civil instruments are fully subject to the discipline of material and formal civil law, even though they are related to criminal acts of corruption. Unlike the criminal process which uses a material evidence system, the civil process adopts a formal evidence system which in practice can be more difficult than material evidence.

The return of state financial losses through criminal channels is often referred to as the confiscation of assets resulting from corruption. If the defendant in a corruption case cannot prove that his assets were not obtained from corruption, the judge has the authority to decide to confiscate the assets for the state. This is as stated in Article 38B paragraph (2) of the Law on the Eradication of Corruption which reads:

"If the defendant cannot prove that the assets referred to in paragraph (1) were not obtained through a criminal act of corruption, the assets are deemed to have also been obtained through a criminal act of corruption and the judge has the authority to decide that all or part of the assets be confiscated for the State."

The provisions for confiscation of assets resulting from criminal acts of corruption through civil lawsuits in the law on the eradication of criminal acts of corruption are an alternative route when confiscation of assets through criminal prosecution cannot be carried out for reasons justified by law.[23]In other words, the restitution of state financial losses due to corruption through civil channels can be carried out after the corruption case examination process through criminal channels is completed or cannot be continued for certain reasons, such as the death of a suspect or defendant in a corruption crime during the examination, which automatically results in the loss of the authority to prosecute, as stated in Article 77 of the Criminal Code.

[21]Frans Jomar Karinda, et al. Efforts to Recover Assets of Corruption Perpetrators to Optimize State Financial Losses, Journal of Social and Cultural Syar-i, 9 (6) 2022, p. 1744
[22]Refi Meidiantama & Cholfia Aldami, Return of Assets of Corruption Perpetrators in International Law and its Implementation in Indonesian National Law, Muhammadiyah Law Review, 6 (1), January, 2022. p. 59
[23]Muhammad Yusuf, Op.Cit, Jakarta, 2013, p. 165

In line with the explanation above, Article 18 of the Corruption Law explains the provisions for additional criminal penalties as an effort to recover state losses, which reads as follows:

1) In addition to the additional penalties as referred to in the Criminal Code, the additional penalties are:
a. Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as goods replacing such goods;
b. Payment of compensation in an amount that is at most equal to the assets obtained from the criminal act of corruption;
c. Closure of all or part of the company for a maximum period of 1 (one) year;
d. Revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or may be granted by the Government to the convict.
2) If the convict does not pay the replacement money within 1 (one) month after the court decision has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money.
3) In the event that the convict does not have sufficient assets to pay the replacement money, he/she shall be punished with imprisonment for a term not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law and the length of the sentence shall be determined in the court decision.[24]

Furthermore, regarding the existence of a third party with good intentions being proven in a court hearing related to a corruption case, according to the provisions of Article 19 paragraph (1) of Law No. 31 of 1999, the judge is not permitted to issue a decision to confiscate the assets of a third party with good intentions. As stipulated in Article 19 paragraph (1) of Law No. 31 of 1999, namely:

"A court decision regarding the confiscation of goods that do not belong to the defendant shall not be made if the rights of third parties acting in good faith will be harmed."

Based on these provisions, it can be understood that asset confiscation cannot be imposed on a third party who has good intentions, which means that asset confiscation is limited. This is because it can be limited because of the good intentions that must be

proven by the third party by submitting an objection no later than 2 (two) months after the judge's decision.[25]

As for Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption 2003 (United Nations Convention Against Corruption 2003) where asset return as a major breakthrough in the Anti-Corruption Convention 2003 (KAK 2003) is a relatively new legal issue. From the perspective of social justice theory, the regulation of asset

[24]Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption
[25]Article 19 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption

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return in the KAK 2003 is the empowerment of international legal institutions and national anti-corruption legal institutions, especially in the efforts of UN member countries to prevent and eradicate criminal acts of corruption and lay the foundation for international cooperation to return assets resulting from criminal acts of corruption to the victim country.

The 2003 Anti-Corruption Convention can be interpreted as a product of a number of substantive and procedural developments in the eradication of criminal acts of corruption. Viewed from the perspective of substance, the provisions on asset recovery as regulated in the 2003 ToR are the latest developments in a number of efforts to build an anti-corruption legal system, both at the national and international levels, which are carried out simultaneously with the increasing understanding of the scope and seriousness of the problem of corruption.[26]

Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003), later referred to as UNCAC, on April 18, 2006, explains that the confiscation of assets of perpetrators of corruption crimes can be carried out through criminal and civil channels.

In UNCAC 2003, the restorative aproach in the form of asset recovery is regulated in Chapter V Article 51 to Article 59 on Asset Recovery, which is a fundamental principle expected by the participating countries of the convention to provide the widest possible cooperation and assistance on this matter. The major breakthrough of UNCAC 2003 on Asset Recovery includes a system for preventing and detecting the proceeds of corruption (Article 52 UNCAC 2003), a direct asset return system in Article 53, an indirect asset return system and international cooperation for the purpose of confiscation (Article 55 UNCAC 2003).

3.2. Asset Recovery Mechanism in Corruption Cases that Cause State Financial Losses

The idea of asset recovery has become a new criminalization goal in anti-corruption law. To recognize the theory of asset recovery, it is important to describe the understanding and principles that underlie the theory of asset recovery. Matthew Fleming explains that at the international level there is no explanation of asset recovery, but Fleming formulates that asset recovery is the process of revoking the rights of criminals to assets obtained from the proceeds of crime.[27]

The asset recovery effort is based on the principle of “Give the state what is its right” and this is in line with the principle of “Give the people what is their right”. This principle is the moral and social basis for taking and seizing back state assets controlled by corruptors.[28]

The state's obligation to improve social welfare creates an urgent condition for the state to take action to return assets, the concept and ideals of public welfare become the basis for the state to confiscate and revoke assets from the hands of perpetrators of corruption, the

[26]Purwaning M. Yanuar, Op.Cit. 2007, p. 112-113
[27]Matthew H. Fleming. Op.Cit, University College London, January 2005
[28]Ade Mahmud, et al. Substantive Justice in the Process of Asset Recovery of the Results of Corruption Crimes, Suara Hukum Journal, 3 (2), September 2021, p. 235

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urgency of the importance of taking back assets resulting from corruption can be described as follows:

1. The basis of prevention (prophylactic), aims to anticipate the perpetrators having control over illegally obtained assets to commit other acts in the future. Corruption as a core crime opens up the possibility for perpetrators to carry out follow-up crimes such as money laundering, funding the illicit drug trade, radicalism. These various crimes can certainly cause new problems for the country, the reason for prevention is an urgent problem to be implemented immediately by law enforcement considering that the value of assets resulting from corruption is on average very large and makes it possible to fund systematic and organized forms of crime.
2. Reasons for propriety. The issue of propriety is based on the principle of morality that aplies universally as noble and civilized values, the principle of morality views that the issue of ownership of objects of economic value can only be transferred and owned if through a legal process. A person does not have the right to take and control the property of another person without a clear legal basis. In the context of criminal law, every perpetrator of a crime does not have legality over assets from the proceeds of crime. The indicator of propriety must be seen from the process of transfer that is recognized and legally valid. When becoming a suspect, various assets in any form must be returned to the state.
3. Preliminary reasons. This reason is based on the argument that the assets taken by corruptors contain social rights of the community that must be returned immediately to fund strategic government programs in the fields of education, health, welfare, and security. Social interests are seen as much more urgent than individual/personal interests so that it is very reasonable for the state to precede the return of assets for the benefit of other parties who feel they have been harmed. The crime of corruption places the state as a special party (victim) to take back assets that are unlawfully controlled by the perpetrator. So if there is another party who demands compensation through a civil lawsuit against the defendant to the court which is the same as the criminal decision to return state losses, then the decision to return state losses must be prioritized because the public interest is seen as more urgent.
4. The reason as the owner, the state as the legal owner of the assets controlled by the perpetrator has the right to take the assets in full. The owner of the assets has the right to take or revoke the assets controlled by the defendant, especially if the assets are taken unlawfully. Assets as a protected legal interest provide a guarantee to the owner to take back the object. Asset retrieval can use criminal law instruments by confiscating all or part of the defendant's assets or through a monetary penalty. Meanwhile, civil law instruments can be used if after a criminal court decision new assets are found that have not been confiscated, then the public prosecutor can file a civil lawsuit with the district court.[29]

The implementation of asset return, the role of the state must be more dominant as a necessary prerequisite, the state's willingness to return assets is a guarantee for law enforcers to act firmly based on existing legal regulations without any pressure, this is reflected in the

[29]Purwaning M Yanuar, Op.Cit, 2015

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experience of other countries that have succeeded in returning assets from corrupt regimes because of the seriousness of the state.[30]
The term “Asset Recovery” is not explicitly regulated in the Corruption Eradication Law, the State Finance Law, or the State Treasury Law. The strategy of returning assets from corruption is a major breakthrough in eradicating corruption today. The issue of returning assets from corruption will face its own legal problems, both conceptually and operationally. In relation to the regulation of asset recovery, if we look at the aproach model used based on the provisions of the Criminal Code and the Criminal Procedure Code, it is contained in Article 10 of the Criminal Code concerning the confiscation of certain goods as one type of additional punishment, including: revocation of certain rights, confiscation of certain goods and announcement of the judge's decision. This means that the confiscation of tangible or intangible movable goods or immovable goods (asset confiscation) is an additional punishment that can be imposed together with the main punishment in the form of imprisonment/or fines.[31]

Article 39 (1) of the Criminal Code stipulates that the property of the convict is property obtained through crime or intentionally used to commit a crime can be confiscated. Paragraph (2) of the Article states that property that is not necessarily confiscated is for crimes that are not committed intentionally and for violations. In the case of confiscation, the property of the convict changes ownership to become the property of the state. Article 41 paragraph (1) of the Criminal Code explains that if the convict does not want to hand over the property, it will be replaced with a substitute prison sentence. Furthermore, regarding the Criminal Procedure Code (KUHAP).

For Indonesia, the criminal law aproach as one of the instruments in combating corruption is still the main choice. This indicator can be seen from the strategy of imposing increasingly severe criminal sanctions in every change to the law governing corruption. The intention is clear that with an increasingly severe criminal law aproach, it is hoped that perpetrators of corruption will be deterred, in addition to the hope that people who will commit corruption will be afraid to commit this crime. Although in its objectives it is expected to run in accordance with the objectives set out above, this strategy is certainly not without weaknesses. The fundamental weakness of this strategy is that the aproach taken is still fragmentary, partial, symptomatic and repressive, because it seems to only see 1 (one) factor/condition as the cause or weak point of efforts to eradicate corruption.

As a result of this one-sided aproach, there has been a failure to eradicate corruption in Indonesia. The signal of the failure of criminal law instruments in eradicating corruption in Indonesia can be clearly seen in the corruption perception index which almost always places Indonesia in the top five (5) most corrupt countries in the world.[32]

[30]Eddy OS Hiariej, Criminal Asset Recovery, Opinio Juris Journal, 13, May-August 2013.
[31]Jan Remmelink, Criminal Law: Commentary on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code, Publisher PT. Gramedia Pustaka Utama, Jakarta, 2003, p. 490
[32]Hasanal Mulkan & Serlika Aprita, Asset Recovery in Corruption Crimes as an Effort to Recover State Financial Losses, Journal of Legal Studies “THE JURIS”, VII (1), June 2023, p. 178

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Assets that are subject to return by the state are any assets obtained, either directly or indirectly from criminal acts, either before or after the enactment of the law. Assets that can be confiscated are adjusted to the type of criminal act related to the assets to be confiscated, namely:

1) Any assets resulting from criminal acts or obtained from criminal acts;
2) Assets used as tools, means or infrastructure to commit crimes or suport criminal organizations;
3) Any assets related to criminal activity or criminal organizations;
4) Assets used to finance criminal acts or criminal organizations;
5) Anything that is the property of the perpetrator of a crime or criminal organization.[33]

The qualification of the weight of the sanction is a necessity that is emphasized in the law because criminal sanctions are a form of giving suffering to the perpetrator of the crime. The clearer the regulation of criminal sanctions, the smaller the potential for human rights violations. The state has the legality to impose criminal sanctions but is prohibited from violating human rights in imposing criminal sanctions.[34]

In terms of the mechanism of asset recovery efforts due to state financial losses due to corruption, there is an understanding of the asset return legal system. Purwaning M. Yanuar stated that there are 3 (three) elements that form the asset return legal system, namely (a) substance elements; (b) structural elements; (c) legal culture elements.[35]

Asset recovery as the return of state financial losses through criminal channels is often referred to as the confiscation of assets resulting from corruption. If the defendant of a corruption crime cannot prove that his property was not obtained from a corruption crime, the judge has the authority to decide to confiscate the property for the state.[36]In terms of criminal procedures, efforts to recover the assets of perpetrators of corruption crimes can be carried out in the following ways: asset tracking, asset freezing, asset confiscation, and asset forfeiture.[37]The mechanisms for returning assets through criminal channels include:

1. Asset Tracking

This stage is very important and determines the next stage. The purpose of this investigation or asset tracking is to identify assets, the location of asset storage, evidence of asset ownership, and their relationship to the crime committed. This stage is also a collection of evidence. In handling corruption crimes, the role of prosecutors is very important in returning state financial losses. Prosecutors have a great responsibility in ensuring that assets obtained

[33]Hasanal Mulkan & Serlika Aprita, Op.Cit, VII (1), June 2023, p 179
[34]Ade Mahmud, Op.Cit, 2021, p. 63-64
[35]Purwaning M. Yanuar, Op.Cit, 2015, p. 205-206.
[36]Jekson Kasehung, Right to Sue for State Financial Losses after an Acquittal in Corruption Crimes, Lex Administratum, III (1), January-March 2015, p. 193
[37]M. Muladi and Dwidja Priyatno. Corporate Criminal Liability, Third Edition. Jakarta: Prenada MediaGroup. 2012, p. 127-132

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illegally by perpetrators of corruption are returned to the state treasury. They must work together with other law enforcement agencies to confiscate these assets and ensure that the process of returning state financial losses runs smoothly.[38]This is important because tracing assets resulting from corruption is intended to minimize and/or prevent the following possibilities:

a. Corruptors in managing the proceeds of corruption do not place them under their own control. The proceeds of corruption are in the hands of family members or third parties they trust; and
b. After knowing that he was named a suspect, he then sold or transferred his corrupt assets to another party to avoid confiscation by investigators or public prosecutors in the future. If these possibilities occur, they can be classified as money laundering.[39]

2. Asset freezing

The success of the investigation in tracing the illegally acquired assets allows the implementation of the next stage of asset recovery, namely the freezing or seizure of assets. According to the United Nation Convention Against Corruption (UNCAC) 2003, freezing means a temporary prohibition on transferring, converting, disposing or moving property or temporarily being considered as being placed under guardianship or under control by order of a court or other competent authority.[40]Asset freezing in corruption crimes is an action taken to block or limit the use of assets suspected of being related to corruption crimes. This is done to prevent perpetrators of corruption from moving, diverting, or spending the assets before the legal process is complete.[41]

3. Asset Confiscation

Asset confiscation in asset recovery of corruption crimes is a legal effort to identify, track, confiscate, and return assets resulting from corruption to the state. This is an important part of the asset recovery process which aims to return state losses and provide a deterrent effect for perpetrators of corruption.[42]Confiscation is an order from a court or an authorized body to revoke the rights of perpetrators of corruption to assets resulting from corruption. Usually, a confiscation order is issued by a court or authorized body of the recipient country after a court decision has been made that imposes a criminal penalty on the perpetrator of the crime.[43]Confiscation can be carried out without a court decision in cases where the perpetrator of the crime has died or disapeared or there is no possibility for the prosecutor as public prosecutor to prosecute. In carrying out the confiscation of assets, the prosecutor has the authority to carry out the process. The confiscation of assets in corruption crimes carried out by the prosecutor's office uses Article 18 paragraph (1) letter a of Law No. 31 of

[38]Ulang Mangun Sosiawan, Op. Cit, 20 (4), December 2020, p. 587.
[39]M. Alatas, Mulyati Pawennei, Muhamamd Kamal, Effectiveness of Asset Tracing Implementation Against Corruption Crime Perpetrators, Journal of Lex Philosophy (JLP), 5 (2), December 2024, p. 1558
[40]Chapter I Article 2 letter (f) United Nations Convention Against Corruption 2003
[41]Ali Imron, Recovery Of Assets Stolen By Criminal Acts Of Corruption (Reversal of the Burden of Proof System Aproach to Assets Proceeded from Corruption Crimes), Res Nullius Law Journal, 6 (2), July 2024, p 121
[42]Boby Amanda & Ida Keumala Jeumpa, Asset Forfeiture of Perpetrators of Corruption by the High Prosecutor's Office of Aceh as an Effort to Indemnify Country Loss, Student Scientific Journal: Criminal Law Field, 5 (4), August 2021, p. 571
[43]Purwaning M. Yanuar, Op. Cit, 2015, p. 215

1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and also uses the Criminal Procedure Code as a confiscation mechanism.[44]

4. Asset Forfeiture

Asset confiscation is a legal effort to take over assets resulting from corruption. This process aims to recover state losses and prevent corruptors from enjoying the proceeds of their crimes. Asset confiscation can be carried out through an in rem confiscation mechanism, namely focusing on assets suspected of being the proceeds of crime, not on the perpetrators.[45]

The things that can result in the return of state financial losses through civil channels based on the law on corruption crimes are as follows:

1) The investigator is of the opinion that there is not enough evidence to prove the elements of the crime of corruption, but there has clearly been a state financial loss as referred to in Article 32 paragraph (1) of the Corruption Law which states: "In the event that the investigator finds and is of the opinion that there is insufficient evidence for one or more elements of the crime of corruption, while there has clearly been a state financial loss, the investigator will immediately submit the case files resulting from the investigation to the State Attorney for a civil lawsuit or submit them to the agency that has suffered losses to file a lawsuit."
2) The suspect dies during the investigation, but there has clearly been a state financial loss as referred to in Article 33 of the Corruption Law which states: "In the event that the suspect dies during the investigation, while there has clearly been a state financial loss, the investigator shall immediately submit the case files resulting from the investigation to the State Attorney or to the agency that suffered the loss to file a civil lawsuit against his heirs."
3) The defendant dies during the examination in court, but there has clearly been a state financial loss as referred to in Article 34 of the Corruption Law which states: "In the event that the defendant dies during the examination in court, while there has clearly been a state financial loss, the public prosecutor will immediately submit a copy of the trial minutes to the State Attorney or submit it to the injured agency to file a civil lawsuit against his heirs."
4) After a court decision has permanent legal force, there are still assets belonging to the convict which are suspected to originate from criminal acts of corruption as referred to in Article 38C of the Corruption Law which states: "If after a court decision has permanent legal force, it is discovered that there are still assets belonging to the convict, which are suspected or can reasonably be suspected to also originate from criminal acts of corruption which have not been confiscated for the State as referred to in Article 38B paragraph (2), then the State can file a civil lawsuit against the convict and/or his heirs."

[44]Boby Amanda & Ida Keumala Jeumpa, Op.Cit, 5 (4), August 2021, p. 573

[45]Nurdiana Yuniar Kusumawardhani, et al. Confiscation of Assets Without Criminal Prosecution in Corruption Crimes, Unes Law Review, 6 (4) June 2024, p. 12395

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5) An acquittal verdict against the defendant, but there has clearly been a loss to state finances as referred to in Article 32 paragraph (2) which states: "A verdict of acquittal in a corruption case does not eliminate the right to sue for losses to state finances."[46]

The authority of the State Attorney to act as a representative of the state in efforts to prosecute the return of losses to state finances through civil channels is regulated in the provisions of Article 30 paragraph (2) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office, which reads: "In the field of civil and state administration, the prosecutor's office with special powers can act both inside and outside the court for and on behalf of the state or government."

In taking the civil path, the corruption law does not provide any special provisions. Efforts to recover state financial losses are carried out through ordinary civil processes, meaning that the use of civil paths in efforts to claim state financial losses is subject to formal and material civil law.[47]

Functionally, the state institution in the role of asset recovery efforts, the presence of the Asset Recovery Center (PA) in the prosecutor's office which is a mandate of Perja No. PER-006/A/JA/3/2014 concerning Amendments to Perja No. PER009/A/JA/01/2011 concerning the Organization and Work Procedures of the Indonesian Attorney General's Office. PA as the center for asset recovery plays a role in implementing asset recovery activities, providing assistance, and coordinating and ensuring that each stage of asset recovery is integrated and runs well in order to realize good governance.[48]

The very striking difference between the criminal punishment system for corruption and general criminal punishment is seen in the type of additional punishment. In Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, additional punishment can be considered quite severe because it targets assets, this is understandable because corruption as an economic crime always causes state losses, so the law regulates additional punishments that are quite severe such as the punishment of confiscation of assets suspected of being the result of corruption can be confiscated by the state, not to mention the convict must serve the main punishment.

Regarding additional types of criminal penalties, there are new types that are not recognized according to Article 10 of the Criminal Code, but are included in Article 18 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, namely:

[46]Haswandi, Return of Corruption Crime Assets according to the Indonesian Legal System in Realizing a Welfare Legal State, Litigation Journal, 16 (2), 2015, p. 2991

[47]Jawade Hafidz Arsyad, Corruption in the Perspective of State Administrative Law, Sinar Grafika, Jakarta, 2013, p. 189

[48]Fajri Kurniawan, et al. Determination of State Financial Loss Recovery Effort Through The Role of The Prosecutors Against the Apropriation Assets of Criminal Acts of Corruption, Rewang Rencang: Jurnal Hukum Lex Generalis. 3 (7), July 2022, p. 576

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1) Confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including companies owned by convicts where corruption was committed, as well as the price of goods replacing such property. The first type of criminal offense is the confiscation of movable or immovable assets suspected of being the proceeds of a crime, this crime is listed because the lawmakers want all property obtained from corruption to be returned to the state, whether movable property such as motor vehicles, jewelry, or immovable property, such as land and buildings;
2) Payment of replacement money in an amount that is as much as possible equal to the assets obtained from the criminal act of corruption. For criminal sanctions of replacement money, this type of punishment is often aplied by judges as an effort to restore state losses. Replacement money is considered effective and efficient because its execution does not require expensive costs, only requiring a series of efforts first to find a place to store the money, because generally the money from corruption is not placed in one's own name and is outside the jurisdiction of Indonesia. According to Article 19 paragraph (3) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 specifically for replacement money, if the convict does not have sufficient assets to pay replacement money, then the convict is punished with imprisonment for a period not exceeding the maximum threat of the main sentence, in accordance with that threatened in the crime committed and this imprisonment has been determined in the judge's verdict in advance.
3) Closure of all or part of the company for a maximum of 1 (one) year. The sanction of closing the company in practice is very rare, the defendant's company will be closed by law enforcement if it is proven that the company was established and run with funds from corruption or the company's profits were used to commit corruption such as bribes against state officials, then there is a possibility that the company will be closed. At this time, there is a possibility that a company was established with the aim of being a place to store the proceeds of crime, such as companies in the financial sector are very vulnerable to becoming a place to store money from crime.[49]
4) Revocation of all or part of certain rights or the elimination of all or part of certain benefits that have been or may be granted by the government to the convict.[50]

The management of seized goods has a strategic role in the framework of asset recovery efforts for criminal acts. The management of seized goods is the end of the chain of the process of recovering assets from corruption crimes.[51]Optimizing the management of seized goods will affect the outcome of the stages of the asset recovery process that have been carried out. To achieve this goal, the management of seized goods must be carried out by paying attention to both the law enforcement aspect and the asset management aspect. The law enforcement aspect is the core of the asset recovery process. This process is carried out by law enforcement officers as part of the legal process carried out in the context of handling a criminal case. As it develops, the handling of criminal cases is carried out not only with the

[49]Agus Pranoto, Abadi B Darmo & Iman Hidayat, Legal Study on Confiscation of Corrupt Assets in Efforts to Eradicate Criminal Acts of Corruption according to Indonesian Criminal Law, Legalitas, X (1), June 2018, p. 98
[50]Ibid
[51]Gabriela Andriyani Jaiheno & Ermania Widjajanti, Settlement of Criminal Cases through the Duties and Functions of Confiscated Goods Storage Houses (Rupbasan) in Recovering State Losses, Critical Journal of Legal Studies, 9 (11), 2024, p. 201

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aim of punishing the perpetrators of the crime but also as much as possible to recover the losses caused by the crime committed. The asset management aspect is a component that needs to be added to the existing asset recovery process framework in order to obtain optimal results from the series of processes that have been carried out. The asset management process in managing assets resulting from the recovery of criminal assets is carried out by paying attention to the principles of effectiveness, efficiency, and flexibility.[52]

In other words, substantive justice does not mean that judges must always ignore the wording of the law, but rather, substantive justice means that judges can ignore laws that do not provide a sense of justice, but still adhere to the formal-procedural laws that provide a sense of justice and guarantee legal certainty.

3.3. The Essence of Legal Effectiveness in Asset Recovery Efforts for Corruption Crimes to Overcome State Financial Losses

Corruption as an economic crime that causes state losses requires law enforcement officers to return the losses in order to maintain social justice and bring the perpetrators to justice. The moral justification for the state to realize the steps to return assets from corruption is based on the theory and the state's obligation to realize social justice for all Indonesian people.[53]

In the era of globalization where efforts to return/recover stolen state assets (stolen asset recovery) through corruption tend to be difficult to do. The perpetrators of corruption have extraordinary access and are difficult to reach in hiding or laundering money from corruption, confiscating assets owned by corruptors will fully provide a deterrent effect and fear for corruptors to repeat their actions. Because so far corruptors have not felt afraid of the criminal penalties given to them. So there should be a new breakthrough to create a deterrent for corruptors and scare others through this asset confiscation to be an example for other public officials.

The affirmation of the status of asset confiscation as an additional criminal offense can be seen in the Criminal Code as a general criminal law regulation and is also contained in the PTPK Law as one of the special criminal regulations in Indonesia. Asset confiscation as one form of additional criminal offense in the Criminal Code can be seen in the formulation of Article 10 (b) of the Criminal Code. Based on these provisions, confiscation is carried out on the basis of a court decision or a judge's ruling, against certain goods. The confiscation is carried out in a limited manner in accordance with the provisions contained in the Criminal Code, namely goods owned by the convict obtained from a crime or intentionally used in committing a crime. The confiscation can be replaced with imprisonment if the confiscated

[52]Anna Maria Salamor, Law Enforcement of Asset Recovery of Corruption Crimes in Indonesia, Malakao: Corruption Law Review, 1 (2) November 2023, p. 121
[53]Ade Mahmud, Problems of Asset Recovery in Returning State Losses Due to Corruption. Judicial Journal, 11 (3), 2018, p. 347.

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goods are returned to the convict, the duration of the imprisonment is at least 1 day and at most 6 months.[54]

In the Corruption Eradication Law as a law that specifically regulates the eradication of corruption in Indonesia, the affirmation of asset confiscation as an additional punishment is stipulated in Article 18 paragraph (1) letter a of the Corruption Eradication Law which states, in addition to the additional punishment referred to in the Criminal Code, additional punishment is the confiscation of tangible or intangible movable goods and immovable goods used for or obtained from acts of corruption.[55]

Although in the formulation of Article 10 (b) of the Criminal Code and in Article 18 paragraph (1) letter a of the Corruption Eradication Law the term confiscation of assets is not explicitly mentioned, the term confiscation of certain goods in the Criminal Code and the term confiscation of tangible or intangible movable goods or immovable goods in the Corruption Eradication Law can be interpreted as what is known as the term confiscation of assets.

The Indonesian criminal system groups types of criminal penalties into main penalties and additional penalties, due to the differences between the two, namely:

a. The imposition of one type of principal punishment is mandatory (imperative), whereas the imposition of an additional type of punishment is not mandatory (facultative);
b. The imposition of the main type of punishment may be imposed without imposing the additional type of punishment (can stand alone), whereas the additional type of punishment may not be imposed without first imposing the main type of punishment (cannot stand alone);
c. The type of principal punishment imposed, if it has permanent legal force (inkracht van gewijsde zaak), requires an implementation action (executie).[56]

If we look at the differences between principal and additional penalties as described above, it can be concluded that the existence of asset confiscation as a type of additional penalty has a weak position. So to overcome this, it is apropriate to place asset confiscation as a type of principal penalty, especially in corruption cases that result in state losses. So by placing asset confiscation as a principal penalty, it is very likely that state losses caused by corruptors can be recovered.

As a result, the above efforts can optimize asset recovery efforts to effectively return state financial losses due to criminal acts of corruption and legal effectiveness can be actualized in the recovery process.In the theory of legal effectiveness, according to Anthony Allot is how

[54]Marfuatul Latifah, Urgency of Establishing a Law on Confiscation of Assets Proceeds of Criminal Acts in Indonesia, Negara Hukum, 6 (1), June 2015, p. 23
[55]Inggrid Pilli, Additional Punishments in Corruption Court Decisions, Lex Crimen, 4 (6) August 2015, p. 169.
[56]Adami Chazawi, Criminal Law Lessons Part 1 (Criminal System, Criminal Acts, Theories of Punishment and Limits of Aplicability), Publisher RajaGrafindo Persada, Jakarta, 2002, p. 26-27

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the law can realize its objectives or in other words how the law can fulfill its objectives. However, to assess or measure the effectiveness of the law is difficult to do. Allot stated:

A general test of the effectiveness of a law (a particular provision of a legal system) is therefore to see how far it realizes its objectives, ie. fulfills its purposes. There are two difficulties here. The first is that, even in a society with express law-making (through legislation or otherwise), the purpose of a particular law may not be clearly stated by its maker or emitter. What is more, as the law acquires a history, those who aply it, follow it, or ignore it re-shape both the law and its purposes to correspond to their power and their influence. A law lives and develops. Most normative statements are not originated by those who propound them; but to the recipient of the legal message, what counts is not what the originator of the norm may have intended, but what the current emitter of it intends.[57]

The effectiveness of a law in a country is measured by three degrees of implementation of that law:

1) When the law becomes a deterrent (preventive), does the law succeed in preventing the legal subject from committing prohibited acts?
2) When the law becomes a resolution of disputes (currative) that arise between legal subjects, does the law succeed in providing a fair resolution?
3) When the law becomes a provider of the needs of its legal subjects to carry out legal acts (facilitative), does the law succeed in providing rules that facilitate their needs?[58]

According to Anthony Allot there are three factors that cause the law to be ineffective. The three factors are:

1. The unsuccessful delivery of the intent and purpose of the law or the communication of norms that are not conveyed to the public. The form of the law is generally in the form of standard language regulations that are difficult for the general public to understand and the lack of a supervisory body for the acceptance and implementation of the law; Allot stated as follows:

The first reason lies at the originating or transmitting end, in the equipment which formulates and "emits" a norm. All verbal formulations, legal as well as non-legal, are subject to the defects of every linguistic message. We need not press this point, which has been well explored by "Glanville Williams" and others. It may, however, be useful pointing out that it is not only the inherent limitations of linguistic expression which get in the way of the efficient formulation of a legal message; it is also the fact that, in developed legal systems, the linguistic register and structure used for such messages is an artificial one.[59]

The legal system in general has a weakness in its verbal. The language that is too rigid and standard causes the difficulty of the mandate of the law to be accepted by the community. Only law enforcers, lawyers and people who have parallel education and communication can grasp the rapid mandate of the law. Sometimes, legislators fail to realize it and even to

[57]Anthony Allot, Op.Cit, 15(2), 1981, p 233
[58]Diana Tantri Cahyaningsih, Op.Cit, 6 (2), 2020, p. 3
[59]Anthony Allot, Op.Cit, 15(2), 1981, p 236

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communicate it effectively to its subjects, there is no monitoring of its acceptance and implementation or no feedback.

2. There is a conflict between the goals that the legislators want to achieve and the basic nature of society. As the author quotes Anthony Allot's argument as follows:
A second reason for the ineffectiveness of laws lies in the possible conflict between the aims of the legislator and the nature of the society in which he intends his law to operate. Here, the contrast between the customary society and the modern society is most acute. Even in customary-law societies where leadership roles are well defined (including those with centralized governments, such as chiefly societies), the people and their representatives have a much more active role in the making of laws. In many instances propositions for new laws only take effect after they have been put to and accepted by those who will be subject to them; although this may not be so in some instances, the legislator generally works within the presuppositions, practices, and limits of acceptance of his community.[60]

4. Conclusion

In relation to the regulation of asset recovery, legally the Indonesian government has issued various regulations that can be used as a basis/foundation in the government's efforts to recover state financial losses as a result of corruption. The efforts referred to are regulated in: Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption (Corruption Law); Law No. 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption (Anti-Corruption Convention); Law 15 of 2002 as amended by Law No. 25 of 2003 concerning Money Laundering (TPU Law); Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters. Article 20 of Law No. 30 of 2014 concerning Government Administration stipulates that responsibility for state losses is divided into administrative and criminal responsibility. However, it seems that administrative responsibility for the recovery of state losses has not been fully implemented. Substantially, asset recovery is an important part of preventing and eradicating criminal acts, especially corruption. In the Corruption Law, the return of state financial losses can be carried out through two legal instruments, namely criminal instruments and civil instruments. Criminal instruments are carried out by investigators by confiscating the perpetrator's property that has previously been sentenced by the court with an additional criminal verdict in the form of compensation. Meanwhile, efforts to return state financial losses using civil instruments are fully subject to the discipline of material and formal civil law, even though they are related to criminal acts of corruption. Unlike the criminal process which uses a material evidence system, the civil process adopts a formal evidence system which in practice can be more difficult than material evidence. *Asset recovery*as the return of state financial losses through criminal channels is often referred to as the confiscation of assets resulting from corruption. If the defendant of a corruption crime cannot prove that his assets were not obtained from a corruption crime, the judge has the authority to decide to confiscate the assets for the state. In terms of criminal procedures, efforts to recover assets of perpetrators of corruption crimes can be carried out in the following ways: asset tracking, asset freezing, asset confiscation, and

[60]Ibid, p. 237

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asset forfeiture. Functionally, the state institution in the role of asset recovery efforts, the presence of the Asset Recovery Center (PA) in the prosecutor's office which is a mandate of Perja No. PER-006/A/JA/3/2014 concerning Amendments to Perja No. PER009/A/JA/01/2011 concerning the Organization and Work Procedures of the Indonesian Attorney General's Office. PA as the center for asset recovery plays a role in implementing asset recovery activities, providing assistance, and coordinating and ensuring that each stage of asset recovery is integrated and runs well in order to realize good governance.

5. References

Journals:

A. Fatah, & H. Nyoman Serikat Putra Juliani Jaya, Legal Study of the Aplication of the Element of Detriment to State Finances in Law Enforcement of Corruption Crimes. *Diponegoro Law Journal*, 6 (31), 2017,

Ade Mahmud, et al. Substantive Justice in the Process of Asset Recovery of the Results of Corruption Crimes, *Suara Hukum Journal*, 3 (2), September 2021,

Ade Mahmud, Problems of Asset Recovery in Returning State Losses Due to Corruption. *Judicial Journal*, 11 (3), 2018,

Agus Pranoto, Abadi B Darmo & Iman Hidayat, Legal Study on Confiscation of Corrupt Assets in Efforts to Eradicate Criminal Acts of Corruption according to Indonesian Criminal Law, *Legalitas*, X (1), June 2018,

Ali Imron, Recovery Of Assets Stolen By Criminal Acts Of Corruption (Reversal of the Burden of Proof System Aproach to Assets Proceeded from Corruption Crimes), *Res Nullius Law Journal*, 6 (2), July 2024,

Anna Maria Salamor, Law Enforcement of Asset Recovery of Corruption Crimes in Indonesia, *Malakao: Corruption Law Review*, 1 (2) November 2023,

Boby Amanda & Ida Keumala Jeumpa, Asset Forfeiture of Perpetrators of Corruption by the High Prosecutor's Office of Aceh as an Effort to Indemnify Country Loss, *Student Scientific Journal: Criminal Law Field*, 5 (4), August 2021,

Chandra Ayu Astuti and Anis Chariri, Determination of State Financial Losses Carried Out by the BPK in Corruption Crimes, *Diponegoro Journal of Accounting*, 4, (3), 2015,

Eddy OS Hiariej, Criminal Asset Recovery, *Opinio Juris Journal*, 13, May-August 2013.

Fajri Kurniawan, et al. Determination of State Financial Loss Recovery Effort Through The Role of The Prosecutors Against the Apropriation Assets of Criminal Acts of Corruption, *Rewang Rencang: Jurnal Hukum Lex Generalis*. 3 (7), July 2022,

Frans Jomar Karinda, et al. Efforts to Recover Assets of Corruption Perpetrators to Optimize State Financial Losses, *Journal of Social and Cultural Syar-i*, 9 (6) 2022,

Gabriela Andriyani Jaiheno & Ermania Widjajanti, Settlement of Criminal Cases through the Duties and Functions of Confiscated Goods Storage Houses (Rupbasan) in Recovering State Losses, *Critical Journal of Legal Studies*, 9 (11), 2024,

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 20 No. 2 June 2025

Hasanal Mulkan & Serlika Aprita, Asset Recovery in Corruption Crimes as an Effort to Recover State Financial Losses, *Journal of Legal Studies "THE JURIS*", VII (1), June 2023,

Haswandi, Return of Corruption Crime Assets according to the Indonesian Legal System in Realizing a Welfare Legal State, *Litigation Journal*, 16 (2), 2015,

Inggrid Pilli, Additional Punishments in Corruption Court Decisions, *Lex Crimen*, 4 (6) August 2015, p. 169.

Jekson Kasehung, Right to Sue for State Financial Losses after an Acquittal in Corruption Crimes, *Lex Administratum*, III (1), January-March 2015,

Juhaya S. Praja. Philosophy and Methodology of Science in Islam and Its Aplication in Indonesia. Jakarta: Teraju. 2002,

M. Alatas, Mulyati Pawennei, Muhamamd Kamal, Effectiveness of Asset Tracing Implementation Against Corruption Crime Perpetrators, *Journal of Lex Philosophy (JLP),* 5 (2), December 2024,

Nofil Gusfira & Abdul Hafiz, The Role of Law in a Philosophical Perspective on Eradicating Corruption, *Maqasadi: Journal of Sharia and Law,* 1 (2), 2021,

Nurdiana Yuniar Kusumawardhani, et al. Confiscation of Assets Without Criminal Prosecution in Corruption Crimes, *Unes Law Review,* 6 (4) June 2024,

Refi Meidiantama & Cholfia Aldami, Return of Assets of Corruption Perpetrators in International Law and its Implementation in Indonesian National Law, *Muhammadiyah Law Review*, 6 (1), January, 2022.

Books:

Adami Chazawi, Criminal Law Lessons Part 1 (Criminal System, Criminal Acts, Theories of Punishment and Limits of Aplicability), Publisher RajaGrafindo Persada, Jakarta, 2002,

Baharudin Lopa, Law on Corruption (Law No. 3 of 1971) with Discussion and Its Aplication in Practice. Bandung: Alumni. 1987

Elwi Danil, Corruption: Concept, Criminal Acts, and Eradication, 1st Ed.; 2nd Printing, Jakarta: Rajawali Pers, 2012

Ernst Utrecht, Introduction to Indonesian Law, Jakarta: University Publisher, 1966,

Gomgom TP Siregar, Asset Recovery for Corruption Offenders, Unes Law Review, 6 (2), December 2023,

Hamdan Zoelva, Presidential Impeachment: Reasons for Criminal Acts of Presidential Dismissal According to the 1945 Constitution, Revised Ed., 2nd Printing, Jakarta: Konstitusi Press, 2014

Jan Remmelink, Criminal Law: Commentary on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code, Publisher PT. Gramedia Pustaka Utama, Jakarta, 2003,

Jawade Hafidz Arsyad, Corruption in the Perspective of State Administrative Law, Sinar Grafika, Jakarta, 2013,

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 20 No. 2 June 2025

M. Muladi and Dwidja Priyatno. Corporate Criminal Liability, Third Edition. Jakarta: Prenada MediaGroup. 2012,

Mahrus Ali, Principles, Theory and Practice of Criminal Law on Corruption, UII Press, Yogyakarta, 2013,

Marfuatul Latifah, Urgency of Establishing a Law on Confiscation of Assets Proceeds of Criminal Acts in Indonesia, Negara Hukum, 6 (1), June 2015,

N. Drijarkara SJ Sparks of Philosophy. Jakarta: PT. Pembangunan, 1978.

Soerjono Soekanto. Introduction to Legal Research, Jakarta: UI Press, 1986,

Soetiksno. Philosophy of law 2. Jakarta: PT. Pradnya Paramita. 1984.

Titik Triwulan Tutik, Civil Law in the National Legal System, Surabaya: Kencana, 2011,

Regulation:

Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption

Article 19 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption

Chapter I Article 2 letter (f) United Nations Convention Against Corruption 2003