

Regulation of the Prosecutor's Authority in Recovering State Financial Losses Through Civil Suits Based on Legal Certainty

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Abstract. *This research is motivated by the persistently high level of state financial losses due to abuse of authority, negligence, and corruption, which cannot all be recovered through criminal channels. In this context, the Attorney General's Office (AGO) has strategic authority through civil lawsuits to represent the state in recovering assets and optimally recovering state losses. This research aims to analyze the regulations governing the AGO's authority, identify emerging obstacles, and formulate a legal certainty-based strategy to optimize the recovery of state losses through civil lawsuits. This study uses a normative juridical legal research method, namely research that examines primary, secondary, and tertiary legal materials through a statute approach, a conceptual approach, and a case approach. The analysis was conducted on regulations governing the authority of the Prosecutor's Office, such as the Prosecutor's Office Law, the State Treasury Law, the Corruption Law, the Attorney General's Regulations, and various court decisions related to state civil lawsuits. Data were obtained through a literature review and analyzed qualitatively to assess the suitability between applicable norms and the practice of recovering state losses. The research results show that the regulations regarding the Attorney General's authority in civil lawsuits are quite clear, but there are shortcomings in the execution of decisions, asset tracking, and inter-agency coordination. Technical obstacles such as a lack of documentation, the complexity of evidence, and limited human resources at the Attorney General's Office (JPN) are significant obstacles. Optimizing the recovery of state losses requires strengthening regulations, increasing the capacity of State Attorneys and Attorneys, digitizing the asset tracking system, and establishing a legal certainty-based asset recovery unit to ensure the civil lawsuit process runs effectively and provides adequate legal protection.*

Keywords: *Financial; Lawsuit; Prosecutor's.*

1. Introduction

Indonesia firmly establishes itself as a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the concept of a state of law (*rechtsstaat*), all actions of the government and citizens must be subject to the law. Jimly Asshiddiqie stated that the principle of a state of law contains three main elements, namely the supremacy of law, equality before the law, and just law enforcement. Thus, the existence of anti-corruption regulations is a form of implementation of the rule of law that must be enforced without discrimination.

State financial management is a crucial component of governance, ensuring that all public resources are used transparently, efficiently, and accountably. However, in practice, state financial losses frequently occur due to abuse of authority, unlawful acts, and negligence on the part of government officials and private parties collaborating with the state. This situation demands an effective and legally certain mechanism for recovering state losses to ensure that the losses incurred do not become a burden on the public or the state budget.

One legal instrument used to recover state financial losses is a civil lawsuit through the authority of the State Attorney (JPN). This authority is attributive based on Law Number 16 of 2004 in conjunction with Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia. With this authority, the Attorney General's Office can act on behalf of the state in filing lawsuits against parties deemed responsible for state financial losses, thus ensuring the state recovers its rights in accordance with the principle of legal certainty.

However, the implementation of the prosecutor's authority in filing civil lawsuits has not been immediately effective. Various obstacles often arise, such as difficulties in providing evidence, a lack of administrative documentation, and the unpreparedness of government agencies to provide data support to the Prosecutor's Office. Structural obstacles such as a lack of resources for State Attorneys and suboptimal asset tracking also hamper the recovery of state losses. These factors mean that the implementation of civil lawsuits is not fully able to meet the need for optimal recovery of state assets.

One concrete example demonstrating the importance of optimizing civil lawsuits is the Antasari Market Case in Banjarmasin, where the state suffered billions of rupiah in losses due to irregularities in the market construction project. The Prosecutor's Office initiated a civil lawsuit against the private parties involved after the criminal process failed to recover state assets. Through this lawsuit, some of the state's losses were recovered, although the process took a long time due to incomplete documentation and the transfer of assets to other parties.

From a legal certainty perspective, the existence of clear regulations is crucial to ensuring that the Prosecutor's Office's civil lawsuits are not legally contested in court. However, in practice, several regulations are still considered inadequate,

particularly regarding the execution of judgments and asset tracking mechanisms. This situation requires simultaneous regulatory improvements to ensure the Prosecutor's Office can exercise its authority effectively and provide legal certainty for all parties involved.

Given these various issues, research into the regulatory authority of the Prosecutor's Office (PPA) in recovering state financial losses through civil lawsuits is crucial. This research aims not only to understand the legal structure of the PPA's authority but also to examine the obstacles encountered and formulate strategies and solutions that can increase the effectiveness of state loss recovery. Therefore, the results of this study are expected to contribute to strengthening the national legal system, particularly in the context of accountability in state financial management.

With the background described above, the author is interested in writing an individual working paper entitled "REGULATION OF THE PROSECUTOR'S AUTHORITY IN RECOVERING STATE FINANCIAL LOSSES THROUGH CIVIL SUITS BASED ON LEGAL CERTAINTY".

2. Research Methods

This study uses normative legal research, namely using norms in laws with a conceptual approach and a special approach. The research specification used is Analytical Descriptive, namely an effort to analyze and explain legal issues related to the object. The method used in this study is normative juridical. This research goes through the stages of literature study, the data obtained is then analyzed through a qualitative analysis approach. Qualitative data processing and analysis generally emphasize the analysis of the deductive and inductive conclusion process and the dynamics of the relationship between observed phenomena using scientific logic.

3. Results and Discussion

3.1. Regulation of the Prosecutor's Authority in Recovering State Financial Losses Through Civil Lawsuits Based on Legal Certainty

The regulation of the authority of the Republic of Indonesia Attorney General's Office in recovering state financial losses through civil lawsuits is a form of expanding the role of the prosecutor's office in safeguarding state finances as public assets that must be protected by law.

Normatively, this authority stems from Article 30 paragraph (2) of Law No. 16 of 2004 in conjunction with Law No. 11 of 2021 concerning the Indonesian Attorney General's Office, which expressly grants the State Attorney (JPN) the right to act in and outside the courts in the interests of the state.

This regulation strengthens JPN's position as the government's legal

representative in recovering state losses arising from unlawful acts, whether committed by state officials or private parties.

Apart from the Attorney General's Law, another important legal basis is Law No. 1 of 2004 concerning State Treasury, which emphasizes that any state losses must be recovered, one of which is through a civil lawsuit mechanism.

This regulation shows that the state places the Prosecutor's Office at the forefront in ensuring that state financial losses do not become a public burden and can be recovered effectively through civil law instruments.

In the context of legal certainty, the existence of explicit rules regarding the authority of the JPN is very important so that the action to recover state losses is not legally questioned by the defendant in the litigation process.

The authority of the Prosecutor's Office is also procedurally strengthened through Attorney General Regulation No. 7 of 2019 concerning Guidelines for Handling Civil and State Administrative Cases, which regulates litigation, non-litigation, and execution mechanisms.

This regulation is important because it provides operational standards that ensure that every JPN action is not only legally valid, but also consistent and accountable.

In the legal dimension of state administration, this authority is attributive, meaning it is directly granted by law, so that the Prosecutor's Office does not require delegation from other institutions to act.

In addition to the national aspect, Indonesia has also ratified the United Nations Convention Against Corruption (UNCAC), which requires countries to carry out asset recovery, including through civil mechanisms.

Thus, the authority of the JPN to sue parties who cause losses to state finances has international legitimacy as a form of fulfilling the state's obligations in eradicating corruption and misuse of public finances.

In the context of legal certainty, this clear regulation provides a strong basis so that civil lawsuits are not dismissed simply because of formal objections regarding authority, as often happened before the revision of the Attorney General's Law was enacted.

Explanations regarding state losses in the context of civil lawsuits often refer to the results of BPK or BPKP audits, so that collaboration between the Prosecutor's Office and state audit institutions is also an important part of the legality of JPN actions.

An example of the application of this authority is seen in the Antasari Market Case in Banjarmasin, where the Prosecutor's Office sued PT GJW to recover regional

financial losses amounting to IDR 26 billion after the criminal process was unable to recover the assets in full.

In this case, the court recognized JPN's legal standing due to the clarity of the regulations underlying the lawsuit, proving that legal certainty is a key factor in the success of recovering state losses.

The regulation of the Attorney General's authority was also studied in the Unissula Master of Law study, which emphasized that the authority of the JPN as a representative of the state is appropriate but needs to be strengthened in terms of execution and synergy between institutions to ensure legal certainty.

With all of these normative constructions, it can be concluded that the regulation of the Attorney General's authority in civil lawsuits has fulfilled the principle of legal certainty, although its implementation still requires strengthening in the technical, coordinative and administrative aspects.

3.2. Obstacles Faced by the Prosecutor's Office in Recovering State Financial Losses through Civil Lawsuits

The Indonesian Attorney General's Office has the authority to file civil lawsuits in order to recover state financial losses, but this authority faces various obstacles originating from legal, administrative, and technical aspects of proof.

One of the most significant obstacles is the issue of proving state financial losses, which often requires complete documents, audit results, and transaction evidence, which in many cases is no longer complete or has been removed by the perpetrator.

In addition, differences in interpretation regarding "state losses" between auditors, investigators, courts, and defendants often cause the litigation process to drag on and slow down the recovery of state finances.

Obstacles also arise from a lack of coordination between institutions, especially between government agencies requesting legal assistance and the Prosecutor's Office, for example in providing documents, granting SKK, or seriousness in supporting the lawsuit process.

It is not uncommon for government agencies to be late in providing a Special Power of Attorney (SKK) to the Prosecutor's Office so that the lawsuit process can only begin when the perpetrator's assets have been transferred or are difficult to trace.

In addition, structural obstacles also arise due to the limited number of State Attorneys (JPN) who have technical expertise in complex civil cases, especially those involving large assets and complicated financial transactions.

Civil lawsuits for the recovery of state losses usually involve technical aspects such as investment analysis, asset appraisal, forensic audits, and business contracts, thus requiring a JPN with multidisciplinary competence.

The next obstacle is asset tracing which is not optimal, especially if the perpetrator has deliberately hidden or transferred his wealth to other parties both at home and abroad.

At the technical level, obstacles also occur in the process of executing civil decisions, because even if the Prosecutor's Office wins the lawsuit, the implementation of the decision is often hampered by unclear assets, seizures already carried out by other creditors, or the status of disputed assets.

Problems also arise because some perpetrators exploit weaknesses in civil execution regulations, such as transferring ownership of assets before the decision has permanent legal force, so that state assets cannot be fully recovered.

The next obstacle is resistance from the defendant, especially large corporations or officials with political influence, who often file repeated legal efforts such as appeals, cassation, and judicial review to delay the execution.

From a budgetary perspective, the Prosecutor's Office also faces limitations in litigation funding, especially for large-scale civil cases that require independent experts or high appraisal costs.

Another legal obstacle is the lack of specific civil law regulations for the recovery of state assets, because most of the existing regulations still focus on criminal acts of corruption, not on recovering losses through pure civil lawsuits.

A concrete example of this obstacle can be seen in the BLBI Case, where the Attorney General's Office's efforts to sue delinquent obligors faced obstacles in the form of documentation, assets that had been transferred, and a very long litigation process, so that the recovery of state losses was not optimal.

Similar obstacles also occurred in the Pasar Turi Surabaya Case, where the Prosecutor's Office faced difficulties in executing the defendant's assets because most of the assets had been transferred to third parties, so that the value of the state's losses could not be fully recovered.

A study from the Unissula Master of Law Journal explains that the biggest obstacle to JPN lies in the weak integration of the information system for state assets and the assets of the party being sued, so that tracking and execution become ineffective from a legal certainty perspective.

Thus, the obstacles faced by the Prosecutor's Office in recovering state losses through civil lawsuits are multidimensional, encompassing legal, technical, administrative, political and institutional aspects, thus requiring a comprehensive

solution based on legal certainty to ensure the effectiveness of state asset recovery.

3.3. The Prosecutor's Office's Solutions and Strategies in Recovering State Financial Losses through Civil Lawsuits Based on Legal Certainty

The Attorney General's Office's solutions and strategies for recovering state financial losses through civil lawsuits require a comprehensive approach that encompasses legal, institutional, administrative, and information technology aspects to ensure effective recovery of state assets.

The first key step is to strengthen the legal basis by improving regulations, both at the statutory and technical regulation levels, so that the authority of the State Attorney (JPN) in filing civil lawsuits is no longer legally disputed.

In addition to strengthening regulations, the Prosecutor's Office needs to optimize the legal audit process and evidence collection from the outset, especially financial documents and audit results from the BPK or BPKP, because the strength of evidence is the main key to the success of state civil lawsuits.

On the institutional side, the Prosecutor's Office needs to improve the competence of JPN through special training covering civil law, business, finance, forensic audit, and asset recovery, considering that state civil cases are technical and multidisciplinary in nature.

To strengthen the effectiveness of civil lawsuits, it is necessary to establish a special asset recovery unit at the Attorney General's Office, the High Prosecutor's Office, and the District Attorney's Office that focuses on tracking, freezing, confiscating, and mapping the assets of parties who harm the state.

Another important strategy is to build a national asset data integration system, which connects land, banking, financial transaction, and corporate ownership data, so that the National Land Agency (JPN) can more quickly trace the perpetrators' assets.

At the litigation level, the Prosecutor's Office can utilize unlawful acts and simple lawsuits to accelerate the recovery process when the value of state losses is not too large or the evidence is strong enough.

Non-litigation strategies such as mediation and voluntary settlement negotiations are also effective solutions, especially for cases that have the potential to take a long time to resolve through litigation.

In addition, the Prosecutor's Office can implement a preventive-repressive strategy, namely by providing legal assistance to government agencies before state losses occur, while also handling lawsuits after losses occur.

To strengthen legal certainty, the JPN must ensure that the entire lawsuit process is carried out in accordance with the standards of Attorney General Regulation No. 7 of 2019, including SKK procedures, legal opinions, and legal assistance.

The next strategy is to increase international cooperation through Mutual Legal Assistance (MLA) and extradition treaties in order to recover assets held abroad, especially in large-scale corruption cases.

The Prosecutor's Office also needs to increase transparency by publishing progress in handling state civil cases, so that the process of recovering state losses can be monitored by the public and reduce the opportunity for political intervention.

At the execution stage, the Prosecutor's Office must strengthen coordination with the courts and state auction offices so that the implementation of civil decisions can be carried out effectively and without delay, so that state assets can be recovered immediately.

An example of the implementation of this strategy is seen in the Antasari Market Case in Banjarmasin, where the Prosecutor's Office succeeded in recovering more than IDR 26 billion through a combination of civil litigation, asset tracing, and confiscation of the defendant's assets that had previously been transferred.

Another example is the case of alleged state losses by PT GWP in Subang, where the JPN took swift action by blocking the defendant's assets before the decision became legally binding, so that the execution could proceed effectively without any obstacles.

A study from the Unissula Master of Law Journal confirms that the key strategy for asset recovery is strengthening the regulatory framework and digitizing asset data, as the biggest obstacle for JPN is limited access to information on the perpetrator's assets.

Thus, the Attorney General's Office's solutions and strategies for recovering state financial losses through civil lawsuits must be implemented through regulatory, structural, technological, and collaborative approaches, so that efforts to recover state assets can be carried out effectively, efficiently, and based on legal certainty.

4. Conclusion

The Attorney General's authority to recover state financial losses through civil lawsuits has been clearly regulated through various regulations, such as the Attorney General's Law, the State Treasury Law, the Corruption Law, the Attorney General's Regulations, and international instruments such as the UNCAC. The State Attorney's authority is attributive and grants the Attorney General's Office full legitimacy to represent the state in resolving civil disputes. This regulation demonstrates that legal certainty is in place, although strengthening implementation aspects, particularly the execution process and asset digitization,

still needs improvement. Obstacles to recovering state losses through civil lawsuits are multidimensional. The main obstacles include difficulties in proving state losses, a lack of documentation, weak inter-agency coordination, limited human resources within the Prosecutor's Office (JPN), the complexity of asset tracking, and challenges in executing court decisions. Non-technical obstacles such as political intervention and defendant resistance also impede the effectiveness of state asset recovery. Therefore, the challenges faced by the Prosecutor's Office are not only legal but also structural, administrative, and technological. Possible solutions for the Attorney General's Office include strengthening the regulatory structure and enhancing the competence of the National Asset Management Agency (JPN), optimizing asset tracing, expanding international cooperation, utilizing non-litigation settlements, and integrating national asset data. Digitalization strategies, increased coordination with the Supreme Audit Agency (BPK/BPKP) and government agencies, and the establishment of a dedicated asset recovery unit are strategic steps that can accelerate the recovery of state losses. These strategies must be based on the principle of legal certainty to ensure that the Attorney General's actions always have clear, measurable, and accountable authority.

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