

Legal Certainty in Recovering State Financial Losses in Corruption Crimes

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ABSTRACT

Corruption, as an extraordinary crime, requires extraordinary measures—especially in recovering state financial losses—which demands legal certainty. This research aims to analyze legal certainty in procedures for recovering state financial losses caused by criminal acts of corruption, focusing on the role of public prosecutors and the effectiveness of the applicable legal mechanisms. Using normative legal research methods with legislative and conceptual approaches, this study processes primary and secondary legal materials through documentation and interpretative analysis techniques. The results of the study show that although procedures for recovering state losses are regulated in the Corruption Eradication Law and its derivative regulations, legal certainty has not been fully realized due to the unclear authority of the public prosecutor or the Corruption Eradication Commission (KPK) in tracking and seizing assets, as well as weak synchronization between criminal and civil instruments. Therefore, this study recommends reformulating regulations that explicitly define the authority of law enforcement agencies, providing adequate facilities and infrastructure for the Attorney General's Office and the KPK, and strengthening the role of the community in reporting criminal acts of corruption. These efforts are expected to create legal certainty in the recovery of state losses, increase the effectiveness of restitution, and restore public confidence in the judicial system.

KEYWORDS

Legal Certainty, Recovery of State Financial Losses.



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INTRODUCTION

The fourth paragraph of the preamble to the Constitution of the Republic of Indonesia in 1945 states that one of the goals of the Unitary State of the Republic of Indonesia is to improve the general welfare (Jimly Asshiddiqie, 2021; Julyano & Sulistyawan, 2019). The achievement of state goals is always related to state financial law, which contains legal principles to manage state finances as a form of financing for the implementation of state government carried out by state officials (Abdurachman et al., 2025). In addition to the preamble to the 1945 Constitution of the Republic of Indonesia, there are also articles in the constitution that discuss state finances (Negara, 2001; Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945). In terms of the management of state finances, as stated in Article 23 paragraphs (1) and (2), there is a phrase 'for the greatest prosperity of the people. Therefore, all forms of financing for state administration and state administration must be used for the welfare of the people in accordance with the constitutional mandate.

In general, the crime of corruption is an act that enriches itself and causes losses to the state (Muqorobin & Arief, 2020). Indonesia classifies corruption crimes as extraordinary crimes (WAHYU, 2021). Corruption is one of the criminal acts whose purpose is not only to punish the perpetrator, but also to recover the financial losses that have occurred. In the law, in addition to the criminals that have been regulated in the Criminal Code (KUHP) (Sitanggang, 2024; Wibowo et al., 2025). Therefore, the development of law plays an important role in social, national, and state life. Law functions as a tool of regulation and supervision to achieve order, security, and justice (Hukum et al., 2020). Currently, the implementation of the law in

Indonesia is not optimal. Given an increasingly connected world and rapid globalization, various legal issues have become more complex and have the potential to hinder the achievement of legal goals (Soekanto, 1986, 2006, 2015). Among the various problems that exist, the crime of corruption is one of the most worrying problems because its impact has damaged various aspects of social, national, and state life.

Corruption has increased risks to economic stability and government integrity in Indonesia. Corrupt practices not only harm the national economy but also erode public trust in government and judicial institutions. The latest data from the Corruption Eradication Commission (KPK) illustrates the extent of this problem: from 2019 to 2023, state financial losses due to corruption were estimated at IDR 71.3 trillion, while the asset recovery rate reached only 32.8%. The significant gap between potential losses and the effectiveness of asset recovery indicates a legal vacuum in the state's financial loss recovery system, particularly regarding coordination between criminal and civil instruments.

However, the recovery of state financial losses resulting from corruption in Indonesia continues to face obstacles at both procedural and technical levels. (Gubali, 2019). After the enactment of Law Number 31 of 1999 concerning the Eradication of Corruption, which was later amended by Law Number 20 of 2001, Article 2 paragraph (1) defines corruption as:

“Every person who unlawfully commits an act of enriching himself, another person, or a corporation that can harm the State's finances or the State's economy shall be sentenced to life imprisonment or imprisonment for a minimum of four (4) years and a maximum of twenty (20) years, and a fine of at least Rp 200,000,000.00 (two hundred million rupiah) and a maximum of Rp 1,000,000,000.00 (one billion rupiah).”

Furthermore, Article 3 stipulates:

“Every person who, with the intent of benefiting himself, another person, or a corporation, abuses the authority, opportunity, or means available to him because of his position, and thereby harms the State's finances or economy, shall be sentenced to life imprisonment or imprisonment for a minimum of one (1) year and a maximum of twenty (20) years, and a fine of at least Rp 50,000,000.00 (fifty million rupiah) and a maximum of Rp 1,000,000,000.00 (one billion rupiah).”

The procedure for recovering state financial losses begins with the detection and calculation of losses by the Audit Board of the Republic of Indonesia (BPK) through an investigative audit as regulated in Law Number 15 of 2006 concerning the Audit Board. The results of the audit are documented in the Audit Results Report (LHP), which contains accurate calculations of losses, evidence of irregularities, and recommendations to hand over the case to law enforcement officials. Furthermore, the Corruption Eradication Commission (KPK) or the Attorney General's Office conducts asset searches in collaboration with third parties such as banks, the National Land Agency (BPN), and SAMSAT to identify hidden assets and confiscate assets related to corruption based on Article 18 of the Anti-Corruption Law. This process continues to the prosecution stage in court, where the public prosecutor prepares an indictment that includes a claim for damages, with the BPK LHP serving as primary evidence to reinforce the calculation of losses until the judge issues a final and binding verdict. (Situmorang et al., 2022). During the implementation phase, the public prosecutor or the Corruption Eradication Commission (KPK) follows a structured mechanism, starting from the issuance of bills and statements of willingness to pay to the deposit of compensation money

into the state treasury through the Non-Tax State Revenue Assistance Deposit Letter (SSPBP). If the convict does not fulfill his payment obligations, his property will be confiscated and auctioned, and he will be subject to a substitute criminal penalty in the form of imprisonment in accordance with Article 18 paragraph (3) of the Corruption Law, as stated in the implementation report (BA-8). If criminal enforcement is not possible, recovery of damages can be pursued through a civil lawsuit against the defendant or his heirs, as well as through claims for administrative damages, which are divided into claims for damages (for civil servants who cause non-cash losses to the state) and state treasury claims (for treasurers who cause cash shortages in the state budget). Both are regulated under BPK Regulation Number 3 of 2007.

The final stage involves systemic prevention and monitoring conducted by the BPK and the KPK to prevent the recurrence of corruption. The BPK provides recommendations to improve state financial governance within relevant agencies, while the KPK monitors the implementation of these recommendations and coordinates with the Attorney General's Office to ensure that recovered assets are not misappropriated again.

The process of recovering state financial losses plays a vital role in restoring state assets that have been diminished. This process is carried out by authorized law enforcement agencies, one of which is the Financial Audit Agency (BPK). Based on Law Number 15 of 2006 concerning the Financial Audit Agency (BPK), the BPK is a state institution tasked with auditing the management and accountability of state finances, as referred to in the 1945 Constitution of the Republic of Indonesia. Additionally, the Corruption Eradication Commission (KPK), as an independent institution, also plays an important role in recovering state financial losses caused by corruption through investigations, examinations, and prosecutions.

Based on the foregoing description, it can be concluded that the direct consequence of corruption lies in the financial losses suffered by the state, where public funds that should have been allocated to improve people's welfare are misused by certain parties. According to Article 1 of Law Number 17 of 2003, State Finance is defined as all monetary rights and obligations of the state. The explanatory note further states that this includes all state assets in various forms—both separate and inseparable—including components of state assets and all rights and obligations arising from: being under the control, management, and accountability of state officials at both central and regional levels; and being under the control, management, and accountability of State-Owned Enterprises (SOEs), Regional-Owned Enterprises (ROEs), foundations, legal entities, and companies that include state capital or third-party capital.

State financial recovery due to corruption can be pursued through three main mechanisms: asset confiscation, payment of compensation, and civil lawsuits. Payment of compensation is regulated in Article 18 paragraph (1) letter (b) of the Corruption Law as an obligation for convicts to return funds equivalent to the state losses incurred due to the profits gained from corruption. This process begins with the prosecutor's demand based on calculations from the BPK, followed by enforcement through bills, asset confiscation, and auctions if the convict fails to meet his obligations. If the auction results are insufficient, the convict may face a substitute prison sentence (*subsider*). However, this mechanism often fails to achieve restorative justice, as convicts frequently claim inability to pay while continuing to

live lavishly—for instance, in the case of Nazaruddin, who has not paid Rp 150 billion in compensation despite serving a prison sentence.

Through the Theory of Criminal Asset Forfeiture, the state applies coercive measures to seize control and/or ownership of criminal assets based on a court decision with permanent legal force, independent of the perpetrator's punishment. The current formulative policy for confiscating assets resulting from corruption is contained in the Corruption Law, which allows asset confiscation through two routes: criminal law (via criminal court decisions) and civil law (via civil proceedings). Based on this provision, the act of asset confiscation is established as both a sanctions mechanism and an additional criminal measure against perpetrators of corruption when aiming to recover the proceeds of crime.

The application of criminal compensation and fines serves as one of the primary methods for restoring state financial losses. Under existing corruption laws, all cases involve substitute money penalties. Additional penalties in the form of payment of substitute money are provided in Article 18 paragraph (1) letter (b) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 on the Eradication of Corruption Crimes (commonly referred to as the Corruption Law II). The provisions regarding compensation payments are now stricter—if payment is not made within one month, the convict is immediately subject to imprisonment, as determined by the judge's decision. The duration of imprisonment may not exceed the maximum sentence for the main crime. In general, judges handling corruption cases have adopted two main approaches to restoring misused state assets. These approaches include:

- a. Burden of co-dependence: Liability (co-burden) which is better known in the realm of civil law, is the way an agreement with a large number of subjects occurs. In the context of civil law, it is known that there are 2 (two) forms of liability, namely active and passive. Liability can be said to be active if the number of creditors is more than one, and conversely, passive liability occurs if the number of debtors (debtors) is more than one.
- b. Proportionate Burden: Proportionate burdening refers to a compensation sanction scheme in which a panel of judges explicitly determines in its verdict the amount of responsibility of each defendant. The determination of the amount is based on the judge's assessment of the role or contribution of each defendant in the corruption crime in question.

This study critically examines the existence of legal gaps related to legal certainty in terms of recovering state financial losses caused by corruption crimes. This is strengthened by KPK data for the 2019-2023 period, which shows a low asset recovery rate, which is 32.8% of the state's total losses of Rp71.3 trillion. In addition, there are cases such as the case of Nazaruddin, who managed to avoid his obligation to pay compensation of Rp150 billion even though he had served a prison sentence. This legal uncertainty is caused by weak synchronization between criminal instruments (Article 18 of the Corruption Law) and civil law, unclear procedures in taking action against perpetrators who deliberately conceal assets, and the absence of binding coordination mechanisms between relevant institutions such as the BPK, KPK, the Attorney General's Office, and the courts. Therefore, this study aims to legally analyze the legal loopholes in the state loss recovery system, formulate an integration model between asset confiscation, compensation payments, and civil lawsuits to achieve legal certainty, and provide policy recommendations to develop a comprehensive legal framework. This framework is expected to ensure the effectiveness of restitution while restoring public trust in the justice system. This legal research study only focuses on the aspect of asset recovery

caused by corruption crimes because the formulation of the problem focuses on the juridical analysis of the recovery of state financial losses. This limitation of scope is based on the fact that the return of state financial losses has not reached the expected optimal level, either through the criminal mechanism of fines and additional compensation that often cannot be fulfilled by defendants and convicted of corruption crimes.

METHOD

This research employs a normative legal research method focusing on the juridical analysis of the recovery of state financial losses in corruption cases (Wignjosoebroto, 2002). According to Soerjono Soekanto, normative legal research is “legal research carried out by examining literature materials or secondary data as the basis for research, by reviewing regulations and literature related to the problem being studied.” In line with that, Johnny Ibrahim explains that qualitative research in the context of law is “a research procedure that produces descriptive data in the form of written or spoken words from people and observable behaviors, which in this case are related to legal norms, principles, and rules.” This approach was chosen because the study aims to gain an in-depth understanding of the legal phenomena related to the recovery of state financial losses through analyses of laws and regulations, court decisions, and various legal literatures. In this study, the author adopts a normative legal research type, or literature-based legal research, examining laws and regulations within a coherent legal system. This research applies two main approaches, namely the Statute Approach, which involves examining legislation related to the legal issues under study to evaluate consistency and conformity between regulations, and the Conceptual Approach, which derives from legal views and doctrines to identify ideas that produce relevant legal definitions, concepts, and principles. Through the combination of these two approaches, the researcher identifies legal problems, conducts legal reasoning, analyzes existing challenges, and provides comprehensive solutions to issues concerning the recovery of state financial losses in corruption cases. The data analysis techniques used are content analysis and interpretative analysis of primary and secondary legal materials. The analysis is carried out systematically through the stages of collecting and classifying legal materials, performing deductive-normative analysis using grammatical, systematic, and teleological interpretations, and conducting synthesis and evaluation to draw conclusions and formulate recommendations based on the principles of justice, legal certainty, and benefit. Through this approach and analytical framework, this research aims to provide a comprehensive and solution-oriented overview of legal certainty in the recovery of state financial losses caused by corruption crimes.

RESULT AND DISCUSSION

1. Rules for the Recovery of State Financial Losses in Corruption Cases according to Laws and Regulations in Indonesia

The Government of Indonesia has drafted Law Number 31 of 1999 concerning the Eradication of Corruption, which was subsequently revised through Law Number 20 of 2001. The provisions regarding sanctions for corruption crimes are regulated in Law Number 31 of 1999 and Law Number 20 of 2001, which include various forms of criminal offences that can be imposed by judges against perpetrators, including:

- 1) death penalty;
- 2) imprisonment;
- 3) criminal fines; and
- 4) Additional penalties.

Law plays a role in safeguarding the interests of society through the creation of order, justice, and legal certainty. Thus, the law guarantees that the rights of individuals and groups are respected and protected. Furthermore, the law also serves to deal with offenses that have the potential to harm other parties or disrupt overall social stability. The main motivation in efforts to eradicate corruption in various countries is the protection of state wealth. The return of financial assets derived from corruption has become an independent legal norm, based on the principle that perpetrators are not allowed to profit from the proceeds of corruption. In the framework of criminal acts committed by perpetrators, the confiscation of assets resulting from corruption can be used to restore damage and degradation of the quantity and quality of the economy, as well as improve the welfare of the people affected by these acts. The types of wealth that can be seized in this context include:

- 1) Assets obtained through the proceeds of corrupt activities or businesses.
- 2) Assets derived from business results or activities arising from corruption.
- 3) Assets obtained from corrupt activities or businesses that generate profits through actions such as conveying false information, misleading, deleting information, damaging data, or providing inaccurate statements.

Many parties question the fate of state financial losses caused by corruption crimes, where the value is not small, whether the assets will be returned or adequately overcome with criminal sanctions alone, such as prison sentences accompanied by fines, which are considered balanced with the act. Such an approach is clearly inappropriate, because if the state's financial losses are not recovered, it is not impossible that the economic crisis in Indonesia will worsen. Efforts to recover state assets due to corruption are still far from the expectations of the Indonesian people, so the disclosure of cases must be used as the main indicator of success. The recovery of state assets is often just an empty hope, considering that there are still many assets that have not been tracked by law enforcement officials. The Government of Indonesia has adopted various measures to eradicate corruption, in line with the character of the state of law as affirmed in the 1945 Constitution of the Republic of Indonesia, especially Article 1 paragraph (3). The core meaning of the concept of the state of law basically includes the direction of state policy in building the life of the nation and state. This principle became the basis for the birth of Law Number 31 of 1999 concerning the Eradication of Corruption, which was later amended by Law Number 20 of 2001. The main issue in the current development of corruption eradication emphasizes three main aspects, namely prevention, eradication, and payment of compensation or recovery of state losses. This illustrates that the handling of corruption is not limited to efforts to prevent and eradicate through the criminalization of perpetrators, but also involves the process of returning and recovering state losses from the proceeds of corruption crimes.

The recovery of state financial losses can be carried out through two legal instruments, namely criminal instruments and civil instruments. This asset return process is a complex challenge, even under ideal conditions, because it involves a complex and multidisciplinary approach. The main purpose of state loss recovery is to prevent wider negative impacts, so that

the losses incurred can be overcome through the return and restoration of assets resulting from corruption. In Indonesia, law enforcement continues to be improved and becomes a priority for law enforcement officials, especially the police, prosecutors, and the Corruption Eradication Commission (KPK), especially in uncovering corruption cases that occur in various regions. The investigation stage carried out by law enforcement plays a crucial role in the disclosure of the corruption case. The success of recovering state financial losses due to corruption crimes is highly dependent on optimizing law enforcement measures in uncovering these cases, by utilizing the authority granted by laws and regulations, as well as the support of adequate facilities and infrastructure. This allows the reimbursement of state losses from corruption to be carried out effectively and maximally. The process of recovering state financial losses in corruption cases basically aims to compensate the state for the damages, although in practice it is still faced with various obstacles, both at the procedural and technical stages.

Legal instruments that are relevant to the pattern of corruption crimes and the object of their legal problems are in the procedural realm. The results of corruption cases in the form of state funds are not only enjoyed by the perpetrator or defendant, but also received and utilized by third parties who are not convicts. Therefore, efforts to recover state financial losses from third parties require procedurally appropriate legal action.

The Law on Corruption Crimes describes the concept of state finance, but does not specify the definition and indicators of "can harm state finances". The term "could" implies the possibility of state losses or potential losses that may not be realized. Thus, clear measurement criteria are needed to assess which acts have the high potential to cause state losses, so that the public prosecutor and the panel of judges do not act arbitrarily in declaring the existence of state losses or proving them. In the prosecution phase or before the court decision, state losses do not necessarily occur in actuality, especially if the process still involves paying installments of principal debts, interest, and fines. Here are some explanations about state finance based on positive laws in Indonesia. First, according to Law Number 17 of 2003 concerning State Finance, Article 1 number 1,

"State finance includes all rights and obligations that can be valued with money, as well as all forms of money or goods that can belong to the state in the exercise of these rights and obligations".

Second, according to Law Number 31 of 1999 concerning Corruption Crimes. "State finance refers to all state wealth in all forms, whether separated or not, including the share of state wealth and the rights and obligations arising from: (1) control, management, and accountability by state agency officials, both at the central and regional levels; (2) control, management, and accountability by State-Owned Enterprises/Regional-Owned Enterprises, foundations, legal entities, and companies that include state capital or third-party capital based on agreements with the state".

In general, state finance includes all rights and obligations of the state that have monetary value, including policies and activities in the fiscal, monetary, and management fields of state wealth that are separated, along with all forms of money or goods that can belong to the state related to the implementation of these rights and obligations. Especially regarding state losses, the explanation in the legislation is still limited, including according to Law Number 1 of 2004 concerning the State Treasury, state/regional losses are defined as a lack of money, securities, or goods that are real and definite in amount, due to unlawful acts, either intentional or

negligent (Nomor, 1 C.E.) (Indonesia, 2004). From the above description, it becomes clear that state losses refer to actual and real shortages of money, securities, or goods that have been reduced from their original amount, for example, due to corruptors carrying away state funds, partners who swell project costs paid by the state treasury, and the like. This kind of loss is referred to as a really real state loss.

This behavior damages the social and economic rights of the community, as well as causes losses to the state, so the assets obtained from it must be confiscated by the prosecutor's office. The recovery of state assets in various forms of crime, including corruption, is an important and strategic element in law enforcement. In addition to providing criminal sanctions to perpetrators, efforts to recover state financial losses also play a vital role in realizing holistic justice. In this context, the prosecutor's office occupies a central position in the process of taking over or confiscating assets to compensate for state losses. Based on the Law on Amendments to the Prosecutor's Office of the Republic of Indonesia, the prosecutor's office is a state institution responsible for prosecution and other legal authorities. Article 30 paragraph (1) letters a and b affirms the authority and responsibility of the prosecutor in the criminal realm, namely carrying out the prosecution process and the execution of the decisions of judges and courts that have obtained permanent legal force. In addition, the role of the prosecutor's office in asset recovery is also regulated in Article 30A, which states that:

"The Prosecutor's Office is also authorized in asset recovery efforts."

If examined more deeply about asset recovery under the law, Article 30A is divided into two paragraphs. Article 30A paragraph (1) states that:

"The Prosecutor's Office is authorized to rescue, secure, and return state assets, including assets that are illegally controlled by other parties."

While Article 30A paragraph (2) explains that;

"The authority as referred to in paragraph (1) is exercised through tracing, confiscation, and return of assets to the state."

Thus, these two paragraphs emphasize the urgency of handling cases, including corruption crimes. The recovery and takeover of assets in corruption cases refers to the Corruption Law which based on Article 18 paragraph (1) letter b, corruption perpetrators are not only subject to the main sanctions, but can also be required to pay compensation for state losses. These additional sanctions include the revocation of certain rights or the confiscation of property as a measure to recover state losses. If within one month after the verdict obtains legal force the convict has not paid off the replacement money, the prosecutor has the right to confiscate and auction the convict's property to cover the loss. If the convict's assets are insufficient, the convict may be subject to an additional prison sentence, although it must not exceed the duration of the main sanction. The provisions for asset confiscation are also regulated in the Criminal Procedure Code (KUHP). The objects of confiscation include property or bills resulting from corruption, objects used for crimes, objects that obstruct investigations, goods made specifically for crimes, and objects directly related to criminal acts. The confiscation process is carried out in accordance with the procedures and requirements set out in the legislation, namely:

- 1) Ordinary confiscation, which is carried out under applicable provisions, by obtaining a permit from the court, showing an identity card, identifying the goods to be confiscated, and involving the village head or local environmental official and two witnesses.

- 2) Seizure in an urgent situation, which aims to prevent obstacles in the case, so that it is carried out when evidence is crucial to be secured before it is moved or destroyed by the relevant parties.
- 3) Seizure without the approval of the chief justice is only allowed in emergency situations that require immediate action without delay.
- 4) Confiscation in the case of being caught, where investigators are authorized to confiscate all items proven to be used in the execution of criminal acts.

In this case, it should be noted that the investigator may only confiscate after obtaining permission from the head of the court. However, there are exceptions for very urgent situations, where investigators are allowed to seize moving objects. In such conditions, investigators are obliged to immediately report the seizure to the chief justice for further approval. In addition, prosecutors have two approaches in tracing assets belonging to corruption convicts. The first approach involves tracing through relevant agencies, such as the National Land Agency for land, banking institutions for accounts, and the Samsat Office for vehicles. If the assets are successfully identified, a report is made for further analysis by the special crimes section to determine the steps to confiscate. If this approach is inadequate, the prosecutor proceeds to the execution stage by applying the P-48A warrant, where the search is carried out directly by the executing prosecutor without the assistance of the intelligence section. Once the assets are collected, they are auctioned, and if the auction proceeds are sufficient to cover the state's losses, the convict does not need to serve a substitute sentence. These provisions are strengthened by Article 270 of the Criminal Code, which states that: "The implementation of court decisions that have legal force is still carried out by the prosecutor."

Based on this article, the prosecutor has strong authority as an executor in the recovery of assets according to the judge's decision. Therefore, the recovery of state assets in corruption crimes is an essential part of fair law enforcement, because it not only imposes criminal sanctions on the perpetrators, but also restores state losses. This reflects a real effort to uphold justice and maintain the financial integrity of the state. Nonetheless, in practice, asset recovery is still faced with a variety of obstacles, ranging from tracking assets that have been diverted or hidden by actors, to auction processes that demand a high level of transparency and accountability. In addition, there are other obstacles in the implementation of asset recovery in Indonesia, such as the involvement of various institutions including the Prosecutor's Office, PPATK, KPK, Police, and Ministry of Law and Human Rights which actually cause bureaucratic complexity. Second, the mechanism for asset recovery through criminal channels (conviction-based asset forfeiture) is considered less effective because the process is long, expensive, and depends on court decisions with permanent legal force. Third, the application of asset forfeiture without criminal process (in rem asset forfeiture) also raises issues, especially if the origin of assets cannot be legally proven, which has the potential to violate personal property rights as guaranteed in Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Therefore, strengthening the role of the Prosecutor's Office is considered crucial to overcome these obstacles more effectively than other institutions.

In the eradication of corruption in Indonesia, coordination between law enforcement agencies such as the KPK, the Prosecutor's Office, the Police, the BPK, and international cooperation is very important. However, field practice shows that there are still many problems to be faced. Before that, the form and coordination mechanism were carried out externally and

horizontally between the Police, the Prosecutor's Office, APIP, BPKP, and BPK. This coordination usually begins at the early stage of the investigation to ensure clarity of authority, accuracy of actions, and acceleration of case handling. The KPK has a mandate to coordinate and supervise other law enforcement agencies in eradicating corruption, as stipulated in Law No. 19 of 2019 and Presidential Regulation No. 102 of 2020. The BPK plays a role in calculating and determining state losses and providing the results of investigative examinations that can be used by law enforcement in the legal process of corruption cases. Furthermore, regarding obstacles and coordination problems, including:

- 1) Sectoral egos are still a major obstacle, where individual institutions tend to retain authority and are not fully open to coordinating.
- 2) Overlapping authority, especially between the Police and the Prosecutor's Office, often occurs in the early stages of handling cases, so the potential for conflict of authority is quite high.
- 3) The KPK itself admits that the synergy and implementation of coordination and supervision tasks have not gone well, even though there are clear regulatory directions.

This shows the weak coordination between the executive and legislative institutions in creating an effective and progressive legal system, as well as the lack of achievement of the principles of transparency, accountability, and efficiency as emphasized in the General Principles of Good Governance (AUPB).

Article 18 paragraph (3) (Corruption Law) stipulates in a structured manner three phases of additional criminal implementation in the form of substitute money, in order to ensure recovery of state financial losses. The first phase involves giving the convict an opportunity for one month, since the court decision has acquired permanent legal force, to pay off the compensation voluntarily. The second phase is applied if the deadline is passed without payment, where the executing prosecutor has the right to confiscate the assets belonging to the convict and hold an auction through the State Property and Auction Service Office (KPKNL) as the responsible technical unit. The third phase applies if the auction results are insufficient to cover all state losses, so that the convict is punished with a substitute penalty in the form of imprisonment for a maximum of six months (as a substitute for a criminal sentence). This provision is realized practically through the Attorney General's Regulation Number PER-014/A/JA/12/2021 concerning Procedures for the Implementation of Additional Crimes, which details procedures ranging from confiscation, asset assessment, auction implementation, to the execution of substitute crimes. Thus, this mechanism provides legal certainty and ensures that the process of recovering state financial losses continues even if the convict experiences difficulties or negligence in complying with his obligations. The Law on Investigative Audits, Calculation of State/Regional Losses, and Provision of Expert Testimony in Article 5 of this regulation stipulates clear procedural obligations: first, the Audit Board (BPK) is obliged to submit the Audit Results Report (LHP) to the Corruption Eradication Commission (KPK) or the Prosecutor's Office within a deadline of 7 working days from the issuance of the investigative audit report; second, the KPK must coordinate with the Financial Transaction Reporting and Analysis Center (PPATK) to track the flow of funds from corruption through the analysis of suspicious financial transactions; third, the Prosecutor's Office is required to report the results of asset execution to the BPK as part of the accountability cycle for the recovery of state losses. Although this regulatory framework theoretically creates a structured

coordination flow, its implementation on the ground still faces significant obstacles due to inter-agency silo systems and sectoral egos that lead to ineffective data exchange, delayed responses, and sometimes overlapping authority, which in turn reduces the effectiveness of holistic asset recovery efforts.

2. State Financial Recovery Mechanism in Laws and Regulations in Indonesia

The law on corruption clarifies the definition of state finance, but does not detail the understanding or indicators that indicate potential or threats to state finances. The use of the word "may" in this context indicates the possibility of state losses, but does not necessarily imply that such losses have already occurred. Therefore, a clear measurement instrument is needed to determine whether an action actually causes or has the potential to cause state losses. It is important that the public prosecutor and the panel of judges do not arbitrarily declare the existence of state losses without sufficient evidence, especially at the prosecution stage or before a court decision that has permanent legal force. For example, in the case of payment of principal debt quotas, interest, and fines, state losses cannot be ascertained to occur as long as the process is still ongoing. The following are some explanations of the meaning of state finance according to the provisions of positive law in Indonesia: Based on Law Number 17 of 2003 concerning State Finance, Article 1 number 1, "state finance" includes all rights and obligations that can be assessed with money, as well as everything related to money and in the form of commodities owned by the state in order to carry out these rights and obligations.

According to Law Number 31 of 1999 concerning the Eradication of Corruption, "state finance" includes all assets that can be separated or not, including all state property as well as rights and obligations arising from the management, supervision, and accountability of civil servants in state institutions both at the central and regional levels. It also includes asset management by State-Owned Enterprises (SOEs), Regional-Owned Enterprises (BUMDs), foundations, legal entities, and companies whose capital comes from the state or third parties based on agreements with the state. State financial losses can be understood as actions that cause measurable losses to state finances in the form of money or assets that can be assessed financially, either intentionally or unintentionally and contrary to the law. These losses are not only limited to cash, but also include securities or other assets whose value can be estimated. The sophistication of corrupt perpetrators in hiding and diverting the proceeds of their crimes is not only domestic, but also transnational, making it difficult for law enforcement officials to track and recover state finances lost due to corruption.

In the context of criminal law, there are provisions regarding the confiscation and confiscation of the proceeds of crime (*corpora delicti*) and tools used in criminal acts (*instrumenta delicti*). This provision is regulated in the (Criminal Code) as an additional criminal act, as well as in the implementation of confiscation regulated by Law Number 8 of 1981 concerning the Criminal Procedure Law, especially Article 39 of the Criminal Procedure Code which regulates the act of confiscation. In connection with the procedure for returning or recovering state losses and returning assets resulting from corruption crimes, Yanuar stated that the process can be carried out through criminal, civil, or administrative or political channels (Simbolon, 2020). Based on the view of Purwaning M. Yanuar, there are several steps that can be taken in an effort to recover state losses due to corruption, including:

1) Recovery of State Losses Through Criminal Proceedings

In the criminal route, the prosecutor's office has the authority to take various actions to restore state losses caused by corruption crimes. These actions can be carried out starting from the investigation stage to the execution of court decisions that have permanent legal force, including:

a. Asset Search

The definition of asset tracking as mentioned in the Regulation of the Attorney General of the Republic of Indonesia Number PER-027/A/JA/10/2014 dated October 1, 2014 is a series of actions of seeking, requesting, obtaining and analyzing information about knowing or revealing the origin, existence and ownership of assets. Asset tracing activities need to be preceded by asset tracing planning, which is preparation to carry out carefully arranged asset tracing activities regarding everything that will be done by the asset tracing implementer, so that valid information and data can be obtained. The tracing or tracking of the assets belonging to the suspect or defendant of a corruption crime is part of the investigation and investigation process as stipulated in Article 1 point 2 of the Criminal Code. The purpose of this search is to identify the assets owned by the suspect, the location of their storage, proof of ownership, and their relationship with the criminal act committed, as the basis for restoring state losses.

b. Seizure of Assets or Property

After information about the assets of the proceeds of corruption is collected, the next step is to confiscate the assets. The confiscation of assets is carried out by first asking permission from the Chairman of the local District Court as stipulated in Article 38 paragraph (1) of the Criminal Code. However, if it is in an urgent situation and only for movable objects, confiscation can be carried out first before there is permission from the Chief of the local District Court, and for that it is mandatory to immediately report to the Chief of the local District Court to obtain approval. Such confiscation procedures are also regulated in Article 47 paragraph (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission. According to the provisions of Article 38 paragraph (1) stipulates: "Confiscation can only be carried out by investigators with a permit from the chairman of the local district court.

The seizure aims to secure the defendant's property related to corruption so that it can be returned to the state in accordance with the court decision. In practice, this seizure often takes the form of blocking bank accounts, certificates, vehicle papers, and other movable goods. The blocking of the savings account belonging to the suspect or defendant that is suspected to be the result of corruption as stipulated in Article 29 paragraph (4) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes can be carried out on assets derived from corruption or not, provided that confiscation and auction are carried out if the defendant does not fulfill the obligation to pay compensation.

c. Prosecution of Payment of Substitute Money

The payment of compensation in excess of the amount of money is equal to the property obtained from the crime of corruption. If the convict does not pay the compensation as referred to in paragraph (1) b at the latest within one month after the verdict has obtained permanent legal force, then the property can be confiscated by the prosecutor and to cover the compensation. In the event that the convicted person does not have sufficient assets to pay the replacement money as referred to in paragraph (1) b, he shall be sentenced to imprisonment for

a period of imprisonment whose duration does not exceed the maximum threat of the principal penalty in accordance with the provisions of this law, the duration of the sentence has been determined in the court decision. (Article 18 paragraph (2), (3) of the PTPK Law). The public prosecutor can demand additional criminal charges in the form of payment of compensation equal to state losses. This prosecution is based on Article 18 of the Law on the Eradication of Corruption. If this claim is granted by the judge and the verdict has permanent legal force, then the execution of the payment of compensation can be carried out.

d. Execution of Court Decisions Regarding State Loss Recovery

In the case of corruption, in addition to the public prosecutor, the defendant is also burdened with the burden of proof, namely the obligation to show that the wealth he owns was not obtained through corrupt practices. The burden of proof for the defendant is known as the principle of Reversal Burden of Proof. This principle implies that the suspect or defendant is by default considered to have committed corruption unless they succeed in proving their innocence and there is no loss to the state's finances as a result of the act. In the Indonesian judicial system, only the judge in the court trial has the authority to determine whether a fact is proven or not. Calculations submitted by authorized agencies or public accountants during the hearing are not binding on the judge. Judges are not required to immediately accept such calculations as accurate, legal, and legally binding. Similarly, the defendant whether the suspect, the defendant, or the convict has the right to deny the validity of the calculation and reject it as admissible evidence.

Plaintiffs, such as the Public Prosecutor (JPU) or aggrieved agencies, are required to prove that the defendant has caused losses to state finances through unlawful acts (onrechmatige daad or factum illicitum). This burden of proof is indeed very heavy, but the plaintiff must successfully meet it in order to claim recovery of losses. If the defendant's property has been confiscated before, this will make it easier for the plaintiff to trace it back, so that they can apply to the judge to confiscate the collateral (conservatoir beslag). However, if the wealth has never been or has not been confiscated, the plaintiff will face great difficulties in tracking it, because it is likely that the proceeds of corruption have been hidden by being registered in the name of another party. The execution of the verdict is under the authority of the public prosecutor, including the criminal execution of the substitute money. The prosecutor's office issued a warrant for the implementation of the court decision and implemented the verdict which included additional penalties in the form of compensation. If the defendant does not pay the compensation within the stipulated period of time, then his wealth can be confiscated and auctioned off to cover the state's losses. If the auction results are insufficient, the defendant can serve a substitute sentence of imprisonment.

2) Recovery of State Losses Through Civil Channels

In civil lawsuit procedures, the burden of proof is entirely on the plaintiff, which includes the State Attorney (JPN) or the institution that suffered losses. In this context, the plaintiff is required to prove several main points, including:

- a. There is a state financial loss that actually occurs factually;
- b. The loss is a direct consequence or closely related to the actions taken by the suspect, defendant, or convict;
- c. The existence of assets belonging to suspects, defendants, or convicts that can be used to compensate for state financial losses.

The implementation of this kind of civil lawsuit is indeed not simple, considering the various obstacles in practice. Further, Article 32 provides that

- 1) If the investigator finds and assesses that one or more elements of the corruption crime are not supported by sufficient evidence, but the state's financial losses have been proven in real terms, then the investigator is obliged to submit the case file of the investigation to the State Attorney for filing a civil lawsuit, or to the aggrieved institution in order to file the lawsuit.
- 2) The acquittal verdict in corruption cases does not eliminate the right to demand recovery of losses to state finances.

Meanwhile, Article 33 states in more detail that if the suspect dies during the investigation process, even though the state's financial losses have been proven in real terms, then the investigator must immediately submit the case file of the results of the investigation to the state prosecutor or to the aggrieved institution, in order to file a civil lawsuit against his heirs. Similarly, Article 34 stipulates that in the case of the defendant dying at the examination stage at the court hearing, while the financial loss of the state has been proven in fact, the public prosecutor is obliged to immediately submit a copy of the file and minutes of the trial to the state prosecutor or to the aggrieved institution, to file a civil lawsuit against his heirs. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter abbreviated as the Corruption Law) uses the term "there has been real state losses" as the standard formulation in these provisions. If in the investigation process there are elements of corruption crimes that are not enough evidence, but state losses have occurred, then the case file can be submitted to the aggrieved institution to file a civil lawsuit. In the event that the defendant dies, but the state losses remain, the public prosecutor can submit the case file to the State Attorney or a related institution to sue the heirs civilly.

3) Efforts to Recover and Recover State Losses Due to Corruption

The recovery of state losses due to corruption is one of the main pillars in efforts to eradicate corruption in Indonesia, as stipulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (as amended by the Corruption Law). This process aims not only to restore lost state assets, but also to provide a deterrent effect for the perpetrators and prevent further budget leakage. Some of the strategic steps that can be taken by law enforcement, such as the prosecutor's office, the Corruption Eradication Commission (KPK), and the police, include optimizing asset tracing, negotiation of payments, community involvement, improving infrastructure, and affirming the authority of prosecutors. The development of these measures can be enriched by the perspectives of prominent legal experts such as Peter Mahmud Marzuki, former Chief Justice of the Supreme Court of the Republic of Indonesia, who in his various writings and speeches emphasized the importance of integrity, coordination, and institutional reform in the enforcement of criminal law, especially corruption. Marzuki often criticizes the lack of inter-agency coordination and calls for a holistic approach that combines preventive and repressive aspects to ensure restorative justice. Some of the strategic steps that can be taken by law enforcement in recovering state losses due to corruption include:

a. Asset Search and Seizure Optimization

Asset tracing and confiscation is a crucial stage in recovering state losses, as corrupt assets are often hidden through money laundering schemes, overseas transfers, or placements

in the name of third parties. Cooperation between institutions such as the prosecutor's office, KPK, police, local governments, banks, and the One-Stop Manunggal Administration System (SAMSAT) allows for early detection through financial transaction analysis, vehicle record checks, and property tracking. In addition, involving the defendant's family and co-defendants can uncover hidden assets, for example through interrogation or witnesses of financial forensic experts. Further development can be done by leveraging technologies such as blockchain to track digital assets and international cooperation through Mutual Legal Assistance Treaties (MLAT) with countries such as Singapore or Switzerland, where many of Indonesia's corrupt assets are hidden. Peter Mahmud Marzuki, in his book *Introduction to Law and Legal Methodology* (latest edition) and his speeches at legal forums, emphasized that the optimization of asset tracing must be based on the principle of "substantive justice" that not only pursues crime, but also the restoration of losses. Marzuki emphasized that if this kind of approach is not applied, law enforcement will only turn into a mere formal procedure that is unable to realize its main goal, which is the restoration of justice for the benefit of the community. He gave examples of large-scale corruption cases in Indonesia, where the loss of assets was caused by a lack of coordination, and encouraged procedural reforms to strengthen forensic evidence that can withstand trial trials. Therefore, the optimization of this process is not only a technical aspect, but also an ethical one, which ensures that the confiscation of assets remains in line with human rights and the principles of fair legal process. Cooperation between the prosecutor's office, the Corruption Eradication Commission (KPK), the police, local governments, and related agencies such as banking and SAMSAT is very important to detect and secure assets belonging to the defendant. A search can also involve the defendant's family and co-defendant who allegedly knew of the whereabouts of the assets.

b. Convincing Convicts to Pay Compensation

Payment negotiations are an effective option to speed up the recovery of state losses, especially in situations where assets are difficult to track or the judicial process takes a long time. In practical terms, the prosecutor's office or the KPK could provide the option of plea bargaining or voluntary disclosure agreements, in which the perpetrator knowingly repays part or all of the losses in exchange for a reduction of the sentence or acquittal from further charges. Existing success stories include cases where defendants deposit funds into court-supervised escrow accounts, thus saving costs from protracted legal disputes. However, these kinds of negotiations need to be strictly regulated to avoid abuse, for example by setting a minimum return threshold (such as 100% loss plus fines) and involving independent auditors to validate. Furthermore, merging with restorative justice programs can motivate actors to contribute to social initiatives, such as the construction of public facilities, as a form of acknowledgment. Peter Mahmud Marzuki, through his works on criminal justice reform, defends negotiation as a tool of "transformative justice" that goes beyond conventional retributive models. In his speech at the Indonesian Law Congress in the 2010s, he satirized the over-reliance on criminal sanctions that are often suboptimal due to institutional limitations, and emphasized that negotiations should be based on the principle of equality—that is, the state should not appear weak, but also should not overuse the perpetrators. Marzuki recommends regulating this process through separate laws to prevent possible corruption in the negotiation mechanism, thus forming a comprehensive framework between prevention, prosecution, and remediation.

c. Involving the Community in Corruption Eradication

Public participation plays a central role in strengthening transparency and accountability during the process of recovering state losses. By utilizing instruments such as whistleblower protection under Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, citizens can safely convey indications of corruption, including clues about hidden assets. Public education campaigns by the KPK, such as the "Corruption Is Not Our Culture" initiative, can be enhanced through the involvement of civil society organizations, the media, and local groups to monitor government projects that are at high risk of corruption. As an illustration, digital platforms such as the KPK reporting application facilitate the public in monitoring the movement of public funds directly, while community discussions can reveal patterns of money laundering at the regional level. This approach also involves collaboration with higher education institutions for social forensic research, where students in the field of law or accounting also analyze related matters. Peter Mahmud Marzuki often emphasizes the contribution of society in his essays on "legal democracy", with the view that without public involvement, anti-corruption law enforcement will tend to be exclusive and vulnerable to intervention. In his work *Law and Society*, Marzuki criticized the separation of law enforcement agencies from the community, which resulted in low asset recovery results. He invited the adoption of participatory methods that are in line with the values of Pancasila, where the community plays a role not only as observers, but as active partners in the restoration of justice. For him, this kind of involvement is able to prevent the recurrence of corruption through the formation of a culture of shared supervision, which is in line with the concept of restorative justice that focuses on social reconciliation.

d. Improving Facilities and Infrastructure to Support Corruption Eradication

Strengthening facilities and infrastructure is the main basis to support a smooth and efficient recovery. This includes investing in digital forensic technologies, such as big data analysis software to identify suspicious transaction patterns, as well as training for prosecutor's and KPK staff in cross-border investigation skills. State budget allocations can be focused on establishing an integrated data center that connects financial, property, and immigration databases, thereby accelerating the tracking of assets across jurisdictions. For example, the application of artificial intelligence systems to monitor crypto-based assets or collaboration with bodies such as the Financial Action Task Force (FATF) for anti-money laundering standards. In addition, budgeting reform for law enforcement agencies needs to be prioritized to reduce dependence on potentially misused external sources of funds. Peter Mahmud Marzuki, as the former Chief Justice of the Supreme Court, in a number of his judicial reform suggestions, highlighted that weak infrastructure is the main cause of failure of law enforcement. In his speech at a national legal seminar, he denounced the "structural poverty" in law enforcement agencies that hinder the recovery of losses, and urged a balanced budget allocation based on the principle of legal efficiency. Marzuki views that improving facilities is not limited to technology alone, but also includes human resources, namely, the development of ethics and integrity through training to prevent corruption in it (Sulistiyono, n.d.). According to him, this strategy will result in a flexible and sustainable legal system, by integrating repressive and preventive elements for a more equitable justice.

e. Affirmation of the Authority of the KPK Prosecutor and Public Prosecutor Appointed by the KPK

The strengthening of the prosecutor's authority in the special handling of corruption cases, in accordance with Articles 2 and 3 of the Corruption Law, ensures that the recovery of losses remains a priority element in every prosecution effort. Prosecutors are authorized to file specific criminal charges that make the return of assets an essential prerequisite, including through the enforcement of stricter court rulings against third parties involved. To reinforce this, the harmonization of authority among institutions through the Joint Task Force (Satgas) on Asset Recovery is essential, with the prosecutor serving a leadership role in coordination with the KPK and the Police. In addition, regulatory amendments could expand prosecutors' authority to temporarily freeze assets without relying on final decisions, to prevent the loss of evidence. Peter Mahmud Marzuki, in his study of the Indonesian criminal justice system, emphasizes the function of the prosecutor as a "gatekeeper of justice" that must be empowered to prevent the fragmentation of power. Through his writings in legal journals, he highlights the ambiguity of authority that often leads to overlap and failure in recovery efforts, advocating for strengthening through stringent laws. Marzuki proposes a comprehensive institutional approach in which prosecutorial authority is coupled with the principle of accountability, ensuring that asset recovery is not only repressive but also contributes to systemic reform. In this way, such strengthening will enhance the overall credibility of the judiciary.

CONCLUSION

The recovery of state financial losses in corruption cases in Indonesia still faces a number of fundamental challenges, particularly the inconsistency between the intent of the law and its actual application, which collectively undermines legal certainty as a key pillar of justice enforcement. The law is essentially designed to restore state losses as optimally as possible through a rigorous and predictable approach. However, the reality of law enforcement often fails to reflect this certainty, resulting in the asset recovery process being used more as a means to reduce sanctions for perpetrators rather than as a fixed, comprehensive, and reliable recovery instrument. Consequently, substantive justice is marginalized, leading to public doubt about the legal mechanism due to the lack of clarity regarding procedures, implementation schedules, and anticipated sanctions. Therefore, structural changes in the enforcement of anti-corruption laws must focus on strengthening legal certainty to ensure the recovery of state financial losses.

These changes include: (1) enhancing cooperation among law enforcement agencies (such as the KPK, the Prosecutor's Office, and the Police) to ensure standardized asset recovery procedures free from ambiguity; (2) implementing the Money Laundering Law (TPPU Law) more effectively, with an emphasis on the immediate and decisive process of tracking and confiscating assets to prevent delays detrimental to state interests; and (3) enforcing strict, transparent, and law-based measures grounded in legal certainty, including the preparation of detailed implementing regulations on asset recovery as a mandatory obligation for relevant actors, rather than a negotiable option. With this approach, legal certainty will serve not only as a safeguard for the recovery of state financial losses but also as a reliable means of preventing corruption, ensuring that justice and recovery are fully realized for the benefit of the wider community.

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