

**JURIDICAL ANALYSIS OF FINES AS AN EFFORT TO RECOVER LOSSES THE STATE IN THE CASE OF CORRUPTION (STUDY OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA DECISION NUMBER 2379 K/PID.SUS/2024)**

By

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**ABSTRACT**

*Criminal fines in the context of corruption can be an effort to recover state losses, although it is not the only way. Based on the results of the study, it is known that the judge's legal considerations in the Supreme Court of the Republic of Indonesia Decision Number 2379 K/Pid.Sus/2024 regarding the penalty of fines for the return of state losses in the case of corruption are that the defendant has enjoyed money from the crime, then the appropriate fine against the Defendant is Rp.200,000,000.00 (two hundred million rupiah) to Rp. 300,000,000.00 (three hundred million rupiah) because it is seen from the aspect of the State's losses is included in the low category and seen from the aspect of profit return is included in the low category because the Defendant only returns the State's losses less than 50% (fifty percent).*

**Keywords:** *Criminal Fines, State Losses, Corruption*

**ANALISIS YURIDIS PIDANA DENDA SEBAGAI UPAYA PENGEMBALIAN KERUGIAN NEGARA DALAM PERKARA TINDAK PIDANA KORUPSI (STUDI PUTUSAN MAHKAMAH AGUNG RI NOMOR 2379 K/PID.SUS/2024)**

**ABSTRAK**

*Pidana denda dalam konteks tindak pidana korupsi dapat menjadi upaya pengembalian kerugian negara, meskipun bukan satu-satunya cara. Berdasarkan hasil penelitian diketahui bahwa pertimbangan hukum hakim dalam Putusan Mahkamah Agung RI Nomor 2379 K/Pid.Sus/2024 terkait pidana denda untuk pengembalian kerugian negara dalam kasus tindak pidana korupsi adalah terdakwa telah menikmati uang dari tindak pidana, maka pidana denda yang tepat terhadap Terdakwa adalah Rp.200.000.000,00 (dua ratus juta rupiah) sampai dengan Rp300.000.000,00 (tiga ratus juta rupiah) karena dilihat dari aspek kerugian Negara termasuk kategori rendah dan dilihat dari aspek pengembalian keuntungan termasuk kategori rendah karena Terdakwa hanya mengembalikan kerugian Negara kurang dari dari 50 % (lima puluh persen).*

**Kata Kunci:** *Pidana Denda, Kerugian Negara, Korupsi*

## INTRODUCTION

The Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution which upholds Human Rights (HAM) and guarantees all the rights of citizens who are equal in the law and government with no exceptions. This is emphasized in Article 1 paragraph (2) of the 1945 Constitution which reads: "Sovereignty is in the hands of the people and is carried out according to the Constitution". The role of every citizen is very influential and necessary in law enforcement. The state of law has a nature in which its apparatus can only act according to and be bound by the rules predetermined by the apparatus authorized to carry out the rule.

One of the phenomenal criminal acts is corruption. This phenomenon is understandable considering that the negative impact caused by this crime can touch various areas of life. Corruption in Indonesia has become increasingly widespread and uncontrolled among the Indonesian people which will bring disaster to the life of the nation and state. The increase in cases of corruption is a very serious problem, because corruption can endanger the stability and security of the state and its society, endanger the social and economic development of society, politics, and can even damage the values of democracy and the morality of the nation because of the culture of corruption.

A social phenomenon called corruption is the reality of human behavior in social interactions that are considered deviant, and endanger society and the state. Therefore, this behavior in all forms is reproached by the public, even including by the corruptors themselves in accordance with the phrase "corruptors shout corruptors". Public denunciation of corruption according to the juridical conception is manifested in the formulation of the law as a criminal act that needs to be approached specifically, and threatened with quite severe penalties.

Corruption is one of the problems that has received a lot of attention from the public and representatives of the people in the House of Representatives today. Various efforts have been taken to overcome the problem of inter-agency corruption through the preparation of various laws and regulations. Corruption is an *extra ordinary crime* seen from its complexity and negative effects that cause great damage to the state, resulting in social disasters such as increasing poverty in the community and the destruction of the national economy. Corruption has occurred systematically, structurally, and massively.

Corruption is no longer a new problem in legal and economic issues for a country because the problem of corruption has existed for thousands of years, both in developed and developing countries, including in Indonesia. Corruption in the public sector that is rampant is bribery and abuse of public authority. Officials who have certain authority are referred to as public officials. The spread of corrupt practices in Indonesia is very ironic with the many strategies that have been carried out because perpetrators of corruption usually have a strong economic and political position. To be able to expose the perpetrators of corruption crimes who have a strong economic and political position, of course, it requires various government institutions such as the BPK, BPKP, the Inspectorate, the KPK as well as NGOs such as ICW.

## RESEARCH METHODS

This research is descriptive analysis, namely research that describes, examines, explains and analyzes laws and regulations related to the purpose of this research. The purpose of descriptive research is to accurately describe the characteristics of a particular individual, state, symptom or group, or to determine the frequency or spread of a symptom or the frequency of a particular relationship between symptoms and other symptoms in society. The main purpose of the analysis of legal materials is to find out the meaning contained by the terms used in the legal rules conceptually, as well as to know their application in legal practice and decisions.

## RESULTS AND DISCUSSION

The criminal law on fines in cases of corruption in Indonesia is regulated in Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (Corruption Law), which stipulates fines ranging from Rp 200 million to Rp 1 billion, and if not paid, can be replaced with imprisonment. Fines and compensation may be imposed along with imprisonment to recover state losses, with the implementation provided for in the criminal procedure law

Corruption comes from the Latin word "*Corruptio*" or "*Corruptus*", in French and English it is called "*Corruption*", in Dutch it is called "*Corruptie*". Corruption in Indonesia is in a worrying situation. The problem of corruption is full of various complexities of problems, an integral approach should be taken. Not only do law reform, but it should also be accompanied

by social, *economic, political, cultural, moral, and administrative reform*. Corruption occurs everywhere, so that shame and guilt are covered with pride in the results of the corruption crime. Corruption crimes that occur in Indonesia from year to year are increasingly systematically permeating all joints of state and community life. The development of corruption for approximately 30 years has not decreased, in fact it is increasing both from the quantitative and qualitative sides.

Paying attention to the formulation of Articles 2 to 17 and Articles 21 to 24 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, the perpetrators of corruption crimes are any person which means an individual or corporation. The provisions contained in Law Number 31 of 1999 and Law Number 20 of 2001, Corruption can be divided into two aspects, namely active and passive. The active aspect means that the perpetrators of the crime of corruption immediately commit acts of enriching themselves or others or corporations by abusing authority, opportunities or means. Meanwhile, the crime of corruption that is passive is those who receive gifts or promises because they do or do not do something in their position that is contrary to their obligations.

The problem with corruption in Law Number 31 of 1999 as amended by Law Number 20 of 2001 is the formulation of the element "may harm the state finances or the state economy" in Article 2 paragraph (1) and Article 3 which causes a debate about the understanding of the word "can be harmful". The element of "may harm the state finances or the country's economy" is the potential financial loss of the state or the country's economy. To be able to meet the element of "may harm the state finances or the country's economy" it is not necessary to have really suffered losses, but the element of state losses must still be proven and must be calculated, even if it is an estimate or even though it has not happened and the calculation must be determined by an expert.

State losses arising from corruption crimes are not only limited to state financial losses but also more than that, namely causing losses to the country's economy. According to the explanation of the Article in the 4th paragraph of Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, it is explained that: "... The state economy is a economic life that is structured as a joint venture based on the principle of family or community business independently based on government policies, both at the

central and regional levels in accordance with the provisions of applicable laws and regulations that aim to provide benefits, prosperity, and welfare to all people's lives". Based on the description above, the difference between state losses and the state economy lies in the measurement method. State financial losses are measured by the value of money, while losses to the state economy are measured based on performance, such as the inhibition of the achievement of a country's economic index due to the defendant's actions.

Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, especially Articles 2 and 3, makes the element of state financial loss as one of the elements of corruption. Based on the records of the Institute for the Study and Advocacy for Judicial Independence (LeIP), although there are only two articles, these provisions are most often used by law enforcement officials (Police, Prosecutor's Office and Corruption Eradication Commission) to ensnare corrupt perpetrators. The spirit contained in these two articles may be intended to provide a deterrent effect on the perpetrators and force the money from corruption and that has been enjoyed by the corruptor to be returned to the state. State money should be used for the welfare of the people and not for the welfare of corruptors.

Efforts to ensnare corruptors by using Article 2 and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is not an easy matter. Law enforcers encounter obstacles or problems in the application of Article 2 and Article 3 of Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, especially to prove the existence of elements of state financial losses in the formulation of the corruption offense. The research on "The Application of Elements of State Financial Losses in the Delik of Corruption Crimes" conducted by Indonesia Corruption Watch (ICW) tries to examine the practices and problems that occur in the application of elements of state financial losses in handling corruption cases. Abusing the authority, opportunity or means available to him because of his position or position that may be detrimental to the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or 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 elements of Article 2 of Law

Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption are:

1. Everyone
2. Against the law
3. Enriching oneself, others or corporations.
4. Can harm the state finances or the country's economy
5. The elements of Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption are:
  6. Unlawfully
  7. Committing acts of enriching oneself or others or a corporation
  8. It can harm the state or the country's economy.

Articles 2 and 3 of Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes which contain the words, "which may harm state finances or state reconciliation". This element is important to determine whether or not corruption perpetrators can be convicted. Normatively, if all the elements in Article 2 and Article 3 are proven, then the perpetrator can be sentenced to prison or compensation. Meanwhile, if one of the elements is not proven, it can have an impact on the release of the perpetrator of corruption from legal bondage (either because the investigation is stopped or released by a court judge).

A number of corruption cases handled by the Prosecutor's Office, such as the procurement of *Sisminbakum access fees at the Ministry of Law and Human Rights*, the procurement of Pertamina tankers (VLCC), and corruption at PT Texmaco, were stopped from investigation (SP3) because no elements detrimental to the state were found. Although many corruptors have been charged under Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption and sentenced to prison for being proven to be detrimental to state finances, but in practice, the application of the element of "harming state finances" in Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes on the process of handling corruption cases, often causes problems.

Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes classifies corruption into seven types, namely:

1. Harming state finances (enriching oneself or abusing authority so as to harm state

- finances),
2. Bribe,
  3. Gratification,
  4. Embezzlement in office,
  5. Extortion,
  6. Fraudulent acts,
  7. Conflict of interest.

The many provisions that regulate corruption crimes in Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, provisions that regulate "harming the State's finances", are only found in the articles, namely Articles 2 and 3 of Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. In addition, criminal acts categorized as corruption do not require the calculation of state financial losses. There are several articles that do not link corruption to state finances, such as bribery. An official accepting a bribe from someone cannot be said to be detrimental to the country's finances.

## CONCLUSION

The legal regulation of corruption crimes in Indonesia is stipulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which has been amended by Law Number 20 of 2001. This law stipulates various types of corruption crimes, criminal sanctions, and efforts to eradicate them. The regulation of criminal law fines in corruption cases in Indonesia is regulated in Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (Corruption Law), which stipulates fines ranging from Rp 200 million to Rp 1 billion, and if not paid, can be replaced with imprisonment. Fines and reimbursement may be imposed along with imprisonment to recover state losses, with the implementation of which is regulated in the criminal procedure law.

The criminal process of fines is an effort to recover state losses in corruption crimes as an additional punishment. Criminal fines are one of the instruments that can be used in efforts to recover state losses due to corruption.

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