

A LEGAL ANALYSIS OF THE PRINCIPAL CRIMINAL ACTION OF MONEY IN THE FORM OF SUBSTITUTE CRIMINAL (Study of Supreme Court Decision of the Republic of Indonesia Number 110 K/Pid.Sus/2024)

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ABSTRACT

Payment of replacement money in corruption cases can save state money that has been corrupted. The formulation of the problem in this study is how the mechanism for payment of replacement money to return state losses in corruption cases, the obstacles faced in the process of payment of replacement money to return state losses in corruption cases, how the legal considerations of judges in the Supreme Court of the Republic of Indonesia Number 110 K / Pid.Sus / 2024 related to payment of replacement money to return state losses in corruption cases. The results of the study, namely the obstacles faced in the process of paying substitute money to return state losses in corruption cases, are that the handling of corruption cases has been carried out in an extraordinary manner, but there are still obstacles concerning the confiscation of assets that do not yet have a legal umbrella, confiscation of assets, and audits of the calculation of state financial losses that do not reach the level of the flow of money and the Perception of the Executing Prosecutor regarding the Judge's verdict. The legal consideration of the judge in the Supreme Court of the Republic of Indonesia Number 110 K/Pid.Sus/2024 regarding the payment of replacement money for the return of state losses in corruption cases is that the defendant has enjoyed money from the crime, so based on Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption, the Defendant is sentenced to pay replacement money converted with money that the Defendant has deposited with the Public Prosecutor

1. Introduction

Corruption not only hinders the nation's development towards a better direction, namely improving the welfare and alleviating poverty. The powerlessness of the law in the face of powerful individuals, coupled with a lack of commitment from government elites, are contributing factors to why corruption continues to thrive in Indonesia. This is because law is not the same as justice; law comes from the minds of those in power, while justice comes from the hearts of the people.



Various efforts have been made to eradicate corruption, but the results are still far from expected. It is recognized that eradicating corruption is not as easy as turning the palm of your hand. Our government has implemented numerous methods, and corruption eradication efforts have been ongoing since the time of Indonesian independence. One way to restore lost state corruption is by imposing additional penalties in the form of restitution payments. This effort has yielded results in the form of revenue to the state treasury from the proceeds of restitution payments. Some convicts have been entrusted with restitution payments.

Restitution as an additional penalty in corruption cases must be understood as part of the criminalization efforts against those who violate the law; the violation is a follow-up to corruption. Corruption has led to poverty, so perpetrators of corruption must be subject to restitution for the corruption that has occurred. This not only harms state finances and the national economy, but also hinders national development. The purpose of restitution is to impose the harshest possible punishment on corruptors to deter them and to control state finances that have been lost due to corruption.

Consequently, corruption eradication efforts should not solely aim to impose lenient prison sentences on corruptors but also to recover the state's losses incurred due to corruption. Restitution of state losses is expected to offset the state's inability to finance various critically needed aspects. Restitution in corruption cases has received little attention in writing. The problem is quite complex, including the incomplete set of regulations that accompany this issue. One such obstacle is the implementation of Law No. 20 of 2001, which remains hampered by the incompleteness of the procedures for corruption courts regarding the recovery of embezzled state funds. As is known, Law No. Law No. 20 of 2001 only provides a few provisions regarding special procedural law for eradicating corruption, in addition to the procedural law stipulated in the Criminal Procedure Code (KUHAP).

At the end of 2006, the issue of state compensation for losses resurfaced, particularly regarding outstanding compensation unpaid by convicts. Meanwhile, regarding compensation for state losses in corruption cases handled under Law No. 31 of 1999, those who have paid compensation but have not paid the remaining balance will be asked for a Supreme Court fatwa.

Compensation is a crucial effort in eradicating corruption in Indonesia. This is because compensation represents a form of restitution for state losses caused by corrupt acts committed by irresponsible individuals for personal enrichment. However, to date, the imposition of compensation for corruptors in addition to imprisonment has never been fully discussed.





2. Research Method

This research is descriptive in nature. Descriptive research is intended to provide the most accurate data possible. In this case, we will describe how expressing aspirations in public can lead to anarchy. This descriptive research begins with collecting data related to the discussion above, then compiling, classifying, analyzing, and interpreting the data to obtain a clear picture of the phenomenon under study.

This research employs a normative juridical approach. This approach is used to analyze laws and regulations related to the application of additional penalties in the form of compensation in corruption cases, as outlined in Supreme Court Decision No. 110 K/Pid.Sus/2024.

3. Results And Discussion

Results

State losses resulting from corruption are not limited to state finances but also extend beyond that, causing losses to the state economy. Efforts to prosecute corruptors using Articles 2 and 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption are not easy. Law enforcers encounter obstacles or problems in implementing Article 2 and Article 3 of Law Number 31 of 1999 in conjunction with Un Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption specifically seeks to prove the element of state financial loss in the formulation of the crime of corruption.

One of the fundamental elements of a criminal act of corruption is the existence of state financial loss. Article 1, number 1 of Law Number 17 of 2003 concerning State Finances defines state finances as all rights and obligations of the state that can be valued in money, as well as everything, whether in cash or in kind, that can be made state property in connection with the implementation of these rights and obligations.

The definition of state finances in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption differs from the State Finance Law. In the General Explanation of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it is stated that state finances are all state assets in any form, whether separated or not separated, including all state financial losses and all rights and obligations arising therefrom.

Based on the provisions of Article 1 paragraph 22 of Law Number 1 of 2004 concerning State Treasury, it can be seen that the concept adopted is the concept of state loss in the sense of a material crime. An act can be said to be detrimental



to state finances if there is a truly real state loss. This differs from Article 2 paragraph (1) of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which explains that state losses in the concept of a formal crime are said to be detrimental to state finances or the state economy.

4. Discussion

Article 1, number 15 of Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK) defines state/regional losses as a real and definite shortage of money, securities, and goods resulting from unlawful acts, whether intentional or negligent. Furthermore, the BPK Law also defines state financial/asset losses as losses not only of a real nature but also potential losses, such as those that have not yet occurred, such as potential state revenues.

The Constitutional Court, in this case, argued that losses incurred in corruption, especially large-scale ones, are extremely difficult to prove precisely. Such demands for precision raise doubts about whether a proposed loss amount, even if it cannot always be accurately proven, will result in a conviction of the alleged act. This has encouraged anticipation or a need for accuracy and perfection of proof, thus making it necessary to ease the burden of proof. If accurate evidence of the actual loss cannot be presented, or if the act committed is such that state losses may occur, it is deemed sufficient to prosecute and convict the perpetrator, provided that other elements of the charge, such as unlawful enrichment of oneself, another person, or a corporation, have been proven.

There is a *nebis in idem* between Constitutional Court Decision Number 25/PUU-XIV/2016 and the previous Constitutional Court Decision Number 003/PUU-IV/2006. The similarities lie in the same basis for testing and the same material, namely Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law against Article 28D paragraph (1) of the 1945 Constitution. The previous Constitutional Court ruling stipulated that the phrase "can harm state finances or the state economy" in Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law did not conflict with the 1945 Constitution. However, with Constitutional Court Decision Number 25/PUU-XIV/2016, it was declared contrary to the 1945 Constitution.

This latter point is closer to the intention of qualifying corruption crimes as formal crimes. Between the two relationships, there is actually still a relationship that "has not yet actually occurred," but by considering the specific and concrete circumstances surrounding the incident that occurred, it can logically be concluded that a result, namely state losses, occurred. To consider the specific and concrete circumstances surrounding the incident that occurred, which can logically conclude whether state losses occurred or not, must be carried out by



experts in state finance, state economics, and experts in analyzing the relationship between a person's actions and losses. The Constitutional Court's opinion echoes the understanding of Prof. Komariah Emong, Professor of Criminal Law at Padjajaran University. According to Prof. Komariah, Law Number 20 of 2001 concerning Amendments to Law Number 30 of 1999 concerning the Eradication of Criminal Acts of Corruption adheres to the concept of state losses in the formal sense of the crime. The element of causing harm to state finances should be interpreted as causing harm to the state directly or indirectly. This means that an action can automatically be considered detrimental to state finances. If the act has the potential to cause state losses, the existence or absence of actual state losses is irrelevant. The concept of state losses in the context of formal crimes is already recognized in the previous Corruption Law, Law No. 3/1971.

If accurate evidence of the actual loss cannot be presented, or if the act is such that state losses are likely to occur, it is considered sufficient to prosecute and convict the perpetrator, provided that other elements of the charge, such as enriching oneself, another person, or a corporation through unlawful means, have been proven. Corruption is classified by law as a formal crime. Therefore, corruption is classified as a formal crime, where the elements of the act must be met, rather than a material crime, which requires that the resulting loss must have occurred as a consequence of the act. Applying the element of financial loss using the concept of actual loss provides greater legal certainty and is consistent with efforts to synchronize and harmonize national and international legal instruments, including Law Number 1 of 2004 concerning the State Treasury (State Treasury Law) and Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK Law), as well as the 2003 United Nations Convention Against Corruption (UNCAC), which Indonesia has ratified through Law Number 7 of 2006.

The element of unlawfulness is not only against statutory laws and regulations, but also if the act is inconsistent with a sense of justice or social norms, then the act is punishable. To prove the public prosecutor's indictment of the defendant's corruption offense involving state financial loss, the public prosecutor must provide at least two pieces of evidence to support the charge. On the other hand, the defendant or his legal counsel will try to state and prove that the defendant is not proven guilty of committing the crime charged by the public prosecutor. The Public Prosecutor's Policy is not to use articles regarding state losses regulated by laws and regulations in the field of state administrative law, because criminal sanctions regarding state losses can only be implemented absolutely from the arguments of Article 2 and Article 3 of Law Number 20 of



2001 concerning Amendments to Law Number 30 of 1999 concerning the Eradication of Criminal Acts of Corruption. In carrying out evidence in corruption cases, the Public Prosecutor proves the subject and act elements by using Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 30 of 1999 concerning the Eradication of Criminal Acts of Corruption. The element "can" harm state finances even as a result of prohibited acts, is a formal offense and a material offense as a philosophy of eradicating criminal acts of corruption in Law Number 20 of 2001 concerning Amendments to Law Number 30 of 1999 concerning the Eradication of Criminal Acts of Corruption that must be convinced by the Public Prosecutor to form the judge's conviction not to issue an acquittal.

The provisions for the payment of compensation have a coercive norm as stated in Article 18 paragraph 1 letter b of the Corruption Law, which stipulates that if the convict does not pay the compensation within one month after the verdict becomes legally binding, his property can be confiscated by the prosecutor and auctioned to cover the compensation.

In practice, in corruption case files, investigators often fail to fully search for assets owned by suspects as proceeds of crime to be confiscated and incorporated into the case file so that the Panel of Judges can later determine the confiscated objects as compensation for state financial losses to be auctioned publicly.

Although there are other instruments after the court's decision has become final, the convict's assets can be confiscated and auctioned as stated in Article 18 paragraph (2) of the UUPTK to cover state losses incurred within a period of 1 (one) month, in fact, when the execution is carried out, the convict prefers the option of carrying out the subsidiary sentence only for various reasons because carrying out the subsidiary sentence with a substitute sentence is considered lighter than having to sacrifice his assets to be confiscated and auctioned. Therefore, the middle way chosen is that the Panel of Judges should increase the substitute sentence to provide a deterrent effect for perpetrators who embezzle state funds.

The imposition of replacement money as an additional penalty for perpetrators of corruption is optional and not imperative because in its application there is a subsidiary replacement penalty within a certain period of time which is not The penalty does not exceed the principal sentence. Because it is optional, it is possible to avoid impoverishment of corruptors whose assets are auctioned off. The perpetrator chooses an official to carry out the substitute sentence, and the executing prosecutor does not attempt to locate the corruptor's assets to auction off the convict's assets to recover state financial losses. The penalty for the





payment of substitute money was first regulated in Government Regulation in Lieu of Law Number 24 of 1960 concerning the Investigation, Prosecution, and Examination of Corruption Crimes.

The existence of a coercive norm in asset confiscation should have made the Corruption Law more effective, but this provision still fails to recover state financial losses, given that the replacement is limited to the acquired assets. In corruption cases committed jointly (*delneeming*), the proceeds of corruption tend to be divided. The author's observations indicate that not all corruptors are brought to trial. Another obstacle is that the assets have been transferred/*transferred*/*transferred* to third parties, thus exceeding the scope of the provisions of the Corruption Law.

Another obstacle to asset confiscation is that more than twenty years after the enactment of the Law on the Protection of Assets (UUTPK), there is still no law on asset confiscation, derived from Article 18 paragraph (1) of the UUTPK. This certainly makes it difficult for law enforcement officials to fully recover replacement money because there is no legal umbrella for this action. Therefore, the existence of norms governing asset confiscation is absolutely necessary.

5. Conclusion

The mechanism for paying replacement money to recoup state losses in corruption cases does not have concrete regulations in the law regarding the method of payment, which must be in cash or permitted in installments. The 2015 Circular Letter of the Attorney General permitted payment of replacement money in installments until it is fully paid. However, the impact of this mechanism in practice will make the certainty of the prison sentence, which is subsidiary to the replacement money, uncertain, due to the uncertainty of whether the replacement money will be paid in full, and the legal consequences for convicts who pay replacement money as a certain percentage of the total amount of replacement money. Obstacles encountered in the process of paying compensation for restitution of state losses in corruption cases include the extraordinary handling of corruption cases, but still challenges related to the seizure of assets without a legal basis, the confiscation of assets, and the audit of the calculation of state financial losses that does not reach the level of the flow of funds and the Executing Prosecutor's Perception of the Judge's decision.

The judge's legal consideration in Supreme Court Decision No. 110 K/Pid.Sus/2024 regarding the payment of compensation for restitution of state losses in corruption cases is that the defendant has benefited from the crime. Therefore, based on Article 18 of Law No. 31 of 1999 concerning the Eradication





of Corruption, the defendant is sentenced to pay compensation converted from money that the defendant has deposited with the Public Prosecutor.

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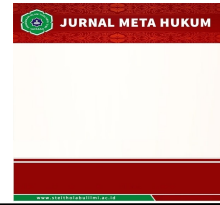


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