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The Ideal Concept of Regulation of Recovering State Financial Losses in Enforcement of Non-Criminal Corruption Laws Based on the Value of Justice

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Abstract
The negative impact caused by criminal acts of corruption covers various areas of life. Corruption is a serious problem, because it can endanger the stability and security of society, disrupt the process of socio-economic development, political stability and national morality. The purpose of this study is to analyze and find regulations for recovering state financial losses in law enforcement of corruption crimes that are not based on the value of justice. In conducting the analysis is to find weaknesses in the regulation of the return of state financial losses in the current enforcement of criminal acts of corruption. Then to find the reconstruction of regulations for recovering state financial losses in law enforcement of corruption based on the value of justice. As for conducting the research, the Constructivism Paradigm was used, with a social legal research approach, the data used were primary data and secondary data. Whereas the results of the research found (1) The Regulation of Recovering State Financial Losses in Law Enforcement of Corruption Crimes is Not Based on the Value of Justice, due to the blurring of the norms in Article 18 (1) b and paragraph (2) with Law No. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, states that the payment of replacement money in the maximum amount is the same as the property obtained from criminal acts of corruption. The implementation turned out that the payment of the replacement money was not in accordance with the amount of state financial losses. This can be seen in several judges' decisions, as well as in Article 18 paragraph (2) which is deemed less effective because many convicts who have been convicted of crimes in the form of paying replacement money in the end do not want to carry it out and then lose or transfer their property resulting in arrears in payment. replacement money penalty. This means that court decisions cannot be implemented, Reconstruction of Regulations in Recovering State Financial Losses in Law Enforcement of Corruption Crimes Based on the Value of Justice, including the reconstruction of legal norms in the provisions of Article 18 (1) b with Law No. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes, states that the payment of replacement money which is the same amount as possible for assets obtained from criminal acts of corruption, becomes Article 18 paragraph (1) letter b of the Corruption Law which states that the payment of replacement money is as much as the amount is the same as the property obtained from the criminal act of corruption which is equivalent to the value of the price of gold, and then related to Article 18 paragraph (2) with Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes,
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A. INTRODUCTION

The goal of the Indonesian nation, as stated in the 4th Alenia of the 1945 Constitution of the Republic of Indonesia[1], is to protect the Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life and participate in carrying out world order.[2]

Indonesia is a country that is based on law,[3] so that every human activity or society which constitutes their life activity must be based on existing regulations and norms that apply in society.[4]

[1] Anis Mashdurohatun, et.al. Authority Of The Constitutional Court In The Dispute Resolution Of Regional Head Elections, Lex Publica, Vol. VI, No. 1, 2019, pp. 52-60. Bambang Suprabowo, et.al, Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values, J.Eng. Applied Sci, Volume. 14, Issue. 12. 2019.pp. 4176-4182.
[2] Ridwan, Criminal Law Enforcement Policies in Eradicating Corruption Crimes in Indonesia, Jure Humano Journal, Volume 1 Number 1, 2009, page 74.
[3] Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a rule of law, at least it must have characteristics or elements consisting of: The government in carrying out its duties and obligations based on laws or statutory regulations; Guarantee of human rights (citizens); Distribution of power (distribution of power) within the state; Oversight of the judiciary. Sri Sumantri, Anthology of Indonesian Constitutional Law, Alumni, Bandung, 2003, page 4, as quoted by Mien Rukmini, Protection of Human Rights Through the Presumption of Innocence and the Principle of Equality in Law in the Indonesian Criminal Justice System, Alumni, Bandung, 2005 , p. 37.
[4] Law cannot be separated from human life because law is a rule to regulate human behavior in life, because without law one cannot imagine what this country will be like in the future.

Corruption[1] has become a global problem between countries, classified as a transnational crime.[2] In various parts of the world, corruption always gets more attention than other crimes. This phenomenon is understandable considering the negative impact caused by criminal acts of corruption. The impact caused by criminal acts of corruption can touch various areas of life. Corruption is a serious problem, criminal acts of corruption can endanger the stability and security of society, endanger socio-economic development,[3] and are also dangerous politically,[4] and can damage democratic values and morality because over the years this act seems to have become a culture.[5] Corruption is a threat to the ideals of a just and prosperous society.[6]

Like a disease, corruption in Indonesia has developed in 3 stages, namely elitist, endemic and systemic. At the elitist stage, corruption is considered a pathology that is typical among the elite. At the endemic stage, endemic corruption reaches wide layers of society. Then at a critical stage corruption becomes systemic where every individual can be infected with a similar disease.[7]

Corruption is not a new thing, corruption is in line with human history, perhaps the same as other crimes, where crime is a social problem that is not only faced by Indonesia or certain communities and countries, but is a problem for all people in the world.

Crime, as said by Saiichiro Uno, is a universal phenomenon, not only the number has increased, but also the quality is taken seriously compared to the past.[8] Likewise, corruption is a social problem that has always been a problem to this day for the Indonesian people. The embryo of corruption could have been born from the domination of an area and natural resources by a few groups that encourage people to fight over and dominate each other.

Attention to corruption in recorded history dates back thousands of years. In India corruption has become a serious problem since 2300 years ago. This is proven by the writings of a Prime Minister Chandragupta about 40 ways to steal the country's wealth.[9] The Chinese Empire thousands of years ago implemented a policy called Yang-Lian, which rewards clean State Officials, as an incentive to suppress corruption. Seven centuries ago, Dante said that corruptors would live in the crust of the nation and Shakespeare raised the themes of corruption in his various works.[10]

The rapid rate of corruption resulted in the agreement of the international community, including Indonesia, to work together in eradicating corruption, this was marked by the signing of the Declaration on the Eradication of Corruption in Lima, Peru on 7-11 September 1997 at the Anti-Corruption Conference which was attended by

[1] Corruption is no longer foreign to our ears. All layers of society have even been fluent in saying that an act is corruption. Someone who hides money that does not belong to him can be said to be corrupt. Even though they do not know clearly the intent and meaning of the word corruption from a legal point of view. Corruption is deeply embedded in people's lives. In Indonesia, the word corruption has been known since the Dutch East Indies era, where the word originates from the Dutch language, namely corruptie (korruptie). So it's not surprising that the word corruption has become known and has become an everyday word. Andi Hamzah, Corruption Eradication Through National and International Criminal Law Raja Grafindo Persada, Jakarta, 2005, page 4. Transparency International Indonesia (TII) uses the definition of corruption to abuse public power and trust for personal gain. From this definition, there are three elements: Abuse of power, entrusted power (both public and private sectors); have access to business and material benefits, and personal benefits (which does not necessarily mean only to the person who abuses power, but also to their family members or friends). J. Pope, Strategy for Eradicating Corruption, Yayasan Obor Indonesia, Jakarta, 2003, p. 6. With the recognition of corruption by the public, this indicates that corruption has been going on for a long time, even before the word corruption became widely known. Corruption is caused by several things that are varied and varied. One of the causes of corruption is that acts of corruption are carried out with the aim of gaining personal/family/group/group benefits. Based on this personal or group profit motive, if corruption is found everywhere and occurs at any time because the problem of corruption is related to the motives that exist in every human being to gain personal or group benefits, I. G. M. Nurdjana, The Criminal Law System and the Latent Dangers of Corruption: Perspectives The Upholding of Justice Against the Legal Mafia, Student Library, Yogyakarta, 2010, page 31.

[2] In the Corruption in Government Resolution (results of the 8th UN Congress in 1990) it was stated that corruption was not only related to various economic crime activities, but also to organized crime, illicit drug trafficking, money laundering, political crime, top hat crime, and even transnational crime.

[3]There are many reasons for the continued increase in corruption cases in Indonesia. As stated by B. Soedarso, in general, people link the growth of corruption because it is easiest to relate, for example, lack of official salaries, poor economy, poor mentality of officials, chaotic administration and management which results in winding procedures and so on. Andi Hamzah, Op, Cit, p. 12.

[4]Corruption in Indonesia is already at the crime level of political corruption. Indonesia's condition is very apprehensive, because corruption attacks the world of politics and the nation's economy. Political corruption is carried out by people or institutions that have political power or by conglomerates that carry out collusive transactional relationships with power holders. Evi Hartanti, Corruption Crime, Sinar Graphic, Jakarta, 2009, page 1.

[5] Crime will continue to increase in different ways, even with increasingly sophisticated and modern equipment, so that crime will increasingly disturb the community

[6] Corruption has received more attention than other crimes in various countries because it can have a widespread negative impact in a country. The resulting impact concerns various aspects of life. Corruption is a serious problem, criminal acts endanger the stability and security of society, endanger socio-economic and political development, and undermine democratic values and morality because gradually these actions seem to become a culture. Corruption is a threat to the ideals of a just and prosperous society. Ibid., p. 3.

[7]Ermansjah Djaja, *Mendesain Pengadilan Tindak Pidana Korupsi*, *Implikasi Putusan Mahkamah Konstitusi Nomor 012-016-019/PPU-IV/2006*, Sinar Grafika, Jakarta, 2010, p. 11.

[8] Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara,* Semarang, 1994, CV Ananta, p. 11.

[9] Robert C Tilman, "*Emergence of black market Bureucracy: Administration, Development and Corruption in the New States"* dalam "Controling Corruption" Robert Klitgaard, University of California Press, 1988.p. 7

[10] Noonan John t.Jr, *"Bribers"* New York Macmillion, 1984 dalam Vito tanzi *"Corruption Arround the World",* IMF Papers, Vol 45 No. 4 Desember 1998 .p.. 1.

93 countries, the declaration is known as the Declaration of 8 th International Conference Against Corruption. At the conference it was believed that corruption damaged the moral fabric of society, denied social and economic rights, especially among the poor and weak.[1]

In simple terms, corruption is defined as the abuse of power/trust for personal gain. also includes the behavior of officials in the public sector, both politicians and civil servants, enriching themselves inappropriately and unlawfully, or people close to bureaucratic officials by abusing the power entrusted to them.

According to the former Secretary General of the United Nations, Kofi Annan, corruption has injured and harmed the poor through disproportionate or unequal allocations of funding, reduced the government's ability to perform basic services for its citizens, created imbalances and injustices, and had a negative impact on investment. and foreign aid funds. In addition to hindering investment, the criminal act of corruption itself is the biggest obstacle to realizing a balance of income, welfare, access to education, and even eradicating poverty.[2]

In Indonesia, corruption has grown rapidly and is classified as an extraordinary crime. Because of that the handling of corruption crimes cannot be carried out normally, extraordinary steps are needed.[3] Corruption is considered destructive because it harms society and the state. Corruption places Indonesia among the most corrupt countries in the world.[4] According to Indonesia Corruption Watch (ICW) monitoring trials of corruption cases in the period January 2020 to December 2020. As a result, the total loss to the state due to corrupt practices throughout 2020 reached Rp. 56.7 trillion.[5] Meanwhile, the replacement money that returned to the state for losses in corruption cases in 2020 was only Rp. 8.9 trillion.[6]

So far, corruption has been widely understood by various parties rather than eradicating it,[7] even though corruption is a crime that can touch various interests related to human rights, state ideology, the economy, state finances, national morals, and so on, which constitutes criminal behavior that tends to be difficult to overcome. The difficulty of overcoming corruption can be seen from the fact that many defendants have been acquitted in corruption cases or the minimum amount of punishment borne by the accused is disproportionate to what he has done. In the current developments in eradicating corruption, the focus is on three main issues, namely prevention, eradication and return of assets resulting from corruption (asset recovery).[8] This shows that efforts to eradicate corruption do not only lie in efforts to prevent and eradicate in terms of criminalizing the perpetrators but also include efforts to recover state losses from the proceeds of corruption. Refunds for state losses are intended so that the state losses incurred can be covered by returns from the proceeds of corruption so that they do not have a worse impact. Returning losses from the proceeds of corruption will make the perpetrator unable to enjoy the results of his actions.

B. RESEARCH METHOD

The research method used is non-doctrinal. This research is a qualitative research, [9] descriptive juridical research type, primary and secondary data types, library data collection methods, observations and interviews[10]. The data collected was analyzed through qualitative inductive.[11]

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[1] Wijayanto Ridwan Zachrie, *Korupsi Mengorupsi Indonesia, sebab, akbiat dan prospek pemberantasan*, Jakarta, 2009, PT Gramedia Pustaka Utama, p. 555.

[2] Kristian dan Yopi Gunawan, *Tindak Pidana Korupsi Kajian terhadap Harmonisasi antara Hukum Nasional dan The United Nations Convention Againt Corruption (UNCAC),* (Bandung: Refika Aditama, 2015), p. 7

[3] Penjelasan Umum Undang-undang Nomor 30 tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi

[4] Fazzan, Jurnal Ilmiah Islam Futura, *Korupsi di Indonesia daam Perspektif hukum Pidana Islam*, Vol. 14 Nomor 2, 2015, p. 147.

[5] https://nasional.kontan.co.id/news/icw-sepanjang-2020-kerugian-negara-akibat-korupsi-mencapai-rp-567-triliun

[6] https://nasional.kompas.com/read/2021/03/22/data-icw-2020-kerugian-negara-rp-567-triliun-uang-pengganti-dari-koruptor-rp

[7] Indonesian cultural or cultural background is one of the sources or causes of widespread corruption. Currently Indonesian people are more inclined to follow people who commit corruption, rather than eradicate corruption. This was stated by Syed Hussein Alatas who said that the majority of people who do not commit corruption should participate in eradicating corruption by a minority. This method is called Siskamling (Mobile Security System). Another cause of corruption is poor management and less effective and efficient control which is also supported by modernization which has brought significant changes in people's lives. Andi Hamzah, Op, Cit, p. 16.

[8] Haswandi, *Pengembalian Aset Tindak Pidana Korupsi Menurut Sistem Hukum Indonesia Dalam Mewujudkan Negara Hukum Kesejahteraan*, Jurnal Litigasi Vol. 16(2), 2015, p3.

[9] O. K. Isnainul, et.al. Ideal Legal Concept of Fidusia Guarantee Registration Obligations by Justice-Based Financing Companies, Journal of Asian Research , Vol. 3, No. 2, 2019. pp.139-161. Mahyuni, et.al. Land Acquisition of Toll Roads for Public Interest in The Kendal District, Jurnal Akta, Volume 6 Issue 1, March 2019,pp. 153-158, Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017, see too Sukarmi et.al, Impact of Traffic Congestion on Economic Welfare of Semarang City Community, Journal of Xidian University ,Volume 16, ISSUE 2, 2022.

[10] Carto Nuryanto, Gunarto, Anis Mashdurohatun, Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice, The 5th International Conference and Call for Paper Faculty of Law 2019, Sultan Agung Islamic University, 2019,pp.91-95. See too Wawan Setiyawan and Anis Mashdurohatun, The Reforming Of Money Politics Cases In Election Law As Corupption Crime. Law Development Journal, Volume 3 Issue 3, September 2021, pp.621 – 629.

[11] Esmi Warassih. Pranata Hukum: Sebuah Telaah Sosiologis, (Semarang: Suryandaru Utama, 2005), page. 23-24. Yeltriana, et.al, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, International Journal of Law, Government and Communication, Volume: 4 Issues: 14 [March, 2019]. pp.32-49. Irwansyah, Ahsan Yunus, Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel, Mirra Buana Media , Yogyakarta. 2020. Bimo Bayu Aji Kiswanto, Anis Mashdurohatun, The Legal

C. RESEARCH RESULTS AND DISCUSSION

C. 1 Recovery of State Financial Losses in Law Enforcement of Corruption Crimes in Various Countries

Regulations in Singapore differentiate more on the sorting of perpetrators from criminal acts of corruption, while in Indonesia it differentiates more on the offenses that occur. This can be seen from the regulations in Singapore with the Prevention of Corruption Act, the formulation of special offenses in the business community in the form of bribery between the private sector and the private sector, and for civil servants, bribery offenses are taken from the Singapore Criminal Code.

The Swiss state also implements asset confiscation against crimes using a criminal basis or without a criminal basis. Both of these methods have their main source in Swiss criminal law which is regulated in the penal code dated December 21, 1937 as stated in article 123 Paragraphs 1 and 3 of the Federal Constitution. Confiscation of assets on the basis of criminal forfeiture and confiscation without conviction are based on Articles 70 to 72 of the 1937 Law.[1]

The act of confiscating property is property acquired or the result of a crime. The point is that the property is the direct result of the crime or the property that has been purchased with the proceeds of the crime. All traceable assets can be confiscated. The important thing is that the property is really the result of a crime, if the property is not related to crime, then there is no possibility of confiscation.[2]

Article 263 paragraph (1) SCCrP, states that assets or assets belonging to suspects or defendants or third parties which are the result of a crime can be confiscated if the assets are to be used as compensation claims, will be used as evidence, will be used as collateral for case handling procedures or financial sanctions or will be returned to the party who suffered the loss. Confiscation orders can be carried out from the initial process of investigation by the police or prosecutors. Article 198 paragraph (1) SCCrP states that during the trial period the order for confiscation was carried out by the Court.[3]

C. 2 Recovery of State Financial Losses in Law Enforcement of Corruption Crimes According to Islamic Law

Islamic history records that in the development of Islam there has been corruption, this can be seen in the era of the Caliphate of the Khulafa 'al-Rashidin, to be precise in the era of the caliph 'Umar ibn al-Khattab, where he ordered some of his companions to oversee the assets of government officials.[4]

As is well known, the criminal act of corruption is essentially the abuse of authority and power to enrich oneself or benefit oneself, another person, group or class, so this is a form of betrayal of the mandate and oath of office. Betrayal of the trust given is a character of hypocrisy and includes the prohibited acts mentioned in the Koran. (QS. Al-Anfal: 27) & (QS. al-Nisa '58).

The criminal act of corruption is synonymous with jarimah hudud and qishosh, the perpetrators of corruption have stolen state finances, so that they must be punished accordingly for actions that have caused the death of the country's economy, thus harming state finances.

Islamic law recognizes several types of sanctions that can be given to perpetrators of crimes, namely as follows:[5]

a. Corporal punishment, namely punishment imposed on human limbs such as the punishment of cutting off hands and flogging.
b. Punishment imposed on the soul, such as the death penalty. Ahmad Hanafi included the death penalty in corporal punishment, while A. Djazuli included it in the punishment of the soul. According to Ahmad Hanafi, the punishment imposed on the soul is not the body or life, but punishment that is psychological in nature, such as threats, warnings or reprimands.
c. Punishments imposed for loss of human liberty or freedom, such as exile or imprisonment.
d. Punishment for the property of the offender, confiscation, diyat, and fines

The combination of penalties imposed on perpetrators of corruption in addition to corporal punishment is also subject to fines and payment of compensation money. So it is associated with the type of criminal punishment in Islamic law also recognizes crimes related to property in the form of confiscation of property (confiscation) such as diyat and fines[6].

Protection Against Children Through A Restorative Justice Approach, Law Development Journal, Volume 3 Issue 2, June 2021, pp. (223 – 231).

[1] Theodore S. Greenberd, dkk *Stolen Asset Reovery Good Practice Guide untuk perampasan aset tanpa pemidanan (Non conviction Basen NCB Asset Forfeiture)* The word Bank, Washington DC, 2009.p. 111-112.

[2] Ibid p. 112.

[3] Jacinta Abyango Odour, dkk, *Left Out The Bargain : Settlemen in Foreign Bribery Casses and Imlication for Asset Recovery,* The ord Bank UNODC, Whasington DC, 2014, p. 21

[4] Muhammad Husain Haikal, *Sayyidina 'Umar ibn al-Khattab*, Jakarta, 2003, Litera Antar Nusa, p. 665

[5] Rahmad Hakim, *Hukum Pidana Islam Fiqih Jinayah,* Bandung, 2000, Pustaka Setia,p. 68

[6] Paisol burlian, Implementasi Konsep Hukuman Qishas di Indonesia, Jakarta: Sinar Grafika, 2015, p. 54

C. 3 The Ideal Concept of Recovering State Financial Losses in Upholding Corruption Crime Laws Based on the Value of Justice

Indonesian independence on August 17, 1945 became a golden gate for the Indonesian nation towards reforming criminal law in Indonesia. Since the proclamation on August 17, 1945, Indonesia has started to organize its laws. Because Indonesia had just been formed, the 1945 Constitution made regulations for membership as in Article II of the Transitional Rules which stated:

"All existing state agencies and regulations will still apply immediately, as long as new ones have not been implemented according to this basic law."

The provisions of article II of the Transitional Rules were made on the basis of avoiding the occurrence of a legal vacuum, with the existence of the Transitional Rules the rules that were in effect during the Dutch colonial period remained in effect until new regulations were formed by the Indonesian government.

Article II of the Transitional Rules is the general basis for the Indonesian Criminal Code (KUHP). Through law number 1 of 1946 and due to various developments and the needs of the society which are accelerating, several criminal laws outside the Criminal Code[1] were made. Nevertheless, the demands for material changes stipulated in the Criminal Code are becoming more and more evident. Therefore, reforming the criminal law is deemed urgent to be implemented immediately.

The urgency to make changes to criminal law is that the Criminal Code of Western European countries is individualistic-capitalistic and this is different from the pattern of Eastern European countries which are based on socialist politics. The Indonesian state's political views based on Pancasila need to be adjusted, because views on criminal law are very closely related to general views on law, the state, society and criminality (crime).[2]

The reform of the criminal law needs to be carried out especially to adjust it to the principles and style as well as the Indonesian legal system which is guided by Pancasila.[3] The principles and foundations of criminal law originating from the Colonial era are seen as irrelevant.

Likewise, in efforts to tackle corruption crimes, it is necessary to make changes to the law because very often the existing regulations are seen as no longer accommodating within the framework of overcoming crimes that the law seeks to eradicate.

In fact, legal renewal is closely related to legal reform (law reform). Talking about law reform will be different from the notion of legal reform. In legal reform, there is a process of legal renewal that is realized and desired. This process is a progressive and reformative political process. In such conditions the law can function as a tool or means to form or manipulate society (tool of social engineering).

In fact, it can be said that the concept of tools of social engineering has not produced satisfactory results. Such a concept of legal reform only involves legislative activities which generally only involve the minds of professional elites who have access to lobbying. Therefore, legal reform is considered not to produce results so that it creates a flow to produce law reform. The meaning contained in law reform is broader than the meaning contained in Legal Reform. Law is defined as a product of the political activity of the sovereign people, which is driven by their straightforward economic interests, which is also inspired and/or referred to by social norms and/or cultural ideal values.

This view of law reform is in accordance with the understanding developed by Satjipto Rahardjo by using the term progressive law. According to him, it is not laws that have a special place in legal reform, but the perspectives, thoughts, and paradigm ideas that underlie these reforms.[4] The idea of Progressive Law was born out of concern about the low contribution of legal science in Indonesia in enlightening this nation to emerge from crises, including crises in the legal sector.

Eradicating corruption, not only requires legal reform but law reform. We can see how the existing laws on corruption eradication are deemed inadequate so that gaps are still found that prevent the goals of the law from being achieved. Especially regarding the recovery of State losses which is difficult to achieve is an illustration of the weakness of the current corruption law. Therefore, it is necessary to reform the law so that recovery of state losses (asset recovery) can be achieved.

The idea of applying the concept of confiscation is a form of legal renewal in Indonesia. As stated above, the concept of confiscation of collateral is a form of legal principle known in civil procedural law, the incorporation of civil law into criminal law is a renewal step and needs to be implemented with the aim of efficiency of the law itself.

Corruption is an extraordinary crime and therefore handling it also needs to be done in an extraordinary way.

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[1] Hardi Widioso, HR Mahmutarom, Anis Mashdurohatun, A Juridical Review of the Truth of Criminal Stelsel that has not been oriented on the Basis of Balance in the Penal Code, Saudi Journal of Humanities and Social Sciences,June2019; 4(6): pp. 441-445

[2] Sudarto, *Hukum Pidana dan Perkembangan Masyarakat*, *Op.cit.* p. 60-61

[3] Nyoman Serikat Putra Jaya, *Relevansi Hukum Pidana Adat dalam Pembaruan Hukum Pidana Nasional,* Citra Aditya Bakti, Bandung, 2005, p.78.

[4] Satjipto Rahardjo, *Hukum Progresif Sebagai Dasar Pembangunan Ilmu Hukum Indonesia*, Dalam Ahmad Gunawan (Ed). *Menggagas Hukum Progresif Indonesia*, Pustaka Pelajar IAIN Walisongo Program doctor UNDIP; Semarang, 2006.

Satjipto Raharjo once stated that Indonesia is a country based on law, but has not been able to answer problems in a complete (finite) way, and often creates problems in the future.[1]

It is realized that the legal community in this world is very orthodox and anti-change. This is also what made Bung Karno say that we cannot evolve with legal experts. This is based on the still classic way of thinking of law enforcers such as police, prosecutors and judges. A formalistic legalistic perspective based on a legal positivism view makes law enforcers submissive towards positive law, not creative or even daring to break existing rules (rule breaking).[2]

The eradication of corruption by applying such a classical perspective makes the role of law in eradicating corruption seem far from the fire. In connection with the application of the concept of confiscation of collateral, it is fitting that investigators, prosecutors and judges act progressively. This means that one can be creative by seizing collateral during an investigation, so that by applying the concept of such confiscation it is hoped that efforts to recover state losses for defendants who are proven guilty can be implemented immediately.

Besides that, in the process of legalizing laws in the legislature, it is necessary to continue to be encouraged towards renewing the corruption laws, namely by making revisions to the corruption laws by incorporating the general confiscation concept into the revised corruption laws, thus giving birth to regulations related to new rules in an effort to recover state financial losses due to criminal acts of corruption which in the end will have a just impact where corruptors are not only punished but their property becomes the right of the state to seize it to return the state's financial losses.

As stated earlier, the crucial issue in corruption is how state losses arising from corrupt acts can be reclaimed as state property. The main objective of eradicating criminal acts of corruption with the issuance of law number 31 of 1999 concerning eradicating criminal acts of corruption as amended by law number 20 of 2001 concerning Amendments to Law number 31 of 1999 is how state losses can be recovered.

This issue is closely related to the provisions of Article 18 paragraph (1) letter b UUPTK number 31 of 1999 as amended by Law number 20 of 2001. The article states that the defendant may be subject to additional punishment in the form of payment of criminal compensation in the same amount as possible. with assets obtained from criminal acts of corruption.

Article 18 paragraph (2) further explains that if the convict does not pay compensation as referred to in paragraph (1) letter b no later than 1 (one) month after a court decision that has permanent legal force, then his property can be confiscated by Attorney and auctioned off to cover the replacement money.

The problem is that in practice the application of the provisions in Article 18 paragraph (1) letter b and paragraph (2) UUPTPK Number 31 of 1999 as amended by Law number 20 of 2001 is not as easy as the law aspires to be. Often the recovery of state losses carried out by corruptors is not successful. Thus giving birth to arrears of criminal settlement of replacement money by the attorney general.

In the event that someone files a lawsuit in court related to compensation or debts, of course, a guarantee is needed so that if they win, the lawsuit can be realized. This problem will usually be carried out by the plaintiff to file a confiscation first. Confiscation is a court action against movable or immovable objects belonging to the defendant at the request of the plaintiff to be supervised or taken as collateral so that the claim or authority of the plaintiff does not become void.[3]

There are four types of confiscation: those regulated in Civil Law, including the first, confiscation of collateral (conservatoir beslag) which is a confiscation of the disputed assets and the assets of the defendant both movable and immovable related to claims for compensation or debts. Second, confiscation of property rights (revindicatoir beslag) relating to the confiscation of a movable object based on the reason that the plaintiff's property rights are currently in the hands of the defendant. Third, confiscation of joint assets (marital beslag) which is a confiscation of joint property of husband and wife both in the hands of the husband and wife in the event of a divorce dispute, and finally, execution confiscation (executoir beslag) is a confiscation of items listed in the decision order. which has permanent legal force.

General confiscation in civil law is unknown, general confiscation is introduced in terms of bankruptcy. The definition of a general confiscation is a confiscation carried out on all assets belonging to the debtor, both currently and in the future, with the aim that the proceeds from the sale of the confiscated assets can be distributed fairly and proportionately among fellow creditors in accordance with the amount of receivables. from each except among the creditors have reasons for precedence.[4] 6 According to Hadi M. Shubhan, general confiscation has differences from other civil confiscations, namely general seizures do not require a specific action or certain legal action as other seizures in civil law.[5]

[1] Satjipto Raharjo, *Membedah Hukum Progresif*, Buku Kompas, Maret 2007, p. 129.
[2] Ibid
[3] Wildan Suyuthi, Sita dan Eksekusi Praktek Kejurusitaan Pengadilan, Jakarta: PT Tatanusa, 2004, p. 20
[4] Siti Hapsah Isfardiyana, *Sita Umum Kepailitan Mendahului Sita Pidana dalam Pemberesan Harta Pailit*, Padjadjaran Jurnal Ilmu Hukum, Vol. 3, No. 3, Tahun 2016, p. 635, http://jurnal.unpad.ac.id/pjih/article/ viewFile/7177/5419, diakses tanggal 22 Januari 2023
[5] Hadi M. Shubhan, *Hukum Kepailitan Prinsip, Norma dan Praktik di Pengadilan*, Jakarta: Kencana Prenada Media Group, 2012, p. 266

There is a difference between confiscation known in civil law and known in criminal law. Confiscation in criminal law aims nothing but to support and strengthen the process of proving the confiscation of evidence, and also to serve as a legal basis for the use of confiscated items to be used as evidence. Whereas confiscation in civil law is to guarantee and provide certainty for the plaintiff if won to immediately get the rights as the one being sued for the confiscated defendant's property.

The essence of general confiscation of the debtor's assets is that the purpose of bankruptcy is to stop action against seizure of bankrupt assets by creditors and to stop traffic transactions against bankrupt assets by debtors which are likely to harm creditors.[1]

The concept of general confiscation that will be introduced in corruption crimes is as a form of justice for countries that have been harmed, so that state financial losses that have been taken by perpetrators of corruption can be taken back and will then be used by the state to realize social justice for all Indonesian people.

The provisions in Article 18 of Law Number 31 of 1999 in conjunction with Law number 20 of 2001 are as follows:

1. In addition to the additional crimes referred to in the Criminal Code, additional crimes include: corruption, including companies owned by the convicted person where the criminal act of corruption was committed, as well as goods that replace these items;
   a. confiscation of tangible or intangible movable property or immovable property used for or obtained from a crime
   b. payment of replacement money in the maximum amount equal to the assets obtained from the criminal act of corruption;
   c. closure of all or part of the company for a maximum period of 1 (one) year;
   d. revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be granted by the Government to convicts.
2. If the convict does not pay the replacement money as referred to in paragraph (1) letter b no later than 1 (one) month after the court decision has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned off to cover the replacement money.

Article 18 paragraph (2) can be continued by being reconstructed into an additional paragraph 3 in the form of the following provisions: When determined as a suspect, all property, both movable and immovable, tangible and intangible, whether in his power or other parties applies general confiscation status.

Whereas with this provision, once an investigator determines the status of a person as a suspect, the general confiscation will automatically apply to all assets belonging to the suspect. The purpose of this general confiscation is almost the same as that of a civil confiscation in general, namely to prevent the suspect from committing an act that is detrimental to the state in the event that the court decides that the defendant has paid compensation, such as hiding or diverting his property.

Besides that, in order to realize a sense of justice for the state as the victim who has suffered losses, the value of replacement money needs to be adjusted to changes in currency fluctuations, where the value of money continues to change and if there is no adjustment it can have an impact on recovering state financial losses which are not optimal. Therefore it is necessary to add as well as a reconstruction of regulations related to references for payment of replacement money which is the same amount as the assets obtained from criminal acts of corruption which are equivalent to the value of the price of gold. The aim is to realize the recovery of state financial losses based on justice.

As a measure, for example the criminal act of corruption that was committed ten years ago, and was only processed after ten years later, then when sentenced by a judge it was clear that the value of the loss was felt to be unequal. For example, in 2000 he committed a criminal act of corruption with a loss of Rp. 1,000,000,000, then after obtaining a report around 2010, an investigation was carried out and the perpetrator was subsequently punished by paying a compensation of Rp. 1,000,000,000, if the money is one billion in 2000 compared to 2010, then of course there is a change in the value of the currency so that if you have to pay Rp. 1,000,000,000 it is also considered unfair, because the profits obtained by the perpetrators by enjoying the proceeds of corruption for ten years Then, of course, there are a lot of them, so it is appropriate to be sentenced to a penalty of payment of replacement money whose value is equivalent to the price of gold, when sentenced by a judge.

[1] Ibid p. 163

Table
The Ideal Concept of Regulation of Recovering State Financial Losses in Upholding Corruption Crime Laws Based on the Value of Justice
Article 18 (1) b and paragraph (2) of Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes

Before Reconstruction	Weakness	After Being Reconstructed
Article 18 paragraph (1) letter b of the Corruption Law states that the payment of compensation in the maximum amount equals to the property obtained from criminal acts of corruption. Article 18 paragraph (2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b no later than 1 (one) month after the court decision has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned off to cover the replacement money.	So far, the payment of compensation money has not materialized the values of justice because the calculations have not been balanced or equivalent to the loss of state finances. There is no balance in the return of state financial losses, which has not taken into account the interests of the state and society which are based on the equivalence of payment of compensation money with state financial losses. Then often the perpetrator after being sentenced to pay a replacement money does not comply by transferring property with the aim of avoiding confiscation	Article 18 paragraph (1) letter b of the Corruption Law states that the payment of compensation in the maximum amount equal to the property obtained from the criminal act of corruption which is equivalent to the value of the price of gold. Article 18 paragraph (2) states, "If the convict does not pay compensation as referred to in paragraph (1) letter b within 1 (one) month after the court decision that has obtained permanent legal force, then the property can be confiscated by the prosecutor and auctioned to cover the replacement money. Reconstructed with the addition of paragraph 2 A it becomes, "When named as a suspect, all property, both movable and immovable, tangible and intangible, whether in his power or other parties, applies general confiscation status."

D. CONCLUSION

The Regulation on Recovering State Financial Losses in Law Enforcement of Corruption Crimes is Not Based on the Value of Justice, due to the obscurity in the normalization of Article 18 (1) b and paragraph (2) with Law No. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, states that the payment of replacement money in the maximum amount is the same as the property obtained from criminal acts of corruption. The implementation turned out that the payment of the replacement money was not in accordance with the amount of state financial losses. This can be seen in several judges' decisions, as well as in Article 18 paragraph (2) which is deemed less effective because many convicts who have been convicted of crimes in the form of paying replacement money in the end do not want to carry it out and then lose or transfer their property resulting in arrears in payment. replacement money penalty. This means that court decisions cannot be implemented, Reconstruction of Regulations in Recovering State Financial Losses in Law Enforcement of Corruption Crimes Based on the Value of Justice, including the reconstruction of legal norms in the provisions of Article 18 (1) b with Law No. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes, states that the payment of replacement money which is the same amount as possible for assets obtained from criminal acts of corruption, becomes Article 18 paragraph (1) letter b of the Corruption Law which states that the payment of replacement money is as much as the amount is the same as the property obtained from the criminal act of corruption which is equivalent to the value of the price of gold, and then related to Article 18 paragraph (2) with Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes,

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