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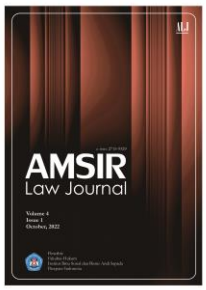

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Refund of State Financial Losses in Realizing the Welfare State of Law

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ABSTRACT

The concept of punishment is not only emphasized to the subject of the perpetrator, but also the consequences that can be caused need to be accounted. What is the ideal form of punishment for perpetrators of corruption. Does it really need extraordinary efforts to deal with this crime? This article was a type of normative research. The approach used in normative research was the statutory approach, which is an approach taken by examining all laws and regulations related to the legal issues being handled. Refund of state financial losses, especially corruption in Indonesia, is not easy and can be done. The perpetrators of corruption have very strong access to a wide network of power that is difficult for law enforcement to reach. This article describes the regulation of the return of state financial losses due to criminal acts that can be carried out through two legal instruments, namely criminal law instruments and civil law instruments.

1. Introduction

The challenge for all countries today is how to create a legal welfare state that is able to realize the realization of community prosperity. This challenge also addresses the negative impacts of acts of corruption that involve a number of state officials, both at the central and regional levels.

The importance of realizing a legal welfare state is not only carried out to overcome poverty and social inequality, but what is more relevant is the efforts to process financial recovery, economic stability, and worsening political crises marked by low performance appraisals and public services. Armstrong and Baron mention that performance is the result of work that has a strong relationship with the organization's strategic goals, community satisfaction, and contributes to the economy.[4]

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[4] Ismiyarto Ismiyarto. (2017). Penilaian Kinerja Unit Pelayanan pada Organisasi Publik. *Jurnal Ilmu Pemerintahan Suara Khatulistiwa, 2*(2), 12-29. https://doi.org/10.33701/jipsk.v2i2.923 .

One of the principles in realizing a welfare law state must be balanced with a commitment to uphold the rule of law with the following characteristics: the supremacy of law, legal certainty, responsive of law, consistent and non-discriminatory law enforcement, and independence justice. The legal framework must be fair and enforced regardless of anyone, including subject to human rights values.

In recovering state financial losses in order to realize a legal welfare state, at least two legal instruments are needed. First, criminal law instruments that can be carried out by investigators by confiscating property belonging to the perpetrator of a crime which is then decided by the court with an additional criminal decision in the form of money to compensate for state financial losses. This mechanism can be carried out by the public prosecutor so that the property belonging to the perpetrator is confiscated by the state. While the second, through civil instruments, such as through Articles 32, 33, and 34 of Law Number 31 of 1999 which has been amended into Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. This can be done by the State Attorney or the agency that feels aggrieved.

The two legal instruments have been repeatedly implemented, but in some cases these instruments have not been able to optimally recover state financial losses. This can be seen in the corruption case at Pertamina, where Ibnu Sutowo's authority as the initial manager of Pertamina was alleged to have corrupted all Pertamina projects whose savings were estimated at 90 billion rupiah, but Ibnu and his colleagues were free from legal entanglements.[5] The civil mechanism in technical-juridical asset recovery does have some complexities. State attorneys or agencies that have been harmed sometimes have difficulty in dealing with norms which still refer to the civil procedural law of the colonial era. This colonial civil procedural law system still adheres to the principle of formal proof. Such as the burden of proof that lies with the party who argues (Article 1865 of the Civil Code and Article 163 HIR and Article 283 Rbg). The state attorney or agency that has been harmed must prove the equality of the parties, the obligation of the judge to reconcile the parties and so on.

The state attorney or agency that has been harmed as the plaintiff must prove that there has been state loss related to unlawful acts committed by the suspect, defendant, or convict. This evidence needs to be proven by the existence of property belonging to the suspect, defendant, or convict in the form of proceeds of a criminal act, such as the proceeds of corruption, for example. In addition, generally the handling of civil cases takes a long time. The trial period and the judge's decision are relatively long. In fact, until there is a legal decision that has permanent legal force, extraordinary legal efforts such as a review will certainly increase the period of handling cases. Not to mention if there are obstacles caused when the case is about to be executed, there will be a lawsuit against or rebuttal from a third party (*derden verzet*) against the assets to be executed.

These circumstances are further complicated if the perpetrator dies before the court decides and then the heirs expressly make a statement to the clerk of the district court refusing to be the heir (Article 833 Paragraph 1 BW in conjunction with Article 1057 BW and Article 1058 BW). Another condition is when the proceeds of corruption are smuggled out which have been hidden in overseas banks, whether through agents, notaries, lawyers,

[5] Sari Mandiana. (2013). Tanggung Gugat dalam Tindak Pidana Korupsi melalui Pasal 32, 33, 34 dan Pasal 38C Undang-undang No. 31 Tahun 1999 jo. Undang-undang No. 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi. *Jurnal Gema Aktualita*, *2*(2), 57-58.

family, or people close to the perpetrators. This condition in the legal world is known as the *"gatekeeper"*.[6]

Another weakness is also found in the current Corruption Law relating to the return of assets or assets of a corruptor. The provisions of Article 18 Paragraph 3 of Law Number 31 of 1999 which has been amended into Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption states that, "In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph 1 letter b shall be sentenced to imprisonment for a length of time that does not exceed the maximum threat of the principal sentence in accordance with the provisions of this law, the length of which has been determined in a court decision. Based on these provisions, the judge in his decision can replace the penalty for paying compensation with imprisonment for a length of time determined in the decision". In practice, many convicts prefer to carry out a substitute prison sentence rather than pay or return the money from their corruption to the state. Especially if the corruptors managed to hide the assets resulting from corruption.

The state needs funds for development and for the welfare of the community as a manifestation of the state's goals as stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. If this continues, it is possible that the state will continue to suffer losses, making it increasingly difficult to present the state. laws for the welfare of the people. Therefore, this article provides an offer of law enforcement needed by the current legal system in Indonesia with an orientation to bring about harmonization of existing legislation and the judicial system by making adjustments to the imposition of basic crimes as commonly known in Article 10 of the Criminal Code. This is solely to provide a sense of justice so that the consequences of eradicating corruption are not solely aimed at imprisoning corruptors, but also must be able to restore state losses that have been taken by perpetrators of criminal acts, especially corruptors.

The legal system theory from Lawrence M. Friedman can be used as a reference in providing a better legal basis for a change that leads to a prosperous society. The legal substance, legal structure and legal culture proposed by Friedman are in a functional relationship that is engaged in upholding the rule of law which must be continuously and integrally pursued.[7] The theory becomes the tools of analysis in regulating the steps to recover state financial losses from perpetrators of criminal acts of corruption as an effort to restore state finances that supports the implementation of a welfare law state. Through the use of this theory, the perpetrators of criminal acts of corruption in addition to being sentenced to prison, can also be given a fine and payment of compensation. The concept of punishment is not only emphasized to the subject of the perpetrator, but also the consequences that can be caused need to be accounted. What is the ideal form of punishment for perpetrators of corruption. does it really need extraordinary efforts to deal with this crime?

2. Method

Legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced with the results to be achieved.[8] In this research, the writer used normative legal research or also known as dogmatic research, doctrinal legal research, and theoretical research. This research was also commonly referred to as law in books research.

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[6] Isma Nurillah, and Nashriana Nashriana. (2019). Gatekeeper dalam Skema Korupsi dan Praktik Pencucian Uang. *Jurnal Simbur Cahaya, 26*(2), 207-229.

[7] Mustawa. *Teori Sistem Hukum dalam Pemberitaan Pers*. Available from: <https://www.academia.edu/61637838/Teori_>. [Accessed June 23, 2022].

[8] Peter Mahmud Marzuki. (2016). *Penelitian Hukum*. Jakarta: Kencana, p. 57.

The nature of normative legal research is theoretical-rational by using a reasoning model with deductive logic (withdrawal from general to specific). Normative legal research has a tendency to image law as a perspective discipline (according to applicable legal provisions or rules).[9] This article uses a type of normative research. The approach used in normative research is the statutory approach, which is an approach taken by examining all laws and regulations related to the legal issues being handled.

3. State Financial Loss Refund System

The payment of replacement money as regulated in Article 18 Paragraph 1 Letter b of the Corruption Crime Law stipulates that the maximum amount of replacement money is the same as the assets obtained from the criminal act of corruption. Neither the Corruption Crime Act nor in its explanations stipulates the notion of replacement money. Article 18 Paragraph 1 Letter b only mentions the relationship between replacement money and property "obtained" from a criminal act of corruption.[10] According to Komariah Emong Sapardjaja, the replacement money is money that the defendant actually "enjoyed" from the proceeds of the corruption crime he committed and the amount must be clear.[11] If the convict does not pay the replacement money as referred to in the provision, the convict will receive a sentence of confiscation of property by the prosecutor and auction it off to cover the replacement money. This can be done no later than one month after the court's decision which has obtained permanent legal force.

The execution of the return of state financial losses by law enforcers, both prosecutors and judges who act as executor, usually experiences various obstacles in carrying out the confiscation of property. Constraints faced by the apparatus in returning state losses are usually the convicts preferring the form of "acceptance of corporal punishment" rather than having to pay the replacement money that has been charged in the judge's decision. The judge was also reluctant to impose a subsidiary sentence or a substitute imprisonment. This is highly avoided by law enforcers if law enforcers are serious about returning state financial losses. The most profitable alternative for the state is to provide replacement money for convicts in corruption cases who have been proven to have committed criminal acts of corruption.

The Corruption Law explains that the recovery of state financial losses can be done through two instruments. Can be in the form of civil law instruments or criminally. Civil law instruments can be carried out by referring to Articles 32, 33, and 34 of Law Number 31 of 1999 and Article 38 C of Law Number 20 of 2001. Which can be done by the state attorney or agency that is harmed. Meanwhile, criminal instruments can be carried out by investigators by confiscating property belonging to the perpetrator which has previously been decided by a judge in court with an additional criminal decision in the form of compensation for state financial losses. The next action by the public prosecutor is to ask the judge to confiscate the defendant's property.

Efforts to recover state financial losses using civil law instruments are fully subject to material and formal civil law discipline, even though this is related to corruption. In contrast to the criminal law process that uses a material proof system, in the civil law process a formal proof system is adopted which in practice can be more difficult than material proof. Understanding against material law according to Ch. Enschede and A. Heijder is that a

[9] S. Purwanda, and M.N.K. Dewi. (2020). The Effects of Monism and Pluralism on Legal Development of a Nation. *Amsir Law Journal*, *2*(1), 21-26. https://doi.org/10.36746/alj.v2i1.30 .
[10] Kristwan Genova Damanik. (2016). Antara Uang Pengganti dan Kerugian Negara dalam Tindak Pidana Korupsi. *Masalah-Masalah Hukum, 45*(1), 1-10. https://doi.org/10.14710/mmh.45.1.2016.1-10 .
[11] *Ibid.*

person does not need to be subject to a criminal offense even though the requirements for the violation of the offense have been met, if the act does not contain a material law violation. On the other hand, if an act that is deemed formal is not against the law or does not violate the law, but is deemed despicable, then the act is against the law, and is also a condition for imposing sanctions on the perpetrator.[12]

In a criminal act of corruption, for example, apart from the state attorney, the defendant also has a burden of proof, namely the defendant is obliged to prove that his property was obtained not because of the proceeds of a crime such as corruption. The burden of proof on the defendant is known as the principle of reversing the burden of proof. This principle implies that the suspect or defendant is considered guilty of committing a criminal act of corruption (presumption of guilt),[13] unless the suspect or defendant is able to prove that he has not committed a crime of corruption and has not caused state financial losses. The application of the presumption of guilt refers to the system of examination of suspects carried out by law enforcers in America with the Crime Control Model System, so that since the suspect is arrested and detained, he is considered guilty or is considered to have declared war on the state by hiring mercenaries, namely the services of a professional advocate.

In a civil law process, the burden of proof is the obligation of the plaintiff, which in this case is taken over by the state attorney or agency that is harmed in accordance with the provisions of the legislation. In this regard, the plaintiff is obliged to prove three things, including:

1) That it is clearly proven in court that there have been acts that have resulted in state financial losses;
2) The state financial loss in the first point, as a result of the actions of the suspect, defendant, or convict; and
3) The existence of property belonging to the suspect, defendant, or convict that can be used to recover state financial losses.

The burden of proof according to Eddy O. S. Hiariej is the division required by law to prove an event.[14] In the context of universally applicable criminal cases in this world, the obligation to prove the charges against the accused is the public prosecutor. In practice, both the public prosecutor and the defendant or their legal advisors prove each other in front of the trial, which is known as the principle of reversing the balanced burden of proof or exculpatory evidence. However, to be able to carry out the civil suit, it is not an easy thing. Sometimes there are things that get in the way of practice which can be exemplified as follows:

1) In the first case, as in Articles 32, 33, and 34 of Law Number 31 of 1999, in which there is a formulation "there has been a real loss to the state". The explanation of Article 32 states that what is meant by "there has actually been a state financial loss" should be proven by the existence of a state loss whose amount has been calculated based on the findings of the authorized agency or public accountant. The definition of "real" here is based on the existence of state losses which can be calculated by the authorized agency or public accountant. So, the notion of "real" is equated or given the same legal weight as the legal sense: proven. In the legal system in Indonesia, only

[12] Indriyanto Seno Adji. (1996). *Analisis Penerapan Ajaran Perbuatan Melawan Hukum Materiil dalam Perspektip Hukum Pidana di Indonesia.* Jakarta: Universitas Indonesia, p. 94-96.
[13] Romli Atmasasmita. (1998). *Perbandingan Hukum Pidana*. Bandung: Alumni, p. 23.
[14] B.H. Simatupang. (2020). Alat Bukti Keterangan Ahli Hukum Pidana Dalam Proses Pemeriksaan Perkara Pidana. *Ensiklopedia Social Review*, *2*(3), 304-313. https://doi.org/10.33559/esr.v2i3.637 .

judges who in a court trial have the right to declare something proven or not proven. The calculation of the authorized agency or public accountant in a court session is not binding on the judge. The judge does not necessarily accept the calculation as a correct and valid calculation which then "binds" on the decision. Likewise, the defendant (suspect, defendant or convict) can also reject it as a correct or valid and acceptable calculation. Who is meant by "authorized agency" is also unclear. Perhaps he meant the Supreme Audit Agency. Regarding the public accountant, it is also not explained who appointed the public accountant? Plaintiff, defendant or court, who?

2) In the second case, the plaintiff, who in this case is the state attorney or agency that was harmed, must be able to prove that the defendant, whether it is a suspect, defendant, or convict, has harmed state finances by committing acts without rights (*onrechmatige daad* or *factum illicitum*). This burden is indeed not light, but the plaintiff must succeed in being able to settle the claim for compensation.

3) The third situation, if the assets of the defendant, whether it is a suspect, defendant, or convict have been confiscated, then this makes it easier for the plaintiff, namely the state attorney or agency that has been harmed, to trace back and then the plaintiff can ask the judge to confiscate the guarantee (*conservatoir beslag*) to suspects, defendants, or convicts. But if the defendant's assets have not been or have never been confiscated at all, then of course it is difficult for the plaintiff to trace it back. Another possibility that can occur if such a situation occurs, it is very likely that the proceeds of corruption have been secured in the name of someone else.

4) In addition to Articles 32, 33, and 34 of Law Number 31 of 1999, the same situation also occurs in Article 38 C of Law Number 20 of 2001 which states that "the property of the convict which is suspected or reasonably suspected to have originated from criminal acts of corruption that have not been subject to confiscation for the state… then the state can file a civil lawsuit." Armed with "allegations or suspicions" alone, the plaintiff, namely the state attorney or agency that is harmed, will certainly fail to sue the defendant's property, whether it is a suspect, defendant, or convict. The plaintiff must be able to prove legally in advance that the defendant's property originates from a criminal act of corruption. Only by "suspecting or suspecting" alone, it has absolutely no legal force in civil proceedings.

5) The last condition is a matter of time, the process of civil cases in practice lasts a long time. The process can take a long time, be protracted and without guarantee of legal certainty. In addition, there is no guarantee that civil cases related to corruption cases will receive priority in a civil trial. In addition, as is common observation that the decisions of civil judges are very difficult to predict (unpredictable).

The second instrument in criminal proceedings can be found in the arrangements based on Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption. The provisions regarding the convention against corruption basically have made a major breakthrough regarding the return of state assets that have been corrupted by corruptors, including a system for preventing and detecting the results of criminal acts of corruption, a system for direct asset recovery, an indirect asset recovery system and international cooperation for the purpose of foreclosure.

The essential provisions that are very important in this context are specifically aimed at the return of assets resulting from corruption from the custodial state to the country of origin where the assets of corruption are located. The strategy for returning assets resulting from corruption is explicitly regulated in the Preamble of the Convention Against Corruption

2003, Article 8 which explicitly formulates to prevent, track, and prevent in a more effective way an international transfer of assets obtained illegally. In addition, the preamble also strengthens international cooperation in recovering state assets.

However, in practice, the provisions regarding the return of assets due to criminal acts of corruption face obstacles in their implementation. Among other things, due to differences in legal systems in several countries and the political will of countries receiving assets resulting from criminal acts of corruption. For example, the civil lawsuit case of Kartika Ratna Taher against the Government of Indonesia, in this case PT Pertamina in the Singapore Court.[15] Kartika Ratna Taher's husband, Achmad Taher, who serves as finance director, has savings of up to 80 million dollars in Singapore, which is the subject of a case in the Singapore Court. The struggle for the inheritance of Achmad Taher between the legal heir and his young wife Kartika Taher. This is where Indonesia as a country that suffered losses due to the actions of Pertamina officials at that time managed to win its civil lawsuit by obtaining US$ 35 million in savings from Achmad Taher's corruption after going through a long struggle for more than 10 years in court. Due to the corrupt behavior of these officials, Pertamina was almost disbanded due to debts of up to US$ 10.5 billion in 1976. Pertamina could only be saved after some of its natural wealth was pawned to foreign countries through several concessions. It is quite interesting to bring up the corruption case at Pertamina, especially from the point of view of the civil suit won by the Indonesian Government in the Singapore Court, although the investigation by Indonesian law enforcement on the corruption case has never been completed.[16]

The importance of the issue of asset recovery for developing countries that have suffered losses due to corruption should receive serious attention from all countries. The idea of some countries wanting the return of assets to be treated as a right that cannot be removed or revoked,[17] and this should be supported by all countries because all countries have the potential to experience corruption from their state officials.

Criminal law instruments in recovering state financial losses can be carried out through criminal channels which can indirectly be through criminal recovery. The asset recovery process can usually be done through four stages, namely:

1) Asset tracing with the aim of identifying assets, evidence of asset ownership, asset storage locations in relation to the criminal act committed;
2) Freezing or confiscation of assets where according to Chapter 1 Article 2 letter f of the Convention Against Corruption of 2003 this aspect is determined to include a temporary prohibition on transferring, converting, disposing or transferring wealth or temporarily bearing the burden and responsibility for managing and maintaining and supervising assets based on a court order or other stipulation that has a competent authority;
3) Confiscation of assets which according to Chapter I Article 2 letter g of the Convention Against Corruption of 2003 is defined as the permanent revocation of wealth based on a court order or other competent authority; and
4) Return and handover of assets to victims.

[15] Sudargo Gautama. (1992). *Putusan Banding dalam Perkara Pertamina Lawan Kartika Taher*. Bandung: Citra Aditya Bakti, p. 1.
[16] Sari Mandiana. (2013). *Loc.Cit*.
[17] Purwaning M. Yanuar. (2007). *Pengembalian Aset Hasil Korupsi (Berdasarkan Konvensi PBB Anti Korupsi 2003) dalam Sistem Hukum Indonesia*. Bandung: Alumni, p. 10-11.

The return of assets is indirectly regulated in the provisions of Articles 54 and 55 of the 2003 Convention Against Corruption, where the system for returning assets is carried out through a process of international cooperation or cooperation in the implementation of confiscation. In addition, it is also interesting to examine the provisions of Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning the Crime of Money Laundering.

Money laundering is an activity which in general is an act of transferring, using, or carrying out other acts of the proceeds of a criminal act committed by a criminal organization or individual who commits a criminal act of corruption, narcotics or drug trafficking, illegal logging, and other criminal acts. other crimes as predicate crime or predicate offense with the aim of hiding or obscuring the origin of the money originating from the crime into the financial system or financial system such as banking and non-bank financial institutions, so that it appears as if it can be used as money. legitimate. In Black's Law Dictionary, money laundering is term used to describe investment or other transfer of money following from racketeering, drug transaction, and other illegal source into legitimate channels so that its original sources cannot be traced. This shows that there is a close relationship between corruption and money laundering. Why this can happen, the simple reason is because money laundering is included in the category of economic crime or financial crime with a capital gains motive, which must be overcome through a follow the money approach. The crime of money laundering is a follow-up crime from a crime that produces wealth or money. It should be understood that there is a very close relationship between the two types or qualifications of these crimes. Why do you need an approach: follow the money?

Theoretically, following the proceeds of crime is an idea that goes beyond the workings of money laundering. Finding money or property or other assets that can be used as evidence (objects of crime). Especially if it has gone through an analysis of financial transactions that can suspect that it is "money proceeds of crime". This is different from the conventional approach which focuses on finding the culprit directly after the initial evidence is found.

Through this provision on anti-money laundering, it is possible to recover assets from state financial losses as a result of criminal acts of corruption. The return of corrupt assets as a form of predicate crime that proceeds to the crime of money laundering has been included in the work of existing Financial Service Providers, starting from the report of the Financial Service Provider to the State Financial Intelligence Agency that a suspicious financial transaction has occurred. The State Financial Intelligence Agency in Indonesia is at the Center for Financial Transaction Reports and Analysis which was established based on Law Number 15 of 2002, as an independent institution established in the context of preventing and eradicating the crime of money laundering.

Suspicious financial transactions are regulated in Article 1 point 8 of the Law on the Crime of Money Laundering in which the provisions divide into three elements, including:

1) Financial transactions that deviate from the profile, characteristics, or habits of the transaction pattern of the customer concerned;
2) Financial transactions by customers that are reasonably suspected to have been carried out with the aim of avoiding reporting of the relevant transactions that must be carried out by the Financial Services Provider in accordance with the provisions of the applicable law; and
3) Financial transactions carried out or canceled using assets suspected of originating from the proceeds of criminal acts.

The return of assets through this anti-money laundering provision can be made based on Article 32 Paragraphs 1 and 34 of Law Number 15 of 2002. This is related to mutual assistance in criminal matters. The stipulation in the preamble to Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters is formulated that:

1) The Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia which supports and guarantees certainty, order and legal protection with the core of justice and truth;
2) Criminal acts, especially those of a transnational or cross-country nature, result in legal problems between one country and another that require handling through good relations based on the law in each country; and
3) The handling of transnational crimes must be carried out by cooperating between countries in the form of mutual assistance in criminal matters, for which until now there is no legal basis.

Regarding the problems that have been described previously, we can relate these problems to the theory of the legal system proposed by Lawrence M. Friedman. The legal system consists of three components, namely the legal structure, legal substance, and the legal culture of the community. So far, these three elements have not been compatible, so that the optimal return of state financial losses has not been fulfilled. Step that should be taken by the state is to optimize the three available components in order to achieve the desired welfare state.

The first description in solving the problem of legal substance is to revise Article 18 of Law Number 31 of 1999 as amended in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which regulates additional penalties in the form of payment of compensation. This article is the main cause of the disproportionate loss suffered by the state with the financial return of state losses. Supposedly, the imposition of additional penalties is only optional, so that corruptors or convicts prefer to undergo imprisonment rather than having to pay the compensation charged. The state should reorganize the laws and regulations by placing the return of state financial losses as the main or main crime. It is also necessary to revise Article 10 of the criminal code law, so that harmonization occurs with the corruption law. Through harmonization of regulations in legal substance, judges have begun to avoid imposing subsidiary punishments or substitute confinement and prefer to substitute monetary compensation for defendants in corruption cases who have been proven to have committed corruption crimes.

Procedures through the judiciary must also continue to be used so that state finances are in the same position before they were managed. This procedure can be carried out through courts based on instruments of criminal law, state administrative law, and civil law.[18] Of course, the three legal instruments contain different procedures based on the legal structure they contain. For this reason, it is time to reform various laws and regulations so that they are in a harmonious system with the structure of law enforcement officers in each law enforcement instrument. Consequently, eradicating corruption is not solely aimed at getting corruptors to be sentenced to prison (deterence effect), but must also be able to restore the state's losses that have been corrupted.

The legal culture of implementing law enforcement in terms of returning state financial losses is at the investigation stage which is still prone to abuse. This happens because the

[18] Muhammad Djafar Saidi, and Eka Merdekawati. (2017). *Hukum Keuangan Negara; Teori dan Praktik*. Jakarta: Rajawali Pers, p. 172.

return of state losses is often done in the form of a physical handover of money from the examinee to the investigator. Even though it is accompanied by the minutes of the confiscation which will later be attached to the case file (if it goes up to prosecution in court). This is not a guarantee that the money submitted is not misused. The problem that arises is, if the amount of money that has been submitted turns out to be more than the amount that will be proven at trial. Usually, the suspect doesn't want to take the excess money anymore because he doesn't want to bother dealing or even being traumatized by law enforcement officers. It may also happen that the return of state losses in the investigation stage is a pretext to extort the examiner.

If a certain amount of money has been handed over, then the case is discontinued because it does not meet the elements, or even the investigators or prosecutors do not act on it, then this will be a separate problem. The opportunity for abuse with this mode is very large and often occurs. The return of state losses is expected to be able to cover the budget deficit of state revenues so that it can cover the state's inability to finance various much-needed aspects. In addition, it is solely to achieve a concept of a welfare state that can really be enjoyed by its people.

4. Conclusion

Based on the description that has been explained in the discussion, it is necessary to revise Article 18 of Law Number 31 of 1999 as amended in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and Article 10 of the Criminal Code by placing priority on returning state financial losses as part of the principal crime. In addition, efforts to update civil instruments also need to be carried out by prioritizing more modern efforts. In the absence of an option, the perpetrators of criminal acts of corruption are burdened with responsibility based on errors, which are not only burdened with criminal responsibility but also burdened with the responsibility of returning state financial losses. Thus, the revision of these provisions is an efficient and effective progressive step as a legal concept in the future while still referring to the vision of a welfare state concept.

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