

# opción

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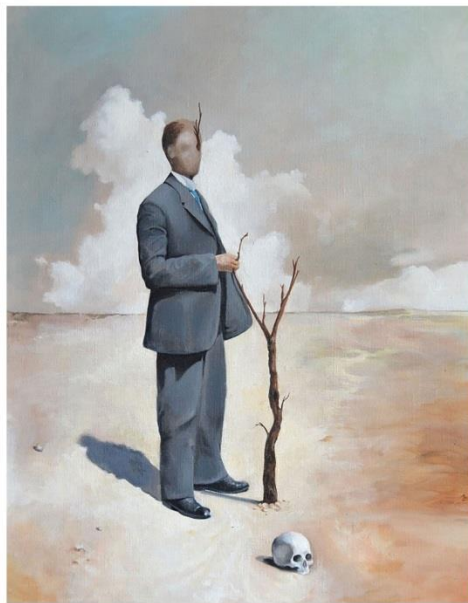
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# **Confiscation of property corruption convicts refund and their families for the loss**

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## **Abstract**

This research tries to find out how to determine and how to restore the state losses, as well as additional punishment forms that need to be given to the convicted corruption. In accordance with the purpose of this study, the nature of the research is analytical descriptive research. As a result, all losses, whether in the form of money taken, or losses in the state economy, must be calculated and paid in cash. In conclusion, Additional criminal sanctions in the form of the repeal of political rights and social sanctions need to be given to the convicted corruption.

**Keywords:** Money, State, Crime, Victims, Justice.

## **Confiscación de la corrupción de la propiedad, reembolso de los condenados y sus familias por la pérdida**

### **Resumen**

Esta investigación intenta descubrir cómo determinar y cómo restaurar las pérdidas estatales, así como formas de castigo adicionales que se deben dar a la corrupción condenada. De acuerdo con el propósito de este estudio, la naturaleza de la investigación es la investigación analítica descriptiva. Como resultado, todas las pérdidas,

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ya sea en forma de dinero tomado, o pérdidas en la economía estatal, deben calcularse y pagarse en efectivo. En conclusión, deben imponerse sanciones penales adicionales en forma de derogación de los derechos políticos y las sanciones sociales a los condenados por corrupción.

**Palabras clave:** Dinero, Estado, Crimen, Víctimas, Justicia.

## 1. INTRODUCTION

If examined, the term corruption is no stranger to the ears of the Indonesian people. It can be said, almost every time people speak of corruption. That happened because corruption in Indonesia was very troubling. In fact, corruption is considered as one of the complex and socially implicating crimes, because corruption has caused misery to the community. Thus, MAHRUS (2014) says that corruption is already a part of the existing system. ARIEF (2007) also said that corruption in Indonesia is like cancer in a stage that cannot be cured. On that basis, RASUL (2009) said corruption was considered as one of the main enemies in this country.

A question that is often asked, why is corruption so difficult to overcome in this country. That question is reasonable, considering that the crime of corruption has been done for so long. This is in accordance with what was stated by ARIEF (2007) that the handling of criminal acts of corruption already existed almost throughout Indonesia. However, even though various efforts have been made to mitigate it, corruption continues to occur, and in fact, it is increasingly becoming and rampant.

Based on observations, quantitatively, the Corruption Eradication Commission (KPK), the Prosecutor's Office, and the National Police were quite successful in uncovering corruption and including many perpetrators of corruption into prisons but qualitatively did not show results and significant changes in reducing corruption. This can be seen from the increasingly systemic acts of corruption that have occurred in the past decade, and the money that has been corrupted has increased. In fact, corruption is carried out in congregation.

Through the news, we see the KPK conducting Hand-Catching Operations (OTT) against several state officials (DPR, DPRD, Governors, Regents, Judges, Prosecutors, other state officials), and private parties. So, it became true what Bagir Manan said, even though various efforts had been made, it turned out that corruption was still rampant. Fear seems to have nothing to do with corruption. According to the chairman of the Financial Supervisory Agency (BPK) Moermahadi Soerjadi, Djanegara, that from 2005-2017 there was as much as 224.28 trillion rupiahs of state losses have not been returned to the state treasury. A very large number. Seeing the increasingly widespread phenomenon of corruption, ARIEF (2007) says that eradicating corruption must be done extraordinary. The same thing was said by SUKINTO (2016), that:

Considering the very damaging effects and endangering the existence of our country, it is very necessary to carry out effective efforts to fight and suppress corruption until it reaches the minimum volume or to the extent tolerated, and if possible excluded. For that

reason, there is no other choice but to make non-conventional efforts. The rampant corruption requires extraordinary action to overcome it because corruption in Indonesia has been very widespread which is very complicated, difficult to detect and legally proven in court (HALIF, 2016: 14).

## **2. METHODOLOGY**

This type of research is normative legal research. In accordance with the purpose of this study, the nature of the research is analytical descriptive research, namely by trying to provide an overview or description of the problems in this research, namely how to determine state losses in corruption and how to recover state losses in corruption. The normative legal approach is carried out because in determining and how to determine state losses in corruption and how to restore state losses in dealing with corruption as a rule of law and legal norms are normative legal issues but cannot be separated from political, economic problems, etc. Therefore, the juridical-analysis approach remains the focus of this research (ALKOSTAR, 2009 & USAK, KUBIATKO, SHABBIR, DUDNIK, JERMSITTIPARSERT, RAJABION, 2019).

Since this research is normative legal research, this research is conducted in 1 (one) stage, which only examines primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are all official documents that contain the legal

provisions examined, namely various laws and regulations, namely: Law Number 31 of 1999 concerning Eradication of Corruption Crime, State Gazette Number 140 of 1999, Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crime, State Gazette Number 134 of 2001, Law Number 30 of 2002 concerning Eradication Commission for Corruption Crime, State Gazette Number 137 of 2002, Law Number 17 Year 2003 concerning State Finance, State Gazette Number 47 of 2003, Law Number 1 of 2004 concerning State Treasury, State Gazette Number 5, 2004, Law Number 15 of 2006 concerning the State Audit Board, State Gazette Number 66, Year 2004 and other regulations that have to do with the object under study.

Secondary legal material is an unofficial document, in the form of legal material that helps provide an explanation of primary legal material, such as the design of primary legal materials, research results and the work of legal experts who have relevance to this research, including dictionaries, encyclopedias, and so. Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials relating to this research, such as electronic media, print media, articles, and so on. The research material collected is in the form of legal material. The legal material collection technique is carried out by tracing official documents as primary legal material. Official documents in the form of legislation that have to do with corruption and other regulations related to the object under study. Finally, from the official documents traced and collected, samples are selected that truly reflect the characteristics and

characteristics of the population that has been known or identified previously.

In accordance with the approach taken, namely normative juridical, research material collection techniques are carried out through reviewing legal materials obtained in legislation, textbooks, journals, research results, legal dictionaries, and so on. The research material in the form of legal material has been collected, then processed and analyzed qualitatively in the form of words and not tangible numbers. With this analysis, the steps taken are based on steps of thinking in stages and coherent to obtain answers to the problems that are the starting points of this research. The analytical instrument used is the method of interpretation, as commonly used in legal research, especially normative legal research, such as: grammatical, systematic, historical, teleological, and other methods of interpretation. Basically, the legal material collection technique with this approach is carried out on written literature, so that more research is done in the library.

### **3. RESULTS AND DISCUSSIONS**

As stated in the previous discussion, that in corruption cases the main problem is the abuse of authority from state administrators which is detrimental to state finances. In the perspective of dealing with corruption, it is necessary to think about how to determine the state's losses and how to recover the state's losses. This matter is very



important to think about, because with the return of state losses the sense of justice of the people will be restored. Indeed, there is an assumption that the return of losses to the state of the criminal claim is removed. That is not true. Restoring state losses does not mean removing criminal charges (FONTIAN, 2015 & MAHMOOD, ARSHAD, AHMED, AKHTAR, KHAN, 2018). Both must be done in a balanced manner so that the functions of the court as law enforcers and justice are fulfilled.

Regarding state losses, this term originates from Law Number 31 of 1999 concerning Eradication of Corruption Act Jo Number 20 the Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. However, this Law does not provide a clear and explicit formula regarding what is called a state financial loss. Article 2 and 3 of the Act. No. 31 of 1999 concerning the Eradication of Corruption Crime, among others, only said, that: "which can harm the state's finance or the country's economy (ARIEF, 2007: 17)". In the explanation of Article 32 of this Law, it is only stated that what is meant by loss of state finance is a loss that can be calculated in the amount based on the findings of the authorized agency or designated public accountant.

Therefore, in understanding what is meant by loss the state can see the provisions of Article 1 number 22 of the Act. No. 1 of 2004 concerning State Treasury, which states that: State / Regional Losses are lack of money, securities, and goods that are real and certain in number as a result of acts against the law both intentionally and negligently. In Article 1 number 15 of Law Number 15 of 2006

concerning the Supreme Audit Agency, it also states that: State / Regional losses are lack of money, securities, and goods that are real and certain in number as a result of illegal or intentional acts (PANJAITAN, 2017 & NIKKU, RAFIQUE, 2019).

Based on what was stated above, it appears that the state's financial losses cover all state assets that can be valued with money and losses in the state economy. State losses in the form of lack of money are calculated by the authorized agency or designated public accountant for that. ARIEF (2007) said that the magnitude of state losses must be measured in fact so that the determination of payments for compensation is truly fair and in accordance with reality. Therefore, calculating losses in the form of money and property that can be valued with money is certainly predictable. The difficult thing is how to calculate losses in the form of a state economy. Because this is very abstract in nature. Regarding the loss of the country's economy, in the general explanation of the Act. No. 31 of 1999 stated among others, that:

The State Economy is an economic life that is arranged as a joint business based on the principle of family or independent business community based on Government policies, both at the central and regional levels in accordance with the provisions of legislation applies that aims to provide benefits, prosperity, and prosperity to the entire life of the people (ARIEF, 2007: 15).

Based on this understanding it appears that the country's economy is an economic life that aims to provide benefits, prosperity, and prosperity to all people's lives. Correlation of criminal acts of

corruption with the country's economy is that state money that should be intended to build the country's economy is corrupted, resulting in economic development that does not run as expected, and / or even fails. When the country's economic development is not achieved and/or fails, the aim is to provide benefits, prosperity, and prosperity to all people's lives, which are not achieved and/or fail.

KARINA (2017) said that corruption is a criminal act of taking state assets so that the state loses its ability to carry out its obligations and responsibilities in the welfare of society. KRISDANTO (2015) also said that corruption is a chronic disease that infiltrated all aspects of life, and this has become a bad image for the Indonesian people today because corruption is not a mere legal problem, but actually a violation of the economic and social rights of society. Corruption has caused great poverty and social inequality. The community cannot enjoy equal distribution of development outcomes and does not enjoy the rights that should be obtained.

Overall, corruption has weakened the social and economic security of the Indonesian people. In this case, the community is a victim of crimes from corruptors. Therefore, it is true of ARIEF (2007) that the danger of corruption has exceeded the impact and danger of violations of human rights (HAM), so that criminal acts of corruption can be compared with the types of gross violation of human rights. The community as victims of gross human rights violations in criminal acts of corruption is reasonable through the state demanding the restoration of their rights by confiscating all the assets of the convicted corruption to recover state losses. Because, as said by SUDARTO (2017), the

value of the state's overall losses and that which could be seized so far is not balanced (SUDARTO, 2017).

As stated by PANJAITAN (2017), that in the crime of corruption the community is a victim of crime. Because the people of Indonesia today are very suffering because of the actions of unscrupulous state officials. The act of corruption not only caused suffering to the community but psychologically in international relations the name of Indonesia was very bad. As a result, many investors are reluctant to invest their shares in Indonesia, and even those who have already diverted their shares out of Indonesia. Just as stated by ARIEF (2007), victims of crime are an interesting phenomenon in the criminal justice process. As a party that suffers losses, both material losses and immaterial losses, the criminal justice process receives less attention. In fact, attention to both criminal actors and victims of crime must be balanced. Based on these two opinions, people as victims of crime have the right to justice. For this reason, all losses, whether in the form of money taken, or losses in the state economy, must be calculated and paid in cash.

#### **4. CONCLUSION**

State losses in corruption can be in the form of lack of money, and property that can be valued with money, as well as economic losses. The state loss must be determined exactly how many. Therefore, in determining state losses, a forensic audit must be carried

out by the auditor determined and / or public accountant. The state loss must be returned with the money and may not be replaced with corporal punishment. To recover state losses, all the assets of the convicted corruption are subject to seizure guarantees since the case was investigated until the case obtained permanent legal force without seeing the assets obtained from the proceeds of corruption or not.

If his assets are thought to be insufficient to recover state losses, his family's assets (children, father and brother or sister) are then subject to confiscation. The aim is for the assets not to be transferred to others during the settlement process. After the case has permanent legal force, all the assets of the convicted corruption are sold to recover state losses. Regarding how many state losses the corruption convict must return must be mentioned in the indictment and the demands of the Public Prosecutor. The amount of the loss is the basis for the Panel of Judges in punishing convicted corruption for returning state losses. In the ruling, it must be stated clearly that the loss must be paid with money and may not be replaced with a body sentence. If the assets of the convicted corruption are insufficient, the assets of the family confiscated are sold to pay the state losses.

The act of confiscating all the assets of a corruption convict and his family in returning the state's losses as well as a way to prevent corruption. Because, when a person holds a position and / or an entrepreneur, it is his family who supervises him. In addition, the provision of additional criminal sanctions in the form of revocation of political rights, as well as sanctions in the form of being a social worker, public road sweeper, cleaning staff where he previously

worked, and sewer cleaning in traditional markets also prevent corruption. Because this is a lesson for others to not commit criminal acts of corruption.

In realizing the above, it is necessary to make amendments to UUTPK (Act on Corruption Crime) in providing a legal basis for confiscating assets of corrupt convicts and their families to repay state losses. In addition, the courage of judges is needed in determining the amount of state losses and the provision of additional criminal sanctions in the form of revoking the political rights of convicted corruption and giving penalties for social sanctions.

## REFERENCES

- ALKOSTAR, A. (2009). "Corruption of Political Corruption with Law and Governance in Modern Countries (Study of the Practices of Political Corruption and its Countermeasures)". **Jurnal Hukum**. Vol. 16, N<sup>o</sup> 1. Indonesia.
- ARIEF, S. (2007). "A Note about Corruption". **Paper at the National Seminar organized by FH. UNPAR dengan DPC**. Bandung. Indonesia.
- FONTIAN, M. (2015). "Comparative Criminal Replacement Money and Substitute Criminal Replacement Money in the Context of Protecting State's Economic Rights and Legal Certainty". **Jurnal Hukum Ius Quia Iustum**. Vol. 22, N<sup>o</sup> 1. Indonesia.
- HALIF, K. (2016). "Model of Asset Deprivation of Assets resulting from Money Laundering". **Jurnal Rechtsens**. Vol. 5, N<sup>o</sup> 2. Indonesia.
- KARINA, F. (2017). "Civil Lawsuit in Corruption Crimes According to Law Number 31 of 1999 JO Law Number 20 of 2011 concerning

- Eradication of Corruption”. **Jurnal Lex Crimen**. Vol. 6, N° 9. Indonesia.
- KRISDANTO, K. (2015). “Legal Implications of Confiscation of Assets as a result of a Corruption Crime whose Ownership Rights have been transferred to a Third Party”. **Jurnal Katalogis**. Vol. 3, N° 12. Indonesia.
- MAHRUS, A. (2014). “The Relationship Between Sources and Methods for Calculating State Financial Losses and Determination of Replacement Money”. **Jurnal Hukum**. Vol. 21 N° 1. Indonesia.
- MAHMOOD, A., ARSHAD, M. A., AHMED, A., AKHTAR, S., & KHAN, S. (2018). “Spiritual intelligence research within human resource development: a thematic review”. **Management Research Review**. Vol. 41, N° 8: 987-1006. UK.
- NIKKU, B. R., & RAFIQUE, Z. (2019). Empowering people: Role for political social work in South Asia. **International Social Work**, Vol. 62, No 2: 877-891. UK.
- PANJAITAN, J. (2017). “Settlement of Abuse of Authority Causing State Loss According to Government Administrative Law”. **Jurnal Hukum Ius Quia Iustum**. Vol. 24, N° 3. Indonesia.
- RASUL, S. (2009). “Implementation of Good Governance in Indonesia in the Prevention of Corruption”. **Jurnal Mimbar Hukum**. Vol. 21, N° 3. Indonesia.
- SUDARTO, N. (2017). “Asset Seizure Mechanism Using Non-Conviction Based Asset Forfeiture as an Effort to Recover State Losses Due to Corruption”. **Jurnal Pasca Sarjana Hukum UNS**. Vol. 5, N° 1. Indonesia.
- SUKINTO, Y. (2016). “New Concept of Recovering State Losses from Corruption”. **Yuridika, Faculty of Law, Airangga University**. Vol. 31, N° 2. Indonesia.

USAK, M., KUBIATKO, M., SHABBIR, M. S., VIKTOROVNA DUDNIK, O., JERMSITTIPARSERT, K., & RAJABION, L. (2019). "Health care service delivery based on the Internet of things: A systematic and comprehensive study". **International Journal of Communication Systems**, 4179.





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