

***RETURN OF STATE LOSSES FROM THE PROCEEDS OF  
CORRUPTION THROUGH CIVIL LAWSUITS***

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**ABSTRACT**

The main factor causing the occurrence of criminal acts of corruption is the country suffering financial losses. Therefore, those who are found guilty of committing criminal acts of corruption are obliged to replace state funds obtained illegally. In handling corruption cases, law enforcement officials have two options to recover state losses: through criminal channels or civil channels, as stated in the provisions of Law No. 20 of 2001, amendments to Law No. 31 of 1999 concerning Prevention of Corruption Crimes. The aim of the research is to find out what the legal rules are regarding civil lawsuits in cases of criminal acts of corruption in Indonesia and to find out the mechanism for returning state losses from the proceeds of criminal acts of corruption through civil suits. This study uses normative juridical methods. The assessment approach used is a statutory approach. Sources of legal materials include primary legal materials from Law no. 31 of 1999 and Law No. 20 of 2001 concerning Corruption Crimes. The technique for collecting legal materials is carried out through literature study. The results of the study show that, the provisions governing civil prosecution for criminal acts of corruption are contained in Law No. 31 of 1999 and Law No. 20 of 2001, especially in Article 32 paragraph (1), Article 33, Article 34, and Article 38C. This law regulates the process of recovering state losses due to corruption through civil channels, namely by filing a lawsuit in the District Court by the State Attorney as the plaintiff. To increase public awareness of corruption cases, it is important for civil society and law enforcement agencies to collaborate effectively. By working together, these entities can ensure that cases of corruption are handled properly and that perpetrators are held accountable for their actions. This collaborative effort is very important to achieve the best results, especially in terms of recovering state losses due to corrupt practices.

***Keywords:*** *Corruption Crimes, State Losses, Civil Lawsuits.*

## 1. INTRODUCTION

The word "corruption" is familiar to the people of Indonesia, even other countries in the world. Corruption is classified as one of the criminal acts and is an extraordinary crime when viewed in the context of the state, because corruption is an act that harms the country's finances or economy, so that it can cause the country to become poor.<sup>1</sup> Therefore, the handling of corruption must be carried out with extraordinary efforts because the impact caused by corruption is very extraordinary to the state.

One of the stages in the process of handling Corruption Crimes is an effort to recover state losses arising from corruption.<sup>2</sup> The restitution of state losses involves the process of compensating the state by taking back assets obtained illegally by the perpetrators of corruption crimes.<sup>3</sup> So far, efforts to handle corruption have been carried out more through criminal procedures. This looks reasonable, because the position of corruption cases as a special criminal act that has a special law and is prioritized for accelerating the case.

The handling of corruption cases through criminal procedures involves a legal process that aims to compensate the state for losses arising from corruption crimes.<sup>4</sup> One of the stages in handling corruption cases through criminal procedures is the existence of criminal efforts or can be called criminal impositions/punishments against perpetrators of corruption crimes, namely the imposition of the principal penalty in the form of imprisonment/fines and the imposition of additional penalties in the form of payment of substitute money.<sup>5</sup>

Based on the results of previous research conducted by Kharisma Putri, with the title "Return of State Losses from the Proceeds of Corruption Crimes Through Civil Lawsuits: A Case Study at the Central Jakarta District Court". This study found that the process of recovering state losses from the proceeds of corruption through civil lawsuits at the Central Jakarta District Court experienced challenges in determining the value of accurate losses and an effective collection process.<sup>6</sup>

Furthermore, the results of previous research conducted by Tri Wicaksono, with the title "The Effectiveness of Civil Lawsuits in the Recovery of State Losses from the Proceeds of Corruption Crimes". This study shows that the use of civil lawsuits as a means to recover state losses from the proceeds of corruption crimes has advantages in accelerating the process of recovering state assets, even though it is still faced with substantive legal constraints in calculating losses.<sup>7</sup>

Furthermore, the results of previous research conducted by Intana Tania Ningsih with the title of the thesis "Legal Strategies in Recovering State Losses from the Proceeds of Corruption Crimes Through Civil Lawsuits". This study highlights the importance of appropriate legal strategies in

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<sup>1</sup> Romli Atmasasmita. *Transparent Justice: Sue for Judicial Transparency and Accountability in Corruption Cases*. Gramedia Pustaka Utama Publisher, Jakarta, 2001. p. 34.

<sup>2</sup> Syamsul Arifin. *Corruption Criminal Law: Theoretical and Practical Perspectives*. Rajawali Pers, Jakarta, 2015, p. 105.

<sup>3</sup> Ade Mahmud. "The urgency of progressive law enforcement to restore state losses in corruption crimes." *Legal Issues* 49, no. 3 (2020): 256-271.

<sup>4</sup> Salsabila, and Slamet Tri Wahyudi. "The role of the prosecutor's office in resolving corruption cases uses a restorative justice approach." *Legal Issues* 51, no. 1 (2022): 61-70.

<sup>5</sup> Ismaya Hera Wardanie. "The effectiveness of additional criminal executions with the payment of substitute money in corruption cases." *Journal of Responsive Law* 7, no. 2, 2019, pp. 146-147.

<sup>6</sup> Kharisma Putri. "Return of State Losses from the Proceeds of Corruption Crimes Through Civil Lawsuits: A Case Study at the Central Jakarta District Court". PhD diss., University of Indonesia 2021.

<sup>7</sup> Tri Wicaksono. "The Effectiveness of Civil Lawsuits in the Recovery of State Losses from the Proceeds of Corruption Crimes". PhD diss., University of Riau, 2023.

maximizing the effectiveness of civil lawsuits to recover state losses, including in terms of the use of evidence and court authority.<sup>8</sup>

Finally, based on the results of previous research by Fadlul Abid "The Role of the District Court in the Process of Recovering State Losses from Corruption Crimes Through Civil Lawsuits". This study emphasizes the important role of the District Court as an institution that facilitates the process of recovering state losses from corruption through civil lawsuits, focusing on the role of judges in upholding justice and efficiency of the legal process.<sup>9</sup>

The purpose of the additional penalty in the form of compensation money is to convict the corruption defendant in order to return the aggrieved state finances and to provide a deterrent effect, so that it is unlikely that the defendant will repeat the same mistake.<sup>10</sup> This explanation means that the return of state losses does not abolish the crime that has been imposed, as well as the imposition of a criminal penalty does not exempt the perpetrator from the obligation to compensate for losses. However, in the enforcement of the law on corruption crimes, especially those related to state financial losses through criminal channels, there are weaknesses, so other legal means are needed to recover state financial losses.<sup>11</sup> One way to recover state financial losses due to corruption crimes is through civil efforts in the form of civil lawsuits.

The use of civil lawsuits in handling corruption crimes is intended to maximize the return of state financial losses. Because according to the rules, when the court decision has permanent legal force, then no criminal action can be taken. The purpose underlying civil lawsuits in the recovery of state financial losses due to corruption crimes is to fulfill the community's sense of justice. This is emphasized because many perpetrators of corruption crimes have been found who hide assets that are suspected to come from corruption crimes even abroad. Therefore, the return of state losses must be optimized so as not to hinder national development and the country's economic growth.

Indonesia as a country that has various types of corruption cases has implemented the use of civil lawsuits as a mechanism for recovering state financial losses. By using civil lawsuits, the state seeks to recover losses arising from corruption crimes and keep state assets protected. Some examples of corruption cases that have used civil lawsuits in their handling include:

1. Lukas Enembe (Governor of Papua for the 2013-2023 period) is a defendant in a corruption case in the form of bribery and gratuities related to infrastructure projects in Papua Province.<sup>12</sup> On September 14, 2022, the KPK designated Lukas Enembe as a suspect in the bribery and gratuity case. Then, Lukas was arrested on January 10, 2023 in Jayapura, Papua. After the investigation process against Lukas, the calculation of the amount of state losses caused by Lukas Enembe reached Rp 47.8 billion. For this loss, in the decision of the Central Jakarta Corruption Court (Tipikor), the sentence against Lukas Enembe on October 19 was sentenced to 8 years in prison, a fine of IDR 500 million and a subsidy of 4 months of imprisonment. The judge also ruled that Lukas Enembe must reimburse the state for Rp19.6 billion. Then after the criminal verdict, Lukas Enembe underwent treatment at the Gatot

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<sup>8</sup> Intana Tania Ningsih. "Legal Strategies in Recovering State Losses from the Proceeds of Corruption Crimes Through Civil Lawsuits". PhD diss., Syiah Kuala University, 2016.

<sup>9</sup> Fadlul Abid. "The Role of the District Court in the Process of Recovering State Losses from Corruption Crimes Through Civil Lawsuits". PhD diss., University of Medan Area, 2021.

<sup>10</sup> Frelyka Indana Ainun Nazikha. "The implementation of additional criminal sanctions in lieu of money in corruption cases as an effort to recover state financial losses." PhD diss., Islamic University of Indonesia, 2015.

<sup>11</sup> Barda Nawawi Arief. Bunga Potpourri Criminal Law Policy: Development of the Drafting of the New Criminal Code Concept. Publisher Kencana Prenada Media Group, Jakarta, 2008.

<sup>12</sup> Yohanis Sudiman Bakti, Samsul Tamher, and Gustav Robby Urbinas. "Restructuring Criminal Law Enforcement Policies in Efforts to Eradicate Corruption in Papua Province." *Journal of Jurisdictional Law (JHY)* 1, no. 1 (2024): 14-29.

Soebroto Army Central Hospital (RSPAD), Central Jakarta, until finally it was reported that he had died on December 26, 2023. The deputy chairman of the KPK at that time, Johanis Tanak said that with the death of the defendant, the defendant's criminal liability ended. Even though the right to sue the defendant has ended, however, related to the restitution of state losses, the state still has the right to sue for state losses through civil law proceedings. To exercise the right to claim state losses through the civil law process, the KPK must submit all Lukas Enembe case files to the Prosecutor's Office so that the State Attorney can file a civil lawsuit with the District Court.

2. The case of PT Aneka Tambang (Antam), a case of mutual lawsuit between Antam and conglomerate Budi Said. This case was initially a civil case, then turned into a corruption case because Antam is a subsidiary of BUN PT Inalum (Persero) which has the potential to harm the state.<sup>13</sup>
3. The case of Johnny G Plate, the former Minister of Communication and Information Technology, was sentenced to 15 years in prison in a corruption case related to the construction of 4G BTS towers and supporting infrastructure in 2020-2022.<sup>14</sup>
4. The case of Syahrul Yasin Limpo, the former Minister of Agriculture who was named as a suspect in a case of extortion in office, gratuities and money laundering within the Ministry of Agriculture (Kementan) on October 11, 2023.<sup>15</sup> According to Johanis, the KPK representative said that the alleged corruption committed by Syahrul began when he made a policy related to the obligation to collect deposits since 2020 aimed at state civil servants within the Ministry of Agriculture. The form of deposit is in the form of cash, bank account transfer to gratuities in the form of goods or services. The deposit is routinely paid every month to Syahrul until the total received in the 2020-2023 period is approximately IDR 13.9 billion. Syahrul used the deposit for personal interests, namely to pay credit card installments and Toyota Alphard car loan installments.

## 2. RESEARCH METHODS

This research uses the normative juridical method, which is a literature research with a focus on written laws such as laws and regulations. This research is descriptive to describe phenomena related to the settlement of corruption cases through civil lawsuits. The source of legal materials consists of primary legal materials in the form of Law Number 31 of 1999 which has been changed to Law Number 20 of 2001, secondary legal materials such as books and legal journals. The data collection technique is carried out through literature study, with the analysis of legal materials that use qualitative methods to interpret legal materials.

## 3. RESEARCH RESULTS AND DISCUSSION

### 3.1 Regulation of Corruption in Legislation in Indonesia

Regulations regarding Corruption Crimes in Indonesian legislation are contained in several regulations that are the legal basis for Corruption Crimes, namely: The Criminal Code (KUHP), regulations regarding Corruption Crimes (Tipikor) are listed in Part Three, Articles 603 to 606. Law No. 46 of 2009 concerning the Corruption Courts. Law No. 48 of 2009 concerning Judicial Power. Law

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<sup>13</sup> Aprillia Ika, Complete Chronology of the Antam Vs Budi Said Case, <https://money.kompas.com/read/2024/01/20/073000626/-populer-money-kronologi-lengkap-kasus-antam-vs-budi-said-masih-ada-utang?page=all>, accessed on June 27, 2024.

<sup>14</sup> Admin, Johnny G Plate Sentenced to 15 Years in Prison in the Corruption Case of Kominfo's 4G BTS Tower, <https://www.bbc.com/indonesia/articles/cxr17w4yrdvo>>, accessed on June 27, 2024.

<sup>15</sup> Aryo Putranto Saptohutomo "Chronology of Syahrul Yasin Limpo's Alleged Corruption from Investigation to Detention". <https://nasional.kompas.com/read/2023/10/14/04450061/kronologi-dugaan-korupsi-syahrul-yasin-limpo-dari-penyelidikan-sampai?page=all>, accessed on October 14, 2023.

No. 1 of 2006 concerning Mutual Assistance in Criminal Matters. Law No. 31 of 1999 which has been amended into Law No. 20 of 2001 concerning the Eradication of Corruption. Based on these legislation, the Crime of Corruption is more specifically regulated in Law No. 31 of 1999 Jo Law No. 20 of 2001 with several discussions, regarding:

### **1. Forms of Corruption**

Based on Law No. 31 of 1999 which has been amended into Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, the forms of Corruption Crimes can be grouped into 7 types, namely:

#### **a. Detrimental to State Finances**

Corruption that harms state finances is a form of unlawful act committed by a person, Civil Servant, state administrator who violates the law and abuses the authority, opportunity or means available due to position, then used to commit corruption crimes.<sup>16</sup> Forms of corruption related to state financial losses are regulated in Articles 2 and 3 of Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the Eradication of Crimes Corruption.

#### **b. Bribery**

The word bribery comes from the Sanskrit word "suapaya", which means to give a gift to someone with a specific intention. Bribes are usually given in the form of money, goods or services with the aim of obtaining personal benefits or to influence a person's decisions.<sup>17</sup> Meanwhile, bribery is the act of accepting a bribe from the bribe-giver. Recipients of bribes or bribes usually have great power or influence, so they are able to influence decisions or the course of a process. This act of bribery can harm other parties who should get fair treatment and are in the public interest.<sup>18</sup>

Bribery or commonly referred to as bribery is the most frequent form of Corruption, where when someone gives a bribe to a public official or other individual to gain benefits or influence.<sup>19</sup> This corruption crime in the form of bribery is very detrimental to the state, because it interferes with the decision-making process that should be based on fair and transparent criteria. Regulations regarding Corruption in the form of bribery based on Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 are contained in Article 5, Article 6 and Article 12B.

#### **c. Embezzlement in Office**

According to R. Soesilo, embezzlement has similarities with the meaning of theft. The difference in theft is that the goods are not in the hands of the perpetrator. Meanwhile, in embezzlement, the goods were already in the hands of the perpetrator at the time of the embezzlement.<sup>20</sup> Regulations regarding corruption in the form of embezzlement in office according to Law No. 20 of 2001 are contained in Articles 8 to 10. The explanation of embezzlement in office according to Article 8 states that a Civil Servant or a person other than a Civil Servant who is assigned to carry out a public office continuously or temporarily deliberately embezzles money, or securities stored because of his position and allows such money or securities to be taken or embezzled by others, or assists in committing such acts.

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<sup>16</sup> Rizkan Zulyadi. "Abuse of Government Power that Harms State Finances through Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers." *Criminal Law and Legal Development* 1, no. 2 (2019).

<sup>17</sup> Chatrina Darul Rosikah, and Dessy Marliani Listianingsih. *Anti-corruption education: Anti-corruption studies of theory and practice*. Sinar Grafika, Jakarta, 2022, p. 12.

<sup>18</sup> Geographs, Definition of Bribery. <[https:// www.geographs.com/definition-of-bribery](https://www.geographs.com/definition-of-bribery)>. Retrieved June 10, 2024.

<sup>19</sup> Risqi Perdana Putra. *Law Enforcement of Corruption Crimes*. Deepublish, Yogyakarta, 2020, p. 15.

<sup>20</sup> R. Soesilo, *Criminal Code*, Politea, Bogor, 1986, p. 259.

*d. Extortion*

Corruption in the form of extortion is a type of corruption that involves officials by coercing them to get benefits in return for services provided. In general, extortion is usually carried out by service providers to residents.<sup>21</sup> Extortion occurs when service officers actively offer services or ask service users for rewards to speed up their services, even though they violate procedures.

Based on Law No. 20 of 2001, there is a regulation regarding extortion, namely in Article 12 which explains that extortion is an act committed by a Civil Servant or State Administrator with the intention of benefiting himself or others unlawfully or by abusing his power by forcing someone to give something, pay or receive payment with a deduction or to do something for himself.<sup>22</sup>

**2. Elements of Corruption**

An act or act cannot be said to be a form of corruption if there are no elements that are the legal basis for determining whether an act can be categorized as corruption.<sup>23</sup> There are several elements that constitute a corruption crime whose explanation is contained in Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the Eradication of Corruption. The main element in determining an act as a form of corruption is the existence of the subject as the perpetrator of the corruption crime and the object that is the target or target of the corruption. In the Corruption Law, the subject element as a perpetrator of a corruption crime is every individual or corporation in which there is a group of people who commit corruption. The subject as a perpetrator of the Crime of Corruption must be a person who has certain authority or position, whether it is a state administrator, a civil servant, or another person.

**3. Legal Subject of Corruption**

Crime In particular, the legal subjects in the Crime of Corruption mentioned in several articles of the Law on the Eradication of Corruption Crimes are Civil Servants and non-Civil Servants or State Administrators and corporations. Based on practice, Article 2 paragraph (1) of Law No. 31 of 1999 is applied to legal subjects in corruption crimes from non-Civil Servants or Private Parties. Meanwhile, Article 3 of Law No. 31 of 1999 is applied to the subject of Corruption Crimes from Civil Servants or Public Officials.<sup>24</sup> The difference in the use of the Article is based on the criteria for state losses. If the state loss is less than Rp. 100,000,000,- then what is used is Article 3 of Law No. 31 of 1999 and if the state loss is more than that value, then Article 2 paragraph (1) of Law No. 31 of 1999 is used.

After experiencing developments, article 2 paragraph (1) of Law No. 31 of 1999 applies corporations as legal subjects in corruption crimes. The application is related to the definition of Civil Servant which has been expanded in meaning in Law No. 31 of 1999 Article 1 number 2 of Law No. 31 of 1999 which includes people who receive salaries or wages from other corporations that use capital or facilities from the state or society. In Public Official Bribery (bribery), the perpetrators are civil servants (bureaucrats), both as bribe recipients and bribe givers. Meanwhile, non-civil servants or the private sector (entrepreneurs) can

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<sup>21</sup> Olivia, Corruption: Definition, Types and How to Eradicate It, <Corruption: Definition, Types, and How to Eradicate It (detik.com). November 9, 2024>. Retrieved June 10, 2024.

<sup>22</sup> Republic of Indonesia, Law Number 20 of 2001 concerning the Eradication of Corruption, Article 12.

<sup>23</sup> Elwi Danil. Corruption: Concept, Crime and Its Eradication-Rajawali Press. PT. RajaGrafindo Persada, Jakarta, 2021.

<sup>24</sup> Darwin Prinst, Eradication of Corruption, PT Citra Ditya Bakti, Bandung, 2002, p. 29. See also Vidya Prahassacitta, Who is the Subject of Corruption in Indonesia?, < WHO IS THE SUBJECT OF CORRUPTION IN INDONESIA? (binus.ac.id). February 26, 2024>. Retrieved June 10, 2024.

only be bribe-givers. Thus, private parties and corporations can only become perpetrators of Corruption Crimes if the corporation acts as a bribe giver or Aktieve Omkoping.<sup>25</sup>

#### **4. Object of Corruption Crime**

The object of the Corruption Crime is the state finance or the country's economy which is usually in the form of money, assets, or other resources owned or controlled by the state. In the case of corruption, the object is something that is the target or target of the perpetrator of the crime of corruption, so it can be understood that acts that are detrimental to the state finances or the state economy such as embezzlement of state assets, misuse or misappropriation of funds and economic resources owned by the state can be referred to as corruption crimes.

#### **5. Types of Criminal Penalties in Corruption Crimes**

The term criminal imposition can be interpreted as criminal sanctions, the provision of punishment or criminal punishment which basically has two types, namely the main criminal punishment and the additional criminal punishment. The main crimes threatened to perpetrators of corruption are the death penalty, imprisonment and fines. Criminal imposition is a suffering or punishment given to a person who violates an act prohibited by law.<sup>26</sup> Based on the provisions of Law No. 20 of 2001 amending Law No. 31 of 1999, the types of criminal imposition that can be carried out by judges against perpetrators of corruption crimes are as follows:

##### **1) Death Penalty**

The regulation regarding the death penalty is contained in Law No. 1 of the Criminal Code (KUHP) Article 8 which states that the "death penalty" or "death penalty" is a threat imposed as an alternative last resort to prevent the occurrence of criminal acts and to protect the community. The death penalty is the heaviest crime, therefore the death penalty is only threatened for criminal acts that are really serious. The formulation of articles that include the death penalty is always followed by other alternative criminal penalties, such as "the death penalty or life imprisonment or imprisonment for a minimum of 4 years or a maximum of 20 years". So that the imposition of the death penalty on violators who are threatened with the death penalty is uncertain because the application of the death penalty is a special punishment, meaning it is not the main punishment and can change at a certain time.<sup>27</sup>

##### **2) Prison Sentence**

The imposition of prison sentences contained in the formulation of the PTPK Law articles is life imprisonment and temporary imprisonment. The penalty of life imprisonment is listed in Article 2 paragraph 1, Article 3, Article 12 and Article 12B paragraph 2. Temporary prison sentences are threatened with a maximum limit and a minimum limit. The minimum limit is determined in the Law Article as one of the efforts in order to achieve more effective goals to prevent and eradicate corruption crimes. Provisional prison sentences range from 1 year to 20 years. 20 years in prison as an alternative to life imprisonment.<sup>28</sup>

##### **3) Criminal Fines**

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<sup>25</sup> Indriyanto Seno Adji, *Corruption and Its Problems*, Diadit Media, Jakarta, 2012, p. 93. See also Vidya Prahassacitta, *Who is the Subject of Corruption in Indonesia?*, < WHO IS THE SUBJECT OF CORRUPTION IN INDONESIA? (binus.ac.id). February 26, 2024>. Retrieved June 10, 2024.

<sup>26</sup> Legal Angle, *Definition of Criminal Punishment*, <Definition of Criminal Punishment – suduthukum.com. January 4, 2018>. Retrieved June 10, 2024.

<sup>27</sup> Barda Nawawi Arief, *Law Enforcement Issues and Criminal Law Policies in Crime Control*, Kencana, Jakarta, 2014, p. 156.

<sup>28</sup> Sugali, *Imposition of Criminal Sanctions for Corruption*, < Imposition of Criminal Sanctions for Corruption | SUGALILAWYER.COM - SUGALILAWYER.COM. March 10, 2022>. Retrieved June 10, 2024.

The penalty of fines is one of the alternatives to replace prison sentences if applied optimally. The fines that can be imposed on the perpetrators of corruption crimes are at least 50 million and at most 1 billion. The rule is contained in the formulation of article 3 of Law No. 31 of 1999 which reads "Any person who, with the purpose of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position that can be detrimental to the state finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine at least Rp. 50,000,000.00 (fifty million rupiah) and at most Rp. 1,000,000,000.00 (one billion rupiah)."

4) *Additional Crimes*

Additional punishment is a punishment that can only be imposed if there is already a principal penalty.<sup>29</sup> Because basically, the additional penalty is only imposed if the principal penalty is imposed.<sup>30</sup> The imposition of additional penalties in the case of corruption crimes regulated in the formulation of Article 18 paragraph of Law No. 31 of 1999 is explained in several forms, including confiscation of goods, payment of substitute money and closure of the Company.

### **3.2 Legal Theory of State Loss Recovery in Corruption Crimes**

The legal basis for state financial returns regulated in Law No. 31 of 1999 jo Law No. 20 of 2001 concerning the Eradication of Corruption is contained in the formulation of Articles 2 and 3 as one of the requirements to reveal the truth of the occurrence of corruption crimes.

The definition of restitution of state losses according to Purwaning M. Yanuar in his book is as a law enforcement system carried out by the victim state of corruption to revoke, deprive and eliminate the right to the proceeds of corruption from the perpetrators of corruption crimes through a series of mechanisms, both criminal and civil, both assets resulting from corruption crimes at home and abroad, tracked, frozen, confiscated, confiscated, handed over and returned to the victim country from the proceeds of corruption crimes, so that it can return state financial losses to prevent perpetrators of corruption crimes from committing other crimes and provide a deterrent effect for perpetrators of corruption crimes.<sup>31</sup>

The purpose of recovering state losses is to restore the country's finances that have experienced shortages and return them to their original state so that they can be reused to achieve the country's goals. The return of state financial losses is one of the efforts in reform and building the foundation of legal institutions. This is in accordance with the ideals and objectives of criminal law to prevent and eradicate corruption crimes. The process of recovering state losses in corruption crimes can be carried out through several mechanisms using the following instruments:

a. *Return of State Financial Losses through Criminal Instruments*

Law enforcement in Indonesia continues to be improved and has become a top priority for law enforcement officials, especially the Police, Prosecutors and the Corruption Eradication Commission (KPK). In order to eradicate corruption, the focus is on efforts to prevent, eradicate and

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<sup>29</sup> Muhammad Iqbal Iskandar, Types of Principal Punishments and Additional Punishments According to Article 10 of the Criminal Code, along with their explanations, < Types of Principal Punishments and Additional Punishments in Article 10 of the Criminal Code (tirto.id). November 26, 2022>. Retrieved June 10, 2024.

<sup>30</sup> Ingrid Pili, Additional Punishments in Corruption Court Decisions, *Lex Crimen Journal*, Vol. 4, No. 6, 2015.

<sup>31</sup> M. Yanuar Purwaning, *Return of Assets Proceeds of Corruption: Based on the 2003 Anti-Corruption Convention in the Indonesian Legal System*, PT. Alumni, Jakarta, 2007, p. 104.



restore state losses. Therefore, the eradication of corruption does not only focus on arresting the perpetrators of corruption crimes, but is also related to efforts to restore and recover state losses from the proceeds of corruption crimes.<sup>32</sup>

The recovery of state financial losses through criminal instruments can be carried out starting from the investigation stage to the execution stage of decisions from judges with permanent legal force.<sup>33</sup> The process of returning and recovering state losses is carried out by the Prosecutor's Office.

*b. Implementation of State Losses Recovery from Corruption Proceeds Through Civil Lawsuit Mechanism*

One of the main elements contained in the Corruption Crime case is the existence of state financial losses. In practice, the eradication of corruption crimes not only aims to criminalize corruption perpetrators (Deterrence Effect), but also seeks to restore state losses that have been corrupted. The issue of asset recovery in the practice of handling corruption cases has become a serious problem, because the fact is that many corruption cases have been sentenced but in terms of the implementation of the criminal penalty of replacement money is difficult to realize.<sup>34</sup>

The return of state financial losses resulting from corruption crimes in its implementation feels difficult to implement because in general, corruption crimes, both on a small scale and on a large scale, are carried out in very secret ways and involve many parties who protect or cover up acts of corruption through legal manipulation, legal engineering, and apathetic behavior of state officials towards the interests of the people. Even the wealth from the actions of corruptors has passed across countries through transfers between accounts to other countries in anticipation of eliminating the origin of the wealth. Therefore, an extraordinary way must be carried out, namely by confiscating the assets resulting from corruption.<sup>35</sup>

Article 32 paragraph (1) of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law No. 20 of 2001, states that in the event that the investigator finds and argues that there is insufficient evidence of one or more elements of the Corruption Crime, while there has been a real loss to the state, then the investigator immediately submits the case file of the investigation results to the State Attorney or submits it to the aggrieved agency to submit a Lawsuit.

Civil lawsuits as an effort to recover state losses that have been corrupted, normatively regulated in article 38C of Law No. 20 of 2001 Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes which reads: If after the court decision has obtained permanent legal force, it is known that there are still assets belonging to the convict that are suspected or should be suspected of also coming from corruption crimes that have not been subject to expropriation for the state as intended in Article 38B paragraph (2), the state can file a civil lawsuit against the convict and/or his heirs".

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<sup>32</sup> Butje Visilia and Refly, "A Legal Study on the Return of State Financial Losses in Corruption Crimes." *Lex Crimen Journal* 10, no 13 (2021) p. 146.

<sup>33</sup> Purwaning M. Yanuar, *Return of Assets Resulting from Corruption*, Alumni, Bandung, 2017, p. 56.

<sup>34</sup> Supatmo Eka Iskandar, *Principles of State Financial Return Due to Corruption Crimes Through Civil Lawsuits*, Dissertation Program of the Faculty of Law, Airlangga University, Surabaya, 2009. It can also be seen in the *Journal of Yuli Asmara Triputra, Recovery of State Assets Through Civil Lawsuits and Stages of Asset Recovery Resulting from Corruption Crimes (A Constructive Breakthrough in Progressive Law Enforcement)*, *Journal of Sriwijaya State Polytechnic Lecturer*, SSN Print Solution 0216-9835; ISSN Online 2597-680X, Vol. 21, No. 3, September 2023

<sup>35</sup> Oka Mahendra, *Cooperation on Mutual Assistance in the Return of Assets from Papers in the Seminar on Synergy of Corruption Eradication*, Jakarta, 2006.

Based on the formulation of the article, a civil lawsuit as a mechanism to implement the return of state losses is filed by the State Attorney or related agencies that have been harmed, in accordance with Articles 32 to 34 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption. In practice, the plaintiff is the Prosecutor's Office represented by the State Attorney based on a Special Power of Attorney and Warrant from the Deputy Attorney General for Civil and State Administration (JAM DATUN).

The District Court where the lawsuit is filed is subject to the provisions of article 118 of the updated *Het Herziene Inlandsch Reglement/Indonesian Reglement*. The provision essentially provides that a civil lawsuit at the first instance is filed with the District Court:

- a. The place where the defendant is silent or if the place of residence is unknown, the actual place of residence; If the defendant has more than one person, it is submitted to the District Court whose jurisdiction includes the residence of one of the defendants.
- b. If the defendant is a debtor and an insurer, it is submitted to the District Court whose jurisdiction includes the domicile of the debtor;
- c. If the defendant's place of residence and residence are unknown, the lawsuit is filed with the Chief Justice of the District Court where the plaintiff resides. If the lawsuit is about illegal goods, it is submitted to the Chairman of the District Court in the jurisdiction that includes the location of the goods.

Law No. 31 of 1997 and Law No. 20 of 2001 concerning the Eradication of Corruption Crimes do not provide special provisions related to evidence that can be used in corruption cases that are resolved through civil mechanisms. Thus, the provisions regarding evidence are subject to the provisions of article 164 HIR/article 284 Rbg. In this article, it is determined that evidence consists of written evidence, evidence with witnesses, suspicions, confessions, oaths.

Other provisions related to civil proof are not regulated at all in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. The special provisions in the law only apply to the settlement of corruption cases through criminal mechanisms. In other words, the law of proof in filing a civil lawsuit related to a corruption case is the same as the law of proof that applies to ordinary civil cases. Similarly, the provisions for trial examination in handling corruption cases through civil mechanisms are not specifically regulated, so the provisions refer to the provisions of the civil procedure law that apply in general.

Although the filing of a lawsuit in a corruption case is not specifically regulated, the possibility of a place to file a lawsuit only exists in the provisions of Article 118 paragraph (1), paragraph (2), or paragraph (3). Because corruption when viewed from the perspective of civil law is interpreted as an unlawful act, which is an engagement born because of the law, so it is impossible to file a lawsuit to the District Court that has been approved in advance through an agreement. The defendant, in accordance with the provisions of articles 32 to 34 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, is a corrupt perpetrator or his heirs.<sup>36</sup>

The recovery of state losses using the civil lawsuit mechanism usually takes a relatively long time until the decision can be executed. At the time of execution, it is possible that there will be a lawsuit against or a third party against the property to be executed. This will complicate the civil law enforcement process, because the state as the plaintiff must have strong evidence to prove that the defendant is the perpetrator of the crime of corruption as well as proof of the amount of state losses due to the act of corruption.

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<sup>36</sup> Haswandi. "Return of Corruption Assets of Perpetrators and Their Heirs According to the Indonesian Legal System", *Journal of Law and Justice* 6, no. 1, (2017).

#### 4. CONCLUSION

Based on the discussion of the regulation of corruption in legislation in Indonesia, it can be concluded that there are several laws that are the legal basis, including the Criminal Code, Law No. 46 of 2009, Law No. 48 of 2009, Law No. 1 of 2006, and Law No. 31 of 1999 Jo Law No. 20 of 2001. The law regulates various forms of corruption such as harming state finances, bribery, embezzlement in office, and extortion. In law enforcement, it is important to maintain transparency, fairness, and effectiveness in imposing criminal sanctions such as the death penalty, life imprisonment, prison sentences, fines, and additional penalties to recover state losses. To ensure its effectiveness, good coordination between law enforcement agencies and strengthening the mechanism for recovering state losses through criminal and civil channels is needed.

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