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The Role of Legal Politics in the Recovery of State Financial Losses Due to Corruption

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Abstract

Corruption crimes have caused very large losses to the state and can have an impact on the emergence of various crises in various fields such as social life, nationhood, and statehood. Therefore, a legal enforcement method is needed through the establishment of a special body that has broad, independent, and free authority from any power in efforts to eradicate corruption crimes that are carried out maximally, intensively, effectively, professionally, and continuously. This paper uses a normative juridical research method through an approach based on basic legal materials by examining theories, concepts, legal principles, and regulations. Research using a normative juridical method is legal research conducted by examining literature or secondary data as a basis for research by tracing regulations and literature related to the issues being studied. To solve the legal problems that have been formulated and get their answers, this research uses four problem-solving approach models, namely the statutory approach, comparative approach, historical approach, and conceptual approach. The results of this study are various changes and reviews of anti-corruption laws that are legal policies applied by Indonesia as efforts towards legal reform for the better. Because corruption has harmed state finances, efforts to recover state financial losses are carried out through criminal, civil, and administrative channels.

Keywords Corruption Crimes; Legal Politics; State Financial Losses

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1. INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945) declares that Indonesia is a state of law. Greek philosopher Plato was the first to establish the idea of a state of law, arguing that a nation's legal system is a sign of effective government. The primary structural and abstract component of a state of law is justice, which Indonesia seeks to attain as well as societal welfare. Justice necessitates reform, which calls for constitutional adjustments in the areas of politics, social justice, economics, law, and culture. With legislative change as its primary goal, the reform movement of 1998 signaled the start of a rebirth in all spheres of life. During the New Order era, the

judicial system was oppressive and

The prevalence of corruption is suspected to be a legacy and culture that has become ingrained in the Indonesian nation. During the New Order era, despite the establishment of an anti-corruption team and the issuance of Law Number 3 of 1971 on the Eradication of Corruption, which was the result of an amendment to previous laws, the issue of corruption remained unresolved. Upon entering the reform era, efforts related to combating corruption were realized with the issuance of the MPR Decree Number XI/MPR/1998 on the Clean and Free from Corruption, Collusion, and Nepotism State Administration. The follow-up to the MPR Decree was the enactment of Law Number 28 of 1999 on the clean and corruption-free state administration. The basis for the implementation of this law is that Corruption, Collusion, and Nepotism are not only committed by state officials but also between state officials and other parties that can damage the foundations of societal, national, and state life. In a better effort to combat corruption, Law Number 31 of 1999 on the Eradication of Corruption was enacted.

The creation of a system to combat corruption is very important because this system can address specific issues that arise in corruption cases, such as lack of transparency in accounting processes, reporting, and the reports themselves. Because they often engage in these activities, experts with higher degrees must pay special attention to this. To ensure that the public receives information about corruption and its potential impacts, a system must be built to convey information in an easily understandable and straightforward manner. The public will benefit from this, as will the experts handling corruption cases, as they will be better prepared to address this issue and stop the spread of corruption.

In line with the increasing uncontrollable rate of corruption that harms the state finances, the national economy, and hinders national development, corruption in Indonesia is categorized as an extraordinary crime. Therefore, law enforcement through the establishment of a special body with broad, independent, and free from any authority in efforts to eradicate corruption optimally, intensively, effectively, professionally, and continuously is needed. In accordance with Law Number 31 of 1999 which mandates the establishment of a corruption eradication commission, on December 29, 2003, the Corruption Eradication Commission (KPK) was formed based on the legal basis of Law Number 30 of 2002 on the Corruption Eradication Commission.

The Corruption Eradication Commission (KPK) is a state institution in Indonesia that aims to eradicate and prevent corruption. It was established under the UN Convention against Corruption, which mandates effective and efficient corruption prevention through anti-corruption institutions. However, the KPU has faced criticism for weak coordination among law enforcement agencies, allegations of overlapping authority, and the absence of a supervisory body. This research aims to determine the role of legal politics in recovering state financial losses due to corruption crimes. The KPK

was ratified through Law No. 7/2006.

Asset recovery from the proceeds of corruption is a crucial part of societal and state regulations on criminal acts. The government in a country implements this function, requiring firmness and efforts to return assets from war-torn countries. Corruption Law Number 31 of 1999 and Law Number 20 of 2001 address this issue. Asset recovery involves handling crimes assets in an integrated manner at every stage of law enforcement to maintain their value and fully return them to victims and the state. It also includes preventive actions to prevent asset value decrease. To address these issues, the government must ensure the process is conducted with utmost firmness and efficiency.

The corruption epidemic in Indonesia has long been a problem for the country and the world. The usage of goods that might harm the country's moral standards and economy is forbidden by law, and severe penalties are used to stop corruption from growing. According to the Transparency International CPI Index 2018, Thailand is ranked first among 180 nations, whereas Indonesia is ranked fourth in ASEAN. Asia's highest jobless rate is found in Singapore, followed by Brunei and Malaysia. Twenty-one is Cambodia's ranking.

The state employs a number of strategies to recover funds, including the tracking and seizure of assets or products thought to be connected to corrupt activities. Laws pertaining to the eradication of corruption crimes, such as Law Number 3 of 1971 and Law Number 31 of 1999, establish criminal fines.In criminal law studies, financial loss to the state is one form or type of corruption crime as stipulated in Law Number 31 of 1999 jo. Law Number 20 of 2001 on the Eradication of Corruption Crimes (Corruption Law). The definition regarding forms of corruption has been explained in 13 articles, specifically regarding financial loss to the state regulated in Article 2 and Article 3 of the aforementioned law. Establishing asset mechanisms to combat terrorism requires the involvement of staff members, police memoranda, and intelligence memos that pose a threat to its effectiveness. However, Law No. 16 of 2004 concerning the Indonesian National Police, which was later revised by Law No. PER-010/A/JA/05/2014, outlines the role and authority of the police.

Law enforcement efforts in combating corruption crimes include conducting investigation and prosecution processes, and to assist in these processes, the role of intelligence agencies is crucial. Law Number 17 of 2011 concerning State Intelligence serves as the basis for regulating intelligence in the Republic of Indonesia. According to Article 1 paragraph (1) of Law Number 17 of 2011 concerning State Intelligence, it states: "Intelligence is knowledge, organization, and activities related to policy formulation, national strategy, and decision-making based on analysis of information and facts gathered through working methods for detection and early warning in the context of prevention, interception, and mitigation of any threats to national security."

Corruption has spread systemically penetrating all sectors at various levels of central and regional

government, in all state institutions, whether executive, legislative, or judicial. Therefore, corruption is classified as an extraordinary crime. The Indonesia Corruption Watch (ICW) report indicates that state losses due to corruption reached Rp 26.83 trillion in the first semester of 2021. This amount increased by 47.63% compared to the same period last year, which was Rp 18.17 trillion. The number of corruption cases found by law enforcement agencies during that period was 209 cases, with a total of 482 suspects processed legally.

In Indonesia, corruption has grown to be a serious societal problem that affects society, the economy, and the environment in addition to inflicting large material losses. To improve national financial security, cooperation between law enforcement authorities is essential. The only tax that is permitted is the deforestation tax. Laws, rules, law enforcement, and prevention are the keystones of financial protection against corruption; the effectiveness and caliber of the legal system are paramount. Officials and civil servants are accountable for protecting state funds legally, and technology and procedural aspects contribute to the enforcement of legal proceedings for tax law violations. In order to deal with non-compliance, the government and other organizations use civil seizure as a legal tool to assess if a certain action breaches tax laws. Because of this, the government's involvement is greater.

According to a research by Indonesia Corruption Watch (ICW), corruption in Indonesia may have cost the country's finances IDR 62.93 trillion in 2021—the most in the previous five years. The mere IDR 1.4 trillion in demanded reparations suggests that Indonesia's efforts to eradicate corruption have not been successful. The conviction of those responsible and the restoration of misappropriated public property serve as indicators of how well corruption has been eradicated. With the goal of offering legal innovation in the eradication of corruption, the Corruption Eradication Committee Law has been put to the test by a number of constitutional court rulings.

The number of corruption cases in Indonesia has grown dramatically since the reform period began, and by 2022, it is expected to have climbed by 10.9% to IDR 802 billion. The Corruption Eradication Commission (KPK) has investigated 1,261 cases of corruption since 2004, mostly with the goal of recouping financial damages that the state suffered as a result of corruption. This essay, which focuses on the fulfillment of three legal ideals, seeks to analyze and critique the part played by legal politics in the KPK's attempts to restore state finances after years of corruption and to eradicate it..

2. METHOD

Research method is a scientific way to obtain valid data with the aim of discovering, proving, and developing knowledge so that it can be used to understand, solve, and anticipate problems. This paper uses the normative juridical research method through an approach based on basic legal materials by examining theories, concepts, legal principles, and regulations. Research using the normative juridical

method is legal research conducted by examining library materials or secondary data as the basis for research by conducting searches of regulations and literature related to the issues being studied. To solve the formulated legal problems or issues and obtain answers, this research uses four problem-solving approach models, namely the statutory approach, comparative approach, historical approach, and conceptual approach (Marzuki, 2008).

3. FINDINGS AND DISCUSSION

3.1. The Role of Legal Politics in the Implementation of Corruption Eradication in Indonesia

Corruption offenses have caused very large losses to the state and can lead to the emergence of various crises in various fields. Faced with this very alarming reality, the Government's consistency in eradicating and preventing corruption is needed, which must be done in a real and comprehensive manner in the (law enforcement) process in Indonesia. In the midst of National Development efforts in various fields, the public's aspiration to eradicate corruption and various other deviations is increasing. The Government's serious efforts to realize a clean and free of corruption State administration were then realized by the issuance of Law Number 28 of 1999 concerning Clean and Free of Corruption State Administration. Furthermore, as an effort to eradicate corruption offenses, the Government strives to realize it by stipulating Law Number 31 of 1999 concerning Eradication of Corruption Crimes as a replacement for Law Number 3 of 1971 concerning Eradication of Corruption Crimes. Corruption offenses that are considered no longer in line with the current legal and societal needs. Law Number 31 of 1991 was further perfected with the issuance of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1991 concerning Eradication of Corruption Crimes.

To eradicate and minimize corruption in Indonesia, political and bureaucratic reforms are needed. Political reform is to limit executive power as much as possible and monitor it effectively. Supervisory and inspection bodies must be truly independent and effective. Another way to reduce corruption is through institutional reform. In this regard, the establishment of the Corruption Eradication Commission is intended to realize a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Its existence is a mandate of reform that expects changes in corruption eradication. The establishment of the KPK institution is considered important constitutionally and has met the provisions of the 1945 Constitution. The importance of an institution specifically dealing with corruption eradication has implications for the implementation of the mandate of Law Number 31 of 1999 to establish the Corruption Eradication Commission.

Law Number 31 of 1999 marks the beginning of the reform era in the government's efforts to eradicate corruption. Then came Law Number 30 of 2002 concerning the Corruption Eradication Commission which regulates the authority of the KPK in carrying out its duties. The KPK can supervise

authorities responsible for corruption offenses, investigate and prosecute corruption offenses, take preventive measures against corruption, and monitor the administration of the state government. The KPK also has the authority to streamline bureaucracy and prosecution processes. The KPK can take on two roles at once, the tasks of the Police and the Attorney General which have been powerless in combating corruption.

In the midst of national development efforts in various fields, the public's aspiration to eradicate corruption and other forms of deviation is increasing, because in reality, acts of corruption have caused very large losses to the State which in turn can lead to crises in various fields. Therefore, efforts to prevent and eradicate corruption need to be further intensified and intensified while upholding human rights and the interests of the public. The Corruption Criminal Law is expected to meet and anticipate the development of the legal needs of society in order to prevent and more effectively eradicate any form of corruption that greatly harms the State's finances or the national economy in particular, and the public in general.

Corruption is a specific criminal act. Because corruption has specific specifications that are different from criminal law in general, such as the existence of procedural and substantive legal deviations intended to seize state assets resulting from corruption. Therefore, the UN Convention describes that corruption is already a serious threat to the stability and security of society, weakening institutions, and damaging democracy. Although not comprehensive, anti-corruption laws in Indonesia are based on Military Regulation No. PRT/PM/06/1957. This law states that initiatives impacting the finances and economy of the state are beyond the scope of government institutions and that steps must be taken to stop corruption and its recurrence.

Tax on corruption should be proportional to the value of society and should reduce its impact on various industries. Corruption tends to occur in all layers of society, including local and national governments, as a result of increasing national and national income and its impact on the social and economic rights of individuals. This makes corruption an extraordinary crime. To maximize the use of state financial resources, this strategy must prioritize restorative measures over retributive justice.

One of the relevant legal objects in Indonesia included in the Criminal Code is corruption. Officially adopted in Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (UU PTPK). The purpose of Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes is to meet the increasing needs of the community in preventing and prosecuting corruption cases effectively.

The creation of a system to combat corruption is very important because this system can address specific issues that arise in corruption cases, such as lack of transparency in accounting processes, reporting, and the reporting itself. Because they often engage in these activities, experts with higher

degrees must pay special attention to this. To ensure that the public receives information about corruption and its potential impact, a system must be built to deliver information in an easily understandable and straightforward manner.

In practice, the eradication of corruption carried out by the KPK has not been optimal. This can be seen from the records of Indonesia Corruption Watch (ICW) and the Coalition of Judicial Monitoring in the KPK Roadmap 2007-2011 towards effective corruption eradication, the number of cases taken over by the KPK is too few. In addition, the continuation of corruption cases that have been monitored and coordinated by the KPK cannot yet be confirmed for their accuracy. This condition is supported by the Indonesian Political Indicator Survey on public trust in state institutions, which states that public trust in the Corruption Eradication Commission (KPK) tends to decline. In practice, the eradication of corruption carried out by the KPK has not been optimal. This can be seen from the records of Indonesia Corruption Watch (ICW) and the Coalition of Judicial Monitoring in the KPK Roadmap 2007-2011 towards effective corruption eradication, the number of cases taken over by the KPK is too few. In addition, the continuation of corruption cases that have been monitored and coordinated by the KPK cannot yet be confirmed for their accuracy. This condition is supported by the Indonesian Political Indicator Survey on public trust in state institutions, which states that public trust in the Corruption Eradication Commission (KPK) tends to decline.

With various conditions and challenges faced by the Corruption Eradication Commission (KPK), this has led to changes in the anti-corruption laws in Indonesia. Therefore, the second amendment to Law Number 30 of 2002 concerning the Eradication of Corruption Crimes was made by the enactment of Law Number 19 of 2019. The new regulations are intended to strengthen the independence of the authority to prosecute corruption carried out by the KPK. In the formation of a law, it is necessary to pay attention to the basis and reasons underlying the formation of the law through the legal policy of law formation. Legal policy is the state's legal policy in the context of replacing old laws or making new laws to achieve national goals. Mahfud MD divides legal policy into three parts, namely the official legal direction to be applied (legal policy) to achieve state goals that can replace old laws and form new laws, second, the background and subsystem in society that underlies the birth of the law. law, third, problems or issues that occur around the law, especially the implementation of the law (Risnain, 2014).

There is nothing wrong with whether law determines politics or politics determines law, because fundamentally scientific truth is relative, not absolute or absolute because everything depends on the assumptions, concepts, and scientific theories used. So, law and politics are two sides of the same coin and cannot be separated, if politics is assumed to be power then the expression of Prof. Mochtar Kusumaatmadja can be used as a simple assumption that "politics and law are mutually determining", because "politics without law is unfair, while law without politics is paralyzed" (Kartika & Gunawan,

2014).

The concept of a rule of law is inseparable from the purpose of law, which is to provide justice, legal certainty, and legal benefits, which then in the concept of legal science, a rule of law must be able to be a state that meets needs. the concept of a welfare state in the sense of law is able to provide benefits and health without neglecting justice and legal certainty that must be guaranteed by state legal institutions. From a state that adheres to the rule of law, there are two important things in a rule of law. First, the existence of independent judicial power to carry out justice in order to realize legal certainty and justice. Second, the existence of law enforcement officials (police, prosecutors, and other law enforcement officials) who are able to carry out their duties and authorities professionally and fairly. Thus, judicial power and law enforcement agencies are a unit like currency that is the pillar of law enforcement.

Law enforcement cannot be separated from the existence of a country's legal products, because legal products are a manifestation of a country's political process and the existence of law indicates the presence of legal politics of a particular country. Legal politics is manifested in all positive laws/types of regulations of the state. From legal politics arise policies both at the legislative and executive levels to carry out the manifestation of legal politics and law itself in providing benefits for the wider community.

Law enforcement related to corruption eradication in Indonesia needs to be examined to what extent the laws related to corruption eradication have been realized in a legal ideal. Then it is also necessary to pay attention to the basis of law enforcement besides the juridical basis, namely the sociological basis that exists in social life. The reason for amending Law Number 30 of 2002 is that previously government institutions were not effective in eradicating corruption so an effective and efficient state institution is needed in eradicating corruption. Then this was changed in Law Number 19 of 2019 that the state needs synergy among law enforcement agencies to successfully eradicate corruption and implement a balanced corruption prevention and eradication strategy. Furthermore, another reason for amending the KPK Law is related to the goal of protecting human rights in accordance with the principles of human rights set out in the law. In this case, the lawmakers want there to be synergy in performance between the KPK, the Attorney General's Office, and the Police in combating corruption, considering the initial goal of the KPK was to be a "trigger mechanism" for the Attorney General's Office and the Police.

3.2 Recovery Efforts for State Financial Losses Due to Corruption Crimes

Corruption has the worst impact on countries in transition like Indonesia. Corruption is a problem that disrupts and hinders national development because it has resulted in state financial losses.

Corruption can also weaken the foundations of societal, national, and state life, therefore maximum enforcement against corruption crimes is needed.

Procedures that can be applied in the process of recovering state losses or returning the proceeds of corruption crimes can be done through criminal, civil, administrative, or political channels.

1. State Loss Compensation Through Criminal Process

Through the criminal route, the prosecutor can take actions to recover state losses due to corrupt acts committed by corruptors, actions that can be taken from the investigation stage to the implementation of a final court decision, these actions include:

a. Asset Tracking

Tracing or tracking the wealth of suspects/defendants of corruption crimes, according to criminal procedural law, tracking efforts are closely related to investigative actions and investigations listed in Article 1 number 2 of the Criminal Procedure Code. This is done to provide information to investigators, prosecutors, and public prosecutors about the wealth of suspects/defendants as an effort to recover state losses. The purpose of tracing the wealth of suspects/defendants is to determine the wealth, storage location of the wealth, evidence related to the ownership of the wealth, and its connection to the acts committed.

b. Asset Seizure

After all information related to the wealth resulting from corruption crimes has been documented, the seizure of wealth/assets is carried out. The purpose of this seizure is to secure the assets/property of the defendant/assets related to the corruption crimes that occurred, so that their return is appropriate and just to the rightful party according to the decision. In practice, the term asset seizure by the prosecutor/investigator is closer to the term blocking, blocking done by the prosecutor for the purpose of recovering state losses can be done on the suspect's accounts, certificates, vehicle documents, and other movable property. The seizure of the wealth/property of the suspect/defendant is done on assets resulting from corruption crimes and assets of the defendant that are not the result of corruption crimes. Seizure of the suspect's wealth can be done on assets that are purely the result of corruption crimes and those that are not purely the result of corruption crimes.

c. Prosecution for Payment as Compensation

The steps taken by the prosecutor in recovering state losses through the criminal route can be done by demanding additional punishment regarding compensation in accordance with the losses suffered by the State. In practice, the Public Prosecutor must be able to position Article 18 of the Anti-Corruption Law with the article that will be charged to the defendant, if the demand of the Public

Prosecutor is granted by the judge as stated in the decision and has a final nature, only then can the execution be carried out.

d. Execution/Implementation of Court Decisions Regarding the Return of State Financial Losses

Implementation of the verdict is in the hands of the public prosecutor's authority, as well as restitution. To carry out the execution, the prosecutor's office issues a court decision execution order. In addition to carrying out the orders as referred to in the prison sentence, detention, fines, evidence, and court costs, the prosecutor's office also enforces verdicts that include additional restitution. Specifically for the penalty of paying restitution, failure to pay restitution can be penalized. The prosecutor's office conducting the execution does not immediately make an official report regarding the implementation of the criminal act of paying restitution other than the subsidiary prison sentence against the defendant/convict who chooses a prison sentence instead of restitution. which regulates that if the defendant does not pay the substitute money within one month, then his assets will be auctioned and seized by the prosecutor's office.

2. Recovery of State Losses Through Civil Litigation

If the investigator believes and finds that there is more than one element of corruption but there is not enough evidence, yet there is a financial loss to the state, then the case is handed over to the aggrieved institution to file a lawsuit. When the trial process is conducted in court but the defendant passes away, yet there is actually a loss of state funds, then a duplicate of the trial minutes is immediately handed over by the public prosecutor to the Prosecutor's Office or the institution. suffering losses to file a civil lawsuit against the heirs.

3. Recovery of State Losses through State Administrative Law

State Loss Compensation through State Administrative Law, compensation for state losses due to authority or power abused for corrupt actions, can result in very large state losses to a country's finances. there are two forms of compensation to the State, namely;

a. Compensation claim

For civil servants, claims for compensation are not imposed on treasurers/other officials who commit unlawful acts, whether intentionally or negligently, causing state losses that are not in the form of cash shortages, and the authority to impose them lies with the relevant ministry or institution. head.

b. Treasury claim

This claim is imposed on the treasurer because of unlawful acts, whether intentional or negligent, resulting in cash shortages, the authority to collect compensation lies with the BPK.

Basically, efforts to recover state financial losses such as confiscation and seizure of the proceeds and tools of corruption from criminal perpetrators not only transfer a certain amount of wealth from criminals to the public but also increase the possibility for the public to realize it. common goal of

achieving justice and prosperity for the community. Thus, it is hoped that the value of utility can be present in line with the value of justice embodied in the eradication of corruption.

4. CONCLUSION

Corruption is a crime that harms state finances, the national economy, and hinders national development, so the increasing corruption in Indonesia is categorized as an extraordinary crime. The Corruption Eradication Commission (KPK) is an institution established to eradicate and prevent corruption based on the mandate of Law Number 31 of 1999 as amended by Law Number 20 of 2001. The legal basis for the establishment of the KPK is Law Number 20 of 2001. 31 of 2002 concerning the Corruption Eradication Commission which was later amended by Law Number 19 of 2019. Various changes and testing of anti-corruption laws are legal policies implemented by Indonesia towards better legal reform. Because corruption has harmed state finances, efforts to recover state financial losses are carried out through criminal, civil, and administrative channels. This is intended to achieve the state's goals of social justice and community welfare so that the basic legal values can be achieved.

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