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IMPLEMENTATION OF STRENGTHENING IN RETURNING NATION ASSETS AS A PUNISHMENT FOR CORRUPTION

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Abstract

Corruption is a very serious crime. The purpose of this study is to examine the impact of confiscation of assets convicts of corruption on the deterrent effect and the return of financial losses and the state's economy. The author of this study uses a normative juridical method with a descriptive-analytical approach, and a statutory approach, to examine laws and regulations related to the confiscation of assets resulting from criminal acts of corruption. The result is that the changing of paradigm in punishment so the purpose of asset recovery can be maximized obtained that prevail implementation of asset keeping as *premium remedium*. The process of removing the property rights of perpetrators from the state as victims through confiscation, freezing, and confiscation in local, regional, and international competencies so that these assets can be returned to the legitimate state is known as the returning of nation assets. compensation for the proceeds of corruption (victims). This policy hoped can become a law innovation toward national asset recovery, with the form of handling Corruption Crime Cases that focus on efforts to restore national assets as a whole, because the seizing punishment for corruptors is the most effective way to reduce corruption cases in Indonesia, and seizing with unable to sued - confiscation non-conviction based (NCB) – already exist as a media for effective alternative seizing in a situation where it impossible for getting criminal sentence – is the convicted dead, no information, disappear, or immune on sue, or in the case where statute of limitations prevents sue.

Keywords: Assets Confiscation; Asset Recovery; Corruption.

INTRODUCTION

Explanation of the Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission, TPK can no longer be categorized as an ordinary crime but has become an extraordinary crime, with the first consideration of the fact, that corruption is increasingly widespread in society, its development continues to increase both from the number of cases that occur and the number of cases. state financial losses as well as in terms of the quality of the crimes committed are increasingly systematic and the scope of which enters all aspects of people's lives. The second cause or effect, increasing corruption and crime that cannot be controlled will bring disaster not only for the national economy but also for the nation and country society to their social and economic rights. Again, by using two considerations which became a basis for TPK categories as extraordinary crime that differ from general crime.[1]

Corruption is a very serious crime because not only makes people miserable due to the potential loss of nation to do a development also affects the affordability of goods and services because of increases in goods price and decreasingly of society purchase capacity including facility and health care become limited also the blockage

of nation economy development also changed the culture and norm of society local originality become worst.[2]

The slowing economy has widened social inequality. The rich people with power can take bribes and will get richer than before. As for the poor people, they will become more miserable in economic conditions because of the shifting of public goods because corruptor so the development and also the uneven income distribution and distortion in health education quality which is slower because there are some effects on the low level of investment. This happened because the investor did not want to go to a country with a high rate of corruption. There are many ways for people to know the level of corruption within the nation, such as using the Corruption Perception Index (IPK).[3]

Indonesia Corruption Index (IPK) in the 2022 January period was ranked 96th out of 180 countries with a score of 38, which is an increase of one point from last year although it is still below the global average IPK, which is 43. The Corruption Perception Index is an achievement indicator level for eradication of corruption in a country that will improve if it is close to 100 and worse if it is close to zero.[4] An increase of one point in the IPK does not make law enforcement a leading sector in efforts to eradicate corruption, Indonesia has been given facilities that have the authority to take action on cases of corruption.[5]

The nation value losses in the case of PT. Jiwasraya amounting to twelve point four trillion - failed to pay policies to customers related to Saving Plan investments. Those who were convicted are Hary Prasetyo (Director of Finance of Jiwasraya), Hendrisman Rahim (former Director of Jiwasraya), Syahmirwan (former Head of Investment and Finance Division of Jiwasraya), Joko Hartono Tirto (Director of PT Maxima Integra), Benny Tjokrosaputro (Director of PT Hanson International) and Heru Hidayat (Director of PT Trada Alam Minera and Director of PT Maxima Integra) with a loss of sixteen point eight trillion rupiah. As for corruption cases that happened in Bank Century caused a nation loss with an amount of seven trillion rupiahs. -that loss is because the provision of the Short-Term Funding Facility (FPJP) given to Century Bank has caused state losses of IDR 689.394 billion, and economic losses due to systematic impacts have cost the state IDR 6.742 trillion.[6]

Next, Pelindo II corruption case in 2020, the Audit Board of the Republic of Indonesia (BPK) released a national loss of six trillion rupiah- mobile crane and quay crane which the corruption case was handled by the Police Criminal Investigation and Corruption Eradication Commission. This case brought the former PT Pelindo President Director, RJ Lino, which convicted in 2015. He was suspected of abusing his power by directly appointing HDHM from China in the procurement of three QCC units.[7]

The next corruption case with a fantastic value is the corruption case that dragged the East Kotawaringin Regent Supian Hadi causing a national loss for the amount of five point eight trillion and seven hundred and eleven thousand US dollars, where the corruption abused authority in the issuance of mining business permits to PT Fajar Mentaya Abadi, PT Billy Indonesia and PT Aries Iron Mining. Each of these permits was granted from 2010 to 2012.[8]

The case of the Bank Indonesia Liquidity Assistance Certificate (SKL BLBI) happened in 2004 when Syafruddin issued an obligations fulfillment letter known as an SKL against Sjamsul Nursalim as the controlling stockholder of BDNI, who had obligations to IBRA with a national loss of four points fifty-eight trillion rupiahs.[9]

The next case, the E-KTP corruption case which caused a national loss of two point three trillion was carried out by the former Chairman of the Indonesian House of Representatives Setya Novanto, Irman Gusman, and Andi Narogong. Meanwhile, the Hambalang athletes Homestead 10 corruption case. The Hambalang project corruption case with a national loss of seven hundred and six billion megaprojects of the Hambalang athlete's homestead stalled in 2012 while the suspects are former Democratic Party Chair Anas Urbaningrum, former Democratic Party Treasurer Muhammad Nazaruddin, former Kemenpora Andi Mallarangeng, and Angelina Sondakh.[10]

All the convicts above were charged with imprisonment or flogging, and very little refund of nation losses. In the process of resolving minor TPK cases out of court, investigators and public prosecutors act on behalf of the state as victims. To be able to terminate the case based on the principles of feasibility and restoration justice, according to the author, the main conditions that must be met are the admission of guilt from the suspect/defendant and an agreement between the suspect/defendant and the investigator/public prosecutor to resolve the case without a prosecution process. The agreement must be based on the restoration of state rights, including refunding the nation's financial losses, payment of a sum of money to the nation as a fine, return of proceeds obtained from TPK, and release of ownership of belonging that can be taken for the nation.

If the law enforcement orientation is based on retributive justice, then the nation's budget and losses cannot be achieved because the large cost recovery is not equal to asset recovery from corruption crimes handled by law enforcement officers and has no deterrent effect, this is evidenced by the increasing number of corruption cases in Indonesia.

Based on the above background, the problem is how the impact confiscation of assets of convicts of corruption can provide a deterrent effect while at the same time covering losses to national finances and the economy.

The author in this study uses a normative juridical method with a descriptive-analytical approach, a statutory approach, examines laws and regulations related to the confiscation of assets resulting from criminal acts of corruption ,[11] with material in the legislation related to the confiscation of assets resulting from criminal acts of corruption. in the form of the above research, the author uses primary secondary, and tertiary legal sources. In terms of applied science and methods, the author uses an interdisciplinary approach that combines law and economics.

The amount of money given by the state to law enforcement is so large that the police have around 535 offices throughout Indonesia and have as many as 520 offices throughout Indonesia with a budget ceiling of around IDR 200 million with the Police to handle one corruption case, which is IDR 208 million. The Prosecutor's Office details: investigation (IDR 25 million), investigation (IDR 50 million), prosecution (IDR 100 million), and executions get a budget ceiling of around IDR 12 billion for 85 cases. 3 prosecutions (IDR 25 million). Meanwhile, the Corruption Eradication Commission (KPK) has one office and has a budget ceiling of around IDR 12 billion for 85 cases.[12]

The number of corruption cases that APH has successfully dealt with in 2021 is more than the previous year and tends to fluctuate in the last five years. According to ICW, this indicates that the budget management done by the government every year is getting worse in terms of supervision. ICW also assessed the prosecution of corruption

cases carried out by APH, such as the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK). However, the trend in the value of potential state losses tends to continue to increase during the 2017-2021 period, as shown in Table 1 below:[13]

Table 1: Trends in Case Action and Potential State Loss due to Corruption (2017-2021)

Year	Value of Potential State Loss (Trillion)	Number of Case Actions
2017	6,5	576
2018	5,6	454
2019	8,4	271
2020	18,6	444
2021	29,4	533

Sources: Katadata.com (2022)

In the disclosure context information on case handling, ICW considers that the Police and Prosecutor's Office tend to remain silent, while the KPK is very informative. Corruption cases that happened in Indonesia out of ten corruption cases had an impact on the value of state losses of 181.7 trillion which is shown in Table 2 below:[14]

Table 2: 10 Corruption Cases with the Biggest State Loss in Indonesia

No	Years	Corruption cases	State loss value (Billions)
1	2008	Cases of land grabbing in Riau	78.000,00
2	2015	The case of PT TPPI	37.800,00
3	2020	PT Asabri (Persero) corruption case	22.700,00
4	2020	PT Jiwasraya corruption case	16.800,00
5	1997	Century Bank case	7.000,00
6	2015	Pelindo II corruption case	6.000,00
7	2012	The corruption case of the East Kotawaringin Regent	5.810,00
8	2004	BLBI SKL case	4.580,00
9	2011	ID card corruption	2.300,00
10	2012	Hambalang Corruption Case	706,00
		Total	181.696,00

Sources: Kompas (2022)

As in cases such as land grabbing in the Riau case which dragged Duta Palma Group, inc. The owner of Duta Palma Group, inc., Surya Darmadi, has been convicted in a corruption case involving land grabbing with the former Regent of Indragiri Hulu from 1998 to 2008. Surya Darmadi has committed corruption with a national loss of IDR. 78 trillion. In this case, the former Head of BP Migas, Raden Priyono, and the former Deputy for Economic Finance and Marketing of BP Migas, Djoko Harsono, have been sentenced to 12 years in prison while the nation losses amount to two point seven billion US dollars or equivalent to thirty-seven point eight trillion rupiah, but former President Director of PT TPPI, Honggo Wendratno who was sentenced to 16 years in prison is still a fugitive.[15]

he third largest state loss was in the corruption case of Asuransi Armed Forces Indonesia, inc., or Asabri (Persero), the nation had to lose twenty-two point seven trillion rupiah, where seven people were found guilty in this case. They are the President Director of Asabri 2011-2016 - Adam Rachmat Damiri - President Director of Asabri 2016-2020, Sonny Widjaja, and the Director of Investment and Finance of Asabri 2008-2014, Bachtiar Effendi and Hari Setianto (Director of Asabri 2013-2014

and 2015-2019), Heru Hidayat (Director of Trada Alam Minera, inc., and Director of Maxima Integra, Inc.,), Lukman Purnomosidi (President Director of Prima Network, inc.,), and Director of Jakarta Issuer Investor Relations, Jimmy Sutopo.[16]

Many independent law enforcement agencies in their eradication such as the Anti-Corruption Commission (KPK) and many alternative punishment in eradicating corruption ranging from the death penalty to the return of assets from corruption are law enforcement efforts, but these conditions have not been maximized in their implementation because the large state budget set for law enforcement officers and the imposition of punishment has not been oriented towards returning assets resulting from corrupt criminal acts to cover or replace state financial losses, this is because the point of view of law enforcement is still based on punishment with imprisonment and even if there is a fine and replacement money, it is not a basic criminal punishment but is additional, besides that our law has not taken sides with the eradication of corruption as an extraordinary crime because it is easy for corruptors to get leniency through remissions because of the cancellation or revocation of government regulation no. 99 of 2012 by the Supreme Court, which so far has been very strict in providing remissions for corruptors.[17]

Stolen Asset Recovery (SAR) is hampered by procedures and mechanisms for recovering assets resulting from corruption. These obstacles such as investigation of :[18]

(1) inside job obstacles (2) legal systems between different countries (3) inadequate facilities and infrastructure owned by Indonesia (4) It is not easy to cooperate with other countries both in terms of the form of extradition treaty and MLA. (5) the problem of dual criminality (6) the error in making a claim related to the replacement money and the wrong decision by the judge (7) the problem of the Central Authority.

The eradication of corruption must be oriented for the nation's financial losses to recover, because the current approach has an impact on being inefficient and effective where imprisonment results in prison capacity and the loss of the deterrent effect of prisoners, due to that, based on the Prosecutor's Law Article 30 Paragraph (2) of Law no. 16 of 2004 which was then followed up by the Jampidsus Circular Letter JNo.: B-765/F/Fd.1/04/2018 dated April 20, 2018, regarding Technical Instructions for Handling Corruption Cases in the Investigation Stage.[19]

The Indonesian Attorney General's Office has the authority to investigate criminal acts of corruption. Therefore, the prosecutor's investigation stage is oriented to finding criminal acts of corruption in unlawful acts and must find out the amount of state financial losses for national development. For example, suppose there is a cooperative attitude from the parties involved to recover state financial losses through confiscation of the perpetrator's assets.[20]

The process of removing the property rights of perpetrators from the state as victims through confiscation, freezing, and confiscation in local, regional, and international competencies so that these assets can be returned to the legitimate state is known as the return of state finances. compensation for the proceeds of corruption (victims). This policy is expected to be a legal breakthrough in recovering state finances, in the form of handling Corruption Crime Cases that focus on efforts to restore state finances as a whole, not just prosecution.[21]

Prosecutors are facing difficulties in the civil mechanism for returning assets in a technical-juridical manner in doing out civil lawsuits. Among other things, the civil procedural law used is fully subject to ordinary civil procedural law which, such as, adheres to the principle of formal proof. The burden of proof lies with the party who argues (the nation attorney who must prove) the equality of the parties, the judge's obligation to reconcile the parties, and so on. Meanwhile, the National Prosecutors General (JPN) as the prosecutor must prove that there has been a national loss so that the return of national losses will take a long time until the decision has become absolute.[22]

These problems must be given an immediate solution to optimize the return of national losses through the creation of a special civil procedure law for corruption cases, which is out of the conventional procedural law standards. Civil lawsuits need to be placed as the main legal remedy in addition to criminal efforts, not merely facultative or complementary to criminal law, as regulated in the Law on the Eradication of Criminal Acts of Corruption. Therefore, a progressive concept of state financial returns is needed, for example by harmonizing the 2003 United Nations Convention Against Corruption (UNCAC).[23]

The idea behind the resolving thought of minor TPK cases out of court has moral values of compassion, fairness, and virtue (the equitable and the good). Furthermore, the justification nature for the settlement of minor TPK cases based on the principles of feasibility and restorative justice is compatible with the quick principles, simple justice, low cost; the feasibility of criminal sanctions; reduction of over-criminalization; reduction of the accumulation of cases and reduce the burden on the nation budget.[24]

The concept of restoration in the settlement of criminal cases as regulated in PERJA Number 15 of 2020 has been widely implemented in several District Attorney's Offices and not even a few Heads of District Attorneys have created the concept of "Kampung or Restorative Justice House" as an icon for developing a criminal case understanding solution in an RJ manner to the public. As the concept of RJ becomes familiar, the issue rolls over to the concept of settling TPK cases with a relatively small amount of minor losses.[25]

In general, the UUTPK does not make a distinction between TPK with the large nation losses and small nation losses, except in Article 2 paragraph (2) there is a death penalty if there is any corruption, in Article 2 paragraph (1) is carried out under certain circumstances and in base on Article 12A bribery offenses can be lightened if the corruption is less than five million rupiahs.[26]

However, according to the UUTPK, all acts that meet the formulation of offenses in the UUTPK are extraordinary crimes or serious crimes. This implies that no matter how much a person is corrupted, it is formally a serious crime. The criminal threat that can be imposed remains the same, for example for Article 2 paragraph (1) of the UUTPK a minimum prison sentence of 4 (four) years and a maximum of 20 (twenty) years. Even according to Article 4, the return of state financial losses or the proceeds of corruption crimes to the state does not eliminate the punishment of perpetrators.[27]

Today punishment system for criminals is experiencing a paradigm shift towards a restorative justice approach where previously the criminal system was more focused on retaliation and lashing against perpetrators of criminal acts. This punishment system involves active action from the perpetrators and victims in the settlement of criminal cases as well as the involvement of the families of the perpetrators or victims

and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation.[28]

The sign for a change in the concept of humanistic punishment in the form of RJ has been formulated in legislation, including Article 5 paragraph (1) of Law (UU) Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and other laws and regulations relating to the handling of children. Facing the Law (ABH) where the settlement of cases prioritizes peace rather than the legal process - *ultimum remedium* - the Juvenile Criminal Justice System must prioritize a restorative justice approach.[29]

The Supreme Court (MA) issued Supreme Court Regulation (PERMA) Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Justice System (PPA), even before that a Government Regulation was issued which was a derivative of the UUSPPA. In addition, Law Number 39 of 2009 concerning Narcotics also there is a concept that does not prioritize "imprisonment" for narcotics users in a limited number through a "rehabilitation" process.[30]

The purpose of corruption eradication in Indonesia is the return of national losses. However, the retributive justice paradigm which becomes the basis for eradicating and criminalizing corruption is not relevant to the main objective of corruption eradication law in Indonesia, because it is not a principal crime. So, a new paradigm is needed in the application of criminal sanctions, where the return of assets must be the main goal of criminalizing economic crimes, especially corruption.[31]

Eradication of criminal acts of corruption in various countries is based on the spirit to save state assets optimally although by applying different methods. Therefore, the law on corruption eradication must be designed in such a way that it can facilitate comprehensive and systematic efforts to eradicate corruption to achieve these objectives. The norms for eradicating corruption must be created and compiled with strong and appropriate foundations in representing that goal, both from a philosophical point of view and the theories used.[32]

Optimizing the return of the nation's financial losses is also the basis for the formulation of punishment for corporate corruption perpetrators. However, in practice, there are problems in the effort to recover state financial losses through criminalizing corporate corruption actors both from the aspect of substance, structure, and also legal culture.[33]

The Nigerian criminal justice system and the function of the EFCC are to combat and prevent crime in the economic sector including corruption, but plea bargaining by the EFCC in corruption crimes will not be effective and will create a deterrent effect, so it must be prevented because it has the effect of increasing corruption because there is no deterrent effect. plea bargaining is only suitable for the settlement of minor crimes.[34]

Article 4 of the law's existence on eradicating corruption, which is imbued with the retributive justice paradigm, certainly shows that eradicating corruption in Indonesia does not lead to the main focus, such as saving state finances. Moreover, in several cases, it has been described that the types of fines contained in the formulation of the articles contained in the corruption eradication law are no longer commensurate with the amounts of losses suffered by the nation due to the corruption itself.[35]

Through the United Nations Convention Against Corruption (UNCAC) which was signed by 133 countries, the United Nations urges its member countries to immediately respond to the presence of this convention, especially in the context of returning the nation's asset (asset recovery). The strengthening returning nation losses concept by

the corruptor can immediately recover the losses due to criminal acts, it can also realize other sentencing objectives and also can provide a different sentence to give deterrent effect and improve the attitude of the corruptor.[36]

Agus Rusanto said that punishment such as imprisonment is no longer relevant for eradicating corruption because focusing on assets protection or national assets is more important the existence of corruptors destroys the mental of many law enforcers and it can create a new corruption crime. The convicts of corruption cases instead use the proceeds of corruption to bribe correctional officers to get luxurious facilities while they are serving their sentence.[37]

The punitive approach in sentencing creates a lot of negativities (Negative excess) inside the justice system, where the revocation independence punishment – imprisonment – has an impact on dehumanization, imprisonment, and stigmatization. The nature of corrupt crime harmed the nation's finances in the name of corporate benefit, for law enforcement should give priority to recovering the nation's financial losses. One solution and its implementation is to starting reconsidered to optimizing the return of nation losses caused by corruption which is the perpetrator of the corporation is a restorative justice approach.[38]

The restorative justice approach already adopted by international legal instruments and used as a solution to overcome the weaknesses of the retributive justice approach implicitly in Article 26 Liability of Legal Persons United Nations Convention Against Corruption (UNCAC) in 2003 which opens the possibility of corporate responsibility for not being in the form of criminal sanctions but also effective and proportionate non-criminal sanctions can be applied.[39]

Elwi Danil, Hasbullah F Sjawie referred in Budi Suhariyanto stated that corporations as a law subject commit a crime and can be suey on responsibility and sentences processed by the management or employees of the corporation which are still within their authority place, and intra vires, in other word that they are still within the objectives and purpose of the corporation, and the act was carried out for the benefit of the corporation.[40]

The authority of the Corruption Eradication Commission (KPK) which has a few special authorities to eradicate the corruption crime yet there is still no corporation case handled by KPK and never done the investigation and suey toward the corporation subject law. Whether inside conventional criminal justice and corruption system still having a problem to sue a corporation as a law subject.[41]

The corporation's placement as a subject of criminal crime does not regulate when the corporations commit a criminal crime and how corporations are accountable by criminal punishment cannot go too well. For example, there is a weakness inside the legislation policy toward corporation criminal punishment, such as there is no special provision on criminal punishment for corporations that are only threatened by imprisonment, and there is no regulation about substitute punishment if the fine is not paid by the corporation. These weaknesses in the context of criminal law reform, must be renewed.[42]

There are a few solutions on the default settings described above, to reduce corporation criminal acts related to corruption is already existed and enforced since the promulgation of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. For instance, related to points B and C. Some

policies already formulated space about corporations that confirmed as a group of people and organized wealth whether corporation or non-corporation (vide Article 1 point 1).[43]

Some indications directly to the nature of using criminal law as a "*premium remedium*" above is confirmed the paradigm belief is retributive justice. In its development, both in terms of the judicial review fulfillment related to the nature of material violations by the Constitutional Court and the practice of law enforcement that does not heed the provisions of the specific minimum criminal threat as well as the addition of the latest regulation in the form of UNCAC ratification, it has shifted the important joints to sue the construction of the following premium medium. the retributive justice paradigm that exists in the law on eradicating corruption.[44]

The decision of the Constitutional Court No.003/PUU-IV/2006 dated July 25, 2006, regarding the judicial review of the explanation of Article 2 paragraph 1 of Law No. 31 of 1999 Jo. Law No. 20 of 2001 About the Eradication of Criminal Acts of Corruption decides that "what is meant by against the law in a formal and also as in a material, which is even though the act is not regulated in the legislation, but if the act is considered despicable because it is not by the sense of justice or the norms of community life, the act can be punished "contrary to the 1945 Constitution of the Republic of Indonesia and declared not to have binding legal force.[45]

It means that the term against the law is supposed to be used to prove corruption crime is only limited to the term against formal law. Inside the norm constitutional context, a widened policy to oppose material law that is one of the "special icon" retributive justice on corruption eradication was being aborted.[46]

Muladi and Diah Sulistyani referred in Budi Suhariyanto stated that in the application of policy-specific criminal minimum punishment, inside its practice, some of the judges in the courts (including the Supreme Court) on making a punishment decision break through and do not heed these special minimum criminal limits. The reason justice, especially social justice and moral justice gives a decision under the limit of specific minimum punishment becomes a law consideration from the judge's decision. The most basic criteria on that decision breakthrough related to elements of nation economy losses or nation economic because of the corruptor.[47]

Indeed, corruption is on all levels, but the context that must be understood is the small scale of corruption, where the person does not realize that they committed a criminal act which is categorized as an extra-ordinary crime, that it's better for the judge that facing a small scale of corruption with nominal under five million Rupiah, it's suggest that the formal policy about minimum punishment or can be breakthrough, and make a decision or in any other crimes that orientated propose on punishing which tend to be integration that contains element of humanity, educative and justice. In terms of this context, as practical, the judge indirectly gave a valuation toward the retributive justice paradigm which contains the spirit to decide minimum punishment for special criminals in the corruption eradication law.[48]

For the time being, relating to updating the regulation of corruption eradication which indicates updating the nature of corruptor law punishment that related to corporation as the subject, focusing from UNCAC ratified by Law Number 7 of 2006. In Article 4 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 about Eradication of Criminal Acts of Corruption stated that the return of a nation's financial losses or the nation's economy does not eliminate the punishment of criminal acts as referred to in Article 2

and Article 3. Elucidation of Article 4 states that the return of the nation's financial losses or the nation's economy is only one of the lightening factors. In this context, the nature of criminal law, which is *premium remedium,* is adopted so that it does not allow punishment besides the criminal law can be used to replace criminal punishment against corporate corruption perpetrators.[49]

The small amount of returning the nation's financial losses from corruption then the seizing basis asset without punishment – non-conviction (NCB) – existed as a tool of seizing alternative, supported by Independent Institute – UNCAC, FATF, OECD, UE, etc. This has already been applied in many developed and developing countries, with varied success rates. The NCB asset seizing gives an effective way to seize on the situation where it is not possible to get a crime punishment- Is the convicted dies, no information, missing, or immune from prosecution, or in cases where the statute of limitations prevents prosecution. Independent institution is key to avoiding political intervention in investigating and seizing process of NCB must be legal and proportional, and the process must ensure the process of right law and fair trial.[50]

The restorative justice approach to corruption eradication is still addressed as controversial because considered that restorative justice is only applied to factual victims (individuals) or a group of people and cannot be enforced toward criminal acts where the victim is a nation or the national development interests so that it is impossible to mediate.[51]

Alkostar referred in Budi Suhariyanto that in corruption, impossible to mediate penal because the victim of corruption spreads in society where many of their social economy rights are taken by corruptors. Different statement from Alkostar, Marwan stated that restorative justice can be used in corruption, which differs from restorative justice toward general criminal that must involve the victim side, criminal, and society, related to corruption problem focuses on the return of nation losses.[52]

The problem of returning the nation's losses through crime punishment of individuals and also corporations in corruption is optimizing returning nation losses by using a restorative justice approach. The premium remedium principle is being evaluated into ultimatum remedium and hoped that corporations become corporative returning the nation's losses which is corruption with the choice of using non-criminal punishment and the non-processing of criminal justice. In addition to the existence of constraints on asset confiscation regulations as a suggestion. The idea development of basic crime punishment also happened in dynamic law in Indonesia. Until now, our national criminal law is in the throes of seeking a new form, constantly trying to release its colonial culture.[53]

This development is not separated from society development with the fast pace, also the ideology influence from a nation. The development regarding punishment is the basic purpose of punishment. Until now there are known as 4 (four) theories about the punishment purpose, such as retribution, precaution, incompetence, and rehabilitate theories. Now, there is no belief in the purpose of classic retaliation, in the sense that a criminal is a must for mere justice. Today retaliation theory is a theory that proposes retaliation in a modern way.[54]

So, believers such as Van Bammelen, Pomple, and Enschede, stated that retaliation is not the sole purpose, moreover as a restriction, in another mean, there must be a balance between action and criminal. Modern criminal punishment, aims at rational things, with many alternatives to use the punishment, so the Judge is given the

freedom to choose what type of fair and humane sentences, even above the certainty of law. Although known, the court decision was still much influenced by economic culture, which grew in the pragmatism environment around the court.[55]

As a transnational crime, asset recovery needs strong and limitless international cooperation – the result of crime is kept in different countries, while the corruptor enjoys the wealth from unlimited corruption- Bacarese referred in M. Idris Sihite, M. Mustofa stated that the transfer money from money laundry in the global financial system with ease and obtain the legal asset in European Union and across the globe. So, some policies are a must in order asset to recover from corruption whether through investigation, freezing, and returning to the nation's money supply to recover the financial losses due to corruption- and also to give a deterrent effect toward the corruptor and the future of corruptor.[56]

By policy arranging mutual legal assistance in UNCAC, the asset returning attempt that exists outside the victim nation's jurisdiction is through the aid of the law of reciprocity. If the wealth is from corruption that is located in another country, the victim country can ask for cooperation with the volunteer country to do a process of returning that asset - Article 46 of UNCAC, where the volunteer country of assets must assist the victim country in the process of returning assets.[57]

Diversion in restorative justice idea was first used in child crime in purpose to avoid the child from stigmatism process – The restorative paradigm is a view change of law enforcement officers in the norm of criminal punishment – from norm violation that causes losses, switch to the individual affected by crime; from punishment and tribulation, switch to losses restoration. Viewing from the solution aspect of variated conflicts, the important element of restorative justice definition is maintaining reconciliation from retaliation.[58]

It is expected that applying this restorative justice will bring essential justice to all people and in the long term cause social fairness. A pillar of restorative justice is social justice, which is a value of social justice for all Indonesian people. If restorative justice is a justice that prospered the people. Social justice can be realized through Economic Analysis of Law, which is an efficient on solving law problems. In the context of giving punishment, then it must be with economic rationalization not only based on norm and action rationalizations.[59]

The approach of the economy in law is not only concerned about fees but also the effectiveness- the presence of a deterrent effect - can produce an optimal impact. The economy micro principle, states that the price will rise if the demand continuously increases, the same as if we connect to the economic punishment will show that the increase of criminal crime makes punishment or law enforcement become a main economic activity that uses a lot of funds.[60]

Tens of trillions of rupiah are used to fund law enforcement activities in the Police, the Attorney General's Office, the Supreme Court (MA), and the Directorate General of Corrections (Ditjenpas). Therefore, the criminal policy is being analyzed economically so that limited resources are used to achieve maximum results (efficiency) – ceteris paribus – other influencing factors are ignored.[61]

Social justice is the basis of Pancasila, and that is contextualized by all law enforcement officers and Indonesian people. Social justice contextualization is orientated toward creating the prosperity of people. The economic approach to doing

legal acts can be one of the instruments to create social justice. Judicial power practice held by national judicial institutions. As for the main task of judicial institutions especially in the field of judicial tasks, such as investigating, judging, deciding, and finishing all problems proposed by justice-seeking society.[62]

The justice-seeking (Justiciabelen) is very hoped that the problem already proposed to the court can be decided by professional judges who have high moral integrity, so can create decisions that not only contain aspects of legal certainty (procedural justice), but also dimension on legal, moral, and social justices. Justice is the main purpose that intends to be achieved in finishing the process of dispute in court.[63]

The effort to stop any type of corruption is only effective if the corruptor is found and punished and the result and instrument of the crime are kept and taken by the nation. In Indonesia, some crime policies are already set about the possibility of keeping and taking corrupt assets and criminal instruments. However, according to some policies, the corruptor's wealth taken can only be done after the corruptor is found legally guilty in court and ensured that they have done corruption, the mechanism possibility that can be given a punishment. Some problems make the corruptor cannot follow the inspection in court or lack enough proof to file a lawsuit in court and for other reasons.[64]

Some policies of corruption that still apply also create a few problems. The existence of substitution from the obligation of paying replacement funds with corporal imprisonment for a length of time that does not exceed the maximum penalty of the principal criminal sentence creates opportunities for corrupt actors to choose to extend the term of corporal punishment rather than having to pay compensation.[65]

The paradigm error about fund replacement in corruption only addressed the corruption, even though it is biased if the corruptor is changing their asset status is controlled by third parties through money laundry - Article 18 of Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Criminal Acts of Corruption – Another method for suspects to hide assets resulting from corruption is usually by using relatives, close relatives, or confidants.[66]

A.A. Oka Mahendra said that corruption eradication with conventional ways is very hard to do. Corruption, whether on a small scale, moreover on a large scale done secretly, or concealed, involves many people with strong solidarity to protect and conceal the TIPIKOR through law manipulation. The wealth of the corruptor often being transferred to other nations as an anticipation action and to fog out the wealth of the corruptor.[67]

Other difficulty to maximize the returning of corruptor wealth to nation is because *Tipikor* laws already limit the replacement that can be imposed is the same as the money obtained from corruption or the amount that can be proven in court. Furthermore, the obstacle in law paradigm of *Tipikor* eradication, the effort for returning nation money also being block by corruption characteristic which very detail in proving and take a long time. On the other side, the effort from the corruptor hiding their wealth from corruption already done since the corruption began. Average of time from 2 until 3 years to finish a corruption case give a lot of time window for the corruptor to disappearing their wealth from corruption.[68]

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The difficulty of tracing wealth from corruption (asset tracing) increases if the corruptor already transferred their asset to another country. Learning from another country that tries to reclaim the corrupt wealth from their former president, takes a long time and serious effort, whether on a domestic and also international scale. Peru during the ten-year reign of Alberto Fujimori, already embezzled the nation's assets for the amount of USD two-billions. Start from asset tracing for at least five years. The new Peru Government succeeded in getting back Alberto Fujimori's assets for the amount of USD 180 million. [70]

The history of seizing corrupt assets in Indonesia still has not yet had any significant result. The assets that were taken to another country for example like Edy Tansil case, Global Bank, BLBI case, and other cases, until this day the law enforcer is having difficulty doing tracing and seizing.[71]

The obstacle is not only because the law set that still weak, but also because still does not yet have a set of laws that arrange cooperation with other countries to seize the corruptor's wealth. Some crimes or law violations cannot be sued by using the crime provision. For example, this day the act against material law which causes the nation losses cannot be sued by the provision of corruption law.[72]

In the last years, law development in the international world shows that keeping and seizing corruption results and crime instruments become an important part of reducing criminal acts remembering that criminal act and found the person, keeping, and seizing corruption assets and criminal instruments become a vital part of the investigation and suing the crime, to strengthen existing criminal provisions, some countries have adopted provisions derived from civil provisions for the return of criminal proceeds to prosecute the 18 Civil prosecutions can be carried out separately from criminal prosecution efforts against perpetrators of criminal acts. Based on existing experience, the application of this approach in several countries has proven to be effective in terms of increasing the value of the proceeds of criminal acts that can be seized.[73]

In regulations related to corruption punishment is not only imprisonment but also related to returning the nation's asset that being corrupted and this term where free sanctions of corruptor do not release to demand compensation as well as if the suspect dies, the compensation is addressed to the heirs of the suspect – Article 32 Paragraph 2, Article 33 and Article 34 of Law Number 31 of 1999.[74]

In terms of asset recovery optimization on corruption can be done by keeping the asset if the corruptor cannot prove where they got the asset and if someday find out that the asset is from corruption but does not seize for the nation, the nation can make a crime lawsuit to the corruptor and their heir. The filing of this lawsuit can be done by appointing a power of attorney to represent the nation. The power of attorney is not limited only to the State Attorney but can be appointed as a proxy other than the State Attorney. The provisions of Article 38 letter c of Law no. 20 of 2001.[75]

Handling corruption is often constrained because there is power, so the official corruptor who is corrupt is chased when they already retired whereas the corrupt former official usually has time to hide their corruption asset and try to protect themselves from their responsibility by achieving immunity from prosecution or escaping. Some juridical does not allow in doing assets keeping and seizing except based on criminal act, which of course is not possible if the corruptor official cannot be sued.[76]

The juridical admits that there are a lot of obstacles to asset recovery that can be handled through adopting and using the seizing law based on non-conviction (NCB). The NCB keeping which is called "civil seizing" in some countries, is an act not against the individual, but against the property itself. Because it's against the properties, NCB-keeping action does not depend on criminal punishment and can be done even if the corruptor official is already dead, and become a wanted poster, already being freed from related crime, law immunity, or enjoying the effect of politics created a prosecution become impossible.[77]

Most NCB laws require greater evidence or a balance of probabilities whereas criminal seizing laws require individual convictions, usually to a higher "standard beyond doubt", although in some countries more evidence is lower. The standard governs the foreclosure phase of the criminal process after the guilt is proven by a higher standard. Besides adopting NCB laws, other stated barriers to asset recovery can be overcome through the enactment and implementation of effective, comprehensive, and flexible mutual legal assistance laws that provide for the enforcement of foreign restraining orders and final foreclosure assessments. Corrupt officials often launder their illicit proceeds to places outside their jurisdiction.[78]

Prosecution and recovery of national assets created by trial decisions are still not effective where the Corruption Eradication Commission still does not optimize the process of returning national assets losses. In terms of returning the nation's assets losses (asset recovery) that are sourced from revenue from the auction of keeping and seizing assets from corruption and money laundering (TPPU) cases are very large, but the trend continues to decline - asset recovery data from 2016 to 2020.[79]

It is necessary to improve the judiciary in deciding cases to cover losses state as a result of corruption, then for two sufficient perspectives, it is necessary to improve the quality of corruption prosecution, and the efficiency of corruption action, and efficiency. time and cost of handling cases, the implementation of IT in handling cases, and the quality of human resources in improving the quality of asset returns. Optimizing the application of regulations that are applied, especially in determining penalties and fines obtained by suspects, both materially and socially covering state losses, and increasing the capacity and ability of Corruption Eradication Commission personnel such as forensic accounting to improve recovery of state losses due to corruption.[80]

The status of the suspected assets that exist and are controlled by a third party suspected of being the result of corruption committed by the convict. The filing of a lawsuit against another party for possessing property resulting from corruption is based on the provisions of Article 37A. That policy obligated the defendant to give an explanation about all of their assets property of the wife or husband, children, and property of any person or corporation suspected of having a relationship with the case that is being charged. This is to show that there is a possibility the suspected does not want to give their corrupt assets to the other parties. [81]

Due to that, the lawsuit being addressed must have a decision from permanent law related to seizing assets that are regulated in Article 37A of Law no. 20 of 2001, and in the case of corruption that causes substantial financial losses to the State, the suspect must keep, transfer, and use the proceeds of corruption so that it is not known to other parties. This effort is categorized as a money laundering crime so in investigating corruption, facts must always be sought about the flow or use of money for keeping. In addition, if there is a suspect's property which is estimated to be unreasonable when compared to the suspect's income, it can also be kept based on a money laundering crime.[82]

In corruption eradication especially in enforcement field, should not only punish the accused after being declared proven by a court that has obtained permanent legal force, but still have an effort to returning and saving the national assets losses must become prioritised during investigating phase. According on the Technical Instructions (JUKNIS) of the Attorney General of the Republic of Indonesia Number: B-116/A/JA/07/2015 dated 31 July 2015 about saving nation assets in handling and finishing corruption, it will be given a sign so the investigators give their maximal effort to obtain data or fact about the convicted assets and fund to other people that obtained through corruption or the thing that does not related to corruption, but keeping act that done by investigator that does not relate to corruption that only done by blocking so the asset can be kept in the execution phase if the convicted cannot pay the replacement money which burden toward them.[83]

The seizing of assets in the investigation phase as proof, according to the facts of the trial that the assets are from corruption, then the sue seized for the nation and calculated as a replacement fund payment burdened by the convict. This effort can be made if the investigation phase, the investigator must investigate and search the convicted asset before trying to transfer it to other people. This can make an easy effort to execute, so with the completion of the handling of cases of criminal acts of corruption, there are no longer PNBP arrears regarding replacement money. If the convicted still does not pay the replacement money or during the investigation does not have to obtain the seized assets of the convicted that seized as proof, then after the decision to obtain permanent legal power, the Executing Prosecutor is obliged to carry out a continuous search for the property of the convict.[84]

Based on the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2014 concerning the Additional Penalty of Compensation in a criminal act of corruption, which is used as the basis for the Technical Instructions, which states that if the convict has not paid off the replacement money charged to them, they are allowed to pay it off both after serving the principal sentence and after serving the principal sentence. while serving a prison sentence instead of replacement money. The payment is still considered to reduce imprisonment instead of replacement money.[85]

In this calculation, KAJARI issued a Letter of Determination of a Substitute Prison sentence that the convict must undergo. Corruption as a one of extra-ordinary crime has not only become a national problem but also a global one that is systematized and organized involving intellectual, and stakeholder actors also involving law enforcers, and has a destructive effect on a wide scale. This characteristic makes corruption eradication difficult if only depending on normal law enforcers, moreover, corruption already spread and is contagious the all aspects and society. The effort of precaution

and eradication of corruption has not only become a local problem in a specific nation but has also already become a transnational phenomenon that requires international cooperation.[86]

The recovery mechanism of national asset losses is a complex process and multidiscipline – criminal, civil, and any other laws – to return and recover the national losses that were purposely passed and hidden to conceal asset status from the result of the crime so makes an obstacle for recovery effort of nation assets losses: whether aspect of terminology, procedural or structural differences about delegation tasking can complicate the collaborative effort. To face that challenge, the investigator must approach the case flexibly and orientated toward the result focusing on a narrow purpose and incremental, with the main goal is to securing and returning the nation's asset losses, law enforcer must do a tracing, freezing, seizing, and returning efforts – the result of corruption, as a source of Non-Tax State Revenue PNBP.[87]

The Substance of Article 14 UNCAC related to strategy to combat a money laundry must be done not only the duty of law enforcer but also involve all sides especially the international world because corruption is a trans-nation crime so the process of returning the asset from corruption can be maximization to cover the nation losses. PPATK as FIU can help return the asset, especially in the process of investigating assets for corruption. Next, according to the result of the investigation into corruption assets can be done a keeping and seizing, even passing the asset, whether national and also international. Indonesia already has a basic law that allows to do international cooperation, not only exchanging information, but also mutual legal assistance which includes keeping and asset passing in the effort or returning the asset (asset recovery) for the importance of infrastructure and economic strengthening of the nation.[88]

CONCLUSION

The conclusion, it needs a mechanism or the newest law and also the changing of paradigm in punishment so the purpose of asset recovery can be maximalise obtained where the seizing asset is no longer an extra punishment but a main, however, it needs a clear law for the future that prevail implementation of asset keeping as premium remedium and prison punishment as ultimum remedium. The recovery of national assets through assets seizing of the corruptor as a main crime punishment must be considered in forming a regulation for the future. The process of removing the property rights of perpetrators from the state as victims through confiscation, freezing, and confiscation in local, regional, and international competencies so that these assets can be returned to the legitimate state is known as the return of national assets. compensation for the proceeds of corruption (victims). This policy hoped can become a law innovation toward national asset recovery, with the form of handling Corruption Crime Cases that focus on efforts to restore national assets as a whole, because the seizing punishment for corruptors is the most effective way to reduce corruption cases in Indonesia, because naturally, human is economics creature that always for and loss so that the externality of confiscation of the defendant's assets and also the social sanctions can reduce the level of corruption crimes as well as the recovery of nation losses due to corruption is achieved compared to the prison sentence approach. Seizing with unable to sued - confiscation non-conviction based (NCB) – already exists as a medium for effective alternative seizing in situations where it is impossible to get a criminal sentence – if the convicted is dead, with no information, disappeared, or is immune on sue, or in the case where statute of limitations prevents sue.

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