









LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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**ASSET FORFEITURE MECHANISM AS AN ADDITIONAL PUNISHMENT IN
ORDER TO RECOVER STATE LOSSES IN CORRUPTION CASES**

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ABSTRACT

This research aims to analyze the mechanism for applying additional punishment in the form of restitution in recovering state losses and to examine the effectiveness of asset forfeiture in the process of recovering state finances due to corruption. This research uses a normative-empirical legal approach method, with data obtained through document studies, laws and regulations, as well as interviews with prosecutors, judges, and auditors in the West Nusa Tenggara region. The results show that the additional penalty of restitution as stipulated in Article 18 of the Corruption Crime Law has the main objective of restoring state finances, but its application still faces obstacles, including discrepancies in perceptions regarding the institution authorized to calculate state losses (BPK, BPKP, or independent auditors), as well as limited law enforcement resources. Case studies such as the Po Suwandi case in the BRI KUR program show the challenges in optimally enforcing additional punishment. Meanwhile, asset forfeiture without conviction as stipulated in the Anti-Money Laundering Law and Asset Forfeiture Bill has not been effectively implemented due to the absence of supporting regulations and integrated technical guidelines. In fact, this mechanism is important to overcome cases when the perpetrator cannot be tried due to death or disappearance. This study recommends strengthening the legal and institutional framework, immediate ratification of the Asset Forfeiture Bill, and increasing synergy between law enforcement officials in an effort to optimize the return of state losses as part of the additional criminal objectives in combating corruption.

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1. INTRODUCTION

Corruption in Indonesia has become a serious problem that continues to grow and cause huge losses to state finances. As Mulyono stated, corruption not only harms the country's finances or economy but also hampers national development (Mulyono, 2023). The high rate of corruption has prompted more intensive eradication efforts, such as the establishment of the Corruption Eradication Commission (KPK) and the passing of Law No. 31/1999 on the Eradication of Corruption, which was later amended through Law No. 20/2001. This law regulates corruption crimes that result in state financial losses, by providing updates in special arrangements that include procedural law and materials aimed at minimizing leaks and irregularities that can harm the state's finances and economy. The crime of corruption itself is part of the special criminal law (*ius singulare*, *ius speciale* or *bijzonder strafrecht*) in Indonesia's positive legal provisions, which distinguishes it from the general criminal law through characteristics designed to provide stricter and more effective handling of corruption (Dharmawan, 2004).

The crime of corruption is one of the most common crimes committed by power holders who abuse their authority. This crime is not only committed by the government (*executive*), but also by individuals in the legislative, judicial and private institutions. Many people commit corruption because they want to benefit themselves, their families and relatives (Rodliyah & Salim, 2019).

This crime, which is classified as an *extraordinary crime*, not only causes huge losses to state finances, but is also one of the crimes with the most severe punishment compared to other types of corruption. As stated by Helmi, corruption in Indonesia is often likened to an iceberg in the middle of the ocean, only a little of which can be seen, namely the peak, while the invisible part is the largest part of the existing reality (Helmi, 2021). This is of course in line with the function of State finances is to finance State

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activities whose purpose is to prosper the people, besides that one of the sources of State finances is from tax contributions from the people. To prosecute the perpetrators of corruption called corruptors, there must be an element of financial or economic loss to the State that must be proven as explained in Article 2 and Article 3 of the Corruption Eradication Law which reads:

Article 2:

"Every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm the State's finances or the State's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

Article 3:

"Every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position which may harm the State finances or the State economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

In addition to the main punishment as stipulated in Articles 2 and 3, the Anti-Corruption Law also regulates additional punishment as stipulated in Article 18. Article 18 of the Anti-Corruption Law regulates that additional punishment can be in the form of:

Article 18

Paragraph (1)

- a. Forfeiture of tangible or intangible movable property or immovable property used for or obtained from corruption offenses, including companies owned by convicted persons where corruption offenses were committed;
- b. Payment of restitution in an amount equal to the property obtained from the crime of corruption;
- c. Closure of all or part of the company for a maximum period of 1 (one) year;

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- d. Revocation of all or part of certain rights or removal of all or part of certain benefits that have been or may be granted by the Government to the convicted person.

Paragraph (2)

"If the convicted person does not pay the restitution as referred to in paragraph (1) letter b at the latest within 1 (one) month after the court decision that has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the restitution."

Paragraph (3)

"In the event that the convicted person does not have sufficient assets to pay the restitution as referred to in paragraph (1) letter b, then he/she shall be punished with imprisonment which shall not exceed the maximum punishment of the principal punishment in accordance with the provisions of this law and the length of such punishment has been determined in the court decision."

This additional criminal provision has an important role in efforts to recover state losses due to corruption. Bambang Sugeng Rukmono emphasized that the effectiveness of additional punishment in the form of restitution of state losses must be a major concern in the Indonesian legal system, not only to take action against the perpetrators but also to recover state finances that have been harmed (Rukmono, Suwadi, & Islam, 2024). Especially the provisions regarding the payment of restitution which aim to recover state financial losses to an amount equivalent to the proceeds of corruption enjoyed by the convicted person.

In the context of eradicating corruption, calculating and proving the existence of state financial losses is very important. Not only to ensnare the perpetrators of corruption but also an effort to recover state financial losses from the actions of the perpetrators of corruption. One of the prominent issues is the effectiveness of the application of additional punishment, especially the return of state losses as an effort to recover state finances that have been harmed. Additional punishment such as payment of restitution is expected to not only be able to provide a *deterrence effect* to the

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perpetrators, but also ensure that the state regains its rights that have been deprived by corrupt acts.

Financial returns from the proceeds of corruption have become a norm in their own right, with the legal principle emphasizing that perpetrators of corruption should not benefit from their actions. In the context of the offense committed, the confiscation of assets resulting from corruption can be used to restore damage, repair negative impacts on the economy, and improve the welfare of affected communities.

Assets that can be forfeited include:

- a. Wealth obtained from corrupt activities or businesses.
- b. Wealth derived from the management of corruption proceeds.
- c. Wealth generated from corrupt acts that provide benefits through the submission of false information, misleading, omitting, tampering with information, or providing false information.

The return of state financial losses is a consequence of the consequences of corruption crimes committed by corruptors that harm the state. I Gede Eka Sumahendra argues that there is a need for regulatory clarity regarding criminal liability for beneficial owners in corporations to prevent a legal vacuum that can be utilized for money laundering (Sumahendra, Amrullah, & Tanuwijaya, 2024). To restore the loss, juridical means are needed, namely additional punishment in the form of payment of restitution.

Restitution as a form of additional punishment in corruption cases must be interpreted as part of the sanctions against perpetrators of corruption. The goal is not only to recover state financial losses, but also to create a deterrent effect for the perpetrators. As one type of additional punishment, restitution in corruption cases is basically not always required to be imposed by judges, both according to law and doctrine. However, in corruption cases, this becomes very important to note. This is due to the nature of corruption that violates the law and harms, or has the potential to harm,

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state finances, so that these losses must be returned or recovered (Atmoko & Syauket, 2022).

The application of restitution as one of the instruments of criminal liability for convicted corruption and money laundering is essential where the purpose of implementing this is to maximize the return of state losses which actually has the same principle, namely asset recovery (Rozah, Baskoro, & Fauzi, 2016). The return of state losses from corruption through restitution is one of the important efforts in eradicating corruption. However, recovering state losses is not easy because corruption is an *extraordinary crime* whose perpetrators come from intellectuals and have important positions, and there are also issues related to whether it is effective or not if it is found that the restitution does not match or is less than the amount of state losses suffered.

Concrete examples that illustrate the challenges of recovering state losses can be seen in several corruption cases that occurred in the West Nusa Tenggara region. The first case was decided by the Mataram District Court Number 17/Pid.Sus-TPK/2023/PN Mtr on January 5, 2024. In this case, the defendant PO SUWANDI was proven legally and convincingly guilty of committing a criminal act of corruption as regulated in Article 2 paragraph (1) jo. Article 18 of the Anti-Corruption Law jo. Article 55 paragraph (1) to 1 of the Criminal Code.

Based on the results of the examination at trial, the defendant PO SUWANDI as Director of PT Anugrah Mitra Graha (PT AMG) was proven to have committed illegal acts in the management of iron sand mining in East Lombok Regency. According to the audit results of the NTB Financial and Development Supervisory Agency (BPKP), the total state financial losses reached Rp 36.4 billion, of which Rp 17,729,640,333 was charged to the defendant PO SUWANDI (Wathoni & Cahaya, 2024).

After going through the trial process, the Panel of Judges sentenced the defendant to 13 years imprisonment and a fine of Rp 500,000,000 (five hundred million rupiah) in lieu of 6 (six) months imprisonment. In addition to the main punishment, the defendant

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was also sentenced to additional punishment in accordance with Article 18 of the Anti-Corruption Law in the form of an obligation to pay restitution of Rp 17,729,640,333. Of the total state losses, only Rp 800,000,000 (eight hundred million rupiah) has been returned, which has been confiscated to be deposited into the state treasury.

The decision has been upheld at the appeal level through the Mataram High Court Decision Number 2/PID.TPK/2024/PT MTR dated March 5, 2024 and at the cassation level through the Supreme Court Decision Number 4960 K/Pid.Sus/2024 dated August 28, 2024. In the latest development, as conveyed by East Lombok Kajari Hendro Wasisto, because the convict was unable to pay the restitution within one month after the decision was legally binding, the prosecutor's office has confiscated assets in the form of one plot of land and buildings in Ekas Buana Village, Jerowaru District, which are currently in the process of being valued for auction.

Similar problems were also seen in a case decided by the Corruption Court at the Mataram District Court on February 12, 2025 (Decision Number 34/Pid.Sus-TPK/2024/PN Mtr). In this case, two defendants, namely Samudya Aria Kusuma as the former Head of BRI Unit Kebon Roek and Sahabudin as Mantri BRI Unit Kebon Roek, were proven to have committed corruption in the distribution of People's Business Credit (KUR) in 2020-2021 which resulted in state losses of Rp 2.23 billion (Rosyid, 2025).

The panel of judges chaired by Irlina sentenced the two defendants to 4 years in prison each. In addition, both were also fined Rp 300 million in lieu of 4 months imprisonment. In terms of additional punishment, Samudya Aria Kusuma is required to pay restitution of Rp 86 million, while Sahabudin is required to pay restitution of Rp 35 million. Of the restitution, Rp 86 million was confiscated from Samudya and Rp 35 million (consisting of Rp 6 million and Rp 29 million) from Sahabudin, which has been returned to the state. This case also involved a DPO named Ida Ayu Wayan Kartika who was declared as the party who enjoyed most of the state financial losses.

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These two cases show the weak effectiveness of additional punishment in returning state losses. Although the decision has provided a grace period and the threat of substitute punishment, in practice the return of state losses remains difficult to fully realize. This can be seen from the significant gap between the total state losses and the amount that has been returned.

This situation shows that a more effective mechanism is needed in recovering state losses, not only relying on the willingness or ability of convicts, but also through strengthening the system of tracking and seizing assets resulting from corruption. These cases also show the importance of inter-agency coordination in efforts to recover state losses, given the large value of losses that must be recovered.

However, in its application, the provision of additional punishment in the form of restitution still faces a number of problems, one of which is the issue of jurisprudence that lacks norms that regulate in detail the mechanism of calculation and execution of state compensation. The Corruption Crime Law (Corruption Crime Law) has indeed regulated the additional punishment of restitution, but in practice there is often uncertainty in calculating the amount of state losses that must be returned by the defendant, especially in corruption cases that are complex and involve various parties. This norm vacuum causes disparity in court decisions regarding the amount of restitution, as well as legal loopholes that can be utilized by defendants to avoid this obligation. As a result, state money that has been corrupted is difficult to fully recover.

In major corruption cases such as this, the verdict should be able to provide the maximum deterrent effect, both for the perpetrators and for other potential perpetrators. Setya Novanto, who throughout the legal process showed an uncooperative attitude and attempted to evade the law in various ways, should receive a more severe sentence, such as life imprisonment. With a harsher punishment and a clearer mechanism to recover state losses, it is hoped that this will serve as a lesson for other public officials not to commit similar acts. Otherwise, there will be concerns that lenient sentences and

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unclear state reimbursement rules will set a bad precedent that further weakens efforts to eradicate corruption in Indonesia.

This case also reflects the need to strengthen the legal system in handling complex corruption cases, especially in terms of recovering state losses. The lacuna of norms in the calculation and execution mechanism of additional compensation must be addressed immediately with more detailed and strict regulations. The government and related institutions need to formulate clear guidelines in determining the amount of restitution based on the actual level of state losses and ensure an effective execution mechanism. With the number of major corruption cases that have emerged, such as the tin corruption case that cost the state up to IDR 271 trillion, strengthening the rules related to additional restitution is very urgent so that state money can be returned properly.

Thus, the effectiveness of additional punishment in the form of restitution of state losses in corruption cases must be a major concern in the Indonesian legal system. This effort not only aims to take action against the perpetrators, but also to recover state finances that have been harmed so that they can be reused for the benefit of national development. It is hoped that with stricter measures, a clearer legal system, and the closure of legal loopholes due to norm vacancies, corrupt practices can be suppressed as much as possible, so that state money is no longer lost due to corruption and public confidence in law enforcement can be maintained.

2. RESEARCH METHODS

The legal research used is normative legal research, namely legal research that examines norms, principles, and values contained in laws and regulations, which reflect legal problems in the form of a vacuum of norms. In normative legal research, several approaches are used as follows: a) The Law Approach is carried out by examining all laws and regulations related to the legal issues being addressed. The statutory approach in normative legal research has both practical and economic uses (Amiruddin & Asikin,

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2018). b) Conceptual approach, starting from the views and doctrines that have developed in the legal sciences. Understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issues at hand (Amiruddin & Asikin, 2018). c) Case approach, carried out by analyzing, examining, and used as a guide for legal issues to resolve legal cases. The research case has similar problems that have permanent legal force (BHT).

3. DISCUSSION

Asset Forfeiture Mechanism in Returning State Losses Due to Corruption Crime

Asset forfeiture is one of the strategic measures used by the state in order to recover state losses due to corruption crimes. This mechanism aims to ensure that all proceeds of crime, including illegally obtained assets, can be taken back by the state to recover the losses incurred by corrupt acts. In the context of Indonesian criminal law, asset forfeiture mechanisms have been regulated in various legal instruments, both general ones such as the Criminal Code and the Criminal Procedure Code, as well as specific ones such as the Corruption Crime Law, and the Money Laundering Crime Law.

Provisions regarding asset forfeiture have long been recognized in legislation that has been in force in Indonesia. Regulation of the Central War Ruler Number: PRT/PEPERPU/013/1958 concerning Investigation, Prosecution and Examination of Corrupt Acts and Property Ownership, which is the provision that first uses the term corruption, there are arrangements that give the owner of the property the power to confiscate the property of a person or an entity if after conducting a thorough investigation based on certain circumstances and other evidence, there is a strong suspicion that the property is included in the property that can be confiscated and confiscated (Suprabowo, 2016).

The asset forfeiture mechanism used is contained in the Criminal Procedure Code which focuses on disclosing criminal acts in which there are elements of finding the

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perpetrator and placing the perpetrator in prison and only placing asset forfeiture as an additional punishment, but this has not been effective in reducing the crime rate. When asset forfeiture is focused on law enforcement of criminal acts, there will be no omission of the perpetrators of criminal acts to control and enjoy the proceeds of criminal acts and even to finance the criminal acts they have committed (Latifah, 2015).

Government Regulation in lieu of Law No. 24 of 1960 concerning Investigation, Prosecution and Examination of Corruption stipulates that all property obtained from corruption is confiscated, and the defendant may also be required to pay restitution in an amount equal to the property obtained from corruption. Law Number 20 of 2001 concerning the Eradication of the Crime of Corruption authorizes judges to confiscate the assets of a person who dies, before there is an irreversible decision, has committed a criminal act of corruption, then the Judge at the request of the Public Prosecutor, with a court decision, can decide on the confiscation of goods that have been confiscated (Latifah, 2015).

In recent years, international legal developments have shown that the confiscation and forfeiture of criminal proceeds and instruments has become an important part of efforts to reduce crime rates. In addition to uncovering criminal offenses and finding the perpetrators, confiscation and forfeiture of criminal proceeds and instruments have become a major part of criminal investigations and prosecutions. In addition, in order to strengthen the existing criminal provisions, some countries adopt provisions derived from civil provisions to prosecute the return of criminal proceeds. Such civil prosecution can be conducted separately from the criminal prosecution of the perpetrator. Experience has shown that this approach has been effective in a number of countries in terms of increasing the value of forfeitable proceeds (Prost, 2006).

Internationally, there are two types of forfeiture. The types of forfeiture *in question* are the *In Personam* forfeiture mechanism and the *In Rem* forfeiture mechanism. *In Personam* Deprivation (criminal deprivation) is an action that is shown

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to a person personally (individual). The action is part of a criminal sanction so that it can be carried out based on a criminal court decision. Prosecutors in this case must prove that the assets to be seized are the proceeds or means of a criminal offense. In addition, the application for asset forfeiture must be submitted together with the prosecution file by the public prosecutor (Latifah, 2015).

The second type of asset forfeiture is the *In Rem forfeiture* mechanism. There are various terms for *In Rem forfeiture* mechanisms, namely *civil forfeiture*, *civil forfeiture, non-conviction based (NCB), Asset Forfeiture*. The essence of asset forfeiture using the *In Rem* mechanism is a lawsuit against assets not against people. This mechanism is a separate action from the criminal justice process and requires evidence that a property has been tainted by a criminal offense (Latifah, 2015).

In the existing provisions in Indonesian criminal law, the seizure of certain goods can only be carried out with a court decision that has binding legal force. Thus, during the law enforcement process for a criminal offense, other actions can be taken, namely confiscation. Confiscation is a forced effort made by investigators to take over and store objects (assets) for evidentiary purposes in the law enforcement process both at the stages of investigation, prosecution, and trial. Previously, investigators must conduct an asset search which aims to determine the existence and type of assets obtained from the proceeds of a criminal offense, which will be used to compensate state losses by conducting *permpasan* and / or confiscation (Herwibiwo, 2016).

The authority of investigators in terms of tracing assets or assets belonging to suspects of corruption crimes is based on the Corruption Eradication Law which stipulates that investigators, public prosecutors, or judges can ask banks to block deposit accounts belonging to suspects or defendants suspected of being the proceeds of corruption. Investigators have the right to open, examine, and confiscate letters and shipments by post, telecommunications, or other means suspected of having a relationship with the corruption case being examined (Prasetyo, 2024).

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Confiscation in the context of returning criminal assets is the most important part at the beginning of the law enforcement process to eradicate corruption. As is well known, the perpetrators of corruption crimes easily hide their assets. If law enforcement does not quickly confiscate it, there is a possibility that the assets will be fled somewhere or even transferred ownership to another party. KUHAP determines that confiscation is only carried out by investigators with the permission of the head of the local district court (Prasetyo, 2024).

The role of asset confiscation is very important in the process of payment of restitution, namely to lock the assets *of* the perpetrator so that they are not transferred until the court decision is legally binding. Through the application of additional punishment in the form of payment of restitution with the strengthening of confiscation, it is expected to be able to provide a concrete *deterrent effect*, because there will be no more convicts who can still indulge in using the proceeds of corruption in prison.

4. CLOSING

The mechanism of asset *forfeiture* in recovering state losses due to corruption generally follows the *conviction-based asset forfeiture* model, where forfeiture is carried out after a court decision declaring the defendant guilty. This mechanism involves the stages of asset tracking, freezing, confiscation, and finally seizure through court decisions. However, this mechanism often experiences obstacles if the perpetrator cannot be brought to justice, such as due to death or escape. Therefore, it is necessary to strengthen the law through the ratification of the *Asset Forfeiture* Bill which adopts a *non-conviction based asset forfeiture* approach, to enable the state to confiscate and seize assets resulting from corruption without waiting for a criminal verdict. In addition to regulations, the effectiveness of asset forfeiture is highly dependent on the ability of the apparatus to carry out cross-sector and cross-country work, as well as the support of an integrated information technology system.

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