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Reconstruction of article 4 of the law on corruption and the implementation of restorative justice oriented towards the return of state financial losses

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ABSTRACT

Corruption remains a pervasive issue, affecting all levels of society, from power holders to both the public and commercial sectors. This study investigates the implications of Article 4 of the Corruption Law regarding corrupt perpetrators and its effectiveness in restoring state financial losses. Employing a normative juridical research method, the study underscores the importance of Article 4 in law enforcement against corruption, particularly in financial recovery efforts. This article serves as a crucial balance between penalizing corrupt practices and ensuring accountability, emphasizing that corruption is a grave crime that requires more than just monetary restitution. The findings suggest that the eradication of corruption in Indonesia, as outlined in Law No. 31 of 1999, aims to restore national finances and the economy, highlighting the recovery of state financial losses as a fundamental objective. Specifically, Articles 4 and 18(1)(b) provide a framework for this recovery approach. The study recommends that the government and the House of Representatives prioritize revisions to the Corruption Crime Law to enhance the focus on state financial recovery, thereby strengthening the fight against corruption in the country.

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1. Introduction

Corruption cases to date seem endless and so deeply rooted to all levels of society (Setiyawan & Farida, 2022). This uncommendable act of corruption is getting more systematic, sophisticated, and massive from year to year, both in the context of the number of perpetrators and the amount of state financial losses in terms of the number of perpetrators, which is increasingly methodical, sophisticated, and has a greater scope in all elements of society. The increase in corruption that is difficult to eradicate can of course cause the Indonesian economy to be constrained, but it can also affect the lives of the nation or the Indonesian people in general. As a result of the massive growth of corruption crimes in Indonesia, we do not know the boundaries between who, why, and how.

This corruption is no longer only in those with power and special interests, but has become a problem both in terms of the public sector and the commercial sector itself (Helena Hestaria et al., 2022). An interesting thing is that an anti-corruption non-governmental organization, *Indonesia Corruption Watch* (ICW), released a Report on the Trends in Corruption Case Enforcement Semester 1 of 2021. Based on data collected by ICW, the number of prosecutions of corruption cases in the first six months of 2021 alone exceeded 209 cases. This increase in cases increased compared to the same period in the previous year, only reaching 169 cases (Pahlevi, 2022).

One of the efforts and targets of the eradication of corruption is how the state's financial losses can return and of course the results of this achievement are for the benefit of the people and also estimate various problems that arise in various fields. The effort to recover state financial losses is also essential because it is the basis for the formulation of the criminalization of thieves of people's money, but in its execution it encounters its own obstacles, for example in the context of its legal substance, structure, and culture in terms of the return of losses experienced by the state through the punishment of corruptors (Hasan, 2020).

Article 4 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption contains provisions on legal accountability, but these regulations are often not optimal in encouraging restitution due to factors such as weak law enforcement, unwillingness of perpetrators and related parties to return state losses, and lack of firm and effective sanctions. In addition, administrative constraints and lack of awareness of the importance of restitution also have an effect.

Based on this background, the formulation of the problem in this writing is as follows: What is the existence of Article 4 of the Corruption Law on corruption perpetrators and its effect on the return of state financial losses?

2. Method

The research method applied is normative juridical, which means normative juridical legal research (or often called doctrinal law research) can be briefly understood as research that traces the existence of law in a particular jurisdiction. The researcher in this case seeks to collect and then analyze the legal regulations and related legal norms. This is usually done from a historical point of view and may also involve other sources such as journal articles or other writings that comment on legal cases and laws and regulations (Tan, 2021). This is done so that the discussion in this study can answer the problem.

3. Analysis and Results

3.1. Problem with Article 4 of the Corruption Law

Before continuing to discuss the Problems of Article 4 of the Corruption Law, let's first look at Articles 2 and 3 as well as Article 4 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as follows (Fiter et al., 2024):

Article 2

1. *Any person unlawfully commits an act of enriching himself or another person or a corporation that can harm the state finances or the state economy, shall be sentenced to imprisonment for a minimum of 4 years and a maximum of 20 years and a fine of at least Rp. 200,000,000 and a maximum of Rp. 1,000,000,000.*
2. *In the event that the crime of corruption as intended in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.*

Article 3:

"*Any person who, with the aim of benefiting himself or others or a corporation, abuses his authority, opportunity or means because of his position or position that can harm the state*

> *finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 1 year and a maximum of 20 years and or a fine of at least Rp. 50,000,000 and a maximum of Rp. 1,000,000,000*"
>
> Article 4:
> "*The return of state financial losses or the state economy does not abolish the conviction of the perpetrators of criminal acts as referred to in Article 2 and Article 3*".

The existence of efforts to recover state financial losses from the results of corrupt practices certainly makes corruptors unable to enjoy the results of their crimes (Batubara, 2018). This effort can be done by forcibly taking items suspected of being related to acts of corruption as additional punishments other than the main crime, namely, imprisonment and fines contained in the Criminal Code (KUHP).

The relationship between the return of money from corruption to the punishment imposed on corruptors is explained in Article 4 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, namely, the return of state financial losses or the state economy does not abolish the conviction of the perpetrators of corruption crimes as referred to in articles 2 and 3 of the Law (Agustin et al., 2024). In Article 4 of Law No. 31 of 1999, it is clarified, namely: "In the event that the perpetrators of corruption crimes as referred to in Article 2 and Article 3 have fulfilled the elements of the said article, then the return of state financial losses or the state economy, does not abolish the criminal penalty against the perpetrators of the criminal act"(Kumakauw, 2021).

If the corruptor is willing to hand over the proceeds of his crime, the punishment is still applied and only the punishment is light (Dwiasty et al., 2024). Corrupt perpetrators think that if they hand over the proceeds of their crimes before the authorities collect information to uncover a criminal event, the legal process will not be continued. Even before there is a judge's decision and it has not yet been inkred, the punishment is still imposed. It's just that when the corruptor takes the initiative to hand over the proceeds of the crime, it can be a special judgment from the judge to reduce the punishment. On the initiative of the corruptor, the judge made an excuse to reduce the sentence.

By knowingly the corruptor handing over the proceeds of a criminal act, namely corruption, there is a good intention not to repeat the act. The submission of the results of corruption crimes can reduce punishments, but does not eliminate the element of unlawfulness. Meanwhile, *non-penal* efforts are more *preventive*, namely prevention/deterrence/control before crimes occur.

We already know that January 25, 2017 is the right opportunity for an important change to the provisions of the criminal act of corruption related to state financial losses (Kristanto, 2019). This good opportunity began with the issuance of the Constitutional Court Decision Number 25/PUU-XIV/2016 on public complaints arising from political changes in the Law related to the Government Administration Law. From the beginning, the approach taken to resolve corruption crimes on the administrative side was carried out with a law enforcement process, with the issuance of the Government Administration Law, it became different and used the approach of recovering state financial losses and the administrative procedure approach.

In line with that, the Constitutional Court Decision Number 25/PUU-XIV/2016 responds to the political dynamics of the law regarding state financial losses that need to be implemented in the law enforcement process in the field of corruption acts related to the elements of state financial losses. The Constitutional Court's decision considers that the definition of corruption that was previously known with the conception of formal acts becomes invalid (Tirtakusuma, 2017). The definition of corruption can be excluded if it is interpreted as a material act. The understanding of formal acts is based on the views of criminal law experts, namely acts that in their formulation focus more on acts that should not be done (Sari, 2020), or other terms with the decision of the lawmaker prohibiting the commission of the act by not giving criteria for the

occurrence of any consequences of the act. Formal acts have been considered completed if the perpetrator has fulfilled the series of acts formulated in a certain act.

Then material acts are acts whose formula focuses on prohibited consequences, or in other words, the decision of the lawmakers determines that there should be no consequences caused. The understanding of material acts requires that there must be consequences, or other meanings, if the material act is considered complete and if the consequences that cannot be done in the formulation of the act really occur (Ariwafa, 2023).

In the Constitutional Court Decision Number 25/PUU-XIV/2016, to declare state losses must be really interpreted as concrete losses. The provisions of this amendment immediately have an effect on the norm of Article 4 which contains the legal structure of Article 2 and Article 3 in the return of State financial losses. This legal perspective is more about the nature of the law that prioritizes the term *primum remedium*. Referring to Article 4 of the Corruption Law, it implicitly uses *a retributive justice approach* that does not prioritize resolving legal issues outside the court as an option. Article 4 of the Corruption Law is a legal result of Article 2 and Article 3 of the Corruption Law which are formally formulated.

However, in the 2017 Constitutional Court Decision, the Court eliminated the phrase 'may' finally causing the consequence, namely that there is a requirement that there be *a factual loss* or concrete state financial loss. *Factual loss* is the criterion in Article 2 and Article 3 of the Corruption Law, so *mutatis mutandis* Article 4 does not apply. In such a context, it can be meant that the existence of Article 4 becomes meaningless if Article 2 and Article 3 of the Anti-Corruption Law are interpreted in a material legal construction that provides criteria for the occurrence of *factual loss*. This is a serious concern if the return of state finances is considered to have been completed because the legal perspective is materially constructed. The interpretation of Article 4 of the Corruption Law on the Return of State Financial Losses only has juridical consequences, especially in terms of reducing sanctions for corruptors.

Article 4 of the Corruption Law contains provisions on legal accountability (Prayitno, 2021). The legislature as a lawmaker includes a section of responsibility for acts that contain formal acts and can be seen from the context of the sentence that states that the return of state financial losses does not eliminate the perpetrator's conviction. Thus, it can be interpreted as a consequence of the criminal act of corruption, namely harming the state's finances, cannot negate the unlawful nature of the criminal act of corruption. Article 2 and Article 3 of the Corruption Law since the Constitutional Court Decision 25/2016 have been formulated as material offenses. Thus, the return of the State's financial losses in the context of Article 4 of the Corruption Law must be defined in the understanding of material acts. In other words, the emergence of the initiative to refund the State's financial losses can eliminate the elements of the State's financial losses listed in Article 2 and Article 3 of the Corruption Law.

Talking about prevention is anticipating before acts of corruption occur, so it is not solely concentrating on providing deterrent effects such as punishment. Such a prevention focus begins with prioritizing legal options that provide a means of state financial recovery in the form of compensation by suspected perpetrators who cause state financial losses. This suspected perpetrator must be given the opportunity to take advantage of the settlement options provided in the provisions of administrative law to carry out compensation for the acts that have occurred. When this opportunity is not carried out, the perpetrator's assets must be confiscated and confiscated as a form of collateral in compensating for the State's financial losses.Article 4 of the Corruption Law After the issuance of the Constitutional Court Decision, in the perspective of criminal law, it must be interpreted as an element of material acts that have a consequence on the return of state financial losses that can affect the non-fulfillment of the elements of state financial losses that eliminate accountability for corruptors as mentioned in Articles 2 and 3 of the Corruption Law (Ahmad et al., 2021).

3.2 Reconstruction of the Corruption Crime Law Oriented to the Return of State Financial Losses

The purpose of eradicating corruption in Indonesia can be seen in the points of weighing letters a and b of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (Law on the Eradication of Corruption) which says that the eradication of corruption is carried out to restore the country's finances and economy. One of the ways to recover the country's finances and economy is by recovering the State's financial losses as stated in Article 4 Jo. Article 18 (1) letter b of Law No. 31 of 1999 Jo. Law No. 20 of 2001. However, there are problems in the conception of the criminalization of the eradication of corruption (Sosiawan, 2020).

This can be seen in the provisions of Article 4 of the Corruption Eradication Law which states that the return of the State's financial losses or the State's economy does not abolish the conviction of the perpetrators of criminal acts as referred to in Articles 2 and 3 of the Corruption Eradication Law. The enactment of this article is an argumentum a contrario of the purpose of eradicating corruption in the Corruption Law. This is as expressed by Romli Atmasasmita that the article actually makes corruptors not have good faith to return the State's finances because the punishment for them still leads to imprisonment. From this problem(Fuadi et al., 2024), a discourse was born about the elimination of criminal penalties for perpetrators of corruption crimes that return state financial losses as a restorative effort to recover the resulting losses (Hamka et al., 2022). This is also the ratio legis of the birth of several laws and regulations that do not use state losses as a reason for the implementation of agency regulations. As in Article 20 of Law No. 30 of 2014 concerning Government Administration which categorizes the liability for state losses into two, namely criminal liability and administrative liability, namely administrative liability is carried out by compensating the State's financial losses for a maximum of 10 working days without the need for body confinement (Hamonangan et al., 2024).

Currently, the method of eradicating corruption through revolutionary means must be carried out, considering that corruption is not just a mathematical calculation that focuses on economic losses (David et al., 2023), but also state losses due to corruption also cause losses to people's social rights, as contained in the point of considering Law No. 20 of 2001 concerning the Eradication of Corruption.

The revolutionary concept of eradicating corruption by withdrawing the wealth of corruptors is what Indonesia needs to consider as a reference (Shaleh & Fawaid, 2023), namely placing the recovery of state losses through the confiscation of suspects' property. The confiscation was carried out using the mechanism in the Asset Forfeiture Bill, namely by first tracing by KPK investigators regarding the suspect's property (Siburian & Wijaya, 2022). Then the District Court will issue a ruling regarding the total property of the suspect. Furthermore (Gunawan et al., 2023), the corruptor's assets are handed over to the Asset Management Agency which has the function of recovering and returning the proceeds of criminal acts in accordance with the Asset Forfeiture Bill (Sholeh & Noerdajasakti, 2024).

The ideal of the Indonesian legal state according to Romli Atmasasmita as quoted again by Siti Nurhalimah is the realization of a just and prosperous society as stated in the Preamble to the 1945 Constitution. Therefore, the state needs to reformulate the conception of combating corruption, so that it is not only oriented to the perpetrators but also oriented to the recovery of state finances as the main requirement for realizing a welfare state in accordance with the mandate of the constitution. Considering the purpose of the law as conveyed by Satjipto Rahardjo, that the law aims not to be in the status quo but to move to create human welfare and happiness (Nurhalimah, 2017).

4. Conclusion

One of the ways to recover the country's finances and economy is by recovering the State's financial losses as stated in Article 4 *Jo*. Article 18 (1) letter b of Law No. 31 of 1999 Jo. Law No.

20 of 2001. However, there are problems in the conception of the criminalization of the eradication of corruption. This can be seen in the provisions of article 4 of the Corruption Eradication Law which states that the return of financial losses of the State or the State economy does not abolish the conviction of the perpetrators of criminal acts as referred to in Articles 2 and 3 of the Corruption Eradication Law. The enactment of this article is an argumentum a contrario of the purpose of eradicating corruption in the Corruption Law. This is as expressed by Romli Atmasasmita that the article actually makes the corruptors not have good faith to return the state finances because the criminalization for them still leads to imprisonment. From this problem, a discourse was born about the elimination of criminal penalties for perpetrators of corruption crimes that return state financial losses as a restorative effort to prioritize the return of state financial losses, the government and the House of Representatives can consider revising the Corruption Crime Law. Finally, related state agencies or institutions such as the KPK, BPK also need to support by making technical rules for the implementation of the goal of achieving restitution justice.

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