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# The Urgency of Implementing Corruption Crime Asset Confiscation in The Context of Recovering State Losses

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## Abstract

Return of assets resulting from criminal acts of corruption based on Article 10 of the Criminal Code and Articles 18, 19 of Law no. 20 of 2001 concerning the Eradication of Corruption Crimes, cannot yet be used as a basis for maximizing the return of State losses, applying replacement money sanctions under Article 10 of KUHP and Articles 18 and 19 of UU TIPIKOR is fraught with difficulties. In court rulings for criminal acts of corruption that have permanent legal effects, the quantity of money resulting from the act and the burden of state losses in corruption are never equal (Inkracht). The amount returned to the state is reduced due to corruption crimes. In a judge's decision that has permanent legal force (Inkracht) ordering perpetrators of criminal acts of corruption to return the money that was corrupted and/or money obtained from criminal acts of corruption, in practice, it often happens that perpetrators are unable to pay replacement money, so they prefer to replace it with prison punishment. Prison sentences are often used as a loophole to avoid paying compensation so that the state still suffers losses even though it has been proven in court. Therefore, the appropriate strategy for recovering and returning state losses in the context of realizing state financial justice is to confiscate the assets of perpetrators of criminal acts of corruption by the value of the state losses incurred by corruption by giving the authority to the Public Prosecutor to submit asset confiscation to the court to confiscate the assets of perpetrators of criminal acts of corruption before a court decision or before there is a lawsuit.

**Keywords:** Return of Assets, Confiscation of Assets, Corruption Crimes, Through Court.

## Introduction

Just around 22 years after Indonesia adopted the *UN Convention Against Corruption* (UNCAC),<sup>1</sup> the Asset Confiscation Bill (RUUPA) represents a groundbreaking and progressive legal development. One way to combat corruption is through this law. The government and

<sup>1</sup>Muhammad ade Risandi, Anita Afriani sinulingga, dkk, “*Hambatan Indonesia dalam implementasi UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) 2015-2022*”, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Andalas Padang, Politics, Humanities, Laws, International Relations and Social (Palito), Vol. 01 No. 02 (2020)



People Council (DPR RI)'s best effort to guarantee that state funds do not suffer losses in any infrastructure development project or National Strategy (PSN) that employs state funds is the idea of confiscating assets linked to criminal acts of corruption.

The government frequently suffers large losses when executing national strategy and infrastructure development projects, not only in the form of state funds but also because of conflicts of interest and corrupt authority that prevent the development from proceeding. Development halts (stalls) when Management fails to adhere to the principles of good corporate governance.<sup>2</sup> According to Presidential Regulation (Perpres) Number 3 of 2016, 225 national strategic projects with an estimated state budget of IDR 4,809.7 trillion are among the infrastructure and PSN projects that were halted and only partially finished during the Joko Widodo administration,<sup>3</sup> obtained from APBN, APBD, BUMN, and/or the private sector, whereas the eastern region of Indonesia, which includes Papua and Maluku, had the second-largest budget (Rp 565.6 trillion), followed by Sumatra (Rp 543.4 trillion).<sup>4</sup>

**Tabel 1. Value and Number of National Strategy Projects**

Regional	Value (IDR T)	Projects	Program
<i>Sumatra</i>	543.4	41	0
<i>Jawa</i>	1184.3	82	1
<i>Bali &amp; Nusa Tenggara</i>	33.2	18	0
<i>Kalimantan</i>	507.3	16	0
<i>Sulawesi</i>	467.1	23	0
<i>Maluku dan Papua</i>	565.6	9	0
<i>Nasional</i>	1508.8	12	9
<b>Total</b>	<b>4809.7</b>	<b>201</b>	<b>10</b>

Source: Press Release of the Coordinating Ministry for Economic Affairs, Presidential Decree Number 109 of 2020.

According to government records, 66 National Strategy Projects totaling Rp 414.3 trillion were completed between 2019 and 2021, and nine National Strategy Projects totaling Rp 140.1 trillion were completed between January and August 2022 and September and December 2022. Of these, 16 national strategic projects totaling Rp 101.2 trillion were completed, while the remaining projects, including toll roads, dams, container ports, the National Capital (IKN), and others, are still pending completion and are expected to be finished by the end of 2024<sup>53</sup>. The use of state funds

<sup>2</sup>Asian Development Bank (ADB), Mengatakan : Good Corporate Governance (GCG) mengandung empat nilai utama yaitu : *Accountability, transparency, predictability, Participiantion, Fainness dan Indepency*

<sup>3</sup>Tirta Citradi, NBC Indonesia, “ini Proyek Infrastruktur Mangkrak SBY yang Rampung Era Jokowi” di akses dari <https://www.cnbcindonesia.com/news/20210325105026-4-232755/ini-proyek-infrastruktur-mangkrak-sby-yang-rampung-era-jokowi/3>, pada tanggal 25 maret 2021, Pukul 12:23.

<sup>4</sup>*Ibid.*

<sup>3</sup>Erlangga Hartanto (Menteri Koordinator Bidang Perekonomian), “Pembahasan Evaluasi Proyek Strategi Nasional digelar di Istana Kepresidenan Bogor, Jawa Barat, selasa 6 September 2022” di akses dari <https://www.cnbcindonesia.com/news/20220906162213-4-369781/daftar-psn-yang-terancam-mangkrak-tak->



for national strategy projects, infrastructure development, and other initiatives must adhere to the rules of the relevant legislation, including being administered in a transparent, efficient, accountable, and orderly manner<sup>6</sup>, by paying attention to the sense of justice and propriety based on applicable laws and regulations.

According to data from Indonesia Corruption Watch (ICW), state losses due to corruption cases reached Rp. 238.14 trillion over the last 10 years (2013-2022). Based on court decisions issued by the court of first instance up to cassation,<sup>7</sup> The judge's decision to pay compensation in nominal terms is still much lower than the financial losses incurred, so it must be encouraged that corruptors are impoverished and their assets confiscated and returned to the state.<sup>8</sup> To recover state losses from the proceeds of criminal acts of corruption.

**Table 2. State Losses from 2013 - 2022**

Year	State Loss
2013	Rp. 3,46 Trillion
2014	Rp. 10,69 Trillion
2015	Rp. 1,74 Trillion
2016	Rp. 3,08 Trillion
2017	Rp. 29,42 Trillion
2018	Rp. 9,29 Trillion
2019	Rp. 12 Trillion
2020	Rp. 56,74 Trillion
2021	Rp. 62,93 Trillion
2022	Rp. 48,79 Trillion

Source: Data from the KPK Anti-Corruption Education Center

Based on the Performance report, the Supreme Court recorded that the recovery of state assets throughout 2016 amounted to IDR. 1.5 trillion of which came from 356 corruption cases in the form of compensation money amounting to Rp. 647.373.468.339, when compared with the state's financial losses suffered throughout 2015 due to criminal acts of corruption, it was Rp. 31,0077,000,000,000,- (*Thirty-one trillion seventy seven billion rupiah*), As stated by ICW, actually confiscating assets resulting from criminal acts of corruption in order to recover state financial losses is not successful enough<sup>9</sup>, if the confiscation of assets in question still uses Article 18 paragraph (1) of the UUTPIKOR and Article 10 of the KUHP.

[selesai-di-2024#](#), Pada 29 September 2024, Pukul 23.05

<sup>6</sup>Pasal 3 ayat (1) UU No. 17 Tahun 2003 Tentang Keuangan Negara mengatakan : *Keuangan Negara dikelola secara tertib, taan pada peraturan perundang-undangan, efisien, ekonomis, efektif, dan bertanggung jawab dengan memperhatikan rasa keadilan dan kepatutan*"

<sup>7</sup>Yunus Husein, Korupsi dan kerugian keuangan negara yang ditimbulkan, Pusta Edukasi Anti Korupsi, 28 Feb 2024

<sup>8</sup>*Ibid.*

<sup>9</sup>Bettina Yahya, Budi Suhariyanto, Muh. Ridha Hakim, Urgensi dan mekanisme pengembalian aset hasil tindak pidana korupsi, Puslitbang Hukum dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI,



To avoid losses in managing state money, the government established Law No. 19 of the year 2019, as amended by Law No. 30 of the year 2002 concerning the Corruption Eradication Commission, and Law No. 31 of the year 1999, amended by Law No. 20 of the year 2001 concerning the Eradication of Corruption Crimes which is effective to date, the Corruption Eradication Commission has special authority to supervise State finances used in Infrastructure Development and national strategy projects that originate from state money, this special supervision takes the form of Prevention and Eradication of Crimes. Corruption crimes committed by individuals or corporations that harm state finances.<sup>10</sup>

The preamble to the Corruption Crime Law states the points to consider: a. that "criminal acts of corruption that have occurred widely have not only been detrimental to the State's finances but have also constituted violations of the social and economic rights of society at large so that they need to be classified as crimes whose eradication must be carried out in an extraordinary manner<sup>11</sup> (*extra ordinary crime*). Because the perpetrator is a state official who has authority and power as well as a strong network, it is difficult to prove, especially if the crime was committed by the head of a state institution who has full authority and power. Because it is an extraordinary crime<sup>12</sup> the legal norms required are, of course, more specific and require special handling, considering that corruption in the infrastructure sector and National Strategy Projects is still high and poses a threat to equitable regional development.

Based on the author's research, there are several other articles discussing the urgency of regulating the confiscation of corporate assets resulting from the crime of illegal fishing in Indonesia; on the other hand, there are also those that examine the confiscation of assets proceeding from corruption crimes abroad through mutual legal assistance (Mutual Legal Assistance). This article explains the importance of implementing asset confiscation related to criminal acts of corruption that are detrimental to state finances and the state economy so that extraordinary measures are needed to return and restore state finances, where the problem that always occurs is that prosecution and criminal imposition of replacement money is different from

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Puslitbang Hukum dan Peradilan MA RI, Cet. I, 2017

<sup>10</sup>Pasal 2 UU No. 31 Tahun 1999 sebagaimana telah dirubah dengan Undang-undang No. 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi Mengatakan : *Setiap orang yang secara melawan hukum melakukan perbuatan memperkaya diri sendiri, atau orang lain, atau korporasi yang merugikan keuangan negara atau perekonomian Negara di pidana penjara seumur hidup atau pidana penjara paling singkat 4 (empat) tahun dan paling lama 20 (dua puluh) tahun dan denda paling sedikit Rp. 200.000.000,00 (dua ratus juta rupiah) dan paling banyak Rp. 1.000.000.000,00 (satu miliar rupiah)* Jo Pasal 3 Mengatakan : *Setiap orang yang dengan tujuan menguntungkan diri sendiri atau orang atau suatu korporasi, menyalahgunakan kewenangan, kesempatan, atau sarana yang ada padanya karena jabatan atau kedudukan yang merugikan keuangan negara atau perekonomian negara, di pidana dengan pidana penjara seumur hidup atau pidana penjara paling singkat 1 (satu) tahun dan paling lama 20 (dua puluh) tahun dan/atau denda paling sedikit Rp. 50.000.000,00 (lima puluh juta rupiah) dan paling banyak Rp. 1.000.000.000,00 (satu miliar rupiah)*

<sup>11</sup>Luhut MP Pangaribuan, *Tindak Pidana Ekonomi dan Anti Korupsi*, Depok : Papar Sinar Sinanti, Cet. Pertama, 2019, hal. 137

<sup>12</sup>Dikatakan **kejahatan luar biasa** karena : Korupsi menyebabkan kerusakan yang besar dan meluar, Korupsi adalah kejahatan sistematis, korupsi melanggar hak asasi manusia, Pelaku korupsi di hukum dengan berat, pelaku korupsi pejabat negara yang mempunyai jabatan tinggi (*powerfull*), korupsi mengancam ketertiban dunia, diakses dari: <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/2023209-ini-alasan-mengapa-korupsi-disebut-kejahatan-luar-biasa>, Pada tanggal 9 Februari 2023, Pukul. 20.00 Wib



the state financial losses determined by the appointed State Financial Audit Agency, this is very detrimental to the state because the payment of replacement money is not adjusted to state financial losses and the applicable laws and regulations. In addition, the return process is long because you have to wait for *inkrahct's* decision, so its nature is uncertain.

Based on that explanation, the author chose a scientific writing title: *The Urgency of Implementing Corruption Crime Asset Confiscation in The Context of Recovering State Losses*”

The aim of this research is to provide information about the urgency of implementing the Bill on Confiscation of Assets resulting from Corruption Crimes according to laws and regulations in Indonesia, as well as examine the urgency of implementing the Bill on Confiscation of Assets resulting from Corruption Crimes to prevent losses and refunds of state funds resulting from the proceeds of criminal acts of corruption.

## Method

In writing this article, the author used normative research methods. There are three approaches to studying the three problems that are to be discussed with this normative research method, namely the *statutory approach*, the *case approach*, and the *conceptual approach*. A legislative approach is needed in order to explore the legal ratio and *ontological* basis for the birth of statutory regulations,<sup>13</sup> The case approach is used to find the ratio decidendi or reasoning, namely the court's considerations to arrive at a decision, where the legal breakthrough is located, which aims to provide access to justice<sup>14</sup> , The conceptual approach is used to understand precisely and accurately the various concepts used by legal principles in laws and regulations and the doctrine of jurists.

The data used in the research are secondary data sources consisting of primary legal materials in the form of statutory regulations, international legal conventions, and court decisions, as well as secondary legal materials in the form of research literature.

## Confiscation of Assets According to Indonesian Legislation is different from the UN Convention Against Corruption (UNCAC 2003)

After Indonesia signed UNCAC on December 18, 2003, the UN Anti-Corruption Convention was the first time at the global level to take a firm stance against corruption by formulating *71 articles* and *eight chapters* that required member countries to implement the contents of the convention.,<sup>15</sup> in the year of 2006 The Indonesian government ratified the Anti-Corruption Convention through the 2006 Law concerning ratification of the *United Nations Convention Against Corruption*, as the government's commitment to fighting corruption crimes in the form of the Anti-Corruption Institution through Law no. 19 of 2019 as amended by Law

<sup>13</sup>Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana 2014), hal. 93-94

<sup>14</sup> Sulistyowati Irianto dan Lim Sing Meij, *Praktik Penegakan Hukum : Arena Penelitian Sosiologi yang Kaya*, dalam Sulistyowati Irianto dan Shidarta, *Metode Penelitian Hukum (Konstansi dan Refleksi)* (Jakarta: Yayasan Pustaka Obor Indonesia. 2011), hal. 191

<sup>15</sup>Rio, Declaration on Environment and Development, United Nations Conference on Environment and developments, 1992, hal. 80



no. 30 of 2002 concerning the Corruption Eradication Commission and Law no. 31 of 1999 has been amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes.

Confiscation of assets belonging to perpetrators of criminal acts of corruption can be carried out through criminal and civil channels. Confiscation of assets through criminal channels goes through 4 (four) stages<sup>16</sup>: *First*, tracking assets to identify proof of ownership and storage location of assets related to the offense committed. *Second*, freezing or confiscation following Chapter 1 Article 2 letter (f) UNCAC 2003 is prohibited from temporarily transferring, converting, disposing, or transferring assets or temporarily bearing the burden and responsibility for administering, maintaining, and supervising assets based on a court order or other authority's competent decision. *Third*, confiscation of assets following Chapter 1 Article 2 letter (g) UNCAC 2003 is defined as the forfeiture of assets forever based on a court decision or other competent authority. *Fourth*, the return and handover of assets to the victim country. Furthermore, UNCAC 2003 also stipulates that the confiscation of assets of perpetrators of criminal acts of corruption can be carried out directly through a court process based on a "*negotiation plea*" system or through an indirect return, namely through confiscation of assets based on a court decision.<sup>17</sup>

The *legal concept* that has been established in the UN Anti-Corruption Convention UNCAC, Indonesia, has not been implemented consistently; as seen from several Corruption Court decisions, it has not been maximized. In 2018, the country suffered a loss of IDR. 9.2 trillion based on 1,053 Corruption Court decisions against 1,162 defendants, while the return of state assets from additional punishment in the form of replacement money was only Rp. 805 billion and USD 3,012 (equivalent to IDR 42 billion), In 2020, the State's losses reached IDR. 56.7 trillion, which was successfully returned, and the additional penalty was only Rp. 8.9 Trillion.<sup>18</sup>

According to the author, the failure to return and restore state finances related to criminal acts of corruption is one of the influencing factors, Apart from the concept of punishment (additional punishment), paying replacement money, which is waiting for the results of a decision with permanent legal force (*inkracht*), the execution of the replacement money takes a long time, resulting in a decrease in value. Confiscated price, the convict is unable to pay replacement money and in practice chooses imprisonment for those who are unable/willing to pay replacement money, and the convict dies. These obstacles are closely related to the punishment system

<sup>16</sup>Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, Hasil Penyelarasan Naskah akademik RUU Tentnag Perampasan Aset terkait dengan Tindak Pidana, 2022, hal. 27.

<sup>17</sup>Pasal 53 UNCAC 2003 mengatakan : Setiap Negara pihak harus, sesuai dengan hukum nasionalnya ayat (1) mengambil tindakan-tindakan yang diperlukan untuk mengizinkan Negara pihak lain untuk mengajukan gugatan perdata di pengadilannya untuk menetapkan kepemilikan atau hak milik atas harta benda yang di peroleh melalui pelaksanaan suatu tindak pidana yang ditetapkan sesuai dengan konvensi ini, ayat (2) mengambil tindakan-tindakan yang diperlukan untuk mengizinkan memerintahkan mereka yang telah melakukan tindak pidana yang ditetapkan berdasarkan konvensi ini untuk membayar kompensasi atau ganti rugi kepada negara pihak lain yang telah dirugikan oleh tindak pidana.

<sup>18</sup>Ismaya Hera Wardanie, (Rekonstruksi Hukum Pengembalian Kerugian Keuangan Negara dalam Tindak Pidana Korupsi melalui Pidana Tambahan Pembayaran Uang Pengganti), Disertasi Program Doktor Ilmu Hukum Fakultas Hukum Universitas Gajah Mada, Yogyakarta, 2023.



(additional punishment) regarding replacement money in an effort to recover financial losses in the country.

This obstacle also exists in the definition of confiscation in Article 1 number 16 and Articles 38 to Article 48, KUHAP, which requires court permission to confiscate objects belonging to suspects that are carried out by investigators with court permission and then store the confiscated objects, which will be used as goods. Court evidence in Article 47 Paragraph 1, of Law No. 19 of 2019 has been amended by Law No. 30 of 2002 concerning the Corruption Eradication Commission Corruption Crime Law, according to Berenda Granland, there is a difference in confiscation in the Criminal Procedure Code and confiscation of assets. Confiscation of assets is more of a permanent act while confiscation is only temporary.<sup>19</sup>

The legal concept of confiscation as regulated so far in the Criminal Procedure Code and the additional crime of paying replacement money in article 18 of UUTPIKOR requires a long process and time, apart from its temporary nature, it can also be detrimental to the State as the party responsible for the return and recovery of state finances. A theory that can answer the basis for asset confiscation is the *theory of social order* or the *theory of social defense*,<sup>20</sup> which prioritizes social justice and legal protection for the community, aligned with the implementation of the *theory of Restorative Justice*, which is heavily influenced by the microeconomic analysis approach to law which prioritizes the operation of law based on the principles of maximization, balance, and efficiency<sup>21</sup>.

*Restorative Justice* can be used in criminal acts of corruption without having to involve the involvement of the perpetrators, victims and the community like general criminal acts, but focuses more on returning state financial losses related to criminal acts of corruption.<sup>22</sup> Marwan Efendy argues further:

*“If we look further, the in-rem approach process in handling corruption is in line with restorative justice which is currently being developed in North American countries and Europe. In French it is called justice reparatrice, tater-of-er Ausgleich in German or Hestelrech in Dutch, which means an approach to justice that focuses on the interests of victims, perpetrators, and society, including the State rather than the aim of justice to enforce abstract legal principles, however to satisfy the needs of society who only want to ensure that punishment is imposed”.*

In the punishment of criminal acts of corruption, the meaning of confiscation of assets has shifted from being a consequence of the punishment of a crime of corruption to the recovery

<sup>19</sup>Ikade Andi Pramana Putra, I Dewe Gede Dana Sugama, Urgensi Pengaturan Perampasan Aset Korporasi hasil tindak pidana Illegal Fishing, Fakultas Hukum Universitas Udayana, Jurnal Kertha Negara, Vol. 9 No. 4 Tahun 2021, hal. 294-303

<sup>20</sup>Sylvana Agnetha Wulan Widyastuty dkk, Pneggambalian Aset Tindak Pidana Korupsi berdasarkan UNCAC di Kawasan ASEAN, Fakultas Hukum Universitas International Batam, Legal Spirit, Vol. 6 (2), Desember 2022.

<sup>21</sup>H.P Pangabeian, Pemulihan Aset Tindak Pidana Korupsi Teori-Paraktik dan Yurisprudensi di Indonesia, Bhuana Ilmu Populer Kelompok Gramedia, 2020, hal. 191.

<sup>22</sup>Lilik Mulyadi, Model ideal Pengembalian Aset (asset recovery) Pelaku Tindak Pidana Korupsi, Kencana, 2020, hal.58



of criminal assets.<sup>23</sup> including emphasizing the return of assets for criminal acts of corruption without going through a prosecution process or before there is a court decision regarding the article charged and in the form of confiscation of assets through civil and/or criminal lawsuits in court.<sup>24</sup> In this way, according to the author, there will be legal certainty, justice and benefits for the State in concrete *asset recovery actions*.

Indonesia, in order to optimize recovery and recovery of state finances, has created an Asset Confiscation Law related to economic crimes, which has not yet been ratified by the People Council (DPR RI) and the government. RUU Asset Confiscation was first drafted in 2008, then after more than a decade, in 2023, the new Asset Confiscation Bill was included in the *Prolegnas* priority list,<sup>25</sup> in the people's council (DPR RI), however, it has not yet become a priority for discussion, so Political will is needed from the people's council (DPR RI) and the Government to make the Asset Confiscation Bill discussed and passed as law, so that the State can recover financial losses through asset confiscation with special rules and with extraordinary action considering that the crime of corruption is a special and extraordinary crime.

### **Additional Criminal Sanctions regarding Replacement money according to Legislative Regulations do not yet provide a solution for the recovery and return of State Finances (Asset Recovery)**

The crime of corruption is an extraordinary crime, so that in eradicating it an extraordinary institution is also needed. This extraordinary crime can be eradicated by preemptive means (i.e. solving the root causes of corruption), preventive methods (namely carrying out prevention through administrative law, civil law, and other related laws), and repressive methods (namely through the application of criminal law)<sup>26</sup>. In this way, the return of corrupted state asset can be carried out optimally in accordance with the form of action and the application of the law.

Eradicating corruption in Indonesia still leaves a lot of homework for law enforcers, especially in returning and recovering state financial losses related to criminal acts of corruption, especially in Infrastructure projects and National Strategy Projects. According to the ICW report, the potential for state financial losses due to corruption in the construction sector in the 2012-2022 period has reached Rp. 138.39 trillion,<sup>27</sup> The Corruption Eradication Commission reported that in the period 2009 – 2015, corruption in the construction sector cost the State finances around

<sup>23</sup>*Ibid.* hal. 192

<sup>24</sup>*Loc.Cit.* hal 170.

<sup>25</sup>ICW, Kilas Balik RUU Perampasan Aset, diakses dari:

<https://www.cnnindonesia.com/nasional/20240829100312-20-1138875/kilas-balik-ruu-perampasan-aset-yang-disinggung-jokowi>, Pada tanggal 29 Agustus 2024, pukul 10.44.

<sup>26</sup>Moh. Yusril, Syachdin, kamal, Implementasi uang pengganti dalam tindak pidana korupsi (studi kejaksaan negeri donggala), Universitas Radulako, Jurnal ilmu Hukum Toposantaro, Vol. 1 No. 2 (2024)

<sup>27</sup>ICW, Riset: menelaah penyebab dan cara melawan korupsi infrastruktur di Indonesia, diakses dari: <https://theconversation.com/riset-menelaah-penyebab-dan-cara-melawan-korupsi-infrastruktur-di-indonesia-222152>, pada tanggal 30 Januari 2024, pukul 8.03.



Rp. 202 trillion, in addition there was a 50% increase in infrastructure project corruption cases from 106 cases in 2015 to 167 cases in 2018.<sup>28</sup>

The urgency of implementing asset confiscation related to criminal acts of corruption is crucial and urgent because the reality is that state financial losses due to criminal acts of corruption in 2022 have reached Rp. 48,786 Trillion with the rate of recovery of losses through criminal compensation of only Rp. 3,821 Trillion or the equivalent of 7.83% of the total losses received by the state, according to the *Transparency International Indonesia* (TII) agency, Indonesia's perception index (IPK) at the beginning of 2023, Indonesia's IPK, which was initially 38, plunged to 34 and fell to The country is ranked 110th most corrupt out of 180 countries in the world.<sup>29</sup>

In the context of recovering state financial losses related to criminal acts of corruption, professional judges are needed to produce quality court decisions in cases of criminal acts of corruption. Apart from that, judges are also expected to be able to explore the values of justice and economic benefits for the State in deciding criminal cases. Corruption as a form of *economic crime*, considering that the crime of corruption is a crime that is detrimental to state finances and the state economy as stated in Articles 2 and 3 of UUTPIKOR, perpetrators of corruption, in addition to the main crime and fines, are also additional penalties in the form of replacement money regulated in PERMA No. 6 of 2014 and Article 18 paragraph (1) letter b of the Anti-Corruption Law which states that the payment of compensation money is as much as possible equal to the assets obtained from criminal acts of corruption.<sup>30</sup>

According to Aradila, in practice, the payment of replacement money is a standard procedure, but more as a choice given by the prosecutor to the convict, for example the prosecutor offers whether the convict wants to pay replacement money or go to prison. This is a gap that must be addressed in the future so that the mechanism for paying replacement money to convicts is carried out according to procedures, not options offered to convicts,<sup>31</sup> so that it is vulnerable to new legal violations that will harm the State's finances because the convict chooses imprisonment rather than paying compensation for the proceeds of corrupt crimes.

The legal rules governing the return of state finances are in Article 10 of the Criminal Code, Article 18 paragraph (1), Article 19 of the Corruption Law, and Perma No. 6 of 2014, which essentially regulates additional punishment in the form of paying replacement money for those convicted of criminal acts of corruption, according to the author's research, is not optimal

<sup>28</sup>*Ibid.*

<sup>29</sup>Aviva Khalila, "Rejuvenasi KPK, Urgensi Pemberlakuan RUU Perampasan Aset dengan pendekatan In Rem dan tinjauan pendekatan serupa pada regulasi Unexplained wealth di Australian", LK2 FH UI, 2023

<sup>30</sup>Budi Suhariyanto, "Penerapan Pidana Uang Pengganti kepada korporasi dalam perkara korupsi demi pemulihan Kerugian keuangan Negara" Pusat Penelitian dan Pengembangan Hukum MA-RI, RECHTsVINDING, Vol. 7 No. 1, April 2018.

<sup>31</sup>Aradilan, ICW, Kalau terpidana tak sanggup bayar uang pengganti, diakses dari : <https://www.hukumonline.com/berita/a/kalau-terpidana-tak-sanggup-bayar-uang-pengganti-it58cf439d3b4/>, 20 Maret 2018, pada Pukul : 18.30



in recovering state financial losses. According to Donal Fariz, there are four weaknesses in the Corruption Eradication Law, especially regarding replacement money.<sup>32</sup>

First: confiscation of corruptors' assets can only be carried out on goods used or obtained from corruption, this provision is as regulated in Article 18 paragraph (1) letter a. The weakness lies in the impossibility of confiscation of other assets outside of the case being processed, even though a corruption convict can have quite a lot of wealth beyond the reasonable amount compared to his legal income. Secondly: Compensation for state financial losses as in Article 18 paragraph (1) letter b is not optimal, the article states that several large losses resulting from the actions of certain officials cannot be returned, additional punishment in the form of compensation for losses is only limited to the maximum enjoyed by the corruption convict. Third: there is a legal loophole for not paying replacement money, it is replaced by imprisonment, this is a weakness in eradicating corruption if, from the start of the inquiry and investigation, asset tracing and confiscation are not carried out, if you wait for a verdict, there is a high possibility that assets will be transferred, concealed or sold. Fourth: proof is difficult, so confiscation or payment of replacement money from the convict's assets can only be done after the corruption has been proven in court. This is the author's opinion because it will hinder the acceleration of recovery and return of state money resulting from criminal acts of corruption which must wait for an *inkracht* court decision.

Every indictment of the Public Prosecutor, most of the indictment includes a penalty of compensation for state losses and the judge in his decision decides according to the facts in the trial, some are granted, some are rejected, compensation money in criminal acts of corruption is very difficult to formulate for legal experts who provide an understanding of Replacement money is even stated in Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the eradication of criminal acts of corruption which provides the term replacement money does not provide a clear definition of what the replacement money means.<sup>33</sup>

Practically, there is no common view regarding the parameters for determining the amount of replacement money, where in some conditions it is often calculated based on the amount of state losses incurred, but in other conditions it is calculated based on the amount of property obtained from the criminal act of corruption.<sup>34</sup> To answer this problem, according to the author, it is necessary to have clear and comprehensive regulations regarding the parameters for confiscating assets of those convicted of corruption, which do not only depend on the amount of replacement money, but more on legal certainty and justice for the State to obtain or recover its assets in order to accelerate the recovery and return of related assets. Criminal acts of corruption which so far have not been optimal.

The problem of applying additional punishment to convicts regarding replacement money in Article 18 paragraph (1) UUTPIKOR, creates legal and justice uncertainty for the recovery

<sup>32</sup> BPHN Kementrian Hukum dan HAM RI, *Loc.cit*, hal. 102.

<sup>33</sup> Moh. Yusril, Syachdin, kamal, *Loc.Cit*, 86

<sup>34</sup> Budi Suhariyanto, *Loc.Cit*, hal. 129



and restitution of state financial losses, for example in the imposition of a replacement prison sentence of 12 (twelve) months imposed by Decision Number 655K/Pid .Sus/2010 as a replacement if you do not pay replacement money in the amount of Rp. 378,116,230,813,- this is very inconsistent with decision Number 50 K/Pid.Sus/2010 which also stipulates a substitute prison sentence of 12 (twelve) months for non-payment of replacement money in the amount of Rp. 2,800,000,- This disparity shows that the imposition of large amounts of compensation money on corruption convicts is not necessarily followed by a replacement prison sentence for a time commensurate with the value of the replacement money, and vice versa, this disparity and uncertainty is a form of non-optimal return rules of State financial losses because the handling is still conventional.<sup>35</sup>

The criminal act of corruption is a special criminal act that has a direct impact and is detrimental to state finances, therefore the criminal threat is also specifically different and focuses on recovering state losses in the form of confiscation of assets related to criminal acts of corruption. Payment of replacement money as an additional criminal offense in Article 18 paragraph (1) letter a of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the eradication of corruption has not addressed the nature of returning state financial losses because in its implementation the convict is often unable to pay the replacement money and there are provisions for subsidiary criminal or substitute imprisonment if the replacement money is not paid 1 (one) month after the judge's decision has permanent legal force.<sup>36</sup>

According to Supardji in his book *Confiscation of Assets Proceeds of Corruption*, the existence of coercive norms in confiscating assets should make UUTIPKOR more effective, but this provision is still unable to recover state financial losses considering that compensation is limited to property obtained only, even though in corruption cases it is carried out jointly (delneeming), the proceeds of criminal acts of corruption tend to be divided (there is more than one perpetrator), another thing that hinders it is that it has been transferred/streamed/changed hands to third parties so that it is not covered by the provisions stipulated in the UUTIPKOR.<sup>37</sup>

The difficulty of optimizing the recovery of State financial losses, in the author's opinion, requires confiscation of assets related to the proceeds of Corruption Crimes as agreed to in the UN Convention in UNCAC 2003 and ratified by the Indonesian Government through the 2006 Law on UNCAC. By confiscating assets related to criminal acts of corruption, will provide solutions and targets for maximum return of state finances through more detailed and strict regulations regarding criminal sanctions for criminal acts of corruption in the form of confiscation of assets.

<sup>35</sup>*Ibid.* hal. 121.

<sup>36</sup>Moh. Yusril, Syachdin, kamal, *Loc.Cit.* hal. 91

<sup>37</sup>Siti Aisyah, Atikah Rahmi, Analisis Pembebanan Uang Pengganti dalam tindak pidana korupsi, Fakultas Hukum Universitas Muhammadiyah Sumatera Utara, *Unes Law Review*, Vol. 6 No. 2 Desember 2023.



## Conclusion

Returning state financial losses through the concept of punishment in the form of additional criminal penalties by punishing perpetrators of criminal acts of corruption to pay replacement money as regulated in Article 10 of the Criminal Code and Article 18 paragraph (1) UUTUPIOR cannot optimally restore recovery/restitution of State financial losses, the penalty is paying replacement money to perpetrators of criminal acts of corruption have weaknesses in the aspects of implementing criminal sanctions and recovering State Assets for perpetrators of criminal acts of corruption as stated in Articles 2 and 3 of UUTUPIKOR, many perpetrators of criminal acts, both individuals and corporations, are punished by paying replacement money without implementing the judge's decision which has permanent legal force, many perpetrators of criminal acts of corruption choose prison sentences to avoid paying replacement money.

Punishment for perpetrators of criminal acts of corruption to pay replacement money, apart from being considered a failure, is also not in accordance with the nature of the crime and the impact of criminal acts of corruption which endanger the country's economy and can cause the country to go bankrupt which makes its people suffer due to the prolonged economic crisis, The criminal act of corruption is said to be an extraordinary crime because of its extraordinary impact, therefore the handling of criminal acts of corruption must be in an extraordinary measure by making provisions and regulations that are extraordinary and focus on justice and benefits for Indonesian nation and state.

So far, the handling of perpetrators of criminal acts of corruption, especially corruption, state financial losses through the current law has been unable to provide recovery and return of state financial losses, so the financial state continues to experience leaks, and the people are harmed by the actions of perpetrators of criminal acts of corruption, therefore Strict regulations are needed, namely the application of confiscation of assets resulting from criminal acts of corruption to perpetrators of criminal acts of corruption after law enforcers find evidence and before prosecution or before the perpetrators of criminal acts of corruption are punished, which has permanent legal force.

By implementing asset confiscation related to criminal acts of corruption to the assets/property belonging to convicts, it will be faster to provide certainty of recovery and return of corrupted state money.

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