

Conference Paper

Charges and Payments of Compensation for State Financial Losses as an Effort to Obliteration of Corruption Crimes

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ABSTRACT

Corruption obliteration presently focuses on three main issues: prevention, obliteration, and asset recovery. Eradicate corruption not only focus on preventing and eradicating, but also improves the terms of punishing the perpetrators and is also associated with seeking to recover state financial losses from the proceeds of corruption crimes. The provisions in question are of great hope for systematic and comprehensive anti-corruption measures, which feature not only criminal prosecution of corruption crimes but also the protection of national finance, that is, the obligation to return state funds from the perpetrators of criminals. Corruption crimes can be used for national development. Therefore, normatively it would not be excessive if the provisions of Article 18 of Constitution no. 31 of 1999 in conjunction with Constitution no. 20 of 2001 regarding the Obliteration of deceits of corruption can be an effective legal instrument for compensating the State for losses caused by corruption crimes.

Keywords: Corruption crimes, return of state financial losses

Introduction

Constitution No. 20 of 2001 regarding Amendments to Constitution No. 31 of 1999 regarding Obliteration of Deceits of Corruption (in the future referred to as the Constitution on the Obliteration of Corruption), was promulgated established on the consideration that corruption crimes that have occurred so far have been widespread, not only detrimental national funds, but it has also constituted a contravention of the social and economic rights of the broader community so that the criminal act of corruption needs to be classified as a fraud whose obliteration must be carried out particularly.

The explanation of a criminal act of corruption is not explicitly regulated in several explanations in Article 1 of Constitution No. 31 of 1999 regarding the Obliteration of Deceits of Corruption. Article 1 No. 1 to No. 3 of Constitution No. 31 of 1999 regarding the Obliteration of Deceits of Corruption, among others, only provides an understanding of organizations, civil servants, and everyone. However, the explanation of a criminal act of corruption can definitively is presented in the formulation of Article 2 paragraph (1) and Article 3 of Constitution No. 31 of 1999 regarding the Obliteration of Deceits of Corruption, as mentioned:

Article 2 paragraph (1) of Constitution No. 31 of 1999 regarding Obliteration of Deceits of Corruption: "Everyone who unconstitutionally perpetrates an act of enriching him/herself or themselves or another party or an organization that can disadvantage national funds or the state economy is sentenced to minimum penal servitude 4 years and a maximum of 20 years and a minimum fine of 200 million rupiahs and a maximum of 1 billion rupiahs."

Article 3 of Constitution No. 31 of 1999 regarding the Obliteration of Deceits of Corruption: "Every person who intending to benefit him/herself or themselves or another party or an organization, abuses the authority, opportunities or facilities available to him because of his

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position or because of his position which can disadvantage national funds or the state economy, shall be sentenced to life penal servitude, or penal servitude for a minimum of 1 year and a maximum of 20 years and or a fine of at least 50 million rupiahs and a maximum of 1 billion."

Based on the two articles, corruption can be interpreted as all people who unconstitutionally enact acts that enrich themselves or enrich others or an organization by way of abuse of authority obtained, chance, or facilities because of their wealth or position or because of the assets they have and the position that can influence or disadvantage national funds.

Amendments to Constitution No. 31 of 1999 regarding the Obliteration of Deceits of Corruption are needed to avoid the many interpretations of the constitution that arise and provide protection for the social and economic rights of the community, as well as provide fair treatment in the act of eradicating corruption. The extraordinary efforts to eradicate corruption as referred to in the consideration of the issuance of the Anti-Corruption Constitution are among others realized by formulating provisions that regulate types of criminal sanctions that are not contained in other criminal constitutions. The criminal penalty in question is an additional criminal in the form of a criminal remittance of replacement money (Hartanti, 2009).

Corruption obliteration presently focuses on three main issues: prevention, obliteration, and asset recovery. Therefore, it can be stated that efforts to eradicate corruption are not only focused on prevention and obliteration as well as terms punishing the perpetrators but are also associated with efforts to recover state financial losses caused by corruption. Corruption leading to financial losses can restore the state's financial losses to cover by returning the proceeds of the corruption fraud so that it does not have a worse impact (Syaifulloh, 2019).

Returning of state financial losses after a corruption case aims to make the corruption case stop and give deterrent effects to all perpetrators. Returning of state financial losses is performed by confiscating certain items obtained from deceits as additional crimes. The main punishment such as penal servitude and fines are contained in Article 10 of the Criminal Code (KUHP). It is as stipulated in Article 39 of the Criminal Code: "(1) Items belonging to the convict obtained from fraud or which are intentionally used to enact a fraud can be confiscated, (2) In the case of a conviction for a fraud that was not perpetrated intentionally or because of a violation, the decision on confiscation may also be imposed established on matters stipulated in the constitution, (3) The confiscation can be carried out against a guilty person who is handed over to the government but only on goods that have been confiscated.

Provisions regarding criminal sanctions for remittance of substitute money in Article 18 of the Anti-Corruption Constitution, which states that:

1. In addition to additional penalties as referred to in the Criminal Code, additional penalties are:
 - a. Confiscation of tangible and intangible movable goods, as well as immovable goods that are used or obtained from deceits of corruption, as well as from goods that replace these goods, including the company owned by the convict where the criminal act of corruption was enacted;
 - b. Remittance of replacement money which has the same nominal cost as the proceeds of the criminal act of corruption by the perpetrator;
 - c. Termination of the company's activities with a maximum period of 1 (one) year;
 - d. Revocation or elimination of all or part of certain rights granted by the government to the convict.
2. If the convict does not recompense the replacement money as referred to in paragraph (1) letter b no later than 1 (one) month after the court's decision that has obtained permanent legal force, then his assets can be confiscated by the prosecutor and auctioned off to cover the replacement money.
3. If the convict does not have sufficient assets to recompense the replacement money as referred to in paragraph (1) letter b, then he shall be sentenced to penal servitude for a length of time not exceeding the maximum threat of the principal sentence following the

provisions of this Constitution and the length of time. The fraud has been determined in a court decision.

If a convict does not recompense compensation within the time limit determined by the judge, then Article 18 paragraph (2) and (3) of Constitution No. 20 of 2001 Amending Constitution No. 31 of 1999 regarding Obliteration of Deceits of Corruption arranged that a month after the judge's decision has become legally binding, the property owned can be confiscated and auctioned to get replacement money. Furthermore, if the convict does not have sufficient assets to recompense the replacement money, he will be sentenced to a prison term that exceeds the principal period. Normatively, losses are also regulated in constitutions and regulations as stipulated in Article 35 paragraph (1) of Constitution No. 17 of 2003 regarding National funds, which states, "Every state official and civil servant is not a treasurer who violates the constitution or neglects directly either directly or indirectly disadvantage the national funds associated to the change in the losings in question."

Normatively, the previous provisions raise considerable expectations for a systematic and comprehensive obliteration of deceits of corruption, which is marked by the imposition of criminal penalties on perpetrators of deceits of corruption and the return of cash proceeds of corruption to the state by perpetrators of deceits of corruption in the hope of saving the state money, which can then be used for national development. Thus, Article 18 of the Corruption Obliteration Constitution can be an effective and ideal legal tool for recovering state losses due to corruption.

Based on the description that has been mentioned previously, the problems in this study are: How is the Imposition and remittance of Compensation for State Financial Losses in Corruption Crimes?

Study reports review corruption crimes, national funds, and state financial losses

An overview of the fraud of corruption

The term corruption that we commonly call comes from Latin "*corruptio*" "corruption" (English) and "*corruptie*" (Dutch), meaning refers to corrupt, rotten, dishonest actions, which are associated with finance According to Black's Constitution Dictionary, corruption is an act carried out to seek unofficial advantages to other parties in the wrong way, namely using a position contrary to the constitution to obtain advantages for him/herself or themselves or others (Chaerudin et al., 2009).

Based on Constitution No. 31 of 1999 regarding Obliteration of Deceits of Corruption as amended by Constitution No. 20 of 2001 regarding Amendments to Constitution No. 31 of 1999 regarding Obliteration of Deceits of Corruption, article 2 and 3 define corruption as

1. Any person who intentionally violates the constitution by perpetrating an act to enrich him/herself or themselves or another party or an organization that can disadvantage national funds or the state economy.
2. Every person to benefit him/herself or themselves or another party or an organization abuses his authority, opportunity, or facilities to disadvantage the country's economy.

Corruption is known as an act carried out by public officials who abuse their authority, power, and trust for their interests which results in losses to national funds. Corruption includes the behavior of public sector officials, both politicians and civil servants, who enrich themselves unreasonably and against the constitution, or those closest to them, by abusing the power entrusted to them (Chaerudin et al., 2009).

The explanation of corruption in Constitution No. 31 of 1999 regarding the Obliteration of Corruption Crimes Jo. Constitution No. 20 of 2001 regarding Amendments to Constitution No. 31 of 1999 regarding Obliteration of Deceits of Corruption are:

1. Any person who unconstitutionally perpetrates an act to benefit him/herself or themselves or another party or an organization that can cause financial or economic losses to the state (Article 2);

2. Every person who abuses his authority and facilities because of his position, for the sake of benefitting him/herself or themselves or another party or an organization, can disadvantage national funds or the state economy (Article 3);
3. Anyone who perpetrates a fraud as referred to in article 5, article 6, article 7, article 8, article 9, article 10, article 11, and article 12 of Constitution No. 20 of 2001;
4. Everyone who has power or position, giving gifts or promises to government employees or by giving gifts or promises is considered attached to the position (Article 13);
5. Whoever violates the provisions of the legislation which contains the rule that the contravention of the constitution is known as a criminal act of corruption, the provisions stipulated in this constitution shall apply. (Article 14);
6. Every person who plots supports, or colludes with a criminal act of corruption (Article 15);
7. Persons outside the territory of the Republic of Indonesia who provide support, opportunities, facilities, or information for the occurrence of corruption deceit (Article 16).

The explanation of national funds

In-Constitution No. 17 of 2003 regarding National funds, which contrives the explanation of National funds as all rights and obligations of the State that can be valued in money and state property in the form of money, or in the form of goods that can be used as a property of the State associated to the implementation of these rights and obligations (Arsyad, 2013). National funds in a narrow sense include every legal entity that has the authority to manage and account for it in a narrow explanation (Arsyad, 2013).

In the explanation of Constitution No. 31 of 1999 regarding the Obliteration of Deceits of Corruption, national funds mean all forms of public property, whether separate or not, including all parts of government property and all rights and obligations arising from :

- a. Responsible for or being in the control, management, and accountability of state agency officials at both the central and regional levels;
- b. Being in the management, control, direction, and responsibility of State / Regional Owned Enterprises (BUMN/BUMD), foundations, legal entities, and companies that include state capital or companies that include third-party capital under agreements with the state.

The state's financial losses

The explanation of national funds is in the form of money and all forms that the cost of money can measure. By relating to the information and details of the article and the explanation of losings limits, in addition to national funds previously, may be formulated the means of state financial losses as a reduction in state assets and property because of abuse of authority or possibilities or centers to be had to someone due to function and position (Arsyad, 2013).

The explanation of state financial losings can be found in Constitution No. 1 of 2004 regarding State Treasury, Article 1 paragraph (22) "State/regional financial losses are shortages of money, securities, and goods, which are real and definite in amount as a result of acts against the constitution either intentionally or negligently". Therefore, the financial losings of the state must be certain, not guessed, and calculate the financial losings of the state (Arsyad, 2013).

The state that suffers from financial losses due to corruption can be recovered by applying additional criminal penalties to reimburse the state's financial losses. Reimbursement of the state's financial losses is an important objective goal of the government's efforts to root out corruption. With the threat of criminal sanctions restoring state financial losses, it will be easier to recover state financial losses due to corruption. In essence, the remittance of state financial losses is aimed at recovering the amount of money hidden by perpetrators of corruption crimes. Under the provisions of Constitution No. 31 of 1999 in conjunction with Constitution No. 20 of 2001, Article 18 contains the threat of additional criminal sanctions in the form of reimbursement of state financial losses.

Material and Methods

This study is structured using normative legal study methods, is a study performed by examining the sources of library materials (secondary data) which are used as the basis for the study, in the form of legislation and associated study reports and the issues raised. The primary source of the constitution used is the 1945 Constitution of the Republic of Indonesia, Constitution no. 1 of 1946 regarding the Criminal Constitution Regulations, Constitution No. 8 of 1981 regarding the Criminal Procedure Code, Constitution No. 31 of 1999 jo. Constitution No. 20 of 2001 (State Gazette of 1999 No.: 140) regarding the fraud of Corruption, Constitution no. 19 of 2019 regarding the second amendment to Constitution no. 30 of 2002 regarding the Corruption Obliteration Commission (State Gazette of the Republic of Indonesia No. 197 of 2019). Secondary Constitution Materials used include legal doctrines and theories, as well as study results (scientific works). Tertiary Legal Materials used in this study include legal dictionaries and other dictionaries.

The legal materials in this study were then investigated using the following methods: (1) Qualitative Investigation, where the data generated from the study were then grouped and linked to the problem under study according to the quality of its truth, to answer the existing problems; (2) Descriptive Investigation, which describes the data obtained from library study. Data Investigation was concluded by using the inductive method, namely a special way of thinking, and then general conclusions were drawn, aiming to answer the formulation of the problem in the study. The study or publication of this article was funded by the DIPA of the Public Service Agency of Sriwijaya University 2021. SP DIPA-023.17.2.677515/2021, on November 23, 2020. By Rector's Decree No.: 0010/UN9/SK.LP2M.PT/2021, On 28 April 2021.

Results and Discussion

The penalty for paying compensation is a consequence of deceptions or corruption that endangers the country's finances or the country's economy. A Juridical means is needed to recover the losses, namely in the remittance of replacement money. Replacement money is an additional form of punishment (criminal) in corruption cases. In essence, both legally and doctrinally, judges are not required to always impose additional penalties. However, it is necessary to recompense attention to this specifically for corruption cases. Corruption is an act that is contrary to the constitution that is detrimental or can disadvantage the state's finances; in this case, the state's losses must be recovered.

One way that can be used for state losses is with a proven obligation and has perpetrated a criminal act of corruption to return the proceeds of corruption in the form of replacement money. Therefore, even though the replacement money is only an additional cost, it would be very unwise not to recompense the money to overcome state losses. Defendants of a criminal act of corruption who have been declared to have perpetrated a criminal act of corruption are exempted from paying compensation if the money is declared to be exchangeable for state booty or does not enjoy the money in all, or has paid replacement money, or state losses are still collectible from other parties. The amount of replacement money that is taken or a certain state losing is responsible for state losses. Article 17 in conjunction with 18 letter b of Constitution No. 31 of 1999 regarding Obliteration of Deceptions of Corruption in conjunction with Constitution No. 20 of 2001 Amendments to Constitution No. 31 of 1999 regarding Obliteration of Deceptions of Corruption, which states that: 2, Article 3 Article 5 to Article 14, additional penalties as referred to in Article 18 may be imposed. Furthermore, Article 18 letter b states, "In addition to additional penalties as referred to in the Criminal Code, additional penalties are: b. remittance of replacement money in the maximum amount of objects obtained from deceptions of corruption".

The constitution emphasizes specifically the amount of the replacement money that as much as possible must be equivalent such as the results obtained by the fraud of corruption. From a juridical point of view, this must be interpreted as a loss that can be charged to the convict as a

state losing has a real and definite amount, due to an unconstitutional act, whether perpetrated intentionally or due to negligently perpetrated by the convict.

Imposition

The judges who decide the corruption case decided by applied imposition, there are 2 (two) imposition models, The imposition model consists of (Rzk, 2006):

Mutual liability

Mutual liability (shared responsibility), which is better known in the field of the civil constitution, is a way in which a contract occurs with many actors. Within the scope of the civil constitution, it is known that there are 2 (two) forms of association and some liability, which are active and passive. Joint and multiple debts can operate if the No. of debtors (creditors) is greater than one and vice versa; Passive solidarity and some liability occur when the No. of debtors (debtors) is greater than one (Rzk, 2006).

Referring to the concept of joint liability and some of the liabilities, joint liability and certain liabilities in the context of oppressive alt-coins can be described as joint and multiple liabilities. passive liability, where the State, in this case, is the creditor and the defendants the debtor. This means that if the state, through a panel of judges, has imposed a substitute fine simultaneously and individually on more than one defendant, each defendant must serve the sentence. According to the civil concept, if one of the defendants has fully reimbursed the replacement amount, the obligation of the other defendant is automatically reduced. Under the joint liability model, the panel of judges in its decision only said that the defendants were obliged to recompense a fine of a certain amount of rupees in exchange for a certain period. The (state) panel of judges is not concerned with how the defendants collect the replacement payment, whether borne by one of the defendants or by some section. In the spirit behind the concept of fines instead, the state is only concerned with how to return the money of the state that is harmed.

Proportional imposition

Proportional imposition is the imposition of a substitute money penalty where the panel of judges in their ruling definitively determines how much each defendant's burden will be. The determination of the amount of the replacement money is established on the judge's interpretation of the contribution of each defendant in the associated corruption.

Assessing state losses must be carried out by agencies that are not only experts but are also authorized. It means that the assessment and estimation of state losses must have the authority, ability, expertise, and knowledge to determine and assess them. The assessment and determination of state losses must be established on methods, standards, requirements, and skilled procedures and have authority following constitutions and regulations and the auditor's code of ethics. The decision of the Constitutional Court No. 003/PUU-IV/2006, which examined Constitution No. 31 of 1999 as amended by Constitution No. 20 of 2001 regarding the Obliteration of Deceits of Corruption, stated, "... to consider the specific and concrete circumstances surrounding the events that occurred, which logically can be concluded that state losses occurred or did not occur, it must be carried out by experts in national funds, the state economy, as well as experts in analyzing the relationship between a person's actions and losses...". "An expert in the field, must determine such a conclusion."

As decided by the Constitutional Court, an expert in his field is appointed established on a court decision to assess and determine state losses. However, suppose the expert is requested by investigators or other parties from state institutions/non-ministerial government institutions/public accountants/other relevant institutions. In that case, the expert must have public authority to determine and calculate state losses. According to the state administrative constitution, authority is a public power established by the constitution. Determining and assessing state losses is included in public actions that must be established in the constitution

because the act of determining and assessing state losses is the basis for taking forced actions and other legal actions by other parties, especially by the legal apparatus.

Thus, the institution authorized to assess, calculate, and decide country losses ought to additionally be regulated via way of means of regulation to keep criminal fact and maintain the assessment, estimation, and backbone manner now no longer inspired via way of means of any strength and influence due to the fact it's far a part of the due-of-regulation manner (Simatupang, 2011). It is regulated in the Elucidation of Article 32 paragraph (1) of Constitution No. 31 of 1999 as amended by Constitution No. 20 of 2001, which states, What is meant by "there has been a state financial loss" is a state losings that the amount can already be calculated established on the findings of the authorized agency or appointed public accountant. In terms of the method of assessing and calculating state losses, according to Article 13 of Constitution No. 15 of 2004, to reveal indications of state/regional losses and/or criminal elements, the examiner may carry out an investigative examination. Meanwhile, according to the Regulation of the Supreme Audit Agency No. 1 of 2008 regarding Standards for State Financial Audit, investigative audits, or coherent with the terms used by BPK with audits with specific purposes, is to detect deviations from the provisions of constitutions and regulations, fraud and inappropriateness (abuse). Thus, to reveal state losses and criminal allegations, investigative examinations or examinations for certain purposes are needed to produce findings or conclusions. The investigative review will produce results on the estimation of state losses and findings associated with state losses due to illegal acts or misconduct. If Crown loss is found to be in error, the evaluator will recommend compensation or fines to determine Crown loss. If it concludes that there are signs of deceit, the expert shall submit it to the State for damage estimation..

In practice, the two models previously applied randomly depending on the judge's interpretation. This inconsistency is most likely due to the lack of clarity in the existing rules. established on the nature of each model, the proportional model is indeed the one that has the least potential problems that will be raised. In contrast to the proportional model, the joint responsibility model has the potential to cause problems. First, the application of this model can lead to civil disputes between the defendants. It is very likely to happen because the panel of judges has thrown a 'hot ball' by not assigning a replacement money burden to each defendant. Each defendant can accuse the other and claim about how much burden they have to bear. This dispute may end up in court if one or both parties file civil constitutions. As a result, the criminal execution of replacement money is likely to be protracted on the pretext of waiting for a court decision on a civil constitution filed by one of the convicts.

Payments

Constitution No. 31 of 1999, as amended by Constitution No. 20 of 2001 through article 18 paragraph (2), actually stipulates a very short period of 1 (one) month for the convict to return the replacement money. However, in the same paragraph, the Constitution of No.s 31 of 1999 regarding the Obliteration of Deceits of Corruption also provided for a criminal reservation in the form of confiscation of the convict's property, which would then be auctioned for replacement money. In the next paragraph, the convicted person is even threatened with penal servitude, the term of which does not exceed the maximum threat level of the main penalty. Therefore, the real convict will not escape even if he claims that a civil constitution is pending.

Subsidiary punishment or substitute confinement substitute punishment for the replacement of a defendant's surrogate money in a proven and convicted bribery case guilty of giving a bribe is prohibited. Because basically, defendants who are proven to have embezzled acts are forced to return the money caused by embezzlement to recover losses to the state. Alternative prison sentences can prevent the state from recovering losses due to corruption. The Supreme Court (MA), for example, in many decisions only imposes replacement money without subsidiary penal servitude as a way to force the defendant to return state money. An alternative term of penal servitude may be imposed for bribery in small amounts causing damage to the state or for inability

to recompense under certain circumstances. In cases where an alternative prison sentence is required by the constitution, the alternative prison sentence must be increased (jdih.bpk.go.id, 2011).

In the provisions in article 4 of Constitution No. 31 of 1999 as amended by Constitution No. 20 of 2001, it is mentioned that "Returning losses to national funds or the country's economy does not eliminate the punishment of perpetrators of deceits". Thus, in other words, if a person is suspected of perpetrating a corrupt offense leading to financial loss to the State that he or she has to bear, then it is not. This is a continuation of the reward theory (dessert theory), which explains that the actions perpetrated by a transgressor should be punished depending on his actions.

The Panel of Judges may can "impose a criminal return on state financial losses as an additional fraud and the main punishment, namely penal servitude and fine". Returning financial losses to the state is important for eradicating corruption. Optimizing efforts to eliminate corruption and recover financial losses do not depend solely on the court decisions of judges. However, it is also heavily influenced by the indictments and demands of prosecutors as the judge's considerations when deciding on a case.

Conclusion

Constitution No. 31 of 1999 regarding Obliteration of Deceits of Corruption in conjunction with Constitution No. 20 of 2001 Amendments to Constitution No. 31 of 1999 regarding Obliteration of Deceits of Corruption through Article 17 in conjunction with 18 letter b of, which states that: 2, Article 3, Article 5 until Article 14, the defendant may be subject to additional penalties as provided for in Article 18. Furthermore, Article 18 letter b states that "In addition to additional penalties as referred to in the Criminal Code, additional penalties are: b. remittance of replacement money in the maximum amount equal to the assets obtained from the criminal act of corruption".

There are two charging models of burden that have been adopted by judges adjudicating corruption cases. The assignment model is the assignment of many and some responsibilities and loads proportionally. Constitution No. 31 of 1999, as amended by Constitution No. 20 of 2001 through Article 18 paragraph (2), actually stipulates a very short period of 1 (one) month for the convict to return the replacement money. However, in the same paragraph, Constitution no. 31 of 1999 regarding the Obliteration of Deceits of Corruption also provided for a criminal reservation in the form of confiscation of the convict's property, which would then be auctioned for replacement money. In the next paragraph, the convict is even threatened with penal servitude, the punishment of which does not exceed the highest degree of threat from the principal punishment

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Constitution and Regulations

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- Constitution No. 17 of 2003 regarding National funds.
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