International Journal of Law, Crime and Justice
Volume. 2 Number. 1 March 2025
e-ISSN: 3047-1362; p-ISSN: 3047-1370, Hal 306-316
DOI: https://doi.org/10.62951/ijlcj.v2i1.556
Available online at: https://international.appihi.or.id/index.php/IJLCJ

Restitution of State Financial Losses Under the Anti-Corruption Law: A Progressive Legal Reconstruction Approach

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Abstract. *This research examines the reconstruction of Article 4 of the Corruption Crime Law regarding the return of state financial losses through a progressive legal approach. This research uses sociological normative legal research methods with statutory and conceptual approaches. The results show that the provision of Article 4 which states that the return of state financial losses does not eliminate punishment needs to be recon-structed to accommodate the principles of restorative justice and legal incentives for perpetrators who voluntarily return state losses. The reconstruction does not completely eliminate punishment, but provides different treatment based on the level of cooperation of the perpetrator. For corruption cases with relatively small state losses, a restorative justice approach is more appropriate considering that case handling costs are often greater than the value of losses. This research recommends reformulating Article 4 to provide op-portunities for administrative settlement within a certain timeframe before proceeding to criminal pro-ceedings.*

Keywords. *Corruption, Legal reconstruction, progressive law, restorative justice, state financial losses.*

1. INTRODUCTION

The criminal justice system in its movement will always experience interaction, interconnection and interdependence with its environment in society, economy, politics, education and technology, as well as subsystems of the criminal justice system itself (subsystem of criminal justice system (N, 2020). The Criminal Justice System as a system is essentially an open system. The use of criminal law in the judicial process is essentially the enforcement of criminal law itself and as part of criminal politics, namely a rational policy for crime prevention with the ultimate goal of justice and human welfare (Ismail & Mantali, 2021).

In social life, society is seen as a system and of course in its realization it always undergoes changes in the form of progress and decline, broad or limited, fast or slow (D, 2013). In the face of these advances and setbacks, humans are often faced with various problems and problems, which can have implications for the criminal justice process, both caused by themselves and caused by the actions of others, but one thing is certain that the law is present to regulate the life of the nation and state to create a good society.

Received: March 10, 2025; Revised: March 17, 2025; Accepted: March 24, 2025; Published: March 31, 2025

The Indonesian Constitution (the 1945 Constitution of the Republic of Indonesia) in Article 1 paragraph (3) explicitly states that "The State of Indonesia is a state of law." Law as a norm has a specific characteristic, which is to protect, regulate and provide balance in maintaining the public interest (G. T, 2023). The provisions that are emphasized and applied to a person who neglects or disturbs the balance of public interests are legal provisions that apply in the life of social groups in community life. In accordance with a goal to achieve order for the sake of justice, the rules of law will develop in line with the development of human society (A, 2013). As is known that, the function of law is to provide protection for human interests personally and together, so that human interests can be protected as expected, it is necessary to enforce the law related to legal issues that interfere with and involve human life in social life (F. M, 2011).

Corruption cases are one form of crime that has received a lot of public attention, including the background of the perpetrators of corruption, the amount of losses suffered by the state, to the debate about what sanctions are appropriate and feasible for corruption suspects (R et al., 2021). In the consideration of the making of Law Number 31 of 1999 concerning the Eradication of the Crime of Corruption that the crime of corruption has been very detrimental to state finances or the state economy and hampers national development, then in the consideration of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of the Crime of Corruption in consideration that the crime of corruption has been classified as a crime whose eradication must be carried out in an extraordinary manner, In further consideration, in order to ensure legal certainty, avoid diversity of legal interpretations and provide protection for the social and economic rights of the community, as well as fair treatment in eradicating criminal acts of corruption, no one distinguishes between people or corporations that commit criminal acts of corruption, whether the losses are small or large. Specifically, Article 4 of the Anti-Corruption Eradication Law states that the return of state financial losses or the state economy does not eliminate the criminalization of the perpetrators of criminal acts as referred to in Article 2 and Article 3.

Steps in handling or resolving criminal cases with restorative justice methods offer several different points of view and approaches in understanding and handling a criminal case. In the view of restorative justice, the meaning of criminal offense is basically the same as the view of criminal law in general, which is related to the relationships that exist in society (Siswosoebroto, 2009). In this regard, what was initiated by Satjipto Rahadjo about progressive law, is realized in a way of law that is not status quo, out of conventional habits in order to protect human interests and humanity, care for social life, and pro-people and justice. Progressive law is reflected in legal actors who have been reputable (Aulia, 2018).

This study revisits Article 4 from the perspective of progressive law initiated by Satjipto Rahardjo, which prioritizes substantive justice compared to rigid legal positivism. This study criticizes how the formulation and judicial interpretation of Article 4 has weakened the deterrent effect and accountability in handling corruption cases. This study identifies the need for normative reconstruction so that legal provisions are in line with moral and ethical imperatives in efforts to eradicate corruption. Previous legal interpretations often considered the recovery of state losses as an absolute mitigating factor, ultimately leading to a reduced sentence or even acquittal. However, this is contrary to the basic objectives of criminal law and the eradication of corruption, which include retribution, prevention and rehabilitation. Therefore, reconstruction of this article is urgent to reflect the evolving values of justice and integrity.

The main problem in this research is how should Article 4 of the Corruption Eradication Law be reconstructed in the perspective of progressive law to ensure justice and legal certainty in returning state financial losses?

2. METHODS

Steps in handling or resolving criminal cases with restorative justice methods offer several different points of view and approaches in understanding and handling a criminal case. In the view of restorative justice, the meaning of criminal offense is basically the same as the view of criminal law in general, which is related to the relationships that exist in society (Siswosoebroto, 2009). In this regard, what was initiated by Satjipto Rahadjo about progressive law, is realized in a way of law that is not status quo, out of conventional habits in order to protect human interests and humanity, care for social life, and pro-people and justice. Progressive law is reflected in legal actors who have been reputable (Aulia, 2018).

3. RESULT AND DISCUSSION

Current Legal Arrangements in the Return of State Financial Losses in Corruption Crimes

This study was conducted online by distributing a digital questionnaire to students from various universities in Indonesia. This method enabled the research to reach a broader range of respondents without geographical limitations. The questionnaire was distributed through digital platforms such as Google Forms, WhatsApp, and Telegram over a specific period.

Article 4 of Law Number 31 Year 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes stipulates that the return of state financial losses does not eliminate the punishment for the perpetrators of corruption crimes. This provision emphasizes the repressive nature of anti-corruption law enforcement. However, in the perspective of progressive law, this article needs to be reconstructed so that it does not only focus on retaliation, but is also able to guarantee substantive justice and legal certainty for the perpetrators and the state, especially in the context of returning state losses.

a. Carry out the prosecution process in criminal cases;
b. Execute the judge's decree and implement court decisions that have permanent legal force;
c. Supervise the implementation of conditional sentence, supervision entence, and conditional release decision;
d. Investigate special criminal offenses in accordance with the provisions of the applicable laws and regulations; and
e. Completing certain case files, including conducting additional examinations before being submitted to the court, while still coordinating with investigators in its implementation.

A final court decision, which orders a defendant to pay restitution for state financial losses caused by the actions of an irresponsible party, will lose its effectiveness if the prosecutor, as executor, does not exercise his authority to recover state losses. Therefore, prosecutors have the responsibility to ensure the implementation of such court decisions by taking the necessary legal steps to recover state financial losses in accordance with applicable regulations.

In filing a civil lawsuit to recover state financial losses, the State Law Enforcement Prosecutor or the aggrieved institution must be able to prove several important aspects as the basis for their claims. Matters that must be proven in their capacity as prosecutors, among others:

a. There is a real loss of state finances;
b. State financial losses incurred are a direct consequence of or have a relationship with the actions committed by the suspect, defendant, or convicted person;
c. There are assets owned by suspects, defendants, or convicts that can be utilized as a source to recover state financial losses.

Article 4 of the Corruption Law is no longer relevant to the situation and is limitative. The element of state financial loss in the Corruption Crime Law is an element that must be fulfilled in the process of recovering state financial compensation. In handling corruption crimes, a large budget allocation is required. In fact, in some cases, the value of state financial or economic losses incurred is smaller than the costs incurred in the handling process, including in the punishment stage. As a result, although the state seeks to recover the losses incurred, the reality shows that the expenditure in handling corruption cases, especially those of small value, can be disproportionate to the amount of losses recovered.

It cannot be denied that the difficulties in confiscating property experienced by Investigators often have an impact on the actions of Investigators who focus on confiscating letters or written documents used to determine the amount of state financial losses incurred, which of course can only be used to prove the guilt of the perpetrator which aims to impose imprisonment, while the implementation of confiscation, auction, and payment of compensation as additional punishment is hampered.

The inhibiting factors in efforts to recover state money damages due to corruption can be described as follows:

a. Statutory factors.

   Juridically, the provisions of Article 17, Article 18, Article 32, Article 33, Article 34, and Article 38C of the Corruption Eradication Law do not provide a loophole for every perpetrator of corruption to escape criminal liability or avoid confiscation, seizure, auction, and payment of compensation. In relation to confiscation, the Criminal Procedure Code as the parent of the implementation of criminal procedure law has provided a limitation that the assets that can be confiscated are only objects that are the proceeds of criminal acts of corruption or objects that are used during the commission of criminal acts of corruption or objects that are in third parties but must have a relationship or connection with criminal acts of corruption. Considering that the criminal act of corruption is included in extraordinary crimes with perpetrators who have a high educational background, the subject of handling corruption cases to the Criminal Procedure Code can provide opportunities for each perpetrator to make efforts that have the potential to make Investigators unable to confiscate the property of the perpetrator. As is known, the implementation of confiscation of the perpetrator's property will determine the success of confiscation efforts, auctions, and payment of compensation as a return of state financial compensation.

b. Law enforcement factors

   The low success of Investigators in confiscating property owned by perpetrators of corruption cannot be separated from the point of view that restitution of state losses is a subsidiary punishment, while the primary punishment is imprisonment. Although the Law on the Eradication of Corruption Criminal Acts provides options related to the prosecution of corruption cases consisting of criminal charges and restitution of state losses through additional punishment and civil suits, considering the impact caused by corruption crimes on state finances, it is appropriate if law enforcement officials prioritize efforts to recover state losses compared to imprisonment.

c. Community factors

   Problems that often arise in society that can affect the recovery of state financial compensation due to corruption are: Low awareness of the public to

report to law enforcement officials if they are aware of the occurrence of corruption crimes; Low capacity for the public to become witnesses in the trial process based on fear and fear that the testimony given at the trial will have an impact on the public's personal interests, because most of the perpetrators of corruption crimes are people with high positions, positions, and knowledge.

Legal Reconstruction of the Return of State Financial Losses in Corruption Crime in the Perspective of Progressive Law

This study was conducted online by distributing a digital questionnaire to students from various universities in Indonesia. This method enabled the research to reach a broader range of respondents without geographical limitations. The questionnaire was distributed through digital platforms such as Google Forms, WhatsApp, and Telegram over a specific period.

The amount of state financial losses incurred is one of the factors considered in the prosecution process carried out by state institutions, including the Indonesian Attorney General's Office. When the value of state losses incurred is smaller than the budget that must be spent on the prosecution process, there is an imbalance in the effectiveness and efficiency of the use of state resources. Therefore, in these conditions, the restorative justice approach is one solution that can be applied. Restorative justice is an approach in the justice system that focuses more on recovery and reconciliation, rather than just punishment. The basic principles contained in this approach are in line with human rights, especially in terms of protecting human dignity and the basic rights of individuals. Restorative justice recognizes that every individual, including criminal offenders, still has intrinsic value that must be respected, even though they have committed illegal acts. In the context of corruption crimes with a small scale of state losses, this approach can be used to restore state losses without having to spend more than the value of the loss itself, so that law enforcement continues to run fairly and benefit the community.

The restorative approach aims to provide justice for both perpetrators and victims, taking into account the level of loss experienced. This approach is relevant in corruption cases with relatively small state losses, as it allows recovery without having to sacrifice the efficiency of state resources in the law enforcement process. In addition, the application of restorative justice in corruption cases is also in line with the instructions of the Attorney General of the Republic of Indonesia, which emphasizes priorities and achievements in handling corruption cases. This instruction encourages that in handling certain cases, especially those involving small amounts of state losses, more effective settlements can be made through optimal recovery of state losses without having to spend a much larger budget for a long legal process. Thus, this approach not only fulfills aspects of justice, but also reflects effectiveness in law enforcement policy.

When calculated economically, the state in this case loses more when handling cases with relatively small state losses, where the cost of handling corruption cases incurred is not proportional to the value of state losses, so in this case, it must pay attention to cost and benerfits because the process of handling cases from the investigation stage to execution uses an operational budget that is greater than the amount of state losses caused by the perpetrators of corruption. The cost of handling corruption cases incurred is not proportional to the value of the state losses.

The main goal of Law Number 20 Year 2001 is the recovery of state financial losses. Law enforcement officials are expected to identify corruption cases that are considered detrimental to state finances so that they can be resolved through out of court settlement, by calculating the ratio of the value of operational funds for handling cases to the value of state financial losses. Out of court settlement is a concept of restorative justice. The application of restorative justice needs to be accommodated to evaluate the weaknesses of thr retributive justice approach as it has exisred and applies. Seen from that point of view, the concept of restorative justice does not completely eliminate criminal sanctions, but rather prioritizes sanctions that emphasize efforts to restore the consequences of crime.

In the context of corruption crimes, the focus of legal attention should be on how the state losses incurred by the perpetrators of corruption crimes can be returned prioritized by the law by paying attention to the amount of state losses caused compared to the benefits that will be received by the state, in this case the cost of resolving corruption cases from the investigation stage to execution rather than prioritizing criminal proceedings so that, there are at least 2 (two) concepts of punishment for perpetrators of corruption crimes that can be applied according to the restorative justice approach, namely first, the recovery of state losses in the form of returning state financial losses, second, punishment in the form of forced labor for perpetrators of corruption whose proceeds are confiscated to the state. Law enforcement against corruption crimes with small state losses in realizing justice carried out by the Prosecutor's Office prioritizes the aspect of restitution rather than the aspect of punishment against the perpetrators of corruption crimes because if the aspect of punishment is carried out against the perpetrators of corruption crimes with small state losses, then indirectly law enforcement against corruption crimes with small losses can cause losses to the state because the costs incurred are greater than the cases handled.

Based on the explanation above, restorative justice is very suitable to be used in law enforcement against perpetrators of corruption crimes with small state losses, because the purpose of restorative justice is to repair the losses caused by the perpetrator to the victim (the State) by compensating the losses suffered by the victim (the State). Reimbursement in the context of law enforcement against corruption crimes with small state losses is to return the state losses, through the mechanism of

members or leaders of related agencies where the state losses occurred. Settlement of state losses needs to be done immediately to restore lost or reduced state assets and increase the discipline and responsibility of civil servants / state and regional officials in general, and financial managers in particular.

In practice, this provision often creates a dilemma between legal certainty and substantive justice . A progressive legal perspective that emphasizes law as a tool to create justice and humanity demands that this article be reconstructed. The reconstruction in question does not remove the punishment altogether, but accommodates the principle of restorative justice as well as legal incentives for perpetrators who return full or significant state losses voluntarily. With this approach, the state gets direct benefits in the form of recovery of state financial losses, while the perpetrators are still prosecuted, but given different treatment based on their level of cooperation. This reconstruction also responds to inequalities in legal practice, where perpetrators who return state losses still receive maximum charges without appreciation of their good faith. Progressive law encourages a system that is more responsive and adaptive to reality, so the reconstruction of Article 4 must contain norms that allow for fair legal rewards, such as a reduction in criminal threats, without negating the deterrent aspect. Thus, the reconstruction of Article 4 in the perspective of progressive law will create a balance between substantive justice and legal certainty in the process of recovering state financial losses.

Regarding state financial losses, as a reference for the construction of recommendations, there is currently a Memorandum of Understanding between the Ministry of Home Affairs (Number: 100.4.7/437/SJ), the Indonesian Attorney General's Office (Number: 1 Year 2023) and the Indonesian National Police (Number: NK1/I/2023) concerning the Coordination of Government Internal Supervisory Apparatus and Law Enforcement Apparatus in Handling Reports or Complaints on the Implementation of Regional Government, that in Article 5 paragraph (1) states "the parties agree that the results of an examination or investigation that indicate state financial losses whose value is smaller than the cost of handling the case are given the opportunity to resolve administratively no later than 60 days" [23].

This certainly opens up space that relatively small corruption crimes can be resolved by returning state financial losses and can be accompanied by interest fines, so that the settlement is not criminal in order to save the budget spent at the stage of punishment, this is a form of legal progressivity that develops according to the needs of the state and society [24]. Referring to the Memorandum of Understanding between the Ministry of Home Affairs, the Indonesian Attorney General's Office and the Indonesian National Police regarding the Coordination of Government Internal Supervisory Apparatus and Law Enforcement Officials in Handling Reports or Complaints on the Implementation of Regional Government, it can basically be a reference in revising by reformulating Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of the Crime of

Corruption in Article 4 which provides alternative liability for relatively small acts of corruption, then the construction of Article 4 of the Anti-Corruption Law will be as follows:

a. For examination results that indicate state financial losses that are smaller than the cost of handling the case, an opportunity is given to settle administratively no later than 60 (sixty) days.
b. If within 60 (sixty) days the indication of state financial loss as referred to in paragraph (1) cannot be resolved, the indication of state financial loss may be continued criminally.

In theory, legal products will depend on the legal politics at work in a country, so in legal politics the indicators for legal products are the process of making them, providing their functions, and opportunities to interpret them. In principle, the law can be at the forefront of tipikor cases with relatively small / light state losses. One step that can be taken is to provide a clear legal basis to prioritize the application of restorative justice that allows the perpetrator to return the funds to the state. This approach is considered more effective than processing the perpetrator through criminal channels, which in the context of the principle of expediency, often requires case handling costs that are far greater than the value of the state financial losses incurred, thus, this mechanism not only ensures optimal recovery of state finances, but also avoids budget waste in the criminal justice system.

4. CONCLUSION

The Corruption Eradication Law (Anti-Corruption Law) was drafted with the main objective of recovering losses suffered by the state due to corruption. The form of restitution of state financial losses when observed from the changes in the articles on corruption crimes related to state financial losses between the Anti-Corruption Law and Law Number 1 of 2023 concerning the Criminal Code there are significant differences, especially in terms of imprisonment and fines. Efforts to recover state financial losses for the occurrence of corruption crimes juridically can be started from the investigation stage, the prosecution stage and the execution stage or the implementation of court decisions. The weaknesses in the return of state financial losses in the current corruption case are that Article 4 of the Corruption Crime Law is no longer relevant to the situation and is limitative in nature, making it less flexible in its application. In addition, another weakness lies in the process of confiscating assets in corruption cases, which often faces legal and technical obstacles in its implementation.

REFERENCES

Aisyah, Simanjuntak, I., & Pohan, M. (2020). Pengembalian kerugian keuangan negara dalam pelaksanaan penegakan hukum tindak pidana korupsi. *MERCATORIA*, *13*(2), 178–187. https://doi.org/10.31289/mercatoria.v13i2.4155

Amelya, S., & Elfiani, F. (2022). Kebijakan sanksi pidana dalam perkara tindak pidana korupsi di Indonesia. *JOJA*, *1*(2), 44–60. https://doi.org/10.30606/joja.v1i2.1495

Aulia, M. Z. (2018). Hukum progresif dari Satjipto Rahardjo: Riwayat, urgensi, dan relevansi. *Undang: Jurnal Hukum, 1*(1).

Djamali, A. (2013). *Pengantar hukum Indonesia*. Jakarta: Rajawali Press.

Fajar, M., & Achmad, Y. (2010). *Dualisme penelitian hukum normatif dan empiris*. Yogyakarta: Pustaka Belajar.

Gunawan, Y., & Singaperbangsa, P. S. U. (2020). Pemberantasan tindak pidana korupsi pasca ratifikasi. *2*(1).

Hakim, A., Alfitrah, A., & Angel, J. (2023). Tindak pidana korupsi pada perkara pengembalian ganti rugi keuangan negara dalam peraturan perundang-undangan. *DJD, 3*(1), 1–11. https://doi.org/10.35706/djd.v3i1.7940

Ilmi, M., Muchtar, S., & Ilyas, A. (2022). Penyitaan berbasis properti sebagai upaya pengembalian kerugian keuangan negara dalam tindak pidana korupsi. *JULR, 5*(2), 493. https://doi.org/10.26623/julr.v5i2.5197

Indriana, Y. (2018). Pengembalian ganti rugi keuangan negara pada perkara tindak pidana korupsi. *Jurnal Cepalo, 2*(2).

Ismail, D. E. (2024). Collocation of restorative justice with human rights in Indonesia. *Legality: Jurnal Ilmiah Hukum, 32*(2).

Ismail, D. E., & Mantali, A. R. Y. (2021). *Hukum acara pidana (sebuah pengantar)*. Yogyakarta: UII Press.

Juliani, R. D., & Lubis, S. (2023). Pengembalian aset hasil korupsi dan penanggulangan korupsi melalui penyitaan non-conviction based asset forfeiture: Tinjauan hukum Indonesia dan United Nations Convention Against Corruption (UNCAC) 2003. *J.Edu, 9*(1), 273. https://doi.org/10.29210/1202322846

Karindra, A. B., & Sundary, R. I. (2022). Penyelesaian perselisihan hubungan industrial yang disebabkan oleh hak atas upah di PT. Kalindo Etam dihubungkan dengan Undang-Undang No. 2 Tahun 2004. *BCSLS, 2*(2). https://doi.org/10.29313/bcsls.v2i2.2691

Kasenda, D. G., & Saputra, E. S. (2020). Tinjauan yuridis tentang eksekusi kerugian negara dalam tindak pidana korupsi. *JIHTB, 5*(2), 775–799. https://doi.org/10.61394/jihtb.v5i2.145

Lamusu, R., Ismail, D. E., & Tijow, L. M. (2021). Model penegakan hukum terhadap tindak pidana korupsi dana desa. *Philosophia Law Review, 1*(1).

Mahmudah, N. (2020). Perlindungan hukum terhadap perempuan dalam sistem peradilan pidana. *Setara: Jurnal Studi Gender dan Anak, 2*(1), 31–47.

Muchlis, A. (2017). Penegakan hukum terhadap tindak pidana korupsi dengan kerugian negara yang kecil dalam mewujudkan keadilan. *FIAT JUSTISIA: Jurnal Ilmu Hukum, 10*(2).

Saraswati, F. Y., dkk. (2023). Manajemen hypervolemia untuk mencapai adekuasi hemodialisis pada pasien CKD dengan nefrolithiasis di RSUD Dr. Wahidin Sudiro Husodo. *EZ-SCI-BIN, 1*(2A), 63–74. https://doi.org/10.58526/ez-sci-bin.v1i2A.45

Siburian, M. R., & Siregar, S. A. (2020). Tinjauan yuridis penerapan pidana denda pada kasus tindak pidana korupsi. *Retentum*, *2*(1). https://doi.org/10.46930/retentum.v2i1.427

Siswosoebroto, K. (2009). *Pendekatan baru dalam kriminologi*. Jakarta: Universitas Trisakti.

Siregar, G. T. (2023). Pengembalian aset (asset recovery) pelaku tindak pidana korupsi. *UNESREV*, *6*(2).

Sunarto. (2016). *Keterpaduan dalam penanggulangan kejahatan*. Bandar Lampung: Utama Raharja.

Wantu, F. M. (2011). *Idee des recht (kepastian hukum, keadilan dan kemanfaatan)*. Yogyakarta: Pustaka Belajar.

Wulansari, D. (2013). *Sosiologi konsep dan teori*. Bandung: Refika Aditama.