The Concept of State Financial Loss Recovery Reviewed from the Perspective of the Judex Factie Court's Considerations

Konsep Pengembalian Kerugian Keuangan Negara Ditinjau Dari Perspektif Pertimbangan Majelis Hakim Judex Factie

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Abstract: Corruption causes measurable state financial losses, making restitution a critical component of Indonesia's criminal justice system. Although mechanisms such as restitution and asset forfeiture are regulated under the Corruption Eradication Law, their implementation faces significant obstacles, including limited technical provisions, difficulties in tracing the origin of assets, and reliance on court decisions with permanent legal force. This study employs a normative juridical method to examine the regulatory framework governing restitution and its effectiveness in recovering state assets. The findings reveal that the absence of clear standards for calculating and enforcing restitution hampers legal consistency and weakens the recovery process. The study concludes that a reformulation of restitution policy is essential to ensure legal certainty and to transform restitution into an effective tool for restoring real state losses.

Keywords: Corruption; State Loss; Restitution

INTRODUCTION

Corruption has become a very worrying crime for Indonesia, because its impact can hamper economic growth and disrupt national development. Corruption is an important issue that has the potential to threaten the stability and security of the people, hamper economic, social and political development, as well as make democratic values and morality damaged, as if this behavior is slowly becoming part of the culture(Yusoff et al., 2023, p. 1025) . The consequences caused by tipikor, for example what has been explained previously, it has a reason that this crime can no longer be categorized as an ordinary crime, but can be categorized as an extraordinary crime(Fuad, 2023, p. 2) . In addition to this, if we refer to the explanation contained in the regulation of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (hereinafter referred to as

the Anti-Corruption Law), which states that the eradication of corruption must be carried out with extraordinary measures, this further confirms that corruption is included in the category of extraordinary crimes, which requires handling with mechanisms that cannot be done with mediocrity(Kaparang, 2021, p. 78)

Corrupt behavior can be considered an extraordinary crime category that has been confirmed in the Anti-Corruption Law regulation. With this regulation, it has been stated that corruption, which is currently developing systematically, is not only the loss of the state, but also the violation of the economic and social rights of the people. For this reason, corruption is no longer categorized as an ordinary crime, in other words, it is now categorized as an extraordinary crime. As a result of this, the efforts of countermeasures also cannot be done with common things, but must carry out extraordinary methods or mechanisms.

One of the most important elements in corruption crimes that must be proven is state financial losses, which have been regulated in Article 2 and Article 3 of the Anti-Corruption Law(Pratiwi et al., 2024, p. 776) . However, at this time this element is crucial, because if a behavior that has abused authority is not proven to have state financial losses, then it cannot be categorized as a corruption crime.

Indonesia Corruption Watch (ICW) noted that the total state financial losses from 2014 to 2023 reached tens of trillions of rupiah, as listed in the following table:

Table 1: ICW Data on State Losses

Year	State Losses (In Trillion)
2014	10,69
2015	1,74
2016	3,08
2017	29,42
2018	9,29
2019	12
2020	56,74
2021	62,93
2022	48,79
2023	56

Source: Data processed by Authors, 2025

In 2024, corruption cases set a new record, due to corruption committed by PT Timah as stated in Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst(ACLC KPK, 2024) . Initially, the state loss due to the corruption case was estimated at approximately 271 trillion rupiah, but later the figure rose to a higher estimate than 271 trillion rupiah. In the verdict, the judge then imposed a prison sentence of 6 (six) years and 6 (six) months, and was required to pay a fine of Rp 1,000,000,000.00 (one billion rupiah), with the provision that if the fine is not paid,

it will be replaced by imprisonment for 6 (six) months. In addition, the defendant is also sentenced to pay restitution for state financial losses in the amount of Rp 210,000,000,000.00 (two hundred ten billion rupiah), with the condition that if the restitution is not paid within 1 (one) month after a court decision that is legally binding, then his property can be confiscated by the prosecutor's office and auctioned off to cover the restitution. If the defendant does not have sufficient assets to pay the restitution, then the prison sentence will increase for 2 (two) years(Misbah et al., 2024, p. 92)

The concept of state financial losses in terms of the consequences of criminal acts of corruption, in Indonesian legislation still does not have a clear and adequate formulation. The calculation that should be used in assessing a state financial loss must be based on actual losses, because in fact the rules or regulations of criminal law must apply the principles of lex scripta, les stricta and lex certa. So, based on the description of the problems above, it is necessary to examine and find concepts regarding state financial losses.

The research method used in this writing is normative juridical(Ali, 2021, p. 20) . The analysis in this research uses descriptive analysis to describe thoroughly and in depth the concept of state financial losses arising from corruption crimes using case examples. This research uses a statutory approach and a case approach by referring to court decisions. In addition to laws and regulations, legal materials used to support this research are sourced from books, journals, and other legal documents relevant to the topic of this research.

RESULTS AND DISCUSSION

The Importance of Calculating State Financial Losses in Corruption Cases in Indonesia

Corruption crimes that have occurred for years in Indonesia have actually caused many losses, not only for the community but also for the state. This is because corruption is one of the categories of extraordinary crime that has a systemic impact on the country's economic and financial stability (Anggara, 2024, p. 96). Every act of corruption committed by state administrators and private parties has the potential to cause significant state financial losses. The process of law enforcement against perpetrators of corruption becomes a crucial aspect that must be fulfilled, one of which is by proving the existence of real and measurable state losses.

State financial losses in corruption cases are calculated based on real and certain losses(Janis, 2023, p. 8) . In handling corruption cases, the calculation of losses to state finances cannot be done carelessly. A firm legal basis is needed as a foothold so that the process is juridically valid. The interpretation of the phrase "may" harm state finances in Articles 2 and

3 of the Anti-Corruption Law, as decided by the Constitutional Court, emphasizes that the loss in question must be actual and verified that the action has the potential to cause state losses directly or indirectly, not merely possible or speculative (ACLC KPK, 2024)

Relevant regulations, including Law No. 1/2004 on State Treasury, place importance on the validity of the calculated financial loss data. In this context, only certain agencies or parties are legally authorized to conduct such calculations, namely the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), and public accountants who have qualifications in accordance with statutory provisions. According to Tuanakotta, the method of calculating state losses is divided into several patterns(Theodorus M. Tuanakotta, 2023, p. 158) namely:

1) Total Loss

   This method is used in state revenues that are not deposited, either partially or completely, so that it means that the part that is not given to the state is part of the state loss.

2) Total Loss in Adjustment

   This method is a calculation between total loss + adjustment. The adjustment in question is if there are items that must be destroyed or their destruction requires costs.

3) Net Loss

   Basically, this method is the same as total loss. However, if the net loss is calculated, the total loss minus the net value of an item.

4) Fair Price

   This method is used as a comparison for "realized price". State financial losses where the transaction is not fair in the form of the difference between the fair price and the realized price, such as in the procurement of goods and the disposal of assets.

5) Cost Price

   The calculation of the cost of goods is adjusted to the market price, which can be adjusted upwards or downwards from the market price depending on the market conditions at the time of the vested transaction.

6) Opportunity Cost

   This method is used to obtain the best return on state financial losses. However, the obstacle is that state financial losses must be based on real and certain losses.

7) Interest as an Element of State Financial Losses

In practice, interest is not established as an element of state financial loss in the case of corruption crimes. It is applied only to civil disputes that are calculated based on the applicable time period and interest rate.

Article 1 point 22 of Law Number 1 of 2004 concerning State Treasury explains that in essence state losses can be interpreted as a shortage of money, securities, and goods that are real and certain in amount as a result of unlawful acts either intentionally or negligently. Thus, state financial losses must be validly calculated, not based on estimates, assumptions, potential or imagination(Simatupang, 2022, p. 58)

State financial losses are determined through an audit process carried out by an institution that has the authority in accordance with statutory regulations (Zuhdi et al., 2025, p. 48). The audit is investigative in nature and can be directed not only to government agencies or state institutions, but also to private parties if there is a connection with the management of public funds. This is in line with the provisions of Article 2 of the State Finance Law which expands the scope of state finances. Audits conducted are generally in the form of Investigative Audits or special audits to calculate the value of state losses. Requests for this audit usually come from law enforcement institutions, such as the Police, the Attorney General's Office, and the Corruption Eradication Commission, in order to support the proof of the elements of state losses in corruption crimes. The value of state losses obtained through an official audit by an institution with legal authority is one of the crucial evidence in corruption cases. The amount of loss incurred not only serves as an indicator of the impact of the crime, but also has a significant effect on the prosecutor's consideration in preparing the charges, as well as being a reference for judges in determining the severity of the sentence imposed on the defendant.

Official audits provide a strong factual foundation for the prosecution and implementation of restitution. In Indonesia, the realization of asset recovery during 2020-2024 reached trillions of rupiah thanks to the basis of legitimate calculations, proving that measurable losses are not accessories, but the main instrument in upholding conceptual and restitutive justice (Kamula, 2025, p. 30). For example, in the case of PT Timah, Tbk with the convict Harvey Moeis in Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst jo. Decision Number 1/Pid.Sus-TPK/2025/PT DKI shows the concrete implementation of this principle. The panel of judges found Harvey guilty of corruption and money laundering, and ordered him to pay Rp 210 billion in compensation for state losses. This figure is the result of a legal audit by law enforcement officials (AGO, possibly assisted by BPK/BPKP or a public

accountant) and is accompanied by a provision that if not paid, the confiscated property will be auctioned or replaced by additional imprisonment in line with Article 10 of Law No. 15/2006 and related Perpres. Then the appeal decision also upheld the loss figure: the compensation increased to IDR 420 billion, with stricter legal execution through an increase in the duration of imprisonment and fine contract. This confirms that accurate calculations can have a direct impact on the intensity of sanctions as well as the ability to make restitution. This confirms that accurate calculations can have a direct impact on the intensity of sanctions as well as the ability to make restitution. However, the verdicts also reflect challenges. The large variation between Rp210 billion and Rp420 billion reflecting possible differences in methodology or new information in the audit underscores the need for consistent and transparent national calculation standards. The case also serves as an important study on inter-agency analytical coordination (AGO, BPK, BPKP), where consensus on loss figures is controversial and affects the final outcome of the trial.

Formulation of Return of State Financial Losses as a Result of Corruption Crime

Based on the provisions in the Law, one of the elements of the crime of corruption is the existence of actions that cause losses to state finances(Ashfa Azkia, 2024, p. 137) . Therefore, every act of corruption will certainly have an impact on the loss of some state assets. Therefore, it is logical for the government to establish a regulation in the form of a law that aims to recover state financial losses caused by acts of corruption.

State financial losses in corruption crimes cannot be separated from the main objective of law enforcement in the financial sector: to recover what has been lost from the state treasury due to illegal acts. In many cases, the value of losses incurred by corruption crimes not only serves as a formal element of proof, but also serves as a basis for consideration in imposing punishment and determining the amount of restitution. Therefore, the concept of state financial losses is not only important for assessing the extent to which violations have occurred, but also a step towards formulating justice based on recovery. Within this framework, the recovery of state losses is not the final step, but an integral part of a comprehensive legal process.

The law enforcement process in terms of recovering state losses is realized through instruments such as restitution and asset forfeiture. Institutions such as BPK and BPKP have the constitutional and administrative authority to calculate the amount of state losses, as stipulated in Law No. 15/2006 on the Supreme Audit Agency and Presidential Regulation No. 192/2014 which strengthens BPKP's position as an investigative auditor. The results of this loss calculation become the basis for the demands of law enforcement and the judge's verdict in

determining the amount that must be returned by the defendant. Based on Supreme Court Circular Letter No. 4/2018 on the Implementation of the Formulation of the Results of the 2016 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Tasks for Courts in the Criminal Chamber Legal Formulation at point 6, it emphasizes that in essence, BPK is the agency authorized to state whether or not there is a state financial loss, while other agencies such as BPKP / Inspectorate / Regional Apparatus Work Units are authorized to conduct examinations and audits of state financial management but are not authorized to state whether or not there is a state financial loss(Mahkamah Agung Republik Indonesia, 2016) . In certain circumstances, the judge can assess the presence or absence of state losses along with the amount based on the facts of the trial(Yasir et al., 2019, p. 281)

In practice, the formulation of state loss recovery often clashes with technical and legal limitations. The restitution mechanism can be said to have not been maximized in dealing with the problem of state financial losses due to corruption crimes. Especially because asset returns are still considered as additional punishment, not the main punishment(Agustin et al., 2024, p. 364) . The return of state financial losses either through restitution or asset forfeiture, both do not yet have a patent calculation basis. The Asset Forfeiture Bill is one of the urgent priorities because saving assets resulting from corruption is an effective instrument to prevent the state from further decline(Dwi Juliani & Lubis, 2023) . Efforts to save state assets include the process of tracking, managing, transferring, utilizing, and monitoring assets that have been confiscated. So far, assets belonging to criminal offenders have only been treated as evidence of the proceeds of crime, so that they have not fully led to the concept of recovering state losses(Saputro & Chandra, 2021, p. 273) . The act of asset forfeiture originating from corruption is a preventive effort to secure or avoid transfer of ownership or transfer of location of assets that are suspected of being obtained unlawfully(Ashfa Azkia, 2024) . Provisions regarding asset forfeiture have not been explicitly regulated in Indonesian legislation. The current regulation, the Law on the Eradication of Corruption, still has shortcomings. One of them is that the process of asset forfeiture through criminal channels can only be carried out if the defendant has been declared legally and convincingly guilty by a court decision with permanent legal force. Although asset forfeiture has a legal basis and its application is possible in the Indonesian legal system, its implementation in the field still faces obstacles, especially when the assets are already in the possession of the perpetrator.

In addition to asset forfeiture, the recovery of state financial losses is also carried out through additional punishment as stipulated in Article 18 paragraph (1) letter b of Law Number

31 Year 1999 on the Eradication of Corruption as amended by Law Number 20 Year 2001 on the Amendment to Law Number 31 Year 1999 on the Eradication of Corruption, namely: "In addition to the additional punishment as referred to in the Criminal Code, as additional punishment are: (b) payment of restitution in an amount as much as or equal to the assets obtained from the criminal act of corruption." The provisions in the law expressly stipulate that the amount of restitution that can be imposed on the perpetrator must not exceed the value of the assets obtained from the criminal act of corruption. "Juridically, this must mean that the loss that can be charged to the convicted person is the real and certain amount of state loss as a result of the unlawful act either intentionally or negligently committed by the defendant. Thus, what plays an important role for this is the technical discovery of state financial losses, which must be found based on the findings of the authorized agency or public accountant appointed through the correct audit procedures(Agustin et al., 2024)

In the case of PT Timah, Tbk with the Convict Harvey Moeis, the Panel of Judges in its consideration in Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst, stated that, "Considering, that in its decision the Constitutional Court considers Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 199 concerning the Eradication of Corruption Crimes related to the application of the element of harm to state finances has shifted by emphasizing the existence of consequences (material offense), so that the element of harm to state finances is no longer understood as an estimate (potential loss) but must be understood to have actually occurred or real (actual loss) in the crime of corruption(antaranews.com, 2025) . The Panel of Judges also gave an understanding that what is meant by state finances is all state assets in any form, whether separated or not separated, including all state assets and all rights and obligations arising from:

1. Being in the control, management and responsibility of state agency officials, both at the central and regional levels;

2. Being in the control, management and responsibility of State-Owned Enterprises or Regional-Owned Enterprises, Foundations, Legal Entities and Companies that include third party capital based on agreements with the state.

Based on the BPKP RI audit, there were state financial losses of Rp 300,003,263,938,131.14 (three hundred trillion three billion two hundred sixty-three million nine hundred thirty-eight thousand fourteen rupiah). However, the judge in his decision sentenced the defendant to imprisonment for 6 (six) years and 6 (six) months and a fine of Rp

1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 6 (six) months, as well as paying compensation for state financial losses of Rp 210,000,000.000.00 (two hundred ten billion rupiah) provided that if the convicted person does not pay the restitution within 1 (one) month at the latest after the court decision becomes final, then his/her assets may be confiscated by the Prosecutor and auctioned to cover the restitution, and if the convicted person does not have sufficient assets to pay the restitution, then he/she shall be punished with imprisonment for 2 (two) years.

Then, in the appeal decision, the amount of compensation for state financial losses became different based on Decision Number 1/Pid.Sus-TPK/2025/PT DKI(Mahkamah Konstitusi Republik Indonesia, 2025) . The Judges of Judex Factie in their decision stated that the amount of compensation for state financial losses in the case of PT Timah, Tbk was Rp 420,000,000,000.00 (four hundred and twenty billion rupiah). The Panel of Judges of the Appellate Level disagrees with the Panel of Judges of the First Level who only imposed restitution of Rp 210,000,000,000.00 (two hundred ten billion rupiah). The Panel of Appellate Judges in their consideration stated that, "Considering that the Defendant Harvey Moeis has enriched himself together with the witness Helena Liem in the amount of Rp 420,000,000,000.00 (four hundred and twenty billion rupiah)".

The calculation of restitution based on the Anti-Corruption Law is simply the formula that as much as possible is equal to the assets obtained from the criminal act of corruption. The amount of restitution can be interpreted as an amount calculated based on the value of the defendant's assets obtained from the criminal act of corruption as charged. Therefore, in determining the amount of restitution, the judge needs to first carefully identify the part of the defendant's assets that came from corruption and distinguish it from legally obtained assets. Only after the identification and valuation process has been completed can the judge determine the amount of restitution to be paid by the defendant. However, this approach tends to be difficult because the judge will face challenges in accurately assessing the portion of wealth that is the result of criminal acts. The absence of a clear and definite formula regarding the amount of restitution to be paid, often leads to uncertainty in the amount of restitution. In addition, when the convicts are unable to pay the restitution, the restitution will be replaced by imprisonment. If so, then the recovery of state losses becomes unbalanced and difficult to fulfill.

CONCLUSION

The recovery of state financial losses resulting from corruption remains a central yet underperforming element of Indonesia's criminal justice framework. Although restitution and asset forfeiture are formally recognized in the Corruption Eradication Law, their implementation is hindered by fragmented technical regulations, limited evidentiary tools, and the absence of standardized mechanisms for asset valuation and tracing. This study finds that judicial difficulties in linking assets to criminal proceeds are exacerbated by the lack of clear legal parameters on how restitution should be calculated and enforced. To address these normative gaps, regulatory reform must not only strengthen procedural clarity but also ensure substantive alignment with the principles of legal certainty and effective asset recovery. Such a transformation is essential to shift restitution from a symbolic legal obligation into a functional instrument for restoring measurable state losses.

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