

COMPARATIVE ANALYSIS OF SHARIA AND SANCTIONS FOR THE RETURN OF STATE FINANCES BY CORPORATIONS IN THE SYSTEM OF CORRUPTION JUSTICE SYSTEM

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Abstract : Corruption has become a serious problem that harms state finances and hampers development. The purpose of this study is to examine the provisions of Article 20 paragraph (7) jo. Article 18 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption. This research uses several approaches including a statutory approach and a case approach. The results showed that the regulation regarding the sanction of returning state financial losses in corruption cases by corporations is still sectorally scattered, starting from Law Number 8 of 1981 concerning Criminal Procedure, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, Circular Letter of the Attorney General of the Republic of Indonesia Number B-036/A/Ft.1/06/2009 regarding Corporations as Suspects / Defendants in Corruption Crimes, Regulation of the Attorney General of the Republic of Indonesia No. 028/A/JA/10/10/2009 concerning Corporations as



Suspects / Defendants in Corruption Crimes: Per- 028/A/JA/10/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects, Supreme Court Regulation No. 13/2016 on Procedures for Handling Criminal Cases by Corporations.

Keywords: Sanctions, Return of State Financial Losses, Corruption Offenses

INTRODUCTION

Corruption is something rotten, evil and destructive, based on this fact, acts of corruption involve; something immoral, rotten nature and conditions, concerning the position of government agencies or apparatus, misuse of power in office due to gifts, transporting economic and political factors and placing families or groups into the officialdom under the power of office. According to Law Number 20 of 2001, corruption is the act of a person or group of people who intentionally and unlawfully enrich themselves or other people or companies that can harm state finances or the national economy. Corruption has very dangerous consequences for human life, both aspects of social, political, bureaucratic, economic and individual life.

In the perspective of crime prevention, criminal justice efforts can be complemented through preventive non-criminal justice efforts which are part of culture if arranged in a systematic pattern. The Unitary State of the Republic of Indonesia (NKRI) is a country that is developing in several fields, especially in the field of the state economy, so that it requires state financial management, which is one of the most important things in the economic life of a country, because it is closely related to whether or not the state is able to realize the goals and ideals of the state and create prosperity for citizens. But if the weak state financial management system and the legal system in our country are about to trigger factors of misuse of state assets and finances.

The goal of eradicating corruption in Indonesia is to recover state financial losses and the state economy¹. Increasing and uncontrolled corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. Widespread and systematic corruption is

¹ Budi Suhariyanto, "Restoratif Justice Dalam Pemidanaan Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 5, no. 3 (2016): 421-438.



also a violation of the social and economic rights of the community, so corruption is no longer classified as an ordinary crime but has become an extraordinary crime so that its eradication requires extraordinary methods as well. In its development, according to the provisions of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption, the crime of corruption can be committed by any person or corporation². The definition of every person in Article 1 paragraph 3, every person is an individual or includes a corporation. The new development regulated in Law Number 31 Year 1999 on the Criminal Acts of Corruption is the inclusion of corporations as legal subjects of corruption crimes that can be sanctioned, which is not regulated in Law Number 3 Year 1971 on the Eradication of the Criminal Acts of Corruption³.

The Corruption Eradication Law, which contains many special material crimes, although not in detail, also regulates the criminal procedure law for corporations that commit corruption crimes as stipulated in the provisions of Article 20 paragraph (1) and paragraph (2). The provisions of Article 20 of the Corruption Eradication Law regulate corporate criminal liability if the corporation and/or its management commit corruption crimes committed for the benefit of the corporation. The provisions of Article 20 paragraph (1) provide confirmation that if a corruption crime is committed by or on behalf of a corporation, the prosecution and imposition of punishment can be carried out against the management only, the corporation only, or the management and the corporation. The inclusion of corporations as one of the legal subjects of corruption in the Corruption Eradication Law states that in addition to natural human legal subjects (*naturlijke persoon*), corporations or legal entities (*rechtsperson*) are also referred to as legal subjects like human legal subjects who have rights and obligations and responsibilities in every action⁴.

The beginning of the inclusion of corporations as subjects of criminal law in Indonesia has long been regulated in laws outside the Criminal Code or in

² Roni Saputra, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi Yang Merugikan Keuangan Negara Terutama Terkait Dengan Pasal 2 Ayat (1) UU PTPK)," *Jurnal Cita Hukum* 3, no. 2 (2015): 95573.

³ Russel Butarbutar, *Pertanggungjawaban Korporasi Dalam Tindak Pidana Korupsi Pengadaan Barang Dan Jasa Pemerintah Di Bidang Konstruksi* (Gramata Publishing, 2015).

⁴ Ir Yudi Wibowo Sukinto and M H SH, *Tindak Pidana Penyelundupan Di Indonesia: Kebijakan Formulasi Sanksi Pidana* (Sinar Grafika, 2022).



special criminal laws. The acceptance of corporations as subjects of criminal law in Indonesia was first stated by Emergency Law Number 17 of 1951 concerning Goods Hoarding, which in Article 11 of the Law states that legal entities can be punished separately from their management⁵. Furthermore, corporations as subjects of criminal law were then strengthened by the issuance of Emergency Law Number 7 of 1955 concerning Investigation, Prosecution and Trial of Economic Crimes (hereinafter abbreviated as TPE Law), which in the provisions of Article 15 of the Law explained that legal entities, companies, associations of persons or foundations are legal subjects that can be punished⁶.

Previous research by Suhariyanto examined restorative justice in the criminalization of corporate corruption offenders for the sake of optimizing the return of state losses based on Article 26 UNCAC and Article 52 of the Criminal Code Bill, normatively the application of restorative justice in corporate criminalization has a strong foundation in the context of the effectiveness and efficiency of corruption eradication⁷. Another study by Nazikha on the implementation of additional criminal sanctions of restitution in corruption cases as an effort to recover state financial losses, the Supreme Court's decision has shown that the application of restitution is quite ideal as the consideration of the panel of judges in seeing the trial process, but it turns out that in the realm of practical implementation by the executor, namely the prosecutor, it is still not optimal as shown by the BPK findings data, in 2012, 2013 and 2014 the percentage between the application of restitution and its implementation did not reach 50% that could be executed⁸. This is influenced by legal probelmatics, namely legal substance, legal structure, and legal culture.

The absence of research on the sanction of returning state finances by corporations in the corruption justice system specifically becomes a novelty in this research. The urgency of this research lies in the negative impact of

⁵ Muhammad Romy, Afrizal Nilwan, and Devira Andriani, "Pertanggungjawaban Wajib Pajak Selaku Pelaku Tindak Pidana Pajak Menurut Hukum Positif Indonesia," *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 2666–2680.

⁶ Nani Mulyati, "Korporasi Sebagai Subjek Hukum Dan Pertanggungjawaban Pidananya Dalam Hukum Pidana Indonesia," *Fakultas Hukum Program Pasca Sarjana Universitas Indonesia: Jakarta, Disertasi* (2018).

⁷ Suhariyanto, "Restoratif Justice Dalam Pemidanaan Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara."

⁸ Frelyka Indana Ainun Nazikha, "Pelaksanaan Sanksi Pidana Tambahan Uang Pengganti Dalam Perkara Tindak Pidana Korupsi Sebagai Upaya Pengembalian Kerugian Keuangan Negara" (UNIVERSITAS ISLAM INDONESIA, 2015).



corruption by corporations, which can harm state finances and create inequality in society. In the era of globalization, where companies operate across borders, it is important to ensure that corporations comply with international laws and standards in all their operations. This research provides a better understanding of how corporations engage in acts of corruption that harm state finances, and provides a basis for policymakers to develop more effective regulations. In addition, this research can improve corporations' understanding of the legal implications and sanctions associated with acts of corruption, encourage legal compliance, and develop better corruption prevention strategies.

Based on the above background, there are some very basic legal problems juridically regarding the system of imposing criminal sanctions related to the return of state financial losses for corporations that commit corruption crimes. This has not been clearly regulated in the corruption law regarding restitution and specifically fines against corporations are only regulated in the Supreme Court Regulation which does not prioritize the principle of expediency, so it is necessary to reform the Corporate Criminal Law in Indonesia, especially corruption crimes. In this context, the author is interested in further examining in depth the application of criminal sanctions to recover state financial losses committed by corporations in favorable corruption cases. The purpose of this research is to examine the provisions of Article 20 paragraph (7) jo. Article 18 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption.

LITERATURE REVIEW

State Finance

Public finance refers to all activities related to the management of government funds and assets, including revenues, expenditures, investments, and debt. It includes all financial transactions involving the government in order to carry out its functions. Furthermore, Article 2 of the State Finance Law mentions the scope of state finances which include⁹:

- (a) the state's right to collect taxes, issue and circulate money, and make loans;

⁹ Laurensius Arliman, "Makna Keuangan Negara Dalam Pasal Pasal 23 E Undang-Undang Dasar 1945," *Lex Librum: Jurnal Ilmu Hukum* 6, no. 2 (2020): 189–201.



- (b) the state's obligation to carry out the general service duties of state government and pay third party bills;
- (c) state revenue;
- (d) state expenditure;
- (e) regional revenues;
- (f) regional expenditure;
- (g) state/regional assets managed by itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets separated in state companies/regional companies;
- (h) assets of other parties controlled by the government in the context of carrying out government duties and/or public interests;
- (i) assets of other parties obtained by using facilities provided by the government.

Corporations

Corporations, or companies, are legal entities that are separate from their owners and can conduct a variety of business activities. They are owned by shareholders and aim to achieve profit. Corporations can be either public companies (their shares are traded on an exchange) or private companies (their shares are owned by a small number of shareholders)¹⁰.

Corruption

Corruption is the act of abusing power or a position of trust for personal gain, whether in the form of money, goods, or influence. It involves illegal or unethical behavior that harms the public or organizational interests¹¹. Corruption can occur at various levels, from individual to institutional, and has a serious impact on the economy, justice, and social stability. According to Sam Santoso, corruptors know thousands of moves, but the goal is one mouth, namely wanting to live luxuriously in a short time and through shortcuts. Employees will engage in corrupt endeavors, when the benefits of corruption outweigh the sanctions of being caught, and the possibility of being caught.

¹⁰ H Zainal Aikin et al., *Pengantar Hukum Perusahaan* (Kencana, 2016).

¹¹ Sari Rusmita, "Persepsi Mahasiswa Akuntansi Terhadap Korupsi," *JAAKFE UNTAN (Jurnal Audit dan Akuntansi Fakultas Ekonomi Universitas Tanjungpura)* 4, no. 01 (2015).



Sanctions include wages and other incentives that must be sacrificed if they lose their jobs¹².

RESEARCH METHODS

This research is to discover and develop legal science in the field of criminal law, especially those related to the application of punitive sanctions against corporations involved in corruption crimes that are carried out fairly and prioritize legal expediency.

This research on "Sanctions for the Return of State Finances by Corporations in the Corruption Criminal Justice System" focuses on analyzing the philosophical aspects, theories and legal norms resulting from Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes which does not regulate sanctions for the return of state financial losses that prioritize the side of benefit for corporations that commit corruption crimes. so that it will cause innocent victims who not only kill the survival of corporations, shareholders, but also how many thousands of people will lose their jobs who are laid off and the loss of potential state revenue from taxes and the potential for investors to leave the country, so that it will cause innocent victims who not only kill the sustainability of corporate life, shareholders, but also how many thousands of people will lose their jobs who are laid off and the loss of potential state revenue from taxes and the potential for investors to leave the country.

This study uses several approaches to understand legal issues. First, the legislative approach, which is a research approach that uses laws and regulations consisting of legislation and regulations both in Indonesia and in other countries. Second, the case approach, which is the approach needed to see the implementation of legal norms and rules in the real practice of law contained in court decisions or jurisprudence. Third, Comparative Approach, in applying comparative legal research, elements of the legal system are used as a starting point.

¹² Satrio Devan Nugroho and Ilham Fahmi, "Peran Gaya Kepemimpinan Visioner Kepala Sekolah Dalam Pencegahan Tindak Korupsi Di Sekolah Menengah Pertama," *Jurnal Ilmiah Wahana Pendidikan* 8, no. 16 (2022): 530–538.



RESEARCH RESULT

Legislation Regulating Sanctions for the Return of State Financial Losses in Corruption Cases Committed by Corporations

The following are some of the laws and regulations that regulate sanctions for the return of state financial losses in corruption cases committed by corporations, among others:

Sanction Arrangements for the Return of State Financial Losses According to Law Number 8 of 1981 concerning Criminal Procedure Law.

State finances are the rights and obligations of the state that can be valued in money or goods which in this case can be owned by the state because it has a correlation related to the implementation of these rights and obligations. Basically, the recovery of state financial losses is one of the efforts in reforming and building the foundation of legal institutions in terms of realizing the ideals and objectives of criminal law for the prevention and eradication of acts of corruption²². The return of state financial losses from corruption crimes can be carried out starting from the investigation stage to the execution stage of the judge's decision that has permanent legal force¹³. According to criminal procedural law, tracing efforts are closely related to the investigation and investigation actions listed in Article 1 point 2 of the Criminal Procedure Code. Tracing the assets of a convicted person is carried out to provide information for investigators, investigators, and public prosecutors to identify the convicted person's assets, the place where the assets are stored, evidence related to ownership or assets and their relationship to the actions committed as an effort to recover state money losses.

Confiscation must be carried out with the permission of the chairman of the local district court unless the suspect is caught red-handed committing a criminal offense, then in a necessary and urgent situation where the investigator must act immediately and it is impossible to obtain permission from the court, the investigator can confiscate movable objects but is still required to immediately report to the chairman of the local district court for approval as stipulated in Article 38 of the Criminal Procedure Code¹⁴.

¹³ Akad Edi Kurniawan, "Pengembalian Kerugian Keuangan Negara Dalam Tahap Penyidikan Tindak Pidana Korupsi," *Journal of Law (Jurnal Ilmu Hukum)* 8, no. 2 (2022): 12–21.

¹⁴ Sumaidi Sumaidi, "Kajian Terhadap Penyitaan Sebagai Pemaksaan Yang Dihalalkan Oleh Hukum," *Legalitas: Jurnal Hukum* 8, no. 1 (2017): 220–244.



The implementation of execution to recover state financial losses is regulated in the provisions of Article 273 of the Criminal Procedure Code, if the court decision imposes a fine on the convicted person, a period of one month is given to pay the fine, except in the decision of the speedy examination procedure which must be immediate. If the court decision determines that the evidence is confiscated for the state, then the prosecutor authorizes the object to the state auction office and within three months it must be sold by auction, the proceeds of which are deposited into the state treasury for and on behalf of the prosecutor. And the period as stated in 273 paragraph (3) of the Criminal Procedure Code can be extended for a maximum of one month and in the extension of time must be maintained so that the implementation of the auction is not delayed. So that the provisions of Article 273 of the Criminal Procedure Code can be used as a reference in the context of returning state financial losses or returning assets resulting from corruption crimes¹⁵. The return of state losses is expected to be able to cover the state budget deficit so that it can cover the state's inability to finance various aspects of needs based on Law No. 11 of 2009 concerning People's Welfare²¹.

Arrangement of Sanctions for Returning State Finances in Corruption Cases Committed by Corporations According to Law Number 31 of 1999 as Amended by Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concerning the Eradication of Corruption.

Losses of "state finances can occur at two stages, namely at the stage when funds will enter the state treasury and at the stage when funds will leave the state treasury. At the stage of funds going into the state treasury, losses can occur due to tax conspiracies, conspiracies" .fines, conspiracies to recover state losses and smuggling, "while at the stage of funds going out of the state treasury losses occur due to mark "ups, corruption, implementation.activities that are not in accordance "with the program and others²³. Specifically, the punishment and accountability of corporations as perpetrators of corruption crimes regulates when and in what cases a corruption crime can be categorized as a corruption crime committed by a corporation, the provisions of Article 20 of Law Number 31 Year 1999 regulate when and how a corruption crime is committed by a corporation. For corruption crimes committed by corporations,

¹⁵ Basir Rohromana, "Pidana Pembayaran Uang Pengganti Sebagai Pidana Tambahan Dalam Tindak Pidana Korupsi," *Jurnal Hukum PRIORIS* 6, no. 1 (2017).



in addition to being subject to additional penalties as stipulated in Article 10 number b of the Criminal Code, additional penalties are also imposed as stipulated in Article 18 paragraph (1) of the Law on Criminal Acts of Corruption. According to the provisions of Article 20 paragraph (7) of the Corruption Eradication Law, the main punishment that can be imposed on corporations is only a fine, provided that the maximum punishment is increased by 1/3. The imposition of punishment formulated is single because there is no other alternative what if the fine is not paid by the corporation¹⁶.

Setting Sanctions for the Return of State Finances in corruption cases committed by corporations according to the Circular Letter of the Attorney General's Office of the Republic of Indonesia Number B-036/A/Ft.1/06/2009 regarding Corporations as Suspects/Defendants in Corruption Crimes.

The Circular Letter of the Attorney General's Office was issued because the corruption law, although it regulates the subject of corporate criminal law, does not regulate the procedural law on how to conduct investigations and prosecutions. In the investigation process, it is required to confiscate the articles of association and bylaws of the corporation to obtain the identity of the corporation to be included in the case file, for making indictments, at least containing the identity of the name of the corporation, the number and date of the deed of corporation, the number and date of the company's deed of establishment, the number and date of the company's deed at the time of the criminal event, the number and date of the last amendment, the position or status of establishment and the field of business. Additional penalties that can be applied to corporate convicts in addition to those regulated in the Criminal Procedure Code are also stipulated in Article 18 of the Law on Corruption, namely in the form of confiscation of tangible or intangible movable property, confiscation of immovable property obtained from corruption, payment of compensation money, closure of business or closure of part of the company / corporation for a certain time or revocation of rights / business licenses and revocation of all or part of certain rights.

The demand for additional punishment in the form of obligation to pay restitution cannot be applied to corporations as defendants, because additional punishment in the form of obligation to pay restitution can be replaced with

¹⁶ Abdurrahman Alhakim and Eko Sponyono, "Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi," *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (2019): 322-336.



imprisonment based on the provisions of Article 18 paragraph (3), while corruption punishment is only a fine without being replaced (subsidiar) with corporal punishment.

Arrangement of State Financial Return Sanctions in corruption cases committed by corporations according to the Regulation of the Attorney General of the Republic of Indonesia Number: Per- 028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects.

Regulation of the Attorney General Number PER-028/A/JA/10/2014 regulates the actions of corporations that can be held accountable. The criteria and actions of corporate management that can be held criminally liable and more importantly, corporations that can be prosecuted are additional criminal charges imposed on corporations and corporate management in the form of payment of compensation for state financial losses, confiscation or elimination of profits obtained from criminal acts, repair of damage resulting from criminal acts, obligation to do what is done without rights, placement of the company under pardon for a certain period of time, closure or suspension of part or all of the company's activities for a certain period of time, revocation of part or all of certain rights, revocation of business licenses, confiscation of evidence or property or corporate assets and or other actions in accordance with the provisions of the applicable Law.

Additional criminal charges in the form of restitution imposed on the corporation if within 30 days it is not paid, the assets or assets of the corporation are confiscated for the payment of restitution and if the corporation has no assets, the corporation is charged with additional punishment. And if the fine is not paid, the assets or assets of the corporation are confiscated in accordance with applicable laws and regulations. In the implementation of a court decision that has permanent legal force if the convicted person only pays part of the amount of the fine, the rest is replaced with confinement in lieu of fines on a balanced basis and the fine is paid for a maximum of one month and can be extended for one month but if it is not paid, it is replaced by confiscation of property or assets owned by the corporation to be sold and auctioned. In the case of confiscation of evidence or corporate property/assets, as long as it concerns movable objects, it must be carried out within 3 (three) months from the copy/excerpt of a court decision that has permanent legal force is received. Then in terms of handling assets related to corporate legal subjects at each level



of examination and implementation of decisions, it is carried out through cooperation and coordination with the Asset Recovery Center of the Indonesian Attorney General's Office and the object of handling assets/assets is movable and immovable objects, which also include current assets/assets, long-term investments, fixed assets/assets, intangible assets/assets, deferred tax assets/assets, and / or other types of assets/assets. Thus, the sanction of returning state finances according to the Regulation of the Attorney General Number PER-028/A/JA/10/2014 is implemented in the form of demands, namely in the form of additional punishment in the form of restitution and criminal fines.

Arrangement of State Financial Return Sanctions in corruption cases committed by corporations according to Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

Supreme Court Regulation Number 13 of 2016 regulates the meaning of employment relationship which is defined as the relationship between a corporation and its employees based on a work agreement that has elements of work, wages, and or orders. And also regulates other relationships, namely the relationship between the management and / or corporation with other people or corporations so as to make the other party act for the benefit of the first party based on an agreement, either written or unwritten as stipulated in Article 1 number 11 and number 12 of Supreme Court Regulation Number 13 of 2016. Considering the provisions of Article 143 paragraph (2) letter a of KUHAP only regulates the identity of persons as legal subjects , then article 10 of Supreme Court Regulation Number 13 of 2016 emphasizes that the summons to the corporation must contain the name of the corporation, domicile, nationality of the Corporation, the status of the corporation in the criminal case, the time and place of the examination and a summary of the alleged criminal event related to the summons. In line with that, the court decision of conviction against the corporation must include the identity of the name of the corporation, place, date of establishment and or number of articles of association or deed of establishment or regulations or documents or agreements as well as the last change of domicile, nationality of the corporation, type of cooperative, form of activity or business and the identity of the representative management.

Judges in imposing punishment against corporations are only in the form of principal punishment and or additional punishment. The main punishment



that can be imposed against the corporation is a fine, while the additional punishment that can be imposed against the corporation is in accordance with the provisions of laws and regulations. In the case of a fine imposed on a corporation, the corporation is given one month from the time the verdict is legally binding to pay the fine, but if it is not paid within one month, it can be extended for a maximum of one month and if it still does not pay, the corporation's assets can be confiscated by the prosecutor and auctioned to pay the fine as stipulated in Article 28 of Supreme Court Regulation Number 13 of 2016, this is not regulated in the provisions of Article 20 paragraph (7) of the Corruption Eradication Law which states that the main punishment that can be imposed on corporations is only a fine, with the maximum penalty plus 1/3. Corporations that are subject to additional punishment in the form of restitution, compensation, and restitution, the corporation is given a maximum period of one month since the decision is legally binding to pay within one month and can be extended for a maximum of one month. If the corporation does not pay the restitution, compensation and restitution, then the property can be confiscated by the prosecutor and auctioned to pay the restitution, compensation and restitution as stipulated in Article 32 paragraph (4) of Supreme Court Regulation Number 13 of 2016. Thus, Supreme Court Regulation Number 13 of 2016 has regulated the sanction of returning state financial losses in the form of restitution and fines carried out by corporations that commit corruption crimes.

Arrangement of Sanctions for the Return of State Financial Losses in corruption cases committed by corporations according to Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code).

The regulation of the crime of corruption in the new Criminal Code is regulated in the provisions of Article 603, namely every person who unlawfully commits an act of enriching himself, another person, or a corporation that harms the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI. In addition to regulating the legal subjects of persons, the provisions of Article 604 also regulate the legal subjects of corporations which states that every person who with the aim of benefiting himself, another person, or the Corporation abuses the authority, opportunity, or means available to him because of his position or position which is detrimental to state finances or the



state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI. However, according to the provisions of Article 624 of Law Number 1 of 2023 concerning the Criminal Code, that Law Number 1 of 2023 will come into force after 3 (three) years from the date of promulgation, namely January 2, 2023, this Law will come into force on January 2, 2026.

In addition to the sanction arrangements stipulated in the old and new Criminal Code or sectoral regulations either through the Attorney General's Regulation or through the Supreme Court Regulation which regulates the procedures for handling cases of corruption crimes committed by corporations, no less important is the authority of law enforcement agencies that will carry out law enforcement including corruption crimes committed by corporations to restore state financial losses. To achieve the objectives of the criminal justice system, it is expected that all elements in the system must work in an integrated manner. In the explanation of the Law on corruption, it is explained that the aspirations of the community to eradicate corruption and other forms of irregularities have increased because corruption is considered to have caused enormous state financial losses, which will have an impact on the emergence of crises in various fields. Therefore, the eradication of corruption in order to restore state financial losses is not only carried out by one institution, but by several law enforcement agencies, the essence of which is to be able to restore state financial losses for the occurrence of criminal acts of corruption, including those committed by corporations. In order to restore state financial losses, there are several law enforcers who are given the authority to eradicate corruption. So, restitution of financial losses state financial loss is an obligation that must be carried out by the perpetrator as regulated by law and if it is not returned it will get a refund. regulated in the law and if not returned will get sanctions both administrative and criminal. sanctions both administrative and criminal²⁴.

The Role of the Corruption Court in Combating Corruption.

The authority of the Corruption Court is not only to hear prosecutions filed by the Corruption Eradication Commission but also prosecutions carried out by the Prosecutor's Office as stipulated in Article 1 point 3 of Law Number 46 of 2009 concerning the Corruption Court. The procedural law of the Corruption Court regulates the length of time for examination, namely that



corruption cases are examined, tried and decided by the Corruption Court at the first level within a maximum of 120 (one hundred and twenty) working days from the date the case is submitted to the Corruption Court. Provisions for appeals and cassations are determined by time, namely the examination of the appeal level of Corruption Crimes is examined and decided within a maximum of 60 (sixty) working days from the date the case file is received by the Court of Appeal. Meanwhile, the examination at the cassation level of Corruption Crimes is examined and decided within a maximum of 120 (one hundred and twenty) working days from the date the case file is received by the Supreme Court. As an extraordinary effort, if a court decision that has permanent legal force is requested for review, the examination of corruption cases shall be examined and decided within a maximum of 60 (sixty) working days from the date the case file is received by the Supreme Court.

The regulation of sanctions to restore state financial losses in corruption cases with corporate legal subjects is then included in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes which regulates the imposition of penalties on corporations that commit corruption crimes, which in previous regulations have never been regulated. Corporations are included as subjects of criminal law in corruption crimes as an effort to restore state financial losses as stated in the provisions of Article 18 of the Corruption Eradication Law. Additional criminal sanctions that can be imposed are in the form of confiscation of tangible or intangible movable property, confiscation of immovable property obtained from corruption crimes, payment of compensation money, closure of business or closure of part of the company / corporation for a certain time or revocation of business rights / permits and revocation of all or part of certain rights. The regulation of sanctions to restore state financial losses through payment of restitution cannot be applied to corporations, because the provisions of Article 18 paragraph (3) of the Anti-Corruption Law which states that in the event that the convicted person does not have sufficient property to pay restitution, then he/she will be sentenced to imprisonment only applies to natural legal subjects while corporations are not natural legal subjects so they cannot be sentenced to imprisonment.



The application of criminal sanctions against corporations and corporate management by the Public Prosecutor and the Panel of Judges.

Criminal sanctions are essentially a loss in the form of intentional suffering given by the state to individuals or people who violate the law, however, punishment is also a moral education for perpetrators who commit crimes so that in the future they do not repeat their actions again. The regulation of corporate punishment is regulated in the provisions of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption, corruption can be committed by any person or corporation.

According to the provisions of Article 20 paragraph (1) of the Law on the Eradication of Corruption, in the event that a criminal act of corruption is committed by or on behalf of a corporation, the prosecution and imposition of punishment may be carried out against the corporation and or its management. Paragraph (2) states that the criminal act of corruption is committed by a corporation if the criminal act is committed by persons either by virtue of employment relationship or by virtue of other relationships, acting within the corporation either individually or jointly. Paragraph (3) states that in the event that charges are brought against a corporation, the corporation is represented by the management. Meanwhile, paragraph (4) states that the management representing the corporation as in paragraph (3) can be represented by another person. Finally, paragraph (7) states that the main punishment that can be imposed on a corporation is only a fine, provided that the maximum penalty is increased by 1/3. Although the imposition of criminal sanctions against corporations has been stated in Article 18 and Article 20 of the Anti-Corruption Law, in its implementation the Anti-Corruption Law cannot be applied, so Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations was born, which separates the punishment of the management and the corporation.

Legal reform of State Financial Return Sanctions in Corruption Crimes that Benefit All Corporations.

The punishment of corporations that commit corruption crimes has 3 paradigms, namely philosophical, sociological and juridical bases. The philosophical base will realize justice (*gerechtigheid*), the sociological base will realize benefits (*zweckmassigkeit*), and the juridical base will realize the dimensions of legal certainty (*recht zekerheids*). The synergy of the three bases will then give birth to the dimensions of moral justice, social justice, and legal



justice in the framework of future criminal law politics. These aspects and dimensions are *mutatis mutandis* in line with the thinking of Romli Atmasasmita, the politics of criminal law in the 21st century which is a series of criminal law formation processions sourced from the results of social, economic, and political evaluations that develop in society with the aim of creating order, certainty, justice, and measurable and accurate benefits.

The criminalization of corporations for corruption crimes from the perspective of philosophical grounds seeks to prevent potential obstacles to the protection of the Indonesian state to protect all Indonesians, both from internal and external threats. The form of crimes committed by corporations related to corruption, including money laundering, the environment and so on, is a serious threat to the resilience of the nation and state. In this case, crimes committed by corporations can cause a wide range of direct and indirect impacts. With the criminalization of corporate crime, it is hoped that the state's goal of promoting public welfare will not be hampered. In addition, the impact of corporate crime is greater than crimes committed by individuals. The characteristics of corporate crime in the panorama of white collar crime, transnational organized crime, and business crime that crosses cross-jurisdictional crime means that the punishment of corporations is also carried out in the context of the mandate of the state's objectives in supporting world order in line with the 2nd and 5th Precepts of Pancasila. Where corporate crime can hinder the implementation of the 5th Precept of Pancasila to realize and create social justice for all Indonesian people and corporate crime is also in line with the 2nd Precept of Pancasila, namely the embodiment of Fair and Civilized Humanity.

The sociological basis for punishing corporations for corruption is an objective description that the regulation is formed from the society itself in order to meet the needs of society in various aspects. Therefore, the sociological basis actually describes the empirical facts regarding the development of problems and needs of society and the state. The development of corruption practices in Indonesia with the paradigm of extraordinary crime, transnational organized crime, premium remidium and the most serious crime and has rooted in all levels of bureaucracy and the omission of corporations as perpetrators of corruption will result in enormous losses to the country's



finances and economy which will ultimately disrupt the basic joints of the life of the nation and state.

The sociological basis for corporate punishment is studied from the perspective of the provisions of Law Number 31 Year 1999 Jo Law Number 20 Year 2001, the aspirations of the community to eradicate corruption and other forms of irregularities committed by corporations are increasing. On the one hand, in reality there are acts of corruption committed by corporations that have caused enormous state losses that have an impact on the emergence of crises in various fields. On the other hand, corporations that commit corruption get and enjoy the proceeds of their crimes. For this reason, efforts to prevent, eradicate corruption, create legal instruments that are able to seize all corporate assets from corruption crimes need to be increased and intensified while still upholding the values of justice and the principle of expediency as well as human rights and the interests of society and thinking about the fate of a corporation that has quite a lot of employees.

The provision of administrative sanctions in efforts to resolve corruption crimes is based on the provisions according to Law No. 1 of 2004 which states that: "any loss to the state or region caused by an unlawful act or negligence of a person must be compensated by the guilty party, in this case the corruptor. The settlement is intended so that state / regional losses can be recovered from the losses incurred"²⁵.

The imposition of fines and restitution against corporations needs to be revised.

The main punishment that can be imposed on corporations is only a fine, but the sanction of a fine against a corporation if it does not pay the fine is not regulated in the Corruption Eradication Law as stipulated in Article 20 paragraph (7) of the Anti-Corruption Law. Criminal provisions with corporate legal subjects are included in the provisions of Article 2 of the Anti-Corruption Law which states that every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that can harm state finances or the state economy. As well as Article 3 which states that every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of the position or position or the means available to him or her because of the position or position that can harm the state finances. The provisions of



Article 20 paragraph (1) provide confirmation that if the criminal act of corruption is committed by or on behalf of a corporation, the prosecution and imposition of punishment can be carried out against the management only, the corporation only, or the management and the corporation. With the inclusion of corporations that commit corruption crimes as subjects of criminal law, it is hoped that they will be able to restore state financial losses as the purpose of the birth of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, namely to recover and restore state financial losses and the state economy. While the imposition of additional criminal sanctions in corruption cases is included in the form of restitution as stipulated in Article 18 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, additional penalties that can be applied to corporate convicts other than those regulated in the Criminal Code are only as specified in Article 18 paragraph (1) lettera a, c and d of the corruption crime law.

Because the sanctions imposed on corporations may not be subject to restitution, it is necessary to revise the provisions of Article 18 paragraph 1 letter b of the Corruption Crime Law. Because it is hindered by the provisions of article 18 paragraph 3 of the Anti-Corruption Law, namely in the event that the convicted person does not have sufficient property to pay restitution as referred to in paragraph (1) letter b, then the convicted person shall be sentenced to imprisonment which does not exceed the maximum threat of the principal punishment in accordance with the provisions in this Law and the length of the punishment has been determined in the court decision. Whereas corporations are not natural human beings who cannot be imprisoned, while the criminalization of corporations is different from natural human beings. Referring to the provisions of Article 17 of the Corruption Eradication Law, in addition to being sentenced as provided in Article 2, Article 3, Article 5 and Article 14, the defendant (including corporations) can be sentenced to additional punishment as provided in Article 18 of the Corruption Eradication Law. Meanwhile, the imposition of additional punishment stipulated in Article 18 of the Law on the Eradication of the Crime of Corruption is in the form of confiscation of movable property, both tangible and intangible, confiscation of immovable property obtained from corruption, payment of compensation,



closure of business or closure of part of the company / corporation for a certain time or revocation of business rights / licenses and revocation of all or part of certain rights. The main punishment that can be imposed on corporations is fines, but fines against corporations if they do not pay fines are not regulated in the Corruption Eradication Law. This can cause problems because if the fine is not paid, it will return to the provisions of Article 30 of the Criminal Code, which is replaced with imprisonment in lieu of a fine for 6 months.

As a result of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes which does not prioritize the settlement of corruption cases committed by corporations from the side of expediency, it not only kills the continuity of the corporate wheel of the corporation, but also how many thousands of people lose their jobs who are laid off and the loss of potential state revenue from corporate taxes processed through criminal justice. In addition, in the court's ruling with the determination of corporate assets, both movable and immovable, to be confiscated and then auctioned to cover the state financial losses incurred, of course this further makes corporate punishment very unfair and does not prioritize legal expediency because by confiscating and auctioning corporate assets, it is the same as providing immaterial suffering and enormous corporate losses, where the continuity of the corporate economy will be paralyzed. This is due to the provisions of Article 18 paragraph (1) letter a, c and d of the Corruption Crime Law which does not prioritize the side of expediency by confiscating tangible or intangible movable goods or immovable goods used for or obtained from corruption crimes, including companies owned by convicts where corruption crimes are committed, as well as from goods that replace these goods, closure of the company in whole or in part for a maximum period of 1 (one) year as well as revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or can be given by the Government to the convicted person (letter d). Meanwhile, the main punishment that can be imposed on corporations is only a fine, but the sanction of a fine against a corporation if it does not pay the fine is not regulated in the Corruption Eradication Law as stipulated in Article 20 paragraph (7) of the Anti-Corruption Law. Therefore, it is necessary to revise the provisions of Article 18 and Article 20 paragraph (7) of Law Number 31 of 1999 as amended



by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption.

CONCLUSION

Regulations regarding sanctions for returning state financial losses in corruption cases by corporations are still scattered sectorally, starting from Law Number 8 of 1981 concerning Criminal Procedure, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, Circular Letter of the Attorney General of the Republic of Indonesia Number B-036/A/Ft.1/06/2009 regarding Corporations as Suspects / Defendants in Corruption Crimes, Regulation of the Attorney General of the Republic of Indonesia No. 028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Subjects, Regulation of the Supreme Court of the Republic of Indonesia No. 13/2016 concerning Procedures for Handling Criminal Cases by Corporations: Per-028/A/JA/10/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects, Supreme Court Regulation No. 13/2016 on Procedures for Handling Criminal Cases by Corporations. This has caused the criminal justice system to run independently, as reflected in several decisions of the panel of judges that still mix up the imposition of criminal sanctions against administrators with the imposition of sanctions against corporations.

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