

# ECONOMIC ANALYSIS OF LAW IN THE RECOVERY OF ASSETS PROCEEDING TO THE CRIME OF CORRUPTION TOWARDS THE VALUE OF STATE FINANCIAL LOSSES

REGGIE TENTERO<sup>1</sup>

<sup>1</sup>Doctor of Law Study Program, Universitas Jenderal Soedirman, Indonesia  
Email: tenteroryjj@gmail.com

**Abstract**--The recovery of state financial losses based on the economic analysis of law is based on the concept that the state does not experience an increase in the amount of state financial losses due to the time value of money and opportunity lost to achieve public welfare due to sacrifice costs lost as a result of acts of corruption. Confiscated assets are assets that are related or related to a crime. Mechanisms for confiscating assets that have added value beyond the value of state losses incurred in acts of corruption that have been determined by the auditor where confiscation of assets that have added value outside of the value of state financial losses incurred in acts of corruption can be confiscated based on an economic analysis approach. Law with the method of calculating the time value of money where the future value is the value of the loss at the beginning of the criminal act committed plus the number of years of the new criminal act being revealed multiplied by the banking compound interest.

**Keywords**- Asset Recovery, Corruption Crime, State Financial Losses, Economic Analysis of Law, State Finances

## INTRODUCTION

Various ways of handling corruption cases have been implemented in Indonesia, starting from preventive measures by instilling an anti-corruption mentality from an early age in children and legal counseling among adults to repressive measures by taking action against perpetrators of corruption. However, from the various ways of handling these corruption cases, there is a fact that the return on state financial losses is not commensurate with the losses incurred from acts of corruption.

State financial losses caused by a criminal act of corruption, may not necessarily be recovered by returning state financial losses or confiscation of the convict's property as a substitute for state financial losses, the value of which is only limited to the assets obtained by the convict (Supardi, 2018). This certainly leads to the essence of recovering state financial losses as the goal of eradicating corruption.

The urgency of returning state financial losses caused by criminal acts of corruption received strict attention from Indriyanto Seno Adji through the following (Adji, 2009): Returning state losses as a result of corruption is a law enforcement system that requires a process of abolishing the rights of the perpetrator's assets from the victim country by confiscation, freezing, appropriation both in local, regional and international competence so that wealth can be returned to the legal (victim) country. This opinion stands on the existence of a view that has developed in economics as known as the concept of game theory from John F. Nash (Romly Atmasasmita, 2016) which shows that returning state financial losses in corruption cases is a mutually exclusive event in which the event is the result of actions that should have occurred at the same time. By virtue of their mutually exclusive nature, the recovery of state financial losses should not have a gap in time so that it will open opportunities for perpetrators of corruption to hide the proceeds of their crimes.

Efforts to recover financial losses that have been carried out so far are by seizing criminal assets (Amrullah, 2021). In the perspective of the state as a victim of corruption, namely in the perspective of economic analysis of law, the problem of recovering assets of corruption is related to the criminal sanctions imposed on the perpetrators of the crime must be heavier than the benefits obtained by the perpetrators. Thus the principle of efficiency outlines the implications for optimal law enforcement, including in relation to the recovery of assets resulting from criminal acts of corruption.



Related to the issue of efficiency Posner defines efficiency as the allocation of resources where value is maximized, has limitations as an ethical criterion of social decision-making (Posner, 1992).

That many judges' decisions go beyond the corridors of legislation in determining the amount of return on assets from perpetrators of corruption that is disproportionate to the state's own financial losses, will cause the following conditions (Togarisman, 2014).

The calculation of state financial losses and the country's economy is the calculation of opportunity lost. Even though this calculation is not allowed, in real cost-based calculations there is another very important thing, namely the possibility of applying the principle of benefit through economic calculations to obtain efficiency in legal decisions as stated in the theory of economic analysis of law. The use of the benefit principle is the benefit that will be obtained from the objectives to be achieved when an allocation is determined. In this regard, the basis for calculating civil lawsuits is not only the value of state losses. However, the calculation of the "time value of money" of all state losses and the costs incurred by the state for the settlement of the Sudjiono Timan case must be included in the accumulated state losses.

This opinion is based on the theory of economic analysis of law (Economic Analysis of Law) to analyze the amount of state financial losses that must be returned by perpetrators of corruption. Furthermore, this will be useful because in the current reality, the process of calculating the amount of state losses still often results in different interpretations by the Attorney General's Office, the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), and the Courts (Eri Satriana, 2020). In addition, the discrepancy between state financial losses and state financial losses has led to the perception that the eradication of corruption is still running ineffectively.

#### PROBLEM FORMULATION

Based on this description, the following problems can be proposed:

1. How is the recovery of state financial losses based on the economic analysis of law?
2. What is the mechanism for confiscating assets that have added value apart from the value of state losses incurred in acts of corruption?

#### RESULTS AND DISCUSSION

##### Recovery of State Financial Losses Against Economic Analysis of Law

The definition of state finances based on the General Explanation of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states that:

*"All state assets in any form that are separated or not separated, including all parts of state assets and all rights and obligations that arise because they are in the control, management and accountability of officials of state institutions, both at the central and regional levels are under control, management and management. accountability of State Owned Enterprises/Regional Owned Enterprises, foundations, legal entities and companies that include state capital, or companies that include third party capital based on an agreement with the state".*

In the context of managing state finances, it is regulated in Article 1 point 1 of Law Number 1 of 2004 concerning the State Treasury, stating that:

*"The State Treasury is the management and accountability of state finances, including segregated investments and assets, which are stipulated in the APBN and APBD".*

In accordance with this understanding, Law Number 1 of 2004 has regulated the general principles of the state treasury, which are explicitly regulated in Article 3 and the elucidation section of Law Number 1 of 2004. Some of these general principles are; (1) The principle of unity requires that all state/regional revenues and expenditures be presented in one budget document; (2) The principle of universality requires that every financial transaction be presented in its entirety in the budget document; (3) The annual principle limits the validity period of the budget for a certain year; (4) The principle of specialization requires that the budget credit provided is clearly detailed for its purpose.



In addition, in recovering state financial losses, an Economic Analysis of Law approach can be studied or applied. The theory of Economic Analysis of Law is a theory by Richard A. Posner which raises the problem of legal efficiency based on classical economic theory of the inverse relationship between price and output, alternative opportunity costs and the tendency of resources to attract from lower values to higher value uses. This theory raises the issue of the state's obligation to create welfare for its people with a paradigm to maximize welfare which is an elaboration in the theory of economic analysis of law, with the application of efficiency principles, which Posner defines as resource allocation where value is maximized, has limitations as ethical criteria of social decision-making. Therefore Posner's theory can be used to form a formulation regarding legal efficiency which is explained more specifically based on efficiency theory and cost benefit analysis. Efficiency in Posner's point of view is related to increasing one's wealth without causing harm to other parties.

Posner in the concept of economic analysis of law, essentially uses an economic approach to law, both in normative and positive aspects, as stated in his opinion as follows (Romli Atmasasmita, 2016): The economic approach to law, in both its normative and positive aspects, has generated considerable opposition, especially, but not only among academics, lawyers who dislike the idea that the logic of law might be economics.

The teaching of economic analysis of law is an "entry point" for economic analysis of law which argues that the theory that is suitable for the punishment of a crime that causes destruction in an effort to maximize social welfare is the theory of retributive punishment, based on the meaning of "maximization" of the economic analysis of The law of compensating for state losses as a result of criminal acts of corruption aims to maintain order so that crimes do not recur.

The theory of economic analysis of law has a focus on how the economic system works based on a legal perspective and behavior based on rational choices due to limited resources with unlimited human needs. Within this frame of mind, economic theory of law is used to formulate a formulation regarding maximization of punishment which can be explained more specifically based on efficiency theory and cost benefit analysis. On this basis, the problem of loss to state finances as a result of criminal acts of corruption can be examined for its advantages and disadvantages in terms of economic efficiency, so that in the end a formulation of a law that has a deterrent effect will be obtained by using this theoretical approach.

The following substances related to the concept of state financial losses are the essence of the theory of economic analysis of law which is aimed at creating efficiency in every legal decision. This efficiency problem is not just to compare the rationality of calculating the cost of handling corruption from the start of investigation to prosecution which is on average, but more importantly, in handling corruption, the state does not experience an increase in the amount of state financial losses due to the time value of money. as well as lost opportunities (opportunity lost) to achieve public welfare due to the costs of sacrifices lost as a result of acts of corruption. Viewed from the theory of punishment, this economic analysis uses the theory of prevention which has a deterrence effect.

The main principle in optimal criminal law enforcement is based on the idea of maximizing social welfare. The government in designing policies, including policies prohibiting certain actions (in abstracto), must pay attention to the maximum profit to be obtained. In the context of economic analysis of criminal law, social welfare can be pursued by taking into account the amount of profit the perpetrator gains from committing a prohibited act, minus the losses caused by that act, and expenses incurred in the context of law enforcement (Nuno Garoupa, 2002).

Losses due to this crime include social losses incurred, costs that must be incurred by potential victims to prevent them from becoming victims, and losses directly experienced by victims (McCollister et al., 2010). Meanwhile, the costs of enforcing criminal law include the costs of prevention, disclosure, arrest, and imposition of criminal sanctions (Mark A. Cohen, 2000). All of this must be measured and compared with the amount of profit that the perpetrator gets from committing a crime. If the losses resulting from the crime (after being cashed) and the costs that must be incurred by the government to deal with the crime through law enforcement officials are greater than the amount of profit that the perpetrator gets from committing the crime, optimization of law enforcement will not materialize.

### Mechanism of Confiscation of Assets that Have Added Value Outside of the Value of State Losses Incurred in Corruption Crimes

Based on the Academic Text of the Draft Law on Confiscation of Criminal Assets that assets resulting from crime are the weakest point in the chain of crime, everyone is not entitled to enjoy assets resulting from crime. At present, there are 2 (two) mechanisms for the implementation of asset confiscation in Indonesia which are used in the process of returning assets resulting from corruption; (1) First, by tracking, then assets that have been successfully tracked and their whereabouts known are then frozen. And; (2) Second, assets that have been frozen are then confiscated and confiscated by the competent authorities of the country where the assets are located, and then returned to the country where the assets were taken through certain mechanisms.

Asset recovery at the same time will have a preventive impact on the development of crime with the motive of profit in the form of proceeds of crime. The first preventive impact occurs in the absence of assets controlled by the perpetrators so that the perpetrators lose resources to commit other crimes. Second, by directly attacking the criminal motives of the perpetrators, there is no longer any opportunity or hope to enjoy the assets resulting from the crime, at least it can be minimized. The return of assets eliminates the purpose which is the motive for the crime committed by the perpetrator. Third, with the return of these assets a strong message can be given to the wider community that there is no safe place in this world for perpetrators of crime to hide the proceeds of their crimes, as well as giving a strong message that no one can enjoy the proceeds of crime as the "crime does not pay" doctrine. These things will be able to weaken the desire of citizens, especially potential perpetrators, to commit crimes. The perpetrators of criminal acts will also always move the assets obtained from a crime, the number of which is increasing day by day, in order to disguise or hide the results of their crime.

Confiscated assets are assets that are related or related to a crime. Mechanisms for confiscating assets that have added value beyond the value of state losses incurred in acts of corruption that have been determined by the auditor where confiscation of assets that have added value outside of the value of state financial losses incurred in acts of corruption can be confiscated based on an economic analysis approach. law with the method of calculating the time value of money where the future value is the value of the loss at the beginning of the criminal act was committed plus the number of years old the new criminal act was revealed multiplied by the banking compound interest or by the formula:

$$NK.S = NK.A + (Jt. \times (NK.A \times 5\%))$$

Information:

NK.S = Current State Loss Value

NK.A = The value of the country's losses when the incident occurred

Jt = Number of years.

5% = Compound Interest Average Per Year

Example:

The value of state financial losses arising from corruption crimes committed in 2016 was IDR 100,000,000.00 then the case was revealed in 2020 so based on the theoretical provisions of the time value of money calculation, we get:

$$\begin{aligned} NK.S &= NK.A + (Jt. \times (NK.A \times 5\%)) \\ &= IDR 100 \text{ million} + (4 \times (IDR 100 \text{ million} \times 5\%)) \\ &= IDR 100 \text{ million} + (4 \times IDR 5 \text{ million}) \\ &= IDR 100 \text{ million} + IDR 20 \text{ million} = IDR 120 \text{ million.} \end{aligned}$$

So the value of state financial losses that must be paid by convicts in 2020 is IDR 120,000,000.00 with the principle that perpetrators of criminal acts may not obtain or enjoy benefits from the proceeds of the corruption they commit. In criminal acts "crimes do not pay" is a principle which confirms that a person violating the law does not benefit from the unlawful actions he commits, so that any profits or assets obtained from violating the law can be used as objects of confiscation of assets. Confiscation of criminal assets can also be used to control any profits derived from a crime so that it can function as a mechanism that creates a "deterrence effect" and demotivates other perpetrators of crime.

## CONCLUSION

Recovery of state financial losses based on economic analysis of law based on the state not experiencing an increase in the amount of state financial losses due to the time value of money and opportunity lost to achieve public welfare due to sacrifice costs lost as a result of acts of corruption. The confiscated assets are assets related to or related to a crime. Mechanisms for confiscating assets that have added value beyond the value of state losses incurred in acts of corruption that have been determined by the auditor where confiscation of assets that have added value outside of the value of state financial losses incurred in acts of corruption can be confiscated based on an economic analysis approach. Law with the method of calculating the time value of money where the future value is the value of the loss at the beginning of the criminal act was committed plus the number of years the new criminal act was revealed multiplied by the bank's compound interest. The need for recovery of state financial losses using an economic analysis of law approach, so that any profits or assets obtained from violations of the law can be used as objects of asset confiscation. Confiscation of criminal assets can also be used to control any profits derived from a crime so that it can function as a mechanism that creates a "deterrence effect" and demotivates other criminals. The direction of law enforcement in the future so that the handling of corruption cases places more emphasis on the follow the asset follow the money approach by confiscating based on the economic analysis of law approach using the time value of money calculation method.

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