

# Efforts to Restore State Finances in Corruption Cases Through the Role of State Prosecutors

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**Abstract.** Under the command of the Law of the Republic of Indonesia Number 16 of 2004 concerning the Examiner's Office of the Republic of Indonesia article 30 section (2), and alluding to the Guideline of the Head legal officer of the Republic of Indonesia Number: 040/A.J.A/12/2010 dated December 13, 2010, the Head legal officer's Office is given the errand and capability in the field of Common and State Organization (DATUN) as the state lawyer. Returning misfortunes from the returns of criminal demonstrations of defilement will make the culprits incapable to partake in the consequences of their activities. It tends to be finished by holding onto specific merchandise that are gotten or created in a lawbreaker demonstration of debasement as an extra wrongdoing notwithstanding the primary wrongdoing, for example, detainment and fines contained in Article 10 of the Crook Code, Returning the returns of defilement, as well as reinforcing state funds because of misfortunes brought about by defilement.

**Keywords:** state finances; corruption; the role of the prosecutor

## 1 Introduction

The current development of corruption eradication has focused on three (3) main issues, namely prevention, prosecution, and asset recovery. It shows that efforts to eradicate corruption do not only lie in preventing and taking action against the perpetrators but also include efforts to recover state losses from the corruption process. The refund of state losses is intended so that the state losses that arise can be covered by returns from the proceeds of corruption so that they do not have a worse impact.

Returning misfortunes from the returns of criminal demonstrations of defilement will make the culprits incapable to partake in the consequences of their activities. It tends to be finished by holding onto specific products that are gotten or created in a crook demonstration of debasement as an extra wrongdoing notwithstanding the essential wrongdoing, for example, detainment and fines contained in Article 10 of the Lawbreaker Code.

In Regulation Number 31 of 1999 as changed by Regulation Number 29 of 2001 concerning revisions to Regulation Number 31 of 1999 concerning the Annihilation of Criminal Demonstrations of Defilement, it has been expressed in Article 18 passage (1) which peruses:

Notwithstanding extra punishments as alluded to in the Lawbreaker Code, extra punishments are:

- a. confiscation of substantial or elusive portable products or steady merchandise utilized for or got from criminal demonstrations of defilement, including organizations having a place with the convict where the lawbreaker demonstration of debasement was perpetrated as well as from the merchandise that supplant the merchandise;
- b. Payment of substitution cash in the greatest sum equivalent to the property got from the crook demonstration of defilement;
- c. Closure of all or part of the organization for a greatest time of 1 (one) year;
- d. Revocation of all or part of specific freedoms or disposal of all or part of specific advantages, which have been or might be conceded by the public authority to the convict.

The wrongdoing of defilement is an extraordinary wrongdoing. One of the obligations and specialists of the public examiner's office is to direct examinations concerning specific crook acts in light of the law.

The Express Examiner's Office concerning job of the Express Lawyer's Office in recuperating state monetary misfortunes from defilement doesn't run as expected. From the debasement choice, there is a choice on substitution cash, then the exceptional wrongdoing field presents its true reminder to the Common and State Organization Office to gather the substitution cash that has not been paid by the defilement convict. How much the choice on the substitution cash is cash that has been appreciated or ruined by the convict. In the event that the convict passes on, the assortment will be addressed to his main beneficiaries. In the event that vital, substitution cash will be made to the nearby PN on the off chance that the substitution cash is as yet not paid.

State Lawyer is an Examiner with extraordinary powers, representing and for the benefit of the state or government in common or managerial cases or cases [1]. The term State Lawyer (JPN) isn't unequivocally expressed in Regulation Number 16 of 2004 concerning the Indonesian Principal legal officer's Office and past regulations, in particular Regulation Number 5 of 1991, and Official Declaration Number 55 of 1991 concerning Hierarchical Construction and Organization. Examiner's Office of the Republic of Indonesia. Nonetheless, the significance of "unique power" in the common field is itself inseparable from "legal counselor." In light of this presumption, the term state legal advisor, which is an interpretation of the grounds supporters' form of the 1922 Staatblad Number 522 Article 3, isn't well known by people in general and the public authority [2].

## **2 Problem**

The problem in this paper is about how to restore state finances through the role of the State Attorney.

## **3 Method and Approach**

### **3.1 Method**

The method used in writing this applied paper is the descriptive analytical method, namely by using data that clearly describes the problems directly in the field, then analyzing and concluding to reach a problem solution. The technique of collecting data is through observation and literature study to obtain problem-solving in the preparation of this paper.

### **3.2 Approach**

Sociological juridical approach, namely the juridical approach method used to examine problems in terms of law and systematics, and as a guide to be used as the groundwork for analyzing the emerged legal phenomena. A sociological approach is used to examine an issue in society or the community environment with the intent and purpose of obtaining facts, followed by finding problems, identifying problems, and finding solutions to problems.

## **4 Discussions**

### **4.1 Legal Basis of Duties of State Attorney**

The examiner's work in the common area has existed beginning around 1922, in particular in light of the arrangements specified in Staatsblad Number 522 of 1922, and its presence has never been repudiated up to this point. With the order of Regulation Number 5 of 1991, the errand of the Public Examiner's Office in the common area was additionally reinforced and, surprisingly, added to the assignment in the field of state organization regarding the authorization of Regulation Number 5 of 1986. in light of KEPPRES Number 55 of 1991 concerning the obligations and specialists of the examiner's office in the field of Common and State Organization, KEPJA Number: KEP-035/J.A/3/1992 concerning the authoritative design of the Principal legal officer's Office of the Republic of Indonesia, other KEPJA, INSJA, as well as guidelines for JAM DATUN [1].

The obligations of the Public Examiner's Office in the common area are directed in Regulation Number 5 of 1991, Regulation Number 1 of 1995, Regulation Number 4 of 1998, Regulation Number 1 of 1999, Official Announcement Number 86 of 1999, and KEPJA Number KEP - 115/J.A/10/1999, as follows:

1. Law Number 5 of 1991 concerning the Examiner's Office of the Republic of Indonesia, Article 27 Section 2: "In the field of common and state organization, the public examiner's office with extraordinary powers might act inside or outside the court for and for the benefit of the State or government."
2. Law Number 1 of 1995 concerning Restricted Responsibility Organizations, Article 117 The Locale Court might break up the Organization in line with the Examiner's Office in view major areas of strength for of that the Organization abuses the public interest.
3. Law Number 37 of 2004 concerning liquidation Article 2 Passage 1. 1. Article 30 Passage (2) of the Law. RI No. 16 of 2004 concerning the Examiner's Office of the Republic of Indonesia. 2. Article 632 PERPRES RI No. 38 of 2010 concerning the Association and Work Methodology of the Examiner's Office of the Republic of Indonesia. 3. Guideline of the Head legal officer of the Republic of Indonesia Number: 040/A/J.A/12/2010 concerning Standard Working Methodology (SOP) for the Execution of Obligations, Capabilities, and Specialists of Common and State Organization.
4. Decree of the Attorney General of the Republic of Indonesia Number: KEP-157/A/JA/11/2012 concerning the Administration of Civil Cases and State Administration.

Following the mandate of the Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia article 30 paragraph (2), and referring to the Regulation of the Attorney General of the Republic of Indonesia Number: 040/A.J.A/12/2010 dated December 13, 2010, the General Attorney's Office is given the task

and function in the field of Civil and State Administration (DATUN) as state attorneys, which include:

1. Legal Guide is the obligation of the State Lawyer (JPN) in common and state regulatory cases to address State establishments, focal/provincial government offices, BUMN/BUMD in light of an extraordinary legal authority, both as an offended party and as a respondent which is completed in suit or non-prosecution as well as at home and abroad, for instance, exchange, intercession, and help.
2. In carrying out his duties as a State Attorney, the things that are done in providing legal assistance are as follows:
  - a. Every application received by the Head of the TU/KAUR TU, within 2 (two) days at the latest, must be forwarded and received by the implementing unit in stages.
  - b. At the latest within 4 (four) days, the implementing unit must have completed a review and submitted it to the General Attorney of the Republic of Indonesia/JAM DATUN, KAJATI, KAJARI:
    - 1) At the latest within 2 (two) days, the implementing unit must have completed a review and submitted it to JAM DATUN, ASDATUN, and KASI DATUN in stages. Accompanied by the concept of the DATUN Service Note to the Attorney General of the Republic of Indonesia, ASDATUN to KAJATI, KASI DATUN to KAJARI;
    - 2) Within 1 (one) day, JAM DATUN, ASDATUN, KASI DATUN must have reported the study to the Attorney General of the Republic of Indonesia, KAJATI, KAJARI, and then waiting for the disposition of the Attorney General of the Republic of Indonesia, KAJATI, KAJARI.
    - 3) If deemed necessary, DATUN HOURS/SES DATUN HOURS/Director, KAJATI/ASDATUN, KAJARI/KASI DATUN may order the implementing unit to conduct exposure/exposure to the study, then the reporting time to the Attorney General of the Republic of Indonesia, KAJATI, KAJARI can be increased by 1 (one) day.
  - c. Within 1 (one) day after the disposition of the Attorney General of the Republic of Indonesia, KAJATI, KAJARI is received, JAM DATUN, ASDATUN, KASI DATUN must have forwarded it along with instructions to the implementing unit through SES JAM DATUN and the Director, ASDATUN, KASI DATUN.
  - d. At the latest within 2 (two) days after receiving instructions from JAM DATUN, KAJATI, and KAJARI, the implementing unit must have completed the net draft of the Substitution Power of Attorney.
  - e. If the application is not accompanied by a Special Power of Attorney (SKK), within 1 (one) day after receiving instructions from JAM DATUN, KAJATI, KAJARI, the implementing unit notifies the applicant/authorizer to immediately submit the SKK. Furthermore, within 2 (two) days after receiving the SKK from the applicant/authorizer, the implementing unit must have finished preparing the Substitution Power of Attorney and submit it in stages to the Attorney General of the Republic of Indonesia/JAM DATUN, KAJATI/AS DATUN, KAJARI/KASI DATUN for signed.
  - f. Completion of the provision of legal aid in the position as a plaintiff on a non-litigation basis:
    - 1) At the latest within 60 (sixty) days, the Implementing Unit must have completed the provision of legal assistance.

- 2) If within 60 (sixty) days the task has been completed, then no later than 1 (one) day after that the implementing unit must have submitted a final report to JAM DATUN, KAJATI, KAJARI, attached with a draft letter from the Attorney General of the Republic of Indonesia/JAM DATUN, KAJATI/AS DATUN, KAJARI/KASI DATUN to the power of attorney.
  - 3) If within 60 (sixty) days the implementing unit has not been able to complete its task, then within 1 (one) day after that the implementing unit must have reported to JAM DATUN, KAJATI, KAJARI in stages to request an extension of time.
  - 4) Within 1 (one) day after receiving the report of the implementing unit in point (b), JAM DATUN, KAJATI, and KAJARI have approved an extension of time for a maximum of 30 (thirty) days and cannot be extended.
  - 5) Within 3 (three) days after receiving the final report from the implementing unit, JAM DATUN, KAJATI, and KAJARI must have notified the attorney along with conclusions and suggestions, then non-litigation efforts are declared complete.
- g. Completion of legal aid in litigation position as a plaintiff:
- 1) At the latest within 10 (ten) days from the signing of the SKK, the implementing unit must have completed drafting the lawsuit and submitted it to JAM DATUN, KAJATI, and KAJARI in stages for instructions.
  - 2) At the latest within 2 (two) days after the draft lawsuit is received, JAM DATUN, KAJATI, and KAJARI must have given instructions. If deemed necessary, JAM DATUN/SES JAM DATUN/Director, KAJATI/AS DATUN, KAJARI/KASI DATUN may order the implementing unit to conduct exposure/exposure to the draft lawsuit, then the time for drafting the lawsuit can be increased by 3 (three) days.
  - 3) At the latest within 1 (one) day after the draft lawsuit is approved by JAM DATUN, KAJATI, and KAJARI, the implementing unit must have registered the lawsuit with the court.
  - 4) One day before the trial schedule, the implementing unit must have finished feeding/preparing the replica, documentary evidence, witnesses, experts and conclusions to be presented in the trial. If deemed necessary, DATUN HOUR/SES JAM DATUN/Director, KAJATI/AS DATUN, KAJARI/KASI DATUN may order the Implementing Unit to perform exposure (exposure) to the replica and conclusion no later than 2 (two) days before the trial.
  - 5) As soon as there is a judge's decision, the implementing unit carries out its duties toward the decision of the First Level Court:
    - a) If the power of attorney wants an appeal, then at the latest within 7 (seven) days after the court's decision is read out, the implementing unit must have submitted an appeal to the court by signing the Deed of Application for Appeal.
    - b) At the latest within 10 (ten) days from the application for appeal, the implementing unit must have finished compiling the Memorandum of Appeal and submitted it to the Court by signing the Deed of Submission of the Memorandum of Appeal,
    - c) If the defendant files an appeal, no later than 10 (ten) days after the Memorandum of Appeal is received, the implementing unit must have finished making the Counter Memorandum of Appeal and submit it to the court by signing the Deed of Submission of the Counter Memory of Appeal.

- 6) Regarding the Decision of the Court of Appeal:
  - a) If the power of attorney wishes that a cassation be taken, then at the latest within 7 (seven) days after receiving the notification of the High Court's Decision, the implementing unit must have submitted a request for cassation to the Court by signing the Deed of Application for Cassation.
  - b) Not later than 7 (seven) days after the request for cassation, the implementing unit must have finished compiling the memorandum of cassation and submit it to the court by signing the Deed of Submission of the Memorandum of Cassation.
  - c) If the defendant submits a request for cassation, at the latest within 7 (seven) days after receiving the memorandum of cassation, the implementing unit must have finished making the Counter Memorandum of Cassation and submit it to the Court by signing the Deed of Submission of the Counter Memorandum of Cassation.
- 7) Against the Cassation Decision:
  - a) If the power of attorney wants a judicial review (PK) to be carried out, no later than 30 (thirty) days after the reason for submitting a judicial review is found, the implementing unit must have submitted an application for judicial review and submitted a memorandum of review to Court by signing the Deed of Submission of the Reconsideration Memory.
  - b) If the defendant submits a judicial review, at the latest within 10 (ten) days after the memorandum of review is received, the implementing unit must have finished making the counter memorandum of review and submit it to the court by signing the deed of submission of the counter memorandum of review.
- 8) Settlement of Legal Aid in the position of Defendant:
  - a) At the latest within 3 (three) days before the day of the trial, the implementing unit must have finished compiling or preparing and submitting the Answer Concept, duplicate, documentary evidence, witnesses, experts and conclusions to be submitted in court to JAM DATUN, KAJATI, KAJARI in stages.
  - b) Immediately after the Court's decision, the implementing unit carries out activities regarding the First Level Court Decision:
    - (1) In this case the power of attorney wishes that an appeal be made, then no later than 7 (seven) days after the Court's decision is read out, the implementing unit must have submitted an appeal to the Court by signing the Deed of the Application for Appeal.
    - (2) Not later than 7 (days) since the Deed of Application for Appeal and submit it to the Court by signing the Deed of Submission of the Memorandum of Appeal.
    - (3) If the plaintiff files an appeal, at the latest within 7 (seven) days after the memorandum of appeal is received, the implementing unit must have completed making the counter memorandum of appeal and submit it to the court by signing the Deed of Submission of the Memorandum of Appeal.
  - c) Against the Court of Appeals Decision:
    - (1) If the Authorizer wishes that a cassation be taken, then no later than 7 (seven) days after the notification of the appeal decision is received, the

- implementing unit must have submitted the Cassation application to the Court by signing the Deed of Application for Cassation.
- (2) At the latest within 7 (seven) days from the signing of the Deed of the Cassation Application, the implementing unit must have finished compiling the Memorandum of Cassation and submitted it to the Court by signing the Deed of Submission of the Memorandum of Cassation.
  - (3) If the plaintiff submits a request for cassation, within 7 (seven) days after receiving the memorandum of cassation, the implementing unit must have completed making the counter memorandum of cassation and submit it to the Court by signing the deed of submission of the counter memorandum of cassation.
- d) Against the Cassation Decision:
- (1) If the power of attorney wishes that legal action for judicial review (PK) be carried out, no later than 30 (thirty) days after the reason for the application for judicial review is found, the implementing unit must have submitted an application for judicial review and submitted an application for judicial review. the memorandum of review to the Court by signing the Deed of Submission of the Memorandum of Review.
  - (2) If the Plaintiff Requests a Judicial Review, within 10 (ten) days at the latest after the receipt of the Judicial Review, the implementing unit must have finished making the Counter Memorandum of Review and submitting the Memorandum of Review to the Court by signing the Deed of Submission of the Counter Memory of Judicial review.

#### **4.2 The Role of State Attorneys in Recovering State Financial Losses in Corruption Crimes**

The State Lawyer is given the position to act with regards to the freedoms of the state, and take property or resources coming about because of debasement. State resources or resources incorporate all state freedoms that can be esteemed in cash, and different articles, both mobile and steady.

Regulation Number 16 of 2004 concerning the Indonesian Head legal officer's Office, the arrangements of Article 33 and Article 34 of Regulation Number 20 of 2001 concerning the Destruction of Criminal Demonstrations of Defilement, connected with the presence of a suspect or respondent whose activities are presently not criminally responsible, on the grounds that he kicked the bucket on when an examination is done or potentially at the hour of assessment in court. It is a restrictive lawful occasion so a suspect or respondent can't be criminally handled, despite the fact that there has been a genuine state monetary misfortune. Expecting the event of state monetary misfortunes, Regulation Number 20 of 2001 concerning the Annihilation of Criminal Demonstrations of Defilement controls the endeavors of common claims that can be addressed to their beneficiaries.

Concerning defilement which is demonstrated to cause state misfortunes as far as unlawful taking of resources or the type of state resources, it should be lawfully demonstrated. Defilement should satisfy the components of a crook act in its activities illegal so the lawbreaker demonstration of debasement can be brought to court and the culprits can be rebuffed by the relevant regulation.

Specifically, the Defilement Regulation doesn't make sense of the importance and marks of debasement that can hurt the state's funds. "Can" implies that state misfortunes can happen

or potential state misfortunes happen however there may likewise be no state misfortunes. Consequently, an estimating instrument is expected to figure out what activities or activities can possibly cause state misfortunes so the Public Investigator and the Board of Judges don't with no obvious end goal in mind proclaim or express that state misfortunes have been demonstrated. At the hour of arraignment at the hour of the Court's choice, there was no misfortune to the State since it was still during the time spent paying the portions of the head, interest, and fines.

The following are some explanations of State finances according to positive law in Indonesia, which are as follows:

- a) According to Law Number 17 of 2003 concerning State Finances Article 1 number 1 "State finances are all rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be used as state property in connection with the implementation of rights and the obligation".
- b) According to Law Number 31 of 1999 concerning the Crime of Corruption "State finances in question are all State assets in any form, separated or not separated, including all parts of State assets and all rights and obligations arising from:
  - 1) Being under the control, management, and accountability of state agency officials, both at the central and regional levels;
  - 2) Are under the control, management, and 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 agreements with the State".
  - 3) State Finances are:

*"Includes all rights and obligations of the State that can be valued in money, including policies and activities in the fiscal, monetary, and management of separated State assets, as well as everything both in the form of money and in the form of goods that can be made into the property of the State in connection with the implementation of these rights and obligations. "*

Specifically for the explanation of state losses, the equivalent in the legislation is limited, namely:

According to Law No. 1 of 2004 concerning the State Treasury.

*"State/Regional losses are shortages of money, securities, and goods, which are real and definite in amount as a result of unlawful acts, either intentionally or negligently".*

From the explanation of state losses above, it is very clear that the shortage of money and real securities have been reduced from the previous amount, for example by corruptors taking state money away, by partners increasing project costs paid by the state treasury, and so on. This loss is referred to as the real state loss.

Then again, on the off chance that utilizing the sentence can hurt the State, despite the fact that the activities of the culprits, eventually, don't make misfortunes the State, since it just so happens, there is a discount of the State's cash, by the culprits, the activities of the culprits can currently be qualified to a limited extent to be unfavorable to the State's funds, running against the norm, in the event that the activities of the culprits are not possibly impeding to the State's funds and it just so happens, there is an arrival of state funds after development, then the demonstration of the culprit can't be qualified as having the option to hurt the state's funds. So what can possibly hurt the state's funds and activities that don't can possibly hurt the state's funds?

The presumption that expresses that a crook demonstration of defilement is a proper offense, consequently, needn't bother with to be demonstrated thus that can cause state



misfortunes, it is adequate on the off chance that the components of Article 2 of Regulation Number 31 of 1999 have been demonstrated, for example, a demonstration illegal and the presence of improving oneself or others, then it is sure or naturally that the components that can hurt the state's funds have been satisfied. This assessment is irrational since it can hurt the state's funds not simply because of a material offense yet as the motivation behind the culprit with the goal that he commits the demonstration. From this objective, which brought forth the rationale and goal, to be specific to enhance oneself or others whose outcomes are hindering to the state's funds, it should be demonstrated whether the culprit plans to advance himself to hurt the state's funds. Assuming there is no state misfortune, the culprit has zero desire to commit defilement [3].

Endeavors to return resources coming about because of criminal demonstrations of defilement in Indonesia by attempting to reestablish state misfortunes through the seizure of resources. The endeavors made by the Indonesian government through the Head legal officer's Office, which is the state lawyer. The term State Lawyer.

## 5 Conclusion

The current development of corruption eradication has focused on three (3) main issues, namely prevention, prosecution, and asset recovery. The Express Examiner's Office concerning job of the Express Lawyer's Office in recuperating state monetary misfortunes from defilement doesn't run as expected. The State Lawyer has been given the position to act with regards to the state's freedoms and take property or resources coming about because of debasement. State property or property incorporates all legislative privileges that can be estimated in cash, other individual property, and property that can be laid out as the State Income and Use Spending plan (APBN) and the Neighborhood Income and Consumption Spending plan (APBD). Incorporates land, and government income barring charges (PNBP).

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