

# Implementation of the Authority of the State Attorney's Prosecutor to Carry out Civil Lawsuits in the Event of State Losses in Corruption Crime Cases If the Defendant Dies

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**Abstract.** The power of the Principal legal officer's Office of the Republic of Indonesia to stop an examination concerning a crook case is conceded by Regulation Number 8 of 1981 (KUHAP) as expressed in Article 109 passage (2) of the Criminal Technique Code. Specifically, for the authority to examine corruption cases, whether with the death of the accused the investigation or examination of the case, must be stopped because Article 77 of the Criminal Code regulates the death of a prosecution caused by the death of the accused. Seeing the flow of the criminal case itself, investigation and prosecution are parts that are not separate from one another, so if the corruption suspect dies during the investigation process, then the continuation of the next criminal process will also be deleted/aborted. This is because even if an investigation is carried out, the prosecution cannot be carried out because of the provisions in Article 77 of the Criminal Code. Referring to Article 33 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter, referred to as the "Corruption Eradication Law"), if a suspect die during an investigation, whereas there has been a loss of state finances, the specialist will promptly present the record the case coming about because of the examination is to the Express Lawyer's Examiner or to be given over to the office that is hindered to complete a common claim against his beneficiaries.

**Keywords:** Authority; State Attorney Attorney; Civil action; Criminal act; Corruption.

## 1. Introduction

The Republic of Indonesia is a laid out state (rechtsstaat), to be explicit a state in which all viewpoints and lead, and exercises, whether committed by the subject matter experts or by its occupants, ought to be established on guideline. [1] The fundamental objective of the rule of law is to provide people with legal protection. According to Philipus M. Hadjon, the principle of a rule of law and the principle of human rights constitute the foundations upon which the people can obtain legal protection from government actions. [2]

A rule of law state has as its primary objective the recognition and protection of human rights. As a result, in order for state agencies, which are tools of the state government, to be able to run the government and the law, there must be guarantees.

Lawful assurance for individuals against government activities can be adroitly partitioned into two classes: repressive legal protection and preventative legal protection. Before a

government decision is finalized, people are allowed to submit objections (inspraak) or opinions in preventive legal protection. [3]

The government has established a variety of national strategies in an effort to eradicate corruption. This procedure was reversed in Official Guidance No. 5 of 2004 with respect to the Speed increase of Defilement Annihilation, the Public Methodology and Activity Plan for Debasement Destruction (Stranas PPK) 2010-2025, Official Guidance No. 9 of 2011 concerning the Activity Plan for the Speed increase and Annihilation of Defilement 2011, Official Guidance No. 14 of 2011 concerning the Speed increase of Execution of Public Advancement Needs of 2011, Official Guidance No. 17 of 2011 concerning Activity for the Speed increase.

The power of the Indonesian Lawyer's Office to stop the examination of a crook case is conceded by Regulation Number 8 of 1981 (KUHAP) as expressed in Article 109 passage (2) of the Criminal Methodology Code which peruses as follows: "If an investigator stops the investigation because there is not enough evidence or the event turns out to be not a crime or the investigation is terminated for the sake of law, the investigator shall notify the public prosecutor, the suspect or his family about this." [4]

Specifically, for the authority to examine corruption cases, whether with the death of the accused the investigation or examination of the case must be stopped because The prosecution's death as a result of the death of the accused is governed by Article 77 of the Criminal Code. Because the investigation and the prosecution are parts of the same criminal case that flow together, if a corruption suspect passes away during the investigation, the subsequent criminal process will also be halted or canceled. This is due to the fact that the provisions of Article 77 of the Criminal Code prevent the prosecution from being initiated even if an investigation is carried out.

As per Article 33 of Regulation No. 31 of 1999 Concerning the Destruction of Defilement Wrongdoings (hereinafter alluded to as the "Debasement Destruction Regulation"), if a suspect kicks the bucket during an examination and there is a deficiency of state reserves, the specialist is expected to either promptly present the case document to the Express Lawyer's Examiner or to be given over to the office that is distraught to complete a common claim against the suspect's.

From a series of legal bases, it is known that criminal charges against corruption suspects who died were indeed null and void and that criminal charges cannot be directed against their heirs. Notwithstanding, assuming there has been a misfortune to state funds, for debasement cases, a common claim can be documented by the State Lawyer or organization that has endured misfortunes against the successors to defilement suspects who have passed on. As such, state monetary misfortunes can be considered responsible to the main successors to debasement suspects who have kicked the bucket through common claims. What then, at that point, is implied by the thought of "there has been a deficiency of state funds"? The meaning of "really there has been a misfortune to state funds" truly intends that there has been a misfortune to the state which can be determined in view of the discoveries of the equipped power or the designated public bookkeeper. This depends on the clarification of Article 32 section (1) of the Debasement Annihilation Regulation.

Given the provisions of Article 77 of the Criminal Code and Article 33 of Law no. 31 of 1999 as explained above and considering that the proceeds of corruption must be returned to those who are entitled, so on this occasion the author wishes to conduct research by taking the title: "Execution of the Authority of the State Attorney's Prosecutor to Carry out Civil Lawsuits in the Event of State Losses in Criminal Cases Corruption If the Defendant Dies".

The problem in this paper is how is the State Attorney's Attorney's Authority Executed to Carry out Civil Lawsuits in the Event of State Losses in Corruption Crime Cases If the Defendant Dies.

## **2. Method**

The descriptive analytical method was used to write this applied paper. This means that data that clearly describes problems directly in the field were used, then the analysis was done, and then a conclusion was made to solve a problem was made. methods of observation and literature review for data collection in order to solve problems and prepare this paper.

In accordance with the exploration targets to be accomplished, the domain of this examination is remembered for the domain of subjective examination, subsequently a subjective methodology strategy will be utilized. As indicated by Petrus Soerjowinoto et al., a subjective technique is a strategy that underscores the most common way of understanding specialists on the definition of issues to build a perplexing and comprehensive legitimate peculiarity. [5]

An exact legitimate methodology is one that depends not on auxiliary information from composed positive regulation (regulation), yet rather on genuine way of behaving as essential information from field research areas (field research).[6] This study portrays the state of the subject of the review, with an emphasis on guideline and the utilization of the express lawyer's power to record a common claim in case of a state misfortune in a defilement case in the event that the litigant passes on as per Article 77 of the Crook Code. Article 33 Guideline no. 31 jo in the year 1999 Regulation No. 20 of 2001 being used.

## **3. Findings and Discussion**

### **3.1 Return of State Money Allegedly Result of Corruption**

One type of corruption offense outlined in Law No. 31 of 1999 jo. UU no. 20 of 2001, which deals with the eradication of criminal acts of corruption, is a corruption crime that hurts the state's finances or the economy of the country, resulting in state losses. [7]

The arrangements of Articles 33 and 34 of Regulation Number 20 of 2001 Concerning the Destruction of Debasement, which connected with the presence of suspects or litigants whose activities are as of now not feasible to be considered responsible under criminal regulation since they kicked the bucket during an examination or potentially at the hour of assessment in court, were integrated into Regulation Number 16 of 2004 concerning the Head legal officer's Office of the Republic of Indonesia. Even though there has been a real loss of state funds, this is a conditional legal event, which means that a suspect or defendant cannot be prosecuted for a crime. Law Number 20 of 2001 on the Eradication of Corruption Crimes regulates civil lawsuits that can be addressed to their heirs in anticipation of losses to state finances.

Corruption must be legally proven to have the effect of causing losses to the state through the illegal taking of assets or state assets. In order for corruption to be prosecuted and its perpetrators punished in accordance with applicable laws, it must meet the requirements of a criminal act in an unlawful act.

In particular, the definition of corruption and indicators of corruption, which can be harmful to state finances, are omitted from the Corruption Crime Law. The word "could" indicates that state losses may or may not occur, as well as that state losses may or may not occur. Consequently, there ought to be an assessing instrument to sort out what exercises might conceivably cause state disasters so the public specialist and the leading group of judges don't

haphazardly declare that state incidents have occurred, or pronounce that state misfortunes have been demonstrated. The state did not suffer at the time of the prosecution or the Court's decision because it was still making payments for the fines, interest, and principal.

As per Regulation Number 1 of 2004 concerning the State Depository. "State/Regional losses, namely the lack of money, securities, and goods, the amount of which is real and certain as a result of unlawful acts, whether intentional or negligent".

It is abundantly clear from the preceding explanation of the State's losses that the real securities, which have decreased from the previous amount, are the absence of funds caused, among other things, by partners increasing project costs paid for by the State treasury, corruptors stealing State funds, and so on. A real-state loss is the name given to this loss. Conversely, if using a sentence can harm the state, then even though the perpetrator's actions do not ultimately cause state losses, because it turns out that there is a return of state money, by the perpetrator, the perpetrator's actions can already be partially qualified as being able to harm state finances, conversely, if the perpetrator's actions do not potentially harm state finances and it turns out that there is a return of state finances after maturity, so the perpetrator's actions cannot be qualified as being detrimental to state finances. It is abundantly clear from the preceding explanation of the State's losses that the real securities, which have decreased from the previous amount, are the absence of funds caused, among other things, by accomplices expanding project costs paid for by the State depository, corruptors stealing State funds, and so on. A real-state loss is the name given to this loss ?

The assumption stating that the criminal act of corruption is a formal offense, therefore, does not need to be proven as a result that occurs in the form of causing losses to the State, it is sufficient if the elements of Article 2 of Law Number 31 of 1999 have been proven such as the existence of an illegal act and the existence of enriching oneself or others, then it is certain or by itself, the element that can harm the State's finances has been fulfilled. This opinion is groundless because it can harm the state's finances not solely as a result of material offenses but rather as the goal of the perpetrator to commit the act. From this goal, motives and intentions emerge, namely to enrich oneself or other people whose consequences are detrimental to state finances. Therefore, it must be proven whether the perpetrator intends to enrich himself to the detriment of state finances. If there is no loss to the state, then the perpetrator has no intention of committing corruption. [8]

### **1.1. The Process of Returning State Money Allegedly Results of Corruption When the Defendant Dies**

Talking about the right to sue, our attention is directed to the term *subjectief strafrecht (just peniendi)*, in which *recht* does not mean "law", but "right", namely the right of the state, represented by its instruments, to punish someone who violates the law. criminal. the tools of the state are prosecutors. [9]

Starting from the aspect of "position" or "functional official", in essence the duties and powers of the prosecutor in criminal proceedings may include the following: [10]

- a. Make a request for a re-examination of a criminal case because the letter of examination of the case has been lost.
- b. Must resign if still bound by blood or marriage to the third degree.
- c. Carry out judges' decisions and decisions in criminal cases.
- d. Ask the District Court to examine and then determine whether or not a person can be extradited and the Prosecutor attends the hearing and gives his opinion.

- e. Receiving results from the Immigration Apparatus regarding arrival information about foreigners, especially regarding the aims and objectives and the places they will visit.
- f. Lead examinations of explicit crook acts in view of the law, as framed in Article 30 section (1) letter d of Regulation Number 16 of 2004 concerning the Examiner's Office, as per the exceptional arrangements of criminal technique specified in Article 284 passage (2) of the Criminal System Code.
- g. Undertake cassation against acquittal/*vrijspraak* decisions based on circumstances and conditions, for the sake of law, justice and truth.
- h. Conduct investigations if there are strong indications that irregularities and irregularities or misuse have occurred by Officials / Employees / Village Heads and their devices within the ranks of the Ministry of Home Affairs which are suspected of being specific crimes such as corruption.
- i. Conduct investigations and/or investigations on the findings of the BPKP in carrying out its supervisory duties in finding cases with indications of corruption.

The Prosecutor's Authority as stated in Article 30 of the Prosecutor's Law which basically states:

- a) Conduct indictment;
- b) Carry out the choices of judges and court choices that have acquired extremely durable legitimate power;
- c) Supervise the execution of restrictive criminal choices, administrative criminal choices, and parole choices.
- d) Conducting examinations concerning specific crook acts in view of the law.
- e) Completing certain case records and for that can complete extra assessments prior to being moved to the court which in its execution is facilitated with agents.2) The prosecutor with special powers has the ability to represent the state or government in civil and state administration both inside and outside of the court.

The prosecutor's office also organizes events for the purpose of maintaining public order and security:

- a) Increased public lawful mindfulness.
- b) Security of policing.
- c) Supervision of flow of printed matter.
- d) Supervision of convictions that can hurt society and the state.
- e) Prevention of misuse and additionally maligning of religion.
- f) Legitimate innovative work and criminal measurements.

The legal foundation that strictly regulates the State Attorney's Prosecutor's authority to file or file a civil lawsuit against the accused of corruption whose defendant has died and the State Attorney's authority to file a lawsuit against the heirs of this matter is found in Article 34 of Law No. 31 of 1999, which says that criminal acts of corruption must be eradicated:

“In the event that the defendant dies while being examined at a court hearing, while in fact there has been a loss to state finances, the public prosecutor shall immediately submit a copy of the minutes of the hearing to the State Attorney or submit it to the agency that has suffered a loss to file a civil lawsuit against his heirs.”

To clarify this, we can see the explanation of other articles in Law no. 31 of 1999 said. Among them is the Elucidation of article 33 which states: what is meant by "heirs" in this

Article is following the applicable laws and regulations. As stipulated in civil law, where the Civil Law defines the heir is a certain person who is limitedly regulated in the Civil Code who receives the inheritance. Beneficiaries who acquire in light of their situation (uit eigen hoofed) or acquire straightforwardly, for instance, in the event that the dad kicks the bucket, each of his youngsters show up as main beneficiaries.

The way to calculate the loss of state finances concerning criminal compensation can be divided into 4 (four) stages:

- a) a) First Stage, determining whether there is a loss in state finances;
- b) b) Second Stage, calculating the amount of state financial losses;
- c) c) Stage Three, determining state financial losses;
- d) d) Fourth Stage, the decision regarding whether or not there is a state financial loss.

Then, if we concentrate more on Article 34 of Law no. In the criminal justice corruption trial, it is stated that the Public Prosecutor submits a copy of the trial minutes to the State Attorney's Prosecutor or to the agency that is disadvantaged to file a civil lawsuit against his heirs.

#### 4. Conclusion

The following is what the authors are able to draw from the above analysis and discussion: Article 34 of Law No. 1 grants the State Attorney's Prosecutor the authority to bring a civil suit against a deceased corruption defendant. 31 of 1999, which dealt with the criminalization of corruption. In the meantime, there are four stages to the process of calculating state financial losses related to compensation money crimes: The first step is to determine whether there are financial losses for the state. The second step is to figure out how much the state will lose financially. The loss of state funds is determined in the third stage. Additionally, the determination of whether there is a financial loss for the state is the fourth stage. Additionally, in order to expedite the resolution of civil cases, it is necessary to amend the Prosecutor's Law regarding the arrangements and powers of the Prosecutor as a State Lawyer and to streamline the litigation process.

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