

The Role of The Ago in Rescuing State Assets From Corruption Crime in Indonesia

Ricky Setiawan Anas¹, Riswadi², Zudan Arief Fakrulloh³
Jaksa_Ricky@yahoo.co.id¹, riswadi@borobudur.ac.id², cclsis@yahoo.com³

Universitas Borobudur^{1, 2, 3}

Abstract. Current advancements in annihilating defilement have zeroed in on three central concerns, to be specific anticipation, destruction, and return of resources coming about because of debasement. This research is an examination that is analytical and descriptive in nature, specifically research that presents peculiarities or side effects and the genuine circumstance with respect to state lawyers and lawyers in returning state funds and additionally resources coming about because of debasement wrongdoings. Government Regulation no. 5 of 2010 concerning the 2010-2014 Medium-Term Development Plan (RPJM) is directed at improving good governance through 7 (seven) strategies related to eradication efforts, and efforts to eradicate massive and increasingly effective corruption. Official Guidance No. 9 of 2011 concerning Activity Plans for the Avoidance and Annihilation of Defilement Lays out 6 (six) systems, specifically methodologies in the field of counteraction, implementation of harmonization of regulations and guidelines, the salvage of resources coming about because of debasement, worldwide collaboration, and techniques in the field of detailing.

Keywords: Corruption, Recovery, Crime

1. Background

The Attorney General's Office, a part of the government structure that enforces laws, is tasked with carrying out additional obligations in addition to its main responsibilities as a public prosecutor, such as representing the government in civil matters. Regarding the duties and powers of prosecutors in the city and state administrative fields, this is contained in RI Law No. 16 of 2004 concerning the Prosecutor's Office, in which Article 30 paragraph (2) regulates the duties and powers in the city and state administrative fields.

Current developments in eradicating corruption have focused on three main issues, namely prevention, eradication, and asset recovery (Hariandialog, 2019). This shows that efforts to eradicate corruption include efforts to recover state losses from the proceeds of corruption as well as prevention and eradication efforts in the sense of criminalizing the perpetrators. The purpose of returning state losses is to offset losses suffered by the state by returning the proceeds of corruption to prevent further damage.

Saving state finances is pursued in various ways, including tracking/chasing and confiscating goods/wealth that is suspected of being related to corruption crimes.[1] The burden of criminal fines has been directed in Regulation Number 3 of 1971 concerning the Destruction of Debasement Wrongdoings, which has been corrected by Regulation Number 31 of 1999

concerning the Annihilation of Defilement Violations and has been revised again by Regulation Number 20 of 2001 concerning Alterations to Regulation Number 31 1999 concerning the Annihilation of Defilement Wrongdoings and afterward likewise gave Regulation Number 30 of 2002 concerning the Commission for the Destruction of Defilement Wrongdoings. Regulation Number 20 of 2001 controls sanctions for the installment of fines and remuneration cash for demonstrations of defilement committed by people or legitimate elements. The motivation behind the criminal installment of substitution cash is to boost the arrival of state cash that has been ruined.

The Public Examiner will address both the offended party and the litigant in managing different gatherings who have taken state funds as well as resources because of criminal demonstrations of debasement or in light of common misfortunes to play out their jobs and obligations as state lawyers. in returning state funds and additionally riches.

Since debasement has taken the nation's riches and in light of the fact that assets are direly expected to reconstruct and restore society through manageable turn of events, resource recuperation is vital, particularly for non-industrial nations. As per Regulation Number 20 of 2001 concerning the Destruction of Debasement Violations, the most common way of returning resources coming about because of criminal demonstrations of defilement is completed utilizing two methodologies, in particular the common methodology did by the examiner's office in its situation as a state. lawyers, and the criminal approach, which uses forfeiture and confiscation processes. Therefore the authors researched the effectiveness of state attorneys' lawyers in recovering money and/or state assets due to acts of corruption committed by criminals or as a result of civil losses.

Returning misfortunes from the returns of defilement will make the culprit incapable to partake in the aftereffects of his activities. This should be possible by seizing specific things got or delivered in a lawbreaker go about as an extra wrongdoing other than fundamental violations, for example, detainment and fines contained in Article 10 of the Crook Code (KUHP). As contained in Article 39 of the Lawbreaker Code:

1) Things having a place with the convict which were gotten from the wrongdoing or which were intentionally used to perpetrate the wrongdoing, can be seized.

2) In the event of a conviction for a crime that was not committed intentionally or because of a violation, a decision of confiscation can also be imposed based on matters specified in the law.

3) Seizure can be completed against a blameworthy individual who is given over to the public authority, however just for merchandise that have been seized.

Efforts to recover state losses from corruptors will be successful if there is a cooperation between law enforcement officials (police, prosecutors, KPK) to uncover acts of corruption, especially in efforts to recover state losses. It will be difficult to recover the country's financial and economic losses without this cooperation. Because the results of corruption have already been used, it appears that apart from the law, the competence and professionalism of the legal system is a determining factors in eradicating corruption. The payment of compensation for corruption has so far not been carried out properly due to the many obstacles for the accused, law enforcement, and implementing regulations.

One of the organizations approved by regulation to do the destruction and anticipation of criminal demonstrations of defilement notwithstanding The Debasement Annihilation Commission shaped by Regulation Number 30 of 2002 is the Head legal officer's Office of the Republic of Indonesia. Notwithstanding the Lawyer's clout in the field of arraignment and examination for explicit wrongdoings, in light of the arrangements of Article 30 section (2) of Regulation Number 16 of 2004 concerning the Examiner's Office of the Republic of Indonesia,

in the field of normal and state association the analyst's office with unprecedented powers can act both inside and outside the court to and for the state or government.[2]

2. Methods

The methodology utilized in this examination is standardizing juridical. This exploration is research that is scientific illustrative in nature, specifically research that presents peculiarities or side effects and the genuine circumstance with respect to state lawyers and lawyers in returning state funds or potentially resources coming about because of criminal demonstrations of debasement or in light of common misfortunes.[3] In addition, this research also seeks to reveal the constraints and problems that are technical in nature legislation that occurs to state attorneys-attorneys in their duties to restore state finances and or assets. The study uses data sources in the form of secondary data. In collecting data, researchers examined legislation and literature studies. The research data that has been collected will be presented in the form of a description, in the form of a description of the information, information, and statements provided by the respondents.

3. Result And Discussion

3.1. Regulation of Corruption in Indonesia

A social peculiarity called defilement is a truth of human conduct in friendly connection that is viewed as degenerate and jeopardizes society and the state. Thusly, this conduct in all structures is criticized by society, in any event, including by the corruptors themselves by the saying "corruptors yell corruptors". Public dissatisfaction with regards to debasement as per the juridical origination is appeared in the plan of regulation as a type of wrongdoing. In the legislative issues of Indonesian criminal regulation, debasement is even viewed as a type of wrongdoing that should be drawn nearer explicitly and is dependent upon serious punishments.[4]

Although in the Criminal Code, there is no explicit use of the terminology of corruption in the formulation of offenses, there are several provisions that can be captured and understood in essence as formulations of criminal acts of corruption. The provisions for corruption in the Criminal Code are found separately in several articles in three chapters, namely:[4]

- a. Chapter VIII concerns crimes against general authorities, namely in Articles 209, and 210 of the Criminal Code.
- b. Chapter XXI regarding fraudulent acts, namely Articles 387 and 388 of the Criminal Code.
- c. Chapter XXVIII regarding position crimes, namely Articles 415, 416, 417, 418, 419, 420, 423, 425, and 435 of the Criminal Code.

The formulation of criminal acts of corruption contained in the Criminal Code can be grouped into four groups of criminal acts (delicts), namely:[4]

- a. Bribery crime group; which consists of Articles 209, 210, 418, and Article 420 of the Criminal Code;
- b. The group of criminal acts of embezzlement; which consists of Articles 415, 416, and Article 417 of the Criminal Code;

- c. The group of criminal acts of greed (knevelarij or extortion); which consists of Article 423 and Article 425 of the Criminal Code;
- d. The group of criminal acts related to chartering, suppliers, and partners; which consists of Articles 387, 388, and Article 435 of the Criminal Code.

As of today, there are at least 7 (seven) specific laws that are still normatively valid and can be utilized to prevent and eradicate criminal acts of corruption. These laws include:[4]

- a. Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001.[5]
- b. Law Number 30 of 2002 concerning the Corruption Eradication Commission.[6]
- c. Law Number 46 of 2009 concerning Corruption Courts.[7]
- b. Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion, and Nepotism. [8]
- c. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. [9]
- d. Law Number 13 of 2006 concerning the Protection of Witnesses and Victims.[10]
- e. Law Number 7 of 2006 concerning Ratification of the United Nations Conventions Against Corruption, 2003 (United Nations Convention Against Corruption, 2003).

According to Alfitria, the emergence of acts of corruption is driven by two motivations. First, is intrinsic motivation, namely the urge to obtain satisfaction caused by acts of corruption. In this case, the perpetrator feels satisfaction and comfort when he succeeds in doing so. In the next stage, corruption becomes a common way of life, habit, and tradition/culture. Second, extrinsic motivation, namely the encouragement of corruption from outside the perpetrators who are not an inherent part of the perpetrators themselves. The second motivation, for example, is due to economic reasons, the ambition to reach a certain position, or the obsession with increasing living standards or career positions through shortcuts.

In rather a detail, the occurrence of corruption is caused by three things:[11]

- a. First, corruption by greed. This corruption occurs in people who don't need it, are not economically urgent, and maybe even rich. Their high position, big salary, luxurious house, and rising popularity but unstoppable power caused him to be involved in corrupt practices.
- b. Second, corruption by need corruption is carried out because of urgency in fulfilling the necessities of life (basic needs).
- c. Third, corruption by chance (there is an opportunity). This corruption is carried out because there are great opportunities for corruption, opportunities to get rich quickly through shortcuts, and opportunities for instant promotion to positions, usually this is supported by weak organizational systems, low public accountability, lax public oversight, and porous law enforcement which is exacerbated by legal sanctions that do not deter.

The modus operandi of corruption is increasingly sophisticated, packaged in such a way that it is not known that it is not corruption. Some common modus operandi of corruption that is found in Indonesia are as follows:[12]

- a. Giving bribes or kickbacks (Bribery).

Misrepresentation is an unlawful demonstration committed by individuals from the inside and additionally outside the association, to get individual as well as gathering benefits that straightforwardly hurt different gatherings. In general, the intensity of the

occurrence of fraud in the aspects of planning, organizing, implementing activities, and supervising is in the category of "fraud ever occurred". Activities that are significant in terms of the intensity of the emergence of fraud are increasing the budget in submitting activities and using state property for personal gain. The areas of activity identified in the category of "fraud often occur", namely in the areas of licensing, procurement of goods and services, the election of regional heads of staffing, maintenance of public facilities, receipt of regional income, supervision, and accountability of regional heads.

b. Forgery (Fraud).

Extortion is an act of forcing someone to pay or give a sum of money or goods or another form in exchange for a public official to do or not do something. These actions can be followed by physical threats or violence.

c. Extortion.

Extortion is an act of forcing someone to pay or give a sum of money or goods or another form in exchange for a public official to do or not do something. These actions can be followed by physical threats or violence.

d. Abuse of Position or Authority (Abuse of Discretion).

Abuse of position or authority is an act of using the authority one has to take partial or favoritism towards groups or individuals while being discriminatory towards other groups or individuals.

e. Nepotism (Nepotism).

In the Purwadar Minta dictionary, it is written that nepotism is giving positions to relatives or friends only, while Jhon M. Echols categorizes it as a noun by prioritizing relatives, especially in granting positions. The term nepotism comes from the Latin word "nepos" which means grandson. Nepotism is used as a term to describe the act of prioritizing relatives, close friends, and members of like-minded political parties, without regard to the conditions specified. So, if the family does meet the requirements then it does not include nepotism in that sense.

3.2. The Attorney's Role in the Implementation of State Compensation Payments

Whether or not the position and elements of the Principal legal officer's Office of the Republic of Indonesia are controlled expressly or verifiably in the 1945 Constitution, what is sure is that the Principal legal officer's Office of the Republic of Indonesia is a subsystem of the Indonesian established framework as specified in the 1945 Constitution.

Definition of Public Prosecutor and Prosecutor, based on Law no. 08 of 1981 concerning the Criminal Procedure Code namely:

- a. Prosecutors are authorities approved by this regulation to go about as open examiners and to do court choices that have acquired long-lasting legitimate power.
- b. The Public Examiner is the Investigator who is approved by this Regulation to arraign and do the appointed authority's assurance.

Article 284 passage (2) of the Criminal System Code (KUHAP) states:

"With the temporary exception regarding the special provisions for criminal procedure as stated in certain laws, until there is a change and or declared no longer valid."

Article 17 Unofficial law Number 27 of 1983 concerning the execution of the Criminal Technique Code states:

"Investigations according to the special provisions for criminal procedure as referred to in certain laws as referred to in Article 284 paragraph (2) of the Criminal Procedure Code are

carried out by investigators, prosecutors and other authorized investigators based on statutory regulations."

So in view of this arrangement obviously in the Criminal Strategy Code itself, there is a legitimate reason for the Examiner's situation as an examiner for explicit crook acts (lex specialis).[13]

The arrangement is in accordance with Article 26 of Regulation Number 31 of 1999 as revised by Regulation Number 20 of 2001 concerning the Annihilation of Criminal Demonstrations of Debasement which states:

"Investigations, prosecutions, and examinations at court hearings in cases of criminal acts of corruption, are carried out based on the applicable criminal procedure law unless otherwise provided for in this law".

In light of this depiction, the Principal legal officer's Office has the place of examiner and specialist in debasement wrongdoings and the public examiner of a case before preliminary. The Criminal Method Code doesn't give further guideline in regards to the place of the Examiner's Office regardless of whether it is an expansion of the specialists, just making sense of that the Investigator completes the legal capability.

Following the provisions in Article 18 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 that payment of replacement money must be carried out by the convict no later than 1 (one) month after the court decision obtains permanent legal force. Based on these provisions, the prosecutor as the executor of the court decision (Article 270 of the Criminal Procedure Code) will take the following steps:

- a. The convict will be summoned to discuss the issue of payment of replacement money.
- b. Conduct negotiations regarding the willingness to pay replacement money utilizing payments made by the convict in stages.
- c. Carry out searches and investigations of the convict's property allegedly obtained from corruption.
- d. If inside the time concurred between the investigator and the convict, the installment of remuneration cash isn't completed by the convict, the examiner will take the convict's property and apply the State Receivables and Sale Administration Office (KP2LN) to lead an execution closeout of the seized products the.
- e. The replacement money that has been paid by the convict or the proceeds from the subsequent execution auction by the prosecutor is deposited to the State Treasury Office or the Bank that has been appointed by the state as state revenue from payment of replacement money.
- f. After all settlements for payment of replacement money have been carried out by the prosecutor, the prosecutor then makes a report on the settlement of payment of replacement money which is submitted to the court.

If in practice the Replacement Money has been determined and decided by the court but the defendant cannot carry out the payment of Replacement Money by the stipulated time, then a substitute penalty will be imposed, namely an additional prison sentence by the replacement calculation by the amount of Replacement Money that has not been paid. If the convict dies before the replacement money is paid, the family and heirs of the convict are responsible for the return of the convict's replacement money if it is proven that there are assets from the family or heirs that turn out to be the result of a criminal act of corruption.

Concerning substitution cash which was chosen in view of Regulation No. 3 of 1971 and changed to Regulation No. 31 of 1999 and went through one more change to become Regulation No. 20 of 2001 concerning the Annihilation of Defilement Violations, the disposal of substitution cash was proposed to the Pastor of Money of the Republic of Indonesia through the Principal legal officer of the Republic of Indonesia with complete:

- a. Warrant for disbursement of the convict's property;
- b. Report on the disbursement of the convict's property with an attachment to a statement from the Lurah or village head that the convict does not have any property that can be confiscated to pay compensation.

For compensation money paid in part by the convict, it is still proposed to abolish it through the Attorney General of the Republic of Indonesia by completing:

- a. Receipt of replacement money payment (D3);
- b. Proof of payment of replacement money to the State Treasury;
- c. Report on the disbursement of the convict's property with an attachment to a statement from the Lurah or Village Head that the convict does not have any property that can be confiscated to pay compensation

As to substitution cash that was chosen in view of Regulation no. 31 of 1999 related to Regulation Number 20 of 2001 concerning the Annihilation of Defilement Violations, if the convict does not pay then there must be evidence that the convict has served a replacement sentence. It must be proven by the minutes of the implementation of a replacement sentence, if the convict is serving a sentence or has already served a sentence even though the minutes for the implementation of a replacement sentence have not been made, the KAJARI must order the Head of Special Investigation Unit or the Public Prosecutor to coordinate with the Head of the Penitentiary to obtain a statement that the convict has served a substitute sentence. The certificate must be attached to the case file.

If no evidence can be found that the defendant has served a substitute sentence, the public prosecutor must execute the convict in the form of payment of replacement money or replacement punishment.

Disposal of substitution cash controlled in Regulation No. 3 of 1971 and Regulation No. 31 of 1999 related to Regulation Number 20 of 2001 is directed by RI Unofficial law No. 14 of 2005 concerning Techniques for Discounting State/Provincial Receivables.

The settlement process for replacement money that has permanent legal force based on KEP-518/J.A/11/2001 dated November 1, 2001, is carried out in the following manner:

- a. A summons (D-1) is made with the subject of billing for replacement money for the convict to appear before the executing attorney at the local prosecutor's office;
- b. After being summoned and appearing before the executing attorney, the convict was asked about his ability to pay compensation that had been handed down by a court that had permanent legal force. At this stage the convict is made a statement (D-2) which contains whether or not he can pay replacement money;
- c. When paying the replacement money, a Payment Receipt (D-3) is made for the money that has been received from the convict and signed by the Head of Special Crimes Section on behalf of the Head of the District Attorney;
- d. After receiving replacement money from the convict, the head of the local district/high prosecutor's office issues an order (D-4) instructing the Executing Prosecutor/Kasi Special Crimes/Head of Sub-Division Prosecutor's Office to hand over replacement money on behalf of the convict concerned to the Head of Sub-

Division of the local Prosecutor's Office. Special Treasurer/Recipient within 1x 24 hours after receipt. 5. The Special Treasurer/Recipient after receiving the replacement money within 1x 24 hours must deposit the replacement money with a blank Non-Tax State Receipt (SSBP) to the state treasury with Revenue Budget Currency (MAP) 423473 through a bank. However, based on the Jambin Letter No: 005/C/Cu/01/08 and the Minister of Finance Regulation No. 91/PMK.05/2007 MAP was changed to Number: 423614 effective since January 2008.

Regarding the determination of the penalty for payment of replacement money, it is guided by the Attorney General's Letter No. B-28/A/Ft.1/05/2009 dated 11 May 2009, regarding instructions to the public prosecutor in making a charge letter, one of the instructions regarding the crime of payment of replacement money, namely:

- a. The obligation to pay compensation as far as possible is directly addressed to the agency that is harmed as a result of a criminal act of corruption. Amar letter of demand: "to pay compensation money to the State (the institution that has suffered losses) in the amount of etc.
- b. To give a sense of justice to the convict who pays replacement money but only part (not full) of the crime in the decision, then in the indictment the clause is added: "if the defendant/convict pays replacement money, then the amount of replacement money paid will be calculated with the duration additional punishment in the form of imprisonment as a substitute for the obligation to pay replacement money.
- c. Concerning the obligation to pay replacement money where the defendant has more than one person, in the Amar claim, the amount for each defendant is clearly and stated the amount for each defendant is not expressed clearly and definitely and cannot be stated jointly and severally because it is not will provide legal certainty and cause difficulties in execution. Execution difficulties that occurred both related to the amount of replacement money that had to be paid by each defendant/convict and convicts who did not pay (or paid part of) the replacement money so they had to undergo corporal punishment as a substitute for the obligation to pay the replacement money.
- d. If it is not known with certainty the amount obtained from the criminal act of corruption by each defendant/convict, then one way that can be used as a guide to determine the amount of replacement money to be used for each convicted/defendant is to use the qualification "participate" in Article 55 paragraph (1) 1st Criminal Procedure Code.
- e. For the implementation of the instructions for determining the amount of replacement money so that it is carried out in an orderly manner with accountable administration accompanied by accurate evidence that can be used as material for reporting on the results of saving state financial losses by the Attorney General's Office.[14]

4. Closing

The issue of debasement is not generally restored as far as regulation and financial matters for a country on the grounds that the issue of defilement has existed for millennia, both in created and non-industrial nations including Indonesia which are phenomenal on the grounds that it has expanded and spread to all degrees of society. Government's endeavors in destroying

debasement in the districts, to be specific the issuance of Official Guidance No. 5 of 2004 concerning the speed increase of debasement destruction. To understand an administration that is spotless and liberated from CCAs as expressed in the vision and mission of the public system and the public activity plan for destroying defilement (Public Methodology and RAN PK) 2010-2005. Government Regulation no. 5 of 2010 concerning the 2010-2014 Medium-Term Development Plan (RPJM) is directed at improving good governance through 7 (seven) strategies related to eradication efforts, and efforts to eradicate massive and increasingly effective corruption. Official Guidance No. 9 of 2011 concerning Activity Plans for the Avoidance and Destruction of Debasement Lays out 6 (six) procedures, specifically techniques in the field of anticipation, implementation of harmonization of regulations and guidelines, the salvage of resources coming about because of defilement, worldwide participation, and systems in the field of announcing.

References

- [1] M. . Saidi, *Hukum Keuangan Negara*. Jakarta: PT Raja Grafindo Persada, 2011.
- [2] “Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.” .
- [3] S. S. dan S. Mamudji, *Penelitian Hukum Normatif*. Jakarta: Raja Grafindo, 2001.
- [4] E. Danil, *Korupsi Konsep, Tindak Pidana dan Pemberantasannya*. Jakarta: PT. Raja Grafindo Persada, 2012.
- [5] “Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.” .
- [6] “Undang-undang Nomor 30 Tahun 2002 tentang Komisis Pemberantasan Tindak Pidana Korupsi.” .
- [7] “Undang-undang Nomor 46 Tahun 2009 tentang Pengadilan Tindak Pidana Korupsi.” .
- [8] “Undang-undang Nomor 28 Tahun 1999 tentang Penyelenggaraan Negara yang Bersih dan Bebas dari Korupsi, Kolusi, dan Nepotisme.” .
- [9] “Undang-undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.” .
- [10] “Undang-undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dna Korban.”.
- [11] Alfitra, *Modus Operandi Pidana Khusus Di Luar KUHP*. Jakarta: Raih Asa Sukses, 2014.
- [12] Rohim, *Modus Operandi Tindak Pidana Korupsi*. Bekasi: Pena Mukti, 2008.
- [13] M. . Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*. Jakarta: Sinar Grafika, 2012.
- [14] E. Kholis, *Pembayaran Uang Pengganti Dalam Perkara Korupsi*. Depok: Solusi Publishing, 2010.