

The Role of Prosecutors in Paying Compensation to Customers Through Substitute Money for Corruption Crimes in BPR Salatiga in the Perspective of Progressive Justice

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ABSTRACT

The role of prosecutors in the law enforcement system for corruption is not enough just to impose prison sanctions but also to make efforts to recover state losses caused. The role of the prosecutor is to spearhead efforts to recover or recover state financial losses. The case of the corruption case of PD BPR Salatiga with the Supreme Court Cassation Decision Number: 5969 K / Pid.Sus / 2022 dated November 9, 2022 on behalf of the convicted Sunarti, the Prosecutor has confiscated assets against the property of the convicted Sunarti so that later it can reduce the nominal replacement money imposed on the convicted of corruption. But the problem in the case of PD BPR Salatiga corruption is that the money that has been corrupted by the convict who in fact is a former employee of PD BPR Salatiga is the money of PD BPR Salatiga customers so that whether the replacement money that has been paid or taken from assets that have been confiscated must be confiscated to the state or returned to PD BPR Salatiga or handed over to the aggrieved customer. The State is a representative of a society, when the community becomes a victim and is harmed, this is where the State must contribute to solving problems fairly and wisely.

INTRODUCTION

The strong demand of the public for the government to seriously fight corruption was responded by the government by issuing Law No. 31 of 1999 which has been amended and supplemented by Law No. 20 of 2001 hereinafter will be called the Tipikor Law. The reason the government issued Law No. 31 of 1999 and Law No. 20 of 2001 was because the Criminal Eradication Law No. 3 of 1971 (Tipikor Law) was considered unable to answer the legal needs in combating corruption and was considered very weak, especially in criminal and criminal matters.

In the event that additional criminal convictions in the form of payment of substitute money to the convicted person are consequences of corruption acts that have resulted in state financial losses or the State economy, so that to restore the financial losses of the State or the economy of the State, juridical means are needed in the form of payment of substitute money. Criminal policy strategies in crimes with new dimensions must pay attention to the nature of the problem, if it is closer to the field of law of its kind.

One of the objectives of law enforcement of corruption crimes where the crime prioritizes the return of state financial compensation from perpetrators of corruption crimes. Return of state financial compensation arising from the proceeds of corruption which is a system of law enforcement that requires a process of removing rights to the perpetrator's assets from the state as victims by means of confiscation, freezing, confiscation both in local, regional and international competencies so that wealth can be returned to the legitimate state (victim).

Talking about the victims of a corruption crime in the case of the corruption case of PD BPR Salatiga with the defendant Sunarti is a customer of PD BPR Salatiga. Based on the Supreme Court Cassation Decision Number: 5969 K / Pid.Sus / 2022 dated November 9, 2022 on behalf of the convicted Sunarti, where the panel of judges in its verdict stated that the defendant was legally and conclusively proven guilty of violating Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption juncto Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption juncto Article 55 Paragraph (1) 1st of the Criminal Code juncto Article 64 Paragraph (1) of the Criminal Code and Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. That as a result of the defendant's actions, the defendant is sentenced to imprisonment for 12 (twelve years) years and a fine of Rp. 500,000,000 (five hundred million rupiah) subsidair 6 (six) months confinement, and must pay a substitute of Rp.10.196.063.163, (ten billion one hundred ninety-six million sixty-three thousand one hundred sixty-three rupiah) subsidair 6 (six) months imprisonment.

Law enforcers involved in eradicating corruption are investigators, public prosecutors and judges. Judges are the final determinant in the eradication of corruption. However, judges cannot act actively outside the context of cases submitted to trial by the public prosecutor (prosecutor). While the party who is active in conducting investigations and prosecutions is the prosecutor.

Therefore, it is not an exaggeration to mention that the Prosecutor's Office is one of the determinants of success in eradicating corruption.

At the investigation stage, the Prosecutor has confiscated assets against the property of the defendant Sunarti so that later it can reduce the nominal replacement money imposed on the convicted of corruption. But the problem in the case of PD BPR Salatiga corruption is that the money that has been corrupted by the convict who in fact is a former employee of PD BPR Salatiga is the money of PD BPR Salatiga customers so that whether the replacement money that has been paid or taken from assets that have been confiscated must be confiscated to the state or returned to PD BPR Salatiga or handed over to the aggrieved customer.

One of the objectives of the promulgation of Law Number 31 of 1999 concerning the Eradication of Corruption Jo Law Number 20 of 2001 is to restore state losses. Therefore, criminal law enforcement prioritizes the return of state financial compensation from perpetrators of corruption crimes. Return of state financial compensation arising from the results of corruption which is a system of law enforcement that requires a process of removing rights to perpetrators' assets from the state as victims by means of confiscation, freezing, confiscation both in local, regional and international competencies so that wealth can be returned to legitimate victims. The State is a representative of a society, when the community becomes a victim and is harmed, this is where the State must contribute to solving problems fairly and wisely.

Legal certainty is a law enforcement factor that cannot be ignored, because if ignored it will cause the expected law enforcement not to be achieved. Therefore, the existence of the Prosecutor's Office as a law enforcement agency, has a central position and strategic role in a state of law because the Prosecutor's Office is a filter between the investigation process and the examination process in court, so that its existence in the community must be able to carry out law enforcement duties so that the community feels legal certainty.

The prosecutor as the executor in carrying out investigations, prosecutions to the execution of money in lieu of corruption crimes contained in the verdict that has the permanent legal force, is certainly not as easy as imagined. State losses incurred in the case of corruption of PD BPR Salatiga are not necessarily only the state that is harmed but the most disadvantaged are PD BPR Salatiga customers who must be the attention of the Public Prosecutor as the later Prosecutor Executor.

Based on this background, research is needed related to the return of substitute money to customers who are victims of corruption crimes PD BPR Salatiga. Therefore, the author is interested in discussing and analyzing further the role of the public prosecutor in paying compensation to customers through substitute money for corruption crimes of PD BPR Salatiga in the perspective of progressive justice.

METHODOLOGY

This legal research is prepared using a case approach and a historical approach with qualitative analysis. The approach used in this legal research is the case approach and historical approach. The case approach is an approach carried out using a related case, namely the Corruption Crime of PD BPR Salatiga. The historical approach is an approach that is carried out by looking at a problem that is behind what is studied and the development of arrangements related to issues that occur in society. The research location was at the Corruption District Court in Semarang, the Central Java High Prosecutor's Office, and the Salatiga State Attorney's Office. The data analysis technique used is qualitative analysis. In this case, the legal event of returning state losses in the corruption case of PD BPR Salatiga aims to find answers to legal problems in the form of how the process of returning state financial compensation through substitute money in the PD BPR Salatiga corruption case and how the role of the public prosecutor should be carried out.

RESEARCH RESULT

Return of state losses is an effort that must be carried out to restore the state economy that results in corruption, but within the scope of the Corruption Eradication Law which has indirectly provided an opportunity for convicts to make choices whether to pay substitute crimes or choose to serve the crimes specified in the judge's decision. This can be seen in the formulation of Article 18 paragraph (1) point b of the Corruption Eradication Law which states "in addition to additional crimes as referred to in the Criminal Code, as additional crimes are b. payment of substitute money in the amount of property obtained from corruption crimes". Article 18 paragraph (2) of the Corruption Eradication Law states "if the convicted person does not pay the substitute money as referred to in paragraph (1) point b no later than 1 (one) month after the court decision that has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money", while Article 18 paragraph (3) of the Corruption Eradication Law states "in the event that the convicted person does not Having sufficient property to pay the substitute money as referred to in paragraph (1) point b, then sentenced to imprisonment whose duration does not exceed the maximum criminal threat of the principal crime in accordance with the provisions of this Law and therefore the crime has been determined in a court decision.

According to Eddy Rifai, substitute money is one of the additional criminal penalties in corruption cases that must be paid by the Convicted to the state which is as much as the same amount as the property obtained from the criminal act of corruption, if there is an inability of the Convicted to pay the replacement money, it can be replaced with corporal crime as a subsidiary punishment. Furthermore, according to Novian Saputra, the main criminal conviction is a must carried out by the Judge based on the Public Prosecutor's indictment and everything proven at trial, while additional criminal convictions are optional with the basis of Article 18 of the Corruption Eradication Law. The judge imposes an additional penalty in the form of payment of substitute money, so the amount of value to be paid depends largely on the results of the

audit of state financial losses adjusted to the trial facts regarding the amount of money received by the defendant, whether the proceeds of corruption obtained by the defendant have been returned to the state, and whether the criminal act of corruption is carried out jointly so that the payment of substitute money can be charged jointly against the defendants.

According to Kasi Pidsus of the Salatiga State Prosecutor's Office Hadrian Suharyono, SH, after a court decision with permanent legal force, the Prosecutor's efforts in collecting substitute money payments to the convicts include the following administrative steps:

- a. Make a bill regarding the collection of compensation to the Convicted Person to appear before the executor Prosecutor at the local Prosecutor's office;
- b. The convict is summoned and must appear before the Prosecutor to explain his ability to pay state monetary damages that have been determined by a court that has permanent legal force. At this stage, a statement letter is made containing whether or not to pay state money compensation. But if the convict cannot pay then it must be proven by the statement of the authorized official;
- c. At the time of payment of the compensation money, a receipt of payment of money that has been received from the Convicted Person must be given and signed by the local Chief District Attorney;
- d. At the time of receipt of compensation money from the convict, the local Chief Prosecutor orders the executor prosecutor to deposit the replacement money. Convicted with proof of Non-Tax State Beneficiary Deposit Letter form through the bank.

To analyze what are the obstacles in returning state financial compensation through substitute money in the case of corruption PD BPR Salatiga, it is first necessary to present here the opinion of Soerjono Soekanto. It was stated by Soerjono Soekanto that in essence the problem actually lies in the factors that might influence it. These factors have a neutral meaning, so the positive or negative impact lies in the content of these factors. First, the legal factor itself, which will be limited to laws and regulations only; second, law enforcement factors, namely those who form and apply the law; third, the factor of facilities or facilities that support law enforcement; fourth, community factors, namely the environment in which the law applies or is applied; and fifth, cultural factors, namely as the result of work, creation and taste based on human charities in the association of life. The above factors are closely interrelated, because they are the essence of law enforcement, and are also a benchmark of law enforcement effectiveness.

Soerjono Soekanto stated that conceptually, the core and meaning of law enforcement lies in the activity of resolving the relationship of values described in solid rules and manifesting and acting attitudes as a series of final stage value elaboration, to create, maintain and maintain social peace. The

conception, which has a philosophical basis, requires further explanation, so that it will appear more concrete.

In the general explanation of Law No. 31 of 1999, it is stated that national development aims to realize the whole Indonesian people and the Indonesian people as a whole who are just, prosperous, prosperous, and orderly based on Pancasila and the 1945 Constitution. To realize a just, prosperous, and prosperous Indonesian society, it is necessary to continuously increase efforts to prevent and eradicate criminal acts in general and corruption in particular.

First, based on its own legal factors. In the execution or criminal execution of the payment of substitute money is also basically a matter of law enforcement. The law can reflect the values that form the basis of the law itself so that the law or legislation can be effective. In this regard, laws and regulations relating to the criminal effectiveness of payment of substitute money in the criminal act of corruption in accordance with Article 18 of the Tipikor Law, from the legal factors themselves have weaknesses and obstacles that hinder the purpose of returning state losses from criminal acts of corruption. In relation to the return of state losses in the criminal act of corruption, law enforcement most related to this matter are investigators and prosecutors as executors of court decisions, investigators as stipulated in Article 39 paragraph 1 of the Code of Criminal Procedure that "Objects or bills of suspects or defendants which in whole or as allegedly obtained from criminal acts or part of the proceeds of criminal acts" from the paragraph it can be concluded that investigators are given the authority to confiscate property belonging to criminal suspects Corruption is limited only to property obtained from the proceeds of criminal acts of corruption. It is associated with Article 18 of the Corruption Law that the seizure of property belonging to suspects is obtained from corruption crimes committed by suspects. The investigator's authority is limited to the authority he has in accordance with the Criminal Procedure Code and the Criminal Procedure Law.

In this case, the Corruption Law and the procedural law used limit the authority of investigations by only being able to confiscate the property of suspects obtained or reasonably suspected from the proceeds of corruption crimes committed by suspects. So that in terms of legal factors, this also affects the ineffectiveness of state financial returns in certain cases, one of which is the Supreme Court Cassation Decision Number: 5969 K / Pid.Sus / 2022 dated November 9, 2022 on behalf of the convicted Sunarti where in the investigation of the corruption criminal case, the property of the convicted Sunarti that can be confiscated by investigators is smaller than the amount or value of state losses contained in the criminal act corruption committed by convicts.

So that this can make it difficult to recover state losses carried out by the prosecutor as the executor of court execution as stipulated in Article 18 of the Corruption Law that if a lawyer within one month after the court has permanent legal force, the prosecutor does not pay compensation money, the prosecutor can confiscate and auction off the lawyer's property. to be calculated as payment of replacement money, if the confiscated assets are smaller in amount or profit than the amount or value of state losses incurred in the

criminal act of corruption committed by the convict, so that the executing attorney must look for the convict's assets to cover the replacement money that must be paid by the convict, this becomes difficult because this condition can be used as a loophole by the convict considering that the legal process requires sufficient time and can even take a long time, so that during the legal process the convict can divert, hide or lose his wealth so that the property that must be confiscated and auctioned off by the prosecutor is not found again so that state losses cannot be effectively recovered.

Second, law enforcement factors, namely those who form and apply the law. The achievement of the rule of law must be measured by how well law enforcement is carried out in Indonesia, talking about law enforcement, then the most important and fundamental thing is how the ability of law enforcement officials (especially in the field of corruption), in the justice system can accommodate and appreciate the demands of justice both the formal legal spirit and the demand for a sense of justice by the community in eradicating corruption is a basic need. Stated by Soerjono Soekanto, as one of the factors that determine the law enforcement process is not only the parties who apply the law but also the parties who make the law. In this discussion, parties directly related to the application of the law are discussed. The parties in the law enforcement process are the police, prosecutors, judiciary and lawyers. Limitations of investigators in disclosing or recording the assets of defendants in corruption crimes so that they can be used by defendants to hide, transfer or transfer their property to others. In this case, the investigator's authority to confiscate the property of the accused who is known or reasonably suspected from the proceeds of the criminal act of corruption, is constrained by the difficulty of tracking the property of the defendant obtained from the proceeds of the criminal act of corruption.

Third, the facility factor, in terms of the return of substitute money in the criminal act of corruption. The facility factor is also one of the obstacles. In this case, the lack of funds provided by the state. If the amount or value of confiscated property is less than the amount or value of state losses contained in the criminal act of corruption, the prosecutor must recover the property of the convicted person to be confiscated and auctioned to cover the difference in replacement money to be paid by the convict. However, this search was not balanced and supported by adequate facilities for the successful search of property or the search for assets belonging to the accused to cover the lack of state losses.

Fourth, community factors, namely the environment in which the law applies or is applied. The most important part of society that determines law enforcement is society's legal awareness. The legal regulations that apply or are implemented have a strong influence on the implementation of law enforcement. Because law enforcement comes from society and aims to achieve peace and justice in society. Its relation to the factors that constrain the effectiveness of the implementation/execution of the crime of payment of replacement money in the corruption crime of PD BPR Salatiga is the lack of awareness from the public to report or notify criminal acts of corruption in their

environment as well as property owned by the accused, concern or awareness of the public to provide information effectively. early warning to law enforcers against people suspected of committing criminal acts of corruption is still lacking, in fact there is a tendency to participate in covering up. In connection with the societal factors that influence law enforcement, if related to Friedman's opinion about the elements in the legal system, one of the elements is "legal culture", namely attitudes and values related to law, which come from the people or service users. law.

it can be argued that the legal culture of society is reflected, among others, by the attitude of the people who are reluctant to provide information about the existence of perpetrators of corruption or property owned by officials in their environment, indicating the existence of a legal culture of society that does not yet support the enforcement of criminal acts of corruption. So that it can be said that community factors, especially the legal culture of society, are inhibiting factors in overcoming criminal acts of corruption.

Then the public is also willing to carry out transactions without finding out who the person against the transaction is still in the legal process in this case the criminal act of corruption. Decision on the imposition of additional criminal compensation money in the decision on the corruption case at the Corruption Court with the Supreme Court Cassation Decision Number: 5969 K/Pid.Sus/2022 Dated 09 November 2022 on behalf of the convict Sunarti where the replacement money that should have been returned by the convict to the state was not entirely return. In accordance with Article 18 of the Anti-Corruption Law, if the convicted person does not pay replacement money one month after the sentence is finalized, then his property can be confiscated and auctioned off by the Prosecutor to be counted as replacement money, if the convict does not have sufficient property to be counted as replacement money, then the convict sentenced to a subsidiary prison sentence as stated in the decision, 6 months imprisonment. In the Supreme Court Cassation Decision Number: 5969 K/Pid.Sus/2022 November 9, 2022 on behalf of the convict Sunarti where the replacement money is Rp.10,196,063,163,- (ten billion one hundred ninety six million sixty three thousand one hundred sixty three rupiah) subsidiary of 6 (six) months imprisonment, the investigating prosecutor only confiscated the assets of the convict Sunarti if later the auction was held, it was only approximately 2 billion and it was clear that this was not sufficient for payment of replacement money as a consequence of the state losses incurred by the convict Sunarti. Obstacles come from community factors, lack of awareness from the public to report or notify criminal acts of corruption in their environment, awareness or public awareness to provide early information to law enforcement against people suspected of committing criminal acts of corruption is still lacking. Defendants who should have returned replacement money but could not pay replacement money so that most convicts would rather carry out their subsidiary crimes than pay replacement money.

DISCUSSION

The role of the public prosecutor in law enforcement has a major role in the administration of the life of the nation and state to ensure the interests of the

majority of the community or citizens, can ensure legal certainty, justice, and truth and respect human rights, so that various criminal acts and arbitrary acts committed by members of the community against other members of society will be avoided. Consistent law enforcement can realize community expectations with certainty and legal provisions based on justice and truth.

Efforts to restore state financial compensation as a risk of criminal acts of corruption cannot be separated from the factors that influence it, as stated by Soerjono Soekanto, law enforcement is basically not solely applying the provisions of the legislation, but there are also factors that influence it, which are as follows:

- a. Statutory factors (legal substance)
- b. Law enforcement factors
- c. Facilities and facilities factor
- d. Community factors
- e. Cultural factors.

According to Eddy Rifai, the investigation and investigation process that is not optimal provides the greatest contribution if the implementation of the return of state financial losses encounters obstacles, because one of the authorities possessed by the Investigator as stipulated in Article 5 paragraph (1) of the Criminal Procedure Code is to search for information and evidence, at this stage the Investigator must be as much as possible able to search and find assets belonging to perpetrators of corruption crimes, so that when the case is upgraded to the investigation stage, the Investigator can immediately confiscate existing assets to avoid the transfer of assets by the Suspect to others. Obviously what the investigator and the investigator meant was the prosecutor.

The confiscation of assets belonging to the Suspect is related to an additional crime in the form of confiscation which can be determined together with the conviction of the principal crime by the Judge so that it can make it easier for the Executor Prosecutor to recover state losses. However, what often happens is that investigators actually prioritize the calculation of state losses and the fulfillment of criminal elements with the aim that the results of the calculation of state financial losses can be asked for a return through the payment of substitute money to the state.

Elements that result in state financial losses in the Corruption Crime Act are things that must be fulfilled in an effort to return state financial compensation. Considering that acts of corruption are often carried out by people who have positions and are highly educated, of course every corrupt actor will take systematic and structured actions to hide the results obtained from acts of corruption so that it can make it difficult for investigators to confiscate assets obtained from acts of corruption. It cannot be denied that the difficulties of confiscating property experienced by investigators often have an impact on the actions of investigators who focus on confiscating letters or written documents that are used to determine the amount of state financial losses incurred, of course this can only be used to prove wrongdoing. perpetrators who aim to impose prison sentences, while the implementation of

confiscation, auctions, as well as payment of replacement money as an additional punishment is hampered.

The difficulty of the Investigator to confiscate is also based on the limitations on objects as stipulated in Article 39 paragraph (1) of the Code of Criminal Procedure which specifies that, those who can be subject to confiscation are:

- a. Property or bills of a Suspect or Defendant which in whole or in part are alleged to have been obtained from a criminal act or as a result of a criminal act;
- b. Objects that have been used directly to commit a criminal offence or to prepare it;
- c. Objects used to obstruct the investigation of criminal acts;
- d. Objects specifically made or intended to commit criminal acts;
- e. Other objects that have a direct connection with the criminal act committed.

According to Sugeng, bound by criminal convictions in the form of payment of compensation money that can be used as a basis for recovering state financial losses, there are basically several obstacles so that the verdict seems futile, including:

- a. The existence of a long time span between the occurrence of corruption and the trial process makes it difficult to trace money or the proceeds of corruption crimes.
- b. Money or income from corruption crimes has been exhausted or has been committed in other forms that are difficult to reach by law.
- c. Inability of the Convicted to pay money in lieu.

According to Sugeng, the failure to confiscate and auction the convict's property due to the prosecutor's difficulty in finding the convict's property, however the prosecutor as the executor of the court decision can carry out the execution of a prison sentence as a substitute for the convict not paying compensation. 10 Article 32 , Article 33, Article 34, and Article 38C of the Law on the Eradication of Corruption Crimes also provide a legal basis for State Law Enforcement Prosecutors and institutions that suffer losses to make efforts to recover state losses by using civil lawsuit orders.

According to Sugeng, the same is the case with efforts to recover state losses through criminal instruments related to filing civil lawsuits, obstacles experienced by State Attorneys and institutions that are harmed are fundamental to the difficulty of finding property belonging to the convict. In addition, in addition to the trial examination process which takes a long time, another obstacle related to filing a civil lawsuit is the limited budget provided to file a civil lawsuit to pay costs consisting of:

- a. Registration of a power of attorney
- b. Registration of a lawsuit
- c. Summoning witnesses
- d. Confiscate bail
- e. Confiscate executions
- f. Auction execution

g. Local inspection.

According to the author, the inhibiting factors in efforts to recover state money compensation due to corruption can be described as follows:

a. Statutory factors.

Juridically, the provisions of Article 17, Article 18, Article 32, Article 33, Article 34, and Article 38C of the Corruption Eradication Law do not provide loopholes for every perpetrator of corruption crimes to escape criminal responsibility or avoid attempts to confiscate, confiscate, auction, and pay substitute money. Regarding confiscation, the Criminal Procedure Code as the parent of the implementation of the criminal procedure law has provided a limitation that the property that can be confiscated is only objects that are the result of corruption criminal acts or objects used during the commission of corruption crimes or objects that exist in third parties but must have a relationship or connection with corruption criminal acts.

Given that corruption is included in extraordinary crimes with perpetrators who have a higher education background, the submission of handling corruption cases against the Criminal Procedure Code can provide opportunities for each perpetrator to make efforts that have the potential to make investigators unable to confiscate the perpetrator's property. As is known that the implementation of confiscation of perpetrators' property will determine the success of seizure efforts, auctions, and payment of compensation as a return for state financial compensation.

b. Law enforcement factors.

The low success of investigators in confiscating property belonging to perpetrators of corruption cannot be separated from the point of view that the return of state losses is a subsidiary crime, while the primary crime is imprisonment. Although the Corruption Eradication Law provides options related to the prosecution of corruption cases consisting of criminal convictions and return of state losses through additional crimes and civil lawsuits, considering the impact caused by corruption crimes affecting state finances, it is appropriate if law enforcement officials prioritize efforts to recover state losses compared to imprisonment

c. Facilities and infrastructure factors

In relation to the return of state losses through the mechanism for filing civil lawsuits, it is known that there are obstacles in the form of unavailability of adequate budget to pay costs from registration of power of attorney, registration of claims, summoning witnesses, confiscation of bail, confiscation of execution, execution of auctions, and local examinations.

d. Community factors.

Problems that often arise in society that can affect the return of state financial compensation due to criminal acts of corruption are: Low public awareness to report to law enforcement officials if they know of a criminal act of corruption; The low carrying capacity for the community who become witnesses in the trial process is based on worry and fear that the information given at the trial will have an impact on the personal interests of the

community, because most of the perpetrators of corruption crimes are people who have a position, position, and high knowledge.

e. Cultural Factors.

Cultural factors have a correlation with law enforcement apparatus factors, based on the example of the decision used in this study it is known that the executing attorney has not been able to make efforts to recover state losses based on the judge's decision. Because in this case, the Supreme Court's Cassation Decision Number: 5969 K/Pid.Sus/2022 dated November 9, 2022 on behalf of the convict Sunarti where the replacement money is Rp.10,196,063,163, (ten billion one hundred ninety six million sixty three thousand one hundred and sixty-three rupiah) to be confiscated by the State and handed over to PD BPR Salatiga. It is clear that in this case, the Semarang Corruption Eradication Commission could not interpret the price of the assets confiscated from the convict Sunarti because of the verdict in which the replacement money and confiscated assets were confiscated for the state and handed over to PD BPR Salatiga. This has resulted in protracted delays and handling of concerns that it could become a habit among executor prosecutors so that it can hamper the process of returning state financial compensation due to criminal acts of corruption. The victim gets what is his right in the form of compensation for losses. According to the author's analysis, efforts to recover state financial losses resulting from criminal acts of corruption can be started from the investigation stage, the prosecution stage and the execution stage or implementation of court decisions.

f. Investigation Stage

In connection with the investigation process, if the suspect is subject to Article 2 and Article 3 of the Corruption Eradication Law, investigators can ask for assistance and/or involve the Financial Audit Agency (BPK) or the Financial and Development Supervisory Agency (BPKP) as an agency that has the competence to calculate the amount of state losses incurred as a result of the actions of the suspect. In addition to summoning and examining witnesses as well as arresting and detaining suspects, investigators can also confiscate items belonging to suspects that are related to criminal acts of corruption, including assets owned by suspects that are suspected of being used or obtained from the proceeds of the crime. corruption crime. The aim of the confiscation is to prevent the suspect from selling or transferring ownership to someone else. In addition, the confiscation can make it easier for the executing prosecutor to conduct an auction to recover state financial losses if in the trial process the suspect is found guilty of committing a criminal act of corruption.

g. Prosecution Stage.

Optimizing the authority of the Public Prosecutor in court can be applied by asking the Judge through a criminal complaint letter to impose an additional penalty in the form of punishing the Defendant to return compensation to the state for the criminal act of corruption committed based on the provisions of Article 18 paragraph (1) letter b of the Law. Corruption Crime Eradication. Apart from that, the Public Prosecutor can also ask the Judge to determine that items that have been confiscated during the investigation process be confiscated

so that they can be auctioned to cover the state losses incurred. The proof of state financial losses in the amount demanded by the Public Prosecutor is used as a basis for punishing the Defendant to pay compensation equal to the value of the state losses incurred. However, in the Supreme Court Cassation Decision Number: 5969 K/Pid.Sus/2022 dated 09 November 2022 in the name of the convict Sunarti where the replacement money was IDR 10.196.063.163, (ten billion one hundred ninety six million sixty three thousand one hundred and sixty three rupiahs) that must be paid by the convict Sunarti. Previously, the investigating prosecutor had confiscated valuable assets belonging to convict Sunarti in the form of houses, land, buses, cars, all of which, if appraised and auctioned, would not have reached 3 billion. Meanwhile, the subsidiary of the replacement money amounting to Rp. 10.196.063.163, is only 6 months in prison, which is not commensurate with the losses experienced by the victim, in this case a PD BPR Salatiga customer.

h. Stage of Execution or Implementation of Court Decisions

Article 270 of the Criminal Procedure Code stipulates that the implementation of a court decision which has permanent legal force is carried out by the Prosecutor. The execution of a court decision can only be carried out based on the substance contained in the decision, relating to the return of state financial losses through a penalty of paying compensation for state money. If the convict is unable to return it, then the prosecutor can confiscate and auction the assets specified in the decision. the confiscation process no longer requires a permit or court order because it has become an integral part of the principal decision of the case. However, if the assets confiscated and auctioned are not sufficient to pay for the refund of compensation, the convict must serve a criminal sentence for the length of time specified in the decision. Apart from that, outside the context of the court decision, the State Attorney can also file a civil lawsuit through the court as an effort to recover financial losses.

After paying close attention to the substance contained in Article 18 paragraph (2) of the Corruption Eradication Law, it is known that there is a sentence "the assets can be confiscated and auctioned", according to the author, the assets referred to in this article are assets belonging to the Defendant which are not income from criminal acts of corruption or is not an asset used to carry out criminal acts of corruption, because if based on the trial it is proven that the property confiscated is property resulting from criminal acts of corruption then the provisions of Article 18 paragraph (1) letter a of the Eradication Law apply Corruption Crimes so that the Prosecutor does not need to carry out confiscations and auctions based on Article 18 paragraph (2) of the Corruption Eradication Law. Furthermore, based on Article 18 paragraph (3) of the Corruption Eradication Law, it is determined "in the event that the convict does not have sufficient assets to pay compensation as intended in paragraph (1) letter b, then he will be punished with imprisonment for a period not exceeding the threat of the maximum amount of the principal sentence is in accordance with the provisions of this law and the length of the sentence has been determined in the court decision."

According to the author, the provisions of this article are considered as a subsidiary punishment for the convict, which can only apply if:

- a. The convict does not have sufficient assets to pay compensation, besides that within a period of 1 month after the court's decision has obtained permanent legal force it turns out that he cannot provide compensation money and auction income from property is not sufficient to provide compensation money;
- b. The lengthy process of punishment for alternative confinement does not exceed the threat of maximum confinement according to the article stipulated;
- c. The duration of the substitute imprisonment has been determined in a court decision, the determination of the length of imprisonment is intended as an effort to accommodate if the compensation money cannot be paid in whole or in part by the convict.

In addition to using criminal law instruments, the Corruption Crime Eradication Law does regulate actions to recover state losses by using civil law instruments through filing lawsuits that can be carried out by State Attorneys for state financial losses to perpetrators or their heirs based on the following provisions:

- a. Article 32 of the Law on the Eradication of Criminal Acts of Corruption stipulates that:
 - 1) In the event that the investigator finds and is of the opinion that one or more elements of the criminal act of corruption do not have sufficient evidence, while in fact there has been a loss of state finances, the investigator shall immediately submit the case files resulting from the investigation to the State Attorney for a civil lawsuit or submission to the injured agency to file a lawsuit.
 - 2) An acquittal in a corruption case does not eliminate the right to sue for losses to state finances.
- b. Article 33 of the Law on the Eradication of Corruption Crimes stipulates that, in the event that a suspect dies during an investigation, while in fact there has been a loss to state finances, the investigator immediately submits the case files resulting from the investigation to the State Attorney or submits them to an agency authorized to suffered a civil lawsuit against his heirs.
- c. Article 34 of the Law on Corruption Eradication stipulates that, in the event that a defendant dies during an examination 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 trial to the State Attorney General. or handed over to the agency that suffered the loss to carry out a civil lawsuit against the heirs.
- d. Article 38C of the Law on the Eradication of Corruption Crimes stipulates that, if after a court decision has obtained permanent legal force, it is known that there are still assets belonging to the convict who are suspected or should be suspected of also originating from criminal acts of corruption that have not been subject to appropriation for the state as referred to in Article

38 B paragraph (2), the state can file a civil suit against the convict and/or his heirs.

The things that must be proven by the State Attorney in terms of his position as prosecutor include:

- a. There is a real loss of state finances;
- b. The state financial losses incurred are a risk or are related to the actions of the suspect, defendant or convict;
- c. The existence of assets belonging to the Suspect, Defendant or Convict that can be used to recover state financial compensation.

In the Supreme Court Cassation Decision Case Number: 5969 K/Pid.Sus/2022 November 9, 2022 in the name of the convict Sunarti, where the convict Sunarti was an employee of PD BPR Salatiga who had a high position at PD BPR Salatiga who, with the authority he had at that time, had abused his position to enrich himself so that several customers from PD BPR Salatiga were harmed by Defendant Sunarti. And the Defendant Sunarti was guilty and had to pay compensation in the amount of Rp. 10,196,063,163, - (ten billion one hundred ninety six million sixty three thousand one hundred and sixty three rupiah) subsidiary 6 months imprisonment.

At the investigation stage, the Prosecutor had confiscated assets of the defendant Sunarti's property so that later he could reduce the amount of compensation money handed down to the corruption convict. a former employee of PD BPR Salatiga is the money of a customer of PD BPR Salatiga so whether the replacement money taken from assets that have been confiscated must be handed over to the aggrieved customer. The state is a representative of a society, when people become victims and are disadvantaged, this is where the state must contribute to solving problems fairly

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the discussion, it can be concluded that the obstacles in the process of returning compensation for state finances through replacement money in the corruption case at PD BPR Salatiga in the Cassation Decision of the Supreme Court Number: 5969 K/Pid.Sus/2022 dated November 9, 2022 on behalf of the convict Sunarti where the replacement money is Rp. 10,196,063,163, - (ten billion one hundred ninety six million sixty three thousand one hundred sixty three rupiah) subsidiary 6 (six) months imprisonment, where previously the investigating prosecutor had confiscated the assets of the convict Sunarti and the auction was only held for approximately 2 billion and it was clear that this was not enough to pay compensation as a consequence of the state losses incurred by the convict Sunarti. Refunds for compensation for state finances resulting from criminal acts of corruption can be carried out through 2 (two) mechanisms, namely:

1. Criminal law mechanisms based on the provisions of Article 18 of the Law on Corruption Eradication.
2. Civil law mechanisms through filing lawsuits based on Article 32, Article 33, Article 34 and Article 38C of the Corruption Eradication Act.

Regarding the role of the public prosecutor in paying compensation to customers through replacement money for criminal acts of corruption PD BPR Salatiga from a progressive justice perspective. Prosecutors must ensure and supervise the auction process and price estimation of confiscated goods and prosecutors must oversee until the end the delivery of compensation money to PD BPR Salatiga customers who are victims of Corruption Crimes that occurred at PD BPR Salatiga so that PD BPR Salatiga customers receive compensation in accordance with what is his right. Suggestions for law enforcement officials who have the authority to conduct investigations of criminal acts of corruption to be able to as much as possible carry out search and trace efforts to find assets or property belonging to suspects to support the success of recovering state financial losses. In connection with the existence of the inhibiting factor, it is suggested that each legal apparatus agency authorized to take action in order to be able to make more structural improvements in order to achieve success in recovering state financial losses.

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