Eksekusi: Journal Of Law
Vol. 6 No. 2 Desember 2024, hlm. 209-235
DOI: 10.24014/je.v6i2.31845

P- ISSN: 2714-5271
E-ISSN: 2686-5866

Article History	Received: 24-07-2024	Reviewed:02-10-2024	Accepted: 30-11-2024	Published: 01-12-2024

INCONSISTENCY OF LAWS ON ERADICATION OF CORRUPTION IN INDONESIA

Leo Gustian[1], Ardiansah[2], Bagio Kadaryanto[3]
[123] *Magister Ilmu Hukum Universitas Lancang Kuning Pekanbaru*
Email: gustianleo03@gmail.com

ABSTRACT
The inconsistency of the law on eradicating criminal acts of corruption in Indonesia, especially regarding criminal acts of corruption in office or related to office, apart from not conflicting with the legal hierarchy in Indonesia, also causes the absence of legal certainty in law enforcement against criminal acts of corruption, especially corruption in office or related matters. Related to position and ostensibly to provide wide latitude for state administrators/state officials who are caught in criminal acts of bribery to escape punishment. The ideal legal concept for eradicating criminal acts of corruption in Indonesia, especially regarding criminal acts of corruption in office or related to office, is the ideal concept in Article 3 and Article 4 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning Commissions. Eradication of Corruption Crimes. The phrase "can" which still exists in Article 3 of the regulation as well as Article 4 in the regulation makes it easier to prove cases in inquiries and investigations in police and prosecutor institutions, besides compensation for state losses does not eliminate the sanctions of imprisonment and fines, thus creating a deterrent effect. In society, there is legal certainty and equal justice for all Indonesian people.
***Keywords**: Inconsistency, Position, Corruption*

ABSTRAK
Inkonsistensi hukum pemberantasan tindak pidana korupsi di Indonesia terutama terhadap tindak pidana korupsi dalam jabatan atau yang berhubungan dengan jabatan, selain tidak bertentangan dengan hierarki perundang-undangan di Indonesia juga menyebabkan tidak adanya kepastian hukum dalam penegakan hukum terhadap tindak pidana korupsi terutama korupsi dalam jabatan atau yang berhubungan dengan jabatan serta seolah-olah memberikan ruang gerak yang luas bagi penyelenggara negara/pejabat negara yang terjerat dalam tindak pidana korupsi yang dimaksud untuk lepas dari pemidanaan. Konsep ideal hukum pemberantasan tindak pidana korupsi di Indonesia terutama terhadap tindak pidana korupsi dalam jabatan atau yang berhubungan dengan jabatan adalah konsep ideal dalam Pasal 3 dan Pasal 4 Undang-Undang Nomor 19 Tahun 2019 tentang Perubahan Kedua Atas Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi. Frasa "dapat" yang masih eksis dalam Pasal 3 regulasi tersebut serta Pasal 4 dalam regulasi tersebut memudahkan pembuktian perkara dalam penyelidikan dan penyidikan dalam institusi kepolisian dan kejaksan, selain itu penggantian kerugian negara tidak menghapuskan sanksi hukuman pidana penjara dan pidana denda, sehingga menimbulkan efek jera dalam masyrajat, adanya kepastian hukum serta keadilan yang merata bagi seluruh rakyat Indonesia.
Kata Kunci: Inkonsistensi, Jabatan, Korupsi

INTRODUCTION

Law enforcement agencies in Indonesia have an obligation to carry out their respective duties, functions and authorities based on the law as a reflection of the concept of a state of law. The consequence is that every action/deed of the government is known as Rechtshandelingen or legal actions/deeds of the government. "Rechtshandelingen is a government action based on law."[1] "Law is defined as a norm that encourages society to achieve certain ideals and conditions, but without ignoring the real world."[2] Government legal action/deed is a legal action/deed intended to create rights and obligations *(en rechtshadlingen is gericht op het scheppen van rechten en plichten)"*[3]

Law enforcement is carried out by law enforcement agencies, one of which is law enforcement in the field of criminal law. "Criminal Law is a set of rules regarding violations and crimes against the public interest that carry the threat of punishment in the form of suffering or torture for the perpetrator."[4] In order to enforce criminal law, various criminal law reforms have been carried out by the legislative and judicial functions which have attracted a lot of public attention, namely the crime of corruption. "The essence of criminal law reform means that criminal law reform is an effort to conduct a review and re-evaluation in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society which underlie social policy, criminal policy and law enforcement policy in Indonesia."[5]

Meanwhile, related to the crime of corruption, Kartini Kartono provides a limitation of the scope of the crime of corruption, namely: "corruption as the behavior of individuals who use authority and position to enrich themselves/personal gain, harming public and state interests. Corruption is a symptom of abuse/misappropriation of power, for personal gain, misusing

---

[1] Kuntjoro Purbopranoto, *Beberapa Catatan Hukum Tata Pemerintahan dan Peradilan Administrasi Negara,* (Bandung: Alumni, 1981), hlm. 44.

[2] Satjipto Rahardjo (Ed.), *Ilmu Hukum,* Cetakan Ke-8, (Bandung: Citra Aditya Bakti, 2014), hlm. 27.

[3] Aminuddin Ilmar, *Hukum Tata Pemerintahan,* (Jakarta: Prenamedia Group, 2014), hlm.101.

[4] Yulies Tiena Masriani, *Pengantar Hukum Indonesia*, Cetakan Ke-II, (Jakarta: Sinar Grafika, 2006), hlm.60.

[5] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, cetakan kedua, (Jakarta: PT Kencana Prenada Media Group,2014), hlm. 30.

state wealth sources by using formal authority and powers in the concept of power (for example with legal reasons and power) to enrich themselves."[6]

Based on the narrative reflection above, it can be said that corruption is closely related to officials and positions. Where one type of corruption is never-endingly discussed by the public and is always a hot legal issue. Such corruption is a form of corruption of criminal acts in office or which are related to office. "Wirjono Prodjodikiro is of the opinion that crimes in office are criminal acts committed by officials who hold power and criminal law must be applied to them."[7] "Talking about criminal acts of office or those related to office by Civil Servants is very identical to criminal acts of corruption."[8]

Legally, the definition of the criminal act of corruption in question along with its legal sanctions is contained in Article 3 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which states that: "Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity, or means available to him because of his position or position or means available to him because of his position or position which can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least IDR 50,000,000 (fifty million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah)." Sanctions are imposed directly (deliquette), because his own actions make the person responsible. Where the subject of legal responsibility/responsibility and the subject of legal obligations are the same."[9] The regulation of legal sanctions is a form of legal accountability.

Law enforcement is carried out by law enforcers, especially the Indonesian National Police (Polri), the Prosecutor's Office and the judicial institution based on their respective duties, functions and authorities based on

---

[6] Kartini Kartono, *Pathologi Sosial,* Edisi Baru, (Jakarta: CV. Rajawali Press, 1983), hlm. 8.

[7] Wirjono Prodjodikoro, *Tindak-Tindak Pidana Tertentu di Indonesia*, (Bandung: Refika Aditama, 2003), hlm. 24.

[8] Yoserizel Nisnoni, "Pemberhentian Pegawai Negeri Sipil di Pemerintahan Daerah Kabupaten Timor Tengah Selatan Yang Terlibat Korupsi Ditinjau Dari Segi Keadilan", *Jurnal Sosains,* Vol. 1 No. 7 Juli 2021, hlm.630.

[9] Jimly Asshiddiqie dan Ali Safa'at, *Teori Hans Kelsen tentang Hukum*, (Jakarta: Konstitusi Press, 2006), hlm. 61.

the law. The law enforcement system in criminal justice is realized by the implementation of criminal justice in the form of the work of criminal law enforcement officers starting from the process of investigation, investigation, arrest, detention, prosecution to examination in court or in other words "the work of the police, prosecutors, judges, correctional officers which also means the process of criminal procedural law."[10] "In essence, the implementation of good, dignified, appropriate and fair law enforcement is very dependent on the capabilities of state apparatus, one of which is the law enforcement apparatus."[11]

However, with the renewal of criminal law in the field of corruption, various law enforcement problems have arisen, namely as follows:

1. The issuance of the Attorney General's Circular Letter Number: B-113/F/Fd.1/05/2010 Concerning Priorities and Achievements in Handling Corruption Cases dated May 18, 2010, mandates the return of state finances by corruptors automatically eliminating their criminal penalties due to the application of restorative justice. As stated in a journal, that: "The return of state losses is contrary to Article 4 of Law No. 31 of 1999 concerning Corruption which in essence explains that the return of state losses does not eliminate criminal penalties. The circular issued by the Attorney General's Office has indeed drawn much criticism and not infrequently those who consider that the Attorney General's Office seems to underestimate corruption by releasing corruptors."[12]
2. Provisions in number 5 of the Supreme Court Circular Letter Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court, cause a legal loophole for corruptors to be freed from the clutches of the law due to the difficulty of proving material by law enforcers in corruption crimes in further investigations. Then the existence of a period of time for the

[10] C. djisman Samosir, *Hukum Acara Pidana,* (Bandung: Peneribit Nuansa Aulia, 2018), hlm. 4.

[11] SF. Marbun dan Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara,* (Yogyakarta: Liberty, 1987), hlm 98.

[12] Salsabila dan Slamet Tri Wahyudi, "Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan *Restorative Justice," Jurnal Masalah-Masalah Hukum*, Vol. 15 No. 1 Januari 2022.hlm. 62.

return of state/regional financial losses will be used by corruptors to return the losses so that in further investigations the material proof of state/regional losses is no longer proven because the return has been made by the perpetrator of corruption. As stated in the journal that: "the calculation of state losses carried out by the Financial Supervisory Agency will ultimately give the impression of slow handling of corruption cases which then becomes a loophole for the return of state/regional losses by corruptors because the provisions for returning the losses are a maximum of 60 days. So that later after the return of the losses is made, it will be difficult to provide evidence in further investigations by law enforcers."[13]

The above legal inconsistencies cause the absence of legal certainty in law enforcement against corruption crimes, especially corruption in office or related to office and as if providing wide room for state administrators/state officials who are caught in the intended corruption crime to escape punishment. Such conditions can also be narrated as if justice for the wider community is not fulfilled. Justice is only for the political elite and certain power holders. "Legal certainty is the implementation of the law according to its wording, so that the community can ensure that the law is implemented. The creation of legal certainty in laws and regulations requires requirements related to the internal structure of the substance of the legal norms themselves."[14]

RESEARCH METHODOLOGY

This study uses normative legal research (juridical normative). "The type of normative legal research is a process of finding legal rules, to answer the legal issues faced." "This is in accordance with the character of perspective in legal science. This normative legal research is conducted to produce new arguments, theories or concepts as prescriptions in the problems faced."[15] In normative legal research, data sources come from secondary data. "Secondary

[13] Riki Saputra, "Implementasi Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016 Dalam Pemberantasan Tindak Pidana Korupsi di Provinsi Riau, *Jurnal Equitable,* Vol. 4 No. 1 Tahun 2019, hlm. 131.

[14] Fernando M. Manulang, *Hukum Dalam Kepastian,* (Bandung: Prakarsa, 2007), hlm. 95

[15] *Ibid*.

data is data obtained from the results of literature review or review of various literature or library materials related to the problem or research material."[16]

The data collection technique used in normative legal research is only used in documentary study techniques (library studies), namely data collection techniques obtained by exploring written sources, both related agencies, laws and regulations and literature books that are relevant to the problems used as research complements. In normative legal research data, the author uses qualitative analysis by describing descriptively in the form of sentences that the author presents clearly from the data obtained.

RESULTS AND DISCUSSION

Inconsistency of Corruption Eradication Law in Indonesia

The application of criminal law is an effort to overcome the problem of crime in law enforcement. In addition, it also has the aim of achieving public welfare in general, therefore law enforcement is also a policy in the social field. Thus, the problem of controlling, overcoming and handling crime is a problem of policy. Therefore, criminal law or more precisely the criminal system is part of criminal politics. Social policy itself can be interpreted as all reasonable efforts to achieve public welfare and at the same time includes community protection. So it can be concluded that the application of criminal law can be interpreted in the sense of social policy and also includes social welfare policy and social defense policy."[17]

The formation of regulations regarding criminal acts of corruption in Indonesia within the scope of the criminal law reform is certainly attached to the regulation of sanctions in it. "Sanctions are feelings/actions that cause suffering as a result of evil actions/mistakes committed by someone because they violate a rule."[18] Criminal law is closely related to punishment. Punishment in the concept of imposing criminal sanctions, fines and imprisonment in the concept of criminal law has an important position. The imposition of such sanctions is often referred to as Criminal Responsibility. "Criminal responsibility in foreign languages is called toeken-baarheid,

---

[16] *Ibid,* hlm. 140.

[17] Noveria Devy Irmawanti dan Barda Nawawi Arief, "Urgensi Tujuan dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidan, *Jurnal Pembangunan Hukum Indonesia*, Vol. 3 No. 2 Tahun 2021, hlm. 222.

[18] Ngalim Purwanto, *Ilmu Pendidikan Teoretis dan Praktis*, (Bandung: Remaja Rosdakarya, 2000), hlm. 189.

criminal responsibility or criminal liability. The responsibility in question is to determine whether a person can be held criminally responsible or not for the actions he has committed.[19]

"In essence, criminal acts only refer to prohibited and threatened acts with a penalty. A person who commits a criminal act can be sentenced to the penalty as threatened, depending on whether the act committed has elements of a crime or not. Responsibility without any fault from the party who violates is termed leer van het materiele feit."[20] Sanctions are needed in every formation of a legal product so that in its implementation the law is effective in society, especially criminal sanctions which can have a deterrent effect.

It should be remembered that in carrying out the regulatory role, political substance always accompanies the law both from the process of making the law itself and the process of implementing the law that has been made. "Law as a tool so that in practice legal politics is also a tool or means and steps that can be used by the government to achieve the national legal system in order to achieve the ideals of the state's goals."[21] Therefore, the study of the legal aspect is very necessary in research in the field of criminal law in particular. Where the legal politics in the abstract legislation should be able to influence the implementation of the law itself which of course cannot be separated from political elements. Such a reality also underlies the author to conduct legal research related to the existence of criminal law reform in handling corruption crimes in Indonesia, especially corruption crimes in office or those related to office.

Based on the above matters, it is only right that legal reforms regarding criminal acts of corruption, especially criminal acts of corruption in office or related to office, must also be implemented based on the applicable legal hierarchy and formed by authorized state institutions. The legal reforms in question are:

1. Article 3 and Article 4 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which states that:

---

[19] S.R Sianturi, *Asas-Asas Hukum Pidana dan Penerapannya*, (Jakarta: Alumni, 1996), hlm. 245

[20] Moeljanto, *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2009), hlm. 165

[21] Mahfud MD, *Politik Hukum di Indonesia,* (Jakarta: Raja Grafindo Persada, 2017), hlm. 2.

a. Article 3: “Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity, or means available to him because of his position or position or means available to him because of his position or position that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).”
b. Article 4: "Restitution of state financial or state economic losses does not eliminate the criminal penalty for perpetrators of criminal acts as referred to in Article 2 and Article 3.”

2. Article 23 of Law Number 15 of 2004 concerning Audit of State Financial Management and Accountability, states: "Ministers/heads of institutions/governors/regents/mayors/board of directors of state-owned companies and other bodies that manage state finances report the settlement of state/regional losses to the Audit Board of Indonesia no later than 60 (sixty) days after it is known that the state/regional losses have occurred."
3. Article 17 paragraph (2) of Government Regulation Number 38 of 2016 concerning Procedures for Claiming Compensation for State/Regional Losses Against Civil Servants Who Are Not Treasurers or Other Officials, which states that: "In the case of State/Regional Losses as a result of unlawful acts, the Injured Party/Guardian/Obtainer of Rights/Heirs are required to compensate the State/Regional Losses no later than 90 (ninety) calendar days from the date the Absolute Liability Statement (SKTJM) is signed.”
4. Constitutional Court Decision Number: 25/PUU/XIV/2016 revoked the phrase "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, which interpreted that the phrase "can" harm state finances or the state economy in Article 2 paragraph (1) and Article 3 of the Corruption Law must be proven with real state financial losses (actual loss) not potential or estimated state financial losses (potential loss)."

This means that there has been a shift in the crime from a formal crime to a material crime so that the consequences arising from the crime of corruption become the basis for proving that someone has committed a crime of corruption and the principle of quality cannot be separated, namely that the cause and effect of this state loss must be proven.

5. Numbers 5 and 6 of the Circular Letter of the Supreme Court Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Courts, state that:
    a. Number 5: "The 60-day time limit for returning state losses based on the recommendation of the Audit Board/Financial and Development Supervisory Agency/Inspectorate in accordance with the provisions of Article 20 paragraph (3) of Law Number 15 of 2004 concerning the Audit of State Financial Management and Accountability does not apply to Defendants who are not Officials (Private) who return state losses within the time limit, the provisions only apply to Government Administrators. However, it is not binding if the return of state losses by Government Administrators is carried out after the 60-day time limit. It is the authority of the Investigator to carry out legal proceedings if indications of Corruption are found..”
    b. Number 6: "The agency that has the authority to state whether or not there is a state financial loss is the Financial Audit Agency which has constitutional authority, while other agencies such as the Financial and Development Supervisory Agency/Inspectorate/Regional Work Units remain authorized to conduct inspections and audits of state financial management but are not authorized to state or declare the existence of a state financial loss."
6. Attorney General's Letter Number: B- 765/F/Fd.1/04/2018 concerning Technical Instructions for Handling Corruption Cases at the Investigation Stage. In order to optimize the rescue of state financial losses in handling corruption cases at the investigation stage, by considering several things as follows:

a. Investigations should be carried out more optimally, namely not only limited to finding corruption cases in the form of unlawful acts, but efforts should also be made to find the amount of state financial losses.
b. To find the amount of state financial losses, it can be done by calculating it yourself or by cooperating with the government's internal supervisory apparatus.
c. In order to save state financial losses due to corruption, data on the assets of the parties involved in corruption should be collected immediately
d. If the parties involved are proactive and have returned all state financial losses, then the legal process can be considered by considering the interests of the stability of the local government and the smooth running of national development.

7. Circular Letter of the Deputy Attorney General for Special Crimes Number: B-113/F/Fd.1/05/2010 Regarding Priorities and Achievements in Handling Corruption Cases dated May 18, 2010 contains an order to the heads of the Prosecutors' Offices throughout Indonesia to prioritize corruption cases that are big fish (large scale seen from the perpetrators and/or the value of the losses). This Circular Letter of the Deputy Attorney General for Special Crimes emphasizes that for people who commit corruption with small losses (under 100 million) and have returned their losses, the concept of restorative justice can be used.

The regulations in Indonesian law regarding the handling of criminal acts of corruption in their application to the handling of corruption in office or related to office based on document studies conducted by the author through several journals, as follows:

1. Settlement of Corruption Crimes in Office Through Return of State Losses by the Perpetrator

Corruption case in office by local Industry and Trade Department officials that occurred in Lebak, Banten City. Corruption in the construction of Gajrug Market worth 20 billion is a case that Settlement of Corruption Crimes through Return of State Losses by the Perpetrators. The construction of the market stopped and was abandoned because at the time of law enforcement it was indicated that there was a corruption crime with a state loss of 700

million. Then when law enforcement was carried out, it was discovered that at the investigation stage, the state loss was returned by the auction winner to the Lebak District Attorney's Office to be handed over to the state treasury (Industry and Trade Department). The case process was not continued because it was considered insufficient evidence, the state loss that had been recovered by the perpetrator meant that there was no longer an element of state loss.[22]

According to the author's analysis, such law enforcement policies are implemented based on the following rules:

a. Constitutional Court Decision Number: 25/PUU/XIV/2016 revoked the phrase "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, which interprets that the phrase "can" harm state finances or the state economy in Article 2 paragraph (1) and Article 3 of the Corruption Law must be proven with real state financial losses (actual loss) not potential or estimated state financial losses (potential loss)." This means that there has been a shift in the crime from a formal crime to a material crime so that the consequences arising from the crime of corruption become the basis for proving that someone has committed a crime of corruption and the principle of quality cannot be separated, namely that the cause and effect of this state loss must be proven.
b. Article 17 paragraph (2) of Government Regulation Number 38 of 2016 concerning Procedures for Claiming Compensation for State/Regional Losses Against Civil Servants Who Are Not Treasurers or Other Officials, which states that: "In the case of State/Regional Losses as a result of unlawful acts, the Injured Party/Guardian/Obtainer of Rights/Heirs are required to compensate the State/Regional Losses no later than 90 (ninety) calendar days since the Absolute Liability Statement (SKTJM) was signed." c. Attorney General's Letter Number: B-765/F/Fd.1/04/2018 concerning Technical Instructions for Handling Corruption Cases at the Investigation Stage. In order to

[22] Rena Yulia, *Hakikat Pengembalian…, Op. Cit*, hlm. 6.

optimize the rescue of state financial losses in handling corruption cases at the investigation stage. This is because the perpetrator has returned the state losses, by considering several things as follows:

1). Investigations should be carried out more optimally, namely not only limited to finding criminal acts of corruption in the form of unlawful acts, but efforts should also be made to find the extent of state financial losses.
2). If the parties involved are proactive and have returned all state financial losses, then the continuation of the legal process can be considered by considering the interests of the stability of the local government and the smooth running of national development.

2. Settlement of Corruption Crimes in Office Based on Restorative Justice that Result in State Losses of Under Rp. 100,000,000,- (One Hundred Million Rupiah) Through the Return of State Losses by the Perpetrator

The settlement of corruption in office based on restorative justice resulting in state losses of less than Rp. 100,000,000,- (one hundred million rupiah) was carried out by the Sawah Lunto City Prosecutor's Office against corruption of god funds carried out by a village head. The nominal state loss at that time was known to be Rp. 40,000,000,- (forty million rupiah). The state loss has been resolved by the perpetrator, so that the termination of the investigation and investigation that was currently underway between the police and the local prosecutor's office was carried out where the value of the state loss was determined by the Financial Supervisory Agency. The principle of restorative justice was applied by the local prosecutor's office in this case so that the criminal penalty for the perpetrator was eliminated."[23]

According to the author's analysis, such law enforcement policies are implemented based on the following rules:

[23] Fandra Ari Sandi, Iyah Faniyah dan Amiruddin, "Penanganan Tindak Pidana Korupsi Dana Desa Dengan Kerugian Negara di Bawah Lima Puluh Juta Rupiah oleh Kejaksaan Negeri Kota Sawahlunto," *EkaSakti Legal Science Journal,* Vol. 1 No. 1 Januari 2024, hlm. 3.

1). Constitutional Court Decision Number: 25/PUU/XIV/2016 revoked the phrase "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, which interpreted that the phrase "can" harm state finances or the state economy in Article 2 paragraph (1) and Article 3 of the Corruption Law must be proven with real state financial losses (actual loss) not potential or estimated state financial losses (potential loss)." This means that there has been a shift in the crime from a formal crime to a material crime so that the consequences arising from the crime of corruption become the basis for proving that someone has committed a crime of corruption and the principle of quality cannot be separated, namely that the cause and effect of this state loss must be proven.

2). Article 23 of Law Number 15 of 2004 concerning Audit of State Financial Management and Accountability, states: "Ministers/heads ofinstitutions/governors/regents/mayors/board of directors of state-owned companies and other bodies that manage state finances report the settlement of state/regional losses to the Audit Board of Indonesia no later than 60 (sixty) days after it is known that the state/regional losses in question have occurred."”

3). Numbers 5 and 6 of the Circular Letter of the Supreme Court Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court, state that:

   a. Number 5: “The 60-day time limit for returning state losses based on the recommendation of the Audit Board/Financial and Development Supervisory Agency/Inspectorate in accordance with the provisions of Article 20 paragraph (3) of Law Number 15 of 2004 concerning the Audit of State Financial Management and Accountability does not apply to Defendants who are not Officials (Private) who return state losses within the time limit, the provisions only apply to Government Administrators. However, it is not binding if the return of state losses by Government Administrators is

carried out after the 60-day time limit. It is the authority of the Investigator to carry out legal proceedings if indications of Corruption are found."

b. Number 6: "The agency that has the authority to state whether or not there is a state financial loss is the Financial Audit Agency which has constitutional authority, while other agencies such as the Financial and Development Supervisory Agency/Inspectorate/Regional Work Units remain authorized to conduct inspections and audits of state financial management but are not authorized to state or declare the existence of a state financial loss."

Circular Letter of the Deputy Attorney General for Special Crimes Number: B-113/F/Fd.1/05/2010 Regarding Priorities and Achievements in Handling Corruption Cases dated May 18, 2010 contains an order to the heads of the Prosecutors' Offices throughout Indonesia to prioritize corruption cases that are big fish (large scale seen from the perpetrators and/or the value of the losses). This Circular Letter of the Deputy Attorney General for Special Crimes emphasizes that for people who commit corruption with small losses (under 100 million) and have returned their losses, the concept of restorative justice can be used.

In addition to the two cases that were set aside by the concept of law enforcement in the concept of criminalization and imprisonment above, the author also presents a case in the author's document study through a journal, as a comparison of the regulation of handling corruption before and after the birth of criminal law reforms regarding the handling of corruption in Indonesia.

This case is a settlement of corruption by imposing criminal sanctions in prison and the application of the concept of actual punishment based on the main regulation for handling corruption in Indonesia, namely Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. "The corruption case of academic improvement scholarships for Raudlatul Atfal (RA) and Madrasah teachers in 2010 carried out by local officials as stated in the Decision of the Corruption Court of the Mataram District Court Number: 20 / Pid.Sus-TPK / 2017 / PN.Mtr which befell Nurwani and Zakaria, with a state loss of Rp. 6

million was sentenced to 1 year in prison by the Panel of Judges of the Corruption Court of the Mataram District Court. Both defendants were found guilty of corruption as stipulated in Article 3 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission in conjunction with Article 18 of the Corruption Law. The subject of a criminal act recognized in the Criminal Code is an individual. So in cases of corruption, those who can commit a crime are individuals and those who can be prosecuted are also individuals. In this case. Although the perpetrator has made a return of the loss, it cannot eliminate the criminal penalty, the return of the state loss is sufficient to be a consideration for leniency by the local court judge in imposing a criminal sentence on the perpetrator."[24]

Regarding this problem, the author analyzes that from the perspective of Lex Specialis, the police, prosecutors and local district court judges in imposing sanctions are based on the provisions of Article 3 and Article 4 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which states that:

a. Article 3: "Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity, or means available to him because of his position or position or means available to him because of his position or position that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."
b. Article 4: "Refunding of state financial or state economic losses does not eliminate the criminal penalty for the perpetrator of the crime as referred to in Article 2 and Article 3."

Analyzing the three cases above in relation to the inconsistency of the law on eradicating corruption in Indonesia, the author's overall analysis is: First, the author's analysis is based on the Stufenbau Theory of Law. Hans Kelsen's Stufenbau Theory of Law states: "Norms are tiered and layered in a

[24] Rizqi Purnama Puteri, Muhammad Junaidi, dan Zaenal Arifin, "Reorientasi Sanksi Pidana Dalam Pertanggungjawaban Korporasi Di Indonesia," *Jurnal USM Law Revie,* Vol. 3 No. 1 Tahun 2020, hlm. 103.

hierarchical structure. This means that the norms that are below apply and originate from higher norms. Then the higher norms also originate from higher norms and so on until they stop at the highest norm known as the Basic Norm (Grundnorm) in a dynamic norm system."[25]

The above in another sentence can be stated that: "Basically, legal norms are tiered and layered in a hierarchical structure, where lower norms apply, originate from and are based on higher norms."[26]

The author states that all regulations in the context of criminal law reform in handling corruption crimes in Indonesia are in conflict with Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, with the following analytical description:

1. Article 3 and Article 4 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which states that:
   a. Article 3: "Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity, or means available to him because of his position or position or means available to him because of his position or position that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."
   b. Article 4: "Refunding of state financial or state economic losses does not eliminate the criminal penalty for the perpetrator of the crime as referred to in Article 2 and Article 3."

Referring to the two articles above, the Constitutional Court Decision Number: 25/PUU/XIV/2016 revokes the phrase "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which interprets that the phrase "can" harms state finances or the state economy in Article 2 paragraph (1) and Article 3 of the Corruption Law must be proven by real state financial losses

[25] Jimly Asshiddiqie dan M. Ali Safa'at, *Teori Hans…, Op. Cit,* hlm. 35.
[26] Jimly Asshiddiqie, *Teori Hans…, Loc. Cit*.

(actual loss) not potential or estimated state financial losses (potential loss)." Contrary to Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, especially the spirit of eradicating criminal acts of corruption in office or related to office in Article 3 and Article 4 of the regulation.

In this case, the Constitutional Court made a new interpretation of Article 3 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In fact, the article is clear and clear to ensnare perpetrators of criminal acts of corruption in office or related to office so that there is no need for a new interpretation by eliminating the phrase "can" in Article 3 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

So based on the author's analysis, the emergence of the provision of the removal of the phrase "can" is related to the interests of officials and state administrators who are perpetrators of criminal acts of corruption so that they are free from the entanglement of imprisonment and fines. In this case, justice for the wider community will not be achieved.

2. Attorney General's Letter Number: B- 765/F/Fd.1/04/2018 concerning Technical Instructions for Handling Corruption Cases at the Investigation Stage. In order to optimize the rescue of state financial losses in handling corruption cases at the investigation stage. This is because the perpetrator has returned the state's losses, by considering several things as follows:
    a. Investigations should be carried out more optimally, namely not only limited to finding criminal acts of corruption in the form of unlawful acts, but also efforts must be made to find the amount of state financial losses.
    b. If the parties involved are proactive and have returned all state financial losses, then it can be considered for the continuation of the legal process by considering the interests of the stability of the local government and the smooth running of national development.

In this case, the author analyzes that the Attorney General's Letter Number: B-765/F/Fd.1/04/2018 concerning Technical Instructions for Handling Corruption Cases at the Investigation Stage contradicts Article 4 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999

concerning the Eradication of Corruption, which states that: "The return of state financial losses or the state economy does not eliminate the criminalization of the perpetrators of the crime as referred to in Article 2 and Article 3." Circular of the Deputy Attorney General for Special Crimes Number: B-113/F/Fd.1/05/2010 Concerning Priorities and Achievements in Handling Corruption Cases dated May 18, 2010 contains an order to the heads of Prosecutors' Offices throughout Indonesia to prioritize big fish corruption cases (large scale seen from the perpetrators and/or the value of the losses). This Circular of the Deputy Attorney General for Special Crimes emphasizes that for people who commit corruption with small losses (under 100 million) and have returned their losses, the concept of restorative justice can be used. In this case, the author analyzes that the circular also contradicts Article 4 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, which states that: "Returning state financial losses or the state economy does not eliminate the criminalization of the perpetrator of the crime as referred to in Article 2 and Article 3."

Second, the author's analysis is based on the Theory of Legal Responsibility. According to Sugeng Istanto, "responsibility means the obligation to provide an answer which is a calculation of all things that happen and the obligation to provide restitution for losses that may be caused."[27] Related to the problems in this thesis research, the author analyzes that the exclusion of the provisions of Article 3 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts which are oriented towards criminal punishment in the form of imprisonment and fines for perpetrators of corruption in office or related to office is one form of the perpetrator's legal responsibility to the state as a victim through legal provisions that prioritize restorative justice for corruption cases with a loss value of less than IDR 100,000,000 (one hundred million rupiah) and the regulation of the return of state losses as an elimination of criminal punishment. Such conditions also do not provide justice for the wider community.

However, the concept of legal responsibility does not actually stop there. Legal responsibility in the concept of general legal theory is also stated that: "everyone, including the government, must be able to be responsible for

[27] Satjipto Rahardjo dan I Gede A.B Wiranata (Ed.), *Membedah Hukum…, Loc. Cit*.

every action, whether it occurs based on error or without error." [28] In this case, it is possible that there is a gap in the form of new acts of corruption, especially bribery and gratification against the prosecutor's office and the police in resolving corruption cases in office or related to office through restorative justice for corruption cases with a loss value of less than Rp. 100,000,000,- (one hundred million rupiah) and the regulation of the return of state losses as an elimination of criminal penalties. So the author questions how is the legal responsibility of the government in this case the police and the prosecutor's office against this possibility?

Third, the author's analysis is based on the Theory of Legal Certainty. "Legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed."[29] Related to the problems in this thesis research, the author analyzes that the legal certainty of the purpose of creating Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption will not be implemented properly because the provisions of restorative justice for corruption cases with a loss value of less than IDR 100,000,000 (one hundred million rupiah) and the regulation of the return of state losses as an elimination of criminal penalties will not have a deterrent effect on the perpetrators and will not scare other people, especially against criminal acts classified as criminal acts of corruption in office or related to office so that the guarantee that in the future the provisions in Article 3 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption will be obeyed by the community.

For the wider community, it can be interpreted that state losses are also losses for the wider community considering that the source of wealth and spending income is partly obtained from tax money paid by the people and natural resources which in essence belong to the people but whose control and management are in accordance with the provisions of Article 33 paragraph (3) of the Indonesian Constitution. Even though the state losses have been

[28] Munir Fuady, *Teori Negara…, Loc. Cit.*

[29] Zainal Asikin, *Pengantar Tata Hukum..., Loc. Cit*.

returned by the perpetrator, release from criminal punishment still does not provide a sense of justice for the wider community.

The Ideal Concept of the Law for Eradicating Criminal Acts of Corruption in Indonesia

Law is seen as a system of principles discovered philosophically and these principles reveal the essence of things that are guidelines for human behavior. "Law and humans develop side by side and grow together, like a theory that says "Ubi Societas Ibi Ius". Ubi Societas Ibi Ius is an expression put forward by Marcus Tulius Cicero which means "where there is society there is law." This classic expression provides an illustration of when the law was first created, the question contains the meaning that the law was created when humans were also created, because when there were humans and their relationships at that time the law already existed. The answer is since humans were first created by the Creator".[30]

This statement is also reinforced by the expert opinion that: "Law is a norm that regulates human behavior, namely explaining what behavior should be done, is prohibited and permitted."[31] The general function of law is to regulate and organize social interactions and resolve problems that arise."[32] In line with the dynamics of social development, the function of law also develops as follows:[33]

1. As a tool to regulate public relations
2. As a means to realize social justice physically and mentally
3. As a means of driving development
4. As a critical

To find out the ideal concept of determining legal norms in "The law that is created should be able to serve the needs and social interests that are experienced and found, not by officials but by the people. In this case,

[30] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Edisi Revisi, (Jakarta: Kencana Prenanda Media Group, 2016), hlm. 41.

[31] Fajlurrahman Jurdi, *Logika Hukum,* Cetakan Kedua, (Jakarta: Prenadamedia Group, 2019), hlm. 40.

[32] Sadjijono dan Bagus Teguh Santoso, *Hukum Kepolisian di Indonesia (Studi Kekuasaan dan Rekonstruksi Fungsi Polri dalam Fungsi Pemerintahan),* (Surabaya: LaksBang PRESSindo, 2017), hlm. 61.

[33] R. Soeroso, *Pengantar Ilmu Hukum,* (Jakarta: Sinar Grafika, 2004), hlm. 53-55.

responsive law has a more sensitive nature to society."[34] In addition, in a material legal state which is often known as a welfare state (Welarestaat), balanced rules are needed between changes in society so that they can be accommodated by law. "Both greatly influence according to their respective roles where the relationship between social change and the legal sector is an interactive relationship, this can be interpreted that there is an influence of social change on changes in the legal sector while on the one hand the existence of legal changes also influences social change.

Legal changes that can influence social change like this are in line with one of the functions of law, where the function of law is as a means of social change or what we often hear as a means of social engineering."[35] "This was adopted by Roscoe Pound for the first time in his theory which stated that law is a tool of social engineering or better known as law as a tool of social engineering."[36] Legal reform in the concept of law as a tool of social engineering Roscoe Pound.

This ideal concept is reflected in Article 3 and Article 4 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which states that:

1. Article 3: "Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity, or means available to him because of his position or position or means available to him because of his position or position that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."
2. Article 4: "Refunding state financial or state economic losses does not eliminate the criminal penalty for the perpetrator of the crime as referred to in Article 2 and Article 3."

---

[34] Artidjo Alkostar (Ed.), *Identitas Hukum Nasional,* (Yogyakarta: Fakultas Hukum Universitas Islam Indonesia, 1997), hlm. 174.

[35] Munir Fuady, *Sosiologi Hukum Kontemporer "Interaksi Hukum, Kekuasaan, dan Masyarakat",* (Jakarta: Kencana, 2011), hlm. 61.

[36] Munir Fuadi, *Teori-Teori Besar (Grand Theory) Dalam Hukum,* (Jakarta: Kencana Prennamedia Group, 2013), hlm. 248.

The settlement of corruption crimes by imposing criminal sanctions in prison and implementing the concept of actual punishment based on Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission as explained in the article above is able to provide justice for the wider community and a deterrent effect for the perpetrators. This can be seen in the following case:

"the corruption case of academic improvement scholarships for Raudlatul Atfal (RA) and Madrasah teachers in 2010 carried out by local officials as stated in the Decision of the Corruption Court of the Mataram District Court Number: 20/Pid.Sus-TPK/2017/PN.Mtr which befell Nurwani and Zakaria, with a state loss of Rp. 6 million was sentenced to 1 year in prison by the Panel of Judges of the Corruption Court of the Mataram District Court. The two defendants were found guilty of corruption as regulated in Article 3 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission in conjunction with Article 18 of the Corruption Law. The subject of the crime recognized in the Criminal Code is an individual. So in the case of a corruption crime, the person who can commit a crime is a person and the person who can be prosecuted is also a person. In this case. Although the return of losses has been made by the perpetrator, it cannot eliminate the criminal penalty, the return of state losses is sufficient to be considered as leniency by the local court judge in imposing a criminal sentence on the perpetrator. Justice is obtained by the wider community and the perpetrator also claims to be deterred by the punishment."[37]

The author's analysis of the ideal concept of the formation of norms for handling corruption crimes above can be explained that "Legal certainty is part of a legal objective and can be called an effort to realize justice. Legal certainty is a concrete form of law that has an abstract nature, where the implementation and enforcement of the law against an action without discrimination/selective action is a real form of legal certainty. "The existence of legal certainty allows each community to estimate what rights - what things might happen if they take legal action, certainty is very necessary to create justice. Certainty and law are interrelated and have a fairly close correlation level, especially for written legal norms. Law without certainty will lose its

[37] Rizqi Purnama Puteri, Muhammad Junaidi, dan Zaenal Arifin, *Reorientasi Sanksi…, Loc. Cit.*

meaning because law cannot be used as a benchmark for behavior for each community."[38] Based on the entire description of the concept above, it is only right that the formation of statutory regulations should provide legal certainty for the wider community, especially regarding criminal acts of corruption in office or related to office.

To regulate its society through laws made for the sake of creating security and order in the life of society, nation and state. "Even if necessary, the state can enforce its power in order to use physical violence in forcing the community to comply with the law to the orders it issues." The enforcement of legal compliance referred to above is in the form of regulating legal sanctions for violations of legal obligations. Legal sanctions are also a form of legal accountability for existing legal obligations. "Legal accountability is needed when sanctions are not only imposed on the direct perpetrator of the crime (delinquent) but also on individuals who are legally related to him."[39]

The concept of responsibility according to Hans Kelsen is "responsibility is a matter that is closely related to obligations, but not identical. The obligations in question arise because of the existence of laws that regulate and give obligations to legal subjects. In this scope, legal subjects who are burdened with obligations must carry out these obligations as an order from the rule of law. The consequences of not carrying out obligations will result in sanctions. This sanction is a coercive action from the rule of law so that obligations can be carried out properly by legal subjects. Legal subjects who are subject to these sanctions are said to be responsible" or legally responsible for violations."[40] The regulation of legal sanctions is intended to create legal certainty.

The author analyzes that against all forms of criminal acts, sanctions must be applied as a form of legal responsibility of the perpetrators and the government which has a role as a law maker and law enforcer. Likewise, against the occurrence of criminal acts of corruption in office or related to office. The author's analysis is in line with Hans Kelsen's Theory in the theory of legal responsibility, stating that legal responsibility is: "A responsibility that is closely related to obligations, but both do not have identical characteristics. These obligations arise/exist due to the existence of legal rules that regulate

[38] C.S.T Kansil, *Kamus istilah Hukum, Op. Cit,* hlm. 270.
[39] Hans Kelsen, *General theory …, Loc. Cit.*
[40] Raisul Muttaqien, *Teori Hukum…, Loc. Cit.*.

and provide a burden of obligation to legal subjects. For this reason, legal subjects who are burdened with obligations must be able to carry out their obligations as a form of order from legal rules. Failure to carry out these obligations will result in sanctions. Sanctions can be interpreted as coercive actions that arise from a legal rule with the aim that these obligations can be carried out properly by legal subjects who have been burdened with responsibility. Where the legal subjects who are subject to sanctions are said to be responsible or legally responsible for violations."[41]

In the concept of punishment, it is closely related to criminal sanctions, not sanctions that actually eliminate punishment in order to provide a deterrent effect and uphold the spirit of the law itself in its implementation. Therefore, the author analyzes that the application of criminal sanctions should not be eliminated even though the return of state losses has been carried out by the perpetrator.

The author once again emphasizes that "The material legal state includes a broader understanding including justice in it. The state's task is not only to maintain order by implementing the law, but also to achieve the welfare of the people as a form of justice (welfarestate)".[42] Therefore, an ideal legal product is needed so that chaos does not arise in society by providing legal certainty and legal responsibility that provides justice and welfare for the wider community.

The law must also not conflict with higher laws. This means that it must remain firmly guided by the hierarchy in the concept of Hans Kelsen's Stufenbau Legal Theory. Where this concept is embodied by the Indonesian government in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, that the Types and hierarchy of Legislation are as follows :

1. Constitution of the Republic of Indonesia 1945
2. MPR Decree
3. Law/Government Regulation in Lieu of Law
4. Government Regulation
5. Presidential Regulation
6. Provincial Regulation

---

[41] *Ibid.*

[42] Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar – Pilar* Demokrasi, Edisi Kedua, Cetakan Ketiga, (Jakarta: Sinar Grafika, 2015), hlm. 133.

7. Regency/City Regulation

CONCLUSION

1. The inconsistency of the law on eradicating corruption in Indonesia, especially against corruption in office or related to office as the focus of this thesis research, in addition to not being contrary to the hierarchy of legislation in Indonesia, also causes a lack of legal certainty in enforcing the law against corruption, especially corruption in office or related to office and as if providing broad room for state administrators/state officials who are caught in the intended corruption to escape punishment. Such conditions can also be narrated that it is as if justice for the wider community is not fulfilled. Justice is only for the political elite and certain power holders.
2. The ideal concept of the law on eradicating corruption in Indonesia, especially against corruption in office or related to office, is the ideal concept in Article 3 and Article 4 of Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption. The phrase "can" which still exists in Article 3 of the regulation and Article 4 of the regulation makes it easier to prove cases in investigations and inquiries in police and prosecutorial institutions, in addition to that, compensation for state losses does not eliminate criminal sanctions in the form of imprisonment and fines, thus creating a deterrent effect in society, legal certainty and equal justice for all Indonesian people.

REFERENCES

1. Book

Aminuddin Ilmar, *Hukum Tata Pemerintahan,* (Jakarta: Prenamedia Group, 2014).

Arief Budiman, *Teori Negara, Kekuasaan dan Ideologi,* (Jakarta: PT Gramedia Pustaka Utama, 1996).

Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, cetakan kedua, (Jakarta: PT Kencana Prenada Media Group,2014).

C. djisman Samosir, *Hukum Acara Pidana,* (Bandung: Peneribit Nuansa Aulia, 2018).

Fajlurrahman Jurdi, *Logika Hukum,* Cetakan Kedua, (Jakarta: Prenadamedia Group, 2019).

Fernando M. Manulang, *Hukum Dalam Kepastian,* (Bandung: Prakarsa, 2007).

Jimly Asshiddiqie dan Ali Safa'at, *Teori Hans Kelsen tentang Hukum*, (Jakarta: Konstitusi Press, 2006).
Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar – Pilar* Demokrasi, Edisi Kedua, Cetakan Ketiga, (Jakarta: Sinar Grafika, 2015).
Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif,* (Surabaya: Bayu Media, 2007).
Kartini Kartono, *Pathologi Sosial,* Edisi Baru, (Jakarta: CV. Rajawali Press, 1983).
Kuntjoro Purbopranoto, *Beberapa Catatan Hukum Tata Pemerintahan dan Peradilan Administrasi Negara,* (Bandung: Alumni, 1981).
Mahfud MD, *Politik Hukum di Indonesia,* (Jakarta: Raja Grafindo Persada, 2017).
Moeljanto, *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2009).
Munir Fuady, *Teori-Teori Besar (Grand Theory) Dalam Hukum,* (Jakarta: Kencana Prennamedia Group, 2013)
Munir Fuady, *Sosiologi Hukum Kontemporer "Interaksi Hukum, Kekuasaan, dan Masyarakat",* (Jakarta: Kencana, 2011)
Ngalim Purwanto, *Ilmu Pendidikan Teoretis dan Praktis*, (Bandung: Remaja Rosdakarya, 2000)
Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Edisi Revisi, (Jakarta: Kencana Prenanda Media Group, 2016).
R. Soeroso, *Pengantar Ilmu Hukum,* (Jakarta: Sinar Grafika, 2004)
Roscoe Pound, *An Introduction to the Philosophy of Law,* (New Haven: Yale University Press, 1975)
S.R Sianturi, *Asas-Asas Hukum Pidana dan Penerapannya*, (Jakarta: Alumni, 1996),
Sadjijono dan Bagus Teguh Santoso, *Hukum Kepolisian di Indonesia (Studi Kekuasaan dan Rekonstruksi Fungsi Polri dalam Fungsi Pemerintahan),* (Surabaya: LaksBang PRESSindo, 2017)
Satjipto Rahardjo (Ed.), *Ilmu Hukum,* Cetakan Ke-8, (Bandung: Citra Aditya Bakti, 2014)
SF. Marbun dan Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara,* (Yogyakarta: Liberty, 1987)
Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Rajawali Press, 1990).
Wirjono Prodjodikoro, *Tindak-Tindak Pidana Tertentu di Indonesia*, (Bandung: Refika Aditama, 2003)
Yulies Tiena Masriani, *Pengantar Hukum Indonesia*, Cetakan Ke-II, (Jakarta: Sinar Grafika, 2006)
Artidjo Alkostar (Ed.), *Identitas Hukum Nasional,* (Yogyakarta: Fakultas Hukum Universitas Islam Indonesia, 1997)

2. Journal:

Fandra Ari Sandi, Iyah Faniyah dan Amiruddin, "Penanganan Tindak Pidana Korupsi Dana Desa Dengan Kerugian Negara di Bawah Lima Puluh Juta Rupiah oleh Kejaksaan Negeri Kota Sawahlunto," EkaSakti Legal Science Journal, Vol. 1 No. 1 Januari 2024.

Noveria Devy Irmawanti dan Barda Nawawi Arief, "Urgensi Tujuan dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidan, *Jurnal Pembangunan Hukum Indonesia*, Vol. 3 No. 2 Tahun 2021.

Riki Saputra, "Implementasi Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016 Dalam Pemberantasan Tindak Pidana Korupsi di Provinsi Riau, *Jurnal Equitable,* Vol. 4 No. 1 Tahun 2019.

Rizqi Purnama Puteri, Muhammad Junaidi, dan Zaenal Arifin, "Reorientasi Sanksi Pidana Dalam Pertanggungjawaban Korporasi Di Indonesia," *Jurnal USM Law Revie,* Vol. 3 No. 1 Tahun 2020.

Salsabila dan Slamet Tri Wahyudi, "Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan *Restorative Justice," Jurnal Masalah-Masalah Hukum*, Vol. 15 No. 1 Januari 2022.

Yoserizel Nisnoni, "Pemberhentian Pegawai Negeri Sipil di Pemerintahan Daerah Kabupaten Timor Tengah Selatan Yang Terlibat Korupsi Ditinjau Dari Segi Keadilan", *Jurnal Sosains,* Vol. 1 No. 7 Juli 2021