



PROSECUTOR'S AUTHORITY AS A COUNTRY LAWYER IN RETURNS OF STATE LOSSES DUE TO CORRUPTION CRIMINAL ACTION

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The Attorney General of the Republic of Indonesia, as one of the law enforcement agencies in Indonesia, plays an important role in the law enforcement process. The role of the prosecutor in enforcing the Law for the Maintenance of Public Order, Legal Security, and the Protection of the Interests of the State and the Civil Rights of the People, as set forth in Law No. 16 of 2014 concerning the Attorney General of the Republic of Indonesia, became known as the Prosecutor General. The role of prosecutors includes their ability to represent the state in efforts to offset financial losses incurred by the state due to criminal acts of corruption. However, this agency has not guaranteed a significant return on government losses due to corruption. The writing of this thesis uses a normative legal research methodology and serves two purposes, namely, to analyze the laws and regulations governing the authority of prosecutors as prosecutors in relation to the restitution of state losses, and to study and describe the role of prosecutors to make the restitution to guarantee government assets or to offset government losses. due to criminal acts of corruption. Therefore, it is necessary to review the existing regulations so that the existing regulations do not open opportunities for corrupters to avoid being responsible for restoring government losses. The Attorney General's Office uses an asset recovery approach that is effective, efficient, transparent, and accountable so that the recovery of state finances can be achieved for justice, certainty, and legal benefits in society.

Keywords: State Prosecutor's Authority, Asset Recovery, Losses, State Finances.

INTRODUCTION

Prosecutors with special powers to act for and on behalf of the state in civil cases and state administration, known as state attorney general. The prosecutor is a functional official who is authorized by law to act as a prosecutor in a case representing the state or government, as well as carry out court decisions in cases that have obtained permanent legal force and carry out other powers based on the law. In accordance with the provisions of Article 1 point 1 (one) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

Prosecutor's Office has several functions, namely ensuring the rule of law and guaranteeing legal certainty, restoring state finances, upholding the authority of the government and the state, protecting the civil rights of the community, by guaranteeing the value of benefits and the value of legal justice for the community. Prosecutors can act in civil and state administrative cases as state attorneys, if: Prosecutors are given the power to represent state or government, based on the provisions of Article 30 paragraph (2) of Law No. 16/2004 on the Prosecutor Republic of Indonesia which reads: *In the field of civil and state administration, the prosecutor with special powers can act both inside and outside the court for and on behalf of the state or government.*

Authority differs in the criminal and civil realms. In criminal cases, the prosecutor acts as a lawyer/legal advisor while in civil cases, the prosecutor acts as a lawyer / legal attorney from the state or government both inside and outside the court. regarding civil cases, after a court decision that has permanent force.¹

Prosecutors as lawyers / case defenders / legal counsel on behalf of the state / government in civil cases with a position as the defendant or plaintiff. State attorneys can provide legal considerations to the state or government in the form of legal opinions (*Legal Opinion/LO*) and/or legal assistance (*Legal Assistance/LA*) in the civil and state administration fields and/or legal audits (*Legal Audits*) .) in the civil sector. Legal assistance and/or provision of legal services by state attorneys outside of law enforcement, legal assistance and legal considerations in the context of returning state finances or state assets due to criminal acts of corruption and upholding the authority of the government, among others, prosecutors act as conciliators, mediators or facilitators in the event of a dispute between countries or governments.²

The Prosecutor's Office in carrying out the authority in the civil and state administrative fields, has the responsibility fully responsible for the state and act in accordance with the provisions of the law . Prosecutors are committed to eradicating corruption with the aim of recovering state financial losses due to corruption cases. Corruption is a criminal act that is categorized as *an extra ordinary crime* or extraordinary crime and results in harming state finances. Corruption according to Law 31 of 1999 concerning the eradication of criminal acts of corruption, defines an act of corruption that is if it is carried out by anyone who is categorized as against the law, commits an act of enriching oneself, benefits oneself or another person or a corporation, abuses authority or an opportunity. or the facilities available to him, because of his position or position which can harm state finances or the state economy. Meanwhile, corruption according to Law Number 20 of 2001, Article 2 is an act of enriching oneself, another person or a corporate body by means of unlawful acts or acts with the intention of enriching oneself, another person or corruption which results in harm to the state or the country's economy. If the state suffers a financial loss due to a criminal act of corruption, the prosecutor is appointed to represent the state as a state attorney or in other words, if it has been legally and convincingly proven, someone has committed a criminal act of corruption and a financial loss is found, for example by an official. state, then the state appoints a lawyer to defend the state in the civil realm, through the authority of the prosecutor who acts as the state's representative in an effort to recover state financial losses.

State financial losses due to criminal acts of corruption by the prosecutor's office is carried out by means of, among others, tracking/pursuing and confiscation of goods/wealth suspected to be related to the crime of corruption. If after a court decision which has permanent legal force, as a result of the actions of the convict of corruption it is declared to be detrimental to the state's finances, then he is subject to a penalty of paying state losses in additional penalties in the form of replacement money (Article 10 of the Criminal Code). The purpose of payment of compensation is to maximize the return of state money that has been corrupted and the imposition of criminal fines is regulated in Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption, which has been amended by Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. and

¹Set of instructions for the Deputy Attorney General for Civil and State Administration (JAM DATUN), XXII, Publisher: Attorney General of the Republic of Indonesia p.2.

²<http://datun.kejati-ntt.com>



underwent another amendment to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption and Law Number 20 of 2001 regulating sanctions for payment of fines and compensation for acts of corruption committed by people individuals and legal entities.

Formulation of Problem

Based on the description above, the scope of the problem formulation is as follows:

1. What is the legal arrangement regarding the prosecutor's authority as a state attorney against the return of state losses due to corruption?
2. Has the arrangement of the prosecutor's authority as the state's lawyer guaranteed the return of state losses due to corruption?

AUTHORITY OF THE PROSECUTOR AS STATE LAWYER IN STATE REFUND

The concept of the prosecutor's authority as a state attorney in recovering state losses due to corruption.

Prosecutor's Office as a law enforcement agency functions to ensure the rule of law and guarantee legal certainty, restore state finances, uphold the authority of the government and the state and protect the civil rights of the community by guaranteeing the value of benefits and legal justice for the community. In terms of law enforcement on the return of state losses, it is the authority of the prosecutor as a state attorney, where the prosecutor can act in civil and state administrative cases as state lawyers, if Prosecutors are given the power to represent state or government , based on the provisions of Article 30 paragraph (2) of Law No. 16/ 2004 on the Prosecutor Republic of Indonesia which reads:

In the field of civil and state administration, the prosecutor with special powers can act both inside and outside the court for and on behalf of the state or government.

State financial losses due to corruption can be sought to be optimally returned to the state treasury, through the authority of the prosecutor as a state attorney. After the court decision on the corruption case has permanent legal force and a state loss is found, the prosecutor as the state attorney carries out the process of returning state assets or state financial losses in the form of replacement money and fines as regulated in Law No. 20 of 2001 concerning sanctions for payment of fines and compensation for acts of corruption committed by individuals or legal entities. Prosecutors can use theories in the process of recovering state losses, including:

- a) **The theory of Jeremy Bentham**, benefit and justice in the greatest happiness to the greatest number of people as the main goal of law. The principle of legal expediency, with the aim of realizing *the greatest happiness of the greatest number* which means the greatest happiness for many people. ³Whether the law is fair or not for many people, it really depends on whether the law is able to give happiness to humans or not. Benevolence and justice are defined as *happiness* .
- b) **The theory of John Rawls**, in his book *A Theory Of Justice* , there are 3 main ideas put forward, namely , **first** , Classical Utilitarianism, which is the purpose of law solely to provide the greatest benefit or happiness to as many people as possible. **Second**, Justice as Fairness (honesty, fairness, appropriateness) or *Justice as Fairness* that which principle of justice is the most *fair* and **Two Principles of Justice** according to Rawls, **firstly** the principle of freedom is a principle where everyone is entitled to have the greatest freedom,

³Papers.ssrn.com 08 October 2016, *John Rawls' Theory of Justice (John Rwl's Theory of Justice)*

equal to the same freedom for all. people, as long as they don't hurt other people. **Both** social and economic inequalities are however expected to be to the benefit of all (fair).

- c) **Gustav Radbruch's theory**, legal certainty due to law and legal certainty in or from law that guarantees a lot of legal certainty in society, namely useful or beneficial law.⁴
- d) **Principles of Justice (simple, fast and low cost)**. Article 2 paragraph (4) of Law No. 48 of 2009 concerning judicial power. Simple means that the examination and settlement of cases is carried out in an efficient and effective manner. The fast principle, universal in nature, relates to the completion time that is not protracted. The fast principle or known as the *justice delayed, justice denied* adage, which means that the cost of the case can be reached by the community.⁵ The principle of fast, simple and low cost relates to the time for the completion of a case and the legal remedies taken by the parties. If one of the parties takes ordinary legal remedies (appeal and cassation) or extraordinary (review) then the time required to complete the case will be longer. With regard to time, in special courts such as corruption, a time limit for completion (expiration) has been determined. Likewise, the time limit for stating legal remedies and submitting a legal memory if it exceeds the specified time limit can lead to legal consequences. The theories mentioned above are related to the authority of the prosecutor as a law enforcement agency, that the prosecutor should pay attention to some of these theories in carrying out his authority to restore state financial losses, how the prosecutor's authority can provide legal benefits and a sense of justice so that the greatest happiness (*happines*) is realized to the public. as many people as the main goal of law. As law enforcers, prosecutors who have been appointed to act on behalf of the state/government in exercising their authority to recover state losses must pay attention to the principles of justice, honesty, fairness and *neutrality*. Thus, the prosecutor plays a role in upholding the authority of the government and protecting the civil rights of the community by guaranteeing the value of expediency, legal justice and legal certainty for the community in accordance with the provisions of Article 30 paragraph (2) of Law No. 16/ 2004 on the Prosecutor Republic of Indonesia.

The concept of state losses and refund of state losses due to corruption.

State financial losses in the provisions of Article 1 number 22 of the Law Number 1 of 2004 concerning the State Treasury and Article 1 number 15 of Law Number 15 of 2006 concerning the Supreme Audit Agency, both define that *state/regional financial losses are a real and definite shortage of money, securities and goods as a result of unlawful acts. either intentionally or negligently*. This means that state financial losses can be in the form of losses of money, securities and goods within the scope of the definition of state finances as regulated in Law Number 17 of 2003 concerning State Finances, Law Number 15 of 2006 concerning the State Audit Board and Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. State financial losses in the legal dimension of state administration will also always refer to legality, which has the core of the authority to determine state financial losses so that it has legitimacy. Settlement of civil state financial losses is carried out by state attorneys who are appointed to represent the state in returning state financial

⁴ <https://ngobrolin Hukum.wordpress.com>, *understand legal certainty*.

⁵ <https://m. Hukumonline.com>, *a simple, fast and low cost trial*. (accessed date 14 February 2018).



losses. Prosecutors act as state attorneys and are regulated separately in Article 32 , Article 33 and Article 34 of Law No. 31/1999 in conjunction with Law No. 20 of 2001.⁶

In an effort to handle corruption crimes by all levels of the Prosecutor's Office throughout Indonesia, acting in accordance with the mandate of the law as one of the law enforcement agencies, is required to play a greater role in upholding the rule of law, protecting public interests, upholding human rights and eradicating corruption, collusion, and nepotism. State losses due to corruption are very influential on the country's economy , as it is known that corruption is classified as an *extraordinary crime*. UUPTPK Number 31 of 1999 defines acts of corruption that anyone who is categorized as against the law, commits acts of enriching himself, benefits himself, himself or another person or a corporation, abuses his authority or an opportunity or facility available to him because of his position or position which can harm the state finances or the state economy.

Regulating the authority of prosecutors and guarantee of return state losses due to criminal acts corruption.

Law enforcement in eradicating a criminal act of corruption with the aim of returning state financial losses must be balanced with preventive measures or strategic policies, such as concrete actions that prevent people from committing criminal acts of corruption. If there has been a criminal act of corruption, the role of law enforcement agencies such as the prosecutor's office is needed to act in accordance with the mandate of the law. If it is found that state financial losses are found, then the return of state losses is carried out by way of payment of replacement money (additional penalties) carried out by the prosecutor as regulated in Article 18 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 that:

1. *In addition to additional penalties as referred to in the Criminal Code, as additional penalties, namely:*
 - a. *confiscation of tangible or intangible movable property or immovable property used for or obtained from a criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as from the goods that replace the goods;*
 - b. *Payment of replacement money in the maximum amount equal to the property obtained from the criminal act of corruption;*
 - c. *Closure of all or part of the company for a maximum period of 1 (one) year;*
 - d. *Revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be granted by the Government to the convict.*
2. *If the convict does not pay the replacement money as referred to in paragraph b at the latest within 1 (one) month after the court's decision that has obtained permanent legal force, his assets can be confiscated by the prosecutor and auctioned to cover the replacement money.*
3. *In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he shall be sentenced to imprisonment for a length of time that*

⁶ Suhendar, 2015, *The Concept of State Financial Loss Approaches to Criminal Law, State Administrative Law and Special Criminal Corruption* . Malang-East Java, Equivalent to Intrans Publishing Press, Wisma Kalimetro Jl.Joyosuko Metro 42, hlmn.141-147.

*does not exceed the maximum threat of the principal sentence in accordance with the provisions of this Law and the length of the sentence has been determined in a court decision.*⁷

The importance of the role of the prosecutor as a state attorney in regulating his authority is whether it has provided guarantees for justice, benefits and legal certainty of returning state losses, because the return of state assets can affect the achievement of development goals in Indonesia. The authority of the prosecutor as a state attorney after it is found that there is an element of state loss and the prosecutor has been appointed by the state to act for and on behalf of the government starting from investigation to civil prosecution and state administration followed by the confiscation process in returning state assets (*asset recovery*) or returning state losses. as a result of corruption. In reality, the process of law enforcement by the prosecutor's office encountered obstacles in terms of the length of time a case was resolved. On average it takes a long time at a great cost. The procedure for replacement money in its implementation there is an option to change between nominal money and imprisonment, if the defendant is unable to pay. Therefore, several corruption cases have been completed in court, but in refunding state financial losses the total amount is not returned to the state treasury. This causes the process of law enforcement by the prosecutor to experience an imbalance between the legal aspects in hope or *das sollen* and the legal aspects in reality or *das sein* .

AUTHORITY OF THE PROSECUTOR AS STATE LAWYER IN RETURN OF STATE DAMAGES DUE TO CRIMINAL ACTS OF CORRUPTION.

Prosecutors as state attorneys can be seen in detail letter C Attachment to the Regulation of the Attorney General Number PER-018/A/JA/07/2014 concerning Standard Operating Procedures for the Junior Attorney General for Civil and State Administration (Annex Perja 18/2014) which explains what the prosecutor is doing state attorney , can be described, among others:

1. State attorney's attorney carries out law enforcement

Law enforcement by state prosecutors to file lawsuits or applications to courts in the civil sector , as stipulated by laws and regulations in the context of maintaining legal order, legal certainty and protecting the interests of the state and government as well as the civil rights of the community. The prosecutor as one of the law enforcement apparatus, carries out the function of law enforcement in his activities as a state attorney, to file a lawsuit or application to the court , in the civil sector as statutory regulations, in the context of maintaining legal order, legal certainty and protecting interests. state and government as well as civil rights of the community.⁸

Prosecutors in detail in their mention as state lawyers can be seen in letter C Attachment to the Attorney General's Regulation Number PER-018/A/JA/07/2014 concerning Standard Operating Procedures for the Junior Attorney General for Civil and State Administration (Appendix Perja 18/2014) which explains what state attorneys do , in addition to acting specifically to represent the state in returning state losses in corruption cases, prosecutors as state attorneys also carry out several authorities , namely:

- 1) State attorney attorney provide legal assistance and legal assistance in civil and state administrative cases to represent state institutions, government agencies at the center/

⁷Article 18, Law No. 20 of 2001 Amendments to Law No. 31 of 1999 concerning *the Eradication of Criminal Acts of Corruption* , State Gazette of the Republic of Indonesia of 2001 Number 134 Supplement to the State Gazette of the Republic of Indonesia Number 4150.

⁸www.kejaksaan.go.id *Functions of the Civil Service and State Administration Administration at the Indonesian Attorney General's Office, the Indonesian Attorney General's Center for Legal Information;*



- regions, BUMN/BUMD based on a Special Power of Attorney, both as plaintiffs and as defendants, carried out by litigation or non-litigation.
- 2) State attorneys provide legal considerations, to provide legal opinions (*Legal Opinion/LO*) and/or assistance (*Legal Assistance*) in the Civil and State Administration fields on the basis of requests from state institutions, central/regional government agencies, BUMN/BUMD , whose implementation based on the Warrant of JAM DATUN, KAJATI, KAJARI.
 - 3) Legal services are the duty of state attorneys to provide explanations on civil law and state administrative matters to members of the public who request.
 - 4) State prosecutors carry out law enforcement to file lawsuits in civil courts in accordance with statutory regulations in order to maintain legal order, legal certainty and protect the interests of the state and government as well as civil rights of the community, including: annulment of marriage, dissolution of a Limited Liability Company (PT.) and bankruptcy declaration.
 - 5) State attorneys take other legal actions, namely acting as a mediator or facilitator in the event of a dispute or dispute between state institutions, between central and regional government agencies, BUMN/BUMD in the Civil and State Administration fields .
 - 6) File a lawsuit for the annulment of a marriage that does not meet legal requirements. Based on Article 6 of Law Number 1974 Article 26 paragraph (1) the Prosecutor's Office may apply for an annulment of a marriage against a marriage which was held in front of an invalid marriage registrar, an invalid marriage guardian or which was held without the presence of 2 (two) witnesses. From the provisions of Article 26 paragraph (1) of Law no. 1 of 1974, it is clear that the prosecutor's authority to apply for an annulment of marriage is limited. However, based on the letter of the Deputy Attorney General for Civil and State Administration Number: B-017/G/2/1996 dated February 29, 1996 concerning marriage annulment, it has been expanded to include all requirements to enter into a marriage, in this case the state attorney general as the authorized official based on Article 23 letter c, Law no. 1 of 1974.
 - 7) Application for bankruptcy of a limited liability company or a legal entity. The legal basis for the authority of the prosecutor to file an application for bankruptcy of an entity is in Article 2 of Law No. 37/2004 concerning Bankruptcy and Postponement of Debt Payments and Government Regulation No. 17 of 2000 concerning Application for Bankruptcy for reasons of public interest. .
 - 8) Application for cancellation of registration of trademark rights. Law No. 20 of 2016 as regulated in Article 76 paragraph (1) and its explanation gives the state attorney's attorney the authority to apply for the cancellation of the mark.
 - 9) Application for cancellation of patent rights. State attorneys representing the national interest apply for the cancellation of a patent in the event that the granting of a compulsory license is apparently unable to prevent the implementation of the patent in a form and manner that is detrimental to the public interest within a period of 2 (two) years from the date of granting the relevant compulsory license or from the date of granting the license. the first mandatory, in the case if granted several mandatory licenses. The legal basis for the prosecutor's authority is regulated in Article 132 paragraph (4) of Law no. 13 of 2016 concerning patents which reads: *The lawsuit for the abolition as referred to in paragraph (1) letters d and e is filed by the prosecutor or other party representing the national interest against the patent holder or the recipient of the compulsory license to the Commercial Court.*

- 10) Application for the dissolution of the limited liability company. The legal basis is in accordance with Article 146 of Law no . 40 of 2007 concerning Limited Liability Companies, the prosecutor's office is given the authority to apply for the dissolution of a limited liability company if by reason of violating the laws and regulations that carry a criminal threat, it is required to have a decision that has permanent legal force stating that the limited liability company violates the applicable laws and regulations.
- 11) Application for dissolution of the foundation. One of the reasons for the dissolution of the foundation as stipulated in Article 62 of Law No. 16 of 2001 is a court decision that has permanent legal force based on the reason that the foundation violates public order and morality. Parties who can submit applications represent the public interest based on the general explanation of Law No. 16 of 2001. Based on Article 71 paragraph (4) of Law no. 28 of 2004, a foundation that does not adjust its articles of association within 3 (three) years after the enactment of Law No. 28 of 2004 cannot use the word foundation in front of its name and can be dissolved based on a court decision at the request of the prosecutor or interested parties.⁹

The ethics of state attorneys when proceeding in court are:

- State attorneys act for and on behalf of the power of attorney and are limited to the authorized powers.
- State attorneys in proceedings are subject to the applicable procedural law.
- The position of the state attorney's attorney is equivalent to that of the principal/lawyer of the opposing party.
- State attorneys uphold professionalism.
- The state attorney's attorney reports every progress of the case to the client.¹⁰

2. State attorney general can provide legal assistance or Providing legal services.

State attorneys have the task of providing legal assistance in civil and state administrative cases to represent state institutions, central/regional government agencies, BUMN/BUMD based on a special power of attorney, both as a plaintiff and as a defendant in litigation or non-litigation. State attorneys provide legal assistance in the civil sector to the state or government and act as legal counsel based on a special power of attorney, both litigation and non-litigation , in civil courts and arbitration as Plaintiffs, Plaintiffs intervention, Petitioners, Opponents, Objectors or Defendants, Intervention Defendants, Respondents, Opponents, Defendants, as well as legal services in the field of State Administration (TUN) by the State Attorney's Attorney to the State or Government as Defendants/Defendants in the TUN Court and as a Representative of the Government, or as an interested party in cases of judicial review of laws at the Constitutional Court and as Respondents in cases of judicial review of regulations under the Act at the Constitutional Court . Prosecutors in their authority can provide legal services outside of law enforcement, legal assistance and legal considerations in the context of saving and restoring state finances/state assets and upholding the authority of the government, among others acting as conciliator, mediator / facilitator in the event of

⁹ www.kejaksaan.go.id *Functions of the Civil Service and State Administration Administration at the Indonesian Attorney General's Office, the Indonesian Attorney General's Center for Legal Information*

¹⁰ www.kejaksaan.go.id *Functions of the Civil Service and State Administration Administration at the Indonesian Attorney General's Office, the Indonesian Attorney General's Center for Legal Information;*



a dispute between countries or governments.¹¹ The provision of legal services can be provided in writing or orally to the public, which includes individuals and legal entities, related to civil matters and TUN in the form of consultations, opinions and information. The advantages for government institutions/agencies, central/regional agencies, BUMN/BUMD when using the legal services of a state attorney include:

- The state attorney's attorney acts on behalf of the power of attorney.
- State attorneys act professionally and are ready to compete with civil/private lawyers/advocates.
- State attorneys do not know lawyer fees
- The state attorney general could not reject the SKK even though he knew that in the position case, it was unlikely to win.
- State attorneys do not create a conflict of interest (not double-edged).
- State attorneys do not represent individuals.
- The main duties and functions of the civil and state administration sectors can prevent legal problems from arising, including the occurrence of criminal acts of corruption.¹²

3. State attorney's attorney gives legal considerations

Legal considerations by state attorneys to provide legal opinions (*Legal Opinion/LO*) and/or legal assistance (*Legal Assistance*) in the Civil and State Administration Courts on the basis of requests from state institutions, central/regional government agencies, BUMN/BUMD, whose implementation is based on the Warrant of JAM DATUN, KAJATI, KAJARI. State attorneys' attorneys can provide legal considerations in order to save and restore state finances due to corruption, in accordance with the provisions of **Article 34 paragraph (2)** : *The Prosecutor's Office can provide legal considerations to the government* .

Meanwhile, for the implementation of court decisions in civil cases, which have permanent legal force at the confiscation stage, they are carried out by the bailiff and the clerk led by the head of the court (**Article 54 paragraph (2) UU no. 48 of 2009 concerning Judicial Power** . Legal considerations, namely the duty of state attorneys to provide legal opinions (*Legal Opinion/LO*) and/or legal assistance (*Legal Assistance*) in the civil and TUN and/or legal audits (*Legal Audit*) in the civil sector at the request of state institutions, government agencies at the center/regions, BUMN/BUMD, the implementation of which is based on the Order of JAM DATUN, the Attorney General's Office and the Attorney General's Office . Legal considerations are given in 3 (three) forms, namely:

- a) or *Legal Opinion* , namely legal services provided by state attorneys in writing in accordance with legal facts regarding a civil law issue and state administration made at the request and for the benefit of the state or government.
- b) or *Legal Assistance* is legal services provided by state attorneys in the form of a legal opinion on an ongoing basis on an activity proposed by the applicant and ends with a conclusion on the provision of the legal opinion in the form of minutes of legal assistance.
- c) Legal audit or *Legal Due Delligence* , namely legal services provided by state attorneys' attorneys in the form of thorough and thorough examination activities from a legal perspective carried out by state attorneys at the request of the state or government for an

¹¹<http://datun.kejati-ntt.com>

¹² www.kejaksaan.go.id Functions of the Civil Service and State Administration Administration at the Indonesian Attorney General's Office, the Indonesian Attorney General's Center for Legal Information;

act that has been carried out relating to civil law that describes compliance with legal provisions for an activity or legal entity in a normative juridical manner.¹³

4. State attorney general can provide legal services

The legal service is the duty of state attorneys to provide explanations about civil law and state administrative matters to members of the public who request. Prosecutors can provide legal services, in the form of providing written or oral legal services to the public, which include individuals and legal entities, related to civil and state administrative matters in the form of consultations, opinions and information.

5. State attorney's attorney takes other legal actions

State attorneys perform the task of taking other legal actions, namely acting as a mediator or facilitator in the event of a dispute or dispute between state institutions, between central and regional government agencies, BUMN/BUMD in the Civil and State Administration fields .

ARRANGEMENTS OF THE PROSECUTOR'S AUTHORITY AND GUARANTEE ON STATE RETURN OF DAMAGES DUE TO CRIMINAL ACTS OF CORRUPTION.

The Prosecutor's Office has the authority as a state attorney with regard to the return of state losses resulting from corruption in the civil and administrative fields. So far what has happened is that the state continues to suffer financial losses due to corruption. The total number of state financial losses that have been returned has not been fully returned to the state treasury or in other words it is still outstanding with a fantastic number, because the amount of return is not the same as that which has been corrupted. Although there are law enforcement agencies, in this case the prosecutor's office through its authority in the context of eradicating corruption, prosecutors are given special powers as state lawyers, acting for and on behalf of the government to restore state losses.

Prosecutor's Office in carrying out other authorities as referred to in Article 1 of Law Number 16 of 2004, namely the authority as a state attorney, can defend the rights of the state in returning assets resulting from corruption and returning state losses through additional punishment, namely replacement money in the process of recovering financial losses. state due to corruption, as regulated in Article 18 letter b of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 states that *Payment of replacement money in the maximum amount equal to the property obtained from the criminal act of corruption.* Payment of replacement money is an additional crime that is specifically known in corruption crimes. Payment of replacement money is carried out if after the criminal decision, it is proven legally and convincingly as a result of the actions of the convict of corruption having harmed the state, in this case the loss of state finances. The payment of replacement money is carried out by a specially appointed prosecutor acting for and/or on behalf of the state to restore the state's loss. Article 10 of the Criminal Code only recognizes additional penalties, in the form of revocation of certain rights, confiscation of certain goods or announcement of judge's decision. The procedure used is to ask the convict to pay replacement money. If the replacement money cannot be afforded, the convict's property is confiscated by the Prosecutor and auctioned off. If the convict is unable to pay, then his property is confiscated and auctioned off and if it is not proportional to the value that has been corrupted, then he must undergo imprisonment (corporate confinement).

¹³ www.kejaksaan.go.id Functions of the Civil Service and State Administration of the Republic of Indonesia at the Indonesian Attorney General's Office, the Indonesian Attorney General's Center for Legal Information;



Return of state losses (*asset recovery*) through replacement money and fines, if in the implementation of returning state losses the money returned is not the same as the amount that has been corrupted, then this shows how important the prosecutor as a state attorney is in returning state losses due to corruption. there will be a guarantee that state losses can be resolved through the authority of the prosecutor as a state attorney, if the rules regarding *asset recovery* are not carried out according to the procedure, in which there is a flow deviation by a replacement option other than the loss figure, the option meant is that the remaining data loss is replaced by imprisonment. The procedure carried out in the fact that there is an option to submit a statement of inability to pay compensation to the state by the corruption defendants, so that one of these options creates an opportunity for the corruptors to take refuge with the choice of a partial sentence of imprisonment. Meanwhile, if it is seen that it turns out that there is no legal justice or in other words the authority of the prosecutor as a state attorney through the basic rules in Article 18 of the PTPK Law, it has not yet guaranteed civilly, the full return of state finances that have been lost due to corruption. Various obstacles without a solution, as the end of legal expectations in the form of justice, benefit, and legal certainty as long as the prosecutor carries out his authority as a state attorney, the result is that the state will continue to lose money.

Article 18 of the Anti-Corruption Law uses the phrase *the amount as much as possible is the same as the property obtained from the criminal act of corruption*, from these two points, it can be seen that how to calculate the amount of replacement money, when it must be paid, and the consequences if the replacement money is not paid. Then in Article 18 paragraph (3) it reads: *In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he is sentenced to imprisonment for a length of time that does not exceed the maximum threat of the principal punishment in accordance with the provisions of Article 18 paragraph (3). in this Law and the length of the sentence has been determined in a court decision .*

CLOSING

Conclusion

The Prosecutor's Office needs to be more maximal in the implementation of its authority, by implementing various innovative solutions in the future. As is known, the mechanism for *asset recovery* in Indonesia can be implemented through 3 (three) legal channels, namely the mechanism for returning assets through criminal means. administration and return of assets through civil channels . ¹⁴Talking about *asset recovery* , implementation of the legal system and *asset recovery mechanism* running according to the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, but tends to be difficult because corruptors are only sentenced to prison and even though *asset recovery is carried out* by the apparatus, the return of state losses is usually not proportional to the state losses that should be. Return of state losses due to corruption , carried out by the prosecutor as a law enforcement agency, should be able to maximize the additional criminal penalty of replacement money or *asset recovery* . for example , by formulating an indictment using the crime of money laundering (TPPU), so that the *follow the money approach* so that the return of state losses is carried out more maximally. Another alternative, namely the application of the gratification article in the Law on Corruption Crimes as an approach, namely a limited reversal of the burden of proof, can also be used to confiscate assets whose validity cannot be accounted for.

¹⁴Purwaning M. Yanuar, 2007, Return of Assets Proceeds from Corruption. Bandung;PT. Alumni, hlm.206

Law enforcement by the prosecutor's office in the legal expectation that the priority is on asset recovery , so that it can have a deterrent effect for the perpetrators.

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