



## Legal Certainty on Asset Return Procedure from Proceedings of Corruption Criminal Acts to Return Losses to the State

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### ABSTRACT

Published Online: June 20, 2023

Current developments show that the management of State/Regional property is not merely administrative, but more advanced thinking in handling state assets properly, not the other way around the state suffers losses from the management of state property due to the misuse of state property. This reality is not in line with asset return theory that is faithful to the principle of “give the state what is due to it.” Based on the results of the research, state property is all goods purchased or obtained at the expense of the state revenue and expenditure budget or regional revenue budget or originating from other legitimate acquisitions. The management of state property must be carried out based on laws and regulations as well as the principles of decency and justice. Qualifications of acts in crimes against state property: criminal acts of theft, extortion, threats, embezzlement, fraud, acts detrimental to state finances, acts detrimental to the state, destruction and destruction of state property and collection of proceeds of crime against state property. The problem of asset recovery is faced with the reality of the inability of corruption convicts to pay criminal compensation money because it is normatively possible in Article 18 paragraph (3) of Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Even though in fact there are still hidden assets belonging to the convict that have not been confiscated by law enforcement. As a result, asset recovery cannot be achieved because the convict chooses to undergo a subsidiary sentence and the state continues to lose money.

### KEYWORDS:

corruption, return on assets, state losses.

### I. INTRODUCTION

The position of a judge in resolving and deciding a case must be very careful, on the other hand a judge also needs to pay attention to the balance factor in order to protect the interests of the parties involved, namely perpetrators, victims, and society as a whole, because a judge is required to have a wise nature and wise. In an effort to determine a person's guilt, in this case the perpetrator, a judge must be based on two valid pieces of evidence supported by the judge's belief that the defendant is guilty.<sup>1</sup>

Whether the accused is found guilty or not is certain based on the judge's conviction that is unraveled in a decision

that really determines one's fate. So that the judge's decision will feel so appreciated and has a value of authority, if the decision reflects the sense of legal justice in society and is a means for people seeking justice to get truth and justice. Before a judge decides on a case, he will first ask his own conscience, whether this decision will be fair and beneficial (benefit) for humans or vice versa will cause more damage (harm), so that a judge is expected to have brains. intelligent, and have a clean conscience.<sup>2</sup>

Especially in corruption cases, the judge's decision will be in the spotlight of the whole community, whether the decision provides fair certainty or vice versa. In the case of

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*\*Cite this Article: Beren Rukur Ginting, Cuk Indah Mardianto, Raden Yudhi Teguh Santoso (2023). Legal Certainty on Asset Return Procedure from Proceedings of Corruption Criminal Acts to Return Losses to the State. International Journal of Social Science and Education Research Studies, 3(6), 1068-1074*

<sup>1</sup> Alfitra. *Hukum Pembuktian Dalam Beracara Pidana, Perdata Dan Korupsi Di Indonesia*. Jakarta: Raih Asa Sukses, 2012, h.29

<sup>2</sup> Rifa'i, A. *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*. Jakarta: Sinar Grafika, 2014, h.3

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returning state assets from criminal acts, there is currently much debate among practitioners and academics. Return or confiscation of assets is a process or activity carried out either through criminal courts or civil courts to search for, freeze and return assets obtained as a result of violating applicable legal provisions.<sup>3</sup>

The criminal act of corruption is not only detrimental to state finances, but has also violated the social and economic rights of the people so that it is categorized as an extraordinary crime. So that the handling of corruption has undergone a paradigm shift, from punishment and imprisonment to an emphasis on returning assets resulting from corruption placed in other countries.<sup>4</sup>

Law Number 51 Prp of 1960 only regulates state assets in a narrow sense, namely state-owned land that is transferred to third parties, so it does not involve state assets in other forms. State assets in the juridical-normative sense are all goods purchased or obtained at the expense of the state revenue and expenditure budget or originating from other legitimate acquisitions, such as grants/donations, implementation of agreements/contracts, statutory provisions, or court decisions that have been obtain permanent legal force.<sup>5</sup> In the theoretical concept, put forward by J. Prodhoun, state assets are assets that are within the scope of the public domain (public privy), so that their management and accountability are subject to the provisions of laws and regulations publicly.

Based on the definition presented by the Basel Institute On Governance International Center for Asset Recovery, returning state assets resulting from corruption is an act of tracking, freezing, confiscating proceeds of corruption which must be returned to the state.<sup>6</sup> Regarding the return of assets resulting from corruption, there are several experts who express their opinions, Purwaning M. Yanuar argues that asset recovery is a law enforcement system run by the state to revoke, confiscate, and eliminate rights over assets resulting from corruption from corruptors through a series of processes and mechanisms, both criminally and civilly, assets resulting from criminal acts of corruption both inside and outside the country will be tracked, frozen, confiscated, confiscated and handed back to the state as a form of returning

state losses caused by perpetrators of criminal acts of corruption.<sup>7</sup>

Based on the provisions in Article 1 Number 8 of the Draft Law on Confiscation of Assets, there is also an explanation regarding confiscation of assets or known as in rem appropriation, which means an act by the state to return assets through a court decision in a civil case based on stronger evidence that assets is suspected of originating from a criminal act of corruption or that will be used in carrying out a criminal act of corruption.<sup>8</sup> The return and confiscation of assets is usually directed at someone who commits a criminal act of corruption with the aim of obtaining wealth by exploiting his power.

In Rem confiscation is only pursuing assets resulting from crime regardless of who the perpetrators are, because basically in rem confiscation is indeed carried out with the aim of returning state losses due to criminal acts of corruption committed by irresponsible elements. If viewed from several explanations regarding the return on assets that the author described above, the essence of returning these assets is that the state has been harmed by the actions of irresponsible parties by committing acts of corruption, then for these actions the state can punish the parties concerned and can ask for compensation or demanding the return of assets from parties who commit corruption.

If the state is going to carry out the return or confiscation of assets to parties that are detrimental to the state, then all processes must go through legal proceedings, both criminally and civilly which must be based on statutory regulations. The management of state property in Government Regulation Number 28 of 2020 concerning the Management of State/Regional Property is not merely administrative, but more advanced thinking in handling state assets properly, not the other way around the state suffers losses from the management of state property due to the management of state property. it is being used incorrectly. Here then raises no crimes against state property.

In fact, the management of state-owned goods causes many legal problems, including the recording, the goods are there but the records are not there, and the goods are not there but they are still being maintained. Not to mention the problem of state property whose whereabouts are unknown or

<sup>3</sup> Yunus Husein, *Pengembalian Aset Hasil Tindak Pidana (Asset Recovery) Dan Corporate Criminal Liability*, <https://acch.kpk.go.id/images/ragam/makalah/pdf/pidanakorporasi/Pengembalian-aset-CCL-KPK-yunus-husein>, diakses tanggal 23 Mei 2023

<sup>4</sup> Ulang Mangun Sosiawan, *Penanganan Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Dan Penerapan Konvensi Pbb Anti Korupsi Diindonesia*, *Jurnal Penelitian Hukum De Jure*, Volume 20, Nomor 4, Desember 2020, h.587-604

<sup>5</sup> Peraturan Pemerintah Nomor 6 Tahun 2006 Tentang *Pengelolaan Barang Milik Negara/Daerah*.

<sup>6</sup> Agustinus Herimulyanto, *Sita Berbasis Nilai Pengembalian Aset Tindak Pidana Korupsi*, Yogyakarta: GENTA Publishing, 2019, h. 33

<sup>7</sup> Purwaning M. Yanuar, *Pengembalian Aset Hasil Korupsi*, Bandung: Alumni, 2007, h.104

<sup>8</sup> Refki Saputra, *Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (NonConviction Based Asset Forfeiture) Dalam RUU Perampasan Aset Di Indonesia*, <https://acch.kpk.go.id/id/artikel/riset-publik/tantangan-penerapan-perampasan-aset-tanpa-tuntutanpidana-non-conviction-based-asset-forfeiture-dalam-ruu-perampasan-aset-di-indonesia> diakses tanggal 3 Juni 2023.

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state property which is heavily damaged but cannot be proposed for its elimination, there are also state property which are taken on purpose to be brought home and used as private property. This is of particular concern in this study in order to qualify criminal acts against state assets.<sup>9</sup>

Justice must have the first and most important position in terms of legal certainty and benefits. Historically, at first, according to Gustav Radburch, the goal of legal certainty was ranked at the top among the other goals. As it is known that in reality there is often a conflict between legal certainty and expediency, or between justice and legal certainty, between justice there is a conflict with expediency.<sup>10</sup>

Based on this background, some of the main issues that will be discussed are formulated, namely: 1. What is the procedure for returning assets resulting from corruption as an effort to save state finances? And 2. What are the problems faced in efforts to recover assets due to criminal acts of corruption?

### II. METHODOLOGY

Legal research is a scientific activity based on certain methods, systematics and thoughts which have the aim of studying several legal phenomena.<sup>11</sup> In this study, the type of research used by the author is normative research. This normative legal research is legal research that uses library materials as a source of research data and places law as a building system of norms, namely regarding principles, norms, rules of law and regulations, court decisions, legal theories and doctrines.<sup>12</sup> The approach used is the Statutory Approach by examining all laws and regulations that are related to the legal issues being discussed, and the Conceptual Approach is done by examining the point of view of practical knowledge so that it can determine its meaning and identify principles, views and existing doctrines that can then give rise to new ideas.<sup>13</sup>

### III. DISCUSSION

#### 1. Procedure for Returning Assets Proceeds of Corruption Crimes as an Effort to Save State Finances

Crimes against property in the form of rape or assault on people's legal interests in property belonging to other

people (not belonging to the accused), are contained in book II (two) of the Criminal Code (KUHP), namely: criminal acts of theft, extortion, embezzlement of goods, fraud, harming people who owe and are entitled, and destruction or damage to goods, and begunsting.<sup>14</sup>

The criminal act of corruption is a part of the special criminal law besides having certain specifications that are different from the general criminal law, such as deviations from procedural law and when viewed from the regulated material. Based on the provisions in Articles 2, 3 and 4 of the Corruption Act, there are 3 legal terms that require more explanation, namely related to the term corruption, state finances and the state economy.

As for what is meant by Corruption Crimes are:<sup>15</sup>

1. Everyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the country's economy.
2. Everyone who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of his position or position which can be detrimental to state finances or the country's economy (according to Articles 2 and 3 of Law No. 31 of 1999 ).

Therefore, the criminal act of corruption, directly or indirectly, is intended to suppress as little as possible the occurrence of leakages and irregularities in the country's finances and economy.

A criminal act or criminal act is an act in which the perpetrator may be subject to criminal law. This is in the opinion of Moeljatno who stated:<sup>16</sup>

“That a criminal act is an act that is prohibited by a rule of law. Which prohibition is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition. It can also be said that a criminal act is an act which is prohibited by a rule of law and is punishable by punishment, as long as it is kept in mind that the prohibition is shown to the act (i.e. a condition or

<sup>9</sup> Jacob Hattu, Juanrico A. S. Titahelu, Elias Zadrack Leasa, Anna Maria Salamor, *Kejahatan Terhadap Harta Kekayaan Negara*, Jurnal Belo, Volume 7 Nomor 2 Desember 2021, h 213-222

<sup>10</sup> Arief Sidharta, *Meuwissen Tentang Pengembanan Hukum, Ilmu Hukum, Teori Hukum dan Filsafat Hukum*, PT Refika Aditama, Bandung, 2007, h. 20-21

<sup>11</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, cet.III, Jakarta: Penerbit Universitas Indonesia UI-Press, 2007, h.56

<sup>12</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta: Pustaka Pelajar, 2015, h.34

<sup>13</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenadamedia Group, 2019, h.133.

<sup>14</sup> Adami, Chazawi, *Kejahatan Terhadap Harta Benda*. Malang: Bayu Media, 2007, h. 1

<sup>15</sup> Eddy Suhartono, *Perihal Ketentuan-Ketentuan Tindak Pidana Korupsi, Buletin Pengawasan No. 28 Dan 29 Th. 2001*. [http://www/google.com/korupsi](http://www.google.com/korupsi), diakses tgl 13 Mei 2023

<sup>16</sup> Moeljatno, *Asas-asas Hukum Pidana*, Bina Aksara, Jakarta. 2015, h 56

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event caused by a person's behavior), while the criminal threat is shown to the person who causes it. that incident."

Discussing the position of state assets is something that needs to be protected. The subject of State assets owned is in the form of State/regional property, namely tangible goods, intangible goods, movable goods, immovable goods originating from purchases or acquisitions at the expense of the APBN/D and other legitimate acquisitions.

Minister of finance as manager of state property and governor/regent/mayor as manager of regional property and minister/head of institution as user of state property and goods/region. Management of state assets (assets) is one of the representations of the function of the Ministry of Finance as the State General Treasurer (BUN). Based on Article 1 number 11 of Law Number 19 of 2003 concerning State-Owned Enterprises, restructuring is an effort made in the context of restructuring BUMNs which is one of the strategic steps to improve the company's internal conditions in order to improve performance and increase company value. Restructuring is an action or activity to change the company structure with the aim of improving and maximizing.<sup>17</sup>

State Owned Enterprises or BUMN have an important role in in order to realize the welfare of society. The state provides capital towards SOEs either in part or as a whole with the aim of to meet the needs of people's lives and get benefits.<sup>18</sup> BUMN as one of the subjects of the Corporation in its implementation it actually does a Corruption Crime that can be detrimental to society and cause financial loss to the state. However, in the process of law enforcement namely the imposition of accountability to BUMN for criminal acts.

The substance of the legal system for returning assets through criminal law channels is carried out through 4 (four) stages consisting of:<sup>19</sup>

1. Asset tracking, this stage is very important and decisive, tracking purposes identify assets, asset storage locations, evidence of asset ownership, and criminal relationships committed collection by means of action as well as evidence. For the purposes of asset tracking, a presumption is formulated that the perpetrators of criminal acts will use the funds that obtained illegally for personal and family interests
2. Freezing or confiscation of assets, the success of the investigation in tracing the assets obtained illegally allows the execution of subsequent asset

returns, stage namely freezing or confiscation of assets.

3. Confiscation of Assets, the definition of confiscation including surrender when necessary is the permanent revocation of wealth based on a court order or other competent authority.
4. Return and delivery of assets to the victim country. In order to be able to return assets, both the receiving country and the victim country need to take legislative actions and other actions according to the principles of the national law of each country so that the respective state agencies so that the authorized body can carry out the return of these assets.

The corruption he does, there are still various weaknesses or problems that can hinder the process of law enforcement itself, among others Another difference is the non-uniformity of the definition of state finances, the existence of disparities in judge's decisions for Corruption Crimes within the scope of SOEs, the inaccuracy of the concept of fines as one of the sanctions for Corruption Crimes committed by SOEs and so on as described in the discussion above.

### 2. Problems Faced in Asset Recovery Efforts Due to Corruption Crimes

Making a decision by a judge is a complex process full of dynamics and problems that drain the energy of a judge, both physically and psychologically, and therefore requires training, experience and wisdom. As stated by Alkostar<sup>20</sup>, that the central figure of law enforcement is in the judges who must have a moral obligation and professional responsibility to master knowledge, have skills in the form of legal technical capacity.

Based on knowledge and the adequacy of knowledge and technical skills of judges in deciding a case, will be able to provide appropriate and correct legal considerations. If a court decision does not sufficiently consider (onvoldoende gemotiveerd) matters that are legally relevant and legally appear at trial, there will be an irregularity which will cause

<sup>17</sup> Zaeni Asyhadie dan Budi Sutrisno, *Hukum Perusahaan dan Kepailitan*, Penerbit Erlangga, Jakarta, 2012, h.173

<sup>18</sup> Zul Afiatul Kharisma, Brian Bagus Wiyan Putra, Melasari Nurul Hidayah, *Model Pertanggungjawaban Atas Tindak Pidana Korupsi Oleh Bumn Sebagai Korporasi: Antara Tanggungjawab Korporasi Dan Pengurus*, Jurnal Hukum Lex Generalis. Vol.2. No.12 (Desember 2021)

<sup>19</sup> Wahyudi Hafiludi Sadeli, "Implikasi Perampasan Aset Terhadap Pihak Ketiga yang terkait dengan Tindak Pidana Korupsi." 2010

<sup>20</sup> Alkostar, A. *Kerugian Keuangan Negara Dalam Perspektif Tindak Pidana Korupsi*. Majalah Hukum Varia Peradilan, XXIII(275), (2008, Oktober).h. 33-41

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common sense to die.<sup>21</sup> Further thinking is very possible the existence of allegations of judicial corruption.<sup>22</sup>

The problem that arises in efforts to recover assets in corruption cases is regarding the judge's decision which seeks to impose additional penalties in the form of payment of replacement money, but always collides with the economic situation of the convict who is unable to pay the replacement money in full. As a result, the punishment of money as a replacement as an effort to recover assets is subsidized by imprisonment, so that the judge's decision cannot realize the hope of achieving economic justice.<sup>23</sup>

Normatively, the provisions for payment of criminal money as compensation are regulated in Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which regulates the existence of additional penalties as an attempt to recover state losses due to corruption which emphasizes the following:<sup>24</sup>

- (1) In addition to additional punishments as referred to in the Criminal Code, additional punishments are:
  - a. Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by the convict where the criminal act of corruption was committed, as well as the prices of the goods that replace these goods.
  - b. Payment of replacement money in the maximum amount with assets obtained from criminal acts of corruption.
  - c. Closure of all or part of the company for a maximum period of one year.
  - d. Revocation of all or part of certain rights or elimination of all or part of certain benefits that have been or can be given by the government to convicts.
- (2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b no later than one month after the court decision which has permanent legal force,

then the prosecutor's property may be confiscated and auctioned off to cover the replacement money.

- (3) In the event that the convict does not have sufficient assets to pay compensation as referred to in paragraph (1) letter b, he shall be sentenced to imprisonment for a term not exceeding the maximum threat of the principal sentence in accordance with the provisions of this law and the length of the sentence. This has been determined in a court decision.

This rule shows that the legal basis for efforts to recover state losses through payment of criminal compensation money already exists. The reality in judicial practice shows that the judge has passed a decision on payment of compensation money in accordance with the state financial losses incurred as a result of corruption, but when the prosecutor was about to execute him, the convict admitted that he did not have sufficient assets to pay compensation money, in the end the money crime replacement is replaced with a substitute imprisonment whose duration does not exceed the principal sentence imposed as stipulated in Article 18 paragraph (3) above. Court decisions like this are unlikely to be able to recover state losses due to criminal acts of corruption and will not create a deterrent effect.

The Law on the Eradication of Corruption Crimes was formed based on the principles that underlie and animate the birth of various norms in corruption laws. Principles are unwritten legal norms that live and develop in society and become the spirit of norms in corruption laws. One of the unwritten principles that animates corruption laws is the principle of "returning state losses".<sup>25</sup>

The reality of efforts to recover state losses is not in line with the theory of asset recovery which is based on the basic principle that "give the state what is due." The rights of the state contain obligations that are the rights of individual citizens, so that this principle is equivalent to the principle of "give the people what is their right." Barda Nawawi Arief explained that the sentencing policy strategy for crimes with a new dimension must pay attention to the nature of the problem. If the nature of the problem is closer to problems in the field of economic law, then the use of fines or the like is

<sup>21</sup> Syamsudin, April). *Keadilan Substantif Yang Terabaikan Dalam Sengketa Sita Jaminan*. *Jurnal Yudisial*, Vol 5, No (1) 2012, h. 41

<sup>22</sup> Rahman, A.. *Penguatan Lembaga Komisi Yudisial Sebagai Upaya Mencegah Dan Menanggulangi Judicial Corruption Lembaga Peradilan*. *Jurnal Simbur Cahaya*, XXIII(2), 2016,h.4518-4539

<sup>23</sup> Ade Mahmud, *Problematika Asset Recovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi*, *Kajian Putusan Nomor*

62/Pid.Sus/Tipikor/2013/PN.PBR, *Jurnal Yudisial* Vol. 11 No. 3 Desember 2018: 347 - 366

<sup>24</sup> Sosiawan, U. *Peran Komisi Pemberantasan Korupsi (KPK) Dalam Pencegahan dan Pemberantasan Korupsi*, *Jurnal Penelitian Hukum de Jure*, 19(4), 2019.517-537, <http://dx.doi.org/10.30641/dejure.2019.V19.517-538>

<sup>25</sup> Pardede, R. *Pengembalian Kerugian Keuangan Negara Ditinjau Dari Tujuan Pembentukan Undang-Undang Nomor 31 Tahun 1999 Tentang Tindak Pidana Korupsi*. Disertasi Pascasarjana Unisba. Bandung, (2015, Februari). h.235

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preferred. Determination of criminal sanctions should be done through a rational approach. If based on this rational concept, the policy of determining criminal sanctions is inseparable from setting goals to be achieved by criminal policy as a whole.<sup>26</sup>

Based on the opinion above, it is appropriate that the criminal sanctions applied to corruption convicts should be crimes that are oriented towards the state's economic losses, namely:

1. Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption;
2. Payment of replacement money; And
3. Closure of all or part of the company. This type of crime will bring more economic justice and economic benefits to countries that have suffered material losses.

However, Article 18 paragraph (3) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes provides space for convicts to escape the obligation to pay compensation.

This space is problematic in efforts to recover asset recovery because empirically there have been various judge's decisions that are subsidized by imprisonment, when in fact the convict has hidden money/assets that can be paid to compensate for state financial losses. In practice, illicit money originating from corruption is disguised in many ways to avoid action by the competent authorities, especially putting the money into the financial system so that the money can be taken out of the financial system as lawful money.<sup>27</sup>

The problem of asset recovery does not only stop with the substitution of money penalty for compensation, but there is also an imbalance between the compensation penalty that must be paid and the subsidiary penalty that is being served. The reason for the emergence of a discrepancy between the replacement money and the subsidiary crime is due to the absence of a reference to guide the judge in deciding the size of the subsidiary sentence imposed, so the judge's subjectivity is the only measure.

Along with the development of the various modus operandi of corruption crimes which are often difficult to uncover, it is necessary to criminalize certain optional provisions, for example the practice of illicit enrichment. States parties are required to submit to considering the form of the crime in the positive legal system of the state party. Having this provision means effectively acknowledging the

existence of a violation of "enriching illegally themselves", in which the defendant must provide proof of a significant increase in his assets.

This reality raises concerns about the occurrence of abuse of power due to the existence of such large discretionary power due to the guarantee given by law on the freedom of judges in handling criminal cases to be so open.<sup>28</sup> The process of proving illicit enrichment is generally done through reverse proof. That is, the obligation of the state (public prosecutor) is limited to only proving the existence of a strong allegation for illicit enrichment, while it is the defendant who has the burden of proving whether the wealth he has was obtained from legitimate/legal sources or not. The standard of proof is generally lower. Sanctions for illicit enrichment vary depending on the legal system in each country. It could be that the sanctions are only in the form of confiscating assets that are considered illegal, administrative sanctions or even corporal punishment and fines.

### IV. CONCLUSION

Based on the description that has been done above, it can be concluded that state property is all goods purchased or obtained at the expense of the state revenue and expenditure budget or regional revenue budget or originating from other legitimate acquisitions. The management of state property must be carried out based on laws and regulations as well as the principles of decency and justice. Qualifications of acts in crimes against state property: criminal acts of theft, extortion, threats, embezzlement, fraud, acts detrimental to state finances, acts detrimental to the state, destruction and damage to state property and collection of proceeds of crime against state property.

The problem of recovering assets in court decisions on corruption cases is faced with the reality of the convict's inability to pay criminal compensation money which is normatively possible in Article 18 paragraph (3) of Law Number 31 of 1999 concerning Eradication of Corruption Crimes. In fact, there are still hidden assets belonging to the convict that have not been confiscated by law enforcement. This reality is inconsistent with the theory of return on assets which is faithful to the principle of "give the state what is due." As a result, economic justice cannot be achieved because the convict chooses to undergo a subsidiary sentence and the state continues to lose money. In addition, there is a discrepancy between the penalty for compensation that must be paid and the subsidiary punishment that is served.

<sup>26</sup> Arief, B.N. *Pembaruan Penegakan Hukum Dengan Nilai-Nilai Moral Religius*. Makalah disampaikan pada Seminar Nasional Menembus Kebuntuan Legal Formal Menuju Pembangunan Hukum dengan Pendekatan Hukum Progresif. Semarang: FH Undip. (2009, Desember). h.13

<sup>27</sup> Setiadi, E. *Hukum Pidana Ekonomi*. Yogyakarta: Graha Ilmu, 2010, h.154

<sup>28</sup> Zulfa, A. *Paradigma Pergeseran Pemidanaan*. Bandung: CV Lubuk Agung. 2011.h.40

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