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Juridical Analysis Regarding the Implementation of Asset Auction for Replacement Payment Related to Rights of Corruption Case in Class I Sukamiskin Institution Associated with Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018

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Abstract

The implementation of asset auctions for payment of replacement money related to the rights of convicts in corruption cases is something that deserves attention, because it has a very important impact on law enforcement. Thus the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018 is considered a regulation in reviewing and analyzing compensation money related to the rights of convicts in Correctional Institutions. The purpose of this research is to find out the implementation of asset confiscation for payment of replacement money for the rights of convicts in corruption cases in Class I Penitentiary Sukamiskin Bandung, as well as to find out the obstacles that hinder the auctioning of confiscated assets for payment of replacement money and what solutions can be taken to overcome these obstacles. The specification of this research is descriptive analytical, while the approach method uses a normative juridical approach. Data collection techniques use secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. While the data analysis using qualitative. The results of this study can be concluded that: The rights of convicts in corruption cases according to Minister of Law and Human Rights Regulation No. 3 of 2018 have not been carried out because the payment of criminal compensation money with confiscation of assets is not followed by an auction according to Supreme Court Regulation Number 5 of 2018 2014. Obstacles - obstacles faced by law enforcers in carrying out asset auctions, apart from having to go through predetermined procedures also require a long time, this is due to various things such as the confiscated assets are joint assets, or are outside the jurisdiction of the country of Indonesia. The author suggests that it is necessary to revise the Correctional Law, by first taking steps in the form of studying and evaluating the policy on the rights of convicts in corruption cases. There is also a need for special rules regarding Asset Auctions for Corruption Crime cases, so that synchronization between rules and the implementation of prisoners' rights can be fulfilled, besides that good cooperation between convicts and law enforcement is needed regarding the disclosure of confiscated assets in order to facilitate the return of losses to

the state. so that the rights of citizens assisted by correctional cases of corruption can obtain their rights in accordance with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018

Keywords
Asset Auction, Compensation Money and Convict Rights

Corrections are currently in the spotlight of the public, various news about correctional facilities are found almost every day, especially those concerning problems with special criminal acts of corruption.

According to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption Article 2 paragraph (1) which has been amended by Law Number 20 of 2001 that what is included in criminal acts of corruption is "Any person who is categorized as against the law, commits acts of enriching himself , benefiting oneself or another person or a corporation, abusing authority or opportunity or means available to him because of his position or position which can be detrimental to state finances or the country's economy".

Jimly Asshiddiqie said that the dangers of corruption have outweighed the impact and violations of human rights (HAM), so that criminal acts of corruption can be equated with other types of gross human rights violations.*(gross violation of human right)*.[2]

Corrupt behavior that is so severe, tends to become entrenched and becomes the epidermis into all aspects of people's lives, so that corruption is considered one of the main enemies in this country.[3]

In Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, it also states the following:

"... considering that corruption in Indonesia occurs systematically and is widespread so that it not only causes losses to the state, but also violates the social and economic rights of the community at large, the eradication of corruption needs to be carried out in an extraordinary way".[4]

The existence of state losses that have an impact on the nation's economy, causes us to think about how to restore state losses that were corrupted by corruptors.

With the promulgation of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, this is one of the steps taken by the government in fighting corruption crimes, and also as a way to return state funds, in the form of additional punishments given to corruption convicts, one of which is the confiscation of assets suspected of being the proceeds of their corruption.

Article 10 of the Criminal Code reads as follows:

"Criminal consists of:

a. Main Crime:
1) Death Penalty;
2) Imprisonment;
3) Confinement;
4) the shop

b. Additional Penalties:
1) Revocation of certain rights;
2) Confiscation of certain goods;
3) Announcement of judge's decision.

In the Corruption Law, Corruption Law No. 31 of 1999 which was renewed by Law no. 20 of 2001 Article 18 (1b) that for criminal acts of corruption it is added to the existence of a substitute money crime which is a legal breakthrough.

Asset confiscation is an anticipatory step that aims

[2] Didin S. Damanhuri, *Foreword Book Publishing: Corruption, Bureaucratic Reform and Indonesia's Economic Future*, Jakarta: FEUI Publishing Institute, 2006, p. xi.
[3] Sjahruddin Rasul, "Implementation of Good Governance in Indonesia in Efforts to Prevent Corruption Crimes, *Journal of Mimbar Hukum*, No. 3 Vols. 21 of 2009, p. 543.
[4] Elucidation of Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, I GENERAL paragraph 2.

to save or prevent the flight of assets. It is these assets that will be decided by the court, whether to be taken as an effort to recover state financial losses or as an additional punishment in the form of seizing the proceeds of crime.

The perpetrators of criminal acts of corruption are currently under the scrutiny of society, because most of them are carried out by state apparatus, who are supposed to be the protectors of society, but in reality the community feels betrayed by the actions of corrupt state apparatus, on the one hand they are lawbreakers, but on the other hand they are ordinary people who have rights that they can receive as inmates of correctional facilities.

This is in accordance with Law Number 12 of 1995 concerning Corrections, Article 14 paragraph (1) letters (i), (j), (k), and (l) which states that convicts have the following rights:

1. Get a reduced sentence (remission);
2. Getting the opportunity to assimilate including leave to visit family (CMK);
3. Obtain conditional release (PB);

Getting leave before independence (CMB).

Then Law Number 12 of 1995 concerning Corrections Article 14 paragraph (2) also states the following: "Provisions regarding the conditions and procedures for implementing the rights of convicts as referred to in paragraph (1) are further regulated by Government Regulations".

It is this confiscation of assets that often becomes an obstacle for convicts to obtain their rights as stipulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 3 of 2018 Article 88 paragraph 2 which states the following: "In addition to attaching the documents referred to in Article 87 paragraph (1), convicts convicted of committing a crime of corruption must also attach evidence of having paid in full fines and replacement money."

Here it is clear that the confiscated assets must be immediately calculated with the amount of replacement money, so that convicts who commit acts of corruption have legal certainty about the status of the replacement money. Is the result of the assets sufficient, not enough?,or even exceed the amount of replacement money that must be paid.

However, in reality, the continuation of the assets confiscated from convicts is unknown, what is obtained as a handle is only a piece of paper indicating evidence of confiscation of assets, while the estimated total amount of these assets has not been obtained by the convict until the convict in question should have been able to obtain his rights as a convict. to carry out assimilation in accordance with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018.

This triggers problems in Correctional Institutions, where convicts of special criminal acts of corruption demand their rights on the grounds that their assets have been confiscated through evidence of asset confiscation as payment for replacement money, while for the calculation of their assets, these convicts do not have written evidence that can be used as a basis that the replacement money that must be paid, can be declared in full, less or more, from the auctioneer or the organizer of the execution of confiscation (attorney).

Based on the description of the background of the problem, the author is interested in conducting research with the title "Juridical Analysis Regarding the Implementation of Asset Auctions for Payment of Compensation Money Related to the Rights of Corruption Convicts in Correctional Institutions Related to Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018. ”

Based on the description, the researcher will outline some of the issues that will be discussed, including: (1) How is the implementation of asset confiscation for payment of compensation money for the rights of corruption case convicts at Class I Penitentiary Sukamiskin Bandung Linked to the Regulation of the Minister of Law and Human

Rights of the Republic Indonesia Number 3 of 2018?; and (2) What obstacles hinder the auctioning of confiscated assets for payment of replacement money, and what solutions can be made to overcome them?

The aims of the authors in conducting this research are as follows: (1) To find out and understand the implementation of asset confiscation for payment of compensation for the rights of convicts of corruption cases at Class I Penitentiary Sukamiskin Bandung in relation to Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 Year 2018; and (2) To know and understand the obstacles that impede the auctioning of confiscated assets for payment of replacement money, and the solutions that can be made to overcome them.

Theoretical Basis

Corruption Crimes that Harm State Finances

The Corruption Law does not only regulate the formulation of criminal acts of corruption, but also regulates the types of "derivative" criminal acts, namely certain acts or actions that are not types of criminal acts of corruption, but can be charged under the Corruption Law. These actions can be subject to articles in the Corruption Law because they are related to the handling of criminal acts of corruption. Here's the classification:

a. Obstructing the process of examining corruption cases (Article 21).
b. Failure to provide information and providing incorrect information (Article 22 in conjunction with Article 28).
c. Banks that do not provide information about the suspect's account (Article 22 in conjunction with Article 29).
d. Witnesses or experts who do not testify or give false testimony (Article 22 jo. Article 35).

It is. The person holding the secret of office does not provide information or give false information (Article 22 in conjunction with Article 36).

f. The witness who disclosed the identity of the complainant (Article 22 in conjunction with Article 31).

Of the six groups of offenses above, only one group which contains elements detrimental to the state is regulated in two articles, namely Article 2 paragraph (1) and Article 3, while the other five groups consisting of 28 articles relate to deviant behavior by state administrators or employees. state and private parties.

Even though there are only two articles, these articles are often the favorite of law enforcement officials to prosecute corruptors who as a whole are suspected of causing losses to the state.[5]

Human Rights and the Rights and Obligations of Citizens in Indonesian Positive Law

Human rights as well as the rights and obligations of citizens as one of the important elements of democracy in addition to the rule of law, have been regulated in the 1945 Constitution.

Definition of Human Rights (HAM)

The term Human Rights was first introduced by Roosevelt when the Rights and Duties of Citizens *Universal Declaration of Human Rights* formulated in 1948, as a substitute for the term*the Rights of Man*. In the Indonesian constitution (UUD 1945) the term rights of citizens are used by*the Founding Father* intended to fulfill human rights. However, these two terms (Human Rights (HAM) and Citizen Rights and Obligations) are used officially by the MPR as stated in the Second Amendment of the 1945 Constitution (Chapters X and Chapter

[5] This can be seen from the 735 corruption cases examined and decided at the Supreme Court Cassation Level, whose data were collected by LeIP in 2013. Of the 735 cases, 503 cases or 68.43% used Article 3 of the Corruption Law to prosecute perpetrators of corruption. In addition to Article 3 of the Corruption Law, the Public Prosecutor also often uses Article 2 of the Corruption Law to ensnare perpetrators of corruption in around 147 cases or 20%. As for acts of bribery, there are only 26 cases that use Article 11 of the Corruption Law.

X A) as well as in the MPR RI Decree Number XVII/1998.[6]

Unlike the case with liberal and leftist conceptions, the conception of human rights according to the Indonesian version is human rights according to the structure of Indonesian society. It can also be said that the conception of human rights in Indonesia focuses on a balance between human rights and basic obligations. The difference in conception lies in the idea and the application. However, substantially, human rights are a universal concept in which there are human aspects as a basis which cannot be violated by anyone and under any circumstances.[7]

Human rights are usually divided into two types, namely: individual human rights and social human rights. Individual rights as fundamental rights attached to individual human persons are the rights to life and development of life. For example: the right to freedom of conscience, freedom to embrace religion, freedom in private life, the right to a good name, the right to marry and the right to form a family. While social rights are rights inherent in the human person as a social being which includes economic, social and cultural rights. For example the right to meet the necessities of life (food, clothing), health, work, education. In their position as social beings, individuals have an obligation to build a life together so that the intended rights can be realized. [8]

The conception of human rights that is recognized by our country as well as other countries according to law can be divided into two categories, namely:[9]

a. Fundamental rights that only citizens have.

b. Fundamental rights that are basically owned by all people who live in a country regardless of their nationality.

Regulation of Human Rights

According to Ahadian, the very limited regulation of human rights in the 1945 Constitution was due to the fact that the Draft Constitution was discussed in an atmosphere of wanting independence from Dutch colonialism, which itself did not want to contain matters originating from western understandings, including human rights.[10] This is reflected in the pros and cons among the founders of the state regarding the urgency of including human rights in the Constitution. However, in the end a consensus was reached to include human rights in the constitution with the consideration of limiting the powers of the ruler.

Rights of Prisoners According to Law Number 12 of 1995 Concerning Corrections

Convicts are also citizens of this country who deserve their rights and obligations, the rights and obligations of convicts are regulated in Law Number 12 of 1995 concerning Corrections, the rights of convicts include:

1) Performing worship in accordance with his religion or belief;
2) Receive treatment, both spiritual and physical care;
3) Getting education and teaching;
4) Get proper health services and food;
5) Submit a complaint;
6) Get reading material that follows other mass media broadcasts that are not prohibited;
7) Receive wages or premiums for the work performed;
8) Receive visits from family, legal counsel or other specified persons;
9) Obtain a reduction in criminal past (remission);
10) Get the opportunity to assimilate including

[6] Eleanor Roosevelt, "*On the Adoption of the Universal Declaration of Human Rights*" 2021, (https://www.americanrhetoric.com/speeches/eleanoorrooseveltdeclarationhumanrights.htm) diakses pada 18 Juli 2022, pukul 14.00 WIB.

[7] H. Mansyur Effendi, *Human Rights in National and International Law*, Jakarta: Ghalia Indonesia 1994, p.15.

[8] Theo Huijbers, *Philosophy of Law*, Yogyakarta: Kanisius, 1995, p. 103.

[9] A. Ubaedillah and Abdul Rozak, *Civic Education Pancasila Citizenship, Democracy, Human Rights, and Civil Society*, Jakarta: Kencana, 2012, p.152.

[10] Aswanto, "*Perspective on Human Rights in the 1945 Constitution*", Paper of the National Seminar on Human Rights, UNHAS, Makassar, 1998, p. 5.

leave to visit family;
11) Obtaining parole;
12) Getting leave before independence;
13) Obtain other rights in accordance with the laws and regulations.

The obligations of convicts according to Law Number 12 of 1995 concerning Corrections include:

1) Obedient to carry out worship according to the religion and/or belief he adheres to and maintain religious harmony;
2) Participate in all planned activities;
3) Obey, obey, and respect the officers;
4) Wearing the specified uniform;
5) Maintain tidiness and dress according to the norms of decency;
6) Maintain self-cleanliness and the residential environment and participate in activities carried out in the context of cleanliness of the residential environment;
7) Following the room apple held by Correctional Officers.

Research Methods

The approach method used in this research is normative juridical, in which legal research is carried out by examining literature or secondary data as the basis for research by conducting a search of regulations and literature related to the problem under study.[11]

Discussion

Implementation of Confiscation of Assets for Payment of Compensation Money for the Rights of Corruption Convicts at Class I Penitentiary Sukamiskin Bandung Related to Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018

The problem of payment of compensation due to criminal acts of corruption is a problem that has not escaped attention in efforts to eradicate corruption in the current democratic era. The strong encouragement of the public to free themselves from corruption has prompted the government to form various regulations to restore state financial losses due to corruption. One of them is formulating a norm requiring convicts to pay replacement money in Law 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Corruption.

In Article 18 paragraph (1) letter b of the Corruption Eradication Law it is stated that "Payment of compensation in the maximum amount of property obtained from criminal acts of corruption". However, Article 18 paragraph (3) includes the formulation of compromising norms as follows:

"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 duration not exceeding the maximum penalty of the principal sentence in accordance with the provisions of this law and therefore the sentence This has been determined in a court decision."

This provision is in fact used by convicts in corruption cases which harm state finances in large numbers, they hide assets resulting from corruption in the bank and non-bank financial system which are difficult to track down by PPATK so that it appears as if they are not enjoying the proceeds of corruption to avoid the obligation to pay replacement money. and replace it with imprisonment. As a result, even though investigators and public prosecutors are able to prove the element of loss to the state in court, in the end the legalistic-positivistic judge will give the convict the opportunity to choose to pay compensation or replace it with imprisonment.

The implementation of payment of replacement money to recover state losses due to corruption is experiencing quite complicated dynamics,

[11] Soerjono Soekanto & Sri Mamudji, *Normative Legal Research*, Jakarta: Rajawali, 1986, pp.14-15.

because the provisions in Article 18 paragraph (3) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, provide tolerance that if the convict does not have sufficient property to pay replacement money, then he will be punished (replaced) with a prison sentence of a duration not exceeding the maximum threat of the principal sentence, and the sentence has been determined in a court decision.

The substitute criminal rules for paying state compensation money as stated in Article 18 paragraph (3) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is the root of the problem which is an obstacle for the executing prosecutor when executing payment of replacement money to cover state losses imposed on convicts.

The problem of replacement money does not stop there, after the convict chooses to serve his sentence*subsidiary*the alternative imprisonment sentence as a substitute for the replacement money sentence mentioned in the judge's decision is not balanced because in practice the value of replacement money which amounts to hundreds to billions of rupiah is subsidized by relatively short prison sentences.

This data shows that in practice the recovery of state losses*(asset recovery)* did not work as expected by the wider community, the law on the eradication of criminal acts of corruption requires the return of state losses, not only punishing the perpetrators. The perpetrator prefers not to pay off the replacement money or prefers to replace it with a replacement prison sentence (*subsidiary*). The decision above also shows a pattern of disproportionate in determining the replacement money.

Recovery of state losses must be carried out based on a rational policy taking into account the economic conditions of the convict which makes it impossible to pay off criminal compensation money, so that it is possible for the judge to replace it with prison. However, the policy of determining alternative imprisonment sanctions must be truly balanced and proportional to the value of the replacement money charged to the convict on the basis of the calculation that "the greater the value of state losses due to corruption, the longer the replacement sentence must be served".

The need for law in eradicating corruption today is law enforcement that is oriented towards returning state losses stolen and enjoyed by corruptors. Corruption that occurs in Indonesia has no motivation to survive*(corruption by need),* but driven by a high lifestyle*(corruption by life style).* Therefore the application of criminal sanctions needs to shift from the paradigm*follow the person* the*follow the money and asset.*

Optimization of criminal compensation money requires a progressive legal approach to pursue state losses. The problem is how to take steps to optimize the money penalty through progressive law. The existence of progressive law provides a challenge for law enforcers to see law as something that is continuously in process because progressive law does not see law as something absolute and final.

Referring to the previous description, it can be seen that the main reason for the dynamics of money laundering crimes is in fact caused by the formulation policy factors, in addition to the commitment of law enforcers. In order to optimize the replacement money penalty, it is necessary to change or improve the policy in dealing with corruption cases, balanced by means of progressive law that is not confined by legal positivism because the concept of progressive law always sees law as not an absolute and final institution.

The legal breakthrough for optimizing money penalty through progressive law enforcement is not an emotional legal breakthrough but a rational legal breakthrough based on theoretical arguments. The theoretical basis for optimizing

money substitute crimes is to use a progressive legal lens that is faithful to the big principle "the law is for humans, not the other way around" as an entry point and point of view.*(point of view)*. Progressive law sees that law is always in the process of continuing to be*(law as proces, law in the making)* and do not look at the law from the point of view of the law itself, but seen from the social goals to be achieved.

Optimizing the return of state losses with replacement money through progressive law enforcement emphasizing the human aspect (law enforcement). In order to expedite the flow of state refunds, law enforcers need to prosecute progressively by carrying out the confiscation provisions as stipulated in Article 18 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which previously could be implemented if the replacement money was not paid. can be implemented from the investigation stage. This action is a legal breakthrough*(rule breaking)* to anticipate that the assets that are the object of replacement money are not diverted and to facilitate tracking, thus making it easier for the prosecutor to apply for collateral confiscation. The issue of confiscation of collateral was adopted in the cassation decision No 2190/K/Pid.Sus/2010. In this decision, the panel of judges determined that a house that was not related to the case was used as collateral for payment of replacement money. According to the author, this consideration was taken by the panel of judges with reference to Article 1131 of the Civil Code which stipulates that: "All movable and immovable property belonging to the debtor, both existing and new, will serve as collateral for individual engagements. the debtor".

In this case the convict is analogous to the debtor and the replacement money is analogous to the achievements in the contract that must be fulfilled by the convict, while the state (victim) is analogous to a concurrent creditor. This has the consequence that the convict's assets, both existing and future, are used as collateral for payment of replacement money. This decision is a breakthrough to make the payment of replacement money effective while at the same time confirming that the Supreme Court recognizes the concept of confiscation of collateral in corruption cases as an instrument to ensure the execution of criminal compensation money. This practice shows that the Supreme Court through the decision above accepted the confiscation of collateral as a guarantee of repayment of replacement money without the need to wait for the replacement money to be paid off, but to avoid resistance from third parties, the security confiscation needs to be strengthened as early as possible at the policy level (UU Tipikor), namely from the investigation stage .

With a legal breakthrough strategy*(rule breaking)* in the form of confiscation since the investigation stage, regardless of whether or not these assets have anything to do with criminal acts of corruption, it is hoped that the dynamics of replacement money can be overcome through progressive law enforcement channels. Because it is impossible for the judge to impose a sentence without*subsidiary*to perpetrators who really do not have enough assets to pay for it. The concept of confiscation of guarantees in criminal law allows it to be implemented because several decisions at the Supreme Court level have applied this pattern.

The policy of confiscation of guarantees does not intend to impoverish the perpetrators of corruption because crimes cannot contain elements*over penalization* but solely for the purpose of guaranteeing that the offender pays the penalty for the replacement money imposed in a court decision. The concept of confiscation is useful enough to minimize the dynamics of paying replacement money that is not paid or only partially paid.

Human rights are basic human rights that must be given, even if someone is in a prison situation. In*A*

Human Rights Approach to Prison Management terbitan International Center for Prison Studies explained that "Convicts are Human too". Because convicts are human too, they also have human rights, no matter how serious the crimes they have committed. The basic rights of prisoners that can be deprived are physical freedom and restrictions on the right to gather with family and the right to participate in government. In order to protect the human rights of convicts, including detainees, the UN in 1955 has formalized a number of rights and minimum treatment that must be given to convicts/detainees while in prison/detention institutions, in the form of *Standard Minimum Rules for the Treatment of Prisoners* (SMR). The provisions contained in the SMR are the minimum provisions that "morally" must be obeyed in treating convicts/detainees.

There are 10 principles formulated in the correctional system through the Lembang Conference, namely:[12]

(1) People who are lost are also supported.
(2) Criminal imposition is not an act of revenge from the state.
(3) Repentance cannot be achieved by torture, but by guidance.
(4) The state does not have the right to make a person worse or worse than before he entered the board.
(5) During the loss of freedom of movement, convicts must be introduced to and may not be alienated from society.
(6) The work given to convicts may not be of a fill-in-time nature, or only be intended for the benefit of the state from time to time.
(7) Guidance and education given to convicts must be based on Pancasila.
(8) Prisoners are humans and must be treated as humans, even though they have strayed.
(9) Convicts are only sentenced to loss of independence.
(10) It is necessary to establish new correctional institutions in accordance with the needs of program implementation, and move institutions located in the middle of the city to places that are in accordance with the needs of the correctional process.

The ten correctional principles regulate the "position" of correctional as the treatment of convicts who have been determined by a judge's decision. Therefore, Article 1 point 5 of the Correctional Law refers to convicts as prisoners of correctional facilities. An unusual term and not widely known by the public. The naming of convicts to convicts certainly contains a certain meaning, that lawbreakers are no longer referred to as criminals, but as people who are lost. So, stray people are fostered in correctional institutions so that they can get out and be free from their misery. The treatment of convicts in the form of coaching is the main task of the correctional system. This can be seen from the provisions of Article 2 and Article 3 of the Correctional Law. Article 2 of the Correctional Law states that: "The Correctional System is organized in the context of forming Correctional Families to become fully human beings, aware of mistakes, improve themselves, and not repeat criminal acts so that they can be accepted again by society, can play an active role in development, and can live naturally as good and responsible citizens. Whereas Article 3 of the Correctional Law states that: "The penitentiary system functions to prepare inmates of correctional institutions so that they can integrate in a healthy manner with society, so that they can play their role again as free and responsible members of society." In a broader context, the penal system is part of efforts to protect human rights. As part of the Criminal Justice System, the Correctional System is an agency that fulfills and protects the human rights of suspects, defendants and convicts.

[12] Directorate General of Corrections Ministry of Justice and Human Rights R.I, "*Ten Principles of Corrections*", Jakarta: Ministry of Justice, 2004. p. 82-83

The focus of this formulation is that the Correctional System is a system of treatment for prisoners and convicts framed by human rights.

The main function of the Correctional System is to protect human rights, that law enforcement by Corrections is an effort to humanize humans. Penitentiary is an institution that fulfills and protects the human rights of suspects (pre-adjudication stage), defendants (adjudication stage) and convicts (post-adjudication stage). At the post-adjudication stage, the Correctional Technical Implementation Unit which functions in the protection of human rights is the Penitentiary. The function of correctional institutions, which are philosophically different from prisons, is an effort to prevent inhuman punishment processes from occurring. One of these efforts is to prevent prisonization or the learning process of crime and to minimize suffering in imprisonment. The existence of prisoners' rights protected by the Correctional Law is an effort to minimize the possibility of prisonization and stigmatization of society.

Based on the explanation above, it can be stated that the protection of human rights is the main indicator of the success of the duties and functions of correctional institutions, especially the rights of convicts and detainees. The commitment to changing the condition of the convicts is explicitly stated in Article 5 of the Correctional Law, that "The correctional development system is carried out based on the principle; protection, equality of treatment and service, education, guidance, respect for human dignity and worth, loss of independence is the only suffering, and the guarantee of the right to keep in touch with family and certain people. In addition, Article 14 of the Correctional Law stipulates that "Every convict has the following rights:

a. Performing worship in accordance with his religion or belief;
b. Receiving treatment, both spiritual and physical care;
c. Getting education and teaching;
d. Get proper health and food services;
e. Submit a complaint;
f. Get reading material and follow other mass media broadcasts that are not prohibited;
g. Receive wages or premiums for the work performed;
h. Receive visits from family, legal counsel, or other specified persons;
i. Obtain a reduction in criminal past (remission);
j. Get the opportunity to assimilate including leave to visit family;
k. Get parole;
l. Getting leave before independence; and
m. Obtain other rights in accordance with the applicable laws and regulations."

Of the rights regulated in Article 14 of the Correctional Law, there are rights that are automatically obtained, namely the rights referred to in Article 14 paragraph (1) letters a through h. However, there are rights that can only be obtained by convicts if they meet certain requirements. The Penitentiary Manual determines that there are at least 5 (five) convict rights that are granted if the convict meets certain requirements, namely:

1. Having limited contact with outside parties;
2. Obtaining remission, namely obtaining a reduced sentence;
3. Gaining assimilation;
4. Obtaining leave; and
5. Obtain parole.

Based on the explanation above, it can be seen that the right to remission is not a right that is automatically obtained by convicts, but a right that is accompanied by conditions. The right to remission is only received by the convict, after the person concerned fulfills the specified conditions. From a formal juridical point of view, a legal umbrella relating to remissions has been made in the Correctional Law; Government Regulation (PP) Number 32 of 1999 concerning Requirements and Procedures for the

Implementation of the Rights of Correctional Families (PP Number 32 of 1999) as amended by PP Number 99 of 2012; Presidential Decree Number 174 of 1999 concerning Remission (Presidential Decree Number 174 of 1999); Decree of the Minister of Law and Legislation (now the Minister of Law and Human Rights) of the Republic of Indonesia Number. M.09.HN.02.01 of 1999 concerning Implementation of Decree of the President of the Republic of Indonesia Number 174 of 1999 concerning Remissions, Regulation of the Minister of Law and Human Rights Number 21 of 2013 concerning Terms and Procedures for Granting Remissions, Assimilation, Leave to Visit Family, Parole, Leave Before Free, and Conditional Leave (Regulation of the Minister of Law and Human Rights Number 21 of 2013). From the various regulations above, the definition of remission is expressly stated in Government Regulation Number 32 of 1999, which is a reduction in the period of serving a sentence given to convicts and criminals who fulfill the conditions specified in the laws and regulations (Article 1 point 6). Then in the Decree of the Minister of Law and Legislation of the Republic of Indonesia Number. M.09.HN.02.01 of 1999 stated that remission is a reduction in the sentence given to convicts and criminal children who have behaved well while serving their sentence (Article 1 point 1). Based on the Regulation of the Minister of Law and Human Rights Number 21 of 2013, remission is a reduction in serving a sentence given to Prisoners and Criminal Children who meet the requirements specified in the provisions of the law (Article 1 point 1). In Presidential Decree No. 174 of 1999 there is no definition of remission, it is only stated that every convict and criminal who is serving a temporary sentence and imprisonment can be given remission if the person concerned has behaved well while serving his sentence (Article 1 paragraph (1). As for the Correctional Law , it is said that convicts are entitled to a reduction in their sentence (remission), without qualifying convicts based on the type of crime for which they were sentenced.

Based on the above understanding, it can be explained that remission is a conditional right (*conditional*). So, remission is not a human right*par excellence*, which can be immediately claimed by any inmates. However, to obtain remission, certain conditions must be met. In principle, remission is only given to convicts who have good behavior. This is proven by not undergoing disciplinary punishment within the last 6 (six) months, starting from the date of granting remission; and has participated in a coaching program organized by a penitentiary with a good predicate.

Meanwhile, the juridical consequences of granting remission to convicts and criminal children who have served 2/3 (two-thirds) of their sentence, at least have served their sentence for 9 (nine) months. Granting remission means reducing the criminal term of the convict or criminal child concerned. This situation will result in a shorter parole period. Another legal consequence is remission which also regulates the provisions regarding commutation or change of life imprisonment to temporary imprisonment of 15 years, provided that, among other things, the person concerned has served a sentence of at least 5 (five) consecutive years and has good behavior (Article 9 Presidential Decree R.I Number 174 of 1999).

Every convict has the right to get a reduced sentence (remission) if he has fulfilled the existing conditions set out in Article 34 paragraph (2) PP Number 99 of 2012, namely good behavior and has served more than 6 (six) criminal terms. Especially for convicts of corruption cases, they must also comply with Article 34A paragraph (1) letters a and b of Government Regulation Number 99 of 2012, which stipulates:

(a) Willing to cooperate with law enforcers to help dismantle criminal cases they have committed;

(b) Have paid in full fines and compensation money in accordance with the court's decision for convicts who were convicted of committing corruption.

Therefore, in order for law enforcement relating to the granting of remissions to be effectively applied to convicts who commit acts of corruption, the aspects of justice, legal certainty, benefits must be considered and their application needs to be carried out consistently and consistently.

Obstacles Obstacles in Auctioning Confiscated Assets for Payment of Replacement Money, and Possible Solutions to Overcome them

The handling of corruption cases cannot be carried out normally. Need action and special treatment in order to run optimally. The trend of criminal acts of corruption is increasing from year to year, forcing law enforcers to work extra hard.

In providing solutions to the obstacles faced by the Bandung High Court in recovering state financial losses due to criminal acts of corruption, the authors discuss them in one unified section. Because if you pay attention to the existing constraints, it can be seen that these constraints are interrelated and cannot be separated from one another.

In the first statement it was stated that "Actually this (the need for additional Prosecutors) cannot be directly said to be an obstacle, but it is more correct to say that efforts to save state finances through replacement money will be maximized if the number of existing Prosecutors is increased." The author agrees that it would be inappropriate to include this as an obstacle, but the author still includes it because this "problem" has also affected efforts to recover state financial losses at the Bandung High Court.

In the next point it is stated that "Prosecutors also lack the motivation to continuously trace and search for the assets of convicted corruption convicts. The background of corruption convicts, the majority of whom are educated, makes the assets/assets of corruption convicts very difficult to find except with a lot of time and effort. So that if it is felt that all of the convict's assets/assets have been found, even though all of the replacement money has not been paid, the prosecutor usually stops to retrace."

There is no doubt that the first and second points are related to one another. At least the Prosecutor who is in charge of handling cases is "forced" to be resolved immediately in order to work on other cases. Increasing the number of Prosecutors is one of the classic solutions but also the short term solution that makes the most sense to run, but it also does not guarantee that the settlement of cases will be better.

In addition, "The prosecutor at the Bandung High Court also has a high sense of compassion, so that when he sees the state of the convict's family who only has a few assets left to support their daily life, makes further confiscation of the convict's assets / heirs of the convict to cover the lack of payment of replacement money often not done."

This occurs when the payment of replacement money has not been paid by the convict or the confiscation carried out after that has not been able to pay off all the replacement money. When this happened, the prosecutor again collected bills from the convict or the convict's family in order to pay off the replacement money. In several cases, the convict still has some of the assets used by the convict's family, but with a low selling value. This causes the Prosecutor to hesitate to carry out further confiscation.

Cases like this, the author feels, are a dilemma for everyone who faces them. If the confiscation is carried out again by the family of the convict who loses his assets which can be a source of his livelihood (a motorcycle for motorcycle taxis, for example), then if the confiscation is carried out, he cannot pay off the compensation that has been dropped. However, if a confiscation is carried out, it does not violate the existing rules, because it is said that the convict's existing assets can still be confiscated to pay off the replacement money. In addition, the confiscation of the convict's

assets/assets until they run out and makes the convict's family "miserable" will also be a clear example in the prosecution of corruption cases.

For the case above, the author provides a solution in which the Prosecutor should carry out confiscation of the convict's assets/assets which are not used as life support for the convict's family, and have a value that can be used to pay replacement money.

The next point was conveyed that in essence "In recovering state financial losses, the most important effort to be made is to confiscate and auction the assets of corruption suspects which are then used to pay off compensation payments. However, in its implementation, this effort is not specifically regulated in the Corruption Law, so that in practice the Prosecutor's Office adheres to the Criminal Procedure Code, which from the outset was intended to deal with general crimes."

Obstacles that occur related to replacement money in the corruption case at Class I Penitentiary Sukamiskin Bandung include convicts of special criminal acts of corruption demanding their rights on the grounds that their assets have been confiscated through evidence of asset confiscation as payment for replacement money, while for the calculation of their assets, the convict is not has written evidence that can be used as the basis that the replacement money that must be paid, can be declared in full, less or more, from the auctioneer or the organizer of the execution of confiscation (attorney). However, the Class I Penitentiary Sukamiskin Bandung also carries out correspondence activities with other law enforcement agencies to find a definite point of light in a case so that the rights of convicts can be properly implemented. Therefore, integration between prisons and law enforcement agencies is needed in order to create good integration.

The next obstacle relates to the suspect/convict, which essentially states "The convict is also sometimes uncooperative, does not want to pay compensation, plus when a suspect/convict dies."

If one looks at it in more detail, according to the author, all the existing obstacles have the same goal, namely improving the process of recovering state financial losses through confiscation.

First, additional punishment in the form of payment of replacement money due to criminal acts of corruption is a new thing, where the regulatory system is still small. Arrangements related to this matter are only regulated in several articles in the Corruption Law, especially those regulated in Article 18 of the Corruption Law.

In Article 10 of the Criminal Code, it is explained that "Criminal punishment consists of principal punishment and additional punishment where the principal punishment consists of: death penalty, imprisonment, confinement, fines and imprisonment. Meanwhile, additional punishment consists of revocation of certain rights, confiscation of certain items, and announcement of judge's decision.

The additional penalty for payment of replacement money is a special additional crime that is only found in acts of corruption. This is stated in the formulation of the article which says that "Payment of compensation in the maximum amount equal to the property obtained from criminal acts of corruption."

The words "...obtained from criminal acts of corruption", The formulation above states the specificity of the use of this article, in which only defendants who actually commit acts of corruption can be charged with additional criminal compensation money.

But this article is not free from the problem in it, the phrase "...then his property can be confiscated by the Prosecutor..." allows for alternative choices, both for the convict and for the attorney who is tasked with collecting replacement money. Especially if it is associated with a limited payment period of one month.

The two words...can be confiscated..." in Article 18 paragraph (2) of the Corruption Law is also not the same as the meaning of "confiscation" as referred to in Article 1 number 16 of the Criminal

Procedure Code. If you pay close attention, it's confiscation is always within the framework of investigation, investigation and prosecution, where this is within the criminal procedural law regime. Unlike the case with "can be confiscated" where a confiscation is carried out in the framework of implementing a decision which causes it to be included in the legal regime for implementing a decision.

So to resolve this, what must be done is first, to emphasize the intent of Article 18 paragraph (2) of the Corruption Law relating to the phrase "can be confiscated". Emphasizing what is meant by the author is to mean that the phrase does not provide a choice of either the convict or the prosecutor in the process of confiscating the convict's assets/assets. This can be done by changing the Corruption Law or it can also be done by issuing lower legal products.

Next is the creation of more detailed legal products relating to the confiscation of assets/assets of corruption suspects that are oriented towards the process of recovering state financial losses. This can be done by adding it to the Corruption Law (revising the Corruption Law), and making it into lower laws and regulations, for example government regulations. This was done, so that from the start the Prosecutor could move to anticipate the implementation of additional crimes in the form of replacement money which was carried out by confiscating the suspect's assets/assets which were not only obtained within a certain period of time.*the time of the offence*course, but more towards confiscation of collateral with the orientation of returning state financial losses.

Finally, with regard to the convict, there are a number of things that can be done if the convict is not cooperative, firstly aggravating the main criminal sentence and a fine if the convict is not cooperative in the investigation and prosecution stages. Likewise, the convict's right to joint leave, parole, and the granting of remissions is postponed or not granted as long as the convict has not paid off the replacement money.

In Article 32 paragraph (1) of the Corruption Law it is explained that "If an investigator can initiate a civil lawsuit if during the investigation stage it is found that one or more elements of the criminal act of corruption do not have sufficient evidence, while in fact there has been a loss of state finances. This civil lawsuit can be carried out by investigators by submitting the case files as a result of investigations to the State Attorney's Prosecutor or submitted to the agency that is disadvantaged to file a lawsuit.

Apart from that, Article 32 paragraph (2) of the Corruption Law states that prosecutors/law enforcers can also file lawsuits against defendants who have been acquitted by the court.

Furthermore, as stated in Article 33 of the Corruption Law, in the event that a suspect dies while in the investigation stage, the Prosecutor can file a civil lawsuit against his heirs if there has been a real loss of state finances by submitting the investigation file to the State Attorney or submitting the file to the agency that has suffered losses. to file a lawsuit.

Prosecutors can also initiate civil lawsuits if there has been a real loss of state finances, but the defendant dies during examination at court. This can be done by referring to Article 34 of the Corruption Law by submitting the minutes of the trial to the State Attorney's Prosecutor or to the agency that has been harmed.

It must be admitted that in general the problem of corruption does not only result in losses to state finances, but can have a very broad impact, both in the social, economic, security, political and cultural fields. According to Romli Atmasasmita, apart from causing misery to the people, corruption also violates the economic and social rights of the people. as a serious crime and a heavy

burden to every country.[13] However, the policy that differentiates the remission of convicts who commit corruption crimes with other convicts can become a problem of discrimination, because from the criminal system it is necessary to understand that corruption is indeed a crime that must be handled in an extraordinary manner, both at the level of investigation and at the level of examination before the court. However, for someone who has been found guilty of committing a crime (regardless of the type of crime) by a court with permanent legal force, the defendant's status immediately becomes a convict. When convicts are placed in a penitentiary and hold the status of convicts, there is no longer any extraordinary treatment for them, all of them have fundamental rights as equal human rights, without any criminal discrimination, a*equal rights without punishment discrimination,* to obtain remission as a right. Their existence in correctional institutions is not included in the realm of law enforcement (*law enforcement*) again, but the realm of coaching convicts (*treatment*). On the basis of this distinction, it has long been recognized that there is a significant difference between punishment (*punishment*) on the one hand and coaching convicts (*treatment of prisoners*) on the other hand. Therefore, the policy not to provide or differentiate remission requirements for convicts who commit corruption crimes must have a strong juridical basis and reasons that can be accounted for, because if this is not the case, then in law enforcement the eradication of criminal acts of corruption through limiting the remission rights of convicts , will develop in the reduction and violation of the rights of convicts as mandated in the Correctional Law. In making a policy on the remission right of corruption convicts as a form of law enforcement without violating the law, it is necessary to make adjustments (harmonization) of existing laws and regulations. Adjustments can be made both to the Correctional Law and to the Corruption Crime Eradication Law by including it as an additional punishment, taking into account the principles of human rights in the development of convicts. Steps that can be taken include, through:

1. Assessment of the factors causing the ineffectiveness of implementing legal policies in the law enforcement process regarding the granting of remissions for convicts who have committed corruption so far by involving elements of society;
2. Analysis and evaluation that is sharp in formal logic regarding the philosophy of the definition of remission which is based on punishment with the correctional system;
3. Careful assessment of the impact of implementing the legal policy framework for tightening the terms and procedures for granting remissions to convicts who commit corruption crimes while still taking into account the right to obtain a reduced sentence;
4. Clear, transparent and consistent arrangements related to laws and regulations, including the 1945 Constitution; The Criminal Code (KUHP); The Criminal Procedure Code (KUHAP); Law Number 20 of 2001 in conjunction with Law Number 31 of 1999 concerning Eradication of Corruption Crimes; Law on Human Rights; Laws relating to certain criminal acts, for example the Narcotics Law, the Psychotropic Law, the Terrorism Law; Law Number 12 of 2001 concerning Formation of Legislation. Then it is adjusted to the new remission regulatory framework, so that it does not overlap, is not contradictory, but is relevant.
5. Approaches that are accommodative, realistic, futuristic, in the formulation of a new correctional law policy framework to obtain

[13] Romli Atmasasmita, Corruption, *Good Governance, and the Anti-Corruption Commission in Indonesia, Jakarta: National Legal Development Agency,* Ministry of Justice and Human Rights, 2004, p. 23.

comprehensive or holistic results with the aim of sentencing;

6. Strict and accountable supervision in the implementation of remissions for convicts, especially convicts who commit corruption crimes, and ensure that through the implementation of policies or regulations granting new remissions, order in correctional institutions and justice can be achieved for both convicts and society.
7. Guarantee the independence of the process for handling granting remissions that is transparent starting from the assessment process to the process of receiving it.

Conclusions and Recommendations

Conclusion

a. Implementation of payment of money as a substitute for confiscation of assets is an additional criminal rule in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, but this is not followed by Supreme Court Regulation Number 5 of 2014 concerning Additional Crime of Compensation Money in Corruption Crimes, CHAPTER IV Article (9) paragraph (3) which says that "Implementation of the auction is carried out no later than 3 months after the confiscation is carried out", so that these assets have legal certainty that can affect the rights of convicts, especially corruption cases in Class I Prison Sukamiskin, in accordance with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018.

b. The obstacles faced by law enforcers in carrying out asset auctions are not easy, in addition to having to go through established procedures it also requires a lot of time, this is due to various things such as the assets being confiscated are joint assets, or are outside the jurisdiction of the Indonesian state. .

Suggestion

a. It is necessary to revise the Correctional Law, by first taking steps in the form of reviewing and evaluating the policy of granting remissions for corruption case convicts based on the philosophy of punishment within the correctional system. There is also a need for special rules regarding Asset Auctions for Corruption Crime cases, so that the synchronization between the rules and the implementation of the rights of inmates can be fulfilled.

b. Good cooperation is needed between convicts and law enforcers regarding the disclosure of confiscated assets in order to facilitate the return of losses to the state so that the rights of prisoners in correctional cases of corruption can obtain their rights in accordance with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2018.

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