



Return of State Losses In The Investigation Process That Can Eliminate Criminal Perpetrators of Corruption

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Abstract: The purpose of writing to be achieved in this paper is to know and analyze the return of state losses in the investigation process that can eliminate criminal perpetrators of corruption. This research is normative legal research using the *statutory approach* "the statute approach", the case approach "case approach", and the *conceptual approach* "the conceptual approach". This study used analytical descriptive analysis techniques. The results of this study show that the return of state financial losses in the investigation stage of corruption can stop the process of handling criminal acts through police discretion. One of the elements of corruption is the element of state loss, meaning that when it has been returned, it means that the element has been lost, meaning there is no loss as a logical consequence of the Constitutional Court decision No. 25/PUU-XIV/2016. But with the condition that it must be before the investigation stage through police discretion and if it is based on *the Lex Posterior Derogate Lege Priori*, meaning that the new law overrides the old law, meaning that the new regulation ignores or overrides the old regulation in the same respect.

Keywords: *State Loss Return; Criminal Corruption.*

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I. Background

Corruption is also a class of crimes that are considered *extraordinary extra ordinary crimes*. This is due to the nature of corruption crimes carried out systematically and widely so that they have the potential to have an impact on state financial losses in no small amount.

Responding seriously to the problem, every country in the world recognizes that corruption has a very bad impact on a country's economic losses, ranging from implications for the decline in the standard of living of a country's people, stunted economic growth, and a swollen state budget deficit. To answer the anxiety caused by the criminal act of corruption, in 2003 the United Nations Convention Against Corruption (UNCAC) was published, *with Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003)*, Indonesia hereby has ratified the convention, which means committed and supported in efforts to eradicate, prevent and eliminate corrupt practices and politically Indonesia has positioned itself. Because this will cause serious problems not only related to the national economic life of a country but also to the life of the nation and state if the criminal act of corruption cannot be controlled, with the widespread and systematic criminal act of corruption is also a violation of the economic rights of citizens and their social rights, therefore it cannot be categorized as a crime that is usually corruption but becomes a crime that *extraordinary*. So that the eradication process can no longer be carried out normally, but with extraordinary efforts and processes.¹

Furthermore, in Law No. 31/1999 jo. Law No. 20/2001 concerning the Eradication of Corruption Criminal Acts (the so-called PTPK Law) limits the meaning of what is meant by corruption is "any person who unlawfully enriches himself or another person or a corporation that can harm State finances or the State Economy".

Basically, the ideals of eradicating corruption contained in laws and regulations, for now, contain at least three main issues, namely prevention, eradication, and return of assets resulting from corruption (*asset recovery*). The mandate of the law means that the eradication of corruption does not only lie in preventing and punishing corruptors but also includes actions that can restore state financial "losses" resulting from criminal acts of corruption.²

In agreement with Arifin, the main issue regarding the development of eradicating corruption has now focused on three things, namely preventing, eradicating and paying substitute money / returning state losses. This explains that efforts to eradicate corruption not only lie in preventing and eradicating in terms of criminalizing

¹ Sandi Herintus Kabba, I Made Arjaya, and I Made Minggu Widyantara, "Prosedur Pengembalian Dan Pemulihan Kerugian Negara Akibat Tindak Pidana Korupsi," *Jurnal Interpretasi Hukum* 2, no. 3 (December 1, 2021): 573-79, <https://doi.org/10.22225/JUINHUM.2.3.4139.573-579>.

² Asep Rochman Dimiyati, "Penyitaan Aset Tindak Pidana Korupsi Dalam Perspektif Pengembalian Keuangan Negara Ditinjau Dari Teori Keadilan Dan Teori Kemanfaatan," *JURNAL HUKUM MEDIA JUSTITIA NUSANTARA (MJN)* 11, no. 1 (2021): 40-57, <https://doi.org/10.30999/MJN.V11I1.1915>.

perpetrators but also related to efforts to restore and recover state losses from the proceeds of corruption.³

Efforts to return "stolen" state assets (*stolen asset recovery*) from the proceeds of corruption crimes are not easy to do. Perpetrators of corruption crimes have wide access and are difficult to reach in storing and laundering money (*money laundering*) the proceeds of their corruption crimes. A similar statement was also revealed by an international institution, *Basel Institute on Governance, International Centre for Asset Recovery* stated that "asset recovery is a difficult task and is fraught with the complicity of the banks involved, the navigation of a costly international legal labyrinth and the fact that those implicated in public looting are usually those with the most power and influence". It can be interpreted that the return of assets is a very complicated problem to trace the solution, and will include banking problems, also related to the fact of taking public money because of the position or influence attached to the perpetrators of corruption crimes. Return of assets is an important issue because theft of state assets in developing countries by people who were once in power in the country concerned is a serious problem. In Indonesia, corruption has caused huge losses to state finances.⁴

Asset return is a difficult process, even under ideal circumstances, asset return is a complex and multidisciplinary process.⁵ The return of state losses does not have a worse impact and is intended so that state losses incurred can be covered by the return and recovery of the proceeds of corruption.

It is stated in Article 2 paragraph (1) of the PTPK Law that any person who unlawfully enriches himself or another person or a corporation that can harm state finances or the country's economy. The elements contained in this article are (1) Perpetrators in the phrase "everyone" namely "individuals and corporations", (2) against the law, (3) enrich themselves or others, and (4) can harm the state or the country's economy.

Meanwhile, Article 3 of the PTPK Law states any person who, with the aim of benefiting himself or others or corporations, abuses the authority, opportunity or means available to him because of a position or position that can harm state finances or the country's economy. The elements contained in this article are (1) Perpetrators in the phrase "everyone" namely "individuals and corporations", (2) benefit themselves, others, perpetrators, or corporations, and (3) abuse the authority, opportunity, or means available to them because of their position or position, and (4) may harm the state or the country's economy.

The inclusion of elements of "harming state finances" in corruption offenses (especially Article 2 and Article 3 of the Law on Corruption) in practice often raises problems that can affect the process of handling corruption cases. Starting from the multi-interpretation of the definition of state finance and state losses, the authority to

³ Firdaus Arifin, "Problematika Hukum Pengembalian Aset Tindak Pidana Korupsi Pelaku Dan Ahli Warisnya," *Pagaruyuang Law Journal* 3, no. 1 (July 5, 2019): 64–85, <https://doi.org/10.31869/PLJ.V3I1.1604>.

⁴ *Ibid.*,

⁵ Arfin Candra D., "Kendala Pengembalian Aset Hasil Tindak Pidana Korupsi Transnasional," *Jurnal BPPK: Badan Pendidikan Dan Pelatihan Keuangan* 11, no. 1 (August 20, 2018): 28–55, <https://doi.org/10.48108/JURNALBPPK.V11I1.49>.

calculate state losses, the slow process of calculating state losses which is considered to hinder the handling of corruption cases, and to the lack of maximum execution of substitute money in corruption cases.

Return of State Losses as we already know in Article 2 and Article 3 of the PTPK Law, that one element of the Criminal Act of Corruption is that it can harm state finances or the state economy. According to Article 4 of the PTPK Law, it is emphasized that the return of state financial losses or the state economy does not remove the criminal offender referred to in Article 2 and Article 3 of the Law. Therefore, if the perpetrators of the Corruption Crime as referred to in Article 2 and Article 3 have fulfilled the elements/elements of the article, then the return of state financial losses or the state economy does not eliminate the crime against the perpetrators of the crime.

Based on this statement, the return of state financial losses or the country's economy is only one reason to reduce the sentence (*clementine*) only. Meanwhile, before the enactment of Law 31/1999, there were many cases of corruption where if state financial losses had been returned or state economic losses had been returned, then the crime was considered to have disappeared.⁶

In its application, for example, the Persiba Bantul Grant Fund Corruption case amounting to Rp.12,500,000,000.00 (two billion five hundred million rupiah) involving the former Regent of Bantul, namely Idham Samawi. The determination of the suspect by the DIY High Prosecutor's Office is based on the results of investigations conducted since early 2013 after a case was carried out by the Investigation Team. In the title of the case, sufficient evidence was found, so the head of the DIY High Prosecutor's Office immediately escalated the legal process to the investigation stage with the determination of Idham Samawi and Edi as suspects. From the results of the degree, it was concluded that there was a process of disbursement of grant funds that was not in accordance with the provisions and the use of funds outside the designation.

Based on information collected from Kejati DIY, Idham and Edi are suspected of being responsible for the alleged corruption of Persiba Bantul grant funds in 2011. At that time, Persiba received grant assistance from the APBD and APBD Change, amounting to Rp8,000,000,000.00 (eight billion rupiahs) and Rp4,500,000,000.00 (four billion five hundred rupiahs) respectively. However, the grant funds that were supposed to be for the cost of participating in the PSSI 2011-2012 main division competition were actually used outside of their designation. Kejati DIY also believes that in this case there are violations and cause state losses. Therefore, the Chief Prosecutor of Yogyakarta raised the legal process to the investigation stage and formed a Special Criminal Investigation Team consisting of 7 people for the case of alleged corruption of the Bantul persiba grant fund.⁷

⁶ Darwan Prinst, "Pemberantasan Tindak Pidana Korupsi /Darwan Prinst | OPAC Perpustakaan Nasional RI.," accessed June 12, 2023, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=306931>.

⁷ Hanafi Amrani; Ayu Izza Elvani; Iqra Ayatina Yasinta, "Esensi Keberadaan Pasal 4 Undang-Undang Pemberantasan Tindak Pidana Korupsi Dan Implementasinya Dalam Praktek Penegakan Hukum" (Yogyakarta, 2017).

It can be seen that there are problems arising from some of these cases, namely about the problem of returning state financial losses by corruption suspects carried out at the investigation stage and then issued SP3 by the High Prosecutor's Office under various pretexts. As a result of the issuance of SP3, the investigation process was stopped even though the actions committed by the perpetrators of corruption had been clearly proven.

This then became a debate, affirmed by Article 4 of the PTPK Law that the return of state financial losses cannot eliminate criminal liability in terms of corruption. Furthermore, Criminal Procedure Law expert from Universitas Islam Indonesia (UII) Mudzakkir also argued that the return of money or state losses by the accused could be a reason for the judge to reduce the sentence imposed on the defendant concerned. The return is said to be in good faith to correct the error. Then refunds do not reduce the unlawful nature.

Talking about how when the money from corruption was returned intact while still under investigation. Responding to this, Mudzakkir also confirmed:⁸ "The return of the proceeds of a criminal act is often associated with its timing. When a return is made before an investigation begins, it is often interpreted as removing a criminal offense committed by a person. However, when done after the investigation has begun, the return does not remove the criminal offense. Even if it is returned before or after the investigation, it is still against the law. Let's say I steal, then return the stolen goods before anyone else knows. It's still a criminal offense."

2. Problems

Based on the description above, the problem in this paper can be formulated is How to return state losses in the investigation process that can eliminate criminal perpetrators of corruption?

3. Research Methods

This research is normative legal research using the *statutory approach*, the case approach", and the *conceptual approach*. This study used analytical descriptive analysis techniques. That is, researchers describe and provide an overview of the data obtained in the form of explanations before analyzing it using applicable theories and principles by making predictions and studying their implications, which are then given conclusions.

4. Analysis and Discussion

4.1. Return of State Financial Losses at the Investigation Stage of Corruption Cases

The content of Article 1 point (5) of Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHAP) states that the definition of investigation is a series of investigator actions to find and find an event that is suspected to be a criminal offense in order to determine whether or not an investigation can be carried out in the manner regulated in the law. Meanwhile, Article 1 point (2) states the definition of investigation as a series of investigator actions in terms and according to the manner

⁸ Amrie Hakim, "Pengembalian Uang Hasil Korupsi," Hukumonline, 2017, <https://www.hukumonline.com/klinik/a/pengembalian-uang-hasil-korupsi-lt4d0786a1bb8b5/>.

regulated in this law to search and collect evidence that occurred and to find the suspect.

From the above understanding, the investigation is to find and find an event that is suspected of being a criminal act, while the investigation is the process of searching and collecting evidence and finding suspects.

Furthermore, handling cases of criminal acts of corruption can be carried out first through the process of investigation by investigators in a criminal case that occurs. While there are reports of alleged abuse of authority reported by the community, the National Police will first verify the report and coordinate with APIP (Government Internal Supervisory Apparatus). The Government Internal Supervision Apparatus (APIP) is a Government Agency that has the main duties and functions of conducting supervision, and consists of:

- 1) Financial and Development Supervisory Agency (BPKP) responsible to the President;
- 2) Inspectorate General (Itjen)/Main Inspectorate (Ittama)/Inspectorate responsible to the Minister/Head of Non-Departmental Government Institution (LPND);
- 3) Provincial Government Inspectorate responsible to the Governor, and;
- 4) District/City Government Inspectorate responsible to the Regent/Mayor.

Furthermore, the calculation of state financial losses in corruption crimes is carried out in an examination by the BPK and BPKP, namely actual state financial losses. The purpose of state financial losses in the Corruption Eradication Law itself if state losses can be calculated based on the findings of authorized agencies or appointed public accountants.

The agency that has the authority to calculate state financial losses in this case is the Financial Inspection Agency (BPK) as a state institution tasked with examining the management and responsibility of state finances carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, SOEs, Public Service Agencies also conduct audits of central/regional state financial losses.⁹ Regarding the settlement of state/regional financial losses, BPK is authorized to assess and/or determine the amount of state financial losses caused by unlawful acts either intentionally or negligently.¹⁰

⁹ Muhammad Yusuf, "Merampas Aset Koruptor : Solusi Pemberantasan Korupsi Di Indonesia / Muhammad Yusuf | OPAC Perpustakaan Nasional RI.," accessed June 12, 2023, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=869688>.

¹⁰ The agency authorized to declare the presence or absence of state financial losses is the Audit Board which has constitutional authority, while other agencies such as the Financial and Development Supervisory Agency/Inspectorate/Regional Apparatus Work Unit remain authorized to conduct audits and audits of state financial management. However, it is not authorized to declare or declare any state financial losses. In certain cases, the judge based on the facts of the trial can assess the existence of state losses and the magnitude of state losses.

Then in the Examination of State financial management and responsibility, including:¹¹

- 1) Officials are required to follow up on recommendations in the inspection result report.
- 2) Officials are required to provide answers or explanations to the BPK about follow-up on recommendations in the examination result report.
- 3) Answers or explanations are submitted to BPK no later than 60 (sixty) days after the examination report is received.
- 4) BPK monitors the implementation of follow-up examination results.
- 5) Officials who are found not to have carried out their obligations may be subject to administrative sanctions in accordance with the provisions of laws and regulations in the field of personnel.

Based on the provisions mentioned above, it can be concluded that the results of the BPK examination and the authority to monitor the follow-up of the examination results are in principle in the realm of State administrative law, so that as long as the BPK's recommendations on the results of the examination have been followed up by the officials concerned, it means that its administrative obligations for the BPK have been completed, thus the return by the parties as mentioned in the BPK recommendations, means that the state/regional losses in the findings have been recovered.

Moreover, the recommendations that have been followed up certainly do not need the BPK to conduct investigative examinations to further reveal the existence of criminal elements in it, and of course the BPK no longer needs to report this to law enforcement for further investigation.

In relation to the Constitutional Court Decision, according to the author, one of the elements of corruption is the actual loss of state finances. That is, by this returning state financial losses before the investigation has basically eliminated one of the elements of the criminal act of corruption, in other words that when state officials have returned state financial losses thus the state no longer suffers losses, so that one of the elements of the criminal act is no longer fulfilled.

Given the existence of article 4 of the PTPK Law which states that the return of state financial losses or the state economy does not eliminate the punishment of perpetrators of corruption crimes. So there is often a debate about the timing of the return of state financial losses obtained from the proceeds of corruption. In particular, the return of state losses at the time of investigation can stop the process of handling or eliminate criminal acts. While the financial loss of the state itself is one element of a criminal act. This means that if it has been returned, it means that the element has been lost, which means that the state is no longer in a state of loss. But with the condition that it must be before there is an investigation. Conversely, if the investigation has begun, the return of state financial losses only reduces criminal sanctions.

¹¹ See Article 20 of Law Number 15 of 2004 concerning State Financial Management and Responsibility

From this it is very apparent that the Law and its implementers should be able to create legal certainty. Laws that open up too much space for multiple interpretations in their articles make it difficult for law enforcement to have the same perception regarding the application of *laws in concreto*.

For example, in the handling by the Gorontalo Regional Police of corruption cases. Further Investigation of alleged criminal acts of corruption in the construction of the Bongo People's Market Zero Kec paguyaman kab Boalemo T.A 2015 in one of the offices in Boalemo Regency with a contract value of Rp. 6,789,022,000 (six billion seven hundred eighty-nine million twenty-two thousand rupiah where based on the results of the investigation occurred based on the results of an investigative audit by BPKP representative of Gorontalo there was an alleged state financial loss of Rp. 246,148,000 (two hundred forty-six million one hundred forty-eight thousand rupiahs), then in the process of investigating the State's financial losses returned by the provider by depositing into the regional treasury of Boalemo district.

Based on the proposition of "State Financial Loss", if the loss has been returned to the regional treasury of Boalemo district in the investigation process, then, in other words, the State financial loss in the case no longer exists or the element of State financial loss is no longer fulfilled if the case will be escalated to the investigation process because after the constitutional court decision, the phrase can be in the elements of article 2 and article 3 concerning state financial losses in the law on The criminal act of corruption has no binding legal force. Furthermore, the case was no longer upgraded to the investigation stage based on the Kabareskrim Jukrah on the handling of Corruption Criminal Acts as stated in the Kabareskrim telegram No: ST/206/2016/VII/2016, dated July 25, 2016, and the investigation was terminated by first going through the internal case title process.

Based on this, if relying on crime reduction policy or commonly known as criminal politics (*criminal policy*) covers a fairly broad scope, G. Peter Hoefnagels¹² Gives the idea that crime reduction can be broadly divided into two, "through penal" and "through non-penal", the meaning here is all the use of law by law enforcement to resolve social deviations to realize peace including criminal law enforcement policies.

In its implementation, according to the author, the return of state losses at the investigation stage can stop the process of handling criminal acts through police discretion. This is as explained that officials of the National Police of the Republic of Indonesia in carrying out their main duties and authorities; are "tasked with conducting investigations and investigations into all criminal acts in accordance with the criminal procedure law and other laws and regulations" (Article 14 paragraph 1 letter g of Law number 2 of 2002 concerning the National Police of the Republic of Indonesia), bound by Article 7 paragraph 1 letter j of the Criminal Procedure Code jo Article 16 paragraph (1) letter l of Law number 2 of 2002 concerning the National Police of the Republic of Indonesia.

¹² Suparmin, "Model Polisi Pendamai Dari Perspektif Alternative Dispute Resolution (ADR) : Studi Penyelesaian Konflik Antar Partai Politik," 2012, 408.

Furthermore, in carrying out its main duties and authorities as referred to in Article 13 and Article 14 in the field of criminal proceedings, the National Police of the Republic of Indonesia is authorized to "carry out other acts according to responsible law". Bound by Article 18 paragraph (1) of Law number 2 of 2002 concerning the National Police of the Republic of Indonesia "for the public interest of officials of the¹³ National Police of the Republic of Indonesia in carrying out their duties and authorities can act according to their own judgment" or known as the authority of "police discretion".¹⁴

As for the authority to act according to its own judgment (discretion), it can be exercised under conditions that describe the situation including very necessary circumstances; not contrary to legislation; and does not contradict the professional code of ethics of the police.¹⁵ The discretionary authority in its implementation must also consider the benefits and risks of its actions and be truly in the public interest.¹⁶

According to Johana Olivia Rumajar in her research that the investigator's authority to issue a Warrant to Stop the Investigator in the case of a criminal act of corruption, if in the case of a criminal act of corruption if no unlawful acts are found; the absence of solid evidence; and the absence of state losses.¹⁷ So, according to the author, if it is related to the context of stopping the investigation process of corruption cases, it can be dismissed when state financial losses have been recovered.

In this regard, according to the author, the return of state losses is associated with Article 4 of the Corruption Eradication Law with the application of the State Finance Law, and the State Treasury Law if it is related to the principle of "*Lex Posterior Derogate Lege Priori*" which means the new law overrides the old law.¹⁸

If traced, based on the definition of state losses contained in several laws that have been mentioned, simply when there are civil servants / state officials or financial managers who commit acts in the form of unlawful acts either intentionally or because

¹³ Mahmutarom HR, "Pranata Hukum :Sebuah Telaah Sosiologis /Esmi Wrassih; Editor, Karolus Kopong Medan, Mahmutarom HR | OPAC Perpustakaan Nasional RI.," accessed June 12, 2023, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=461285>. In general, the public interest is first, to preserve the common interest with the common good. The public interest is done by rejecting the harm that befalls humans in general and brings benefits. And second, realizing the public interest by relying on the two joints of truth and justice

¹⁴ The explanation of Article 18 paragraph (1) of Law number 2002 concerning the National Police of the Republic of Indonesia which is meant by acting according to his own judgment is an action that can be taken by members of the National Police of the Republic of Indonesia who in acting must consider the benefits and risks of their actions and are really in the public interest.

¹⁵ Yoyok Ucock Suyono,, "Hukum Kepolisian : Kedudukan Polri Dalam Sistem Ketatanegaraan Indonesia Setelah Perubahan UUD 1945," 2013. Hal. 73

¹⁶ *Ibid.*

¹⁷ J. O. (Johana) Rumajar, "Alasan Pemberhentian Penyidikan Suatu Tindak Pidana Korupsi," *Lex Crimen* 3, no. 4 (2014): 3204.

¹⁸ The author's rationale refers to the previous discussion that after the Constitutional Court Decision No. 25/PUU-XIV/2016 by removing the meaning of the word "may" in the element of "can harm state finances", the Law on the Audit Agency, the State Treasury Law, and the Law on Combating Corruption are in line and synchronous in interpreting the element of state losses.

of negligence that results in state losses, then the person concerned must be responsible for returning the lost or reduced state wealth.

Furthermore, the return or compensation of state/regional losses is carried out through the process of settling state/regional indemnities, namely in accordance with laws and regulations. So, *first*, refer to Article 35 paragraph (1) of the State Finance Law. *Second*, in Article 59 of Law Number 1 of 2004 concerning the State Treasury.

Third, in the general explanation number 6 regarding the settlement of state losses in the State Treasury Law, it is mandated to settle state losses / by returning / indemnifying state / regional losses. To avoid state/regional financial losses due to unlawful actions or negligence of a person, the State Treasury Law stipulates provisions regarding the settlement of state/regional financial losses. Therefore, the law affirms that any state/regional losses caused by unlawful acts or negligence of a person must be compensated by the guilty party.

Fourth, in the explanation of Article 59 paragraph (1) of Law No. 1 of 2004 concerning the State Treasury, it is emphasized the need for state/regional compensation through the process of settling state/regional compensation. Settlement of state losses needs to be done immediately to restore lost or reduced state wealth and increase the discipline and responsibility of civil servants/officials in general, and financial managers in particular.

So regarding the provisions of Article 4 of the PTPK Law when faced with the provisions of 3 (three) regulations, namely the State Finance Law and its implementing regulations as mentioned above, namely article 35 paragraph (1), and the provisions of article 59 and general explanation number 6 of the State Treasury Law and the Law on Examination of State Financial Management and Responsibility, Government Regulation No. 58 of 2005 concerning Regional Financial Management, BPK Regulation No. 3 of 2007 concerning Procedures for Settling State Compensation for the Treasury, and Regional Regulations or Regional Head Regulations on Procedures for Claiming Regional Compensation against Non-Treasurer Public Servants. So according to the author, this will refer to which provisions must be used and take precedence in terms of processing a case of corruption that has been processed for the return of state financial losses or has been returned state losses.

Article 2, article 3 and article 4 along with their explanations to the Corruption Eradication Law, were formed long before the State Finance Law and its Implementing Regulations. The author's point of view on this matter, when referring to the principle of *Lex posterior derogate lege priori* means that the new law overrides the old law, meaning that the new law ignores or overrides the old rule in the same respect. That is, if a material that has been regulated in a Law, then that material is regulated again in a new Law, then from then on the entry into force of the new Law, the previous provisions governing the same material will no longer apply.¹⁹

¹⁹ Constitutional Court Decision No. 25/PUU-XIV/2016 by removing the meaning of the word "may" in the element of "can harm state finances", the Law on the Audit Agency, the State Treasury Law, and the Law on Combating Corruption Crimes are in line and synchronize in interpreting the elements of state losses

In accordance with this principle, the three laws and regulations, namely the Financial Law and its Implementing Regulations formed after Article 4 of the Corruption Eradication Law, Article 4 can be set aside.

Meanwhile, from a juridical point of view, one of the elements of corruption is the element of state loss, meaning that when it has been returned, it means that the element has been lost, meaning there is no loss. But returns that can stop the process of handling corruption crimes must be required before the investigation stage through police discretion based on *Lex Posterior Derogate Lege Priori* means that the new law overrides the old law, meaning that the new law ignores or overrides the old law in the same respect.

5. Conclusion

Based on the description of the discussion, there are several things that can be concluded that the return of state financial losses in the investigation stage of corruption can stop the process of handling criminal acts through police discretion. One of the elements of corruption is the element of state loss, meaning that when it has been returned, it means that the element has been lost, meaning there is no loss as a logical consequence of the Constitutional Court decision No. 25/PUU-XIV/2016. But with the condition that it must be before the investigation stage through police discretion and if it is based on *the Lex Posterior Derogate Lege Priori*, meaning that the new law overrides the old law, meaning that the new regulation ignores or overrides the old regulation in the same respect. Therefore, with this principle, the State Finance Law and the State Treasury Law were formed after Article 4 of the Corruption Eradication Law, Article 4 can be set aside.

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