

THE RESTITUTION EFFORT OF COUNTRY'S MONEY THROUGH CIVIL SUIT

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ABSTRACT

The removing of corruption is not only be the responsible as criminal but also must be alleged to return the financial loss. In the suit of restitution towards the country, the persecutor lawyer can ask and count the real financial loss of the country, the expense and the interest as the effect of someone that is written in the allegation. This paper aims to find out the restitution effort of the country's money toward the corruption criminal action that there is not enough proof through civil suit. The constitution of the removing of corruption criminal action gives a chance to do a restitution suit to alleged corruption criminals when the investigating officer found adequate proof, and there is a fact that shows the financial loss or economy of the country. The law of PTPK chapter 32 directs the investigating officer to give the documents to the persecutor lawyers of the country or the institution which had been loss to do civil suit. Formally or materially, the civil cases have several certainties about the verification that can be used to prove that there is law relation in the suit. The litigant should prove that there is amount of financial loss of the country as the effect or related to the alleged criminals. On the other hand, the alleged criminals are given opportunity to answer and prove whether the suit is right or not. It is based on KUH Perdata (BW) chapter 1865. From this chapter, it is clear that the cost of the verification is given to the two parties, one who stated a right and the other who disagreed someone's right.

Key words: Restitution, corruption, Civil Suit.

Introduction

Fights against corruption in Indonesia had been blown since "orde lama" (Suharto's regime). Government mainly concerned to this cases by issued regulation UU No.3 Tahun 1971 against corruption acts. In this regulation, the main points underlined that corruption is absolutely harmful for government and of course being one of potential problem for national development. In fact, corruption was considered as the main people needs to be eradicated since 1998 (orde lama collapsed), and then followed by regulation UU No.31 Tahun 1999 against corruption crime.

In 2003, based on government regulation UU No.30 Tahun 2002, Indonesia decided to form one parliament in order to hand, gain, and watch for corruption. KPK stand for (Komisi Pemberantasan Korupsi) is specially authorized to do investigation, examination, and prosecution of corruption crime until now.

Criminal Behavior is not invented but learned especially corruption, it is not simply a crime but more than that it needs intelligence, and that is why corruption includes into extra ordinary crimes or more common known as white collar crime. The main actor of this crime is usually come from people who are in stake holder position and have competence in institution. It is upside down to the conventional crime. With a high ability and capability, corruptors are easily hiding or camouflage their corrupted properties. No wonder if they are known as very prosperous and humble person in society.

Fights against corruptions become priority in whole around the world include Indonesia. Some methods, designs, activities, and mechanism of multilateral coordination for corruption fights had been strongly forced until now in order to not give any space for a change of corruptor to distract the national assets become private assets.

Law in Indonesia can be classified into three forms, namely the Civil Law, Criminal Law and Administrative Law, which has its characteristics and its methods to implement the objectives of the law. Corruption leads to the criminal law, so that the criminal penalties are punished suffering as a form of principal responsibility and are charged amount of money as indemnity.

Subsidiary prosecution is regulated in Pasal 18 Ayat (3) UU No. 31 Tahun 1999 on corruption eradication, as amended by UU No. 20 Tahun 2001, asserted that "In the case of the convicted person who does not have enough wealth to pay compensation as referred to Ayat (1) Huruf b, it shall be imprisoned for the duration that is not exceed the maximum prosecution of substantially criminal prosecution in accordance with the provisions, also the criminal duration has been specified in the court judgment.

However, with a fairly high intellectual ability, corruptors preferred to receive a prison sentence rather than the payment of compensation, so the prisoners and their families were still able to enjoy the proceeds of corruption. In here, Government is still being the harmful side. That is why corruption is only lead by an intellectual person.

Indonesia has lost most of her identity; prison is not a scary thing anymore. They are no longer afraid of going to jail, they are more afraid of poverty than being jailed, because wealthy determine their status in society.

Laws should be able to be an instrument of change in society, the law must be able to implement and carry out the purposes of the law itself. So that corruption is not only considered as a crime but also considered as civil accusation. This civil action is taken when a criminal prosecution is no longer possible. So it can be found that the civil effort is facultative. In fact, civil efforts will be able to solve of returning state losses caused by corruption

Data of KPK said that in 2009, Indonesia has issued a statement of corruption cost is Rp 73 trillion, while the amount of financial penalties for corruption succeed returning is only Rp 5.3 trillion¹. From the data of KPK, It shows us that government does not receive maximally reimbursement of the stolen money by corruptors; Government is only getting 8.5% of the corrupted results. Further research conducted by Rimawan quoted by Tempo magazine on March 4, 2013 stated that there were 1842 criminals accused of corruption with a total value of Rp 168.19 trillion in 2001 to 2012.

Imagine how much government could allocate for amount of money that much. If all of the corrupted money was able to be restored to government budget, Indonesia needed to pay loan no more. In fact, Rimawan² says that court fined the corruptor only 8,9% or as much as Rp. 15.9 Trillion.

Comparison between the amount of returning and the amount of government loss is significantly different. Government should have been strict to apply the principle of civil law for corruption. In accusation for compensation of government loss, public attorney could consider and count the real of government loss, include cost and interest caused by activities against laws as it written in petitum of accusation.

Research design

The formulation of the problem in this study is an attempt to do what effort can be done to the loss which doesn't have enough evidence against the elements of corruption so that the prosecution is not available to be done, in fact, there has been a loss of amount of government budget or the State's economy. When it is clearly found that there has been the financial loss, but in the process of investigation and trial, the defendant / suspect passes away, what will be our legal efforts should take for this cases.

Review of related literature

Corruption

Corruption is a criminal act committed by people who have high intellectual ability, as is often done with sophisticated engineering and utilizing technology. Literally, corruption means decay, ugliness, depravity, dishonesty, can be bribed, immoral, deviation from chastity, words or sayings that insult or slander. Literally, it can be concluded that corruption is a significant negative word. In Indonesian dictionary (KBBI) defines that corruption is bad acts such as embezzlement, receiving bribes, and so on, while in the international world, definition of corruption by the Black Law Dictionary means that anything from a formal deed or someone's trust where to break the law and full error employs a number of advantages for himself or others contrary to the duties and other truths

Some legal experts provide some definitions of corruption include Robert Klitgaard³ argues that corruption is defined by collecting the money for the service that it should be given or using the authority to achieve purposes legally. Corruption does not carry out the task due to careless and intentional.

According to Sheikh Hussein Alatas⁴, formulation of corruption is when a public servant receives gifts offered by someone with an intention to influence the public servant in order to give special attention to the interests of the giver. Sometimes, it is also an act that offers some prizes, such as money, and it can seduce government officials. It is also included in the definition of extortion, namely the demand for such a gift or gifts in the execution of public duties that they take care for their own benefit. From the definition given by Sheikh Hussein Alatas, it can be viewed from a sociological viewpoint, where there is corruption in public life, excessive kindness and empathy so as to give certain privileges to some individuals. The notion of corruption cannot be separated from the notion of collusion and nepotism. It can also be seen from the definition of corruption in Indonesian positive law that is contained in, *UU No. 31, Tahun 1999 Jo. UU No. 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi*, which states "Any person who knowingly against the law, committing to enrich themselves or someone else or a corporation that could harm the economy of the State or State financial". Further, in *Pasal 3* declares that "any person with the purpose of enriching himself or another person or a corporation, abusing authority, opportunity, means at its disposal, because of the position or situation that could harm the economy of state or country, with life imprisonment or 1 year imprisonment and a maximum of 20 years or a fine of 50 million and a maximum of 1 billion".

Basic Law of Civil Lawsuit in Corruption

Corruption is a crime-categorized act; corruption act is a modern crime by actors who have a certain intellectual level. Corruption is a crime that harms society more specific is a financial loss to the State.

¹ <http://kpk.go.id/id/nukpk/id/berita/berita-sub/571-koruptor-harus-tanggung-kerugian-akibat-korupsi> accessed in may 10, 2014.

² Rimawan is a researcher and lecturer of Gajah Mada University. <http://www.tempo.co/read/news/2013/03/04/058464996/Akibat-Korupsi-Uang-Negara-Menguap-Rp16819-triliun>

³ Robert Klitgaard, 2005., *Penuntun Pemberantasan Korupsi dalam Pemerintahan Daerah.*, Alih Bahasa /Translator by Masri Maris, Yayasan Obor Indonesia, Jakarta, Pp. 3

⁴ Jawade Hafidz Arsyad., 2013., *Korupsi dalam perspektif Hukum Administrasi Negara.*, Sinar Grafika., Jakarta., Pp. 7

In the Indonesian legal justice system, there are some rules of law in the prosecution of legal subjects' liability legal actions, namely Criminal Law, Civil Law and Administrative Law. Regarding to some law cases, the three laws can conducted successively, although there is a clear separation among them.

Corruption is a special crime that currently has a special law, namely *UU Pemberantasan Tindak Pidana Korupsi*. According to the principle of preference, if there are law actions to which existing laws and regulations that are specific the legislation, then law regulation is that is ruled out (principle of *Lex specialis derogat legi Generalis*).

Concerning with corruption, in *UU No. 31 Tahun 1999* on Eradication of Corruption, as amended by *UU No. 20 Tahun 2001* on the amendment of *UU No.31 Tahun 1999* on Eradication of Corruption, further, the authors calls with *UU Pemberantasan Tindak Pidana Korupsi* states that the corruption is charged in addition to the criminal justice system, can also be charged in the civil justice system, it is because of this corruption in which there is the injured party. In addition to these two justices systems in corruption can also be prosecuted using the legal system of Administrative State, due to the corruption that is impaired financial state.

Pasal 32 on Corruption Eradication declares that "In the case of investigators discovered and found one or more elements for the not enough evidence corruption, while there has been a financial loss to the state, the investigator shall submit the results of the investigation file to the state attorney to do a civil action or submitted to the aggrieved department to apply a lawsuit".

Ayat (2) declares that "Acquittal in corruption cases does not eliminate the right to sue the financial loss to the State".

In *Ayat 33* of the Law for corruption states that if at the time of the investigation, the suspect passes away, the investigation process is stopped and then the investigator assigned to the State Attorney for the heirs sue. This is similar to *Ayat 34* of the Law on Corruption Eradication also states that if at the time of the inspection process in the trial court, the suspect died, while there are financial losses, so the state prosecutor shall submit a copy of the trial dossiers to the State Attorney to do civil suit to his heir.

Disadvantage

Compensation is reviewed from two law systems, namely civil law and criminal law. Compensation in civil law is the main objective in finishing civil disputes. Another case of the criminal case, compensation is hardly known in criminal law decision. The differences are stated *KUHPidana dalam Pasal 1 angka 22 Undang-Undang No. 8 Tahun 1981 Tentang Hukum Acara Pidana / Kitab Undang-Undang Hukum Acara Pidana (KUHPA)*, as follows:

"Compensation is a right to receive the fulfillment of the demands in the form of a sum of money in exchange for arrested, detained, charged or prosecuted for no reason by law or in error concerning the person or law that is applied in the manner set out in this law. "

From the article, it is clear that the compensation contained in the criminal justice system is the compensation given to the accused / convicted persons or suspects to have been dropped or suspected as perpetrators of criminal acts.

Whereas in the civil law, meaning of compensation is not described explicitly, however, it can be interpreted in the sense that is contained in *Pasal 1243 Kitab Undang-Undang Hukum Perdata (KUHPer)* which describes the following compensation:

"Replacement costs, damages, and interest due to non-fulfillment of an engagement, then start required, if the debt, after being found negligent meet perikatannya, still miss it, or if something should be given or made, can only be given or made within the time limit has passed"

Based on the two articles above, it is clear that the criminal law leads to compensation for the benefit of the suspect or the accused. While, the civil law leads to compensation for the interest of the injured party upon the occurrence of an unlawful act or a broken promise.

Civil Law

Civil law is one of law efforts which can be reached by the parties who feel their interests are disturbed by other parties. Indonesian law system provides opportunities for law subjects who feel their interests are ignored or overlooked by other law subjects using the instruments of civil law as a way of fulfilling their interests through the District Court. *Pasal 118 HIR* states that to file a civil lawsuit claims a right to the legal issues in the District Court authorized in its jurisdiction is under *Pasal 118 HIR*.

Indonesian civil law recognizes two kinds of lawsuits, namely *voluntair* lawsuit and *contentiosa* lawsuit, where both of them have meaning characteristics and space environment of each civil dispute. In *voluntair* lawsuit, this lawsuit is unilateral (*ex - parte*) that is issues filed with the court contains no dispute, but only for the benefit of the applicant. In this *voluntaire* lawsuit, the parties in the lawsuit are referred to as the Applicant and the Respondent, so that the judge's ruling on the lawsuit is set *voluntair*.

It is unlike the case with the second lawsuit, namely *contentiosa* lawsuit, where a claim contains a dispute between two or more parties. Cases or lawsuits are proposed to the panel of judges is a dispute or a disagreement between two parties or more.

Two things that are different but still in the realm of civil law, the experts distinguish the petition calling for *Voluntair* lawsuit to *contentiosa* lawsuit. It is based on the meaning of the Black's Law Dictionary, which is called the *contentiosa* or contentious jurisdiction, the jurisdiction of that court is concerned with contested matters between contending parties.

A claim is used to demand rights or interests of law subjects. To be processed the claim, then it must fulfil the requirements of a formal lawsuit first⁵. In this case, it is needed practically, although to *Pasal 180 and 120 HIR / RBg* do not mention and require a formulation or lawsuit content⁶. The formal requirements that must exist in every lawsuit are:

1. Addressed to the District Court

This is important because it relates to the authority of the courts in deciding a dispute, or commonly called the relative competence (*Pasal 118 HIR*). If the lawsuit is not addressed in accordance with the relative competency, the lawsuit is stated unacceptable (*Niet onvankelijke*).

2. Given Date

Giving date on the lawsuit does not become a duty and has no legal effect if it is not done. It just gives the date to facilitate the dispute if a problem arises with a power of attorney or other.

3. Signed by a plaintiff or power

Signatory a lawsuit can be done by plaintiff himself or his power. If the proxy signer who did signatory, it should be noted that the power of attorney has a first date than a lawsuit.

4. Identities of parties.

The mention of the identity of the parties is very important in the lawsuit, although the identity of the parties is not as detailed as the indictment in the criminal case. If the identity of the parties is not specified or included and even wrong, it will cause a lawsuit is invalid or did not exist. The importance of identity *apra* party in a civil case as stipulated in *Pasal 118 HIR*, that identity serves as a basis for delivering a subpoena, or giving a notice. Nevertheless, errors in writing the identity of the lawsuit can be said error in personal or *obscur libel* (the person who sued vague or unclear), the lawsuit is not acceptable.

5. Fundamental *Petendi (posita)*

Fundamental *Petendi (posita / arguments of a lawsuit)*, means the basis of the claim or demand basis. Argument of the lawsuit is the foundation inspection and completes a case. Examination and settlement should not deviate from the argument of the lawsuit.

6. *Petitum* lawsuit.

The last Requirement that must be fulfilled in the letter of lawsuit should include what is requested (the principal demands of the plaintiff). This request must be made clear one by one about what the subject matter which the plaintiff demands that must be declared and charged to the defendant.

Proof in Civil Law

Both formal and material civil dispute contain several provisions regarding the burden of proof, proof in civil cases is used to prove the existence of a legal relationship in the arguments of the lawsuit (*posita*) whether the plaintiff as the basis for the lawsuit plaintiffs may be granted or denied by the judge. Plaintiff must explain and promote the claim first by explaining the existence of a legal relationship with strong arguments. Plaintiff must be able to prove that there has been a real nominal amount into the State due to the loss or actions relating to the suspect, accused or convicted. Otherwise applicable to the defendant, that to the suspect was given the opportunity to answer and prove whether the lawsuit argued is real or not. It is stated in *Pasal 1865 KUHPerdara* which states that "Any person who claims to have a right, or designate an event to confirm or to refute the rights of rights of others, are required to prove the existence of such rights or that the events that happened ". From the article, it can be clearly understood that the burden of proof is given either to parties who have any right or to parties who deny the rights of others.

To be able to propose a lawsuit Compensation, it must be proven first that the defendant committed a legal act fulfil the requirements, as follows:

- a. There must be an element such unlawful, such as act violate the rights of others, contrary to legal obligations suspected, contrary to good morals, contrary to propriety and necessity that must be considered in the association community
- b. There must be an element mistakes made by actors
- c. There must be an element in the form of losses incurred material losses and non- material loss.
- d. There should be elements of any causal relationship (cause and effect) between the act and the harm caused to the perpetrators be held accountable.

Proof in civil law is charged proportionally to both parties, but to be able to file a claim for compensations, plaintiff must prove and collect valid evidence and convincing as the basic argument of the lawsuit first. This is done to avoid the lawsuit stated *Obscuur libel* (blurred or dark suit) or even a lawsuit which is rejected.

Analysis

⁵ M. Yahya Harahap., 2006., Hukum Acara Perdata Tentang Gugatan, Pesidangan, Penyitaan, Pembuktian, dan putusan pengadilan., Sinar Grafika., Jakarta., Pp. 51

⁶ Soepomo, 1993., Hukum Acara Perdata Pengadilan Negeri., Pradnya Paramitha., Jakarta., Pp. 24.

Fights against corruption crime in Indonesia for several decades become a priority and highlight among many communities in society, as stated in the explanation in UU PTPK that corruption in Indonesia is systematically organized and widespread that it is not only detrimental to the finances of the State, but also has violated the rights of social and economic society at large, so fight against corruption needs an extraordinary way. The spirit contained in the explanation of UU about the Corruption Eradication should have a special treatment for the people of Indonesia, especially for the law enforcement officers. Corruption is no longer a small thing, but there has been a systematic manner, so that Indonesia had to think systematically as well to solve corruption cases. It become a must because the victims are the social rights of the people and affects the community economy.

Government had given big enough priority for corruption; it can be seen in Pasal 25 which states that "the investigation, prosecution, and examination at trial in corruption cases shall be the priority over other cases and shall be handled as soon as possible." Additionally authorized investigators are also conducted wiretapping as part of the investigation process.

Further affirmed in Pasal 32 in UU for corruption, when the investigator is not able to find the elements of corruption, but he is clearly sure that there had been big amount of financial loss of government economy, and then the investigator shall submit the file to the state attorney or aggrieved department to do a civil lawsuit.

Here is the statement of Pasal 32 Ayat (1) "In the case of investigators discovered and found one or more elements for the not enough evidence corruption, while there has been a financial loss to the state, the investigator shall submit the results of the investigation file to the state attorney to do a civil action or submitted to the aggrieved department to apply a lawsuit

The article above (Pasal 32) can be interpreted that the civil justice system just as a supporting course, which is rarely used in cases of corruption, but from the data that has shown that the government suffered huge amount of losses due to the country just got returning of corrupted money by 8.9% and it means that government suffered a loss of 91.1%. The state will continue being suffered of losses if the civil justice system is still not treated as priority and has a big chance in court.

This is reinforced in paragraph (Ayat 2), which mention that even the acquittal though, does not remove the right to prosecute of government financial loss. It means that the civil law system has some principles that can be synchronized to the corruption crime. In the corruption crime, it is obviously that the government suffered financial loss, and for that such loss should government take a lawsuit to reclaim that loss. .

Fights against corruption crime is not only be done on the one court system, because as it has explained in UU about corruption that corruptors set a crime in a systematic way, and they often use sophisticated technology in executing their acts, While the Indonesian positive law takes only the physically punishment (prison) which is considerably not giving any lesson to other corruptors, even worse, many of the them are obviously back to live in luxuries after being jailed.

Rules of civil law can be used as a tool / effort to do impoverishment against corruptor, because it is identified that some convicted of corruption prefer to receive a prison sentence than the returning money to pay the penalty which imposed on him. As an illustration, MA has taken some aggravation in verdict for defendants on corruption and money laundering in PT Asuransi Kredit Indonesia (Askrindo). The decision was also imposed an additional punishment to fine Rp 1 billion subsidiary six months in prison and payment of compensation valued at USD 796.38 million subsidiary six months in prison⁷. The verdict seemed so scary for ordinary people, but in fact corruptors feel like having an opportunity to set their corrupted property from jail that is why they tend to accept imprisoned.

Based on Pasal 18 Ayat (2) states if the convicted person does not pay the compensation referred to ayat (1) huruf b, maximum 1 (one) month after the court decision binding, government deserve to take over his property to be auctioned to cover the replacement money.

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In this article, it seems easy to do, but some studies shows us differently that the prosecutor had difficulty in taking over the property belonging to the convicted person, as released on the official website of ministry, Research and Development Center of Kejaksaan R.I, Study on Steps in Law to be taken in effort in Returning Arrears Payment Money, 2008⁸ If this provision is implemented, the prosecutor will face difficulty in finding property belongs to the convicted person or to his heirs. And the possibility of arrears money of returning is getting bigger. Therefore, collecting data and confiscation of property belong to the suspect should have been done since the investigation. For that thing, it requires Attorney efficiency for task and function in the field of judicial investigations and intelligence. Otherwise, the state and society will always suffer the loss caused by corruption cases. The law should role of the judicial system of civil law, although the Law on corruption currently has little thing to do with the civil law system by applying the compensation in sentencing judge's decision.

In addition, the Law on corruption provides opportunities to do prosecution in returning to suspect that alleged corruption. Compensation is an obligation imposed to persons who have acted against the law to commit acts of corruption and causing a loss to another person (the country) because of their corruption.

Applying prosecution in returning the loss is not as simple as we imagine, because the UU PTPK Pasal 32 states that the chances of applying a lawsuit against corruption should have an abundance of case investigator first, because when the investigators do

⁷<http://www.tribunnews.com/nasional/2013/10/10/ma-perberat-vonis-terdakwa-kasus-korupsi-askrindo-jadi-15-tahun-penjara>, accessed date May,12 2014

⁸ http://www.kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=35&id=53, accessed date May,12 2014

not find one or more evidence of the corruption, while there has been a loss of the government budget, the investigators then submit the file to the State Attorney or department aggrieved.

From the article could be interpreted that, when the loss is not proven as corruption crime, so the state attorney or department are able to do a lawsuit to the local Court. From the article could be interpreted that, when the state losses that cannot be proven or not enough evidence of corruption then the State Attorney⁹ or Agency filed a lawsuit to the local Court. In this case, the State Attorney in carrying out their duties require SKK (Power of Attorney) because, according to the Indonesian Attorney Act, the Attorney has the duty and authority to conduct law enforcement and legal assistance in order to maintain law and order, and protect the interests and rights of state and government -civil rights society.

When investigators stated that they don't have enough proof to state a criminal offense against the alleged corruption cases to the suspect, the investigator must immediately submit the results of the investigation to the State Attorney or department aggrieved.

In conducting of civil effort, the sides that deserve to sue are those who are ignored or neglected from suffered losses. Applying a lawsuit is allowed by the plaintiffs themselves or by authorized lawyers or Advocate. In the Indonesian law system, the prosecutor is not only being a prosecutor but also able to act as a lawyer, but the attorney as a lawyer / advocate is permitted only if the victim is government or states department.

To corruption case that there has not enough evidence, then the state attorney do the usual remedies first, by applying a lawsuit through the local District Court in accordance with the relative and absolute competences that contained in the rule of law.

State Attorney made a lawsuit by postulating that the defendant had legal actions which obviously suffer such a loss to victim in part of *posita* / *Fundamentum petendi*. It is stated in Article (Pasal 163 HIR) that is written "Whoever says he has the rights or he mentions something that works to strengthen to his rights, or to deny the right of another person, so that person must prove the existence of such rights or the event."

The article has the same meaning as civil KUHP 1865. it states that "any person who argued that he has a right, or in order to enforce its own right or to deny rights of others, refers to an event, be required to prove the existence of such rights or event".

These articles can be used as the references of the course of civil disputes in court, the State Attorney must be able to argue that it is obviously state suffered a loss, for that at least, the State Attorney should study and find evidence. In terms of financial loss to the state, then the state attorney lawyer should seek for assistance from accountants that have certainty in terms of calculating state losses. In the rule of law, both civil and criminal, it is not specified who or what institution designated for calculating the amount of loss, but the thing is the State suffers a loss, so it would be wise if the accounting / auditing comes from department / institutions under the auspices of the government, such as KPK, BPKP or BPK. BPK / BPKP audit results can be used to argue that there has been a loss to the State.

In addition to making and to postulating the occurrence of loss to the state or national economy, so the state attorney/prosecutor must first ensure that the evidence used as the basis for the lawsuit has been argued and valid in formal and substantive qualify. In civil law, each tool has a different minimum threshold of proof for evidence of each others. The same thing to the value of the inherent strengths of each of the evidence is not the same¹⁰.

If the State Attorney argued in *posita* that the defendant has committed an illegal act, the State Attorney must prove such as below first:

1. Existence of a defendant's guilt either intentional (willful) or due to negligence
2. Losses are a direct result of the unlawful acts of the defendant¹¹
Collecting evidence in a civil case is not based on quantity, but based on quality, because the plenty of evidences don't mean anything for the minimum proof.

There are fundamental differences between the inherent probative force of evidence with evidence of criminal procedure and on to the civil procedure, criminal procedure where the law does not recognize the evidence that has probative force and perfect determines, but all types of evidence, only to have the value of the strength of free evidence (*Vrij bewijskracht*).

The burden of proof in civil effort is not merely charged to Plaintiff as written on Pasal 1365, 1865 and 164 HIR civil KUHP, but also charged the defendant, which the defendant was given the burden of proof to prove that the defendant deserve to what he has owned and prove that the proof is on the wrong side that makes the holder has no rights as states on the Civil KUHP 1977. So it can be said that the proportional burdened, the plaintiff is required to prove what is on his lawsuit and the defendant was given the opportunity to prove his rebuttal. However, if the defendant did not commit a refutation of the plaintiff, so it shall apply Article (Pasal 1865 of the Civil Code KUHP and 164 HIR *as a general regulation*). This is appropriate with the principle of examining of the lawsuit in court, which is fully devolved to argue the fact and truth obligations to the all sides / parties. And the judge was not required to find the material truth or ultimate truth based on conscience, but it is enough with the truth in the form of formal (*formiele waarheid*), which is just in accordance with the formalities prescribed by law¹². But there is no prohibition for the civil court or judge to seek and find the ultimate truth (real truth) as quoted by Yahya Harahap in the Supreme National Court Decision (MA)¹³.

⁹ Peraturan Jaksa Agung RI Nomor 040/A/JA/12/2010

¹⁰ Yahya harapa., *Op.cit.*, Pp. 544

¹¹ *Ibid.*, Pp. 536

¹² *Ibid.*, Pp. 71

¹³ Mahkamah Agung Nomor 3136 K/Pdt/1983, Pengadilan Tinggi Semarang Nomor 100/1981

One thing that is also very important that is available on Petition lawsuit. State Attorney in formulating a lawsuit must observe carefully. Because in the civil law, there is the principle of *ultra partium petitem*, which the judge in deciding the case is prohibited to grant something that was not presented or requested in the petition, as contained in Pasal 178 ayat (2) and (3) HIR, Pasal 189 ayat (2) and (3) R.Bg, and Rv Pasal 50. Beside of that contained in HIR/Rbg, the principle is also affirmed by a decision of the Supreme Court No. 882K/Sip/1974 tanggal 24 April 1976. The *Ultra Petitem Partium* principle can also be interpreted as the judge is banned to consider anything that deviates from the basis of the demand / accusation. For that, the State Attorney must clearly apply the counting of the losses suffered by the State along with the interest and it is also possible to charge the outcome to be gained State if the corruption did not occur. However, in the civil court, judge is authorized to reduce the petition logically and rationally, also in accordance with the amount of the losses suffered by the plaintiff.

In the examination process of civil disputes, the judge is permitted to decide confiscation (*conservatoir Beslag*). This thing is applicable in case after case to disputes both claims for compensation caused by breach of contract and Unlawful acts (Article 1365 Civil Code KUHPerdata). And this sequestration is to guarantee the fulfillment of payment for the claims of plaintiff suffered as written in Pasal 227 ayat (1) or Pasal 720 Rv. Sequestration can be imposed on all assets of the defendant, but by seizure of moving objects first, if a moving object is insufficient to ensure compliance with the compensation, it is allowed to conduct sequestration (*conservatoir Beslag*) of the unmoving objects .this sequestration is contained in Pasal 197, 198, 199, 226 ayat (3), 227 ayat (3) HIR

Conclusion

Efforts to refund money state losses in the case there is no fulfilment the elements of corruption becomes an important matter. It remembers that there is the large amount of financial loss in the state or country's economy because of corruption. Currently Indonesian society has degraded identity, this time a prison is not as a disgrace and creepy thing again. Most people are more afraid of the poor rather than lived most of his life in prison. For the civil suit, it should be placed as a remedy which is as important as criminal remedies. Not merely voluntary or complement of criminal law, as stipulated in the UU *Pemberantasan Tindak Pidana Korupsi pasal 32* which states that the investigator as soon as possible submit files Corruption being handled to the State Attorney if he thought did not quite meet the elements of the crime of Corruption, but clearly there has been a financial loss to the state or national economy. Investigators in addition to submit the file to the State Attorney, they can also submit the investigation papers to the agency harmed.

The civil remedies pursued with the goal of getting back some state assets or state economy. So the state can take back the money that was taken or stolen by the defendant by way of ordinary legal remedy in civil law systems which filed a lawsuit to the local District Court where defendant domiciled.

Conducted a civil suit based on / in accordance with the provisions contained in the *KUHPerdata* and *Hukum Acara Perdata (HIR/RBg)*. *Contentiosa* lawsuit can be done by those who feel harmed or be authorized to the lawyer or advocate. In terms of financial loss to the state override, then the lawsuit filed by the State Attorney, whose job is to protect the interests of the State civil.

More obviously the duty prosecutor as *JPN dalam Keppres 55/1991 tentang Susunan Organisasi dan Tata Kerja Kejaksaan RI dalam pasal 24 dan pasal 25 huruf e*, mentioned, *JAM Datun* has the duty and authority to provide assistance, consideration, and legal services to government agencies and state in the field of civil and state administration to save the wealth of the country and uphold the authority of the government, to take legal action in and out of court, civil represent the interests of the state, the government and the public, either by position or special power inside or outside the country.

Performed according to the tort system of civil law, which is subject to the *BW / KUHPerdata dan HIR/RBg*. The state prosecutor as the defendant must be able to prove and look for valid evidence and strong, that there has been a financial loss to the state or national economy in the argument of the lawsuit and obtain accurate counting scale state loss listed in the lawsuit petition. In investigation civil case, the State Attorney may request the imposition of sequestration (*conservatoir Beslag*) treasures belonging to the defendant's allegedly insufficient to pay the amount of financial loss to the state so that these treasures cannot be transferred by the Defendants. Sequestration efforts made in order to avoid the state of non-existence *eksekutable* decision.

In addition subject to *BW and HIR / RBg*, also subject to the *UU Pemberantasan Tindak Pidana Korupsi* of the permissibility of using a system of civil law in cases of corruption that does not provide enough evidence of the criminal offenses of corruption. In addition it is subject to the Law of the Republic of Indonesia Attorney governing authority as State Attorney in order to protect the interests of the State civil.

Suggestion

Actions that cause financial loss or economic state the country must not only be judged and accounted for using the criminal justice system alone, but must also be done using a system of civil law, whether done individually and separately in accordance with the rules of civil and criminal law as well as relative and absolute competency Judiciary. This harmonization is needed in relation to the financial return through the state civil suit in the Law on Corruption Eradication has not been accompanied by a reversal of the burden of proof as a model of civil forfeiture in other countries. In addition, the cases of corruption do not just stop at the criminal verdict, but must also be done using a system of civil law.

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