



DOI: <https://doi.org/10.31933/unesrev.v6i4>

Received: 16 May 2024, Revised: 31 May 2024, Publish: 1 June 2024

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Law Enforcement of State Losses Through Civil Proceedings: Exploration of the Role and Analysis of Alternative Options in Corruption Cases

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Abstract: Corruption in Timor-Leste has become a chronic issue that harms the country's finances and economy, as well as violates the social and economic rights of the people. Efforts to recover state financial losses due to corrupt practices through civil proceedings have not been optimal, with the focus being more on criminal prosecution, which has proven to be ineffective. This research aims to examine the concept of recovering state financial losses through civil processes in Timor-Leste, identify obstacles in filing civil lawsuits, and formulate an ideal model and specific regulations for civil lawsuits in the context of recovering the proceeds of corruption. The study uses a qualitative approach by examining relevant legal documents and analyzing the judicial process and financial management in Timor-Leste. The focus of this research is on the application of civil lawsuit rules in recovering the proceeds of corruption and the challenges faced. The results show that the use of civil forfeiture can be a solution to expedite the recovery of corrupt assets through civil proceedings. The research also found obstacles in civil lawsuits, such as the ineffectiveness of criminal prosecution in reducing corruption and the need for anti-corruption legal reforms to improve the mechanism for recovering corrupted state assets. The proposed ideal model includes strengthening the role of the administrative tax and accounts court in examining the management and financial responsibility of the state, as well as placing civil lawsuits as the primary legal effort in combating corruption. This research underscores the importance of legal reforms and the implementation of civil lawsuits as the main strategy in fighting corruption in Timor-Leste. The use of civil forfeiture and asset confiscation through administrative channels is necessary to expedite the recovery of corrupt assets and reduce state financial losses.

Keyword: State Financial Loss, Civil Lawsuit, Corruption.

INTRODUCTION

Timor-Leste, officially known as the Democratic Republic of Timor-Leste (RDTL), is a small sovereign nation in the 21st century located north of the continent of Australia and south of the Republic of Indonesia. The country has a long history of struggle for independence and sovereignty, having been colonized by three nations: Portugal for 450 years, Japan for 3 years, and Indonesia for 24 years, before being placed under the leadership of the United Nations Transitional Administration East Timor (UNTAET) for over 2 years (October 24, 1999 - May 20, 2002).

Timor-Leste is an independent and sovereign country with the Constitution of the Democratic Republic of Timor-Leste (RDTL) established on May 20, 2002, mandating that the nation's goal is to achieve the welfare and prosperity of the people, as well as the management of land and natural resources (earth, water, and airspace) contained within it. The Constitution of the Democratic Republic of Timor-Leste (RDTL) emphasizes that Timor-Leste is based on law, not solely on power, meaning that the Democratic Republic of Timor-Leste (RDTL) is a democratic legal state based on the Constitution, upholding human rights, ensuring all citizens are equal before the law, and the government must uphold the law without exception. The law determines what must be done and what must not be done, as well as the consequences. The law is not only directed towards those who clearly violate it but also towards legal actions that may occur (Soekanto & Mamudji, 2014), and towards the state apparatus to act in accordance with the law. Such a legal system is one form of a legal state (Wandatama & Sukarja, 2007).

The process of development can bring progress to society, but it can also lead to negative social impacts, particularly concerning disturbing actions that trouble the community (Supriadi, 2023). One of the unlawful acts that can be said to be quite phenomenal is the problem of corruption (Effendy, 2007). This action absolutely harms the people and the state's finances, and it also violates the social and economic rights of the community (Agustina et al., 2019; Syahrani, 1991).

Corruption is derived from the Latin word *corruptio* or *corruptus*, which has a range of meanings including the act of damaging or destroying (Hutabarat et al., 2022). It is also associated with rottenness, wickedness, depravity, dishonesty, bribery, immorality, deviation from purity, and words or statements that insult or defame (Atmadja, 1986). The term "corruptio" is translated into English as "corruption" or into Dutch as "corruptie." The word "corruptie" in Dutch has been adopted into the Indonesian lexicon as "korupsi." According to the Great Dictionary of the Indonesian Language (KBBI), korupsi refers to the misappropriation or misuse of state funds by individuals, companies, organizations, foundations, and so on, for personal gain or the benefit of others.

The World Bank presented an alternative definition of corruption in 2000, stating that corruption involves the misuse of public power for personal gain. This definition has since become an international standard for understanding corruption. The Asian Development Bank (ADB) also defines corruption as activities that include inappropriate and illegal behavior by employees in both the public and private sectors, aimed at enriching themselves and those close to them. Additionally, the ADB's definition highlights how these individuals use their positions to influence others to engage in corrupt activities.

Transparency International, an organization that annually releases the Corruption Perceptions Index (CPI), defines corruption as inappropriate and illegal actions by public officials, whether politicians or civil servants, to enrich themselves or close associates by abusing the authority entrusted to them by the public. On the other hand, the Hong Kong Independent Commission Against Corruption (ICAC) states that corruption is the misuse of power and authority by public officials through violations of the law related to their duties, in order to seek benefits for themselves and third parties.

In Article 8 of the United Nations Convention Against Transnational Organized Crime and The Protocol Thereto initiated by the United Nations Office on Drugs and Crime (UNODC), corruption has two definitions. First, corruption is promising, offering or giving to a public official, either directly or indirectly, an undue advantage, either for himself or herself or for another person or entity, in order for the official to act or not act in the performance of his or her official duties.

Second, corruption is the request or acceptance by a public official, directly or indirectly, of an undue advantage, either for himself or herself or for another person or entity, in order for the official to act or refrain from acting in the performance of his or her official duties. UNODC on its website calls corruption a complex social, political and economic phenomenon. Corruption, says UNODC, undermines democratic institutions, slows economic growth and destabilizes governments.

Meanwhile, Kofi Annan, Secretary General of the United Nations for the period 1997-2006, in his speech at the United Nations Convention against Corruption (UNCAC), said that corruption is a terrible plague that has a destructive impact on society. Corruption, Annan said, causes human rights violations, damages markets, erodes the quality of life, and raises organized crime, terrorism, and other threats to human life.

From the various definitions above, corruption basically has five components, namely:

1. Corruption is a behavior.
2. There is abuse of authority and power.
3. It is done for personal or group gain.
4. Violating the law or deviating from norms and morals.
5. Occurs or is carried out in government or private institutions.

From the explanation above, it can be seen that anti-corruption is an antithesis. The understanding of anti-corruption is all actions, words, or deeds that oppose corruption and all its forms. Someone who understands this concept of anti-corruption will act in accordance with the values of integrity. The nine values of integrity are honesty, independence, responsibility, courage, simplicity, caring, discipline, fairness, and hard work, or abbreviated as "Jumat Bersepeda." By firmly holding onto the principle of anti-corruption, an individual has a moral fortress to refrain from engaging in corruption and also prevent corrupt practices. Corruption in Timor-Leste continues to show an increase, yet not a single perpetrator of corruption has returned the financial losses to the State. This indicates that the judicial system is still dominated by those in power, with politics being more dominant and systematically controlling all aspects of society.

Corruption is one of the major problems facing Timor-Leste, in fact, to a certain extent it has reached a chronic level. Corruption in this country penetrates all aspects of state life and is like an octopus line. Irregularities do not only penetrate areas that are already perceived by the public as suggestions of corruption, but also penetrate the hallways of unimaginable institutions.

Thus, various non-governmental organizations in Timor-Leste began to actively raise the issue of corruption and encourage law enforcement officials to apply criminal and civil proceedings against state corruptors.

The role it plays in recovering the State's finances from the clutches of corrupt individuals who have acquired them through the positions bestowed upon them by the People to exploit the State's finances for personal and familial enrichment. The law encourages the disposal, collection, and safeguarding of savings and provides the necessary financial resources for economic and national development, which is the aspiration of the People. From a subjective standpoint, the term "State finances" encompasses all the aforementioned objects owned or controlled by the central government, local governments, state/regional enterprises, and other entities associated with State finances. From a procedural perspective, State finances encompass the entire range of activities related to the management of the

aforementioned objects, starting from policy formulation and decision-making to assuming responsibility. From the perspective of the purpose of State finances, it includes all policies, activities, and legal relationships related to the ownership or control of the aforementioned objects in the context of the implementation of government and the increasing sophistication and complexity of financial deviations or the State's economy. Therefore, corruption offenses are formulated as broadly as possible to encompass acts of enriching oneself or others that are contrary to the law. In the above formulation, the concept of "contrary to the law" in corruption actions can also include reprehensible acts that, according to the sense of justice of society, should be prosecuted and punished. As for the meaning of causing harm, it is synonymous with causing financial losses to the State or a decrease in State finances.

Convicted individuals involved in corruption cases may face additional penalties, such as the payment of restitution equal to the amount of assets obtained through corrupt practices, in addition to imprisonment or fines. However, in reality, very few individuals actually pay restitution, often claiming to lack the necessary funds or assets. The reluctance or inability of convicted individuals to pay restitution is typically known by investigators and prosecutors even before the case is brought to court. In such instances, prosecutors should seek the maximum imprisonment sentence as prescribed by law.

According to Andi Hamzah (2005) in his book, entitled eradication of corruption, the consequences of corruption are detrimental to the State's finances or economy. The loss must be charged to the convicted person after the court decision has obtained permanent legal force, it is known that there is still property belonging to the convicted person that is suspected or should be suspected of being derived from the crime of corruption that has not been subject to confiscation for the State as intended, then the State can file a civil lawsuit against the convicted person and / or his heirs. This provision clearly provides a possibility for the creation of justice for wrongful acts that according to the sense of justice of the community must be prosecuted and punished.

The explanation above more explicitly states that the rationale for the provisions in this article is to fulfill the public's sense of justice from the actions of perpetrators of corruption who hide property suspected of originating from corruption.

Thus, specifically the procurador of the Democratic Republic of Timor Leste has the authority to be able to handle civil cases in court, especially in relation to efforts to restore expressive losses to unite the word prosecutor is authorized to carry out civil lawsuits, the authority of the procurador in the collection of State financial losses due to corruption crimes regulated in the Law *Codigo Proseco Penal* artigo 48 paragraph (1) of the criminal prosecution code states.

O ministerio público é o titular da acção penal, competindo-lhe colaborar com o tribunal na descoberta da verdade e a realização do direito obedecendo em todas as interbenções proessesuais a criterios de estrita legalidade e objetividade.

The public prosecutor is responsible for the criminal offense and is responsible for cooperating with the court in finding the truth and realizing the law, complying with all procedural interventions with strict criteria of legality and objectivity

Effective law enforcement against corruption should fulfill two objectives. The first goal is that the perpetrators of corruption are punished with fair and proportional criminal penalties. If committed during a critical economic period or when the economy is still in the stage of improvement, the punishment imposed on the perpetrators of corruption should be the most severe punishment.

The second objective is that the losses suffered by the State as a result of the corruption crime are recovered. Such a situation, if allowed to continue, will have a very negative impact on law enforcement in Timor-Leste, for the prosecutor's office itself, it will be unfavorable and can even further degrade its image and in turn will damage the public's sense of justice.

In the Black Law Dictionary in the Corruption module of the KPK, Corruption is an act committed with the intention of obtaining some benefit contrary to official duties and other truths "an act of an official or trustworthy person which unlawfully and wrongfully uses some benefit for himself or others contrary to duty and other truths.

In the context of criminal law, not all types of corruption that we recognize are qualified as criminal acts. Therefore, what actions are declared as corruption, we must refer to the criminal law act no 2 / 26/2009, title Crimes participasaun ekonomia e negosion carried out in the office of public functions article -299, eradication of corruption as follows.

O codigo penal artigo 299 no. (1) participação economico e negocio,o funcionario que em razão do exercicio de cargo politico deva intervir em contrato ou outra operação ou atividade,e se aproveitar dessa condição,para obter para si ou para terceiro,direitamente ou por interposta pessoa,vantagem patrimonial,ou por participação economica ilisita e deste modo lesar os intreses publicos,que lhe comprir administrar,fiscalizar,defender,é punidos com apenas de prisão de 2 a 8 anos.

Article 299 (1) Economic participation, which is required to intervene in a contract or operation or other activity by virtue of public office, and takes advantage of this condition to obtain for himself or others a patrimonial or non-patrimonial advantage, either directly or by another person, by unauthorized economic participation, to the detriment of the public interest which he is obliged to manage, supervise, defend or implement, shall be punished by imprisonment for 2 to 8 years.

The authors took this title because corruption in Timor Leste will never end because people do not care about this situation because they are afraid of the government, but corruption has reached an alarming nadir, hence the authors chose the location of the Dili District Court, because this court was the court that held the corruption case against the former Minister of Justice.

Based on the above background, the purpose of this research is to explore two issues. First, is to understand the role of law enforcement against state losses through civil proceedings as a result of corruption. Second, is to assess and analyze alternative options in the process of law enforcement against state financial losses through civil proceedings in corruption cases.

METHOD

This research type is normative research, as it focuses on the philosophy of norms related to the main issues under study, namely norms in the field of criminal law on corruption and the recovery of state finances through civil proceedings. The approach used in this research to analyze both legal issues is a legal approach and a case approach.

The legal materials used are primary legal materials and secondary legal materials. Primary legal materials consist of the basic constitutional law of RDTL Law No. 132 of 2001 on corruption and the recovery of state financial losses through civil proceedings, and the penal code of Timor Leste Article 48 of 2009. Secondary legal materials are obtained from textbooks/literature discussing criminal law and civil law on corruption and the results of legal research in the form of journals and articles.

Primary legal materials consist of regulations in the field of corruption and the recovery of state financial losses through civil proceedings due to corruption, as well as implementing regulations related to legal issues collected through inventory and categorization methods. Secondary legal materials are collected using a note card system that summarizes the original writings and broadly outlines the citation cards used to record the main issues under study, as well as graduation cards containing analysis of the issues found.

The management of legal materials is conducted through the method of library research, which is carried out at the Oriental Timor Lorosa'e University Library (UNITAL) and the Procuradoria Geral da Republika. The literature and sources used include reference

books, legal norms or laws, scientific works (previous research results), articles from electronic journals, and other relevant references related to this paper. The purpose is to obtain basic references for research.

The primary and secondary legal materials that have been collected through this inventory are then grouped and studied using the approach of laws and statutes to obtain fundamental knowledge from these legal materials. It is prescriptive in nature as a science that studies the objectives of legal values, justice, the validity of legal rules, legal concepts, and legal norms as applied in the field of law. Legal science establishes standard procedures for implementing legal rules, and its prescriptive nature is sustainable in the field of law. Afterwards, the classified legal materials are analyzed, studied, and compared with the doctrines, theories, and legal principles proposed by experts based on reasoning or logic in legal arguments. The analysis is conducted to discover pragmatic truth.

RESULT AND DISCUSSION

Filing a civil lawsuit in court in the recovery of State financial losses

The process of initiating a civil lawsuit is governed by the Civil Code in Timor-Leste. The *Codigo Processo Civil* Timor Leste serves as a comprehensive law that regulates the legal interactions between individuals and their respective needs. It encompasses various aspects of private law and provides guidelines for other laws pertaining to *Codigo Processo Civil* Timor Leste, including matters related to worship, parental authority, rights and obligations. This law applies universally and at all times, with the primary purpose of regulating the relationship between legal entities and addressing legal issues.

According to the draft *Codigo Processo Civil* Timor Leste there are five sections:

1. The section discusses the "common parts" (of a book). This section covers general principles that apply to all literature, e.g. whether it has the ability to enter into legal relationships and how to interpret the law.
2. Two sections on "obligations" (two books) Examples: general contracts, responsibilities, warranties, compliance with Contracts, penalties not to be fulfilled by persons, construction contracts.
3. Three sections on "things and land" (three books) Examples: property rights, land rights, arrangement, lease, and so on.
4. Fourth section on "Family" (four books) Examples: who can marry, divorce, adoption, food etc.
5. Section five on "Earth" (five books) Examples: who is entitled to receive inheritance, how the Government determines the value of the inheritance.

The definition of state finances is all state rights and obligations that can be valued in money, as well as everything in the form of money and in the form of goods that can be used as state property related to the implementation of these rights and obligations (Goedhart, 1973). There are 2 (two) things related to state finances, namely state financial management and state financial responsibility. Examination of the management and responsibility of state finances is regulated in the Constitution of the Democratic Republic of Timor Leste No. 1 of 2002 Article 129 paragraph 3 explains about.

O tribunal superior administrativo, fiscal e de contas é o órgão superior da hierarquia dos tribunais administrativos, fiscais, e de contas, sem prejuízo da competência própria do suprimo tribunal da justiça.

The higher administrative, taxation and financial court, the higher administrative, taxation and accounting court, as an agency, are responsible for supervising the legality of public expenditure and assessing state accounts.

Audit is a process of problem identification, analysis, and evaluation carried out independently, objectively, and professionally based on audit standards, to assess the truth, accuracy, credibility, and reliability of information regarding state financial management. To

carry out an examination of the management and financial responsibility of the state, the Supreme Audit Agency (BPK) is appointed as the only institution that carries out an examination of the management of state finances. This is in accordance with what is mandated in the Constitution of the Democratic Republic of Timor Leste of 2002 Article 129 paragraph 3 Administrative Tax and Accounts Court carries out an examination of the management and financial responsibility of the state. tasked with examining the management and financial responsibility of the state carried out by the Central Government, Local Governments, other State Institutions, the Central Bank of Timor Leste State-Owned Enterprises, Public Service Agencies, Regional-Owned Enterprises, and other institutions or bodies that manage state finances. As a public sector organization Administrative Tax and Accounts Court is required to prepare a work plan and budget each year. The necessity to formulate a budget as required by the Government Regulation of the Democratic Republic of Timor Leste of 2002 Article 145 Paragraphs (1,3), General State Budget, is outlined as:

o orçamento geral do estado é elaborado pelo governo e aprovado pelo parlamento nacional A execução do orçamento e fiscalidade pelo tribunal superior administrativo, e fiscal de contas e pelo parlamento nacional The general state budget is prepared by the government and approved by the national parliament.

Budget execution is supervised by higher administrative, fiscal and accounting courts and by the national parliament.

State finance as a vital instrument in the process of state development, the state and government cannot run effectively when it is not supported by the state budget prepared by the government through the proposed legislation (*proposta da lei*) and sent to the national parliament (*parlamento nacional*) for discussion and approval before being sent to the president of the Republic for promulgation in accordance with the mandate of the *Constituição da República Democrática de Timor Leste 2002*. State finances are an important part of the existence of a democratic state; therefore, the definition of state finances is in accordance with the norms of law and in accordance with the existing state finance law. But before knowing more clearly about the definition of state finances in accordance with the law there are ideas presented by experts regarding the definition of state finances as follows:

1. The definition of state finances according to **M. Ichwan** is a quantitative activity plan (with numbers including realizing in the amount of currency) that will be carried out for the future.
2. According to **Geodhart**, state finances are all laws that are periodically enacted which give the government the power to carry out expenditures regarding a certain period and show the means of financing needed to cover these expenses.
3. According to **M.Subagio**, state finances consist of state rights and obligations that can be valued in money, as well as everything in the form of money and goods that can be used as state property in connection with the implementation of these rights and obligations, state rights include the right to create money, the right to bring results, the right to levy the right to borrow and the right to force the state's obligations to cover.

Alternative Solutions to Recover State Financial Losses as a Result of Corruption Crime through Civil Proceedings

The return of state finances due to corruption is faced with various obstacles, these obstacles are not only because corruption has become an extra ordinary crime involving power and state financial losses but also because corruption is very difficult and complicated to prove. Therefore, an integral approach is needed, both through a penal approach and a non-penal approach, one of which is through a civil instrument approach, as well as a global approach (international cooperation) The limitations of the legal process, especially civil law, are considered not effective enough to recover state financial losses, because they must be faced as obstacles. For example, the dominant political factor of power, such as the case of

the Minister of Justice Lucia Lobato regarding the procurador's economic participation case, did not have the courage to investigate the case because the Deputy Prime Minister had already said in public that he would form a team to find out who used the money. But what happened 1 day later he was fired from his position, actually finding out about it but because he was in the center of power the *procurador* was helpless and, to process the case further, the main cause was because procedurally the recovery of state financial losses must be done through a civil lawsuit, which in fact must be subject to the provisions of the civil procedural law set out in the 2009 civil procedural law statute, a product of the government of Timor Leste, which was one hundred percent applied in Timor Leste after independence. The Democratic Republic of Timor Leste (RDTL) said that the legal process in court must use Portuguese, it is also an obstacle for legal practitioners in Timor Leste to apply the rules of civil law, and using Portuguese is a factor that hampers the civil process in Timor Leste, the return of assets from the proceeds of corruption is very far from reality, especially since legal practitioners in Timor Leste still do not master the portuguese language well, of course it is also a factor that determines the decision of a case in court.

In response to these constraints, civil suits to recover state financial losses thus require special regulations that are more specific based on statutory regulations so that in the context of recovering state financial losses to prioritize non-legal approaches that are more effective, fast and simple so that state financial losses can be recovered immediately.

1. Criminal investigation in corruption offenses in court

In relation to the topic of this paper, the author reinforces the concrete actions that occurred in East Timor regarding corruption. The public prosecutor maintained his charges against the defendant Lucia Lobato in the Gleno Ermera prison rehabilitation case, who was a former Minister of Justice and former director of Gleno prison. Both defendants provided reasons for the necessity of changing the legal qualification of the law and the consideration of two legal systems, namely Indonesian law and East Timorese law, for the defendants to take into account. In his indictment, the public prosecutor utilized East Timorese law as the criminal law and cited articles of criminal procedure.

During the trial, on September 13, 2018, at 8.30pm, the public prosecutor requested for the court to impose a single sentence of 7 years imprisonment against the two defendants.

After analyzing the facts and evidence, the court concluded that the actions of the defendants fulfilled the objective and subjective elements of the crime of economic and business participation as set out in the Timor-Leste *codigo penal artigo 299 no. (1)*:

participação economico e negocio,o funcionario que em razão do exercicio de cargo politico deva intervir em contrato ou outra operação ou atividade,e se aproveitar dessa condição, para obter para si ou para terceiro,direitamente ou por interposta pessoa,vantagem patrimonial,ou por participação economica ilisita e deste modo lesar os intreses publicos,que lhe comprir administrar,fiscalizar,defender,é punidos com apena de prizão de 2 a 8 anos.

Article 299 (1) Economic participation, which is required to intervene in a contract or operation or other activity by virtue of public office, and takes advantage of this condition to obtain for himself or others a patrimonial or non-patrimonial advantage, either directly or by another person, by unauthorized economic participation, to the detriment of the public interest which he is obliged to manage, supervise, defend or implement, shall be punished by imprisonment for 2 to 8 years.

In the case of Lucia Lobato, the public prosecutor requested a single sentence of seven years' imprisonment to be imposed and ordered the State to pay a total of \$406,602.48 for two years. The Barbuda public defender requested the court to acquit the defendants, arguing that the facts were of a personal nature. In her final statement, the

defendant Lucia Lobato testified that the charges were not true. However, the public defender expressed readiness to accept the court's decision.

The public prosecutor charged former Minister Lucia Lobato and the director of Gleno Prison with the crime of participation in economic negotiation, as outlined in Article 299 of the Penal Code. During the V Constitutional Government, the Minister of Justice awarded the rehabilitation project for Gleno Prison to his family, despite the project's aim to ensure quality. Lucia Lobato approved and financed the work, along with the two defendants.

The allocated budget for the prison program was \$1,350,000, with \$1,000,000 designated for equipment purchase and \$730,000 for construction. Lucia Lobato stated in court that she was willing to cooperate fairly.

2. Application of civil lawsuit rules by the court in the return of corruption asset proceeds

In relation to Timor Leste, the 2008 *codigo processo civil* law 697 paragraph 2,

A penora deve iniciar-se pelos bens nomeados pelo executando e dentre estes aqueles cujo valor seja de mais facil realizaco e se mostre adequado ao montante do credito exequente

The seizure must begin with the assets named by the debtor and among these those whose value is easier to realize and is appropriate to the amount of the credit being enforced.

Hence, in the current case in Timor Leste, Laws No. 2/2006, 793, 808, and the Civil Procedure Code could have been utilized to conduct civil proceedings. This pertains to the ongoing cases in court involving Minister of Finance Emilia Pires and former Deputy Minister of Health Madalena Hanjan, who collaborated in embezzling state funds designated for the purchase of beds for the Guido Valadares National Hospital. However, civil proceedings are consistently sidelined, diminishing public hopes of holding perpetrators accountable for financial losses. It's evident that the criminal process alone is not effective in recovering state finances. This presents a significant opportunity for Attorney General's Office to demonstrate the authority granted by Law No. 2/2006, 793, 808, and the provisions of the civil procedure law, particularly in the civil pursuit of corruption eradication outlined in 793, 808. Given that these cases are still under court scrutiny in Timor Leste, the former Minister of Justice's exoneration does not negate the existence of substantial state financial losses.

However, the reality depicted by various studies and evaluations conducted by different institutions reveals an increasingly alarming trend. In general, these studies conclude that Timor Leste ranks among the most corrupt countries globally, with a corruption index of 32 out of 177 countries. A glaring weakness in the pursuit of Good Governance in Timor Leste is the lack of effective measures to combat corruption. The public perception, shared by many, is that corruption permeates public institutions, both departmental and non-departmental. This indicates that corruption has indeed become a serious and systematic problem, posing significant threats to the state and society, especially in a small country like Timor Leste.

Unfortunately, many people fail to recognize that corruption has dire consequences, as funds earmarked for development and welfare are misappropriated. Moreover, corruption has eroded the government's capacity to provide essential services and meet the basic needs of its citizens, leading to an unfair distribution of food resources.

Furthermore, corruption has subverted democracy and the rule of law, resulting in human rights violations, market disruptions, deteriorating quality of life, and increased crime rates.

3. Application of Legal System Rules

Application is the act of putting theory, methods, and other elements into practice to achieve specific goals and desired outcomes by a predetermined group or entity.

According to Austin, law is a regulation established to guide reasonable beings by other reasonable beings who hold authority over them. Furthermore, Lili Rasjidi and Wyasa Putra elaborate that the application of law is a continuous process following the legal formation process, encompassing institutions, enforcement agencies, legal advice, and procedural mechanisms for enforcing the law. Discussing the application of law entails discussing the actual implementation of legal norms, as laws are designed with the intention of being enforced. A law cannot truly be considered as such if it is never put into practice. The implementation of law invariably involves human actions and behaviors.

The police institution is tasked with handling violations of the law, the prosecutor's office is structured with the aim of preparing for the examination of cases before the court. J. F. Glastra Van Loon explains the function and application of law in society, among others, are:

- a. Bringing order to society and regulating social intercourse;
- b. Resolving disputes;
- c. Maintaining and defending order and rules if necessary, by maintaining and defending the right;
- d. Violence;
- e. Changing the rules and regulations in order to adjust to the needs of society; and
- f. Fulfilling the demands of justice and legal certainty by realizing the above functions.

Meanwhile, according to Soerjono Soekanto (2014), the functions and application of law in society include:

- a. Tools of public order and tranquility;
 - b. A means of realizing social justice inwardly and outwardly; and
 - c. A means of driving development
4. Obstacles to civil lawsuits in recovering state financial losses due to corruption crimes

Civil lawsuits have become increasingly impractical due to their inherent delay in recovering state financial losses. This delay has caused civil lawsuits to lose momentum and the opportune moment to seize assets from corrupt individuals right from the outset. The prolonged nature of these civil suits offers no guarantee of immediate return of state financial losses. Furthermore, initiating civil suits for the restitution of state finances after corruption crimes have occurred is no longer feasible due to specific legal conditions, such as insufficient evidence leading to acquittal or the death of the suspect or defendant. These conditions present technical challenges for the prosecutor, particularly regarding the burden of proof. The difficulty arises because the prosecutor must adhere to the evidentiary system outlined in civil law, which relies on formal proof.

The problem is that the procurator must submit the formal evidence in a civil case trial, even though the evidence has already been processed in a criminal case and declared insufficient evidence or even acquitted. Evidence that has been submitted in a criminal case does not allow it to be submitted again as evidence in a civil case, consequently the Attorney General's Office must find new factual evidence that has evidentiary value so that it can support the truth of his claim otherwise it will affect the possibility of failure to produce a civil claim for state financial recovery, referring to the case of a lawsuit against the former Minister of Justice as an example, the Attorney General's Office lawsuit was unsuccessful because in the trial the attorney for the former Minister of Justice was able to prove formally that the former Minister of Justice reported the results of the implementation of the financial budget used to the Prime Minister, so that the former Minister of Justice was judged by the court not guilty of committing an unlawful act.

5. Ideal Model and Special Arrangements for Civil Litigation

The potential for conducting civil lawsuits is more effectively utilized through civil forfeiture. Both civil forfeiture and NCB asset forfeiture share the same intent and

purpose: the seizure of assets without following criminal channels and without targeting the individual, but rather focusing on the assets themselves. Therefore, the principle behind asset forfeiture is aimed at reclaiming stolen assets from the hands of corrupt individuals.

Asset recovery involves a legal process of confiscating or seizing assets that have been identified as proceeds or means of crime. This process includes mechanisms such as freezing and confiscating assets through court-issued confiscation orders. It involves criminal court judges and can occur without a conviction or court decision (administrative forfeiture and asset forfeiture). The ultimate aim is to return the assets to victims, society, and the state. Specifically, asset forfeiture can be implemented without the need for a decision from either criminal or civil courts.

Asset forfeiture offers several advantages in situations where criminal forfeiture is not feasible or where existing remedies fail to establish the defendant's guilt. It proves highly effective in seizing assets acquired through corruption and reallocating these funds for the benefit of the state and society. Understanding that asset forfeiture is distinct from restitution or fines in criminal cases is crucial, as it is the only way to redistribute assets acquired through illegal activities. By providing a means of social justice and preventing corrupt officials from engaging in further acts of corruption, asset forfeiture serves as a vital instrument in recovering state financial losses.

For the sake of the loss of the perpetrator for the benefit of the injured, if in normal circumstances the injured party is obliged to prove that the perpetrator has committed a violation of the law, then here the violation of the norm is presumed to exist, and further obliges the perpetrator to negate this presumption and competition to show that he did not commit a violation of the law, secondly it is also possible to sharpen the liability for state financial losses, in this case it is still possible to distinguish between the mere negation of fault (in the narrow sense) on the one hand and the negation of fault, and fault as a condition of liability on the other hand, for example children who are still very young and the insane, certainly innocent in certain circumstances can be held liable for the unlawful acts they commit, The second example is the liability of the employer for the unlawful acts of his subordinates. Regarding civil suits in corruption crimes, it is more related to the sharpening of the responsibility of fault by reversing the burden of proof of having a relationship with corruption, this makes it sufficient for the Attorney General's Office to prove that the assets being sued have a relationship to a corruption crime, The increasing quantity and quality of corruption cases in Timor Leste, then to reduce corruption, one way can be to use the civil forfeiture instrument to facilitate the prosecution and return of corruption assets through civil channels, Timor Leste has tended to prioritize settlement through criminal channels which are more focused on punishing the perpetrators of corruption rather than recovering state financial losses.

The reality is that the criminal path is not sufficiently able to soak or reduce the number of criminal acts of corruption, corruption is not endless, it is even more widespread, even its development continues to increase from year to year, both in terms of the number of cases, the amount of State losses and their quality, these impacts are increasingly processed and systematic, the scope has penetrated into all aspects of people's lives and across State borders, corruption is nationally agreed not only as an extraordinary crime (extraordinary crime) but as a transnational crime.

Sharpening the understanding of civil forfeiture, there are several fundamental differences in general between civil forfeiture compared to criminal forfeiture, including first, civil forfeiture is not related to criminal offenses so that confiscation can be more quickly requested to the court of confiscation in the criminal process requires the existence of a suspect or a scale decision, civil forfeiture can be done as soon as there is a relationship between assets and criminal offenses, so it is lighter in proving the burden of

civil proof, but by using the civil burden of proof, so that it is lighter in proving the lawsuit that has been filed, third civil *forfeitur* is a lawsuit process against assets (*in rem*), so that the perpetrator of the act is relevant again, fourth civil forfeiture is useful in cases where criminal prosecution is hindered or impossible to carry out, the successful use of civil forfeiture in developed countries may be a discourse in Timor Leste because this procedure will provide benefits in the judicial process.

Asset forfeiture or civil forfeiture originated from countries adhering to the common law system, usually applied as an instrument to confiscate or seize assets originating or related to the proceeds of crime, in the modern era recently asset forfeiture has become a very hot issue discussed in various countries to be adopted by each country into the legal system asset forfeiture does not use criminal law (penal) channels but uses civil law channels which means using civil suits, without having to wait for the criminal prosecution process to take precedence.

Asset forfeiture is also known as asset forfeiture, and civil forfeiture is also called an asset forfeiture model that purely uses civil law Non Conviction based (NCB) forfeiture is an instrument that is most effective for seizing assets without punishment, The NCB asset forfeiture model, on the other hand, does not use a civil lawsuit against assets (*in rem*) or confiscation of assets (confiscation *in rem*) civilly without following criminal channels, and not against the person (in person) therefore the principle in (NCB) asset forfeiture is a return or opponent of convection based asset forfeiture identically also called the stolen asset recovery (star) initiative means pursuing the assets of corruptors.

As seen so far, the courts often experience processing corruption cases because of the high standard of proof used in criminal cases, besides that in the process of scanning the corruptors become sick, disappear or affect the judicial process, this can be minimized by using civil forfeiture because the object is the asset not the corruptor so that the illness, disappearance or death of the corruptor is not an obstacle to the trial process.

6. Priority Settlement of Administrative Pathways

The demand for compensation for the return of State financial losses through administrative channels is expected to immediately restore State finances, this prevention effort is important before the State's money from corruption is transferred to other parties or hidden or even fled abroad, the reason underlying this offer is because the administrative channel instrument is the only settlement for the return of State finances, In addition to being more practical, administrative mechanisms are also easier to carry out, especially due to abuse of authority by State officials. Logically, corruption cases related to abuse of office and power are assumed to always cause State finances, this is because corruption crimes are always related to office and power both at the central and regional levels.

CONCLUSION

The conclusions drawn from the discussion in this paper are based on the legal foundation utilized in the composition of this paper, which is the fundamental norm of the Constitution of the Democratic Republic of Timor Leste number 1/2002. This constitution serves as the legal source for the restitution of state financial losses resulting from corruption through civil proceedings. Specifically, Article 145, which pertains to state finances, is relevant in the context of applying the rule of law in Timor Leste. Similar to Indonesia, Timor Leste also employs the laws of *codigo penal*, *processu penal*, *codigo civil*, and *processu civil* to regulate the recovery of state financial losses caused by corruption crimes. Consequently, the courts must adhere to these laws as there are ongoing corruption cases in Timor Leste that are being reviewed. Therefore, it is imperative for the courts to utilize the civil process in addressing these cases.

The author proposes alternative solutions which involve utilizing civil forfeiture to expedite the recovery of state financial losses. This method focuses on seizing assets rather than punishing individuals, allowing for a more efficient process. By bypassing the criminal proceedings, the state can quickly confiscate assets from corrupt individuals involved in financial crimes. Additionally, seeking resolution through administrative channels is seen as a way to promptly recover state funds before they are transferred to other parties or hidden overseas.

The judiciary must always remain steadfast and resolute in upholding the law, without succumbing to any form of pressure or intimidation, even from the authorities. Timor Leste is a nation governed by the rule of law, where the law reigns supreme and all individuals are expected to abide by its provisions without exception. There is a pressing need to revise the anti-corruption legislation, particularly concerning the reinforcement of the anti-corruption commission, which has thus far fallen short in its mission to combat corruption effectively, particularly in terms of recovering misappropriated state assets through civil litigation. The implementation of civil forfeiture mechanisms, as seen in other jurisdictions, should be integrated into the framework of civil lawsuits aimed at reclaiming embezzled state assets. The existing civil litigation procedures outlined in the civil procedure code and civil code have proven to be inadequate in addressing the recovery of state financial losses. Civil lawsuits should be prioritized as a primary legal recourse alongside criminal proceedings, rather than being viewed as optional. This necessitates amendments to the civil litigation laws to enhance alternative dispute resolution mechanisms, such as ADR, as part of legal reforms aimed at recovering state financial losses resulting from corrupt practices.

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