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JURIDIC IMPLICATIONS OF ARTICLE 64 LAW #1 YEAR 2004 AGAINST THE TREASURE AND OTHER OFFICIALS THAT SUBJECT TO REGIONAL COMPENSATION

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ABSTRACT
Article 64 paragraph (1) and paragraph (2) of Law no. 1 of 2004 concerning the State Treasury, states firmly that the Treasurer and other officials who have been appointed to compensate the state/regional losses in settlements with the dimensions of State Administrative Law may still be subject to administrative sanctions and/or criminal sanctions. And if the treasurer and other officials are processed under criminal law, the criminal decision does not relieve the claim for compensation that has been determined through a settlement with the dimensions of State Administrative Law. The regulation of such norms certainly raises legal issues, namely the implications for the Treasurer and Other Officials who have been determined by the Regional Compensation Claim. In the author's view, the treasurer and other officials when this article is applied will create double sanctions, sanctions for compensation claims (internal settlement), administrative sanctions and criminal sanctions.

KEY WORDS
Juridical Implications, sanctions, treasurer, officials, Indonesia.

Corruption has been going on for a long time, and corruption is an act that is hated and condemned by many people every generation regardless of nation, race, and belief. Niccolo Machciavelli, stated that: "Equating the holders of power and public positions who always abuse their power to commit acts of corruption as criminals who like to rob and commit crimes that destroy the state order".[1]

Corruption is one of the many big problems facing the Indonesian nation today. Corruption has become one of the inhibiting factors for progress in all fields. In fact, various countries in all corners of the world have made corruption a common enemy, including Indonesia. There are no easy ways and shortcuts to eradicate corruption. Corruption, to a certain degree will always be present in the midst of society, nation and state. Corruption is now endemic and systemic reaches all governments. Corruption is not only a matter of public officials who abuse their positions, but also about anyone who abuses his position to get abundant money in an easy way in a short time.[2]

Although there has been a lot of progress in other sectors in Indonesia, corruption is still the nation's biggest problem today.[3] There have been many state finances that have "leaked" as a result of corruption either for intentional or negligent motives to benefit oneself or other people and corporations. The failure of eradicating corruption so far is due not only to the lack of commitment from stakeholders, politics and bureaucrats, including corruption

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[1] *Quah, Jon ST, 1999, Corruption in Asian countries: Can it be Minimized, Public Administration Review, Nov/Dec, 59, 6, ProQuest Research Library, hlm. 483.*

[2] *Budihardjo Hardjowijono dan Harie Muhammad, 2006, Daftar Simak Monitoring Proses Pengadaan Barang dan Jasa Pemerintah, Indonesia Procurement Watch, Jakarta, hlm. i.*

[3] *Irmon G. Lonti, 2006, Indonesia: Accomplishments Amidst Challenges, Southeast Asian Affairs; ProQuest Research Library, hlm. 93.*

eradication institutions, especially conventional institutions, but also the lack of morality, greed has hit many people. From the center to the regions there has been corruption, even corruption is also carried out by law enforcement officers. Corruption in this country is like a cancer and a parasite, it sticks and spreads in almost all lines of power, from central to regional, executive, legislative, judicial, local, national and international businesses. The cancer of corruption also involves many people from various educational backgrounds, from high school graduates to professors. So it is not surprising that normatively this nation has made corruption a common enemy, by placing it as an extraordinary crime. More and more, relatively new terms are introduced, such as congregational corruption, legal mafia, judicial mafia, and political mafia.

Corruption occurs due to many factors, ranging from the design of the constitution or state administration that opens up opportunities to give birth to corrupt regulations[4], commitment of power leaders, poor political recruitment, greed, morale of law enforcers, clashes between institutions. The problem of corruption is also closely related to the complexity of other problems, including issues of attitude, mental/morality, patterns/attitudes of life and social culture, economic needs/demands, political structure/culture, opportunities in the development mechanism or bureaucratic weaknesses in the service sector. In fact, Busro Muqoddas stated: "Corruption in this country involves many actors ranging from central and regional bureaucrats, national-international businessmen, central-regional politicians, case brokers, budget brokers, law enforcers, project cukongs and political cukongs.[5]

Seeing such conditions, the President of the Republic of Indonesia, Joko Widodo, echoed the campaign as a political vision of mental revolution, because preventing corruption can start from a mental revolution. The term "mental" is the name for the pool of everything regarding the way of life.[6] In the way of life there are ways of thinking, ways of looking at problems, ways of feeling, believing/believing, ways of behaving and acting. This is civil society, which is a movement of citizens (citizens) to carry out a sustainable transformation for the civilization of living together called Indonesia. In the legal context, the mental revolution supported by the power of civil society is part of strengthening legal culture when viewing law as a system. Lawrence M. Friedman[7] emphasizes that legal culture is an atmosphere of social thought and social forces that determine how the law is used, avoided or abused. Legal culture is closely related to public legal awareness.

The existence of a mental revolution campaign is expected to be an instrument for preventing corruption carried out by all elements of the State. There are several facts that show that corruption has become so widespread that almost all elements of the State, whether in the executive, legislative, or judicial branches, have been infected with the virus of corruption. In addition, the number of cases of state/regional losses that are resolved through criminal proceedings and the perpetrators are regional heads at the provincial government level or at the district/city government level, this shows that regional financial management is still not running well based on the principles of state administration that clean and free from Corruption, Collusion and Nepotism.

To fight corruption, many efforts have been made, in terms of the judiciary, legal structures, enforcement agencies have been formed, both conventional enforcement agencies such as the police, prosecutors, and courts. Furthermore, non-conventional or ad hoc institutions such as the KPK. In terms of supervision, BPK and BPKP were formed as institutions that audit as well as supervise the administration of state/regional finance. Meanwhile, in terms of financial traffic, there is a PPATK that supervises and identifies

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[4] *Aidul Fitriciada Azhari, Membangun Sistem Keadilan Konstitusional, makalah yang disampaian pada seminar terbatas "Anti Korupsi dan Membangun Hukum Indoensia yang Berkeadilan" dalam rangka masukan pada Tanwir PP Muhammadiyah 2014, yang diselenggarakan Program Doktor Sekolah Pascasarjana UMS, Solo, hlm. 5.*

[5] *Busyro Muqoddas, Kebijakan Penangulangan Korupsi di Indoensia, makalah yang disampaikan pada seminar tebatas "Anti Korupsi dan Membangun Hukum Indoensia yang Berkeadilan" dalam rangka masuka pada Tanwir PP Muhammadiyah 2014, yang diselenggarakan Program Doktor Sekolah Pascasarjana UMS, Solo, hlm. 5.*

[6] *Arfan Faiz Muhlizi, 2014, Revolusi Mental Untuk Membentuk Budaya Hukum Anti Korupsi, Jurnal RechtsVinding Media Pembinaan Hukum Nasional, Volume 3 Nomor 3, Desember, hlm. 454.*

[7] *Lawrence M. Friedman, 2001, Hukum Amerika: Sebuah Pengantar (American Law: An. Introduction), Penerjemah oleh Wisnu Basuki, PT. Tatanusa, Jakarta, hlm. 7.*

suspicious transactions that are suspected to be the result of money laundering or the proceeds of corruption. Meanwhile, in terms of legislation, there are legal products in all forms and from various levels of authority ranging from Laws, Government Regulations, Presidential Decrees, Ministerial Decrees, and Regional Regulations. In terms of concepts, various concepts of good governance have been launched as an effort to prevent corruption, such as the concept of *good governance*.[8]

UNDP provides definition *good governance* is "*the exercise of political economic and administrative authority to manage nation's affair at all levels*".[9] While the World Bank is synonymous with *good governance* with: "The implementation of solid and responsible development in line with democracy and an efficient market, avoidance of misallocation of scarce investment funds, and prevention of corruption both politically and administratively, implementing budget discipline and creating *legal and political frameworks* for the growth of entrepreneurial activity. Meanwhile, UNDP itself provides definition *good governance* as a synergistic and constructive relationship between the private sector and society. Based on this, UNDP then submitted character *good governance* as follows: *participation*, *rule of law*, *transparency*, *responsiveness*, *consensus orientation*, *equity*, *effectiveness and efficiency*, *accountability*, *strategic vision*.[10]

This concept is actually not something new, because in fact efforts to realize good governance have also been carried out by the MPR, among others, manifested by TAP MPR RI Number XI/MPR/2009 concerning the Implementation of a State Free from Corruption, Collusion and Nepotism, then in Law Number 28 of 2009 concerning the Implementation of a State that is Clean from KKN, as stated in Article 3 contains the principles of state administration which include: 1. The principle of legal certainty; 2. The principle of orderly state administration; 3. The principle of public interest; 4. The principle of openness; 5. The principle of proportionality; 6. The principle of professionalism; 7. The principle of accountability.

The two regulations mentioned above are the first steps in reforming good governance. In addition to the two regulations, Law Number 15 of 2002 concerning the Eradication of the Crime of Money Laundering and Law 30 of 2002 concerning the Corruption Eradication Commission (KPK) were issued as amended by Law Number 19 of 2019 concerning Amendments Second, on Law Number 30 of 2002 concerning the Corruption Eradication Commission. Following up on the two laws above, the President has issued Presidential Instruction Number 5 of 2004 concerning the Acceleration of Corruption Eradication.[11]

On the other hand, in the internal bureaucracy in order to fight against the practice of Corruption, Collusion and Nepotism, mainly as a preventive measure which is also in line with the concept of good governance as mentioned above, is the formation of a team called the Treasury Claims and Compensation Claims. (TP-TGR) at various levels of government, and departments. TP-TGR is an internal control model for state/regional losses, both in the form of goods and money.

One of the elements in a criminal act of corruption is the loss of state finances. Against state financial losses, the Corruption Law, both the old Law Number 3 of 1971 and the new Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, stipulates a policy that state financial losses must be returned or replaced by the perpetrators of corruption. Judging from the aspect of how to solve it, there are various ways that can be taken, starting from (1). Criminal Prosecution/Special Criminal (Corruption), (2). Civil Claims, (3). Treasury Claims (TP), and (4). Claim for Compensation (TGR).

According to Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, the return of state financial losses can be done through two legal instruments, namely criminal instruments and civil instruments. Criminal instruments are carried out by investigators by confiscating the property of the perpetrator and then by the public prosecutor, they are demanded to be confiscated by the judge. Civil instruments are carried out by the State

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[8] *Sjahruddin Rasul, Mimbar Hukum, Volume 21, Nomor 3, 2009, Universitas Gajah Mada, Jogjakarta, hlm. 538.*
[9] *Sjahruddin Rasul, Ibid, hlm. 539.*
[10] *Sjahruddin Rasul, Ibid, hlm. 541.*
[11] *Sjahruddin Rasul, Ibid, hlm. 539.*

Attorney (JPN) or institutions that have been harmed by the perpetrators of corruption (suspects, defendants, convicts or their heirs if the convict dies). Criminal instruments are more commonly used because the legal process is simpler and easier.

In addition to the criminal and civil methods mentioned above, on the other hand there are administrative methods or approaches that have long been practiced in the internal bureaucracy which are also strengthened by various provisions of laws and regulations, especially Law Number 15 of 2006 concerning the Supreme Audit Agency of the Republic of Indonesia. , Law Number 1 Year 2004 concerning State Treasury, and Law Number 17 Year 2003 concerning State Finance. The institutional administration instrument is carried out by the Treasury Demands and Compensation Claims (TP-TGR) assembly which is formed by the relevant department units or regional heads at all levels.

Furthermore, the criminal decision does not exempt from demands for compensation, this is in accordance with the provisions in Article 64 of Law Number 1 of 2004 concerning State Treasury, which states: "Paragraph (1) treasurer, non-treasurer civil servants, and other officials who have been appointed to compensate for state/regional losses, administrative sanctions and/or criminal sanctions may be imposed. "Paragraph (2) of the criminal decision does not exempt from the claim for compensation". Then in Article 14 paragraph (1) of Law Number 15 of 2004 concerning Audit of State Finance Management and Responsibility, that: "If during the examination a criminal element is found, the BPK immediately reports the matter to the competent agency in accordance with the provisions of the legislation".

Based on Law Number 1 of 2004 concerning the State Treasury, it regulates treasury claims and claims for compensation, as regulated in Chapter XI of Settlement of State/Regional Losses starting from Article 59, Article 60, Article 61, Article 62, Article 63, Article 64, Article 65, Article 66 and Article 67. Of the nine articles, there are several articles and paragraphs that form the legal basis for the authority to carry out treasury claims and claims for compensation. Of the nine articles, one of the articles that raise legal problems for the author is Article 64 paragraph (1) and paragraph (2) of Law Number 1 of 2004 concerning the State Treasury. In the author's view, the treasurer and other officials when this article is applied will create double sanctions, sanctions for compensation claims (internal settlement), administrative sanctions and criminal sanctions. Therefore, the existence of the norms of Article 64 paragraph (1) and paragraph (2) of Law Number 1 of 2004 concerning the State Treasury has implications for the Treasurer and Other Officials whose Claims for Regional Compensation have been determined.

Based on the explanation of the background above, the problems can be formulated, namely:

"What are the juridical implications of regulating the norms of Article 64 of Law Number 1 of 2004 concerning the State Treasury for treasurers and other officials who are subject to demands for regional compensation?"

METHODS OF RESEARCH

This research is a legal research using a statutory approach. The legal materials used are primary, secondary, and tertiary legal materials which are analyzed using analytical descriptive.

RESULTS AND DISCUSSION

Implications of the Principle of Legal Justice for Treasurers and Other Officials Who Have Determined Regional Compensation Claims. As stipulated in the norms of Article 64 paragraph (1) and paragraph (2) of Law Number 1 of 2004 concerning the State Treasury, that the Treasurer and other officials who have been appointed to compensate the state/regional losses may be subject to administrative sanctions and/or criminal sanctions if proven commit administrative and/or criminal violations. In addition, the criminal decision does not relieve the treasurer and other officials from claims for compensation that have

been decided internally prior to the criminal decision. By setting up such legal norms, according to the author, it has implications for the principle of legal justice for treasurers and other officials whose claims for compensation have been set but are then subject to administrative sanctions and criminal sanctions.

When examined from the perspective of the principle of legal justice, the above issues reflect and present legal injustice for the perpetrators which according to the author can be subject to double criminal sanctions as a form of accountability for state/regional financial losses. With the regulation of such legal norms, treasurers and other officials who have been subject to claims for compensation, administrative sanctions and criminal sanctions are unable to carry out the obligation to restore state/regional financial losses which were decided through claims for compensation. In fact, in the context of law enforcement there are three basic values that must be in it, namely justice, certainty and expediency.

Gustav Radbruch argued that "there are three basic values that must be contained in the law, namely justice, expediency and legal certainty". Antonius Sujata also stated that "law enforcement wherever and whenever has noble ideals, namely justice, certainty, order and benefits". Soenarjati Hatono also stated the same thing that "the most important goal of law is to achieve justice in society". This means that on the one hand legal rules are not only valid but must also be fair rules and on the other hand law enforcement and law enforcement must not be carried out in such a way as to completely eliminate ethical values in general and eliminate human dignity as human beings in particular.[12]

A philosophical description of the relationship between justice and law can also be found in the view of John Rawls, who argues that the rule of law is clearly closely related to justice. According to John Rawls, a legal system is:[13] "A coercive sequence of public rules aimed at rational people with the aim of regulating their behavior and providing a framework for social cooperation. When these rules are fair, they establish a basis for legitimate expectations. They are the foundation on which people rely on one another and have the right to object when their expectations are not met. In relation to this law, Rawls defines justice as order, *justice as regulatory*".

According to Huijber[14] in the legal system called *continental* the law is perceived as interwoven with the principles of justice: the law is a just law. Huijbers shows that this understanding is very in line with traditional philosophical teachings where law is understood as ius or recht. Law in this concept is essentially related to the meaning of law as justice. This means that if a concrete law, namely the law is contrary to the principles of justice, then the law is no longer normative, and in fact cannot be called a law anymore. The law is only law when it is fair.

From the explanation of the principle of justice associated with the legal norms of Article 64 paragraph (1) and paragraph (2) of Law Number 1 of 2004 concerning the State Treasury, the authors can conclude that this norm is a legal rule that reflects legal injustice so that on the other hand, Law enforcement and law enforcement seem to be carried out in such a way that it completely eliminates ethical values in general and eliminates human dignity as human beings in particular. Such as the burden of sanctions given to treasurers and other officials who have applied for compensation and then administrative sanctions and criminal sanctions have been imposed.

Generally, in the case of state/regional financial losses, it appears that all treasurers as perpetrators who cause losses cannot carry out their obligations to make payments for the losses incurred. 3 (three) types of sanctions imposed on the perpetrators have made the perpetrators impoverished and do not have enough property to be confiscated as a substitute for state/regional financial losses. In fact, the perpetrators prefer to undergo imprisonment as a substitute for fines and additional penalties in the form of replacement money. On this basis, the author is of the opinion that the norms of Article 64 paragraph (1) and paragraph

[12] *Yustinus Suhardi Ruman, Keadilan Hukum dan Penerapannya dalam Pengadilan, Jurnal Humaniora Vol. 3 No. 2, Oktober 2012, hlm. 346.*
[13] *Yustinus Suhardi Ruman, Ibid.*
[14] *Yustinus Suhardi Ruman, Ibid.*

(2) of Law No. 1 of 2004 concerning the State Treasury will create legal injustice in the context of law enforcement of the criminal act of corruption in loss of state finances.

In the author's opinion, when the perpetrators (treasurers and other officials) have been subject to compensation through a Treasury Claim, it is better for the criminal case to be discontinued as regulated in the norms of Article 64 paragraph (2) of the State Treasury Law. If so, then the author agrees with the issuance of the Memorandum of Understanding between the Ministry of Home Affairs of the Republic of Indonesia and the Attorney General's Office of the Republic of Indonesia and the State Police of the Republic of Indonesia Number: 700/8929/SJ, Number: KEP-694/A/JA/11/2017, Number: B /108/XI/2017 concerning Coordination of Government Internal Supervisory Apparatus (APIP) with Law Enforcement Apparatus (APH) Regarding the Handling of Public Reports or Complaints in the Implementation of Regional Government, in which the settlement approach prioritizes administrative law so that criminal handling is an ultimatum remedium in handling a problem in the administration of local government.

As stated in Article 7 paragraph (5) letter b of the Memorandum of Understanding on Coordination of Government Internal Supervisory Apparatus (APIP) with Law Enforcement Officials (APH) Regarding the Handling of Public Reports or Complaints in the Implementation of Regional Government, states that: "There are state/regional financial losses and has been processed through a claim for compensation or a treasury claim no later than 60 (sixty) days since the report on the results of the APIP or BPK examination is received by the official or has been followed up and declared completed by the APIP or BPK. The norm in Article 7 paragraph (5) letter b regulates State/regional losses originating from reports on audit results by BPK or internal control. So this norm does not apply to state losses caused by criminal acts such as bribery, gratuities, extortion and others.

The existence of this MoU certainly reap the pros and cons. The opposing party views that this memorandum of understanding has the potential to hamper the work of Law Enforcement Officials (APH), cause problems in practice, and have the potential to create legal conflicts. This legal conflict is related to the norms of Article 7 paragraph (5) letter b of the MoU. Namely, there is a loss but it has been processed through a claim for compensation no later than 60 days since the inspection report is received by the official or has been followed up and declared completed by APIP or BPK. Including administrative errors if it is part of the discretion and administration of government administration as long as it is in accordance with the general principles of good governance.

There is a loss but it has been processed through a claim for compensation no later than 60 days since the inspection report has been received by the official or has been followed up and declared completed by the APIP or BPK, meaning that a local government official who is indicated to be corrupt can have his case terminated if he returns the corrupted money. The termination of the case is carried out in accordance with the agreed mechanism. The National Police or the Attorney General's Office first coordinates with APIP to conduct internal research in regional governments that indicate corruption. If APIP only finds indications of administrative violations, it will be handled internally by the institution. On the other hand, if elements of a criminal act are found, the law enforcement officers will follow up.

The norm of Article 7 paragraph (5) letter b of the MoU according to some views will certainly contradict Article 4 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which states that: "Refunding of state financial losses or the state's economy does not eliminate the punishment of perpetrators of criminal acts as referred to in Article 2 and Article 3". Meanwhile, Articles 2 and 3 regulate the time of punishment and fines for any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the country's finances or economy.

Implications for the Principle of Legal Certainty for the Treasurer or Other Officials for which the Demand for Regional Compensation has been determined. The regulation of the norms of Article 64 paragraph (1) and paragraph (2) of Law Number 1 of 2004 concerning the State Treasury, that the Treasurer and other officials who have been appointed to compensate the state/regional losses may be subject to administrative sanctions and/or

criminal sanctions if they are proven to have committed a crime. administrative and/or criminal violations, in addition to presenting legal injustice, also presents legal uncertainty. Such regulation of legal norms, according to the author, has implications for the principle of legal certainty for treasurers and other officials whose claims for compensation have been set but are then subject to administrative sanctions and criminal sanctions.

As the principle of legal certainty according to Gustaf Radbruch that of the three basic ideas of law (justice, certainty and legal benefit), legal certainty which requires that the law can function as a regulation that must be obeyed is of course not only about how the regulation is implemented, but also how the norms or the content material in the regulation contains the basic principles of law.[15] According to Fence M. Wantu, "law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone".[16] Legal certainty is defined as the clarity of norms so that they can be used as guidelines for people who are subject to this regulation.[17] Legal certainty is defined as the clarity of norms so that they can be used as guidelines for people who are subject to this regulation:[18] "Legal certainty can also mean things that can be determined by law in concrete matters. Legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. Legal certainty is a justifiable protection against arbitrary actions which means that a person will be able to obtain something that is expected under certain circumstances.

A good law is a law that is able to synergize these three elements for the welfare and prosperity of the community. According to Radbruch, "legal certainty is defined as a condition in which the law can function as a rule that must be obeyed".[19] Law is tasked with creating legal certainty because it aims to create order in society. Legal certainty is a feature that cannot be separated from law, especially for written legal noma. According to Fence M. Wantu, "law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone".[20]

Legal certainty is defined as the clarity of norms so that they can be used as guidelines for people who are subject to this regulation.[21] Regarding the concept of legal certainty according to Maria S.W. Sumardjono that:[22] "Normatively, legal certainty requires the availability of laws and regulations that are operational and support their implementation. Empirically, the existence of laws and regulations needs to be implemented consistently and consistently by the supporting human resources.

From the explanation above, it can be concluded that legal certainty can be interpreted that there is clarity and firmness towards the enactment of law in society. This is so as not to cause a lot of misunderstanding. A regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and is logical so that it becomes a norm system with other norms that do not conflict or cause norm conflicts. Norm conflicts arising from uncertainty of rules can take the form of norm contention, norm reduction or norm distortion.

The legal uncertainty referred to by the author is related to the implications of regulating the norms of Article 64 paragraph (1) and paragraph (2) of Law Number 1 of 2004 concerning the State Treasury, namely creating ambiguity and firmness regarding the enactment of the law for treasurers and other officials who are subject to claims for compensation through treasury claims and then subject to administrative and criminal sanctions. Administrative sanctions are dishonourable dismissal and criminal sanctions in the

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[15] *R. Tony Prayogo, Penerapan Asas Kepastian Hukum dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 tentang Hak Uji Materiil dan dalam Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 tentang Pedoman Beracara dalam Pengujian Undang-Undang, Jurnal Legislasi Indonesia, Vol. 13, No. 02, Juni 2016, hlm. 192*

[16] *Fence M. Wantu, Antinomi Dalam Penegakan Hukum oleh Hakim, Jurnal Berkala Mimbar Hukum, Vol. 19 No. 3 Oktober 2007, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, hlm. 388.*

[17] *Tata Wijayanta, Asas Kepastian Hukum, Keadilan dan Kemanfaatan dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga, Jurnal Dinamika Hukum Vol. 14 No. 2 Mei 2014, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, hlm. 219.*

[18] *Van Apeldoorn, 1990, Pengantar Ilmu Hukum, Cetakan Kedua Puluh Empat, Pradnya Paramita, Jakarta, hlm. 24-25.*

[19] *R. Tony Prayogo, Op.Cit., hlm. 194.*

[20] *Fence M. Wantu, Op.Cit., hlm. 388.*

[21] *Tata Wijayanta, Op.Cit, hlm. 219.*

[22] *R. Tony Prayogo, Loc.Cit.*

form of a basic crime (imprisonment is accumulated with a fine), as well as additional punishment for replacement money. Even though the person concerned has undergone criminal sanctions and administrative sanctions, the BPK still collects them through the Inspectorate to settle the compensation that has been determined through the treasury demands.

From cases that have been handled by the author, the perpetrators have been unable to carry out their obligations, namely to compensate for regional financial losses because they have no income after their ASN status was dishonourably dismissed. Against this condition, the Palangka Raya City Government through its Inspectorate and the Palangka Raya City Regional Financial Loss Settlement Team has made various maximum efforts to collect in the context of recovering regional financial losses. However, the collection efforts carried out were not effective because the perpetrators were no longer able to recover regional financial losses even in instalments. One of the last efforts made by the Palangka Raya City Government through the Palangka Raya City Regional Financial Loss Settlement Team, sent a letter to the Head of the State Loss Settlement Team of the Indonesian Financial Audit Agency and the Head of the Indonesian Supreme Audit Agency Representative of Central Kalimantan Province in Palangka Raya with the subject of the letter, namely an application Status of Determination of Settlement of Cases for the Treasury of Palangka Raya City. In the application letter, the Palangka Raya City Government hopes that the Supreme Audit Agency of the Republic of Indonesia can make a decision so that recommendations related to these findings can be categorized as "Cannot Be Followed Up With Legitimate Reasons", in accordance with the Supreme Audit Agency Regulation Number 2 of 2017 Article 7 point (d) which reads: "recommendations cannot be followed up, namely recommendations that cannot be followed up effectively, efficiently, and economically based on the professional judgment of the State Audit Board".

The application letter sent by the Palangka Raya City Government received a response from the Supreme Audit Agency of the Republic of Indonesia, which in the letter of the Supreme Audit Agency of the Republic of Indonesia essentially stated that compensation through treasury claims was still being processed in accordance with applicable regulations. This condition, according to the author, creates legal uncertainty for the perpetrator (treasurer), especially in relation to legal status. In terms of administrative sanctions and criminal sanctions, the perpetrators have received and carried out, while the compensation sanctions through treasury demands still have to be accounted for. This means that the person concerned still has debts with the State/region related to the financial losses incurred. The legal status of the perpetrators who have undergone administrative sanctions and criminal sanctions have become "hanged" because they still have the obligation to compensate for regional financial losses. According to the author, such actions violate human rights. When the person concerned has been declared incompetent (poor) and does not have the ability to replace it, the BPK RI should provide a recommendation in the form of "Cannot be followed up with valid reasons", so that the person concerned is no longer billed by the Regional Financial Loss Settlement Team and its legal status not hanging.

With the contents of the norms of Article 64 paragraph (1) and paragraph (2) of Law Number 1 of 2004 concerning the State Treasury which has double sanctions, causing the perpetrators to prefer not to compensate for the losses that have been decided through the treasury demands. Because the perpetrators assume that it is certain that other sanctions will be given through administrative and criminal accountability, thus ignoring the compensation that has been determined internally. In contrast to the case, when the perpetrator has been determined for compensation through a treasury claim but is not processed later through a criminal settlement, then the perpetrator still has the intention to complete the compensation.

From the explanation above, it can be concluded that the implications for the principle of legal certainty for treasurers or other officials who have been determined for regional compensation claims, namely presenting legal uncertainty in the form of:

1. Article 64 paragraph (1) and paragraph (2) of Law No. 1 of 2004 concerning the State Treasury, namely to raise ambiguity and firmness regarding the law

enforcement for treasurers and other officials who are subject to claims for compensation through treasury claims and are then subject to administrative sanctions and criminal sanctions;
2. The legal status of perpetrators who have undergone administrative sanctions and criminal sanctions are suspended because they still have the obligation to compensate for regional financial losses even though the person concerned has been declared incompetent through a Certificate of Poor (Poor) issued by an authorized official.

Implications for the Mechanism of the State/Regional Compensation Settlement Process. The mechanism for the state/regional compensation settlement process that has been carried out so far refers to best practice or to the habits that have been running so far. The case of state/regional loss begins with information coming from the LHP Inspectorate and LHP BPK. Information from the LHP Inspectorate can come from special inspections or from regular inspections. Then state/regional losses originating from regular inspections are followed up with monitoring of Deposits (STS for deposits to the regional treasury and SSP and SSBP for deposits to the State treasury). Meanwhile, State/regional losses originating from special audits are followed up with SKTJM (Certificate of Absolute Responsibility). For cases of State/regional losses originating from BPK's LHP information, followed up with monitoring of Deposit Letters (STS for deposits to the regional treasury and SSP and SSBP for deposits to the State treasury).

Of the cases in Palangka Raya City, there were several cases that caused the team to experience legal problems. Referring to the case above, based on the provisions of Article 64 paragraph (2) of Law Number 1 of 2004 concerning the State Treasury which states that criminal decisions do not exempt from demands for compensation, law enforcement in the realm of criminal law does not necessarily eliminate claims for compensation. in the realm of administrative law. Nevertheless, the TPTGR Advisory Council Team continues to carry out recovery of state/regional losses in accordance with the provisions of Article 62 paragraph (1) and Article 63 paragraph (1) of Law Number 1 of 2004. The TPTGR Advisory Council Team has difficulties in making efforts to recover regional losses, among others caused by:

1. It is difficult to collect bills from people who are affected by TGR and have been processed by law enforcement agencies;
2. Perpetrators who have died and their heirs/family do not want to be responsible;
3. The perpetrator has died, and efforts to collect the heirs have failed because the heirs are unable to afford the loss;
4. Perpetrators who have been dismissed with no respect and have no income so that they are unable to carry out their obligations to pay compensation even though it is in instalments.

For cases that have been completed, the TP-TGR Council of Palangka Raya City uses the settlement method based on Best Practice and Habits. Although actually normatively, the settlement of regional losses based on compensation claims does not have a strong legal basis. This is mainly due to the mandate of the establishment of implementing regulations stipulated in Article 63 paragraph (2) of Law Number 1 of 2004 concerning the State Treasury, which stipulates that: "The procedure for claiming state/regional compensation is regulated by government regulation", has not yet been formed. Currently, there is only Government Regulation Number 36 of 2016 concerning Procedures for Claiming State/Regional Compensation for Civil Servants who are not Treasurers or Other Officials, while the procedure for claiming State/regional compensation for damages against treasurers is regulated in the State Audit Board Regulation Number 3 of 2007 concerning Procedure for Settlement of State Compensation Against the Treasurer.

The emergence of problems in the process of settling claims for state/regional financial compensation, possibly due to the procedures and requirements specified at each stage of the process, do not guarantee the achievement of the stated objectives. Without a clear legal basis (only based on best practices and habits that have been carried out so far), and with relatively "simple" completion stages and less stringent requirements, the process is experiencing obstacles, especially at the execution stage.

CONCLUSION

Based on the discussion of the juridical implications of regulating the norms of Article 64 of Law Number 1 of 2004 concerning the State Treasury against treasurers and other officials who are subject to demands for regional compensation, the authors can conclude:

1. Implications for the principle of legal justice for treasurers and other officials whose claims for regional compensation have been determined. Viewed from the perspective of the principle of legal justice, the above issues reflect and present legal injustice for the perpetrators who, according to the author, can be subject to double criminal sanctions as a form of accountability for state/regional financial losses. With the regulation of such legal norms, treasurers and other officials who have been subject to claims for compensation, administrative sanctions and criminal sanctions are unable to carry out the obligation to restore state/regional financial losses which were decided through claims for compensation. In fact, in the context of law enforcement there are three basic values that must be in it, namely justice, certainty and expediency;
2. The implications for the principle of legal certainty for treasurers or other officials whose claims for regional compensation have been determined are as follows: 1). Article 64 paragraph (1) and paragraph (2) of Law No. 1 of 2004 concerning the State Treasury, namely creating ambiguity and firmness regarding the application of the law to treasurers and other officials who are subject to demands for compensation through treasury claims and are then subject to administrative sanctions and criminal sanctions ; 2). The legal status of the perpetrators who have undergone administrative sanctions and criminal sanctions are suspended because they still have the obligation to compensate for regional financial losses even though the person concerned has been declared incompetent through a Certificate of Poor (Poor) issued by an authorized official;
3. Implications for the agency authorized to collect the treasurer or other officials who have been appointed to compensate for regional losses, include: 1). It is difficult to collect bills from people who are affected by TGR and have been processed by law enforcement agencies; 2). Perpetrators who have died and their heirs/family do not want to be responsible; 3). The perpetrator has died, and the attempt to collect the heirs was unsuccessful because the heirs were unable to afford the loss; 4). Perpetrators who have been dismissed with no respect and have no income so that they are unable to carry out their obligations to pay compensation even though in installments. 5). Future arrangements for regional compensation claims against the Treasurer and Other Officials with justice and legal certainty.

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