

## Additional Criminal Sentences Can Be Used as Substitutes in Corruption Cases



Rahmat Muhajirin<sup>1</sup>, Joko Nur Sariono<sup>2</sup>, Ria Tri Vinata<sup>3</sup>

<sup>1,2,3</sup>Faculty of Law, Wijaya Kusuma Surabaya University

**ABSTRACT:** This research is entitled "Additional Criminal Penalties Can Be Used as a Substitute in Corruption Cases". The type of research used in this research is normative, namely by basing it on the applicable laws and regulations (positive law) using the approach of laws and regulations and conceptual. Where all the legal materials collected, both primary legal materials and secondary legal materials, will be processed and analyzed systematically, which are presented in the form of descriptions related to the theory or legal principles so as to obtain a clear conclusion and picture in the discussion of the problem. Based on the research as mentioned, the discussion can be produced: additional criminal penalties in the form of replacement money, especially in district court decisions, it can be concluded that the legality of additional criminal penalties in the form of replacement money in corruption cases lies in Article 18 of Law No. 31 of 1999 which has been improved by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption. As for the benchmark for its determination, it is contained in Article 18 paragraph (1) letter b. which reads "payment of replacement money as much as possible equal to the assets obtained from the criminal act of corruption". Related to the definition of state financial losses which is one of the important elements in the article regulating criminal acts of corruption, it can be concluded that "a reduction in state assets or an increase in state obligations without being balanced by achievements caused by 'unlawful' acts". The Judge's Consideration in the district court's decision can be said to be less relevant when associated with additional penalties in the verdict in the form of replacement money. This is because the relationship between the considerations and the verdict pronounced by the Judge is 'blurred', as well as the amount of additional penalties in the form of replacement money that does not correspond to the amount of state financial losses contained in his considerations.

**KEYWORDS:** additional penalties; criminal acts; corruption

### I. INTRODUCTION

Empirical evidence has shown that corruption has a detrimental impact on the functioning of democratic systems and the ability of individuals to have fair and equal access to justice. The limitations on the public's ability to participate, caused by corrupt systems, have undermined the achievement of well-being. Corruption hinders citizens' access to justice.

Transparency International has released its Corruption Perceptions Index (CPI) for 2023. Overall, many studies show that most countries are not actively working to eliminate corruption in the public sector. This is supported by the average global Consumer Price Index (CPI), which remained unchanged compared to the previous year. The CPI stands at 43, indicating that more than two-thirds of the countries studied scored below 50. This indicates that corruption is a very significant problem for most countries around the world.

An independent, transparent and well-resourced judiciary and law enforcement are essential prerequisites for combating corruption. In turn, preventing the abuse of political power, bribery and other forms of corruption that affect the justice system is key to ensuring effective anti-corruption efforts.

Corruption is classified as the only criminal offense that is processed separately from the Criminal Code in legal terms. When resolved, it has different attributes that distinguish it from ordinary criminal law violations, such as violating regulations and principles set to reduce the possibility of deviations to the country's finances and economy.<sup>1</sup>

According to Soedarso, there are several factors that contribute to the increasing cases of corruption in Indonesia. One of the main reasons is the low salaries of officials, which makes them more vulnerable to corruption. In addition, poor economic conditions and lack of mental strength among officers also play a role. In addition, chaotic administration and management lead to inefficient procedures, creating an environment that supports corruption.<sup>2</sup>

<sup>1</sup> Lilik Mulyadi, 2007, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi*, PT. Alumni, Bandung, p. 3.

<sup>2</sup> Andi Hamzah, 2012, *Pemberantasan Korupsi, Melalui Hukum Pidana Nasional dan Internasional*, Raja Grafindo Persada, Jakarta, p. 12.

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Corruption in Indonesia develops in three different phases, namely elitist, endemic, and systemic, like the development of a disease. Corruption is seen as a disease that is common among the upper class. At the endemic stage, corruption penetrates various levels of society. At a crucial point, corruption transitions into a systemic condition, when the entire system is susceptible to the same corrupt practices.<sup>3</sup>

Corruption is a criminal act that is classified as an extraordinary crime because of its involvement in the abuse of power and causes state financial losses. Therefore, special efforts are needed to eradicate it. In Indonesia, corruption poses a great risk to the nation and its existence because it causes great losses. The activities of corrupt individuals almost caused the country's economy to collapse, especially during the 1997 monetary crisis which was then followed by an economic disaster.<sup>4</sup>

Romli Atmasasmita said that the problem of eradicating corruption in Indonesia is not only a matter of law and law enforcement, but also a significant social and psychological concern. This is as serious as a legal problem so that it requires simultaneous attention from the state. Corruption is a problem that has many aspects and has social and psychological implications. Socially, corruption causes an unfair distribution of resources and welfare. Psychologically, corruption may be seen as a social disease that is difficult to eradicate.<sup>5</sup>

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Eradication of corruption violations is an integral component of the criminal justice system that only uses a punishment strategy, because simply punishing individuals involved in corruption will not effectively reduce the prevalence of corruption violations. Efforts to eradicate corruption involve more than just catching the perpetrators; it is equally important to improve the culture of integrity and maintain individual accountability by requiring them to compensate for state financial losses through monetary restitution, asset confiscation, and payment of fines.

In response to the strong demands of the people to eradicate corruption, the government has established certain policies. One approach is to establish the latest anti-corruption law, specifically Law No. 31 of 1999 in conjunction with Law Number 20 of 2001

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<sup>3</sup> Ermansjah Djaja, 2010, *Mendesain Pengadilan Tindak Pidana Korupsi, Implikasi Putusan Mahkamah Konstitusi Nomor 012-016-019/PPU-IV/2006*, Sinar Grafika, Jakarta, 2010, p. 11.

<sup>4</sup> Teguh Sulistia I, *op.cit.*, p. 206-207.

<sup>5</sup> Romli Atmasasmita, 2002, *Korupsi, Good Governance dan Komisi Anti Korupsi Indonesia*, Badan Pembinaan Hukum Nasional Departemen Kehakiman dan Hak Asasi Manusia Republik Indonesia, Jakarta, p. 48.

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is sometimes also referred to as Law Number 20 of 2001. What is the reason for the government to issue Law Number 31 of 1999 in conjunction with? Law Number 20 of 2001 was enacted to address the perceived weaknesses of Law Number 3 of 1971, particularly related to the effectiveness of criminalization and the implementation of the law. However, the existing law is expected to be weakened due to the weakening of the Corruption Eradication Commission, which will have an impact on the unbalanced state financial situation. Financial losses due to corruption far exceed the amount of reparations obtained by the state for corrupt activities. To get the best results, it is very important to obey the law while providing compensation for state financial losses. In essence, government authority must be returned to the state in order to improve the welfare of the people. In reality, the amount of money obtained by the state due to corruption is smaller than the amount that was originally embezzled. Execution is the authority of the public prosecutor who is legally controlled to enforce the implementation of the judge's decision. The judge's decision that can be enforced is a decision that has obtained permanent legal force (in kracht van gewijsde).

Recovering state financial losses due to corruption is a challenging task. Not only is there a significant delay in receiving compensation from corruption convicts, but it is also impossible for the funds to be returned to the state treasury, especially if there are additional penalties including asset confiscation. The bureaucratic process that must be completed results in a delay in the return of state financial losses to the state treasury, which can then be allocated for the welfare of the people. In addition, this also serves as a moral incentive for me to improve criminal regulations by implementing stricter penalties that are currently not adequately enforced.

The perpetrators of corruption are aware that the penalties stipulated in Law Number 31 of 1999 can be in the form of imprisonment or monetary sanctions. Law Number 31 of 1999 introduced the idea of "efforts to recover state financial losses" in Article 18, which is an additional offense aimed at taking public funds embezzled by corruptors.

Current corruption eradication tactics do not only involve arresting and punishing corruptors with detention, but also include confiscation of the defendant's assets as a form of additional punishment to recover state financial losses. In addition, there are alternative actions that can be taken, namely through civil channels against the assets of corruptors who escape arrest, die, or are released but accused of causing state losses. The purpose of this article is to understand the process of asset confiscation by individuals involved in corruption, and to investigate the feasibility of confiscating assets that were not obtained through dishonest means. However, optimizing court decisions that apply additional penalties in the form of returning state financial losses still encounters many obstacles. Based on the background above, the research title Additional Criminal Procedure Can Be Used as a Substitute in Corruption Cases was chosen.

## **II. RESEARCH METHODS**

The reason researchers use normative legal research is to produce arguments, theories or new concepts as proposals in solving the problems faced, although the implementation of the Law in this case the object of research is corruption. In addition, the resolution of the problem will be more detailed to know and understand and in addition to analyzing existing regulations also dealing with reality and directly related to the accused corruptor. The normative legal research method or library legal research method is a method or method used in legal research which is carried out by examining existing library materials. The first stage of normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal problems. The second stage of normative legal research is research aimed at obtaining subjective law (rights and obligations). The research conducted is descriptive in nature, namely describing the symptoms in the community environment towards a case being studied, the approach taken is a qualitative approach which is a research procedure that produces descriptive data. A qualitative approach is used to understand or comprehend the symptoms being studied. conducting research with the aim of drawing legal principles ("rechtsbeginselen") which can be applied to written positive law and unwritten positive law.

## **III. DISCUSSION**

### **Additional Criminal Penalty as a Substitute in Corruption Cases**

Law No. 31 of 1999 concerning Corruption Crimes contains provisions for additional penalties outside the three categories mentioned above. Article 18 of this law regulates the following additional penalties: 1. Confiscation of movable property or property, both physical and non-physical, that is utilized or obtained through corruption activities, including businesses controlled by people who have been convicted of corruption; 2. Disbursement of restitution funds in the amount of the entire value of assets obtained through corruption; 3. Temporary suspension of business for up to one year for all or part of the corporation; 4. Withdrawal of certain privileges or elimination of certain benefits that are currently granted or may be granted by the government to individuals convicted of crimes. In addition, there are additional criminal acts that are outlined in other laws and regulations, which are sourced from legal examination of laws. Among others: 1. Cancellation of business licenses (as regulated in Law No. 3 of 2014 concerning Industry); 2. Payment of compensation (as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System); 3. Dissolution of the corporation and subsequent liquidation (as stated in Law Number 15 of 2002 concerning Money Laundering).

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Sanctions are legal punishments imposed by the court on those found guilty of violating the law. Sanctions are often given as a form of deliberate and mature punishment by the competent authorities.<sup>6</sup>

The term criminal is often equated with the phrase punishment. Punishment is generally defined as the deliberate imposition of hardship or sorrow on someone as a kind of condemnation. Meanwhile, the term "criminal" has a special meaning in the context of criminal law. Although it has a different meaning, this word is still related to the broader term punishment or pain.

In the context of criminal law, punishment functions more as a means and not an end. Its application causes an experience of misery or discomfort for individuals who are referred to as convicts. Punishment, as defined by Soedarto, is the deliberate giving of pain to someone who has carried out an activity that meets certain criteria. However, Roeslan Saleh views punishment as a way to deal with violations, where the state deliberately inflicts misery on the violators.

Mahrus Ali identifies the aspects of the term criminal as follows: 1. Crime can be defined as suffering, misery, or other negative consequences; 2. The punishment is deliberately carried out by an individual or organization that has authority; 3. This punishment is imposed on someone who commits a crime in accordance with statutory regulations; 4. Crime is an official state condemnation of someone who violates the law.<sup>7</sup>

Criminal punishment is the most common type of punishment imposed on those who are proven to have committed a crime. Criminal punishment is a punitive measure imposed by the authorities on individuals who are found to have violated rules of conduct that are punishable by criminal law. This sanction involves the act of causing pain as a means of revenge. This consequence is seen as a kind of punishment imposed on someone who is found guilty of violating criminal law, with the intention of preventing him from committing another crime.<sup>8</sup>

In his explanation, Herbert L. Packer defines criminal sanctions as certain actions or a series of actions that are permitted or appear to be permitted by law for individuals who are found guilty of committing a crime through different criminal justice system procedures.<sup>9</sup>

The purpose of punishment is to increase social harmony and ensure the regulation and control of society. Illegal punishment involves imposing lawful punishment on individuals who have been found guilty of committing a crime, with the aim of deterring them from further illegal behavior.

## Obstacles Faced by Prosecutors as Public Prosecutors as Executors of Court Decisions in Carrying Out Payment of Replacement Money from Perpetrators of Corruption Crimes

In the implementation of court decisions, especially in criminal cases where compensation is ordered as an additional punishment based on the anti-corruption law, there are often challenges that arise. These challenges can make it difficult for prosecutors responsible for implementing court decisions to successfully implement compensation payments. Based on the findings of a study conducted at the Prosecutor's Office, the obstacles that prosecutors often face in enforcing court decisions regarding compensation payments are:

1. If the convict involved in corruption, or his beneficiaries, no longer have assets that can be seized to fulfill the remaining reparations, even though maximum efforts have been made. The confiscation and auction of the assets of convicts and their heirs in corruption cases is one way to recover state financial losses.

According to Article 18 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, a person who has been found guilty and does not pay compensation as referred to within one month after the court decision has permanent legal force, his assets can be confiscated by the Public Prosecutor and sold through auction to cover the amount of compensation. However, if the perpetrator no longer has sufficient resources to meet the monetary compensation, they will be subject to imprisonment for a period not exceeding the maximum sentence specified in the main sentence, as stated in Article 18 paragraph (3) of this law and determined by a court decision.

These provisions are stated in Article 18 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, specifically regulates the "confiscation and auction of the convict's property if he/she does not pay the replacement funds determined within the specified time period". The prosecutor himself/herself expressed his/her dissatisfaction with these provisions, considering them too simplistic and unclear. This can hinder the implementation of confiscation and auction which is essentially an effort to replace the financial losses of the community.

What is meant by "property" is the property of the convict that was not obtained through a criminal act of corruption, and was not used to commit the act. If proven in court, the property becomes the property of the convict. If the convict's property is obtained through corrupt activities or used to commit a criminal act of corruption, the court will impose an additional penalty

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<sup>6</sup> Jan Rummelink, 2003, *Hukum Pidana, Komentar Atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*, PT. Gramedia Pustaka Utama, Jakarta, p. 7.

<sup>7</sup> Mahrus Ali, 2012, *Dasar-Dasar Hukum Pidana*, Sinar Grafika, Jakarta, p. 186.

<sup>8</sup> *ibid.*, p. 194.

<sup>9</sup> Herbert L. Packer, 1968, *The Limits of The Criminal Sanction*, Stanford University Press, Stanford, p. 35.



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called "confiscation of goods" as stated in Article 39 paragraph (1) of the Criminal Code in conjunction with Article 18 paragraph (1) letter a of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. This means that the Prosecutor is not required to confiscate and auction confiscated goods to recover their monetary value. Article 18 paragraph (2) states that the word "can be confiscated" refers to the nature of the confiscation carried out by the Prosecutor's discretion. This means that it is neither mandatory nor voluntary. Therefore, you have the option to choose one of the available options. According to Article 270 of the Criminal Code, the Prosecutor who acts as the executor of the court's decision is the only one authorized to confiscate the convict's property and auction it. This can only happen if the convict fails to pay the specified compensation within the specified time period. Prior permission from the local District Court Chief Justice is not required for the seizure of the defendant's property. In addition, there is no requirement to immediately report the seizure to the local District Court Chief Justice for approval. This is because the seizure is not carried out as part of an investigation, but rather as the implementation of a court decision. The prosecutor must accurately assess the value of the convict's property to be confiscated. This value must be sufficient to cover the amount of compensation determined by the court, if the goods are to be auctioned. Mistakes in assessing the value of confiscated goods that do not cover the replacement cost after being auctioned will create further challenges, including the inability to replace all state financial losses.

2. In addition to the above factors, prosecutors also often encounter obstacles in their efforts to obtain compensation for criminal acts, especially in cases where the suspect of corruption dies while the investigation is ongoing. Although it is suspected of causing state financial losses, as regulated in Article 33 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, investigators are required to immediately submit case files to the District Attorney's Office (JPN) or the relevant agency. This allows for the initiation of a civil lawsuit against the heirs of the deceased suspect. This article specifically relates to the initiation of a civil case against the descendants of a person involved in a corruption crime, in connection with the issuance of a Case Termination Order (SP3), because the suspect in question has died. The purpose of filing a civil lawsuit against the heirs of a deceased corruption suspect is so that the state can obtain financial compensation, even though the defendant has died.
3. If the defendant in a corruption case dies while being examined or presenting evidence in court, and there is a genuine or reasonable suspicion or estimate that the state has suffered financial or economic losses. If the defendant dies during the legal process, a civil case can still be filed against his/her successor. According to Article 34 of Law Number 31 of 1999, if the defendant dies during the trial and there is a real state loss, the public prosecutor must immediately provide a copy of the trial minutes to the Attorney General. The state or institution affected can transfer the responsibility to file a civil complaint against the heirs.
4. If the convict is proven guilty and found to have committed a criminal act of corruption that resulted in state financial losses, then he/she is obliged, among other things, to provide compensation for the state's losses due to his/her corrupt acts. Given that the individual has been declared dead, it is clear that the public prosecutor will face challenges in executing the criminal verdict to provide compensation.
5. Many criminals transfer assets resulting from corruption, either in part or in full. Corruption perpetrators who violate the law carry out this behavior solely to avoid confiscation procedures.

Obstacles in the process of completing the payment of replacement money as described above are often encountered due to the inherent characteristics of the perpetrators of corruption. These attributes include their abilities, position, and social standing. Criminals involved in corruption crimes are usually educated individuals who have position, influence, or opportunities. The trend of globalization in today's society, along with the rapid progress of science and technology, has had a very large influence on the increasingly diverse methods used in committing corruption. A person with a relatively high level of intellectual capacity in engaging in corrupt activities can effectively hide their actions, ensuring that they are carried out properly, efficiently, and over a long period of time. This makes it difficult to track their activities and collect the necessary evidence.

## **Efforts Faced by Prosecutors as Public Prosecutors as Executors of Court Decisions in Carrying Out Payment of Replacement Money from Perpetrators of Corruption Crimes**

To overcome the challenges faced by prosecutors in effectively implementing court decisions regarding the payment of compensation, the following efforts are made to ensure the smooth implementation of these payments and the rapid recovery of state financial losses:

1. When handling corruption cases, the Public Prosecutor needs to obtain accurate information regarding the wealth and assets of the suspect or defendant, as well as the assets of his/her family and associates. This information is important to recover the financial losses incurred by the state and ensure that criminal charges can be carried out effectively. The evidence presented by the Public Prosecutor during the trial process is important and has a purpose. It is important for the Public Prosecutor (JPU) to conduct a thorough investigation into the assets of the suspect or defendant in a corruption crime, as well as his/her family or associates. This is an important step in order to immediately recover the state's financial losses due to corruption. Replaced. This is quite significant because it is known that there are several individuals involved in corruption who transfer or transfer their assets to other people to avoid confiscation of their assets.

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2. After accurate information regarding the assets or assets of the suspect or defendant in corruption has been obtained, the Prosecutor's Office must then closely monitor the assets and assets of the defendant, his/her family, and related persons. This includes tangible assets as well as securities, bank accounts, or deposits. The purpose of asset supervision is to prevent the easy transfer or release of assets and wealth obtained by suspects or defendants through criminal acts of corruption.
3. The Prosecutor's Office can overcome obstacles to the implementation of replacement money payments by utilizing the authority given to investigators, public prosecutors, or judges based on Article 29 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. This law allows them to request information from the Bank regarding the financial condition of the suspect or defendant for the purposes of investigation, prosecution, or examination in court. Investigators, Public Prosecutors, or Judges have the authority to ask the Bank to freeze the savings account of a person suspected of being involved in corruption and deemed to have obtained illegal profits, as referred to in Article 29 paragraph (4). The blocking as referred to in Article 29 paragraph (4) involves the Investigator, Public Prosecutor, or Judge requesting the Bank to prevent changes to either incoming or outgoing funds from the suspect or defendant's savings account. By considering the provisions contained in Article 42 paragraph (1) of Law Number 7 of 1992 concerning Banking In Law Number 10 of 1998, what is meant by "finance" is "savings", which can be interpreted as funds entrusted by the community to the community. Banks through fund storage agreements in the form of demand deposits, deposits, deposit certificates, or other similar forms (as referred to in Article 1 number 5 of Law Number 7 of 1992). In the context of Article 29 paragraph (1) of Law Number 31 of 1999 Jo). Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, the term "suspect or defendant" refers to individuals who hold the status of "depositing customers". This means that they are customers who entrust their funds to the Bank in the form of savings, according to the agreement between the Bank and the customer.
4. The prosecutor takes action against corruption convicts who do not pay the required compensation within the time period specified by law, namely one month after the court decision becomes final. In such cases, the prosecutor confiscates and auctions the property or assets belonging to the convict as a replacement for the compensation that has not been paid. This is in accordance with Article 18 paragraph (2) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the eradication of corruption.
5. If a corruption defendant dies, the prosecutor will confiscate the convict's inheritance through his heirs with the aim of equalizing the value of the assets obtained from the profits of the corruption crime as much as possible. However, if the convict's assets are proven to be insufficient to cover the amount of compensation required, the prosecutor has the option to file a civil lawsuit against the convict's family or heirs. This action is used to immediately replace the financial losses suffered by the state, even if the person suspected or accused of corruption dies.
6. If the goods obtained through corruption have been transferred to another person, either in part or in whole, then the Public Prosecutor will request their return in order to fulfill the payment of compensation determined by a judge's decision that has permanent legal force. If the above efforts do not produce results, the Prosecutor has the option to initiate civil legal proceedings against a third party who intentionally refuses to hand over or transfer the goods (property). Civil lawsuits are carried out according to the rules contained in Staatsblad 1992 Number 552 and regulations related to Civil Procedure Law. This civil complaint is in accordance with Article 25 letter b of Presidential Decree Number 55 of 1991 which stipulates that if there is a state financial loss, the prosecutor has the authority to file a lawsuit to request compensation.

## **Regulations Concerning Criminal Payment of Replacement Money as Additional Criminal Sanctions in Corruption Crimes**

Corruption has been an eternal topic and is often debated in several forums. Especially when it relates to the government's efforts to trace the wealth or assets owned by corruptors (asset recovery), both currently and in the past, as an effort to increase the efficiency of recovering state financial losses or its economy. The effort, as previously stated, can be done by implementing monetary restitution sanctions as a form of additional punishment for those involved in corrupt activities.

Previous laws and regulations governing the eradication of corruption, especially Law Number 3 of 1971, already contain provisions regarding compensation for state financial losses or the national economy. Article 34 letter c stipulates that repayment must be in accordance with the value of assets obtained illegally through criminal acts of corruption. Article 34 letter c of Law Number 3 of 1971 regulates criminal regulations regarding the payment of compensation. The purpose of this regulation is to achieve optimal results in recovering financial or economic losses suffered by the state due to corruption.

The provisions regarding the offense of paying replacement funds are again regulated in new laws and regulations aimed at eradicating corruption, namely Law Number 31 of 1999 Jo. Law 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In addition, the presence of TAP. MPR.RI Number XI of 1998 concerning the Implementation of a Clean and Corruption-Free State in conjunction with TAP MPR RI Number VII of 2001 concerning Recommendations for the Direction of Policy for the Eradication and Prevention of Corruption, Collusion and Nepotism, Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, and Presidential Instruction Number 5 of 2004 concerning the Implementation of a Clean and Corruption-Free State. Acceleration of Corruption Eradication is also a supporting factor in overcoming corruption, especially in recovering state financial losses. The crime of paying compensation as referred to in Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning the Eradication of Corruption refers to

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additional punishment. In this punishment, the defendant is obliged to compensate the state for both financial and economic losses arising from his corrupt actions. The ideal amount of compensation is the same as the value of the property obtained through the criminal act of corruption. Law Number 31 of 1999 was enacted on August 16, 1999 to replace the previous Corruption Law, namely Law Number 3 of 1971. Law Number 31 of 1999 applies to acts of corruption that occurred after August 16, 1999. Therefore, acts of corruption that occurred before August 16, 1999 remain subject to the provisions of Law Number 3 of 1971. Although Law Number 31 of 1999 has been enacted, Law Number 3 of 1971 remains applicable to acts of corruption committed before August 16, 1999, as long as it provides benefits to the suspect or defendant of corruption. The above thinking is in line with the principle of "Temporary", as regulated in Article 1 paragraph (2) of the Criminal Code, which states that "if there is a change in the law after the act is committed, the most lenient regulation for the defendant" shall be applied."

An efficient law enforcement system that targets individuals involved in corrupt criminal activities must aim to achieve two main objectives. The main objective is to ensure that those who commit corruption are punished with fair and proportionate punishments for the crimes they have committed. Corruption is a terrible and detrimental crime, especially when it occurs during an economic crisis or when the country's economy is in the recovery stage. Therefore, perpetrators of corruption must be punished as severely as possible. The second objective is to immediately recoup the state's financial losses due to corruption, which can be achieved by imposing additional penalties in the form of restitution payments.

Moreover, Article 4 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which is still an amendment to Law Number 31 of 1999 concerning the Eradication of Corruption, explicitly states that the restitution of state financial losses or the revival of the country's economy does not free the perpetrators of the crime, as stated in Articles 2 and 3. Restitution of state financial losses is only one of several bases or rationales for easing the sentence for those convicted of corruption.

Article 10 letter b of the Criminal Code regulates additional penalties, including: a. revocation of certain rights; b. Confiscation of certain goods; c. Public announcement of the judge's decision. As previously stated, the Criminal Code (KUHP) does not specifically regulate the crime of paying compensation as an extra-criminal provision as stated in Article 10 letter b of the Criminal Code. Provisions governing the imposition of replacement money as an additional punishment for corruption crimes can be found in Law Number 31 of 1999 Jo. Law Number 20 of 2001 which amended Law Number 31 of 1999 concerning the Eradication of Corruption. Specifically, these regulations are stated in Article 18 of the law, which reads as follows:

1. In addition to additional penalties as referred to in the Criminal Code, additional penalties are: a. Confiscation of movable property, both physical and non-physical, or immovable property used or obtained through corruption, including corporations controlled by people convicted of carrying out such activities, as well as the value of the products used to replace such assets; b. Payment of replacement funds in the amount of the value of the property obtained and the unlawful act of corruption; c. Temporary cessation of business for up to 1 (one) year, either the entire company or part of it; d. Revocation of certain rights or termination of special benefits that may be provided by the Government to the convict.
2. If within one month after the court decision has permanent legal force, the Public Prosecutor has the authority to confiscate the property of the convict and sell it at auction to recover the compensation money.
3. If the convict does not have sufficient assets to meet the compensation as referred to in paragraph (1) letter b, he shall be punished with imprisonment. The length of imprisonment shall not exceed the maximum sentence stipulated in this law, and the length of the sentence shall be determined by a court decision.

Amidst the economic downturn and challenges of state finances, the recovery and stabilization of state finances are one of the main concerns. Therefore, in handling corruption cases, the recovery of public funds is the main priority. The settlement and recognition of corruption cases without being accompanied by effective compensation for state losses through the implementation of compensation measures is not in line with the goal of eradicating corruption.

## **Implementation of the Corruption Court Decision to Make Compensation Payments as Additional Criminal Sanctions in Corruption Crimes**

Based on the legal perspective, it has been explained in 13 articles in Law No. 31 of 1999 which has been amended by Law No. 20 of 2001 concerning the Eradication of Corruption. Based on these articles, corruption is formulated into 30 forms/types of corruption. These articles explain in detail the acts that can be subject to criminal sanctions for corruption. The thirty forms/types of corruption can basically be grouped as follows: 1. State financial losses; 2. Bribery; 3. Embezzlement in office; 4. Extortion; 5. Fraudulent acts; 6. Conflict of interest in procurement; 7. Gratification.<sup>10</sup>

Furthermore, the general explanation of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, explains that in the midst of national development efforts in various fields, the aspirations of the community to eradicate corruption and other forms of deviation are increasing, because in reality the existence of corruption has caused very large state losses which in turn can have an impact on the emergence of crises in various fields. For this reason, efforts to prevent and eradicate corruption need to be further improved and intensified while still upholding human rights and the interests of the community. Increasing efforts

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<sup>10</sup> Syamsa Adisasmita DEA, "Definisi Korupsi Menurut Perspektif Hukum dan E-Announcement Untuk Tata Kelola Pemerintahan Yang Lebih Baik, Terbuka, Transparan dan Akuntabel", *Makalah*, tanggal 23 Agustus 2016.

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to eradicate corruption is not only an improvement in the level of laws and regulations but also an improvement in law enforcement institutions including efforts to improve the quality of human resources of law enforcement officers, however, these efforts have not had a significant impact, this can be seen from the still high occurrence of corruption, corruption no longer occurs in the center of power or high state institutions, but corruption has occurred in villages, in the last few years many Village Heads and Village Apparatus have been asked to be accountable for acts of corruption in the management of village cash funds in the village, both from Village Funds, Village Fund Allocations and from funds from the Provincial Government or Regency Government.

The phenomenon of increasing corruption as understood has directly impacted state financial losses, based on data released by Indonesia Corruption Watch (ICW) reporting the potential state financial losses due to corruption in Indonesia in 2021, ICW assessed the state loss at IDR62,930,000,000,000.00 (sixty-two trillion nine hundred and thirty billion rupiah) this figure increased by 10.9% compared to the previous year. This figure is also the largest in the last 5 years. The state losses handled by the Prosecutor's Office amounted to IDR62,100,000,000,000.00, (sixty-two trillion one hundred billion rupiah) while those handled by the Corruption Eradication Commission (KPK) were only IDR802,000,000,000.00 (eight hundred and two billion rupiah). The large amount of state financial losses was contributed by several cases, including the corruption of PT Trans Pacific Petrochemical Indonesia's Oil and Gas Condensate worth IDR 36,000,000,000,000.00 (thirty-six trillion rupiah), the Jiwasraya corruption case of IDR 16,000,000,000,000.00 (sixteen trillion rupiah), and the corruption of textile imports by PT Fleming Indo Batam of IDR 1,600,000,000,000.00 (one trillion six hundred billion rupiah).<sup>11</sup>

The increase in the amount of state losses caused, as per the data released by ICW above, is a concern, the large amount of state losses caused by the criminal acts of corruption in question, of course, has a direct impact on economic growth and increased welfare and prosperity for the Indonesian people. Due to this, efforts to eradicate criminal acts of corruption simultaneously must continue to be carried out, efforts to eradicate criminal acts of corruption are not enough just to give or impose criminal sentences to each perpetrator of criminal acts of corruption, but what is more important is the effort to return the state financial losses caused by the criminal acts of corruption, efforts to return state financial losses aim to restore or recover state finances. Recovery of state finances is now the main focus in addition to prevention and eradication of criminal acts of corruption, which is then bridged by the inclusion of provisions on replacement money as regulated in Article 18 of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. However, later through its release, ICW conveyed that the verdict of the corruption case in 2021, from the state losses reaching IDR 62,930,000,000,000.00 (sixty-two trillion nine hundred and thirty billion rupiah) based on the court decision, the amount of compensation decided was only IDR 1,400,000,000,000.00 (one trillion four hundred billion rupiah), meaning that it seems that recovery of state losses due to corruption is impossible.

The implementation of court decisions can be seen as the implementation or execution of punishment by the Judicial Body, such as the imposition of the death penalty or the confiscation and sale of a person's property to pay off debts. According to the Big Indonesian Dictionary published by the Ministry of Education and Culture, what is meant by "execution" is the act of implementing the decision of the Panel of Judges which is final and cannot be changed according to law.

According to Article 270 of the Criminal Procedure Code, the Prosecutor is responsible for implementing court decisions that have permanent legal force. To make it easier, the Clerk submits a copy of the decision letter to the Prosecutor.

Meanwhile, what is meant by "has obtained permanent legal force" is the status of a court decision that has permanent legal force. The reasons why a court decision is considered to have obtained permanent legal force are: 1. If the defendant or public prosecutor agrees with the decision handed down by the District Court or Panel of Judges; 2. If the appeal period has passed and has not been utilized properly by the defendant or public prosecutor; 3. In the event that the appeal is withdrawn; 4. If there is no request for leniency from the perpetrator to the President (within the same time period as the appeal). If the above conditions exist, then the implementation of the District Court decision cannot be implemented.

### Implementation of Criminal Penalties for Payment of Replacement Money in Corruption Crimes

Paying compensation is a separate crime that is included in the Corruption Eradication Law (Law Number 3 of 1971 in conjunction with Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendments Based on Law Number 31 of 1999 concerning the Eradication of Corruption). The aim is to increase the efficiency of recovering state financial losses due to corrupt practices.

In essence, suspects or defendants in corruption cases can pay off state financial losses or the state economy before there is a court decision or a decision by the Panel of Judges that mandates the defendant to provide compensation to the state. This means that state financial losses can be replaced while the examination or trial process is still ongoing.

In corruption cases, the suspects or defendants mentioned above have the option to replace state financial losses. This compensation can be given in full or in installments. However, if it is proven that the defendant has not paid off all state financial losses immediately after the court decision is announced, then the defendant is obliged to pay the remainder through compensation.

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<sup>11</sup> *Kerugian Negara akibat Korupsi Capai Rp62,93 Triliun pada 2021*, <https://dataindonesia.id/ragam/detail/kerugian-negara-akibat-korupsi-capai-rp6293-triliun-pada-2021>, diakses 26 Juli 2024.



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This means that the convict is obliged to pay the remaining state losses that have not been paid off. It should be noted that further criminal penalties in the form of compensation can only occur if there is a court decision that has permanent legal force.

The action of disbursing compensation funds is carried out by the public prosecutor in accordance with his/her jurisdiction as the executor of a court decision that has permanent legal force. This is in accordance with Article 1 paragraph (6) letter a of the Criminal Procedure Code which states that the Prosecutor is an official with legal authority who is tasked with acting as a Public Prosecutor and implementing a court decision that has permanent legal force, in conjunction with Article 1 paragraph (6) letter b which defines the Public Prosecutor as a public prosecutor who has the authority to prosecute and implement a judge's decision. According to Article 270 of the Criminal Procedure Code, the prosecutor is responsible for implementing a court decision that has permanent legal force.

According to Article 18 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, the convict or his/her representative must pay a predetermined amount of compensation to the implementing Prosecutor within a period of one month. After the payment is made and submitted to the Prosecutor, the Prosecutor will issue a Letter of Willingness to Pay Fines/Replacement Money (D-2), signed by the defendant/PH/defendant's family, and a Receipt of Payment of Fines/Replacement Money (D-3), signed by the Head of the Special Crimes Section. The purpose of making a Receipt of Payment of Fines/Replacement Money is to provide real evidence and establish the legal validity of the payment of replacement funds made by the defendant or his attorney.

The prosecutor immediately transfers the replacement money received to the Special Treasurer (Receipt Treasurer) of the District Attorney's Office within 24 hours by submitting a detailed report on the procedures for submitting fines, replacement money, and court costs. Furthermore, the Special Treasurer who is in charge of managing income, deposits fines, replacement money, and court costs through BRI. After the Special Treasurer of the Prosecutor's Office deposits the replacement funds, the Bank issues Proof of Submission of Replacement Money which is also called the Payment Deposit Proof Letter (SSBP) to be kept by the Prosecutor's Office as an official record. The Payment Deposit Proof Letter (SSBP) is then sent to the Attorney General's Office of the Republic of Indonesia and the Minister of Finance through the State Treasury Service Office (KPPN). According to the Big Indonesian Dictionary, the term "State Treasury" is a place where government financial resources are stored, including civil servant salary funds distributed by the state. The distribution of replacement funds is also adjusted to the type of corruption committed by the convict and the related court decision. The panel of judges greeted him. If the loss occurs in the State Treasury, then the funds obtained from the payment of replacement money will be deposited into the state treasury (APBN). However, if the loss occurs in the Regional Treasury, then the replacement funds will be deposited into the respective regional treasury. If the court has issued a criminal verdict requiring payment of replacement funds as referred to in Article 18 paragraph (1) letter b, then the convict is given a certain period of time to make the payment. This period of time is determined in Article 18 paragraph (2), namely "within one month after the court decision has permanent legal force". It should be noted that during this period, the Public Prosecutor who is tasked with implementing the court decision (as stated in Article 270 of the Criminal Procedure Code) does not have the authority to extend the deadline for payment of replacement funds.

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## **IV. CLOSING**

### **Conclusion**

Based on the problems as mentioned above, which conclusion as an answer to the problem is composed as follows: additional criminal penalties in the form of replacement money, especially in district court decisions, it can be concluded that the legality of

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additional criminal penalties in the form of replacement money in corruption cases lies in Article 18 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which has been improved by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. As for the benchmark for its determination, it is contained in Article 18 paragraph (1) letter b. which reads "payment of replacement money as much as possible equal to the assets obtained from criminal acts of corruption". Related to the definition of state financial losses which are one of the important elements in the article regulating criminal acts of corruption, it can be concluded that "a decrease in state assets or an increase in state obligations without being balanced by achievements caused by 'unlawful' acts". The Judge's Consideration in the district court's decision can be said to be less relevant when associated with additional criminal penalties in the verdict in the form of replacement money. This is because the relationship between the considerations and the verdict pronounced by the Judge is 'blurred', and the amount of additional criminal penalties in the form of replacement money does not match the amount of state financial losses contained in the considerations.

### Suggestions

1. Prevention and eradication of corruption and TPPU, there must be prevention implementation in other ways that are more optimal in order to return assets;
2. Legal reform is needed in terms of confiscation, seizure, and return of assets resulting from corruption and TPPU located in the country or abroad to optimally return state financial losses
3. As it should be, the judge in formulating the verdict should not fail to remember the aspects of justice that exist, not only for the defendant, but also for the State, and society. In this case, the author really hopes that the Judge will act firmly and produce the fairest law for the defendant, society, or the State.
4. In addition, it is better if the Judge formulates a verdict with all clear and reasonable considerations when associated with all the facts revealed during the trial. Not just listing them for the sake of formality alone so that it produces a verdict that can be said to be unrelated to all the considerations that have been formulated from the trial facts. And the judge should determine additional punishment in the form of compensation at least the same or even greater than the benefits obtained by the defendant.

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