



Optimizing Compensation Payments in Recovering State Losses Due to Corruption Crimes

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ABSTRACT

This study aims to see the return of state losses through the payment of replacement money by corruption convicts which consists of (1) How to regulate the return of state losses through the payment of replacement money by corruption convicts (2) What are the consequences of the payment of replacement money for the state finances of the Republic of Indonesia. This study is a normative juridical study, namely research that is focused on studying the application of rules or norms in positive law, the object of this study is positive law. Normative legal science is a legal science that is sui generis, meaning it cannot be compared with other sciences. The focus of the study is positive law, therefore this normative legal science has many names. The results of this study show (1) As for the regulation of the Return of State Losses Through the Payment of Replacement Money by Corruption Convicts that alternative payments are a way to provide compensation to the State caused by corruption. The payment of replacement money is regulated by Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 Amendment to Law Number 31 1999 concerning the Eradication of Criminal Acts of Corruption (2) The consequences of paying replacement money to the state finances of the Republic of Indonesia are that criminals of corruption are required to return state losses and normalize the state economy due to corruption. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Article 18 regulates this matter. However, its implementation is not effective for returning losses and normalizing the state economy. Based on the analysis of this research, it shows that most corruption convicts in Indonesia do not pay replacement money but choose a prison sentence instead.

Keywords: Restitution of Losses, Replacement Money, Corruption

INTRODUCTION

The law determines what must be done, what may be done, and what is prohibited. "The intended targets of the law are not only those who clearly act against the law, but also those who may commit legal acts, and the state apparatus that acts according to the law. The system by which the law operates is a form of law enforcement. Amidst national development efforts in various fields, public aspirations to eradicate corruption and other forms of irregularities are growing, as corruption has in reality caused enormous state losses, which in turn can lead to crises in various sectors. Therefore, efforts to prevent and eradicate corruption need to be further

enhanced and intensified while upholding human rights and the interests of the community (Sudirman & Alvian, 2022).

A fundamental issue that is crucial and requires deeper attention in eradicating corruption is how to recover state losses resulting from corruption, whether committed by individuals or corporations. Recovering state funds and assets is crucial, given the fact and phenomenon that corruption eradication efforts have so far only recovered 10-15 percent of the total amount of money embezzled. As a criminal law instrument that allows for the recovery of state funds from corruption, this legal instrument is considered more rational for achieving the goal of eradicating corruption, namely preventing state losses (Levi & Reuter, 2012).

One of the elements of corruption in Article 2 and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 is the existence of state financial losses. This element has the consequence that the eradication of corruption is not only aimed at deterring corruptors through imposing heavy prison sentences, but also restoring state finances due to corruption, as emphasized in the Considerations and General Explanation of Law Number 31 of 1999. The instrument for restoring state finances is included in additional penalties in the form of payment of replacement money. Quoting Paragraph 8 of the Explanation of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, this also includes prison sentences for perpetrators of corruption who cannot pay additional penalties in the form of replacement money for state losses. "The formulation implies that replacement money aims to replace state losses.

The issue of compensation is indeed troublesome, considering that Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 does not regulate compensation that cannot be paid in full. According to Assegaf, it is unfair for the heirs of convicts to be responsible for paying compensation. Compensation is money deemed by the court to be the proceeds of corruption. It is inappropriate to inherit it. He believes the conventional calculation of the length of prison sentences using outstanding compensation for corruption convicts is appropriate.

Corruption results in perpetrators gaining financial benefits, while the state suffers financial losses. The resulting losses ultimately impact the state in various ways. Corruption has even led to poverty, necessitating criminal penalties and the payment of restitution. The consequences of corruption, in addition to harming state finances and the national economy, also hamper the growth and sustainability of national development, which demands high efficiency (Liu et al., 2020). The purpose of compensatory monetary penalties is to impose the harshest possible penalties on corruptors to deter them and to deter others from engaging in corruption. Another goal is to recover state funds lost due to corruption. This idea aligns with the definition of corruption. According to the law, one of the elements of corruption is an act that harms the state. With this element, every instance of corruption inevitably results in a loss to state finances. It is natural for the government to implement a policy, as stipulated in the law, to seek the recovery of state funds lost due to corruption.

One of them is the implementation of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which is still hampered by the incomplete regulation of procedures for corruption courts in terms of returning embezzled state funds. As is known, only a few provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the

Eradication of Criminal Acts of Corruption concerning special procedural law in eradicating corruption in addition to the procedural law regulated in the Criminal Procedure Code. With the description above, the author decided to conduct research in this article with the title: *"Recovery of State Losses Through Payment of Replacement Money by Corruption Convicts"*.

METHOD

This research is a normative legal research, namely research that focuses on the study of positive legal norms related to the payment of compensation by convicts of corruption crimes in the context of recovering state losses (Ariawan, 2019). Normative legal research is research that focuses on the study of the application of rules or norms in positive law, with the objects of study in the form of legal norms, legal principles, legal doctrines, statutory regulations, and court decisions that are relevant to the research problem. This research uses a statutory approach to examine various legal provisions governing criminal acts of corruption, state losses, additional penalties in the form of compensation payments, and their implementation mechanisms; a conceptual approach to analyze the concept of criminal acts of corruption, state losses, compensation, the responsibility of convicts, and recovery of state losses based on doctrine and expert opinions; and a case approach to examine court decisions related to the imposition and implementation of compensation payments in corruption cases. The legal materials used consist of primary legal materials, in the form of laws and court decisions related to the research object; secondary legal materials, in the form of books, scientific journals, articles, research results, expert opinions, and legal doctrine; and tertiary legal materials, in the form of legal dictionaries, the Great Dictionary of the Indonesian Language, encyclopedias, and other sources that provide explanations of the legal terms used. The collection of legal materials is carried out through library research by tracing, identifying, inventorying, and reviewing legal materials relevant to the research problem. The collected legal materials are then processed through the stages of inventory, classification, systematization, and interpretation of legal provisions related to the payment of compensation and recovery of state losses. Furthermore, the legal materials are analyzed qualitatively and descriptively using legal reasoning to obtain a systematic picture and argumentation regarding the regulation and implementation of compensation payments by corruption convicts in the context of recovery of state losses, so that conclusions can be drawn that are in accordance with applicable legal provisions.

RESULT AND DISCUSSION

Regulations for the Restitution of State Losses Through Payment of Compensation by Corruption Convicts

This discussion was conducted to find out the regulations regarding additional penalties in the form of payment of replacement money and how the procedures for payment of replacement money are regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Yashila & Athifahputih, 2022).

Corruption is a dangerous act that threatens the survival of the nation. The negative impacts of corruption are more devastating than natural disasters or even

war. In Indonesia, this practice has grown like mushrooms during the rainy season, and it will be very difficult to eradicate unless the government and relevant parties take concrete action (Ihsan & Azwar, 2018).

The eradication of corruption has not been implemented as effectively as it should to date. Therefore, improvements are needed, both professionally and intensively, to eradicate corruption, as it has caused financial and economic losses to the state and hampered national development (Maria Handayani, 2019).

Corruption in Indonesia has legal provisions governing acts deemed detrimental to the nation and state, both economically and morally. The consequences of corruption not only harm individuals but also the national economy, hindering national development, improving people's welfare, and alleviating poverty (Sartika, 2014).

Corruption hinders the development of democracy, hinders the implementation of public institutions and the optimal use of resources. Corruption fosters secrecy and oppression. Ultimately, corruption denies the most vulnerable members of society the opportunity to participate in development and a higher quality of life (Daven, 2016).

Corruption, as an extraordinary crime, requires the state, through law enforcement, to be responsible for recovering state losses incurred as a result of corruption. Asset recovery is one of the objectives of criminal punishment in corruption and money laundering law. Matthew H. Fleming explains that asset recovery is the process by which perpetrators of crimes are stripped of, confiscated, and stripped of their rights from the proceeds of their crimes (Mahmud et al., 2021).

Fleming's opinion emphasizes three factors, namely: first, the return of assets as a process of revocation, confiscation, removal; second, what is revoked, confiscated and removed are the results/profits obtained from criminal acts of corruption; and third, one of the objectives of revocation, confiscation, removal is so that the perpetrator of the crime cannot use the results/profits from the crime as a tool/means to commit other crimes.

The criminal penalty of paying replacement money was first regulated in Government Regulation in Lieu of Law Number 24 of 1960 concerning Investigation, Prosecution and Examination of Corruption Crimes (Tipikor). This instrument was then continued in Law Number 3 of 1971 and Law Number 31 of 1999 concerning Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes which states that the criminal penalty of paying replacement money is one of the additional penalties in corruption cases in addition to additional penalties as referred to in the Criminal Code (Imbar, 2015).

With the enactment of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the rules regarding the payment of replacement money are increasingly clear as explained in Article 17 and Article 18 that corruption cases can also be subject to additional criminal penalties (Gatot Triyanto, 2001), namely:

1. Confiscation of tangible and intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as goods replacing these goods.

2. Payment of compensation in an amount equal to the assets obtained from the criminal act of corruption.
3. Closure of all or part of the company for a maximum period of 1 (one) year.
4. Revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or may be given by the Government to the convict.

Compensation was not only formulated in 1999 through Law Number 31 of 1999, but this type of additional punishment was first introduced in 1960 through Government Regulation in Lieu of Law Number 24 of 1960 concerning the Investigation, Prosecution and Examination of Corruption Crimes (Gatot Triyanto, 2001). This can be seen from Article 16, namely:

1. Anyone who commits a criminal act of corruption as referred to in Article 1 sub a and b shall be punished with a maximum prison sentence of twelve years and/or a maximum fine of one million rupiah.
2. All assets obtained from corruption were confiscated.
3. The convict may also be required to pay compensation in an amount equal to the assets obtained from corruption.

Furthermore, Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption also regulates replacement money (Alfiantoro, 2019) , which is formulated in one of the articles, namely Article 34 letter c. Article 34: In addition to the Criminal provisions as referred to in the Criminal Code, the additional penalties are:

1. Confiscation of tangible and intangible fixed and immovable goods, with which or in relation to which the crime was committed or which were wholly or partly obtained through the crime of corruption, as well as the counter value of the goods which replace those goods, regardless of whether the goods or the counter value belong to the defendant or not.
2. Confiscation of tangible and intangible fixed or immovable goods, including the company of the defendant, where the crime is committed as well as the counter value of the goods that replace the goods, regardless of whether the goods or the counter value belong to the defendant or not, however the crime is related to the goods that are confiscated according to the provisions of sub-article a of this article.
3. Payment of compensation in an amount equal to the assets obtained from corruption.

Furthermore, after Law Number 3 of 1971 was replaced by Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the additional criminal penalty of replacement money was also regulated with a similar formulation, namely in Article 18 Paragraph (1) letter b. Article 18, namely:

1. In addition to additional penalties as referred to in the Criminal Code, additional penalties are: a. Confiscation of tangible or intangible movable property or immovable property used for or obtained from the crime of corruption, including the company owned by the convict where the crime of corruption was committed, as well as goods that replace such goods; b. Payment of replacement money in an

- amount as much as or equal to the assets obtained from the crime of corruption; c. Closure of all or part of the company for a maximum period of 1 (one) year; d. Revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be given by the Government to the convict.
2. If the convict does not pay the replacement money as referred to in paragraph (1) letter b within a maximum period of 1 (one) month after the court decision has obtained permanent legal force, then his assets can be confiscated by the prosecutor and auctioned to cover the replacement money.
 3. In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he shall be punished with a prison sentence of a term not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law and the length of the sentence has been determined in the court decision (Alfiantoro, 2019) .

The law places particular emphasis on the amount of compensation, which is equal to the amount of assets obtained from the corruption crime. Legally, this must be interpreted as a loss that can be charged to the convict is a real and definite loss to the state as a result of the unlawful act, whether intentional or negligent, committed by the defendant. Therefore, the technical aspect of discovering state financial losses is crucial, namely, it must be based on the findings of an authorized agency or a designated public accountant through proper audit procedures.

If the court has issued a decision regarding the payment of replacement money as referred to in Article 18 Paragraph (1) letter b, then the convict is given time to pay the replacement money, namely no later than 1 (one) month after the court decision has obtained permanent legal force as determined in Article 18 Paragraph (2) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Supramono, 2022) .

If the specified time limit has passed and it turns out that the convict has not paid the replacement money, then his property can be confiscated by the Prosecutor and auctioned to cover the replacement money. Furthermore, in Article 18 Paragraph (3) it is explained that if the convict does not have sufficient property to pay the replacement money as referred to in Article 18 Paragraph (1) letter b, then he will be punished with imprisonment for a period not exceeding the maximum criminal threat of the main sentence in accordance with the provisions of this Law and the length of the sentence has been determined in the court decision (Supramono, 2022) .

The purpose of compensatory monetary penalties is to impose the harshest possible penalties on corruptors to deter them and deter others from engaging in corruption. Another goal is to recover state funds lost due to corruption. This idea aligns with the definition of corruption. According to the law, one element of corruption is an act that harms the state. With this element, every act of corruption inevitably results in a loss to state finances. It is natural for the government to establish a policy, enshrined in law, to seek the recovery of state funds lost due to corruption (Sudarti & Lasmadi, 2021) .

Article 34 letter c of Law Number 3 of 1971 and Article 18 Paragraph (1) letter b only stipulates a simple formula regarding the amount of replacement money, namely as much as possible equal to the assets obtained from the criminal act of corruption. It

can be interpreted that the amount of replacement money can be calculated based on the value of the defendant's assets obtained from the criminal act of corruption charged. Therefore, to determine the amount of replacement money, the Judge must first carefully sort out which part of the defendant's total assets comes from the criminal act of corruption charged against him and which does not. After making an assessment, the Judge can then calculate how much replacement money will be imposed. With this concept, the Judge will definitely encounter difficulties in determining the amount of replacement money (Ihsan & Azwar, 2018).

First, judges will have difficulty distinguishing between assets derived from corruption and those that are not, given the increasing complexity of corruption. Furthermore, this clearly requires specialized expertise and comprehensive data and information. This is especially true if the assets being assessed are located abroad, requiring complex and time-consuming diplomatic bureaucracy. Second, calculating the amount of compensation will be difficult if the defendant's assets being assessed have been converted into assets with fluctuating values, whose value is constantly changing.

In practice, the amount of compensation in corruption cases carried out jointly (participation) is determined based on two burden models, namely: 1. Joint liability In the joint liability model, each defendant is obliged to fulfill the sentence, and according to the civil concept, if one defendant has paid a certain amount of compensation, the obligation of the other defendant is automatically terminated. 2. Proportional The burden of compensation is imposed definitively by the panel of judges on each defendant according to their contribution.

However, in the prosecution, the Attorney General has instructed the public prosecutor to only apply a proportional charging model in order to provide legal certainty and avoid difficulties in execution as regulated in the Attorney General's Circular (SEJA) No. B28/A/Ft.I/05/2009 concerning Instructions to the Public Prosecutor in Making a Letter of Indictment. The SEJA states that the amount of compensation charged to each defendant must be stated clearly and definitely in the indictment and may not be stated in joint and several responsibilities. If the assets resulting from corruption are not known with certainty, then the amount of compensation to each defendant is determined by referring to the qualifications of the indictment and as regulated in Article 55 Paragraph (1) Ke-1 of the Criminal Code (Abdul Hayy Nasution, 2018).

Additional punishment in the form of payment of replacement money as regulated in Article 18, and the general explanation formulates "This Law also contains imprisonment for perpetrators of corruption who cannot pay additional penalties in the form of replacement money for state losses." In reality, the implementation of a court decision on replacement money actually has quite a few problems, because the convicts prefer to be sentenced to prison rather than pay replacement money on the grounds that their assets are no longer there. From the court decision above, it can be seen that apart from there being an imbalance between the amount of replacement money and the replacement prison sentence.

Where the replacement money, which amounts to hundreds of millions to billions of rupiah, is only replaced with a very short subsidiary prison sentence. Furthermore, the court rulings above also show a striking disparity between one subsidiary prison sentence and another. This occurs because Article 18 paragraph (3)

of the Corruption Crime Law only contains a rule that the substitute prison sentence must not exceed the threat of the principal sentence. Therefore, there is no specific pattern or rule that can be used as a benchmark in imposing the substitute prison sentence itself.

The lack of a standard for determining substitute imprisonment when compensation is not paid within a specified timeframe has led to disparities in the length of substitute imprisonment. This disparity demonstrates that the imposition of a large sum of substitute imprisonment is not necessarily accompanied by a lengthy substitute imprisonment or one commensurate with the value of the substitute, and vice versa. Referring to the above description, it can be seen that the primary cause of the stalled execution of substitute payment is in fact due to policy factors, in addition to the commitment of law enforcement. To optimize the payment of substitutes, changes and/or improvements to the policy for handling corruption cases are needed.

Regarding substitute prison sentences, the author proposes that substitute prison sentences be set according to the class range, where the greater the substitute money, the longer the substitute prison sentence.

Table 1. Substitute Prison Sentences Determined According to Class Range

No	Range Kelas Uang Pengganti	Usula Pidana Penjara Pengganti
1	<100 juta	2 Tahun
2	100 Juta - 500 Juta	3 Tahun - 5 Tahun
3	500 Juta - 1 Miliar	5 Tahun - 10 Tahun
4	1 Miliar - 5 Miliar	10 Tahun - 15 Tahun
5	> 5 Miliar	>15 Tahun

In closing this analysis, in practice the substitute prison sentence as referred to in Article 18 Paragraph (3) mentioned in the judge's decision is not balanced because the value of the substitute money amounting to hundreds of millions to billions of rupiah is subsidiary to a relatively short prison sentence. The following is the Decision in a Corruption Crime Case at the Jambi District Court in 2018 which imposed an additional sentence of substitute money accompanied by a substitute prison sentence (subsidiary):

No	No. Perkara	Nama Tersangka	Pasal Yang Dilanggar	Putusan Akhir
1	1/Pid.Sus-TPK/2018/PN Jmb	FARIDA HERYANI Binti ABDUL LANI	Pasal 3 Jo Pasal 18 UU No. 31 Tahun 1999 sebagaimana telah diubah dengan UU No. 20 Tahun 2001 Jo Pasal 65 Ayat (1) KUHP	Pidana Penjara (1 Tahun) Pidana Denda (Rp. 50.000.000, subsider 6 bulan) Uang Pengganti (Rp.50.000.000, subsider 1 Bulan)
2	7/Pid.Sus-TPK/2018/PN Jmb	ZAM ZAMI, SE Bin MUHAMMAD SALEH TUAH	Pasal 3 Jo Pasal 18 Ayat (1) huruf b UU No. 31 Tahun 1999 sebagaimana telah diubah dengan UU No. 20 Tahun 2001 Jo Pasal 64 Ayat (1) KUHP	Pidana Penjara (1 Tahun) Pidana Denda (Rp. 50.000.000, subsider 1 bulan) Uang Pengganti (Rp.10.518.379, subsider 1 Bulan)
3	13/Pid.Sus-TPK/2018/PN Jmb	MUHAMMAD IMAAAH Bin PAJI	Pasal 3 Jo Pasal 18 UU No. 31 Tahun 1999 sebagaimana telah diubah dengan UU No. 20 Tahun 2001	Pidana Penjara (1 Tahun 4 Bulan) Pidana Denda (Rp. 50.000.000, subsider 1 Bulan) Uang Pengganti (Rp.487.500.000, subsider 6 Bulan)
4	16/Pid.Sus-TPK/2018/PN Jmb	AWALUDDIN Bin TULUS	Pasal 2 Jo Pasal 18 UU No. 31 Tahun 1999 sebagaimana telah diubah dengan UU No. 20 Tahun 2001 Jo Pasal 55 Ayat (1) KUHP	Pidana Penjara (2 Tahun) Pidana Denda (Rp. 50.000.000, subsider 1 Bulan) Uang Pengganti (Rp.342.231.499,10, subsider 1 Bulan)
5	21/Pid.Sus-TPK/2018/PN Jmb	SYAMLAWI Bin MARZUKI	Pasal 2 Ayat (1) Jo Pasal 18 UU No. 31 Tahun 1999 sebagai mana telah diubah dengan UU No. 20 Tahun 2001 Jo. Pasal 55 Ayat (1) KUHP	Pidana Penjara (4 Tahun) Pidana Denda (Rp. 200.000.000, subsider 1 Bulan) Uang Pengganti (Rp.106.399.627,5, subsider 1 Tahun)

From the 2018 Corruption Crime Case Decision at the Jambi District Court, it can be seen that in practice the imposition of additional criminal penalties in the form of replacement money accompanied by substitute imprisonment shows an imbalance between the amount of replacement money and the substitute imprisonment imposed. The state has high hopes that the Corruption Eradication Law can recover state losses caused by corruption through additional criminal provisions, but in reality, normative regulations actually provide leniency to perpetrators to escape the obligation to pay replacement money and still be able to enjoy the proceeds of corruption.

Based on Article 18 Paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the return of state losses through payment of replacement money must be returned by the defendant within 1 (one) month from the time the court decision has permanent legal force (Dulang, 2019) .

In practice, the recovery of state losses can generally be said to be unsuccessful, because in corruption cases many defendants do not fulfill their obligations stipulated in the court decision. In such circumstances, it is the prosecutor's obligation to execute compensation in order to recover state financial losses in corruption crimes, demonstrating the prosecutor's role as the spearhead in efforts to recover state finances is very important.

To achieve the effort to return state finances from the convict, the Prosecutor can confiscate the convict's assets and then conduct an auction. In corruption cases as regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is regulated regarding the return of assets resulting from criminal acts of corruption through civil channels in the form of civil lawsuits or criminal channels.

The PTPK Law may confiscate assets resulting from corruption or means of corruption through criminal prosecution if the public prosecutor can prove the guilt of the defendant who has committed the crime of corruption and the assets that have been confiscated in the case in question as the results of the crime of corruption. In proving the guilt of the defendant in court, the public prosecutor often experiences difficulties because the *modus operandi* of the corruption crime he is handling uses sophisticated methods coupled with the high standard of proof that must be met (*beyond reasonable doubt*) (Saputra, 2017) .

Regulations regarding asset confiscation have not been specifically regulated in Indonesian legislation, and existing provisions, namely the Corruption Eradication Law, also have weaknesses, namely that through criminal prosecution, efforts to confiscate assets resulting from criminal acts can only be carried out if the perpetrator of the crime has been declared legally and convincingly guilty of committing a crime by a judge in court (Saputra, 2017) .

The mechanisms implemented often face challenges due to obstacles that prevent perpetrators from undergoing trial. They can also be ineffective due to insufficient evidence to file charges, among other issues. The assets in question can also be easily diverted or even taken abroad.

According to the Fatwa of the Supreme Court of the Republic of Indonesia Number: 37/T4/88/66/Pid dated January 12, 1988, the implementation of the execution of payment of replacement money is:

1. The convict's remaining belongings are confiscated and then sold by auction with the aim of fulfilling the criminal obligation to pay compensation.
2. Confiscation should exclude items used to support the convict and his family's livelihood.
3. Confiscation should avoid the mistake of confiscating goods that do not belong to the convict so that there is no resistance from third parties who feel they have been harmed.
4. The professionalism of prosecutors is the spearhead of upholding criminal executions. This impacts the profession of an executing prosecutor, who carries out his duties and authority as the enforcer of criminal decisions (Febriani & Lasmadi, 2021).

Based on internal regulations within the Prosecutor's Office, namely the Attorney General's Decree (Kepja) Number KEP-518/JA/11/2011, the Regulation stipulates that one of the stages in the execution of the replacement money order is to inquire about the convict's ability to pay the replacement money. The phrase "asking whether the convict is able to pay the replacement money" clearly states that the convict is given a choice, allowing them to choose whether or not to declare their ability to pay the replacement money (Febriani & Lasmadi, 2021).

This situation is ultimately exploited by convicts, who, due to the circumstances and limitations of handling corruption cases, readily claim to no longer have assets to pay and settle the restitution, and "choose" a more advantageous alternative prison sentence. To address this issue, prosecutors should take an active role in tracing convicts' assets so that the seized assets are sufficient to cover the restitution.

Consequences of Compensation Payments for the State Finances of the Republic of Indonesia

One way to maintain the country's economic strength is to eliminate all opportunities for corruption. This way, the nation's wealth, which is meant for the people, will be fully managed for the benefit of their well-being. This stage is included in the prevention efforts undertaken by all state institutions under the supervision of the Corruption Eradication Commission (KPK) (Argiya, 2013). Therefore, eradicating corruption can become a leading sector in improving people's welfare and alleviating poverty. Corruption eradication is formed from three components: prevention (anti-corruption/preventive), action (anti-corruption/repressive), and community participation (Alfedo et al., 2020).

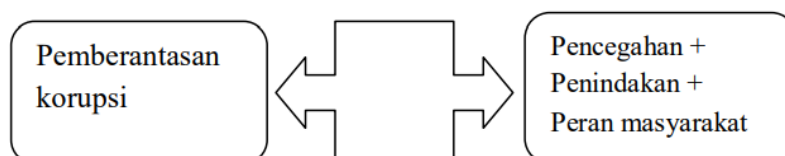


Figure 1. Corruption eradication is formed from three elements.

Indonesia currently lacks an early detection system for corruption. The system being strengthened involves audits of financial management and accountability conducted by the Supreme Audit Agency (BPK), the Central Bank (BI), and the Financial Transaction Reports and Analysis Center (PPATK), to track the flow of funds suspected of being used for and from criminal acts. Therefore, strengthening the BPK and PPATK is crucial for eradicating corruption (Pramudyastuti et al., 2021).

Even though the Supreme Audit Agency (BPK) has sufficient data to pinpoint the point of state financial loss, it does not have the legal authority to justify the blame on an individual. To prevent state/regional financial losses due to unlawful actions or negligence, Law Number 1 of 2004 concerning State Treasury regulates provisions regarding the settlement of state/regional losses. This law stipulates that any state or regional loss caused by unlawful actions or negligence of an individual must be compensated by the guilty party. By settling these losses, the state/region is recovered from the losses that have occurred (Arifardhani, 2019).

This is where the normative clash for law enforcement, most Public Prosecutors base the indictment of a criminal act of corruption that causes financial losses to the State/region/BUMN by using Law Number 1 of 2004. Generally the norms and sanctions that underlie the indictment are the Corruption Law, even though the norm of state financial losses is also regulated in a special law on State Finance. In the material context, the State Finance Law is actually a *lex special* for state losses. Corruption Judges also do not use the State Finance Law as a material reference in imposing criminal sanctions on perpetrators of corruption. In fact, if you look closely, the law does not provide alternative sanctions, as in the Corruption Law (Juliani, 2016).

In relation to human law as a subject and recipient of the mandate to carry out divine laws that have been determined and established through revelation (the Quran) and apostolic tradition (sunnah) or hadith. Humans can reorient subjective thinking to objective thinking, theorize in addition to using the normativity of teachings, change ahistorical understanding to historical and formulate general formulations of revelation into specific and empirical formulations (Moh. Rozin & Ahmad Musonnif Alfi, 2017).

Before discussing the changes, it is necessary to first outline the elements considered problematic, namely those that more or less hinder or delay the return of state funds or potentially cause state financial losses. A law is a statutory regulation established by the House of Representatives (DPR) with or through the proposal and approval of the President. Therefore, a law is a type of statutory regulation.

The 1945 Constitution is needed to strengthen the corruption eradication instruments, because corruption is the estuary of the destruction of the nation and state. Because corruption is a fundamental mistake and crime, its regulation is not only in the form of a law, but must also be implied in the 1945 Constitution. The chapters in the 1945 Constitution that need to be induced regarding the regulation of corruption are Chapter VIII on Financial Matters; Chapter VIIIA on the Audit Board; Chapter IX on Judicial Power; Chapter XIV on National Economy and Social Welfare; Chapter VIIIB on general elections (Raharjanto, 2019).

Article 12 of Law Number 30 of 2002 specifically regulates investigations and inquiries. The *liddik* and *tut* (inquiry) framework for eradicating corruption is a special jurisdiction of the Criminal Procedure Code (KUHP). These special authorities are regulated as follows:

1. Conduct wiretapping and recording conversations.
2. Order the relevant agencies to prohibit someone from traveling abroad.
3. Request information from banks or other financial institutions regarding the financial situation of the suspect or defendant being investigated.
4. Ordering banks or other financial institutions to block accounts suspected of being the result of corruption by suspects, defendants or other related parties.
5. Order the suspect's superior or leader to temporarily suspend the suspect from his position.
6. Requesting data on the wealth and tax data of suspects or defendants from the relevant agencies.
7. Temporarily suspending a financial transaction, trade transaction, and other agreement or temporarily revoking permits, licenses and concessions carried out or owned by a suspect or defendant who is suspected, based on sufficient initial evidence, of being related to the criminal act of corruption being investigated.
8. Request assistance from Interpol Indonesia or law enforcement agencies of other countries to conduct searches, arrests and confiscation of evidence abroad.
9. Requesting assistance from the police or other relevant agencies to carry out arrests, detentions, searches and confiscations in corruption cases currently being handled (Raharjanto, 2019) .

Prevention of state losses is only implemented upon the determination of a suspect or defendant, a truly slow process for an extraordinary crime like corruption. New norms need to be formulated to prevent losses and potential state financial losses as early as possible, before the perpetrator transfers the ill-gotten wealth. Such instruments must certainly take into account the perpetrator's private economic rights, but they must also not neglect the protection of the community's socio-economic justice rights (Febriani & Lasmadi, 2021) .

Based on this thought, the author provides an opinion on changing norms in the KPK Law, especially in Article 12. The idea for this renewal is:

1. KPK investigators, the Prosecutor's Office and the Police are tasked with blocking and/or confiscating assets in the form of movable and/or immovable objects, whether obtained from the proceeds of corruption or not from the proceeds of corruption, whether obtained during or after corruption or before committing corruption, to be used as collateral for alleged losses of state funds resulting from the alleged corrupt acts.
2. The amount of assets and wealth blocked or confiscated as collateral for the loss is worth the estimated value of the corruption plus 20% as a guarantee for the risk of an increase in economic value during the legal process.
3. The duties referred to in this point are carried out on the orders of the Court.
4. Assets that are confiscated or blocked will be forcibly reduced by order of the State (ed.-law) based on the judge's decision.
5. The remaining assets from the reduction will be returned to the perpetrator after the execution of the return of state losses.
6. The forced reduction or cut does not reduce or eliminate the principal sentence (prison) (Enel Reza Hafidzan, Ery Agus Priyono, 2016) .

Legal certainty is essentially the achievement of the objectives of legal norms. Without the return of state funds, the goal of enforcing corruption laws is not achieved. This shortcoming must be addressed through material reforms in eradicating corruption so that normative objectives can be achieved. The implications of the proposed material reforms are:

1. Blocking and confiscating wealth obtained not from criminal acts of corruption, which is obtained before or after the criminal act of corruption is committed will make people feel and think that corruption ultimately consumes all wealth; corruption can ultimately impoverish the perpetrator; whoever commits corruption will become poor and the country will become richer.
2. Blocking and confiscating assets obtained not from criminal acts of corruption, obtained before or after the criminal act of corruption was committed will provide legal certainty regarding the return of losses and/or potential losses to the State.
3. Blocking and confiscating assets obtained not from criminal acts of corruption, obtained before or after the criminal act of corruption was committed will facilitate the performance of investigations, inquiries, prosecutions and execution of decisions.
4. Blocking and confiscating assets obtained not from criminal acts of corruption, which are obtained before or after the criminal act of corruption is committed will provide a sense of public justice, namely socio-economic justice, because in fact the assets that are corrupted actually belong to the Indonesian people (Raharjanto, 2019) .

The existence of normative provisions for imprisonment as a substitute for the inability to reimburse the state for losses and potential losses is a cause of legal uncertainty and socioeconomic injustice. The author argues that this is a highly ironic legal situation, where we create legal norms to undermine the purpose of the law itself.

Therefore, it is necessary to make a legal update, specifically in Article 18 (1) by replacing the drafting of the norm as follows: Returning state losses is not included in additional penalties, but is included in the main penalty. So that the dimension of justice in legal sanctions against corruptors must include two aspects, namely the aspect of legal justice in the form of imprisonment for convicts who commit corruption but do not cause losses and/or potential losses of state money; and the aspect of socio-economic justice in the form of the main penalty of imprisonment and the main penalty of returning losses and potential losses to the state for perpetrators of corruption crimes who cause losses and/or potential losses to the state. The draft in Article 18 (2) is changed to be as follows:

1. The criminal penalty is to return losses and/or potential losses to the State in the amount of State assets and wealth enjoyed or used or lost as a result of the corrupt act committed.
2. The return of state losses as referred to in paragraph (1) must be made no later than two months after the court decision has obtained permanent legal force, then the assets that are under state blocking and confiscation guarantee are reduced by the amount determined in the decision.
3. If there is an excess of blocked and confiscated assets over the value of losses and/or potential losses in the verdict, then the remaining assets are returned to the convict or the convict's family. If there is a shortage of blocked and confiscated assets that

are insufficient to cover the value of losses and potential losses to the State in the verdict, then the convict is required to serve an additional sentence in the form of imprisonment according to the judge's decision (Raharjanto, 2019).

That is the reality faced in the agenda of eradicating corruption, seeking to recover state losses and normalize the economy that has fallen due to corruption. The legal norm related to this is Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. Ni Nyoman Santiari argues that additional punishment in the form of compensation cannot be implemented effectively because the convict does not have the money, and the repayment period is very short. 4 As a solution, the judge imposed an additional prison sentence. This is the initial reason why the embezzled state money was not returned.

CONCLUSION

From the results and discussion above, the research on the return of state losses through the payment of compensation by corruption convicts can be concluded as follows (1) Regarding the regulation of Restitution of State Losses Through Payment of Replacement Money by Corruption Convicts, alternative payment is a way to compensate the State for corruption. The replacement money is regulated by Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 Amendment to Law Number 31 1999 concerning the Eradication of Criminal Acts of Corruption. However, the regulation of the replacement payment itself is still unclear. In addition, we can also see that there is a fairly clear difference between alternative prison sentences and others. The time limit for payment of replacement money is determined in Article 18 Paragraph (2), specifically for 1 (one) month. The alternative payment mechanism is regulated in the Attorney General's Order: Kep-518/JA/11/2001 1 November 2001. Regarding technical payments for altcoins, there are no specific provisions in the law regarding the procedures for cash payments or official installment payments. In the 2015 Circular of the Minister of Justice, reasonable payments for the replacement amount must be paid in installments until it is paid in full. However, the impact of implementing this mechanism will create personality traits that the certainty of additional prison sentences as an alternative to fines becomes uncertain due to the uncertainty of whether the replacement amount will be replaced, and the legal consequences for convicts who pay replacement money in a certain percentage of the total replacement amount. The consequences of paying compensation for the state finances of the Republic of Indonesia are that corruption criminals are obliged to return state losses and normalize the state economy due to corruption. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Article 18 regulates this matter. However, its implementation is not effective in returning losses and normalizing the state economy. Based on the analytical review of this research, it shows that the majority of corruption convicts in Indonesia do not pay compensation but choose to replace imprisonment. This ignores the principle of economic justice and fails to restore state losses. Therefore, this research provides a concept related to the proposed renewal of norms in the corruption eradication law. Namely: 1) eliminating additional penalties for inability to pay state losses; 2) confiscating collateral against all assets owned by the suspect since being named a suspect.

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