

The Additional Criminal Payment of Compensation Money as an Effort to Return Assets Proceeds of Corruption Crimes

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Abstract. *This study aims to find out and examine about additional criminal payment of replacement money as an effort to return assets resulting from corruption. This study uses a normative juridical approach that is analytical descriptive. The data used is secondary data obtained through library research, which is then analyzed qualitatively. Based on the research it was concluded that the additional crime of payment of replacement money as an effort to return assets resulting from criminal acts of corruption as an effort to recover state losses from Articles 17 and Article 18 of Act No. 31 of 1999 jo. Act No. 20 of 2001, has the goal of saving state wealth/finances that have been taken by perpetrators of corruption as well as to punish the perpetrators of corruption as severely as possible. Compensation money in the context of returning state financial losses in acts of corruption is an amount of money that must be paid by a defendant who is proven legally and convincingly according to law based on a court decision, because his act of committing a criminal act of corruption causes losses to state finances. In the criminal payment of replacement money, it must be linked to the existence of consequences or losses arising from the existence of criminal acts of corruption committed by the maker or perpetrator.*

Keywords: *Compensation; Corruption; Money.*

1. Introduction

The starting point for crimes or criminal acts that have occurred in the world has existed and/or have occurred since the existence of humans and will exist as long as human existence, and will even develop in line with the development of

human civilization.¹The dynamics of the development of human civilization will bring logical consequences to the development of a crime or crime that occurs in society.

Along with the development of human civilization, people's lives are greatly influenced by various kinds of crimes or criminal acts. It cannot be denied that until now there have been many unconventional crimes or criminal acts that have arisen as a result of social reactions from society. One of the crimes or unconventional crimes that are currently known is corruption.

Corruption is not a new thing in Indonesian society and the corruption that has occurred is widespread, planned and even structured, especially the abuse of power by state officials.² Forms of corrupt practices grow and develop over time, both in quality and quantity³ and the development of corruption in Indonesia is still relatively high, while its eradication is still very slow.⁴

The criminal act of corruption is a part of the special criminal acts (*ius singulare, ius speciale, bijzonder strafrecht*) which are regulated in the provisions of positive law (*ius constitutum*) in Indonesia, namely in Act No. 31 of 1999 concerning the Eradication of Corruption Crimes, as amended with Act No. 20 of 2001 concerning Amendments to Act No. 31 of 1999 concerning the Eradication of Corruption Crimes, or commonly referred to as (UUPTK).⁵

Corruption is not only detrimental to state finances, but also has the potential to damage the foundations of social life and people's economic rights. Basically, corruptors are usurpers of people's money, and the fact that corruption has

¹Sadjijono. (2021). Criminal Law in Position Perspective Formation of Offenses. Yogyakarta: LaksBang Jutitia, p. 1.

²Harris, Abdul. Ma'ruf, Umar and Kusriyah, Sri. (December 2019), Role And Function Of Attorney In Order To Optimize The Prevention Of Corruption Through Establishment Of TP4P/D (Case Studies In State Attorney Of Grobogan), in Daulat Hukum Journal, Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8287>.

³Siregar, Hulman and Suharto, Rakhmat Bowo. (September 2018). Analysis and Review of The Implementation of Law Enforcement Operations Juridical Capture Corruption in The Criminal Justice System. in the Sovereign Law Journal, Vol. 1 No. 3. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3412/0>.

⁴Putra, Muhammad Riyadi and Gunarto. (June 2019). Analysis Of Handling Practices On Corruption Crime By Police (Case Study In Special Criminal Investigation Police Directorate Of Central Java), in Daulat Hukum Journal, Vol. 2 No. 2, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5425>.

⁵Mahmood, Ade. (2020). Return of Corruption Crime Assets Progressive Legal Approach. First Print. Jakarta: Sinar Graphics, p. 1.

become so widespread is not only seen from the perceptions of the Indonesian people, but also the international community.⁶

As an economic crime, corruption always targets the state budget with various modus operandi to trick law enforcement. That is why law enforcement on the eradication of corruption cannot only aim at convicting the perpetrators, but is far more important, namely that the corrupted state assets can be returned, so that efforts to eradicate corruption today are not only focused on criminally arresting corruptors, but also through other efforts. efforts to recover and return assets resulting from criminal acts of corruption committed by perpetrators of criminal acts of corruption.⁷

In essence, the aspect of returning assets of criminal acts of corruption through criminal procedures can be in the form of imposing criminal penalties on the perpetrators such as criminal fines or defendants being punished to pay replacement money. If it is detailed that the return of assets from this criminal pathway, it is carried out through a trial process, and the Judge, in addition to imposing the main sentence, can also impose an additional sentence.

Additional punishment for payment of replacement money has a strategic position in the context of recovering state losses, because this type of crime is the easiest to impose without cost, and has great potential to restore state losses.

The purpose of this study is to find out and examine the additional punishment for payment of replacement money as an effort to return assets resulting from criminal acts of corruption.

2. Research Methods

The type of research used in writing this legal journal is normative juridical, which is descriptive analytical. The data used in this study is secondary data, which consists of primary, secondary and tertiary legal materials. According to

⁶Muis BJ, Abdul. (2021). Eradication of Corruption, Functions and Authorities of the Indonesian National Police in Corruption Crimes to Restore State Financial Losses in Indonesia. First Print. Bandung: Copyright Library, p. 1.

⁷Panggabean, HP, (2020). Recovery of Corruption Crime Assets, Theory-Practice and Jurisprudence in Indonesia. First Print. Jakarta: Bhuana Popular Science, p. 69.

the data that has been obtained, it is then analyzed using qualitative data analysis.

3. Result and Discussion

Corruption is an act that can cause harm to many parties and can even affect the existence and development of progress and welfare of the people of a country.⁸The criminal act of corruption is also a violation of the social and economic rights of the community, so that the criminal act of corruption can no longer be classified as an ordinary crime, but has become an extraordinary crime (extra-ordinary crimes).⁹

What is certain is that the consequences of criminal acts of corruption are detrimental to state finances or the country's economy. The loss must be borne by the convict after the court decision has permanent legal force. This shows that the legislators want asset recovery or an illustration of the government's desire to recover state finances after a criminal act of corruption occurred, considering that the money that is corrupted is people's money, which should be used for public interests.¹⁰

The crime of corruption is referred to as an extraordinary crime, because corruption in Indonesia is widespread and systematic, and violates people's economic rights. The nature of corruption will form a moral that tends to be capitalist and individualistic, and does not think about the surrounding environment. This characteristic does not reflect the personality, character and greatness of the Indonesian nation.¹¹For this reason, extraordinary methods of eradicating corruption are needed.¹²Various institutions, actions and

⁸Siregar, Hulman. (March 2018). Formulation of Criminal and Punishment of Corruption Crimes which are Harmful to State Finances and Problems in Their Application. in the Sovereign Law Journal Vol. 1.No. 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2626/19> 75.

⁹Sulastri, Lucia. (June 2022). The Legal Protection on Reporters for Corruption Crime. in the Sovereign Law Journal, Vol. 5 Issue 2. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/21024/6994>.

¹⁰Pardede, Rudi. (2017). Process of Recovering State Losses Due to Corruption. Second printing. Revised Edition. Yogyakarta: Genta Publishing, p. 114.

¹¹Zuhairmanto, Gholibuddin. Saraswati, Retno and Benuf, Kornelius. (March 2022). The Practical Barriers to Auction of Confiscated Objects for Corruption Crime. in the Sovereign Law Journal, Vol. 5 Issue 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/18555/6694>.

¹²Rodliyah and HS., Salim. (2019). Special Criminal Law, Elements and Criminal Sanctions. First Edition. Second printing. Jakarta: Rajawali Press, p. 34.

assessments of resistance were carried out as a series of major actions under the heading of "eradicating corruption".¹³

One of the fundamental elements in eradicating corruption is the loss of state finances. The existence of the element of loss to state finances is an entry point in efforts to confiscate and return state financial losses resulting from corruption in Indonesia. An important part in eradicating corruption is how these state losses can be returned to the state, to be used for the greatest interests of the people. The legal concept of returning assets according to Indonesian criminal law is an additional sentence that can be imposed by a judge, together with the main sentence.¹⁴

In the concept of sentencing in general, sentencing has the aim of achieving justice, benefit and certainty, both for perpetrators and victims and society.¹⁵ As is the case with criminal acts of corruption, the victims are the state and the people, so that the punishment imposed in corruption cases must be able to restore the victims' rights.

Act No. 31 of 1999 concerning Eradication of Corruption jo. Act No. 20 of 2001 concerning Amendments to Act No. 31 of 1999 concerning the Eradication of Corruption Crimes, provides two ways or two ways with regard to returning assets resulting from criminal acts of corruption which cause financial losses or the country's economy. The two roads in question are confiscation through criminal channels and deprivation through civil lawsuits. As mentioned, the confiscation of assets from the path of criminal prosecution is carried out through the trial process, where the judge, in addition to imposing the main sentence, can also impose additional penalties.

¹³Leksana, Cipto Dwi and Suharto, Rakhmat Bowo. (March 2019). Implementation of Cooperation Agreement Between the Ministry of Internal Affairs, Police, Attorney General Office (Ago) in Handling and Crime of Corruption in Indonesia. in the Sovereign Law Journal, Vol. 2 Issue 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4217/2923>.

¹⁴Syam, Muhammad Husnul. Marlina, Andi and Suhartina. (April 2022). Return of Assets Proceeds of Corruption Crimes by Heirs; Asset Recovery Corruption by the Heirs. in *Delictum: Journal of Criminal Law and Islamic Criminal Law*. url: <https://ejournal.iainpare.ac.id/index.php/delictum/article/download/3189/1095>.

¹⁵Yusuf DM, Mohd. Good luck, Elvi. Susanti, Devi and Soba, Hifni. (December 2022), Provision of Additional Penalties Against the Revocation of the Political Rights of Convicted Corruption Cases Based on Legislation, in *The Juris Journal of Law Sciences* Vol. VI No. 2. url: <https://ejournal.stih-awanglong.ac.id/index.php/juris/article/view/634/417>.

The basis for returning assets resulting from corruption is the principle: "Give the state what is due", because the state's rights contain obligations that are the rights of individual citizens, so that principle is equivalent to the principle "Give the people what is their right".¹⁶

Returning assets resulting from criminal acts of corruption through criminal compensation is more beneficial than having to imprison the perpetrator in a correctional institution. Compensation money punishment is one of the additional criminal penalties in corruption cases that must be paid by the convict to the state in the maximum amount equal to the property obtained from the corruption crime, if there is an inability of the convict to pay the replacement money, then it can be replaced with corporal punishment as a subsidiary punishment.¹⁷

Additional punishment for payment of replacement money as an effort to recover state losses from Act No. 31 of 1999 jo. Act No. 20 of 2001, has the goal of saving state wealth/finances that have been taken by perpetrators of corruption as well as to punish the perpetrators of corruption as severely as possible.

Compensation money in the context of returning state financial losses in corruption is an amount of money that must be paid by a defendant who is proven legally and convincingly according to law based on a court decision, because his actions committed a criminal act of corruption causing losses to state finances.¹⁸

In the criminal payment of replacement money, it must be linked to the existence of consequences or losses arising from the existence of criminal acts of corruption committed by the maker or perpetrator. The purpose of the criminal payment of replacement money is to recover losses due to criminal acts of corruption, in contrast to criminal fines which are solely shown for the income of money for the state treasury.¹⁹

¹⁶Mahmood, Ade. op. cit., p. 88.

¹⁷Indrana, Yayan. (July-December 2018). Refund of Compensation for State Finances in Cases of Corruption Crimes Repayment Of Compensation For State Finances In Corruption Cases. in Cepalo's Journal, Vol. 2 No. 2, July-December 2018, url: <https://jurnal.fh.unila.ac.id/index.php/cepalo/article/download/1769/1486/5769>.

¹⁸Wattimena, Husin., op. cit., p. 26.

¹⁹Pardede, Rudi., op. cit., p. 71.

Regulations regarding money-replacement criminal sanctions are regulated in additional criminal provisions, which textually have been stipulated in Article 17 and Article 18 of Act No. 31 of 1999, broadly stipulating that:

1. In addition to the additional punishment referred to in the Criminal Code (KUHP), as additional punishment is the confiscation of tangible or intangible movable goods used for those obtained from criminal acts of corruption, payment of replacement money, revocation of all or part certain rights or removal or certain benefits;
2. If the convict does not pay the replacement money, then his property can be confiscated by the Prosecutor and auctioned off to cover the replacement money;
3. In the event that the convict does not have sufficient assets to pay compensation, then he shall be sentenced to imprisonment for a duration not exceeding the maximum threat of the principal sentence specified in the court decision.

The provisions above have formally supported efforts to recover losses suffered by the state as a result of criminal acts of corruption as contained in the principle of returning state assets which is the spirit of Act No. 31 of 1999 jo. Act No. 20 of 2001, but in its implementation only a few convicts pay criminal compensation payments. Even though normatively the laws and regulations have provided this opportunity.²⁰

Act No. 31 of 1999 jo. Act No. 20 of 2001 is not merely a law enforcement tool, but also social and economic justice enforcement. This means not only giving punishment to those who are proven guilty with the harshest possible punishment, but also so that the state losses caused by their actions can all return in the not too distant future. This is a law enforcement effort in eradicating criminal acts of corruption.²¹

Implementation of efforts to recover state losses as expected by Act No. 31 of 1999 jo. Act No. 20 of 2001 through criminal law instruments is actually influenced by 3 (three) factors, namely:²²

²⁰Pardede, Rudi. op. cit., p. 117.

²¹Muis BJ, Abdul. op. cit., p. 3.

²²Pardede, Rudi. op. cit., p. 125.

1. There is a substitution penalty included in the judge's decision which then becomes a loophole for corruption convicts to escape payment of replacement money;
2. The limitations of the executor prosecutor in carrying out the execution because the convict prefers to replace it with imprisonment;
3. The inability of investigators to trace the whereabouts of the convict's assets which are strongly suspected of being the result of a criminal act of corruption.

Ideally, additional criminal provisions in the form of replacement money must be equal or balanced with state financial losses as a result of criminal acts of corruption.²³ However, the existence of an additional penalty in the form of payment of replacement money, cannot simply restore state losses that have been corrupted, so that the Judge's decision is deemed to be in favor of the corruptors and impartial and seeing the suffering of the people due to corruption, so that currently the public is dissatisfied with the judiciary. . The judiciary is considered to have failed to live up to expectations as the last bastion against injustice. This has resulted in a lack of respect for the judiciary, and accusations that the judiciary has been politicized and corrupt have emerged.²⁴

The imposition of criminal fines and additional criminal compensation money against perpetrators of corruption is correct, and in accordance with the purpose of punishment, namely to withdraw money from corruption, but in practice or in law enforcement it cannot be said to be effective.

Husin Wattimena stated that returning state losses through replacement money is very important, because this money can be used to continue development. The return is not easy because:²⁵

1. The trial process for criminal acts of corruption generally takes a long time, so that convicts have the opportunity to divert or hide their assets originating from criminal acts of corruption;

²³Muammar and Meldandy, Maulana. (February 2022). Application of Additional Crime in the Form of Compensation Money in Cases of Corruption Crimes. in Widya Pranata Hukum, Vol. 4 No. 1. url: <https://ejournal.widyamataram.ac.id/index.php/pranata/article/view/564/301>.

²⁴Arliman S., Laurensius. (2015). Law Enforcement and Public Awareness. First Edition. First Print. Yogyakarta: Deepublish, p. 123-124.

²⁵Wattimena, Husin. (2017). Implementation of Threats of Additional Criminal Sanctions for Recovery of State Financial Losses in Corruption Crimes. First Print. Yogya-karta: LP2M IAIN Ambon and Deepublish, p. 84.

2. The crime of corruption is an extraordinary crime, where the perpetrators are intellectuals and have important positions, so it is easy to divert/hide their assets that come from the proceeds of corruption.

In addition, if the perpetrator is unable to pay compensation for state financial losses, then the perpetrator carries out a subsidiary prison sentence, so that the amount of state financial losses returned is generally smaller than the amount of money corrupted. This is also because judges sometimes calculate the amount of state financial losses themselves, and prosecutors find it difficult to prove state financial losses in court. Thus, the recovery of state financial losses cannot be optimal.²⁶

The amount of state financial losses caused by corruption is very disproportionate to the amount of state financial returns due to corruption. Recovery of state financial losses must be carried out in any way that is justifiable according to law, so that it can be optimally pursued. In principle, the right of the state must be returned to the state for the welfare of the people.²⁷ Satjipto Rahardjo also criticized the high level of corruption in Indonesia by comparing it to the disproportionate enforcement of criminal acts of corruption.²⁸

The low return on state losses due to the proceeds of criminal acts of corruption deeply hurts the hearts of the people. There is a disparity in court decisions in corruption cases which is very unfortunate. The general public is of course wondering why a 100 million rupiah corruption penalty is commensurate with billions of rupiah. This phenomenon of disparity in punishment has the potential to hurt the sense of justice in the wider community.²⁹

The difference in the weight of the sentence imposed by the judge is not without risk. The most likely risk is a very significant difference in punishment for two or more actions with almost the same weight of loss, or also the similarity of

²⁶Hikmawati, Princess. (June 2019). Recovery of State Financial Losses from Payment of Compensation for Corruption Crimes, Can It Be Optimal?; Return of State Financial Losses from The Payment of Substitute Money Corruption Criminal Act, Can It Be Optimal?. in the rule of law, Vol. 10 No. 1. url: <https://jurnal.dpr.go.id/index.php/hukum/article/view/1217/pdf>.

²⁷Wattimena, Husin., op. cit., p. 7.

²⁸Sujono. (2020). Recovery of Corruption Assets, Through Payment of Compensation Money and State Civil Lawsuits. First Print. Yogyakarta: Genta Publishing, p. 37.

²⁹Djarmiko, Wahyu Prijo. (2020). The Politics of Criminal Corruption Eradication Perspective of Legal Culture. Sixth Printing. Yogyakarta: Thafa Media, p. 67.

punishment for two or more actions with very different weight of loss. Conditions like this to a certain degree can be felt as injustice. This injustice arises because the violations are almost the same, in fact receive different punishments, or vice versa, namely criminal acts that have different amounts of loss can receive almost the same punishment, in other words that due to the absence of these guidelines, uncertainty arises for justice seekers regarding punishment that is considered appropriate and fair. When people feel that the legal system does not provide justice,³⁰

In every criminal act that occurs, a proportional criminal punishment is very much needed, which ensures that the criminal punishment must at least be proportional to the losses incurred as a result of the crime. Appropriate sanctions/rewards must be in accordance with the gravity of the act and the losses incurred by the violator.³¹

Judges as decision makers in court have an important role in terms of imposing an appropriate sentence on a defendant, including imposing criminal sanctions to recover state financial losses to corruptors. The purpose of imposing a crime related to non-corruption is not only to create a deterrent effect on perpetrators and as an effort to prevent corruption, but the most important thing in imposing a crime is an effort to recover state financial losses due to corruption.

4. Conclusion

Additional punishment for payment of replacement money as an effort to return assets resulting from corruption as an effort to recover state losses from Act No. 31 of 1999 jo. Act No. 20 of 2001, has the goal of saving state wealth/finances that have been taken by perpetrators of corruption as well as to punish the perpetrators of corruption as severely as possible. Compensation money in the context of returning state financial losses in acts of corruption is an amount of money that must be paid by a defendant who is proven legally and convincingly according to law based on a court decision, because his act of committing a criminal act of corruption causes losses to state finances. In criminal payment of replacement money, must be linked to the existence of consequences or losses arising from the existence of criminal acts of corruption committed by the maker

³⁰Gunawan, TJ (2015). *The Concept of Value-Based Punishment for Economic Losses; Towards a Criminal Law System that is Just, Equitable, Provides Deterrent Power and Keeps abreast of Economic Developments*. First Print. Yogyakarta: Genta Press, p. 1-2.

³¹*Ibid.*, p. 97.

or perpetrator. Regulations regarding criminal sanctions for replacement money are regulated in additional criminal provisions, which are textually stipulated in Article 17 and Article 18 of Act No. 31 of 1999.

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