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# Return of State Losses Due to Criminal Acts of Corruption on Problemed Loans at BRI Bank, Kediri Branch Office

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***Abstract.*** *The research aims to be Accountable for Refunding State Financial Losses Due to Criminal Acts of Corruption in Problematic Loans at BRI Bank, Kediri Branch Office, Weaknesses and Solutions in the implementation of accountability for refunding state financial losses due to criminal acts of corruption in Problematic Loans at BRI Bank, Kediri Branch Office. The sociological legal approach method is an approach to studying and exploring legal realities experienced in the field or an approach that is based on problems concerning legal matters and existing realities, using the theory of criminal responsibility and the legal system. The results of the research and discussion are that (1) Accountability for the Return of State Financial Losses Due to Corruption Crimes is proven to impose a prison sentence of 4 (four) years 6 (six) months and a fine of Rp. 100,000,000.00. If the fine is not paid, it will be replaced with a prison sentence of 3 (three) months. Imposing an additional sentence on the Defendant to pay compensation of Rp. 891,177,500. If the convict does not pay compensation within 1 (one) month after the court decision has obtained legal force, his property can be confiscated by the Prosecutor and auctioned to cover the compensation in the event that the convict does not have sufficient property to pay compensation, then he will be punished with imprisonment for 2 (two) years.(2) Weaknesses in the implementation of accountability for the return of state financial losses due to corruption; First, if the fine is not paid, it is replaced with imprisonment for 3 (three) months each, from the decision of the fine, it is possible that the defendants choose a substitute sentence of imprisonment because it is considered too light, which is only 3 (three) months imprisonment, rather than fulfilling the provisions of the fine that must be paid is considered quite large, even though they are able. Second, the application of cumulative penalties for corruption, there needs to be implementing regulations, especially regarding the implementation of fines. Third, the threat of imprisonment and fines together, their implementation (execution) must be carried out by defendants of corruption, especially fines.*

***Keywords:*** *Corruption; Return; State Loss.*

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## 1. Introduction

Article 1 paragraph (3)in the 1945 Constitution of the Republic of Indonesiastates that "Indonesia is a country of law". This means that all state activities, including legislative, executive, and judicial, must be carried out based on applicable laws. The goal is to provide legal certainty, prevent abuse of authority, and ensure that all citizens are treated equally before the law.In reality, aspects of life today, including economics, politics, social and culture, are regulated by legal products, including the issue of criminal acts of corruption.

Handling by the Indonesian government prioritizes corruption as an extraordinary crime, because it violates the social and economic rights of the community and disrupts state finances. So that the approach to handling corruption has experienced a paradigm shift,from punishment and deterrence to focusing on the return of assets resulting from corruption that are placed in other countries.[1]Although the government has changed every 5 years. However, efforts to combat corruption will never stop. In Indonesia, various legal systems have been developed to eradicate and eradicate corruption. Because corruption is considered an extraordinary crime committed by individuals who are educated, professional, and have power and authority in managing the country.[2]

Literally, the word corruption is rottenness, badness, crime, dishonesty, which can be influenced or bribed. Corruption in Indonesian means bad deeds, such as embezzlement of money or bribes.[3]In general, corruption is an action or deed that can endanger the economy and state finances for personal or group interests.[4]According toBaharuddin Lopa quoted the opinion of David M. Chalmers, explaining the meaning of the term corruption in various fields, namely those concerning bribery issues related to manipulation in the economic field, and those concerning the field public interest.[5]In the Criminal Code (KUHP) there are certain articles that substantially contain the meaning of the definition of corruption. The provisions in the Criminal Code (KUHP) in the narrow sense are actually quite capable of accommodating and containing various forms of deviant behavior that in the literature are understood as corruption.[6]

The criminal act of corruption, which is also known as the act of enriching oneself or a group, is detrimental to the state and society, so thatin its provisions there are elements of criminal acts of corruption, as seen in Article 2 paragraph (1) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, which states that criminal acts of corruption:

Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000 (one billion rupiah).

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[1]Ulang Mangun Sosiawan, Handling of the Return of State Assets from Corruption Crimes and the Implementation of the UN Anti-Corruption Convention in Indonesia, De Jure Legal Research Vol.20 No.4 of 2020. Url:https://ejournal.balitbangham.go.id/index.php/accessed November 01, 2024.
[2]Ibid,
[3]Hamzah Ahmad and Anando Santoso, 1996, Smart Dictionary of Indonesian, Fajar Mulia, Surabaya, p.211
[4]Andy Hamzah, 1991, Corruption in Indonesia: Problems and Solutions, Gramedia Pustaka Utama, Jakarta, p. 7
[5]Eva Hartanti, 2005, Criminal Acts of Corruption, Sinar Grafika, Jakarta, p.9
[6]K. Wantjik Saleh, 2003, Criminal Acts of Corruption, Ghalia Indonesia, Jakarta, p. 44

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Explanation in Article 2 paragraph (2)Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruptionconfirming that in the case of a criminal act of corruption as referred to being committed under certain circumstances, the death penalty may be imposed if:

What is meant by "certain circumstances" in this provision are circumstances that can be used as a reason for increasing the criminal sentence for perpetrators of corruption crimes., namely if the crime is committed against funds allocated for dealing with emergency situations, national natural disasters, dealing with the consequences of widespread social unrest, dealing with economic and monetary crises, and repeated acts of corruption.

The explanation in Article 3 of the Law states:

Any person who, with the intention of benefiting himself or another party or a corporation, by abusing the authority, opportunity or means/facilities available to him (owned) because of his position and/or position that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

During 2024, according to data presented by the Corruption Eradication Commission (Corruption Eradication Commission), including those in East Java, as a province with the highest number ofcorruption casethe highest in Indonesia, there were 156 cases recordedcorruption in East Java,put it intop of the dark list. FollowWest Javafollowed with 154 cases, while North Sumatra was in third place with 93 cases. In East Java itself, the peak of corruption cases occurred in 2018 with 37 cases, before decreasing in 2019 to only 2 cases. Unfortunately, this trend has increased again in the following years. A number of major corruption cases in East Java have attracted public attention, one of which involved the Regent of Sidoarjo, Ahmad Muhdlor Ali or Gus Muhdlor. He was caught in an alleged cut in incentive funds for State Civil Apparatus (ASN) at the Regional Tax Service Agency (BPPD) worth IDR 1.4 billion. At the trial at the Surabaya Corruption Court, Monday (9/12/2024), the prosecutor demanded a sentence of 6 years and 4 months in prison for him.[7]

One thing that state-owned bank employees are worried about is that there will be abuse of authority in banking, namely corruption.Because they can be asked for information at any time, as witnesses or examined by the authorities, either the police or the Prosecutor's Office in cases of corruption. This often happens in the banking world with problematic credit from creditors that does not match what has been agreed in the application, including the denial of the agreement from the borrower by delaying, reducing or not paying at all their obligations, either in the form of parent credit and or loan interest.

The initial stage of lending and borrowing is a legal act that falls within the scope of civil law, based on an agreement between the creditor and the debtor. However, it eventually turns into a criminal act of corruption when the credit/financing becomes stuck. The stuck credit/financing is suspected of causing state financial losses. Indeed, not all credit/financing that experiences a deadlock in its return shifts to a criminal act of corruption. Of course,

[7]https://surabaya.inews.id/read/534882/jatim-jadi-provinsi-dengan-kasus-korupsi-tertinggi-berikut-data-resmi-dari-kpk/allaccessed April 15, 2025.

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investigators will look at other elements of criminal acts of corruption in the investigation and inquiry process.[8]

The debate on the element of state loss in corruption related to credit or financing defaults is a very important debate. If the business does not run as expected, there may be losses in the distribution of credit or financing. The failure of customers to pay credit or financing at risk has been included in the interest or profit sharing costs. This means that the credit interest or profit sharing has included the risk of credit or financing defaults, it has been calculated that most of them may experience problems or defaults.[9]There are differences of opinion regarding losses for State-Owned Enterprises (BUMN) or subsidiaries only for providing credit or financing to certain debtors or losses during the reporting period. If there is credit or financing that experiences problems or is stuck, the State-Owned Enterprise or its subsidiary may experience losses. However, overall, during the reporting period, the company still made a profit and did not experience losses, in addition, certain macro and microeconomic situations can cause credit or financing to become problematic or stuck.[10]

Incident in 2022, BRI Kediri Branch started implementing the Indonesian People's Market Program (PARI) program, one of the implementing units of which is BRI Sambi Unit. The Indonesian People's Market Program (PARI) is a digital marketplace application platform launched by Bank Rakyat Indonesia (BRI) with the main objective of improving the welfare of the people in Indonesia, especially rural communities. The defendant was appointed as the Mantri PIC PARI at BRI Kediri Branch Office based on Decree Nokep: 29/KC-XVI/LYI/03/2022 dated March 10, 2022 and also as the Mantri for PARI Ecosystem Management at BRI Kediri Branch Office based on Decree Nokep: S.83.e-KC-XVI/LYI/01/2023 dated January 2, 2023. The defendant as the Mantri in the PARI Program at Bank BRI Sambi Unit has the task of finding customers who want to register as PARI Program customers and conducting a business feasibility analysis, carried out On The Spot (OTS) to the prospective debtor's business location, if the requirements are not met, the application will be rejected and if the requirements are met, the bridging funds can be disbursed on the PARI application based on the MVP Phase Piloting Implementation Guidelines No: B.67-MBD/BST/02/2022 concerning Indonesian People's Market Bridging Credit (PARI) and the Piloting Implementation Guidelines No.B.101-HEC/08/2023 and No.B.701-MBD/08/2023 dated August 25, 2023 concerning the Application and Credit for the Indonesian People's Market (PARI). The defendant as the party utilizing the PARI application bridging funds was unable to return the bridging funds to Bank BRI Unit Sambi, resulting in state financial losses.[11]

The act violated is contained in the provisions of the defendant Article 2 letter g of Law Number 17 of 2003 concerning State Financial Management states that state assets/regional assets managed independently or by other parties in the form of money,

[8]Try Widiyono, Farhana, State Losses in Corruption Crimes of Members of The Board of Directors of State-Owned (Persero) or Regional Government-Owned Banks and Their Subsidiaries in The Provision of Credit/Financing, Jurnal Penelitian Hukum De Jure Vol.22 No.01 Tahun 2022, Url:https://review-unes.com/index.php/law/article/view/2255accessed November 11, 2024.
[9]Ibid,
[10]Ibid,
[11]Indictment File No. Reg. Case: PDS-02/M.5.45/Ft.1/08/2024

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securities, receivables, goods, and other rights that can be valued in money, including assets separated in state-owned companies/regional companies. As well as Law Number 19 of 2003 concerning State-Owned Enterprises, Article 2 Paragraph (1) states the intent and purpose of establishing a BUMN, namely:

1. Contributing to the development of the national economy in general and state revenues in particular.
2. Chasing profits
3. Providing public benefits in the form of providing high quality and adequate goods and/or services to fulfill the needs of many people.
4. Becoming a pioneer in business activities that cannot yet be implemented by the private sector and cooperatives.
5. Actively participates in providing guidance and assistance to entrepreneurs from economically weak groups, cooperatives and the community.

The defendant's actions as regulated and threatened with criminal penalties in Article 2 Paragraph (1) Jo. Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption Jo. Article 55 Paragraph (1) ke-1 of the Criminal Code Jo. Article 64 Paragraph (1) of the Criminal Code. In the case ofreturn of assets resulting from criminal acts of corruption, there are several experts who have different opinions, namely Purwaning M. Yanuar who is of the opinion that asset return is a law enforcement system carried out by the state to revoke, confiscate, and eliminate rights to assets resulting from criminal acts of corruption from perpetrators of corruption through various processes and mechanisms, both criminally and civilly, including assets taken from criminal acts of corruption must be returned to the State.[12]

As stated by the Basel Institute On Governance International Centre for Asset Recovery, the return of state assets resulting from criminal acts of corruption is the process of searching for, freezing and confiscating assets resulting from criminal acts of corruption that must be returned to the state.[13]

To recover state losses dIn criminal law enforcement, the priority is to return state financial losses rather than the perpetrators of corruption.However, the Criminal Code (KUHP) regulates the confiscation of assets resulting from criminal acts in the Indonesian legal system. In handling law enforcement, criminal law problems are often encountered, due to many factors, not only regulatory issues, but also legal culture issues, law enforcement institutions, and lack of support and facilities. Meanwhile, the failure of the criminal justice system in enforcing the law on corruption has caused legal uncertainty, justice, and benefits for the community. In cases of criminal liability, punishment determines whether a person can be held criminally responsible for his actions.

[12]Purwaning M. Yanuar, 2007, Return of Assets from Corruption, Alumni, Bandung, p.104
[13]Agustinus Herimulyanto, 2019, Confiscation Based on the Return Value of Corruption Crime Assets, Genta Publishing, Yogyakarta, p. 33

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## 2. Research Methods

This type of research is legal research conducted using the type of socio-legal research. Explaining that law can be studied and researched as a study of law that actually lives in society as a non-doctrinal and empirical study. While it is known that sociological legal research emphasizes the importance of empirical observation, observation and analytical steps or better known as sociolegal research.[14] Based on the view that law is a manifestation of the symbolic meaning of social actors as seen from the interactions between them (society), the data obtained by researchers, both primary and secondary data, will be analyzed qualitatively and presented descriptively, namely by explaining, describing and depicting problems and their solutions that are closely related to the research.[15]

## 3. Results and Discussion

### 3.1. Analysis of Accountability for Restitution of State Financial Losses Due to Criminal Acts of Corruption on Problematic Credit at Bank BRI Kediri Branch Office

Bank is one of the institutions engaged in the business sector has one of the functions known as the provision of credit facilities which in the context of credit is known as a bank as an intermediary institution. The function of the bank as an intermediary institution, especially in credit distribution, has an important role for the movement of the wheels of the economy as a whole and facilitates economic growth.[16] Furthermore, according to FE Perry (in Komaruddin) that:

A bank is a company that deals with money, accepts it on deposit from customers, provides services to customers in withdrawing deposits made on request, collects checks for customers and makes loans or invests surplus deposits until they are treated for payment.[17]

Talking about credit, we must first know what the definition of credit itself is and where the source of credit funds comes from.

Article 1 number 2 of Law Number 7 of 1992, which was amended by Law Number 10 of 1998, defines:

Banks are business entities that collect funds from the public in the form of savings and distribute them to the public in the form of credit and/or other forms in order to improve the standard of living of many people.

Furthermore, Article 1 number 11 of the Banking Law states that:

Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with the provision of interest.

Looking at the explanation above Article 1 number 2 in conjunction with Article 1 number 11 of the Banking Law, we can interpret that credit is the provision of money or something

[14]Sabian Utsman, 2013, Basics of Sociology of Law: Complete with Legal Research Proposal, Pustaka Belajar, Yogyakarta, p. 310
[15]Ibid,
[16]Thoma Suyatno. et al, 2008, Banking Institutions, Gramedia, Fifth Edition, Jakarta, p.1
[17]Komaruddin, 2012, Banking Dictionary, CV Rajawali, Jakarta, p.27

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that is equated with a bill given by a bank as a creditor and another party as a debtor that is bound or based on a contract that arises because of an agreement whose source of funds comes from funds collected from the community in the form of savings. However, the reality in society is that a debtor can be said to have failed to pay or is in default in a credit facility. A bad credit can be said to be a criminal act of corruption, whereas credit funds are funds collected from the community in the form of savings and distributed through credit.

The existence of corruption in banking is a progress of the modern era that is increasingly sophisticated and has also developed with various modes of operation. So that legally there will never be a criminal act of corruption if the element of state financial loss is fulfilled. Theoretically, banking crimes are divided into two, namely banking crimes and crimes in the banking sector. Banking crimes are crimes as regulated in the provisions of Law of the Republic of Indonesia Number 10 of 1998 concerning Banking. While crimes in the banking sector are all forms of crimes committed using banking facilities as a medium to commit crimes, one of which is corruption using banking.

Banking crime can be interpreted as a violation or unlawful act against banking provisions based on the Banking Law, while criminal acts in the banking sector are interpreted as criminal acts that are related or have a connection with activities in running the bank's main business, such acts can be regulated and threatened with criminal penalties based on criminal provisions outside the Banking Law. This means that the existence of criminal acts in the banking sector can be subject to criminal penalties by imposing articles in laws outside banking, one of which is the crime of corruption.

The scope of banking crimes in corruption crimes if the criminal act is not included in the Banking Law, in essence from corruption crimes, then when a criminal act in the banking sector causes clear and obvious losses to state finances, and its impact is broad and dangerous both to society and the state economy. The existence of state losses in banking crimes cannot be separated from the formulation of Article 2 paragraph (1) 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 Corruption Crimes which provides an indirect understanding of causing losses to state finances.

State financial losses as explained in Article 32 paragraph (1)Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruptionexplain: What is meant by "there has clearly been a state financial loss" is a loss that can be calculated based on the findings of the authorized agency or appointed public accountant."[18] In the explanation of Article 59 paragraph (1)Law Number 1 of 2004 concerning State Treasury,It is said that state losses can occur due to violations of the law or negligence of state officials or civil servants who are not treasurers in the implementation of administrative authority or by treasurers in the implementation of treasury authority. The settlement of state losses needs to be carried out immediately to restore lost or reduced state assets and to improve the discipline and responsibility of civil servants/state officials in general, and financial managers in particular.[19]

[18] Article 32 paragraph (1)Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption

[19] Article 59 paragraph (1)Law Number 1 of 2004 concerning State Treasury

Regarding state finances, the explanation of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption states that all state assets in any form, whether separated or not separated, include all parts of state assets and all rights and obligations arising from:

1. Being under the control, management and accountability of state institution officials both at the central and regional levels.

2. Being under the control, management and accountability of State-Owned Enterprises/Regional-Owned Enterprises, Foundations, legal entities and companies that include third party capital based on agreements with the state.

Furthermore, based on Article 1 number 1 of Law Number 17 of 2003 concerning State Finance, the definition of state finance is all state rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be owned by the state in connection with the implementation of these rights and obligations. The scope of state finance based on Article 2 of Law Number 17 of 2003 concerning State Finance is:

a. The state's right to collect taxes, issue and circulate money and make loans

b. The state's obligation to carry out general government service duties and pay third party bills

c. State Revenue

d. State Expenditure

e. Wealth of other parties obtained by using facilities provided by the government.[20]

Based on the provisions of the Law on the Eradication of Criminal Acts of Corruption and the Law on State Finance, state finance can be seen in a broad sense and in a narrow sense, state finance in a broad sense includes the rights and obligations of the state that can be valued in money, including money and state property that is not included in the state budget, either the State Budget (APBN) or the Regional Budget (APBD). While state finance in a narrow sense is limited to the rights and obligations of the state that can be valued in money, including money and state property listed in the state budget, either the State Budget (APBN) or the Regional Budget (APBD).Thus, corruption can be understood as an act of misuse of state assets that serve the public interest, for personal or individual interests. However, the practice of corruption itself, such as bribery or bribery, is often found in society without having to involve state relations., evencriminal acts of corruption related to banking. [21]

Take for example the case that occurred, namely the case of Corruption in the provision of credit facilities at the Bank.BRIKediri Branch Officewith the chronology of events that:

On In 2022, BRI Kediri Branch began implementing the Indonesian People's Market Program (PARI) program, one of the implementing units of which is BRI Sambi Unit. The Indonesian People's Market Program (PARI) is a digital marketplace application platform launched by

[20]Muhammad Djafar Saidi, Eka Merdekawati Djafar, 2008, State Financial Law: Theory and Practice, Rajawali Press, Depok, p. 11

[21]Sudarsono and Sugiri Bambang, 2017, Criminal Acts of Corruption in Indonesia, Media Nusa Creative, Malang, p.38

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Bank Rakyat Indonesia (BRI) with the main objective of improving the welfare of the people in Indonesia, especially rural communities. The defendant was appointed as the Mantri PIC PARI at the BRI Kediri Branch Office based on Decree Nokep: 29/KC-XVI/LYI/03/2022 dated March 10, 2022 and also as the Mantri PARI Ecosystem Management at the BRI Kediri Branch Office based on Decree Nokep: S.83.e-KC-XVI/LYI/01/2023 dated January 2, 2023.

The defendant, as a Mantri in the PARI Program at Bank BRI Sambi Unit, had the task of finding customers who wanted to register as PARI Program customers and conducting a business feasibility analysis, which was carried out by*On The Spot*(OTS) to the prospective debtor's business location, if it does not meet the requirements, the application will be rejected and if it meets the requirements, the bridging funds can be disbursed on the PARI application based on the MVP Phase Piloting Implementation Guidelines No: B.67-MBD / BST / 02/2022 concerning Indonesian People's Market Bridging Credit (PARI) and Piloting Implementation Guidelines No.B.101-HEC / 08/2023 and No.B.701-MBD / 08/2023 dated August 25, 2023 concerning the Application and Credit for Indonesian People's Market Bridging (PARI). The defendant as the party who utilized the PARI application bridging funds was unable to return the bridging funds to Bank BRI Sambi Unit, resulting in state financial losses.[22]

Based on the State Financial Loss Calculation Report at BRI Sambi Unit dated July 12, 2024 Number: B.154/KC-XVI/LYI/07/2024 there has been a deviation in the Implementation of the Pari Program at PT. Bank Rakyat Indonesia (Persero) Tbk Sambi Kediri Unit in 2022-2023 which resulted in state financial losses of approximately IDR 949,370,000.*(Nine Hundred and Forty Nine Million Three Hundred and Seventy Thousand Rupiah).*From the explanation above, there is something interesting to discuss legally considering that in Law Number 10 of 1998 concerning Banking there are criminal provisions and in Law Number 10 of 1998 there is not a single article that categorizes an activity and action in the banking sector as falling into the realm of corruption. In the context of this case, corruption has limitations, namely because of abuse of authority or anyone who breaks the law with the result of harming state finances or the state economy, including what is meant by every act of corruption qualification as stated in Article 5 to Article 16 of Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption.

Thus, based on the explanation above, the qualification of the classification of corruption crimes in the Corruption Crime Law is divided into 30 (thirty) types which are accommodated into 7 (seven) groups which directly in the formulation of the articles also provide limitations to the extent to which the perpetrators of the crime are subject to the articles of corruption crimes according to the regulation of the elements of each article contained which then which acts are included in state financial losses, bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement, or gratification. So that the case regarding the provision of credit facilities at the Kediri Branch Bank is considered part of a criminal act of corruption.

The facts revealed in the trial, then the proof regarding the elements of the criminal act charged was submitted in the trial at the Corruption Court at the Surabaya District Court in

[22]Indictment File No. Reg. Case: PDS-02/M.5.45/Ft.1/08/2024

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the form of Subsidiarity, then the Public Prosecutor in the trial proved the charges by proving the Primary charges first, violating Article 2 Paragraph (1) Jo. Article 18 of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption Jo. Article 55 Paragraph (1) ke-1 of the Criminal Code Jo. Article 64 Paragraph (1) of the Criminal Code.

That the Defendant is a legal subject whose identity is as stated in the Minutes of the Defendant's Examination, at the investigation stage, the Minutes of the Defendant's Research at the prosecution stage, or as attached to the case file in the form of an ID card. That in this case after the Public Prosecutor matched the Defendant's identity with the Indictment and based on the statements of witnesses, Experts, letters, Instructions and the Defendant's Statement and connected with the evidence, legal facts were obtained that the Defendant in the trial was able to answer all questions raised by the Panel of Judges, the Public Prosecutor and his Legal Counsel well and smoothly, so that the Defendant can be categorized as a legal subject as referred to in the definition of the element Every Person in this case. Thus, there was no error in persona and from the trial examination the defendant was a legal subject who was physically and mentally healthy so that he was able to be responsible for his actions and no excuses or justifications were found in the defendant.

Furthermore, in its implementation, after the Public Prosecutor examines the available evidence, both from Witness Statements, Expert Statements, Letters, Defendant Statements and physical evidence, he finds the fact that the quality of the subject/perpetrator and the method of committing the act as formulated in Article 2 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 in the Public Prosecutor's primary indictment, according to the Supreme Court, this formulation is very general.and its scope is broad, so that it will ensnare everyone regardless of their quality, as long as they commit acts in the manner formulated in the article, namely "unlawfully". On the other hand, what is formulated in Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in the subsidiary charge is more specific because the subjects/perpetrators who can be ensnared are only people with certain qualities who can commit acts in certain ways/circumstances, namely in "their position or position".

Meanwhile, what can differentiate the meaning of Article 2 with Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 is related to the object of the act, namely in Article 2 the object is still outside the power/authority of the perpetrator, while in Article 3 the object is already within the power/authority of the perpetrator. So the Supreme Court is of the opinion that Article 3 is a special feature of Article 2. So in this case the adage "*Lex specialis derogate legi generalis*". Therefore, the Supreme Court is of the opinion that for people/legal subjects who commit corruption crimes committed in office or position, it is more appropriate to apply/sue Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001.

Every person who is accused of being a perpetrator of corruption is required to prove otherwise regarding his/her property which has not been charged, but is also suspected of originating from a criminal act of corruption. Thus, if the accused cannot prove that the

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property was not obtained due to a criminal act of corruption, then the property is deemed to have been obtained from a criminal act of corruption. The provisions of this law constitute a reverse burden of proof as referred to in Article 38 B paragraph (2) of Law Number 20 of 2001 which states that*"If the defendant cannot prove that the assets referred to in paragraph (1) were not obtained through a criminal act of corruption, the assets are deemed to have also been obtained through a criminal act of corruption and the judge has the authority to decide that all or part of the assets be confiscated for the state."*However, according to legal provisions, only the formulation of crimes that contain elements or core parts of which involve losses to the state or the state economy can be subject to compensation for the confiscation of said property by the court.

Enriching oneself or another person or corporation is linked to Article 37 paragraph (4) where the accused/defendant is obliged to provide information about the source of wealth in such a way that the wealth is not balanced with the income or additions used as evidence. So the element*"enrich yourself"*It can be proven that the perpetrators of corruption live a luxurious lifestyle in their daily lives, in this case, it can be proven about the increase in the wealth of the perpetrators of corruption before and after the corruption was committed. That based on the facts revealed in the trial, the defendant committed an act of enriching himself, namely after the defendant took documentation that seemed as if the customers submitted by the defendant had a business in accordance with the terms and conditions of the PARI Program, which in reality each of these customers did not have a business in accordance with the terms and conditions of the PARI program at Bank BRI Unit Sambi. The defendant managed the bailout funds for the business of lending money to other people which was subject to 2.5% interest. The defendant in managing the bailout funds used the PARI application account of each witness, where the username and password of each witness had been requested previously by the defendant at the time of registration. In addition, the defendant also used the bailout funds to provide a number of fees to each witness whose identity was used in the PARI program at Bank BRI Unit Sambi.[23]

According to Roeslan Saleh, talking about criminal responsibility cannot be... released from one or two aspects that must be viewed with philosophical views. One of them is justice, so that discussions about criminal responsibility will provide a clearer contour. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy.[24]Meanwhile, in essence, criminal responsibility is a system built by criminal law to react to violations of an agreement to reject a certain act.[25] According to Roeslan Saleh, criminal responsibility is the continuation of objective blame that exists in a criminal act and subjectively fulfills the requirements to be punished for the act.[26]

Accountability leads to the criminalization of the perpetrator, if he has committed a crime and fulfills the elements that have been determined in the law. Viewed from the perspective of the occurrence of a prohibited (required) act, a person will be held responsible for the

[23]Indictment File No. Reg. Case: PDS-02/M.5.45/Ft.1/08/2024
[24]Roeslan Saleh, 2002, Thoughts on Criminal Responsibility, Ghalia Indonesia, Jakarta, p.10
[25]Chairul Huda, 2006, From No Crime Without Fault Towards No Criminal Responsibility Without Fault, Kencana, Second Edition, Jakarta, p. 70
[26]Roeslan Saleh in Hanafi Amrani and Mahrus Ali, 2015, Criminal Responsibility System: Development and Implementation, PT Rajawali Press, Jakarta, p. 21

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criminal act if the act is unlawful (and there is no elimination of the unlawful nature or*legal basis*or justification) for that. Viewed from the perspective of the ability to be responsible, then only someone who is "able to be responsible can be held accountable.[27]

**3.2. Analysis of Weaknesses and Solutions in Accountability for Restitution of State Financial Losses Due to Criminal Acts of Corruption in Problematic Credit at Bank BRI Kediri Branch Office.**

The main function of a bank is to provide credit to debtor customers which contains business risks for the bank, namely the risk of the debtor's possible inability to pay installments and principal debts due to something beyond his control.[28]With the provision of credit by the bank begins with a research examination of the application or credit application from the debtor customer where the credit application, the amount of credit, and the credit repayment period, the method of credit repayment and collateral or credit guarantee. As supporting materials, the debtor customer must attach the required supporting documents, namely attaching the Company's Deed of Establishment, ID Cards of the administrators, Company Registration Certificate, Taxpayer Identification Number, Balance Sheet and Profit and Loss Report for the last three years and a photocopy of the certificate used as collateral.[29]Next, the bank will conduct a thorough and detailed study of the submitted credit application files if the results of the study show that the credit application files are incomplete, the bank will return the files to the debtor customer to be completed. Conversely, if the files are complete, the next process is to assess creditworthiness.[30]

For this reason, the granting of credit is always based on the following matters:

1. Trust, namely the belief of the creditor that the performance he has given, whether in the form of money, goods or services, will actually be received back within a certain period of time in the future.

2. Time limit, which is a period that separates between the granting of achievements and counter-achievements that will be received in the future. In this time element, there is an understanding of the premium value of money, namely that the money that is now has a higher value than the money that will be received in the future.

3. *Degree of risk*, namely the level of risk that will be faced as a result of the existence of a period of time that separates between the provision of performance and counter-performance that will be received later. The longer the credit is given, the higher the level of risk, because as far as human ability to penetrate the future, there is always an element of uncertainty that cannot be calculated. This is what causes the element of risk. With the existence of this risk element, a guarantee arises in the provision of credit.

[27]Moeljatna, 2007, Principles of Criminal Law, Bina Aksara, Jakarta, p. 49
[28]Noel Chabannel Tohir, 2013, Complete Guide to Becoming an Account Officer, Elex Media Komputindo, Jakarta, p.171
[29]Purnomo, 2013, Analysis of Several Requirements in the Musyarakah Financing Policy at PT. BPRS Artha Mas Abadi, Faculty of Sharia and Islamic Economics, Walisongo State Islamic Institute, Semarang, p.37
[30]Ramlan Ginting, 2011, Regulation of General Bank Credit Provision, Legal Discussion of Banking, Civil and Criminal Legal Aspects of Credit Facilities in Banking Practices in Indonesia, Jakarta, p.19

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4. The achievement or object of credit is not only reported in the form of money, but can also be in the form of goods or services. However, because modern economic life is now based on money, then credit transactions involving money are what we often encounter in credit practices.[31]

In order to avoid problems after providing credit to customers, banks in making assessments to provide approval for credit applications by debtors must apply the principles of caution and trust as contained in Article 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking which serve as guidelines, namely:

a. *Personality*

Banks are required to seek complete data on the personality of the customer applying for credit, such as his life history, experience in business, his social environment and so on, so that he is worthy or not of being given credit.

b. *Purpose*

Banks must also seek data on the purpose or use of the credit according to the bank's line of credit business.

c. *Prospect*

Banks must conduct a careful and in-depth analysis of the form of business that will be carried out by the credit applicant. For example, whether the business run by the credit applicant has prospects in the future in terms of economic aspects and community needs.

d. *Payment*

That in distributing credit, banks must clearly know the ability of the credit applicant to pay off the credit debt in the amount and time period specified.[32]

Corruption is a crime motivated by personal or group interests that result in the failure to realize public welfare. It has been agreed that corruption threatens economic growth, social development, consolidation of democracy and national morals. The world reveals that corruption hinders economic efficiency, diverts resources from the poor to the rich, increases the cost of doing business, distorts public spending, and deters foreign investors, corruption also erodes the representation of development programs and reduces humanitarian problems.[33]

In addition, the term corruption in some countries is also used to indicate rotten conditions and actions. Corruption is often associated with someone's dishonesty in the financial sector. There are many terms in some countries 'gin moung' (Moang Hadi) which means 'eating the nation', 'tanwu' which means 'stained greed', ashoku (Japan) which means 'dirty work'.[34]

Henry Campbell Black defines 'corruption' as follows:

[31]Noel Chabannel Tohir, Op.Cit., p.171
[32]Article 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking
[33]Purwaning M. Yanuar, OC Kaligis and Associates, 2007, Return of Assets Proceedings of Corruption Based on the 2003 UN Anti-Corruption Convention in the Indonesian Legal System, PT. Alumni, Bandung, p. 38
[34]Sudarto, 2009, Criminal Acts of Corruption in Indonesia, In Law and Criminal Law, Alumni, Bandung, p.122

*"An act done with an intent to give some advantage in accordance with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."*[35]

Handling bad credit by suing through criminal courts is currently considered quite effective. Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is still considered "quite" effective in eradicating criminal acts of corruption in the credit sector. In addition to the threat of very high and burdensome criminal penalties, it also makes the perpetrators and their families feel uncomfortable being labeled as corruptors.

What is interesting about criminalization in the Bank caseBRIKediri Branch Officewhich provides credit facilities in 2022. BRI Kediri Branch began implementing the Indonesian People's Market Program (PARI) program activities, one of the implementing units of which is BRI Sambi Unit. The defendant was appointed as Mantri PIC PARI at BRI Kediri Branch Office based on Decree Nokep: 29/KC-XVI/LYI/03/2022 dated March 10, 2022 and also as Mantri PARI Ecosystem Management at BRI Kediri Branch Office based on Decree Nokep: S.83.e-KC-XVI/LYI/01/2023 dated January 2, 2023.[36]

Based on the State Financial Loss Calculation Report at BRI Sambi Unit dated July 12, 2024 Number: B.154/KC-XVI/LYI/07/2024, there has been a deviation in the Implementation of the Pari Program at PT. Bank Rakyat Indonesia (Persero) Tbk Sambi Kediri Unit 2022-2023 which resulted in a state financial loss of approximately Rp.949,370,000 (Nine Hundred Forty Nine Million Three Hundred Seventy Thousand Rupiah).[37]In the verdict of the Corruption Crime Court at the Surabaya District Court, the defendant was held criminally responsible for being proven legally and convincingly guilty of committing a crime of corruption with a prison sentence of 4 (four) years 6 (six) months and a fine of Rp. 100,000,000.00 (one hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 (three) months.[38]

Imposing additional punishment on the Defendant to pay compensation of Rp891,177,500 (eight hundred ninety one million one hundred seventy seven thousand five hundred rupiah), which is compensated/calculated with Evidence number 62 to 74 in the form of cash totaling Rp. 47,400,000,- (forty seven million four hundred thousand rupiah). If the convict does not pay compensation within a maximum of 1 (one) month after the court decision that has obtained permanent legal force, then his property can be confiscated by the Prosecutor and auctioned to cover the compensation, in the event that the convict does not have sufficient property to pay compensation, then he will be punished with imprisonment for 2 (two) years.[39]

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[35]Henry Campbell Black, 1979, Black's Law Dictionary, Fifth Edition, St. Paul Minn, West Publishing Co, Boston, p.131

[36]Indictment File No. Reg. Case: PDS-02/M.5.45/Ft.1/08/2024
[37]Ibid,
[38]Corruption Crime Court Decision File at Surabaya District Court Number: 111/Pid.Sus-TPK/2024/PN Sby
[39]Corruption Crime Court Decision File at Surabaya District Court Number: 111/Pid.Sus-TPK/2024/PN Sby

Based on data processed through information from the Judge handling the Corruption Crime Court Decision Case at the Surabaya District Court Number: 111/Pid.Sus-TPK/2024/PN Sby which states that:

"In the renewal of the special criminal law, there is the application of cumulative punishment, namely between imprisonment and fines as a criminal witness so that it is expected to fulfill the purpose of punishment. In the application of this cumulative punishment, problems arise related to the implementation of fines, for example in a case of corruption, where for perpetrators of corruption, in addition to being given a prison sentence, they are also given a fine, as stated in Article 2 paragraph (1) of Law Number 31 of 1989 in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption."

The weaknesses in the accountability for the return of state financial losses due to criminal acts of corruption in Problematic Credit at Bank BRI Kediri Branch Office are:

1) If the fine is not paid, it will be replaced with imprisonment for 3 (three) months each, from the verdict of the fine, it is possible that the defendants chose a substitute sentence of imprisonment because it was considered too light, namely only 3 (three) months imprisonment, rather than fulfilling the provisions of the fine that must be paid is considered quite large, even though they are able. This is a weakness, the reason for the return of state financial losses is not as it should be.

2) The application of cumulative punishment in corruption crimes, there needs to be implementing regulations, especially regarding the implementation of fines, because in its implementation, its application does not use an alternative cumulative formula but a pure cumulative one against the perpetrators of corruption crimes. The threat of imprisonment and fines together and in its implementation (execution) must be carried out by the defendants of corruption crimes, especially fines. To classify the determination of the pattern of determining fines in corruption crimes as serious crimes, a concept of executing fines against perpetrators of corruption crimes is needed, with correct and effective steps, so that in the application of accountability for convicts it can provide a greater sense of justice.

3) If the implementation of criminal fines as the application of cumulative criminal penalties in corruption crimes in executing them is difficult to fulfill and the Prosecutor's Office cannot execute criminal fines, if the defendants choose a substitute sentence of imprisonment so that the deposit to the state treasury is not fulfilled. This occurs due to the lack of firmness and clarity of regulations regarding the implementation of criminal fines in corruption crimes, making it difficult for judges and prosecutors to eradicate corruption, this is proven by the increasing number of perpetrators of corruption crimes that occur, especially in the mode of banking crimes.[40]

Based on the explanation above, in accordance with Lawrence M. Friedman's theory, the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure (*structure of law*), legal substance (substance of the law) and legal culture (legal culture). The legal structure concerns law enforcement officers, legal

[40]Results of the interview with the Judge of the Surabaya District Court Number: 111/Pid.Sus-TPK/2024/PN Sby

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substance includes legislative instruments and legal culture is a living law that is adopted in a society.[41]Regarding the legal structure Lawrence M. Friedman explains:

*"To begin with, the legal system has the structure of a legal system consisting of elements of this kind: the number and size of courts; their*jurisdiction …Structure also means how the legislature is organized …what procedures the police department follows, and so on. Structure, in a way, is a kind of cross section of the legal system…a kind of still photograph, with freezes the action."

The structure of a legal system consists of the following elements, the number and size of

*"Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioral patterns of people inside the system...the stress here is on living law, not just the rules in law books."*

Another aspect of the legal system is its substance, which means that the substance is the rules, norms and real patterns of human behavior.is in the system. So the substance of law concerns the applicable laws and regulations that have binding power and serve as guidelines for law enforcement officers. Meanwhile, regarding legal culture, Friedman argues:

*"The third component of legal system, of legal culture. By this we mean*people's attitudes toward law and legal system, their beliefs …in other words, is the clarification of social thought and social forces that determine how law is used, avoided, or abused".

Legal culture concerns the legal culture which is the attitude of humans (including the legal culture of law enforcement officers) towards the law and the legal system. No matter how good the legal structure is to implement the established legal rules and no matter how good the quality of the legal substance that is made without the support of legal culture by the people involved in the system and society, law enforcement will not run effectively.

Law as a tool to change society or social engineering is nothing more than ideas that the law wants to realize. To ensure the achievement of the function of law as engineering society towards a better direction, it is not only necessary to have the availability of law in the sense of rules or regulations, but also the existence of a guarantee for the realization of the legal rules into legal practice, or in other words, a guarantee of good law enforcement.[42]So the functioning of the law is not only a function of legislation, but also the bureaucratic activity of its implementers.[43]

Lawrence M. Friedman further explains the function of the legal system, namely:

a) Social control function. According to Donald Black, all laws function as social control from the government.

b) Functions as a way of resolving disputes (dispute settlement) and conflicts (conflict). This dispute resolution is usually for settlements that are in the form of small-scale local disputes (micro). On the other hand, conflicts that are macro in nature are called conflicts.

[41]Friedman, M. Lawrence, 2001, American Law An Introduction Second Edition, Translator Wishnu Basuki, Tetanusa, Jakarta, pp. 8-10
[42]Munir Fuady, 2007, Contract Law (From a Business Law Perspective), Citra Aditya Bakti, Bandung, p. 40
[43]Acmad Ali, Op.Cit. p.4

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c) Redistributive function or social engineering function. This function refers to the use of law to bring about planned social change determined by the government.

d) Social maintenance function. This function is useful for enforcing the legal structure so that it continues to run according to the rules of the game.[44]

Based on the above, it can be said that the function of law enforcement is to actualize legal regulations so that they are in accordance with what is aspired to by the law itself, namely to realize an attitudeor human behavior in accordance with the frame (frame-work) that has been established by a statute or law.[45]This relates to accountability for state losses in criminal acts of corruption in the provision of credit facilities at Bank BRI Kediri Branch.

The solution in implementing accountability for returning state financial losses due to criminal acts of corruption in Problematic Credit at BanksBRI Kediri Branch Officenamely:

(1)The need for a formulation system for defendants in corruption crimes can make payments of criminal fines in the form of returning state financial losses by installments within a time limit in accordance with the judge's decision. So the judge in giving a decision against the perpetrators of corruption crimes can apply cumulative penalties without having to use alternative cumulative penalties, so that the application of the criminal fine sanctions set can be fulfilled by the defendants of corruption crimes.

(2)If the perpetrator of a corruption crime is truly unable to pay the criminal fine in the responsibility for state losses, then it is determined by the court, it is better to alternatively or replace it with social work rather than replacing it with imprisonment, this is considered more effective in implementing social work, the results or premiums of which are a substitute for the unpaid fine.

(3)If indeed the criminal fine in the form of restitution of state financial losses that is determined must be replaced with imprisonment, there needs to be a new regulation or special regulation in the legislation that regulates criminal fines such as corruption crimes, then there needs to be a regulation regarding imprisonment as a substitute for fines, so that the length of imprisonment is in accordance with the fine that has been imposed on the defendant in the corruption crime, if the application of the substitute imprisonment still refers to the provisions of Article 30 and Article 31 of the Criminal Code.[46]

## 4. Conclusion

Based on the description in chapter 3 (three) of the previous discussion results, this research can be concluded as follows: 1. Accountability for Restitution of State Financial Losses Due to Criminal Acts of Corruption in Problematic Credit at BRI Bank Kediri Branch Office was revealed in the trial at the Corruption Court at the Surabaya District Court in the form of Subsidiarity. The defendant was proven legally and convincingly guilty of committing a criminal act of corruption by sentencing the defendant to imprisonment for 4 (four) years 6 (six) months and a fine of Rp. 100,000,000.00 (one hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months. Imposing an additional sentence on the Defendant to pay replacement money of

[44]Ibid,
[45]Ibid,
[46]Results of the interview with the Judge of the Surabaya District Court Number: 111/Pid.Sus-TPK/2024/PN Sby

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Rp. 891,177,500 (eight hundred ninety-one million one hundred seventy-seven thousand five hundred rupiah), which was compensated/calculated with Evidence numbers 62 to 74 in the form of cash totaling Rp. 47,400,000,- (forty-seven million four hundred thousand rupiah). If the convict does not pay the replacement money within 1 (one) month after the court decision has obtained permanent legal force, then his property can be confiscated by the Prosecutor and auctioned to cover the replacement money. In the case where the convict does not have sufficient property to pay the replacement money, then he will be punished with imprisonment for 2 (two) years. 2. Weaknesses in the implementation of accountability for the return of state financial losses due to corruption in Problematic Credit at Bank BRI Kediri Branch Office, that: First, if the fine is not paid then it is replaced with imprisonment for 3 (three) months each, from the decision of the fine, it is possible that the defendants choose a substitute sentence of imprisonment because it is considered too light, which is only 3 (three) months imprisonment, rather than fulfilling the provisions of the fine that must be paid is considered quite large, even though they are able. Second, in the application of cumulative criminal penalties for corruption, there needs to be implementing regulations, especially regarding the implementation of fines, because in its implementation its application does not use an alternative cumulative formula but a pure cumulative against the perpetrators of corruption. Third, the threat of imprisonment and fines together in their implementation (execution) must be carried out by the defendants of corruption, especially fines, so that the implementation of fines as the application of cumulative penalties in corruption in executing it is difficult to fulfill and the Prosecutor's Office cannot execute fines, if the defendants choose a substitute sentence of imprisonment so that the deposit to the state treasury is not fulfilled. Solution: First, there is a need for a formulation system for defendants in corruption crimes to be able to pay criminal fines in the form of returning state financial losses by paying in installments within a time limit according to the judge's decision. Second, if the perpetrator of a criminal act of corruption is truly unable to pay the criminal fine in the responsibility for state losses, then it is determined by the court, it is better to be alternatively or replaced with social work rather than replaced with imprisonment, this is considered more effective in implementing social work where the results or premiums are a substitute for the unpaid fine. Third, if indeed the criminal fine in the form of returning state financial losses that is determined must be replaced with imprisonment, there needs to be a new regulation or special regulation in the legislation that regulates criminal fines such as corruption crimes, then there needs to be a regulation regarding imprisonment as a substitute for criminal fines.

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