

## **Legal Analysis of The Mechanism for Returning Money or Replacement Money in Cases of Corruption Criminal Acts in Village Credit Institutions (Lpd) in Bali**

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**Abstract.** *The background of the problem began with the rampant corruption cases in the Village Credit Institutions (LPD) in Bali. LPD management that deviates from the provisions of laws and regulations is prosecuted as a criminal act of corruption. The dilemma in imposing a replacement fine on LPD corruption cases in Bali is interesting to study further. If the replacement money is paid to the State Treasury, the state's loss in this case the LPD's loss is irrecoverable. Several judges' decisions impose a replacement fine with the order that reads "Ordering the defendant to pay the replacement money to the State Treasury cq LPD". The implementation of the replacement fine is open to multiple interpretations and tends not to side with the community/krama who are victims of the corruption. This study uses a normative legal research method. The results of this study aim to solve the issue of criminalizing replacement money for corruption crimes that occurred at LPD in Bali from the perspective of state losses, in this case LPD losses, where the victims are LPD customers/krama. That there are still many other similar decisions that include the injunction, namely imposing a replacement monetary penalty that is deposited into the State Treasury cq. LPD Cash. It is implied that the purpose of the replacement monetary penalty from the verdict which states that it is deposited into the State Treasury cq. LPD Cash is intended to recover state losses in this case suffered by the community as LPD customers themselves. It appears that the regulation of replacement monetary penalties as stipulated in Article 18 paragraph (1) letter b for defendants in the perspective of corruption crimes in LPD in Bali, the legal norms are vague or unclear (unclear of norm/vague van de normen). The solution to this unclear legal norm requires interpretation or interpretation for law enforcers, especially judges, in imposing additional criminal sentences whose purpose is to replace state losses in this case LPD losses.*

**Keywords:** *Corruption; Return; Replacement.*

## 1. Introduction

Bali is a province that relies on the tourism sector for most of its economy.<sup>1</sup>This is because Bali has a very strong culture and local wisdom of the community. Traditional organizations in Bali that have an autonomous nature based on the original norms of the Indonesian nation and have a social religious character called Desa Pakraman/ or Adat.<sup>2</sup>Based on the regulations, policies and responsibilities of regional autonomy, Traditional Villages are also required to have independent economic management, so that in 1984 the Bali provincial government had the idea to establish Village Credit Institutions in all Traditional Villages in Bali in 1984 using the Governor's Decree (SK) Number 972 of 1984 concerning the Establishment of LPD in the Province of Bali.

As stated in Article 1 number 9 of Bali Provincial Regulation number 3 of 2017 concerning Village Credit Institutions, Village Credit Institutions, hereinafter referred to as LPD, are financial institutions owned by the Village Pakraman which are domiciled in the Village Pakraman jurisdiction. The idea of establishing LPD emerged through the idea of the Governor of Bali at that time, Ida Bagus Mantra, starting when he visited West Sumatra. At that time he found a well-developed customary Financial Institution named "Lumbung Pitih Nagari". A few months later he attended a seminar in Semarang regarding Village Financial Institutions (LKD) or Village Credit Agencies (BKD). The events he experienced gave rise to the idea that Bali also has the potential and opportunity to form a financial institution managed by customary/Pakraman institutions like those in West Sumatra which are currently known as LPD.

The LPD that was established is expected to encourage entrepreneurial spirit and improve the standard of living of the traditional village community, so LPD runs its business with fairly easy and simple management. Uniquely, this microfinance institution is run based on Balinese customs in its management system, but has been managed professionally based on a modern banking system in its operational techniques. From a formal normative perspective, the institutional status of LPD still raises pros and cons because it was established without a Decree of the Governor of Bank Indonesia as stipulated in Article 16 letter a of Law Number 10 of 1998 concerning Banking, which states that "Every party that carries out activities to collect funds from the community in the form of deposits must first obtain a business license as a Commercial Bank or Rural Credit Bank from the Head of Bank Indonesia, unless the activities of collecting funds from the community are regulated by a separate Law. " In the Regional Regulation of the Province of Bali Number 3 of 2017 concerning Village Credit Institutions, it is emphasized that LPD is a financial business entity whose existence has provided benefits both economically, socially and culturally for the indigenous community, thus firmly clarifying the institutional status of LPD as a financial business entity owned by the Traditional Village.

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<sup>1</sup>Tarubali Baliprov, Spatial Planning of Bali Province, Available from <https://tarubali.baliprov.go.id/sekilas-bali/>, Accessed on November 16, 2024 at 14.00 WITA.

<sup>2</sup>I N. Sirtha, 1999, Strategy for Empowering Traditional Villages by Establishing a Communication Forum between Traditional Villages, Kertha Patrika, 71 (24), p. 47.

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The vision of LPD is to realize a healthy, strong, productive and trusted LPD as a financial business entity owned by traditional villages to support efforts to improve the standard of living of village people and the sustainable development of the economy of Traditional Villages, as well as the preservation of Balinese regional culture based on Tri Hita Karana in order to enrich the nation's cultural heritage.<sup>3</sup> While the mission of LPD is to create conducive conditions to encourage the improvement of LPD performance and sustainable financial services to residents in Traditional Villages to support economic growth and improve the welfare of indigenous people/villagers in the Bali region.<sup>4</sup>

LPD is formed for the purpose of carrying out cultural missions, only carrying out activities internally-community, and oriented towards improving the welfare of traditional village communities which is basically also intended to improve the community's ability to bear the burden of the costs of maintaining civilization. The profit orientation in LPD business activities can be said to be a pseudo element, with a character that considers the local wisdom of the local community which is certainly very different from the profit element in banking. The profit element in banking activities is an element of profit in the context of economic law.<sup>5</sup>

LPD, which is a financial business entity owned by a traditional village, its main activity is to receive/collect funds from village residents in the form of savings and deposits and provide loans to village residents. In relation to these activities, one of the keys to maintaining the stability of LPD development is the need for an element of trust. In other words, village residents believe that funds stored in LPD are safe and can be withdrawn at any time. Likewise, LPD provides trust that funds borrowed by village residents will be returned according to the agreement. If the element of trust has not been formed, it will be difficult for LPD to develop. The destruction of the trust of village residents who are LPD customers will have a negative impact on the survival of LPD and will have a negative impact on the Traditional Village.<sup>6</sup>

In 2013, the performance of LPD in Bali as a microfinance institution managed by the traditional village community began to be questioned, the first time a case of corruption related to the misappropriation/misappropriation of LPD financial management emerged. Through the decision of the Denpasar District Court Number 9/PID.SUS/TPKR/2013/PN DPS, Gede Budiasa alias Jero Tapakan Gede Budiasa as the head of the LPD of Banyualit Traditional Village was declared legally and convincingly proven to have committed a criminal act of corruption in the management of the LPD of Banyualit Traditional Village.

Justice is essentially a relative concept, according to each person the benchmark of justice is not the same, fair according to one person is not necessarily fair according to another. When a case has received a court decision, then someone could assert that the decision is fair, but not so for another person. Of course, this must be relevant to public order where a

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<sup>3</sup>Anak Agung Ngurah Gede Sadiartha, 2020, *The Medewa Saksi Ceremony as a Solution to Overcome the Management Crisis of Village Credit Institutions*, Cakrawala Satria Mandiri, Denpasar, p.51.

<sup>4</sup>Ibid, p. 51.

<sup>5</sup>Nopirin, 2009, *Monetary Economics*, Book I, 4th Edition, BPFE, Yogyakarta, p. 21.

<sup>6</sup>Results of the Bali Province LPD Regional Working Meeting, 2017, *Operational Technical Instructions (PTO) for the Bali LPD Customer Deposit Guarantee Fund (DPS-LPD)*, p. 1.

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scale of justice is recognized. The scale of justice varies greatly from one place to another, each scale is defined and fully determined by society according to the public order of that society.<sup>7</sup>

The criminal act of corruption that occurred in the LPD in Bali is a type of state financial loss. From a narrower perspective, the state loss that occurred was due to deviations/misappropriation in the management of the LPD, which is actually a loss to the LPD itself, so that those affected are LPD customers/krama. Quoting the opinion of Wayan Ramantha who revealed that LPD is the wealth of the Traditional Village whose management is separated. If there are LPD administrators who are proven to be corrupt and are punished, they must return the losses. It should be returned to the LPD itself, not to the state treasury.<sup>8</sup>

Ideally, the payment of criminal compensation for state losses is carried out based on the principle of proportionality, because from the perspective of the criminal act of corruption that occurred at the LPD in Bali, the fulfillment of the element of state losses is because the LPD obtained its initial capital in its establishment. amounting to Rp. 2,000,000,- (two million rupiah) sourced from the Regional Budget of the Province of Bali as an "Investment Credit" with a term of 5-10 years".<sup>9</sup> LPD capital in its further development consists of "capital accumulation, utilization of customer savings and loans."<sup>10</sup>

The replacement money itself is The additional punishment given to the defendant is in the form of having to pay a sum of money to the state, the maximum amount of which is equal to the assets obtained by the defendant during the crime of which he was charged. This provision is regulated in Article 18 paragraph (1) letter b of the PTPK Law, which reads "In addition to the additional punishment as referred to in the Criminal Code, the additional punishment is payment of compensation in an amount that is as much as possible equal to the assets obtained from the crime". Furthermore, in the General Considerations and Explanation of the PTPK Law, it is stated that "This Law also contains a prison sentence for perpetrators of corruption who do not pay additional penalties in the form of compensation for state losses."

The definition of state loss itself is not explained in the PTPK Law, but if you look for the definition of "loss" in the Big Indonesian Dictionary it is: (1) sold and so on for less than the capital; not making a profit; (2) less than capital (because selling is lower than the cost price); (3) do not receive benefits (benefits); not getting anything useful; (4) something that

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<sup>7</sup>M. Agus Santoso, 2014, Law, Morals & Justice: A Study of Legal Philosophy, Second Edition, Kencana, Jakarta, p. 85.

<sup>8</sup>Bali Post, Prof. I Wayan Ramantha: There is No State Loss in LPD, Available from <https://www.balipost.com/news/2022/01/13/243244/There-Are-No-State-Losses-in...html>. Accessed on August 11, 2025.

<sup>9</sup>Article 8 paragraph (1) of the Decree of the Governor of the Level I Region of Bali Number 972 of 1984 concerning the Establishment of Village Credit Institutions in the Level I Region of Bali Province.

<sup>10</sup>Article 8 paragraph (2) of the Decree of the Governor of the Level I Region of Bali Number 972 of 1984 concerning the Establishment of Village Credit Institutions in the Level I Region of Bali Province.

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is not good (unprofitable; detrimental).<sup>11</sup>Meanwhile, "loss" is (1) to bear or suffer loss; (2) the matter of loss; (3) something that is considered to cause loss (regarding damage etc.); (4) compensation."<sup>12</sup>Furthermore, the definition of state finances according to the PTPK Law is explained as follows:

"All state assets in any form, whether separated or not separated, including all parts of state assets and all rights and obligations arising from them:

1. Being under the control, management and accountability of state institution officials at both central and regional levels.
2. "Being under the control, management and responsibility of State-Owned Enterprises/Regional-Owned Enterprises, Foundations, Legal Entities and Companies that include state capital or companies that include third party capital based on agreements with the state."

In addition, there are many other similar decisions that include the injunction of imposing a monetary penalty to be deposited into the State Treasury cq. LPD Treasury.

If we analyze the Decision, it is implied that the purpose of the criminalization of replacement money from the verdict which states that it is deposited into the State Treasury cq. LPD Cash is intended to recover state losses in this case suffered by the community as LPD customers themselves. This is also stated in one of the judge's considerations which states, "that the consequences arising from the mismanagement of LPD finances are state financial losses or state economy cq Region cq LPD Desa Adat Kapal Desa Kapal District Mengwi Regency Badung amounting to Rp. 15,352,058,925,-".<sup>13</sup>

It appears that the regulation of the replacement money punishment as stipulated in Article 18 paragraph (1) letter b for defendants in the perspective of corruption crimes in LPD in Bali, the legal norms are vague or unclear (unclear of norm/vague van de normen). The solution to this unclear legal norm requires interpretation or interpretation for law enforcers, especially judges, in imposing additional criminal sentences, the purpose of which is to replace state losses, in this case LPD losses.

Based on the above conditions, it is hoped that in the future criminalization regarding the payment of compensation for state losses due to corruption crimes at the LPD in Bali can be carried out appropriately. from the perspective of the victim, namely the LPD/krama customer. Therefore, the author is interested in raising a study entitled "LEGIDAL ANALYSIS OF THE MECHANISM OF RETURNING MONEY OR REPLACEMENT MONEY FOR CORRUPTION CRIMINAL CASES IN VILLAGE CREDIT INSTITUTIONS (LPD) IN BALI".

## **2. Research Methods**

This study uses a type of normative legal research. Normative legal research is a research conducted by reviewing the applicable laws and regulations or applied to a particular legal

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<sup>11</sup>Big Indonesian Dictionary Online, Available from <https://kbbi.kemdikbud.go.id/entri/rugi>, Accessed August 11, 2024.

<sup>12</sup>Ibid.

<sup>13</sup>Denpasar District Court Decision Number: 22/Pid.Sus.TPK/2018/PN.Dps dated April 2, 2019.



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problem. Normative legal research examines the law from an internal perspective with the object of research being legal norms.<sup>14</sup> Normative research is often referred to as doctrinal research, namely research whose objects of study are legal regulatory documents and library materials.<sup>15</sup> Normative legal research is also called research to analyze the rules or norms in positive law.<sup>16</sup>

### 3. Results and Discussion

#### 3.1. Mechanism for Refund or Replacement Money for Corruption Crimes at Village Credit Institutions in Bali

Examining one of the criminal acts of corruption that occurred in Bali is related to corruption in financial management at the LPD. The hope of the local government to realize social welfare for the community at the smallest level of government, namely the customary village through the LPD, has been hampered by the many cases of corruption at the LPD in Bali.

Handling of LPD corruption cases is generally subject to the provisions of Article 2 paragraph (1) or Article 3 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by the Republic of Indonesia Law Number 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as the PTPK Law).

Based on research into several news reports and court decisions, it is known that corruption in the LPD was carried out either individually, in secret and monopolistic manner or systematically, planned and collectively (together).

The single, closed and monopoly corruption cases are found in LPD with a guided organization system, where the Head of LPD has a centralistic and charismatic role. All policies are controlled by himself without being carried out through consensus. Due to the monopoly of tasks, functions and authorities, the LPD governance is only regulated by one person, the others are "puppets" who have no role. Here, one person covers all the tasks and functions of the LPD officers / LPD administrators. This type of LPD corruption is usually related to fictitious credit, companies within companies, embezzlement of LPD finances, embezzlement of LPD assets / LPD customer assets, etc.

Systematic, planned and collective corruption cases are the models that usually/commonly occur. The leadership type of a Head of LPD is "Togetherness" in the sense of trusting all employees. So if there is an intention (*mensrea*) to commit a deviation, an evil conspiracy will be sought first. Then the division of tasks for each employee in committing the deviation (corruption) is carried out. For example:

- The Head of LPD is tasked with being the "intellectual father" or "brain behind the crime" where based on orders, deviations are committed such as orders to make "cash

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<sup>14</sup>I Made Pasek Diantha, 2017, Normative Legal Research Methodology in Justification of Legal Theory, Prenada Media Group, Jakarta, p.12.

<sup>15</sup>Peter Mahmud Marzuki (2), 2011, Legal Research, Kencana Prenida Media, Jakarta, p. 34.

<sup>16</sup>Johny Ibrahim, 2012, Theory and Methodology of Normative Legal Research, Banyumedia, Malang, p. 295.

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advances"/give "cash advances" which are then diverted into fictitious credit, provide credit to relatives/siblings (nepotism) in amounts exceeding the BMPK/large amounts without collateral, mark up LPD expenditures, sell LPD assets, distribute LPD money, etc.;

- Administration, is responsible for making administration such as cash book reports, balance sheets, accountability reports that are not real (fictitious);
- The treasurer in charge of managing LPD accounting administration made unrealistic bookkeeping;
- The cashier's job is not to make real records of every expense and income; and
- Supervisors (panaruksa) should carry out supervision but on the contrary in their position they do not carry out the function to supervise LPD. Sometimes Supervisors and LPD Managers / LPD officers agree and benefit each other (there is feedback between them).

LPD is a financial institution that carries out functions similar to banking. The characteristics of crimes against LPD objects "have similarities" with banking crimes. The characteristics of banking crimes according to Muladi and Barda Nawawi Arief are:<sup>17</sup>

- a. Disguise or hidden nature of the intent and purpose of the crime;
- b. The perpetrator's belief in the victim's stupidity and recklessness; and
- c. Concealment of violations.

LPD corruption has a simpler pattern compared to banking crime patterns that already use technology systems and fraud prevention systems. However, the characteristics are similar, namely LPD corruption is carried out with manipulation (disguise) with the aim of concealing the purpose of the crime (disguise of purpose of intent). The characteristics of LPD corruption perpetrators in general based on the author's analysis during investigations or evidence in court, it is known that the perpetrators are figures who have positions / positions (special characteristics of corruption), hard workers (work holic), ambitious, aggressive, have a good understanding of LPD, and have special skills in bookkeeping (accounting), management of correspondence, making accountability reports and mastery of computers.

There are several modes of operation of LPD corruption crimes, namely:

- a. Fraud or cheating in the credit sector (credit fraud).
- b. Embezzlement of LPD funds and assets (embezzlement of The village financial institution funds and assets).
- c. Misappropriation or misuse of LPD funds (village financial institution funds).
- d. Violation of regulations about The village financial institution funds.

Factors that cause criminal acts of corruption in LPD in Bali include:

1. Errors in governance;

The absence of written parameters/rules in the management of LPD results in poor financial management, which often occurs. abuse of authority from the administrators (head, secretary/administrator and treasurer). In terms of management, I Wayan Ramantha said that in problematic LPDs, the implementation of satay trading management in the form of

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<sup>17</sup>Muladi and Barda Nawawi Arif, 1992, Criminal Law Anthology, Alumni, Bandung, p. 5.

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administrative, financial and decision-making functions is often taken by one person, namely the chairman.<sup>18</sup>

## 2. Weakness Supervision of LPD management;

The Theory of Legal Effectiveness is needed because in a weak control system, someone is not afraid to take actions that are detrimental to the company, because the actions they take are not detected by anyone.<sup>19</sup> That in Bali Regional Regulation Number 3 of 2017 concerning LPD and Pergub Number 44 of 2017 concerning the implementation of LPD Regional Regulation has regulated that the LPD audit process is carried out once a year. It should be noted that there are two institutions that can audit LPD financial management. The first is Panureksa LPD, an internal supervisory body that is ex officio held by the local customary village head. When Panureksa does not carry out intensive supervision in providing credit or in evaluating the monthly and annual reports of the LPD itself, then the opportunity for corruption will occur.

The second is the external supervisor, namely the LPD Supervisory Institution or commonly known as LPD, which has the task of implementing the empowerment of LPDs in Badung Regency through technical guidance, inspection, training, and problem handling activities as well as managing protection funds, liquidity buffer funds and LPD deposit guarantee funds.

Apart from these two institutions, independent auditors can also be used to supervise LPD financial management;

## 3. Aspect economy and morals of LPD administrators

The cause of corruption in LPD in Bali that often occurs is due to economic aspects. The need to live and feel that they have insufficient income, so that certain LPD administrators are determined to commit fraud in LPD financial management which leads to corruption. In general, economic aspects can be the basis for humans to feel pressured to take shortcuts, in order to meet their needs and desires. In this case, the provision of cash advances is considered a policy of the administrators to meet daily needs. Initially, the cash advance was in a small amount, but because there was no accountability, over time the amount of this cash advance grew and automatically disrupted the financial management of the LPD itself.

## 4. The term of office of the LPD head is unlimited

There is no regulation on how many times a person can serve as head of LPD. Based on data obtained in several cases of corruption in the management of LPD that have been inkraht, on average the main actor is the head of LPD.

It can be understood that the adage of corruption and power are like two sides of the same coin. Corruption always accompanies the journey of power and conversely power is the gateway for corruption. This is the essence of the statement of Lord Acton, a professor of modern history at Cambridge University, England, who lived in the 19th century with his

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<sup>18</sup>Bali Business. LPD Governance Must Be Improved. Available from <http://bisnisbali.com/tata-kelola-lpd-harus-diperbaiki/>, Accessed on June 10, 2022 at 12.20 WITA.

<sup>19</sup>Nitimiani, NK, & Suardika, AAKA, 2020. The Influence of Individual Morality, Information Asymmetry, and Internal Control Effectiveness on the Tendency of Accounting Fraud at LPD in Tegallalang District. Hita Accounting and Finance, 1 (2), 29-62, p. 44.



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famous adage he stated: "Power tends to corrupt, and absolute power corrupts absolutely" which means that power tends to corrupt, and absolute power tends to corrupt absolutely.<sup>20</sup>

Handling a corruption case certainly ends in punishment, both principal punishment and additional punishment given to the perpetrator. In this case, the author will focus on discussing the punishment of replacement money imposed on the perpetrators of corruption that occurred at the LPD in Bali.

As explained by the author in the previous chapter, the pros and cons of handling corruption cases do not only occur because of the status of the LPD which is subject to customary law or national law. However, there is also a disagreement regarding the criminalization of replacement money for perpetrators of corruption cases that occur in LPDs in Bali, the implementation of which is paid to the state treasury, even though in reality the ones who experience losses are the villagers/customers who have savings in the LPD.

Based on the data contained in the table, it shows two different circumstances regarding the criminalization of substitute money in corruption cases that occurred at LPD in Bali. There are 12 (twelve) decisions whose verdicts on the criminalization of substitute money do not include cq. LPD, while 8 (eight) decisions include cq. LPD.

The decision to impose a monetary substitute sentence whose sentence includes the words "cq. LPD" can be interpreted more broadly than a monetary substitute sentence that does not include "cq. LPD". If referring to several provisions of laws and regulations governing the monetary substitute sentence, its implementation can refer to several provisions as follows:

a) Based on the PTPK Law

Article 18 paragraph (1) letter b. states "In addition to the additional penalties as referred to in the Criminal Code, the additional penalty is the payment of replacement money in an amount that is at most equal to the assets obtained from the criminal act of corruption."

Article 18 paragraph (2) states: "If the convict does not pay the replacement money as referred to in paragraph (1) letter b within a maximum of 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."

Article 18 paragraph (3) states "In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, then 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 shall be determined in the court decision.

b) Based on Supreme Court Regulation No. 5 of 2014 concerning Additional Criminal Penalties in the Form of Replacement Money in Corruption Crimes.

Chapter Article 1 (1) states that "In determining the amount of compensation for corruption crimes, it is as much as possible equal to the assets obtained from the corruption crime and not merely the amount of state losses caused."

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<sup>20</sup>Hoesein, ZA, 2016, Power and Corruption in Indonesia. LEX PUBLICA: Journal of Legal Studies of the Association of Indonesian Law College Leaders, 2 (2), p. 385.

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Article 5 states, "In the event that the assets obtained from the criminal act of corruption are not enjoyed by the defendant and have been transferred to another party, compensation money can still be imposed on the defendant as long as no prosecution is carried out against the other party, either in the criminal act of corruption or other criminal acts, such as the crime of money laundering."

Article 9, which regulates the execution of the replacement money itself, states the following:

1. If within a period of 1 (one) month after the verdict has permanent legal force, the convict does not pay the replacement money in full, the prosecutor is obliged to confiscate the property owned by the convict.

2. If after the confiscation as referred to in paragraph 1 has been carried out, the convict still does not pay the replacement money in full, the prosecutor is obliged to auction the assets based on Article 273 paragraph (3) of the Criminal Procedure Code.

3. The auction will be held no later than 3 months after the confiscation.

4. As long as the convict has not completed his/her main prison sentence, the prosecutor can still confiscate and auction off any property belonging to the convict that is found.

c) Circular of the Deputy Attorney General for Special Crimes Number: B-845/F/Fjp/05/2018 dated May 4, 2018 concerning Technical Instructions for Quality Handling Patterns for Special Crime Cases which states "In the event that the Convict pays compensation, the Executing Prosecutor shall submit a receipt for payment of compensation (form D-3) to the Convict or his/her attorney and hand over the compensation to the Receiving Treasurer to be deposited into the State Treasury within 1x24 hours."

d) Government Republic of Indonesia Number 39 of 2016 concerning the types and rates of non-tax state revenues (PNBP) applicable to the Attorney General's Office of the Republic of Indonesia.

Article 1 paragraph (1) letter a: "Types of Non-Tax State Revenue applicable to the Republic of Indonesia Attorney General's Office include revenue from payments of compensation for corruption crimes."

Article 2: "All Non-Tax State Revenue applicable to the Attorney General's Office of the Republic of Indonesia must be deposited into the State Treasury."

Regulation This only regulates the procedures for paying compensation as restitution for state financial losses which are equated with non-tax state revenue without looking at who manages the state finances after the crime of corruption occurs.

Based on the provisions of Article 30 paragraph (1) letter b of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, the duties and authorities of the Prosecutor are to implement court decisions that have obtained permanent legal force.

Sudikno Mertokusumo said *res judicata pro veritate habetur*, which means that what the judge decides must be considered true.<sup>21</sup> In other words, the prosecutor as the executor or implementer of the judge's decision is fully subject to the orders contained in a case

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<sup>21</sup>Sudikno Mertokusumo, 2006, *The Discovery of Law: An Introduction*, Liberty, Yogyakarta, p. 7.

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decision that has permanent legal force (*incracht*). Likewise, in the corruption case that occurred at the LPD in Bali, when an LPD case decision orders the prosecutor to collect replacement money from the convict and deposit it into the state treasury cq regional treasury cq LPD treasury, the prosecutor can immediately deposit the replacement money payment into the LPD treasury.

The current situation is a doubt in the criminalization of replacement money against perpetrators of corruption of LPD in Bali. Law enforcement officers, both judges and prosecutors, are faced with a difficult situation. After many incidents of misappropriation of LPD money in Bali that ended in corruption trials, the final chapter is on what the benefits of the process are.

The community in this case, the villagers, hope that law enforcement will restore the losses suffered. However, it must also be acknowledged that the law is impossible to reach all the demands of the community. Regulations are coercive, rigid and must be obeyed and implemented. As a result, it will also feel rigid and forced, and it is possible that it will cause feelings of injustice.

In the criminalization of replacement money against perpetrators of LPD corruption in Bali from 2013 to 2021, it is known that there are two different circumstances, namely:

1. Criminal Compensation based on existing laws and regulations is a return of state losses that are equated with non-tax state revenue (PNBP). This means that the payment of the compensation must be paid to the State Treasury/Regional Treasury.
2. Criminal Compensation is interpreted as a replacement for the victim's losses in this case the community/village community, but is not directly handed over to the victim himself, but through an institution (LPD) that initially managed the state money but was corrupted by corruptors. In this situation, although the existing regulations on the payment of compensation are deviated from, a paradigm shift has emerged that the criminalization of compensation seeks to be an effort to restore the victim's losses.

These two situations indicate a dilemma in the application and implementation of substitute monetary punishment.

Referring to the general explanation of the PTPK Law, replacement money is a payment of a sum of money by the convict for the state losses he has caused. So it is only natural that the payment of criminal replacement money is not required to be paid to the state treasury, but can be paid to the institution/legal entity that manages the replacement money after the corruption occurs.

The law has the objective of realizing concrete order and justice in society, so the law sometimes tends to be conservative (maintaining and preserving what has been achieved) as well as modernist (bringing, channeling and directing change).<sup>22</sup>

A regulation that is not regulated or whose purpose and direction are unclear, requires problem solving by finding the right law to overcome the incompleteness through various

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<sup>22</sup>Bernard Arief Sidharta, 2000, *Reflections on the Structure of Legal Science - A Study on the Philosophical Foundations and Scientific Nature of Legal Science as a Basis for the Development of Indonesian National Legal Science*, Mandar Maju, Bandung, p.116

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other sources of law, such as jurisprudence, doctrine, treaties, customs, or other unwritten laws (rechtsvinding).

The provisions of Article 18 paragraph (1) letter b of the PTPK Law do not mention the definition of replacement money. However, if we look closely at the provisions of the general explanation, the addition of the phrase "state losses" after the provision "paying additional penalties in the form of replacement money" means that replacement money penalties are actually to replace state losses that occur due to crimes committed by the perpetrator.

In order to further examine whether there is a relationship between replacement money and state losses in the context of Article 18 paragraph (1) letter b of the PTPK Law, it is necessary to investigate whether the replacement money punishment is appropriate and fair as a replacement for state losses that have occurred.

When examining the decisions on corruption cases that occurred at the LPD in Bali, in relation to law enforcement, there are three elements that Gustav Radbruch calls the three basic values of law, which must always be considered in order to realize the essence of the function and purpose itself, namely legal certainty (rechtssicherheit), benefit (zweckmassigkeit) and justice (gerechtigkeit).<sup>23</sup>

The purpose of the rule of law according to Gustav Radbruch (theory of legal ideals or rechtsidee theory) can be understood as a construction of thought that is a necessity to direct the law to the ideals desired by society. In enforcing the law, a compromise is expected between the three elements. The three elements must receive attention in a proportionally balanced manner, although in practice it is not always easy to seek a proportionally balanced compromise between the three elements.

By using the principle of priority, if in reality there is often a clash between one objective and another, (in this case the LPD corruption case in Bali) then the first priority always falls on justice for the victim, then the benefits of the case resolution process, and finally legal certainty.

The facts that explain that the victims of corruption that occurred at the LPD in Bali were villagers must be a benchmark in law enforcement. As with the criminal process that is developing in the era of progressive law which is called "Restorative Justice (restorative justice, namely an approach to justice that focuses on the needs of victims, perpetrators of crimes, and also involves community participation, and does not merely fulfill legal provisions or merely impose criminal penalties) as a correction to Retributive Justice (an approach to justice that involves the state and perpetrators in the formal judicial process)".<sup>24</sup>

*Restorative Justice* In general, the aim is to make the perpetrator return the situation to its original condition. Justice that not only imposes balanced sanctions for perpetrators but also pays attention to justice for victims. This is what the author examines in various decisions on corruption cases that occurred in LPDs in Bali, where the judges interpreted the state losses

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<sup>23</sup>Achmad Ali, 1996, *Unveiling the Veil of Law (A Philosophical and Historical Study)*, Chandra Pratama, Jakarta, p. 95.

<sup>24</sup>Eryantouw Wahid, 2009, *Restorative Justice and Conventional Justice in Criminal Law*, Trisakti University, Jakarta, p. 9.

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that occurred in the LPD corruption cases as losses to the LPD, so that what must be restored to its original state is state losses, in this case losses to the LPD itself.

Based on a study of the decisions on LPD cases in Bali, it can be seen that there are two characteristics of the judge's interpretation of the criminal penalty of replacement money which can be submitted as follows:

a) The narrow interpretation of the criminal penalty of replacement money paid to the state treasury refers to an interpretation that is solely based on the text of the applicable law on criminal penalty of replacement money. Based on the provisions of the Government Regulation of the Republic of Indonesia Number 39 of 2016 concerning Types and Tariffs for Types of Non-Tax State Revenue (PNBP) Applicable to the Attorney General's Office of the Republic of Indonesia, replacement money is referred to as a substitute for state losses but the party entitled to it is the state in the form of non-tax state revenue, whereas in the case of corruption that occurred at the LPD in Bali if the payment was made to the State Treasury, the state loss (LPD loss) tends to be irrecoverable.

b) The broad meaning that includes provisions cq LPD regarding the payment of replacement money, this refers to an interpretation that in addition to being based on the text of the law also pays attention to the context or situation surrounding the incident. This is what is expected from law enforcement on irregularities in LPD management in Bali which is processed through corruption trials.

### **3.2. Obstacles and Solutions Faced in the Implementation of Criminal Sanctions for Refunds or Replacement Money at Village Credit Institutions in Bali**

The crime of corruption, an ancient crime that often threatens the principles of democracy because it clearly hinders the creation of transparency and accountability, and with its systemic nature, it has hampered sustainable development with broad and invisible impacts.<sup>25</sup> It has become a public secret that corruption cannot be tolerated, and each country has involved itself in a competition to eradicate the crime of corruption as well and as thoroughly as possible, and Indonesia is no exception.

In 1999, through the 8 (eight) moral spirits contained in the 1999 PTPK Law, it was hoped that they would become moral restraints for individuals or corporations so that they would not commit corruption.<sup>26</sup>, that is:

1. Eroding the community that always puts forward the "supremacy" of paternalism incorrectly through provisions on the prohibition of bribery of civil servants as regulated in Articles 5 and 6;
2. Reviving early control, starting from the family environment, through provisions that allow the Public Prosecutor to carry out confiscation of assets proven to originate from corruption as regulated in Articles 33, 34 and 38 paragraph (5);
3. Empowering external social control through provisions on community participation in eradicating corruption crimes that regulate legal protection to provide answers to the

<sup>25</sup>See General Explanation of the Law on Ratification of the United Nations Convention Against Corruption, Law No. 7 of 2006, LN No. 32 of 2006, TLN No. 4620,

<sup>26</sup>Abdul Muis BJ, 2021, Eradication of Corruption, Functions and Authorities of the Republic of Indonesia National Police in Criminal Acts of Corruption to Recover State Financial Losses in Indonesia, Pustaka Reka Cipta, Bandung, pp. 61-62



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reports in question within 30 days of receiving the request for the report. Regulated in Chapter V, Articles 41 to 42;

The determination and desire of the creators of the anti-corruption law are truly great, so great that the adage *ultimum remedium* is no longer a role model in applying the PTPK Law. For example, even though the state's losses have been returned and recovered, a perpetrator will still be brought to court to be tried for his actions, that is the desire of the current law. At the time of the formation of this regulation, the government represented by Prof. Muladi who served as Minister of Justice in 1999 said that the preparation of the draft Law on the Eradication of Criminal Acts of Corruption was intended as a revision of Law Number 3 of 1971 on the Eradication of Criminal Acts of Corruption, which was no longer in accordance with the development of legal needs and aspirations that developed in society.<sup>27</sup>

The question that arises is, what are the legal needs and aspirations of the community. In a brief glance, one of the biggest weaknesses of the 1971 PTPK Law is in the technical mechanism of payment of replacement money. In the past, there could be a clause similar to replacement money, but there was no subsidiary thereof, so that the coercive power of the replacement money was very weak. This is what became one of the revisions in 1999 in a concept of overpenalization,<sup>28</sup> which makes subsidiary imprisonment present for the first time in the history of criminal law in Indonesia, which was chosen by the formulators in order to provide coercion in enforcing substitute monetary punishment.<sup>29</sup> So it becomes clear what the main objective of the 1999 PTPK Law is

Replacement Money is a type of punishment that is very laden with the principle of *lex specialis*, and is also a manifestation of a theory of punishment that is relative. Rather than being punitive, this type of punishment is oriented towards the restorative side in order to maintain all the bricks needed by the state in an effort to build the nation. This is because Indonesia has an obligation to protect and create welfare for the people, one of the funding items of which can come from alternative funds, namely the return of money from corruption.<sup>30</sup>

In the 1999 PTPK Law, the regulation regarding the replacement money punishment has been described and explained as well as possible until the conditions that can affect its application are explained. However, because this type of punishment was not previously known, and is also a *lex specialis* to what we have oriented to the Criminal Code, the technical interpretation of this punishment often reaps multiple interpretations and misperceptions that cause the replacement money punishment to not be in accordance with its goals and spirit because there are still shortcomings.

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<sup>27</sup>Ministry of Justice of the Republic of Indonesia, Government Statement Before the Plenary Session of the People's Representative Council of the Republic of Indonesia Regarding the Draft Law on the Eradication of Criminal Acts of Corruption, 1 April 1999, p. 4

<sup>28</sup>DPR – RI (1), 1999, Minutes of the Special Committee Meeting on the Draft Law on the Eradication of Criminal Acts of Corruption, Session III, Meeting 5, Secretariat of the Special Committee of the DPR-RI Secretariat-General, Jakarta, pp. 3–6

<sup>29</sup>DPR – RI (2), 1999, Minutes of the Special Committee Meeting on the Draft Law on the Eradication of Criminal Acts of Corruption, Session IV, Meeting 13, Secretariat of the Special Committee of the DPR-RI Secretariat-General, Jakarta, p. 5.

<sup>30</sup>Purwaning M. Yanuar, 2007, Return of Assets Proceeding from Corruption based on the 2003 UN Convention Against Corruption in the Indonesian Legal System, PT Alumni, Bandung, pp. 17 – 18.

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This phenomenon is in the technical interpretation of law enforcers regarding subsidiary imprisonment which controls the imperative element of this punishment, both from the side of the Public Prosecutor or the Judge as 2 parties involved in the realization of a punishment. As one of the formulators, Dr. Awaluddin Djamin said that the law on corruption will indeed not be perfect, but a good law even if the implementation is not good, the results will not be good, while a less good law if implemented properly will have good results, and this needs to be understood because the Formulation Team has tried to perfect the draft law which has now been ratified as Law No. 31 of 1999.<sup>31</sup> Of course, there are several ways to implement a law properly, one of which is by studying the theory of legal interpretation in order to form valid arguments based on the principle of legality.

Satjipto Rahardjo is of the opinion that the law will not work without interpretation, because the law requires further interpretation to become more just and down to earth, so making laws is one thing, and interpreting the laws that have been made is the next necessity.<sup>32</sup> Although there is no priority in the use of various theories of interpretation, at least it can be said that in criminal law, grammatical interpretation occupies a more important order in the principle of legality. However, in its *lex specialis* nature, historical interpretation - *historia legis* - has an important role.<sup>33</sup>

Consequently, *travaux preparatoires* (preparatory works) can be interpreted as the material used in drafting a law (legislative history) or negotiating an international agreement (negotiating history).<sup>34</sup> becomes urgent in the legal discovery phase, but the most important of the various interpretations in criminal law is teleological interpretation. Thus, if ranked based on the priority of interpretation in criminal law, teleological interpretation is in first place, then followed by historical interpretation, then grammatical interpretation, and finally systematic interpretation.<sup>35</sup>

It is important for this country to restore the dignity of the substitute money crime, in order to obtain an output that is in accordance with the ideals desired by the formulators of the Law. With the noble hope for the progress of the nation, it is inevitable that the obligation of law enforcers in applying a regulation is to be purposeful and appropriate. But of course to achieve this, it takes a not easy effort to understand the meaning and accurate interpretation of the technical application of the substitute money crime. In-depth research and true understanding are needed, by utilizing all available resources from all elements of law enforcement.

Looking at the history and development of the recovery of corruption victims, the basic reference is contained in the United Nations (UN) convention on anti-corruption, specifically starting from the provisions of Article 35 of the United Nations Convention Against Corruption 2003 (UNCAC) which states:

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<sup>31</sup>DPR – RI (1), Op.Cit., p. 13.

<sup>32</sup>Satjipto Rahardjo, 2005, *Progressive Interpretation of Law*, in Anthon Freddy Susanto, *Legal Semiotics: From Text Deconstruction to Progressiveness of Meaning*, Refika Aditama, Bandung, p. 6.

<sup>33</sup>Eddy OS Hiariej, 2009, *Principles of Legality and Legal Discovery in Criminal Law*, Erlangga, Jakarta, p. 69.

<sup>34</sup>Bryan A Garner, 2009, *Black's Law Dictionary* (St paul West Publishing Co), p. 1638

<sup>35</sup>Jan Rummelink, 2003, *Criminal Law: Commentary on the Most Important Articles in the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code*, Gramedia Pusaka Utama, Jakarta, pp. 53 & 56.

*"Article 35, Compensation for damage, Each State Party shall take such measures as may be necessary, in accordance with the principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**Article 35, Compensation for losses,** States Parties shall take the necessary measures, in accordance with the principles of their domestic law, to ensure that any entity or person who suffers damage as a result of an act of corruption has the right to bring legal action against those responsible for that damage in order to obtain compensation."<sup>36</sup>.

Various international documents on anti-corruption do not yet have a unified concept regarding who is meant by a victim of corruption. According to Anugerah Rizki Akbari, et al. as the team compiling the study on the recovery of victims of corruption (Team from the Corruption Eradication Commission) Article 35 of the UNCAC only mentions "that entities or persons who have suffered damage as a result of an act of corruption" and Foreign Countries that suffer losses due to a criminal act of corruption as victims of corruption. Thus, the parties who can be called victims of corruption and are entitled to receive recovery for the losses they have experienced are determined by each country that has ratified the UNCAC. In practice, the countries that are parties to the UNCAC define "entities and persons" as natural persons, legal persons, and states.<sup>37</sup>

#### 4. Conclusion

1. The regulation of the application of replacement money for corruption cases that occurred at the LPD in Bali can be formulated or amended in its implementing provisions, especially in the provisions of Article 2 of Government Regulation of the Republic of Indonesia Number 39 of 2016 concerning the types and Tariffs for Types of Non-Tax State Revenue (PNBP) applicable to the Attorney General's Office of the Republic of Indonesia which reads "All Non-Tax State Revenue applicable to the Attorney General's Office of the Republic of Indonesia must be deposited into the State Treasury" by adding an exception provision which reads "unless otherwise determined by a court decision". So that there is harmonization between the court decision that includes cq LPD with the implementing regulations which serve as other guidelines in carrying out the execution of the decision. 2. Replacement Money is a type of punishment that is very laden with the principle of *lex specialis*, and is also a manifestation of a theory of punishment that is relative. Rather than being punitive, this type of punishment is oriented towards the restorative side in order to maintain all the bricks needed by the state in an effort to build the nation. This is because Indonesia has an obligation to protect and create welfare for the people, one of the funding items of which can come from alternative funds, namely the return of money from corruption. The consistency and uniformity of all decisions on LPD corruption cases in Bali

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<sup>36</sup>Corruption Eradication Monitoring Forum (Farum 2004), 2004, United Nations Convention Against Corruption (UNCAC) 2003 United Nations Convention Against Corruption, 2003 Unofficial Translation by Corruption Eradication Monitoring Forum (Farum 2004), State Printing Press of the Republic of Indonesia, Jakarta, p. 33.

<sup>37</sup>Anugerah Rizki Akbari, et al., 2021, Study of Recovery of Victims of Corruption Crimes, Corruption Eradication Commission, Jakarta, p. 111.

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regarding replacement money that can be used as restitution for losses to victims/villagers can also form jurisprudence. Jurisprudence is the decisions of previous judges to deal with a case that is not regulated in the Law and is used as a guideline for other judges to resolve the same case

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