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Optimizing the Role of the Prosecutor's Office in Settlement of Court-Decided Compensation Money

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Abstract. *The research objective in this study is to examine and analyze the optimization of the role of the prosecutor's office in settling replacement money decided by the court based on Law Number 3 of 1971, to study and analyze the weaknesses and solutions faced in optimizing the role of the prosecutor's office in settling replacement money decided by the court based on Law Number 3 of 1971. This research uses a normative juridical approach, with quantitative descriptive research methods. The data used is primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty. The research results concluded that to be able to maximize its role as mentioned above, supporting factors are needed, including implementing regulations, professional human resources, operational costs and adequate facilities. Efforts to recover state financial losses resulting from Corruption Crimes have not been implemented optimally. This is due to technical, juridical and other obstacles.*

Keywords: *Optimization; Prosecutor's; Replacement.*

1. Introduction

Corrupt behavior occurs everywhere, both among relatives, in democratic and communist government systems, both in religious institutions, the phenomenon of corruption can occur. Almost in every country, especially in the early days of the formation of a country, corrupt behavior from state administrators and their cronies is rampant.[1]More optimal utilization of the state attorney institution will

[1]Hulman Siregar, Criminal Formulation and Punishment of Corruption Crimes That Harm State Finances and Problems in Their Implementation, Jurnal Daulat Hukum, Vol. 1. No. 1(2018)

also provide benefits for the Republic of Indonesia Attorney General's Office. In addition, a positive image of the prosecutor's performance, the role of the State Attorney can provide benefits in the form of direct savings in state or regional expenditure and has the potential to provide non-tax state revenues obtained but, from the return of state losses or payment of state receivables. The function of the state attorney in the civil field is not widely known by the public. News about the role of the state attorney is less popular with the media because it is considered to have less selling value so that it is rarely published even though there are actually many roles of the state attorney. In criminal law politics, it is not easy to determine an act as a crime and must first go through several in-depth study processes.[2]

Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption was born because Law No. 24 Prp. of 1960 concerning the Investigation, Prosecution and Examination of Criminal Acts of Corruption in connection with the development of society is not sufficient to achieve the expected results, and therefore the law needs to be replaced. In addition, we know that corruption is very detrimental to the country's finances/economy and hinders national development.

Replacement Money is a payment of money in an amount equivalent to state property obtained from the proceeds of criminal acts of corruption.[3]In the execution of additional punishment in the form of replacement money, it can be directed at convicts of corruption crimes or corporations, in line with this, it can be concluded that corporations can also be burdened with criminal responsibility because based on Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, an "organization in the form of a group of people who have wealth that is organized in the form of a legal entity".[4]

Regulation of the Attorney General of the Republic of Indonesia Number 19 of 2020 concerning the Settlement of Replacement Money Decided by the Court Based on Law Number 3 of 1971 concerning the Eradication of Corruption as a reinforcement stating that the handling of corruption cases based on Law Number 3 of 1971 concerning the Eradication of Corruption which has permanent legal force, but the settlement of replacement money that must be paid by convicts or former convicts has not been completed, this is because the settlement of replacement money based on Law Number 3 of 1971 concerning the Eradication of Corruption does not regulate sanctions for convicts or former convicts who do not pay replacement money and is not subsidiary or substitute. The application of replacement money as one of the instruments of criminal accountability for convicts of corruption and money laundering is essential

[2]Timbul Mangaratua Simbolon, Criminal Law Policy Against Criminal Acts of Insult or Defamation Through the Internet in Indonesia as Cybercrime, Jurnal Daulat Hukum, Vol. 1, No. 1(2018).
[3] Mahrus Ali, Criminal Law on Corruption in Indonesia, (Yogyakarta: UII Press, 2011), 64.
[4] Henry Donald Lbn Toruan, , "Criminal Responsibility for Corporate Corruption", Jurnal Rechtsvinding 3 No 3, (2014): 399

where the purpose of implementing this is to maximize the return of state losses which actually have the same principle, namely asset recovery.[5]If the assets can no longer be traced, whether the tracing is carried out domestically or abroad, then the application of this replacement money becomes an alternative to recover lost state assets. However, in its implementation, the application of replacement money cannot be said to be optimal, especially if the corruption crime is committed by individuals, corporations or political party administrators. This is supported by supporting data, namely Based on data from Indonesia Corruption Watch, until 2020 the total state loss reached IDR 56,700,000,000,000 (fifty-six trillion seven hundred billion rupiah), while the amount of replacement money granted by the panel of judges amounted to 19,696,446,686,630 (Nineteen trillion six hundred ninety-six billion.

In the records of the Corruption Eradication Commission (KPK), the handling of corruption cases by both the Police and the Prosecutor's Office in terms of saving state finances lost due to corruption has not been successful. According to ICW's records, the return of state financial losses in corruption cases was still very minimal throughout 2021. The amount of state losses due to corruption involving 1,404 defendants reached IDR 62.9 trillion. However, the amount of state loss recovery imposed by the panel of judges in the form of compensation payments was only around 2.2 percent or equivalent to IDR 1.4 trillion.[6]

According to ICW, the potential for state financial losses due to corruption cases during the first semester of 2022 has increased. State losses due to corruption involving 252 corruption cases with 612 suspects with a potential for corruption reaching IDR 33.665 trillion. The data comes from the Budget Implementation List (DIPA) for the 2022 Fiscal Year, the Prosecutor's Office, the Police, and the Corruption Eradication Committee, which were monitored by ICW for the period 1 January to 30 June 2022. From the monitoring results, there were a total of 1,387 cases at the investigation level, but law enforcement officers were only able to realize around 18 percent of the total number of corruption cases, the potential for state losses due to corruption reaching IDR 33.6 trillion. The potential state loss figure has increased by IDR 6.8 trillion in one year. In 2021, the potential loss due to corruption cases is estimated to reach 36.8 trillion.344 Currently, efforts are being made to return state assets lost due to corruption. Return of assets or what is known as stolen asset recovery occupies an important position in eradicating corruption. The underlying fact is the very heartbreaking fact that rampant corruption has robbed the country of all its wealth, which the country needs to build the nation and state through sustainable development.

[5]Umi Rozah, Bambang Dwi Baskoro, Muhammad Arif Fauzi, 2016, Effectiveness of Additional Criminal Penalties in the Form of Replacement Money in Corruption Crimes, Diponegoro Law Journal, Vol. 5, No. 3, (2016), p. 3.

[6]347 https://www.kompas.id/accessed December 4, 2023

Based on the background description above, it is interesting for researchers to take the title: "Optimizing the Role of the Prosecutor's Office in Settling Replacement Money Decided by the Court Based on Law Number 3 of 1971".

This study aims to analyze the weaknesses and solutions faced in optimizing the role of the prosecutor's office in resolving compensation payments decided by the court based on Law Number 3 of 1971.

2. Research Methods

This study uses a normative legal approach. The type of research used in completing this thesis is a qualitative descriptive research method. The data used are primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty.

3. Results and Discussion

3.1. Optimizing the Role of the Prosecutor's Office in Settling Compensation Payments Decided by the Court Based on Law Number 3 of 1971

Article 8 of the Law states that the Attorney General may set aside a case based on public interest. Then Article 9 stipulates that the Attorney General and other prosecutors within their jurisdiction ensure that the detention and treatment of people detained by other officials are carried out in accordance with the law. The similarity of the regulations of the three laws (Law Number 16/2004, Law Number 5/1991, Law Number 15/1961) is that first, in the criminal field, the Prosecutor's Office carries out prosecution, implements court decisions and decisions. Meanwhile, the Prosecutor's Office in supervising the implementation of conditional release decisions is stated in Law Number 16 of 2004 and Law Number 5 of 1991. in carrying out conditional criminal decisions and criminal decisions. Supervision, and conducting investigations into certain criminal acts based on the Law, are only regulated in Law Number 16 of 2004. Furthermore, the three laws on the prosecutor's office above regulate the duties of the Prosecutor's Office to complete certain case files and for that can conduct additional examinations before submitting the case to the court in its implementation coordinated with the investigator. In the explanation of Article 30 Paragraph 1 letter e of Law Number 16 of 2004 and explanation 27 Paragraph 1 additional examinations are carried out by considering the following matters:

1) Not carried out on the suspect;
2) Only for cases which are difficult to prove, and/or which may disturb the public, and/or which may endanger the safety of the State;
3) Must be completed within 14 days after the provisions of Article 110 and 138 Paragraph 2 of Law 8 of 1981 concerning Criminal Procedure Law are implemented;
4) Principles of coordination and cooperation with investigators.

The government's efforts to eradicate corruption by the government are currently still rolling, however, corruption still occurs in several sectors of life. It is undeniable that the decline in the Indonesian economy in recent years is partly due to corruption that has entered all lines of life, not only in government bureaucracy but also in corporations and state-owned enterprises.[7]

The application of punishment or sanctions for perpetrators of corruption is by giving a sentence in the form of imprisonment and also by applying additional penalties. Based on Article 2 Paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption, it is explained that the criminal sanction is 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. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah), and continued by Article 2 which states that: if the crime of corruption is committed under certain circumstances, the death penalty can be imposed. In addition to the main penalty, perpetrators of corruption are also given additional penalties in the form of payment of compensation as an effort to return state losses. The provision of sanctions in the form of the main penalty and additional penalties aims to provide a deterrent effect for perpetrators of corruption so that they do not commit corruption. One of the efforts that can prevent and avoid Indonesia's decline due to corruption, apart from imposing criminal sanctions in prison to provide a deterrent effect, is also to impose additional penalties on perpetrators of corruption as regulated by law, namely by paying compensation as an effort to restore state losses.[8]

Replacement money is one of the important efforts in the eradication of corruption in our country. It can be said so because replacement money is a form of restitution of state losses caused by corruption committed by irresponsible people with the aim of enriching themselves. The application of replacement money is a form of consequence due to corruption committed by corruptors that has harmed the country's finances and economy. Perpetrators of corruption who have been legally and convincingly proven to have committed corruption can be exempted from payment of replacement money if it is replaced with the assets owned by the defendant which are declared confiscated for the state or if the defendant does not enjoy the money at all.[9]

In its implementation, in fact the application of additional criminal penalties with the obligation to pay compensation by corruption convicts is still not fully effective. This is because corruption convicts choose a substitute sentence in the

[7]Diding Rahmat, "Formulation of Criminal Policy on Fines and Replacement Money in Enforcing Corruption Crimes in Indonesia", IUS Journal of Law and Justice Studies (April 2020), p. 79.

[8]Theodorus M. Tuanakotta, Calculating State Finances in Criminal Acts of Corruption (Jakarta: Salemba Empat, 2004), p.19.

[9]Chaerudin, Strategy for Prevention and Law Enforcement of Corruption Crimes, (Bandung: PT Refika Aditama, 2008), p. 90

form of imprisonment rather than having to pay compensation.[10]From the research data that the author obtained through ICW (Indonesia Corruption Watch), it is known that the replacement money returned by the State for losses due to corruption cases reached IDR 56.7 trillion, but what was returned to the State for losses due to corruption cases in 2020 only amounted to IDR 8.9 trillion, which means that only around 12-13 percent of state money was returned from the total losses caused by criminal acts of corruption.[11]The payment of replacement money by convicts in corruption cases has been set a time limit, namely as stipulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2014 concerning Additional Criminal Penalties in Replacement Money in Corruption Crimes, in Article 9 Paragraph (1) CHAPTER IV Execution of Replacement Money, it is stated that: "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."

Based on the Article, it is explained that the convict must have paid off the arrears of replacement money within 1 (one) month since the judge's decision has permanent legal force (inkracht) and if the convict of corruption has not paid off, the convict's assets will be confiscated. The return is not easy because corruption is an extra ordinary crime whose perpetrators come from intellectual circles and have important positions. However, in its implementation there are several obstacles in the application of additional criminal penalties for payment of replacement money, namely regarding convicts who have not yet paid off or are in arrears in the compensation money that has been determined.[12]

3.2. Weaknesses and Solutions to Optimize the Role of the Prosecutor's Office in Settling Compensation Orders by the Court Based on Law Number 3 of 1971

One of the problems that arises is regarding the application of the rules for the settlement of replacement arrears by corruption convicts who are in arrears in paying replacement money, there is a difference between theory and practice in the field, for example the application of the rules regarding additional criminal penalties for payment of replacement money contained in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption with the Regulation of the Supreme Court of the Republic of Indonesia Number 05 of 2014 concerning Additional Criminal Penalties for Replacement Money in Corruption Crimes, in Article 9 Paragraph (1)

[10]0 Evi Hartanti, Criminal Acts of Corruption, (Jakarta: Sinar Grafika, 2012), p. 5. 11Kompas.com, https://www.google.com/amp/s/amp.kompas.com/nasional/read/20

[11] Kompas.com, https://www.google.com/amp/s/amp.kompas.com/nasional/read/2021/03/22/19301891/data-icw-2020-kerugian-negara-rp-567-triliun-uang-pengganti-dari-koruptor-rp accessed December 04, 2023

[12]Wahyuningsih, "Criminal Provisions on Fines in Corruption Crimes at the Extraordinary Crime Level", Journal of Islamic Criminal Law, Volume 1, (June 2015), p. 10

CHAPTER IV Execution of Replacement Money, the two regulations have differences where the Corruption Law explains that convicts are required to pay replacement money as an effort to recover state losses with a period of 1 (one) month, payment can be made by paying in installments with a period of 1 (one) month and if the convict has not paid in full, assets can be confiscated in the amount of replacement money that must be paid and has been determined by the court and has permanent legal force and the Corruption Law also explains that if the convict cannot pay the money In lieu of execution, imprisonment can be carried out as determined by the judge, and the sentence must not exceed the maximum threat of the principal sentence imposed.

From the explanation in the Corruption Law regarding additional criminal penalties, there is a disparity in determining the maximum substitute prison sentence, therefore the Supreme Court Regulation of the Republic of Indonesia Number 5 of 2014 concerning Additional Criminal Penalties in Corruption Crimes was issued, which regulates more specifically the application and mechanism for implementing substitute prison sentences. PERMA Number 5 of 2014 also explains that the maximum substitute prison sentence is in accordance with the principal sentence imposed, and the convict must still pay off the remaining substitute prison sentence after completing the principal sentence or while the convict is serving the substitute prison sentence.

The rampant phenomenon of crimes that have emerged, especially in cases of Corruption that have occurred in Indonesia since the past few years, seems to be a task and challenge for the Government to immediately take firm action. As is known, Corruption is one of the crimes included in extraordinary crimes (extra ordinary crime), not only causing losses to state finances but corruption is a crime that has an impact on the social and economic rights of society at large and harms the life of the nation. Corruption is not just a national problem, it has even become an international phenomenon that requires such cooperation in order to prevent and eradicate corruption. The impacts that have been caused by corruption have had an impact on several aspects, therefore extraordinary efforts need to be made to overcome and eradicate corruption. Regulations regarding Criminal Acts of Corruption have been regulated in Article 2 paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which states: "any person who unlawfully enriches himself or another person or a corporation which can harm state finances or the state economy."

The impact that can be felt that cannot be ignored is that the consequences of corruption not only harm state finances, but also disrupt the stability of the wider community's economy and help undermine the authority of government from public trust. This is because criminal acts of corruption occur in an elitist, endemic, and systemic manner, so that they not only harm state finances, but

have also violated the social and economic rights of the wider community.[13]The losses due to corruption significantly impact the reduced ability of the state to build the economy and in providing facilities for social welfare. Because the crime of corruption gives rise to very significant state financial losses.

According to ICW, the potential for state financial losses due to corruption cases during the first semester of 2022 has increased. State losses due to corruption involving 252 corruption cases with 612 suspects with a potential for corruption reaching IDR 33.665 trillion. The data comes from the Budget Implementation List (DIPA) for the 2022 Fiscal Year, the Prosecutor's Office, the Police, and the Corruption Eradication Committee, which were monitored by ICW for the period 1 January to 30 June 2022. From the monitoring results, there were a total of 1,387 cases at the investigation level, but law enforcement officers were only able to realize around 18 percent of the total number of corruption cases, the potential for state losses due to corruption reaching IDR 33.6 trillion. The potential state loss figure has increased by IDR 6.8 trillion in one year. In 2021, the potential loss due to corruption cases is estimated to reach 36.8 trillion.344 Currently, efforts are being made to return state assets lost due to corruption. Asset recovery or what is known as stolen asset recovery occupies an important position in the eradication of corruption. The underlying thing is the very heartbreaking fact that rampant corruption has robbed the country of all its wealth, which the country needs to build the nation and state through sustainable development.

The urgency of asset recovery is also implied in the first paragraph of the Preamble to the 2003 United Nations Convention Against Corruption. The term asset recovery does not have a definition, but some authors define the concept of asset recovery, such as Poerwaning M.Yanuar who defines asset recovery as a law enforcement system carried out by the country that is a victim of corruption to revoke, seize, and eliminate the rights to assets resulting from corruption from the perpetrators of corruption through a series of processes and mechanisms, both criminally and civilly, assets resulting from corruption, both domestically and abroad, are tracked, frozen, seized, confiscated, handed over, and returned to the country that is a victim of corruption, so that it can return state financial losses caused by corruption and to prevent perpetrators of corruption from using assets resulting from corruption as a tool or means to commit other crimes, as well as providing a deterrent effect for the perpetrators and/or potential perpetrators of corruption.

Although various laws and regulations have been established in order to eradicate criminal acts of corruption, Indonesia's Corruption Perception Index is still ranked lowest. Based on an assessment conducted by Transparency

[13]Nyoman Serikat Putra Jaya, Some Thoughts Towards the Development of Criminal Law, Bandung, 2008, Citra Aditya Bakti, p. 57

International, which ranks the Corruption Perception Index (CPI) every year by ranking countries in the world based on public perception (assumptions) of corruption in public and political positions, in 2021 Indonesia was ranked 96th with a score of 38 out of 180 countries assessed. The scoring method uses a scale from 100 (very clean) to 0 (very corrupt).[14]

In the records of the Corruption Eradication Commission (KPK), the handling of corruption cases by both the Police and the Prosecutor's Office in terms of saving state finances lost due to corruption has not been successful. According to ICW's records, the return of state financial losses in corruption cases was still very minimal throughout 2021. The amount of state losses due to corruption involving 1,404 defendants reached IDR 62.9 trillion. However, the amount of state loss recovery imposed by the panel of judges in the form of compensation payments was only around 2.2 percent or equivalent to IDR 1.4 trillion.[15]

The legal instrument that is the basis for the return or recovery of state financial losses in corruption cases is the provision regulated in Article 18 paragraph (1) letter b of the Corruption Crime Law. This provision is an additional penalty that can be imposed by the Judge in his decision. The additional penalty is imposed in the form of confiscation of tangible or intangible movable or immovable goods that can be used for or obtained from corruption, including companies owned by the convict and goods that replace these goods.

Furthermore, if the defendant does not pay the replacement money for a maximum of one month after the court decision has permanent legal force, then his/her property can be confiscated by the Prosecutor and auctioned to cover the replacement money. If the defendant does not have enough property to pay the replacement money, then the sentence is increased, the length of which does not exceed the maximum threat of the main criminal penalty.

Although it has been regulated in the provisions of Article 18 paragraph (1) letter b of the Corruption Crime Law regarding the confiscation of assets of defendants who are proven to have committed corruption, it is acknowledged that it has not been able to overcome efforts to recover state financial losses that have been taken by perpetrators of corruption. The legal instruments currently in force in Indonesia regarding the confiscation of assets resulting from crime, especially corruption, namely the Criminal Code, Criminal Procedure Code, and Law Number 20 of 2000 in conjunction with Law Number 31 of 1999, have not been able to optimally regulate or accommodate the mechanism for confiscation or return of assets.[16]

The low percentage of state financial loss recovery, which means low state financial rescue, shows that the existing legal devices or instruments are currently considered inadequate in providing maximum results in efforts to

[14]https://id.wikipedia.org/wiki/Corruption_Perception_Index accessed on December 4, 2023
[15]347 https://www.kompas.id/accessed December 4, 2023
[16]HP Panggabean, op.cit. p. 340.

overcome corruption related to state financial losses. This means that state financial losses that have been lost due to corruption cannot be saved with the current regulatory devices or instruments.

The implementation of criminal compensation is one form of law enforcement. In law enforcement, several obstacles or barriers are often encountered, and these obstacles are factors that greatly determine whether or not law enforcement is implemented (Law enforcement). State financial losses due to corruption require efforts to be made to return them in the form of compensation for the losses incurred, so that the perpetrators who caused the state financial losses must be held accountable. The return of compensation for state financial losses as a result of corruption often experiences obstacles or constraints.

There are factors that influence it, Soerjono Soekanto is of the opinion that law enforcement is basically not merely implementing the provisions of laws and regulations, but there are also factors that influence it, namely as follows:[17]

a. Legislative Factors (Legal Substance)
b. Law enforcement factors
c. Facilities and infrastructure factors
d. Community factors
e. Cultural Factors

LM Friedman, revealed that law enforcement is greatly influenced by the legal system itself, where a legal system consists of three sub-systems, namely legal substance, legal structure, and legal culture. These three elements of the legal system greatly determine whether a legal system can run well or not. Legal substance usually concerns aspects of legal regulation or legislation. The emphasis is that the legal structure is more on the apparatus and legal facilities and infrastructure itself. Meanwhile, legal culture concerns the behavior of its society.[18]These three factors are interrelated. For example, if the substance (the legislation) is good, but is not supported by a good structure (law enforcement apparatus) and also a culture (legal culture) that has good legal awareness, then it is difficult to expect the law to be upheld.

Abdul Rahman Saleh in his writing once revealed the factors that hinder the implementation of substitute money punishment. In his opinion, the problem arises because of three things, namely the weakness of the law, incomplete judge's decision, and the prosecutor's administration system.[19]

Based on L.M. Friedman's opinion above, the inhibiting factors in the

[17]Soerjono Soekanto, Factors Influencing Law Enforcement, Bandung, 1986, Rineka Cipta, pp. 8-11

[18]Lawrence M. Friedmann. The Legal System; A Social Science Perspective, Op.cit, p.11.

[19]Abdul Rahman Saleh, in his article entitled One-Door Politics, Replacement Money, Kompas, 6 September 2007.

implementation of substitute monetary punishment will be reviewed from the three factors above, and will then be discussed one by one in relation to the implementation of substitute monetary punishment.

The philosophy of positivism was born through Comte's work in his book entitled Cours de Philosophie Positive.[20]That the influence of the philosophy of positivism developed by Auguste Comte has influenced the philosophical views of legal experts. It was John Austin who tried to put forward his philosophical thoughts known as legal positivism or legal positivism. John Austin is considered the founder of the legal positivism school, because he was the one who formulated legal positivism systematically and conceptually.[21]

The meaning of law in the positivist view is what is called a command from the ruler or a command that comes from a sovereign authority in society. An expression of desire directed by a sovereign authority, which requires people or people to do or not do something. The command is based on the threat of evil, which will be forced into effect if the command is not obeyed. The evil that threatens those who do not obey is the realization of sanctions that are behind each command. So in the positivist view of law there are three main things that are very essential, namely an order, an obligation to obey and a sanction.[22]

Along with the change in the political climate in this country where the first amendment or change to the 1945 Constitution on October 19, 1999 through the MPR general session on October 14-21, 1999, there has been a shift in the power to make laws which were previously in the hands of the President as regulated in Article 5, then with the change in Article 5 it has changed where the President has the right to submit draft laws, and the DPR holds the power to form laws (Article 20). so with this change, the power to make laws is in the hands of the DPR where previously it was in the hands of the president.

As is known, the functions of the DPR include legislative functions, supervisory functions (controlling) and budgeting functions. Of the three functions, the most interesting to note is the legislative function of the DPR. However, if examined critically, the first main task, namely as the initiator of making laws, can be said to have experienced serious decline in recent developments.[23]

Moreover, with the provisions stipulated in the 1945 Constitution after being amended, where the position of the House of Representatives as a legislator is getting stronger, because the Draft Law that has been jointly approved but not ratified by the President, then after thirty days the Law must be enforced, even must be enacted. So that Article 20 paragraph 5 of the 1945 Constitution shows

[20]Jhonny Ibrahim, Theory and Methodology of Normative Legal Research, Malang, 2006, Bayumedia Publishing, , p.75

[21]Herman Bakir, Philosophy of Design Law and Historical Architecture, Refika Aditama, 2007, page 263

[22]Ahmad Ali, The Decline of Law in Indonesia, Causes and Solutions, Ghalia Indonesia, Op.cit, p.22

[23]Ni'Matul Huda, Indonesian Constitutional Law, Raja Grafindo Persada, Jakarta, 2005 p.168.

an unbalanced relationship between the legislature and the executive.

Such conditions actually make the position of the DPR as a legislator very strong, and this will further strengthen the position of political parties in determining changes to existing laws in Indonesia. This phenomenon has given birth to several laws that are not or without the ratification of the President such as Law number 17 of 2003 concerning state finances; Law number 18 of 2003 concerning Advocates; Law number 32 of 2002 concerning broadcasting and Law number 25 of 2002 concerning the Establishment of the Riau Islands Province.[24]

Departing from the understanding of legal positivism, it will be seen to what extent the legislative ability of the DPR in formulating a product of a rule that will later become a reference in the social and national relations of Indonesia. In addition, the product of a law made by members of the DPR will become a political product because it does not rule out the possibility of the birth of a law based on political interests.

As explained in the previous chapter, the regulation of substitute money punishment is actually not a new thing, because since 1960, namely through Law Number 24 Prp. Year 1960, regulations on substitute money punishment have been formulated which were then continued by Law Number 3 of 1971 and then Law Number 31 of 1999 and then Law Number 20 of 2001.

Law Number 24 Prp. of 1960 in Article 16 states as follows:

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

In Article 16 paragraph (3), the payment of replacement money is referred to as "The convict pays replacement money in an amount equal to the assets obtained from corruption." The terminology of convict is the term for convict at this time. In this provision, it is only stated that the convict can be required to pay replacement money. The phrase "can" in this provision explains that the imposition of a replacement money sentence is not a mandatory provision to be implemented, but is optional, meaning it may or may not be imposed on the convict.

In addition, the replacement monetary penalty imposed on the convict (convict) is the amount of the assets obtained from the crime. This means that the replacement monetary penalty may not exceed the assets obtained from corruption. To determine the amount of assets that are corrupted, of course through the calculation of state losses carried out by the authorized institution in

[24]See Kompas, July 17, 2003 by M.Hadi Shubhan.

this case the Audit Board.[25]

Furthermore, in Law Number 3 of 1971, the criminal penalty of replacement money is maintained. The provisions regarding the criminal penalty of replacement money are regulated in Article 34 letter c which states that the payment of replacement money in an amount that is at most equal to the assets obtained from corruption. In this Article, the word "can" is no longer found. The provisions regarding the criminal penalty of replacement money are grouped into additional penalties.

In the explanation of Article 34 of Law Number 3 of 1971, it is stated that if the defendant cannot fulfill the payment of replacement money[26], then the provisions regarding the implementation of the payment of fines apply.[27]This explanation is a regulation on the steps that must be taken in the event that the convict does not want to pay the replacement money. Therefore, according to the explanation, the convict who does not pay the replacement money is subject to the provisions of paying a fine, then it will be seen what form of payment of the fine is. Articles 30 and 31 of the Criminal Code regulate provisions regarding the amount of the fine. The complete contents of Articles 30 and 31 are as follows:

Article 30 of the Criminal Code

1) The minimum fine is three rupiah and seventy-five cents.
2) If the fine is not paid, it will be replaced with imprisonment.
3) The length of the substitute imprisonment is at least one day and at most six months.
4) In the judge's decision, the length of the substitute imprisonment is determined as follows; if the fine is seven rupiah fifty-two cents or imprisonment, it is calculated as one day, if it is more than five rupiah fifty cents, every seven rupiah fifty cents is calculated as a maximum of one day, and the remainder which is not enough is seven rupiah fifty cents.
5) If there is an increase in the fine due to concurrent or repeated acts, or due to the provisions of Article 52, then the substitute imprisonment sentence is a maximum of eight months.
6) The substitute imprisonment may not exceed eight months.

[25]The duties and authorities of the Audit Board are regulated in Law Number 15 of 2006 concerning the Audit Board.

[26]The use of the word defendant is actually not quite right, because legally, a person who has been sentenced to a criminal offense and is incracht, then his status changes from defendant to convict, so this provision must be read as convict, or sentenced according to Law no. 24 of 1960 and Law no. 3 of 1971.

[27]Criminal fines are the third main punishment in Indonesian criminal law, which basically can only be imposed on adults. Read the book by PAF Lamintang in his book Hukum Penintensier Indonesia, Armico, Bandung, 1984 p. 80

Article 31 of the Criminal Code

1) Convicts may serve a substitute prison sentence without waiting for the deadline for paying the fine.
2) He always has the authority to free himself from a substitute prison sentence by paying the fine.
3) Payment of part of the criminal fine, either before or after starting to serve the prison sentence, which is equal to the part paid.

The provisions regarding criminal fines as regulated in Articles 30 and 31 of the Criminal Code above, when linked to criminal compensation in corruption cases as stated in the explanation of Article 34 of Law Number 3 of 1971, can be concluded as follows:

a. If the fine is not paid, it will be replaced with imprisonment.[28] So if it is constructed with a substitute financial penalty, if the convict does not pay the substitute financial penalty, he can be sentenced to imprisonment and if the imprisonment has been served, the consequence is that the substitute financial penalty will be abolished.
b. The convict has the authority to free himself from imprisonment by paying the fine. In relation to the replacement of money, if the convict pays the replacement of money, then the imprisonment does not need to be served anymore.

Although in the explanation of Article 34 of Law Number 3 of 1971 it is stated that convicts who do not want to pay a replacement fine can be subject to criminal provisions of a fine, in practice it still cannot run as desired by Law Number 3 of 1971. The obstacle faced is actually the birth of the Supreme Court Circular (SEMA) Number 4 of 1988. In point 1 of SEMA Number 4 of 1988 it is stated that for the imposition of a replacement payment penalty, a prison sentence cannot be determined as a replacement if the replacement money is not paid by the convict. The SEMA Number 4 of 1988 in the judicial practice in Indonesia is actually enforced, this can be seen in the jurisprudence of the Supreme Court number 2447K/Pid/1988 dated February 9, 1989, in its legal considerations stating: Payment of replacement money is subsidized with imprisonment as a substitute if the replacement money is not paid, is contrary to SEMA Number 4 of 1988 dated July 7, 1988 in conjunction with Article 34 sub c of Law number 3 of 1971. By issuing the decision, the District Court and the High

[28]It can be explained that imprisonment is also a punishment that provides restrictions on the freedom of movement of a convict which is done by locking the person in a correctional institution by requiring the person to obey all the rules and regulations that apply in the correctional institution, for more details read PAF Lamintang Ibid page 71. The institution of imprisonment actually comes from the institution of emprisonnement pour contraventions depolice contained in the French Penal Code.

Court have incorrectly applied the law regarding substitute imprisonment.[29]

The reason the Supreme Court issued SEMA Number 4 of 1988 is that in the provisions of fines where the convict serves a substitute imprisonment sentence (subsidiary), then the substitute monetary penalty is automatically removed, so it is considered not to fulfill the sense of justice. If a convict who has committed a crime of corruption with a state loss value reaching quite large, for example up to billions to trillions of rupiah, it turns out that the convict only serves a subsidiary sentence for 8 months, then it will free him from the substitute monetary penalty, clearly felt unfair.

The provisions in the explanation of Article 34 of Law Number 3 of 1971 also do not provide the best way to return state assets that have been lost due to corruption. Because the same as Article 16 of Law Number 24 Prp of 1960, it only states that convicts can also be sentenced to a replacement fine of the amount of the corrupted assets. In fact, these provisions do not provide clear regulations on what to do if the defendant does not want to pay the replacement fine.

Then in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, the regulation of substitute money punishment was maintained. In fact, there was a little progress in UUPTK Number 31 of 1999. The regulation of substitute money punishment in UUPTK Number 31 of 1999 is stated in Article 18 paragraph (1) letter b which states that substitute money punishment is the maximum amount equal to the assets obtained from the crime of corruption. The development in UUPTK Number 31 of 1999 is the regulation regarding the technical implementation of substitute money punishment for convicts who do not want to pay.

Article 18 paragraph (2) states that 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 assets can be confiscated by the prosecutor and auctioned to cover the replacement money.

What if the convict's property to be confiscated turns out to be no longer there, then in Article 18 paragraph (3) it is stated that in the case of the convict not having sufficient property to pay the replacement money as referred to in paragraph (1) letter b, then he will be punished with imprisonment for a period not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law and the length of the sentence has been determined in the court decision. The existence of the provisions of Article 18 paragraph (3) raises the question, what if the perpetrator is a corporation. In this case, Law Number 31 of 1999 as amended by Law Number 20 of 2001 cannot provide an answer, because it is impossible for a corporation to be sentenced to

[29]Judicial Variation, Year XXII No.259 June 2007, page 53

imprisonment.[30]Because according to Article 1 number 3, what is meant by every person is an individual or including a corporation.

If the convict has made a payment of the replacement money, but has not paid it all off, will the convict still be subject to imprisonment as determined by the judge in the verdict, or will it be reduced? If it is reduced, what is the limit of the reduction? UUPTK Number 31 of 1999 does not explain it, unlike Law Number 3 of 1971, where the alternative is to use the provisions in the fine sentence.

The Chief Justice of the Supreme Court once gave his comments in answering the problem of the criminal penalty of replacement money that had only been paid by the convict in part, what about the additional prison sentence, whether all or part of it was carried out. According to the Chief Justice of the Supreme Court,[31] express such a thing to answer the question by saying that the confinement of the sentence if the replacement money has been paid then it is the authority of the Prosecutor, it is up to the prosecutor to calculate it. Because the implementation of the sentence is the authority of the Prosecutor.

The statement of the Chief Justice of the Supreme Court when associated with the authority and duties of the prosecutor as the executor of the determination of judges and court decisions that have obtained permanent legal force is in line, because in accordance with Article 30 of Law Number 11 of 2021 concerning the Prosecutor's Office, it states that the Prosecutor's Office in implementing court decisions and determinations of judges, the Prosecutor's Office must pay attention to the legal values that live in society and humanity based on Pancasila without ignoring firmness in attitude and action.[32]

4. Conclusion

In the effort to recover state financial losses due to Corruption, the robbery has not been optimal. This is due to obstacles, both technical, legal and other obstacles. For example, in tracing and finding the wealth/assets of suspects, defendants or convicts to be confiscated (as part of the investigation and as the implementation of the court's decision). The investigating prosecutor and the executing prosecutor have doubts about which objects belonging to the suspect, defendant or convict can be confiscated, whether all of their assets can be confiscated or only limited to the assets of the suspect, defendant or convict that are within the "tempus delict" range. The practice that has been running so far shows that the imposition of additional criminal penalties in the form of payment

[30]M. Arief Amrullah, Stolen Asset Recovery (StAR) Initiative in the Perspective of Criminal Law Politics, this paper was submitted in the National Law Study Seminar (SPHN 2007) with the Theme: Asset Recovery through the Stolen Asset Recovery (StAR) Initiative instrument and Indonesian Legislation, at the Millenium Hotel Jakarta on 28-29 November 2007, p.18

[31]Suara Karya Daily, January 8, 2007.

[32]See Explanation of Article 30 paragraph (1) letter b of Law Number 11 of 2021 concerning the Indonesian Attorney General's Office

of a sum of replacement money to convicts of Corruption is considered less effective in efforts to recover/return state financial losses. In addition to the legal factors that regulate it, this is also caused by the inability and unwillingness of the convict to make payments. Most convicts prefer not to pay compensation because they have been sentenced to a fairly heavy prison sentence, even life imprisonment.

5. References

Journals:

Diding Rahmat, Formulation of Criminal Policy on Fines and Replacement Money in Enforcing Corruption Crimes in Indonesia, IUS Journal of Law and Justice Studies, Vo.1, No.2(2020)

Henry Donald Lbn Toruan, Criminal Responsibility for Corporate Corruption, Jurnal Rechtsvinding 3 No 3, (2014)

Hulman Siregar, Criminal Formulation and Punishment of Corruption Crimes That Harm State Finances and Problems in Their Implementation, Jurnal Daulat Hukum, Vol. 1. No. 1(2018)

Timbul Mangaratua Simbolon, Criminal Law Policy Against Criminal Acts of Insult or Defamation Through the Internet in Indonesia as Cybercrime, Jurnal Daulat Hukum, Vol. 1, No. 1 (2018).

Umi Rozah, Bambang Dwi Baskoro, Muhammad Arif Fauzi, Effectiveness of Additional Criminal Penalties in Replacement Money in Corruption Crimes, Diponegoro Law Journal, Vol. 5, No. 3, (2016)

Wahyuningsih, Criminal Provisions of Fines in Corruption Crimes at the Extraordinary Crime Level, Journal of Islamic Criminal Law, Volume 1, No. 5 (2015)

Books:

Chaerudin, 2008, Strategy for Prevention and Law Enforcement of Corruption Crimes, PT Refika Aditama, Bandung;

Evi Hartanti, 2012, Criminal Acts of Corruption, Sinar Grafika, Jakarta;

Herman Bakir, 2007, Philosophy of Design Law and Historical Architecture, Refika Aditama, Jakarta;

Jhonny Ibrahim, 2006, Theory and Methodology of Normative Legal Research, Bayumedia Publishing, Malang;

Mahrus Ali, 2011, Criminal Law on Corruption in Indonesia, UII Press, Yogyakarta;

Ni'Matul Huda, , 2005, Indonesian Constitutional Law, Raja Grafindo Persada, Jakarta;

Nyoman Serikat Putra Jaya, 2008, Some Thoughts towards the Development of Criminal Law, Citra Aditya Bakti, Bandung;

PAF Lamintang, 1984, Indonesian Penitentiary Law, Armico, Bandung;

Soerjono Soekanto, 1986, Factors Influencing Law Enforcement, Rineka Cipta, Bandung;

Theodorus M. Tuanakotta, 2004, Calculating State Finances in Criminal Acts of Corruption, Salemba Empat, Jakarta;

Regulation:

Criminal Code (KUHP)

Criminal Procedure Code (KUHAP)

Law Number 11 of 2021 concerning the Indonesian Attorney General's Office

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

Regulation of the Attorney General of the Republic of Indonesia Number 19 of 2020 Concerning Settlement of Replacement Money Decided by the Court Based on Law Number 3 of 1971 Concerning Eradication of Criminal Acts of Corruption

The 1945 Constitution.

Internet:

https://id.wikipedia.org/wiki/Corruption_Perception_Index accessed on December 4, 2023

Kompas.com, https://www.google.com/amp/s/amp.kompas.com/nasional/read/2021/03/2 2/19301891/data-icw-2020-kerugian-negara-rp-567-triliun-uang-pengganti-dari-koruptor-rp accessed December 04, 2023