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Legal Review of the Implementation of the Execution of Substitute Money as an Additional Criminal Penalty Against Corruption Convicts

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Abstract. *Replacement money in corruption cases has received less attention to be discussed, because so far in handling corruption cases, it tends to prioritize punishment of perpetrators of corruption rather than returning state losses. Basically, the implementation of the execution of the payment of replacement money is not much different from the implementation of executions against people or executions against goods in criminal cases in general, the difference is that there is a time limit for the convict to pay the replacement money after the verdict has permanent legal force. The purpose of this research is toknowing and analyzing (1) legal policy in creating a criminal punishment system for corruption in Indonesia, (2) the legal substance of the mechanism for executing court decisions in the form of compensation for corruption convicts, (3) legal problems in implementing the execution of compensation as an additional punishment for corruption convicts. The approach method used in this study is normative juridical. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. Efforts to block the account are made to make it easier if the defendant is proven to have committed a criminal act of corruption and the court issues a criminal verdict of payment of compensation, then the prosecutor is always the executor who finds it easier to carry out the execution of compensation. (3) The problem in carrying out asset confiscation is that more than twenty years after the Corruption Eradication Law came into effect, there is still no law on asset confiscation as a derivative of Article 18 paragraph 1 of the Corruption Eradication Law.*

Keywords: *Corruption; Execution; Replacement.*

1. Introduction

Indonesia is a country based on law, which means that the Republic of Indonesia is a country based on law as stated in the 1945 Constitution of the Republic of Indonesia.[1]Law has an important meaning in every aspect of life, a guideline for human behavior in relation to other humans, and the law that regulates all aspects of Indonesian society.

Every citizen's action is regulated by law, every aspect has its own rules, provisions and regulations. The law determines what must be done, what may be done and what is prohibited. One area of law is criminal law, which regulates the rules of certain prohibited acts. While criminal acts are acts prohibited by a legal rule which are accompanied by threats (sanctions).[2]

National development aims to realize a just, prosperous, prosperous, and orderly society based on Pancasila and the 1945 Constitution. To realize a just, prosperous, and prosperous Indonesian society, it is necessary to continuously improve efforts to prevent and eradicate criminal acts in general and criminal acts of corruption in particular. In the midst of national development efforts in various fields, the aspirations of the community to eradicate corruption and other forms of deviation are increasing. The existence of corruption has caused great state losses and in turn can have an impact on the emergence of crises in various aspects of national life.[3]

Corruption is a form of crime that can be categorized as a national problem that must be faced seriously by implementing firm and correct steps, while involving all potentials in society, especially the government and law enforcement officers. Corruption is also categorized as an extraordinary crime because corruption is an act that is very detrimental to state and community finances, so that it can hinder the progress of national development.[4]

In Indonesia, corruption has become a culture and has become a system that is integrated with the implementation of state governance. This corruption has affected the entire system of government and society, corruption has also caused the destruction of the character of the Indonesian nation and has also

[1]Anirut Chuasanga and Ong Argo Victoria, Legal Principles Under Criminal Law in Indonesia and Thailand, Jurnal Daulat Hukum, 2 (1), March 2019, p 131
[2]Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, Jurnal Daulat Hukum: 3 (1), March 2020, p 180
[3]Moh. Yusril, Syachdin, Kamal, Implementation of Replacement Money in Corruption Crimes (Study of the Donggala District Attorney's Office), Toposantoro Journal of Legal Studies, 1 (2), 2024, p. 84
[4]Muh. Adenriz Yunus, Diana Lukitasri, Optimization of Criminal Execution of Replacement Money Through the Formation of a Special Work Unit (Case Study at the Surakarta District Attorney's Office), Recidive, 8 (3), September-December 2019, p 3.

caused Indonesia to be less advanced than other countries. In addition, corruption now no longer recognizes territorial boundaries. In other words, corruption has now become a cross-country phenomenon. Corruption itself even interacts with various forms of other cross-country organized crime.

Corruption always thrives in totalitarian, authoritarian, and dictatorial systems of a regime that divides its power among a handful of irresponsible people. Under totalitarian regimes, corruption is often directly related to human rights violations.[5] In this system, corruption can serve one "positive" function, namely the survival of the regime.[6]

In its implementation, the eradication of corruption is manifested in an agreement called "The OECD Anti-Corruption Treaty", and this organization does not only require its members to be bound by an agreement but also expands the agreement beyond the borders of a country, namely by organizing the Convention on the Eradication of Bribery of Foreign Public Officials in International Trade Transactions or "The Convention Combating Bribery of Foreign Public Officials in International Business Transactions" which was signed by 34 (thirty-four) countries in Paris on December 17, 1997.[7]

The Convention Parties have expressed their agreement to draft a special law as part of the national law called the "Foreign Corrupt Practices Act (FCPA)". The Global Anti-Corruption Conference in Washington DC held in February 1999 has expressed their determination and prepared steps to implement the eradication of corruption.

In various countries in the world, the patterns of handling corruption cases are carried out in various ways. One of them is by increasing the threat of punishment for perpetrators of corruption. Increasing the threat of punishment for perpetrators of corruption can basically be understood as an action of criminal politics, which according to G Peter Hoinagels can be done by:

1) criminal law application

2) prevention without punishment

3) influencing society's views on crime and punishment through mass media.[8]

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[5]Darwan Prints, Eradication of Criminal Acts of Corruption, First Edition, PT. Citra Aditya Bakti, Bandung, 2002, p. 9

[6]Robert Klitgaard, Eradicating Corruption, Second Edition, Yayasan Obor Indonesia, Jakarta, 2001, p. 49

[7]Sudhono Isahyudi, Eradication of Corruption in the Era of Regional Autonomy. Journal of Legal Media. 2 (11). September 2004. p 27

[8]G Peter Hofnagels, as quoted by Syafruddin, Criminal Compensation: Alternative Punishment in the Future in Dealing with Certain Crimes, 2002, p. 1.

For Indonesia, the criminal law approach as one of the instruments in combating corruption is still the main choice. This indicator can be seen in the strategy of imposing increasingly severe criminal sanctions in every change to the law governing corruption. The intention is clear that with an increasingly severe criminal law approach, it is hoped that perpetrators of corruption will be deterred, in addition to being expected that people who will commit corruption will be afraid to commit this crime.[9]

The legal issues that occur in the execution of substitute money in corruption crimes are not new issues, but these issues have occurred long before the enactment of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, even the execution of substitute money based on Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption still cannot be implemented until now, even though the payment of substitute money is one of the objectives to return state losses as much as has been corrupted by the convict.

One of the elements of criminal acts of corruption contained in Article 2 and Article 3 of the Republic of Indonesia Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is the existence of losses to the state or the state economy.[10]To replace the state losses lost due to corruption, one way is to provide additional punishment in the form of payment of replacement money. The goal is that corruptors are not only sentenced to prison, but must also return the state losses that have been corrupted. This effort produces results in the form of income to the state treasury from the results of payment of replacement money.

Replacement money in corruption cases has received less attention to be discussed, because so far in handling corruption cases, it tends to prioritize punishment of perpetrators of corruption rather than returning state losses. Basically, the implementation of the execution of the payment of replacement money is not much different from the implementation of executions against people or executions against goods in criminal cases in general, what distinguishes it is that there is a time limit for the convict to pay the replacement money after the verdict has permanent legal force and the requirement to hand

[9]Ismansyah, Implementation and Implementation of Criminal Substitute Money in Corruption Crimes, Democracy, VI (2), 2007, p. 44
[10]R Mukhlis. Shifting Position and Duties of Police Investigators with the Development of Offenses Outside the Criminal Code, Journal of Legal Studies: Faculty of Law, University of Riau, Edition III (1), January 2013, p. 18.

over his property to cover the payment of replacement money if the convict is unable to pay it.

In addition, the replacement money in corruption cases has received less attention to be discussed in writing, the problem is quite complicated, including the incomplete regulation of the procedures for corruption criminal courts in terms of returning corrupt state money. As is known, Law Number 20 of 2001 only makes a few provisions regarding special procedural law in eradicating corruption in addition to the procedural law regulated in the Criminal Procedure Code.

2. Research Methods

There are several ways or methods used by the author in compiling this thesis, previously it is necessary to know the meaning of "method" itself. Method is technique-techniques that are sufficiently generalized to be accepted or used equally within a discipline, practice, or field of disciplines and practices. In compiling this thesis must be preceded by a research or study, because with the existence of a study is expected to achieve the desired target. With the research method that will be used in the study, it provides a very precise description of the main points and very strict requirements, so that the research method can maintain that the knowledge obtained from the results of the study has high scientific value. Thus, this thesis can be accounted for its scientific values.

3. Results and Discussion

3.1. Legal Politics in Creating a Criminal Penalty System for Corruption in Indonesia

The development of world civilization seems to be running towards modernization every day. Developments that always bring changes in every aspect of life seem more real. Along with that, forms of crime also always follow the development of the times and transform into increasingly sophisticated and diverse forms. Crimes in the fields of technology and science always follow suit. Today's crimes are indeed no longer always using the old methods that have occurred for years along with the journey of the age of this earth. We can see examples such as cybercrime, money laundering, corruption and other crimes.

Then after the Second World War, a new era emerged, the turmoil of corruption increased in developing countries, countries that had just gained independence. This corruption problem is very dangerous because it can destroy social networks, which indirectly weakens national resilience and the existence of a nation. Reimon Aron, a sociologist, argues that corruption can invite revolutionary turmoil, a powerful tool to credit a nation. It is not impossible that

distribution will arise if the authorities do not immediately resolve the problem of corruption.[11]

Corruption is one of the crimes that falls into the category of extraordinary crime. Although legal experts generally tend to agree that corruption in Indonesia has become a pervasive problem and can be considered a type of extraordinary crime, there are different points of view. Some argue that corruption cannot be categorized as an extraordinary crime, because there are no explicit provisions in the Rome Statute, the United Nations Convention on the Prevention of Corruption, or the United Nations Convention on Transnational Organized Crime that expressly state that corruption is a form of extraordinary crime.[12]

As for general criminal law in the old Criminal Code product, corruption is included in the substance of the material legal product. In the Criminal Code, the articles on corruption are in Chapter VIII Crimes Against Public Authorities, and Chapter XXV Acts. The regulations are as follows:

1) Article 209 Paragraph (1) Whoever gives or promises something to an official with the intention of moving him to do or not do something in his position that is contrary to his obligations; Paragraph (2) whoever gives something to an official because of or in connection with something that is contrary to obligations, done or not done in his position. Shall be subject to a maximum prison sentence of two years and eight months or a maximum fine of four thousand five hundred rupiah.

2) Article 210 Paragraph (1) Any person who gives or promises something to a judge with the intention of influencing the decision regarding a case submitted to him for trial; Any person who gives or promises something to a person who according to the provisions of the law is determined to be an advisor or advisor to attend a trial or court, with the intention of influencing the advice or opinion that will be given in connection with a case submitted to the court for trial. Paragraph (2) If a gift or promise is made with the intention that in a criminal case a sentence will be imposed. It is punishable by a maximum imprisonment of seven years.

3) Article 387 Paragraph (1) A contractor or building expert or seller of building materials who, when constructing a building or when delivering building materials, commits a fraudulent act which could endanger the safety of people or goods, or the safety of the state in a state of war, shall be subject to a maximum prison sentence of seven years. Paragraph (2) Any person who is

[11]B. Simanjuntak, Introduction to Criminology and Social Pathology, Bandung: Tarsino, 1981, p. 310.
[12]V. Prahassacita, The Concept of Extraordinary Crime in Indonesia Legal System: Is The Concept An Effective Criminal Policy?, Humanities Journal, 7, 2016, p 519

tasked with supervising the construction or delivery of said goods, and who intentionally allows said fraudulent act to occur shall be subject to the same sentence.

4) Article 388 Paragraph (1) Anyone who, when handing over goods needed by the Navy or Army, commits a fraudulent act that could endanger the country's chances in a state of war, is threatened with a maximum prison sentence of seven years. Paragraph (2) Anyone who is tasked with supervising the handover of the goods and intentionally allows the fraudulent act to occur is threatened with the same sentence.

5) Article 418 An official who accepts a gift or promise when he knows or should have suspected that the gift or promise was given because of the power or authority related to his position, or which in the mind of the person giving the gift or promise is related to his position, is threatened with a maximum prison sentence of six years or a maximum fine of four thousand five hundred rupiah.

6) Article 419 A maximum prison sentence of five years is imposed on an official: (1) who receives a gift or promise knowing that the gift or promise was given to encourage him to do or not do something in his position that is contrary to his obligations; (2) who receives the gift knowing that the gift was given as a result of or because the recipient had done or not done something in his position that was contrary to his obligations.

7) Article 420 The following shall be punished by a maximum of nine years' imprisonment: 1. a judge who accepts a gift or promise, even though it is known that the gift or promise was given to influence the decision of a case that is his/her duty; 2. anyone who, according to the provisions of the law, is appointed as an advisor to attend a court hearing, accepts a gift or promise, even though it is known that the gift or promise was given to influence advice on a case that must be decided by the court.[13]

From time to time, the development of law in Indonesia is currently quite significant, along with the development of social society that continues to be dynamic. Various problems faced by the State of Indonesia require the law to continue to move forward as a social controller and become the vanguard in creating an orderly, advanced and prosperous society. One of these legal developments is the enactment of Law No. 1 of 2023 concerning the Criminal Code.[14]One of the interesting points to be studied and researched is the inclusion of regulations on criminal acts of corruption in the new Criminal Code,

[13]Anita Zulfiani, et al. Regulation of Corruption Crimes Before and After the Enactment of Law Number 1 of 2023 concerning the Criminal Code, in an Effort to Reduce Corruption Rates in the Private Sector, Unes Law Review, 5 (4) June 2023, p. 4310
[14]Dhani I Ihza Erawan, Aminuddin Ilmar, & Hijrah Adhyanti Mirzana, Dishonorable Dismissal of State Civil Apparatus in Corruption Cases. Gorontalo Law Review, 7(1) 2024, p 156

where the criminal act of corruption has actually been regulated based on Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

The regulation of corruption crimes is included in the New Criminal Code, namely Law Number 1 of 2023, which will officially be enforced three years later since its ratification. This, in addition to aiming to realize the codification of criminal law in Indonesia to replace the old Criminal Code that has been in effect since the Dutch colonial era, is also a response and actualization of Law No. 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025, which provides an understanding that legal development is part of the overall development process of the Indonesian nation, which is gradually intended to increase the productivity and prosperity of the population in the life of the nation and state.[15]

The birth of various laws regulating the eradication of corruption is influenced by the political conditions when each law was born. As has been revealed, political configuration greatly influences the birth of legal products. The function and role of law are greatly influenced and often intervened by political power. In Indonesia, political configuration develops through the push and pull between democracy and authoritarianism, while the character of legal products follows it in the push and pull between responsiveness and conservativeness. Meanwhile, to build orderly legal systems and minimize political influence, "judicial review" can actually be used as a good control tool.[16]

In reality, law is born as a reflection of the political configuration that underlies it. The sentences in the legal rules are nothing other than the crystallization of competing political wills. In reality, it is seen that politics greatly determines the operation of law. Satjipto Rahardjo stated that if we look at the relationship between legal subsystems, it appears that politics has a greater concentration of energy so that law is always in a weak position. In addition, law is the embodiment of public policy that is influenced by political issues, and the conditions of political change greatly influence public policy actions and law is a political product that views law as a formalization or crystallization of political wills that interact and compete with each other.

Related to the relationship between political configuration and corruption eradication, it can be sought regarding the character of the government that occurred during that period. Many officials were arrested on charges of corrupt practices, although there were also quite a few law enforcement officers involved in practices that placed Indonesia in the ranks of one of the most

[15]Vishnu Nanda Hutama & Dewi Gunawati. Implementation of the Confiscation and Auction of Convicted Assets in the Jiwasraya Corruption Case to Recover State Losses. International Journal of Multicultural and Multireligious Understanding, 11(5) March 2024, p 470.
[16]Indri Astuti, Op.Cit, 41 (2) 2014, p 178

corrupt countries in the world. The success of corruption eradication is largely determined by the presence or absence of political support from the authorities. Political support can be realized in various forms of policies, all of which lead to space, conditions, and situations that support the corruption eradication program to work more effectively. On the other hand, the presence of political support from the authorities can encourage public participation to jointly eradicate corruption.

The effectiveness of changes in the regulation of corruption crimes will depend heavily on strong and impartial law enforcement. Enforcement of efforts to eradicate corruption crimes includes investigations, inquiries, prosecutions, and court processes against perpetrators of corruption. Good coordination is needed between law enforcement agencies, such as the police, prosecutors, and courts, so that this process runs smoothly and fairly. In addition, it is also important to prevent political interference or intervention that can disrupt the law enforcement process. By maintaining the independence and integrity of law enforcement agencies, efforts to eradicate corruption crimes can be carried out more effectively.

3.2. Legal Substantive Matters Regarding the Mechanism for Executing Court Decisions in the Form of Replacement Money for Corruption Convicts

Criminal law provides concrete and very rigid limitations on what is meant by an unlawful act, because it is bound by the principle of "nullum delictum nuela puena sine pravia legi punalli", namely that an act cannot be punished unless it has been regulated in positive law.[17]The existence of the words "harming the state economy" provides an expanded meaning to the definition of corruption. It can be interpreted that the act of corruption must have an impact on the state economy which in the narrow sense can be considered as the state losing money equal to the corruption, but in the broad sense it can be interpreted as state losses in the form of delays in a project, hampering national economic development and so on, not just the state losing money. This means that the act can cause losses in any form to the state, be it material or formal losses.

Therefore, it is actually still not strong enough if corruption is only interpreted as an unlawful act that enriches oneself and one's group and causes losses to the country's economy. State losses in this case must be expanded in meaning so that it is not only economic losses but also other losses, including loss of time and the government's clean image in the eyes of the public. In fact, the essence of "corruption" is "bad deeds".

When viewed from the philosophy of materialism, the act of abusing authority or position with the intention of benefiting oneself or others is clearly detrimental

[17]Rizki Yudha Bramantyo, Legal Philosophy Perspective on Criminal Acts of Corruption, Morality: Journal of Legal Studies, 6 (1) June 2020, p. 78

to the state, the loss in this case is not necessarily from an economic perspective but also from the development of the state and also the acceleration of development. The state is also harmed by the betrayal of the mandate of the law that has been entrusted to the person.[18]

In its development, the prospect of eradicating corruption in Indonesia began to find its spirit again after the fall of the New Order regime in 1998. The strong demands of the community for the government to seriously combat corruption were responded to by the government through various policies. One of them was by issuing a new anti-corruption law, namely Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.

The characteristic of a special criminal law is that there are always certain deviations from general criminal law. Likewise, regarding the criminal punishment system for corruption which has deviated from the general principles in the criminal system according to the Criminal Code. The things that deviate from the general criminal system are regarding the form and system of sentencing. Article 10 of the Criminal Code emphasizes that criminal penalties are divided into 2 (two), namely principal penalties and additional penalties: principal penalties consist of (1) the death penalty, (2) imprisonment, (3) imprisonment (4) fines; while additional penalties consist of (1) revocation of certain rights, (2) confiscation of certain goods, and (3) announcement of the judge's decision.[19]The forms of criminal penalties contained in the articles of Law Number 31 of 1999 as amended by Law Number 20 of 2001 and which have deviated from the general principles in the criminal system according to the Criminal Code are threatened if a criminal act as referred to occurs, namely the provisions regarding the shortest prison sentence and the minimum fine (special minimum).

Looking at the provisions of Article 18 paragraph (1) letter b of Law Number 31 of 1999 which was amended by Law Number 20 of 2001, it states that in addition to additional penalties as regulated in the Criminal Code, additional penalties that can be imposed are payment of replacement money in an amount that is at most equal to the assets obtained from the criminal act of corruption.[20], then additional penalties as an exception or as a deviation are in the form of payment of replacement money and closure of all or part of the company for a maximum period of 1 (one) year.

[18]Ibid, p 79
[19]Adami Chazawi, Criminal Law Lessons, Part 1, Criminal System, Theories of Punishment and Limits of the Applicability of Criminal Law, PT Raja Grafindo, Jakarta, 2005, p. 350
[20]Daniel Hasianto Hendarto, et al. Analysis of the Application of Article 3 Juncto Article 18 Paragraph (1) Letter B of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in the Karen Agustiawan Corruption Case (Case Study of Decision No.15 K/Pid.Sus-TPK/2019/PN.Jkt.Pst), Recidive, 10 (2) May-August 2021, p. 126

In enforcing the law against perpetrators of corruption, the position of the criminal justice subsystem has a significant and urgent role in a judicial process, where the final result of the judicial process is a court decision or often called a judge's decision, because the judge is the one who leads the trial in that court.[21]Judges in deciding criminal corruption cases certainly have considerations from a legal, sociological, psychological, as well as internal and external factors that exist in the judge, so that every decision that is handed down can be accounted for both legally, morally, religiously and to the community. From this, legal certainty and legal authority in society will be created.

Ideal law enforcement is basically a goal to be achieved. This has the consequence that in law enforcement all rights and obligations are implemented and fulfilled in addition to achieving the goals and processes of law enforcement, both long-term and contextual goals. Law enforcement is the enforcement of policies with a staged process, which includes:

1) The stage of determining criminal penalties by lawmakers. In determining legislative policies, it is the initial step in overcoming crime, which functionally can be seen as part of the planning and mechanism for overcoming crime. The stage of determining criminal penalties is often referred to as the imposition of criminal penalties in abstracto. The stage of determining criminal acts is the stage of formulating a law enforcement policy which is essentially for the welfare of society, because the ultimate goal of a formulation is so that the provisions that have been determined can apply in the life of society and find order in the life of society. This is a consequence of the determination of criminalization policies as part of the planning for overcoming achieving public welfare. This stage is a legislative policy (formulative), is the most strategic stage of the entire process of operationalization/functionalization and concretization (law) of criminal law.

2) The stage of implementing criminal law by the authorized body, which can also be called the judicial policy stage starting from the police to the courts through investigation, inquiry, prosecution, trial examination to the judge's decision.

3) The stage of implementing the criminal sentence or what is known as execution, which is the implementation of criminal law by criminal enforcement officers, this stage is also known as the executive or administrative policy stage, namely the imposition of punishment in concreto.[22]

Law enforcement will always involve humans in it and thus will involve human behavior. The law cannot be upheld by itself, meaning that it is not capable of

[21]Satjipto Raharjo, Legal Studies, PT Citra Aditya Bakti, Bandung, 2000, p. 182
[22]Mungki Hadipratikto, Execution of Criminal Decisions on Replacement Money in Corruption Cases, PSMH Untan Journal, 8 (2) 2012, p. 5

realizing the promises and desires contained in the legal regulations by itself.[23]This kind of opinion is in line with what was put forward by Satjipto Raharjo who stated that "law enforcement is an effort to realize ideas into reality, the process of realizing these ideas is the essence of law enforcement."[24]

This will be clearly seen in the judge's decision. In the court's decision (judge) only contains or includes abstract matters (in abstracto) even though the decision contains a criminal sentence, but the judge's decision process is bound by the procedures regulated by law.[25]The only judge's decision that can be legally executed is a judge's decision that contains a criminal sentence.[26]This type of judge's decision is a decision that imposes a criminal penalty on the defendant because the act charged has been proven.[27]existence.

The process of resolving criminal cases is considered and assessed as successful in law enforcement if the execution of the judge's decision that has permanent legal force is carried out by the Prosecutor properly in accordance with the provisions of applicable laws. The implementation of court decisions must be distinguished from the implementation of court decisions. The implementation of court decisions or execution in Law Number 8 of 1981 concerning Criminal Procedure Law or also referred to as the Criminal Procedure Code (hereinafter abbreviated as the Criminal Procedure Code) is regulated in Chapter XIX from Articles 270 to 276. The implementation of court decisions (vonnis) that have obtained permanent legal force according to Article 270 of the Criminal Procedure Code is submitted to the Prosecutor, while the implementation of the judge's decision (beschikking) according to Article 14 of the Criminal Procedure Code is submitted to the Prosecutor who serves as the Public Prosecutor in the trial of the criminal case in question.[28]The existence of a judge's decision containing a criminal sentence becomes the obligation of the Public Prosecutor to implement it (especially in decisions that have obtained permanent legal force or inkracht van gewijsde).

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[23]Satjipto Raharjo, Problems of Law Enforcement (A Sociological Review), Bandung, Sinar Baru Publisher, 1983, p. 11
[24]Ibid, p. 15
[25]Article 1 number 11 of the Criminal Procedure Code states that: A court decision is a judge's statement made in an open court session, which may be in the form of a criminal sentence or acquittal or release from all legal charges in the case and according to the method regulated in this law.
[26]Article 193 Paragraph (3) of the Criminal Procedure Code states "If the court is of the opinion that the defendant is guilty of committing the crime with which he is accused, the court shall impose a sentence."
[27]Article 183 of the Criminal Procedure Code states that "a judge may not impose a sentence on a defendant unless, with at least two valid pieces of evidence, he is convinced that a crime has actually occurred and that the defendant is guilty of committing it."
[28]Suryono Sutarto, Op.Cit, 2008, p. 128,

Implicitly in the discussion of the implementation of the execution of the judge's decision with the crime of corruption where the handling of the crime of corruption using criminal law instruments, is not only done by adding parties who are charged with the corruption law, but those who are charged with the corruption law are also given maximum sanctions. This maximum criminal sanction is not only intended in the form of imposing a longer sentence but can also be done by providing variations in other types of criminal sanctions, in the form of additional penalties.[29]

The criminal penalty of paying compensation is a consequence of the consequences of corruption that can harm state finances or the state economy, so that to restore the loss, legal means are needed, namely in the form of paying compensation. Compensation is a form of additional punishment (criminal) in corruption cases. In essence, both legally and doctrinally, judges are not required to always impose additional penalties. However, specifically for corruption cases, this needs to be considered. This is because corruption is an act that is contrary to the law that is detrimental or can harm state finances.

In this case, the state loss must be recovered. One way that can be used to recover the state loss is to require the defendant who is proven and convincing to have committed a criminal act of corruption to return the proceeds of his corruption to the state in the form of replacement money. Therefore, even though replacement money is only an additional punishment, it is very unwise to allow the defendant not to pay replacement money as a way to recover the state loss.

Defendants in corruption cases who have been proven and convincingly convicted of committing a criminal act of corruption are free from the obligation to pay compensation if the compensation can be compensated with the defendant's assets that have been declared confiscated for the state or the defendant did not enjoy the money at all, or there has been another defendant who has been sentenced to pay compensation, or the state's losses can still be collected from other parties.

The amount of replacement money is the state loss that is actually enjoyed or enriches the defendant or due to certain causalities, so that the defendant is responsible for all state losses. In connection with the sentence "may be subject to additional punishment" in Article 17, the imposition of additional punishment in corruption cases is optional, meaning that the judge does not always have to impose an additional punishment for every defendant being tried, but rather it is

[29]Yudi Kristina, Eradication of Criminal Acts of Corruption: A Progressive Legal Perspective, Yogyakarta: Thafa Media, 2016, p. 59

up to his consideration whether in addition to imposing the main punishment, the judge also intends to impose an additional punishment or not.[30]

The law places special emphasis on the amount of compensation, namely that it must be as much as possible equal to the assets obtained from the criminal act of corruption (Article 18 paragraph (1) letter b of Law Number 31 of 1999). Legally, this must be interpreted as the loss that can be charged to the convict is the loss to the State which is real and definite in amount as a result of unlawful acts, whether intentional or negligent, committed by the convict.

Therefore, it is necessary to have evidence, including expert testimony (as regulated in Article 184 paragraph (1) letter b of the Criminal Procedure Code) which can determine and prove the actual amount of assets obtained by the convict from the criminal act of corruption that he/she committed. This needs to be done because the determination of additional punishment in the form of payment of replacement money is only limited to the maximum amount equal to the assets obtained by the convict from the proceeds of the criminal act of corruption.

The quality of law enforcement officers, in this case the prosecutor, in revealing and tracing the assets of convicts which are the result of criminal acts of corruption, this is a determining factor in the success of implementing the criminal verdict of payment of replacement money, because the quality of the prosecutor in handling corruption cases can be seen from whether or not they are complete in executing, in this case regarding payment of replacement money.

The success of the execution of the criminal penalty of substitute money in the court decision of corruption crimes and the success of optimizing the form of return of state financial losses due to corruption crimes as a representation of the success of the law. In the theory of the working of the law, based on the concept of Lundberg and Lansing, and the concept of Hans Kelsen, Robert B. Seidman and William J. Chambliss compiled a Concept of the Working of Law in Society. The success of the implementation of a regulation is very dependent on many factors. In general, the working of law in society will be determined by several main factors. These factors include all components of the legal system, namely substantial factors, structural factors and cultural factors.

3.3. Legal Problems in the Implementation of the Execution of Replacement Money as Additional Punishment for Corruption Convicts

The fundamental objective of the policy of determining substitute monetary penalties in corruption cases cannot be separated from the objective of saving state losses, which in the long term is closely related to the objective of criminal

[30]PAF Lamintang, Basics of Indonesian Criminal Law, Sinar Baru, Bandung, 2011, p. 84

politics in its overall sense, namely protecting society to achieve prosperity. Unfortunately, as an effective method, the determination of substitute monetary penalties is not conceptualized and actualized in a compatible manner, resulting in various problems. One of them is the determination of the amount of substitute monetary penalties that must be paid by the perpetrators of corruption to the state to cover the losses due to the acts of corruption they have committed.

Viewed as a process, the mechanism of criminal law enforcement can be expressed as a misinterpretation in the mechanism of criminal law enforcement. This means that the determination of a substitute monetary penalty is nothing other than an unplanned policy process. Meanwhile, if we look at the requirements for imposing a penalty in order to run well, it must be done with various plans and through several stages, namely:

1) The stage of determining criminal penalties by law makers.

2) The stage of imposing punishment by the authorized body, and

3) The stage of implementing criminal penalties by the authorized implementing agency.[31]

The parameters of the unplanned determination of substitute money as a form of punishment mechanism can be seen from the minimal regulation of the issue of substitute money in the existing anti-corruption law. Law No. 3 of 1971, practically only regulates substitute money in one article, namely Article 34 letter c. The same condition is also reflected in the replacement law, Law No. 31 of 1999 and its amendment Law No. 20 of 2001.

The lack of regulation regarding replacement money ultimately raises a number of problems in its implementation. One of them is in determining the amount of replacement money that can be imposed on the accused. The formulation of Article 34 letter c of Law No. 3/1971 only stipulates that the amount of replacement money is as much as possible equal to the assets obtained from corruption. The exact same formulation is also found in Article 18 of Law No. 31/1999. From this "very" simple formulation, it can be interpreted that the amount of replacement money can be calculated based on the value of the accused's assets obtained from the corruption charged.

In legal interpretation to determine the amount of replacement money, first the judge must carefully sort out which part of the defendant's total assets comes from the corruption he committed and which does not. After sorting, the judge can then calculate how much replacement money will be charged. In its

[31]Muladi and Barda Nawawi Arief, Criminal Theories and Policies, Bandung: Alumni, 1998, p. 91

actualization, with this concept the judge will definitely have difficulty in determining the amount of replacement money.

First, judges will have difficulty sorting out which assets are from corruption and which are not. In this sophisticated era, it is very easy for corruptors to metamorphose their corrupt assets (asset tracing) through financial transaction and banking services.[32]In addition, to do this clearly requires special expertise as well as complete data and information. Not to mention rationalizing the time which is certainly not short, especially if the assets to be calculated are abroad so that it requires diplomatic bureaucracy which is certainly very complicated and time-consuming.

Second, calculating the amount of compensation will be difficult if the defendant's assets to be assessed have been converted into assets that by their nature have a fluctuating value, such as property assets, jewelry, shares and so on.

Third, there has not been a common perception and integrated coordination among existing law enforcement officers in an effort to prevent and handle corruption crimes. As a result, in several cases there has been a deadlock in communication and misperception among existing law enforcers, resulting in phenomenal precedents that could have a negative impact on the climate of corruption eradication.

The problems in supporting efforts to execute substitute money are efforts. Confiscation according to the provisions of Article 1 point 16 of the Criminal Procedure Code abbreviated as KUHAP is a series of actions by investigators to take over and/or store under their control movable or immovable, tangible or intangible objects for the purpose of evidence. Asset confiscation is an anticipatory step aimed at preventing the replacement of assets from convicted corruption.[33]

Based on the researcher's observations, often in Corruption case files, investigators do not optimally search for assets owned by the suspect as the result of the crime to be confiscated and combined in the case file so that later the Panel of Judges can determine the confiscated objects as compensation for state financial losses to be auctioned off publicly.

Even though there are other instruments after the court decision has become final, the convict's assets can be confiscated and auctioned as stated in Article 18

[32]Josua Nainggolan, Atma Suganda & Agung Makbul, Law Enforcement Efforts Against Corruption Convicts as an Effort to Recover State Losses, Journal of Legal Research: Legality, 15 (1) January 2021, p. 22

[33]Mariana, et al. Asset Confiscation as an Effort to Recover Assets (Asset Recovery) in the Framework of Recovering State Financial Losses. JIIP - Scientific Journal of Educational Sciences, 5 (8) August 2022, p 2928

paragraph (2) of the Corruption Law to cover state losses incurred within a period of 1 (one) month, the fact is that when the execution is carried out, the convict prefers the option of carrying out the subsidiary sentence only for various reasons because carrying out the subsidiary sentence with a substitute sentence is considered lighter than having to sacrifice his assets to be confiscated and auctioned, therefore the middle way chosen is that the Panel of Judges should increase the substitute sentence to provide a deterrent effect for perpetrators who embezzle state funds.

Many legal positivism thinkers, one of whom is HLA Hart, say that law must be concrete, so there must be a party who writes it. The definition of "who writes it" refers to the understanding that law must be issued by a person (subject) who does have the authority to issue and write it. This authority is the state. State authority is indicated by the existence of state attributes, in the form of state sovereignty. Based on its sovereignty, internally the state has the authority to issue and enforce what is called positive law. Furthermore, HLA Hart said: (1) law (which has been concretized in the form of positive law) must contain commands; (2) there does not always have to be a connection between law and morals and is distinguished from law that should be created (there is no necessary connection between law and morals or law as it ought so be).[34]

4. Conclusion

The results of legal policy on handling corruption crimes in Indonesia, namely in the form of legal products, laws on corruption crimes have been amended 4 times, namely Law Number 24 of 1960 concerning the Eradication of Corruption Crimes, Law Number 3 of 1971 concerning the Eradication of Corruption Crimes, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The Corruption Crime Law (Tipikor) was initially considered a formal law, but with the decision of the Constitutional Court (MK), it is now categorized as a material law. This shift has implications for the understanding of the elements of criminal acts in corruption, especially related to state losses. This Constitutional Court decision has an impact on corruption cases that are in the legal process, especially those that are still in the formal criminal stage before having permanent legal force. This shift also encourages the approach of administrative legal procedures in the prosecution of Corruption, with a focus on the recovery of state financial losses through PTUN lawsuits. The Corruption Law is now considered a material law because the element of state loss must be proven with certainty and real. This shift changes the understanding of the elements of criminal acts of corruption and has an impact on the handling of corruption cases.

[34]Teguh Prasetyo and Abdul Hakim Barkatullah, Op.Cit, 2007, pp. 97-99.

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