

## **Criminal Sanctions Policy on Replacement of Money in Corruption Criminal Acts as an Effort to Recover State Losses**

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**Abstract.** *The imposition of a monetary penalty is one way to restore the state's financial condition to its original state and provide direct deterrence to those who have committed corruption crimes. The purpose of this study is to determine and analyze the implementation of the monetary penalty policy in corruption crimes in Indonesia, to identify and analyze the obstacles and solutions in the monetary penalty in corruption crimes as an effort to recover state losses. This legal research uses an empirical legal research approach. Empirical juridical research, namely legal research using legal principles and principles in reviewing, observing, and analyzing problems, in research, in addition to reviewing the implementation of the law in practice. The application of additional monetary penalties as an instrument for recovering corruption assets is based on Article 17 in conjunction with Article 18 of Law 31/1999 in conjunction with Law 20/2001, but its facultative nature makes its imposition still dependent on the discretion of the judge. This condition causes the amount of monetary penalties to often be smaller than state losses, so it does not optimally recover assets and does not have a deterrent effect. Another obstacle arises from Article 18 paragraph (3) which provides loopholes for convicts to not pay replacement money, exacerbated by the existence of subsidiary provisions that actually allow perpetrators to choose to undergo corporal punishment. In addition, there are no standard rules regarding the execution mechanism if the convict is unable to pay part or all of the replacement money. The absence of provisions regarding the conversion of partial payment of replacement money to reduce the subsidiary sentence also creates uncertainty. Solutions taken include confiscation of assets through rule breaking, imposition of replacement money sentences without subsidies through a contra legem approach, and the preparation of sentencing guidelines for subsidiary sentences of replacement money.*

**Keywords:** *Corruption; Criminal; Money; Replacement.*

## **1. Introduction**

The widespread criminal act of corruption has not only harmed state finances but also violated the social and economic rights of the wider community. Therefore, corruption must be classified as a crime that requires extraordinary measures to eradicate. Corruption in Indonesia has become like a flu virus that has spread throughout the government, so that since the 1960s, efforts to eradicate it have been hampered until today.

The term corruption comes from the Latin word *Corruption* or *Corruptus*, meaning bad, depraved, deviant from purity, insulting, or slanderous. According to the General Indonesian Dictionary, corruption is defined as fraudulent, bribery-prone, and immoral behavior. The Legal Dictionary defines corruption as a criminal act that involves enriching oneself, directly or indirectly, to the detriment of state finances.<sup>1</sup> According to the Legal Dictionary, there are two phrases "enriching oneself" and "harming state finances" which are also included in the elements of Article 2 Paragraph (1) of the Corruption Eradication Law which states that every person who unlawfully carries out an act of "enriching oneself" himself or another person or a corporation which can "harm state finances" or the state economy.

According to Prof. Romli Atmasasmita, in Indonesia corruption is a collaboration between actors in the public and private sectors.<sup>2</sup> This situation is further complicated and almost a decision when we also see law enforcement officers from upstream to downstream involved in corruption networks that should be made enemies of law enforcement or targets of law enforcement itself. The deadline for payment of replacement money is a maximum of 1 (one) month, and if they do not pay within that period, their assets will be confiscated by the prosecutor and then auctioned to cover the replacement money. The instrument for imposing replacement money on corruption perpetrators has been clearly regulated in Article 18 paragraph (1) of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

The criminal provisions for the payment of replacement money were then further strengthened with the issuance of Supreme Court Regulation (PERMA) Number 5 of 2014 concerning Additional Criminal Punishment in Corruption Crimes (hereinafter referred to as the Perma on Replacement Money). The Perma on Replacement Money issued by the Supreme Court regulates the parameters for calculating the amount of replacement money; the intersection between the additional penalty of confiscation of goods and replacement money; the

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<sup>1</sup>Simorangkir, Rudy T Erwin, Prasetyo, Legal Dictionary, Jakarta, Sinar Grafika, 2007, p. 85.

<sup>2</sup>Romli Atmasasmita, 2004, Around the Problem of Corruption, National and International Aspects, Mandar Maju, Bandung, p. 1

procedures for executing replacement money, confiscation, auction and the implementation of replacement prison.

Chapter 1 of the Supreme Court Regulation on Replacement Money regarding the basis for determining replacement money, Article 1 explains that "In determining the amount of replacement money payment in corruption crimes, it is as much as possible equal to the assets obtained from the corruption crime and not merely the amount of state financial losses resulting."<sup>3</sup>This means that the Supreme Court Regulation on Replacement Money confirms the view that the parameters for imposing replacement money are based on assets obtained from the proceeds of corruption. Therefore, the understanding (view) that the parameter for calculating replacement money is based on the magnitude of state losses is no longer applicable in law enforcement against corruption.

However, the Supreme Court Regulation on Replacement Money also allows for an exception to the parameters for imposing replacement money. The parameters related to the basis for imposing replacement money, which are based on the assets obtained by the defendant from the proceeds of corruption, can be deviated from if the assets obtained from the corruption are not enjoyed by the defendant but have been transferred to another party, who is not prosecuted.<sup>4</sup>

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in Article 18 paragraph (1) letter b regulates the payment of replacement money in an amount that is at most equal to the assets obtained from criminal acts of corruption. This article is a form of additional punishment that can be imposed on corruption defendants. The main punishment accompanied by the additional punishment is specifically in Article 2 and Article 3 of the Corruption Law, which in its elements of the crime mentions causing losses to state finances or the state economy.<sup>5</sup>

Throughout 2024, ICW uncovered 364 corruption cases with 888 suspects. Estimated state financial losses reached Rp279.9 trillion, a figure significantly influenced by the Tin Commodity Trading Corruption Case within PT Timah Tbk, contributing 96.8 percent of the total losses. Ironically, amidst such a dramatic escalation in state losses, the application of the Money Laundering Article and

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<sup>3</sup>Sipayung, Baren, Insan Tajali Nur, and Mahendra Putra Kurnia. "Dualism of Authority in Determining State Losses by the BPK and Determining Replacement Money by the Judicial Body in the Settlement of State/Regional Losses Carried Out by the Treasurer." *JlIP-Jurnal Ilmiah Ilmu Pendidikan* 7, no. 5 (2024): pp. 4648-4656.

<sup>4</sup>Umara, Nanda Sahputra, and Bagus Pujo Priambodo. "Imposition of Compensation by Defendants on Assets Proceeding from Criminal Acts of Corruption in the Control of Third Parties That Cannot Be Confiscated." *Journal of Social and Economics Research* 6, no. 2 (2024): pp. 416-435.

<sup>5</sup>Hidayat, Yudhi Taufiq Nur, and Andri Winjaya Laksana. "Juridical Review of Additional Criminal Compensation in Corruption Crimes as an Effort to Recover State Financial Losses." *Sultan Agung Scientific Journal* 4, no. 3: pp. 393-405.

Article 18 of the Corruption Eradication Law has not been the primary instrument for recovering assets obtained from corruption.<sup>6</sup>

A closer look at the distribution of corruption cases in 2024 reveals a high vulnerability in sectors directly related to the community's basic needs. The village sector ranked highest with 77 cases and 108 suspects, followed by the utilities sector with 57 cases and 198 suspects, the health sector with 39 cases and 104 suspects, and the education sector with 25 cases and 64 suspects. In terms of actors, the dominant perpetrators were local government employees with 261 suspects, the private sector with 256 suspects, and village heads with 73 suspects. It is noted that private sector involvement contributed the greatest to state losses.<sup>7</sup>

Due to the losses suffered by the country where we see the country as a victim,<sup>8</sup> making this special crime have its own characteristics, namely the recognition of additional punishment in the form of replacement money, which previously in Article 10 of the Criminal Code (Criminal Code) the types of punishment included: Main Punishment, Death Penalty, Imprisonment, Detention, Fines, while Additional Punishment is Revocation of certain rights, Confiscation of certain goods and Announcement of the judge's decision.

This additional form of punishment, which differs from the provisions of the Criminal Code, has existed since the birth of the old Corruption Crime Law (Law Number 3 of 1971) and this provision still exists in the Law on the Eradication of Corruption Crimes currently in effect. The provision of compensatory monetary punishment is important because the state financial losses caused by the actions of perpetrators of corruption must be returned or replaced, in order to recover the losses experienced by the state as a victim of corrupt actions.<sup>9</sup>

With the enactment of the new Indonesian Criminal Code with Law No. 1 of 2023, the regulation on imposing replacement money has not shifted at all, remaining in the group of additional penalties except for the death penalty, which was previously included in the group of main penalties, becoming a special penalty because it is threatened as an alternative.<sup>10</sup> According to the provisions of Article 18 paragraph (1) sub. b UUTPK, the parameters in determining the payment of replacement money are the amount that is as much as possible equal to the assets

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<sup>6</sup>Zararah Azhim Syah, Report on the Results of Monitoring Corruption Trends in 2024, Legal and Investigation Division, Indonesia Corruption Watch, August 2025

<sup>7</sup>Ibid

<sup>8</sup>Ahadi, Nugroho, Ali Masyhar Mursyid, and Cahya Wulandari. "Restitution in sexual violence crimes in Indonesia viewed from a utilitarian perspective." *Journal of Legal Essence* 5, no. 2 (2023): pp. 57-69.

<sup>9</sup>Yustrisia, Lola. "A Legal Analysis of the Criminal Procedure of Compensation Payment in Corruption Crimes." *El-Faqih: Journal of Islamic Thought and Law* 10, no. 2 (2024): pp. 388-399.

<sup>10</sup>Ghozali, Elizabeth. "Policy of Returning State Financial Losses Due to Corruption Crimes Through Payment of Replacement Money." *Justice Law Journal* (2024): pp. 153-162.

obtained from the criminal act of corruption. The characteristic of the concept of criminal replacement money in UUTPK is that the assets obtained from the criminal act of corruption must be handed over to the state. Thus, is the imposition of replacement money identical to state financial losses? If what is obtained is the same as the value of the corruption then the answer is identical, but there are times when the value of the state's loss is not the same as that obtained by the perpetrator of the criminal act of corruption then the answer is not identical, thus from the narrative it can be concluded that what is meant by replacement money is money paid by the defendant in the amount of assets obtained from the criminal act of corruption. The purpose of the payment of replacement money in corruption cases is to cover the state financial losses that have been caused by the perpetrator.<sup>11</sup>

The imposition of additional penalties is one way to restore the state's financial condition to its original state and provide direct deterrence for those who commit corruption. The deterrent effect of punishment is generally applied in two ways: on the individual perpetrator and on the general deterrent effect.<sup>12</sup>

Example of Decision Number 75/Pid.Sus/2021/PN Skh. The Sukoharjo District Court which tried the criminal case with the regular examination procedure at the first instance court, has issued the following decision in the case of Defendant AS, therefore sentencing the Defendant to a prison sentence of 2 (two) years and a fine of Rp1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid it will be replaced with a prison sentence of 4 (four) months; Imposing a replacement monetary penalty on the Defendant in the amount of Rp40,000,000.00 (forty million rupiah) as a form of state financial recovery, with the provision that if the replacement monetary penalty is not paid it will be replaced with a prison sentence of 4 (four) months.

The substitute for monetary punishment in the form of additional imprisonment imposed on the defendant due to the defendant's inability to return state funds is analyzed in terms of its proportionality between the sentence imposed and the amount of state funds obtained by the defendant. The imprisonment sentence as a substitute for monetary punishment does not contain a consistent measure between one case and another, so that wide disparities have the potential to occur and create the potential for convicts to choose additional imprisonment rather than return the corrupted state funds.<sup>13</sup>

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<sup>11</sup>Aisyah, Siti, and Atikah Rahmi. "Analysis of the Imposition of Compensation in Corruption Crimes." *Unes Law Review* 6, no. 2 (2023): pp. 7558-7565.

<sup>12</sup>Christopher Harding, Richard W. Ireland, *Punishment Rhetoric, Rule, and Practice*, First Published, Routledge, New York USA, p. 118

<sup>13</sup>Sine, Jeremy Alexander, Orpa Ganefo Manuain, and Rosalind Angel Fanggi. "Implementation of Additional Criminal Sanctions in the Form of Compensation in the Corruption Case of the Former

## 2. Research methods

This legal research uses an empirical legal research approach. Empirical legal research, that is, legal research that uses legal principles and principles to review, observe, and analyze problems in the research, as well as reviewing the implementation of the law in practice.<sup>14</sup> The empirical research method combines doctrinal and empirical legal research methods. Therefore, the researcher conducted document studies accompanied by field studies. The document study in this research involved literature review using statutory regulations.

## 3. Results and Discussion

### 3.1. Implementation of the Criminal Sanction Policy of Compensatory Money in Corruption Crimes in Indonesia

Corruption has become a social disease that is dangerous to human life. Corruption impacts people's lives in various aspects, including political, economic, social, and environmental aspects. From a political perspective, corruption is a major obstacle to democracy and law enforcement. The principle of "of the people, by the people, and for the people" will not be realized because power and the fruits of development are largely enjoyed by corruptors. The problem is that corruption increases in line with the progress of national prosperity and the advancement of science and technology. Experience even shows that the more a nation's development progresses, the greater the need for and the greater the incentive for people to engage in corruption.<sup>15</sup>

The government's efforts to eradicate corruption are still ongoing. Despite various strategies, corruption remains rampant in various sectors of life. Some argue that the decline of the Indonesian economy in recent years is partly due to corruption, which has infiltrated all aspects of life, like mushrooms in the rainy season, not only in the bureaucracy and government but also in corporations, including state-owned enterprises.

Law enforcement on the one hand and justice in society on the other hand require harmony, especially in the right to obtain legal aid for the community without discrimination on the basis of race, religion, and class. As mandated by the 1945

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Regent of Kupang Regency, Ibrahim Agustinus Medah (Decision No. 78/Pid. Sus-TPK/2021/PN. KPG)." *Artemis Law Journal* 2, no. 2 (2025): pp. 570-582.

<sup>14</sup>Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetry*, Ghalia Indonesia, Jakarta, 1990, p. 33.

<sup>15</sup>Andi Hamzah, *Comparison of Corruption Eradication in Various Countries*, Sinar Grafika, Jakarta, 2005, p. 1.

Constitution, especially Article 27, both as amended and before the amendment. The elaboration of Article 27 of the 1945 Constitution is translated into Law No. 16 of 2011 concerning legal aid. Law in its two forms, namely: First, unwritten law where such law is a legal rule that lives in society or what is often referred to as customary law; Second, written law, which is made by an authorized institution and has sanctions and is coercive. The difference between the two lies in the form and sanctions. The form of unwritten law is only a regulation that is passed down from generation to generation and lacks strict sanctions, while written law, in addition to having strict sanctions, also has clarity regarding the institution that makes it.

The sentences imposed by judges in corruption crimes have not been able to provide a deterrent effect and satisfactory results in returning existing state financial losses, fines and replacement money as part of the punishment imposed on convicts have not had maximum results in law enforcement itself. The implementation of fines and replacement money in corruption crimes can be said to be ineffective and have no deterrent effect. This can be seen from the condition of convicts who are unable to pay, do not have assets to cover the replacement money payments imposed by the court, the existence of a statement stating that they are unable to pay the replacement money and are able to carry out subsidiary punishment.<sup>16</sup>

The penalty for corruption is considered too small, ranging from a minimum fine of Rp. 200,000,000 (two hundred million rupiah) to a maximum fine of Rp. 1,000,000,000 (one billion rupiah). A fine is also only an alternative punishment if the perpetrator of corruption cannot pay the fine, only being subject to a maximum imprisonment of only 6 (six) or 8 (eight) months. Furthermore, a fine is the only punishment that can be paid or borne by someone other than the convict. Doesn't this mean that corruptors can freely commit corruption because they feel that responsibility will be borne by others and the proceeds of corruption can still be enjoyed without having to worry about their property or wealth being confiscated or seized. Although the judge can also impose additional penalties, only items suspected of being obtained from the proceeds of crime or intentionally used to commit the crime can be confiscated.<sup>17</sup>

Recovering state losses is one of the fundamental goals of eradicating corruption, including criminalizing corporate perpetrators. The criminalization system in the corruption law, which is *primum remedium* and uses retributive justice, has not been optimally effective in recovering state financial losses in

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<sup>16</sup>Ade Paul Lukas, The Effectiveness of Penal Payments in Corruption Crimes (A Study of Corruption Crime Decisions at the Purwokerto District Court), *Journal of Legal Dynamics* Vol. 10 No. 2 May 2010, p. 81

<sup>17</sup>Wahyuningsih, Criminal Provisions on Fines in Corruption Crimes at the Extraordinary Crime Level, *alJinayah: Journal of Islamic Criminal Law* Vol 1, No 1, June 2015, p. 105



practice.<sup>18</sup>Therefore, in this regard, a formulation is needed to formulate a criminal policy regarding fines and restitution for corruption convicts in Indonesia. This will ensure an appropriate solution for enforcing corruption crimes through fines and restitution, as desired and aspired to. Based on the above description, the author is interested in discussing alternatives to fines and restitution without imprisonment.

Criminal regulations or fines Based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Criminal Acts of Corruption, it is not regulated in detail, it is only contained in articles regarding acts that fulfill the formulation of articles in criminal acts of corruption which contain provisions for imprisonment and fines.

The regulation of fines in corruption crimes mostly uses the legal basis contained in the Criminal Code, namely in Article 10, Article 30 and Article 31 of the Criminal Code, in Article 10 of the Criminal Procedure Code, fines are included in the category of main penalties in addition to the death penalty, imprisonment, prison and detention, while additional penalties include the revocation of certain rights, confiscation of certain goods and the announcement of the judge's decision.

Meanwhile, Article 30 and Article 31 of the Criminal Code regarding the technical implementation of criminal fines, namely Article 30 reads;

- a) The amount of the fine is at least 25 cents (250,-)
- b) If a fine is imposed and the fine is not paid, it will be replaced by imprisonment.
- c) The length of the substitute imprisonment sentence is at least one day and a maximum of six months.
- d) The length of this imprisonment is determined in such a way that the price of half a rupiah or less is replaced by one day, for fines greater than that, then for each half rupiah the replacement is not more than one day, and for the remainder which is not enough for half a rupiah, the length is also one day.
- e) If there is an increase in the fine due to concurrent or repeated offenses or due to the provisions of Articles 52 and 52a, then the maximum substitute imprisonment can be eight months.

Meanwhile, Article 31 states: (1) The convict 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 the substitute prison sentence by paying the

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<sup>18</sup>Budi Suhariyanto, Restorative justice in the criminalization of corporate corruption perpetrators to optimize state losses, *Rechvinding Journal*, vol 5, no 3, December 2016, p. 421



fine. (3) Payment of part of the fine, either before or after starting to serve the prison sentence, is equal to the part he has paid.

Based on the above, the legal basis for regulating criminal fines is contained in Article 10, Article 30 and Article 31 of the Criminal Code, whereas in the law on criminal acts of corruption there are no specific regulations regulating criminal fines, they are only contained in the elements of the articles which contain sanctions of imprisonment and fines.

With the enactment of the new Indonesian Criminal Code with Law No. 1 of 2023, the regulation on the imposition of replacement money has not shifted at all, remaining in the group of additional penalties except for the death penalty which was previously included in the group of main penalties to become a special penalty because it is threatened alternatively. According to the provisions of Article 18 paragraph (1) sub. b UUTPK, the parameters in determining the Payment of replacement money are the amount that is as much as possible equal to the assets obtained from the criminal act of corruption. The characteristic of the concept of replacement money in UUTPK is that the assets obtained from the criminal act of corruption must be handed over to the state. Thus, is the imposition of replacement money identical to state financial losses? If what is obtained is the same as the value of the corruption then the answer is identical, but there are times when the value of the state's loss is not the same as that obtained by the perpetrator of the criminal act of corruption then the answer is not identical, thus from the narrative it can be concluded that what is meant by replacement money is money paid by the defendant in the amount of assets obtained from the criminal act of corruption. The purpose of the payment of replacement money in corruption cases is to cover the state financial losses that have been caused by the perpetrator. The payment of replacement money in the amount of the assets obtained can be interpreted based on the principle of balance as stated by the philosophy of punishment put forward by Supreme Court Justice Mugiharjo in the 2010 Corruption Court Judge Candidate Training in Mega Mendung Bogor, he stated "In applying the imposition of replacement money, the Judge must not dance on the suffering of the defendant so it must be based on balance."<sup>19</sup>

Thus, the payment of replacement money changes the paradigm of handling corruption crimes from the previous conventional orientation to follow the suspect, namely handling criminal acts that are oriented towards the perpetrator, for example emphasizing imprisonment only, which with the enactment of the law on corruption crimes has changed to the concept of follow the money and follow the asset, namely handling corruption crimes that prioritizes the recovery of the

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<sup>19</sup>Fathur Rauzi, Sukarno: The Problem of Imposing Compensation in Corruption Crimes, Al Daulah, Volume 12 No. 1, June 2023, p. 50

proceeds of crime by prioritizing finding money or assets resulting from criminal acts.

The implementation of additional punishment in the form of payment of replacement money is a direct implementation of a court decision that aims to recover state financial losses due to criminal acts of corruption. Provisions regarding this implementation are regulated in Article 18 paragraph (2) and paragraph (3) of Law Number 31 of 1999 as amended by Law Number 20 of 2001. After the decision has permanent legal force, the prosecutor as executor is responsible for collecting replacement money from the convict. The prosecutor gives one month from the decision having permanent legal force for the convict to voluntarily pay off this obligation. This stage shows the importance of the role of the prosecutor's office in ensuring the effectiveness of the implementation of additional punishment, while also emphasizing the prosecutor's executorial function in the criminal justice system.

Additional penalties in the form of compensation for corruption crimes are a crucial legal instrument for recovering state financial losses. This provision is expressly stipulated in Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. Through these additional penalties, the state is given the right to reclaim losses arising from corrupt acts, so that the primary objective of eradicating corruption is not only to prosecute perpetrators but also to recover assets that have been lost to state finances.

Legally, the additional penalty of replacement money is restitutive in nature.<sup>20</sup> This means it aims to restore the situation to what it was before the crime occurred. This distinguishes it from the principal penalty, which is retributive (retribution). The compensation mechanism allows the perpetrator to compensate the state for the losses they have caused, either directly or through asset confiscation. Thus, this additional penalty bridges the gap between the objectives of criminal law and the state's economic interests.

In practice, the additional penalty of compensation is imposed after the court decision has permanent legal force (*inkracht van gewijsde*). The prosecutor, as the executor, has the authority to execute the decision under Article 270 of the Criminal Procedure Code. If the convict fails to pay the compensation within the specified timeframe, the prosecutor may confiscate and auction off the convict's assets to cover the value of the compensation. This process is carried out in accordance with applicable procedural law while still adhering to the principles of legality and proportionality. The confiscation and auction are a form of state

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<sup>20</sup>Tamba, Nesli, Yusriadi Yusriadi, and Nur Rochaeti. "The Dilemma of Criminal Substitute Money: Accepting *Nemo Bis Punitur Pro Eodem Delicto*, or Carrying Out Bifurcation of Criminal Responsibility." *Journal of Research and Community Service Locus* 4, no. 8 (2025): pp. 7490-7503.

coercion to ensure that state financial losses are recovered, so that no profits remain for the perpetrators of corruption. This implementation also serves as an indicator of the extent to which law enforcement officers are able to effectively implement the asset recovery approach in the context of law enforcement in Indonesia.<sup>21</sup>

However, in reality, the implementation of restitution payments often faces various obstacles. One of these is the limited number of assets convicts can seize or transfer to cover restitution. Furthermore, there are cases where perpetrators have transferred or hidden the proceeds of crime to third parties or abroad, making the asset recovery process difficult. This situation highlights the weakness of the asset tracing system in Indonesia.

If the convict lacks sufficient assets or conceals assets resulting from crime, a subsidiary prison sentence is imposed as a legal consequence. This provision is intended to provide a deterrent effect and ensure legal certainty regarding the implementation of court decisions. However, although subsidiary sentences are a last resort, their application is often considered to fall short of the restitutive objective, as they do not provide a tangible return to state finances. Therefore, a more proactive approach to asset tracking and recovery needs to be prioritized to ensure the effectiveness of additional monetary penalties.

On the other hand, the implementation of additional criminal penalties in the form of substitute money often faces challenges, both from technical and administrative aspects.<sup>22</sup> Problems such as the difficulty in tracing convicts' assets, the lack of accurate financial data, and limited coordination between law enforcement agencies pose significant obstacles. Furthermore, assets obtained from corruption are often diverted or hidden through third parties, both domestically and internationally. Therefore, optimizing the implementation of additional penalties requires synergy between the Prosecutor's Office, the Corruption Eradication Commission (KPK), the Financial Transaction Reports and Analysis Center (PPATK), and financial institutions, including the use of digital asset tracking technology to enhance enforcement effectiveness.

Thus, the implementation of the additional penalty of restitution is not only a form of law enforcement but also a strategic instrument in realizing justice and restoring the country's economy. Consistent implementation, supported by inter-agency coordination and transparency in the execution process, will strengthen public trust in the judiciary and affirm the state's commitment to eradicating

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<sup>21</sup>Syamza, Ridwan, and Iyah Faniyah. "The Effectiveness of Implementing Additional Criminal Punishment in the Form of Compensation Payments by the Executing Prosecutor in Combating Corruption Crimes." *Sakato Ekasakti Law Review Journal* 4, no. 2 (2025): pp. 138-145.

<sup>22</sup>Syamza, Ridwan, and Iyah Faniyah. "The Effectiveness of Implementing Additional Criminal Punishment in the Form of Compensation Payments by the Executing Prosecutor in Combating Corruption Crimes." *Sakato Ekasakti Law Review Journal* 4, no. 2 (2025): pp. 138-145.

corruption comprehensively. Efforts to recover assets through this additional penalty mechanism also serve as clear evidence that Indonesian criminal law not only pursues punishment for perpetrators but also focuses on restitution of state losses and public welfare.

In essence, both legally and doctrinally, judges are not always required to impose additional penalties. However, this is particularly important in corruption cases.<sup>23</sup> This is because corruption is an unlawful act that is detrimental or could be detrimental to state finances. In this case, these state losses must be recovered. One method that can be used to recover these state losses is by requiring defendants who are proven and convincingly guilty of corruption to return the proceeds of their corruption to the state in the form of compensation. Therefore, even though compensation is only an additional penalty, it is very unwise to allow defendants to not pay compensation as a way to recover state losses. Defendants in corruption cases who have been proven and convincingly guilty of corruption are exempt from the obligation to pay compensation if the compensation can be compensated for by the defendant's assets declared confiscated for the state or the defendant did not enjoy the money at all, or another defendant has been sentenced to pay compensation, or the state losses can still be collected from another party.

The amount of replacement money is the state loss that is actually enjoyed or enriched 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 penalties" in Article 17, the imposition of additional penalties in corruption cases is optional, meaning that the judge does not always have to impose an additional penalty for every defendant being tried, but rather it is up to his consideration whether in addition to imposing the main penalty, the judge also intends to impose an additional penalty or not.<sup>24</sup>

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 of a real and definite amount as a result of unlawful acts, whether intentional or negligent, committed by the convict.

The Public Prosecutor's Office has sought almost all of the charges and demands to include a monetary penalty for state losses. A monetary penalty is an additional

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<sup>23</sup>Saputra, Ewaprilyandi Fahmi, and Hery Firmansyah. "Legal Politics in Efforts to Eradicate Criminal Acts of Corruption through Renewal of the Regulation of Criminal Acts of Corruption as an Extraordinary Crime in the National Criminal Code." *UNES Law Review* 6, no. 2 (2023): pp. 4493-4504.

<sup>24</sup>PAF Lamintang, *Basics of Indonesian Criminal Law*, Sinar Baru, Bandung, 2011, p. 84

penalty in corruption cases that must be paid by the convict to the state, up to an amount equal to the assets obtained from the corruption.<sup>25</sup>

Payment of replacement money in corruption crimes is carried out after the court decision has permanent legal force (*inkracht*), the convict is given a grace period of 1 (one) month to pay off the additional penalty in the form of payment of replacement money, where after payment is made in full, the Prosecutor will deposit the payment proceeds into the State Treasury and send a copy of the minutes of payment of replacement money signed by the Prosecutor and the convict to the District Court that is trying the case.

If the payment cannot be made at once by the convict, it is more directed towards a non-litigation settlement carried out through negotiation. That the convict can pay in installments according to the agreement until the replacement money is paid in full. Meanwhile, cases decided by the new Corruption Crime Law, there is a payment time limit of one month, if the replacement money is not paid, the property can be confiscated by the Prosecutor and the confiscated property can be auctioned to cover the replacement money in an amount according to the court verdict that has permanent legal force. Then, if the convict does not have sufficient property to pay the replacement money, the punishment is in the form of imprisonment which the convict will serve for a period not exceeding the principal sentence.<sup>26</sup>

Subsidiary sentences or alternative prison sentences are strictly avoided as a substitute for monetary penalties for defendants in corruption cases who have been proven and convincingly convicted of corruption. Basically, defendants found guilty of corruption are obliged to return the proceeds of corruption as a means of recovering state losses. Subsidiary prison sentences can prevent the state from recovering losses from corruption. The Supreme Court (MA), for example, has in many decisions only imposed monetary penalties without subsidiary prison sentences as a means of compelling defendants to return state funds.

From a criminal law policy perspective, the additional penalty of compensatory money reflects the modern paradigm in corruption law enforcement, prioritizing recovery over mere punishment. This concept aligns with the criminal recovery approach, which prioritizes restitution of state losses. Therefore, the implementation of this additional penalty should not stop at a court verdict alone but must be followed by effective and transparent enforcement measures.

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<sup>25</sup>Letter from the Attorney General of the Republic of Indonesia Number: B012/A/Cu.2/01/2013 dated January 18, 2013 concerning Accounting Policies and Guidelines for Settlement of Replacement Money Receivables of the Attorney General of the Republic of Indonesia 1

<sup>26</sup>Sudarmanto, Kuku, Muhammad Alvin Cyzentio Chairilian, and Kadi Sukarna. "Reconstruction of the Restitution of State Financial Losses as an Alternative to Imprisonment." *USM Law Review Journal* 6, no. 2 (2023): pp. 825-840.

The implementation of additional financial penalties is also closely related to international asset recovery efforts as stipulated in the 2003 United Nations Convention Against Corruption (UNCAC), which Indonesia ratified through Law No. 7 of 2006. Through this convention, Indonesia is committed to cross-border cooperation in tracking, freezing, confiscating, and returning assets obtained from corruption abroad. This strengthens the legitimacy of the implementation of additional financial penalties as part of the global legal system against corruption.<sup>27</sup>

The implementation of additional monetary penalties also needs to be synergized with other legal instruments, such as non-conviction-based asset forfeiture. This instrument allows the state to seize assets obtained from corruption without having to wait for a final and binding criminal verdict, especially if the perpetrator has died or fled. This way, the state's asset recovery strategy becomes more progressive and responsive to the needs of national economic justice.

### **3.2. Obstacles and Solutions in Criminal Sanctions in the Form of Compensation in Corruption Crimes as an Effort to Recover State Losses**

Compensation as an additional penalty in corruption cases must be understood as part of the criminalization effort against perpetrators who violate the law. In this case, the law violated is the law on corruption or the Corruption Eradication Act.<sup>28</sup>

The fundamental objective of the policy of imposing 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 policy in its overall sense, namely protecting society to achieve prosperity.

As a strategy, the imposition of a monetary penalty was not seriously designed and implemented, resulting in various problems. One of these is the determination of the amount of monetary penalties that must be paid by corruptors to the state to cover losses resulting from their corrupt acts. Law Number 3 of 1971, in practice, only regulates monetary penalties in one article, namely Article 34 letter c. The same condition is also reflected in its successor law, namely Law Number 31 of 1999 and its amendment, Law Number 20 of 2001. The lack of regulations regarding monetary penalties ultimately gives rise to a number of problems in its implementation. One of these is in determining the amount of monetary penalties that can be imposed on the accused.

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<sup>27</sup>Hartika, Lia, Indri Dithisari, and Syarifah Lisa Andriati. "The Urgency of Implementing Additional Criminal Execution of Replacement Money by the Executing Prosecutor in Corruption Cases." *Binamulia Hukum* 11, no. 2 (2022): pp. 127-137.

<sup>28</sup>Efi Laila Kholis, *Payment of Compensation in Corruption Cases*, First Edition, 2010, Solusi Publishing, Depok, 2010, p. 5.

In practice, the amount of the criminal decision to pay compensation varies, which can be caused by several factors, including the judge having his own calculations, some of the proceeds of corruption having been returned, or the corruption crime being committed by more than one person so that the criminal penalty for paying compensation is imposed jointly.<sup>29</sup>

The formulation of Article 34 letter c of Law Number 3 of 1971 only stipulates that the amount of compensation is as much as possible equal to the assets obtained from corruption. The exact same formulation is also found in Article 18 of Law Number 31 of 1999. From this very simple formulation, it can be interpreted that the amount of compensation can be calculated based on the value of the defendant's assets obtained from the corruption crime charged. This means that to determine the amount of compensation, the Judge must first carefully select which portion of the defendant's total assets originates from the corruption crime he committed and which does not. After this sorting, the Judge can then calculate the amount of compensation to be imposed.

In the application of the Explanation of Article 4 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which states that:

If the perpetrator of a corruption crime as referred to in Articles 2 and 3 has fulfilled the elements of the Articles in question, then the restitution of state financial or economic losses does not eliminate the criminal penalty against the perpetrator of the crime. The restitution of state financial or economic losses is only one mitigating factor.

The restitution of state financial losses or the state economy is only one mitigating factor. Legal practitioners, namely Public Prosecutors in prosecuting defendants/perpetrators of corruption crimes, and Judges in deciding a corruption case where there is a restitution of state financial losses should consider fulfilling the sense of justice by paying attention to and/or distinguishing the level or degree of awareness, willingness and good faith and fairness of the series of processes for resolving state/regional compensation, whether carried out through the Treasury Claims and Compensation Claims (TP-TGR) process or not through the Treasury Claims and Compensation Claims process.

In the event that the convict does not pay the replacement money, no later than 1 (one) month after the court decision has obtained permanent legal force, then his property can be confiscated by the Prosecutor and auctioned to cover the replacement money. In this case there is difficulty in sorting out which assets originate from criminal acts of corruption and which do not, because it is easy for corruptors to conceal the proceeds of their corruption through financial transaction and banking services. In addition, talking about time which is certainly

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<sup>29</sup>Efi Laila Kholis, op.cit.



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. Then it is difficult to do if the defendant's assets to be assessed have been converted into assets that by their nature have fluctuating values, such as property assets, jewelry, shares and so on. Among law enforcement, there are often communication deadlocks and misperceptions among existing law enforcement, so that phenomenal precedents emerge that can have a bad impact on the climate of corruption eradication.<sup>30</sup>

Sudarto stated that eradicating criminal acts of corruption is no longer just a matter of law enforcement, but also carries a political mission that is able to guarantee the fulfillment of the people's rights as mandated by the constitution, namely realizing the welfare of the Indonesian nation.<sup>31</sup> Therefore, criminal law policies to eradicate corruption should not only focus on punishing perpetrators, but also minimize societal losses through asset recovery. The process of recovering state assets or state losses arising from corruption represents a new breakthrough in Indonesia's criminal justice system.

Losses to the state or the national economy resulting from corruption must be borne by the convict after the court's decision has become legally binding. This demonstrates the law's desire for asset recovery, or a reflection of the government's desire to restore state finances following corruption, given that embezzled funds are supposed to be used for public purposes.

The aspect of state losses that must be imposed on the convict, with the Public Prosecutor must be able to prove that the criminal act committed by the convict has resulted in state losses. This shows that Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 adheres to the principle of returning state assets to ensure the smooth running of national/regional development for the prosperity of the people.

The principle of restitution of state assets is an unwritten legal norm, one level higher than the norms underlying various norms in corruption laws. The principle of restitution of state assets is not explicitly stated in the corruption laws, but is reflected in various norms in corruption laws that serve as the legal basis for law enforcement officials to recover state financial losses resulting from corruption.

Strengthening the principle of returning state losses can be found in Article 38C of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which states that:

If after the court decision has obtained permanent legal force, it is discovered that there are still assets belonging to the convict which are suspected or can be

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<sup>30</sup>Ibid.

<sup>31</sup>Rudi Pardede, op.cit.

suspected of also originating from criminal acts of corruption which have not been subject to confiscation for the state as referred to in Article 38B paragraph (2), then the state can file a civil lawsuit against the convict and/or his heirs.

These provisions clearly show that Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 adheres to the principle of restitution of state losses and allows for the creation of justice for reprehensible acts which, according to the public's sense of justice, must be prosecuted and punished.

The explanation of the above article more clearly states that the rationale for the provisions in this article is to fulfill the public's sense of justice for perpetrators of corruption who conceal assets suspected or reasonably suspected of originating from corruption. These assets are discovered after the court's decision has obtained permanent legal force. In this case, the state has the right to file a civil lawsuit against the convict and/or their heirs for assets obtained after the court's decision has obtained permanent legal force, whether the decision is based on laws before the enactment of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption or after the enactment of said Law. To file such a lawsuit, the state may appoint an attorney to represent the state.

As explained, those convicted of corruption cases have been sentenced to imprisonment and/or fines, in addition to corporal punishment and/or fines, and additional punishments, including the payment of compensation in an amount equal to the amount of assets obtained from corruption. However, in practice, almost no corruption convicts pay the compensation imposed on them by the judge, using various excuses, for example, by saying they do not have money or assets. Investigators and prosecutors can already be aware of the inability or unwillingness of the convict to pay compensation even before the case is submitted to the court. When facing such convicts, the prosecutor should demand the maximum corporal punishment (imprisonment) as stipulated by law and strive to recover the state's losses, although ultimately the judge will determine the sentence.<sup>32</sup>

The issue of implementing the criminal penalty of payment of compensation is essentially a law enforcement issue. This relates to factors that hinder the effectiveness of the implementation/execution of the criminal penalty of payment of compensation in corruption crimes. To identify the factors that influence the effectiveness of the criminal penalty of payment of compensation in corruption crimes, it is necessary to consider the interrelated factors or components of the legal system that influence the implementation of the criminal penalty of payment of compensation.

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<sup>32</sup>Ibid.

Regulations regarding additional penalties in the form of compensation payments in corruption cases in Indonesia are stipulated in Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. This provision is essentially aimed at recovering state financial losses resulting from corrupt acts. However, in practice, these regulations often do not reflect a sense of justice, either for the state or for perpetrators of criminal acts, because the implementation mechanism is still partial and inconsistent.<sup>33</sup>

Conceptually, the additional penalty of compensatory money is designed as a means of recovering state assets damaged by corruption. However, the Indonesian legal system tends to subordinate this penalty to the principal penalty. This means that the primary focus of law enforcement remains on punishing the perpetrator, rather than recovering state assets. This paradigm results in a retributive rather than restorative approach to corruption law enforcement, thus preventing the realization of substantive justice.

Regulatory weaknesses are evident in the lack of clarity regarding the timeline and mechanism for assessing state losses, which are used as the basis for calculating compensation. In many cases, judges determine compensation based on the value calculated by the Supreme Audit Agency (BPK) or the Financial and Development Supervisory Agency (BPKP), without considering the value of recovered assets or benefits received by the state. As a result, there is a disparity between the actual value of losses and the compensation payable by the convict.<sup>34</sup>

In addition, Article 18 paragraph (3) of the Corruption Eradication Law stipulates that if a convict fails to pay compensation within one month, their assets can be confiscated and auctioned, creating new problems. This one-month time limit is often unrealistic, considering that the process of confiscating, assessing, and auctioning assets takes a long time and involves various institutions. In this context, the law becomes rigid and not adaptive to factual conditions.

The provision of a substitute sentence in the form of imprisonment also raises a problem of justice. If the convict is unable to pay the replacement money, they will be sentenced to an additional prison sentence, as if the debt to the state were treated as a new criminal offense. However, from the perspective of Aristotelian distributive justice, punishment should be proportionate to moral wrongdoing, not economic incapacity. This creates injustice for convicts who clearly lack the financial ability to compensate the state for losses.

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<sup>33</sup>Gunadi, I. Komang Pasek. "Implementation of Additional Criminal Punishment in the Form of Compensation Payment in Corruption Crimes at the Klungkung District Attorney's Office." *Kerta Dyatmika* 21, no. 2 (2024): pp. 71-84.

<sup>34</sup>Agustin, Lidya, Sahuri Lasmadi, and Yulia Monita. "Mechanism for Recovering State Financial Losses in Corruption Crimes from the Perspective of Indonesian Legislation." *PAMPAS: Journal of Criminal Law* 5, no. 3 (2024): pp. 364-378.

The enforcement of additional monetary penalties lacks a strong coordination mechanism across law enforcement agencies. Prosecutors, as executors, often face difficulties in locating convicts' assets due to the lack of an integrated national asset tracking system between the Corruption Eradication Commission (KPK), the Attorney General's Office (AGO), the Financial Transaction Reports and Analysis Center (PPATK), and the Ministry of Finance. Consequently, many monetary penalties are never realized, while convicts instead choose to serve alternative prison sentences.

The criminal provisions regarding compensation do not reflect the Pancasila principle of justice. Pancasila values demand a balance between legal certainty, fairness, and expediency. However, current regulations place greater emphasis on formal legal certainty without considering the socio-economic conditions of the perpetrators or their contribution to the asset recovery process. In many cases, perpetrators who act in good faith to return some of the state's losses are still punished equally harshly as uncooperative perpetrators.<sup>35</sup>

The enforcement of additional monetary penalties is still influenced by a formalistic legal culture that views justice solely as a matter of procedural compliance. Judges and prosecutors are often more focused on enforcing the text of the law than on achieving substantive justice. This situation deprives the monetary penalty regulation of its philosophical meaning as an instrument of restitution, not double punishment.

The compensation regulations do not explicitly address payment mechanisms for legal entities, making it difficult for law enforcement to collect compensation from corporate entities. This creates inequality, as individuals often bear a greater burden than corporate entities, which in fact profit more from corruption.

In practice, many court decisions impose disproportionate amounts of compensation. In some cases, judges award compensation exceeding the amount of the perpetrator's profits, potentially violating the principle of *ne bis in idem* in the context of economic sanctions. This situation demonstrates an inconsistency in the application of the principle of proportional justice.

Furthermore, this regulation does not yet provide space for the implementation of alternative mechanisms such as voluntary restitution or asset recovery agreements through a restorative justice approach. In a modern legal system, the recovery of state assets should be achieved through an agreement between the perpetrator and the state outside of court under judicial oversight, thus increasing the effectiveness of asset recovery and making the judicial process more efficient.

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<sup>35</sup>Agustina, Putri Mega. "Implementation of Prosecutor's Regulation Number 19 of 2020 Concerning the Settlement of Replacement Money from the Perspective of the Principle of Legality." *Lex Positivis* 3, no. 2 (2025): pp. 82-111.

Justice issues also arise from the lack of oversight mechanisms for the use of recovered assets. Replacement funds deposited into the state treasury often lack transparency regarding their use, preventing the public from directly benefiting from the returns. Morally, the return of corrupt assets should have a concrete social impact on public welfare.

From Satjipto Rahardjo's progressive legal perspective, the law should serve humanity, not the other way around. Therefore, the regulation on compensation should be interpreted as an instrument for restoring social and economic balance, not simply a means of retribution. If the implementation of this regulation focuses solely on punishment, the value of social justice as enshrined in Pancasila will be neglected.

The lack of detailed regulations regarding asset tracing mechanisms also creates an imbalance between perpetrators with strong networks and those without. Perpetrators with the ability to hide assets abroad often escape restitution due to limited national legal jurisdiction. Meanwhile, small-time perpetrators without such capabilities are subject to additional prison sentences.<sup>36</sup>

The absence of detailed regulations regarding asset tracing mechanisms in the Indonesian legal system is a major factor contributing to the disparity in the implementation of additional monetary penalties. Asset tracing should be the most crucial initial step in the process of recovering state losses from corruption. Without a clear, integrated system with cross-jurisdictional legal force, state efforts to trace and seize corrupt assets often fail. This makes it easier for financially savvy and well-connected perpetrators to evade their legal obligations.

In practice, many perpetrators of corruption in Indonesia exploit legal loopholes.<sup>37</sup> and weak asset tracking systems to conceal the proceeds of their crimes abroad. They move corrupt funds to accounts in countries with strict bank secrecy regimes or invest through shell companies in tax havens. These efforts are difficult for Indonesian law enforcement due to limited international cooperation agreements and the lack of adequate legal instruments for effective mutual legal assistance (MLA).

On the other hand, corruptors who come from lower-class backgrounds or lack international financial networks lack the ability to conceal or transfer their assets. Consequently, they are the most vulnerable to legal action. Under these

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<sup>36</sup>Sianipar, Jessica Petra Natasha. "Relation between Rechtsstaat Concept with Legal Certainty in Money Laundering, Asset Tracing Regulation with Corruption as The Predicate Crime in Economic Crime." *Jurnal Hukum to-ra: Hukum Untuk Regulate dan Perlindungan Masyarakat* 8, no. 1 (2022): pp. 19-41.

<sup>37</sup>Fitriyanti, Lisa Dwi, and Agus Suwandono. "Asset Confiscation as an Additional Sanction: An Analysis of the Recovery of State Losses in Handling Corruption Crimes in Indonesia." *Jaksa: Journal of Legal and Political Studies* 3, no. 3 (2025): pp. 13-27.

circumstances, the provision of additional monetary penalties no longer reflects the principle of true justice, as economically powerful perpetrators can avoid financial obligations, while weaker perpetrators receive additional prison sentences in lieu of monetary penalties.

This situation creates a structural imbalance in corruption law enforcement. Major or "big-time" perpetrators are often able to protect their assets through various means, including using third-party names (nominees), transferring assets to family members, and complex investment schemes. Meanwhile, law enforcement officials are often only able to reach small-time perpetrators who lack the ability to cover their financial tracks. As a result, efforts to recover state losses are disproportionate to the magnitude of the crimes committed.

Globally, Indonesia has ratified the UNCAC through Law No. 7 of 2006. However, the implementation of asset recovery principles in the context of compensation has not been optimal. There is no legal mechanism effectively regulating international cooperation in tracking and repatriating assets obtained from corruption held abroad. This has resulted in low levels of state asset recovery from cross-border corruption.

To achieve justice, the criminal regulations governing additional compensation need to be reformed. These regulations need to be transformed into a more restorative system that takes into account the perpetrator's financial capacity, the extent of the state's losses recovered, and the perpetrator's willingness to cooperate in repatriating assets. This approach better reflects the values of Pancasila justice.

Furthermore, the establishment of a dedicated National Asset Recovery Agency could be a solution to ensure the effective enforcement of additional monetary penalties. This agency would serve as a cross-sectoral coordinator between the Corruption Eradication Commission (KPK), the Prosecutor's Office, the Financial Transaction Reports and Analysis Center (PPATK), and the Financial Services Authority (OJK) in tracking, freezing, and returning assets obtained from corruption, both domestically and internationally. This agency would ensure the restitution of monetary penalties could be carried out systematically and transparently.

Regulatory reform also needs to include integration between the criminal compensation system and the civil system, so that the state has two legal channels for seeking asset recovery: criminal and civil. The civil route can be used if the perpetrator dies or flees, while the criminal route is used for perpetrators who can still be prosecuted. This dualism will strengthen the reach of state law in maintaining economic justice.

Based on a comparative study of regulations on criminal sanctions for replacement money in other countries the Dutch legal system has a strong reputation as one of

the most modern and focused on recovering state funds in corruption cases. In the context of compensatory punishment, the Netherlands applies the principle that crime does not pay. This principle is realized through the mechanism of confiscation of unlawfully obtained profits, which functions similarly to the additional penalty of compensatory payment in Indonesia.<sup>38</sup>

Provisions regarding the confiscation of criminal proceeds are regulated in the Dutch Criminal Code (*Wetboek van Strafrecht*), specifically Article 36e, which allows judges to order perpetrators to pay an amount equal to the profits obtained from the crime. This mechanism applies not only to corruption but also to other economic crimes, such as fraud, money laundering, and embezzlement of public funds. The goal is not simply to punish the perpetrators but also to restore the economic balance disturbed by the unlawful act.

The process of imposing compensatory penalties in the Netherlands involves two stages: the main penalty stage and the asset recovery stage. In the first stage, the perpetrator is sentenced to a principal penalty, such as imprisonment or a fine. Subsequently, the court may impose financial penalties (*ontnemingsmaatregel*, or asset confiscation) to ensure the state or the victim recovers their economic rights. Therefore, the Dutch legal system clearly distinguishes between punishment and recovery.<sup>39</sup>

The enforcement of criminal penalties in the Netherlands relies heavily on the Public Prosecutor's Office (*Openbaar Ministerie*), which has full authority to track, seize, and auction off assets obtained from crime. Prosecutors are not only tasked with prosecuting but also with ensuring that the perpetrators' illegal profits are confiscated and returned to the state. This process is carried out with the support of financial institutions, tax authorities, and specialized investigative bodies such as FIOD (*Fiscale Inlichtingen- en Opsporingsdienst*), the financial intelligence and economic law enforcement agency.

The Netherlands implements a financial investigation system as an integral part of the criminal process. Every corruption investigation is accompanied by financial transaction analysis, tracing of cash flows, and tracing of assets related to the crime. This approach allows law enforcement officials to ensure that all unlawfully obtained profits are identified and recovered.

A distinctive feature of the Dutch system is the use of the principle of reversal of the burden of proof in cases of confiscation of assets obtained through corruption. If the prosecutor can show that someone obtained unjust profits from a crime, the perpetrator must prove that the assets were obtained legally. This principle

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<sup>38</sup>Bollens, Sven. "De verruimde confiscatie in mensenrechtelijk perspectief (noot onder EHRM 13 july 2021, nr. 50705/11 ea, Todorov ea/Bulgarije)." *Nullum Crimen: Tijdschrift voor Straf-en Strafprocesrecht* 6 (2021): p. 489-495.

<sup>39</sup>*Ibid*



expedites the legal process and prevents perpetrators from hiding assets under the names of third parties.<sup>40</sup>

In addition to the confiscation mechanism based on criminal convictions (criminal confiscation), the Netherlands also recognizes a civil forfeiture system. This mechanism is used when it is not possible to fully prove the criminal elements, but there is strong evidence that the assets originated from illegal activities. This approach allows the state to recover financial losses without having to wait for a final and binding criminal verdict.

#### **4. Conclusion**

The application of additional punishment in the form of payment of compensation as an effort to return assets resulting from corruption is based on the provisions of Article 17 in conjunction with Article 18 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, where the amount of compensation is as much as possible equal to the assets obtained from the corruption crime. If the convict does not pay the compensation 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 compensation. The imposition of additional punishment in the form of payment of compensation depends on the discretion of the Judge, because it is optional. This is what makes the application of additional punishment in the form of payment of compensation less than optimal, because there are still Judges who impose additional punishment in the form of payment of compensation that is smaller than the state financial losses, and the low payment of compensation that must be paid by the corruption convict, so that it does not have a deterrent effect on the perpetrator; Obstacles to the policy of additional criminal sanctions in the form of payment of replacement money as an effort to return assets resulting from corruption, Article 18 paragraph (3) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 provides a legal loophole for convicts not to pay replacement money, (ii) the provisions of additional penalties are optional, meaning they can be imposed, but do not have to be imposed by the Judge, (iii) there are no standard rules governing the execution mechanism including guidelines if the defendant is unable to pay all or part of the additional penalty imposed, (iv) there are no provisions for conversion or calculation of replacement money payments whose value is less than the nominal value as stated in the decision to reduce the replacement or subsidiary prison sentence; Solutions taken: Carrying out rule breaking actions in the form of confiscation of assets, Carrying out contra legem

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<sup>40</sup>Beumers, Thijs, Willem van Boom, and E. Karner. "Tortious and Contractual Liability from a Dutch Perspective." *Tortious and Contractual Liability—Chinese and European Perspectives* (2021): p. 223-245.

actions, in the form of imposing replacement money without subsidiaries, Establishing sentencing guidelines for subsidiary replacement money sentences.

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