

Application of Additional Criminal Penalties in the Form of Replacement Fee by The Public Prosecutor in Cases of Criminal Acts of Corruption

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Abstract. *This research is motivated by the fact that in practice, in corruption cases handled by law enforcement officers, it is difficult to find the proceeds of corruption in the form of money because the perpetrators have spent the money from corruption or used and transferred it in other forms. The proceeds from corruption in the form of money are not only obtained by the perpetrators through transfers between accounts but also money obtained in cash. Not infrequently, in the process, many perpetrators of corruption deny having received or spent and transferred it in other forms, while on the one hand, law enforcement officers in this case the Prosecutor must be able to prove in court where the money went. This research aims to: 1. find out and analyze the application of additional criminal penalties in the form of replacement money by the Public Prosecutor in corruption cases, 2. find out and analyze the effectiveness of the application of additional criminal law in the form of replacement money by the Public Prosecutor in corruption cases; This research uses an empirical legal approach with analytical descriptive research specifications, the types and sources of data are primary data through interviews and secondary data through literature studies, analytical methods and logical and systematic. The research problem is analyzed using the theory of legal certainty and the theory of legal effectiveness. Based on the research, it can be concluded: (1) The application of additional penalties in the form of replacement money by the public prosecutor in corruption cases is guided by the applicable regulations and aims to recover state financial losses; (2) The application of additional penalties in the form of replacement money by the public prosecutor in corruption cases is not effective because the recovery of state financial losses is not optimal and there is a difference between the demands by the public prosecutor and the verdict by the panel of judges regarding replacement money.*

Keywords: Additional; Application; Corruption; Criminal; Replacement.

1. Introduction

Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state based on the rule of law. This was enacted after the third amendment, ratified on November 10, 2001. This affirmation of the constitutional provision means that all aspects of social, state, and governmental life must always be based on law.¹

Law is crucial to every aspect of life. It guides human behavior in relationships with others, and it also governs all aspects of life in Indonesia. Socially, corruption is understood by the public as the taking of state funds or property for the personal benefit of those in office.²

It's no exaggeration to label corruption as a highly dangerous crime. The trend in this direction has already been initiated by the Organization for Economic Cooperation and Development (OECD), which has taken the initiative and successfully aligned its members' visions and missions to eradicate corruption.³

In its implementation, the eradication of corruption is realized 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 holding the Convention on the Eradication of Bribery of Foreign Government Officials in International Trade Transactions which was signed by 34 (thirty-four) countries in Paris on December 17, 1997. Convention participants have stated their agreement to draft a special law as part of national law called the Foreign Corrupt Practices Act (FCPA). The Global Anti-Corruption Conference in Washington DC which was held in February 1999 has stated its determination and prepared steps to implement the eradication of corruption.⁴

In Indonesia itself, the Criminal Act of Corruption has been regulated, among others, in Article 2 paragraph 1 of the Republic of Indonesia Law Number 31 of 1999 as amended by the Republic of Indonesia Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which states "Any person who unlawfully commits an act of enriching himself or another person or a corporation

¹Jawade Hafidz. "The Formulation of a Special Minimum Criminal Threat System Formulation in the Corruption Law". Law Development Journal Volume 5 No. 1, March 2023, (54-70), url :<https://jurnal.unissula.ac.id/index.php/ldj/article/view/30035> accessed December 2, 2025.

²Dr. Erdianto Effendi, SH, M.Hum. (2002). Problems of Proving the Elements of Self-Enrichment and Benefiting Oneself or Another Person or a Corporation in Criminal Acts of Corruption. Bandung: PT. Refika Aditama, p. 8.

³Ismansyah. "Implementation and Implementation of Compensatory Penalties in Corruption Crimes." Democracy Vol. VI No. 2, 2007, url:<https://media.neliti.com/media/publications/241274-penerapan-dan-pelaksanaan-pidana-uang-pe-e58e0c05.pdf> accessed December 2, 2025.

⁴Ibid.

that can harm the State's finances or the State Economy shall be punished with imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)". Then in Article 3 of the Republic of Indonesia Law Number 31 of 1999 as amended by the Republic of Indonesia Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it states "Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the State's finances or the State's economy shall be punished with life imprisonment, or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).⁵

That in the case of prosecution, there are not a few corruption cases where the prosecutor's demands burden the perpetrators of corruption with additional penalties in the form of replacement money, but contrary to the judge's decision, not infrequently in his decision, the judge does not burden the perpetrators of corruption with additional penalties in the form of replacement money, of course this is based on various considerations, one of which is that there is no evidence stating that the defendant has obtained money or property for the occurrence of state financial losses. Therefore, the imposition of additional penalties in the form of replacement money is ineffective because there is a difference between the prosecutor's demands and what is stated in the judge's decision, so that the prosecutor in this case the public prosecutor will take legal action from appeal to cassation, with the existence of these legal efforts can cause legal uncertainty because the case has not yet had permanent legal force or has not yet been *Inkracht*.

The demands submitted by the Public Prosecutor in court are based on the existence of evidence and legal facts revealed in court, however, it is not uncommon for the Public Prosecutor to experience difficulties in determining additional penalties in the form of replacement money imposed on the Defendant in the crime of corruption, considering the Defendant's skill in disguising the proceeds of his crime.

Referring to this, this study aims to determine and analyze the application of additional criminal penalties in the form of replacement money by the Public Prosecutor in corruption cases and aims to determine and analyze the effectiveness of the application of additional criminal law in the form of replacement money by the Public Prosecutor in corruption cases.

⁵Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. LN. 2001/ No. 134, TLN NO. 4150, LL SETNEG: 13 pages.

2. Research Methods

This research uses an empirical juridical approach to problem-solving. The intended juridical approach is to view law as a norm or *das sollen*, as the discussion of the problem in this research utilizes legal materials, both written and unwritten, including primary, secondary, and tertiary legal materials. This research is a type of empirical juridical research, also known as field research, which examines applicable legal provisions and what actually occurs in society.⁶ The research specification used in this study is descriptive analytical because it aims to provide a comprehensive and in-depth picture of a situation or phenomenon being studied and analyze the application of additional penalties in the form of compensation by the Public Prosecutor in corruption cases. This is expected to solve the problem by presenting the research object as it is based on the facts obtained during the research. The primary and secondary data collected will be analyzed qualitatively to achieve clarity on the issues being discussed. Using qualitative analysis methods, this research will produce analytical descriptive data, namely what respondents stated in writing or verbally, as well as actual behavior, which will be examined and studied as a whole.

3. Results and Discussion

3.1. The application of additional penalties in the form of replacement money by the public prosecutor is guided by:

- 1) Article 18 paragraph (1) letter b of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Republic of Indonesia Law Number 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption expressly states: "in addition to additional penalties as referred to in the Criminal Code, as additional penalties is the payment of replacement money in an amount equal to the assets obtained from the criminal act of corruption, therefore the amount of the replacement money payment as an additional penalty in this case is adjusted to the facts in the trial."
- 2) Letter Attorney General number: B-012/A/Cu.2/01/2013 dated January 18, 2013 concerning Accounting Policy and Guidelines for Settlement of Replacement Money Debts of the Republic of Indonesia Attorney General's Office defines that "replacement money is one of the additional criminal penalties in corruption cases

⁶Suharsimi Arikunto. (2012). *Research Procedures: A Practical Approach*. Jakarta: Rineka Cipta. p. 126.

that must be paid by the convict to the state in an amount that is equal to the maximum amount of assets obtained from the corruption crime."

3) The imposition of Replacement Money on each Defendant is based on the principle of proportionality and not joint responsibility, this is also in line with the Attorney General's Letter number: B-028/A/Ft.1/05/2009 dated May 11, 2009 regarding the Determination of the Status of Confiscated Objects/Evidence and Replacement Money in the Indictment, in point 6 it states "regarding the obligation to pay replacement money where there is more than 1 (one) defendant, the indictment must clearly and definitely state the amount for each defendant and must not be stated globally and jointly and severally. In addition to not providing legal certainty, it will also cause difficulties in the implementation of the execution, both regarding the amount of replacement money that must be paid by each defendant/convict and for convicts who do not pay (or pay part of) the replacement money so that they must undergo corporal punishment as a substitute for the obligation to pay the replacement money in question. That it is also stated in point 7 "if it is not known for certain the amount obtained from the criminal act of corruption by each defendant/convict, then one of the methods that can be used as a guideline to determine the amount The obligation to pay compensation that will be imposed on each defendant/convict is by using the qualification "participating" in Article 55 paragraph 1 point 1 of the Criminal Code.

Additional punishment in the form of replacement money is an effort used to overcome the problem of state financial losses arising from criminal acts of corruption, as explained in Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Republic of Indonesia Law Number 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The purpose of the law is not only to punish individuals who clearly violate the law, but also to prevent possible actions and to ensure that state institutions act in accordance with the law in various development sectors.⁷

Basically, there are 2 (two) models of additional criminal penalties in the form of replacement money that have been applied so far, namely:

1. Joint Liability

Joint liability (joint responsibility), better known in the realm of civil law, is a way of creating an agreement with a large number of subjects. In the context of civil law, there are two forms of joint liability: active and passive. Joint liability can be said to be active if the number of parties who owe (creditors) is more than one,

⁷Ary Dody Wijaya. "Policy Formulation for Returning State Financial Losses in Corruption Crime Cases. Lex Lata 3, Scientific Journal of Law, number 1 (2021). p. 8 url :<https://journal.fh.unsri.ac.id/index.php/LexS/article/view/685> accessed December 2, 2025.

and conversely, passive joint liability occurs when the number of parties who owe (debtors) is more than one. With the joint liability model, the panel of judges in their decision only states that the defendants are burdened with a criminal penalty of compensation of a certain amount of rupiah for a certain period. The panel of judges (the state) completely ignores how the defendants collect the compensation amount, whether it is borne solely by one of the defendants or a certain portion is pooled. In accordance with the spirit behind the concept of criminal compensation, the state is only concerned with how the state's funds that have been harmed can be recovered.

2. Proportional Loading

Proportional imposition of a penalty is the imposition of a monetary penalty, where the panel of judges definitively determines the amount of the penalty for each defendant in their ruling. The determination of the monetary penalty is based on the judge's interpretation of each defendant's contribution to the corruption offense. In practice, the two models are applied randomly, depending on the judge's interpretation. This lack of uniformity likely arises from unclear regulations. Based on the nature of each model, the proportional model is the one with the least potential for problems.⁸

That by imposing additional penalties in the form of replacement money on the Defendant in the letter of indictment according to the author, the aim is to recover state financial losses and should be a symbol of legal certainty that guarantees that the law applies clearly, consistently, and without arbitrariness, so that everyone can know their rights and obligations and can be held accountable for their actions before the law without discrimination. That when linked to the theory of legal certainty put forward by Jan Michiel Otto, where Jan Michiel Otto defines it as the possibility that in certain situations:

- A. There are clear, consistent and easily accessible rules, issued by and recognized by the state.
- B. The governing bodies (government) implement these legal regulations consistently and also submit to and obey them.
- C. Citizens in principle adapt their behavior to these rules.
- D. Judges (judiciary) that is independent and does not think about applying these legal rules consistently when they resolve legal disputes.
- E. Decisionthe trial is carried out concretely.⁹

⁸Qyrom Syamsudin. (1985). "Principles of Contract Law and Its Development". Yogyakarta: Liberty. p. 8.

⁹Soeroso. (2011). "Introduction to Legal Science". Jakarta: PT. Sinar Grafika.

Based on the legal theory above, the author is of the opinion that the application of additional penalties in the form of replacement money is still hampered by regulations that are unclear (less clear) and less consistent, as evidenced by the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption has not regulated in detail regarding replacement money and the details are unclear and out of context. Especially if the Defendant is found to not admit his actions and is clever in disguising the proceeds of crime obtained from criminal acts of corruption.

3.2. One of the elements of the crime of corruption is state financial loss, related to state financial loss

The government has established the Corruption Eradication Law, both the old law, namely Law of the Republic of Indonesia Number 3 of 1971 and Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption, to reduce state financial loss, it must be returned or replaced by the perpetrator of the crime of corruption.

The payment of compensation is crucial to the effectiveness of the compensation itself. This mechanism refers to Article 18 of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, namely:

- a. After a legally binding decision is made, the replacement money must be paid within a period of 1 (one) month.
- b. If the prosecutor cannot pay, as executor, he can confiscate the convict's property which will then be auctioned to pay the replacement money.
- c. If the convict cannot pay and does not have any assets, the subsidiary sentence (if any) can be executed.

The confiscation provisions must refer to the above to ensure the appropriate payment of compensation and to avoid errors. The confiscation will also impact the payment of compensation. Furthermore, there is an explanation of confiscation through confiscation terminology. According to the Prosecutor, there are two stages of execution:

a. After the verdict becomes final, the prosecutor will confiscate all assets, with the aim of collecting the convict's assets in order to fulfill the replacement money (asset recovery).

b. Meanwhile, during the investigation and prosecution process, confiscation is limited to items/assets directly related to the crime. The purpose of confiscation at this stage is to secure the defendant's collateral as evidence of the crime.¹⁰

Referring to the above, the theory of legal effectiveness as outlined by Soerjono Soekanto uses the following 5 (five) levels of effectiveness in enforcing the law:

a. Legal Factors

The law serves justice, certainty, and utility. In police practice, there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete and concrete, while justice is abstract. Therefore, when judges make decisions based solely on the law, the value of justice is sometimes not met. Therefore, the question of justice is at the forefront. Because the law is not only viewed from the perspective of written law.

b. Law Enforcement Factors

The implementation of the law, the mindset, and the personality of prison guards play a crucial role. If the regulations are sound but the quality is poor, then there is a problem. To date, the public has a strong tendency to interpret the law according to the police or officers, meaning the law is equated with the police or the actual behavior of officials. Unfortunately, problems in the exercise of power often arise from attitudes or behavior that are perceived as excessive, or other actions that tarnish the reputation and authority of the police institution. This is due to the poor quality of law enforcement officers.

c. Supporting Facilities or Infrastructure Factors

According to Soerjono Soekanto, supporting elements or facilities in the form of software and hardware cannot function properly unless they are equipped with adequate vehicles and communication facilities. Therefore, institutions and facilities play a crucial role in law enforcement. Without such advice and equipment, law enforcement agencies will be unable to align regulations that should be in line with their actual duties.

d. Community Factors

Law enforcers come from the community and strive for peace within the community. Every citizen or group possesses some degree of legal awareness. The

¹⁰Munir Fuady. (2002). "Unlawful Acts (A Contemporary Approach)". Bandung: PT. Citra Aditya Bakti. p. 144.

issue lies in the legal business: whether it's high, moderate, or poor legality. The level of compliance with the law is an indicator of the effectiveness of the law in question.

e. Cultural Factors

Culture essentially consists of the values underlying applicable laws, namely abstract notions of what is considered good (i.e., to be obeyed) and what is considered bad (i.e., to be avoided). Thus, Indonesian culture is the foundation or basis for applicable customary law. Written laws (legislation) created by specific social groups with power and authority over them also apply. Statutory law must reflect the values underlying common law in order to effectively implement it.¹¹

The effectiveness of law in legal action or reality can be determined when someone states that a legal rule has succeeded or failed to achieve its objectives. This is usually determined by whether its influence has succeeded in regulating certain attitudes or behaviors so that they are in accordance with its objectives or not. One effort that is usually made to ensure that society complies with legal rules is to include sanctions. These sanctions can be negative or positive sanctions, which are intended to stimulate people to refrain from committing reprehensible acts or to perform commendable actions.¹²

To analyze the problems related to the effectiveness of the application of additional penalties in the form of replacement money charged to the Defendant, based on the results of the interview and when linked to the theory of effectiveness, it can be said that the application of additional penalties in the form of replacement money charged to the Defendant is not running effectively because on the one hand the law enforcement officers in this case are the Public Prosecutor with the existing evidence and also the facts revealed in the trial and with the high goal of recovering state financial losses, impose additional penalties in the form of replacement money to the Defendant even though the replacement money that has been paid by the Defendant cannot all be fulfilled for what has been accounted for to him. On the other hand, the Panel of Judges as the party authorized to sentence the Defendant, in its decision did not impose additional penalties in the form of replacement money to the Defendant on the consideration that the Defendant never received money, goods or other property, so that the Defendant is not worthy of being burdened with the payment of replacement money.

¹¹Soerjono Soekanto. (1986). "Introduction to Legal Research". Jakarta: University of Indonesia Press.

¹²Muhammad Rafif and Zakki Adlhiyati. Review of E-Court Implementation in District Courts Yogyakarta Based on Lawrence M. Friedman's Legal Theory. Journal of the Faculty of Law. Sebelas Maret University. Volume 11 Issue 4, url:<https://jurnal.uns.ac.id/verstek/article/view/76143> accessed December 2, 2025.

Referring to this, the ineffective implementation of additional penalties in the form of restitution money indirectly means it doesn't reduce corruption cases. Therefore, in general, paying restitution money doesn't directly reduce corruption cases in Indonesia and tends to be ineffective due to weak enforcement policies and legal loopholes. Restitution money is an additional penalty to recover state losses, but many convicts choose to serve their prison sentences rather than pay the restitution imposed.

4. Conclusion

The application of additional penalties in the form of replacement money by the public prosecutor in corruption cases is guided by Article 18 paragraph (1) letter b of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by the Republic of Indonesia Law Number 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, however in its decision the Panel of Judges did not agree and in its decision did not burden the Defendant to pay replacement money, this does not provide a sense of justice for the community and also for the state. The convict not only serves a prison sentence but must also return the state's losses as a form of justice for the community. The effectiveness of additional punishment in the form of replacement money by the public prosecutor in corruption cases can be concluded as ineffective, so that the recovery of state financial losses is not optimal, that the court decision at the first level, the Panel of Judges in its ruling did not burden the Defendant to pay additional punishment in the form of replacement money. That the payment of replacement money does not directly reduce corruption cases in Indonesia, even tends to be less effective due to weak enforcement policies and the existence of legal loopholes. Replacement money is an additional punishment to recover state losses, but many convicts choose to serve a prison sentence rather than pay the replacement money imposed on them.

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