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Synchronization of The Proportional Value of Substitutional Criminal Penalties and Substitutional Prison for The Sake of Legal Certainty and Restoration of State Assets (Study of Decision Number 70/Pid.Sus-Tpk/2024/Pn.Jkt.Pst)

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Abstract. *This study aims to examine and analyze the synchronization of the proportional value of substitute monetary punishment and substitution imprisonment for the sake of legal certainty and restoration of state assets in Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst and the effectiveness of the application of substitute imprisonment to encourage the optimization of state asset restoration in Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst. The method used in this research is the Normative Juridical method, the specifications in this research are descriptive analytical, the problems are analyzed using the theory of Legal Certainty according to Gustav Radbruch, the theory of legal effectiveness according to Soerjono Soekanto. The results of this study show that this study analyzes the synchronization of the proportional value of substitute monetary punishment and substitution imprisonment in Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst in the name of defendant Harvey Moeis in order to realize legal certainty and restoration of state assets. The legal construction in the decision shows the application of Article 18 paragraph (1) letter b of the Corruption Law and Article 3 of the Money Laundering Law which is synchronized through the confiscation of various assets worth IDR 14.6 billion, vehicle units, to hundreds of plots of land as an instrument to fulfill the obligation of substitute money of IDR 210 billion. This step is emphasized by the confiscation of other high-value assets to ensure the principle of crime does not pay is effective so that there is no economic benefit left for the defendant. On the other hand, the determination of a 2-year substitute imprisonment sentence functions as an ultimum remedium and a legal coercive tool that provides certainty that the failure of financial restoration will be immediately converted into an appropriate corporal sanction. The effectiveness of this substitute prison sentence manifests as psychological pressure and a strategic negotiation tool that forces defendants to rationally calculate the balance* *between personal freedom and the surrender of assets obtained from crime. Substantially, this implementation reflects a paradigm shift in Indonesian criminal law from mere retributive justice to restorative justice. Thus, substitute prison sentence is positioned as a legal guarantee and social engineering tool that ensures the recovery of state losses remains a top priority through the mechanism of converting assets into cash value for the state treasury.*

Keywords: *Asset Restoration; Corruption; Money Laundering; Replacement Money; Substitution Prison.*

1. Introduction

The phenomenon of corruption in Indonesia itself has existed since before Indonesia became independent. One piece of evidence that shows that corruption existed in Indonesian society during the colonial era is the tradition of paying tribute by several groups of people to local rulers.[1]The uncontrolled increase in criminal acts of corruption has resulted in disasters in the form of losses to state finances and violations of the social and economic rights of society at large.[2]The crime of corruption is no longer classified as an ordinary crime but rather an extraordinary crime, so that its eradication cannot be carried out in ordinary ways but requires extraordinary methods with various kinds of legal breakthroughs.

According to Nyoman Serikat Putra Jaya, criminal acts of corruption are not only carried out by state administrators, between state administrators, but also between state administrators and other parties such as families, cronies and businessmen, thus destroying the foundations of social, national and state life, and endangering the existence of the state.[3]The concept of a state based on the rule of law is built by developing the legal apparatus itself as a functional and just system. The concept of a state based on the rule of law is developed by organizing the superstructure and infrastructure of political, economic, and social institutions in an orderly and regular manner and fostered by building a rational and impersonal legal culture and awareness in the life of society, nation, and state. The principles of a state based on the rule of law are the principles of impartial justice (independence and impartiality of judiciary), which is currently

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[1]Fatakh, A. (2015). Special Criminal Crimes of Corruption in Indonesia: The Perspective of Progressive Islamic Law in National Legal Integrity. Al-Mizan, Vol.11, No.1, P. 2.Https://Journal.Iaingorontalo.Ac.Id/Index.Php/Am/Article/View/151

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

[3]Nyoman Serikat Putra Jaya, 2005, Criminal Acts of Corruption, Collusion and Nepotism in Indonesia, Undip Publishing Agency, Semarang, p. 2.

absolutely necessary in every democratic country. In order to achieve a prosperous state based on the rule of law, it is not justified to commit any unlawful act that can harm society and undermine the ideals of a state based on the rule of law, namely creating just truth for every member of society, one of which is by not committing corruption crimes that are included in extraordinary crimes.[4]

The crime of corruption in Indonesia is regulated by Law Number 20 of 2001, Amendment to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, in Article 2 paragraph (1) it is stated that "any person who unlawfully commits an act of enriching himself or another person or a corporation which can harm state finances or the state economy."[5]The most important thing to do in eradicating corruption is to return state losses or state assets that have been lost due to acts of corruption, carried out by individuals or corporations, saving state money and state assets is something that is very necessary to be implemented, because in the facts and phenomena that have occurred so far that the eradication of criminal acts of corruption can only save a little of the total amount of money that has been corrupted. Returning state losses due to criminal acts of corruption by paying replacement money means that, even though the proceeds of criminal acts of corruption are returned to the state, perpetrators of criminal acts of corruption are still brought to court and will still be punished for their actions.[6]Referring to Article 4 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it is stipulated that: "returning state financial losses or state economic losses does not eliminate the criminal punishment of the perpetrator of the criminal act as referred to in Article 2 and Article 3". In the event that the perpetrator of corruption as referred to in Article 2 and 3 has fulfilled the elements of the article, then the return of state losses or state economic losses will not eliminate the criminal punishment for the perpetrator, the return is only one of the mitigating factors.

The legal gap in the implementation of the case that reflects the corruption deviation is the tin commodity governance scandal that dragged Harvey Moeis, in which the state suffered losses of Rp300 trillion. The sentence imposed on Harvey was 6 years and 6 months in prison. This raises controversy regarding the effectiveness of the punishment applied in providing a deterrent effect to perpetrators of corruption. In addition to the criminal sentence, Defendant

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[4]Ervina Hanindya Raharja, 2019, "Implementation of the Obligation to Pay Compensation in Corruption Crimes (Case Study at the Semarang District Attorney's Office)", Semarang: Sultan Agung Islamic University, pp. 1-3.

[5]Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Article 2 Paragraph (1)

[6]M Yusuf Daeng and Tri Novita Sari Manihuruk, 2021, "Execution of the Return of Replacement Money for Corruption Convicts by the Pekanbaru District Attorney's Office", Jurnal Hukum, Vol. 6 No. 2, pp. 218-219. Https://Journal.Um-Surabaya.Ac.Id/Justitia/Article/Download/5267/4298/24771

Harvey Moeis was legally and convincingly proven guilty of committing corruption committed jointly and committing money laundering and in its verdict, the Panel of Judges stated that the Defendant was sentenced to pay compensation for state financial losses of Rp210,000,000,000.00 (two hundred and ten billion rupiah) with the provision that if the Convict does not pay the compensation for 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, and if the Convict does not have sufficient assets to pay the compensation, then it is replaced with imprisonment for 2 (two) years.

In this context, the public's role as a watchdog over the legal process is crucial. However, it is important to remember that public involvement must be conducted wisely and without violating the presumption of innocence. The Harvey Moeis case serves as a reflection for the Indonesian justice system on the importance of maintaining a balance between judicial independence and public involvement. Transparency in the legal process must be increased to ensure the public receives clear and accurate information. This way, public trust in the justice system can be maintained without compromising fundamental legal principles.

The urgency of synchronizing this proportional value becomes very relevant in the case study of Harvey Moeis in Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst related to the alleged corruption case of tin commodity trade in the IUP area of PT. Timah Tbk. Considering the large figure of state economic losses in this case, which reached hundreds of trillions of rupiah, determining the value of replacement money and substitute imprisonment is a major stake for legal certainty in Indonesia. Without a clear synchronization standard, the judge's discretion in determining the length of substitute imprisonment has the potential to create disparities in decisions that harm the public's sense of justice. Therefore, an in-depth study is needed to formulate an ideal proportional formula between the nominal value of replacement money and the duration of substitute imprisonment. This is not only to provide a maximum deterrent effect for perpetrators like Harvey Moeis, but also to ensure that the law has effective coercive power to optimize the recovery of state assets. This synchronization is an absolute prerequisite for realizing just legal certainty and returning state assets for the prosperity of the people at large.

2. Research Methods

In the research, the author applies an empirical jurisprudence research method, research that is based on observations, experiences, or real data obtained from the real world, not just abstract theories or concepts.[7]So, the empirical legal

[7] Irwansyah, 2022, Legal Research, Mirra Buana Media, Yogyakarta, p. 43

approach in this study means that in analyzing the problem, it is done by combining legal materials (which are secondary data) with primary data obtained in the field regarding the Synchronization of Comparative Values of Criminal Compensation and Substitution Prison for the Sake of Legal Certainty and Restoration of State Assets Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst. The type of data uses primary data and secondary data. The data analysis method used is qualitative descriptive analysis.

3. Results and Discussion

3.1. Synchronization of the Comparative Value of Criminal Compensation and Substitution Prison Sentences for the Sake of Legal Certainty and Restoration of State Assets in Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst

Corruption is an act carried out with the intention of providing an unofficial advantage with the rights of another party by wrongly using one's position or character to obtain an advantage for oneself or another person, contrary to one's obligations and the rights of other parties.[8]Corruption can be classified as a crime. It's an internal human factor; humans are born with a selfish nature. This is what drives a person to behave greedily, leading them to commit corruption. The desire to behave corruptly is a personal thought. An individual's behavior and behavior toward corruption are driven by a strong sense of need and desire within themselves. This arises from their own needs and inherent greed. However, this occurs due to opportunities and weak external factors, such as the government's lack of oversight of corruption.[9]In the formulation of the article in Article 38B paragraph (2) and Article 38c of Law Number 20 of 2001, it is known that there is a principle of returning state assets. The meaning of the principle of returning state assets is an unwritten legal norm where its position is one level higher than the norms that underlie the birth of various norms in corruption laws. The principle of returning assets is explicitly stated in the corruption law but is reflected in various norms of corruption laws which become the legal basis for law enforcement officers to return state financial losses due to criminal acts of corruption.

Efforts to recover state losses from corruptors will be successful if there is cooperation between law enforcement officials (police, prosecutors, and the Corruption Eradication Commission) to uncover corruption, especially in efforts to recover state losses. Without such cooperation, recovering state financial or economic losses will be difficult. No corruptor is willing to return state funds, even if they remain imprisoned. Corruptors are willing to return state funds if

[8]Chaerudin et.al., 2008, Strategy for Prevention and Law Enforcement of Corruption Crimes, Bandung: PT. Refika Aditama, p. 2.

[9]Farid Wajdi, et al., 2024, Introduction to Anti-Corruption Education, Bandung: Widina Merdia Utama, p. 77.

their criminal cases are dropped.[10] An element of corruption is the existence of state financial losses. These state financial losses are stipulated in laws and regulations concerning corruption, both the old regulation, namely Law Number 3 of 1971, and the new regulation, namely Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. The policy stipulates that state financial losses must be returned or replaced by the perpetrator of corruption (Asset Recovery). The process of law enforcement for corruption crimes is not in line with the principles of the formation of corruption laws, considering that some judicial practices have not been able to return state financial losses through their decisions. Based on the experience of Indonesia and other countries, it has been shown that uncovering crimes, finding perpetrators, and placing perpetrators in prison (follow the suspect) is not effective enough to reduce crime rates if not accompanied by efforts to confiscate and seize the proceeds and instruments of crime. Therefore, the handling of corruption has undergone a paradigm shift, from punishment and deterrence to emphasizing the return of assets from corruption. Asset recovery is a series of processes or stages that start from collecting information or intelligence, evidence, and tracing assets (seize or restraint), the court process, implementing court decisions or rulings, and up to handing over assets to the state (asset return).[11]The essence of imprisonment according to the judge is to protect society, while two judges said it was to reform the perpetrator of the crime, while two other judges said it was to protect society and reform the perpetrator of the crime.[12]

The problem of corruption is a very complex one. It occurs not only in Indonesia but also in other parts of the world. However, in Indonesia, corruption has become a deeply rooted and cultural problem, and has even become a driving force hindering the nation's economic progress. Therefore, under the current administration, eradicating corruption is a top priority that must be realized by law enforcement officials in Indonesia. Support and cooperation from various relevant parties in eradicating corruption are absolutely necessary. This collaboration takes the form of a concrete unity in resolving corruption,

[10]Sudarto, 2017. "Asset Confiscation Mechanism Using Non-Conviction Based Asset Forfeiture as an Effort to Recover State Losses Due to Corruption Crimes", UNS Postgraduate Law Journal, No. 1, p. 111.
[11]Ridwan Arifin & Sri Ulyati, 2016. "Efforts to Return Corruption Assets Abroad (Asset Recovery) in Enforcing Corruption Eradication Law in Indonesia, Indonesian Journal of Criminal Law Studies (IJLCS), No. 1, p. 130.
[12]Petrus Irwan Panjaitan, Chairijah, 2008, Imprisonment from the Perspective of Law Enforcement, Community and Prisoners, First Edition, Jakarta, p. 72

interconnected from one stage to another, commonly referred to as the Integrated Criminal Justice System.[13]

Efforts to eradicate criminal acts of corruption consist of measures to prevent the occurrence of criminal acts of corruption and take firm action against perpetrators of criminal acts through coordination efforts, investigations, inquiries, and prosecutions as well as examinations in court. This can be carried out if accompanied by the much-needed participation of the community, in accordance with the provisions of applicable laws and regulations.[14]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.[15]Legal institutions must function optimally and have the same considerations and measures in sentencing corruption defendants in order to provide a deterrent effect and create legal certainty.[16]

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 it has the potential to occur and create the potential for the convict to choose additional imprisonment rather than return the corrupted state funds.[17] Proportionality/Comparability of the substitute monetary penalty can be applied if the payment of the substitute monetary penalty is returned in part or is insufficient. Therefore, the Analysis of Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst which states that Defendant Harvey Moeis was legally and convincingly proven to have committed corruption and money laundering (TPPU) together, legally binds itself to the principle of State Asset Restoration through the imposition of additional penalties in the form of substitute money whose value must be synchronized with the amount of assets obtained from the crime according to the mandate of Article 18 paragraph (1) letter b of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001.

[13]Frans Rudy Putra Zebua, et al., “The Responsibility of Corruption Offenders and Their Heirs in Paying Compensation for State Financial Losses Reviewed from a Civil Law Aspect (Case Study at the Medan District Court)”, Mercatoria, Vol. 1 No. 2 (August 2008), p. 151.
[14]Andryan and Benito Asdhie Kodiya, 2020, “Legal Politics of Corruption Prevention Through Restrictions on the Political Rights of Former Corruption Convicts”, Scientific Journal of Law Enforcement, Vol 7 No 2, p. 178.
[15]Christopher Harding, Richard W. Ireland, Punishment Rhetoric, Rule, and Practice, First Published, Routledge, New York USA, p. 118
[16]Interview with Head of Criminal Investigation Unit AKP Fajri Ameli Putra, STK, SIK, MH, on March 1, 2026 at 13.00 WIB.
[17]Interview with AKP Fajri Ameli Putra, STK, SIK, MH, Loc.Cit.

This relationship is manifested in the Comparability Value Synchronization mechanism, where the amount of substitute money imposed functions as an instrument for recovering state financial losses, while the determination of the duration of Substitution Prison acts as a guarantee of Legal Certainty as well as a coercive tool (sculdwang) so that the defendant prefers to return assets rather than serve additional imprisonment. This is based on Article 18 paragraph (3) of the Corruption Eradication Law which stipulates that if the convict does not pay compensation within one month after the verdict has permanent legal force, then his assets will be confiscated, and if it is insufficient, it will be replaced with imprisonment, the duration of which must be proportional to the value of the unpaid losses. Doctrinally, the integration of punishment between confiscation of assets in the TPPU crime (Article 3 of Law No. 8 of 2010) and compensation in the corruption crime creates a legal balance that ensures that law enforcement does not only stop at physical punishment, but actually achieves economic recovery of the country affected by the trade in tin commodities.[18]Analysis of the verdict of Defendant Harvey Moeis in case Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst shows the application of the principle of Synchronization of Comparative Values which integrates corporal punishment, fines, and asset restoration instruments through replacement money, as reviewed from several aspects, namely:

1. Synchronization of Principal Criminal Sentences and Substitution Fines

The imposition of a prison sentence of 6 years and 6 months and a fine of Rp. 1,000,000,000.00 is a manifestation of cumulative sanctions that aim to provide a deterrent effect as well as a financial burden on perpetrators of corruption. Based on Article 2 paragraph (1) in conjunction with Article 18 of the Corruption Law, the fine is mandatory, and the determination of a substitute imprisonment of 6 months provides legal certainty that financial obligations to the state still have legal consequences if not fulfilled.

2. Asset Restoration through Rp210 Billion in Replacement Money

The penalty of paying compensation of Rp210,000,000,000.00 is the main instrument in State Asset Recovery. This is based on Article 18 paragraph (1) letter b of the Corruption Law, which requires the Defendant to return assets obtained from criminal acts. Substantially, this value is synchronized with the results of the audit of state financial losses to ensure that the state not only punishes the perpetrator, but also recovers the economic losses incurred.

3. Comparability of 2 Years Substitution Prison

The imposition of a 2-year prison sentence as a substitute for compensation is an application of Article 18 paragraph (3) of the Corruption Eradication Law. There is

[18]Interview with AKP Fajri Ameli Putra, STK, SIK, MH, Loc.cit.

a proportional relationship (proportionality) where the duration of imprisonment functions as a "forced guarantee" so that the Defendant prioritizes the return of assets amounting to IDR 210 billion to the state treasury. If the Defendant fails to pay within one month after the decision has permanent legal force (inkracht), the prosecutor has the authority to confiscate and auction assets in accordance with the mechanism of Article 18 paragraph (2) of the Corruption Eradication Law.

4. Legal Certainty and TPPU Synchronization

Given that the Defendant was also proven to have committed money laundering (Article 3 of Law No. 8 of 2010), the confiscation of assets through compensation is integral to efforts to break the chain of economic benefits from the proceeds of crime. The synchronization of a relatively high prison sentence with a massive compensation value creates a balance between retributive justice (imprisonment) and restorative justice (recovery of state assets).

So the relationship between the verdict of Defendant Harvey Moeis in Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst with the principle of synchronizing the proportional value of criminal penalties and restoration of state assets looking at the aspect of Synergy of Principal Criminal Procedure and Fines in Legal Certainty The imposition of a prison sentence of 6 (six) years and 6 (six) months and a fine of IDR 1,000,000,000.00 (one billion rupiah) is a manifestation of cumulative sanctions based on Article 2 paragraph (1) in conjunction with Article 18 of the Corruption Law, where the determination of a substitute prison sentence of 6 (six) months if the fine is not paid functions as an instrument to maintain legal certainty so that the financial penalty has real coercive power against the Defendant.

Then, the Asset Restoration Mechanism through Replacement Money The Defendant's obligation to pay replacement money for state financial losses amounting to Rp. 210,000,000,000.00 (two hundred and ten billion rupiah) is the main instrument in the State Asset Restoration effort, which is legally based on Article 18 paragraph (1) letter b of the Corruption Law to reclaim assets obtained by the Defendant from the proceeds of corruption crimes committed jointly. Furthermore, the Synchronization of the Comparative Value of Substitution Prison Determination of a prison sentence of 2 (two) years as a substitute if the Defendant's assets are insufficient to pay replacement money is an application of the principle of Synchronization of Comparative Value based on Article 18 paragraph (3) of the Corruption Law, where the duration is determined proportionally so that the Defendant does not gain economic benefits from his crime and prioritizes the return of state losses rather than serving additional prison terms. Legal Coercive Power and Execution of the Prosecutor The provision regarding the period of 1 (one) month after the decision has permanent legal force for the Prosecutor to confiscate and auction the

Defendant's assets according to Article 18 paragraph (2) of the Corruption Law provides a clear workflow for the state in recovering public financial losses, while ensuring that the judge's decision is not illusory but can be executed in real terms for the sake of justice. Finally, seen from the Correlation with the Crime of Money Laundering (TPPU) Considering that the Defendant was also proven to have committed money laundering together, all financial sanctions in this ruling are synchronized with Article 3 of Law No. 8 of 2010 (TPPU Law) to ensure that any disguised flow of funds can be withdrawn to the state treasury through a legal and convincing asset confiscation mechanism. Some of the defendant's belongings were confiscated for the state as stated in ruling 1484-1503 Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst. Money stored in several banks is Rp.14,692,363,509.-, Dollar Money, 15 Cars, 291 Grams of Precious Metal, 1,041.98 Grams of Gold Jewelry with a content of 16 Karat-18 Karat, Defendant's bag with a total of 87 Brandid Bags, Land evidence in the name of Defendant Harvey Moeis with a total of 146 Plots of land. All of them were confiscated for the state in order to implement the 3rd verdict, namely to pay compensation for state financial losses of Rp.210,000,000,000.00 (two hundred and ten billion rupiah) with the provision that if the Convict does not pay the compensation for 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, and if the Convict does not have sufficient assets to pay the compensation, then it is replaced with imprisonment for 2 (two) years.

3.2. The Effectiveness of Substitutionary Imprisonment Implementation Encourages Optimization of State Asset Restoration in Decision Number: 70/Pid.SusTPK/2024/PN.Jkt.Pst

The crime of corruption is categorized as an extraordinary crime (extraordinary crime) because it has extraordinary impacts, corruption can not only harm state finances, disrupt the stability and security of society, but also weaken democratic values and legal certainty.[19]The return of state losses due to criminal acts of corruption in the form of state money or assets is only 10 to 15% of the total amount of money that was corrupted, so that laws and regulations are needed that strictly regulate the punishment for perpetrators of criminal acts of corruption.[20]In addition, as regulated in Article 1 of the Supreme Court Regulation (PERMA) Number 5 of 2014 concerning Additional Criminal Compensation in Corruption Crimes, it explains that regarding the calculation of the amount of compensation that is as close as possible to the value of the assets

[19]Vani Kurnia, Sahuri Lasmadi, Elizabeth Siregar. 2020, "A Legal Review of the Prosecutor's Duties and Authorities as Investigators in Corruption Cases," PAMPAS: and Journal of Criminal Volume 1, Number 3, Pg. 8https://online-journal.unja.ac.id/Pampas/article/view/11084/10230

[20]Guntur Rambey, "Recovery of State Losses in Corruption Crimes Through Payment of Compensation and Fines," De Lega Lata: Journal of Legal Studies, Vol. 1 No. 1, 2016, p. 138,https://doi.org/10.30596/DLL.V1I1.785.

obtained by the defendant due to corruption, the amount must be as close as possible to the value of the assets. The interpretation of "as much as possible" from the article can create legal uncertainty. This is because there is no explanation regarding the minimum and maximum figures of the meaning of "as much as possible", whereas in a legal regulation, legal certainty is required as the main principle.[21]Based on Article 11 (4) PERMA Number 5 of 2014, it states "when a corruption convict can only pay part of the replacement money imposed on him, then the payment of the replacement money will be calculated proportionally as a reduction in the length of the replacement prison sentence that must be served." This article is a replacement money that is not enough to pay, but the phrase "proportionally" in the article has the potential to cause ambiguity. This is because in calculating numbers and nominal amounts, a definite formula is needed to achieve legal certainty.

Compensation is a type of additional (criminal) punishment in corruption cases. Legally and doctrinally, judges are not compelled to continuously impose further penalties. However, corruption charges require special attention to this detail. This is because corruption is an unlawful act that damages or harms state finances. In this situation, the lost state must be recovered. One option to recoup state losses is to require defendants who have been proven guilty of corruption to repay the ill-gotten gains in the form of compensation. Therefore, even if the compensation is only an additional fine, it must still be paid.[22]This type of criminal compensation payment was first introduced and regulated by Military Officer Regulation Number PrtlPMl06/1957, Chief of Staff of the Armed Forces of the Allied Military Authority over the Indonesian Armed Forces Region dated April 9, 1957 concerning the Eradication of Corruption.[23]

According to AKP Fajri Ameli Putra, STK, SIK, MH, seeing the absence of a clear pattern or regulation regarding the length of the imposition of subsidiary prison sentences for additional penalties in the form of payment of replacement money can cause obstacles in the execution stage of additional penalties in the form of payment of replacement money, namely that convicts prefer to serve subsidiary prison sentences rather than pay the obligation to pay replacement money. This can be caused because in several court decisions, subsidiary prison sentences for additional penalties in the form of payment of replacement money are relatively short or low when compared to the burden of returning state financial losses which are relatively large and heavier. With these obstacles, the purpose of punishment from additional penalties in the form of payment of replacement

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[21]Mario Julyano and Aditya Yuli Sulistyawan, “Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning,” Crepido Journal, Vol. 1 No. 1, 2019, p. 14,https://doi.org/10.14710/CREPIDO.1.1.13-22.
[22]JDIH Audit Board, 2010, Replacement Money, Jakarta: Audit Board, p. 4.
[23]Akhiar Salmi, “Criminal Payment of Compensation: Past, Present, and Future,” Journal of Law & Development, Vol. 0 No. 0, 2009, p. 218,https://doi.org/10.21143/JHP.VOL0.NO0.185.

money cannot be achieved. The form of imposition of subsidiary prison sentences for additional penalties in the form of payment of replacement money in corruption crimes as described above that there are no regulations for judges, related to the length of the imposition of subsidiary prison sentences for additional penalties in the form of payment of replacement money. It is known that the length of the imposition of subsidiary prison sentences also has an influence on the fulfillment of the execution of additional penalties in the form of payment of replacement money.[24]As for what has been described above, at least 3 points can be obtained, including:[25]

1. Changes and/or improvements to the policy on handling corruption crimes can be submitted to the Supreme Court to issue a Supreme Court Regulation (PERMA) regarding this matter. The legal basis for the PERMA's issuance can be seen in Article 79 of Law No. 14 of 1985 concerning the Supreme Court. Article 79 of Law No. 14 of 1985 authorizes the Supreme Court to create laws or exercise rule-making power. This authority is granted so that the Supreme Court can handle issues not regulated in detail in the legislation.

2. The imposition of a subsidiary prison sentence for the additional penalty of payment of compensation is increased on the grounds that the convict pays compensation rather than serving a subsidiary prison sentence, which is a corporal punishment that should be the Ultimum Remidium. Therefore, the amount of state financial losses should also be the basis for the judge's consideration of the potential for the state financial losses to be recovered by the defendant before the verdict is issued against him. Thus, with this consideration, it is hoped that the imposition of the principal penalty for the original corruption crime will also be increased so that the imposition of a subsidiary prison sentence for the additional penalty of payment of compensation can have a longer time limit. Thus, it is hoped that the recovery of state financial losses through criminal law mechanisms can also be maximized.

3. The imposition of a subsidiary prison sentence in lieu of the additional penalty of payment of compensation is imposed with several provisions or variations in the imposition of a prison sentence in lieu of payment of compensation to be returned. According to the author, the ideal mechanism is to implement an inverted pyramid scheme. This is expected to increase the willingness of convicts to pay the additional penalty of compensation.

The absence of a regulated pattern or basis used by the Judge in determining the length of the subsidiary prison sentence makes the majority of the Judge's subjectivity used. The Judge should also determine the substitute prison according to the class range (the greater the replacement money that must be

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[24]Interview with AKP Fajri Ameli Putra, STK, SIK, MH, Loc.cit.
[25]Ibid,

paid, the greater the length of the substitute prison sentence so as not to cause disparity) Then make changes and/or improvements to the policy in handling the crime of corruption if it can be submitted to the Supreme Court to issue a Supreme Court Circular (SEMA) regarding this matter.

This case focuses on the element of abuse of authority committed systematically and continuously over a ten-year period, underscoring the principle that criminal responsibility is individual and must be borne by public officials involved in the embezzlement of institutional funds. This legal approach underscores the seriousness of the judicial system in prosecuting public officials who abuse their positions for personal gain.[26] The effectiveness of the application of substitute imprisonment in encouraging the optimization of state asset restoration is influenced by several factors, namely:[27]

1. The system for recovering state losses from corruption in Indonesia still faces various challenges, despite the existence of mechanisms stipulated in law. This recovery process involves various parties, including the Attorney General's Office, the Corruption Eradication Commission (KPK), the courts, and sometimes the police, to ensure maximum recovery of state losses. However, obstacles such as lack of coordination between institutions, limited resources, and unclear regulatory implementation often slow the process.

2. The low rate of state loss recovery is caused by several interrelated factors. Legally, despite a strong legal basis, implementation of regulations is often hampered by complex procedures and a lack of coordination between the agencies involved. Administratively, difficulties in recording and tracking assets, both domestically and internationally, exacerbate this situation. Furthermore, practical factors such as evasion and diversion of assets by corruptors and a lack of resources for thorough investigations make many assets difficult to access or seize. Therefore, a thorough evaluation of these factors is crucial to finding solutions that can improve the effectiveness of state loss recovery.

3. There are limitations in tracking and confiscating assets that have been moved or hidden by perpetrators. Furthermore, coordination between institutions is often hampered by differences in approaches, procedures, and priorities. Other obstacles include a lack of transparency and accountability in managing the execution of judges' decisions, as well as challenges in ensuring that confiscated assets can actually be used to recover state losses. Obstacles to recovering state assets also often stem from existing legal issues. For example, inconsistent regulations between institutions or differing interpretations of the law can slow or hinder asset recovery efforts. At the bureaucratic level, slow administrative

[26]Togatorop, Dodi, and Evi Retno Wulan. 2024, "Limitation Of The Crime Of Embezzlement Of Foundation Financial Management." Sehasen Law Journal 10, no. 1, pp. 83-96.
[27]Interview with AKP Fajri Ameli Putra, STK, SIK, MH, Loc.cit.

processes, such as filing for seizure warrants or asset recognition, prolong the time required to recover state losses. Furthermore, a lack of facilities and resources, such as technology for more effective asset tracking, and inadequate training or capacity of officers in managing the recovery process, pose challenges to maximizing the recovery of state assets.

4. The existence of criminal penalties that have not yet reached the maximum penalty even though in the provisions of Article 603 of Law Number 1 of 2023 concerning the Criminal Code which states that Any person who unlawfully commits an act of enriching himself, another person, or a Corporation that is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment of at least 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI. This regulates the mechanism for the return of state losses caused by criminal acts of corruption. However, an evaluation of this provision shows that although this article provides a legal basis for the return of state losses, its implementation is still hampered by various technical and structural obstacles. The imbalance between criminal penalties and the return of state losses is a problem that needs attention, because without clarity regarding how much priority is given to the return of state losses, many corruption cases fail to return all state losses, which in turn reduces the effectiveness of corruption eradication.

5. Then, in returning state losses in criminal acts of corruption, it can be in line with the principles of restorative justice, which prioritizes the restoration of losses and rehabilitation of perpetrators.[28]Harmonizing the two can create a more humane and effective system for eradicating corruption, particularly by reducing reliance on prison sentences, which often have little impact on recovering state losses. Clear regulations regarding restitution as part of restorative justice can increase perpetrators' participation in voluntarily restitution, which in turn can accelerate recovery and minimize the negative social impact of the legal process. However, to achieve this, regulations that support inter-agency coordination and strict oversight are needed to prevent abuse of the system.

6. The existence of a protective article for perpetrators of corruption, namely Article 5 Paragraph (1) Letter b of the Republic of Indonesia Prosecutor's Office Regulation No. 15 of 2020 provides an opportunity to stop the prosecution of corruption crimes through a restorative justice approach, which requires the return of state losses as one of the prerequisites. So this shows that this approach provides flexibility for resolving corruption that prioritizes the recovery of state losses, but also creates the potential for abuse if the return of state

[28]Delfiandi, Mulyadi, M., & Trisna, W. 2024. Legal Analysis of the Return of State Financial Losses in the Criminal Act of Corruption of Village Fund Misappropriation (Study of Decision Number 74/ Pid.Sus-Tpk/2022/Pn.Bna). Journal of Science and Social Research, Vii (4), pp. 1900–1909.

losses is not carried out in a transparent and accountable manner. Therefore, it is important to ensure the existence of a strict monitoring mechanism for the implementation of this article in order to create a deterrent effect while optimizing the recovery of state losses.

Effectiveness of Implementation of Substitutionary Prison Sentence for Restoration of State Assets on Defendant Harvey Moeis in Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst by taking into account the provisions of Article 2 in conjunction with Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) 1st of the Criminal Code and Article 3 of Law Number 8 of 2010 concerning Criminal Acts of the Supreme Court of the Republic of Indonesia Money Laundering in conjunction with Article 55 paragraph (1) 1st of the Criminal Code; for state losses amounting to Rp.271,069,688,018,700.00 (two hundred seventy-one trillion sixty-nine billion six hundred eighty-eight million eighteen thousand seven hundred rupiah). Amar was legally and convincingly proven guilty in the verdict of committing a criminal act of corruption carried out jointly and committing a criminal act of money laundering jointly as in the primary first indictment and the primary second indictment.

Sentencing the Defendant to a prison sentence of 6 (six) years and 6 (six) months and a fine of Rp. 1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 6 (six) months, Sentencing the Defendant to pay compensation for state financial losses of Rp. 210,000,000,000.00 (two hundred and ten billion rupiah) with the provision that if the Convict does not pay the compensation for a maximum of 1 (one) month after the court decision has permanent legal force, then his assets can be confiscated by the Prosecutor and auctioned to cover the compensation, and if the Convict does not have sufficient assets to pay the compensation, then it will be replaced with a prison sentence of 2 (two) years.

The application of substitution imprisonment in Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst on behalf of defendant Harvey Moeis, when reviewed through Soerjono Soekanto's Theory of Legal Effectiveness, shows that the recovery of state assets has not reached the maximum degree of effectiveness due to the lack of synchronization between the five main legal factors, namely Viewed from the legal factors themselves, the use of Article 18 of the Corruption Law in conjunction with Article 3 of the Money Laundering Law normatively does provide a basis for asset restoration, but its effectiveness is weakened due to the gap between the value of the replacement money of IDR 210 billion and the substitution sentence of only 2 years, so that the law fails to create coercive power that is comparable to the value of state losses. In terms of law enforcement, the effectiveness of this decision is highly dependent on the courage and professionalism of the executing prosecutor in progressively tracking assets to ensure that the substitution imprisonment is not used as an escape for the defendant to whitewash the proceeds of his crime. In terms of infrastructure and facilities, optimizing asset restoration is hampered if the state does not have a capable confiscated assets management system to convert confiscated assets into economic value that can quickly and accurately cover the state's losses of hundreds of trillions. Meanwhile, in terms of societal and cultural factors, the effectiveness of the law faces major challenges due to the very high public expectations for ecological justice for the Rp271 trillion loss, while the existing legal culture still tends to be retributive (focused on corporal punishment) rather than restorative, so that the threat of short substitute imprisonment actually risks perpetuating the mindset that the proceeds of corruption can be "paid for" with a relatively cheap detention period. Theoretically, according to Soerjono Soekanto, the law in this case has not worked effectively as an instrument of social change and economic recovery because these five factors do not support the creation of conditions where compliance with paying restitution is far more beneficial for the defendant than serving a substitute prison sentence.

4. Conclusion

1. Synchronization of the Comparative Value of Criminal Substitute Money and Substitute Prison for the Sake of Legal Certainty and Restoration of State Assets in Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst in the Confiscation of various cash assets worth IDR 14.6 billion, foreign currency, 15 units of cars, up to 146 plots of land is a real step in implementing Article 18 paragraph (1) letter b of the Corruption Law, where all of these assets are constructed as instruments to fulfill the obligation of substitute money of IDR 210,000,000,000.00 in order to achieve the target of State Asset Restoration, then in the Confiscation of high-value items such as 291 grams of precious metals, 1,041.98 grams of jewelry, and 87 luxury bags shows a law enforcement strategy that is in sync with Article 3 of the Money Laundering Law, where assets resulting from criminal acts that have been changed in form can still be confiscated for the state to ensure that no economic benefits remain for the Defendant (principle crime does not pay). Furthermore, regarding Substitution Prison as Ultimum Remedium and Coercive Instrument in Determining a prison sentence of 2 (two) years as a substitute if the assets that have been confiscated are not sufficient to cover the value of IDR 210 billion, this is a form of Synchronization of Comparative Value based on Article 18 paragraph (3) of the Corruption Law which functions to provide Legal Certainty that failure to restore assets financially will be immediately converted into an appropriate criminal sanction. 2. The Effectiveness of Substitution Imprisonment Implementation Encourages Optimization of State Asset Restoration In Decision Number: 70/Pid.Sus-TPK/2024/PN.Jkt.Pst on behalf of

defendant Harvey Moeis manifests as the Effectiveness of Psychological and Legal Pressure working to ensure the restoration of the state's economic rights. The 2 (two) year substitution imprisonment sentence is not merely a passive alternative punishment, but rather functions as a strategic legal negotiation instrument that forces the defendant to make a rational calculation between maintaining his personal freedom or handing over assets resulting from crime. In this perspective, the law uses the threat of physical suffering (additional imprisonment) as a pressure force so that the defendant prioritizes the payment of replacement money of Rp210,000,000,000.00, so that the asset restoration process can run more optimally through the confiscation and auction mechanism by the Executing Prosecutor. Substantially, the application of substitutionary punishment aligns the Indonesian sentencing paradigm with the principles of modern criminal law, which has begun to shift from mere revenge focused on the physical suffering of the accused (retributive justice), towards efforts to restore the original state oriented towards the interests of the victim, in this case the state (restorative justice). This effectiveness reflects the functioning of the law as a social engineering tool aimed at withdrawing the flow of illegal funds into the state treasury in order to overcome the destructive impact of corruption. Thus, substitutionary imprisonment is positioned as a "legal guarantee" that ensures that even though corporal punishment has been served, the accused's economic responsibility for state losses remains a top priority that must be resolved through the conversion of assets into cash value for the state.

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