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Legal Certainty for the Implementation of Execution in the Form of Payment of Money in Lieu of Corruption Cases in the Criminal Justice System

Nevertiti Erwinda Emran[1], Ramlani Lina[2], Mohamad Ismed[3]
Jayabaya University Jakarta, Indonesia[1,2,3]
Email: nevertitierwinda@gmail.com[1], rlsinaulan@gmail.com2, ismedismed@gmail.com[3]

ABSTRACT

The determination of additional penalties in the form of "replacement money" should ideally be equal or balanced with state financial losses as a result of corruption crimes. The formulation of the problem in writing this thesis is how to execute compensation in corruption crimes according to positive law and how to ensure the legal certainty of the implementation of execution in the form of payment of compensation for corruption cases in the criminal justice system. The research method used in this study is Normative juridical, with a legislative, conceptual and case approach, the legal materials used are primary, secondary and tertiary legal materials and the analysis of legal materials is qualitative. The results of the study show that one of the elements of corruption in Articles 2 and 3 of Law 31/1999 jo. Law 20/2001 is the existence of state financial losses. This element has the consequence that the eradication of corruption not only aims to deter corruptors through the imposition of heavy prison sentences, but also to restore state finances due to corruption, as affirmed in the General Considerations and Explanations of Law 31/1999. By law, the instrument to restore the state's finances is included in an additional penalty in the form of payment of replacement money. The difference in the meaning of the criminal purpose of paying substitute money between what is referred to in the explanation of the Law and the formulation of Article 18 paragraph (1) letter b causes uncertainty about the purpose of paying substitute money. This ambiguity also has an impact on the dualism of the application of the calculation of the value of substitute money as seen in several Supreme Court (MA) decisions. The legal umbrella of execution in this case is Article 18 of Law 31/1999 and is not a fatwa of the Supreme Court. The execution of the substitute money also does not require a separate lawsuit, because the additional penalty of the substitute money is a unit of criminal verdicts handed down by the panel of judges, where the authority to execute each criminal verdict, both the principal and additional crimes, lies with the public prosecutor. The need for the Supreme Court's fatwa should not be in order to carry out the execution but as a legal umbrella for how long the substitute prison sentence will be carried out if the substitute money has been paid in part, which until now has not been regulated in Law 31/1999 jo. Law 20/2001 or other derivative regulations.

Keywords: replacement money, corruption, legal certainty

Corresponding Author; Nevertiti Erwinda Emran
E-mail: nevertitierwinda@gmail.com

INTRODUCTION

Law enforcement is the process of making efforts to enforce or function legal norms in real terms as a guideline for actors in traffic or legal relationships in community life and management, law enforcement is an effort to realize legal ideas and concepts that the people expect to become a reality, where law enforcement is a process that involves many things (Moho, 2019).

Corruption in Indonesia already has legal provisions that regulate acts that are considered detrimental to state finances and social rights both in terms of morality and economy. The enactment of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption aims to prevent the occurrence of corruption crimes with strict sanctions in the form of criminal law provisions, both basic and additional crimes (Syafira et al., 2015). One of the additional forms of crime is an order to return state losses with an additional penalty in the form of payment of replacement money.

The increase in uncontrolled corruption in an area will certainly bring a disaster, not only an economic disaster but also in the life of the nation and state. This condition is exacerbated by the nature of corruption which has a very close relationship with other forms of crime, particularly organized crime and economic crime, including money laundering, so that in many cases corruption involves large amounts of assets that are an important part of the country's resources, and which threaten the country's political stability and sustainable development (M. N. N. Setiawan & Yensi, 2021).

The judge's decision basically contains several juridical aspects, both material and formal. The judge's decision has a material aspect in the sense that all acts committed by the defendant have been proven to exist, so that the person concerned can be held legally responsible. Meanwhile, the judge's decision has a formal aspect in the sense that there is an obligation for the prosecutor as the executor to be able to implement the decision that has been determined by the judge (Court).

The implementation of the content of the verdict by the prosecutor as the executor is basically inseparable from what has been demanded by him during the case examination process. The charges are based on the existence of legal evidence and facts revealed in the trial (Sugiono et al., 2021), but it is not uncommon for what has been demanded by the Public Prosecutor to experience difficulties when the execution is about to be carried out, be it related to the execution of the convict, the execution of goods, and the additional criminal execution in the form of payment of compensation in the case of corruption (Favian, 2023).

Execution is basically one of the prosecutor's powers regulated by law to implement the judge's decision (Doll, 2014). The judge's decision that can be executed is only the judge's decision that has obtained permanent legal force (in kracht van gewijsde). Of the several things that must be carried out by the execution, what raises the problem is the execution of the payment of compensation which is an additional obligation of the convict in the case of corruption.

Research on the execution of substitute money in corruption crimes has been carried out by many previous researchers, which provide insights and solutions to various challenges faced in its implementation. One of the relevant studies is a thesis by Fransisca Kartini Siambaton (2019) entitled *Execution of Substitute Money in Corruption Crimes (Case Study at the Banyuasin District Attorney's Office)*. This study uses empirical normative law methods by collecting data from primary, secondary, and tertiary sources. The results of the study show that the process of executing substitute money at the Banyuasin District Attorney's Office is carried out in accordance with Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption. However, there are obstacles such as the lack of detailed regulations related to the discretion of the prosecutor's office, limited asset tracking facilities, and lack of legal awareness from convicts and the public.

Furthermore, the thesis by Vina Nurfarhani (2022) Titled *Analysis of the Imposition of Criminal Sanctions of Confinement as a Substitute for Fines in Corruption Crimes* highlighting the regulation and implementation of criminal sanctions of imprisonment in lieu of fines. This research is normative by using criminal theory and legal objectives. Data were collected through literature studies and relevant court decisions. The results show that the return of state assets does not only depend on the criminalization of the perpetrators, but also on the effectiveness of the execution of criminal sanctions and fines that are not optimal in some cases. In addition, a journal by Lutfy Resli (2020) entitled *State Financial Return of Corruption Cases Through Integral Execution by the Prosecutor's Office* discussed the integral policies implemented by the Prosecutor's Office in an effort to restore state finances. This research uses a normative and empirical juridical approach. Resli highlighted the obstacles to the execution of substitute money due to the absence of clear rules regarding the procedures for implementing additional criminal executions. The researcher recommends that the government immediately pass the Asset Forfeiture Bill and consider a policy of amnesty or whitening for convicts who are willing to return state losses.

This study has differences from previous studies. These studies focus more on the return of state finances in corruption cases through integral execution by the prosecutor's office. imposition of criminal sanctions of imprisonment as a substitute for fines in corruption crimes. Meanwhile, this research focuses more on criminal law policies on the execution of substitute money in corruption crimes to realize legal certainty.

Practically, this study provides recommendations to law enforcement officials, especially the prosecutor's office, in overcoming obstacles to the execution of substitute money in corruption cases. With the analysis of juridical, technical, and sociological obstacles in the implementation of execution, this research is expected to be an input in the formulation of more detailed and comprehensive policies or regulations. In addition, this research is also useful for the government in formulating implementing regulations that support the effectiveness of additional criminal executions, so that the process of recovering state losses can run faster and optimally.

Another benefit of this research is to increase public awareness of the importance of participation in the supervision and return of corrupt state assets. With community involvement, it is hoped that synergy will be created between law enforcement and the community in encouraging transparency and accountability in every process of law enforcement of corruption crimes. This research is also expected to encourage the realization of legal certainty and justice in the implementation of judges' decisions, thereby providing a deterrent effect for corrupt actors and strengthening the integrity of the legal system in Indonesia.

METHOD

Type of Research

This research as a form of scientific research is prepared using a certain research method, namely the juridical-normative research method. Soerjono Soekanto said that legal research carried out by researching literature materials or secondary data can be called normative legal research or literature law research (Manan, 2021).

This research is a normative juridical research. Normative juridical research consists of, a. research on legal principles, b. research on legal systematics, c. research on the level of legal synchronization, d. research on legal history, and e. comparative legal research (Ali, 2021).

Research Approach

The researcher uses a legislative approach (*Statute Approach*), conceptual approach (*conseptual approach*), and the case approach approach. A normative research must certainly use a legislative approach, because what will be studied is various legal rules that are the focus as well as the central theme of a research (Sisokhi, 2022). Meanwhile, the conceptual approach in normative research departs from the thoughts and doctrines that have developed in legal science.

Types and Sources of Legal Materials

In normative juridical research, the data used is secondary data. Secondary data is data obtained through literature studies which include laws and regulations, books, research results (research, theses and dissertations), scientific writings (journals, papers and others), dictionaries and encyclopedias. The secondary data used by the researcher in this study consists of:

1. Primary legal materials are binding and researched legal materials in the form of laws and regulations, which include: the 1945 Constitution of the Republic of Indonesia (1945 Constitution). Law Number 1 of 1946 concerning Criminal Law Regulations (Criminal Code (KUHP)). Law Number 8 of 1981 concerning the Criminal Procedure Code (Criminal Procedure Code (KUHAP)). Law Number 31 of 1999 concerning Corruption. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption Crimes. Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.
2. Secondary legal materials, namely legal materials that provide explanations of primary legal materials, in the form of books, research results or scientific writings related to the title of this research.
3. Tertiary legal materials, namely legal materials that provide clues to primary and secondary legal materials, such as the Great Indonesian Dictionary, English Dictionary and encyclopedia, but are not used in this study.

Legal Materials Collection Techniques

The technique of collecting legal materials is as follows: namely the stages carried out when conducting literature research, namely by conducting an inventory of laws and regulations, excavating various principles, legal concepts that are directly related to the research being studied, and categorizing laws in relation to the problems being studied.

Legal Material Analysis Techniques

Data analysis can be done by qualitative analysis or quantitative analysis. In this study, the researcher uses qualitative analysis, with the analysis method being legal interpretation. In other words, the results of the analysis are logically described in the form of sentences that are arranged systematically so that they are easy to understand (Helda et al., 2023).

The researcher will use a systematic legal interpretation method, which is a method that interprets laws and regulations by connecting them with other laws or regulations or with the whole.

RESULTS AND DISCUSSION

Execution of Substitute Money in Corruption Crimes According to Positive Law

The first corruption eradication regulation regulating the payment of replacement money is the Military Ruler Regulation dated April 9, 1957 Number PRT/PM/06/1957 concerning the Eradication of Corruption. This is contained in Article 5 which states "Whoever commits corruption is punished with imprisonment for a maximum of 5 years, all property obtained from corruption is confiscated or required to pay compensation in an amount equal to the price of property obtained from corruption." The provisions of the Article stipulate that the amount of compensation that must be paid by a corruption convict is an amount equal to the property obtained from the proceeds of corruption. However, if the property obtained has been confiscated of the same value as the loss of the state, then there is no obligation for the convict to pay compensation.

Furthermore, the penalty of paying this replacement money is contained in the Regulation of the Central War Ruler of the Chief of Army Staff Number PRT/PEPERPU/031/1958 dated April 16, 1958 concerning the Investigation, Prosecution, and Examination of Criminal Corruption and Property Ownership. This is regulated in Article 40 paragraph (3), namely "The convicted person may also be required to pay compensation in the same amount as property obtained from corruption". The penalty of paying this compensation is imposed in addition to the penalty of imprisonment and/or fines as well as the confiscation of all property obtained from corruption.

In order to eradicate corruption in our country, we have issued 3 (three) laws and regulations regarding corruption, namely Law No. 3 of 1971 concerning the Eradication of Corruption, Law No. 31 of 1999 concerning the Eradication of Corruption, and Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption. The three laws and regulations regulate the criminal penalty of substitute money for defendants in corruption cases.

The criminal regulation of substitute money in Law No. 3 of 1971 concerning the Eradication of Corruption Crimes stipulates that the payment of replacement money is as much as equal to the money that is corrupted. However, Law No. 3 of 1971 does not explicitly determine when the replacement money must be paid, and what the sanctions will be if the payment is not made. Only in the explanation section of the Law is it stated that if the payment of substitute money cannot be fulfilled, the provisions on the payment of fines apply. At that time, this problem was tried to be overcome with the issuance of the Circular Letter of the Chief Justice of the Supreme Court in 1985. The Circular Letter encourages prosecutors to file a civil lawsuit if the execution of the substitute money cannot be carried out due to various reasons.

This legal weakness has been corrected in Law No. 31 of 1999 concerning the Eradication of Corruption Crimes and Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. In both laws, the provisions regarding compensation are more emphatic, namely if they are not paid within 1 (one) month, the convict will be immediately executed by putting him in prison. The prison sentence has been determined in the judge's decision, the length of which does not exceed the maximum threat of the main crime.

In the provisions of Article 17 jo 18 letter b of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes jo Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, which states "In addition to being subject to criminal punishment as stipulated in Article 2, Article 3, Article 5 to Article 14, the defendant may be sentenced to an additional penalty as referred to in Article 18". Furthermore, in the provisions of Article 18 it is stated "In addition to the additional crime as referred to in the Criminal Code, as an additional crime is the payment of compensation money which is as much as equal to the property obtained from the crime of corruption. The law gives special emphasis on the amount of compensation money, which is as much as equal to property obtained from corruption crimes. Juridically, this must be interpreted as a loss that can be charged to the convict is a state loss whose amount is real and definitely the amount is the result of unlawful acts, either intentional or negligent, committed by the convict.

In the implementation of the payment of compensation as stipulated in the provisions of Article 18 paragraph (2) of Law No. 31 of 1999 concerning the Eradication of Corruption in conjunction with Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption which states that if the convict does not pay the compensation as referred to in Article 18 paragraph (1) letter b no later than 1 (one) month after the verdict The court has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money. By looking at this provision, if the convict is unable to pay the additional penalty of compensation imposed on him, the prosecutor can immediately confiscate and auction the property owned by the convict of the crime of corruption.

In Article 18 paragraph (3) it is further stated that in the event that the convict does not have sufficient property to pay the compensation as referred to in Article paragraph 18 paragraph (1) letter b, then he shall be sentenced to imprisonment whose duration does not exceed the maximum threat of the principal penalty in accordance with the provisions of this law and the duration of the sentence has been determined in the court decision.

Provisions related to the regulation of substitute money, in addition to being regulated in the provisions of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, have also been further regulated in the provisions of Supreme Court Regulation No. 5 of 2014 concerning Additional Penalties for Substitute Money in Corruption Crimes.

In the provisions of Article 1 paragraph 1 of the Supreme Court Regulation No. 5 of 2014 concerning Additional Crimes of Substitute Money in Corruption Crimes, it is stated that in determining the amount of payment of substitute money in corruption crimes is as much as the same as property obtained from corruption crimes and not solely a number of state losses caused. Regarding the execution of the substitute money itself, further in the provisions of Article 9 of the Supreme Court Regulation No. 5 of 2014 concerning the Additional Crime of Substitute Money in Corruption Crimes states as follows:

a) If within 1 (one) month after the verdict has permanent legal force, the convict does not pay off the payment of the substitute money, the prosecutor is obliged to confiscate the property owned by the convict.
b) If after the confiscation as referred to in paragraph 1 the convict still does not pay off the payment of the replacement money, the prosecutor is obliged to auction the property in accordance with Article 273 paragraph (3) of the Criminal Code
c) The auction is carried out no later than 3 months after the confiscation.
d) As long as the convict has not completed serving the main prison sentence, the prosecutor can still confiscate and auction the property belonging to the convict who is found.

The adoption of the penalty of substitute money into the criminal law system which was initially only known in civil law instruments was basically based on the idea that corruptors must be threatened with the heaviest possible criminal sanctions so that they are deterred. Looking at the criminal system embraced by corruption laws, both old and new, everyone should be afraid to commit corruption. Moreover, it is coupled with the obligation to pay compensation according to the amount he corrupted.

Article 18 of the Republic of Indonesia Law No. 20 of 2001 concerning the Eradication of Corruption Crimes reads as follows (M. N. Setiawan et al., 2023):

1. In addition to additional crimes as intended in the Criminal Code, as additional crimes: a. Confiscation of tangible or intangible movable goods or immovable goods used for or obtained from corruption crimes, including companies owned by convicts where the corruption crimes were committed, as well as the price of goods that replace such goods; b. Payment of replacement money in the amount of as much as possible equal to property obtained from corruption crimes; c. Closing

all or part of the company for a maximum period of I (one) year. d. Revocation of all or part of certain rights or abolition of all or part of certain benefits, which have been or can be given by the government to the convict.

2. If the convict fails to pay the compensation as intended in paragraph (1) b no later than I (one) month after the court decision that has obtained permanent legal force, then his property may be confiscated by the prosecutor and auctioned to cover the compensation.
3. In the event that the convict does not have sufficient property to pay the substitute money as intended in paragraph (1) b, he shall be sentenced to imprisonment whose duration does not exceed the maximum threat of the principal penalty in accordance with the provisions of this Law and the duration of the sentence has been determined in the court decision.

Corruption has become a crime that is considered to damage the joints of society and state life. State losses caused by corruption crimes have been included in the dangerous category. Corruption in Indonesia is a national problem that is recurrent and emergency that has been faced by the Indonesian nation from time to time in a relatively long span of time so that the special corruption court is expected to help solve a number of past corruption crimes in order to restore lost state assets.

One way to recover the lost state losses is to provide an additional penalty in the form of payment of replacement money. This effort has yielded results, namely in the form of income into the state treasury from the proceeds of payment of replacement money from several convicts who have been determined the amount of payment of replacement money.

Compensation money as an additional crime in corruption cases must be understood as part of criminal efforts against those who violate the law. In this case, the law violated is a criminal act of corruption. To understand more about this issue, it is good to recall the concept of criminalization more completely.

The types of punishment are listed in article 10 of the Criminal Code. These types also apply to offenses listed outside the Criminal Code, unless the provisions of the law deviate (article 103). These types of crimes are distinguished between principal crimes and additional crimes. In principle, the additional penalty is only imposed if the principal penalty is imposed. The types of punishment are as follows:

a. Principal Crimes include: Death Penalty, Prison Sentence, Confinement Penalty, Fine Penalty, and Cover-up Crime.
b. Additional crimes include: revocation of certain rights, confiscation of certain goods, and announcement of judges' decisions (Fajri, 2019).

Criminal sanctions regulated in the Law on the Eradication of Corruption Crimes are: Death Penalty. Both based on article 69 of the Criminal Code, the PTPK Law and based on the supreme human rights, the death penalty is the heaviest crime because its implementation is in the form of an attack on the right to human life, which is the main human right. In addition, the execution that has occurred cannot be corrected or corrected if mistakes are found in the future. For this reason, only really serious criminal acts are threatened by the death penalty. And in every article that includes the death penalty, it is always accompanied by other criminal alternatives so that the judge does not necessarily impose the death penalty on the violator of the article that is threatened with the death penalty. For example, the death penalty or life imprisonment or a provisional sentence of a maximum of 20 years as stated in article 340 of the Criminal Code. This principle is also followed by other laws including the PTPK Law.

Corruption criminal law is one of the special crimes. Special crimes are crimes whose regulations are specifically aimed at a certain group (such as the military) or a certain act (such as corruption). The principle of its enforcement is that special criminal law takes precedence over general crimes. In accordance with the general principle of the law, namely lexgeneralis which is also regulated in the Criminal Code in article 63 paragraph (2).

Before finding out what is behind the payment of corruption compensation money, it must first be known why corruption is made a criminal act. This is very important, especially in finding the relationship between the act that is made into a criminal act and what sanctions should be used. In this regard, Sudarto revealed that "Acts that are sought to be prevented and overcome by criminal law must be desired acts, namely acts that cause losses (material and spiritual) to the community. This is done for the welfare and protection of the community which must also be in line with the goal of national development, namely realizing a just and prosperous society" (Pilli, 2015).

It can be seen that corruption has resulted in the perpetrators obtaining financial benefits and on the contrary, the state as a victim suffers financial losses. In essence, corruption has resulted in poverty, so corruption perpetrators must be subject to additional penalties in the form of payment of replacement money.

The penalty of payment of substitute money, including additional crimes listed in article 18 paragraph (1) of the PTPK Law. Additional crimes have several differences from the principal penalty. That is:

1. The imposition of one of the main types of crimes is a must or imperative. Meanwhile, the imposition of additional criminal penalties is facultative. If in a trial it is proven that the defendant is legally and convincingly guilty, the judge must impose one of the principal crimes according to the type and maximum limit of the formulation of the criminal act violated. The imperative nature can be seen in the formulation of the criminal act, where there are two possibilities, namely being threatened with one of the principal crimes so that the judge inevitably has to impose a sentence according to the formulation or it can also be a criminal act threatened by two or more types of principal crimes so that the judge can choose only one. For example, in article 2 paragraph (2) of the PTPK Law, it chooses the type of criminal sentence for life or for a certain period of time between four years to 20 years. In the additional penalty, the judge may impose or not impose an additional penalty that is threatened against the violator. For example, the judge can impose one of the additional penalties in article 18 paragraph (1) of the PTPK Law in the event that it is proven to violate article 3 of the PTPK Law. Although in principle the imposition of additional criminal penalties is facultative, there are some exceptions, for example article 250 bis of the Criminal Code.
2. The imposition of the principal type of crime must be concurrent with the additional crime (standalone) while the imposition of the additional crime must be concurrent with the principal crime.
3. The type of principal crime that is imposed, if it has legal force, is still required to be executed (executie) while the additional penalty is not. In the principal crime, execution of the achievement of the crime is required unless the principal crime is conditional (article 14a) and the specified conditions are not violated. In additional crimes, for example, the judge's decision.
4. The principal penalty cannot be imposed cumulatively while the additional penalty can. However, it can be deviated from several laws, including the PTPK Law.

The criminal definition of payment of compensation can be drawn from article 18 of Law paragraph 1 letter b No. 31 of 1999, namely: "payment of compensation money in the amount of which is as much as equal to property obtained from corruption crimes." To be able to determine and prove how much property the convict actually obtained from the crime of corruption, it should not only be interpreted as property that was still controlled by the convict at the time of the court decision, but also the property resulting from corruption that at the time of reading the verdict had been transferred by the defendant to another person.

In practice, the criminal verdict for the payment of substitute money varies in amount which can be caused by several factors, including the judge having his own calculation, part of the proceeds of corruption have been returned or the crime of corruption was committed by more than one person so that the criminal payment of substitute money is charged together.

The obstacles in imposing the payment of replacement money in the context of the settlement of state finances have been expressed by Ramelan (2004) as follows:

1. Corruption cases can be disclosed after running for a long period of time, making it difficult to trace the money or wealth obtained from corruption.
2. With various efforts, corrupt perpetrators have spent money from corruption or used/diverted in other forms, including in the name of other people who are difficult to reach by law.
3. In the criminal payment of substitute money, many convicts are unable to pay.
4. Basically, a third party sues the government over the confiscated evidence in order to fulfill the payment of the replacement money.235

Therefore, it is necessary to have evidence, including expert testimony (as stipulated in Article 184 paragraph (1) b of the Criminal Procedure Code) that can determine and prove how much property the convict actually obtained from the crime of corruption committed by him. This needs to be done because the determination of additional crimes in the form of payment of compensation is only limited to as much as the assets obtained by the convict from the proceeds of corruption (Rohromana, 2017).

An additional penalty in the form of payment of compensation is a criminal policy that is inseparable from the broader policy, namely "social policy" which consists of policies to achieve community welfare (social walfare) and policies for community protection (social defence). Therefore, the additional penalty of paying compensation must be withdrawn from corruption convicts in order to achieve community welfare.

The additional penalty for payment of substitute money from Law No. 31 of 1999 which has been added and amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes is the purpose of saving the state wealth/finances that have been taken by corrupt perpetrators as well as to punish corruption perpetrators as severely as possible.

The additional penalty of compensation is regulated in article 18 of Law No. 31 of 1999, and in a general explanation states "This law also contains a prison sentence for perpetrators of corruption crimes who cannot pay additional penalties in the form of compensation for state losses." However, in practice, the implementation of court decisions on replacement money turned out to be many obstacles because the convict did not want to pay and preferred a substitute prison sentence or could not afford to pay on the grounds that his property no longer existed.

Compensation in the crime of corruption must be returned by the convict within 1 (one) month from the date the court decision has permanent legal force. The return of state losses can generally be said to be unsuccessful because in corruption cases many convicts did not fulfill their obligations contained in the court decision.

This shows that the role of the prosecutor is very large, and is the spearhead in efforts to return state finances. However, in reality, the Public Prosecutor as the implementation of the task of executing money in lieu of state finance experienced obstacles in carrying out his duties to save state property, the convict after his case obtained legal force that he no longer had property to be confiscated by the state.

The convict has been legally and convincingly proven to have committed a criminal act of corruption as charged by the Public Prosecutor, the convict only carries out a corporal penalty and an additional penalty of corporal punishment as a reimbursement for state finances that are not paid by the convict. This is as stipulated in Article 18 paragraph (3) of Law Number 31 of 1999 concerning the Eradication of Corruption.

The public prosecutor is unable to find the convict's assets whether it is true that the convict does not have assets or is hidden, the Public Prosecutor (JPU) cannot prove anymore, because since the convict was detained, the prosecutor is only authorized to confiscate assets suspected of being the proceeds of corruption crimes, while the defendant's personal property that is obtained by other legal means The public prosecutor has not been authorized to confiscate.

The implementation of the return of state financial losses due to corruption crimes can also not necessarily be done just like that. In addition to waiting for the payment of replacement money from the convicts in corruption cases which takes a long time, the refund of replacement money to the state treasury cannot be made immediately. This is because there are stages that must be met, so it takes time to return state financial losses to the state treasury so that they can be immediately used for the welfare of the people.

Legal Certainty of Execution in the Form of Payment of Money in Lieu of Corruption Cases in the Criminal Justice System

The issue of determining criminal sanctions and actions at the legislative policy stage, the formulation of sanctions provisions is greatly influenced by the concept or draft law submitted to the legislature. According to Ingkiriwang, (2019), "Criminal policy strategies in crimes with a new dimension must pay attention to the essence of the problem. If the essence of the problem is closer to the problems in the field of economic and trade law, then the use of criminal fines or the like is preferred".

The determination of criminal law sanctions should be carried out through a rational approach. If based on this rational concept, the policy of imposing sanctions in crime is inseparable from the determination of the goals that the criminal policy as a whole wants to achieve, namely the protection of the community. Because crime is a means to achieve this goal, it must first formulate a criminal purpose that is expected to support the general goal. Then, it is oriented from that goal to determine what means, means or actions will be taken.

The purpose of the crime of substitute money is to punish corruptors as severely as possible so that they are deterred and to scare others from committing corruption. Another goal is to return state money that has been lost due to an act of corruption. This thinking is in line with the definition of corruption. According to the law, one of the elements of corruption is the existence of actions that are detrimental to the state. With this element, every time a corruption occurs, it will definitely cause losses to the state's finances. It is natural for the government to then implement a policy contained in the law in seeking the return of state money lost due to corruption.

It is clear that corruption results in perpetrators obtaining financial benefits and conversely the state suffers financial losses. The consequences of losses incurred by the state ultimately have an impact on various things. In fact, corruption has resulted in poverty, so corrupt perpetrators must be subject to the penalty of paying replacement money. As a result of the corruption crimes that have occurred so far, in addition to harming the state finances and the state economy, it also hinders the growth and continuity of national development which demands high efficiency.

Additional criminal penalties can be seen in a narrow or broad sense. In a narrow sense, criminal imposition means the authority to impose a criminal sentence according to the law by an authorized official (judge). Seen in a broad sense, criminal imposition is a chain of legal actions from authorized officials, starting from the investigation process, prosecution to criminal verdicts handed down by the court and carried out by criminal enforcement officials. Like other crimes, additional penalties in the form of payment of compensation are included in the judge's decision.

The crime of paying substitute money has several noble purposes. However, in contrast to the noble burden he carried, it turned out that the regulation regarding the penalty of substitute money was unclear. Both Law No. 3 of 1971 which only regulates replacement money in one article, namely article 34 letter c and the law that replaces Law No. 31 of 1999 and the amendment of Law No. 20 of 2001 in article 18. The lack of regulation regarding replacement money has resulted in various problems. One of them is in determining how much criminal amount of substitute money can be imposed on the defendant.

Article 34 letter c of Law No. 3/1971 and article 18 paragraph (1) letter b only stipulate a simple formula regarding the amount of substitute money, which is as much as equal to the property obtained from corruption, then it can be interpreted that the amount of replacement money can be calculated based on the value of the defendant's assets obtained from the alleged corruption crime. Therefore, to determine the amount of compensation, the judge must first carefully sort out which part of the defendant's total assets comes from the corruption crimes charged against him and which are not. After the sorting is carried out, the judge can then calculate how much compensation will be charged.

In practice, with this concept, judges will definitely encounter difficulties in determining the amount of replacement money. First, it will be difficult for judges to sort out which assets come from corruption and which are not, because in the development of the complexity of a corruption crime is increasing. In addition, to do this obviously requires special expertise as well as complete data and information. Not to mention that if we talk about time, which of course is not short, especially if the assets to be calculated are abroad so that it requires a diplomatic bureaucracy which must be very complicated and time-consuming.

Second, the calculation of the amount of replacement money will be difficult to do if the defendant's assets to be valued have been converted in the form of assets that based on their nature have a fluctuating value, whose value continues to change. One of the officials of the Attorney General's Office, YosephSuardi Sabda, who at that time served as the Director of Civil Affairs, said that the regulation of the formula for the amount of replacement money in the current Corruption Law is very confusing. It is better to use the understanding that the replacement money is equated with the state losses incurred. By setting the amount of compensation equal to the amount of state losses, the positive side is to avoid the hassle of judges in sorting and calculating the convict's assets because the amount is clear and facilitates the return of state finances caused by corruption crimes.

Indeed, there is an impression that it will cause injustice to the defendant because his property obtained from corruption is not necessarily as much as the state losses incurred. Especially in the event of participation, it will be very confusing to determine how much property each defendant has obtained from corruption.

There are two models of burden that have been applied by judges in deciding corruption cases in the form of participation. The first model is joint liability encumbrance, while the second is a proportional encumbrance.

According to the first model, each of them had an obligation to fulfill the penalty. Where according to the civil concept, if one of the defendants has paid off a certain amount of replacement money, the other defendant's obligation will automatically fall.

The second model, proportional acquittal, is the imposition of a criminal penalty in lieu of money where the panel of judges in its judgment definitively determines how much the burden is for each defendant. The determination of the amount of compensation is based on the judge's interpretation of the contribution of each defendant in the related corruption crime.

Regarding the determination of the penalty of payment of substitute money is guided by the Attorney General's Letter No. B-28/A/Ft.1/05/2009 dated May 11, 2009, regarding instructions to the public prosecutor in making a letter of demand, one of the instructions is regarding the crime of payment of substitute money, namely:

1. The obligation to pay compensation as much as possible is directly addressed to the aggrieved agency as a result of the crime of corruption. Amar letter of demand: 'pay compensation to the state (aggrieved institution) in the amount of etc.
2. In order to provide a sense of justice to the convict who pays the substitute money but only part of the sentence in the verdict, the clause should be added to the indictment: "if the defendant/convict pays the substitute money, then the amount of the substitute money paid will be taken into account with the length of the additional penalty in the form of imprisonment in lieu of the obligation to pay the substitute money.
3. Regarding the obligation to pay compensation for more than one defendant, so that in the indictment the amount is clearly and definitely stated to each defendant and should not be mentioned jointly and severally because it will not provide legal certainty and cause difficulties in execution. The difficulties in execution that occur both regarding the amount of compensation that must be paid by each defendant/convict and against the convict who does not pay (or pays part of) the substitute money so that he must undergo corporal punishment in lieu of the obligation to pay the substitute money.
4. If it is not known exactly how much money is obtained from corruption crimes by each defendant/convict, then one of the ways that can be guided to determine the amount of compensation that will be used for each convict/defendant is to use the qualifications for participation in article 55 paragraph (1) 1 of the Criminal Code.
5. For the implementation of the instructions for determining the amount of replacement money so that it is carried out in an orderly manner with an administration that can be accounted for accompanied by accurate evidence that can be used as material for reporting the results of the rescue of state financial losses by the Attorney General's Office.

The process of implementing court decisions is generally regulated in Chapter XIX of the Criminal Code. Execution can only be carried out if the verdict has permanent legal force. The execution is carried out by the prosecutor as stipulated in article 1 point 6 jo article 270 of the Criminal Procedure Code jo article 30 paragraph (1) letter b of the Prosecutor's Law. The crime of paying substitute money is not regulated in the Criminal Procedure Code, which is one of the specifics of PTPK.

In the event that the judge imposes an additional penalty in the form of payment of substitute money, the convict is given a grace period of one month after the court decision has permanent legal force to pay it off. If the specified time has expired, the prosecutor as the state executor can confiscate and auction the defendant's property (article 18 paragraph (2) of the UUPTPK).

The prosecutor cannot extend the time limit for the convict to pay his replacement money such as the penalty of fines regulated in article 273 (2) of the Criminal Code. The crime of paying substitute money and the penalty of fines have different characteristics, this can be seen that the crime of substitute money is an additional crime while the penalty of fine is the main crime. According to Wiryono, although the prosecutor cannot extend the payment grace period, but considering the sound of article

18 paragraph (2) of the PTPK Law, the prosecutor can still determine the stages of payment of the replacement money, but it still does not exceed the one-month grace period.

The material of article 18 paragraph (2) of the PTPK Law is found with the word "..... His property can be confiscated and auctioned....." The property referred to here is the property belonging to the defendant who is not the property resulting from the crime of corruption and/or the property belonging to the convict who is not used to commit the crime, because if it is proven in the court trial that the property belonging to the convict is corrupt property, then the property is confiscated using the crime of confiscation in accordance with article 18 paragraph (1) letter b of the PTPK Law. The prosecutor does not need to conduct a seizure and auction according to article 18 paragraph (2) of the PTPK Law because the criminal sentence is different.

Confiscation and auction are facultative, that is, only carried out in the event that the convict has not paid or has not paid the amount of compensation specified in the verdict within the predetermined time as above. The confiscation of property belonging to the defendant does not need to obtain permission from the chairman of the local District Court because this confiscation is not in the context of investigation but in the context of implementing the court decision.

In the case of confiscating the property, the defendant should follow the confiscation procedures regulated in the implementation of the execution of the payment of compensation according to the Fatwa of the Supreme Court of the Republic of Indonesia Number: 37/T4/88/66/Pid dated January 12, 1988 which includes:

1. The remaining convicts' goods are confiscated and then sold at auction to fulfill the criminal obligation to pay replacement money;
2. Confiscation should be exempted for items used as a buffer to earn a living for the convict and his family
3. Confiscation should avoid the mistake of confiscating goods that do not belong to the convict so that there is no resistance from a third party.

Article 18 paragraph (3) of the PTPK Law stipulates that in the event that the convict does not have sufficient property to pay the compensation within the time limit specified in paragraph (2), the convict is sentenced to imprisonment for a period not exceeding the maximum threat of the main penalty and the penalty has been included in the decision. The prison subsidy in the article can be seen to have three conditions:

1. The new subsidiary penalty applies in the event that the convict does not have sufficient property to pay the replacement money. The convict within 1 month after the verdict obtained permanent legal force turned out to no longer have cash to pay the replacement money, and the auction proceeds from his property were not enough to pay the replacement money.
2. The duration of the substitute prison sentence does not exceed the maximum criminal threat from the article of the PTPK Law violated by the defendant.
3. The length of the substitute prison sentence has been determined in the court decision. With this provision, it is also the judge's obligation in the decision to include this substitute penalty to avoid if the substitute money cannot be paid in whole or in part.

The question arises, is it fair if the defendant can only afford to pay part of the compensation money (which includes the confiscation and auction of property), because of his inability to pay the other half, he must carry out the entire subsidy prison sentence. As in the case of a corruption convict, he was sentenced to pay compensation of Rp. 1 billion for 1 year. However, the convict was only able to pay off Rp. 900 million, while the remaining Rp. 100 million could not be collected because the convict had no more money and no property to confiscate. Is it fair if the convict must serve a one-year corporal sentence because he has paid Rp. 900 million? In a case like this, it should be possible to use the calculation of the conversion of the length of the prison sentence with the replacement money for the corruption convict which is still feasible. Thus, if a person convicted of corruption can only afford to pay half of the replacement money, it can be converted into half of the subsidy prison sentence that must be paid.

The substitute money penalty does not have an alternative crime (subsidiary) such as a fine that can be subsidized with a prison sentence, and therefore it is not an opportunity for the convict to choose which crime he will carry out. Worse, the formulation by the Prosecutor's Office is actually interpreted as an option. This is as admitted by the Director of Legal Efforts and Execution of the Attorney General's

Office, Puji Basuki, who emphasized that the use of the word "subsidiary" in substitute prison sentences is interpreted by the public prosecutor as an option. The same opinion is also adopted in the internal regulations of the Attorney General's Office, namely in the Attorney General's Decree (Kepja) Number KEP-518/J.A/11/2001. In the Kepja, it is stated that one of the stages of the execution of the substitute money is to ask whether the convict is able to pay the substitute money. The sentence "asking whether the defendant is able to pay the compensation money" clearly emphasizes that the convict can choose between stating that he is able to pay the compensation money or not.

This election has clearly deviated from the true meaning of the subside, which is from a substitute when the main thing does not happen, to a choice. This condition was also finally taken advantage of by the convicts - who were supported by the conditions and limitations of handling corruption cases - to be able to easily admit that they no longer had the property to pay the replacement money, and "chose" the substitute prison sentence as more profitable for them, especially supported by the possibility of the convict being released sooner because of the granting of remission at certain times. If the imposition of replacement money is considered an option, then efforts to restore the State's finances as the goal of enforcing corruption crimes will not be achieved.

Second, commitment to carry out execution. This can be seen from the submission of a fatwa by the Prosecutor's Office to the Supreme Court to get a legal umbrella in executing compensation money that has not been paid or has only been partially paid. The submission of this fatwa gives the impression that the Prosecutor's Office is hesitant to carry out the execution even though the formulation of Article 18 paragraphs (2) and (3) of Law 31/1999 has clearly and firmly regulated it. If the prosecutor's doubt in this case is how long the substitute prison sentence will be carried out because the substitute money paid is only partial, then the doubt does not delay the execution and the convict is immediately put in prison.

The legal umbrella of execution in this case is Article 18 of Law 31/1999 and is not a fatwa of the Supreme Court. The execution of the substitute money also does not require a separate lawsuit, because the additional penalty of the substitute money is a unit of criminal verdicts handed down by the panel of judges, where the authority to execute each criminal verdict, both the principal and additional crimes, lies with the public prosecutor. The need for the Supreme Court's fatwa should not be in order to carry out the execution but as a legal umbrella for how long the substitute prison sentence will be carried out if the substitute money has been paid in part, which until now has not been regulated in Law 31/1999 jo. Law 20/2001 or other derivative regulations.

CONCLUSION

Based on the results of the research, it can be concluded that the implementation of the payment of compensation in corruption crimes is an important step in restoring state losses and providing a deterrent effect for corrupt actors. This payment process is carried out after the court decision obtains permanent legal force (inkracht). The convict is given one month to pay off his obligations, and the proceeds of the payment will be deposited into the State Treasury by the Prosecutor. This implementation aims to ensure that the state recovers some or all of the losses caused by acts of corruption.

Additional penalties in the form of payment of substitute money not only function as sanctions, but also as a form of legal certainty that reflects broader criminal efforts. This policy has a dual purpose, namely to uphold justice and protect the interests of the community through the return of state assets. In the context of the criminal justice system, the execution of compensation payments is expected to be able to promote community welfare and strengthen the principle of restorative justice. Thus, the application of additional criminal penalties in the form of substitute money must be carried out consistently and effectively.

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