

Criminal Existence of Additional Compensation Money in Recovering State Financial Losses

Nadhilah Hakim^{1*}
Mas Anienda Tien F., S.H., M.H²

^{1,2}Jurusan Hukum, FH Universitas Pembangunan Nasional “Veteran” Jawa Timur
Surabaya, Fax: 0318706372, INDONESIA

Abstract

Corruption can endanger the country's economy, which not only causes losses to the state, but also causes losses to legal entities on a small or large scale. Corruption has a very close relationship with state financial losses, where state finances contain state rights and obligations that can be worth money. In an effort to recover state financial losses, there are regulations regarding additional penalties in the form of replacement money. The imposition of replacement money is proportional to the amount of assets that have been enjoyed from the proceeds of criminal acts of corruption. The additional penalty of substitute money as an instrument of criminal law is expected to restore wealth that should be owned by the state. This study uses a normative juridical method by using a literature study. The results of this study indicate that even though the reimbursement of money has been given, the return of state financial losses cannot be achieved. This is evidenced by the fact that there are convicts who prefer to carry out substitute prisons rather than paying replacement money. This shows that the additional punishment for substitute money is only a formality and has no essence in recovering state financial losses. Thus, it is necessary to have a statutory regulation that specifically regulates additional criminal compensation so that the convict has no other choice but to pay compensation

Keywords: *Corruption, State Financial Loss, Replacement Money*

1. INTRODUCTION

^{1*}Corresponding author, email: masanienda.ih@upnjatim.ac.id

Citation in APA style: Hakim, N., & Tien, M. A. (2022). Criminal Existence of Additional Compensation Money in Recovering State Financial Losses. *JOSAR (Journal of Students Academic Research)*, 7(2), 446-457.

Received:
July, 23rd 2022

Revised:
September, 10th 2022

Published:
September, 30th 2022

DOI: <https://doi.org/10.35457/josar.v8i2.2440>

Corruption is a special crime that can endanger the country's economy. Corruption is an act in which a person commits a crime that aims to benefit himself, either directly or indirectly, which can cause harm to legal entities or losses to the state, either on a small or large scale. Black's Law Dictionary explains that corruption is an act aimed at obtaining profit informally by harming the property rights of others, where the act is committed there is a misappropriation of office or there is something wrong in morals to achieve profit, both for himself and for others, which is certainly contrary to the obligations and rights of others.¹

Corruption has been a problem for quite a long time in Indonesia, this is caused by acts of deviating from official duties originating from a state position, giving rise to a desire to achieve profits, positions or assets related to personal interests, both individuals, families and private groups. The criminal act of corruption has threatened national development, elements of democracy, elements of ethics and social justice as well as legal regulation in Indonesia so that it will hinder the continuation of development and the welfare of society in fighting poverty.

Corruption must be eradicated because it has caused state financial losses, thus limiting the national development process. State financial losses include all losses related to everything belonging to the state, in which state finances contain the rights and obligations of state property which are worth money, as well as various forms of goods that can become state property. Drs. Siswo Sujanto as an expert in state finance law, argues that the essence of state financial losses is that there are different things between the real form and the book. Thus, state financial losses are real and measurable, adjusted between the actual amount based on the books and the actual amount based on the amount of money available.

In the interest of recovering state financial losses, the government has regulated this in the form of the application of additional penalties, namely the replacement money contained in Article 18 Paragraph (1) of the PTPK Law. The additional penalty of replacement money is a criminal law that is given to defendants who commit corruption to return all forms of assets that have been obtained as a result of criminal acts of corruption as well as a number of state financial losses incurred. Adam Chazawi is of the opinion that the additional punishment in the form of replacement money is intended to recover losses due to corruption. In connection with this, Yudi Kristiana also expressed his opinion that additional criminal penalties for compensation are important, because eradicating corruption has the goal of achieving a return to state financial losses.³

The criminal imposition of additional replacement money should be commensurate with the wealth he has enjoyed from the proceeds of corruption. Additional criminal execution of replacement money is carried out when the decision has permanent legal force. The convict who

runs a substitute prison instead of paying a replacement amount of money that has been charged to him is a phenomenon that illustrates that the essence of an additional criminal law regulation in the form of replacement money is not achieved in recovering state financial losses. This is questionable regarding the legal umbrella in Indonesia for the imposition of replacement money, whether it is complex or not in providing a deterrent effect to the perpetrators while at the same time returning state financial losses.

approach) dan pendekatan kasus (*case approach*) yang memiliki keterkaitan dengan topik hukum yang diteliti. Pendekatan kasus yang dipergunakan dalam penelitian ini ialah putusan nomor 120/Pid.Sus/TPK/2019/PN Sby, putusan nomor 1024K/Pid.Sus/2020 MA RI, putusan nomor 1692K/Pid.Sus/2021/MA RI, dan putusan nomor 1550K/Pid.Sus/2021 MA RI.

Metode pengumpulan data dilaksanakan dengan mengkaji peraturan perundang-undangan serta menelaah bahan hukum primer, sekunder serta bahan hukum tersier yang disesuaikan dengan permasalahan penelitian. Metode pengumpulan data yang dipergunakan yaitu dengan melakukan riset kepustakaan yang berkaitan dengan objek penelitian serta dengan melaksanakan wawancara sebagai penunjang yang bertujuan untuk memperoleh pernyataan yang terdapat dalam permasalahan yang diteliti.

2. METHODS

The legal research method used is normative juridical. Normative juridical research is not only carried out by examining library materials, but also by examining secondary materials. The research was conducted by reviewing written law. This research approach uses a statutory approach and a case approach that is related to the legal topic under study. The case approach used in this research is decision number 120/Pid.Sus/TPK/2019/PN Sby, decision number 1024K/Pid.Sus/2020 MA RI, decision number 1692K/Pid.Sus/2021/MA RI, and decision number 1550K/Pid.Sus/2021 MA RI.

The data collection method is carried out by reviewing the legislation and reviewing primary, secondary and tertiary legal materials that are adapted to the research problem. The data collection method used is by conducting library research related to the object of research and by conducting interviews as a support which aims to obtain statements contained in the problems studied.

3. RESULTS AND DISCUSSION

Implementing the Implementation of Additional Penalty Payments

The additional penalty in the form of replacement money in the crime of corruption is intended so that the perpetrators of corruption crimes return a number of assets that have been obtained illegally. Efforts to impose a substitute money sentence that is in line with the applicable laws and regulations, of course, is a breath of fresh air as well as hope for the convict to be responsible for paying the replacement money penalty. It turned out to not be able to run smoothly. The existence of provisions and implementation as an effort to impose a substitute sentence did not make the implementation of the replacement money payment effective. It is proven in several decisions used in this study, namely:

DecissionNumber	Corruption Total Result	Total of replacement money
120/Pid.Sus/TPK/2019/PN Sby	Rp. 1.800.000.000,-	Rp. 239.277.092,60,-
1024K/Pid.Sus/2020 MA RI	Rp. 132.000.000,00,-	Rp. 132.000.000,00,-
1692K/Pid.Sus/2021/MA RI	Rp. 1.144.392.077,-	Rp. 1.144.392.077,-
1550K/Pid.Sus/2021 MA RI	Rp. 217.729.600,-	Rp. 61.748.500,-

Based on the decisions above, it is clear that the convicts did not carry out the additional punishment for the replacement money that had been imposed on them.

The implementation of the fulfillment of replacement money that is not running effectively can be caused by the convict who is willing to pay the replacement money, but not in full or it is even possible that the convict does not pay the replacement money at all.

Based on these problems, it is clear that there is a discrepancy between the theory as contained in the applicable laws and regulations with the practice in the field. This raises the problem of what factors actually caused the convicts to not be able to pay compensation until the implementation of the compensation sentence was not effective. There are many obstacles in the implementation of additional criminal compensation, including:

a. The Convict's Assets Are Over

The convict who has admitted that he has no more property to pay for the replacement money that was dropped on him, in this case the prosecutor's office as the executor will confiscate his property. Confiscation of property when looking at Article 18 paragraph (2) of the PTPK Law is not only related to the criminal act of corruption committed, but includes personal property that does not originate from the act of corruption crime. The main obstacle related to

this is when the convict's property which is the proceeds of corruption or not the proceeds of corruption is completely exhausted.

The convict's property that has run out can be caused by the long trial process and the operational costs that must be incurred such as hiring the services of a lawyer and also transportation costs which of course cost a lot if the convict is not in the trial area. The imposition of substitute money on the convict thus cannot be carried out effectively, the convict ultimately decides to serve a substitute prison sentence and waive the penalty of paying compensation because his property is completely deplete.

b. Habits of convicts prefer to carry out substitute prison sentences rather than pay replacement money

The convicts prefer to carry out a substitute prison sentence without being responsible for carrying out the penalty for paying replacement money, which has become a habit of the convict. The reason behind the convict to prefer a substitute prison sentence and override the substitute money sentence is because the convict already feels unable to pay the nominal amount of the replacement money imposed on him. The convict can actually pay the replacement money when trying hard to get it, such as borrowing money by asking for help from family or relatives, especially if the amount of replacement money is still affordable. The reality is that the convict is resigned to his depleted assets and does not want to try to pay for a number of assets that he enjoys as a result of his corruption. In addition, the convict also saw that he had been sentenced to imprisonment, so he preferred to carry out a substitute prison at the same time. This has seriously hampered the effective implementation of the restitution penalty.

c. The Convict Has Diverted Corruption Proceeds

Convicted perpetrators of criminal acts of corruption which have caused financial losses to the state have basically succeeded in enjoying a certain amount of money or state wealth. The way convicts enjoy the money from corruption was, of course, in different ways and forms. A crime of corruption which certainly cannot stand alone or in which there is more than 1 (one) human being who cooperates to take and enjoy the wealth of the state unreasonably.

When state money is obtained according to the plan, it is certain that the money will be distributed or handed over to colleagues who are involved in the series of corruption crimes. The distribution of the money when via bank transfer, it will be easy to know. On the other hand, when handing over money in cash, the amount of money from corruption will be difficult to detect. The convict who had previously taken the state's wealth unnaturally certainly tried to

keep the traces of the money from corruption unknown. When the convict in this case diverts the money resulting from corruption by buying goods or objects that are not on his behalf and/or the goods or objects are difficult to reach, it can be ascertained that these transfers cause the money resulting from corruption to be difficult to identify.

d. Convicts on the Wanted List (DPO)

Some convicts who are basically not responsible for acts of corruption that have caused state financial losses will try not to be willing to serve sentences. The criminal act of corruption which has had a direct or indirect impact on all of these aspects, of course, the convict is not necessarily willing to serve the sentence imposed, including in terms of paying compensation for the results of corruption that he has enjoyed. The convict in this case, who then chose to run away until he was declared a DPO status greatly hindered the implementation of the sentence, including the replacement money sentence.

DPO convicts cause state spending to increase. This is because in an effort to find the whereabouts of the Defendant or Convicted DPO, the prosecutor's office is obliged to disseminate information in national newspapers, which of course is not cheap. The cost of publishing through the national newspaper reaches Rp. 30,000,000.00, - (thirty million rupiah).

The DPO convict who can then be found at a later date certainly causes the nominal replacement money as a punishment to decrease in value. As time goes by, the value of money will go down. As a result, the system for implementing the replacement money penalty is still ineffective.

The imposition of replacement money based on the results of corruption that the convict enjoys is of course still attached to the convict's assets. In this case, even though the convict escapes and his whereabouts are not clearly known, the existing assets can still be confiscated until they meet the nominal penalty for the replacement money. This is certainly done for the urgency of implementing the replacement money penalty which is to restore the state's financial losses that he has enjoyed. The obstacle to this problem is when the family or neighbors of the DPO convict try to protect the convict from being caught and his property is safe because those closest to him can enjoy the property, so in this case it greatly hinders the implementation of the replacement money sentence.

In addition to those mentioned above, there are other inhibiting factors, including the government, law enforcement and the community itself. The government, in terms of making legal regulations in Indonesia, does not regulate specifically and firmly regarding the implementation of substitute money penalties. When looking at the description of the problems

above that are attached to the convict, it turns out that there is a lack of specific rules for implementing the replacement money sentence. Money payment rules replacement when the convict's assets run out, then the convict who transfers the money from corruption, the convict has DPO status, until the convict who dies has not been regulated.

The legal regulations regarding substitute prisons which are not specific regarding the period and mechanism in Article 18 paragraph (3) of the PTPK Law make the convicts ultimately prefer not to try to pay replacement money, but instead choose a substitute prison sentence. The Attorney General's Regulation which also regulates the replacement prison, is clearly only a guideline for the Prosecutor's Office to prosecute the Defendant. The convict in this case did not know about this, moreover the regulation was not published in general which the Defendant was certainly still layman when he heard or knew about it.

The Panel of Judges can freely impose a shorter substitute prison sentence without being guided by the Attorney General's Regulations, especially in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) and the PTPK Law, there is no definite minimum limit. The Panel of Judges in this case clearly does not have an attachment or an obligation to be guided by the Regulation of the Attorney General's Office.

The Supreme Court Regulation Number 5 of 2014 also does not regulate the minimum limits for substitute prisons that must be given when the convicts are unable to pay replacement money. The regulation only regulates the maximum limit for granting a substitute prison, which does not exceed the main prison sentence. Thus, the existence of laws and regulations in Indonesia that are less specific and firm in relation to this matter hinders the implementation of the imposition of substitute money penalties.

The prosecutor's office which in this case is the only law enforcement party that has the authority to carry out the execution of the sentence, including the execution of the payment of compensation by the convict. The prosecutor's office in its implementation not only uses the concept of follow the suspect or only aims to punish convicts of criminal acts of corruption, but the prosecutor's office has also tried its best to follow the money and follow the assets. Follow the money and follow the asset means that in this case the prosecutor's office is tracking the assets stored by the convicts so that the return of state losses can be achieved.

The concept of following the money and following the asset is certainly very good, but again, it turns out that the implementation of the imposition of substitute money is still not effective. This is evident when looking at several decisions related to corruption cases used in this study showing that the payment of replacement money as an additional criminal penalty against the convict is not appropriate or ineffective.

The concept of following the money and following the asset is certainly very good, but again, it turns out that the implementation of the imposition of substitute money is still not effective. This is evident when looking at several decisions related to corruption cases used in this study showing that the payment of replacement money as an additional criminal penalty against the convict is not appropriate or ineffective.

The prosecutor's office when executing the replacement money against the defendant DPO used a soft method, which meant that the convict was not openly pursuing. When dealing with family or relatives, do not use force. This turns out to be the same as not having an impact so that the state's right to recover state financial losses due to the money from corruption that is enjoyed is fulfilled. The prosecutor's system like this is categorized as an obstacle in carrying out the execution of substitute money.

Based on the factors that hinder the execution of the replacement money above, the property of the convict will not be left 100% (one hundred percent) or not completely exhausted. The confiscation of property is not necessarily without considering how the convict's family lives to meet their daily needs.

The implementation of the confiscation of the convict's property, which is an effort to effectively execute the replacement money sentence, still considers sociological aspects.

The sociological aspect that is considered is that if you insist on confiscation of all the property of the convict without exception, it is feared that it will cause new problems. The problem is that it can be in the form of violating human rights, because the convict's family cannot meet their daily needs. If applying the concept of impoverishment of corruptors according to Mahfud MD's view of the convict, it is also an unfair thing. This is because many corruptors who before committing corruption already had sufficient assets. If the impoverishment of corruptors continues, it will certainly violate human rights, because the property is obtained outside of the crime of corruption.

The criminal execution of additional replacement money can only be carried out when the decision has permanent legal force, this also causes the criminal execution of additional compensation money as an effort to recover the state's financial losses to be hampered. The convict and his legal advisor always try to file a legal remedy, be it an appeal, cassation or judicial review. The existence of these legal remedies provides leeway for not immediately carrying out the execution of the replacement money sentence. This happens because the legal process takes a long time. That is why in a period of 1 (one) year there are only a few decisions that can be executed. Thus, the application of additional criminal compensation becomes ineffective in an effort to recover state financial losses.

The Panel of Judges can freely determine the substitute prison sentence because the Supreme Court Regulation No. 5 of 2014 does not regulate the minimum limits for substitute prisons that must be given when the convicts cannot pay replacement money and only regulates the maximum limit for granting substitute prisons, namely does not exceed the principal prison sentence.

The regulation regarding the additional criminal compensation is actually already contained in the Supreme Court Regulation Number 5 of 2014 concerning the Additional Substitution Criminal Law in Corruption Crimes. Regulation of the Supreme Court is a statutory regulation, but each regulation has its own load limit. The Supreme Court Regulation is a regulation set by the Supreme Court for performance within the scope of the Supreme Court.

Regulations of the Supreme Court are not included in the hierarchy of laws and regulations in Indonesia in accordance with Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislations, so that the force of its enactment is also not the same as the rules that are included in the hierarchy of laws and regulations. invitation in Indonesia. The Prosecutor's Office is certainly not right if in its professional needs it uses the foundations in the form of a Supreme Court Regulation. The Prosecutor's Office has a Prosecutor's Regulation that applies to him. Legal certainty in this case is vague, because a regulation that has the most legal certainty is a law or regulation that belongs to the hierarchy of laws and regulations in Indonesia in accordance with Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Regulations. Legislation. Thus, it is necessary to have a more specific regulation regarding the additional criminal compensation money, so that a way is formed for the convict to have no other choice but to pay the replacement money charged to him in the interest of recovering state financial losses due to money from corruption that is enjoyed unfairly.

Article 18 of the PTPK Law does not actually regulate the definition of additional criminal compensation and only regulates alternatives to substitute imprisonment when the convict is unable to pay replacement money on a basic basis. so that in this case the article cannot be used as a direct guideline in the effort to realize additional criminal compensation money in order to restore state financial losses.

The realization of additional criminal executions in the form of replacement money in order to restore state financial losses due to the proceeds of corruption that have been enjoyed by the convict is a must for saving state assets. The Prosecutor's Office which is the only law enforcer with the authority to carry out executions in this case plays an important role in

realizing the additional criminal executions in the form of replacement money. foundation also greatly affects the executor in execution. Forms of realization efforts include:

a. Aspects of Legislation

Establishment of regulations related to the execution mechanism for replacement money, both materially and formally, which must then be specifically regulated in the law which is applicable in Indonesia. The legal rules that serve as the basis for the executor in an effort to make the additional criminal execution of substitute money effective have actually been regulated, this is contained in several rules, including:

- a) Regulation of the Attorney General of the Republic of Indonesia Number: PER-010/A/J.A/05/2014 concerning Standard Operating Procedures for Asset Tracking;
- b) Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020 concerning the Second Amendment to the Regulation of the Attorney General Number PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery

The Prosecutor's Office is not only the executor, but also the public prosecutor for the convicted case. In the case of the prosecution, there is also a basis, which means that it is an effort to realize that the additional penalty of compensation can be effective. The legal rule that forms the basis is the Regulation of the Attorney General of the Republic of Indonesia Number 1 of 2019 concerning Criminal Prosecutions in Corruption Crimes in Chapter IV. The Supreme Court also has a rule of law as a basis so that the additional penalty of compensation can be effective. This is regulated in the Regulation of the Supreme Court Number 5 of 2014 concerning the Additional Penalty of Compensation in Corruption Crimes.⁷

The above legal rules are as *ius constitutum* which is used as an effort to realize the criminal execution of additional replacement money in corruption cases in order to restore state financial losses that have been enjoyed. The above legal rules need to be synchronized so that there is a harmony of rules. This becomes an urgency because considering the overlapping regulations between the Prosecutor's Regulations and the Supreme Court Regulations. Legal certainty is very necessary for the realization of additional criminal acts in the form of replacement money for convicts of criminal acts of corruption in order to save state assets.

b. Executor Aspect

The prosecutor's office as the executor has the concept of asset tracing to trace all the assets of the convict, including in terms of tracing assets from corruption proceeds that have been enjoyed unfairly to cause state financial losses. The executor in this case emphasizes the

asset tracing system as the realization of the execution of additional criminal penalties in the form of replacement money. This is done as an urgency to save the country's wealth.

4. CONCLUSION

- 1) The implementation of the additional penalty of substitution money cannot run effectively even though the Prosecutor's Office has executed the convicts. This is due to obstacles in its implementation such as the convict's assets have run out, the habit of the convict who prefers to carry out a substitute prison sentence, the convict has transferred the assets resulting from corruption and the convict has DPO status.
- 2) Efforts to realize that the additional penalty of replacement money can restore state financial losses is to pay attention to material aspects and formal aspects in laws and regulations and require the important role of the prosecutor's office as an urgency in returning state financial losses

5. SUGGESTION .

- 1) For the government to amend and/or revoke several overlapping legal rules related to the substance of additional criminal penalties and substitute prisons. It is necessary to establish a law that is firm and has a deterrent effect so that the convicts have no other choice but to pay compensation. Points that need to be specifically regulated include:
 - a. Substitute prison can only be given as the last alternative to the convict when he is hit by a natural disaster and/or is seriously ill;
 - b. The nominal amount of the replacement money sentence is adjusted to the length of the prison sentence;
 - c. Confiscation of the convict's personal property should still be carried out without considering sociological aspects;
 - d. Replacement prison terms are more specifically regulated.
- 2) The Prosecutor's Office needs to optimize the concept of executing criminal penalties for additional compensation. The optimization is in the form of tracking and the basis for finding the convict's assets, namely in addition to using the soft concept when looking for assets and the concept of racing assets belonging to the convict. This is done so that additional criminal penalties for replacement money can contribute to recovering state financial losses.

ACKNOWLEDGMENTS

The author would like to thank Mrs. Mas Anienda Tien F., S.H., M.H., as the supervisor who has provided direction in this research.

REFERENCES

- 1) Syahroni dkk, 2018, *Korupsi Bukan Budaya Tetapi Penyakit*, Sleman, Deepublish.
- 2) Paeh, Karel Antonius, 2017, Pengembalian Kerugian Keuangan Negara Berdasarkan Rekomendasi Badan Pemeriksa Keuangan (BPK) Hubungan Dengan Unsur Kerugian Negara dalam Tindak Pidana Korupsi, *Jurnal Katalogis*, Vol. 5, No. 2, Hal. 52.
- 3) Chazawi, Adami, 2016, *Hukum Pidana Korupsi Di Indonesia*, Jakarta, Rajawali Pers.
- 4) Rahmat, Diding Rahmat, 2020, Formulasi Kebijakan Pidana Denda dan Uang Pengganti Dalam Penegakan Tindak Pidana Korupsi di Indonesia". *Jurnal Ius Kajian Hukum dan Keadilan*, Vol. 8, No. (1), Hal. 86.
- 5) Rahman, Indra Hafid, 2016, *Pelaksanaan Pembayaran Uang Pengganti dalam Tindak Pidana Korupsi*, Magelang, Universitas Muhammadiyah Magelang.
- 6) Yusni, Muhammad, 2019, *Keadilan dan Pemberantasan Tindak Pidana Korupsi Perspektif Kejaksaan*, Surabaya, Airlangga University Press.
- 7) Noviyanti, Rahma, dkk, 2019, Maret, Penerapan Perma Nomor 5 Tahun 2014 tentang Pidana Tambahan Uang Pengganti Dalam Tindak Pidana Korupsi, *Jurnal Wawasan Yuridika*, Vol. 1, No. 3, Hal. 3