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Progressive Steps to Maximize the Payment of Substitute Money in Corruption Crimes

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ABSTRACT

Although there is a punishment for compensating for state losses brought on by corruption, laws and illegal compensation-paying activities have not been able to efficiently and optimally restore state losses. The study aims to investigate the reasons behind the suboptimal recovery of state losses attributable to corruption through compensation payments, and to identify progressive legislative measures that might enhance the effectiveness of compensation in rectifying these losses. This study employs a normative research methodology, utilizing secondary data derived from legal texts. Techniques for acquiring legal information through literature review. The research results suggest that: 1. The punishment for paying substitute money does not provide the best return of state losses resulting from corruption because: a) there are unclear criminal arrangements for paying substitute money, and b) there are no rules pertaining to the crime of paying substitute money, c) Confiscation Constraints for Payment of Substitute Money, d) Individual Convicts Prefer Subsidiary Prison Instead of Paying Substitute Money, Interpretation of the Purpose of Criminal Application of Substitute Payment Penalties, and f) PERMA Number 5 of 2014's shortcomings in relation to the charge of using extra replacement money in corruption-related activities. 2. To guarantee that the criminal payment of compensation in corruption may most effectively recoup state losses, the following progressive legislative steps are required: a) Subsidies are not included in the penalty for paying compensation, b) The existence of the Law on Confiscation and Forfeiture in Corruption Crimes, c) Return of state losses through compensation money taking into account the value of interest, d) Return of state losses through Bankruptcy Efforts or PKPU of Corrupt Corporations, and e) Corrupt Corporations are restored to Survive and Pay Obligations.

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1. INTRODUCTION

According to Article 1, number 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 for the Eradication of Corruption Crimes, the legal subjects of corruption offenses include individuals and businesses. The term corporation derives from the Latin word "corpus," which signifies

to give a body or to equalize[1]. A corporation is an entity comprising a collective of members, each with distinct rights and duties that are independent of those of the other members[2].

The management of corporate corruption offenses has been further delineated in PERMA Number 13 of 2016 regarding Procedures for Addressing Criminal Cases Involving Corporations and Attorney General Regulation Number Per-028/A/JA/10/2014 concerning Guidelines for Managing Criminal Cases Pertaining to Corporate Law Subjects.

Besides the primary offense that corruption endangers, Law Number 20 of 2001 regulates the subsequent offenses as stipulated in Article 18, paragraph (1) of Law Number 31 of 1999: Alongside those enumerated in the Criminal Code, the additional offenses are incorporated:

a. confiscation of any tangible or intangible mobile or immovable property used or obtained by corruption, including the convict's own place of business where the crime was committed, together with replacement assets;
b. payment of replacement money equal to corrupted property;
c. closure of all or part of the company for a maximum period of 1 (one) year; and
d. the removal of all or a portion of the advantages or rights that the government has awarded or may grant the convicted person.

Criminal punishment is described as the infliction of severe treatment by state authorities on an individual for transgressions against the law[3]. L.R. Huesmann and C.L. Podolski asserted that punishment may serve a suitable function in behavior control but must be administered judiciously[4].

One of the additional crimes in corruption is the payment of substitute money, which is a sum of money charged to the perpetrator of the crime of corruption with the amount of money he has corrupted, which is the same amount as the property obtained from the corruption[5].

The imposition of the additional penalty is one way to restore the state's financial condition to its original state and provide direct punishment for the consequences of the corruption crimes committed[6]. Modern economists such as Richard Posner, see punishment as a form of recovery mechanism[7].

The crime of providing alternatives to monetary compensation was first governed by Government Regulation in Lieu of Law (Perppu) Number 24 of 1960 concerning the Investigation, Prosecution, and Examination of Corruption Offenses. According to Law Number 3 of 1971 and Law Number 31 of 1999 regarding the Eradication of Corruption Crimes, Law Number 20 of 2001, which amends Law Number 31 of 1999, stipulates that the offense of providing substitute money constitutes an additional crime within corruption cases, alongside other offenses delineated in the Criminal Code.

[1]Jon R. Stone, *Dictionary of Latin Quotations: The Illiterati's Guide to Latin Maxims*, Mottoes, Proverbs, and Sayings, Routledge Taylor and Francis Group, New York, 2005. hlm. 17.

[2]Muladi dan Dwidja Priyanto, 2010. *Pertanggungjawaban Pidana Korporasi dalam Hukum Pidana*, Bandung : STIH Pers. hlm. 19-20

[3]Joel Feinberg, *The Expressive Function of Punishment*, State University of New York Page, Albany, 1972, hlm. 25

[4]L.R. Huesmann and C.L. Podolski, Punishment:a Psychological Perspective (The Use of Punisment edited by Sean McConville), First Published, Willan Publishing, Oregon, USA, 2003, hlm.77

[5] Andi Hamzah. 2000. Korupsi di Indonesia, Masalah dan Pemecahannya. Gramedia : Jakarta. hlm 49

[6]Christopher Harding, Richard W. Ireland, Punishment Rhetoric, Rule, and Practise, First Published, Routledge, New York USA, hlm. 118

[7]Andrew Ashworth, Sentencing and Criminal Justice, Cambridge University Press, Fifth Edition, UK, 2010, hlm. 76

Among other things, PERMA Number 5 of 2014 about Additional Criminal Compensation in Corruption Crimes governs:

1) Article 5: The defendant may still be obligated to pay the replacement money if the property obtained through the crime of corruption is transferred to another party and the defendant does not enjoy it, as long as the other party is not charged with corruption or any other crime, including money laundering.
2) Article 6: Compensation can only be imposed on the defendant in the case in question.
3) Article 7 paragraph (2) states that a company cannot be sentenced to prison in place of compensating money if it is subject to an extra punishment of compensatory money.
4) Article 9 specifies:
   (1) The prosecutor has the right to seize the convicted person's property if, within a month of the conviction becoming permanently enforceable, the convicted person fails to pay the replacement money.
   (2) According to Article 273 paragraph (3) of the Criminal Code, the prosecutor must auction the property if the convicted party has not paid the replacement money following the seizure mentioned in paragraph (1).
   (3) The auction is carried out no later than 3 months after the confiscation.
   (4) The prosecution has the right to seize and sell the convicted person's belongings as long as they haven't finished serving their primary jail term.

In practice, there is still little optimism, despite the fact that several laws have been enacted about extra penalties in the form of payment of substitute money in corruption offenses intended to restore state losses.

In Records from the Corruption Eradication Commission (KPK) show that the prosecutor's office and police have not been successful in handling corruption cases to recoup state expenditures that have been wasted due to corruption violations. ICW figures show that in 2021, the reimbursement of public financial damages in corruption cases is still incredibly low. The state lost Rp 62.9 trillion due to corruption violations committed by 1,404 offenders. However, just around 2.2 percent, or Rp 1.4 trillion, of the state losses were reimbursed by the panel of judges in the compensation payout[8].

Based on the description above, this study will analyze the following problems: 1. Why is the return of state losses due to corruption through the criminal payment of compensation not optimal? 2. Progressive legal steps so that the criminal payment of compensation in corruption is able to return state losses optimally?

2. METHODS

In conducting this research, normative law research methods are used, using legal approaches and conceptual approaches. While the legal approach focuses on the rules and regulations related to the crime of paying bribes in corruption, the conceptual technique explores related legal concepts, such as types of laws and regulations, types of crimes, confiscation, and bankruptcy. Secondary data in the form of legal material was gathered through literature research and then given a descriptive analysis.

3. RESULTS AND DISCUSSION

3.1 The cause of the return of state losses due to corruption through the criminal payment of compensation is not optimal

[8] https://www.kompas.id/ diakses tanggal 1 Juni 2025

3.1.1 Ambiguity in the Criminal Arrangement of Payment of Substitute Money

Ironically, minimal or no attention was afforded to this unlawful regulation of substitute currency. The policy seeks to avert public losses by imposing an extra penalty for the payment of replacement money in corruption cases. The indication of the existence of substitute money payments is inadequately conceptualized and developed, since Law Number 31 of 1999 and Law Number 20 of 2000 do not address the criminal issue of substitute money. Since the enactment of Law Number 3 of 1971, the disbursement of compensation funds has been exclusively regulated by Article 34, subsection c. Law Number 31 of 1999, which replaced Law Number 20 of 2001, also provides instances of the same situation.

The ambiguity of the first norm regarding the criminal status of the payment of the penalty for the payment of the penalty for the payment of the penalty is only a complement to the imposition of the principal penalty. Given the existence of a panel of judges, there are those who stipulate that there is a substitute money, and there are also those who do not stipulate substitute money, both to individuals and corporations. Whether the perception of punishment as an addition change over time, along with changes in behavior from a person's values, personal life and the quality of honesty[9].

The crime of providing compensation, which attempts to reduce or even completely eradicate public losses as a result of corrupt practices, is one of the extra offenses listed in Article 18 paragraph (1) of Law Number 31 of 1999 jo Law Number 20 of 2001 above. Legislators' intention with regard to substitute money in corruption crimes is that the money that the convicted individual must pay for the actual benefits he or she receives from the proceeds of the crime is intended to serve as a substitute for the money that was used by the convicted individual—that is, the amount that the convicted individual took from the state coffers, as demonstrated in court.

Judex Facti has construed the law improperly in situations when it does not compel the defendant to pay compensation. For example, in Cassation Decision Number 2631 K/Pid.Sus/2009, the court interpreted the payment of compensation as mandatory. Nonetheless, there is a clear relevance to Cassation Decision Number 161 K/Pid.Sus/2008, which considers compensation to be facultative.

Further crimes as specified in Article 18 paragraph (1) of Law Number 31 of 1999 jo Law Number 20 of 2001 are not required because Article 17 declares that "In addition to being subject to the criminal penalties referred to in Article 2, Article 3, Article 5 to Article 14, the defendant "may" be sentenced to an additional penalty as intended in Article 18;" (b) that as a result, the "imposition or not of additional penalty of payment of substitute money" mentioned in Article 18 paragraph (1) letter (b) is the judge's discretion and authority rather than a "must" or "not imperative," as the word "can" suggests; in other words, it is "facultative."

then has to do with the criteria used to determine how much replacement money was needed. According to Law Number 20 of 2001 and Article 18 paragraph (1) of Law Number 31 of 1999, the amount of compensation paid is determined by the amount of the convict's property that was acquired as a result of the corruption offense. In reality, there is no consensus on the criteria for calculating replacement money because, depending on the circumstances, it is sometimes determined using the amount of state losses incurred and, in other cases, the amount of property acquired as a result of corruption. Then, in PERMA Number 5 of 2014, the Supreme Court addressed the Crime of Additional Substitute Money in Corruption Crimes, stressing that the criteria used to determine the amount of substitute money are

[9]Francis Pakes, Comparative Criminal Justice, Willan Publishing, USA, 2004, No Page.

identical to those used to determine the property acquired through the commission of corruption.

The variation in interpretation of the amount of restitution is caused by a double standard in determining the state damages stemming from law enforcement corruption. Some people apply the standard that the state will lose the same amount of money as the project's value if the project's procurement did not follow the procedures outlined in the relevant laws and regulations, or if the project's work did not follow the project's specifications. Additionally, there are many who insist that state losses are net losses after subtracting the actual project implementation expenditures[10].

The reparation must be paid within a month; if the offender fails to do so, their assets and property will be seized and put up for sale. In addition to lacking a clear foundation of power, the prosecutor's confiscation attempts are ambiguous regarding the time required to finish the search and tracking of the convicted person's assets. because police detectives, not the prosecutor, are in charge of carrying out the confiscation procedures outlined in the Criminal Code. The confiscation outlined in the Criminal Procedure Code aims to find and collect evidence that will be proven before a court decision, whereas the confiscation mentioned in Law Number 31 of 1999, Law Number 20 of 2011, and PERMA Number 5 of 2014 is carried out after a court decision that has permanent legal force. A separate and ambiguous confiscation strategy appears to exist between Law No. 31/1999 Jo's Article 18 paragraph (2). Law 20/2001 is not the same as the confiscation covered by Article 39 of the Criminal Procedure Code.

The clarity of the formulation of the mechanism for the payment of reimbursement is very necessary to reduce regulations that give rise to various interpretations in its implementation.

3.1.2 Vacancy of Norms related to the Crime of Payment of Substitute Money

The restitution of public funds due to an individual's corruption should ideally be distinct from that of the company, and theoretically, the legal entity of the individual who perpetrated the corrupt act differs from that of the firm. Nonetheless, there are no significant provisions or differentiations in the regulations pertaining to the payment of restitution between individuals and public entities in Law Number 30 of 1999 and Law Number 20 of 2001 for the Eradication of Corruption Crimes.

Discussions also focused on the requirement of compensation for firms not designated as defendants. Article 17 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 stipulates that, with the primary penalty, the offender may incur further punishment as specified in Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. According to these principles, the sole individual who may incur further penalties in the form of restitution payments is the defendant. The assertion that only the defendant in the pertinent case may be accountable for substitution money is further corroborated by Article 6 of PERMA Number 5 of 2014 about Additional Penalties for Substitution Money in Corruption Crimes. However, in its development, it is not uncommon for the Public Prosecutor to include demands for payment of reimbursement also to third parties (in this case, including corporations). Such a claim not only has no legal basis, but in principle also violates the principles of fair trial, because the third party is charged without ever being given the opportunity to defend himself like the Defendant in a trial open to the public. The Public Prosecutor's approach, which involves prosecuting corporations that are not made defendants through the payment of replacement money, was authorized by the Supreme Court as well. For example, PT. Adhi Karya, PT. Nindya Karya, PT. Sumigita

[10] Efi Laila Kholis, Pembayaran Uang Pengganti Dalam Perkara Korupsi, Cetakan Pertama, Solusi Publishing, Jakarta, April 2010, hlm. 32

Jaya, PT. Indosat Mega Media, and PT. Green Planet Indonesia. Although not designated as defendants, the four firms remain liable for additional punishments, including paying their administrators, who are defendants. The Supreme Court's legal deliberation (Decision No. 787 K/Pid.Sus/2014) regarding the imposition of a monetary substitute penalty on a corporation not designated as a Defendant is that the liability, as stipulated in Article 20 paragraph (1) of Law Number 31 of 1999 Jo. Law Number 20 of 2001, is borne by the corporation and/or its management. Consequently, while the Public Prosecutor did not directly charge the corporation (PT Indosat Mega Media), the Defendant's involvement in the indictment was as President Director, so allowing for an extra punishment in the form of compensation to be imposed on PT Indosat Mega Media.

Compensation, therefore, does not actually safeguard the community's economic rights that are gradually lost until the decision has permanent legal effect because it is only dependent on the amount the defendant obtained as a result of the crime of corruption.

3.1.3 Confiscation Obstacles for Payment of Replacement Money

The confiscation method exhibits several deficiencies, the foremost being the oversight of the convict's property holdings, since they failed to provide a comprehensive inventory of all assets throughout the inquiry. In a sophisticated period, defendants can readily obscure their illicit assets through financial and banking transactions, as these assets are often untraceable and time-constrained. Furthermore, it requires international bureaucracy, which is likely to be exceedingly challenging and time-intensive if the assets in question are located abroad. Moreover, it would be difficult to ascertain the compensation amount if the defendant's assets subject to evaluation have been converted to assets with fluctuating values, such as stocks, jewelry, real estate, etc.

3.1.4 Individual Convicts Prefer Subsidy Prison Instead of Paying Compensation

The prosecutor is authorized to seize and liquidate the property of the convicted individual to procure funds if the restitution is not remitted within one (1) month after the verdict's enforcement, as stipulated in Article 18, paragraphs (2) and (3) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. If the convicted individual lacks sufficient assets to pay the restitution, they may face incarceration for a duration not exceeding the maximum penalty associated with the principal offense.

The substitute money punishment is settled with an extra jail sentence; in reality, the convicted person would rather serve an additional prison sentence, which is thought to be more beneficial than paying the substitute money[11].

The Attorney General's Decree (Kepja) Number KEP-518/J.A/11/2001 pertains to the internal regulations of the Prosecutor's Office regarding the implementation of monetary restitution in criminal cases. The Attorney General's Decree stipulates that a first stage in the execution of replacement monetary obligations is to ascertain the financial capacity of the condemned individual to fulfill the payment. The phrase "inquiring if he can pay the restitution" distinctly highlights that the prisoner has the option to assert either his ability or inability to pay the restitution. Substitute money crimes lack alternative (subsidiary) offenses, such as penalties that can be offset by imprisonment, hence eliminating the option for prisoners to select which crime they would commit. This alternative has evidently strayed from the real definition of subsidies. If the implementation of substitute currency is deemed a viable possibility, then endeavors to restore state finances through the enforcement of corruption offenses will be futile.

Because prison sentences as subsidiaries can prevent the State from

[11]Efi Laila Kholis, Pembayaran Uang Pengganti Dalam Perkara Korupsi, Cetakan Pertama, Solusi Publishing, Jakarta, April 2010, hlm. 32

recovering losses due to corruption, it is possible to maximize the imposition of substitute penalties for the crime of money in lieu of money. This is because defendants of corruption crimes that have been proven in court should not be given criminal subsidies like imprisonment or confinement.

3.1.5 Interpretation of the Purpose of Criminal Application of Payment of Substitute Money

Per the elucidation of Law Number 31 of 1999 in conjunction with Law Number 20 of 2010, the illicit foundation for compensation pertains to the restitution of state damages. A state financial loss is characterized as a tangible and specific deficit of monetary assets, securities, and commodities resulting from illicit actions, whether deliberate or inadvertent.

However, the compensation provided is commensurate with the property acquired as a result of the corruption offense, as stipulated in Law Number 20 of 2010 and Article 18 paragraph (1) letter b of Law Number 31 of 1999. The concept posits that the penalty for providing restitution involves seizing assets acquired via corrupt gains instead of reimbursing the state.

The definition of the criminal purpose of paying compensation in the explanation of Law Number 31 of 1999 jo. Law Number 20 of 2010 differs from that of Article 18 paragraph (1) letter b of Law Number 31 of 1999 jo. Law Number 20 of 2010, leaving the purpose of paying compensation unclear.

The criminal purpose of compensation payments, which is to seize the proceeds of wrongdoing, is very hard to quantify. The first step is to distinguish the defendant's assets that were obtained through corruption from those that weren't.

As a result of these difficulties, investigators and public prosecutors are eventually urged to base the value of the replacement money on variables that are simpler to quantify or compute, including the overall number of losses incurred by the state. Although there is no standard method for calculating the country's losses, forensic accountants actually use more precise and reasonable pricing calculations.

3.1.5 Weaknesses of PERMA Number 5 of 2014 concerning Additional Penalty of Substitute Money in Corruption Crimes

1) **Payment of Reimbursement Based on Corporate Capacity:**

This PERMA stipulates that the amount of replacement money is determined based on the capacity of the corporation. This can cause problems if the corporation is unable to pay, as they could use the excuse of financial capacity to avoid the obligation to pay the replacement money.

2) **Compulsory Property Confiscation:**

This PERMA highlights that if the convicted party (person or corporate) fails to fulfill his commitment to pay reparation freely, the prosecutor must take possession of the property. This can be a problem if the confiscated property is insufficient to pay off the liability, or if the seizure was carried out in an unfair or unlawful manner.

3) **No Clear Control Mechanism:**

This PERMA does not specifically regulate how the mechanism for controlling and supervising the payment of substitute money is carried out. This can create a risk that the substitute money is not paid or used inappropriately, so that the purpose of the additional penalty is not achieved.

4) **Reimbursement money cannot be imposed jointly:**

If the crime of corruption is committed jointly and tried together, then the compensation money cannot be imposed jointly, so the division of responsibility becomes unclear.

5) **Sentencing That Is Not Focused on State Losses:**

The judge cannot only consider state losses in passing judgments, but also needs to consider the results of corruption enjoyed by the defendants, so that efforts to recover state losses can be less effective.

3.2 Progressive legal steps so that the criminal payment of substitute money in corruption is able to optimally restore state losses

3.2.1 No subsidy in the penalty of payment of substitute money

The illegal subsidy for the payment of replacement money is unregulated by Indonesian criminal law. The purpose of substitute money, an extra punishment for corruption or other crimes, is to make up for losses to the victim or the state; if it is not paid, it will be substituted by another criminal. The prosecution may seize and sell the offender's belongings to satisfy the reparation requirement if the offender fails to pay it. Only criminal fines are covered by the subsidy provisions; replacement money is not.

In order to recoup state losses and serve as a deterrence to criminal activity, compensation for those who commit corruption offenses must be paid as soon as possible. Although the substitute money is not a primary offense, the inability of the convicted party to pay will result in an effort to execute the convicted party's property rather than a substitute penalty of any kind.

Therefore, Article 18 paragraph (3) of Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is: "In the event that the convict does not have sufficient property to pay the replacement money as referred to in paragraph (1) letter b, then he shall be sentenced to imprisonment whose duration does not exceed the maximum threat of the principal crime in accordance with the provisions of this Law and the duration of the sentence has been determined in the decision court", must be abolished immediately, so that state losses due to corruption crimes can be optimally returned or recovered through the penalty of payment of substitute money.

3.2.2 The Existence of the Law on Confiscation and Confiscation in Corruption Crimes

There are several obstacles that are weaknesses in the confiscation process, so asset tracking should be carried out from the beginning by involving prosecutor's intelligence so that from the beginning of the investigation the property of the defendant, the defendant's wife/husband and children have been seen.

Tracking these assets can be done by coordinating with related agencies, namely:

a. The purpose of the National Land Agency (BPN) is to identify assets, such as buildings and land. Involving this agency is intended to raise awareness that the defendant may use the money he receives from his corruption to purchase real estate or structures across the nation.
b. The goal of the SAMSAT Office is to locate the defendant's assets, which include automobiles, ships, and other vehicles.
c. with banks in order to keep track of every defendant's account that could be kept in many banks.
d. Tax office to find out the amount of convicted assets based on the taxes paid;
e. Stock exchange with the aim of tracking the defendant's assets in the form of shares;
f. NGOs, which often act as whistleblowers and are concerned about the elimination of corruption;
g. BPKP as an institution that has forensic accounting expertise and the ability to conduct asset tracing;
h. PPATK with the aim of finding out the existence of suspicious financial transactions.

The assets of the perpetrators, both related to an unrelated to the crime of corruption, were confiscated and subsequently confiscated by a court decision, to cover state losses through the penalty of payment of compensation.

In general, there are two types of forfeiture that are applied internationally to recover the proceeds and instrumentality (assets used to facilitate criminal acts). Confiscation of NCB assets (non-conviction-based) and confiscation of criminal acts.

The spoils derived from this confiscation must be taken into account against the compensation imposed by the court. This is to ensure legal justice, because the confiscated goods come from corruption

crimes that have been enjoyed or used by the convict.

Then related to the assets of corruption convicts being run abroad, so that it becomes an international problem involving the legal regulations of other countries, it can be based on Article 54 of Law Number 7 of 2006 concerning the Ratification of the 2003 United Nations Anti-Corruption Convention, namely: the mechanism for the return of assets through international cooperation in confiscation.

To support efforts to confiscate and confiscate assets of corrupt perpetrators, it is necessary to have a Law on Confiscation and Forfeiture of Assets in Corruption Crimes. The potential of the Law on Confiscation and Forfeiture of Assets in Corruption Crimes to more effectively and efficiently take assets resulting from corruption crimes—even before a criminal decision against the offender is rendered—makes it significant. This is crucial to maximizing state losses, discouraging criminal activity, and preventing the misappropriation of assets brought about by criminal activity.

The state can break the chain of crime, stop additional losses, have a solid legal foundation for dealing with crimes and recovering assets, and respond to international institutions' insistence that Indonesia has a law on confiscation and forfeiture of assets in corruption crimes all thanks to the Law on Confiscation and Forfeiture of Assets in Corruption Crimes.

3.2.3 The return of state losses through replacement money takes into account the value of interest

Given the country's lost economic rights, which will have both direct and indirect long-term economic impacts, it becomes sense to calculate the extra penalty for replacement money by factoring in interest.

The disbursement of replacement funds should incorporate the computation of the time value of money, wherein the resultant figures, when aggregated with the state losses to be compensated, are anticipated to correspond to the diminution of economic value of development incurred by the state during that interval.

The assessment of state financial losses must be conducted meticulously, taking into account the duration until restitution by those convicted of corruption is achieved.

The restitution of state monetary losses throughout this timeframe is shown as though the monies are deposited or invested in alternative banks or financial institutions, where, in effect, the cash will accrue with increments derived from interest calculations. The community whose economic rights are compromised due to corruption will get justice when the financial losses incurred by the state are assessed, including the bank interest rate as a measure of compensating value.

State refunds, calculated using the time value of money approach, represent a form of restorative justice aimed at fully compensating the state for its losses and restoring it to its initial condition. This method incorporates the economic loss incurred due to delays in national development by factoring in interest elements based on the time value of money principle.

The imposition of interest rates on state compensation because the funds corrupted by the defendant have economic value if at a certain time the funds are invested in financial products. This thought is a logical thought as expressed by Prof. Jeremy Horber in an interview conducted by researchers at the London School of Economics, London, UK[12].

Since compensation is only based on the amount that the defendant obtained as a result of the corruption offense, it does not protect the community's economic rights,

[12]Direct Closing InterviewProf John Horber, Lecturer of Criminal Law, London School of Economic, England, 24 September 2014

which are gradually lost until a judgment has permanent legal effect.

3.2.4 Return of state losses through Bankruptcy Efforts or PKPU of Corrupt Corporations

Article 2 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, which states that: "Applications as referred to in paragraph (1) may also be submitted by the Prosecutor's Office in the public interest".

The Explanation of Article 2, paragraph (2) of Law Number 37 of 2004 regarding Bankruptcy -PKPU, in conjunction with the Explanation of Article 1 of Government Regulation of the Republic of Indonesia Number 17 of 2000 concerning Applications for Declaration of Bankruptcy for the Public Interest, delineates the concept of "public interest" as the interests of the nation and state and/or the broader community, for instance:

1) Debtor flee;
2) The debtor embezzled part of the estate;
3) The debtor has debts to State-Owned Enterprises or other business entities that collect funds from the wider community;
4) The debtor has debts that come from the collection of funds from the wider community;
5) The debtor is not in good faith or uncooperative in resolving the problem of overdue debts; or
6) In other cases, according to the Prosecutor's Office, it is in the public interest;

Furthermore, pursuant to the Republic of Indonesia's Government Regulation Number 17 of 2000 regarding Applications for Declaration of Bankruptcy for the Public Interest and its Explanation, specifically Article 2 paragraph (2), it is established that the Prosecutor's Office may file an application for a declaration of bankruptcy on the basis of public interest, provided that:

1) The debtor has 2 (two) or more creditors and has not paid at least 1 (one) debt that is due and can be collected; and
2) Neither party filed an application for a declaration of bankruptcy.

The additional requirement "no party files for bankruptcy declaration", is also a reference for the Prosecutor's Office to represent the public interest in filing a bankruptcy application.

The guarantee of the corporation's property shows that the criminal procedural technique—the means by which the state recovers its financial losses—is not able to implement the payment of replacement funds. Consequently, the best course of action is to use bankruptcy legal instruments that may be most useful in addressing replacement fund payment delays.

The basis for consideration of the use of bankruptcy legal instruments is the existence of the rights of creditors to the corporate property (debtor) which must still be considered, but the question will arise whether a corporation that does not pay the replacement money and the property it owns as collateral for debts to several creditors, meets the formula of "dueful and collectible debt" as a bankruptcy condition.

Article 2, paragraph (1) of Law Number 37 of 2004 regarding Bankruptcy and PKPU defines "debt that has matured and can be collected" as the obligation to settle debts that are due, whether due to mutual agreement, acceleration of the collection timeline as stipulated, imposition of penalties by competent authorities, or as a result of a judicial ruling, arbitration, or arbitral tribunal decision. The corporation will get compensation based on a court order as an additional penalty for recouping state financial losses. Likewise, Law Number 20 of 2001 about the Eradication of Corruption Crimes and Article 18 paragraph (2) of Law Number 31 of 1999 stipulate that restitution payments must be disbursed within one month of the court verdict, possessing enduring legal validity. A corporation that incurs an additional penalty in the form of compensation mandated by a court ruling and neglects to remit payment within one month

after the ruling attains finality is in breach of the stipulation of "not fully satisfying at least one debt that is due and collectible." This adheres to the stipulations of Law Number 37 of 2004 concerning bankruptcy and PKPU, namely Article 2, Paragraph 1.

The court's decision states that, should the bankruptcy requirements specified in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU be met, the state would have the right to restitution of replacement funds as a creditor in this case. Because its assets are used as collateral for debts to other creditors, the corporation also satisfies the requirement of "having two or more creditors" as stated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. This is because the corporation has additional creditors in addition to the state that is in the position of creditors.

The corporation that fails to pay the replacement money and is known to still have its assets that are used as debt collateral to other creditors has, taken together, complied with the bankruptcy requirements as stated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. This aligns with the aforementioned description and the substantiation of the bankruptcy application, which must be approved if specific facts or conditions are demonstrated as stipulated in Article 8, paragraph (4) of Law Number 37 of 2004 about Bankruptcy and PKPU. This grants the state the authority to initiate bankruptcy proceedings against the business (as a debtor) in the Commercial Court.

The Prosecutor's Office may file a bankruptcy application against the corporation, as outlined in Article 2, paragraph (2) of Law Number 37 of 2004 regarding Bankruptcy and PKPU, which states: "Applications referred to in paragraph (1) may also be submitted by the Prosecutor's Office in the public interest." The public interest is served by initiating bankruptcy proceedings against the corporation to address the outstanding replacement payments, which can thereafter be allocated for further development.

It is crucial that the Prosecutor's Office employ bankruptcy legal tools to try to resolve financial arrears in reimbursement payments. The purpose is so that the Prosecutor's Office does not directly use the subsidy of prison or corporal punishment imposed on the management or controller of the corporation, when it is not possible to execute the corporate property that is used as debt collateral. The most important thing is to maximize the return of state financial losses, while the prison penalty subsidy charged to management or controlling personnel is only applied when the corporation does not have sufficient property to pay the replacement money.

3.2.5 Corrupt Corporations Are Restored to Survive and Pay Obligations

Criminalization of corporations, especially sanctions for corporate closures, should be carried out carefully, wisely and carefully taking into account economic stability and business sustainability. Do not let corporate criminalization cause innocent people, such as workers, shareholders, consumers, and parties dependent on corporations, including the government, to become victims as aggrieved parties.

In the future, corporate criminal liability in Indonesia can be carried out with an integral law enforcement approach to achieve transformative justice. Transformative justice emphasizes the importance of accountability, behavior change, and transformation in relationships between individuals and society. Therefore, the right criminal sanctions against corporations are not bankruptcy but how and optimizing the return or recovery of losses caused by criminal acts committed by corporations.

In the perspective of integral law enforcement, corporate criminalization is more directed at achieving transformative justice where parties to the conflict provide justice to each other so as to recreate harmony in society, namely the prosecutor's office provides assistance and supervision to

corporations, and corporations continue to operate with the obligation to return the losses caused.

Transformative justice in the criminalization of corrupt corporations is a legal approach that aims to not only provide criminal sanctions, but also encourage changes in corporate behavior so as not to commit acts of corruption in the future. The orientation to the future in this Transformative Justice is that transformative justice emphasizes more on prevention and positive change in the future than retribution.

4. CONCLUSION

Due to the following factors, the penalty of paying substitute money has not been the best way to recover state losses resulting from corruption: a) unclear criminal arrangements for paying substitute money; b) a lack of norms pertaining to the crime of paying substitute money; c) restrictions on the confiscation of substitute money; d) the preference of individual convicted individuals for a subsidiary prison over paying substitute money; e) the interpretation of the purpose of the criminal application of payment of substitute money; and f) weaknesses of PERMA Number 5 2014 concerning the crime of additional substitute money in corruption crimes.

a) No subsidy in the penalty of payment of compensation in corruption, b) the existence of the Law on Confiscation and Forfeiture in Corruption Crimes, c) the return of state losses through compensation money while accounting for interest value, d) the return of state losses through bankruptcy efforts or PKPU of corrupt corporations, and e) the recovery of corrupt corporations to survive and pay obligations are all progressive legal steps that ensure the penalty of payment of compensation in corruption can recover state losses as efficiently as possible.

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