



## Paying Instructions As An Efforts To Recovery State Financial Loss In The Crime Of Corruption

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### ABSTRACT

*This study aims to analyze the implementation of Compensation Payments as an Effort to Recover State Financial Losses in Corruption Crimes paid by perpetrators of criminal acts in the future. This research uses a normative research method that is prescriptive in nature because it focuses on research on norms that prioritize legal materials in the form of library materials, examines legal principles, the legal system, and legal synchronization by analyzing them, using a statutory approach. and conceptual approach. The results of this study show that the payment of replacement money as an effort to recover state financial losses creates a dynamic that is quite complicated because it collides with normative rules that provide loopholes for convicts to undergo subsidiary crimes.*

**Keywords:** *Replacement Money; Corruption; Child Crime*

### INTRODUCTION

Corruption in the last few decades is one of the things that has become a public concern. Corruption or what is often referred to as *white-collar crime* is now a scourge of this country, besides that the perpetrators are people with high intellect with the aim of enriching themselves and others as well as having a negative impact on the stability and condition of national security. Corruption is considered as an *extraordinary crime* because it does not only have detrimental effects on state finances, but also endangers national development as a whole.

Corruption is a crime that destroys the values of social and state life, losses to the state caused by criminal acts of corruption are included in the "dangerous" category. Corruption in Indonesia is a problem that is recurrent and "emergency", the Indonesian people fight against corruption from time to time in a relatively long period of time and the corruption court is expected able to resolve corruption cases that have occurred in the past so as to restore lost state assets<sup>1</sup>.

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<sup>1</sup> Efi Laila Kholis Pembayaran Uang Pengganti Dalam Perkara Korupsi, Solusi Publishing, Jakarta, Cet1, 2010, hal.5



Acts of corruption occur in all parts world and are no exception in developing countries, including in Indonesia. Some of the causes of corruption include: administration financial and government transparent, the laws and regulations governing corruption are still incomplete, there are still many loopholes in provisions that are detrimental to society, the financial and development supervision system is still weak and has not perfect, and the level of welfare of the state apparatus is low<sup>2</sup>. The Criminal Code (KUHP) regulates classification of crimes which consist of principal crimes and additional crimes. But in line with legislation of.

There are additional types of punishment that are regulated outside the Criminal Code. One of them is the crime of additional money replacement which has an important role in eradicating criminal acts of corruption with the aim of returning state losses.

The role of the public prosecutor is very important in the settlement and eradication of criminal acts of corruption related to his authority as the (*executor*) of decisions court required to be able to calculate the amount money replacement that has been and will be paid by the convict when the convict is in the process of investigating his property confiscated or after the decision a court that has legal force remains the convict pays all or part of the remaining replacement which is his obligation

effectiveness of payment of replacement money as a way of returning state finances should be able to provide optimal results and requires maximum effort so that it can cover the deficit of the State Budget (APBN). and the Regional Expenditure Budget (APBD) due to the actions of the perpetrators to enrich themselves or others by misusing the state budget. legal instrument is needed and it is necessary to law regarding this matter so that law enforcers can more freely carry out their duties within the framework provide a deterrent effect for perpetrators of corruption.

In practice, criminal decisions for payment of replacement money vary in magnitude which can be caused by several factors, including the judge having separate calculations, some of the proceeds of corruption have been returned or the criminal act of corruption was committed by more than one person so that the criminal charge for payment of replacement money is burdened jointly.<sup>3</sup>

Based on the author's search, there are several articles that raise the same theme but differ in substance that are discussed, namely: Sandi Herintus Kabba, I Made Arjaya, I Made Minggu Widyantara Title: Procedure for Returning and Recovering State Losses Due to Corruption Crimes. disclose the process of implementing the return and recovery of state losses by prosecutors in acts of corruption as well as efforts to return and recover state losses due to corruption.<sup>4</sup> the second was written by Princess Hikmawati with the title: Returning State Financial Losses from Payment of Compensation for Corruption Crimes, Can it be Optimal?

<sup>2</sup> Soejono, *Kejahatan dan Penegakan Hukum di Indonesia*, Rineka Cipta, Jakarta, Cet., 1996, Hal.13

<sup>3</sup> Badaru, Agung Riyadi, Abdul Agis & Baharuddin, 2020, "Pembayaran Uang Pengganti Sebagai Pidana Tambahan Dalam Perkara Tindak Pidana Korupsi", *Journal of Lex Generalis (JLS)* Volume 1, No. 1, Universitas Muslim Indonesia Makassar, hlm. 23.

<sup>4</sup> Sandi Herintus Kabba, I Made Arjaya, I Made Minggu Widyantara, 2021, "Prosedur Pengembalian dan Pemulihan Kerugian Negara Akibat Tindak Pidana Korupsi", *Jurnal Interpretasi Hukum* Vol 2 No 3, 573-579



<sup>5</sup>And the third was written by Yayan Indriana with the title Return of Compensation for State Finances in Corruption Crime Cases.<sup>6</sup>

Based on the description above, the author makes a problem statement, namely how to optimize the execution of reimbursement payments?

## **METHOD**

The type of research used is normative<sup>7</sup> type of research used is normative or doctrinal legal research. Including the type of normative research because of the legal obscurity of (the existing provisions).<sup>8</sup> In addition, this research is a study that discusses systematically, analyzes the relationship between provisions, and examines and predicts possible future developments. This research includes research on legal principles, legal history, and comparative law.<sup>9</sup> This research approach uses a statutory approach, including Law Number 31 of 1999, Law Number 20 of 2001 concerning Eradication of Corruption Crimes, and Perma Number 5 of 2014 concerning Additional Crime of Compensation for Corruption Acts

## **ANALYSIS AND DISCUSSION**

### **Optimizing Payment Execution Compensation Money The**

implementation of the execution of money-compensation as an additional punishment decided on the perpetrators of corruption is essentially an attempt to recover state financial losses caused by acts of corruption. Additional penalties for payment of compensation money need to be prosecuted and decided in every case of corruption. Returning state financial losses from criminal acts of corruption through replacement money is one of the important efforts in eradicating criminal acts of corruption.

The process of implementing additional criminal decisions for payment of replacement money in corruption cases is an obstacle because it requires a relatively long time. Implementation of additional criminal payment of replacement money at the execution stage is an important stage as an effort to restore state losses. However, the regular procedures that must be followed indirectly become an obstacle in efforts to carry out criminal decisions in addition to payment of replacement money. The procedure which impedes the criminal execution process for the additional payment of compensation money is very contradictory to the mission carried out in order to return state losses in the shortest possible time and in the maximum possible amount.

once disclosed the dynamics of reducing the payment of replacement money in the context of settling state finances Ramelan :

1. Corruption cases can be uncovered after going on for a long time, making it difficult to trace the money or wealth obtained from corruption.

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<sup>5</sup> Puteri Hikmawati , *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* “Pengembalian Kerugian Keuangan Negara dari Pembayaran Uang Pengganti Tindak Pidana Korupsi, Dapatkah Optimal?” Vol 10 No 1 Tahun 2019. 89-107.

<sup>6</sup> Yayan Indriana, CEPALO“Pengembalian Ganti Rugi Keuangan Negara Pada Perkara Tindak Pidana Korupsi” Vol 2 No 2 , 2018 : 121-128

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Cet.6, (Jakarta: Kencana Prenada Media Group, 2005), hlm. 3

<sup>8</sup> Peter Mahmud Marzuki sebagaimana dikutip dalam Agus yudha Hermoko, 2010, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*, Jakarta: Kencana, hlm. 38.

<sup>9</sup> Jhony Ibrahim, 2007, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, hlm. 5.



2. The perpetrators of corruption have spent the proceeds or used/diverted it in other forms including on behalf of other people who are difficult to reach by law;
3. The existence of a third party suing the government for evidence in the context of fulfilling the payment of replacement money.<sup>10</sup>

Another obstacle encountered in practice, namely that the convict prefers to carry out subsidiary punishment rather than pay replacement money, because the subsidiary sentence imposed is lighter than the payment of replacement money, besides that another obstacle is because the convict does not have property to cover the losses incurred, So that the prosecutor in demanding a subsidiary sentence should demand the maximum sentence in accordance with the provisions of the article that was violated, and there must be more optimal efforts in carrying out the duties and functions of the prosecutor's office in the field of investigation and intelligence.

State losses are increasing along with the increasing number of criminal acts of corruption in Indonesia. Based on the criminal provisions for payment of replacement money in the Law on the Eradication of Criminal Acts of Corruption, state losses can actually be returned. In this case the Law on the Eradication of Criminal Acts of Corruption is a provision that can restore state losses due to criminal acts of corruption, but in practice additional criminal payments of compensation money must be carried out to the fullest extent possible. Additional criminal compensation money in acts of corruption is a form of criminal effort against those who commit acts of corruption. This is a way of returning state financial losses by providing income to the state treasury from the payment of replacement money for convicts whose amount of replacement money has been determined.

Apart from that, other factors or obstacles that occur in the implementation of the crime of payment of replacement money are regarding law enforcement, facilities or facilities that support law enforcement, society, and culture. One of the factors that determine the law enforcement process is not only the parties who apply the law but also the parties who make the law. The parties in the law enforcement process referred to are the police, prosecutors, judiciary, and lawyers. To be able to work professionally, of course, law enforcement officials are faced with various different problems when carrying out their respective duties and authorities.

The stages of criminal execution for payment of replacement money have different characteristics when compared to fines. There is a difference between the two penalties because the penalty for payment of replacement money is an additional punishment while the penalty for fines is the main punishment. The execution of payment of replacement money can still be determined by the prosecutor not to exceed the grace period of 1 (one) month, this is based on Article 18 paragraph (2) of the Corruption Crime Eradication Law.

Understanding of the time period for payment of replacement money if the convict does not pay replacement money no later than 1 (one) month after the Court's decision obtains permanent legal force, then his property can be confiscated by the Prosecutor and auctioned off to cover the replacement money and if in the event the convict has no assets objects that are sufficient to pay replacement money are punished with imprisonment for varying lengths of time for losses to state finances

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<sup>10</sup> Efi Laila Kholis, 2010, *Pembayaran Uang Pengganti Dalam Perkara Korupsi*, Cetakan Pertama, Solusi Publishing, Jakarta, hlm. 15.



incurred by the convict. and in addition to replacement money, the convict is still burdened with compensation money from the state financial losses incurred by the perpetrator, even though he only paid replacement money or could only pay a part of the total penalty for payment of replacement money imposed, then the prosecutor as state executor can yita and auction off the convict's assets to cover state losses due to corruption, as stipulated in Perma No. 5 of 2014 concerning Additional Crime of Compensation for Corruption Crimes. However, the Prosecutor as the executor cannot implement Perma Number 5 of 2014, because the Prosecutor's reference in carrying out his duties is the Corruption Crime Law and not the Perma in the stages of confiscating assets in a substitution payment crime, by way of *asset racing*. to support efforts to execute replacement money payments related to decisions on corruption cases and other state receivables, the implementation of which is in coordination with the relevant work unit and the technical field, namely the Special Crimes Sector. ensnare him.

The prosecutor who carries out the execution is regulated in the formulation of Article 1 point 6 letter a of the Criminal Procedure Code and Article 1 point 1 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it can be explained that the prosecutor has 2 (two) powers, namely as a public prosecutor and executor of court decisions has obtained permanent legal force (executor). As executor, the authority of the prosecutor is in line with Article 270 of the Criminal Procedure Code which states: "The implementation of a court decision that has permanent legal force is carried out by the prosecutor, for which the clerk sends a copy of the decision letter to him". As well as in Article 30 paragraph (1) letter b of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 of 2021, one of the duties and powers of the prosecutor is "to carry out the determination of judges and court decisions that have obtained the power of statutory law". From the provisions of Article 270 of the Criminal Procedure Code and Article 30 paragraph (1) letter b of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 of 2021, it is increasingly clear that the authority to carry out criminal execution for payment of replacement money is in prosecutor's hand as executor.

According to Sudarto, the history of criminal law is essentially the history of criminal (sanctions) and punishment itself. Criminal sanctions which also include actions (*maatregel, masznahme*), however, are a form of suffering or an unpleasant feeling for those who are subjected to them. Therefore, people are constantly looking for the basis, nature and purpose of punishment and sentencing, to provide justification for the punishment.<sup>11</sup> Indonesia as a developing country is actively trying to eradicate corruption, the criminal law approach as an instrument in fighting corruption is still the main choice, Law no. 31 of 1999 concerning the Eradication of Corruption Crimes which has a mission to return state funds. In addition to being equipped with the main punishment of imprisonment and fines with a special minimum. UU no. 31 of 1999 is also equipped with additional punishment, this is as stipulated in Article 17 jo. Article 18 Law no. 31 of 1999 which states that in addition to being subject to the principal sentence, the defendant in a corruption case may be subject to additional punishment, one form of which is a replacement money penalty.

<sup>11</sup> Sudarto, 1981, *Hukum dan Hukum Pidana*, (Bandung: Alumni), hlm. 30





With the formulation of criminal sanctions for payment of replacement money as stipulated in Article 18 of Law Number 31 of 1999, jo. Law Number 20 of 2001, as an additional criminal punishment for payment of replacement money is imposed in a judge's decision, always accompanied by imprisonment as an alternative if the criminal sanction for payment of replacement money is not paid, length of imprisonment as an alternative to punishment for payment of replacement money with a mass of time which varies.

Example of a case in the Decision of the Panel of Judges at the Banjarmasin Corruption Court with decision number number: 11/Pid.Sus-TPK/2020/PN.Bjm dated 21 October 2020 in the name of the defendant Drs. H. Hairan. K, MMPD Bin H. Kasim (late) in managing Bos Funds at SMP Negeri 12 Banjarmasin, violated Article 3 Jo Article 18 paragraph (1) Law Number 31 of 1999 Jo Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption Crimes, in the Court's Decision the convict is charged with paying compensation in the amount of Rp. 300,000,000.- (three hundred million rupiah) if the convict does not pay the replacement money no later than 1 (one) month after the court decision obtains permanent legal force, then his property can be confiscated by the Prosecutor and auctioned off to cover the replacement money and in the event that the convict does not have sufficient property to pay the replacement money, then the penalty is imprisonment for 6 (six) months, and the defendant has made payment of compensation money for the losses incurred in the first installment of Rp. 100,000,000.- (one hundred million rupiah) and the second Rp. 10,000,000.- (ten million rupiah) so the total that the defendant has paid is Rp. 110,000,000.- (one hundred and ten million rupiah) imprisonment for compensation for which payment is made by the convict, there is no calculation or reduction of the period of imprisonment that has been imposed in a Court decision.

The condition of this case is that the convict is burdened with additional criminal compensation in the amount of Rp. 300,000,000.- (three hundred million rupiah) if for 1 (one) month the convict does not pay the replacement money, then he will be sentenced to 6 (six) months in prison, but the convict will make payment in installments for the losses incurred by the perpetrator of Rp. 110,000,000.- (one hundred and ten million rupiah), what is the legal basis for the Prosecutor and the Panel of Judges in the application of imprisonment to compensation money that is paid by the convict.

Furthermore, the Decision of the Corruption Court at the Central Jakarta District Court Number 29/Pid.Sus-TPK/2021/PN.JKT.PST dated 23 August 2021, on behalf of the defendant Juliari Batubara, in the case of accepting bribes in the provision of social assistance for COVID-19 in the Jakarta area, Bogor, Depok, Tangerang and Bekasi (Jabodetabek) Article 12 letter b in conjunction with Article 18 of the Law on the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) 1st of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code, and the convict is charged with paying replacement money of Rp. 14,597,450,000.- (fourteen billion five hundred and ninety-seven million four hundred and fifty thousand rupiah) if the convict does not pay the replacement money no later than 1 (one) month after the court decision obtains permanent legal force, then his assets can be confiscated by the Prosecutor and auctioned off to cover the replacement money and in the event that the convict does not have sufficient assets to pay the replacement money, he shall be punished with imprisonment for 2 (two) years.



In this case, the determination of the Minister of Social Affairs Jualiari Batubara as a suspect in the procurement project for social assistance handling Covid-19 in the Jakarta, Bogor, Depok, Tangerang and Bekasi (Jabodetabek) areas in the form of food packages at the Indonesian Ministry of Social Affairs in 2020, the Minister of Social Affairs was subject to bribery, because the money received by the Minister of Social Affairs comes from partners and not directly from the APBN, so that if we look at the legal regulations that are alleged to the Minister of Social Affairs, namely Article 12 letter b Jo Article 18 Law No. 31 of 1999 has been amended by Law No. 20 of 2001 concerning eradicating criminal acts of corruption Jo Article 55 paragraph ( 1) 1st Criminal Code Jo Article 64 paragraph (1) Criminal Code, in the decision of the Corruption Court the Defendant was burdened with payment of compensation for losses incurred in the amount of Rp . 14,597,450,000, - (fourteen billion five hundred ninety seven million four hundred and fifty thousand rupiahs), if the defendant does not pay the replacement money no later than 1 (one) month after the court decision obtains If the legal force is permanent, then the property can be confiscated by the Prosecutor and auctioned off to cover the replacement money and in the event that the convict does not have sufficient assets to pay the replacement money, he will be punished with imprisonment for 2 (two) years, should be imposition of payment of financial losses The state sourced from state finances in this case was applied by law enforcers to Article 2 paragraph (2) in conjunction with Article 18 UUPTPK instead of Article 12 b, so that the death penalty could not be applied to the Minister of Social Affairs as the recipient, because of the threat of punishment from Article 12 letter b criminal maximum imprisonment for life or 20 years and a fine of Rp. 1 billion and a minimum of 4 years imprisonment and a fine of Rp. 200 million rupiahs. Meanwhile for bribe givers, the punishment is much lighter, imprisonment for a maximum of 5 years and a fine of Rp. 250,000,000.- (two hundred and fifty million rupiah), and a minimum of Rp. 50,000,000.- (fifty million rupiah) and imprisonment for 1 year, while the death penalty is provided for in Article 2 paragraph (2) of the Corruption Law.

Subject to the bribery article against recipients and givers of the Social Assistance case, the defendants cannot be charged with the death penalty, while the death penalty is only contained in Article 2 paragraph (2) of the Corruption Law with state financial losses both APBN and APBD funds by state administrators, for basic food assistance for dealing with emergency situations, national natural disasters, social unrest, economic crises, corruption.

So that from these two cases of criminal acts of corruption all of them have been sentenced to payment of compensation money for losses to the State in varying amounts, but in the implementation of calculating payments for state financial losses which are paid in part in installments, as well as the application of the article in the case of the Minister of Social Affairs there is no legal certainty regarding the rules law especially for written legal norms. Law without certainty value will lose meaning because it can no longer be used as a guideline for everyone's behavior. Certainty itself is referred to as one of the objectives of the law. Community order is closely related to certainty in law, because order is the essence of certainty itself. Order causes people to live with certainty, so that they can carry out the activities needed in social life. And there is no benefit from law in this case. Benefit here is defined as happiness, so that the judgment of whether or not a law is good or fair depends on whether the law gives happiness to humans or not. This means that every preparation



of legal products (legislation) should always pay attention to the purpose of law, namely to provide as much happiness as possible for the community.

In this case, it shows that the practice of recovering state losses (*asset recovery*) does not work as expected by the wider community, the law on the eradication of criminal acts of corruption requires restitution of state losses, not only punishing the perpetrators. The perpetrator prefers not to pay off the replacement money or prefers to replace it with a substitute *imprisonment*. The above decision also shows a pattern of incomparability in determining compensation money. Corruption acts that in real terms are detrimental to state finances are only replaced by imprisonment for under 2 (two) years. The state experienced quite apprehensive economic losses and the consequences were felt directly by the people, but this mistake was only redeemed by a fairly light prison sentence. This sentencing model is enough to hurt the sense of justice of the wider community. In fact, what should be a replacement as an additional punishment in corruption crimes can answer the public's hope that corruptors can return state money. Compensation money punishment provides great benefits if law enforcers are able to return it through replacement money punishment. Compensation money punishment is indeed formulated as an additional punishment, its optional nature only adds to the main criminal sanction. The imposition of replacement money is very dependent on the discretion of the judge in assessing the evidence that appears in the trial. The judge has the freedom to impose replacement money on the convict or not, but if in the process of proving the Public Prosecutor is able to show that there are real and definite state losses due to corruption, then the principal sentence which is optional can be imposed. The problem is that it has been stated that the provisions of Article 18 paragraph (3) of the Corruption Eradication Law provide room for judges to *subsidize* which results in the escape of corruptors from the obligation to pay replacement money. As a result, the state continues to suffer losses and the corruption perception index continues to increase.

Barda Nawawi Arif said that the strategy for criminal punishment in crimes with a new dimension must pay attention to the nature of the problem. If the essence of the problem is closer to problems in the field of economic law, then the use of fines or the like is preferable. Determination of criminal sanctions should be done through a rational approach. If based on this rational concept, the policy of determining criminal sanctions is inseparable from setting goals to be achieved by criminal policies as a whole, namely the protection of society.<sup>12</sup>

Recovery of state losses must be carried out based on a rational policy taking into account the convict's economic condition which makes it impossible to pay off the replacement money penalty, so that it is possible for the judge to replace it with a prison sentence. However, the policy of determining substitute prison sentences must be truly balanced and professional with the value of replacement money charged to convicts on the basis of the calculation that "the greater the value of state losses due to corruption, the longer the replacement sentence must be served.

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<sup>12</sup> Barda Nawawi Arief, 2009, pembaruan penegakan hukum dengan nilai-nilai moral Religius Makalah disampaikan pada Seminar Nasional Menembus Kebuntuan Legal Formal Menuju Pembangunan Hukum dengan Pendekatan Hukum Progresif, FH Undip. hlm 13.





" the implementation of criminal sanctions must be handled with rational and balanced sentencing policies.<sup>13</sup> The principle of proportionality needs to be used as a basis for judges in determining the weight of the length of punishment of the Subsidiary money for compensation, so that the problem of disproportion between the amount of money for the replacement and the penalty for the subsidiary can be avoided because the principle of proportionality requires a balance between the guilt and the punishment to be received.

The Strategy for Enforcement of Criminal Law to Overcome the Dynamics of Crime of Compensation Money in eradicating corruption at this time is oriented towards returning state losses stolen and enjoyed by corruptors. Corruption that occurs in Indonesia does not have a motivation to survive (*corruption by need*), but is driven by a high lifestyle (*corruption by life style*). Therefore, the application of criminal sanctions needs to shift from the *follow the person* to *follow the money and assets*. Optimization of criminal compensation money requires a progressive legal approach to pursue state losses. The problem is how to take steps to optimize alternative money crimes through progressive law. The existence of progressive law provides a challenge for law enforcers to see law as something that is continuously in process because progressive law does not see law as something absolute and final.

Referring to the previous description, it can be seen that the main reason for the dynamics of money laundering crimes is in fact due to the formulation policy factors, in addition to the commitment of law enforcement. In order to optimize money crime, it is necessary to change or improve policies in dealing with corruption cases, balanced with progressive legal methods that are not confined by legal positivism because the concept of progressive law always sees law as not an absolute and final institution.<sup>14</sup>

The legal breakthrough for optimizing money penalty through progressive law enforcement is not an emotional legal breakthrough but a rational legal breakthrough based on theoretical arguments. The theoretical basis for optimizing money substitute penalties is to use a progressive legal lens, as an entry point and point of view.<sup>15</sup> Progressive law sees that law is always in the process of becoming (*law as process, law in the making*) and does not view law from the point of view of the law itself, but from the social goals to be achieved.<sup>16</sup>

Optimizing the return of state losses with replacement money through progressive law enforcement emphasizing the human aspect (law enforcement). In order to expedite the flow of state funds being returned, law enforcers need to prosecute progressively by implementing the provisions for confiscation as stipulated in Article 18 paragraph (2) of Law Number 31 of 1999 concerning eradicating criminal

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<sup>13</sup> Bandingkan Eva Achjani Zulfa, 2011, *Pergeseran Paradigma Pemidanaan*, Cetakan ke 1, Bandung Lubuk Agung, hlm. 38.

<sup>14</sup> Bandingkan Achmad Rivai, 2014, *Penemuan Hukum oleh Hakim, Dalam Perspektif Hukum Progresif*, Jakarta Sinar Grafika, hlm. 40

<sup>15</sup> Dey Ravena, 2012, *Wacana Konsep Hukum Progresif Dalam Peegakan Hukum di Indonesia Dalam Hukum Untuk Manusia Kado (tak) Istimewa Fakultas Hukum Untuk Indonesia*, Jakarta: Pilar Utama Mandiri, hlm. 338.

<sup>16</sup> Satjipto Rahardjo, 2007, *Membedah Hukum Progresif*, Jakarta: Kompas, hlm. 162.



acts of corruption, from which previously it can be implemented if the replacement money is not paid, to be able to implemented from the investigative stage. This action is a legal breakthrough (*rule breaking*) to anticipate that assets that are the object of replacement money are not diverted and facilitate tracking, making it easier for prosecutors to request collateral confiscation.

In certain circumstances that can be used as a reason for criminal aggravation of perpetrators of corruption, namely if the crime is committed against funds originating from state finances intended for overcoming dangerous situations, national natural disasters, overcoming the consequences of widespread social unrest, economic crises and monetary and repetition of criminal acts of corruption. When viewed from Presidential Decree No. 12 concerning the determination of a non-natural disaster with the spread of Covid-19 as a national disaster,

the normative payment of monetary compensation for money convicts must be paid according to the maximum amount equal to the property obtained from criminal acts of corruption. This is in accordance with the provisions stipulated in Article 18 paragraph (1) letter b "payment of replacement money in the maximum amount equal to the property obtained from criminal acts of corruption" Supreme Court Regulation of the Republic of Indonesia Number 5 of 2014 Concerning Additional Money Crimes Substitute Corruption Crime dated December 31, 2014 with the rationale as set out in the preamble to the Supreme Court Regulation stating:

- a. Whereas Article 18 paragraph (1) letter b of Law - Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes stipulates payment of replacement money as one of the additional crimes:
- b. That the said law also stipulates that if the convict does not pay the replacement money no later than 1 (one) month after the court's decision. "who have obtained permanent legal force, then "the property can be confiscated by the prosecutor and auctioned off to cover the replacement money.

In addition, if after the assets have been confiscated the value is not enough to pay "replacement money", then the convict shall be sentenced to imprisonment for a length not exceeding the maximum threat of the principal sentence, the Supreme Court Regulation above, as the basis for the operation of law number 31 of 1999 which explicitly stipulates if the convict does not pay replacement money no later than 1 (one) month after the court's decision. "who have obtained permanent legal force, then "the property can be confiscated by the prosecutor and auctioned off to cover the replacement money. In addition, if after the assets have been confiscated the value is not sufficient to pay "replacement money", then the convict shall be sentenced to imprisonment for a term not exceeding the maximum threat of the principal sentence.

The provisions of Chapter IV of this Perma regarding the execution of replacement money, in article 9 paragraph (1) explains that "if within 1 (one) month after the decision has permanent legal force, the convict does not pay off the payment of replacement money, the Prosecutor is obliged to confiscate assets objects owned by the convict" paragraph (2) explains "if after the confiscation as referred to in paragraph (1) the convict still does not pay off the payment of replacement money, the Prosecutor is obliged to auction off the property based on Article 273 paragraph (3) of the Criminal Procedure Code, additional criminal payment of money replacement is imperative, meaning that the convict is not allowed to choose whether he will pay replacement money or just run a replacement prison. Article 18 paragraph (2) has



emphasized that if within 1 (one) month after the verdict is read the convict does not pay the replacement money, then his property can be confiscated by the Prosecutor. The confiscation is intended as a coercive tool against the defendant to immediately pay off his obligations, as well as a guarantee if after being confiscated the convict still does not pay off his obligations, the property will be auctioned to pay it off. Thus this means that this request for replacement money confirms the views on indicators or in other words a parameter for the imposition of criminal payments for replacement money based on an asset obtained from a criminal act of corruption. So that the understanding (view) that this indicator or parameter is the calculation of the amount of replacement money in terms of the amount of state losses can no longer be applied in law enforcement against a criminal act of corruption. It's just that in the Perma for replacement money it is possible for an exception to exist in the presence of an indicator for the imposition of said replacement money. The parameter referred to here is regarding the calculation of the amount of replacement money based on the property obtained from the criminal act of corruption, there is an exception if the property obtained from the criminal act of corruption is not enjoyed by the defendant, but has been transferred to another party and no prosecution has been carried out. with this exception, replacement money can still be dropped on the defendant even though the defendant does not enjoy the property he has acquired.

The implementation of returning state financial losses due to acts of corruption cannot be done immediately, apart from waiting for the payment of replacement money from convicted corruption cases which takes a long time, the return of replacement money to the state treasury cannot be done 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 people's welfare. Efforts to restore state financial losses due to criminal corruption are one of the main objectives to emphasize maximum results, one of the efforts is to make provisions regarding payment of replacement money, it is deemed necessary as long as state losses have not been returned to the maximum or at least are inadequate in efforts to restore loss of state finances, as long as it is also the maximum must still try to return it until it reaches the maximum level. In law number 31 of 1999 Jo law number 20 of 2001 concerning the eradication of criminal acts of corruption contains important legal principles or principles and are specific to the scope of criminal law specifically criminal acts of corruption. This legal principle marks an important change in efforts to eradicate criminal acts of corruption through enforcing criminal law, this legal principle marks an important change in efforts to eradicate criminal acts of corruption through enforcing criminal law contained in article 4 which contains the statement "returns to losses of state money or the state's economy are not erase the punishment of the perpetrators of criminal acts "as referred to in Article 2 and Article 3.<sup>17</sup>

Criminal sanctions are an important element in criminal law enforcement as a means of preventing and overcoming crime, on the other hand, inappropriate choices can actually trigger the failure of crime prevention. This assumption is suspected of being one of the facts of the failure of corruption prevention in Indonesia. When referring to policy formulations that lead to a foresight of an issue, especially those

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<sup>17</sup> Anonymous. Implementation of additional criminal payment of replacement money in corruption cases, <http://eprints.ums.ac.id/13115/4/AKSI.pdf>



related to the criminal act of corruption against replacement money, this must be put forward in order to provide legal certainty so that financial losses state can be eliminated or at least minimized against the occurrence of criminal acts of corruption.

This is important to optimize the recovery of state financial losses, the purpose of the anti-corruption law is essentially not only aimed at punishing the perpetrators, but to restore state finances, this is in accordance with the provisions contained in the UNCAC which emphasizes the return of state finances in every eradication of corruption. Chapter V of the UNCAC regulates the return of assets, including prevention and detection of the transfer of proceeds of crime, Actions for direct return of wealth, mechanisms for returning wealth through international cooperation for confiscation, Special cooperation, return and transfer of assets, financial intelligence units and Bilateral and Multilateral agreements and safeguards .<sup>18</sup>

The *success rate* of returning money, evidence and repatriation of assets from abroad is still relatively low, so that in the context of returning assets and handling other problems, international cooperation is needed to save assets both inside and outside the country. The need for an asset prevention mechanism (transfer of assets) and returns with reference to UNCAC provisions, from the beginning of the legal process that occurred and the use of state financial intelligence, so that assets inside and outside the country can be confiscated to return state finances, the process of returning assets resulting from corruption being abroad with a different characteristic of society in terms of law, it is fully supported by the relevant institutions.<sup>19</sup>

Management of state assets resulting from criminal acts of corruption must be recognized that so far it has not been carried out properly, so it is necessary to explain the management mechanism to be used as a learning and evaluation related to saving assets in the future, various things need to be immediately carried out to restore assets to compensate for losses state can be optimized. Perma number 5 of 2014 can fill the legal void regarding the payment of replacement money in doctrine and the law of replacement money in acts of corruption, judges are not required to commit an additional crime specifically in corruption, this must always be considered because corruption is something that is contrary to law and detrimental to state finances, although replacement money here is an additional crime, it would be unwise to not pay replacement money as a very effective way of recovering state finances.

## **CONCLUSION**

Optimizing the recovery of state losses against replacement money through progressive law enforcement emphasizes the human aspect (law enforcement). In order to expedite the flow of state funds being returned, law enforcers need to prosecute progressively by implementing the provisions for confiscating assets from the proceeds of corruption owned by convicts as stipulated in Article 18 paragraph (2) UUPTPK, and RI Supreme Court Regulation Number 5 of 2014 concerning Additional Crimes for Compensation for Corruption Crimes to fill the legal void for replacement money, from which it was originally possible to implement if the replacement money was not paid, has become enforceable since the investigation stage. This action is an

<sup>18</sup> Bambang Waluyo. 2016. Eradication of criminal acts of corruption (strategy and optimization), Jakarta: graphic light, p. 90.

<sup>19</sup> Ibid. p. 90



effort to break the law (*rule breaking*) to anticipate that assets from the proceeds of corruption crimes that are the object of replacement money are not diverted and make it easier to trace, making it easier for prosecutors to request collateral confiscation of assets obtained from proceeds of corruption crimes, if after subject to confiscation, the convict still does not pay off his obligations, the property will be auctioned to pay off the state losses incurred by the convict.

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