

## **ANALYSIS OF THE MECHANISM OF RESTITUTION AND ITS IMPACT ON THE FINANCIAL RECOVERY OF THE STATE DUE TO CORRUPTION OFFENSES**

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### **Abstract**

This research aims to examine the effectiveness of the restitution mechanism, as regulated in Article 18 of Law Number 31 of 1999 on the Eradication of Corruption, as amended by Republic of Indonesia Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on the Eradication of Corruption, in reducing state financial losses due to corruption offenses. This study examines the implementation of the restitution process and its impact on state financial recovery using a qualitative normative juridical method. The researcher demonstrates that imposing restitution as an additional sanction is crucial in recovering state financial losses caused by corruption. However, challenges arise in the form of substitutionary penalties that reduce the effectiveness of restitution, as well as the tendency of offenders to choose imprisonment over fulfilling their obligation to make restitution. The lack of coordination among relevant parties also affects the implementation of restitution. To enhance the effectiveness of restitution, a comprehensive approach is needed, strengthening legal compliance and coordination among law enforcement agencies, judicial institutions, and auditing institutions. By addressing these challenges, the restitution mechanism can significantly contribute to reducing state financial losses caused by corruption.

**Keywords:** Restitution of Assets; Financial Loss Incurred by The State; Corruption Crime.

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### **INTRODUCTION**

Corruption has long been a serious problem in Indonesia and has significantly harmed state finances. These crimes involve abuse of authority and embezzlement of funds by public officials, which has a direct impact on wastage of public resources and reduction of the government's ability to provide effective services to society (Irjayanti & Azis, 2012).

To fight corruption and recover state financial losses, Indonesia has adopted Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which later underwent amendments with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts (hereinafter abbreviated as the Tipikor Law). The Corruption Law is an important legal foundation that regulates various aspects of handling corruption cases, including the mechanism for reimbursement refunds (Johnston, 2012).

One of the crucial aspects of the Corruption Law is Article 18 which regulates the mechanism for reimbursement refunds. This mechanism is designed to return illicitly obtained profits to the state. When a perpetrator of corruption is found guilty, the court can determine the amount of money that must be returned as compensation to the state. This return process

involves the confiscation of assets obtained from corruption crimes and the transfer of ownership of those assets to the state (Surya & Diezo, 2022).

However, the implementation of substitute refunds faces a variety of complex challenges. Identification of assets related to profits from criminal acts of corruption, determination of the value to be returned, as well as administrative and technical processes are obstacles in the implementation of these returns.

So the purpose of this study is to thoroughly analyze the replacement refund mechanism regulated in Article 18 of the Tipikor Law, and look at it from the perspective of practices that have been carried out in handling cases of criminal acts of corruption (Mahmud et al., 2020). The research will involve a review of court rulings, government policies, and substitute refund practices that have been undertaken by law enforcement agencies in Indonesia.

It is hoped that the results of this study can provide a more comprehensive understanding of the implementation of Article 18 of the Criminal Law in the return of substitute money, identify challenges faced in practice, and provide recommendations for improving and strengthening the replacement refund mechanism in the context of state financial recovery due to corruption in Indonesia.

## **METHOD RESEARCH**

This study uses normative research methods to analyze the mechanism of returning substitute money and its impact on state financial recovery due to corruption. The normative research method is an approach that refers to the analysis of applicable laws and regulations to understand the problem or phenomenon under study.

This data collection method is carried out by conducting library research, which involves document analysis such as collecting legal data relevant to the research topic through literature studies, both in the form of primary legal materials (laws and regulations, court decisions) and secondary legal materials (journals, books, and related articles).

The data analysis method used in this study is qualitative analysis. The choice of this method is based on the characteristics of research results that are not in the form of numbers, but in the form of descriptions. Qualitative analysis aims to understand and interpret data in depth (Benuf & Azhar, 2020)

## **RESULT AND DISCUSSION**

### **1. State Finance and State Financial Losses in the Concept of Corruption**

In the concept of corruption, state finances have a central role. State finance refers to all financial resources owned by the state, including income from taxes, other state revenues, and state assets. State finance refers to all aspects of finance related to the state, both in terms of receipts and expenditures. State financial revenues include tax revenues, royalties, dividends, proceeds from the sale of state assets, loans, and aid funds. Based on Article 1 Paragraph (1) of Law Number 17 of 2003 concerning State Finance states that state finance is all state rights and obligations that can be assessed with money, as well as everything both in the form of money and in the form of goods that can be made state property in connection with the implementation of these rights and obligations. The implementation of these rights

and obligations consists of their respective scopes. The scope of state finance based on Article 2 of Law Number 17 of 2003 concerning State Finance is Mustawa et al., (2022):

- a. The right of the state to collect taxes, issue and circulate money and make loans.
- b. The obligation of the state to carry out the duties of the general service of the state government and pay the bills of third parties.
- c. State revenue.
- d. State expenditure.
- e. Regional reception.
- f. Regional expenses.
- g. State wealth / regional wealth managed alone or by other parties in the form of money, securities, receivables, goods and other rights that can be assessed with money, including wealth separated from state companies / regional companies.
- h. The wealth of other parties controlled by the government in the implementation of government duties and / or public interests.
- i. The wealth of others obtained by using facilities provided by the government.

The country's finances have a correlation with state losses. The failure of the country's financial management has an impact on state losses. Article 1 Paragraph (22) of Law Number 1 of 2004 concerning the State Treasury states that "*a real and definite shortage of money, securities, and goods as a result of unlawful acts either intentionally or negligently.*" The meaning of the real nature of state losses means that the lack of money, securities, and goods is real state property as evidenced by relevant, reliable, and valid documents belonging to the state, while it definitely means the lack of money, securities, and goods must be the amount, not an amount that is estimated, assumed, potential, indicated, or imagined, an amount that is valued not based on the amount in and out of money, but on all transactions recorded at book value and at real value reduced relevantly, reliably, and validly.

This state loss can be recovered with State Indemnity. State Indemnity Mechanisms typically involve legal or administrative proceedings in which the party responsible for state losses is required to reimburse or return lost or harmed value to the state. The goal is to restore funds or assets that should be owned by the state and restore the country's finances.

Based on Article 39 of Government Regulation Number 38 of 2016 concerning Procedures for State/Regional Compensation Claims Against Non-Treasurer Public Servants or Other Officials and Constitutional Court Decision Number 25 of 2016 provides guidance on how state/regional compensation claims can be filed against non-treasurer civil servants or other officials (Simatupang, 2011)

Criminal substitute money, also known as fine or compensation, is a form of crime given to perpetrators of corruption crimes to compensate for losses incurred as a result of their actions, The criminal payment of substitute money was first regulated in Government Regulation in Lieu of Law (Perppu) Number 24 of 1960 concerning Prosecution, Prosecution and Examination of Criminal Acts of Corruption. This instrument was then continued in Law Number 3 of 1971 concerning the Eradication of Corruption and the Corruption Law which states that the criminal payment of substitute money is one of the

additional crimes in corruption cases in addition to additional crimes as referred to in the Criminal Code (KUHP) and Article 18 paragraph (1) of the Corruption Law.

The payment of substitute money as an additional crime decided to perpetrators of corruption crimes is essentially an effort to recover state financial losses caused by corruption. Quoting Andi Hamzah's opinion that substitute money is a sum of money charged to perpetrators of corruption crimes with the amount of money he has corrupted which is as much as the same amount as the property obtained from the corruption (Simatupang, 2011). Substitute money is one of the important efforts in the context of eradicating corruption in our country. It can be said that because substitute money is the impact of state losses caused by irresponsible people with the aim of enriching themselves.

Based on Article 18 Paragraph (1) Letter b of the Corruption Law, it states that the payment of substitute money as much as possible is equal to the property obtained from the criminal act of corruption. Neither the Criminal Law nor its Explanation regulates the definition of substitute money. Article 18 Paragraph (1) point b of the Corruption Law only mentions the relationship between substitute money and property "obtained" from corruption.

According to Adami Chazawi, the criminal purpose of paying substitute money is to recover losses due to corruption (Chazawi, 2018). Yudi Kristiana argues that additional criminal sanctions in the form of payment of substitute money are important, because one of the goals to be achieved in eradicating corruption is the return of state financial losses (Kristiana, 2016).

## **2. Forms of Refund in Lieu of Recovery of State Losses in Corruption Crimes**

The mechanism for the return of substitute money and recovery of state losses by prosecutors for corruption crimes is important to ensure that the state recovers funds and assets that have been harmed. It also signals that corruption will not be left without consequences and supports efforts to eradicate corruption.

Article 4 of the Criminal Law states that "The return of state financial or economic losses does not eliminate the conviction of criminal offenders as referred to in Article 2 and Article 3". The Law on the Eradication of Corruption provides a form of refund in the form of additional crime-related additions as stipulated in the provisions of Article 18 Tipikor, namely:

- a. Article 18 Paragraph (1) which states that in addition to additional crimes as referred to in the Criminal Code, additional crimes are:
  - 1) Confiscation of tangible or intangible movable property or immovable property used for or obtained from a corruption crime, including a company owned by the convicted person where the corruption crime was committed, as well as from goods that replace such goods;
  - 2) Payment of substitute money in the amount of the same amount as property obtained from the criminal act of corruption;

- 3) Closure of all or part of the company for a maximum of 1 (one) year;
  - 4) Deprivation of all or part of certain rights or removal of all or part of certain benefits, which have been or may be granted by the Government to the convict.
- b. Article 18 Paragraph (2) states that "If the convicted person does not pay the replacement money as referred to in paragraph (1) point b no later than 1 (one) month after the court decision that has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money.
- c. Article 18 Paragraph (3) states that "In the event that the convict does not have sufficient property to pay the substitute money as referred to in paragraph (1) point 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 length of the crime has been determined in the court decision (Adyaksantoro et al., 2021).

The regulation of norms regarding the crime of tampering in the form of payment of substitute money as Article 18 of the Law on the Eradication of Corruption Crimes, is a shift in the political direction of the law to eradicate criminal acts of corruption, the eradication of criminal acts of corruption is no longer oriented towards imposing prison sanctions solely on perpetrators of criminal acts of corruption, but has undergone a shift towards *recovery*/ recovery of state finances as the main goal, in addition to imposing prison sanctions on perpetrators of corruption crimes.

Taking into account the provisions of Article 18 paragraph (1) point b of the Tipikor Law, the substitute money is charged to the perpetrator of the crime of corruption only in the amount of money he obtained from the crime of corruption. The provision does not mention the amount of state losses, so the replacement money has nothing to do with the amount of state losses. Thus, the purpose and purpose of applying substitute money as an additional punishment is not to recover state losses or recover the magnitude of state losses, but solely to deprive the profits obtained from the deeds committed.

### **3. Implementation of State Financial Returns and Substitute for Recovery of State Losses in Corruption Crimes**

State financial returns and state losses recovery in corruption crimes have significance in restoring public funds, increasing accountability, preventing corruption, and restoring system integrity. This mechanism contributes to overall corruption eradication efforts and ensures that the state regains resources that should be in the public interest.

The implementation of state financial returns and state recovery in lieu of corruption involves a series of measures to be taken to ensure that funds and assets harmed by the state can be returned effectively. That today we have seen various kinds of corruption cases that apply state financial returns as recovery of state losses. Based on the report of the Corruption Eradication Commission (KPK), there are several data that describe the situation of asset returns and handling corruption cases in 2022. The number of suspected corruption cases was 149 people, an increase of 34.23% compared to the previous year which reached

111 suspects. This shows an increase in law enforcement efforts against criminal acts of corruption (Mahmud et al., 2022).

The KPK has succeeded in returning assets from fines for corruption crimes to the state treasury. In 2022, the total return on assets reached IDR 46.17 billion, an increase of 108.82% compared to the previous year of IDR 22.11 billion. This shows the KPK's efforts in returning funds that have been harmed by the state due to corruption. This data reflects the KPK's efforts in taking firm action against corruption, including returning funds and assets that have been harmed by the state. The confiscation of corrupt assets and the return of substitute money are important steps in reducing the impact of corruption and recovering state losses.

As in the Supreme Court Decision Case No. 1616 K / Pid.Sus / 2013, which sentenced Angelina Sondakh at the cassation level to 10 years imprisonment and a fine of Rp 500 million subsidiary to 6 months imprisonment and was required to pay a substitute sentence of Rp 2.5 billion and USD 1.2 million, which if totaled around Rp 13.354 billion. But not all the replacement money was paid by Angelina Sondakh. Head of Public Relations and Protocol of the Directorate General of Public Relations Rika Aprianti said Angelina Sondakh, out of a total substitute crime worth IDR 13.354 billion, had only paid IDR 8,815,972,722. This means that he still underpaid Rp 4,538,027,278. In the cassation decision, the Supreme Court required Angelina Sondakh to pay a substitute sentence of IDR 2.5 billion and USD 1.2 million, if she did not pay it was replaced with a sentence of 1 year in prison. However, because he had already paid Rp 8 billion, he had to serve a criminal term of 4 months and 5 days.

From the perspective of state financial returns, this case highlights the need for effectiveness in the process of recovering state losses. Although a court ruling has been issued and the amount to be paid has been established, there are still challenges in ensuring full and timely payment. It is important to identify obstacles that may arise in the implementation of state financial returns and find appropriate solutions to ensure optimal recovery of state losses.

Furthermore, in the case of Johny G. Plate in the alleged Money Laundering Act (TPPU) related to the corruption of the 4G BTS project of the Ministry of Communication and Information. The imposition of the TPPU article on suspects was carried out by the Attorney General's Office with the aim of tracing the flow of funds allegedly derived from corruption crimes. This shows that there is suspicion that there is an attempt to launder money from corruption through the flow of funds. The trafficking trap is also intended to facilitate the investigation team in seizing suspect assets and ensuring the return of state losses (Sulhan, 2016).

Investigators in this case have focused on the seizure of the suspect's assets. By trapping suspects with trafficking articles, the investigation team can trace and seize assets suspected of originating from the proceeds of corruption. This step is important in efforts to recover state losses caused by corruption and keep suspects from controlling or hiding these assets.

The Financial and Development Supervisory Agency (BPKP) calculated state losses at Rp 8.32 trillion. This amount includes various factors such as the cost of preparing project studies and analyses, budget inflated or unit price mark-ups, and unrealized development payments. The amount of the country's losses shows the seriousness of corruption cases that occurred in the 4G BTS project of the Ministry of Communication and Information.

The investigation team also coordinated with the Financial Transaction Reporting and Analysis Center (PPATK) to trace the flow of funds allegedly flowing to political parties and politicians in the DPR. This indicates the alleged involvement of other parties who received funds from the corruption crime. Cooperation with PPATK can help in identifying patterns of fund flow and its beneficiaries.

In this case, law enforcement efforts include the imposition of TPPU articles, asset seizure, and cooperation with related institutions. This shows efforts to recover state losses, strengthen law enforcement against corruption, and expose the involvement of other parties who may be involved in the flow of funds derived from the criminal act of corruption. Law enforcement efforts in the case still involve the imposition of TPPU articles, asset seizure, and cooperation with related institutions. This shows a commitment to recover state losses, strengthen law enforcement against corruption, and expose the involvement of other parties who may be involved in the flow of funds derived from the criminal act of corruption. Despite challenges in the execution of substitute criminals, these steps are still being taken to confront the problem and ensure state recovery efforts are carried out as effectively as possible.

The problem that often arises is that when the time comes for collection or execution, most of the defendants state that they are no longer able or do not have property that can be used to pay the substitute money, so that as a result, within the specified time limit the defendant has not been able or unable to recover the state losses caused by it, it can be replaced with imprisonment which cannot be more than the principal crime *Rahim & Asma*, (2020). The thing that hinders the criminal implementation of substitute money also lies in how the mechanism is calculated.

There are several arrangements regarding the return of money in lieu of corruption crimes which refer to the crime of deprivation of freedom, order for the return of losses, or substitute money in the amount of as much as the same as the property obtained from the crime of corruption as stipulated in Article 18 Paragraph (1) point b, but this provision cannot necessarily expect the money from corruption to be returned because of the provisions of Article 18 Paragraph (2) and Paragraph (3) (Yahya, 2017).

If the convict does not pay the replacement money within 1 (one) month after the court decision that has obtained permanent legal force, then the perpetrator's property can be confiscated by the Prosecutor and auctioned to cover the replacement money (Article 18 paragraph (2) of the *Tipikor Law*). In the event that the convict does not have sufficient property to pay the replacement money, 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 length of the crime has been determined in a court decision

(Article 18 paragraph (3) of the Tipikor Law). These two provisions are loopholes that are very easy for corruptors to circumvent not to return or pay replacement money.

Criminal money substitutes do not have substitution options such as criminal fines that can be replaced by criminal confinement. The existence of this option is not an opportunity for the convict to choose the crime to be served. However, the Attorney General's Office has interpreted the formula as an option. This understanding is also reflected in the internal regulations of the Attorney General's Office, namely the Attorney General's Decree Number KEP-518/J.A/11/2001. In the decision, it is stated that one of the stages of criminal execution of substitute money is to ask the convict whether or not he is able to pay the substitute money. The phrase "asking whether the convict is able to pay the replacement money" clearly indicates that the convict can choose to declare whether or not he is able to pay the substitute money.

This option clearly transfers the meaning of a subsidiary that should be a substitute if the principal crime does not occur, into an option. This situation was eventually exploited by convicts who, with the support of the conditions and limitations of handling corruption cases, easily claimed to have no property to pay the replacement money, and "chose" substitute imprisonment as a more favorable option for them (Akbal & Umar, 2020). What's more, there is a possibility that convicts will be released sooner through granting remissions at certain times. If the criminal conviction of substitute money is considered an option, then efforts to restore state finances as a goal of enforcing corruption crimes will not be achieved.

#### **4. State Financial Return Solution as State Financial Recovery**

For the effectiveness of State Financial Return as State Financial Recovery in the context of law enforcement, eradicating corruption involves a number of steps that can be taken as a form of completing state financial recovery. These include:

1. It is necessary to increase the capacity and competence of law enforcers involved in eradicating criminal acts of corruption. They need to have in-depth knowledge of corruption laws, financial investigations, and management of seized assets. By increasing their capacity, law enforcement will be more effective in conducting investigations, gathering evidence, and returning state finances.
2. It is important to ensure that law enforcement agencies involved in combating corruption have adequate funding. This will enable them to carry out their duties and responsibilities effectively, including conducting in-depth investigations, gathering solid evidence, and filing a lawsuit for the return of state finances. Adequate funding can also be used to improve infrastructure and technology needed in law enforcement processes.
3. Close and synergistic cooperation between law enforcement agencies, such as the police, prosecutors, KPK, and financial institutions, is essential. They need to share information, coordinate, and work together to identify, investigate, and recover state finances harmed by corruption. This collaboration will strengthen law enforcement efforts and the return of state finances.
4. Transparency and accountability in state financial management are key in eradicating corruption and returning state finances. There needs to be clear and strict regulation on



the country's financial management, including detailed financial reporting and independent audits. By increasing transparency and accountability, opportunities for corruption will be reduced, and state financial returns can be made more effectively.

Corruption prevention efforts are also an important part of the country's financial recovery. It is necessary to develop a strong integrity system in all sectors, including government, business, and society. It involves the implementation of anti-corruption policies, ethics and integrity training, as well as strict supervision of corrupt acts. By preventing corruption in the first place, it will reduce the country's financial losses that need to be recovered.

## **CONCLUSION**

The substitute money criminal is an additional form of criminal that must be added to the principal crime. Although the replacement money is returned to the state, it does not eliminate the main criminal charges in accordance with the provisions stipulated in Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption Jo. Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The procedure for payment of substitute money is regulated by the Attorney General's Decree Number: Kep-518/J.A/11/2001 dated November 1, 2001 which regulates the mechanism for payment of substitute money. The imposition of substitute money sanctions for corruption defendants proven in court should not be given as substitution crimes such as imprisonment or confinement. This is so that state losses due to corruption can be returned optimally through substitute crimes. Imprisonment as a substitute crime can reduce the state's chance to recover losses due to corruption. Substitution imprisonment is usually applied to corruption cases with small state losses or if the defendant is unable to pay. The factor that influences the application of substitute money is that corruptors or convicts prefer to serve prison sentences rather than pay substitute money. This is because the substance of the law gives leeway to the judge to grant a criminal substitution when the substitute money is imposed and gives the defendant the option to pay the substitute money or serve a prison sentence. As a result, many corruption defendants prefer imprisonment rather than paying money in lieu. In fact, the purpose of the substitute money crime is to restore state finances, which unfortunately cannot be carried out because it is replaced by imprisonment. The lack of coordination between parties related to the return of state losses is also an influential factor.

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