

Sanctions criminal Fines and Replacement Money in Corruption Criminal Actslegal Justice Perspective

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Abstract. Purpose of sanctionscriminal fines and compensation in corruption crimeslegal justice perspective. Research methods usedNormative juridical uses three research approaches: the statute approach, the conceptual approach, and the comparative approach.Results of the research on sanctionscriminal fines and compensation in corruption crimesdoes not provide legal justice and a deterrent effect for perpetrators of corruption, because the fine imposed can be replaced with imprisonment and the length of imprisonment does not correspond to the amount of state financial losses. The law is said to provide a sense of justice if it produces legitimate legal consequences and if the law achieves its goal of directing or changing human behavior into lawful behavior.

Keywords : Compensation; Criminal; Corruption; Legal.

1. Introduction

The Unitary State of the Republic of Indonesia based on the Pancasila Law. This aims to protect all Indonesian citizens in accordance with the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia. In order to build a clean country, a just and prosperous society, the government seeks to eradicate corruption as one of the priorities of Indonesian law enforcement.

Corruption in Indonesia is a problem that has not been fully resolved by the state. One of the causes of corruption is rooted in the Indonesian state. Efforts to eradicate corruption have been carried out since the Suharto era (New Order) and the reform era. As a result, corruption has increased, not decreased.¹

Quoting B. Soedarso's opinion regarding the causes of corruption, the public generally believes that the spread of corruption is caused by the most easily connected causes, such as low salaries of officials, a declining economy, poor mental health of officials, disorderly governance, management, and complicated procedures.²

Corruption is one of several special crimes regulated outside the Criminal Code (KUHP). Corruption, if described properly, involves certain specificities that are different from criminal law in general, such as deviations from procedural law and laws and regulations that aim to

¹Musyafaullah. Muhammadiyah in the Anti-Corruption Movement. Journal of Religious and Social Research, Vol 05, No. 03 Year 2004. Url:<https://id.scribd.com/document/792850065/175-180-1> accessed November 13, 2024.

²Andi Hamzah. (2015).Eradication of Corruption, Through National and International Criminal Law,ed. Revised 7th Edition. Jakarta: Rajawalipers, p.12

minimize leakage or misappropriation in national finance and economy.³From a criminal law perspective, corruption is now considered a form of crime that endangers society and the state. State financial losses are a real consequence that is used as the basis for criminalizing various forms of corruption in criminal justice policies.⁴

The crime of corruption itself is not defined terminologically in general provisions. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Several articles contained in CHAPTER II concerning Criminal Acts of Corruption explain several types of corruption normatively.

The provisions in Article 2 paragraph (1) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption state that:

Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Furthermore, Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption states:

Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him due to his position or position which can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

One of the elements of the crime of corruption is the economic loss of the state, so the crime is regulated by *lexspecialis* (special). It should be noted that goods related to the proceeds of crime, both movable and immovable, tangible and intangible, will be confiscated by the state.⁵Confiscation of an object may be carried out if the object meets the provisions of Article 39 paragraph (1) Law Number 8 of 1981 concerning Criminal Procedure Law, which reads:

- a. Objects or claims of a suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or as the result of a criminal act.
- b. Objects that have been used directly to commit a crime or to prepare for it.
- c. Objects used to obstruct the investigation of a crime.
- d. Objects that are specifically made or intended to commit crimes.

³Lilik Mulyadi. (2017). Reversal of the Burden of Proof of Corruption Crimes. Bandung: PT.Alumni, p.3

⁴Elwi Danil. (2016). Corruption, Concept, Criminal Acts, and Eradication. Jakarta: PT. RajaGrafindo Persada, p.70-72.

⁵ "The Criminal Law Enforcement on the Criminal Act of Employment". Journal of Legal Sovereignty Vol 4, No 1 (2022). url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/20620>, accessed 20 October 2024.

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e. Other objects that have a direct relationship to the crime committed.⁶

Sanctions imposed by the court on perpetrators of corruption are divided into two types, namely principal penalties such as imprisonment and fines, as well as additional penalties and payment of compensation. Compensation is a very important means to cover state losses due to corruption and criminal acts. The amount of state losses can be one of the judge's considerations in imposing fines and/or imprisonment and additional penalties through the imposition of criminal penalties.⁷

The existence of fines is now one of the main criminal acts listed in Article 10 of the Criminal Code. Fines are included in the main criminal category, along with the death penalty, imprisonment, imprisonment, and imprisonment, and additional penalties include deprivation of certain rights, confiscation of certain objects, and announcement of the judge's decision.⁸The regulation of criminal fines based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Criminal Acts of Corruption, does not regulate in detail, it is only contained in articles concerning acts that meet the formulation of articles in criminal acts of corruption which contain provisions for imprisonment and fines. PThis research aims to find out sanctions criminal fines and compensation in corruption crimes legal justice perspective.

2. Research Methods

Writing Methods Used Normative juridical uses three research approaches: the statute approach, the conceptual approach, and the comparative approach.⁹The statutory approach is used to examine the provisions that regulates sanctions criminal fines and compensation in corruption crimes legal justice perspective.

Specification Analytical descriptive research takes a problem or focuses on a problem when the research is conducted and the results are processed and analyzed. Data sources consist of primary and secondary data. Legal material sources consist of primary, secondary, and tertiary legal materials.

The data collection method consists of three stages. First, researchers collect data through observation and questions; second, they conduct library research by reading, reviewing, and processing literature, laws and regulations, articles, or writings related to the research topic.¹⁰

Data analysis method is done qualitatively and presented in the form of words or sentences. Qualitative data is analyzed using a deductive approach. One way to make specific conclusions about general things The author uses an interactive analysis model. So, the qualitative data analysis method collects and selects data from literature studies.¹¹

⁶Article 39 paragraph (1) [Law Number 8 of 1981 concerning Criminal Procedure Law](#)

⁷ Muhammad Ridwan Lubis, The Settlement of Child Cases in Conflict with the Law in the Concept of Restorative Justice, Journal of Legal Sovereignty Volume 5 Issue 4, December 2022, Ur: <https://jurnal.unissula.ac.id/index.php/RH/article/view/24357> accessed September 24, 2024.

⁸ Ira Alia Maerani, Siti Rodhiyah Dwi Istinah. "The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)." Journal of Legal Sovereignty Vol.5 No. 4 (2022), Url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/24290/7688>, accessed November 17, 2024.

⁹Ronny Hanitijo Soemitro. (2006). Legal Research Methodology and Jurimetrics, Jakarta: Ghalia Indonesia, p. 10

¹⁰Abdulkadir Muhammad. (2004). Law and Legal Research, First Edition, Bandung: Citra Aditya Bakti, p. 50

¹¹Ibid,

3. Results and Discussion

Corruption is one of several special crimes that are also regulated outside criminal law. To explain it, the crime of corruption has special characteristics that are different from general criminal law. Deviations from procedural laws and regulations that aim to minimize leakage and misappropriation of state finances and the economy.¹²

The problem of eradicating corruption in Indonesia is not only a legal and criminal problem, but also a social and socio-psychological problem that is as serious as the legal problem and must be immediately addressed by the state. Corruption is also a social problem because corruption causes inequality in the distribution of welfare, and is also a psychological problem because corruption is a social disease that is difficult to treat.¹³ Eradication of criminal acts of corruption is part of the criminal justice system which only relies on repressive efforts, because it is impossible to stem the development of criminal acts of corruption only through prosecution in court.

Data from Indonesia Corruption Watch (ICW) recorded 791 corruption cases in Indonesia throughout 2023, with the number of suspects reaching 1,695 people. ICW researcher Diky Anandya said that the data showed that corruption cases in the country had increased significantly compared to previous years. The increase that occurred was very significant compared to previous years. Although the number of cases and suspects increased, the trend of potential state losses due to corruption in 2023 actually decreased. Diky said that the trend of potential state losses in 2023 was at IDR 28.4 trillion, down from IDR 42.7 trillion in 2022. This figure is also smaller than the trend of potential state losses in 2021 of IDR 29.4 trillion. Although there was a decrease compared to the previous two years, the potential state losses in 2023 are still very large.

Monitoring is carried out on information data from various corruption cases in 38 provinces and all districts/cities. ICW monitors cases handled by the prosecutor's office, police, and the Corruption Eradication Commission (KPK) that have entered the investigation stage. This monitoring is carried out to see the level of corruption that occurs from year to year and to identify more deeply a number of variables such as modus operandi, sectors, areas suspected of being vulnerable to corruption, to mapping the professional background of each person named as a suspect by law enforcement officers.¹⁴

The explanation above, if viewed from the beginning to the end of the eradication of corruption, then the concrete goal to be achieved is to firmly prosecute those who are caught committing corruption. In addition, efficient and effective eradication of corruption requires the support of appropriate government control, including the return of assets resulting from corruption crimes so that lost state assets can be returned. Given that the return of economic losses to state assets is a result of corruption and criminal acts that can have a negative impact

¹² Lilik Mulyadi. (2012). Reversal of the Burden of Proof of Corruption Crimes. Bandung: PT.Alumni, p.3

¹³ Romli Atmasasmita. (2012). Corruption, Good Governance and the Indonesian Anti-Corruption Commission. Jakarta: National Legal Development Agency, Department of Justice and Human Rights of the Republic of Indonesia, p.48

¹⁴ <https://nasional.kompas.com/read/2024/05/19/17020321/icw-data-731-case-kokerja-pada-2023-nomor-meningkat-siginifikan> accessed 10 September 2024

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on state finances and the national economy, the recovery of these losses requires legal means, namely additional compensation funds, payments will be required.¹⁵

The elements of corruption related to state financial losses, the government has established the Corruption Law, to reduce state financial losses that must be returned or replaced by the perpetrators of corruption. Recovery of state financial losses can be done through two legal channels, namely criminal law and civil law. For legal instruments carried out by investigators confiscating the perpetrator's property, then the public prosecutor asks the judge to confiscate the property. Civil cases are carried out by the Public Prosecutor who causes losses to the perpetrators of corruption.¹⁶

The threat of fines for corruption is considered too low, starting from a minimum fine of IDR 200 million to a maximum fine of IDR 1,000,000,000 (one billion rupiah). Fines can only be an alternative punishment if the perpetrator of corruption is unable to pay the fine, and can only result in a sentence of up to six or eight months in prison. That is, fines are the only punishment that can be paid or borne by someone other than the convict. Corruptors are free to commit corruption because they feel that the responsibility lies with others and enjoy the consequences of corruption without fear of their property or assets being confiscated or seized. The judge can impose additional penalties, but can only confiscate goods suspected of being the result of a crime or goods that are intentionally used to commit a crime.¹⁷

The legal basis for criminal regulations or fines based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption does not regulate in detail, but only regulates the provisions for implementing acts in accordance with the text of the Corruption Crime Article, and contains provisions for imprisonment and fines. The regulation of fines for corruption crimes is usually based on the legal basis contained in the Criminal Code, namely Articles 10, 30, and 31 of the Criminal Code which contain fines for serious crimes other than the death penalty, imprisonment, imprisonment, closure, other criminal sanctions including deprivation of certain rights, confiscation of certain goods, and announcement of the judge's decision.¹⁸

Articles 30 and 31 of the Criminal Code regulate the technical implementation of criminal fines as follows:

- 1) The amount of the fine is at least 25 cents (250.-).
- 2) If a fine is imposed and the fine is not paid, it will be replaced by imprisonment.

¹⁵Moh. Yusril, Syachdin, Kamal. Implementation of Replacement Money in Corruption Crimes (Study of the Donggala District Attorney's Office), *Toposantaro Journal of Legal Studies* Volume 1 No 2 Year 2024. Url:<https://jurnal.fakum.untad.ac.id> Accessed November 26, 2024

¹⁶ English: Eko Adi Susanto, Gunarto, Criminal Liability for Using Fake Letters Reviewed from Article 263 Paragraph (2) of the Criminal Code, *Jurnal Daulat Hukum* Vol 1, No 1 (2018). Url :<https://jurnal.unissula.ac.id/index.php/RH/article/view/2558>, accessed November 18, 2024.

¹⁷ Wahyuningsih, Criminal Provisions of Fines in Corruption Crimes at the Extraordinary Crime Level, *Journal of Islamic Criminal Law al-Jinâyah* Vol.01 No.1 Year 2015, Url:<https://jurnalfsh.uinsa.ac.id/index.php/HPI/article/view/394>, accessed November 23, 2024.

¹⁸Muhamad Yodi Nugraha, Optimizing the Opportunity Principle in the Prosecutor's Authority to Minimize the Impact of Primum Remedium in Criminalization, *Veritas et Justitia Journal* Volume 6 Number 1. 2020, Url:<https://journal.unpar.ac.id/index.php/veritas/article/view/3882> accessed November 21, 2024.

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- 3) The length of the substitute imprisonment sentence is a minimum of one day and a maximum of six months.
- 4) The length of this imprisonment is determined in such a way that the price of half a rupiah or less is replaced by one day, for fines greater than that, then for every half rupiah is replaced no more than one day, and for the rest that not even half a rupiah, it takes a day.
- 5) If there is an increase in the fine due to concurrent or repeated violations or due to provisions Article 52 and 52a, then the maximum substitute imprisonment can be eight months.

Article 31 states: (1) The convict may serve a substitute prison sentence without waiting for the time limit for paying the fine. (2) He always has the authority freeing himself from a substitute prison sentence by paying the fine. (3) Partial payment of the fine, either before or after the start of the sentence. serve a prison sentence that is equal to the part he paid. Therefore, although the legal basis for regulating fines is contained in Articles 10, 30, and 31 of the Criminal Code, the Criminal Code for Corruption Crimes does not have specific regulations regarding fines, and is only regulated in articles containing imprisonment and fines.

In contrast to replacement money which is an additional criminal act that is not included in the provisions of Article 10 of the Criminal Code, replacement money is regulated in Article 18 paragraph (1), (2), and (3) of the Criminal Code on Corruption, namely Law Number 31 of 1999 combined with Law Number 20 of 2001 concerning Criminal Acts of Corruption:

a) In addition to the additional penalties as referred to in the Criminal Code, additional penalties are:

(1) confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as the price of goods replacing such goods.

(2) payment of compensation in an amount that is at most equal to the assets obtained from the criminal act of corruption.

(3) closure of all or part of the company for a maximum period of 1 (one) year.

(4) revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be granted by the Government to the convict.

b) If the convict does not pay the replacement money as referred to in paragraph (1) letter b within a maximum of 1 (one) month after the court decision has obtained permanent legal force, then this Law and the length of the sentence as determined in the court decision, his property may be confiscated by the prosecutor and auctioned to cover the replacement money.

c) If the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he shall be punished with a prison sentence of a term not exceeding the maximum threat of the principal sentence in accordance with the provisions.

The above explanation regarding criminal sanctions in the form of fines/or execution of criminal payment of replacement money does not provide a deterrent effect for perpetrators

of corruption, because the criminal fine imposed on perpetrators of corruption can be replaced with imprisonment and the length of the imprisonment period does not correspond to the amount of state financial losses due to the actions of the perpetrators of corruption.¹⁹ Although in its application, criminal fines are more beneficial than criminal confiscation sanctions and are more effective in providing a deterrent effect on perpetrators of corruption, criminal fines for corruption crimes are more likely to be imposed because judges prefer imprisonment as the main punishment.²⁰ Therefore, it is necessary to formulate good punishment in positive criminal law in accordance with the modernization of criminal law that currently exists. The regulation of fines in positive criminal law is far behind compared to the enforcement of fines in various countries. Thus, the fines imposed on corruption crimes do not comply with the criminal provisions in the Corruption Law.²¹

Likewise with the replacement money punishment contained in Article 18 paragraph (1), (2), and (3) of Law Number 31 of 1999 and Law Number 20 of 2001 concerning Corruption. In some cases, its implementation is not effective because it is very difficult to trace the perpetrator's assets or because the perpetrator tries to hide them. This must be done so that a policy can be formulated that provides maximum compensation to the state, without relying on the provisions of Article 18 (2) and (3) of Law Number 31 of 1999 and Law Number 20 of 2001 concerning Corruption which tend to favor the replacement of prison sentences that do not occur.

4. Conclusion

Sanctions criminal fines and compensation in corruption crimes from the perspective of legal justice does not provide legal justice and a deterrent effect for perpetrators of corruption, because the fine imposed on the perpetrator can be replaced with imprisonment and the length of imprisonment does not correspond to the amount of state financial losses. A law is said to provide a sense of justice if it produces legitimate legal consequences and if the law achieves its goal of directing or changing human behavior into lawful behavior. There is a possibility that the implementation of criminal sanctions in the form of fines and compensation will be effective in accordance with legal expectations and in accordance with the spirit and objectives of justice. Compensatory criminal penalties (fines) do not provide a deterrent effect for perpetrators of corruption crimes, because the fines imposed on perpetrators of corruption crimes are still too low in amount and perpetrators prefer to serve subsidiary imprisonment in lieu of fines rather than pay fines.

¹⁹ Hanuring Ayu, Itok Dwi, Harjono Harjono, The Quo Vadis Weaknesses in the Corruption Law Enforcement, Law Development Journal Vol. 05 No. 04 Year 2023, Url: <https://jurnal.unissula.ac.id/index.php/ldj/article/view/33483> accessed November 18, 2024.

²⁰ Muhammad Ridwan Lubis, The Settlement of Child Cases in Conflict with the Law in the Concept of Restorative Justice, Journal of Legal Sovereignty Volume 5 Issue 4, December 2022, Ur: <https://jurnal.unissula.ac.id/index.php/RH/article/view/24357> accessed November 24, 2024.

²¹ Syaiful Bakhri, Legislative Policy on Criminal Fines and Their Implementation in Efforts to Combat Corruption, Ius Quia Iustum Law Journal Vol.17 No. 02 of 2010, Url: <https://journal.uui.ac.id/IUSTUM/article/view/3908>, accessed November 23, 2024.

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