

Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption



Erlangga¹, Astri Yuliyanti Monita², Bobyanto³, Joko Nur Sariono⁴

^{1,2,3}Magister of Law, Faculty of Law, Wijaya Kusuma Surabaya University.

⁴Faculty of Law, Wijaya Kusuma Surabaya University.

ABSTRACT: The research article entitled The Criminal Concept of Additional Compensation Money in Corruption Crimes Based on Law no. 20 of 2001 concerning the Eradication of Corruption Crimes with the formulation of the problem and research objectives: What is the concept of additional criminal charges for replacement money in criminal acts of corruption based on Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The approach method used is normative juridical research, and uses a statutory approach and a conceptual approach. Resulting in the following findings/conclusions. The Prosecutor's failure to execute the compensation money in criminal acts of corruption is not optimal, basically it is not something that is desired or intentional, but there are juridical obstacles to the court's decision. The juridical obstacle referred to is the lack of clarity regarding when the execution of a court decision that has permanent legal force is carried out, including Article 270 of the Criminal Procedure Code which states that the execution of a court decision that has permanent legal force is carried out by the prosecutor, after the clerk sends a copy of the decision letter to him, the provisions This requires that the execution can only be carried out and carried out by the prosecutor, after the clerk sends him a copy of the decision letter, so that the defendant refuses to be executed based on a quote from the final decision, in addition to the court decision not providing a legal basis for what the defendant's belongings have been confiscated.

KEYWORDS: replacement money; additional criminal penalties; acts of corruption

I. INTRODUCTION

Juridically, the crime of corruption is one of several special criminal acts which are also regulated outside the Criminal Code. If explained, the criminal act of corruption has certain specifications that are different from general criminal law, such as deviations from procedural law and regulated materials which are intended to minimize the occurrence of leaks and irregularities in the state's finances and economy.¹

Empirically, corruption in Indonesia continues to increase from time to time. The wide scope of corruption that penetrates all people's lives, causes state financial losses because corruption is now systematic and organized. The uncontrolled increase in criminal acts of corruption will bring disaster not only to the life of the national economy, but also to the life of the nation and state.²

The current condition of Indonesia is very worrying, because corruption has attacked the world of politics and the nation's economy. Political corruption is carried out by people or institutions who have political power or by conglomerates who carry out collusive transactional relationships with power holders.

There are many reasons for the continued increase in corruption cases in Indonesia. as stated by B. Soedarso, who stated, among other things: In general, people attribute the growth of corruption to the causes that are most easily connected, for example, lack of salary for officials, poor economy, poor mental health of officials, chaotic administration and management which results in there are tortuous procedures and so on.³

It cannot be denied that Indonesia's cultural background is one of the sources or causes of widespread corruption. Currently, Indonesian people are more likely to follow people who commit corruption, rather than eradicate that corruption. This is as stated

¹ Lilik Mulyadi, 2007, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi*, Bandung: PT. Alumni, p. 3.

² Indriyanto Seno Adji, 2001, *Korupsi dan Hukum Pidana*, Jakarta: Kantor Pengacara & Konsultasi Hukum "Prof. Oemar Seno Adji, SH & Rekan", p. 10.

³ Andi Hamzah, 2012, *Pemberantasan Korupsi, Melalui Hukum Pidana Nasional dan Internasional*, Jakarta: PT. Raja Grafindo Persada, Jakarta, p. 12.

Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption

by Syed Hussein Alatas who stated "that the majority of people who do not commit corruption should participate in eradicating corruption committed by minorities."⁴

Another cause of corruption is poor management and less effective and efficient control which is also supported by modernization which brings significant changes in people's lives.

Lilik Mulyadi, in principle, is "a judge's decision which basically contains juridical aspects, both material and formal. The judge's decision has a material aspect in the sense that all the actions committed by the defendant have been proven so that the person concerned can be held legally accountable, but it is difficult to carry out the execution. If the judge's decision, which has a formal aspect, in the sense that there is an obligation for the prosecutor as the executor to be able to implement the decision that has been determined by the judge (court), is not easy to implement, then it is natural that many parties are very worried and question the law in dealing with criminal acts of corruption."⁵

Mungki Hadipratikto is of the opinion: "the implementation of the contents of the decision by the prosecutor as executor is basically inseparable from what has been demanded by him during the case examination process. These demands are based on the evidence and legal facts revealed in the trial, but it is not uncommon for what has been "It is claimed by the Public Prosecutor that they experienced difficulties when the execution was to be carried out, whether it concerns the execution of the convict, the execution of goods, as well as the execution of additional crimes in the form of payment of compensation money in cases of criminal acts of corruption."⁶

The 2003 United Nations Convention Against Corruption (UNCAC) states that the problem of corruption is a serious threat to the stability, security of national and international society, has weakened institutions, democratic values and justice and endangered development, sustainability and law enforcement.⁷

Examined from an international perspective, basically corruption is one of the crimes in the White Collar Crime classification and has complex consequences and is of concern to the international community. The 8th UN Congress on Prevention of Crime and Treatment of Offenders which passed the Corruption in Government resolution in Havana in 1990 formulated the consequences of corruption, in the form of corrupt activities of public officials: Can destroy the potential effectiveness of all types of government programs (can destroy the potential effectiveness of all types of government programs), can hamper development (hinder development), cause individual victims to groups of society (victimize individuals and groups).⁸

Many countries in the world are experiencing economic and stability problems country caused by corruption. Of the many countries, including is Malaysia which is still a cognate country of Indonesia too became a colonial country so that even though it was independent, the system remained Feudalism still remains as the custom of paying tribute is one of the factors growth of corruption.⁹

Law Number 31 of 1999 Jo. Law Number 20 of 2001, substantively contains content with a different conception compared to previous legislation regarding corruption. The special characteristics of the Corruption Eradication Law include:

1. This law has formulated the criminal act of corruption as a formal offense, not a material offense, so that the return of state finances does not eliminate the prosecution of the defendant, but is only a mitigating factor in the crime;
2. This law lists corporations, in addition to individuals, as legal subjects;
3. This law includes a system for reversing the limited or balanced burden of proof;
4. This law includes jurisdiction beyond territorial boundaries or extraterritorial jurisdiction;
5. This law includes a minimum criminal threat in addition to a maximum criminal threat;
6. This law includes the threat of the death penalty as an aggravating element in certain cases such as the country being in a state of danger, a national natural disaster occurring, a criminal act of corruption being committed as a repeat crime or the country being in a state of economic crisis;
7. This law regulates the freezing of suspect/defendant accounts (*freezing*) which can be followed by confiscation (*seizure*);
8. This law states that the role of the community in eradicating corruption is confirmed and expanded, so that the protection of reporting witnesses is more optimal; And
9. This law mandates the establishment of the Corruption Eradication Commission as an independent institution, consisting of government and community elements.¹⁰

⁴ Syed Hussein Alatas, 1986, *Sosiologi Korupsi*, Cetakan Keempat, Jakarta: LP3ES, p. 81.

⁵ Lilik Mulyadi, *op.cit.*, p. 72.

⁶ Mungki Hadipratikto, "Eksekusi Putusan Pidana Uang Pengganti Dalam Perkara Pidana Tindak Pidana Korupsi". <https://media.neliti.com/media/publications/10672-ID-eksekusi-putusanpidana-uang-pengganti-dalam-perkaratindak-pidana-korupsi.pdf>, p. 2.

⁷ Lilik Mulyadi, *op.cit.*, p. 76.

⁸ Kongres PBB ke-8 mengenai "Prevention Of Crime and Treatment of Offenders" yang mengesahkan resolusi "Corruption in Government" di Havana tahun 1990.

⁹ Andi Hamzah, 2008, *Perbandingan Pemberantasan Korupsi, Di Berbagai Negara*, Jakarta: Penerbit Sinar Grafika, p. 38.

¹⁰ Romli Atmasasmita, 2004, *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*, Bandung: Mandar Maju, p. 19-20.

Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption

Without full participation and support for government efforts, law enforcement officials or commissions formed by the government to eradicate corruption will fail miserably, especially in efforts to save state finances. The state can no longer be lied to by people who understand the state budget and understand the essence of state finances.

Like a disease, corruption in Indonesia has developed in 3 stages, namely elitist, endemic and systemic. At the Elitist stage, corruption is considered a pathology unique to the elite. At the endemic stage, corruption is endemic and reaches broad levels of society. Then at the critical stage, corruption becomes systemic where every individual can contract the same disease.¹¹

Corruption is a criminal act that is considered an extraordinary crime, because it involves abuse of power and causes financial losses to the state, so extraordinary methods are also needed to overcome it. For Indonesia, corruption is a threat to the survival of the nation and state because the losses experienced are very large due to the actions of corruptors which almost bankrupted the country's economy, especially when the monetary crisis occurred which was followed by the economic crisis in 1997.¹²

According to Romli Atmasasmita, the problem of eradicating corruption in Indonesia is not only a legal and law enforcement issue, but also a social and social psychological issue and is really very serious and as serious as legal issues, so it must be addressed by the state simultaneously. Corruption is also a social problem because corruption results in unequal distribution of welfare and is a psychological problem because corruption is a social disease that is difficult to cure.¹³

Eradicating criminal acts of corruption is part of a criminal justice system that relies solely on repressive channels, because simply by bringing corruptors to court it is impossible to suppress the rate of development of criminal acts of corruption. The aim of eradicating criminal acts of corruption is not only to imprison the perpetrators, but what is more important is to encourage people not to act corruptly and to return state financial losses through replacement money, confiscated property forfeited to the state, and fines.

The government has responded to the strong demands of the public for the government to be serious about fighting corruption through various policies. One of them is by issuing a new anti-corruption law (UU No. 31 of 1999 in conjunction with Law No. 20 of 2001). The reason the government issued Law no. 31 of 1999 jo. UU no. 20 of 2001 because of Law no. 3 of 1971 is considered very weak and light, especially in matters of crime and punishment. However, the current law apparently wants to be weakened by weakening the Corruption Eradication Committee, and on the other hand, the recovery of state financial losses cannot be balanced.

The magnitude of state financial losses caused by corruption is disproportionately large at recovery of state financial losses due to corruption. Restitution of state financial losses must be carried out and according to law so that it can be achieved as optimally as possible. In principle, state rights must return to the state for the welfare of the people. In practice, one of the facts is that the recovery rate for state financial losses due to corruption is lower than the amount corrupted. Execution is basically one of the prosecutor's powers regulated by law to carry out the judge's decision. A judge's decision that can be executed is only a judge's decision that has permanent legal force (*in kracht van gewijsde*).

Returning the State's financial losses has other goals and hopes related to the State's inability to finance various aspects that are urgently needed.¹⁴

This is a serious problem where there are irregularities, corruption continues, prevention also continues, law enforcement never stops, but state losses are still irreversible and can occur repeatedly and cannot be easily returned, whereas in the execution of criminal law there is an additional crime that stated in the Corruption Court judge's decision and applied to corruptors, it also still leaves a gap in which it is not easy to recover state losses due to corruption.

The implementation of returning state financial losses resulting from criminal acts of corruption cannot just be done immediately. Apart from waiting for the payment of replacement money from convicts in corruption cases, which takes a long time, the return of replacement money to the state treasury cannot be done immediately, let alone additional penalties in the form of confiscation of assets. This is due to the fact that bureaucratic procedures must be followed, so it takes time to return state financial losses to the state treasury so that they can be immediately used for the welfare of the people. This is what also disturbs my conscience to improve criminal law through reform of additional criminal threats which are very weak in implementation.

Various parties who are corrupt are aware that the criminal threat in the provisions of Law Number 31 of 1999 against corruptors can take the form of imprisonment and also a fine. In an effort to recover as much as possible state finances corrupted by

¹¹ Ermansjah Djaja, 2010, *Mendesain Pengadilan Tindak Pidana Korupsi, Implikasi Putusan Mahkamah Konstitusi Nomor 012-016-019/PPU-IV/2006*, Jakarta: Sinar Grafika, Jakarta, 2010, p. 11.

¹² Teguh Sulistia I, *Op.Cit.*, p. 206-207.

¹³ Romli Atmasasmita, 2002, *Korupsi, Good Governance dan Komisi Anti Korupsi Indonesia*, Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman Dan Hak Asasi Manusia Republik Indonesia, p. 48.

¹⁴ Aga Wiranata, *Kendala Jaksa Dalam Eksekusi Pidana Tambahan Uang Pengganti Pada Perkara Tindak Pidana Korupsi*, <http://download.portalgaruda.org/article.php?article=188096&val=6466&title=KENDALA%20JAKSA%20DALAM%20EKSEKUSI%20PIDANA%20TAMBAHAN%20UANG%20PENGGANTI%20PADA%20PERKARA%20TINDAK%20PIDANA%20KORUPSI%20%28Studi%20Kasus%20Korupsi%20Di%20Kejaksanaan%20Tinggi%20Jawa-Timur%29>, access 23 Mei 2019.

Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption

corruptors, Law Number 31 of 1999 also puts forward the concept of "efforts to recover state financial losses" namely in the provisions of Article 18 as one of the additional penalties.

Repressive efforts against criminal acts of corruption are currently not only focused on arresting and punishing the perpetrators of criminal acts of corruption with imprisonment and imprisonment, but also through efforts to recover financial and economic losses to the state by confiscating and then following up. by imposing additional punishment in the form of confiscation of the defendant's assets through a court decision. In fact, there are also other alternatives which can be taken through civil law by filing a lawsuit against the assets of perpetrators of criminal acts of corruption who have fled, died or defendants who have been acquitted in cases of criminal acts of corruption but there are strong indications that they have caused state losses. The problem in this paper is to find out the mechanism for confiscating the assets of perpetrators of criminal acts of corruption and finding out whether the confiscation of assets of corruptors that were not obtained from criminal acts of corruption can also be carried out.

II. PROBLEM FORMULATION

Based on the background explanation above, the problem formulation is: What is the concept of additional criminal compensation for criminal acts of corruption based on Law Number 20 of 2001 concerning the Eradication of Corruption Crimes?

III. DISCUSSION

1. Additional crimes outside the Criminal Code

Regulations regarding additional penalties are also contained in several other laws and regulations, the Criminal Code itself does not limit that additional penalties are limited to the three forms above. In Law no. 31 of 1999 concerning Corruption Crimes, for example, also regulates other additional punishments apart from the three forms, namely in Article 18 which contains the following:

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;
2. Payment of compensation money in the maximum amount equal to the assets obtained from the criminal act of corruption;
3. Closure of all or part of the company for a maximum of one year;
4. Revocation of all or part of certain rights or elimination of all or part of certain benefits that the government has or can provide to convicts.

There are also other additional criminal provisions listed in other laws, based on statutory legal analysis, namely:

1. Revocation of business permits (Law No. 3 of 2014 concerning Industry);
2. Payment of compensation (Law No. 11 of 2012 concerning the Juvenile Criminal Justice System);
3. Dissolution of the corporation followed by liquidation (Law No. 15 of 2002 concerning Money Laundering).

In a legal context, sanctions are defined as punishment imposed by a court. Generally, sanctions appear in the form of punishment, the conscious and thorough imposition of punishment by the competent authority on perpetrators who are guilty of violating a legal rule.¹⁵

The term criminal is often interpreted the same as the term punishment. Punishment is a general understanding as a sanction of suffering or sorrow that is deliberately inflicted on someone.¹⁶ Meanwhile, criminal is a special meaning related to criminal law.

As a specific meaning, there are also similarities with the general meaning, as a sanction or suffering that is suffered. Criminal law in criminal law is a tool and not the goal of criminal law, which if carried out is nothing other than suffering or discomfort for the person concerned who is called the convicted person. Soedarto defines crime as suffering that is intentionally imposed on people who commit acts that fulfill certain conditions.¹⁷ Meanwhile, Roeslan Saleh defines crime as a reaction to an offense, and this takes the form of suffering that the State deliberately inflicts on the perpetrator of the offense.

According to Mahrus Ali, the elements and characteristics contained in the term criminal are:

1. Crime is essentially an imposition of suffering or misery or other unpleasant consequences.
2. The punishment is given intentionally by a person or body who has power (by the authority)
3. This penalty is imposed on someone who has committed a criminal act according to the law
4. The crime is a statement of censure by the State against a person for violating the law.¹⁸

Criminal sanctions are the type of sanctions most widely used in imposing punishment on someone who is found guilty of committing a criminal act. Criminal sanctions are retaliation (in the form of suffering) imposed by the authorities on a particular person who is deemed to have acted wrongly in violation of the rules of behavior, violation of which is punishable by criminal

¹⁵ Jan Rimmelink, 2003, *Hukum Pidana, Komentar Atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*, Jakarta: PT Gramedia Pustaka Utama, p. 7.

¹⁶ Andi Hamzah IV, *Op. Cit.*, p. 1.

¹⁷ Soedarto, 1986, *Kapita Selekta Hukum Pidana*, Bandung: Alumni, p. 109-110.

¹⁸ Mahrus Ali, 2012, *Dasar-Dasar Hukum Pidana*. Jakarta: Sinar Grafika, p. 186.

Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption

law. Criminal sanctions are defined as suffering or suffering that is inflicted on someone who is guilty of committing an act prohibited by criminal law. With these sanctions it is hoped that people will not commit criminal acts.¹⁹

The definition of criminal sanctions according to Herbert L. Packer is: "Criminal punishment means simply any particular disposition or the range or permissible disposition that the law authorizes (or appears to authorize) in cases of person who has been judged through the distinctive processes of the criminal law to be guilty of crime".²⁰

These criminal sanctions are intended as an effort to maintain peace (or security) and better regulation (control) of society. Basically, criminal sanctions are the imposition of suffering on someone who is found guilty of committing a crime (criminal act) through a series of judicial processes by the authority (law) specifically given for that matter, with the imposition of criminal sanctions it is hoped that the person will not commit the crime. criminal again.

2. Types of Criminal Sanctions for Corruption Perpetrators

Criminal sanctions are the type of sanctions most widely used in imposing punishment on someone who is found guilty of committing a criminal act. The forms of criminal sanctions vary greatly, such as the death penalty, life imprisonment, imprisonment, confinement and fines, which are the main punishments and punishments in the form of revocation of certain rights, confiscation of certain goods, and announcement of the judge's decision, all of which are additional punishment.²¹

Apart from the main types of crimes and additional crimes listed in the Criminal Code, there are also several types of additional crimes that are currently in force in Indonesian criminal law. One of them is an additional type of crime that applies based on Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which was amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which is regulated in the provisions Article 18, especially letters 1, 3 and 4, namely crimes in the form of confiscation of tangible and intangible movable property or immovable property used for or obtained from the proceeds of corruption, payment of compensation money, closure of all or part of the company and revocation of all or part of certain rights.

In this research, the additional punishment referred to is additional punishment in the provisions of Article 18 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes concerns additional penalties with the payment of replacement money, which is considered as evidence of confiscation of goods from corruptors.

Replacement money in the context of returning state financial losses in criminal acts of corruption is an amount of money that must be paid by a defendant who has been legally and convincingly proven according to the law based on a court decision, because his actions committed a criminal act of corruption that caused state financial losses.²²

3. Reasons why perpetrators commit corruption

The increasingly rampant corruption in all aspects of life cannot be separated from the various causal factors which are also diverse and interrelated, one cause and another. According to Surachmin and Suhandi, several causes of corruption include:

1. Greed and greed. Viewed from the perspective of the perpetrator of corruption, the reasons for committing corruption can be in the form of encouragement from within him, which can also be said to be his desire, intention or awareness to do so. Most people who commit corruption are people whose income is quite high compared to their needs. In the event that the perpetrator of corruption is like that, then the element that causes him to commit corruption is an element of himself, namely the nature of greed, avarice, arrogance, greed that exists in that human being.
2. Income inequality among civil servants/state officials. This inequality in civil servants' income has given rise to extraordinary feelings of jealousy, one of which has an impact on acts of corruption carried out in congregation in other ministries/institutions. Just because the Ministry of Finance has a large income cannot prevent its employees from committing corruption, such as in the case of Gaius HP Tambunan, especially in Ministries/Institutions where the income is very low.
3. Consumptive Lifestyle. The consumerist lifestyle in big cities encourages employees to own luxury cars, luxurious houses, send their children to school abroad, expensive clothes, expensive entertainment and so on. This consumptive lifestyle will make low income even more insufficient. This will further encourage someone to commit corruption whenever the opportunity to do so exists.
4. Insufficient income. A civil servant's income should be able to reasonably meet the living needs of the employee and his family. However, if their income is not sufficient to meet their needs, the civil servant must look for additional income. Efforts to seek additional income are certainly a form of corruption, for example renting out official facilities, embezzling office equipment, fictitious official trips, holding unnecessary activities at unreasonable costs.

¹⁹ *ibid.*, p. 194.

²⁰ Herbert L. Packer, 1968, *The Limits of The Criminal Sanction*, Stanford: Stanford University Press, p. 35.

²¹ *ibid.*, p. 193-194.

²² Surachmin dan Suhandi Cahaya, *Strategi & Teknik Korupsi, Mengetahui Untuk Mencegah*, Jakarta: Sinar Grafika, p. 91-109.

Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption

5. Lack of example from the leadership. In an organization, both formal and informal leaders will be role models for every member of the organization. In this case, leaders can be an example for their subordinates.
6. The absence of a correct organizational culture. Organizational culture or culture will usually have a very strong influence on the members of the organization, especially their habits, perspective and attitude in dealing with certain situations.
7. The accountability system in government agencies is inadequate. The absence of a clear vision and mission in each government agency means that the level of attention and interest of management within government ranks in securing resources is not very high, which in turn slowly but surely results in leakage of resources owned by government agencies. This situation creates an organizational situation that is conducive to corruption.
8. Weaknesses of the management control system. In organizations where management control is weak, more employees will commit corruption than in organizations where management control is strong. Supervision by superiors over their subordinates is categorized as a form of supervision which is one element of the management control system.
9. Management tends to cover up corruption within the organization. In general, the ranks of organizations where corruption occurs are reluctant to help reveal the corruption even though the corruption does not involve them at all. It is possible that this reluctance arises because disclosure of corrupt practices within the organization will be considered as evidence of poor quality of organizational management.
10. Negative values that live in society. The values that apply in society are conducive to corruption. Corruption easily arises because of the values that prevail in society conducive for that to happen.
11. The public does not want to realize that the people who are most harmed by corruption are the people themselves. People generally think that if corruption occurs, the party that will suffer the most harm is the state or government. People are less aware that if the state or government is harmed, then it will definitely also be detrimental to society itself.
12. Weak morals. A person whose morals are not strong will tend to be more easily driven to commit corruption due to temptation. The temptation for an employee to commit corruption comes from his superiors, colleagues, subordinates, or from outside parties who are served.
13. Urgent need. Urgent needs such as family needs, the need to pay debts, the need to pay for expensive treatment because a wife or child is sick, the need to pay for their child's school fees, the need to marry off their child, and the need for retirement are forms of encouragement for an employee to commit corruption.
14. Lazy or unwilling to work hard. Another possibility is that people who commit corruption are people who want to quickly get a lot of something in just a short time, but are lazy to work hard and improve their abilities to increase their income.
15. Religious teachings are not implemented properly. In general, perpetrators of corruption are also religious people. They understand the teachings of the religion they adhere to, which prohibits corruption. This shows that many religious teachings are not implemented correctly by their adherents, they are just rituals.
16. Weak law enforcement. Weak law enforcement against perpetrators of criminal acts of corruption includes several aspects, namely the perpetrators of criminal acts having relationships with enforcers (both superiors and personal relationships), the push and pull in handling corruption cases and light sanctions, the existence of backing from state officials for perpetrators of criminal acts of corruption who motivated by group interests.
17. Sanctions that are not commensurate with the results of corruption. Disproportionate sanctions can increase a person's intention to commit corruption, which is proven by the increase in corruption cases that have penetrated the executive, judiciary, legislative, audit and even political parties.
18. Lack or absence of control. The absence of supervision and control in terms of planning activities and budgets has the potential for corruption through engineering calculations of results.
19. Political Factors. The occurrence of corruption in Indonesia can be caused by political factors or related to issues of power.
20. Government organizational culture. Within government organizations, a culture or behavior has been adopted which is continuously maintained and considered as truth. One of them is in the case of cost discrepancies (inflated) which indicates a criminal act of corruption.

The International Transparency Society (MTI) found 9 pillars that cause corruption in Indonesia, namely as follows:

1. Absence of government political will;
2. The general administration and financial systems of the government are in disarray;
3. The dominant role of the military in the political field;
4. Bureaucratic politicization;
5. The supervisory institution is not independent;
6. Lack of functioning of parliament;
7. Weak strength of civil society;
8. Lack of freedom of mass media;

Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption

9. Private sector opportunism.²³

Ilham Gunawan stated that corruption can occur due to various factors, including the following:

1. Absence or weakness of leadership in key positions capable of providing inspiration and influencing behavior that tames corruption.
2. Weaknesses of religious and ethical teachings.
3. The effects of colonialism or the influence of foreign governments do not inspire the loyalty and obedience needed to stem corruption.
4. Lack and weak influence of education.
5. Structural poverty.
6. Weak legal sanctions.
7. Lack and limited anti-corruption environment.
8. Soft government structure.
9. Radical changes resulting in disruption of mental stability. When a value system experiences radical changes, corruption emerges as a traditional disease.
10. The condition of society, because corruption in a bureaucracy can reflect the condition of society as a whole.²⁴

IV. CONCLUSION & SUGGESTIONS

Based on the discussion above, it can be concluded and suggested: The prosecutor's lack of maximum execution of compensation money in criminal acts of corruption is basically not something that is desired or intentional, but there are juridical obstacles to the court's decision. The juridical obstacle referred to is the lack of clarity regarding when the execution of court decisions that have permanent legal force will be carried out, including Article 270 of the Criminal Procedure Code which states that the implementation of court decisions that have obtained permanent legal force carried out by the prosecutor, after the clerk sends him a copy of the decision letter, this provision requires that the execution can only be carried out and carried out by the prosecutor, after the clerk sends him a copy of the decision letter, so that the defendant refuses to be executed based on the quote from the decision that has been fixed in addition to the court's decision not providing What is the legal basis for the defendant's confiscated items?

In order for the legislature together with the executive to immediately draft a Bill on the Return or Bill on Confiscation of Assets of Corruption Convicts which provides a regulatory legal umbrella for prosecutors in carrying out their functions when they succeed/fail to execute the goods or assets of those convicted of corruption, it is still possible for them to be executed again, even though their assets have been declared depleted first. In the past, it was used/enjoyed/transferred/laundered (money laundering) by corruption convicts, both in the Criminal Procedure Code, the Republic of Indonesia Prosecutor's Law, and the Corruption Crimes Law, to fill the gap in legal norms so far.

REFERENCES

- 1) Criminal Code
- 2) Criminal Procedure Code
- 3) Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.
- 4) Aga Wiranata, *Kendala Jaksa Dalam Eksekusi Pidana Tambahan Uang Pengganti Pada Perkara Tindak Pidana Korupsi*, <http://download.portalgaruda.org/article.php?article=188096&v al=6466&title=KENDALA%20JAKSA%20DALAM%20EKSEKUSI%20PIDANA%20TAMBAHAN%20UANG%20PENGGANTI%20PADA%20PERKARA%20TINDAK%20PIDANA%20KORUPSI%20%28Studi%20Kasus%20Korupsi%20Di%20Kejaksaan%20Tinggi%20Jawa-Timur%29> , access 23 Mei 2019.
- 5) Andi Hamzah, 2008, *Perbandingan Pemberantasan Korupsi, Di Berbagai Negara*, Jakarta: Penerbit Sinar Grafika.
- 6) Andi Hamzah, 2012, *Pemberantasan Korupsi, Melalui Hukum Pidana Nasional dan Internasional*, Jakarta: PT. Raja Grafindo Persada, Jakarta.
- 7) Ermansjah Djaja, 2010, *Mendesain Pengadilan Tindak Pidana Korupsi, Implikasi Putusan Mahkamah Konstitusi Nomor 012-016-019/PPU-IV/2006*, Jakarta: Sinar Grafika, Jakarta, 2010.
- 8) Herbert L. Packer, 1968, *The Limits of The Criminal Sanction*, Stanford: Stanford University Press.

²³ *ibid.*, p. 107.

²⁴ Ilham Gunawan, 1990, *Postur Korupsi di Indonesia: Tinjauan Yuridis, Sosiologis, Budaya dan Politik*, Bandung: Angkasa, p. 101.

Concept of Additional Criminal Replacement Money in the Crime of Corruption under Law No. 20 of 2001 Concerning Eradication Criminal Acts of Corruption

- 9) Ilham Gunawan, 1990, *Postur Korupsi di Indonesia: Tinjauan Yuridis, Sosiologis, Budaya dan Politik*, Bandung: Angkasa.
- 10) Indriyanto Seno Adji, 2001, *Korupsi dan Hukum Pidana*, Jakarta: Kantor Pengacara & Konsultasi Hukum “Prof. Oemar Seno Adji, SH & Rekan”.
- 11) Jan Rimmelink, 2003, *Hukum Pidana, Komentar Atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*, Jakarta: PT Gramedia Pustaka Utama.
- 12) Kongres PBB ke-8 mengenai “*Prevention Of Crime and Treatment of Offenders*” yang mengesahkan resolusi “*Corruption in Government*” di Havana tahun 1990.
- 13) Lilik Mulyadi, 2007, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi*, Bandung: PT. Alumni.
- 14) Mahrus Ali, 2012, *Dasar-Dasar Hukum Pidana*. Jakarta: Sinar Grafika.
- 15) Mungki Hadipratikto, “Eksekusi Putusan Pidana Uang Pengganti Dalam Perkara Pidana Tindak Pidana Korupsi”. <https://media.neliti.com/media/publications/10672-ID-eksekusi-putusanpidana-uang-pengganti-dalam-perkaratindak-pidana-korupsi.pdf>.
- 16) Romli Atmasasmita, 2002, *Korupsi, Good Governance dan Komisi Anti Korupsi Indonesia*, Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman Dan Hak Asasi Manusia Republik Indonesia.
- 17) Romli Atmasasmita, 2004, *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*, Bandung: Mandar Maju.
- 18) Soedarto, 1986, *Kapita Selekta Hukum Pidana*, Bandung: Alumni.
- 19) Surachmin dan Suhandi Cahaya, *Strategi & Teknik Korupsi, Mengetahui Untuk Mencegah*, Jakarta: Sinar Grafika.
- 20) Syed Hussein Alatas, 1986, *Sosiologi Korupsi*, Cetakan Keempat, Jakarta: LP3ES.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.