RECONSTRUCTION OF CRIMINAL REGULATION REPLACEMENT CASH IN EFFORTS TO OVERCOME CRIMINAL ACTIONS BASED ON JUSTICE VALUE

Hasanal Mulkan[1], Sri Endah Wahyuningsih[2], Anis Mashdurohatun[3], Mahmutarom HR[4]

[1,2,3] *Universitas Islam Sultan Agung Semarang Indonesia*.

[4] *Universitas Wahid Hasyim, Semarang Indonesia.*

Coresponding Author Email: anism@unissula.ac.id

ABSTRACT

Criminal acts of corruption in Indonesia are still quite rampant which not only harms the state's finances but also violates human rights which include social and economic rights at large, corruption is no longer a national problem, but has become a transnational phenomenon so that and the reality of what has been attempted and has been caused by the parties who commit criminal acts of corruption. One of the efforts made is to overcome the compensation money in an effort to eradicate corruption based on the value of justice. The method in this study was carried out using qualitative methods where data collection through secondary data collection related to the object of research was adjusted to the specifications of descriptive research. Efforts are being made to improve and renew the Indonesian legal system in legal substance, legal construction and legal instruments regarding the confiscation and return of assets, making and ratifying laws and regulations relating to the seizure of assets, the existence of special rules as the legal basis and basis for law enforcement in carrying out their duties. confiscation and return of assets.

Keywords: corruption; countermeasures; transnational; phenomenon.

1. INTRODUCTION

One of the elements in the criminal act of corruption is the existence of state financial losses. Regarding the country's financial losses, the Government made a Corruption Law, both the old Law, namely Law Number 3 of 1971 and the new Law, Law Number 31 of 1999 Jo Law Number 20 of 2001, stipulating a policy that the country's financial losses must be returned or replaced by corruption perpetrators. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes limits that what is meant by corruption is "any person who unlawfully commits acts of enriching himself or others or a corporation that can harm the state's finances or the state's economy."[1] According to the Corruption Law, the return of state financial losses can be made through two legal instruments, namely criminal instruments and civil instruments. Criminal instruments are carried out by the investigator by confiscating the property belonging to the perpetrator and subsequently by the Public Prosecutor demanded to be seized by the Judge. Civil instruments are carried out by the State Attorney (JPN) or agencies that are harmed against corruption perpetrators (suspects, defendants, convicts or their heirs if the convict dies). Criminal instruments are more prevalent because the legal process is simpler and easier. In the decision of the District Court, in addition to the main crime, usually the judge also decides on additional criminal penalties in the form of substitute money crimes to convicted corruption cases. Surrogate money penalties, which are linked to the number of sentences' prison terms, are sometimes not met by convicts, where they prefer additional sentences in the form of corporal confinement over criminal ones. The term surrogate money contains a related sense not of individual or individual interests, but of the public interest or even of the interests of the state. In that case it can be said to be criminal and punitive in their nature.

[1] Krisna Harahap, 2006, *Pemberantasan Korupsi Jalan Tiada Ujung*, Bandung: Grafitri, p. 2

In this case, what is related is the interests of the individual, not the interests of the state.[2] Laws and regulations relating to the criminal effectiveness of payment of substitute money in corruption crimes are contained in Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Article 18 (1) In addition to additional criminal offences as referred to in the Criminal Code, as additional criminal offences are:

a. Deprivation of tangible or intangible movable goods or immovable goods used for or obtained from corruption crimes, including companies belonging to convicts where corruption crimes are committed, as well as from goods that replace such goods;

b. Payment of replacement money in the amount of which is as much as possible equal to the property obtained from corruption crimes;

c. Closure of all or part of the company for a maximum period of 1 (one) year; In the Crime of Corruption.

d. Revocation 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 a convicted person.

(2) If the convict does not pay the surrogate money as referred to in paragraph (1) point b no later than 1 (one) month after the judgment of the court that has obtained permanent legal force, then his property may be confiscated by the prosecutor and auctioned to cover the replacement money.

(3) If the convict does not have sufficient property to pay the surrogate money as referred to in subsection (1) point b, the sentence shall be punished with imprisonment whose duration does not exceed the maximum penalty of the principal sentence in accordance with the provisions of this law and the length of the sentence has been determined in the judgment of the court. Additional penalties still have to be carried out even though the threat of the main penalty already includes a maximum fine of Rp. 1,000,000,000,- (one billion rupiah), it could be that in reality the results of existing corruption cause state losses of more than Rp. 1,000,000,000,- (one billion rupiah), therefore additional crimes in the form of obligations to the convict to pay replacement money with a maximum amount of the amount of property obtained from the deeds he committed and prosecuted and charged in every case of corruption as one of the efforts of law enforcement officials to restore state finances arising from corrupt crimesi.

In addition to the main crime, perpetrators of corruption crimes are also subject to additional crimes, namely in the form of payment of substitute money as an effort to recover state losses. The provision of sanctions in the form of basic and additional criminal acts aims to provide a deterrent effect for perpetrators of corruption crimes so as not to commit corruption crimes. One of the efforts that can prevent and avoid Indonesia's downturn due to corruption is in addition to the provision of prison sentences to provide a deterrent effect and also impose additional crimes against perpetrators of corruption crimes as stipulated in the law, namely by paying compensation money as an effort to recover state losses.[3] Replacement 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 a form of return for state losses caused by acts of corruption committed by irresponsible people with the aim of enriching themselves. The application of substitute money is a form of consequence due to criminal acts of corruption committed by corruptors that have harmed the country's finances and economy. Perpetrators of corruption crimes who have been validly and convincingly proven to have committed acts of corruption may be exempted from payment of surrogate money if it is replaced with the property owned by the defendant which is declared to be seized for the state or if the defendant does not enjoy the money at all.[4]

With the issuance of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, it is hoped that the attitude of acts or behaviors of the community will no longer carry out actions that lead to acts that can be

---

[2] Hendarman Supandji, 2006, *Substansi Uang Pengganti dalam Tindak Pidana Korupsi*, Makalah Penataran Tindak Pidana Korupsi) Puslitbang Kejaksaan Agung R.I. tanggal 5- 6 Juli 2006.

[3]Theodorus M. Tuanakotta, *Menghitung Keuangan Negara dalam Tindak Pidana Korupsi* (Jakarta: Salemba Empat,2004), p.19.

[4] Chaerudin, *Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi*, (Bandung: PT Refika Aditama,2008) ,p. 90

categorized as corruption acts and eradicate corruption crimes that have occurred more effectively. Article 18 of Law No. 31 of 1999, serves as a special effort to expect the return of state money that has been taken by perpetrators of corruption crimes, so this is very important as an effort to recover state financial losses caused by corruption crimes.

Law enforcement Law No. 31 of 1999 aims to recover the country's financial or economic losses due to the actions of perpetrators of corruption crimes. If viewed from the effectiveness rather than the success in the implementation of the criminal conviction of payment of substitute money in criminal acts in the Purwokerto District Court, then it can be said that it has not been effective, especially in terms of the payment of substitute money made by the convict.

In the criminal conviction of additional payment of surrogate money the convict is unable to pay, does not have property to cover the payment of the surrogate's money, there is an affidavit explaining that he is unable to pay the surrogate's money from the convict, and will serve the penalty of subsidy.

In its implementation, in fact, the application of additional criminal penalties with the obligation to pay replacement money by convicted corruption cases is still not fully effective. This is because corruption convicts choose to substitute sentences in the form of confinement rather than having to pay replacement money. From the research data obtained by the author through ICW (Indonesia Corruption Watch) it is known that the replacement money returned by the State for losses due to corruption cases reached Rp. 56.7 trillion but what was returned to the State for losses due to corruption cases in 2020 only amounted to Rp.8.9 trillion, which means that only about 12-13 percent of state money returned from all total losses caused by corruption crimes.[5] Payment of replacement money by convicted corruption cases has been set a time limit, namely as stipulated in the Supreme Court of the Republic of Indonesia Regulation Number 5 of 2014 concerning Additional Substitute Money in Corruption Crimes, in Article 9 Paragraph (1) CHAPTER IV Execution of Replacement Money it is stated that: "If within a period of 1 (one) month after the decision of permanent legal force, the convict does not pay off the payment of the surrogate's money, the Prosecutor is obliged to make confiscation of the property in the possession of the convict". Based on this article, it is explained that the convict must have paid off the arrears of replacement money within 1 (one) month from the decision of the judge with permanent legal force (*inkracht*) and if the convicted corruption has not paid off, confiscation of the property of the convicted corruption will be carried out. The return is not easy because corruption is an *extra ordinary crime* whose perpetrators come from intellectual circles and have an important position. However, in its implementation there are several obstacles in the application of additional criminal payments of substitute money, namely regarding convicts who have not yet paid off or are in arrears with the compensation money that has been determined.[6]

One of the problems that arises is regarding the application of the rules for settling substitute arrears by convicted corruption cases who are in arrears in paying replacement money, there are differences between theory and practice in the field such as the application of rules regarding additional criminal payments of substitute money in Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes with the Rules of the Supreme Court of the Republic of Indonesia Number 05 of 2014 concerning the Crime of Additional Substitute Money in the Corruption Crime, in Article 9 Paragraph (1) CHAPTER IV Execution of Substitute Money, of the two rules has a difference where in the Tipikor Law explains that the convict is obliged to pay replacement money as an effort to recover state losses with a period of 1 (one) month, payments can be made by paying gradually with a period of 1 (one) month and if the convict has not paid off can confiscation of assets 8 a sum of surrogate money payable and fixed by the court and having permanent legal force and in the Act it is also explained that if the convict is unable to pay the surrogate's money can be executed by imprisonment prescribed by the magistrate, and the penalty shall not exceed the maximum penalty of the principal sentence which has been imposed. From the explanation in the Tipikor Law related to the additional criminal replacement money, there was a disparity in the maximum reduction of replacement prisons, therefore the issuance of the Supreme Court of the Republic of Indonesia Regulation Number 5 of 2014 concerning Additional Substitute Money in Corruption Crimes which regulates more specifically the application and mechanism for implementing substitute money. In PERMA No. 5 of 2014, it is also explained that the replacement imprisonment for eternity is in accordance with the main sentence imposed, and the convict

[5] Evi Hartanti, *Tindak Pidana Korupsi*, (Jakarta : Sinar Grafika, 2012), p. 5

[6] Wahyuningsih,"*Ketentuan Pidana Denda Dalam Kejahatan Korupsi Di Tingkat Extraordinary Crime"*, Jurnal Hukum Pidana Islam, Volume 1, (Juni 2015), p 10.

also still has to pay off the remaining replacement money after completing the main prison sentence and when the convict runs a replacement prison.

RESEARCH METHODS

This type of research is empirical normative legal research. Normative legal research is a scientific research procedure to find truth based on the scientific logic of law from its normative side. Scientific logic in normative research is built on the basis of scientific disciplines and normative ways of working legal science. [7]The construction of normative legal research products used in this research is a scientific activity to find the rule of law, legal principles, and legal doctrines, using normative legal methods in answering the legal issues studied. [8]Empirical legal research is a legal research method that functions to be able to see the law in a real sense and examine how the law works in a community environment. [9]Another term used for this research is indoctrinal research or legal sociology and can also be called field research[10], because the legal research taken is from facts that exist in a society, legal entity or government agency.[11]

RESEARCH APPROACH

a. Statute Approach

The statute approach is carried out to examine the legal rules that are the focus of research.[12] This approach is used to obtain a description of the analysis of legal regulations governing the execution of surrogate money

---

[7] Anis Mashdurohatun, .Ali Mansyur, M. Product capabilities dynamic on industrial design carved wood in small and medium enterprises (SMES) jepara furniture in promoting the protection of intellectual property rights, *International Journal of Applied Engineering Research*, 2017, 12(19), pp. 8217–8226. See too Hioe, J.K., Mashdurohatun, A., Gunarto, Tarigan, I.J.Reconstruction of pretrial institution function in supervising investigator authorization based on justice value with moderating role of supply chain management, *International Journal of Supply Chain Management*, 2020, 9(3), pp. 613–61. See too *Anis Mashdurohatun, Kamaliya, N. Legal protection of consumer reviews in social media based on local wisdom values, International Journal of Advanced Science and Technology, 2020, 29(6), pp. 1511–1519.*

[8] Sunaryati Hartono, 1994, Indonesian Legal Research at the End of the 20th Century, Bandung: Alumni, p.105.

[9] Johny Ibrahim, 2006, Normative Legal Research Theory and Methods, Malang : Bayumedia, p. 47

[10] Maniah; Bin Bon, Abdul Talib; Hariadi, Andi Kahar; Gunarto; Mashdurohatun, Anis; et al. Mapping the Competencies and Training Needs of Human Resources to Improve Employee Performance in Indonesia After the Covid-19 Pandemic, *Quality - Access to Success*, 2023, 24(195), pp. 219–225

[11] Usmawadi, 1992, Materi Pendidikan dan Kemahiran Hukum, Palembang : Laboratorium Hukum Fakultas Hukum UNSRI, p. 250.

[12] Johnny Ibrahim, 2005, Teori & Metodologi Penelitian Hukum Normatif, Malang : Bayumedia Publishing, p. 302

in corruption crimes. This approach opens up opportunities for researchers to study whether there is consistency and conformity between a law and another or between a statute and the Constitution or between a regulation and a statute.[13]

b. Socio-Legal Approach

The socio-legal approach is carried out to reveal the truth systematically, analytically and constructively to the data that has been collected and processed by describing the meaning of social action to understand the law in the context of its society, namely a non-doctrinal approach.[14] Through this approach, the object of law will be interpreted as part of a social subsystem among other social subsystems. The understanding that law is limited to a set of normals independent of social unity, will only deny the interrelation of law as a norm and social basis.[15]

c. Case Approach

The case approach in this study aims to study the application of legal norms or rules carried out in legal practice.[16] Related to this research, an example of a case that will be studied is a corruption crime case that has permanent legal force, namely the Decision of the Corruption Crimes Court at the Palembang District Court Number: 31 / Pid.Sus-TPK / 2017 / PN. PLG dated October 23, 2017 on behalf of convicted Adriwiansyah Alias Awin bin Zulkarnain and the Decision of the Corruption Court at the Palembang District Court Number: 45/Pid.Sus-TPK/2014/PN. PLG dated January 14, 2015 on behalf of convicted Ir. H. Madian, M. Si Bin Saiun (Supreme Court Decision of the Republic of Indonesia Number: 1831 K / Pid.Sus / 2015 dated September 9, 2015, Decision of the Corruption Court at the Palembang High Court Number: 4 / Pid.Sus-TPK / 2015 / PT. PLG dated 07 April 2015). Both judgments in their judgments oblige the convicts to pay a surrogate's money equal to the loss of the State enjoyed by the convict.

Then after the primary and secondary data are collected, then the data is analyzed. The data analysis method used is descriptive qualitative.[17]

---

[13] Peter Mahmud Marzuki, 2005, Penelitian Hukum, Jakarta : Kencana Prenada Media Group, p. 93.

[14] Adriaan W. Bedner, 2012, Kajian Sosio-Legal (Seri Unsur-Unsur Penyusunan Bangunan Negara Hukum), Jakarta : Universitas Indonesia, p. 29.

[15] Anis Mashdurohatun,Gunarto, Jati, R.H.H, . A policy handling domestic violence against women in Indonesia based on justice, International Journal of Innovation, Creativity and Change, 2020, 13(4), pp. 196–208

[16]Sacipto, R., Prasetyo, T., Mashdurohatun, A., Ciptono, Analysis of the implementation regulations for police actions as law enforcement of corruption cases constitutional court, *International Journal of Psychosocial Rehabilitation*, 2020, 24(3), pp. 2447–2458

[17] Gusti Ayu Ketut Rachmi Handayani, I.,Gunarto, G.,Mashdurohatun, A.,Gusti Putu Diva Awatara, I.,Najicha, F.U, Politic of legislation in Indonesia about forestry and the mining activity permit in the forest area of environmental justice Journal of Engineering and Applied Sciences, Volume 13, issue, 6, 2018, pp.1430-1435. Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object, Volume 8, Issue 3, 2021.

RESULTS OF RESEARCH AND DISCUSSION

A. Construction of Criminal Regulation of Replacement Money in Efforts to Overcome Corruption Crimes

According to Barda Nawai Arief The development of legal science in general and its practice often raises problems related to the existence of legal rules and the effectiveness of legal rules by centering the effectiveness of law. This means that the effectiveness of the law will be highlighted from the goals to be achieved. Effectiveness means "effectiveness" effect, or efficacy/ efficacy.[18]The theory of legal effectiveness according to Soerjono Soekanto is that the effectiveness or not of a law is determined by 5 (five) factors, namely:[19]

1. Its own legal factors (legislation).

2. Law enforcement factors, namely parties who form or apply the law.

3. Factors of means or facilities that support law enforcement.

4. Community factors, namely the environment in which the law applies or is applied.

5. Cultural factors, namely as a result of work, creation and taste based on human nature in the association of life.

In relation to the community factors that influence law enforcement, when related to Friedman's opinion about the elements in the legal system, one of the elements of which is the "legal culture", namely attitudes and values related to the law, which come from the people or users of legal services.[20]

The word "Corrupt" means bad, broken and rotten, likes to wear goods (money) entrusted to him, can be shunned (using his power for personal gain. Corruption according to the big Indonesian dictionary is an act of misappropriation or embezzlement of state or company finances for personal or other people's interests. Corruption in Latin is called "*Corruptio-corruptus*", in Indonesian it is called "*corruptie*", in English it is called "corruption", and in Sanskrit as stated in the Ancient Text of the State of Kertagama the literal meaning of "*corrupt"* indicates to corrupted, rotten, bejad, dishonest acts that are linked to finances.14 Whereas according to Article 2 paragraph (1) of Law Number 31 of 1999 jo Law Law Number 20 of 2001 concerning the Eradication of Corruption Crimes states that what is meant by corruption crimes is any person who unlawfully commits acts of enriching themselves or others or a corporation that can harm the state's finances or the country's economy. Based on the article above, there are elements of criminal offenses as follows:

1. Everyone;

2. Who commits acts against the law;

3. Enriching oneself, another person or a corporation;

4. May be detrimental to the country's finances or the country's economy.

Corruption is a form of unlawful acts that harm the country's finances or economy. As for what is meant by an unlawful act is an act or not doing something that results in losses for others. Where the act or not doing is intentional or is an accident.[21] Culturally and strategically eradicating corruption is to socialize the new value

---

[18] Barda Nawawi Arief, 2003, Kapita Selekta Hukum Pidana, Citra Aditya Bakti, Bandung, p. 85

[19]Soerjono Soekanto, 2008, Faktor-Faktor yang Mempengaruhi Penegakan Hukum , PT. Raja Grafindo Persada, Jakarta,p. 8.14

[20] Abdul Manan, 2005, Aspek-aspek Pengubah Hukum, Prenada Media Group, Jakarta, p. 9

[21] Sudarto, 1996, Hukum dan Hukum Pidana, Cetakan Keempat, Alumni, Bandung,p. 115

that corruption is a high-risk and low-value problem, and there will be reverse proof that the property it acquires is a halal item.[22] When compared to the criminal system in the Netherlands, it can be said that the pattern of punishment in Indonesia only recognizes fines imposed by the courts. Meanwhile, the Netherlands recognizes extra court sanctions that can carry out fines that must be paid so that a person is not forwarded to the court, namely: extra juridical sanctions in the form of police transactions, transactions with the prosecutor's office, parole, if a prosecution has been carried out.

The effectiveness of fines does not provide a deterrent effect for perpetrators of corruption crimes, because the fines imposed on perpetrators of corruption crimes can be replaced with imprisonment and the length of the confinement period is not in accordance with the amount of state financial losses due to the actions of the perpetrators of corruption crimes. Criminal compensation (fines) does not have a deterrent effect on perpetrators of corruption crimes, because the fines imposed on perpetrators of corruption crimes are still too low in number. A criminal fine is a punishment, based on the provisions of the Criminal Code, namely being obliged to pay a certain amount of money stipulated in a court decision to the state, unable to utilize objections or resistance in the context of civil law against the state.[23]According to Law No. 31 of 1999 jo. Law No. 20 of 2001, the forms of criminal sanctions that can be imposed on perpetrators of corruption crimes are imprisonment and fines.[24]The provisions for fines in corruption crimes at the *extraordinary* crime level have been regulated in Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, but their application has not been very effective because judges prefer imprisonment to be the main crime, even though fines have better benefits than criminal sanctions for deprivation and have effectiveness in deterring corruption perpetrators.[25]

In other studies, the formulation of criminal fines in positive criminal law has not been in accordance with the modernization of punishment. The regulation of criminal fines in positive criminal law lags far behind when compared to the imposition of fines in various countries. Then the fines imposed for perpetrators of corruption crimes are not in accordance with the provisions of the fines in the corruption law. Although most corruption cases are legally and convincingly corroborated.[26] However, most corruption cases have proven to be valid and convincing, especially in corruption courts handled by the KPK, it tends to be difficult to execute fines and compensation in corruption crimes and is a problem that cannot be resolved. The imposition of a high fine will not be effective in its implementation given the provision that if the fine is not paid will be replaced by confinement, as stated in article 30 of the Criminal Code. In addition, the provisions of article 30 of the Criminal Code do not provide for an exact time limit for when the fine should be paid. Likewise, there is no provision regarding other acts of action that guarantees that a convict can be compelled to pay his fine. This means that even if the judge imposes a high fine, the perpetrator of a corruption crime tends to choose a sentence of confinement for six (6) months or eight (8) months if there is a fine imposed instead of having to pay the fine imposed by the court on him. Therefore, the provision should be kept and replaced by paying a fine from the property of the perpetrator and his family, either through installments or by other means. The way out is to create a provision or a coercive regulation so that the convict inevitably has to pay the fine. For example, the KPK is authorized to publicly auction confiscated goods (not those that have been seized) and then deduct

[22] Munir Fu'ady, 2005, Perbuatan Melawan Hukum, Bandung: PT. Citra Aditya Bhakti,p. 4

[23] Soedjono D, 1989, Sistem Peradilan Pidana Peraturan Umum dan Delik-Delik Khusus, RajawaliPers, Jakarta, p.76

[24]Jan Remmelink, 2003, Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dalam Kitab Undang Undang Hukum Pidana Belanda dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia, , PT Gramedia, Jakarta , p. 485

[25]Evi Hartati, Tindak Pidana Korupsi, Sinar Grafika, Jakarta, 2007,p. 12

[26] Wahyuningsih, Ketentuan Pidana Denda Dalam Kejahatan Korupsi Di Tingkat Extraordinary Crime, alJinâyah, Jurnal Hukum Pidana Islam Volume 1 , Nomor 1, Juni 2015,p.105

fines from the auction proceeds. This can be done if the convict after being given a long time but still does not want to pay the fine. If the goods to be confiscated no longer exist, then a substitute for fines is applied.[27]

Fines for corruption in its implementation are not optimal. In addition to the criminal fines, the judge in his ruling gave additional criminal penalties in the form of criminal penalties for compensation. However, in the fact that compensation does not provide a deterrent effect for perpetrators of corruption crimes, this is evidenced by the many corruption crimes that occur in Indonesia.[28] The regulation of fines in the corruption law, for example, contained in article 2 paragraph (1) which reads as follows: "Any person who unlawfully commits an act of enriching himself or others who is a corporation that can harm the state finances or the country's 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)" Based on the above, the criminal arrangement of the fine seems not serious because the penalty is minimalist, this can be seen with a very small fine of very small value, which is between 200,000,0000 (two hundred million rupiah) as a minimum fine and 1,000,0000,000 (one billion rupiah) as a maximum fine, in addition to the minimalist punishment of the average judge's decision in the implementation of the criminal fine often replaced with imprisonment, the replacement of fines with imprisonment in the context of the purpose of criminalizing corruption crimes that must restore state money losses or provide a deterrent effect is not achieved by replacing fines with imprisonment, even though in the system of implementing fines in the Criminal Code contains various weaknesses according to Nawawi Arief, namely;[29]

1. The absence of provisions regarding other acts of action to guarantee the execution of a fine penalty, for example by seizing or confiscating property or property, except by confinement of substitute money;

2. The maximum replacement confinement is only 6 months which can be 8 months if there is a fine, although the penalty of fines threatened or imposed by judges is quite high to tens of millions;

3. There are no guidelines or criteria for imposing fines, either in general or for special matters (e.g. for fines imposed on immature children, who are not yet employed or are still in the custody of parents; In addition to the above, there is a need for a policy formulation in the implementation of fines by not replacing it with imprisonment because it is felt that it is not effective with many corruption offenders who prefer to replace the crime with imprisonment, it's just that there needs to be a formulation of changes or formulations of provisions in the corruption law or the Criminal Code that regulates fines. Likewise, the criminal penalty of substitute money contained in Article 18 paragraphs (1), (2), and (3) of Law No.31 of 1999 Jo Law No.20 of 2001 concerning Corruption Crimes is felt in its implementation there is no effectiveness because sometimes to trace the assets of the perpetrator is very difficult or the perpetrator tries to hide the property, this is what must be sought for a policy formulation in the maximum return of state losses by not basing on provisions of Article 18 paragraphs (2) and (3) which prefer to replace with imprisonment :

The theory of legal effectiveness according to Soerjono Soekanto is that the effectiveness or not of a law is determined by 5 (five) factors, namely:[30]

1. Its own legal factors (legislation).

2. Law enforcement factors, namely parties who form or apply the law.

---

[27] Syaiful Bakhri, Kebijakan Legislatif tentang Pidana Denda dan Penerapannya dalam Upaya Penanggulangan Tindak Korupsi, Jurnal Hukum No. 2 Vol. 17 April 2010,p. 317 – 334

[28] Ninik suparni dalam Wahyuningsih, Ketentuan Pidana Denda Dalam Kejahatan Korupsi Di Tingkat Extraordinary Crime, al-Jinâyah: Jurnal Hukum Pidana Islam Volume 1 , Nomor 1 , Juni 2015,p.105

[29] Bambang Hartono, Analisis Pelaksanaan Pidana Ganti Kerugian(Denda) Dalam Tindak Pidana Korupsi,Keadilan Progresif Volume 2 Nomor 1 Maret 2011,p.13

[30] Indung Wijayanto,Kebijakan Pidana denda di KUHP dalam Sistem Pemidanaan Indonesia,Jurnal Pandecta, Volume 10 Nomor 2 Desember 2015, p.24916

3. Factors of means or facilities that support law enforcement.

4. Community factors, namely the environment in which the law applies or is applied.

5. Cultural factors, namely as a result of work, creation and taste based on human nature in the association of life.

Based on the legal theory above, the author assumes that the factors of non-effectiveness in the implementation of fines and replacement money above can be seen from the side of the law and its law officers, namely as follows:

First, the corruption law, namely Law No.31 of 1999 Jo Law No.20 of 2001 concerning the Crime of Corruption does not in depth and concretely regulate the replacement money, this makes the implementation of the enforcement of substitute money sanctions not firm and not contextual in giving time to the perpetrators of corruption crimes in the future, there must be a formulation of time given to the perpetrator to pay the replacement money in installments to the state in accordance with the ability the offender is up to the end even though he has not served his sentence;

Secondly, the surrogate money in the formulation of the article tends to replace with imprisonment so that in its definition it does not describe a form of punishment that can incriminate the offender and the offender tends to choose to replace it with imprisonment and;thirdly, the judge in the decision of the substitute money is not contextual and progressive.

B. Future Legal Arrangements Regarding Reconstruction of Surrogate Money Regulations in Efforts to Combat Corruption Crimes Based on the Value of Justice

The idea of reconstructing criminal sanctions against perpetrators of corruption crimes based on the value of dignified justice can be realized by conducting a study of court decisions in corruption cases. The idea of carrying out such reconstruction is motivated by, among other things, the urgency of public policy according to the law on the importance of a faster and more effective or extraordinary corruption eradication step in overcoming the extra ordinary crime. The aforementioned legal ideas are in line with the objectives of criminal law in the perspective of the Theory of Dignified Justice (hereinafter abbreviated as Dignified Justice). Dignified Justice, too, is jurisprudence emphasizing the basis of the values of justice according to the law. Such as for example maintaining balance, and proportionality in law. The desired balance in criminal law, for example, can be seen from the purpose through its arrangements and sanctions to provide legal protection to the public interest without compromising the interests of individuals, be it victims, or perpetrators of criminal acts who are also in Dignified Justice are required to pay attention to human dignity and dignity (nguwongke wong) as noble beings created by God Almighty.[31]

The idea as stated above can also be perceived as an urgent need. It is said to be urgent, considering that the need is commonly understood, and it has also been stated above, that the crime of corruption is an extra ordinary crime in Indonesia. Corruption as an extraordinary crime has spread and is widespread in society, and needs to be eradicated effectively and efficiently; or as much as possible reduced among other things through the deterrent effect of threats and the imposition of criminal sanctions on the perpetrators of such extraordinary crimes. The need for appropriate legal means to eradicate corruption is also motivated by the development of a kind of belief that corruption in Indonesia is like a malignant cancer disease. The disease called corruption has the potential to kill the system and harmony of a body, in this case it is intended with the "body", namely the Unitary State of the Republic of Indonesia (NKRI). It is said that the Republic of Indonesia as a body, because it is similar (analogous) to a complete microsystem, namely the body and soul of a human being (people).

The thought of criminal law that is more justice-oriented, namely justice or justice in the sense of providing protection for human dignity and dignity as a noble being, the ideal of God Almighty is in line with the main legal values in Pancasila as the soul of the nation (Volksgeist) Indonesia and the highest; the source of all first sources of law. This is one of the important postulates in the Theory of Dignified Justice used in this dissertation research as a grand theory, or the main theory in dissecting or discussing the problems raised in this dissertation research. The body and soul of the Republic of Indonesia, namely the body and soul (Volksgeist)

[31]Teguh Prasetyo, Keadilan Bermartabat, Perspektif Teori Hukum, Cetakan Pertama, Nusa Media, Bandung, 2015.

of the Indonesian nation in reality continue to be haunted by the development of the number and quality of corruption crimes in Indonesia which continues to increase from year to year. As has been hinted at above, that the development and increase of corruption is undermining the system of society, nation and state, therefore it must be countered with the legal system. The improvement of the quality and quantity of corruption as an extraordinary criminal act is not only seen in terms of the number of corruption cases that occur. The increase can also be seen from the amount of state financial losses caused by crimes called corruption. The increase in corruption crimes can also be seen in terms of quality. As an extraordinary criminal act, the crime of corruption is carried out more systematically. The crime has even entered all aspects of people's lives. Corruption data in 2010 showed that out of 1053 corruption cases examined by the Supreme Court, 269 cases were decided between one and two years, 42 cases were decided freely, 13 cases were sentenced to 6 to 10 years, and only two cases were decided above 10 years. Indonesia is ranked second in Asia and sixth in the world for corruption cases. The rampant corruption cannot be separated from the poor management of the state, the Government (and Local Government), the People's Representative Council (District),[32] and community components.

Indonesia Corruption Watch (ICW) reported that the majority of corruption case suspects handled by the Corruption Eradication Commission (KPK) were members of the DPR which in quality from 2009 to 2010 ensnared 40 dpr members. In addition, there are officials and former government officials also entangled in corruption cases. The total number of corruption cases handled by the KPK in 2010 was 23 cases with 69 suspects. Corruption enforcement in the second semester of 2010 (July-December) there were 272 corruption cases that occurred at the central and regional levels. Of these cases, 716 people have been determined.4 ICW divides the level of judgment into 3 (three) categories. First, a light sentence in the range of 1 (one) year to 4 (four) years. Second, the moderate sentence is between 4 years and 10 years. And Third, the severe sentence handed down by the judge is more than 10 years in prison. The light category is based on the consideration that the minimum sentence of imprisonment in Article 3 of the Tipikor Law is 1 (one) year in prison. Then the sentence of 1 (one) year and below is included in the light category. While the sentence in the moderate category is a sentence above 4 (four) years to 10 (ten) years. Categorized as a severe sentence is a corruption case that is sentenced to more than 10 (ten) years in prison with a maximum sentence of life.

Of the 210 corruption cases that were successfully monitored, the value of state losses incurred was around Rp 3,863 Trillion and $49 Million, and the total value of bribes reached Rp 64.15 Billion. Meanwhile, the amount of fines imposed by the typical panel of judges amounted to at least RP 25 billion with the amount of replacement money of IDR 87.2 billion and $ 5.5 million. This data shows that the development of corruption in quantity and quality in 2009 and 2010 has not touched the substance of the problem, because the outer surface is not linear with the government's efforts to prevent and eradicate corruption in Indonesia. On the other hand, in the results of ICW analysis in 2012 to 2014, corruption figures are still in a worrying position. With 261 corruption cases successfully monitored, the majority of defendants or as many as 242 people (92.33%) were convicted and only 20 defendants (7.67%) were declared free/released. However, in the first semester of 2014, overall the convictions imposed on corruptors have not had a deterrent effect because the majority are lightly punished. Based on ICW monitoring in the first semester of 2014, 195 defendants (74.7%) were sentenced in the range of 1 - 4 years (light sentences), 43 defendants were moderately sentenced (16.4%) and only 4 defendants (1.5%) were severely convicted by a typical judge, including 1 person sentenced to life. This category is not much different from 2013, the dominant sentence for corruptors is in the light category (0 - 4 years) which is 232 defendants (78.64 %). While in the moderate category (4.1 – 10 years) there are only 40 defendants (13.56 %) and the heavy category (over 10 years) only 7 people sentenced to more than 10 years in prison. The average prison sentence for corruptors in the first semester of 2014 was 2 years and 9 months in prison. The average number of sentences for corruption defendants in the first semester of 2014 has increased slightly when compared to the average value of convictions for corruptors- based on ICW monitoring- in the first semester of 2012, namely 2 years 8 months and the first semester of 2013, which is 2 years 6 months 5. The sentences decided by the Tipikor judges are also very varied with the type of sentence imposed. This has an impact on the memory of the judge's ruling which will set a bad precedent for the enforcement of corruption laws in the future. The judge's ruling should be part of the government's efforts to reduce corruption from year to year to minimize it as an effort to crack down. However, as far as the data presented by ICW shows that in that year the corruption chart was not significant with the government's efforts to eradicate corruption.

The development of the KPK's annual report released in 2014, 2015, and 2016 shows that octopus corruption has become part of the bureaucratic structure as a state organizer. Page 5 The results of monitoring ICW

[32]IGM. Nurdjana. Sistem Hukum Pidana dan Bahaya Laten Korupsi, Pustaka Pelajar 2010.

Verdict Trends in the second semester of 2010 – the first semester of 2013, as of July 28, 2013, can be tested in the KPK's annual report, which was submitted in 2016. Recapitulation of corruption crimes as of August 31, 2016, the KPK handled corruption crimes with details; investigation of 61 cases, investigation of 58 cases, prosecution of 46 cases, inkracht 41 cases, and execution of 53 cases. In 2017 the Corruption Eradication Commission conducted 19 arrest operations and named 72 people as suspects with professional backgrounds, ranging from law enforcement officers, legislators, to regional heads.[33]

As a universal form of crime, corruption cannot be called a new problem in legal and economic matters for a Nation and State. The development of corruption in Indonesia at this time has also reached the nadir which greatly endangers development and hinders prosperity in achieving the level of health of the Indonesian people. Corruption has touched all walks of life, be it civil society, or the military. Corruption plagues state servants and law enforcement officials. There are several factors that are commonly understood to drive human intentions to commit corruption crimes. Among other things, the ability to live a hedonistic life. It is meant by hedonism, that is, life is always spree and tends to buy expensive things. In other words, there is a tendency for people to live a consumptive life. Buying things that are not so needed. There is no shame in social life with all the luxuries that do not match the profile of the work. Coupled with no fear of God because of the lack of religious foundations and many other factors that are commonly believed to influence a person to commit a criminal act of corruption. All of the abstraction above shows that corrupt practices in Indonesia are deeply rooted and even tend to become cultural. Corruption is characterized by abuse of authority or unlawful acts that are considered commonplace. According to the research institute Political and Economic Risk Consultancy (PERC) and Transparentcy Internastional Indonesia has always occupied the country with the most corrupt title in Asia in 2010 and 2011.8 In the report, it was stated that corruption crimes have several special properties, namely as a form of white collar crime. Another special trait, too, is that corruption is usually carried out jointly or in an organized (corporative) manner. Corruption is also a special crime because it is usually carried out with a sophisticated modus operandi making it difficult to prove. Therefore, the existence of means, in this case legal means, including criminal sanctions against the perpetrators to eradicate the deeply entrenched corruption, is felt to be insufficient. It requires an expansion of the concept of acts of corruption committed by the subject of law and an increase in efforts to save or restore the financial losses of the State unconventionally. It is commonly understood that etymologically the word corruption or rasuah in Latin, that is, corruptio from the verb corrumpere, which means rotten, damaged, shaken, twisted, poked. Just for comparison, in Malaysia there are also anti-corruption regulations. It's just that in that country, the concept of "anti-corruption" is not used, but the word "anti-gluttony" regulation is used. Malaysia also often uses the term resuah. That last word comes from Arabic (riswah). It is said that in the Arabic-Indonesian dictionary, riswah means the same as corruption.

With the literal notion of corruption, a conclusion can be drawn, that in fact corruption is a juridical concept with a very broad meaning. It is said in the Encyclopedia Americana, that corruption is a multifaceted thing. The definition of corruption varies by time, place and nation. Meanwhile, literally corruption can be interpreted in several senses. Among other things, that corruption is a form of evil, rottenness, immorality, depravity and dishonesty.[34]

Other forms of corruption include embezzlement of money, receipt of bribes, and so on.12 Corruption also comes from the word corruption. The meaning of the word corruption, that is, decay or weathering, decay. It can also be interpreted as contamination or the inclusion of something destructive. Corruption is also defined as impurity or impure. While the word corrupt is explained as to become rotten or putrid, which means to become rotten, weathered or bad into something that was originally clean and good.[35] The Indonesian Encyclopedia says the word corruption comes from Latin, namely corruption or corruptus. As for the meaning of the two words, that is, bribery. Alternatively, it can also mean corruptore, which means destroyer. In the word vandalism there are symptoms where officials, state agencies abuse authority with the occurrence of bribery,

[33]James Morwood, The Pocket Oxford Latin Dictionary, Oxford University Press, Oxford, 1993, p., 36.

[34] Andi Hamzah, Korupsi di Indonesia Masalah dan Pemecahannya, Gramedia, Jakarta, Pustaka Utama, 1998, p., 8.

[35] Poerwadarminta, Kamus Umum Bahasa Indonesia, Balai Pustaka, Jakarta, 1976, p., 12.

forgery, and other irregularities.[36] While in French the word corruption is called corruption. In Dutch, it is copied with the term coruptie or coruptien which means it contains corrupt acts and bribery.[37]

There are several definitions of corruption that can be put forward in order to understand the concept of corruption better, as understood both in expert opinion and in the form of several laws and regulations. In this case, the concept of corruption is understood as follows below. Experts begin to explain the meaning of the word corruption by arguing that the word in Indonesia was originally only general. This word later became a legal term for the first time in the Military Ruler Regulation Number Prt/PM/06/1957 concerning the Eradication of Corruption. In the consideration of the regulation it is said among others; that since there is no smoothness in efforts to eradicate corruption in acts that harm the State's finances and the State's economy which the public calls corruption, it is necessary to immediately establish a working system to be able to break through the bottleneck of efforts to eradicate corruption.[38] Such is the character of the anti-corruption law, as well as its special and extra ordinary procedural law, including criminal sanctions against perpetrators of extraordinary crimes that need to be thought about scientifically. In that context, there are also experts who argue that what is meant by corruption is inappropriate activities. Improperly intended i.e., activities relating to power, governmental activities, or certain attempts to gain position improperly; and other activities such as highlighting.[39] Similarly, the term corruption as a gift / offer and receipt of gifts in the form of bribes (the offering and accepting of bribes) and rottenness or, above has been stated, a vice (decay). It also explained the meaning of corruption in various fields, including the issue of bribery related to manipulation in the economic field and concerning the field of public interest.[40]

In order to eradicate corruption, not only in Indonesia, in Malaysia there are also anti-corruption laws. According to Andi Hamzah from the definition of corruption can literally be drawn a conclusion that Corruption is a very broad term in its meaning. Thus, the approaches that can be taken to the problem of corruption are varied. The sociological approach as practiced by Sayed Husen Alatas is different from that of corruption a normative, political, or economic approach is taken;[41] In this study, all these approaches were not included, but focused on criminal sanctions regulated in laws and regulations and those that have been applied to corruption cases that have been handled so far. Paying attention to the history of the growth of handling corruption in Indonesia, it can be traced from the Military Ruler Regulation of 1957. The rule contains the formulation of the will (Volksgeist) that before there was a law regulating officially and separately, then for the first time corruption was regulated in the Military Ruler Regulation. Nevertheless, in this dissertation research the highlighted aspects are essentially legal, or normative, aspects. Prt/PM-06/1957 dated April 9, 1957. In that rule, corruption is grouped into two senses, namely:

1. Any act committed by any person, whether for his own benefit, for the benefit of others, or for the benefit of an entity that directly or indirectly causes harm to the finances of the State.

2. Any act performed by an official who receives a salary or wages from an agency that receives assistance from the finances of the State or Region, which by the use of the opportunity or authority or power given to him by the office directly or indirectly brings financial or material benefits to him.

---

[36] A. Marriam Webster, New International Dictionary, G&C Marriam Co. Publishers Springfield Mass, USA, 1985.

[37]Evi Hartanti, Tindak Pidana Korupsi, Sinar Grafika, Jakarta, 2005, p., 8.

[38] Adami Chazawi, Hukum Pidana Formil dan Materil Korupsi di Indonesia, Media Publishing, Malang, 2005, p.,1

[39]Sudarto, Hukum dan Hukum Pidana, Alumni, 1986, Bandung: p., 115.

[40] 17 Gurnar Myrdal, Asia Drama, Volume II, Pantheon, New York, 1968, p., 973.

[41] David M. Chalmmers, Encyclopedia American, America Corporation, New York, 1975.p., 22.

The definition of corruption was also put forward in the Army Central War Lords Regulation of 1958. The regulation is known as the Army Central War Ruler Regulation Number Prt/013/Peperpu/013/1958 concerning Prosecution, Prosecution, and Examination of Criminal Corruption and Property Ownership. In the War Lords' regulations, the formulation of corruption was changed to two groups of types of corruption. The two groups of types of corruption consist of:[42]

1. In the first large group, the criminal act of corruption is: a. the act of a person who with or for the purpose of committing a crime or offense of enriching oneself or another person or something that directly or indirectly harms the finances of the State or Region or harms a financial entity or region and other legal entities, which uses capital or concessions from the community. b. acts that with or for the purpose of committing a crime or offense enriching oneself or another person or a body, as well as being committed by abusing a jabtan or position. c. crimes listed in articles 209, 210, 418, 419 and 420 of the Penal Code.

2. In the second large group, what is meant by corruption is:

a. acts of a person who by or for committing unlawful acts enriches himself or others or an entity that directly or indirectly harms the finances of the State or Region or harms the finances of an entity that receives finances from assistance from the finances of the State or Region, or other bodies that use capital and concessions from the community.

b. acts that with or for the purpose of committing a crime or offense enrich oneself or another person or a body, and which is committed by abusing office or position.

According to Law Number 24 (Prp) of 1960, concerning the Prosecution, Prosecution and Examination of Corruption Crimes listed in State Institutions Number 72 of 1960, the formulation of the definition of corruption consists of two large groups. There are also two definitions of corruption in question consisting of: The First Great Group. In this group, corruption is subdivided into five types, namely:

a. whoever unlawfully commits an act of enriching himself or another person or an entity that directly or indirectly harms the finances or economy of the State or is known or reasonably suspected by him that the act is detrimental to the finances of the State or the economy of the State.

b. Whoever for the purpose of benefiting himself or others or an entity, abuses the authority, opportunity, or means available to him because of his position or position, which may directly or indirectly harm the finances or economy of the State.

c. Whoever commits a crime is listed in articles 209, 210, 387, 415, 416, 417, 418, 419, 420, 423, 425, 435 of the Criminal Code.

d. Whoever gives gifts or promises to civil servants as referred to in article 2 keeping in mind a power or an authority attached to the office or. by the giver of a gift or promise deemed attached to that position or position.

e. Whoever without reasonable reason, in the shortest time after receiving a gift or promise given to him, as mentioned in articles 418, 419 and 420 of the Penal Code does not report such gift or promise to the authorities. Second Great Group, which consists of a provision, namely whoever conducts an attempt or agreement to commit the crime in paragraph (1) a, b, c, d and e of the above Article.

The definition of corruption was also put forward in 1971. According to Law Number 3 of 1971, as stated in Article 1, there is a formulation that it is said to be corruption if:

a. whoever unlawfully commits an act of enriching himself or another person or an entity that can directly or indirectly harm the finances of the State or the economy of the State or is known or reasonably suspected by him that such acts are detrimental to the finances of the State.

b. Whoever for the purpose of benefiting himself or others or an entity, abuses the authority, opportunities or means available to him because of a position or position that can directly or indirectly harm the finances of the State or the economy of the State.

[42]Martiman Prodjohamidjoyo, Penerapan Pembuktian Terbalik dalam Berkorupsi, Bandung: Mandar Maju, 2001, p., 13.

c. whoever commits a crime is listed in Articles 209, 210, 308, 415, 416, 417, 418, 420, 423, 425, and 435 of the Penal Code.

d. Whoever gives a gift or promise to a civil servant as referred to in Article 2 keeping in mind a power or authority attached to his office or position or by the giver of a gift or promise is deemed to be attached to his office or position.

e. whoever without reasonable reason, in the shortest time after receiving the gift or promise given to him as mentioned in Sections 418, 419, 420, does not report such gift or promise to the authorities.

f. whoever makes an attempt or agreement to commit such a criminal offence under subsection (1) a, b, c, d, e of this Article. 23 Explanation of Article 1 of Law Number 31 of 1999 also contains a formulation from which it can be known that corruption crimes generally make activities that are manifestations of corruption in a broad sense. The act uses the power or influence attached to a civil servant or a privileged position that a person has in a public office. A bribing person is qualified as a person who commits a criminal act of corruption with all its legal consequences. Corruption also relates to its criminal procedural law. The reason is that the criminal act of corruption is very detrimental to the country's finances or economy. Therefore, the attempt to commit the crime of corruption is used as a separate offense. In the applicable criminal law corruption is also threatened with the same punishment as the threat to the completed crime. Furthermore, according to Law Number 20 of 2001, it also contains a formulation of the definition of corruption crimes. There are seven categories of corruption crimes according to the Undnag-Act, namely:

a. Corruption associated with state financial losses;

b. Corruption associated with bribery;

c. Corruption associated with embezzlement in office;

d. Corruption associated with extortion;

e. Corruption associated with fraudulent acts;

f. corruption associated with conflicts of interest in procurement; and

g. Corruption associated with gratification.[43]

In addition to the types of corruption crimes that have been classified into Law 20 of 2001 above, there are also other criminal acts related to corruption crimes. Criminal acts related to corruption are: a. Obstructing the process of examining corruption cases; b. Not annotating or misrepresenting; c. Banks that do not provide information on the suspect's account; d. Witnesses or experts who do not testify or give false testimony; e. The person holding the secret of office does not give information or give false information; f. The witness who revealed the identity of the complainant. Not only the above definitions, corruption is also placed as one of the organized and transnational crimes. It was found in the United Nations Convention Against Transnational Organized Crime Corruption (UNTOC) in 2000. In the formulation of the international instrument, there is a consideration related to the notion of corruption, the formulation of which is as follows:

1. The modus operandi of corruption has coalesced with the bureaucratic system in almost all States including and not limited to States in Asia and Africa and is carried out in a big way by the largest number of high-ranking officials even a president such as in the Philippines, Nigeria and some other countries in Africa; recent case involving former Prime Minister Thaksin in Thailand.

2. Corruption has been shown to weaken the system of government from within which is a dangerous virus and the cause of the process of decay in the performance of government and weakens democracy.

3. It is very difficult to eradicate corruption in a bureaucratic system that is also corrupt so it requires extraordinary legal instruments to prevent and eradicate it.

4. Corruption is no longer a domestic problem or a national problem within a State, but rather is already a problem between States or relations between two States so that it requires active cooperation between States

[43]Edi Yunara, Korupsi dan Pertanggunjawaban Pidana Korupsi, Citra Aditya Bakti, Bandung, 2012, p., 90-91.

that are interested or disadvantaged due to corruption. This is because there is a lot of evidence that assets from corruption are placed in a country that is considered safe by corruption actors.

In addition to various understandings of corruption as stated above, various efforts have been made to eradicate corruption. It's just that, it has also been mentioned above, that the results achieved in reality are still far from being expected. But it is realized that efforts to eradicate corruption are not as easy as turning the palm of the hand. Even the efforts to eradicate corruption have been carried out far from the time of the independence of the Republic of Indonesia. The existence of two provisions of laws and regulations that specifically regulate corruption crimes produced between 1960 and 1998.[44]

These two provisions prove that the Government and the State do not remain silent in the field of Eradicating Corruption. These laws and regulations include:

1. Law Number 24/Prp/1960 concerning the Prosecution, Prosecution, and Examination of Corruption Crimes;

2. Law Number 3 of 1971 concerning the Eradication of Corruption Crimes. In addition to the two laws and regulations mentioned above, the State through the People's Consultative Assembly issued regulations in the form of TAP MPR Number XI / MPR / 1998 concerning the Implementation of a Clean and Free State from Corruption, Collusion, and Nepotism. The MPR TAP provides a mandate to relevant State organizers, especially Law Enforcers, be it the Police, Prosecutors and Judges as instruments in the Eradication of Corruption Crimes. After the issuance of the MPR Tap Number XI / MPR / 1998 concerning the Implementation of a Clean and Free State from Corruption, Collusion, and Nepotism, the Law in terms of Eradicating Corruption Crimes was born which is still used today. The Act in question, namely:

a) Law Number 28 of 1999 concerning the Implementation of a Clean and Free from Corruption, Collusion and Nepotism (Statute Book of the Republic of Indonesia of 1999 No. 75, Supplement to the Statute Book of the Republic of Indonesia No. 3851). The Act amends. law No. 3 of 1971. The Act hereinafter referred to as the Corruption, Collusion and Nepotism Act.

b) Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Statute Book of the Republic of Indonesia of 1999 Number 140, Supplement to the State Gazette of the Republic of Indonesia Number 3874). The law amends law No. 3 of 1971. The Act hereinafter referred to as the Corruption Act.

c) Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Statute Book of the Republic of Indonesia of 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150). The Act is hereinafter referred to as the Law on Amendments to Corruption Crimes.

d) Law Number 30 of 2002 concerning the Corruption Eradication Commission (Statute Book of the Republic of Indonesia of 2002 Number 137), Supplement to the State Gazette of the Republic of Indonesia Number 4150). The Law is hereinafter referred to as the Corruption Eradication Commission Act. [45]

In addition to the Act as outlined above, there are also regulations that are based on their order under the law. The regulations are made jointly between law enforcement agencies. The 27 Ibids of these regulations include: Presidential Decree of the Republic of Indonesia Number 11 of 2005 concerning the Establishment of a Coordination Team for the Eradication of Corruption Crimes; Government Regulation Number 19 of 2000 concerning the Joint Team for the Eradication of Corruption Crimes; Presidential Instruction of the Republic of Indonesia dated December 9, 2005 Number 4 of 2005 concerning the Acceleration of the Eradication of Corruption Crimes and has formed an ad hoc Timtastipikor team led by the Young Attorney General for Special Crimes of the Attorney General's Office of the Republic of Indonesia who is directly responsible to the President; Joint Decree of the Chairman of the Corruption Eradication Commission with the Attorney General of the Republic of Indonesia Kep: 1.1121.2005 and Number: Kep: 1A1J. A112/2005 concerning KPK Coopera-

[44] Romli Atmasasmita, Pembuktian Terbalik Dalam Kasus Korupsi, makalah disampaikan dalam seminar Pembuktian Terbalik dan Transaksi Keuangan Non-Tunai: Strategi Baru pemberantasan korupsi, diselenggarakan oleh Fakultas Hukum Universitas Sriwijaya Palembang, September 2011, p.,12.

[45] Arief Wahyudi Hertanto dan Arief Nurul Wicaksono, Tindak Pidana Korupsi Antara Upaya Pemberantasan dan Penegakkan Hukum. Pelita, Jakarta, 2007, p., 23

tion with the Prosecutor's Office in the context of Eradicating Corruption in Indonesia. In 2018 the Government issued Presidential Regulation Number 54 of 2018 concerning the National Strategy for Corruption Prevention, together with the KPK, KSP, Bappenas, Ministry of Home Affairs, and Ministry of Home Affairs to follow up and prepare for the implementation of the National Strategy for Corruption Prevention. National Program by involving the entire state apparatus in the prevention of corruption. In addition to making strict regulations regarding corruption in legislation, Indonesia also actively participates in the efforts of the International Community for the prevention and eradication of corruption crimes.[46]

Evidence of Indonesia's activities in the eradication of corruption at the international level, namely with the signing of the United Nations Convention Against Corruption (UNCAC). The international convention to combat corruption was signed on December 18, 2003. The signing was carried out at the headquarters of the United Nations. The convention was adopted from the 58th session of the General Assembly through resolution No. 58/4 on 31 October 2003. Currently, Indonesia has ratified it through the Law of the Republic of Indonesia Number 7 of 2006 concerning the Ratification of UNCAC on April 18, 2006. The ratification of the Convention as stated above is a national commitment to improve the image of the Indonesian nation in the international political arena. Another significance of the ratification of the Convention is:

a) to enhance international cooperation, especially in tracking, freezing, confiscating, and returning assets resulting from corruption crimes placed abroad;

b) increase international cooperation in realizing good governance;

c) enhance international cooperation in the implementation of extradition treaties, mutual legal assistance, surrender of prisoners, transfer of criminal proceedings, and law enforcement cooperation;

d) encourage the establishment of technical cooperation and information exchange in the prevention and eradication of corruption under the umbrella of economic development cooperation and technical assistance in the bilateral, regional, and multilateral spheres; and

e) harmonization of national laws and regulations in the prevention and eradication of corruption in accordance with this Convention.

CONCLUSION

The government's efforts in preventing and cracking down on corruption have not had a significant impact on efforts to eradicate corruption in Indonesia. The types of criminal sanctions in the form of corporal punishment, fines and compensation with various variations of sanctions and the like have not been optimally expected. Corruption is like an iceberg that poses a threat to the survival of the community and state. The threat to the continuity of social and economic life is strongly felt by increasingly creating a gulf between hedonistic communities with the results of corruption and the poor due to structural policies. Criminal sanctions in the form of imprisonment do not create a deterrent effect on the perpetrator, because imprisonment only makes and creates a certain community base. Prison sentences have not had a positive impact on the eradication of corruption. Efforts are being made to improve and renew the Indonesian legal system in legal substance, legal construction and legal instruments regarding the confiscation and return of assets, making and ratifying laws and regulations relating to the seizure of assets, the existence of special rules as the legal basis and basis for law enforcement in carrying out their duties. confiscation and return of assets.

BIBLIOGRAPHY

1. Abdul Manan, 2005, Aspek-aspek Pengubah Hukum, Prenada Media Group, Jakarta

[46] Arief Wahyudi Hertanto dan Arief Nurul Wicaksono, Tindak Pidana Korupsi Antara Upaya Pemberantasan dan Penegakkan Hukum. Pelita, Jakarta, 2007, p., 23

2. Adami Chazawi, Hukum Pidana Formil dan Materil Korupsi di Indonesia, Media Publishing, Malang, 2005

3. Adriaan W. Bedner, 2012, Kajian Sosio-Legal (Seri Unsur-Unsur Penyusunan Bangunan Negara Hukum), Jakarta : Universitas Indonesia

4. Andi Hamzah, Korupsi di Indonesia Masalah dan Pemecahannya, Gramedia, Jakarta, Pustaka Utama, 1998

5. Anis Mashdurohatun, .Ali Mansyur, M. Product capabilities dynamic on industrial design carved wood in small and medium enterprises (SMES) jepara furniture in promoting the protection of intellectual property rights, *International Journal of Applied Engineering Research*, 2017, 12(19),

6. Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object, Volume 8, Issue 3, 2021.

7. Anis Mashdurohatun, Kamaliya, N. Legal protection of consumer reviews in social media based on local wisdom values, International Journal of Advanced Science and Technology, 2020, 29(6),

8. Anis Mashdurohatun,Gunarto, Jati, R.H.H, . A policy handling domestic violence against women in Indonesia based on justice, International Journal of Innovation, Creativity and Change, 2020, 13(4)

9. Arief Wahyudi Hertanto dan Arief Nurul Wicaksono, Tindak Pidana Korupsi Antara Upaya Pemberantasan dan Penegakkan Hukum. Pelita, Jakarta, 2007

10. Arief Wahyudi Hertanto dan Arief Nurul Wicaksono, Tindak Pidana Korupsi Antara Upaya Pemberantasan dan Penegakkan Hukum. Pelita, Jakarta, 2007

11. Bambang Hartono, Analisis Pelaksanaan Pidana Ganti Kerugian(Denda) Dalam Tindak Pidana Korupsi,Keadilan Progresif Volume 2 Nomor 1 Maret 2011

12. Barda Nawawi Arief, 2003, Kapita Selekta Hukum Pidana, Citra Aditya Bakti, Bandung

13. Chaerudin, *Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi*, (Bandung: PT Refika Aditama,2008)

14. David M. Chalmmers, Encyclopedia American, America Corporation, New York, 1975

15. Edi Yunara, Korupsi dan Pertanggunjawaban Pidana Korupsi, Citra Aditya Bakti, Bandung, 2012

16. Evi Hartanti, *Tindak Pidana Korupsi*, (Jakarta : Sinar Grafika, 2012)

17. Evi Hartanti, Tindak Pidana Korupsi, Sinar Grafika, Jakarta, 2005

18. Evi Hartati, Tindak Pidana Korupsi, Sinar Grafika, Jakarta, 2007

19. Gurnar Myrdal, Asia Drama, Volume II, Pantheon, New York, 1968

20. Gusti Ayu Ketut Rachmi Handayani, I.,Gunarto, G.,Mashdurohatun, A.,Gusti Putu Diva Awatara, I.,Najicha, F.U, Politic of legislation in Indonesia about forestry and the mining activity permit in the forest area of environmental justice Journal of Engineering and Applied Sciences, Volume 13, issue, 6, 2018,.

21. Hendarman Supandji, 2006, *Substansi Uang Pengganti dalam Tindak Pidana Korupsi*, Makalah Penataran Tindak Pidana Korupsi) Puslitbang Kejaksaan Agung R.I. tanggal 5- 6 Juli 2006.

22. Hioe, J.K., Mashdurohatun, A., Gunarto, Tarigan, I.J.Reconstruction of pretrial institution function in supervising investigator authorization based on justice value with moderating role of supply chain management, *International Journal of Supply Chain Management*, 2020, 9(3).

23. IGM. Nurdjana. Sistem Hukum Pidana dan Bahaya Laten Korupsi, Pustaka Pelajar 2010.

24. Indung Wijayanto,Kebijakan Pidana denda di KUHP dalam Sistem Pemidanaan Indonesia,Jurnal Pandecta, Volume 10 Nomor 2 Desember 2015,

25. James Morwood, The Pocket Oxford Latin Dictionary, Oxford University Press, Oxford, 1993,

26. Jan Remmelink, 2003, Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dalam Kitab Undang Undang Hukum Pidana Belanda dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia, , PT Gramedia, Jakarta.

27. Johnny Ibrahim, 2005, Teori & Metodologi Penelitian Hukum Normatif, Malang : Bayumedia Publishing,

28. Johny Ibrahim, 2006, Normative Legal Research Theory and Methods, Malang : Bayumedia,

29. Krisna Harahap, 2006, *Pemberantasan Korupsi Jalan Tiada Ujung*, Bandung: Grafitri

30. Maniah; Bin Bon, Abdul Talib; Hariadi, Andi Kahar; Gunarto; Mashdurohatun, Anis; et al. Mapping the Competencies and Training Needs of Human Resources to Improve Employee Performance in Indonesia After the Covid-19 Pandemic, *Quality - Access to Success*, 2023, 24(195)

31. Marriam Webster, New International Dictionary, G&C Marriam Co. Publishers Springfield Mass, USA, 1985.

32. Martiman Prodjohamidjoyo, Penerapan Pembuktian Terbalik dalam Berkorupsi, Bandung: Mandar Maju, 2001

33. Munir Fu'ady, 2005, Perbuatan Melawan Hukum, Bandung: PT. Citra Aditya Bhakti

34. Ninik suparni dalam Wahyuningsih, Ketentuan Pidana Denda Dalam Kejahatan Korupsi Di Tingkat Ex- traordinary Crime, al-Jinâyah: Jurnal Hukum Pidana Islam Volume 1 , Nomor 1 , Juni 2015

35. Peter Mahmud Marzuki, 2005, Penelitian Hukum, Jakarta : Kencana Prenada Media Group

36. Poerwadarminta, Kamus Umum Bahasa Indonesia, Balai Pustaka, Jakarta, 1976,.

37. Romli Atmasasmita, Pembuktian Terbalik Dalam Kasus Korupsi, makalah disampaikan dalam seminar Pembuktian Terbalik dan Transaksi Keuangan Non-Tunai: Strategi Baru pemberantasan korupsi, diselenggarakan oleh Fakultas Hukum Universitas Sriwijaya Palembang, September 2011

38. Sacipto, R., Prasetyo, T., Mashdurohatun, A., Ciptono, Analysis of the implementation regulations for police actions as law enforcement of corruption cases constitutional court, *International Journal of Psychosocial Rehabilitation*, 2020, 24(3)

39. Soedjono D, 1989, Sistem Peradilan Pidana Peraturan Umum dan Delik-Delik Khusus, RajawaliPers, Jakarta

40. Soerjono Soekanto, 2008, Faktor-Faktor yang Mempengaruhi Penegakan Hukum , PT. Raja Grafindo Per- sada, Jakart.

41. Sudarto, 1996, Hukum dan Hukum Pidana, Cetakan Keempat, Alumni, Bandung

42. Sudarto, Hukum dan Hukum Pidana, Alumni, 1986, Bandung.

43. Sunaryati Hartono, 1994, Indonesian Legal Research at the End of the 20th Century, Bandung: Alumni,

44. Syaiful Bakhri, Kebijakan Legislatif tentang Pidana Denda dan Penerapannya dalam Upaya Penanggulan- gan Tindak Korupsi, Jurnal Hukum No. 2 Vol. 17 April 2010

45. Teguh Prasetyo, Keadilan Bermartabat, Perspektif Teori Hukum, Cetakan Pertama, Nusa Media, Bandung, 2015.

46. Theodorus M. Tuanakotta, *Menghitung Keuangan Negara dalam Tindak Pidana Korupsi* (Jakarta: Salemba Empat,2004)

47. Usmawadi, 1992, Materi Pendidikan dan Kemahiran Hukum, Palembang : Laboratorium Hukum Fakultas Hukum UNSRI.

48. Wahyuningsih, Ketentuan Pidana Denda Dalam Kejahatan Korupsi Di Tingkat Extraordinary Crime, alJinâyah, Jurnal Hukum Pidana Islam Volume 1 , Nomor 1, Juni 2015

49. Wahyuningsih,"*Ketentuan Pidana Denda Dalam Kejahatan Korupsi Di Tingkat Extraordinary Crime"*, Jurnal Hukum Pidana Islam, Volume 1, (Juni 2015)