



Application Of Supplementary Penalty As A Substitute For Money In Cases Of Corruption Criminal Proceedings

Muammar^a, Maulana Meldandy^b

^aIAIN Sultan Amai Gorontalo, Email: muammar@iaingorontalo.ac.id

^b Cabang Kejaksaan Negeri Payakumbuh, Yogyakarta, Email: mmeldandy@gmail.com

Abstract

The determination of additional punishment in the form of "replacement money" should ideally be equal or balanced with state financial losses as a result of criminal acts of corruption. Interesting in the decision of the Semarang District Court Number: 32/Pid.Sus/2012/PN.Tipikor.smg there is an unequal determination of "replacement money" when compared to state financial losses caused by criminal acts of corruption committed by the defendant in the "Budget" corruption case. Maintenance of Motorized Service Vehicles by the Chairperson of the Regional Legislative Council of Grobogan Regency for the 2009-2014 period". This type of normative legal research with a normative juridical approach examines library materials in the form of books, magazines and legislation that correlates with the discussion of the problem. Regarding the legality of additional criminal charges in the form of substitute money in corruption cases, it is stated in Article 18 paragraph (1) letter b of Law no. 31 of 1999 concerning the Crime of Corruption, namely "payment of compensation as much as possible equal to the property obtained from the crime of corruption". The judge's consideration in the decision above is concluded to be less relevant if it is associated with additional penalties in the verdict in the form of replacement money.

Keywords: corruption; replacement money; supplementary penalty

a. Introduction

The issue of corruption crime in Indonesia is top-ranked in matters that are urgently to be dealt with in Indonesia, both in prevention, financing, and restoration. In this regard, the role of legislative, law enforcement agencies, especially anti-corruption institutions or courts becomes important, given that the processes relating to law-enforcement in Indonesia have been regulated in such a way through the law of criminal events that will help enforce or implement material criminal law on concrete cases. In this case, a real crime of corruption actually happened in front of him.

One of the elements of corruption in Indonesia is the existence of financial losses of the state, in particular in article 2 paragraph (1) and article 3 of the Law No. 31 of 1999 on the Suppression of Criminal Prosecutions of Corruption, as amended by the Act No. 20 of 2001 on the Amendment of the law No. The losses to the state's finances, in the judgment, are closely linked to the criminal sanctions known as the term compensation money, in order to fulfil the element of justice in its law enforcement.

Interestingly, in the judgment of the State Court in Semarang, there is an inappropriate or impartial establishment of "substitution money" when compared with the state financial losses caused by the corruption crime committed by the accused in the case of corruption "Budget of Maintenance of Motor Vehicles Service by the Chief DPRD of Grobogan District for the period 2009-2014 which he noted as the former Chief of the DPRD district of grobogan during the period 2004-2009.

Based on the above, the author intends to discuss and analyze the scientific research entitled "Application of Supplementary Penalties in Corruption Criminal Cases; (Case Study: Establishment of Replacement Money Not Balanced with the Financial Losses Caused by the State)". In connection with what has been presented earlier, then can be



formulated the issues, namely How the legality of Replace Money as a Supplier Penalty in a corruption case and How consideration of the judge in determining the additional penalty is Replacing Money in Judgment No. : 32/ Pid.Sus/ 2012/ PN.Tipkor.Smg?

The purpose of this scientific paper is to explain how the legality of money replacement as an additional criminal sanction in cases of corruption causing financial losses to the state, as well as to find out how the method of a judge in formulating such a matter falls within the considerations he uses in resolving a corruption criminal case. With regard to the benefits of this research, it is hoped that readers and authors will be able to learn about the legality of additional criminal compensation money in the sense of the theories or doctrines related to it, as well as to know the methods of the judge in formulating a criminal case of corruption related to the establishment of criminal additional compensatory money related to losses to the state finances.

b. Research Method

This research is related to the type of normative law research that is conducted with a juridical normative approach, that is to say, the legal research carried out by studying library materials, which uses the object of writing study such as existing libraries, be it books, magazines, and regulations that have correlations to the discussion of problems.

c. Results and Discussion

1. The Concept

a. Corruption

The definition of corruption according to Fockema Andreae comes from the Latin *corruptio* or *corruptus* (Webbster Student Dictionary:1960). It is further mentioned that *corruptio* is also derived from the word *corrumpere*, an older Latin word. From Latin it came down to European languages such as English (Corruption, Corrupt); French (Corruption); and also Dutch (*corruptie* / *Corruptie*). Then from Dutch it eventually went down to Indonesian, which is 'corruption'.

Corruption literally means corruption, wickedness, cruelty, dishonesty, impudence, immorality, deviation from purity, insulting or defamatory words or speech as read in The Lexicon Webster Dictionary: "corruption {L. corruption (n-)} The act of corrupting, or the state of being corrupt; putrefactive decomposition, putrid matter; moral pervesion; depravity, perversion of integrity; corrupt or dishonest proceedings, bribery; perversions from a state of purity; debasement, as of a language; a debased form of a word" (The Lexicon 1978).The term corruption that has been accepted in the Indonesian vocabulary, is concluded by Poerwadarminta in



the General Dictionary of Indonesians: "Corruption is a bad act like money laundering, receiving money fraud, and so on".

Corruption within the scope of criminal law can be said to have a variety of patterns within it. This time the corruption discussed is narrowed to the circle of the Law on the Suppression of Criminal Acts of Corruption, in particular to the part of material criminal law, because as we know the law also contains a formal law that distinguishes it from general criminal law because it is a special criminal law in the sense that special penal law regulates separately the substance and format of the law contained therein.

The Act No. 31 of 1999 and the Law No. 20 of 2001 on Punishment of Corruption (Tipikor Act), in particular Articles 2 and 3 make the element of the financial loss of the state as one of the elements of corruption. According to the Institute for Research and Advocacy for the Independence of the Judiciary (LeIP) records in 2013. Although only two chapters, the provisions are most often used by law enforcement agencies (police, prosecution and anti-corruption commission) to trace corrupt perpetrators. Corruption referred to in article 2 paragraph (1) of the PTPK Act is corruption committed by any person who unlawfully commits an act of enriching himself or a corporation that causes financial loss to the state.

The spirit contained in these two chapters may be intended to give a jera effect on the perpetrators and force the money of corruption that has been by the corrupt to be returned to the state. The money of the state must have been used for the welfare of the people and not for the well-being of the corrupt.

b. State Finances And Financial Losses Of The State

The financial loss of the state in the dimension of criminal law, in this case the criminal offence of corruption is as defined in sections 2, 3 and 4 of the Act No. 31 of 1999 on the Suppression of the Criminal Prosecution of Corruption as amended by the Law No. 20 of 2001 on the Amendment of the Law no. 31 from 1999. In the law, there is no clear explanation as to how the financial losses of the State referred to in articles 2, 3, and 4 as one of the elements of the criminal offence of corruption referred therein, which exists only concerning the state finances as contained in the Chapter of Explanation, namely: "The State finances in question are all state property in any form, separately or not, including all parts of the state property and all rights and obligations arising from: (a) being in the possession, management, and



responsibility of officials of State institutions, both at the central level and in the region; (b) be in the ownership, administration, and accountability of State Property Agency / Regional Enterprise, foundations, legal bodies, and companies that include state capital, or companies which include third-party capital under agreements with the State".

From the explanation of the financial definition of the State is associated with a loss that means to bear or suffer loss, something that is considered to cause loss, such as damage and damage is to be a loss or decrease. Therefore, the notion of state financial losses is very broad, it can be said to anticipate actions or acts that are 'unlawful' or deviate in the use of state resources'. State financial loss in the jurisprudence can be understood in the sense of decreasing state wealth or increasing State obligations without being offset by the performance caused by the 'lawless' acts. According to the law of the State administration, there is in article 1, paragraph 22 of the Law No. 1 of 2004 on the State Treasury and in article 1 paragraph 15 of the Act No. 15 of 2006 on the Financial Supervisory Authority, which both define: "Financial loss of the state/region is a lack of money, securities, and goods, which are real and certain amounts as a result of acts against the law either intentionally or unintentionally".

Thus, what is meant by the State financial loss can be in the form of money loss, security, and merchandise within the scope of the definition of State finance as regulated by the Law no. 17 of 2003 on State Finance, the Act no.15 of 2006 about the financial supervisory authority, and the Act number 31 of 1999 jointly with the Law, No. 20 of 2001, but abbreviated with the specification of: real and quantity, as a consequence of an act against the laws both intentional and unintentional. Thus, the financial losses of the State must be tangible and must be proportionate to the financial perception of the state itself.

c. Financial Losses Of The State Related To The Supplementary Penal Decision On The Return Of State Money

These types of compensation, listed in article 10 of the Covenant, also apply to non-Covenant regulations, except that they derogate from the provisions of article 103. These types of punishment are distinguished between substantive and additional crimes. The punishment is the following:

- a. Punishment: death penalty, imprisonment, incarceration, fine penalty and closure penalty.
- b. Penalties: forfeiture of certain rights, confiscation of certain goods, and publication of the judge.



Criminal sanctions regulated by the Corruption Punishment Act, namely: Death penalty. According to article 69 of the Code of Human Rights, death is the most severe offence for threatening the survival of himself and others. Replacement payments, including additional penalties listed in article 18, paragraph (1) of the PTPK Act. The following is a distinction with the basic punishment, namely:

1. The fall of one of the criminals is a must or imperative, while the fall of an additional idea is optional. The imperative nature can be seen in the formula of crime. There are two possibilities, namely the threat of one of the main crimes so that the judge does not want to have to drop the crime according to the formula or can jug the crime that is threatened by two or more types of crime so that a judge can choose only one.
2. The falling of a substantive crime shall be accompanied by an additional penalty, whereas the fall of an additional crime shall have the same penalty.
3. The fall of the substantial crime, if it has been legally enforceable, shall be enforced by the executive, while the extra penalty shall not be carried out. (pasal 14a)
4. Trees can not be dropped cumulatively. Meanwhile, the criminal mine gets. However, it can still be violated by some laws including the PTPK Act.

The criminal definition of payment of substitute money is derived from article 18 of the Yat Act (1) letter b of No. 31 of 1999 "Payment of replacement money equal to property obtained from corrupt offences". In determining and proving the amount of property obtained from corrupt offences, no exception is made to property that is not in his possession or has been removed at the time of the judgment being read.

In practice, the amount of compensation imposed by the judge varies. The factors that dominate several decisions regarding the establishment of large amounts of compensation are at the discretion of the judge with its own calculation, whether the result of corruption has been restored or corruption committed jointly whose replacement is charged responsibly.

If we look from the side of justice, it is reasonable when there is a corruption case that causes financial losses to the state, then the perpetrators of such corruption criminal offences should be punishable by the additional penalty in the form of compensation money regulated in article 18 of the Act, which reads: Article 18 (1) In addition to the additional penalties as referred to in the Code of Criminal Law, as an additional criminal offence are:

- a. the seizure of movable goods, whether tangible or non tangible, or non-movable things used for or obtained from the crime of corruption, including



the company owned by the custodian in which the corruption crime is carried out, as well as of the goods that replace such goods;

b. payment of substitutes in the amount not exceeding the amount of property obtained from the crime of corruption;

c. closure of the whole or part of the company for a maximum period of one (one) year; d. withdrawal of all or some of certain rights or the removal of all, or part, of certain profits, which have been or may be granted by the Government to the debtor.

(2) If the defendant fails to pay the replacement payment as referred to in paragraph (1) (b) not later than within 1 (one) month after the judgment of the court which has become legally binding, then his property may be seized by the prosecutor and auctioned to cover the substitution money.

(3) In the case of the defendant who does not have sufficient property to pay the replacement money as referred to in paragraph (1) (b), he shall be sentenced to imprisonment for a period not exceeding the maximum threat of the substantive offence in accordance with the provisions of this Law and the duration of the offence has been determined in the judgment.

Nevertheless, in its implementation From the results of research by Hernold Ferry Makawich examines the relationship between the financial losses of the state and the additional penalty of compensation in his book, there are some differences in the bitterness of the judge's judgment related to the additional penalties of the compensation, namely:

1. Replacement money is greater and equal to the financial loss of the State;
2. Replacement money less than the financial loss of the State;
3. There are no additional penalties for the return of state money.

First, the compensation is greater and equal to the state's financial losses, in his conclusion, Hernold said, "if the approach to the calculation of the state financial loss is carried out by the authorities (competent, professional, and independent) then the prosecution and prosecutions by the Prosecutor-General as well as the trial process, the judge's verdict is truly fair in the context of "true justice", then the dismissal of the court "the fact trial conclusion of the State financial loss equals the return of state money" is an ideal verdict that highlights "the principles of independence and impartiality of the judiciary". Thus, according to Hernold in his investigation concerning the fact that the trial of a judge's judgment establishing an additional penalty of compensation of a value equal to or even greater than the financial loss of the state, is something that should be dropped by the judge to the accused in a corruption criminal case because it is considered to have been in accordance with the basis of justice that must be present in the



judges' considerations in his judgement as well as upholding the principles of independence and impartiality of the judiciary.

Secondly, a smaller replacement money is the loss of the state's treasury. In the same book, it is said that “the calculation of state financial losses with additional criminal judgments of the State’s ‘smaller’ refunds, shows that the problem occurs with weak calculation approaches, but also more of the weakness of the complaint and judgment does not show relevance between the outcome of the calculations of the state’s financial loss in the Prosecutor General’s indictment, the judge’s consideration and the additional criminal ruling of the ‘small’ State’s refund, contains the meaning that there is a lack in the legal consideration (onvoldoende gemotiveerd) of its specific aspects of consideration of additional punishment on the ‘counting of compensation for losses’, even though this is the jurisdiction of the judges”.

Although it is considered to be a weakness in the calculation and consideration of the law, it cannot be blamed entirely. For the lawsuits that the Prosecutor General has brought to the Judge at trial restore the judge's freedom in delivering the judgment that is deemed fair and good.

Third, the additional criminal restitution of state money “no” in a corruption criminal court ruling is based on the absence of the relevant judge’s consideration. When the judgment proves that there is a mistake in the calculation of the financial loss of the state, it is rejected or reimbursed. Otherwise, when the judge's consideration does not indicate the existence of the arguments that are used as the basis of legal considerations.

d. Judge's judgment

The judge, as one of the law enforcement bodies, in carrying out his duties, in deciding a case in court, must take note of a number of things and must include them in his decision, namely: legal certainty (rechtssicherheit); utility (zweckmassigkeit); and justice. (gerechtigk eit).

First, legal certainty, is a protection against arbitrary action, in this case, corrupt people who use state money for their personal interests. When associated with the theory of cause and effect, then when there is an act that can be categorized as 'against the law' and has met all the elements of a rule, then it is the judge who is responsible for enforcing the law by applying the rule to the act that falls into the category 'against the law'. Secondly, the exploitation, in this case a society that has hanged itself and hoped for the protection of the state, according to the



theory of John Locke, must expect a benefit from such a law enforcement, in that case it must eliminate what is called corruption from all those who act arbitrarily against something that is not its 'right'. And thirdly, is the element of justice in the enforcing of the law, the society very much expects justice from the law enforce, in the sense when associated with Islamic law, whoever kills then the punishment equal is to take his life, whosoever steals then his hand will be cut off, and back to this writing, in case of corruption when he damages the state's finances then he must compensate for such losses, or even someone argues that the corruptor deserves to be punished 'poisoned' to 'effect' on him, or in some countries like China / even impose the death penalty to the prisoners for the good of what is done, for the sake of justice, for what is considered to be done by the State, or for what aspects of the society.

When doing law enforcement, a judge must also have a duty to make a legal discovery. Prof. van Apeldorn argues that the way a judge makes a legal discovery can be done in the following ways:

- a. Make adjustments between the law and the concrete events that occur in the community;
- b. Add (anvullen) when deemed necessary.

The verdict is an important aspect of the settlement of criminal cases. Therefore, in Indonesia, the system/theory of proof (Negatief Wettelijke Bewijs Theorie) is adopted. In principle, this proof system determines that the judge can only declare a criminal offence against the accused when the means of evidence have been prescribed by the law and supported by the presence of a judge's belief in such means. According to the doctrine the judge is deemed to know the law (*ius coria novit*) and the judgment is considered to be true (*res judicata pro veritate habetur*). In the case of corruption, then, the basis of the judge's consideration is to adhere to the legal justice that is embedded in the norms of the law in force.

In determining the amount of replacement money, the judge applied the 2 (two) model of charge that has been used. The first model, the loading of the straps. When the defendant has paid a substituted amount of money, it automatically falls for the other. As for the second model, the model of proportional loading. The criminal charge of the replacement money by the judges' assembly in its



final judgment definitively determines the great burden of the holding on the substitution money. The amount of compensation is based on the interpretation of the judge. Another consideration seen by the judge is that from the defendant's side, the judges also consider the sociological aspect, that is, the social aspect that is not regulated by law, but should be considered socially and humanely. In order to meet the criterion that a judgment must include certainty of justice and legal certainness, a judge's judgement must fulfil some of the following conditions:

1. Reflecting Pancasila's philosophical values

The judge's judgment must reinforce Pancasila's philosophical values which have become the philosophy and life view of the Indonesian people. This is as stipulated by the Law No. 48 of 2009 on the Power of the Judiciary contained in Article 1 that "The power of the judiciary is the power of an independent state to organize justice in order to enforce the law and justice based on Pancasila for the organization of the State of Law of the Republic of Indonesia".

2. Meet the Yuridis Conditions

The main feature of the litigation process according to the Grand Listianto (2010:62), is to qualify the juridic.

- a. It has a legal basis.
- b. Giving legal certainty
- c. Provides legal protection In the area of material law, the judge's judgment must contain the grounds and grounds for the judgement, as well as certain articles of the relevant provisions of the Constitution or unwritten sources of law that serve as the basis for the trial, such matters as contained in Article 25 of the Law No. 48 of 2009 on the Power of the Judiciary.
- d. Meet the sociological criteria According to Maj. Listianto (2010:63), a sociological condition must include at least three elements, namely:
 - a. Fulfilling a sense of justice
 - b. Restoring social connections
 - c. Giving comfort and well-being

e. RESULT AND DISCUSSION

1. The legality of replacement money as an additional penalty



Concerning the additional criminal form of compensation money which is generally filed by the prosecutor general to the court is regulated in the following articles:

Article 18 of the Act No. 31 of 1999 on the Suppression of Corruption Criminal Proceedings states:

- a. In addition to the additional criminal offences as referred to in the Code of Criminality, the additional penalties shall be:
 - 1.) the seizure of movable or non-movable goods used for or obtained from corruption crimes, including the company in which the corruption crime is committed, as well as of substitutes for such goods;
 - 2.) the payment of compensation money in an amount not exceeding the amount of the property acquired as a result of corruption criminal proceedings;
 - 3.) the closure of the whole or part of the company for a period of not more than one (1) year;
 - 4.) the withdrawal of all or a part of certain rights or the removal of the entire or some of the profits, which may or may have been granted to the Government.

b. If the defendant fails to pay the compensation as referred to in paragraph (1) (b) within 1 (one) month after the judgment of the court which has become legally binding, then his property may be seized by the prosecutor and auctioned to cover the compensatory money.

c. In the case of a defendant who does not have sufficient property for the payment of the compensating money as described in the paragraph (2) (b), he shall be sentenced to a penalty of imprisonment not exceeding the maximum threat of the criminal offence in accordance with the provisions of this Law and the duration of the penalty has been determined in the court decision.

If it is seen from the provisions relating to the financial losses of the State in this case the regulation concerning compensation money in the case of corruption criminal cases that the maximum limit of the additional penal sanctions compensation cash in the criminal case corruption is to a large extent equal to the property obtained from the corruption crime. As has been stated above, there is no clear understanding of what is a state financial loss in the Law No. 31 of 1999 on the Suppression of Criminal Prosecution of Corruption, which has been refined by the Act No. 20 of 2001. The explanation relating to the financial losses of the State exists only in the Explanatory Chapter of the Act, namely: "The state finances concerned are all state assets in any form,



whether separate or not, including all parts of the state property and all rights and obligations arising from:

- a. being in the possession, management, and responsibility of officials of State institutions, both at the central level and at the local level;
- b. being in control, administration, and accountability of State-owned enterprise agencies/regional owned enterprises, foundations, legal bodies, and corporations involving state capital, or companies involving third-party capital on the basis of agreements with the State”.

But the disadvantage is that there is no limitation in the meaning of the state's financial losses referred to in the explanation of the law, which can make many interpretations and can also cover the entire fraud or arbitrary acts against the wealth of the State by the perpetrators of corrupt crimes.

The question arising from the above explanation when linked to the case that occurred in the Semarang State Court in connection with the criminal offence of corruption committed by the head of the DPRD district Grobogan is whether the judge's consideration in the establishment of additional penalty compensation money in the corruption case of the Chief of the Democratic Party of the district grobogan has been in accordance with the foundations of justice if reviewed from the jurisprudential, philosophical, as well as sociological points of view that he used in formulating an amarged judgment?

Discussions related to the method of the judge in formulating an amarged judgment in connection with the corruption case of the Chief of the DPRD district of Grobogan during the period 2009-2014 that notabene the former chief of DPRD of the district, the period 2004-2009 will be discussed in the next sub-chapter.

2. Judge's consideration in imposing additional penalty as a substitute

This paper will focus on research on the decision of the Semarang District Court. in the judge's consideration before deciding the corruption case reads more or less as follows:



Considering, that the actions of the Defendant are in accordance with the Audit Report of the Central Java Representative BPKP Investigation No. LHAI -/ PWII/ 5/ 2009 dated December 29, 2009 as stated in the Audit Report of the Central Java Representative BPKP: LHAI -/ PWII/ 5/ 2009 dated December 29, 2009 as stated in the Investigative Audit Report on alleged irregularities in the Maintenance of Service Vehicles of the Grobogan Regency DPRD Secretariat for the 2006, 2007 and 2008 Fiscal Years has caused losses to the State finances cq local government finances of Grobogan Regency in the amount of Rp. 1,959,457,343, - (one billion nine hundred fifty nine million four hundred fifty seven thousand three hundred forty three rupiah), so that it has harmed the state finances;

Considering, that based on the facts revealed in the trial, the state losses incurred as a result of being used for the personal interests of the defendant from 2006 to 2008 amounted to Rp.611,171,574 (six hundred eleven million one hundred seventy-one thousand five hundred seventy-four rupiah);

Considering, that the defendant has returned the money used for the personal benefit of the defendant which was a loss to the State to the Regional Treasury of Grobogan Regency in the amount of Rp.423,808,000, - (four hundred twenty three million eight hundred eight thousand rupiah) with details of proof of Deposit Certificate dated December 07, 2009 in the amount of Rp.229,000,000, - (two hundred twenty nine million rupiah), dated December 08, 2009 in the amount of Rp.170 000,000, - (one hundred seventy million rupiah) and on December 10, 2009 amounting to Rp.24,808,000, - (twenty-four million eight hundred eight thousand rupiah) on the pretext that it was the defendant's good intention so that there would be no loss to the State and so as not to cause problems in the future, this indirectly the defendant has admitted to using the maintenance budget for motorized official vehicles for the personal benefit of the defendant.

Considering, that based on the facts revealed during the trial, the Defendant committed the aforementioned acts in stages and between the period of 2006 to 2008 so that the total expenditure for the personal interests of the defendant from 2006 to 2008 amounted to Rp.270,870,117, - (two hundred seventy million eight hundred seventy thousand one hundred seventeen rupiah), with the same intention or purpose, namely to benefit the Defendant himself.



Considering, that based on the aforementioned considerations, it is evident that the actions of the Defendant have fulfilled all the elements of the subsidiary charge, so that the Panel concludes that the Defendant has been legally and convincingly proven to have committed the crime charged to him, namely violating Article 3 of Law Number 31 of 1999 on the Eradication of the Crime of Corruption, as amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of the Crime of Corruption jo. Article 64 paragraph (1) of the Criminal Code;

Considering, that with the fulfillment of all elements of the criminal offense in Article 3 of Law No. 31 of 1999 on the Eradication of the Crime of Corruption, as amended by Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of the Crime of Corruption, jo. Article 64 paragraph (1) of the Criminal Code as considered above, then the Panel considers that what is stated by the Defendant's Legal Counsel in his Memorandum of Defense insofar as the Defendant is innocent does not need to be responded to;

Considering that the indictment of the Public Prosecutor has been charged with Article 18 of Law Number 31 of 1999 Concerning the Eradication of the Crime of Corruption as amended by Law Number 20 of 2001 Concerning the Amendment to Law Number 31 of 1999 Concerning the Eradication of the Crime of Corruption as stated in the indictment of the Public Prosecutor, is an additional punishment that will be imposed on the Defendant if the Defendant is found to have been legally and convincingly proven guilty of committing the crime of corruption;

Considering that because the Accused has been found guilty of committing the crime of corruption as stated in the legal considerations of the Panel on the subsidiary charges, namely Article 3 of Law Number 31 of 1999 on the Eradication of the Crime of Corruption as amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of the Crime of Corruption, then in accordance with the provisions of Article 18 of Law Number 31 of 1999 on the Eradication of the Crime of Corruption as amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of the Crime of Corruption, additional punishment may be imposed on the



Accused. However, regarding this additional punishment, the Panel will consider it as follows;

Considering, that the additional punishment in the form of payment of restitution is not equivalent to the "state loss" and as much as it is equal to the property obtained from the corruption crime committed;

Considering, that from the facts obtained during the trial of this case, the Panel did not find anything that could release the Defendant from criminal responsibility, either as justification or excuse, therefore the Panel concluded that the actions committed by the Defendant must be held accountable to him;

Considering, that because the Defendant is capable of being responsible, the Defendant must be found guilty of the criminal offense charged against him, therefore he must be sentenced;

Considering, that the punishment of the Defendant is not intended as revenge of the Court against the Defendant, but rather as an effort to educate and foster the Defendant or the community, where for the Defendant so that with this punishment the Defendant can realize his mistakes and then will not repeat his actions, while for the community it can be used as a preventive measure not to commit such wrongdoing, so that according to the Court, the punishment as later stated in the amended decision is a punishment that is appropriate and fair.

Based on the considerations put forward by the Judge in his decision as stated above, it can be concluded that there were a total of 3 (three) amounts of 'state losses' found based on the facts of the trial which were used by the defendant for his personal interests from 2006 to 2008 which also fulfilled the elements in Article 3 of Law No. 31 of 1999 concerning Eradication of Corruption which has been improved by Law No. 20 of 2001. The three 'state losses' are as follows:

- a. Rp. 1,959,457,343 (one billion nine hundred fifty nine million four hundred fifty seven thousand three hundred forty three rupiah);
- b. Rp.611,171,574 (six hundred eleven million one hundred seventy-one thousand five hundred seventy-four rupiah); and



c. Rp.270,870,117 (two hundred seventy million eight hundred seventy thousand one hundred seventeen rupiah).

What makes it interesting is that, in the verdict stated by the Judge regarding additional punishment in the form of 'restitution', the amount of restitution determined by the Judge is not at all related to the three amounts of state losses found in his consideration related to the use of state losses for the personal benefit of the defendant. Meanwhile, Article 18 of the Anti-Corruption Law emphasizes that the stipulation related to the additional punishment of restitution is as much as the same as the property obtained from the crime of corruption, or it can be said that all the property obtained by the defendant from the crime of corruption for his personal benefit.

This can certainly be said to be incompatible with the principles of justice and legal certainty that should be presented by the Judge in every decision issued by him. In this case, the restitution determined by the judge in the aforementioned decision, apart from not being related to state financial losses, the amount is also 'smaller' when compared to the three state losses found in his consideration one by one.

The judge in his consideration as stated above said: "Considering, that the additional punishment in the form of payment of restitution is not equivalent to "state losses" and as much as possible is equal to the property obtained from the criminal act of corruption committed".

Even in the consideration, there is no further explanation regarding the meaning of the word equivalent used by the Judge. In the Judge's verdict, the additional punishment in the form of restitution imposed on the defendant is Rp. 187,363,574 (one hundred eighty seven million three hundred sixty three thousand five hundred seventy four rupiahs). This amount is certainly not balanced or arguably lame in the sense of being 'smaller', or even not related to the amount of 'state losses', if we calculate and/or compare it with the three amounts of state losses found in the Judge's consideration.

If we look at the considerations put forward by the judge, the defendant in this case has fulfilled all the elements of Article 3 of Law No. 31 of 1999 on the Eradication of Corruption as amended by Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999. The elements of Article 3 of the Anti-Corruption Law are: 1. Every person; 2. Benefiting oneself or another



person or a corporation; 3. Abusing the authority, opportunity or means available to him because of his position or position; and 4. Loss of state finances. Threatened with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000,- (fifty million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah).

Meanwhile, in his verdict, the Judge sentenced the defendant in the form of imprisonment for 2 (two) years and 5 (five) months and a fine of Rp. 50,000,000, - (fifty million rupiah) and added with additional punishment in the form of payment of compensation in the amount of Rp. 187,363,574, - (one hundred eighty-seven million three hundred sixty-three thousand five hundred seventy-four rupiah).

If you compare the punishment imposed by the Judge on the Defendant in his verdict with the impact or consequences caused by the Defendant's actions revealed in the facts at trial, of course this can be said to be very lame. In this case, there is a problem with the decision issued by the judge. The reason is, from the investigative audit report of BPKP Central Java Representative, the defendant's actions have caused losses to state finances in the amount of Rp. 1,959,457,343, - (one billion nine hundred fifty nine million four hundred fifty seven thousand three hundred forty three rupiah).

One of the issues is that the defendant's actions taken with his colleagues from 2006-2009 resulted in the aforementioned losses to state finances, which also included the act of returning the state money with the intention of avoiding such losses to state finances. The refund of state money made by the defendant and his colleagues amounted to Rp.758,247,250 (the defendant amounting to Rp.423,808,000 plus H. Soenarto, SH. MM of Rp.14,250,000, - plus Drs. Sutanto, MM of Rp.95,960,000, - plus Agus Supriyanto, SH of Rp.128,582,750, - plus other parties amounting to Rp.95,646,500, -). Whereas from the facts that emerged during the trial, in his actions the defendant had enriched or benefited himself in the amount of Rp. 611,171,574 (six hundred eleven million one hundred seventy-one thousand five hundred seventy-four rupiah) with the following details: 2006 amounting to Rp. 213,769,808; 2007 amounting to Rp. 289,415,850; and 2008 amounting to Rp. 107,985,916. Although the defendant has returned some of the state money that had been used for his personal interests as mentioned above, the loss to the state finances still occurred



because the defendant's actions of using state money by abusing the authority of his position took place from 2006 to 2009.

When looking back at the regulations regarding restitution as stated in the previous Chapter, the determination regarding restitution can be imposed as much as the same as the property obtained from the criminal act of corruption. In this case, the profit obtained by the defendant for his actions amounted to Rp. 611,171,574, - (six hundred eleven million one hundred seventy-one thousand five hundred seventy-four rupiah), the problem is that in the verdict, the Judge only imposed an additional penalty in the form of restitution of Rp. 187,363,574, - (one hundred eighty-seven million three hundred sixty-three thousand five hundred seventy-four rupiah).

E. CONCLUSION

From the description and discussion above regarding the legality of replacement money and the judge's considerations in determining additional punishment in the form of replacement money, especially in the Semarang district court decision, it can be concluded that the legality of additional punishment in the form of replacement money in corruption cases lies in article 18 of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes which has been enhanced by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning Eradication of Corruption Crimes. Regarding the benchmarks regarding its determination, it is contained in article 18 paragraph (1) letter b. which states "payment of compensation money as much as possible equal to the property obtained from the criminal act of corruption". Regarding the definition of state financial losses, which is one of the important elements in the article that regulates criminal acts of corruption, it can be concluded in the form of, "a reduction in state wealth or an increase in state obligations without being balanced by achievements caused by 'unlawful' acts." The judge's considerations in the Semarang district court decision No. case 32/Pid.Sus/2012/PN.Tipikor.Smg. it can be said to be less relevant if it is linked to additional penalties in the decision in the form of replacement money. This is due to the 'blurred' relationship between the considerations and the verdict pronounced by the Judge, as well as the amount of additional punishment in the form of replacement money which does not correspond to the amount of state financial losses contained in the considerations. In formulating a decision, a judge should not fail to remember the aspects of justice that exist, not only for the defendant, but also for the State



and society. In this case, the author really hopes that the judge will act firmly and produce a law that is as fair as possible for both the defendant, society and the state.

Apart from that, it would be good if the judge formulates a decision with all considerations that are clear and make sense when linked to all the facts revealed during the trial period. Not only does it include it for the sake of formality, so it gives rise to a decision that can be said to be unrelated to all the considerations that have been formulated from the facts of the trial. And the judge should determine additional punishment in the form of compensation money that is at least equal to or even greater than the profits obtained by the defendant.



BIBLIOGRAPHY

- Emerson Yuntho, 2014, dkk. *Penerapan Unsur Merugikan Keuangan Negara dalam Delik Tindak Pidana Korupsi*. (Jakarta: Indonesia Corruption Watch,).
- Hernold Ferry Makawimbang, 2014, *Kerugian Keuangan Negara, Dalam Tindak Pidana Korupsi, Suatu Pendekatan Hukum Progresif* (Yogyakarta: Thafa Media)
- H. Abdul Latif, 2011, *Hukum Administrasi: Dalam Praktik Tindak Pidana Korupsi*, (Jakarta: RajaGrafindo Persada,)
- H. Jawade Hafidz Arsyad, 2013, *Korupsi dalam Perspektif Hukum Administrasi Negara*, (Jakarta: Sinar Grafika,)
- Kamus Hukum*, Fockema Andreae. 1983, (Bandung: Bina Cipta) huruf c. Terjemahan Bina Cipta.
- Lilik Mulyadi, 2007, *Putusan Hakim dalam Hukum Acara Pidana – Teori, Praktik, Teknik Penyusunan, dan Permasalahannya*, (Bandung: Cetakan Pertama, PT. Citra Aditya Bakti)
- Jur. Andi Hamzah, 2014, *Pemberantasan Korupsi; Melalui Hukum Pidana Nasional dan Internasional*. (Jakarta: RajaGrafindo Persada)
- Sudikno Mertokusumo, 2007, *Mengenal Hukum, Suatu Pengantar*. (Yogyakarta: Liberty)
- Poerwadarminta, 1976, *Kamus Umum Bahasa Indonesia*.
- R. Wiyono, 2008, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*, (Jaakarta: Sinar Grafika)
- Suhendar, *Konsep Kerugian Keuangan Negara*, (Malang: Setara Press)
- Wasis SP. 2002, *Pengantar Ilmu Hukum*. (Malang: UMM Pres)

Peraturan Perundang-Undangan

Undang-Undang No. 31 Tahun 1999, tentang *Pemberantasan Tindak Pidana Korupsi*

Putusan Pengadilan

Putusan Nomor : 32/ Pid.Sus/ 2012/ PN.Tipikor.Smg