

Implications of Applying Criminal Money Substitutes to Co-ordination in Corruption Crimes as an Effort to Restore State Finances

Sugeng Riyadi^{1,*}, Faisal Santiago²

¹ Politeknik Kesehatan Kemenkes Semarang

² Doctor of Law Program Borobudur University City of Jakarta, Indonesia

*Corresponding author. Email: suenkpopeye1999@gmail.com

ABSTRACT

The application of substitute money crimes against coordination in the case of Corruption Crimes is stipulated in Article 18 paragraph (1) letter b, Law No. 31 of 1999 as amended into Law Number 20 of 2021 on Corrupt Crimes and in Article 6 of Supreme Court Regulation No. 5 of 2014. The implication of applying substitute money to coordination as perpetrators of corruption crimes lies in the issue of criminal liability. That is related to the question of the accuracy of legal liability between the chairman of the coordination or members of the coordination by the provisions of the applicable law, as an effort to recover state finances caused by corruption. On the other hand, this discussion also relates to whether or not criminal money is applied to the coordinator who commits corruption crimes. The research method used is normative juridical, by analyzing and reviewing the legislation governing the Implications of The Application of Substitute Money Criminal Against Coordination in Corruption Crimes As An Effort to Recover State Finances.

Keywords: *Implications of Criminal Application of Surrogate Money, Co-ordination, Corruption Crimes, State Financial Recovery Efforts.*

1. INTRODUCTION

The investigation into corruption by the Corruption Eradication Commission continues until this moment. This has become the main focus of the Indonesian government. Various efforts have been made both in order to prevent and in terms of eradicating corruption. The implementation of such activities is carried out by the authority of the power holder who has authority based on the applicable laws in the Unitary State of the Republic of Indonesia. [1] The holders of such powers are none other than the executive, legislative, and judiciary. Corruption crimes are detrimental to the state's finances and have violated the social and economic rights of the community so that it is categorized as an extraordinary crime. Therefore, the handling of corruption crimes is carried out thoughtfully and fairly.

Corruption crimes are committed not only by individuals but also by certain groups such as government institutions and private institutions that have a relationship with the government itself. Corporation as an entity or subject of law whose existence contributes significantly to improving economic growth and national development, but in reality coordination, there are times when also committing various criminal acts (corporate crime) that bring the impact of losses to the state and society by the

Regulation of the Supreme Court No. 13 of 2016 on Procedures for Handling Criminal Cases.

Ideally, coordination is also used to collect and save assets resulting from corruption crimes rather than its administrators or people from among state organizers such as prosecutors, police, and corruption eradication commissions. When viewed from the economic aspect, that personal and coordinated who committed the corruption has first completely avoided "profit loss." It is proven that if the proceeds of corruption are stored and rushed in their assets, then the manager's criminal prosecution alone will not be comparable and adequate to recover the state's financial losses.

As the subject of corruption law, the corporation is stipulated by Article number 3 of Law No. 31 of 1999 (including everyone). Consequently, the corporation can be held accountable and can be criminally prosecuted. Suppose corruption crimes are committed on behalf of coordination. In that case, criminal charges and charges can be made against the corporation and or its administrators by Article 20 paragraph 1 of Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption.

Corruption in Indonesia has become a very severe problem, entrenched and cultured until this moment. Therefore, it takes a particular institution to solve the problem of corruption and restore or recover the financial or economic losses of the country as a result of the depraved acts. [2] It is necessary to provide additional criminal payments in the form of replacement money accompanied by the seizure of assets (assets) of defendants that are proven to be obtained from the proceeds of corruption. According to Eli Laila Kholis, corruption crimes result in the loss of the state and the people directly or indirectly. [2]

Whereas the eradication system of corruption, the expected objective is the ability to meet and anticipate the development of public legal needs in order to prevent corruption crimes both committed by the group and personally, more effectively any form of corruption crimes that are very detrimental to the state's finances or the state economy in particular as well as society in general.

The state's finances are all state assets of any kind, separated or undivided, including all parts of the state's wealth and all rights and obligations arising from:

1. Being in the control, management, and accountability of state agency officials, both at the central and regional levels;
2. Being in the control, management, and liability of State-Owned Enterprises /Regional Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third-party capital under agreements with the state.

Meanwhile, the State Economy is an economic life prepared as a joint venture based on the principle of kinship or community efforts independently based on government policy, both at the central and regional levels. By the provisions of applicable laws and regulations aimed at providing benefits, prosperity, and welfare to all people's lives.

Repressive efforts against corruption crimes today are not only focused on arresting and punishing the

2. METHODS

The research method used in this study, namely normative juridical, analyzes and reviews the legislation governing the Implications of The Application of Substitute Money Criminal Against Coordination in Corruption Crimes As An Effort to Recover State Finances.

3. RESULT AND DISCUSSION

3.1 Understanding, Imposition of Substitute Money, Coordination and Corruption Crimes.

a. Definition of Corruption

According to the Indonesian Anticorruption Encyclopedia, that "Corruption comes from the Latin: "corruption"= bribery; "corruptor,"

perpetrators of corruption crimes with prison and confinement, but also through efforts to recover financial and economic losses of the country by foreclosure and then imposed additional crimes such as the payment of criminal money. The primary criminal explanation that can be imposed against coordination is only criminal plus 1/3 (one-third). First, moving goods that are tangible or intangible or immovable goods used for or obtained from corruption crimes, including companies belonging to convicted companies where no criminal corruption is carried out and from goods that replace the goods scattered. Second; Payment of replacement money as much as possible is the same as property obtained from corruption crimes; third closure of all or part of the company for a maximum of 1 (one) year; the fourth revocation of all or part of certain rights or the removal of all or may be granted by the government to the convicted.

If the convicted (corporation) does not pay the replacement money any later than 1 (one) month after the decision of the court that has obtained a permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money by Article 18 paragraph 2 of Law No. 31 of 1999 Jo. Law No. 20 of 2001 on the Eradication of Corruption. Suppose the imposition of substitute money criminals still does not affect the corporation who commit corruption crimes. In that case, the judge can impose additional criminal closure of coordination business forever or a temporary period.

The implications of the application of substitute money to corporations that commit corruption crimes, until this moment. The judges have different views where on the one hand, considers violations of human rights and violations of the principle of a fair trial, while on the other hand expressly states that his efforts to drop the substitute money criminally is in order to recover the financial losses of the state because if only relying on the criminalization of its administrators whom the proceeds of corruption crimes have become property or corporate assets then it is not fair to who bears the payment of the replacement money.

which, if translated in Bahasa Indonesia, has the sense of "damaging" this is based on the fact of the field[3], that government officials or state agencies that make their positions as economic benefits or abuse their authority with cases of gratification, forgery, and other cases.

Corruption is an act of enriching oneself, or a group is an act that is very detrimental to others/corporations, nations, and countries. [4]*Corruption* is a behavior that deviates from the official duties of a state office due to the gain of status or money concerning the individual (individual, close family, own group) or violates the rules of conduct of some personal conduct. On the other hand, corruption is a disease that has plagued the country of Indonesia. Like a disease, this act of corruption must be cured so as not to spread to other parts of the body. [5]

Based on the above, the state made a special device Law No. 31 of 1999 Jo. Law No. 20 of 2001 on corruption crimes, as a breakthrough of the state government in dealing with corruption. As Article 2 paragraph (1) reads: "Any person who unlawfully enriches himself or others or a corporation that may harm the state's finances or the economy of the state, sentenced to life imprisonment or imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp.1000,000,000,000 00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

Form of legal sanctions and their application against perpetrators of corruption crimes either committed individually or carried out by corporate or certain groups that have authority based on the applicable law. That is first; Moving goods that are tangible or intangible or immovable goods used for or obtained from corruption crimes, including companies belonging to convicted companies where no criminal corruption is carried out, as well as from goods that replace the goods scattered, second; Payment of replacement money as much as possible is the same as property obtained from corruption crimes; third closure of all or part of the company for a maximum of 1 (one) year; the fourth revocation of all or part of certain rights or the removal of all or may be granted by the government to the convicted.

b. Coordination or "Corporate" and Historical Aspects.

A corporation is a group of trade entities. [6] In this brief explanation, the understanding of the corporation has been limited because the corporation that can be held criminally accountable is a corporation that is already incorporated. The reason is that by being incorporated, it is clear the composition of the board and several rights and obligations in the corporation. However, there is also an opinion that corporations do not need to be incorporated. Because every group of people, whether in a trade relationship or other business, can be held criminally accountable.

A corporation is an entity or legal subject whose existence significantly improves economic growth and national development. However, corporations sometimes also commit various crimes (corporate crime) that impact losses to the state and society. In the aspect of corporate history as the subject of criminal law is not known by the Criminal Code, but we can find in Law No. 31 of 1999 Jo. Law No. 20 of 2001 on corruption crimes. Because the Penal Code is a legacy of the Dutch colonial government that adheres to the Continental European system

(civil law). Continental European countries lag slightly behind in regulating corporations as the subject of criminal law compared to Common Law countries, wherein Common Law countries such as The United Kingdom, the United States, and Canada, corporate accountability has begun since the industrial revolution. A court in England began in 1842 where a corporation was sentenced to a fine for its failure to fulfill a legal obligation. [7]

In the Netherlands at the time of formulation, the authors of the Criminal Law Book (1886) accepted the principle of "Societas / delinquent university non-potest," which means that legal entities/associations cannot commit criminal acts. This was in reaction to the absolute practices of power before the French Revolution of 1789, which allowed collective responsibility to one's mistakes. Thus according to the basic concept of the Penal Code, that a criminal act can only be committed by natural humans (natuurlijke persoon).

c. Imposition of "Criminal Money" on Corporations

As the subject of corruption law, corporation is stipulated by Article 1 Number 3 of Law No. 31 of 1999 ("including everyone"). Consequently, the corporation can be held accountable and can be criminally prosecuted. If a corruption crime is committed on behalf of a corporation, criminal charges can be made against the fund corporation or its administrators. The principal criminal that can be imposed against the corporation is only a criminal fine, with the provisions of the criminal maximum fine, with the criminal maximum plus 1/3 (one-third). In addition to corporations may also be subject to additional criminal charges, namely:

- a) Tangible or intangible moving goods or immovable goods used for or obtained from corruption crimes, including companies belonging to convicted companies where no criminal corruption is carried out and from goods that replace the goods,
- b) payment of replacement money as much as possible is the same as property obtained from corruption crimes;
- c) Closing of all or part of the company for a maximum of 1 (one) year;
- d) Revocation of all or part of certain rights or the removal of all or may be granted by the government to the convicted.

Suppose the corporation / convicted corporation does not pay the replacement money any later than 1 (one) month after the court ruling that has obtained a permanent legal force. In that case, his property can be confiscated by the prosecutor and auctioned to cover the

replacement money. The auction is conducted no later than 3 (three) months after the foreclosure. In addition, it can also be considered a judgment by the judge that if it is not sufficient to be affected by the imposition of criminal payments, it can also be imposed additional criminal replacement money more realistically than the assets seized and auctioned or even led to the necessary consequences of the unfulfillment of legal responsibilities.

3.2 System of Application of Substitute Money Criminal Against Coordination In Corruption Crimes;

One of the issues that get "more" attention in eradicating corruption is how to recover lost state losses resulting from corruption, whether done by individuals or corporations. The rescue of the country's money is essential, given that the eradication of corruption committed by apparatus law enforcement can only save 10-15 percent of the total money corrupted. [7]One of the instruments of criminal law that allows the rescue of state money from corruption is to maximize the instrument of the criminal law of substitute money. As a sanction, this legal instrument is considered more rational to eradicate corruption, preventing state losses.

Criminal sanctions are essentially additional penalties of a special nature. Criminal sanctions for substitute money are stipulated in article 34 letter C of Law No.3 of 1971, which reads: "In addition to the provisions of the Criminal Code referred to in the Penal Code, then as an additional penalty is the payment of replacement money as much as the amount of property obtained from corruption. This is similar to the concept covered by Law No. 31 of 1999, which was later revised into Law No. 20 of 2001. *Criminal Money Substitute* is a punishment that requires a person who has acted to harm others (state) to pay some money or goods to the person who was harmed so that the losses that have occurred and be considered never occur.

Article 18 paragraph 1b of Law No. 31 of 1999 stated, the payment of criminal substitute money as much as possible is the same as property obtained from corruption crimes. The explanation of Article 18 paragraph 1b in Article 18 paragraph 2 also states that: "If the convicted does not pay the replacement money as referred to in paragraph (1) letter b no later than (1) letter b no later than 1 (one) month after the court ruling that has obtained a permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money.

The adoption of criminal money substitutes into the criminal justice system that was initially only known in the civil law instrument is backed up by the thought that corruptors should be threatened with criminal sanctions as severely as possible in order for them to be deterred. Romli Atmasasmita, one of the expert team of the formulation of Law No. 31 of 1999, stated that the criminalization system embraced by corruption laws, both old and new, everyone is already afraid to commit corruption. Moreover, coupled with the obligation to pay

the replacement money by the amount corrupted. For every person/perpetrator of criminal acts of corruption who is included in the corruption indictment, he must inevitably face multiple criminal sanctions.

Indemnification is an obligation imposed on a person who has acted unlawfully by committing acts of corruption, thereby causing harm to others (the state) because of his fault. Suppose the convict does not have sufficient property to pay the replacement money as mentioned in paragraph (1) letter b. In that case, the penalty of imprisonment shall not exceed the threat of maximum from the criminal by the provisions in this law. The duration of the criminal has been determined in the court's decision.

The fundamental purpose of the policy of establishing criminal money substitutes in corruption cases cannot be separated from the goal to save state losses, which in the long run relates to the political objectives of criminals in the overall sense of community protection to achieve prosperity. Unfortunately, as a strategy, the determination of criminal money replacement is not designed and taken seriously, resulting in various problems. One of them is determining the amount of criminal money that the perpetrators of corruption must pay to the state to cover losses due to corruption.

Seen as a process of criminal law enforcement mechanisms, this can be an oversight of criminal law enforcement mechanisms. That is, the criminal determination of replacement money is nothing but an unplanned policy process. [6]Whereas, if look at the requirements of giving in order to run with various planning and through several stages, among others as follows:

- a. The stage of criminal determination by lawmakers;
- b. The stage of criminal granting by the authorized body, and;
- c. The stage of criminal implementation by the authorized implementing agency;

Indicators of unplanned criminal determination of surrogate money as a form of criminalization mechanism can be seen from the regulation of criminal problems of surrogate money in existing anti-corruption laws. In practice, with this concept, the judge will have difficulty determining the amount of replacement money. These problems are:

- a. Judges will find it difficult to sort out which assets come from tipikor and which are not. In this sophisticated era, it is straightforward for corruptors to metamorphose assets resulting from corruption (asset tracing) through financial transactions and banking services. In addition to doing this, it requires special skills as well as complete data and information. Not to mention if we talk about the time, that is certainly not a moment, especially if the treasures that will be counted are outside the diplomatic bureaucracy that

- must be very complicated and time-suppressing.
- b. The amount of replacement money will be difficult if the defendant's assets to be assessed turned out to have been converted in the form of assets by their nature have volatile value, such as property assets, jewelry, stocks, and so on.
 - c. There has been no creation of integrated precept and coordination between law enforcement officials to prevent and deal with corruption. As a result, in some cases, there is a deadlock of efficacy and perception among existing law enforcement, so there are phenomenal precedents that can adversely affect the climate of eradication of corruption. One of them is the birth of the Decision of the Constitutional Court that removes the provisions on material legal acts in corruption crimes, even though the provisions of acts against material law have become jurisprudence in Indonesian law.

3.3 Implications of the Application of Substitute Money Criminal against Coordination in Corruption Crimes as an Effort to Recover State Finances.

The term corporation /corporate has a relationship or is closely related to the field of civil law. Because the definition of a corporation is a terminology closely related to the term legal entity (Recht persoon), and the legal entity itself is closely related to civil law.

The corporation has been recognized as a subject born by persons and can act in legal traffic and be held criminally liable, [6] including in corruption cases, coordination obtains regulatory affirmation as the legal subject of "person" and accountability. The criminal system is regulated in detail if corruption crimes are committed by or on behalf of a corporation. Then criminal charges can be made against the corporation funds or its manager. This means that cumulatively-alternatively can be prosecuted and defunded when done by or on behalf of a corporation to be done to corporations and managers, or it could be to the manager and to the corporation itself.

In practice, on this issue, whether the corporation as a legal entity can be sanctioned in the form of payment of substitute money without being filed as a defendant. Two traditions discuss this issue as follows:

- a. The first flow, the imposition of criminal sanctions against a corporation, can be done, although not filed as a defendant in a case, as for the argument is moreover the crime of corruption committed by the manager in his position as President Director (Directing Mind) of a corporation namely:
 - 1) If the crime of corruption is beneficial to the corporation;
 - 2) Both crimes of corruption are extraordinary, so the handlers must be extrapolated;

- 3) Considering one of the purposes of the Corruption Crime Law is to recover state assets /assets recovery to achieve that goal, the handling of perpetrators of corruption should be done cheaply and quickly.
 - b. The second flow, criminal prosecution of a person, must be based on the indictment submitted by the public prosecutor to the court. For the judge, the indictment is the basis for conducting an examination and dropping the verdict to the accused by the provisions of the indictment.

The conditions for an indictment have been determined imitatively in Article 143 of the Kuhap with the threat of null and void or canceled if those conditions are not met. Article 143 kuhap is a closed criminal procedural law, so it cannot be interpreted because it will damage the due process of law and violate one's rights.

For positivists, not being made a corporation as a defendant but also prosecuted and criminal then can be categorized as a violation of the law of the event as well as violating the human rights of the subject of corporate law that has the right to be examined as the legal subject of the person. [6]The judges who refused to grant the prosecutor's request were based on Supreme Court Regulation No. 5 of 2014, which explained that the court should reject the claim and suggested that the Public Prosecutor indict a third party first in the case. This contest is in conjunction with Article 6 of the Supreme Court Regulation Nomor 5 the Year 2014, which states that the prerequisite that additional criminal payments in the form of substitute money can only be imposed on the party of either a person or a corporation that is a Defendant.

In other words, those who are not defendants, although also prosecuted in the prosecutor's demands, it is prohibited to be criminally penalized with substitute money. Meanwhile, in the progressive legal perspective, the verdict of the corporate criminalization is actually in order to protect the human rights of the accused Caretaker who is unlikely to have the ability to recover the financial losses of the state that has been included in the corporate profits. On the other hand, from the perspective of the state and society has the right to recover the state's financial losses from the proven corruption.

In this context, such a criminal verdict is categorized as an attempt at legal discovery. The verdict of corporate criminalization in such corruption crimes is the reality of the functionalization of judges' interpretation. Because in reviewing the philosophy of criminalization that aims to improve the damaged circumstances of the criminal corruption, namely the return of financial losses of the state, the breakthrough interpretation of the judge can be said to find its relevance. As stated by Satjipto Raharjo that "by the Indonesian nation, widespread corruption is called extraordinary crime and we do not stop at giving the creepy name, but also contains the meaning of

eradicating in a way that corresponds to the severity of corruption.”

According to the term surrogate money, that contains an understanding that does not lead to the actions of individuals but the suppression of the public or state. In that case, it can be said: “criminal and punitive in their nature.” This is different, for example, by claiming damages for arrest, arrest, prosecution, trial, or imposed other actions without reason based on the law applied in Article 95 of the Penal Code. The problem is also different from the claim for damages resulting from the act that becomes the basis of the indictment that can be combined into a criminal case. The relevant interests are the interests of the individual, not the interests of the state. [6] While the main interest of the criminal application of surrogate money is the recovery of state financial losses. As a theory of social defense, funding through surrogate money is not only worth the retaliation limits of means to protect the community’s interests. [6]

In its current development, W.J.P Pompe asserts that the legal under the point of criminal law is in the public interest or the public interest. The legal relationship arising from a person's actions arising from a person who gives rise to criminal charges is not a collaborative relationship between the guilty and the harmed but rather a subordinate relationship of the guilty against the government assigned to the benefit of the people. [6]

Therefore it is relevant that the application of criminal money substitutes against corporations that control the assets resulting from corruption crimes from its administrators. It is appropriate to be prosecuted and criminal to restore the state's financial losses because if only relying on criminal money substitutes against its administrators will not be realized optimal efforts to restore the financial losses of the State aqua national economic recovery.

According to the teachings of vicarious liability, a person can be responsible for the deeds of others. Suppose this type is applied to the corporation. In that case, it may have to be responsible for the actions carried out by its employees, its power or horizontal, which is responsible to the corporation. It also obtains legitimacy from Article 20, paragraph 1 of the Tipikor Law, which states that “if a corruption crime is committed by or on behalf of a corporation, then criminal charges and charges can be made against the corporation and or its administrators’. Phrases and/or in the sentence of criminal prosecution and prosecution can be made against the corporation individually or in familiar with its manager, even if the alleged perpetrator of corruption is the perpetrator. So when the board is filed as a defendant and in the judicial process proven legitimately, and convincingly there is a criminal act of corruption on behalf of the corporation. Against the corporation can be prosecuted and criminalized, including, in this case, criminal money substitute. In this context, judges who view that corporations can be penalized with surrogate money even if not made defendants are valid according to the doctrine of vicarious liability accommodated by Article 20 paragraph (1) of the

Tipikor Law. Vicarious liability can be charged with criminal liability for the actions of others if there is a delegation principle. An employer or employer can be held accountable for the actions physically performed by his/her work. Nevertheless, if according to the law, the act is seen as the work of the employer. [6]

The application of the doctrine of vicarious liability is expected to be a factor that can prevent and minimize the occurrence of criminal acts, both crimes committed by individuals and crimes committed by corporations. The principle of vicarious liability is easier to apply because there is no need to look for who did it (directing mind), whether the culprit is a serious actor or criminal acts, whether there is a mistake (men's rea), so liability can be charged to the corporation. [6]

It must be admitted that the establishment of the board alone as a criminal cannot be enough. In economic matters (including corruption), fines can be imposed as punishment to the board compared to the profits that the corporation has received by doing so, or the losses incurred in society, or the losses incurred in society, or suffered by its rivals, those profits and or losses are more significant than the fines imposed as criminal. The criminalization of the board does not provide sufficient assurance that the corporation does not once again commit acts that the law has prohibited. Therefore, additional criminal in the form of an obligation to the convicted to pay replacement money with a maximum amount of property obtained from the act he committed, and prosecuted and imposed on each criminal case of corruption as one of the efforts of law enforcement officials to restore the state’s finances or the economy of the state, then against the corporation in question relevant to be subject to additional criminal payment of replacement money.

4. CONCLUSION

Criminal sanctions are essentially additional penalties of a special nature. Criminal sanctions for substitute money are stipulated in article 34 letter C of Law No.3 of 1971, which reads: "In addition to the provisions of the Criminal Code referred to in the Penal Code, then as an additional penalty is the payment of replacement money as much as the amount of property obtained from corruption. This is similar to the concept covered by Law No. 31 of 1999, later revised into Law No. 20 the Year 2001. The application of substitute money criminal against coordination in the case of Corruption Crimes is stipulated in Article 18 paragraph (1) letter b, Law No. 31 of 1999 as amended into Law Number 20 of 2021 on Corrupt Crimes and in Article 6 of the Supreme Court Regulation No. 5 of 2014.

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