

# The Imprisonment And Compensation Money In Corruption Crime As An Effort To Eradicate Corruption

Thamrin Tarigan, Andi Sofyan, Syamsuddin Muchtar, Wiwie Heryani

**Abstract:** Corruption as deeply rooted in every facet of national life. The payment of compensation money as much as possible with the property obtained from corruption crime. The research is a juridical-sociological-legal research (empirical), a research using library material or secondary data as initial data then continued with primary data or field data. The results show that the imprisonment and compensation money in Corruption Act, imprisonment as a means of deterrent effect and coaching, compensation money is used as an instrument of corruption seizure, especially before the birth of money laundering. Related to the commitment and the role of imprisonment and compensation money by law enforcers in corruption crime can be seen from some judge consideration in deciding criminal corruption. In criminal payment of a compensation money, many convicted persons cannot pay, its basis the third party suing the government for evidences seized in effort to fulfill the payment of compensation money.

**Index Terms:** Criminal Law, Corruption Crime, Compensation, Imprisonment

## 1 Introduction

Nowadays, corruption crime is so devastating make the Indonesia are entered into one of the most corrupt countries in the world. Based on ratings assigned by Transparency International (TI) in 1999, Indonesia was ranked the top-five of most corrupt countries in the world. Then in 2004, TI survey repeated and Indonesia still ranks fifth of most corrupt of 146 countries surveyed. The result of TI survey is also show that the Indonesia was at first the most corrupt country in Asia. Basically, the government has made various efforts to eradicate corruption. The government has even established a special institution, namely the Corruption Eradication Commission (KPK) to deal with corruption, but until now it seems corruption is still difficult to be eradicated. In fact, it regarded that corruption has become part of the culture of the nation. The others believe that corruption is like an endemic disease that has spread throughout the level of government bureaucracy. To restore such losses, juridical means is required in the form of compensation payment or compensation. Additional punishment with compensation payments or compensation is actually not a new type of criminal, since the 1960s this punishment has been known in the law on corruption despite different term qualification.

With the enactment of Act No. 31 of 1999 Jo Act No. 20 of 2001 the regulation concerning the compensation money is increasingly clear that in addition, it can be imposed the principal punishment to the defendant in the case of corruption may also be imposed additional punishment namely: deprivation of tangible or intangible mobile goods or immovable goods used for or obtained from a corruption crime, including a company owned by a convicted person in which a corruption crime is committed, as well as from goods substitute the goods. In addition, the payment of compensation money as much as possible with the property obtained from corruption crime. Closing all or part of the company for a maximum of 1 (one) year. Constraints in the compensation money certainly have consequences for the purpose of eradicating corruption. Because the eradication of corruption does not solely lie in the perpetrators conviction with physical sentenced, but how the State' loss can be returned through the penalty of compensation money. However, the problem of asset recovery in the practice of corruption eradication cases has become a separate issue. Based on several facts that occur, many corruption cases that have been decided where there are some problems in terms of compensation money that is quite difficult to realize. Based on the findings of the Financial Audit Board, that about Rp. 7.6 trillion of compensation money is managed by the attorney general during 2004 has not been collectible. Another difficulty in the compensation money in practice is unclear provisions in the law of corruption itself. For example, cases that are tried by using the provisions of Act No. 3 of 1971 on eradication of corruption in the case of compensation money repayment will face a constraint if the convict does not want to pay the compensation money because there is no further rule that regulates how if the convicted do not pay compensation money. The compensation money does not have an alternative criminal (substitute) such as a fines penalty that can be substituted with imprisonment. For many weaknesses in this matter, the Attorney General once planned to rising physical punishment as a substitute of corruptors who did not return the compensation money as the judge ordered in the case of corruption. The new policy is certainly aimed at preventing corruptors whose verdicts have the legal power of choosing to undergo a substitute punishment that is a physical punishment rather than a punishment for returning money to

- *Thamrin Tarigan, is currently completing Doctoral Program (DR) at Graduate School, Hasanuddin University, Makassar, Indonesia. Tel./Fax: +62-411-587219. Corresponding author.*
- *Andi Sofyan, Syamsuddin Muchtar, Wiwie Heryani, Lecturer at Faculty of Law, Hasanuddin University, Makassar, Indonesia. Tel./Fax: +62-411-587219*

recover State' losses. So far, corruptors are considered to prefer to undergo a compensation punishment in the form of physical punishment instead of returning money that has been corrupted to the State because the substitute indictment is too light.

## 2. METHOD OD THE RESEARCH

The research is a juridical-sociological-legal research (empirical), a research using library material or secondary data as initial data then continued with primary data or field data. The data obtained in the field will be analyzed as the characteristic of data. The data were analyzed qualitatively, the data collected both secondary and primary data is compiled and analyzed qualitatively to interpret, explain, describe, and systematically arranged according to the research objectives.

## 3. ANALYSIS AND DISCUSSION

### 3.1 Arrangement and Imprisonment and Compensation Money Position in Corruption Act in Indonesia

In juridical matters, the related arrangement of imprisonment and compensation money in Corruption Act is regulated in Military Regulations and War Ruler No. Prt / PM / 06/1957 on Working Procedures to Break Congestion for Eradicate Corruption, Government Regulation 24 of 1960 on Investigation, Prosecution and Inspection of Corruption, Presidential Decree on the Establishment of Corruption Eradication Team 1970, Act No. 3 of 1971, Act No. 31 of 1999, Act No. 20 of 2001, Act No. 30 of 2002. In general, the position of compensation money in corruption case can be described as follows (1) Compensation money, Confiscation Instrument of Corruption Result before the Money Laundering Act. The practice of money laundering or concealment of crime - especially corruption is not a new thing. This practice has actually been going on for centuries. This practice is also certainly very likely to occur in Indonesia since antiquity. The problem is that if the corruptor conceals their corrupt results, then the additional criminal instrument to confiscation the goods cannot reach them. Due to the circumstances, the compensation money was immediately regulated in 1960 in Government Regulation 24/60 far before the Corruption Crime Act was born, even before money laundering became a separate crime (*delik suis generis*) in the world. Corruption is classified as an extraordinary crime. Because mode and systematic techniques, destroy the system of national life, both in the economic, political, social, cultural and even to the moral decay of society as well as mental. Economic loss due to corruption is reflected not optimal economic development by the government. While losses in the field of socio-cultural and moral, it appears from the change in the public mindset that seems to assume that corruption is a natural thing and lawful. Corruption as a form of bad conduct, evil and destructive, actually has a very broad sense. Forms of corruption can be misappropriation or embezzlement of state funds for personal interests or others. Corruption also means it can be bribed, either in cash, or in the form of certain objects. Corruption is an act that violates the law or norms related to the duties and responsibilities of civil servants or state officials. Besides, the corruption usually involves more than one person. Corruption is not only applicable in the civil service or state officials, but corruption can involve private business organizations. All of these are characteristic or distinctive character of corruption. In such situation, if the corruptor benefits from their actions,

then the results of crime are transferred to the other party and the other party to another party again then the property cannot be seized, especially if the asset is hidden through the banking system. Article 480 of the Criminal Code (Buyer of stolen goods) has limitations, because this provision only regulates if the transfers are objects, not money. Theoretically, there are many notions of corruption depend on the perspective where a person would perceive it. Corruption can be seen from the perspective of legal, economic, and political. However, to distinguish it from other ordinary criminal offenses, which are not included in the category of corruption, the definition of corruption must be placed in the public domain, so that the understanding of corruption is always related to the public interest. In this case, corruption is an act that is contrary to the public interest or the interests of the state in general. This is one of the basic characteristics possessed by corruption as an extraordinary crime, so it is different from an ordinary theft or fraud is simply subjected at individual persons. Thus, corruption is to be seen in the context of the public interest. The money laundering has not been seen as a crime so that the proceeds of corruption that have been transferred can be confiscated because the parties who receive the funds can also be punished, then emerge the concept of Compensation Money. The concept is simple, if the proceed of corruption is not in the hands of the defendant so that it cannot be subject to confiscation, the defendant is forced to keep returning it, if not his non-corrupt assets may be confiscated and auctioned to replace it, and if still lacking, the defendant may be subject to a prison. With this arrangement, it is expected the defendant is forced to restore the loot that has been hidden, even though the loot has been hidden by other parties.

### 3.2 Roles and Commitments of Law Enforcer in Applying the Imprisonment and Compensation

Corruption as an extraordinary crime is a form of crime that has aspects of systemic (systematic crime) through well organized (crime organized), the range of locus and tempus delict is widespread, causing losses and misery in the community, involves many parties from both the public and private officials. In accordance with the conditions of Indonesia today, it appears that the corruption has jeopardized the order of the nation as well as threaten the foundations of national life. The intention of imprisonment and compensation money is expected in the end the defendant cannot enjoy the result of corruption. The concept of imprisonment especially on the shortage of payment of the compensation payment is only known since Act 31 of 1999. In the explanation of Article 34 it is explained that if the compensation money cannot be fulfilled by the defendant then apply the provisions concerning the implementation of the payment of fine penalty. Initially this means that if the compensation money is not paid by the defendant then the defendant may be subject to substitution prison as regulation of fine (see Supreme Court Decision No. 620 K/Pid/1987). Since 1988 the Supreme Court no longer applies a substitution prison. Based on SEMA No. 4 of 1988 stated that for the payment of compensation money cannot be applied substitution prison. Thus, the concept of compensation money payments is basically an extension of additional criminal of goods looting that have been regulated in the Criminal Code as well as instruments of confiscation of proceeds of crime before the birth of money laundering acts. The compensation money as substitution of a corruption that is not in the hands of the defendant, the compensation money

may be intended to compensate the state losses for corruption. The provisions in article 18 paragraph (1) letter b affirm: "Payment of compensation money as much as the property derived from corruption." Although the amount of compensation money is not determined from how much the state losses caused, but from the result of corruption obtained by the defendant. However, it could be if the compensation money is interpreted as compensation money of the state losses but the provision of how large refers to the result of corruption obtained by the defendant whose number could be less than the state losses caused by their actions. Likewise, if the amount of State losses and the result of corruption are obtained by the defendant is different. Or it could be the state losses caused by the defendant' act is greater than the result of corruption obtained by the defendant, and vice versa. However, it can still be included as a compensation for the State losses. In the case of the scope of loss caused, it can be stated that the formulation of article 18 paragraph (1) letter b is not limited to corruption acts that losses the State finances only. So corruption in the form of bribery can also be substituted for either the giver (the active briber) or the recipient (the passive briber).

### 3.3 Effectiveness and Constraints on Imprisonment and Compensation Money in Corruption

In applying the compensation money as sanction in the case of corruption of Bekasi Islamic Center as a verdict for the defendant, the judges agreed that the implementation of article 18 of Act No. 31 of 1999 the Constitution of the Republic of Indonesia concerning the Corruption Eradication which has been amended by Act No. 20 of 2001 of the amendment to Act No. 31 of 1999 concerning Corruption Act in the form of "payment of compensation money as much as the amount of property obtained from corruption" is considered appropriate and correct so that it can be taken over as a judicial consideration appeal level in examining and deciding the case.

#### A Case of Poor Scholarship Makassar

The applying of compensation money as sanction in the case of corruption in Poor Scholarship of Makassar as stipulated in article 18 paragraph (1) of Corruption Eradication Act. Criminal Corruption concerning compensation money of State losses, the judges shall base, among others on the occurrence of the State' financial loss in the a quo case based on the legal facts revealed in court is a total of Rp 60.200.000,- (sixty million two hundred thousand rupiah) which cannot accounted for by the defendant as the principal of Junior High School 2 Binamu of Jeneponto regency and has not been returned to the State or regional treasury. To map the response of various questions about this topic, the researcher conducts a study by distributes research questions for 30 respondents consisting of prosecutors, general court' judge, corruption crime' judge, supreme court judges and advocates from various educational backgrounds from bachelor to doctoral in the age 20-50 years. From the distribution of question, 60% or 18 respondents answered and returned form and each 10 prosecutors (55%), 6 corruption crime' judges (33%), 1 general court' judge (6%) and 1 supreme judge (6%). The eighteenth of respondents are 8 bachelors (45%) and 10 are law masters (55%) with an average age of 30-39 years is 2 persons (12%), 10 persons 40-49 years (55%) and 6 people are over 50 (33%). IN this research obtained a broader picture of the effectiveness and obstacles of imprisonment and compensation money in

corruption crimes by law enforcement officers, especially the judiciary, provides an overview from a broad perspective, such as the following: First, the priority of corruption eradication in measuring the effectiveness of corruption eradication and the application of criminal sanctions, this research opens a general question about which choice is most important in combating corruption which is then ordered according to priority. The result is that almost all respondents agree that the main priority in eradicating corruption is to strengthen the integrity and professionalism of law enforcement officers selected by 64% of respondents (14 persons), then priority to strengthen is 17% (3), followed by effective and efficient criminal sanctions 12% (2 persons) and perspective on the heavy and light sentence is 6% (1 person). Second, the position of regulation in eradicating corruption, in terms of the conditions for regulating the corruption eradication as reflected in the current legislation, 83% of respondents (15 persons) consider that the arrangement is sufficient. Only 17% (3 people) who consider the laws and regulations governing the corruption eradication is still inadequate. Third, the effectiveness of corruption sanction. Related to the effectiveness of the criminal sanctions for corruption eradication, respondents answer divided in two; 10 respondents (55%) stated that the sanctions that have been applied to eradicate corruption are quite effective. Nevertheless, 8 respondents (45%) consider that existing criminal sanctions have not been effective enough as a weapon against corruption. In the case of the types of criminal sanctions imposed in corruption eradication arrangements, the majority of respondents 9 people (50%) still choose imprisonment as a type of sanction that provides a deterrent effect. Last but not least, respondents (24%) consider that the imprisonment that provides a deterrent effect is a life sentence. While, 3 respondents (16%) chose the death penalty as a punishment which gave a deterrent effect, the remaining 2 respondents (12%) considers that the deterrent effect for corruptor can be done by fine sanction.

### 4 CONCLUSION

Imprisonment and compensation money in Corruption Act, imprisonment as a means of deterrent effect and coaching, compensation money is used as an instrument of corruption seizure, especially before the birth of money laundering. Related to the commitment and the role of imprisonment and compensation money by law enforcers in corruption crime can be seen from some judge consideration in deciding criminal corruption. But in the application, there are obstacles in corruption as an effort to eradicate corruption in Indonesia, among others, corruption cases can be revealed after running in a long period of time making it difficult to trace money or wealth obtained from corruption. Various efforts of corruptor has spent money as corruption result or uses/transfer in other forms including behalf another person who is difficult to reach the law. In criminal payment of a compensation money, many convicted person cannot pay, its basis the third party suing the government for evidences seized in effort to fulfill the payment of compensation money.

**REFERENCES**

- [1] Arofa, E., Yunus, A., Sofyan, A., & Borahima, A. (2015). Corporate Criminal Liability for Corruption Offences in Indonesian Criminal Justice System. *International Journal of Advanced Research*, 3(8), 246-250.
- [2] Abdul Manan, *Aspek-Aspek Pengubah Hukum*, Jakarta: Kencana, 2005.
- [3] Adami Chazawi. *Pelajaran Hukum Pidana Bagian I*. Jakarta: PT Raja Grafindo, 2005.
- [4] Adib Bahari, Khotibul Usman. *KPK: Komisi Pemberantasan Korupsi Dari A Sampai Z*. Yogyakarta: Pustaka Yustisia, 2009.
- [5] Alfitra, *Hukum Pembuktian dalam Beracara Pidana, Perdata, dan Korupsi di Indonesia*. Jakarta: Raih Asa Sukses, 2011.
- [6] Awani Irewati, *Hubungan Indonesia-Amerika Serikat Dalam Menyikapi Masalah Terorisme Pasca 9/11*. Jakarta: Lembaga Ilmu Pengetahuan Indonesia, 2005
- [7] Bappenas, *Strategi Nasional Pencegahan & Pemberantasan Korupsi Jangka Panjang (2012-2025) Dan Jangka Menengah (2012-2014)*. Jakarta: Bappenas.
- [8] Danil, E., & Kurniawan, I. (2017). Optimizing Confiscation of Assets in Accelerating the Eradication of Corruption. *Hasanuddin Law Review*, 3(1), 67-76. doi: <http://dx.doi.org/10.20956/halrev.v3i1.717>
- [9] Darji Darmodiharjo, Shidarta, *Pokok-Pokok Filsafat Hukum: Apa Dan Bagaimana Filsafat Hukum Indonesia*, Jakarta: Gramedia Pustaka Utama, 1995.
- [10] Djisman Samosir, *Fungsi Pidana Penjara Dalam Sistem Pemidanaan di Indonesia*, Bandung: Binacipta, 1992.
- [11] Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia*. Bandung: Refika Aditama, 2006.
- [12] Edi Suandi Hamid and Muhammad Sayuti (Ed). (1999). *Menyingkap Korupsi, Kolusi, Nepotisme di Indonesia*, Aditya Media, Yogyakarta.
- [13] Gunawan, Y. (2017). Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic of Indonesia. *Hasanuddin Law Review*, 3(1), 14-26. doi: <http://dx.doi.org/10.20956/halrev.v3i1.948>
- [14] Mien Rukmini. (2009). *Aspek Hukum Pidana dan Kriminologi*, Alumni, Bandung.
- [15] Sri Suwitri. (2007). Pemberantasan Korupsi di Indonesia: Sebuah Upaya Reformasi Birokrasi. *Dialogue Journal*, 4(1): 23-41.