

# Application of Compensation Money Legal Sanctions in Corruption Crimes in Indonesia and the United States

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**Abstract.** After the issuance of TAP MPR Number IX/MPR/1998 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism, the People's Representative Council of the Republic of Indonesia (DPR RI) then issued a series of laws against corruption, including: Law Number 31 of 1999 concerning the Eradication of Corruption Crimes; and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Apart from that, the government is also making efforts through determining the payment of money as compensation for corruption. The problem is how is the legal comparison between Indonesia and the United States regarding criminal sanctions for money as compensation in the concept of law enforcement on corruption crimes? The research used is normative legal research, namely a scientific research procedure to find the truth based on the scientific logic of law from a normative side, studying the application of rules or norms in positive law to find legal rules, legal principles, and doctrines, generate arguments, theories, or new concepts to find solutions to legal issues that arise and answer problems. The results of the study show that there are differences between Indonesia and the United States regarding criminal sanctions for money substitutes in the concept of law enforcement for criminal acts of corruption.

**Keywords:** *Replacement Money, Corruption, Comparison.*

## A. INTRODUCTION

An Australian criminologist named Athol Moffit said, "Once corruption is committed, especially if it is carried out by high-ranking officials, corruption will flourish. There is no greater weakness than the corruption that permeates all levels of public service in a nation. Corruption weakens the backline, whether in peace or war."

This expression is in line with world conditions where almost all countries are inseparable from acts of corruption. In Indonesia itself, acts of corruption seem to have taken root and become ingrained into a 'culture' that has been passed down from generation to generation (Sudarti & Sahuri, 2019; Harefa, 2020). This can be seen from the data released by Indonesia Corruption Watch (ICW), where throughout 2020 there were 1,218 (one thousand two hundred and eighteen) corruption cases being tried at the Corruption Court, High Court, and Supreme Court. The total number of defendants in corruption cases in 2020 reached 1,298 (one thousand two hundred and ninety eight) people. Based on these data, it was recorded that corruption practices were dominated by the State Civil Apparatus (ASN) in 321 (three hundred twenty one) cases, village officials in 330 (three hundred thirty) cases, and the private sector in 286 (two hundred eighty six) cases.

According to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, corruption is interpreted as a type of crime that is very detrimental to state finances or the country's economy and hinders national development in a better direction, namely increasing welfare and alleviating people's poverty. The lack of commitment from government elites is allegedly one of the factors causing acts of corruption to still flourish in Indonesia.

In order to eradicate acts of corruption, the Indonesian government is making efforts through the ratification of statutory provisions that specifically regulate criminal acts of corruption, such as Law Number 24/Prp/1960 concerning Investigation, Prosecution and

Examination of Corruption Crimes; and Law Number 3 of 1971 concerning Eradication of Corruption Crimes. In addition to these two laws and regulations, TAP MPR No. IX/MPR/1998 was also issued concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism.

After the issuance of the TAP MPR, the People's Representative Council of the Republic of Indonesia (DPR RI) then enacted a series of laws on corruption eradication, including: Law Number 31 of 1999 concerning Eradication of Corruption Crimes; and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. In addition, the government is also making efforts through the determination of payment of money as a substitute for corruption.

The replacement money is expected to be a form of returning state losses caused by acts of corruption committed by irresponsible people with the aim of enriching themselves (Saragih & Medaline, 2018; Kartika, 2020). Payment of replacement money in the criminal act of corruption is an additional crime in addition to the punishment against the convict himself and the criminal fine. Additional crimes in corruption can be in the form of (Lilik Mulyadi, 2011): 1) Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where corruption is committed, as well as from goods that replace these goods; 2) Payment of replacement money in the maximum amount equal to the assets obtained from criminal acts of corruption; 3) Closure of all or part of the company for a maximum period of 1 (one) year; 4) Revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be given by the government to convicts; and 5) If the convict does not pay the replacement money within 1 (one) month after the court decision which has permanent legal force, then the property can be confiscated by the prosecutor and auctioned off to cover the replacement money”

In the event that the convict does not have sufficient property to pay the replacement money, then he will be sentenced to a prison term not exceeding the maximum threat of the principal sentence according to the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 and the length of the sentence determined in a court decision. The implementation of the penalty for payment of replacement money in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is subject to a maximum of the amount of property obtained from the criminal act of corruption and the payment time is no later than 1 (one) month after the court decision obtains permanent legal force (Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes).

If examined further, the imposition of additional crimes in the form of the obligation to pay replacement money for corruption convicts is still ineffective, because the trial process for corruption takes a relatively long time, so that convicts have the opportunity to transfer or hide property obtained from corruption (Pramono, 2005; Wibowo, 2018).

Therefore, in this case, it is necessary to have a legal system related to criminal acts of corruption, especially regarding replacement money in order to be able to eradicate corruption in Indonesia. In making a positive law, it is necessary to have an in-depth study with various methods as a basis for consideration. One method that is often used is to do legal comparisons (Lukito, 2016; Rampadio et al., 2022). Gutteridge stated that comparative law is a comparative method that can be used in all branches of law. Gutteridge distinguishes between comparative law and foreign law. Comparative law is used to compare two or more legal systems, while foreign law is an attempt to study foreign law without actually comparing it to other legal systems.

It is clear that comparative law is not law such as civil law, criminal law, constitutional law, and so on, but is an activity of comparing one legal system with another legal system

(Soerjono, 1989; Wahyudi, 2019). The comparison referred to in this case is an attempt to find and find differences and similarities by providing explanations, examining how the law functions, how the juridical solution is in practice, and what non-legal factors influence it (Sunarjati, 1988).

Theoretically, comparative law has the aim of providing understanding, in order to avoid legal chaos, references in obtaining a better picture of a legal system, and stimulating the development of general principles of law (Thani & Shahrin, 2021; Dinanti & Tarina, 2019). In practice, legal comparisons are carried out for the benefit of forming laws or related regulations, both in the formation of new laws and revisions to old laws. Apart from that, it is also aimed at the interests of justice, international agreements, and realizing a change in the system and implementation of law for the better (Purwanto et al., 2021; Sundari & Retnowati, 2021). In this paper the author will limit the problem by formulating the problem: What is the legal comparison between Indonesia and the United States regarding criminal sanctions in the form of compensation for criminal acts of corruption.

## **B. METHOD**

The research used is normative legal research, namely a scientific research procedure to find the truth based on the scientific logic of law from a normative side, studying the application of rules or norms in positive law<sup>12</sup> to find legal rules, legal principles, and doctrines, generate arguments, theories, or new concepts to find solutions to legal issues that arise and answer problems.

## **C. RESULT AND DISCUSSION**

### **1. Comparison of Indonesian Law with the United States Regarding Criminal Sanctions in Lieu of Money in the Concept of Law Enforcement of Corruption Crimes in Indonesia**

In an effort to eradicate criminal acts of corruption, Indonesia has issued 3 (three) laws and regulations regarding criminal acts of corruption, namely Law Number 3 of 1971 concerning Eradication of Criminal Acts of Corruption; Law Number 31 of 1999 concerning Eradication of Corruption Crimes; and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. These three laws and regulations regulate criminal compensation for money for defendants in corruption cases. Replacement money in Law Number 3 of 1971 concerning the Eradication of Corruption Crimes stipulates that the amount of replacement money payment is the same as the amount of money corrupted. However, this law does not explicitly state when the replacement money must be paid and the sanctions that will follow if the replacement money is not paid. In the explanation section, it is stated that if the payment of compensation money cannot be fulfilled, then the provisions regarding the payment of fines shall apply.

This legal weakness was later corrected in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Both of these laws more strictly regulate provisions regarding compensation money for corruption, namely if the replacement money is not paid within 1 (one) month, the defendant must immediately serve the prison sentence specified in the judge's decision, where the length does not exceed the maximum threat. principal crime.

### **2. Comparison of Indonesian Law with the United States Regarding Criminal Sanctions in Lieu of Money in the Concept of Law Enforcement of Corruption Crimes in the United States**

The many fraud scandals that have occurred in the United States have motivated the U.S. Securities and Exchange Commission (SEC) and the United States Congress to issue laws governing regulations related to corruption in the United States, namely the Foreign Corrupt Practices Act of 1977 (FCPA). The FCPA, which is a United States federal law, emphasizes 2 (two) main provisions, namely the requirements for accounting transparency based on the Securities Exchange Act of 1934; as well as about the bribery of foreign officials (Ang, 2010).

In addition, various accounting scandals that occurred in the 2000s involving various giant companies in the United States and Public Accounting Firms also led to the birth of the Sarbanes-Oxley Act, namely the Company Accounting Reform and Investor Protection Act of 2002 signed by George Bush in July 2002. The main objective of this law is to improve the financial accountability of public companies (good corporate governance), thereby reducing the possibility of companies or organizations to commit fraud (fraud). The Sarbanes-Oxley Act regulates accounting, disclosure and governance updates which require more disclosure of financial information, information about the results achieved by management, a code of ethics for officials in the financial sector, restrictions on executive compensation, and the establishment of an independent audit committee. In terms of reporting, the Sarbanes-Oxley Act requires all public companies to establish a reporting system that allows employees or complainants (whistleblowers) to report irregularities.

The impact of the enactment of the Sarbanes-Oxley Act included the establishment of the Public Company Accounting Oversight Board which supervises public accounting firms in carrying out audit tasks, so that reliability and independence can be guaranteed. The Internal Supervisory Unit is a mandatory part for every company listed on the stock exchange.

### **3. Comparison of the Application of Compensation Money Legal Sanctions in Corruption Crimes in Indonesia**

Basically, there are 2 (two) models of imposing replacement money determined by judges deciding corruption cases in Indonesia, including:

#### **a. Joint Responsibility (Shared Responsibility)**

This term is better known in the realm of civil law which can be interpreted as an agreement with a large number of subjects. The burden of joint responsibility consists of 2 (two) forms, namely: (1) Active joint responsibility, namely if the number of creditors is more than one; and (2) passive joint responsibility, namely if the number of debtors (debtors) is more than one. In relation to replacement money in acts of corruption, the proper description is passive joint responsibility, in which the state is the creditor and the defendants are the debtors.

#### **b. Proportional Loading**

This type of imposition is a criminal charge of replacement money where the panel of judges in their verdict definitively determines how much replacement money will be charged to each defendant. Determination of the amount of replacement money is based on the judge's interpretation of the contribution of each defendant in the related corruption crime.

In terms of the period for payment of replacement money, Article 18 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes stipulates that the period for payment of replacement money is 1 (one) month after the court decision obtains permanent legal force. In the event that a convicted person in a corruption case does not have sufficient assets to pay compensation, he or she will be sentenced to imprisonment for a length not exceeding the maximum threat of the principal sentence in accordance with the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 and the length of time The sentence has been determined in a court decision. The implementation of the criminal payment of replacement money in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is subject to a maximum of the amount of property obtained from the

criminal act of corruption.

#### **4. Comparison of the Application of Compensation Money Legal Sanctions in Corruption Crimes in the United States**

In the United States legal system there are no regulations regarding compensation money in acts of corruption. This superpower chose to apply the concept of Plea Bargaining (Plea Bargain), in which there are negotiations/negotiations between the public prosecutor (Public Prosecutor) and the accused or their legal advisors after an acknowledgment of guilt from the suspect regarding the type of crime being charged and the threat of punishment to be prosecuted. before the trial.

The concept of Plea Bargaining is adopted by several countries with an Anglo-Saxon legal system, including the United States. According to some experts, the concept of Plea Bargaining can be defined as follows (Kukuh, 2020; Lystin, 2018): a) Procedures that only exist in criminal cases where the defendant and the public prosecutor conduct negotiations that benefit both parties and then seek court approval. Usually this includes an admission of guilt by the accused in order to obtain relief from charges or to obtain some other benefit which makes it possible to obtain leniency; b) The process of bargaining by the public prosecutor, so that the defendant admits guilt in exchange for the defendant receiving a reduced sentence; and c) An agreement between two parties, namely the public prosecutor and the defendant or legal adviser that aims to obtain an admission of guilt from the defendant and the public prosecutor agrees to reduce charges.

Romli Atmasmita provides limitations on Plea Bargaining, which include: a) Plea Bargaining is basically a negotiation between the defendant or legal adviser and the public prosecutor; b) Aims to speed up the flow of criminal cases; c) Voluntary in nature, where the defendant admits guilt and the public prosecutor is willing to reduce the sentence; and d) The judge is not involved in this process, because it will create a bad image for the judiciary, because it seems to be on the side of the defendant by reducing the sentence to be handed down.

There are 4 (four) forms of plea (confession) that can be submitted by the defendant after the arraignment (reading of the indictment) in the United States (Suartha, 2020; Nurhilmayah et al., 2020), which consists of:

- a. Plea of not guilty, that is, the defendant neither admits nor denies all of the charges brought against him. Here the judge will proceed to the next stage, namely the trial stage (trial/proof).
- b. Guilty plea, namely the defendant admits his guilt knowing (knows/understands/understands) and intelligently (aware), in which the defendant admits his actions violated the law, accepts and understands the threat of punishment for his actions, and knows the consequences. In addition, the defendant is also required to be willing to give up all of his constitutional rights, such as the right to be confronted with witnesses, the right to be tried before a jury, and so on.
- c. Nolo contendere, namely a statement not to challenge (no contest plea) the indictment. Nolo contendere is different from guilty plea. If the defendant who committed nolo contendere is sued through a civil court by the victim, then the nolo contendere cannot be used as evidence to prove the guilt of the defendant in that court. However, if the defendant is sued by the victim through a civil court, the guilty plea can be used as evidence to prove the guilt of the defendant in a civil court.
- d. Standing mute, namely a silence taken by the defendant at the time of reading the indictment. The court will usually adopt the same procedural procedure as a plea of not guilty if the defendant is standing mute. If the defendant agrees to conduct plea bargaining, the public prosecutor will usually ask the defendant to choose one of the

guilty plea or nolo contendere, whichever is more advantageous to him.

Based on this elaboration, it can be concluded that the voluntary admission of guilt from the suspect/defendant becomes a benchmark for the public prosecutor to determine the criminal threat to be submitted before the trial. On the basis of this recognition, the perpetrator must return all the proceeds of the corruption crime he committed and then the perpetrator will receive leniency from the court.

In practice, the application of Plea Bargaining in the United States has been running effectively and efficiently. As already mentioned, the United States does not recognize the concept of substitute money in acts of corruption. This country also does not apply the death penalty for perpetrators of corruption on humanitarian grounds (human rights). However, the United States will provide a large fine of 2 (two) million dollars against the perpetrators of acts of corruption. As for the perpetrators of acts of serious corruption, they will be subject to imprisonment for a maximum of 20 (twenty) years in prison. Law enforcement efforts related to corruption in the United States are also increasing, such as: (1) Formation of the FCPA (Foreign Corruption Practices Act) Task Force at the DOJ (US Department of Justice), the existence of a special FCPA detachment at the FBI, as well as the FCPA Task Force at headquarters and SEC representatives (32 attorneys); (2) There are incentives for whistleblowers; and (3) US foreign policy regarding the emphasis on anti-corruption issues. Such large fines and strict supervision of financial activities, especially in public organizations, have resulted in the level of corruption in the United States being successfully suppressed.

#### **D. CONCLUSION**

The crime of corruption is included in the category of extraordinary crimes, because it has a very bad impact on national development in the country concerned. In Indonesia, legal sanctions against perpetrators of corruption in addition to imprisonment also include additional penalties in the form of payment of money as compensation for corruption. This replacement money is a payment made by the accused of corruption to replace state losses caused by acts of corruption that he committed. However, in practice the application of imposing replacement money is still considered less effective. This can be seen from the large number of arrears in payment of the replacement money. In the United States, there is no imposition of compensation money for perpetrators of corruption, but the concept of plea-gaining is better known, where there is a negotiation (agreement) between the defendant or his legal adviser and the public prosecutor to provide leniency if the defendant wants to admit his guilt before the court. However, even though there is no replacement money, the United States imposes a fine of 2 (two) million dollars and a maximum prison sentence of 20 (twenty) years for perpetrators of serious corruption crimes. Huge fines and strict supervision are considered quite effective, as evidenced by the low corruption rate in the United States.

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