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PRISON PENALTY AS ADDITIONAL CRIMINAL SANCTION FOR SUBSTITUTION IN CORRUPTION CASE

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Abstract

Criminal sanctions for replacement payments are a consequence of corruption corruption. The imprisonment as a substitute for the replacement money does not contain a consistent measure of one case to another, so the disparity of the decision is very potential. This type of research is a normative legal research, which is focused to examine the rules or norms in positive law. The approach used in this approach. The results of the criminal sanction of substitute money in corruption in the Indonesian legislation system are not regulated expressive verbis. In addition, the concept and application of replacement money to corruption also varies at different levels of the court, resulting in legal uncertainty and unfairness.

Keywords: Criminal Sanctions; Replacement Money; Corruption Crime.

INTRODUCTION

Corruption is an act that is very detrimental to the state and community finances so that it can hamper the course of national development. Therefore, all kinds of actions that are detrimental to state finances need to be eroded, including by maximizing the work force and forced power of the existing legislation through criminal law enforcement.[1]

Actors of corruption are identified as a conspiracy between state and community officials that is very complex, so that in various developed countries the termappears political corruption. This term develops because it contains the concerns of experts and citizens who are good because this criminal act of corruption reduces the public's trust in the government substantially, in addition to resulting in increased costs of social services and conversely decreases the quality of social services.[2]

One element in corruption is the loss of state finances. Against this country's financial losses, the Government made the Corruption Law, both the old one, namely Law Number 3 of 1971 and the new one, namely Law Number 31 of 1999 of Law Number 20 of 2001, stipulates a policy that state financial losses it must be returned or replaced by the perpetrator of corruption.[3]

Based on Law No. 31 of 1999 concerning Criminal Acts of Corruption in Casu, the return of losses on state finances can be carried out through two legal instruments, namely criminal instruments and civil instruments. The criminal instrument is carried out by the

[1] Bambang Waluyo. 2015. "Relevansi Doktrin Restorative Justice dalam Sistem Pemidanaan di Indonesia".*Hasanuddin Law Review*, 1(2), 210-226.

[2]Muladi, 1990, *Beberapa Dimensi dari Tindak Pidana Korupsi, Suatu Makalah Penataran Nasional Hukum Pidana IV.* Purwokerto: Fakultas Hukum UNSOED. P. 2

[3]Krisna Harahap, 2006, *Pemberantasan Korupsi Jalan Tiada Ujung*, Grafitri, Bandung, Hlm. 2

investigator by confiscating property belonging to the perpetrator and subsequently the Prosecutor is prosecuted to be seized by the Judge. Civil instruments are carried out by State Attorney Attorneys (JPN) or agencies that are harmed to corruption actors (suspects, defendants, convicted or their heirs if the convict dies).

Criminal instruments are more common because the legal process is simpler and easier. In the decision of the District Court, in addition to the principal punishment, the judge usually decides additional crimes in the form of substitute money to the convicted cases of corruption. Replacement money crimes are related to the number of prisoners' detention periods, sometimes not met by convicts, where they prefer additional crimes in the form of body custody compared to substitute crimes decided by a judge which can be caused by several things.[4]

The term "substitute money" has an associated meaning, not the interests of individuals or individuals, but the public interest or even the interests of the state. In this casecan be said criminal and punitive in their nature.[5] This is clearly different in nature, for example with claims for damages due to being arrested, detained, prosecuted or prosecuted or subjected to other actions without legal reasons, because of errors regarding his person, the law applied is Article 95 of the Criminal Procedure Code (KUHAP). The problem is also different from the claim of compensation as a result of the act which is the basis of the indictment which can be combined with criminal cases (Article 98 of the Criminal Procedure Code). In this case, what is related is individual interests, not the interests of the state.[6]

In order to achieve effective goals to prevent and eradicate corruption, Law No.31 of 1999 contains criminal provisions that are different from the Law which regulates the previous corruption problem, namely determining additional criminal threats, as stipulated in Article 17 jo Article 18 of Law No.31 of 1999 which states that in addition to being subjected to the principal penalty the defendant in a corruption case can be subject to additional criminal penalties, one of which is the payment of a replacement money.

Criminal payment of substitute money is a consequence of the consequences of a criminal act of corruption that "can harm the state's finances or the economy of the country", so that to recover the losses required juridical means, namely in the form of replacement money payments.[7]Substitute of substitute money in the form of additional imprisonment imposed on the defendant due to the inability of the defendant to return the state money was analyzed for comparability between criminal imposition compared with the amount of state money obtained by the defendant.[8] Imprisonment as a substitute for

[4]*Ibid.*, hlm. 6

[5] Ade Mahmud. (2017). Dinamika Pembayaran Uang Pengganti Dalam Tindak Pidana Korupsi.*Jurnal Hukum Mimbar Justitia*,*3*(2), 137-156.

[6]Muladi, *loc.cit.*

[7]Guse Prayudi, 2007, Pidana Pembayaran Uang Pengganti,*Jurnal Hukum, VariaPeradilan*, Nomor 259 (Juni 2007). P. 49.

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

criminal substitute money does not contain a consistent measure between one case and another, so that a wide disparity has the potential to occur and creates the potential for the convict to choose additional imprisonment rather than return the corrupted State money.

Examples of the disparity in prosecution of corruption cases in Indonesia can be seen in the bribery case of the election of the Senior Deputy Governor of Bank Indonesia. In this case, at least 29 (twenty nine) Members of the Republic of Indonesia Parliament (DPR-RI) were involved. However, the imprisonment sentenced to the recipient of a bribe is not the same, varies. Even though the role of the recipient is relatively the same. That is, receiving money / promises to choose Miranda Gultom as the Senior Deputy Governor of Bank Indonesia.

Especially in eradicating corruption, the phenomenon of criminal disparity is not only limited to principal crimes, but also includes substitute money. As we know, substitute money is a peculiarity of corruption. In its implementation, it is not uncommon to find the phenomenon of disparity in the imposition of imprison-ment for substitute money in the verdict of cases of corruption. The research note found a corruption case convicted of paying a replacement fee of Rp 50 million[9] (fifty million rupiahs) with a prison sentence for substitute money (prison if the convict cannot pay replacement money) for 12 (twelve) months. Whereas in other cases, the Panel of Judges decided on a replacement amount of Rp. 378.11 billion[10] (three hundred seventy eight point eleven billion rupiahs) with imprisonment from a replacement for 12 (twelve) months.

On this basis, this study aims to analyze the substance of the danm application of the implementation of criminal sanctions in lieu of corruption, as well as understanding the legal considera-tions by judges of corruption in dropping the amount of money substituted sanctions due to state losses along with the nominal substitute imprisonment for not paying money substitute.

METHODS

This type of research is normative legal research, which is focused on studying the norms or norms in positive law.[11] The approach used in this study is the legislation approach (statue approach) and the case approach (case approach).[12] The definition of the legislative approach itself is an approach using legislation and regulation. In the legislation approach, the focus of research is not only to look at the form of legislation, but also to review the content material, to find philosophical foundations, ontological basis, and ratio legislation of the birth of laws. To

[9]Putusan Perkara Tindak Pidana Korupsi di Pengadilan Bengkulu atas nama Hendrasono. Lihat pula, Tama S. Langkun dan Bahrain et al, 2014, *Putusan Pemidanaan Perkara Tindak Pidana Korupsi: Studi Disparitas,* Indonesia Corruption Watch (ICW) bekerja sama dengan Yayasan Lembaga Bantuan Hukum Indonesia dan Lembaga Bantuan Hukum Makassar. Hlm, 11.

[10]Putusan Perkara Tindak Pidana Korupsi di Pengadilan Jakarta Selatan atas nama Adrian Waworuntu

[11]Jhonny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif.* Bayumedia, Malang. P. 295.

[12]Pendekatan perbandingan dilakukan dengan mengadakan studi perbandingan hukum. Lihat, Peter Mahmud Marzuki, 2009, *Penelitian Hukum Normatif.* Kencana, Jakarta, Hlm. 93.

strengthen the study in the study, the author also uses a case approach also used to study the application of legal norms or rules that are carried out in law practice in court. This case is used to obtain a practical picture of the application of a rule or legal norm, especially those carried out by a judicial institution.

DISCUSSION

The substance of regulation of substitute criminal sanctions in the system of laws and regulations in Indonesia

In a history flash, the arrangement of additional criminal sanctions in the form of replacement money was first regulated based on the Government Regulation in Lieu of Law No. 24 of 1960 concerning Investigation, Prosecution and Corruption Crime based on Article 16, as follows:

(1) Anyone who commits a criminal act of corruption referred to in article 1 sub a and b shall be sentenced to a maximum jail sentence of twelve years and / or a maximum fine of one million rupiah.
(2) All property obtained from corruption is seized.
(3) Lawyers can also be required to pay a replacement amount equal to property obtained from corruption.

Furthermore, replacement money is regulated in accordance with Law No. 3 of 1971 concerning Corruption Crimes: Article 28: Whosoever commits a corruption act referred to in Article 1 paragraph (1) sub a, b, c, d, e and paragraph (2) of this Law, shall be punished with a prison sentence of live or imprisonment for a maximum of 20 years and / or a maximum fine of 30 (thirty) million rupiahs.

Based on the construction of these norms, it can be seen that the concept of substitute money is essentially to confiscate State assets obtained from corruption and not to replace state losses as the value of State losses is based on the calculation of the State Audit Board and BPKP and other State institutions.

The application of substitute money sanctions in cases of corruption acts aims to compensate the State for losses. According to the researcher, that if a replacement money is applied to compensate the State's losses based on the calculation of State losses, it is very strange. The argument is that state losses are not necessarily fully enjoyed by the perpetrators of corruption and in reality, a court decision that applies additional criminal sanctions in the form of substitute money is usually below the amount of state losses based on the calculation of the authorized state institution to calculate state losses.

In addition, according to the researcher that with the above explanation, precisely as a cause of unclear concept of substitute money as stipulated in Law No. 31 of 1999, has implications for the obscurity of the purpose or concept of being positivated by norms related to substitute money, namely to replace state losses or only to seize assets obtained from corruption.

The unclear purpose of the substitute money concept has a serious impact on law

enforcement related to the application and execution of court decisions by the Prosecutor's Office. In addition, the lack of clarity about the concept of the purpose of implementing substitute money also has implications for the application of substitute money as a compensation for the State or for compensating the State for losses based on the amount enjoyed by corruption convicts. This does not only become debatable academically. But it is also debatable practically.

The debate over the application of substitute money as a substitute for the state or replacing state losses based on the amount enjoyed by corruption convicts, can practically be found to be debatable as based on research conducted by researchers on the Supreme Court's ruling of 1537 K / Pid.Sus / 2013[13] and 1559 K / PID.SUS / 2012[14].

In legal considerations in the decision of the Supreme Court No. 1537 K / Pid.Sus / 2013 are as follows: "Considering, therefore inflicted defendant, the State finances have been harmed, then the defendant should be punished for the state to pay damages."

From the legal considerations, the judicial practice knowable that the purpose of the additional privatization in the form of substitute money is to replace and pay the loss of the State. However, if the other Supreme Court decisions are analyzed as the Supreme Court decision No. 1559 K / PID.SUS / 2012, precisely an additional criminal sanction namely substitute money is applied aimed at seizing assets acquired and enjoyed by the defendant from the proceeds of criminal acts of corruption. More detailed consideration of the panel of cassation judges, as follows:

"That regardless of the reasons for the cassation of the Defendant, Judex Facti has wrongly or wrongly applied the law, because due to the actions of the Defendant the State suffered a significant loss of Rp. 1,838,123,000, - (one billion eight hundred thirty eight million one hundred twenty three thousand rupiahs) which is not considered by the Judex Facti, therefore to fulfill the sense of justice the Defendant must be given severe punishment which can have a deterrent effect on the perpetrators of corruption. "

From the above legal considerations, it shows that the decision applies an additional criminal concept in the form of substitute money aimed at taking the property of the defendant who is enjoyed based on the act of corruption. This, based on the decision verdict which applies a replacement money of 42,000,000, (forty-two thousand rupiah).

The above decision shows that the application of additional criminal sanctions in the form of substitute money, in reality the application of substitute money calculations is still different among the Supreme Court's cassation or judges, namely the application of sanctions which are intended as a substitute for the State versus the application of a replacement money based on treasures resulting from corruption that are enjoyed

[13]Penerapan Penghitungan Uang Pengganti berdasarkan kerugian negara dan Tujuan Pembayaran Uang Pengganti sebagai pengganti kerugian Negara.

[14]Penerapan Penghitungan Uang Pengganti berdasarkan harta hasil korupsi yang dinikmati dan Tujuan Pembayaran Uang Pengganti sebagai Merampas harta hasil korupsi.

and the purpose of payment of substitute money as robbing of assets resulting from corruption, also not only occur at the level of cassation.

This is, as in ICW's observation, there are at least several corruption cases where judges and prosecutors differ in determining the value of state losses and the amount of replacement money. For example, in a corruption case involving the Blitar Regency Regional Budget (APBD) with a state loss of Rp. 97 billion involving the former Blitar Regent Imam Muhadi. The prosecutor demanded the defendant with 18 years in prison, a fine of Rp.500 million, a subsidiary of 6 months in prison, paying a compensation for state losses of Rp. 50 billion. However, the Panel of Judges finally ruled imprisonment for 15 years, a fine of Rp. 400 million, a subsidiary of 6 months in jail and paid a compensation for state losses of Rp. 36 billion.[15]

From the description above, it shows that among the judges in various levels of the corruption criminal court there is a dualism in the purpose of applying substitute money and the impact of the inequality of the concept, it can be fatal to the execution of the prosecutor for additional criminal sanctions in the form of substitute money. Researchers argue, because the assets obtained from the proceeds of corruption are not necessarily the same as the value of the State's losses. This can occur considering the book keeping system financialused by the Prosecutor's Office has not adopted an Agency Accounting System compiled by the Ministry of Finance,[16] so that the amount of replacement money calculated by each institution can be different as happened in a corruption case with former Riau Islands Regent Huzrin Hood. This is also inseparable from the definition of State wealth and state finance that are all different and have not been agreed upon regarding the concept of State losses and this implies a lack of clarity in calculating the supposed replacement money.

The above argumentation of the researcher is also in accordance with the Supreme Court Regulation No. 5 of 2014 concerning Criminal Additional Replacement Money in the Act of Corruption, Article 1:

"In the case of determining the amount of substitute money payment in a crime of corruption, it is as much as possible equal to assets obtained from criminal acts of corruption and not solely a number of losses the state finances that are caused. "

The application describes that the purpose of the application of a criminal is an additional substitute money, not as a substitute for the State's loss. However, criminal sanctions for substitute money aim to seize the assets of the defendant who enjoy the assets or wealth of the State obtained from corruption as committed by the defendant.

From the reality of the problems in judicial practice related to additional criminal arrangements in the form of substitute money

[15]Emerson Yuntho, Illian Deta Arta Sari, et., al, 2014, *Hasil Penelitian Penerapan Unsur Merugikan Keuangan Negara dalam Delik Tindak Pidana Korupsi,*Indonesia Corruption Watch. P. 26-27.

[16]Efi Laila Kholis, 2010,*Pembayaran Uang Pengganti Dalam Perkara Korupsi*, Solusi Publishing, Jakarta.Hlm. 35.

in Indonesia, it is not expressively verbis (express) related to the concept of substitute money, as well as the procedure for applying substitute money to be executed by prosecutors based on laws and regulations. However, it is regulated and found according to the regulations of the Supreme Court. Even so, it still creates legal and justice uncertainty, and makes it difficult for prosecutors to implement it. In addition, it also does not regulate in relation to the standard amount of replacement money that is adjusted to the length of the substitute criminal.

Basis of Application of Criminal Sanctions for Substitute Money by Judges in Case of Corruption Crime

In a criminal case, according to Moeljatno, the process or stages of imposing a decision will be carried out in several stages, namely:[17]

1. Stage of Analyzing Criminal Actions. When the judge analyzes whether the defendant committed a criminal act or not, what is considered primary is the aspect of society, namely the act as in the formulation of a criminal rule.
2. Stage of Analyzing Criminal Responsibility. If a defendant is found guilty of committing a criminal offense violating a particular article, the judge analyzes whether the defendant can be held responsible for the criminal act he committed.
3. Determination Stage of Criminal. The Justice judge will impose a sentence if the elements have been fulfilled by looking at the article in the Act violated by the Actor. With the imposition of a criminal sentence, the perpetrator is clearly defined as a convicted person.

Moeljatno's statement thus constit-utes the rationalization of Law Number 48 of 2009 concerning the judicial power of Article 50 paragraph (1) stated that a court decision must not only include the reasons and basis of the decision, it also contains articles of the relevant legislation or an unwritten source of law which is used as a basis for trial.

In reality, even though the normalization of substitute money sanctions has been postulated, this does not necessarily constitute the basis for the judge to impose criminal sanctions in the form of substitute money. Likewise with the prosecutor in executing a criminal sanction for substitute money that has been decided by the panel of judges. This was evidenced as stipulated in the Supreme Court Circular Number: 4 of 1988 concerning: Execution of the Law of Substitution of Substitute Money, as a basis for norms to fill legal vacancies against the provisions and application of criminal sanctions for substitute money as regulated by Law No. 3 of 1971. The basic application of criminal sanctions in the form of substitute money is not enough if only based on Law No. 2 of 1971. However, the judge's guideline is the basis of the norm for imposing criminal sanctions in the form of substitute money, as a basis for the application of judges to fill the legal vacuum from regulation of additional criminal sanctions in the form of replacement money based on Law No. 3 of 1971 was based

[17]Ahmad Rifai, 2010, *Penemuan Hukum*, Sinar grafika, Jakarta. P. 96.

on the Supreme Court Circular Letter Number: 4 of 1988 concerning Execution of the Laws for Substitution of Money, namely the consideration of the Supreme Court in issuing the circular letter as follows:

In connection there are still doubts about the execution of the law of substitution payments under article 34 sub c Law No.3 of 1971, hereby affirmed as follows:

1. Against the imposition of a criminal payment of substitute money, a sentence of imprisonment cannot be determined if the substitute money is not paid by the convicted person;
2. The execution of the criminal payment of substitute money if it will be carried out by the Prosecutor no longer requires the intervention of the court for example in the form of confiscation permits as outlined in the Stipulation and others. This is based on the opinion that the confiscation of the property of the convicted person is still an implementation of what has been decided by the Judge.
3. Only if in the execution of this time the number of items owned by the convicted person is no longer sufficient, the rest if it is still being billed by the Prosecutor on Other Opportunities must be submitted through a civil suit in court.

The description above shows that the basis of the norm for the application of sanctions by the panel of judges who hear cases of corruption to impose criminal sanctions in the form of substitute money is not enough if only based on Law No. 3 of 1971 which regulates sanctions for substitute money. However, the basis of more detailed norms as the basis for the application of judges in imposing substitute crimes is based on the Circular of the Supreme Court a quo.

In its development, since the revocation of Law No. 3 of 1971 based on Law No. 31 of 1999 concerning Criminal Acts of Corruption, as the basis of the norm for the application of additional criminal sanctions in the form of substitute money there is no difference with the previous law, namely by Law No. 3 of 1971. According to the researcher, only lies in the difference in the regulation of the article only related to the issue of additional criminal sanctions, however, in substance and the sentence of the norm of sanction of substitute money there is no difference. So, the norm that governs the replacement money is simply "copy paste" only from the previous Act. Supposedly, there is progress related to the concept of norms of substitute money based on Law No. 31 of 1999 concerning Corruption Crimes, if based on failure and previous experience in the application of additional criminal sanctions in the form of substitute money.

The impact of the act of positivising the concept of substitute money that onlycopies paste from the Law no. 3 of 1971 is the occurrence of rechtsvakuum (legal vacuum) for the court to apply additional criminal sanctions in the form of substitute money in adjudicating cases of corruption which are aimed at enforcing criminal law in casu, so that "hot balls" named additional criminal in the form of replacement money are in the

hands of the judge and prosecutors, as well as corruption crimes that are no different from previous failures. This reality shows that the norm of additional criminal sanctions in the form of substitute money does not have a difference with the conditions of the previous law norms which regulate explicitly in relation to additional criminal sanctions in the form of substitute money.

With this reality, then mutatis mutandis, Law No. 31 of 1999 concerning corruption, requires and forces the judiciary to issue bleidsregel[18] to fill the legal vacuum as the basis for the application of additional criminal sanctions in the form of substitute money. Responding to this reality, the Supreme Court established the Supreme Court Regulation of the Republic of Indonesia Number 5 of 2014 concerning Additional Crimes for Replacement Money in Corruption Crimes.

As a basis for the norm in the application of sanctions in the form of substitute money, based on the Supreme Mahamah Regulations above, replacement money can only be imposed on the defendant in the case concerned[19]. In relation to the length of time the substitute imprisonment that can be imposed is the maximum principal threat of the article declared proven[20]. In the event that the principal penalty for the article declared proven as referred to in paragraph (1) is the maximum life sentence of a prison substitute is 20 (twenty) years[21]. If within a period of 1 (one) month after the decision is legally binding, the convict does not pay off the compensation payment, the Prosecutor confiscates the property of the convicted person. If after the seizure as referred to in paragraph (1) the convict still does not pay the replacement money, the Prosecutor is obliged to auction off the property according to Article 273 paragraph (3) KUHAP. When, in the time after 3 months of seizure is carried out, an auction is carried out by the Prosecutor. If, the convict has not finished undergoing a principal sentence, the Prosecutor can still confiscate and auction the property of the convict found[22].

In the history of the application of additional criminal sanctions in the form of replacement money, Law no. 3 of 1971 and revoked based on Law 31 of 1999 concerning Criminal Acts of Corruption there is no difference and is not effective without the Supreme Court's policy because the regulation of criminal norms in addition to substitute money is unclear and there is no legal certainty in applying substitute money sanctions in court. Although, the Supreme Court regulations as described above, which aims to fill the legal vacuum, according to the researcher that with the existence of the Supreme Court regulation, it does not necessarily solve the fundamental problem of applying additional criminal sanctions in the form of substitute money. Researcher's

[18]Peneliti menganggap Peraturan Mahkamah Agung sebagai kebijakan in casu, sebagai kebijakan kriminal oleh yudikatif untuk mengisi kekosongan hukum dan lembaga yudikatif secara teoritis hanya dapat membentuk norma hukum konkrit berupa vonnis.

[19]Pasal 6 Peraturan Mahkamah Agung No. 5 Tahun 2014.

[20]Pasal 8 ayat (1) Peraturan Mahkamah Agung No. 5 Tahun 2014.

[21]Pasal 8 ayat (2) Peraturan Mahkamah Agung No. 5 Tahun 2014.

[22]Pasal 9 ayat (1)-(3) Peraturan Mahkamah Agung No. 5 Tahun 2014.

argument, that in the Supreme Court Regulation No. 5 of 2014 Additional Penal for Substitute Money in Corruption Crimes, does not regulate the suitability of the length of substitute imprisonment based on the standard nominal sanction of substitute money that can be guided by any court institution so that there is no significant disparity in decisions between one and the other corruption court institutions. That, according to the resear-chers, the cause of injustice and the discrepancy (disparity) of imposing substitute money sanctions in reality concludes in court.

The disparity in substitute imprison-ment decisions is correlated with the nominal money substitute sanctions, the reason according to the researcher is that this is not independent of the absence of norms that regulate the uniformity of special standards nominal substitute money and substitute imprisonment that apply to every case of corruption. For example, as in the concept of Imprison-ment for non-payment of fine, such as in Singapore, which regulates substitute imprisonment according to the amount of the substitute criminal sanction as discussed earlier.

The legal implications are not regulated in relation to the standard of length of substitute imprisonment that must be served by a convict adjusted to the nominal amount of substitute money sanctions, causing substitute sanctions and substitute imprisonment are only alternative (bargaining) only for the convict to choose which one to live. In fact, the essence of substitute criminal sanctions to restore state finances that are harmed by the perpetrators of corruption, from convicts who enjoy the results of criminal acts of corruption in the form of enriching themselves or enriching others and to deter perpetrators of corruption.

Based on the description above, thus, according to the researcher, even though the additional criminal compensation is regulated by Law No. 31 of 1999 concerning Corruption Crimes and further regulated in the Supreme Court Regula-tion No. 5 of 2014 concerning Additional Crimes for Replacement Money in Corruption Crimes as the basis for the application of judges in imposing additio-nal criminal sanctions in the form of substitute money, however, does not regulate the standard terms of the length of substitute imprisonment adjusted to the amount of substitute criminal sanctions to recover losses Countries and deterring corruptors as the concept Impri-sonment for non-payment of fine as in Singapore.

CLOSING

Conclusion

The substance of the regulation on the substitution of money sanctions in corruption acts in the system of legislation in Indonesia is not regulated verbisically. Apart from that, the concept and application of substitute money to defendants of criminal acts of corruption also vary at various levels of the court, causing legal uncertainty and unfairness. Normatively, Law 31 of 1999 and Supreme Court Regulation No. 5 of 2014 is the basis for the application of criminal sanctions for substitute

money by judges in cases of corruption in the corruption court. In carrying out its decision, the public prosecutor carries out a decision in which the application of a substitute criminal sanction, nominal value and substitute imprisonment are determined by each of the Panel of Judges who adjudicate cases of corruption.

Legal considerations by judges of corruption at the first level and appellate level, as well as in several decisions of corruption cases at the first court, have different legal considerations, ranging from the concept and purpose of applying replacement money, dropping the amount of substitute money sanctions, up to the imprisonment imposed on the defendant as a result of the non-payment of the payment of compensation.

Recommendation

Accordingly, the researcher recommends that the The Imprisonment for Non Payment of Fine theory be used as a new concept of the return of State Finance losses and a substitute imprisonment for the loss of State finances by the defendant. This was intended to complement the provisions of the Criminal Procedure Code (RUU KUHAP), the Criminal Code Bill and the new Corruption Bill.

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