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Redesign of The Concept of Money in Substitution For Criminal Acts of Corruption in Returning State Losses in Criminal Acts of Corruption

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Abstract : *Corruption in the natural resources sector constitutes an extraordinary crime that causes significant financial losses to the state as well as extensive ecological and social impacts. Within the Indonesian positive legal system, the recovery of state losses is accommodated through an additional criminal sanction in the form of substitute money, as regulated under the Anti-Corruption Law. This study aims to analyze the normative construction of substitute money sanctions, judicial considerations in corruption cases involving tin mining and Harvey Moeis, and their effectiveness within the framework of asset recovery. This research employs a normative legal method using statutory and case approaches. The findings indicate that, normatively, substitute money serves as an imperative instrument for restoring state losses. However, in practice, it remains positioned as a subordinate sanction to imprison. The existence of subsidiary imprisonment and limitations in asset tracing have reduced the effectiveness of recovery efforts. The novelty of this research lies in its conceptual reconstruction that positions substitute money as a primary sanction in corruption sentencing based on asset recovery, rather than merely an accessory punishment. This approach emphasizes the follow the money principle and value-based configuration as the central orientation for restoring state financial losses.*

Keywords : *Corruption; State Finance; State Loss; Substitute Money; Reconceptualization*

Abstrak : Korupsi di sektor sumber daya alam merupakan kejahatan luar biasa (extraordinary crime) yang menyebabkan kerugian keuangan negara secara signifikan serta menimbulkan dampak ekologis dan sosial yang luas. Dalam sistem hukum positif Indonesia, pemulihan kerugian negara diakomodasi melalui pidana tambahan berupa uang pengganti, sebagaimana diatur dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi. Penelitian ini bertujuan untuk menganalisis konstruksi normatif sanksi uang pengganti, pertimbangan hukum hakim dalam perkara korupsi pertambangan timah yang melibatkan Harvey Moeis, serta efektivitasnya dalam kerangka pemulihan aset (asset recovery). Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan peraturan perundang-undangan (statute approach) dan pendekatan kasus (case approach). Hasil penelitian menunjukkan bahwa secara normatif, uang pengganti berfungsi sebagai instrumen yang bersifat imperatif untuk memulihkan kerugian negara. Namun, dalam praktiknya, uang pengganti masih ditempatkan sebagai sanksi yang bersifat subordinatif terhadap pidana penjara. Keberadaan pidana penjara pengganti serta keterbatasan dalam pelacakan aset (asset tracing) menyebabkan efektivitas upaya pemulihan kerugian negara menjadi belum optimal. Kebaruan penelitian ini terletak pada rekonstruksi konseptual yang menempatkan uang pengganti sebagai pidana utama dalam pemidanaan tindak pidana korupsi berbasis pemulihan aset, bukan sekadar sebagai pidana tambahan. Pendekatan ini menekankan prinsip follow the money dan konfigurasi berbasis nilai (value-based configuration) sebagai orientasi utama dalam pemulihan kerugian keuangan negara.

Kata kunci : Korupsi; Keuangan Negara; Kerugian Negara; Uang Pengganti; Rekonseptualisasi

Introduction

Corruption is one of the crimes outside extraordinary crimes that gives multidimensional impacts on the country.[1] In addition to causing loss of state finances, corruption also hinders development, destruction order of law, lowering trust public to institutions Government, as well as cause injustice social. [2]

The case of criminal corruption involving Harvey Moeis as a private individual in the management of tin illegally in Bangka Belitung has become a national case. Based on the Decision of the District Court of Action Criminal Central Jakarta Corruption Case Number 70/ Pid. Sus -TPK/2024, the defendant was sentenced to criminal prison for six years six months and charged with criminal addition in the form of replacement money amounting to Rp. 210 billion.

However, at the appeal level in Decision DKI Jakarta High Court Number 1/ Pid.Sus -TPK/2025, the panel of judges increased the sentence criminal to be twenty-year prison and increased the replacement money to Rp. 420 billion. The appeal judge's considerations confirmed that Harvey Moeis' role Not only participate and, but also dominant in coordinate activity illegal which causes loss big to state finances and the environment, as well as style life luxurious results crimes that are considered to hurt the sense of public justice.

To restore state losses due to criminal corruption, the Indonesian law system provides an instrument in the form of a criminal addition in the form of compensation payment as arranged in Article 18 of Law Number 31 of 1999 in

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[1] Puanandini, Dewi Asri, Vita Suci Maharani, and Putri Anasela . " Corruption as crime outside normal : Analysis impact and efforts enforcement law ." *Public Sphere: Journal Social Politics, Government and Law* 4.1 (2025).

[2] Hermawan, Dicky, et al. " Analysis Impact Corruption in Infrastructure Development in Developing Countries." *Innovative: Journal of Social Science Research* 4.1 (2024): 4259-4271.

conjunction with Law No. Number 20 of 2001 concerning Eradication Action Criminal Corruption. Provisions confirm that the judge can drop criminal addition in the form of payment of replacement money in an amount equivalent to state losses incurred by the defendant. If, in term time certain convict No can pay, then the object of the treasure can be confiscated and auctioned, and if the result No sufficient, then it will be replaced with criminal imprisonment.

Implementation of criminal addition in the form of replacement money is an integral part in system law criminal Indonesian corruption. This is arranged in Article 18 paragraph (1) letter b of the Law Number 31 of 1999 in conjunction with Law No. Number 20 of 2001, which states that to perpetrator of corruption can dropped criminal addition in the form of a compensation payment as big as the state losses incurred consequence action criminal said. If the defendant does not pay in term time One month after decision get strength law still[3], then the things he owns can be confiscated and auctioned by the state. If not sufficient, then replaced with additional criminal prison. Within this framework, replacement money is not only an instrument of penalty, but rather a mechanism for recovery of state losses of a restorative nature. Sentencing strategy in the case of corruption must cover the return mark economy results of the crime to the state treasury as part from function of prevention and recovery.

Even though in a way normative enough strong, application of substitute money in practice often meets serious challenges. Research shows that difference audit methods, limitations in tracking assets[4], and not integration in system execution often become main constraints in return state losses through this mechanism. Even in several cases, the amount of compensation imposed by the judge is not proportional to the market loss based on official audits; it raises a gap between decision law and restitution. Research: This study will examine, in a juridical and empirical way, whether criminal compensation in Harvey Moeis' case can give concrete recovery to state losses, especially in the context of crime source Power's impactful nature and systemic nature.

State of the art from study: This lies in focus to recovery state finances through substitute money in case corruption sector mining, an undeveloped field. Lots dissected deeply in criminal law studies. Literature previously more often highlights aspect corporal punishment or administrative sanctions for corruption in bureaucracy. In the context of this study This give perspective new about importance use criminal effective and fair addition as effort state restitution. Criminalization in the context of corruption must touch on substantive justice, and not solely repressive corporal punishment[5].

In the case Number 70/ Pid.Sus -TPK/2024/ PN.Jkt.Pst, a panel of judges at the district level First drop verdict relatively light to Harvey Moeis, namely a criminal prison sentence of six years six months and replacement money amounting to Rp210 billion. The decision was assessed No reflect in a

[3] Waterman, Dana A. "A Defendant's Ability to Pay: The Key to Unlocking the Door of Restitution Debt." *Iowa L. Rev.* 106 (2020): 455.
[4] Pimentel, Erica, et al. "Systemizing the challenges of auditing blockchain-based assets." *Journal of Information Systems* 35.2 (2021): 61-75.
[5] Gould, Laurie A., and Matthew Pate. "Penality, Power, and Polity: Exploring the Relationship Between Political Repression and Corporal Punishment." *International Criminal Justice Review* 21.4 (2011): 443-461.

proportional way the state losses and damage to the environment that occurs consequence practice mining illegal activities facilitated by the defendant. The judge's considerations were more emphasizes formal proof and the role of collective action in criminal cases, without delving more into the social and ecological impact, and degrees profit personal acquired defendant from criminal actions. This shows that the conventional approach tends to be normative and ignoring characteristics crime complex economy.

On the contrary, in decision Number 1/ Pid.Sus -TPK/2025/PT DKI, the panel of judges of the DKI High Court showed more progressiveness strong. Decision the appeal not only aggravate criminal main to twenty year prison and doubled the replacement money to Rp. 420 billion but also includes consideration of law that emphasizes the principle of substantive justice. The appellate judge interpreted the role of Harvey Moeis as the main abuser structure company to disguise profit from criminal actions, as well as evaluate style life luxurious results crime as form humiliation of the public. This is reflecting approach progressive and contextual approach, which is important in handling white-collar crime and responsive demands for justice in society. Focus: This gives contribution academic new to understanding how judges use their authority to uphold justice values in context crime economy massive. Returns state losses through compensation is part from paradigm of criminalization that prioritizes recovery of state finances as effect deterrence and social recovery.

However, the implementation of additional criminal penalties for money laundering in the case of mine tin faces complex juridical issues[6]. First, the losses that arise not only include measurable losses to state finances, but also ecological and social losses, which are not all accommodated in the Corruption Law regime. Second, the effectiveness of returning state losses is still doubtful if the treasury convict is not sufficient, because according to the law, shortcomings in compensation payment can only be replaced with criminal prison. Conditions: This can result in permanent state losses. Not recovered fully. Third, in this case This there is involvement of corporations and extensive business networks, which raises questions about to what extent criminal corporations can be executed in a replacement money mechanism.

Implementation of criminal addition in the form of replacement money faces several juridical and practical constraints.[7] First, the asset tracing search process is not always effective Because perpetrator often hide or divert riches results corruption. Second, the value of such a state loss is high, like in the case of tin mines, causing question whether a substitute money instrument is capable of truly restoring state losses in general. Third, the calculation of state losses does not seldom cause debate, especially related with aspect damage difficult environment assessed with money alone.

The Harvey Moeis Case in the tin mine became an example of how the complexity mechanism returns state losses through additional criminal

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[6] Agustian, Rio Armanda, Reko Dwi Salfutra, and Rahmat Robuwan. "Law Enforcement Problems of Illegal Tin Mining in Realizing Restorative Justice: A Study at the Bangka Resort Police." *Society* 9.2 (2021): 557-570.

[7] Margaretha, Yulikha, and Dani Sintara. "A Legal Analysis Of The Principal Criminal Action Of Money In The Form Of Substitute Criminal (Study of Supreme Court Decision of the Republic of Indonesia Number 110 K/Pid. Sus/2024)." *Jurnal Meta Hukum* 3.3 (2024): 170-179.

replacement money. On one hand, this instrument is important as a recognized form of asset recovery in Indonesian criminal law. However, on the other hand, its effectiveness is questionable, especially when state losses exceed the financial capacity of the convict to replace them. The Harvey Moeis case study becomes important for review because it provides a real description of problematic state losses recovery through additional criminal replacement money in the mining corruption sector. A juridical required to evaluate to what extent existing laws are capable realize objective criminalization, namely not only punishing perpetrators, but also restoring state losses and protecting public interests.

A juridical study to mechanism returns state losses through replacement money in the case of mine tin in Bangka Belitung, with studies case Harvey Moeis case become important for conducting[8]. This study is expected to give a description about the effectiveness of substitute money instruments as a means recovery state losses, identifying obstacles faced in practice, as well as offer solution so that the asset recovery mechanism in case corruption can operate more optimal in the future.

Methods

The selection of a normative legal research method (juridical normative) in this study is highly relevant to the title, which examines the concept of substitute money as a mechanism for the recovery of state losses in corruption offenses. The issues under investigation focus on the construction of legal norms, their juridical basis, and the consistency of their application in judicial decisions, thereby requiring an in-depth analysis of statutory regulations, legal principles, and prevailing doctrines. The statutory approach is used to examine the provisions of Article 18 of the Anti-Corruption Law as the legal basis for imposing substitute money sanctions, while the case approach is used to analyze its application in judicial decisions, particularly in corruption cases involving tin mining. Furthermore, the conceptual approach is necessary to assess the shift in sentencing paradigms from a retributive model toward a restorative model grounded in asset recovery. This method was chosen because it can address normative legal issues concerning the gap between legal norms and their practical implementation, while also providing a solid theoretical foundation for reconstructing the concept of substitute money as the primary instrument for the recovery of state financial losses.

Result And Discussion

Harvey Moeis Corruption Case Decision Number 1/ Pid.Sus -TPK/2025/PT DKI

One of the big cases that draws public attention is the case of trade corruption of tin mines in the Bangka Belitung Islands Province. This case involves various parties, including businessman Harvey Moeis, who is suspected play

[8] Maghfiroh, Laily, and Abdul Kholiq. "Valuing Environmental Damage as State Financial Loss in Corruption Cases: A Substantive Justice Analysis of The Harvey Moeis Verdicts." *Journal of Mathematics Instruction, Social Research and Opinion* 4.4 (2025): 1389-1404.

a role in arranging illegal tin mining activities that are detrimental to the state. Based on the results of the investigators' calculations, state losses due to corruption in the sector mine tin This reach a fantastic amount, that is, dozens to hundreds trillion rupiah. The value of the loss is very large. This make case mine tin case one of the case corruptions with the biggest state loss in Indonesian law[9] history.

Harvey Moeis has been proven to be involved in a network of illegal tin mine trade corruption in Bangka Belitung throughout 2015 – 2022, which caused estimated state losses reaching Rp. 300 trillion, including ecological and financial losses. Based on the Decision of the Central Jakarta Corruption Court Number 70/ Pid. Sus TPK/2024, he was sentenced to 6 years and 6 months in prison, a fine of Rp. 1 billion, and replacement money of Rp. 210 billion. Verdict: This triggered criticism public and academics, such as from Charles Simabura, who assessed punishment the Far from proportional to the scale of losses and impacts on the emerging economy.

At the appeal level, the Decision of the DKI Jakarta High Court Number 1/ Pid. Sus TPK/2025 aggravates the crime to 20 years old prison, a fine of Rp. 1 billion (subsidiary 8 months), and replacement money amounting to Rp. 420 billion, which if not paid will be subject to confiscation of assets and even addition 10 years imprisonment. The panel of judges declared Harvey as an " important actor" who coordinates cash flow from miners illegally to private smelters and finance style life luxury, an action that "hurts the hearts of the people. The decision also strengthens the expert auditor position from IPB in set mark state losses.

The main purpose return state losses in case of criminal corruption is to restore state finances (asset recovery) as a manifestation restorative function in modern criminal law[10]. However, in practice trial, the judge's considerations are still oriented towards retributive justice through a fair criminal prison sentence, while recovery of state losses is placed as an additional element that is not always prioritized. This is seen from the tendency of judges to elaborate on element errors and impacts on actions towards the country, but not in a serious way. Serious link it with obligation return loss as objective main criminalization. As a result, the goal of criminal for protect interest public and state finances is not fully realized in the construction consideration law decision, but rather stops at the justification of personal punishment of the perpetrator.

A fundamental other located on the construction of the judge's considerations that place the return of state losses as mitigating factors, not as an obligation under law of a legal nature imperative[11]. The judge's decision stated that if the defendant has returned part or all of the state losses, then it makes it a reason to reduce criminal prison, without confirming that the return is an absolute

[9] Caesar, Ciprian, and Hibnu Nugroho. "Reconstructing the Meaning of State Losses in Corruption Crimes: A Progressive Legal Perspective." *Architecture Image Studies* 6.3 (2025): 1823-1834.

[10] Ekayana, Komang. "Returns of Assets in Corruption Criminal Acts as Alternative Restoring State Losses." *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 2.1 (2020): 27-34.

[11] Goetz, Charles J., and Robert E. Scott. "The mitigation principle: toward a general theory of contractual obligation." *Virginia law review* (1983): 967-1024.

obligation that must be optimally fulfilled. Approach this in a way No direct cause paradox normative, because the state seems to " give" incentives in the form of relief criminal on return true loss is obligation law. In fact, in the economic approach framework to corruption, criminalization of corruption must ensure that perpetrator No get profit anything from his actions, good in a way direct and No direct.

Effectiveness return State losses is also weakened by the judge's considerations accept a subsidiary criminal penalty in lieu of monetary compensation in the form of criminal imprisonment. Construction: This makes criminal compensation not fully coercive, because the perpetrator has the option to rationalize no return of state losses and undergo a subsidiary criminal offense. From the perspective policy law criminal, thing This contradictory to the principle of following the money, which places confiscation and recovery asset as the main eradication of corruption. The judge's consideration remains to maintain subsidiary criminal penalties without a deep about abil,ity economy defendant show that the objective return of state losses has not become central in fall verdict.

The judge's considerations in the Lots decision have not yet fully reflect paradigm of state losses as the objective main enforcement law for criminal corruption. Judges are still trapped in a classic criminalization paradigm that focuses on confiscation independence, not on the restoration of public assets. In the future, it is necessary to shift the judicial paradigm through guidelines on criminalization that confirm that the return of state losses is not just accessories or a factor of relief, but rather a fundamental goal that must be achieved and confirmed in its realization before and after the decision is dropped. Without a change orientat, ion said, the decision court potential fail give benefit real for the state and society, even though it formally fulfill element of retributive justice

Consistency between consideration law (ratio decidendi) and the amar decision is a fundamental principles in decision-making courts that reflect rationality and the legitimacy of judicial power. Consideration law functions as a base argumentative explanation why the judge came to a certain decision, so that the decision should is consequence logical and normative consequence of the said consideration. However, in practice, criminal justice — in particular, case corruption — often finds misalignment between the description of considerations that confirm the size of state losses and the serious impacts on public interest with a relatively light or no optimal decision in restoring said losses. Inconsistency: This weaken function educational and corrective function of the court decision, because amar does not fully reflect the weight argumentation in the law that has been built in consideration.

Inconsistency the looks when the judge is in his considerations, stating that actions defendant has harm state finances in a significant and contradictory with objective eradication of corruption, however amar decision precisely sets criminal penalties for non -payment of substitute money, comparable or open room for subsidiary criminal penalties in the form of prison. Conditions: This shows there is a disconnect between awareness of normative judges towards objective punishment and the choice of concrete sanctions that are imposed[12].

[12] Sunstein, Cass R., Daniel Kahneman, and David Schkade. "Assessing punitive damages (with notes on cognition and valuation in law)." *Yale Lj* 107 (1997): 2071.

In perspective theory, punishment decisions kind of fail to translate consideration of law into effective penal policy, so that objective restorative and deterrent reduced. In other words, consideration of law stops as a normative concept, without being realized in a way consistent with the operational nature of the law.

Inconsistency between consideration of law and the decision also has serious implications for certainty of law and public belief in the court[13]. The verdict No in harmony with his considerations, potential cause impression arbitrary, as if the amar decision is results compromise outside framework argumentation the law that has been arranged. Therefore, the internal consistency of the decision must be understood as part of the principle of Due Process of Law and judicial accountability. Judges are required to ensure that every normative statement in consideration law own correlation direct correlation with the decision, so that the decision No only legitimate formally, but also logically and substantively coherent. Without consistency, said, the court decision risks losing its moral and legal binding power as an instrument of enforcement of fair and rational law.

main purpose of criminalization, especially in the case of criminal corruption, is to restore disturbed balance consequence crimes, including recovery of state finances, as representation interest public. From this point of view view this, return state losses should be understood as the central objective purpose of punishment, not just a criminal addition or a mitigating factor. When the judge makes the return loss a mitigating factor, then happen distortion to theory restorative. That alone, because the obligation of recovery is treated as if as " faith" or " good voluntary", not as an imperative juridical. This is show failure transformation paradigm of criminalization from retributive to restorative in practice justice.

Existence of subsidiary imprisonment as a substitute for money can be analyzed through the theory economy crime (economic approach to crime)[14]. This theory stems from assumptions that perpetrator crimes, including corruptors, act rational with consider profit and loss. With open options, a subsidiary criminal system precisely creates rational calculations for perpetrator For no return, state losses if the cost of criminal prison is assessed more low than the market value of assets controlled. In this context, the criminal penalty is a replacement for lost characteristic coercive and failed fulfill The principle of Crime should not pay. Penal policies that maintain subsidiary criminal penalties without analysis ability economy defendant contradictory in a way conceptual with deterrence and asset recovery purposes.

From the perspective of integrative (combined theory of punishment), inconsistency between consideration law (ratio decidendi) and amar decision reflects failure of the judge in synergizing objective retaliation, prevention, and recovery[15]. Integrative theory demands that the decision order is a

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[13] Betlem, Gerrit. "The doctrine of consistent interpretation—Managing legal uncertainty." *Oxford Journal of Legal Studies* 22.3 (2002): 397-418.

[14] Block, Michael K., and Robert C. Lind. "An economic analysis of crimes punishable by imprisonment." *The Journal of Legal Studies* 4.2 (1975): 479-492.

[15] Rangi, Dr Amit. "A Critical Evaluation of the Administration of Justice and Theories of Punishment." *International Journal of Advanced Research and Multidisciplinary Trends (IJARMT)* 2.2 (2025): 581-591.

concrete from objective criminalization that has been argued in consideration law. When consideration confirm size of state losses and impacts systemic corruption, but amar No maximizes recovery loss, then the decision lost coherence theoretical and normative legitimacy. In this context, criminalization is not only problematic in a way that criminalizes policy law, but also weakens the principle of Due Process of Law and judicial accountability.

At the Verdict Number 70/ Pid. Sus -TPK/2024/ PN.Jkt.Pst, the panel of judges stated defendant proven do action criminal corruption as per Article 2 paragraph (1) of the Corruption Law and imposes obligation compensation payment amounting to Rp—210 billion on defendant Harvey Moeis. However, if analyzed from a construction law perspective, the judge's consideration is more emphasizes the existence of the flow of funds and profits enjoyed by the defendant without providing sufficient elaboration about whether the state's losses has nature real and certain nature (actual loss) or Still nature potential loss. In perspective law criminal modern corruption, proof of state losses should not be based only on assumptions that certain actions oppose the law Certain detrimental to the country, but rather must be proven in a concrete way through calculations that show the existence subtraction from state wealth.

This criticism becomes relevant if associated with the Decision of the Constitutional Court Number 25/PUU-XIV/2016, which confirms that the phrase “can harm state finances " in Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law No may be interpreted as state losses of a hypothetical or potential nature. Court Constitution confirm that state losses must be proven as actual losses and not just possibility loss. Thus, in a theoretical way, state losses in the case of corruption must be factual, measurable, and accountable in a way accountancy and law[16].

If analyzed in a more critical way, decision the show that the panel of judges accepted the existence of state losses incurred from the practice of managing commodities tin that involves various parties, including the defendant[17]. However, from the perspective of state losses, there is room for criticism that losses that are made base criminalization are not yet fully sorted between real state losses has occurred (actual loss) and calculated losses based on potential or estimated damage. In many cases, corruption sector source Power nature; state losses are often counted with a macro — for example, loss consequence damage environment or potential lost state income —which is methodological different from draft state losses in law state finances.

If loss the counted based on potential economic loss better economy area, then there is a possibility that losses used in a construction case still contain potential elements, not fully factual as referred to in the Constitutional Court Decision 25/PUU-XIV/2016. This becomes problematic because in criminal law, state losses are an important thing to be proven surely. If the element the Still contain speculation or estimates, then the legitimacy of criminalization can be questioned from the corner view principle of certainty of laws and

[16] Goudie, Andrew W., and David Stasavage. "A framework for the analysis of corruption." *Crime, Law and Social Change* 29.2 (1998): 113-159.

[17] Trakman, Leon E. "Winner take some: Loss sharing and commercial impracticability." *Minn. L. Rev.* 69 (1984): 471.

principles of error. Verdict Court Constitution is final, binding, and valid as an interpretative norm to the law being tested. With this, in a way, theoretically the judge should make the Constitutional Court's decision as important when interpret element of "harm to state finances" in Article 2 or Article 3 of the Corruption Law.

Not listing the Constitutional Court's decision can be caused by several possibilities. Firstly, the judge may consider that the state losses in the case if the judge has considered real evidence based on tool evidence presented by the General Prosecutor, so that No need to describe normative debate about draft state losses again. Second, deep practice shows that justice corruption often happen trend where the judge is more focused on proof actions that oppose laws and the flow of funds than do analysis constitutional to element state losses. Third, there are possibility that the judge uses approach offense formal in Article 2 of the Corruption Eradication Law so that the existence of state losses is not made into elements that must be proven in detail as in material offenses. With No included MK Decision 25/PUU-XIV/2016 in consideration of law, it can actually be viewed as a weakness in juridical reasoning in the said decision. The Constitutional Court's decision is a milestone that changes the paradigm of proof of state losses in corruption cases from the concept of potential loss to actual loss. Therefore, every decision that use element of " harm" state finances " should explain whether loss the has fulfil standard of a real and certain amount, as confirmed by the Constitutional Court.

Conceptually, if the judge does not explain explicitly whether the state's losses are factual or only estimated, then there is a risk that criminalization based on the construction of unrecovered state losses does not fully fulfill the constitutional standard. This is important especially in case corruption worth big like Harvey Moeis' case, because the legitimacy of criminalization No only determined by the weight of punishment[18], but also by the accuracy construction of the law used to prove the elements of corruption offenses.

Implications of High Court Decision No. 1/PID.SUS-TPK/2025/PT DKI on Replacement Money Provisions under Article 18 of the Anti-Corruption Law

Article 18 paragraph (1) letter b in Constitution Number 31 of 1999 concerning Eradication Action Criminal Corruption, as changed with Constitution Number 20 of 2001 concerning Change on the Eradication Law Action Criminal Corruption, states that the perpetrator of action criminal corruption can be dropped criminal addition in the form of the largest amount of compensation payment. The same applies to treasure objects obtained from action criminal corruption. In grammatical terms, the phrase "most The same with treasure acquired objects" indicates that replacement money No identical with overall state losses, but rather limited by the number profit or benefit economy which the defendant real enjoys. Thus, this norm in a way textual deposit replacement money as instrument robbery profit results crime (disgorgement of illicit gain), not as mechanism change make a loss full on

[18] Joutsen, Matti. "Legitimation and the limits of the criminal justice system." *Eur. J. on Crim. Pol'y & Rsch.* 1 (1993): 9.

state losses. In the context of the High Court Decision Case Number 1/PID.SUS-TPK/2025/PT DKI against Harvey Moeis, obligations compensation payment amounting to Rp. 210 billion show that the judge tried linking replacement money with the economic gains of the defendant.

In the theory of criminal corruption law, two approaches are often used, namely actual loss (real state loss) and potential loss (state loss that is potential). If the replacement money is based on the total state losses in general overall (total loss), then matter the can contradictory with the construction of Article 18, which is grammatical limit the replacement money to the value of assets acquired by the defendant, not to the total state losses. On the other hand, if the calculation is based on potential loss, then a problem certainty law because unrecovered losses that truly happen are made into base criminalization. Therefore, in a normative way, substitute money should be counted based on the profit accepted by the defendant (actual illicit gain), not based on estimated greater state losses.

Implications decision it is also necessary seen in the relationship with Supreme Court Regulation No. 1 of 2020 concerning Guidelines for Criminalization under Article 2 and Article 3 of the Corruption Law. This PERMA gives guidelines to the judge to consider the magnitude of state losses as a factor for weighting or mitigation criminal principal, especially in determine duration of criminal imprisonment. However, the PERMA does not in any way explicit arrange a method calculation of replacement money as intended in Article 18 of the Corruption Law. As a result, in practice, justice often happen trend that the judge uses the magnitude of state losses calculated by the auditor as base determination of replacement money, even though, in a normative way, replacement money should be related with profits earned perpetrator. Condition: This creates ambiguity between the substitute function of money as mechanism robbery results crime and as an instrument compensation state losses.

From the perspective of criminalization policy (penal policy reform), verdict the show that the system of criminalization of corruption[19] in Indonesia still faces tension between the orientation of punishment and the orientation recovery state losses. Article 18 of the Corruption Law, in a normative way, has led to an asset recovery approach, but ambiguity method calculation state losses and profits defendant cause its implementation No consistent. Therefore, renewal policy criminalization need leading to a more precise formulation, clear about the connection between state losses, perpetrators' profits, and compensation. The reform can be done with confirm that replacement money must be counted based on actual profit results obtained by perpetrators, while the total state losses are used as a base weighting for criminal main as arranged in PERMA 1 of 2020. With the said, the system of criminalization of corruption can be more consistent in reach objective main eradication corruption, namely removing the profit results of crime and, at a time, restoring state losses in an effective.

The decision in the Harvey Moeis case at the High Court Number 1/PID.SUS-TPK/2025/PT DKI needs to be analyzed in the framework of the development of constitutional interpretation about the element of state losses as set in

[19] Yan'an, Shi. "Criminalization and the Improvement of the Punishment System." *Social Sciences in China* 41.4 (2020): 63-84.

Decision of the Constitutional Court Number 25/PUU-XIV/2016. In the decision said, the Constitutional Court interpreted the phrase "can harm state finances " in Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law, which was previously understood as formal. The Constitutional Court affirmed that the element of state losses is not sufficiently understood as potential only, but must be proven by the existence of real state losses or at least can be counted in a way Certain through mechanism valid evidence in court. Thus, since the Constitutional Court's decision, the direction of interpretation of criminal corruption has shifted to a more fact-oriented approach, emphasize factuality state loss (actual loss) as the basis of legitimacy of criminalization.

If synthesis This associated with Decision High Court Number 1/PID.SUS-TPK/2025/PT DKI, then appear question critical regarding the methodological basis calculation state losses that become base fall criminal additional replacement money based on Article 18 of the Corruption Eradication Law. Within the framework of the Constitutional Court's decision, the state losses that were made base criminalization should is real, actual, and foreseeable losses counted surely, not just estimates or potential losses of a speculative nature. If the calculation of state losses uses the potential loss approach or projected losses, then there is a normative tension with the constitutional interpretation that has been granted by the Constitutional Court. In this context of this, use total loss method that does not in a way direct reflect benefits enjoyed by the defendant also has a potential contradictory with the construction of Article 18 of the Corruption Law, which limits compensation to assets obtained from criminal corruption.

More far, implications The Constitutional Court's decision are also related with principle certainty law and proportionality in criminalization[20]. Court Constitution confirm that the element of state losses must be proven in a way rational and able tested in court, because without clear proof it will open room for administrative criminalization policy or actual administrative error. There is no general real state loss. In the context of the Harvey Moeis case, if state losses incurred base criminalization originate from assumptions about the broad economy or from the calculation model macro to loss sector industry, then there is potential that loss the nature aggregate and not fully represent losses that are direct caused by the defendant’s action. This matter cause problem about whether state losses are used in decision-making to truly fulfill the standard of factual state losses as demanded by the Constitutional Court's decision.

Therefore, a synthesis between Article 18 of the Corruption Law, the High Court Decision Number 1/PID.SUS-TPK/2025/PT DKI, and Constitutional Court Decision Number 25/PUU-XIV/2016 show existence tension between the objective recovery of state losses (asset recovery) and constitutional principles about certainty of law in proof of state losses. The Constitutional Court's decision has shift paradigm of proof from potential losses to real and measurable state losses. Consequently, every fall criminal additional replacement money must be based on factual losses as well as benefits that are real obtained by the defendant, not solely on estimation state losses of a potential or aggregate nature. Within the framework of renewal policy

[20] Roach, Kent. "The primacy of liberty and proportionality, not human dignity, when subjecting criminal law to constitutional control." *Israel Law Review* 44.1-2 (2011): 91-113.

criminalization corruption, consistency with the Constitutional Court's decision becomes important for enforcement law corruption still effective at a time in harmony with principles of the rule of law and the protection of constitutional citizens.

Implications of the High Court Decision Number 1/PID.SUS-TPK/2025/PT DKI shows an existence problem of normative in the provisions of Article 18 of the Corruption Eradication Law, in particular related effectiveness of criminal addition in the form of replacement money as an instrument return state losses. In general, Article 18 only states that a convict can be sentenced to pay the most compensation. The same applies to assets acquired from criminal corruption actions, as well as allows replacement with criminal subsidiary prison if obligation the No fulfilled. This formulation causes a number of legal legal blurriness law (vagueness), especially about the method of replacement money, the mechanism search assets, as well as the position of subsidiary criminal penalties in practice, which precisely become alternative rational for the convict For No return state losses. In the context of the decision mentioned, it can be seen that system law Still oriented towards corporal punishment (imprisonment-oriented) [21]and not yet fully asset recovery-oriented as the main criminalization of corruption.

From the perspective of punishment theory, it shows an imbalance between retributive and utilitarian approaches in the policy criminalization of corruption. Criminal prison still becomes the main instrument, while state loss recovery as a utilitarian goal has not been optimized. Even though in theory modern criminal justice, especially economic restorative justice, aims at main countermeasures crime economy, which is remove profit results crime (disgorgement of illicit gains). In addition, from a corner view theory accountability criminal, obligation pay compensation should viewed as consequence direct from error the perpetrator who obtained benefit economy from action criminal. Thus, criminal accountability is not only realized in the form of bodily suffering (prison), but also deep form accountability economy on profits earned in a way oppose law. When subsidiary criminal penalties actually delete the obligation said, then accountability criminal become No proportional with impact losses incurred to state finances.

Reconceptualization of Article 18 of the Corruption Eradication Law: Strengthening the Orientation of State Loss Recovery

Reconceptualization of Article 18 of the Corruption Eradication Law need directed at strengthening the orientation of state losses. In general legislation, Article 18 should be expanded by adding norms that confirm that:

1. Replacement money must be paid as large as profits earned from criminal corruption actions and not can replaced with criminal prison before all over effort tracking and seizure asset done in a maximum way.

[21] O'Donnell, Ian. "The aims of imprisonment." *An Introduction to Penology-LJMU Custom Publication* . Routledge, 2020. 55-70.

2. Obligations compensation payment do not delete with running it criminal subsidiary prison , so that the state remains can execute asset convict after corporal punishment completed executed .
3. The judge is obliged consider asset tracing and asset recovery methods in determine amount of replacement money , including possibility robbery asset party the third one who enjoys results crime .
4. Calculation of replacement money based on profit actual received defendant (*actual illicit gain* [22]), which is proven through the follow-the-money approach.

Formulation reconstruction normative the will shift paradigm of Article 18 of just criminal addition become instrument main recovery state losses .

If change Constitution Not yet done , then the emptiness of the norm can filled through formation Regulation Supreme Court (PERMA) as guidelines criminal penalties and execution of substitute money . The PERMA at least need arrange a number of matter important :

1. Standard method of calculating replacement money, including the difference between state losses and the defendant's profits, as well as the use of the follow-the-money approach.
2. Guidelines conversion proportional subsidiary punishment , so as not to more profitable compared to obligation pay compensation .
3. The judge's obligation to prioritize robbery asset before drop subsidiary criminal penalties, including utilization asset tracing mechanism since stage of investigation.
4. Settings execution sustainable to asset convict, so that obligation compensation payment still can billed although corporal punishment has been executed.
5. Guidelines loading not quite enough answer in a way proportional in case corruption involving Lots the perpetrator, so that the replacement money reflect level the benefits enjoyed by each defendant.

With this approach said, the policy of criminalization of corruption will be more consistent with the main eradication of corruption, namely ensuring that crime does not give profit to the perpetrator (*crime should not pay)*[23]. Reconstruction of Article 18 of the Corruption Law and the formation of PERMA, which is of a technical nature, will strengthen the orientation system of criminalization from just punishment of the perpetrator to recovery of state finances in general, so that policy criminalization corruption becomes more effective, proportional, and harmonious with the principle of the rule of law .

To Decision High Court Number 1/PID.SUS-TPK/2025/PT DKI and the provisions of Article 18 in Constitution Number 31 of 1999 concerning Eradication Action Criminal Corruption in conjunction with the Law Number 20 of 2001 show that the system of criminalization corruption in Indonesia is

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[22] Bowles, Roger, Michael Faure, and Nuno Garoupa . "Forfeiture of illegal gains: An economic perspective." *Oxford Journal of Legal Studies* 25.2 (2005): 275-295.

[23] Kaban, Kevin Sulistyo, and Abdul Kholiq. " Optimization Regulation Criminal Related Asset Confiscation Act Criminal Based Economic Crime " Perspective of Progressive Justice Law ." *Journal of Locus Research and Community Service* 4.5 (2025): 1811-1823.

still facing normative problems in optimize return loss state [24]finances. The provisions of Article 18, which regulate criminal addition in the form of replacement money, basically reflect an orientation in criminalization, namely to[25] eliminate the profit results crime and recovery state losses . However , in practice justice Still there is ambiguity of norms, in particular related method calculation replacement money , position criminal subsidiary prison , as well as mechanism execution assets . Condition This cause asset recovery goals are often not achieved optimally , because convict can choose undergo subsidiary criminal penalties without return state losses in general real .

From a modern criminalization perspective, phenomenon the show that system law Indonesian criminal law is still in transition between the retributive and the restorative-economic[26]. Punishment corruption No Again can understood solely as means revenge to the perpetrator[27], but rather must be positioned as an instrument for restoring public losses caused by crime to the country's economy. Therefore, strengthening arrangements regarding compensation and confiscation asset it is very important, as accountability criminal No only personal through criminal prison, but also reflects economic accountability on the benefits obtained from criminal corruption.

Based on the matter said, the need to reconstruct the provisions of Article 18 of the Corruption Eradication Law through constitutional change and through the formation of technical guidelines such as PERMA, as an important from the development process of criminal law reform in Indonesia. [28]Legal development of criminal No only related with update type sanctions or threat criminal[29] punishment, but also concerns adjusting the punishment system to be in harmony with the growing crime. In the context of corruption as a crime that impacts the systemic economy, the development of criminal law must lead to a system where criminal penalties emphasize recovery of state losses, disappearances profit from crime, as well as effectiveness asset recovery [30]mechanism.

Thus, the reconstruction of Article 18 of the Corruption Law and strengthening the mechanism return state losses not only has a technical meaning in enforcement law, but also has meaning strategic in development law criminal national. These efforts is step important For realize system of criminal

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[24] Fitriyanti, Lisa Dwi, and Agus Suwandono. " Expropriation asset as sanctions additional : Analysis return state losses in handling action criminal corruption in Indonesia." *JAKSA: Journal of Legal and Political Studies* 3.3 (2025): 13-27.

[25] Iqbal, Atthala Daffi, and Ibrahim Fikma Edrisy. " Paradigm New Criminal Penalties in the 2023 Criminal Code: Alternatives Sanctions and Justice Restorative in Justice Criminal ." *Journal Evidence Of Law* 4.3 (2025): 1943-1952.

[26] Kusuma, Windah , and Junifer Dame Panjaitan. " Shift Paradigm System Justice Criminal : Transition from Approach Retributive to Restorative in Perspective Victimology Case Study: Justice Child Crime ." *Causa: Journal of Law and Citizenship* 14.10 (2025): 11-20.

[27] Siahaan, Arifin Farensius, Azmiati Zuliah, and Dian Hardian Silalahi. " Implementation Sanctions Criminal to Perpetrator Corruption Based on the Principle of Retaliation and the Principle of Benefit ." *Tana Mana Journal* 6.3 (2025): 370-374.

[28] Afifah, Hasna. " Justice Restorative in Dynamics Indonesian Criminal Law Update ." *Journal of Syntax Admiration* 5.8 (2024): 3007-3015.

[29] Anugrah, Roby, and Raja Desril. " Policy formulation criminal dead in renewal law Indonesian criminal law ." *Journal of Indonesian Legal Development* 3.1 (2021): 80-95.

[30] Al Fahmi, Anisa Rizki. "Urgency of the Criminal Asset Forfeiture Bill: A Comparative Analysis with the Asset Recovery Approach." *Smart: Journal of Criminal Law Review and Analysis* 1.1 (2026): 58-70.

penalties more responsive to crime, guarantee the effectiveness of corruption eradication, as well as ensuring that the criminal truly functioning protect interest public with uphold principle that crime No may give profit to the perpetrator (*crime should not pay*).

Decision in Harvey Moeis' case (Verdict) High Court Number 1/PID.SUS-TPK/2025/PT DKI) shows that the implementation of criminal addition in the form of replacement money as arranged in Constitution Number 31 of 1999 concerning Eradication Action Criminal Corruption in conjunction with Law Number 20 of 2001 is still facing normative problems in practice justice. Existence criminal subsidiary prison as replacement compensation payment potential weaken objective The main article 18 of the Corruption Law[31], namely recovery of state losses through the asset recovery mechanism. In addition, the method calculation state losses in this case also gives rise to debate about whether losses that are made base criminalization are real state losses or just losses of a nature potential, so that there are implications for certainty of law in criminal corruption proof action.

Based on the matter said, the decision shows the importance reconstruction regulation of Article 18 of the Corruption Law to emphasize on returns state losses in general. Criminal addition in the form of replacement money should be positioned as the main recovery of state [32]losses, not just a complement to criminal prison. Therefore that , renewal policy criminalization through strengthening regulations and guidelines technical justice become important in frame development law more criminal responsive to crime corruption , so that system criminalization No only punish perpetrator personally , but also ensure that crime No give profit for the perpetrator and the state losses can restored in a way maximum .

Asset tracing settings (tracking assets) become very important in the context of returning state losses through replacement money as arranged in Constitution Number 31 of 1999 concerning Eradication Action Criminal Corruption in conjunction with Law Number 20 of 2001. In practice, enforcement of corruption is weak, not only in the drop in criminal prison sentences, but also in suboptimal tracking and seizure results of crime. Without effective asset tracing mechanisms, liability compensation payments often cannot be implemented because asset results of corruption have been diverted, hidden, or placed with a third party. This condition causes criminal activity in the form of replacement; money loses its effectiveness and purpose; recovery of state losses is not achieved optimally.

In a way normative sense, legal positive Indonesia actually has give base for tracking assets, both through authority investigations in corruption cases and through criminal money [33]laundering arrangement actions. However, the

[31] Herdiana , Fransisca, Tofik Yanuar Chandra, and MD Shodiq . " Implementation Criminal Addition Payment of Compensation in Criminal Procedure Criminal Corruption to Achieve Justice." *CENDEKIA: Journal Research and Assessment Scientific* 2.4 (2025): 580-594.

[32] Denasty , Neng Erna Sry . "LEGAL RATIO AND THE PROBLEMS OF IMPLEMENTING SUBSTITUTE MONEY IN CORRUPTION CRIMINAL ACTS AS AN EFFORT TO RECOVER STATE LOSSES." *SCIENTIFIC JOURNAL OF ADVOCACY* 13.4 (2025): 1332-1352.

[33] Jannah, Rohmatul , et al. " Effectiveness Mechanism Prevention and Eradication Action Criminal Money Laundering in " Perspective of Positive Indonesian Law." *Indonesian Legal Media (MHI)* 3.1 (2025).

arrangement the Still nature fragmentary and not yet integrated in a systematic way in the regime of criminalization of corruption. Therefore, in the framework of policy criminalization, necessary to confirm that asset tracing must be done since stage of investigation and inquiry[34], using the money approach, so that judges have a clear basis in determine amount of compensation as well as ensuring that assets acquired from action criminal can confiscated or confiscated for the country.

In the context of legal reform, strengthening asset tracing can be done through two approaches. First, through reconstruction of Article 18 of the Corruption Law by adding mandatory norms apparatus enforcer law do tracking and freezing asset results crime before decision dropped. Second, through formation Regulation The Supreme Court (PERMA) gave it guidelines to the judge regarding method tracking assets, standards proof cash flow, as well as mechanism execution asset in frame payment of replacement money. The PERMA can also arrange the judge's obligation to consider asset tracing results when determine amount of replacement money.

Thus, strengthening asset tracing settings are part important from development of criminal law in eradication corruption. System criminalization corruption not enough only drop criminal prison to the perpetrator, but must capable return state losses in general real through mechanism tracking, seizure and confiscation asset results crime. This approach is in line with the principle that crime cannot give profit to the perpetrator (crime should not pay), while at the same time ensuring that the policy of criminalization of corruption truly protects state and public finances

Conclusion

Constitution Eradication Action Criminal Corruption and studies case case trade corruption tin, can concluded that imposition criminal addition in the form of replacement money own base strong and consistent law imperative as instrument recovery state losses. However, in practice justice, construction normative the Not yet fully implemented optimally, because Still positioned as sanctions subordinate clauses to criminal prison as well as weakened by the presence of subsidiary criminal law. The judge's considerations in the case a quo shows domination paradigm retributive – legalistic which is oriented towards individual punishment, so that Not yet put recovery state losses as the objective of criminalization. As a result, the function of substitute money as an asset recovery instruments not yet capable in a way effective remove profit economy perpetrator and restoring state losses in general, especially in the corruption sector, source Power nature that is complex and impactful broadly. In terms of normative issues law main lies in the mismatch between objective norm formation (recovery of state losses) and its implementation is still leaves room for substitution through criminal imprisonment. Therefore, is necessary reorientation of criminal policy is necessary that places return state losses as a fundamental goal, with strengthen mechanism robbery Assets

[34] Sianipar , Jessica Petra Natasha. "Relation between Rechtsstaat Concept with Legal Certainty in Money Laundering Asset Tracing Regulation with Corruption as The Predicate Crime in Economic Crime." To- *ra Law Journal : Law for Governing and Protecting Society* 8.1 (2022): 19-41.

and the follow the follow-the-money approach. Research novelty: This lies in the reconstruction of the conceptual framework that emphasizes that criminal compensation must be positioned as the primary sanction in criminalization of corruption, not merely an accessory punishment, through integration of value-based confiscation and write-off approach, and effectiveness of subsidiary criminal penalties as alternative payment. Approach: This offer paradigm new criminalization recovery - oriented corruption state finance, prevention economy crime, and its manifestation in substantive law.

Recommendation

This study This confirm the need to update policy law on criminal corruption through reconstruction of Article 18 of the Corruption Law, with criminal compensation as the main (primary sanction) in recovery state losses, not just additional sanctions that can be replaced with criminal prison. The reform need followed by the deletion or restrictions on the effectiveness of subsidiary criminal penalties, strengthening the mechanism for *asset tracing* and an *asset recovery*-based approach to *follow the money*, and forming technical guidelines through Regulation. The Supreme Court regulates method calculation of replacement money based on *actual illicit gain*, standard proof of state losses of a factual nature, and a mechanism execution asset in a sustainable. Thus, the system of criminalization of corruption not only punishes the perpetrator but is also capable ensure recovery of state losses optimally, creating a real deterrent effect, and realize principle that crime No may give profit to the perpetrator (crime should not pay).

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