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Legal Implementation of Compensation Policies in Recovering State Losses from Corruption

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Abstract

Asset tracking and confiscation of assets from corruption crimes committed by three law enforcement agencies have not shown satisfactory results. This study uses a normative legal research method (doctrinal legal research) with a primary focus on corruption cases. This research method was adopted because the payment of Replacement Money in corruption cases has not been fully implemented optimally. Many corruption cases still impose additional penalties in the form of Replacement Money, and corruptors transfer assets to third parties before the state confiscates them. This study uses 3 (three approaches, namely the conceptual approach, the statutory approach, and the case approach. The results of this study indicate that the payment of Replacement Money in corruption cases aims to recover state losses by ratifying Law Number 7 of 2006 on the Ratification of the United Nations Convention on the Eradication of Corruption, 2003. This is done to implement a reverse-verification process for prospective officials before they take office. The practice of paying compensation in corruption cases, which are economic crimes, should prioritise fines or similar penalties. If the perpetrator of corruption fails to pay the fine or compensation, law enforcement (prosecutors), as the implementing agency, will form a team to track down the embezzled assets and seize them to compensate the state for losses.

Keywords
Replacement Money, Corruption Crimes, State Losses.

Introduction

Payment of restitution by law enforcement officials, such as the Indonesian Attorney General's Office and the Corruption Eradication Commission (KPK), as well as judges, is a reality in the Indonesian justice system. The evidentiary process in corruption cases involving restitution involves investigation, inquest, and trial, which requires the collection of strong evidence to support charges against the perpetrator. The development of corruption continues to increase from year to year, both in the number of cases and in the amount of state financial losses. The increase in acts of out-of-control behaviour will bring disaster not only to the national economy but also to individuals' lives.[1] Even so, the achievements of eradicating corruption still show fluctuations. Based on the 2024 Corruption Perceptions Index (CPI) report, Indonesia obtained a score of 37 and is ranked 99th out of 180 countries.[2]

Regulations regarding criminal acts of corruption are regulated in Article 603 of Law Number 1 of 2023 on the Criminal Code (KUHP), which states that:

> "Any person who unlawfully commits an act of enriching themselves, another person, or a corporation that is detrimental to state finances or the state economy, shall be punished with life imprisonment or a minimum of 2 (two)

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[1] Supardi, *Perampasan Aset Hasil Tindak Pidana Korupsi: Perspektif Hukum Pidana Yang Berkeadilan* (Jakarta: Prenada Media, 2018), https://books.google.co.id/books?id=Ue6UDwAAQBAJ; M. Imdad Al-Kavafi, Ja'far Baehaqi, and Maskur Rosyid, "Urgensi Perampasan Aset Dalam Pemberantasan Korupsi: Dalam Perspektif Hukum Pidana Islam," *Jurnal USM Law Review* 8, no. 2 (2025), https://doi.org/10.26623/julr.v8i2.11057.

[2] Dwi Sukma Ramdhani and Ade Adhari, "Construction of Criminal Liability in Single Indictment of Obstruction of Justice under the Corruption Law," *Jurnal Ilmu Hukum Kyadiren* 7, no. 2 (2026): 1163–80.

> years and a maximum of 20 (twenty) years imprisonment and a fine of at least category II and at most category VI."

Furthermore, Article 2 paragraph (1) of Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption states that:

> "Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

In addition to being subject to criminal penalties as referred to in Article 2, Article 3, Article 5 to Article 14 of Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption, the defendant may be subject to additional penalties as referred to in Article 18 of Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption. The additional penalties may be in the form of fines or Replacement Money, the amount of which is adjusted to the state's economic losses. Additional penalties have been regulated in the old Criminal Code and have changed slightly in the 2023 Criminal Code.[3]

The following are the differences between criminal penalties in the old Criminal Code and the new Criminal Code:

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[3] Justika Hairani and Anis Widyawati, "Case Study of Judicial Disparity in Corruption Verdicts Involving State Financial Losses," *The Digest: Journal of Jurisprudence and Legisprudence* 6, no. 1 (2025): 81–106; Eny Suastuti et al., "Inconsistency in the Formulation of Article 2 and Article 3 of Law No. 31 of Corrupt Practices Eradication Law and Disparity in Criminal Penalty for Mining Corruption in the Practice of Law Enforcement," *Journal of Law and Legal Reform* 6, no. 3 (2025), https://doi.org/10.15294/jllr.v6i3.19111.

Table 1. Differences in Criminal Sentences in the Old Criminal Code and the New Criminal Code

<table>
<tr><th>1958 Criminal Code</th><th>2023 Criminal Code</th></tr>
<tr><td>Article 10:
a. Principal Crimes:
1. Death Penalty[4]
2. Prison sentence
3. Imprisonment
4. Criminal Fines
5. Cover-up Crime
b. Additional Penalties:
1. Deprivation of Certain Rights
2. Confiscation of Certain Goods
3. Announcement of the Judge's Decision</td><td>Article 65
(1) The main criminal penalties as referred to in Article 64, letter a, consist of:
a. Prison sentence
b. Cover-up Crime
c. Criminal Supervision on
d. Criminal Fines
e. Community Service
(2) The order of the criminal sentence, as referred to in paragraph (1), determines the severity of the sentence.</td></tr>
<tr><td>Article 30
(1) The minimum fine is three rupiah, seventy-five cents.
(2) If the fine is not paid, it will be replaced with imprisonment.
(3) The length of the substitute prison sentence is at least one day and at most six months.
(4) In the judge's decision, the length of the substitute imprisonment is determined as follows: if the fine is seven rupiah fifty-two cents or imprisonment, it is calculated as one day; if it is more than</td><td>Article 66
(1) Additional penalties as referred to in Article 64, letter b, consist of:
a. Revocation of certain rights;
b. Confiscation of certain goods and/or bills;
c. Announcement of the judge's decision;
d. Compensation payment;
e. Revocation of certain permits; and
f. Fulfillment of local customary obligations.
(2) Additional penalties as referred to in paragraph (l) may be imposed</td></tr>
</table>

[4] Ridwan Ridwan et al., "Reconsidering the Death Penalty for Bribery in Law Enforcement to Prevent and Eradicate Corruption in Indonesia," *Jambe Law Journal* 8, no. 2 (2025): 751–79, https://doi.org/https://doi.org/10.22437/41zyxg03.

five rupiah fifty cents, each seven rupiah fifty cents is calculated as a maximum of one day, and the remainder that is not enough is seven rupiah fifty cents. (5) If there is an increase in the fine due to concurrent or repeated offenses, or due to the provisions of Article 52, then the substitute imprisonment sentence is a maximum of eight months. (6) The substitute imprisonment sentence may not exceed eight months.	if the imposition of the principal penalty alone is not sufficient to achieve the objective. (3) The additional penalties referred to in paragraph (1) may be imposed in 1 (one or more types. (4) Additional penalties for attempted and assisted acts are the same as additional penalties for the crime itself. (5) Additional penalties for members of the Indonesian National Army who commit criminal acts in connection with cases are imposed in accordance with the provisions of laws and regulations for the Indonesian National Army.
Article 39 (1) Items belonging to convicts obtained from crimes or intentionally used to commit crimes can be confiscated. (2) In the case of criminal punishment for a crime that was not committed intentionally or due to a violation, a decision of confiscation may also be made based on matters stipulated in the law. (3) Confiscation may be carried out against guilty persons who are handed over to the government, but only for	Article 79 (1) The maximum criminal fine is determined based on: a. category I, Rp. 1,000,000.00 (one million rupiah); b. category II, Rp. 10,000,000.00 (ten million rupiah); c. category III, Rp. 50,000,000.00 (fifty million rupiah); d. category IV, Rp. 200,000,000.00 (two hundred million rupiah); e. category V, Rp. 500,000,000.00 (five hundred million rupiah);

goods that have been confiscated	f. category VI, Rp. 2,000,000,000.00 (two billion rupiah); g. category VII, Rp. 5,000,000,000.00 (five billion rupiah); and h. Category VIII, Rp. 50,000,000,000.00 (fifty billion rupiah). In the event of a change in the value of money, the provisions regarding the amount of the fine are determined by Government Regulation.

The above regulation is reinforced by Article 18 of Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption, which states that:

(1) In addition to the penalties referred to in the Criminal Code, additional penalties include:
   a. Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as goods replacing such goods;
   b. Payment of compensation in an amount equal to the assets obtained from the criminal act of corruption.
   c. Closure of all or part of the company for a maximum period of 1 (one) year;
   d. Revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or may be given by the Government to the convict.

(2) If the convict does not pay the replacement money as referred to in paragraph (1), letter b, within a maximum of 1 (one) month after the court decision has obtained permanent legal

force, then his assets can be confiscated by the prosecutor and auctioned to cover the replacement money.

(3) If the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1), letter b, then he/she shall be punished with a prison sentence of a term not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law, and the length of the sentence shall be determined in the court decision.

To reach a verdict, the judge requires considerations obtained through the evidentiary process regulated in Law Number 20 of 2025 on the Criminal Procedure Code (KUHAP). Evidence is an important part of criminal procedure law, carried out by seeking the truth in a case and used by the judge to determine whether the defendant committed the act charged or to obtain the basis for issuing a verdict in resolving a criminal case.[5]

The Prosecutor's Office, as the public prosecutor and also the executor in the context of recovering state financial losses, has very limited personnel, and facilities and infrastructure are also still lacking, which impacts the Prosecutor's Office's performance in maximising the search for assets resulting from corruption that have been hidden and disguised by corruptors.[6] According to Todung Mulya Lubis, one criticism of corruption eradication in Indonesia is the low success rate in recovering corrupt money.[7]

In addition to the repressive measures mentioned above, the implementation of Compensation for Corruption Crimes can be done preventively. One way is to use Law Number 7 of 2006 on the Ratification of *the United Nations Convention Against Corruption*, 2003 (United

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5 Reyhan Raesandi and Mella Ismelina Farma Rahayu, "Analisis Putusan Bebas Dalam Kasus Kebakaran Hutan Oleh PT Kumai Sentosa (Studi Kasus Putusan Nomor 233/Pid.B/LH/2020/PN Pbu)," *Jurnal Hukum Adigama* 5, no. 2 (2022), https://journal.untar.ac.id/index.php/adigama/article/view/21785.

6 Septhian Eka Adiyatma and Dhita Fitria Maharani, "Cryptocurrency's Control Cryptocurrency's Control in the Misuse of Money Laundering Acts as an Effort to Maintain the Resilience and Security of the State," *Lex Scientia Law Review* 4, no. 1 (2020), https://doi.org/10.15294/lesrev.v4i1.38257.

7 Sujono, *Pemulihan Aset Korupsi Melalui Pembayaran Uang Pengganti Dan Gugatan Perdata Negara* (Yogyakarta: Genta Publishing, 2020).

Nations Convention Against Corruption, 2003), where the Government only needs to issue Implementing Regulations through Government Regulations or Presidential Regulations to implement the Law. These implementing regulations contain reverse proof for the assets of prospective officials who wish to serve in the House of Representatives (DPR), the Regional People's Representative Council (DPRD), Civil Servants (ASN), and so on. In the future, this method can be proven by evidence of tax payments and remaining assets upon completion of a certain position.

From the description, the author is very interested in discussing this research with the title " **Legal Implementation of Compensation Policies in Recovering State Losses from Corruption**", where, in the future, the Government can make a regulation/policy to address the problem of payment of subsidy money from corruption cases in Indonesia.

Method

Research uses a normative legal research method (doctrinal legal research) with a main focus on analysing corruption cases.[8] The normative legal research method was adopted because the payment of replacement money in corruption cases has not been fully implemented optimally. Many corruption cases still face additional penalties in the form of replacement funds, in which assets are transferred to third parties before being confiscated by the state. Therefore, this research aims to optimise government policy on the payment of replacement funds in corruption cases. This approach enables a systematic examination of relevant legal norms, doctrines, and judicial practices.[9]

Study uses 3 (three) approaches, namely, First, the Conceptual approach that examines fundamental legal concepts through relevant

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[8] Mukti Fadjar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

[9] Jason N.E. Varuhas, "Mapping Doctrinal Methods," in *Researching Public Law in Common Law Systems*, 2023, https://doi.org/10.2139/ssrn.4087836.

theories, including ultra petita, procedural justice, and substantive justice. Second, the statute approach that includes a comprehensive review of all laws and regulations relevant to the issue being investigated to identify applicable legal provisions, such as Law No. 1 of 2023 on the Criminal Code, Law No. 20 of 2025 on the Criminal Procedure Code, Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on the Eradication of Criminal Acts of Corruption, and Law No. 7 of 2006 on the Ratification of *the United Nations Convention Against Corruption*, 2003.[10]

By integrating these three research approaches, this study evaluates both the substance of the law and existing corruption cases to provide prescriptive guidance to limit its future application.

Result and Discussion

A. Implementation of the Compensation Payment Policy in Corruption Cases to Recover State Losses

Corruption has become a social disease, dangerous to human life. According to Transparency International, corruption impacts society in various ways, including political, economic, social, and environmental. Politically, corruption is a major obstacle to democracy and law enforcement. The principle of "of the people, by the people, and for the people" will not be realized because power and the fruits of development are largely enjoyed by the corrupt.[11]

The immediate impact of corruption is the loss to the state. Small-scale corruption can reduce public trust, and large-scale corruption can lead to instability in the national economy, such as corruption in the banking sector. No matter how small, corruption will have a negative impact on the social and economic conditions in the area where it occurs. The most fundamental problem the Indonesian government faces after the economic crisis is a decline in public trust in the public bureaucracy and the government system, as the bureaucracy has been used solely as a

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10 Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Tinjauan Singkat* (Jakarta: Rajawali Press, 2006).

11 Eka Adhi, Wibowo Dan, and Heru Kristanto, "Korupsi Dalam Pelayanan Gereja: Analisis Potensi Penyimpangan Dan Pengendalian Internal," *Integritas: Jurnal Antikorupsi* 3, no. 2 (2017).

political tool by the ruling regime. Currently, the public finds it difficult to appreciate the actions of government officials, bureaucrats, or other elements within the public bureaucracy, especially since many state administrators are involved in corruption.

As mentioned above, the most important issue in enforcing criminal penalties is the need to compensate the state for financial losses resulting from corruption. The definition of state financial losses is not defined in Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption. The Audit Board of Indonesia uses four criteria for determining state losses, as follows:

1. A reduction in state assets and/or an increase in state obligations that deviate from the provisions of applicable laws and regulations. State assets are a consequence of the receipt of profitable income and expenditures that become a burden on state finances (income minus state expenditure).
2. Non-receipt of some/all income that benefits state finances, which deviates from the provisions of applicable laws and regulations;
3. Some or all of the expenditure that becomes a burden on state finances, which deviates from the provisions of applicable laws and regulations;
4. Any increase in state obligations resulting from commitments that deviate from the provisions of applicable laws and regulations.

The losses caused by corruption are enormous. Simply imposing penalties on corruptors, who can receive sentences of just one or two years, or even acquittal, is not enough. The primary priority is to recover assets obtained through corruption to recoup the state's financial losses. Government efforts to recover stolen assets *have* recently been difficult due to evolving modus operandi and perpetrators' use of networks to hide assets in locations that are difficult for law enforcement to track. This difficulty presents a unique challenge for the government.[12] One factor complicating asset recovery is the rapid pace of technological development, which allows corruptors to easily transfer assets and conduct numerous transactions without detection by law enforcement. The rapid pace of

[12] Natasya Klarisa Paruntu and Amad Sudiro, "Pergeseran Paradigma Pemulihan Aset Dalam Tindak Pidana Korupsi Untuk Mewujudkan Optimalisasi Pengembalian Kerugian Negara," *Jurnal USM Law Review* 8, no. 3 (2025), https://doi.org/10.26623/julr.v8i3.12888.

technological advancement demands that law enforcement keep pace, particularly in banking technology, which is confidential yet widely used by perpetrators to conceal assets. Several countries suspected of hiding assets include Singapore, Australia, Switzerland, and the United States. These countries have implemented stringent bank secrecy regulations (Bank Secrecy Acts), making it difficult for law enforcement to recover funds held there. The government needs the support and active participation of the host country to open the perpetrators' accounts and examine various transaction sources to determine the origin of the assets.

To address this issue, the government must utilise Law No. 7 of 2006 on the Ratification of the 2003 United Nations Convention Against Corruption as the basis for developing and implementing regulations for the law. This situation underscores the importance of a legal approach that is not only repressive after corruption occurs, but also preventive before the crime takes place. One such instrument is the reverse burden-of-proof mechanism for prospective public officials' assets.

The reverse *burden of proof* is a method of proof that imposes an obligation on a particular party, in this case, a prospective official, to explain the origins of their wealth. This mechanism differs from the conventional criminal burden of proof, which places the burden of proof entirely on the public prosecutor. In the context of corruption prevention, the reverse burden of proof is not intended to punish, but rather to ensure transparency and integrity from the moment an individual enters public office. Thus, this principle functions as a preventive administrative control tool, not merely an instrument of enforcement.

When linked to the strengthening of the implementation of international anti-corruption conventions ratified through Law Number 7 of 2006, the reverse burden of proof can be positioned as a derivative policy that strengthens the integrity standards of state officials. In practice, this mechanism can be implemented by requiring comprehensive, verified asset reporting before an individual takes office. This data then serves as a basis for comparison when the official leaves office, allowing any increase in assets to be objectively tracked. With such a system, the opportunity to conceal corrupt wealth is reduced because the state has reliable baseline data to reference.

From a crime-prevention theory perspective, reverse-burden-of-proof policies have strategic value because they increase the risk of detection. Deterrence theory states that individuals are more likely to avoid crime if the probability of being caught is high and the consequences are clear. When officials know that all assets are initially recorded and can be audited at any time, the incentive to commit corruption decreases. In other words, wealth transparency serves as both a social and a legal control mechanism.[13]

This new approach to crime prevention requires a focus not only on the individuals who commit crimes but also on the context in which they occur. This approach, often associated with situational crime prevention, seeks to develop a deeper understanding of crime and crime-prevention strategies, making them more effective by attending to the physical, organisational, and social environments that enable crime.[14]

Furthermore, the reverse burden of proof aligns with the principle of public accountability in a modern constitutional state. Public officials are essentially trustees of the people, and therefore, their standards of integrity must be higher than those of ordinary citizens. The obligation to explain the origins of wealth is not a violation of rights, but rather a logical consequence of public office, which carries moral and legal responsibilities. In this context, the reverse burden of proof serves to ensure that power is not used for personal enrichment.

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[13] Fitri Wahyuni, Ishaq, and Aris Irawan, "Criminal Sanctions for Corruption Crimes Based on Perspective Study of Renewal Law and the Relationship with Islamic Criminal Law," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 2 (2021), https://doi.org/10.30631/alrisalah.v21i2.795.

[14] Thomas Abt et al., "Crime, Place, Policy, and Politics," *Aggression and Violent Behavior*, 2024, https://doi.org/10.1016/j.avb.2024.101991; Pupung Purnamasari et al., "Enabling Sustainability by Detecting Early Warning Signs of Corruption in Government Institutions," *Discover Sustainability* 6, no. 1 (2025), https://doi.org/10.1007/s43621-025-01164-2; Sutangsa Sutangsa, "Peran Aparat Administrasi Publik Dalam Pencegahan Korupsi: Suatu Analisis Perspektif," *The World of Public Administration Journal*, 2024, https://doi.org/10.37950/wpaj.v5i2.1888; Ruhadi and Hafiz Rafi Uddin, "Corruption Prevention Strategy in Indonesia through Strengthening Character Education of Pancasila Ethics," *Semarang State University Undegraduate Law and Society Review* 5, no. 2 (2025); Wai Yeung Watt, "The Hong Kong Model - Building an Effective Anti-Corruption Agency," *Global Public Policy and Governance* 4, no. 3 (2024), https://doi.org/10.1007/s43508-024-00090-9; Rasdi Rasdi et al., "When Students Fight Corruption: A Portrait of Anti-Corruption Education for Elementary School Students," *The Indonesian Journal of International Clinical Legal Education* 3, no. 1 (2021).

Implementing regulations in the form of Government Regulations or Presidential Regulations will serve as an operational basis outlining technical mechanisms, oversight bodies, asset verification methods, and administrative sanctions for prospective officials who fail to explain the origins of their assets. These regulations can also govern cross-agency and cross-national cooperation to trace assets abroad, eliminating the potential for concealment of the proceeds of corruption.

Abdul Latief,[15] stated that efforts to eradicate corruption are not the ultimate goal. Eradicating corruption is not a jihad to eliminate all crime in the world. Eradicating corruption is a struggle against dishonest behaviour in government and is part of a broader goal: creating a just, effective, and efficient government. In efforts to eradicate corruption, the 2003 Anti-Corruption Convention (CAC) established guidelines for the return of state assets (asset recovery) to prevent and identify assets resulting from crime (Article 52). The direct asset return system, the indirect asset return system and the international cooperation mechanism in the confiscation process (Article 55). These various provisions are designed to achieve maximum results in returning assets stolen from the state (custodial state) to the country of origin of the corrupt assets.

The obligation to compensate state losses by state financial managers is a reliable element of internal control, because by implementing the settlement of state financial losses consistently in accordance with applicable provisions, every employee or official, even without having to be directly and strictly supervised, will be more careful in carrying out their duties considering the risks or consequences, namely if it causes losses to the state, they are obliged to compensate for the losses.[16]

In addressing the misappropriation of state finances, the government is serious in its efforts to create good governance through openness in the management of state finances and accountability realized by issuing

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15 Ade Mahmud, *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif* (Jakarta: Sinar Grafika, 2021).

16 Agus Adi Priyatno, "Pencegahan Kerugian Negara Melalui Penguatan Regulasi Hubungan Kerja Pemeriksa Eksternal Dengan Pengawas Internal," *SHARE Journal* 1, no. 2 (2025), https://doi.org/10.28986/jshare.v1i2.2435; Kukuh Sudarmanto, Muhammad Alvin Cyzentio Chairilian, and Kadi Sukarna, "Rekonstruksi Pengembalian Kerugian Keuangan Negara Sebagai Alternatif Pengganti Pidana Penjara," *Jurnal USM Law Review* 6, no. 2 (2023), https://doi.org/10.26623/julr.v6i2.7224.

various laws and regulations regarding state finances which are expected to resolve problems resulting from criminal acts of corruption so that state losses can be immediately returned.[17]

B. Practice of Compensation Payment in Corruption Cases

The fight against corruption will never end, given the constant emergence of new methods and the enormous, serious impact of corruption itself, which affects various aspects of life. Among the economic impacts of corrupt behavior are state financial losses, decreased tax/levy revenues, and a sluggish investment climate. As a result of these negative impacts, state finances must be restored, and efforts to prevent and eradicate corruption must be intensified. The most important thing is recovering assets lost to corruption through various law enforcement efforts to recoup state financial losses. However, efforts to confiscate and return assets resulting from corruption always create unpredictable dynamics because no corruptor is willing to admit or hand over the proceeds of crime, even when legally proven to have committed corruption.

Michael Levi outlined 4 (four) important reasons for asset returns, namely as follows:[18]

1. To prevent any assets resulting from corruption from being used to commit other crimes in the future.
2. Reasons of propriety, namely that the perpetrator of the crime does not have proper rights to the assets obtained illegally;
3. The reason for priority/precedence is that criminal acts give the state priority to demand assets obtained illegally rather than the rights held by the perpetrator of the crime;

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[17] Diandra Preludio Ramada and Indah Sri Utari, "Unveiling the Surge in Corruption: A Menacing Threat to Indonesia's Stability in Anti-Corruption Law Reform," *Journal of Law and Legal Reform* 5, no. 1 (2024), https://doi.org/10.15294/jllr.vol5i1.2092; Syamsir Syamsir et al., "State Asset Management in the Framework of Good Governance and International Law for Sustainable Development," *Jambura Law Review* 8, no. 1 (2026), https://doi.org/https://doi.org/10.33756/jlr.v1i1.30817.

[18] Purwaning M Yanuar, "Pengembalian Aset Hasil Tindak Pidana Korupsi" (Bandung: Alumni, 2007); Bettina Yahya, Budi Suhariyanto, and Muh. Ridha Hakim, *Urgensi Dan Mekanisme Pengembalian Aset Hasil Tindak Pidana Korupsi*, *Puslitbang Hukum Dan Peradilan, Mahkamah Agung Republik Indonesia*, 2017.

4. The reason for ownership (*proprietary*) is that the asset was obtained illegally; the state has an interest as the owner of the asset.

The use of prison sentences to enforce corruption laws is inefficient, entailing a very high social cost *of imprisonment* borne by the state, drawn from the people. From an economic perspective, prison sentences are uneconomical for combating corruption because they drain state funds.

Asset recovery is one of the new criminal penalties in criminal law aimed at eradicating corruption and money laundering. Asset recovery is highly expected to recover assets resulting from corruption, so that the state can use these assets to improve the welfare of its people. Efforts to recover assets resulting from corruption are efforts to reclaim the people's property that has been "stolen" by perpetrators of corruption. According to Matthew H. Fleming, there is no universally agreed-upon definition of asset recovery in the international arena. Fleming explains that asset recovery is the process by which perpetrators of crimes are stripped of, confiscated, and deprived of their rights to the proceeds of their crimes. Fleming's opinion emphasizes three factors:[19]

a. Returning assets means seizing and revoking state property rights;
b. The assets confiscated are the proceeds/profits obtained from corruption;
c. The purpose of returning assets is to prevent them from being used to commit other crimes.

From the perspective of eradicating corruption, asset recovery is generally considered a tool to combat profit-oriented crimes, including acquisitive crimes (crimes driven by greed) and organised crime. In practice and in the most general terms, the return of assets resulting from corruption is a process with many stages and branches of several complexities, encompassing several institutions, including the Police (in the broad sense, including the Police, the Prosecutor's Office, the courts, customs, and other investigative bodies).[20]

[19] Mahmud, *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif*; Ranty Septiani et al., "The Role of International Cooperation in the Eradication of Money Laundering in Indonesia," *Journal of Social Political Sciences JSPS* 3, no. 4 (2022).

[20] Mahmud, *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif*.

The theory of asset return is the most important part of anti-corruption law in a form that is rooted in its deepest essence, especially in its function of seeking to return assets resulting from corruption to the state and preventing perpetrators from committing other crimes using these assets.[21] Viewed from the perspective of international social justice, the two principles of "give to the state what is its right" and "give to the people what is their right" place the responsibility on the recipient country of assets resulting from corruption to return or assist in returning these assets to the country that is the victim of corruption.[22]

Various assets resulting from corruption are often placed in the financial system, both through banks and non-bank financial institutions, such as investment companies and insurance companies, as well as through capital markets and cross-border money-laundering schemes. This pattern demonstrates that modern corruption is no longer a simple or complex financial instrument to disguise the origins of funds. In this context, the role of prosecutors as executors becomes highly strategic, not only in prosecuting perpetrators but also in tracking, confiscating, and executing the proceeds of crime to recover state losses.

The prosecutor has the authority to implement court decisions that have permanent legal force. In corruption cases, these decisions often include additional penalties, such in confiscation of assets or payment of compensation. Referring to Article 30 paragraph (1) of Law No. 16 of 2004 on the Indonesian Prosecutor's Office, the Prosecutor's Office in the criminal field has the authority to: (a) Carry out prosecutions; (b) Implement judge's decisions and court decisions that have permanent legal force; (c) Supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and conditional decisions; (d) Carry out investigations into certain crimes based on the law; and (e) Complete certain case files for which additional examinations can be carried out

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21 Ibid.

22 Ahmad Fauzi, Ariesta Wibisono Anditya, and Mohamad Noor Fajar Al Arif Fitriana, "Recovering Justice Amid Restorative Approach: Finding the Silver Lining in Asset Recovery on Corruption Crimes," *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025), https://doi.org/10.15294/ijcls.v10i1.5626.

before being submitted to the court, the implementation of which is coordinated with investigators.[23]

This is where the Prosecutor acts as the executor, responsible for ensuring that assets obtained from corruption are truly confiscated for the state. This function is not merely administrative. In practice, asset tracing *is* a crucial stage in the execution process. Prosecutors must trace the whereabouts of the convict's assets, whether registered in the convict's name or in the name of others. The main challenge lies in the method of disguising assets through *nominee accounts*, shell companies, cross-border transactions, or investments in movable and immovable assets. Therefore, Prosecutors require coordination with financial intelligence agencies, banking authorities, and international cooperation to penetrate transaction secrecy and obtain relevant data.

Sanctions are considered similar to the price (of goods), and society will respond to sanctions as strongly as they respond to the price of goods. Society responds to high prices by purchasing cheaper goods, and likewise, to high sanctions by engaging in actions that carry lower sanctions. Essentially, the economic analysis of behaviour approach is used to predict how society will respond to changes in the law.[24] The role of prosecutors as executors reflects the function of law not only to punish perpetrators but also to recover the losses incurred. In the context of corruption, imprisonment alone is insufficient if the proceeds of crime continue to be enjoyed by the perpetrators or third parties. Therefore, the effectiveness of corruption eradication depends heavily on the prosecutor's ability in trace and confiscate assets. This concept aligns with the *"follow the money" approach*, which involves tracing the flow of funds to uncover and recover the proceeds of crime.

However, asset execution often faces legal and technical obstacles. Legal obstacles can include regulatory limitations in proving ownership of assets transferred to another party. Technical obstacles include the

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23 Ade Adhari and Sherryl Naomi, "Pelatihan Kebijakan Hukum Pidana Dalam Perlindungan Lingkungan Hidup Bagi Calon Jaksa Pada Badan Pendidikan Dan Pelatihan Kejaksaan Republik Indonesia," *Jurnal Serina Abdimas* 1, no. 3 (2023), https://doi.org/10.24912/jsa.v1i3.26218.

24 Richard Posner, *Economic Analysis of Law* (New York City: Little Brown and Company, 1986); A. A. Vasilev and Yu. V. Pechatnova, "The Concept of Economic Analysis of Law by Richard Posner," *Вестник Пермского Университета. Юридические Науки*, no. 4(66) (2024), https://doi.org/10.17072/1995-4190-2024-66-528-540.

complexity of the financial system, limited cross-jurisdictional access to information, and the use of digital financial technology. In this context, prosecutors' professional capacity in understand modern financial transactions is crucial. Strengthening competencies in finance, forensic accounting, and international cooperation is an urgent need.

Based on the descriptions of Robert Cooter and Thomas Ulen, the economic analysis of law introduces new concepts, namely maximisation, equilibrium, and efficiency.[25] These three economic principles are derived from the utilitarian philosophy of Jeremy Bentham and Beccaria, as developed in judicial practice in the United States judicial system. These three new concepts, with an economic analysis approach in the context of Mochtar Kusumaatmadja's development law theory, are highly relevant because they can be used as parameters in determining the legal policies planned by the government to address various problems that occur in society.

In an economic analysis of criminal law regarding perpetrators of corruption, corrupt behaviour is sufficient to warrant punishment by conditional imprisonment because the motive is profit and loss (the cost-benefit principle), not the motivation to survive (*corruption by need*). Economic analysis of criminal law seeks to develop alternatives to criminal sanctions that are more effective and efficient, so that the state does not incur such large costs in implementing criminal penalties. Until now, imprisonment has been considered the preferred sanction. Almost every corruption court decision result's in imprisonment. However, according to economic legal analysis, imprisonment is very expensive to implement, and its effectiveness in combating corruption is very low.[26]

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[25] Robert Cooter and Thomas Ulen, *Law and Economics 6th Edition*, 6th Editio (Berkeley: Berkeley Law Scholarship Repository, 1988), https://eclass.uoa.gr/modules/document/file.php/LAW359/Βάσεις - Θεμελιώδεις έννοιες/%5BR. Cooter%2C T. Ulen%5D Law and Economics %286th edition%29.pdf; Gregory C. Keating, "Reasonableness and Rationality in Negligence Theory," *Stanford Law Review* 48, no. 2 (1996), https://doi.org/10.2307/1229365.

[26] Meika Arista and Hari Purwadi, "Implementing Pre-Trial Conference to Indonesia's Criminal Justice System: Optimize the State Asset Recovery in Corruption Cases," *Jurnal Hukum Dan Pembangunan Ekonomi* 13, no. 2 (2025): 111–28, https://doi.org/https://doi.org/10.20961/hpe.v13i2.111726; Rita Komalasari and Cecep Mustafa, "Strengthening Asset Recovery Efforts: A Path to Mitigating Corruption in the Public Sector," *Integritas : Jurnal Antikorupsi*, 2024, https://doi.org/10.32697/integritas.v10i1.1042.

According to the author's analysis, the form of punishment that is in accordance with the principles of economic analysis of criminal law in dealing with corruption is a fine or similar punishment. Economically, a fine is the most efficient punishment because its implementation incurs no costs beyond the perpetrator's obligation to pay a certain amount to the state. The state itself does not need to incur any costs when imposing a fine. However, the threat of a fine against perpetrators of corruption is not specified by specifying the nominal amount of the fine that the perpetrator of corruption must pay, but simply multiplying the fine according to the profit obtained by the perpetrator, namely, a minimum of 2 (two) times and a maximum of 4 (four) times. The greater the perpetrator's profit from the corruption, the higher the fine that must be paid.

This concept, when examined from a criminal law and sentencing perspective, is likely to generate debate due to its perceived *over-penalization*. However, from an economic perspective, it represents a rational effort to recoup state losses resulting from corruption and reimburse the state for all costs incurred in uncovering and enforcing the law. The imposition of criminal sanctions for corruption must not only be considered in the interests of the perpetrator but also be balanced by considering the interests of the state as the victim.

The reason it must be multiplied to 2 (two) or 4 (four) times, is because in the economic analysis of criminal law, doubling the criminal fine imposed on corruption convicts is a form of compensation for state losses plus costs incurred for handling the case, namely, among others, social costs, actual costs directly incurred by the perpetrator, costs experienced by the victim (state/people) due to the occurrence of the crime of corruption and potential costs that the state might have incurred if the perpetrator had not embezzled the money.

This is because the current prison sentences, particularly for perpetrators of corruption, have not been sufficiently deterrent. Perpetrators should be imprisoned rather than impoverished, because after release, perpetrators can at least still enjoy the fruits of their corruption. Furthermore, they can't use the extraordinary facilities provided in prison compared to inmates in other cases. Therefore, the fine imposed on perpetrators must be multiplied by at least two to four times. This means that the figure is not merely an assumption or an emotional policy proposal, but rather based on rational economic calculations that take into account the interests of both the perpetrator and the state (the victim).

In addition, if the perpetrator of corruption does not pay the fine, law enforcement must seize the perpetrator's assets. The goal is to recover the state's financial losses while also preventing the assets from being used to commit other crimes that pose a danger to society. With this formulation, the imposition of criminal sanctions on the perpetrator becomes more effective and efficient because it avoids the costly and protracted law enforcement costs.[27] In addition, Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on the Eradication of Corruption Crimes has regulated the existence of additional penalties such as the payment of replacement money, so it is necessary to regulate the provision that these additional penalties can be imposed without needing to be combined with the main penalty by following *Wet Vermogenssancties* (Law on Criminal Assets or the Law on Sanctions against Property).

This concept requires that compensation remain a supplementary punishment. However, when imposed by the judge, it need not be concurrent with the principal punishment. This means that the payment of compensation is considered a stand-alone supplementary punishment, independent of the principal punishment. Currently, supplementary punishment is optional and must be imposed concurrently with the principal punishment, as established in the Criminal Code.

Conclusion

From the discussion above, this research draws the following conclusions: Implementation of the Compensation Payment Policy in Corruption Cases to Recover State Losses by Ratifying Law Number 7 of 2006 on the Ratification of *the United Nations Convention Against Corruption*, 2003 (United Nations Convention Against Corruption, 2003). From this regulation, the government made implementing regulations for the United Nations Convention Against Corruption, 2003. This was done to

[27] Wahyu Sinta Dewi Pramudita and Anis Widyawati, "Transnational Enforcement Through the Indonesia–Singapore Extradition Framework Against Corruption," *Jurnal USM Law Review* 8, no. 3 (2025), https://doi.org/10.26623/julr.v8i3.13066.

implement a reverse proof of the assets of prospective officials before they took office. From this implementation, the origin of the assets of state officials can be arranged administratively and can be traced if there are any irregular assets in them.

The practice of paying compensation in corruption cases, which are economic crimes, should prioritize fines or similar penalties. Perpetrators should be imprisoned rather than impoverished, because after release from prison, at least the perpetrators can still enjoy the proceeds of their corruption. If the perpetrators of corruption do not pay the fine or compensation, law enforcement (Prosecutors), as executors, will form a team to track down the corrupt assets and confiscate them to compensate the state for its losses. Successful asset recovery will have a deterrent effect, as the perpetrators will no longer be able to enjoy the proceeds of their crimes. Furthermore, restitution of state losses has substantive justice value, as the recovered funds can be reused for the public good.

From this conclusion, the author outlines the following suggestions:

1. It is hoped that the DPR will make implementing regulations to ratify Law Number 7 of 2006 on the Ratification of *the United Nations Convention Against Corruption*, 2003 (United Nations Convention Against Corruption, 2003), to know the origin of officials' assets after they serve as state administrators.
2. It is expected that the judge will issue a proportional decision by considering the state's losses with the sentence imposed on the corruptor, and take contra legem action in the form of imposing a replacement sentence without a subsidiary.

It is hoped that in the future, law enforcers, namely prosecutors as executors, will create a team to track the proceeds of corruption or the assets of corruptors and confiscate them to compensate for state losses.

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GENERATIVE AI STATEMENT

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