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# Judicial Considerations in Imposing Replacement Money Sanctions in Corruption Cases Involving State Land Transfer

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## Abstract

**The study aims to** examine and analyze the judge's consideration in the imposition of replacement money in corruption cases involving state land transfer through the lens of justice drawing on progressive legal theory, and the theory of economic analysis of law, while also assessing strategies to maximize the recovery of state financial losses through the application of replacement money.

**The method of research** is normative juridical method with a qualitative descriptive approach, focusing on secondary data such as a legislation, court decisions, and legal literature. The research specification used is descriptive analytical.

**Novelty** of this research lies in highlighting analyze the effectiveness of additional criminal sanctions in the form of replacement money in corruptions offenses involving state land transfer in optimizing the recovery of state financial losses through progressive law theory and economic analysis of law approach.

**The Results** indicate that the implementation of replacement money as an additional criminal sanctions is considered not to be optimal in maximizing the recovery of state financial losses, Judges' considerations in several decisions examined show that the imposition of replacement money has not implemented progressive legal theory, without considering other forms of losses impacted by corruption offenses involving state land transfer. This is due to the absence of parameters as guidelines in imposing of replacement money

**Conclusion**, it can be known that although Article 18 paragraph (1) letter (b) of the Corruption Law has included the amount of replacement money payments balanced with the assets/objects obtained from corruption crimes, a more progressive approach are needed to ensure that the imposition of replacement money can effectively restore the state's financial losses. Therefore, it is necessary to calculate the amount of replacement money using the NJOP indicator in corruption cases involving state land transfer in line with efforts to optimize the return of state financial losses.

**Keywords** : Corruption crimes; Transfer of state land; Replacement money.

## Abstrak

**Tujuan Penelitian** dilakukan untuk mengkaji dan menganalisis pertimbangan hakim dalam menjatuhkan pidana tambahan berupa pembayaran uang pengganti ditinjau dari perspektif keadilan melalui teori hukum progresif dan teori analisis ekonomi dalam hukum, dan bagaimana upaya memaksimalkan pidana tambahan berupa uang pengganti dalam tindak pidana korupsi pengalihan tanah negara.

**Metode Penelitian** yang digunakan adalah metode yuridis normatif dengan pendekatan deskriptif kualitatif, berfokus pada data sekunder seperti peraturan perundang-undangan, putusan pengadilan, dan literatur hukum. Spesifikasi penelitian yang digunakan adalah deskriptif analitis.

**Kebaruan** terletak pada meneliti efektivitas penjatuhan pidana tambahan berupa pembayaran uang pengganti dalam mengoptimalkan pemulihan kerugian keuangan negara dalam tindak pidana korupsi pengalihan tanah negara melalui pendekatan hukum progresif dan analisis ekonomi dalam hukum

**Hasil penelitian** menunjukkan bahwa penerapan pidana tambahan berupa pembayaran uang pengganti dinilai belum maksimal dalam memaksimalkan pemulihan kerugian keuangan negara, pertimbangan hakim dalam beberapa putusan yang diteliti menunjukkan penjatuhan pidana tambahan berupa pembayaran uang pengganti belum mengimplementasikan teori hukum progresif, dengan tidak mempertimbangkan bentuk-bentuk kerugian lainnya yang diakibatkan oleh tindak pidana korupsi pengalihan tanah negara. Hal ini disebabkan oleh ketiadaan parameter sebagai pedoman dalam menjatuhkan pidana tambahan berupa pembayaran uang pengganti.

**Kesimpulannya**, dapat diketahui walaupun, Pasal 18 ayat (1) huruf (b) UU Tipikor telah mencantumkan jumlah pembayaran uang pengganti seimbang dengan harta/benda yang didapatkan dari tindak pidana korupsi, tetapi pendekatan yang lebih progresif dan diperlukan untuk memastikan bahwa penjatuhan pidana tambahan berupa pembayaran uang pengganti dapat secara efektif mengembalikan kerugian keuangan negara. Oleh karena itu, dibutuhkan parameter menghitung besaran pembayaran uang pengganti menggunakan indikator NJOP pada tindak pidana korupsi yang berkaitan dengan pengalihan tanah negara agar sejalan dengan upaya optimalisasi pengembalian kerugian keuangan negara.

**Kata Kunci** : Tindak pidana korupsi; Pengalihan tanah negara; Uang pengganti.

## 1. INTRODUCTION

Corruption is a challenge in the form of social injustice, as well as criminal acts that have an impact on the welfare of the nation and state.<sup>1</sup> Furthermore, corruption also provides an opportunity to destroy the joints of social life and deprive the community of economic rights at large, while also causing significant harm to state finances and the national economy.<sup>2</sup> A prevalent form of corruption in Indonesia, involves corruption offenses of state land transfer that is carried out illegally by transferring state land into a certificate of ownership for the purpose of business development in the form of housing and tourism areas for personal and group interests, and involves cooperation between the government as a policy maker and the private sector.

This practice has a negative impact on the loss of the state's strategic assets and the potential loss of public development for the community and state revenue. It has been revealed by the KPK that with the increase in the need for housing in the next 10 years by 70 percent, meaning that there is a demand for one million houses every year, it is necessary to be aware of the rampant corruption in the transfer of state land caused by the increasing need

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<sup>1</sup> Purwaning M. Yanuar, *Pengembalian Aset Hasil Korupsi* (Bandung: PT. Alumni, 2007).

<sup>2</sup> Mien Rukmini, *Aspek Hukum Pidana Dan Kriminologi: Sebuah Bunga Rampai* (Bandung: PT. Alumni, 2014).

of the community for land for housing and tourism areas. Although action has been taken against the perpetrators of corruption crimes in the land sector, it has not yet resolved the problem or ensnared the perpetrators.<sup>3</sup> Corrupt practices in the transfer of state land are directly linked to the acts formulated in the Corruption Law which deal with state financial losses in Article 2 paragraph (1) and Article 3 of the Corruption Law. Furthermore, as an effort to recover state financial losses, it has been regulated in Article 18 of same law, along with Supreme Court Regulation No. 5 of 2014 outlines the imposition of replacement money whose amount of payment is equivalent to property/objects obtained from corruption crimes.

Even so, the imposition of replacement money sanctions in Article 18 of the Corruption Law has not optimally restored the state's financial losses, especially when it is associated with corruption cases involving state land transfer. State financial loss is not confined to the moment of corruption (*tempus delicti*). It also encompasses the protracted period during which the government is unable to administer, develop, or earn income from the land unlawfully seized by third parties. The imposition of replacement money has not been able to protect the cost of opportunities or economic rights of the community that have been lost,<sup>4</sup> the loss of opportunities for community welfare and the potential for state revenue to disappear within the time frame of *tempus delicti* until the verdict has permanent legal force.<sup>5</sup>

The point warrants close attention because land is an appreciating asset: its assessed value, as reflected in the *Nilai Jual Objek Pajak* (NJOP), often rises markedly between the *tempus delicti* and the date of judgment. Once state owned land is converted into private freehold title, subsequent recovery is exceedingly difficult; the rights of bona fide purchasers or other lawful claimants are shielded by statute, and new bases of title may already have crystallised. The problem is compounded where revenue-generating structures are erected on the property, yet the ancillary penalty of restitution is still calculated solely on the illicit profit realised at the moment of the offence. To date, courts fix the replacement money amount only on the sum unlawfully obtained by the defendant, in accordance with Article 18 of the Anti-Corruption Law.

Generally, land obtained illegally through corruption related to the transfer of state land cannot be confiscated by the state. This is due to various things, such as what happened in the Case of Corruption of Land Owned by the Central Java Provincial Public Works Office in the Decision of the Corruption Crimes Court at the Semarang High Court Number: 63/Pid.Sus/2013/PT.TPK.Smg, it was explained that 3.2 hectares of land had been acquired and part of the land had been made housing by the developer and bought by the community. So it is not possible to be seized by the state because on the land have stood the rights of other

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<sup>3</sup> Komisi Pemberantasan Korupsi, "KPK Ingatkan Potensi Suap Dan Pungli Di Sektor Pertanahan Dalam Proses Pengembangan Perumahan," 2023, <https://kanal24.co.id/kpk-ingatkan-potensi-suap-dan-pungli-di-sektor-pertanahan/>.

<sup>4</sup> Fontian Munzil dan Imas Rosidawati Wr., "Kesebandingan Pidana Uang Pengganti dan Pengganti Pidana Uang Pengganti dalam Rangka Melindungi Hak Ekonomis Negara dan Kepastian Hukum," *Jurnal Hukum IUS QUIA IUSTUM* 22, no. 1 (t.t.).

<sup>5</sup> Eri Satriana, *Asset Recovery Dalam Pengembangan Hukum Pidana Nasional* (Bandung: Keni Media, 2019).

people who need to be protected.

In contrast to the case of Corruption in Land Asset Management in Labuan Bajo, although the 30 hectares of land have been formally transferred by the public prosecutors to the West Manggarai Regency Government, it still cannot be controlled by the West Manggarai Regency Government due to the transfer of land rights to property rights certificates. Although, the property certificate was procedurally defective because it was obtained illegally through corrupt practices, the panel of judges of the Labuan Bajo District Court in Court Decision Number 29/Pdt.G/2023/PN Lbj stated that the Property Rights Certificate Number: 02482 / Labuan Bajo, administratively classified under Labuan Bajo Village, Komodo District, West Manggarai Regency, East Nusa Tenggara Province, registered in the names of Ismail Hirawan and Kevin Natasaputra, is legal and has legal force.

Furthermore, there is ambiguity regarding the status of evidence in the form of SHM No. 02448 land with an area of 20,130 m<sup>2</sup> in the name of Rudyanto Suliawan and on top of which the Ayana Labuan Bajo Hotel has been built where the acquisition of the land was carried out illegally, through a series of corrupt acts in the transfer of state land in West Manggarai Regency. Through several decisions that have been studied to the cassation legal remedy, it is known that the status of the evidence is "returned to the Public Prosecutor to be used in other cases", until now no seizure of the land has been carried out. De facto, the Ayana Labuan Bajo Hotel, which stands on land owned by the West Manggarai Regency Government, is still operational and the land has not been confiscated by the state.

This condition shows the urgency to take a more progressive legal approach by judges when imposing additional criminal sanctions in the form of replacement money in corruption cases involving state land transfer, including considering broader social and economic aspects, because the state in this case cannot regain control of the lands caused by attempts to engineer the control ownership and transfer of state land carried out through corrupt practices by the defendants. Thus, optimizing the application of replacement money is essential to support efforts aimed at recovering state financial losses suffered by the state.

Replacement money aims to recover state financial losses and to serve as a deterrent against corruption.<sup>6</sup> However, its practical application has not been fully optimal in restoring the state's financial standing, beyond legal positive, consideration of justice and the state interest side must also be prioritized. According to the 2023 Verdict Trend Report by ICW, the panel of judges' efforts in suppressing state financial losses through the verdict of imposing replacement money as an additional criminal sanctions throughout 2023 amounted to only 7,343,000,000,000,000 (seven trillion three hundred four billion rupiah) of the total state financial losses of Rp 56,075,087,787,308 (fifty-six trillion seventy-five billion eighty-seven million seven hundred and eighty-seven thousand three hundred and eight rupiah).<sup>7</sup>

This journal article will examine the judge's considerations in imposing an additional

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<sup>6</sup> Elizabeth Ghozali, "Kebijakan Pengembalian Kerugian Keuangan Negara Akibat Pidana Korupsi Melalui Pembayaran Uang Pengganti," *Jurnal Hukum Justice* 1, no. 12 (2024).

<sup>7</sup> Indonesia Corruption Watch, "Tren Vonis Kasus Korupsi 2023" (Indonesia: Indonesia Corruption Watch, 2023).

penalty in the form of payment of compensation in the case of land corruption of the Semarang Regency Government, in the Decision of the Corruption Crime Court at the Semarang High Court Number: 63/Pid.Sus/2013/PT.TPK.Smg. In addition, it will also be researched about the case of Corruption in the Management of Land Assets of the West Manggarai Regency Government around 2013 – 2018 in the Supreme Court Decision Number 852 K/Pid.Sus/2022 and the Corruption Crime Court Decision at the Kupang District Court Number 20/Pid.Sus-TPK/2021/PN Kpg.

A review of existing literature review, reveals that few academic studies have directly addressed the crime of corruption of state land transfer and the imposition of replacement money as an additional criminal sanctions within such cases. Some of the research that was found tended to discuss the form of criminal liability of land mafia actors in corruption crimes written by Bambang Prayitno <sup>8</sup>, as well as the establishment of a special work unit in the prosecutor's office to increase the criminal execution of additional payment of compensation in corruption crimes.<sup>9</sup> This shows that this research journal can make a new contribution to the field of research on corruption crimes related to the transfer of state land. The primary object of this study, is to explore and evaluate the judge's consideration in imposing additional criminal sanctions in the form of replacement money within such corruption cases. The analysis is grounded in the lenses of through progressive legal theory, and the theory of economic analysis of law, also the study seeks to identify strategies to maximize the recovery of state financial losses through imposition of replacement money in corruption cases involving state land transfer.

## **2. METHOD**

This research uses a normative juridical law research method, which is research conducted by examining theories, concepts, laws and regulations, and literature related to the problem being researched.<sup>10</sup> Primary legal resources include Article 18 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, and several relevant court decisions regarding corruption crimes related to the transfer of state land, such as: The Decision of the Corruption Crimes Court at the Semarang High Court Number: 63/Pid.Sus/2013/PT.TPK.Smg, Supreme Court Decision Number 852 K/Pid.Sus/2022, and Decision of the Corruption Crimes Court at the Kupang District Court Number 20/Pid.Sus-TPK/2021/PN Kpg. Meanwhile, Secondary legal resources include book literature, scholars' scientific works, journals, and articles from experts related to the problem being researched. The research specification used is descriptive analytical where the research will provide a detailed, systematic, and thorough explanation of the problem

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<sup>8</sup> Bambang Prayitno, "Pertanggungjawaban Pidana Mafia Tanah Dalam Tindak Pidana Korupsi," *Jurnal Hukum Dan Pembangunan Ekonomi* 9, no. 2 (2021).

<sup>9</sup> Muh. Adenriz Yunus, Diana Lukitasari, dan Ismunarno, "Optimalisasi Eksekusi Pidana Uang Pengganti Melalui Pembentukan Satuan Kerja Khusus (Studi Kasus Di Kejaksaan Negeri Surakarta)," *Jurnal Recidive* 8, no. 3 (2019), <https://doi.org/10.20961/recidive.v8i3.47324>.

<sup>10</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Press, 2001).

being researched. The analyst method used by the author is qualitative juridical which refers to legal norms obtained from laws and regulations, and other legal materials. The qualitative juridical analysis method, has the understanding that the author will conduct a detailed search related to legal materials as normative legal research. After obtaining these various legal materials, the author will relate them to the identification of problems as contained in this research to realize objective legal research.

### **3. DISCUSSION**

#### **3.1 The judge's consideration of the imposition of additional criminal penalties in the form of payment of compensation in corruption crimes related to the transfer of state land is reviewed from the perspective of justice**

The term corruption originates from the Latin word "*Corruptio*" or "*Corruptus*", which later evolved into "*Corruption*" in English and French, and in Indonesian it is referred to as "*Korupsi*". Robert Klitgaard, defines corruption as an unlawful act where individuals prioritize their own interests over public welfare, and the objectives they are meant to uphold. Corruption has spread to matters related to policy abuse, namely through the sectors of tariffs, taxation, credit distribution, irrigation, housing, law enforcement, regulations related to public security, counter implementation, loan takers, and others.<sup>11</sup> Corrupt behavior is assumed to be like an endless vicious circle that permeates the economic system, political system, and law enforcement system.<sup>12</sup>

Criminal acts of corruptions has spread to the land or agrarian sector. The actions of the state that commercialize state land for profit become difficult to control when law enforcement officials, policymakers and the private sector work together in corruption crimes that harm the country's finances. In accordance with the opinion, Andi Hamzah stated that corruption is a phenomenon that is developing rapidly along with the development of a nation, so that the need and encouragement to commit corruption crimes are also increasing.<sup>13</sup> Reported through a report by the KPK, with the increase in the need for housing in the next 10 years by 70 percent, it means that there is a demand for one million houses every year, It is necessary to be aware of the rampant corruption of state land transfer caused by the increasing need of the community for land for housing and tourism areas, although action has been taken against the perpetrators of corruption in the land sector, but it has not solved the problem or deterrence for the perpetrators.<sup>14</sup>

The crime of corruption is carried out by transferring state land into property rights certificates to build businesses, such as housing and tourism areas on state-owned land, which in carrying out this act involves cooperation between policy makers and private parties. This

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<sup>11</sup> Robert Klitgaard, *Membasmi Korupsi* (Jakarta: Yayasan Obor, 1998).

<sup>12</sup> Dimas Arya Aziza, "Penerapan Delik Jabatan Dalam Pasal 3 Dan Pasal 11 Undang-Undang Nomor 39 Tahun 1999 Jo Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi," *Jurnal Binamulia Hukum* 7, no. 2 (2018).

<sup>13</sup> Dwi Atmoko dan Amalia Syauket, "Penegakan Hukum Terhadap Tindak Pidana Korupsi Ditinjau Dari Perspektif Dampak Serta Upaya Pemberantasan," *Binamulia Hukum* 11, no. 2 (t.t.): 2022, <https://doi.org/10.37893/jbh.v11i2.732>.

<sup>14</sup> Korupsi, "KPK Ingatkan Potensi Suap Dan Pungli Di Sektor Pertanahan Dalam Proses Pengembangan Perumahan."

in addition to causing losses to state finances, also results in the state losing strategic assets, as well as the potential loss of public development for the community and state revenue. In an effort to restore state financial losses, provisions have been set out in Article 18 of the Corruption Law and Supreme Court Regulation Number 5 of 2014 whose amounts of replacement money equivalent to the property/objects obtained from corruption crimes. Although it has been regulated in positive norms, the imposition of replacement in corruption cases involving state land transfer has yet effectively recover the financial losses suffered by the state.

In practice, corruption offenses involving state land transfer land have an impact on the loss of opportunities for community welfare and the potential for state revenue to disappear within the time span of *tempus delicti* until the verdict has permanent legal force.<sup>15</sup> This is important to consider, that the value of land is economic and increases every year. State land that has been converted into a certificate of ownership is difficult to be seized by the state again, because there are other parties' rights that are also protected or there is a new basis of rights on the land, or on the land there are buildings/properties with profit value.

Generally, land obtained illegally through corruption related to the transfer of state land cannot be confiscated by the state. This is due to various things, such as what happened in the Case of Corruption of Land Owned by the Central Java Provincial Public Works Office in the Decision of the Corruption Crimes Court at the Semarang High Court Number: 63/Pid.Sus/2013/PT.TPK.Smg, it was explained that 3.2 hectares of land had been acquired and part of the land had been made housing by the developer and bought by the community. So it is not possible to be seized by the state because on the land have stood the rights of other people who need to be protected.

In contrast to the case of Corruption in Land Asset Management in Labuan Bajo, even though the 30 hectares of land has been handed over by the public prosecutor to the West Manggarai Regency Government, it still cannot be controlled by the West Manggarai Regency Government due to the change of land rights to property rights certificates, one example is the defective Certificate of Ownership Number 02482 in the name of Dai Kayus (also involved in this case) which is defective procedural because it was obtained illegally through the crime of corruption. However, by the panel of judges of the Labuan Bajo District Court in Court Decision Number 29/Pdt.G/2023/PN Lbj stated that the Certificate of Property Rights Number: 02482 / Labuan Bajo, located in East Nusa Tenggara Province, West Manggarai Regency, Komodo District, Labuan Bajo Village, registered in the name of Ismail Hirawan and Kevin Natasaputra, is valid and has legal force. Furthermore, the status of evidence in the form of SHM land No. 02448 with an area of 20,130 m<sup>2</sup> in the name of Rudyanto Suliawan and on top of it the Ayana Labuan Bajo Hotel has been built where the acquisition of the land was carried out illegally through a series of criminal incidents of corruption in the transfer of state land in West Manggarai Regency. Through several decisions that were examined, it was known that the status of the evidence was "returned to the Public Prosecutor to be used in other cases",

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<sup>15</sup> Satriana, *Asset Recovery Dalam Pengembangan Hukum Pidana Nasional*.

until then the public prosecutor made an appeal and cassation legal effort related to the determination of the status of evidence, the panel of judges remained of the view that the status of the evidence SHM 02448 with an area of 20,130 m<sup>2</sup> in the name of Rudiyanto Suliawan was requested to be confiscated for the State cq. The West Manggarai Regency Government cannot be justified because in fact the evidence is still being used as evidence in other cases. De facto, the Ayana Labuan Bajo Hotel, which stands on land owned by the West Manggarai Regency Government, is still operational and the land has not been confiscated by the state.

This court decision causes the execution to be incomplete, where the state through the public prosecutor can only carry out corporal criminal executions, without carrying out the execution of land seizure for the state. As a result, the primary objective of recovering state financial losses is not fulfilled. The core issue extends beyond the mere inability of the state to physically reclaim the land. The greater concern lies in the prolonged loss of control and potential utilization of the land by the state throughout the period between the commission of the offense (*tempus delicti*) and the final court ruling. Consequently, when imposing the additional criminal sanctions of replacement money, the court took into account not only the land's intrinsic economic value but also the broader consequences arising from the systematic manipulation of state land ownership and transfer executed by the perpetrators through acts of corruption.

The judge's consideration in imposing replacement money in the Supreme Court Decision Number 852 K/Pid.Sus/2022 appears to fall short of the objective of fully restoring state financial losses. This can be seen from the imposition of replacement money for Andi Rizki Nur Cahya D. Alias Ibu Asma only as much as obtained from the crime of corruption, which is Rp450,000,000,- (four hundred and fifty million rupiah) without considering the factors that the involvement of the defendant in this case has resulted in the Regional Government of West Manggarai Regency being unable to utilize and control the land until now.

This has similarities with the Decision of the Corruption Crimes Court at the Kupang District Court Number 20/Pid.Sus-TPK/2021/PN Kpg For the defendant Nizzardo Fabio, although it has been clearly revealed in the legal facts at the trial that Nizzardo Fabio actively carried out the process of acquiring and transferring the rights to the land, he was exempted from paying compensation after being declared legally and convincingly guilty of corruption and was released from all charges by public prosecutor. The judge's consideration was that because Nizzardo Fabio as a foreign citizen (WNA) who received information about the land from Mrs. Asma as a selling power of attorney from the owner to check the location, was not given information about the existence of any sign or claim that the land object belonged to the Manggarai Regional Government. This situation impacts efforts to recover state financial losses, as the additional criminal sanctions in the form of replacement money could not be enforced against Nizzardo Fabio, even though it was meant to offset the damages caused by the act of corruption.



The involvement of corporations in corruption crimes related to the transfer of state land needs to be further investigated because those who benefit the most from this corruption crime are generally corporations such as developers, as well as corporations engaged in tourism such as hotels that have built profitable businesses on state land that have been illegally transferred through corruption. If the imposition of additional criminal sanctions in the form of replacement money is only based on *tempus delicti*, of course the state will lose more, because the value of the land is economical and is increasing every year. This will also not have a deterrent effect for corruptors, nor will there be no prevention of corruption crimes for the wider community. Thus, it is further from the spirit of eradicating corruption.

The involvement of Hotel Ayana Labuan Bajo as a corporation, based on a series of criminal incidents of corruption related to the transfer of state land as a party that buys state land, Hotel Ayana Labuan Bajo should be able to know and should suspect that the acquisition of the land is through an illegal process or the result of a corruption crimes, which when viewed from the legal facts of the trial, namely Nizzardo Fabio as a land broker introduced Burhanudin to Massimiliano De Reviziis and at that time Burhanudin said that they had obtained a prospective land buyer, namely Rudyanto Suliawan as the owner of the Ayana Labuan Bajo Hotel. This should be investigated further, as it is directly to restore state financial losses by imposing replacement money on the corporation, specifically the Ayana Labuan Bajo Hotel.

Judges tend to have the perspective that replacement money is as much as property or objects obtained from corruption crimes, as stipulated in the Law on the Eradication of Corruption and Supreme Court Regulation Number 5 of 2014. Therefore, the total financial losses experienced by the state are not necessarily used as the primary benchmark in determining the amount of replacement money. In determining the amount of compensation, the judge tends to consider the defendant's financial capacity. Meanwhile, state losses are merely treated as aggravating circumstances in sentencing.<sup>16</sup> This shows that in practice, the imposition of replacement money is not fully oriented to recover state finances, but is only limited to punishing defendants who commit corruption crimes.

Conversely, the judge's consideration in the Decision of the Corruption Court at the Semarang High Court Number: 63/Pid.Sus/2013/PT.TPK.Smg, shows the progressive attitude of the judge. In calculating the amount of replacement money, the judges also considered sense of justice and the interests of the state, taking into account the value of land prices that have economic value that from time to time continues to increase. So that to calculate the amount of compensation money, it must also be associated with the value of the land price at the time the additional penalty is imposed, using the Tax Object Selling Value (NJOP) indicator as a benchmark. The calculation method used is:

$$\frac{\text{The amount of money obtained by the defendant}}{\text{NJOP in tempus delicti}} = \text{The results obtained are in the form of } m^2 \times \text{Current NJOP}$$

It is known through the 2023 Verdict Trends report by ICW, the efforts of the panel of

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<sup>16</sup> Bonifasius Nadya Aribowo, S.H., M.Hkes, Hasil Wawancara Mengenai Penjatuhan Pidana Tambahan Berupa Pembayaran Uang Pengganti dalam Tindak Pidana Korupsi yang berkaitan dengan Pengalihan Tanah Negara, 15 Januari 2025.

judges in suppressing state financial losses through the verdict of imposing additional penalties in the form of payment of compensation throughout 2023. This is showing that court decisions in corruption cases do not sufficiently represent substantive justice as well as the return of state financial losses and imprisonment for perpetrators through the imposition of replacement money is still not optimal. The legal purpose in the judge's decision can be discussed through 3 (three) points of view of legal objectives put forward by Gustav Radbruch, namely: legal objectives that look at in terms of legal certainty or normative positive law, legal objectives in terms of justice, and legal objectives in the form of utility. Then, Gustav Radbruch used the principle of priority from the three legal objectives and the first priority always fell on justice, then utility, and finally legal certainty.<sup>17</sup> Judges' decisions should contain substantive justice or actual justice, not just procedural justice based on positivism that sees the law as limited to laws and regulations, but judges' decisions can reflect substantive justice and represent the voice of the people, especially In this case, the return of state financial losses through the imposition of replacement money.

Sometimes the law cannot fully addressing the complexities of certain legal events. In related to the corruption crimes related to the transfer of state land, courts has imposed an additional criminal sanctions in the form of replacement money, in line with Article 18 of the Anti Corruption Law and Supreme Court Regulation concerning replacement money. However, when examined from the perspective of justice, the nominal of the compensation paid has not optimal from a justice oriented viewpoint, the amount of compensation ordered frequently fails to reflect a fair and equitable outcome. In corruption cases involving state land, the state's financial loss should not be limited to the moment the land was illegally transferred (*tempus delicti*). Instead, losses should be assessed over the extended period leading up to the court's decision. Throughout this duration, the state effectively loses access to land that could otherwise be utilized for public benefit, forfeiting both utility and potential revenue. Furthermore, land is a dynamic economic asset whose value generally appreciates over time. The core objective of legal systems is to strike a balance between legal certainty, legal utility, and most importantly, legal justice. However, based on various judicial rulings and sentencing trend analyses, published by ICW, the current determination of replacement money and recognition of financial damage in corruption cases remains disproportionate. As a result, the overarching legal aim delivering justice to the public and to the state harmed by such acts has yet to be fully realized. Fundamentally, replacement money is intended to restore state financial, ensuring that the state is not left a disadvantage.<sup>18</sup>

### **3.2 Efforts to maximize the return of state financial losses to corruption crimes related to the transfer of state land through the imposition of additional criminal sanctions in the form of replacement money**

In determining additional sanctions in the form of replacement money, the judges

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<sup>17</sup> Achmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif* (Jakarta: Sinar Grafika, 2014).

<sup>18</sup> Akhiar Salmi, "Pidana Pembayaran Uang Pengganti: Dulu Kini Dan Masa Datang," *Jurnal Hukum Dan Pembangunan Edisi Khusus Dies Natalis 85 Tahun FHUI*, 2009.

should broaden its consider other forms of state losses. Such as the forfeiture of opportunities to utilize state assets for public welfare and the loss of potential income during the period between the commission of the crime (*tempus delicti*) and the finalization of the court's decision.<sup>19</sup> This broader perspective is essential, particularly given that land holds significant economic value and tends to appreciate over time.

State land that has been converted into private ownership through the issuance of land certificates, reclaiming it becomes increasingly complex due to the emergence of third-party rights or the establishment of new legal claims over the property. This challenge is illustrated in corruption cases involving the unlawful transfer of state land, such as in Semarang, where portions of the land were subsequently developed into residential housing by private developers. A similar complication arose in the Labuan Bajo case, where issues surrounding the seizure of assets were influenced by unclear legal status and the subsequent transfer of land rights. The situation is further complicated when commercial or residential structures have been constructed on the land. In such instances, the imposition of replacement money often relies solely on the unlawful gains during the period of the offense (*tempus delicti*), without accounting for the increased land value or long-term benefits derived from the property's development.

In contrast to the principal criminal sanction, the characteristics of the additional criminal sanctions are that they add to the principal criminal sanction, and cannot stand alone. Whether an additional sentence is imposed or not, the judge is free to decide.<sup>20</sup> According to Hermien Hardiati, additional criminal sanctions should receive serious attention from the judges during case adjudication. When a legal provision grants the authority to impose such additional penalties, judges are expected to evaluate whether the specific circumstances of the case justify their application.<sup>21</sup> Therefore, in corruption cases involving the unlawful transfer of state land, judges are encouraged to adopt a more progressive approach by consistently applying additional sanctions in the form of replacement money. This aligns with the opportunities afforded under the Corruption Eradication Law, which can serve as a legal basis to actively support the recovery and optimization of state financial losses.

It is insufficient for the judges to only assess the payment of compensation from the property obtained during the *tempus delicti*. As previously outlined, the state endures prolonged losses stemming from the inability to utilize the land ranging from forfeited public benefit, diminished potential revenue, to the absence of control over vital strategic resources meant for societal welfare. Accordingly, the imposition of replacement money should adopt a more progressive approach by factoring in the entire duration between the commission of the crime and the issuance of a legally binding verdict. Throughout this interval, the economic value of the land typically increases substantially, thereby magnifying the scale of financial

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<sup>19</sup> Satriana, *Asset Recovery Dalam Pengembangan Hukum Pidana Nasional*.

<sup>20</sup> A. Z. Abidin Farid, *Bentuk-Bentuk Khusus Perwujudan Delik (Percobaan, Penyertaan dan Gabungan Delik)*, (Jakarta: PT. Raja Grafindo Persada, 2006).

<sup>21</sup> Hermien Hardiati Koeswadi, *Perkembangan Macam-Macam Pidana dalam Rangka Perkembangan Hukum Pidana* (Bandung: PT. Citra Aditya Bakti, 1995).

harm suffered by the state.

There is a need for courage for judges in corruption cases, to break rules and get out of the routine of law enforcement in examining cases. Article 1 Number 8 of the Criminal Code, judge is defined as a judicial official of the state who is legally authorized to adjudicate. Furthermore, in the same Article Number 9, adjudication as a series of judicial actions by judges involving to receive, examine, and decide of criminal matters guided by principles of independence, integrity, and impartiality during court proceedings. Judicial power is the authority to conduct legal proceedings in pursuit law and justice, this has been stated in Article 24 paragraph (1) of the 1945 Constitution as the basis of judicial power. The existence of court institutions is regulated in Law Number 48 of 2009 concerning Judicial Power, which establishes that judicial power must function independently to enforce the and deliver justice in accordance with Pancasila and the 1945 Constitution, for the implementation of the Rule of Law of the Republic of Indonesia. The existence of corruption courts is regulated in Law Number 46 of 2009 concerning Corruption Crime Courts, granting them exclusive jurisdiction over corruption offenses. The background of the formation of the corruption court is based on the fact that corruption is an extraordinary crime that also requires an extraordinary settlement.<sup>22</sup>

Replacement money is the payment of an amount of money equivalent to property obtained from the proceeds of corruption.<sup>23</sup> Nevertheless, this mechanism can be effectively utilized to enhance the recovery of financial losses suffered by the state. Optimizing the recovery of state financial losses through replacement can serve as a deterrent for corruptors to enjoy the proceeds of corruption crimes, and cause a deterrent effect for corruptors and potential perpetrators of corruption crimes.<sup>24</sup> The recovery of such losses significantly strengthens the deterrent effect, with the loss of benefits and profits obtained through corruption crimes, it can close the possibility for prospective corruptors to be tempted to commit Corruption Crimes. This will contribute to the prevention of corruption offenses.<sup>25</sup>

The work of judges who adjudicate and decide corruption cases is a noble task, and is expected to represent the voice of the people and justice. Through progressive court decisions, judges are not expected only to be the mouthpiece of the law, but also to be able to always serve the community through their court decisions by thinking progressively and visionarily for the present and future in eradicating corruption. The law is dynamic and develops over time in accordance with the ideals of justice that continue to evolve and change over time. Progressive law emphasizes that law is not an absolute and final institution, but continues to develop and improve itself in accordance with the society development in order

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<sup>22</sup> Elis Rusmiati, Nella Sumika Putri, dan Ijud Tajudin, "The Corruption Court in Indonesia: History & Development," *Central European Journal of International and Security Studies* 12, no. 4 (2018), <https://doi.org/10.51870/CEJISS.XKV3716>.

<sup>23</sup> Mahrus Ali, *Hukum Pidana Korupsi Di Indonesia* (Yogyakarta: UII Press, 2011).

<sup>24</sup> Yunus, Lukitasari, dan Ismunarno, "Optimalisasi Eksekusi Pidana Uang Pengganti Melalui Pembentukan Satuan Kerja Khusus (Studi Kasus Di Kejaksaan Negeri Surakarta)."

<sup>25</sup> Rita Komalasari dan Cecep Mustafa, "Penguatan Upaya Pemulihan Aset: Jalan Menuju Mitigasi Korupsi Di Sektor Publik," *Integritas: Jurnal Antikorupsi* 10, no. 1 (2024), <https://doi.org/10.32697/integritas.v10i1.1042>.

to achieve better legal goals and the achievement of an orderly, just and prosperous society.<sup>26</sup> The judge acknowledged that the absence of parameters that regulate the method of calculating the imposition of replacement money in corruption crimes related to the transfer of state land contributed to the limited application of a progressive judicial approach in determining additional criminal sanction of replacement money. This limitation arises from the absence of established guidelines or technical standards that specifically regulate the imposition of such penalties in corruption cases involving the unlawful transfer of state land.<sup>27</sup>

The calculation by the panel of judge in the Decision of the Corruption Court at the Semarang High Court Number: 63/Pid.Sus/2013/PT.TPK.Smg is getting closer to the essence of replacement money to fully recover financial losses suffered by the state, ensuring no harm remains. Ideally, the imposition of replacement money should correspond proportionally to the losses of financial state caused by the corruption offense.<sup>28</sup> In other words, looking at the meaning of human beings as rational actors benefits must be smaller than costs. So that all rational-minded people choose not to commit criminal acts because the costs incurred are greater than the benefits obtained from the crime, which if this is successfully done as a whole, will contribute to optimizing the return of state financial losses as well as to preventing the occurrence of corruption crimes in the future, through closing all possibilities of intensive crime by increasing the risk, by imposing high amount of replacement money, potentially to reduce the number of crimes committed.<sup>29</sup>

The imposition of replacement money in the judge's decision should emphasize the recovery of state financial losses as a means to promote public welfare. This approach aligns the legal process with the broader purpose of law to serve and protect society. The method for calculating replacement money, in the Decision of the Corruption Court at the Semarang High Court Number: 63/Pid.Sus/2013/PT.TPK.Smg, may serve as a practical benchmark in determining the appropriate amount in corruption cases involving the illegal transfer of state land to third parties. Such a benchmark could be formally adopted through a Supreme Court Regulation (*Peraturan Mahkamah Agung*) on sentencing guidelines, offering a standardized reference for the judiciary. The implementation of these guidelines would help harmonize judicial perspectives and practices, particularly in quantifying compensation aimed at restoring financial harm to the state in cases of land-related corruption.

The current practice of imposing replacement money as an additional criminal sanctions remains inadequate to maximise the recovery of public losses. An economic analysis of law assessment, contrasting the resources expended on enforcement (costs) with the value of assets actually restored to the Treasury (benefits) illustrates this gap. In the 2023 fiscal year,

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<sup>26</sup> Romli Atmasasmita, *Teori Hukum Integratif: Rekonstruksi Terhadap Teori Hukum Pembangunan Dan Teori Hukum Progresif* (Bandung: Mandar Maju, 2019).

<sup>27</sup> Bonifasius Nadya Aribowo, S.H., M.Hkes, Hasil Wawancara Mengenai Penjatuan Pidana Tambahan Berupa Pembayaran Uang Pengganti dalam Tindak Pidana Korupsi yang berkaitan dengan Pengalihan Tanah Negara.

<sup>28</sup> Akhiar Salmi, "Pidana Pembayaran Uang Pengganti: Dulu Kini Dan Masa Datang."

<sup>29</sup> Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas, 2010).

the Office of the Attorney-General disbursed approximately IDR 15.95 trillion,<sup>30</sup> while the Supreme Court spent a further IDR 11.59 trillion.<sup>31</sup> By comparison, prosecutors succeeded in executing compensation awards worth only IDR 2.24 trillion, against an estimated universe of recoverable losses of roughly IDR 27.20 trillion.<sup>32</sup> Judicial compensation orders fared no better: the aggregate sums mandated by the courts that year totalled IDR 7.34 trillion, notwithstanding acknowledged state losses of about IDR 56.08 trillion.<sup>33</sup> Accordingly, less than one-fifth of the financial harm (approximately 17 per cent) is on track to be recouped, while enforcement expenditures already exceed the amounts recovered.

As stated by Richard A. Posner about efficiency, that “The Most Common Meaning of Justice is Efficiency”. Every legal policy and judicial decision ought to yield a net benefit, whereby the advantages derived surpass the associated enforcement costs. Efficiency thus stands in close relation to the principles of justice and utility. In the context of corruption cases, restitution, whether through fines or alternative compensatory mechanisms, serves not only to penalize offenders but also to enhance the perceived satisfaction and utility of those pursuing justice, thereby aligning legal outcomes with broader societal expectations of fairness and effectiveness.<sup>34</sup>

Under Indonesian law, asset confiscation as stipulated in Article 10 of the Criminal Code is classified as an ancillary penalty and can only be executed following a final court judgment. Additionally, the Law on the Eradication of Corruption incorporates provisions on asset confiscation in Article 18(a), Article 32(1)–(2), Article 33, Article 38(5)–(6), and Article 38C, which collectively aim to impose sanctions on perpetrators and facilitate the recovery of assets derived from corruption. Notably, confiscation under the Criminal Code is limited to items that have been previously seized. As such, there is a pressing need for prosecutors to undertake early financial tracing, commonly known as the follow the money approach, beginning from the investigation phase. This strategy enables the identification and preservation of illicitly acquired assets, ensuring their eventual forfeiture. Moreover, it is imperative that both prosecutors and judges explicitly establish the evidentiary status of assets particularly state-owned land unlawfully transferred through corrupt acts as subject to state confiscation.

Despite existing mechanisms such as imposition of replacement money, these have proven insufficient in fully recuperating the financial losses suffered by the state. There are limitations to what such replacement money can achieve, especially when convicted individuals opt to serve custodial sentences rather than comply with compensation orders. Given these constraints, the immediate enactment of a dedicated Asset Forfeiture Law is

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<sup>30</sup> Kejaksaan Agung Republik Indonesia, “Buku II Laporan Tahunan Kejaksaan Republik Indonesia Tahun 2023 Pelaksanaan Tugas dan Fungsi” (Jakarta: Kejaksaan Agung Republik Indonesia, 2024).

<sup>31</sup> Mahkamah Agung Republik Indonesia, “Laporan Tahunan 2023 Mahkamah Agung Republik Indonesia: Integritas Kuat Peradilan Bermartabat” (Jakarta: Mahkamah Agung Republik Indonesia, 2024).

<sup>32</sup> Kejaksaan Agung Republik Indonesia, “Buku II Laporan Tahunan Kejaksaan Republik Indonesia Tahun 2023 Pelaksanaan Tugas dan Fungsi.”

<sup>33</sup> Indonesia, “Laporan Tahunan 2023 Mahkamah Agung Republik Indonesia: Integritas Kuat Peradilan Bermartabat.”

<sup>34</sup> Romli Atmasasmita dan Kodrat Wibowo, *Analisis Ekonomi Mikro Tentang Hukum Pidana Indonesia* (Kencana: Jakarta, 2017).

crucial to achieving a more effective and streamlined recovery process. Such a legal framework would allow for the restraint, seizure, and forfeiture of assets without requiring a prior criminal conviction, thereby reducing both procedural delays and enforcement costs. Importantly, it would also permit the state to confiscate assets linked to criminal conduct that may be discovered after a final judgment has been rendered. Should the Asset Forfeiture Law be adopted, it would significantly enhance the powers of law enforcement authorities. In addition to tracing illicit financial flows, they would be empowered to initiate asset blocking, seizure, and forfeiture procedures against property suspected of being the proceeds of crime. This would substantially reduce the risk of money laundering and asset dissipation, both of which continue to undermine the state's ability to recover losses resulting from corruption.

#### 4. CONCLUSION

The implementation of replacement money sanctions is considered not optimal in restoring state financial losses. The judge's consideration in imposing replacement money tends to be not progressive, by only becoming a mouthpiece of the law without considering the social and economic impact caused by corruption crimes related to the transfer of state land, especially the state has lost control and potential use of the land for many years in the span of time from *tempus delicti* to the verdict. From the perspective of justice, the verdict of replacement money and state financial losses is not proportional. Judges in examining, adjudicating and deciding cases not only carry out the law as it is, but can impose replacement money with visionary and progressive, also emphasize substantive justice in order to deal with corruption crimes as extraordinary crimes. The parameters in imposing additional criminal sanctions in the form of payment of compensation are needed in an effort to optimize the return of state financial losses. The parameters or guidelines for criminalization are based on NJOP indicators as progressively applied in the Semarang High Court Decision Number 63/Pid.Sus/2013/PT.TPK.Smg.

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