

THE RECOVERY OF CORRUPTION ASSETS THROUGH ADDITIONAL CRIMINAL PENALTY OF SUBSTITUTE MONEY PAYMENT

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ABSTRACT

From the samples of 100 cases against corruption handled by the Corruption Eradication Commission or KPK during the period of 2007-2011, only 25.6% of the state's loss related to corruption was recovered through additional criminal penalty of substitute money payment. This means that the implementation of additional criminal penalty of substitute money payment in accordance with article 18 of the Corruption Act has not been effective. This research applies legislation, case, and conceptual approaches to identify the causes of the ineffectiveness of the corruption assets recovery through the verdict of additional criminal penalty of substitute money payment and to formulate legal model to improve the effectiveness of the corruption assets recovery. The results show that there are several causes contributing to the ineffectiveness of the corruption assets recovery through the verdict of additional criminal penalty of substitute money payment, among which are; (i) The light verdict of substitute imprisonment penalty for the additional criminal penalty of substitute money payment, (ii) Not all verdicts of corruption cases are accompanied by additional penalty of substitute money payments in spite of the state's actual financial losses, (iii) Cases of suspects or defendants which are not proceeded to the legal proceedings due to death or because of the limitation of the health requirements, resulting in no additional criminal penalty of substitute money payment, (iv) The positive law does not regulate the conversion of the amount of substitute money payment that has been partly paid as a basis for reducing the substitute imprisonment time, (v) The implementation of corruption asset confiscation has not been optimal during the stage of investigation, (vi) the difficulty to prove that in trial that a defendant has unlawfully benefitted from the corruption assets, (vii) The issue of the difference in the calculation of additional criminal penalty of substitute money payments to the defendant in the different level of judicial examinations, and (viii) the money payment period for the state financial losses within a period of one month after a permanent legal court verdict according to Article 18 paragraph (2) of the Corruption Act which is too short. The research results also lead to some suggestions to solve the condition through several steps of the followings; (i) Giving verdict of a substitute or subsidiary imprisonment penalty which has equal or close value to the main penalty, (ii) Optimizing the confiscation of the corruption assets during the investigation stage, (iii) and converting the additional Criminal penalty of substitute money payment which has been paid partially to the total liability of the imprisonment time in accordance with the court decision.

Keywords: Corruption, Asset recovery, conversion.

I. Introduction A. Background

In the introduction of Asset Recovery Handbook, it is stated that developing countries lose between US\$20 to US\$40 billion each year through bribery, misappropriation of funds, and other corrupt practices. The victims include children in need of education, patients in need of treatment, and all members of society who contribute their fair share and deserve assurance that public funds are being used to improve their lives.¹

Corruption in Indonesia is one of the causes of poverty. As of March 2016, there were 13.31% or about 11 million children out of a total of 85 million of Indonesian children living in poverty.²

The commitment of the Indonesian Government to prevent and combat corruption is done by replacing Law Number 3 of 1971 on the Eradication of Corruption with Law Number 31 of 1999 on the Eradication of Corruption which has been amended by Law Number 20 2001 or the Corruption Act, in which the philosophical foundation for the formation of the Act is that corruption crimes are very detrimental to the state's finances and hamper the national development, thus it must be eradicated in order to realize a just and prosperous society. For the sake of national development, it is necessary to safeguard the state assets from corruption, so that in case of corruption, beside the enforcement of criminal law process to imprison the perpetrators of

¹ Jean Pierre Brun, Larissa Bray, Clive Scot, Kevin M Stephendon, *Asset Recovery Handbook, A Guide for Practitioners*, preface, *Stolen Asset Recovery Initiative*, cited from https://star.worldbank.org/star/sites/star/files/asset_recovery_handbook_0.pdf accessed on November 21 2016, at 14.56 WIB (western Indonesian time region).

² Kompas Newspaper, main page, dated July 26, 2017 .

corruption, it is also necessary to enforce the law to recover the corrupted assets from the perpetrators to the state through legal instrument of additional criminal penalty of substitute money payment as provided for in Article 18 Paragraph (1) letter b.

In comparison, the calculation of the state's financial losses and the additional criminal penalties for the substitute money payment in 100 cases against corruption cases handled by the Corruption Eradication Commission or KPK for the period of 2007 up to 2011, with the application of Article 2 and Article 3 of the Corruption Act, illustrate that; there is a total loss of State finances amounting to Rp2,827,849,127,337, - (two trillion eight hundred twenty seven billion eight hundred forty-nine million one hundred twenty seven thousand three hundred and thirty seven rupiah), while the total additional criminal penalty verdict of substitute money payment only amounting to Rp725,052,276 .665, - (seven hundred twenty five billion fifty two million two hundred seventy six thousand six hundred sixty five rupiah) or 25.6%. Thus there is an irreversible state financial loss of Rp 2.102.796.850.672, - (two trillion one hundred two billion seven hundred ninety six million eight hundred fifty thousand six hundred seventy two rupiah) or 74.4%.

According to Todung Mulya Lubis, one of the criticisms on the corruption eradication in Indonesia is the low level of success in recovering the corrupted money. From 542 corruption cases (2001-2009), according to the prosecutor, the loss suffered by the state is Rp73.1 trillion, while the corruption money recovered was only Rp5.3 trillion³. According Endang Usman, the steps conducted by three law enforcement agencies to acquire assets and confiscate property due to corruption have not been encouraging. Asset tracking and asset recovery have not maximally recovered the state losses that have arisen due to corruption crimes committed by corruptors.⁴ According to Mark Pieth in an article entitled Recovering stolen assets-a new issue, it is stated that the reasons why the rapid assets recovery becomes the main policy, it is because of; (i) the logic of law enforcement: go for the money, (ii) the new interest in the role of Financial institutions in the 'money management' of corruption, (iii) the development agenda, (iv) Asset recovery as a bargaining chip.⁵

Muhammad Yusuf states that the high level of corruption in Indonesia should be used as a study material for the authorities to change the orientation of criminal acts of corruption, from the "follow the suspect" approach to "follow the money approach,"⁶ and this opinion is in line with Robert Cooter and Thomas Ulen's opinion which states that the Economic theory of crime, which we develop in this chapter, does all of this and more. We shall begin by distinguishing criminal prosecutions from civil disputes and ideas for the characteristics of a crime. Then we develop a predictive model of criminal behavior based upon a theory of the rational choice to commit a crime. Finally, we propose a clear goal for criminal law and policy. It should minimize the social cost of crimes. Using this standard, we show how to compute optimal policies.⁷ The essence of this theory is that the net worth of a criminal must be a negative net gain.

B. Research Questions

Based on the above description, the legal issues to be addressed in this research are;

- (i) Why the efforts to recover the corrupted assets through additional criminal penalty of substitute money payment have not been effective?
- (ii) How to develop the appropriate legal model for recovering the assets of corruption through additional criminal penalty of substitute money payment?

C. Research Methodology.

In this legal research, two types of research are used simultaneously namely doctrinal and non-doctrinal legal research to obtain answers to the two legal issues above. The research approaches used are; (i) Legislation approach by reviewing all laws and regulations related to additional criminal penalty of substitute money payment, (ii) Case approach by analyzing corruption cases handled by KPK in 2007 up to 2011, and (iii) Conceptual approach by conducting interviews with law enforcement officers i.e. investigators and judges dealing with corruption cases.

II. Results and Discussion

A. The causes of the ineffectiveness of corrupted assets recovery through additional criminal penalty of substitute money payment.

Article 18 of The Corruption Act essentially regulates among others; the sentencing of additional penalties for substitute money payment in the amount of which equal to the property acquired from the criminal act of corruption. The purpose of additional

³ Todung Mulya Lubis, *Korupsi Bukan Soal Jumlah*, Kompas Newspaper, Jakarta, July 7, 2017, pg. 6.

⁴ Endang Usman, *Penerapan Sita Jaminan (Conservatoir Beslag) Dalam Upaya Mewujudkan Pengembalian Aset Perolehan Hasil/Tindak Pidana Korupsi*, Dissertation, Surakarta, 2016, pg. 96.

⁵ Mark Pieth (ED) , Basel Institute On Governance, 2008, *Recovering Stolen Assets*, Peter Lang AG, Internationaler Verlag der Wissenschaften, Bern, page 6-9.

⁶ Muhammad Yusuf, *Merampas Aset Koruptor –Solusi Pemberantasan Korupsi di Indonesia*, 2013, Kompas, Jakarta, pg. 222.

⁷ Robert Cooter & Thomas Ulen, *Law And Economics*, Addison Wesley Educational Publishers Inc, California, 1996, page 387.

criminal penalty of substitute money payment is essentially to recover the assets lost due to corruption. Therefore, the government's role, either domestically, internationally or globally in restoring the corrupted assets, is very important. Radha Ivory, in an international journal entitled "Corruption, Asset Recovery, And The Protection Of Property In The Public International Law, mentions that in asset recovery cases, reports on corruption in the requesting state may be found by government or intervening third parties to show the importance of Cooperation for the purposes of asset recovery.⁸

KPK (Corruption Eradication Committee) during the period of 5 years between 2007 and 2011 has been dealing with 100 corruption cases with the application of Article 2 and Article 3 of the Corruption Act. From the 100 cases, there was a total loss of State finances amounting to Rp2,827,849,127,337, - (two trillion eight hundred twenty seven billion eight hundred forty-nine million one hundred twenty seven thousand three hundred and thirty seven rupiah), while the total additional criminal penalty verdict of substitute money payment as the effort to recover the state's asset was only amounting to Rp725,052,276 .665, - (seven hundred twenty five billion fifty two million two hundred seventy six thousand six hundred sixty five rupiah), and the state's total loss which had not been recovered was Rp 2.102.796.850.672, - (two trillion one hundred two billion seven hundred ninety six million eight hundred fifty thousand six hundred seventy two rupiah). It can be analyzed that the recovery of the corrupted state assets during the five years of 2007-2011 was only 25.6% at the most, and that there is still an irreversible state financial loss of Rp 2.102.796.850.672, - (two trillion one hundred two billion seven hundred ninety six million eight hundred fifty thousand six hundred seventy two rupiah) or 74.4%. The causes of the ineffectiveness of the corrupted asset recovery through the substitute money payment will be described below:

1. The relatively low verdict of additional criminal penalty of substitute imprisonment or subsidiary for the additional criminal penalty of substitute money payment. .

As an illustration, the low verdict of additional criminal substitute imprisonment or subsidiary can be seen in the verdict of corruption case of Defendant H. Daeng Rusnadi, the chairman of the Regional Representative Council of Natuna Regency, with verdict Number: 26 / Pid.B / TPK / 2009 / PN Central Jakarta. The defendant is proven to be corrupt and sentenced to 5 years imprisonment and an additional Rp 28.365.754.000 (- twenty eight billion three hundred and sixty-five million seven hundred fifty four thousand rupiah) or substitutionary penalty for 3 years of imprisonment . Subsidiary prison sentence which is only for 3 years is considered too light and unfair if converted with the obligation to pay Rp28.365.754.000, - (twenty eight billion three hundred sixty five million seven hundred fifty four thousand rupiah). The verdict reflects that the sentencing policy by courts is still focused on imprisoning the perpetrator and not on committing to recover the corrupted assets, as Yudi Kristiana (former Investigator and Prosecutor of KPK) argues that the recovery of the state financial loss is ineffective depending on law enforcement and its formulation⁹.

To further illustrate the phenomenon, the data can be seen in the following table;

⁸ Radha Ivory, 2014, *Corruption, Asset Recovery, And The Protection Of Property In Public International Law*, Cambridge University Press, page 162.
https://books.google.co.id/books?id=5V43BAAAQBAJ&pg=PA324&lpg=PA324&dq=asset+recovery+from+journal+international&source=bl&ots=M0Fp4AxMnX&sig=joYSy9kWWtTTVtx0joYjTDzT-3I&hl=en&sa=X&redir_esc=y#v=onepage&q=asset%20recovery%20from%20journal%20international&f=false
(downloaded on July 31, at 23.45 WIB).

⁹ Interview result with Yudi Kristiana (KPK investigator and prosecutor) on April 9, 2013 on efforts to improve the effectiveness of corruption recovery assets through criminal law instruments. The main points of the interview are as follows :

- a. Corruption assets recovery is the objective of Corruption Act.
- b. State's loss recovery is not effective and operational depending on law enforcement and formulation.
- c. In the case of P -21 or complete in the case of corruption and money laundering crime (TPPU) in addition to the confiscated property, at the time of the hearing the Prosecutor at the KPK filed a petition for the appropriation of assets without criminal penalty.
- d. The instruments of the Corruption Act are not sufficient for the recovering of corrupt assets so that an asset freezing law is required.
- e. The spirit of the current legislation policy is still to punish the defendant's body and not to recover the state's lost assets through assets recovery legal instruments to reduce punishment, so that the spirit to recover the state's lost assets needs to be built.

NO	NAME / NUMBER OF VERDICT	SENTENCE OF PRINCIPAL CRIMINAL PUNISHMENT	ADDITIONAL CRIMINAL PENALTY OF SUBSTITUTE MONEY PAYMENT	SUBSTITUTE IMPRISONMENT PENALTY (SUBSIDIARY FOR THE ADDITIONAL CRIMINAL PENALTY)	INFORMATION
1	Jimmy Rimba Rogi, S.Sos/ Putusan Corruption Court of Central Jakarta State Court Number: 12/Pid.B/TPK/2009/PN. JKT.PST	5 years	Rp. 64.137.075.000,-	2 years	Recovered assets: Rp. 6,2 billions.
2	Drs. Abdillah Ak., MBA/ Verdict of Indonesian Supreme Court MARI Number: 912K/Pid.Sus/2009	6 years	Rp. 12.197.458.000,-	3 years	Recovered Assets Rp10.295.503.525,-
3	Hendy Boedoro / Verdict of Indonesian Supreme Court MARI No:575K/Pid.Sus/2008	7 years	Rp. 13.121.000.000,-	3 years	State's Loss Rp 16.709.500.000,-
4	Drs.H. Daeng Rusnadi, MBA.,Msi, / Verdict Number: 26/Pid.B/TPK/2009/ PN.JKT.PST	5 years	Rp. 28.365.754.000,-	3 years	-
5	Ismunarso/ Verdict Number: 10/Pid.B/TPK/2009/PN. JKT.Pst	9 years	Rp. 756.297.806,-	2 years	State's Loss Cq. Treasury of Situbondo Regency Rp. 43.838.073.081,-

Table 1. Comparison between Additional Criminal Penalty of Substitute Money Payment and Criminal Imprisonment Substitute or Subsidiary

2. Not all verdicts of corruption cases are accompanied by additional criminal penalty of substitute money payments to the defendant despite the factual state financial loss.

The legal implication of Article 18 of the Corruption Act is that not all corruption cases are always accompanied by additional criminal penalty of substitute money payments to the defendant if the defendant is not found to be benefiting or enjoying the results of a criminal act of corruption. As illustrated in the case of the Defendant H. Uuh Aliyudin in the Supreme Court Verdict of the Supreme Court Number: 94 K / Pid.Sus / 2008, although the case suffered a loss of Rp 346,823,970,564,24 (three hundred forty six billion eight hundred twenty three million nine Hundred and seventy thousand five hundred and sixty four rupiah twenty-four cents) to the state, the court did not impose additional criminal penalty of substitute money payment because the Defendant was not proven to have benefited from the corruption.

3. Corruption case perpetrators are not proceeded with the legal proceedings to the court until a court verdict with a permanent legal force is sentenced to them.

In some corruption cases, the defendant died or did not meet the subjective requirements (e.g. physical and / or psychological illness) so the case was stopped and there was no penalty for the payment of the substitute money, even though the state had suffered financial losses, and there is not any other legal remedies undertaken by by the state such as a civil suit by the State Prosecutor.

An example of the case is of Defendant Hengky Samuel Daud who died while waiting for the Supreme Court's appeal verdict. In the Corruption Court of Central Jakarta District Court Number: 22 / Pid.B / TPK / 2009 / PN.JKT.PST. The defendant was sentenced to 15 years imprisonment and required to pay substitute of Rp 82,646,287,549, - (eighty two billion Six hundred forty six million two hundred eighty seven thousand five hundred forty-nine rupiah), then on the appeal level, according to a source, Kompas newspaper dated June 3, 2010, the defendant was sentenced to 18 years imprisonment and to pay Rp 82.6 billion. The defendant died while waiting for the decision of the appeal so that his case was void by law.

4. The positive law does not regulate the conversion of substitute money payments which the amount is only a part of the total liabilities as the basis for the reduction of a substitute imprisonment sentence.

Additional criminal penalty of substitute money payment is always accompanied by a substitute imprisonment term or subsidiary for a certain period of time, and if the substitute money payment has been fully paid, the defendant shall be legally released from the substitute imprisonment term. The problem is when a defendant has voluntarily submitted his/her asset but the amount has not reached the total (only partial) obligation of the substitute money payment penalty. Such conditions have not been settled in the legislation or applied in court practice, thus it can not be an encouraging factor for the defendant in choosing to pay the substitute money rather than undergoing a substitute or subsidiary imprisonment. According to Komariah Sapradjaja, a former Supreme

Court Judge, in the real world practice, the convicts mostly prefer to undergo a substitute imprisonment instead of paying a the substitute money¹⁰.

5. The implementation of corruption asset confiscation has not been optimal during the stage of investigation.

The confiscation of the corruption assets during the investigation stage has a strategic significance in recovering the corrupted assets, since the assets will be calculated to pay the additional penalty of substitute money. Therefore, if during the investigation stage the investigator can not confiscate assets optimally then the recovery of corruption assets to the state is also not optimal. Such cases can be seen in the verdict of the Corruption Court of Central Jakarta District Court Number: 12 / Pid.B / TPK / 2009 / PN.JKT.Pusat with the defendant Jimmy Rimba Rogi, Mayor of Manado, in which the confiscated property is only worth approximately 6.2 billion and 1 asset of Land Certificate number AS 215946 subsequently seized for the state while the substitute money penalty sentenced by the court is Rp. 64.137.075.000. (sixty four billions one hundred thirty seven millions and seventy five thousand).

6. The difficulty to prove in trial that a defendant has unlawfully benefitted from the corruption assets.

The Verdict of the Corruption Court at the Jakarta High Court No. 04 / Pid / TPK / 2012 / PT.DKI has freed or not punished Defendant Eddie Widiono Suwondho (Former Director of the State Electricity Company) to pay substitute money to the state because the defendant was not proven to enrich himself Rp 2.000.000.000, - (two billion rupiah), while the verdict of the Court of First Instance had sentenced the Defendant to pay the substitute money penalty of Rp2,000,000,000. It can be analyzed that, in the case of corruption case, the Public Prosecutor must be able to prove the elements of criminal corruption committed by the Defendant and also to prove that the Defendant has benefitted unlawfully. This point is more difficult compared to proving the elements of corruption, because the criminals who are economically motivated, the corruptors in this case, have an amoral and rational nature that they have calculated the advantages and disadvantages before doing the corruption.

7. The issue of the difference in the calculation of additional penalty of substitute money payment for the defendant in the different levels of judicial examination.

This can be seen in the case of corruption crime of Defendant Abdillah (Mayor of Medan) in the procurement of fire truck, Ladder Truck Morita MLF Model 4-30 R, without auction process or by direct appointment.

In the verdict of Cassation Number: 912 K / Pid.Sus / 2009 The defendant had been proved to have committed a criminal act of corruption resulting in state's financial loss of Rp 50,588,210,655, - (fifty billion five hundred eighty eight million two hundred ten thousand six hundred fifty Five rupiah) based on the Letter of BPKP Number: SR-437 / D6 / 1/2008 dated 25 April 2008 on the Report of the Calculation Result of the State's / local government's losses due to Misuse of Local Government Budget of Medan City 2002-2006, then sentenced the defendant to pay Rp 12,197 .458.000, - (twelve billion one hundred ninety seven million four hundred fifty eight thousand rupiah) calculated with the returns which had already been submitted of Rp 10.295.503.525, - (ten billion two hundred ninety five million five hundred three thousand five hundred two Five rupiah). At the trial of the Court of First Instance in the Corruption Court at the Central Jakarta District Court, according to the verdict Number: 08 / Pid.B / TPK / 2008 / PN.Jkt.Pst, the defendant was sentenced to pay the substitute money of Rp 17.826.069.391, - (seventeen billion Eight hundred twenty six million sixty nine thousand three hundred and ninety one rupiah) and on the examination of the Court of Appeal, The defendant was sentenced with an additional penalty to pay substitute money of Rp 23,381,407,003,2 (twenty three billion three hundred eighty one million four hundred Seven thousand three rupiah).

Thus, in three different case examination levels, there are differences in the calculation of the amount of substitute money to be paid by the Defendant, so there is no legal certainty as to how much the state's financial losses caused by the Defendant.

8. The period of the money payment for the state financial losses is the longest within a month after the verdict of a permanent legal court under Article 18 paragraph (2) of the Corruption Act which is relatively too short.

In order to calculate the value of the convict's assets, a careful calculation is required, especially for building / house and car assets whose conditions are generally impaired because they are not maintained during the legal process. On the other hand it takes time to sell through a relatively long auction mechanism to obtain a fair price for the parties, namely the state and the defendant.

The sale of goods obtained through corruption, especially land and buildings, takes relatively long time to get a fair or reasonable price so that the Convict is not harmed. Considering that phenomenon, the ratio of a period of one month at the latest, and the possibility of the defendant's inability to pay the state substitute money within the provided time frame which will result in the defendant to be subjected to a substitute or a subsidiary imprisonment term, the one month time frame shall be considered too short, thus the maximum period of one month shall be reviewed for extension through legislation policy.

The above difficulties can occur if in the case of corruption there are many assets in the forms of land and / or buildings that take a relatively long time to sell through the auction mechanism. The case of Agus Supriyadi (Garut Regent) in which according to the Cassation Verdict of Supreme Court Number: 1655.K / PID.SUS / 2008 dated November 24, 2008 stated that the defendant H. Agus Surpiyadi was proven legally and convincingly guilty of corruption crime and was sentenced to Pay Rp 10.810.788.439, - (ten billion eight hundred and ten million seven hundred eighty eight thousand four hundred and thirty nine rupiah) minus the

¹⁰ Interview result with Komariah Sapradjaja, Supreme Court Judge, on March 18, 2013, in the Supreme Court Judge Office

crime assets that has been confiscated of Rp 329,225,000 (three hundred twenty nine million Two hundred and twenty five thousand rupiah) within a maximum of one month after the verdict was permanent, and if the defendant does not pay, his property may be seized by the KPK's public prosecutor and auctioned to cover the substitute money penalty, and if the defendant does not have sufficient money to pay the substitute money, then he will be sentenced to 3 years of imprisonment. Subsequently, the verdict stated that evidences in the forms of; one plot of land and a Villa in Cireungit with an area of 1350 square meters in Mekargalih Garut Sub-district, an empty plot area of 6600 square meters in Mekargalih Garut, a Certificate of Property 653 of a land area of 1003 square meters in Muara Sanding Village, Garut, a building on the behalf of Rukmini Suwanda, a plot of land and building area of 403 square meters in Cipamokolan Village Jl. West Aria 9 Aria Graha Bandung, 1 unit of Camry type car with license number B 1840 Q, 1 unit of Isuzu Panther license number D 18.18 NH, 1 area of land of 97 square meters with shop building certificate number SHM 872 / Pakuwon Sub-district on behalf of Hj Cucu Rukmini, were seized for the State. To sell such assets at fair price within one month time frame is difficult to be realized, thus if the policy is forcefully applied, the auctioned price will be below the market and thus detrimental to the convict. It can even cause abuse of authority by unscrupulous auction organizers with prospective winning bidder by collusion

B. Developing appropriate legal model in the recovery of corruption assets through additional criminal penalties for substitute payments.

It is necessary to develop an appropriate legal model which is capable of operationalizing the philosophical foundation of the Corruption Act to save the state's finances. Thus the focus of corruption case handling is not only to imprison the perpetrators but also to attempt to recover the corrupted assets out of the control of unauthorized parties. The followings are suggested actions for the development of appropriate legal model in the recovery of the corruption assets.

1. Additional criminal penalty of substitute imprisonment which is equal or close in value to the principal penalty.

It is necessary to reinforce the cultural legal component of the judges who are in charge of corruption cases to impose the substitute imprisonment sentence for the substitute money penalty with an imprisonment term which is equal or close in value to the principal punishment in order to spread the message that the profit earned by the perpetrator of corruption and even for his family is a negative net profit. According to Komariah Supradjaja, a supreme court judge, the convicted person prefers to serve a substitute imprisonment rather than to pay the substitute money penalty (ibid).

2. Conversion of the additional criminal penalty of substitute money payment which is less than the obligation as a basis for reducing the imprisonment time of the substitute imprisonment penalty.

In order for the conversion of substitute money to be operationalized and binding the judge to apply it, a Supreme Court Regulation is required. The Supreme Court regulation should regulate the verdict on the reduction of a substitute imprisonment term through the payment of substitute money that has not been fully paid (only partially) with permanent legal force. If this conversion is put into practice and subsequently accommodated through regulation, it will provide a positive broad message that recovering corrupted assets to the state does not only benefit the survival of the national development but also benefits both the perpetrator of corruption himself and his family because the imprisonment penalty period may be reduced.

3. Optimizing confiscation of corrupt assets at the investigation stage.

One internal factor of the investigator is the legal culture component. In this particular case, the investigations that were done had not been deeply investigated to the suspect's family to extract the information of the suspect's assets either directly related to the corruption case or assets that are not related to the case. Likewise, in the previous investigations, the investigators had not been tending to make family members who are suspected to receive the corruption assets as suspects who can be charged with money laundering crime. Therefore, in-depth investigation to the suspect's family has a strategic role as an effort to recover the assets of corruption.

4. Plea Bargaining system to uncover defendant's assets.

The general definition of plea bargaining is the process by which the prosecutor and defendant in a criminal case negotiate in favor of both parties for subsequent court approval. In its operational, the defendant pleaded guilty as a means of settling a case then the confession became a mutual agreement between the defendant and the prosecutor as a matter that will ease the sentence against the defendant. The plea bargaining system here is intended not to obtain a plea of guilt by the defendant for his actions, but to obtain the defendant's acknowledgment of the assets which are originally concealed to be disclosed and thus becoming an excuse to reduce the significant lawsuit and punishment of the defendant.

If such a plea bargaining system is applied in practice and subsequently accommodated through legislation, it can ease the recovery of corruption assets through the substitute money payment.

III. Conclusions and Recommendations.

A. Conclusion

The causes of the ineffectiveness of the corruption the assets recovery through the verdict of additional criminal penalty of substitute money payment are; (i) The light verdict of substitute imprisonment penalty for the additional criminal penalty of substitute money payment, (ii) Not all verdicts of corruption cases are accompanied by additional penalty of substitute money payments in spite of the state's actual financial losses, (iii) Cases of suspects or defendants which are not proceeded to legal proceedings due to death or health requirement limitations so that there is no additional criminal penalty of substitute money payment, (iv) The positive law does not regulate the conversion of the amount of substitute money payment that has been partly paid as a basis for reducing the substitute imprisonment time, (v) The implementation of corruption asset confiscation has not been optimal during the stage of investigation, (vi) the difficulty to prove that in trial that a defendant has unlawfully benefitted from the corruption assets, (vii) The issue of the difference in the calculation of additional criminal penalty of substitute money

payments to the defendant in the different level of judicial examinations, and (viii) the money payment period for the state financial losses within a period of one month after a permanent legal court verdict according to Article 18 paragraph (2) of the Corruption Act which is too short.

Based on the analysis above, in order to develop the appropriate legal model for recovering the corruption assets, the following suggestions are proposed; (i) Giving verdict of a substitute or subsidiary imprisonment penalty which has equal or close in value to the main penalty, (ii) Optimizing the confiscation of the corruption assets during the investigation stage, (iii) and converting the additional Criminal penalty of substitute money payment which has been paid partially to the total liability of the imprisonment time in accordance with the court decision.

B. Recommendations.

The Supreme Court should pass the regulation which govern the conversion of the implementation of the additional criminal penalty of substitute money payment which is only paid partially, or by installment, or insufficient to the amount required by the verdict as the legal basis for reduction of a substitute imprisonment time.

The plea bargaining system should be regulated in the legal procedure of corruption crime to disclose the assets of the defendant which is originally concealed to be submitted to the state through the public prosecutor, and the asset is subsequently calculated as the implementation of the additional criminal penalty of substitute money payment, accompanied by a guarantee to obtain lighter lawsuit and sentence. Plea bargaining system is in line with the purpose of the establishment of the Corruption Act which is to save the state's wealth.

The money payment period for the state financial losses within a period of one month after a permanent legal court verdict according to Article 18 paragraph (2) of the Corruption Act should be changed to be more flexible (longer than 1 month).

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