

Revitalizing the Enforcement of Corruption Crimes That Harm State Finances as a Juridical Effort For Asset Recovery

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Abstract

The dominant approach to punishing corruption cases that cause losses to state finances primarily focuses on imprisoning the perpetrators, a method often described as the “follow the suspect” strategy. However, a key component of corruption offenses, as outlined in Article 2(1) and Article 3 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, is the element of “causing losses to the state’s finances or the national economy. In these circumstances, the state serves as the principal victim, incurring direct financial losses that require compensation and asset recovery. This paper adopts a combination of normative juridical and empirical legal research methods, utilizing a case study approach to examine how corruption, as an economic crime, imposes consequences that can and should be remediated through effective law enforcement mechanisms. The study advocates for a reorientation of the law enforcement paradigm from a punishment-centric model focusing on the deprivation of liberty (follow the suspect) towards a restorative justice model that prioritizes the recovery of state losses (follow the money). Such an approach is imperative to upholding justice and fulfilling the state's role as the primary victim, through judicial mechanisms that emphasize asset recovery alongside criminal sanctions.

Keywords: Reorientation, Paradigm, Asset Recovery.

A. INTRODUCTION

The long journey to eradicate corruption crime in Indonesia can be seen from the historical development of legal, both related to the legislation (legal substance) and legal institutions (legal structure). The revision of Law No. 3 of 1971 on the Eradication of Corruption Crimes into Law No. 31 of 1999 introduced both legal and administrative-technical reforms in the process of enforcing anti-corruption laws. Reforms in legal institutions aimed at combating corruption have led to fundamental shifts in the implementation of law enforcement within the criminal justice system. Technical changes start from implementing legal action for investigation, institutional prosecution, and examination of corruption cases in a court session. During the Dutch colonial era and the early years of Indonesia’s government, corruption was relatively simple, as reflected in the formulation of the Criminal Procedure Code (Darwan Prints, 2002). The forms of corruption are increasingly developing in accordance with the progress and advancements over time, in both scope and scale. It is fair to say that the nature and methods of corruption continuously evolve and adapt in line with the changing times (Martiman, 2001). The corruption level in Indonesia can be said to be at the level of extraordinary events (extraordinary crime) in all lines of power holders, both legislative, executive, and judicial power.

Law enforcement in combating corruption consistently draws public attention, including from anti-corruption activists, Non-Government Organizations, academics, community leaders, and politicians. Media coverage of handling corruption news is often the main news presentation in both print and electronic media. The condition of the level of corruption occurs systematically and massively throughout the ranks of state institutions ranging from the Legislative, Executive, Judiciary, and government bureaucracy from the regional to the central government. Trends in prosecuting corruption cases in Indonesia in the period 2015 to 2019 according to data from the Indonesia Corruption Watch (ICW 2019) which are detrimental to state finances are:

Table 1. Corruption Cases Handled by Law Enforcement Agencies and Corresponding State Financial Losses

No.	Investigating Agency	Total Cases	Total Actors	State Loss Value
1	Prosecutor's Office	109	216	Rp 847.8 million
2	Indonesian National Police (POLRI)	100	209	Rp 1.3 billion
3	Corruption Eradication Commission (KPK)	62	155	Rp 6.2 billion

The impact of corruption can be felt immediately or slowly but surely. Accumulation due to corruption at a certain level can threaten the continuity of a country's governance, while for organizations, besides causing financial losses, it also impacts the achievement of organizational goals. The real impact of corruption can be seen from the hampered growth of investment in domestic investment and foreign investment needed in developing the country's economy to improve its people's welfare. The poor quality of public services and the limited infrastructure available to the community, due to the leaking of state money that should be used to provide infrastructure, maintain and improve the quality of services for the community.

The dominant law enforcement approach in corruption cases primarily emphasizes sentencing offenders to prison. This pattern is apparent in court decisions with permanent legal force, from the trial level through appeal and cassation, demonstrating convictions for offenses that inflict losses on the state's finances. An illustration of a conviction for a criminal act that harms the state's finances is:

Table 2. Comparison of Imprisonment and Asset Recovery Sanctions

No.	Case Number	Imprisonment	Replacement Money	Substitute Prison
1	130/PID.SUS/TPK/2017/PN.JKT.PST	15 Years	USD 7,300,000	2 Years
2	6/PID.SUS.TPK/2019/PT SMG	11 Years	Rp 1,262,268,248	2 Years
3	166K/PID.SUS/2013	12 Years	Rp 12,580,000,000 USD 2,350,000	5 Years
4	430K/PID.SUS/2013	15 Years	USD 500,000 Rp 1,000,000,000	5 Years

What can be concluded from the conviction of the above ruling, the conviction of corruptors prioritizes imprisonment as a punishment for retaliation according to the retributive theory that legitimizes punishment as a means of revenge for a crime committed by someone.

A court's verdict represents the outcome of law enforcement carried out through the criminal justice system, serving as the exercise of judicial authority in resolving a case. In corruption cases that cause losses to the state's finances, criminal sanctions not only include imprisonment but also additional penalties in the form of monetary compensation to cover those losses, which must be paid by the convicted person. The accumulated amount of substitute money imposed on convicted persons, as stipulated in court rulings with permanent legal force up to 2017, can be explained in the following manner:

Table 3. Remaining Replacement Money Not Yet Recovered

Year	Prosecutor's Office (Rp)	KPK (Rp)
2017	7,309,008,493,978.19	519,507,256,981.00

The enforcement of additional criminal sanctions in the form of substitute payments is carried out by the Prosecutor's Office and the Corruption Eradication Commission, as determined by the Corruption Court. Such payments must be made no later than one month after the verdict has obtained permanent legal force. In the event of non-payment, the convict's assets are to be seized and auctioned to cover the substitute payment; if the proceeds remain insufficient, the unpaid amount shall be converted into an additional term of imprisonment.

From the table above illustrates that criminal acts of corruption occur systematically and massive, court verdicts are oriented towards the jail. Restoring state interests through supplementary penal measures in the form of compensation payments, as stipulated in Article 18 of Law Number 31 of 1999 on the Eradication of Corruption Crimes. This can be seen from the decision table's description above the amount of the remaining substitute money that has not been paid by the convicted person until 2017. Penalties oriented in prison, criminal confinement will cause legal consequences for the state. The state must provide a budget allocation of funds to finance convicted persons in prisoner meal costs, security costs, provision and maintenance of facilities to support prisons. From the perspective of court rulings on corruption offenses causing losses to state finances, longer prison terms imposed on defendants or convicts result in greater costs that must be allocated and borne by the state.

In light of the foregoing background, the eradication of corruption causing losses to state finances, undertaken through legal measures within the criminal justice system, must yield legal outcomes that constitute a foundational basis for the attainment of the law's objectives, namely justice, utility, and legal certainty. The enforcement of anti-corruption laws should extend beyond the mere punishment of offenders, placing equal priority on the recovery of state financial losses as an integral element of justice. In this regard, the core problem that will be examined in this research is formulated as follows: "Has the

prosecution and adjudication of corruption crimes that harm state finances been oriented towards the restoration of state interests (asset recovery)?"

LITERATURE REVIEW

In imposing criminal sanctions, judges are required to uphold a balanced approach that harmonizes the principles of justice, legal certainty, and legal benefit. The philosophy of law, legal theories, legal principles, and doctrinal frameworks in legal science serve as the conceptual foundation for both the formulation of legislation and its practical application within the social dynamics of society. This study adopts the core tenets of legal positivism and utilitarianism as philosophical underpinnings in examining the formation and implementation of juridical norms as codified in statutory regulations. Furthermore, the concepts of social jurisprudence and restorative justice theory are employed as theoretical instruments to analyze the research problem, particularly in relation to the judiciary's role in actualizing the law. These frameworks offer a comprehensive perspective on how legal enforcement should not only focus on punitive measures but also aim to safeguard and restore the rights and interests of the state, acknowledged as the principal victim of corruption.

METHODS

This study employs a combination of normative juridical and empirical approaches to provide a comprehensive analysis of the effectiveness of juridical norms as established in legislation, their implementation through judicial decisions, and the ensuing legal implications for the interests of the state. This study adopts a combination of statutory (legislation) approach and case study approach.

RESULTS AND DISCUSSION

Revitalization is defined as a process, method, or action aimed at reviving or reactivating something to restore its essential function and effectiveness. The term "revitalization" derives from the word "vital," which signifies something of crucial importance. In criminal law, punishment denotes the imposition of penal sanctions on a defendant, grounded in legal considerations formulated and evaluated by the judge during the course of judicial proceedings.

Thus, the revitalization of punishment in corruption cases refers to a juridical effort to optimize and enhance the implementation of criminal sanctions within the framework of the enforcement of laws addressing corruption offenses detrimental to state finances. The ultimate objective of this revitalization is to ensure that the imposition of punishment not only fulfills a retributive function but also effectively contributes to achieving the fundamental goals of law enforcement: justice, legal certainty, and utility (benefit). This approach emphasizes the necessity of aligning punitive measures with restorative justice principles, particularly in ensuring the restitution of state assets depleted through corruption. The theoretical framework of Gustav Radbruch (1940) emphasizes that law is a cultural phenomenon that serves as a vehicle for realizing fundamental values, particularly justice. According to Radbruch, the purpose of law must be oriented towards the harmonious integration of three essential elements: legal certainty, justice, and expediency (benefit). These three pillars form the normative framework that guides the formulation, interpretation, and application of law within society.

In the context of this paper, the substance of criminal punishment revitalization involves a reorientation of the prevailing penal paradigm. Traditionally, the enforcement of anti-corruption laws has been heavily focused on imprisoning the perpetrators (follow the suspect approach). Nevertheless, in order to realize the higher objectives of law as articulated by Radbruch, it is imperative to adopt a model that places greater emphasis on restoring state interests, particularly through the recovery of financial losses incurred due to corruption. Such an approach is consistent with the principles of restorative justice, whereby punishment functions not merely as retribution but also as a mechanism for attaining substantive justice, legal certainty, and public benefit.

The classification of corruption as a criminal act detrimental to state finances is clearly stipulated in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999, as amended by Law Number 20 of 2001. These provisions serve as the legal foundation for prosecuting offenses that inflict financial losses on the state through unlawful enrichment, abuse of authority, or other actions diminishing state assets. The term "detrimental to state finances or the national economy" demonstrates the legislature's intent to address both direct financial losses and wider economic effects, while constituting a crucial element requiring evidence of a causal connection between the offender's conduct and the state's financial loss. A

fundamental aspect of these provisions is the phrase “detrimental to state finances or the national economy,” which indicates that the offender’s conduct causes financial losses to the state, evident in the reduction or depletion of state assets.

This element inherently positions the state as the primary victim of corruption offenses that inflict financial harm. Therefore, efforts to combat corruption through law enforcement should extend beyond merely imposing criminal penalties on offenders and place equal emphasis on restoring the state’s financial interests. Effective enforcement of anti-corruption laws, therefore, necessitates an approach that acknowledges and addresses the state's position as the most disadvantaged party, ensuring that asset recovery becomes an integral objective within the broader framework of justice enforcement.

The recovery of state interests impaired by acts of corruption is carried out through criminal law enforcement mechanisms, as provided in Law Number 31 of 1999 on the Eradication of Corruption Crimes, particularly in Article 2 paragraph (1), Article 3, and Article 18. These provisions govern not only the constituent elements of corruption offenses but also the sanctions designed to remedy the adverse impact on state finances, including procedures for asset recovery and compensation. In instances where corruption has caused detriment to the financial interests of the state, the following types of criminal sanctions may be imposed on the offenders:

Basic Criminal Sanctions:

- a. Capital Punishment;
- b. Imprisonment;
- c. Confinement;
- d. Fines.

In addition to these basic punishments, **Article 18** provides for **additional criminal sanctions**, including the obligation to pay substitute compensation equivalent to the state’s financial loss, the confiscation of assets, and the revocation of specific rights. These measures are intended to ensure that the enforcement of anti-corruption laws fulfills both **punitive and restorative objectives**, with a particular emphasis on **recovering state assets and restoring state financial integrity**.

Legal action in the context of law enforcement must consider the principle of usefulness and efficacy holds that every statutory regulation is enacted out of necessity and serves a beneficial purpose in governing the life of society, the nation, and the state. This principle expects that the application of rules can be implemented and be beneficial to the community, government, and state. The purpose of crime is to restore justice, known as restorative justice. The concept of restorative justice theory understood as a form of approach to the settlement of cases according to criminal law by involving the perpetrators of crime, victims, and other parties required to seek a fair solution by emphasizing recovery back to its original state and not retaliation (Eddy O.S. Hiarij,2016). Long before, Aristotle had revealed the principle that became the foundation of restorative justice "to restore both parties to equality, a judge must take the amount that is greater than the equal that the offender possesses and give that part to the victim so that both have no more and no less than the equal (Gunawan,2018).

Practical law bearers who are the backbone of legal reasoning activities are judges, most of the legal reasoning activities are even illustrated as judges' activities in the judicial environment (Shidarta,2013). Legal reasoning that is qualified by the judge in deciding a case can construct a decision that can serve as a tool to influence the social behavior of the community. This principle can be applied in the enforcement of corruption offenses that harm state finances, with an orientation toward restoring state interests and recovering state finances in addition to imposing punishment. Recovering state financial losses from corruption that harms the state finances cannot rely solely on asset confiscation, as numerous challenges arise in identifying and valuing the offender’s assets, as well as in obtaining sufficient supporting evidence for presentation in court.

Roscoe Pound, a distinguished legal philosopher, is well known for his view that law operates as an instrument of social engineering. He contends that law is not simply a collection of normative rules, but a means to shape and reform society by ensuring the balance and protection of diverse social interests. Pound divides these interests into various categories, one of which is public interests, encompassing the interests of the state as a juridical entity (the government) and as the guardian of the collective well-being of society. From this theoretical framework, it can be inferred that acts of **corruption which harm state finances** directly violate the public interests that Pound emphasizes. Therefore, the state's interests, whether as a legal subject (government entity) or as the representative of society's welfare, must be afforded **legal protection through effective law enforcement mechanisms**. In this regard, **criminal prosecution**

of corruption offenses that cause state financial losses must utilize the law as a means of social engineering, whereby judicial verdicts are not only focused on punishing the offender but are deliberately constructed to safeguard and restore the state's financial interests. Thus, the judge's ruling becomes an instrument of legal engineering to reinforce state integrity, deter future corruption, and restore public trust in the legal system.

A court ruling that has acquired final and binding legal status (*inkracht van gewijsde*) serves as a valid and authoritative legal basis for executing penalties against individuals convicted of corruption offenses that have caused financial harm to the state. Such a decision represents a final and conclusive determination affirming the defendant's guilt and obligating the execution of sanctions as stipulated in the verdict, including but not limited to imprisonment, the imposition of fines, asset forfeiture, and the payment of restitution. State financial losses can be recovered through the following means:

- (a) seizing movable or immovable property, whether tangible or intangible, that was used in or obtained from acts of corruption;
- (b) requiring restitution payments in an amount equal to the value of assets gained from the commission of corruption offenses.

1. Confiscation of Assets Obtained Through Corruption.

The sequence of additional criminal penalties begins with the forfeiture of tangible movable property, intangible entitlements, and immovable assets that have been utilized in, or obtained from, the commission of corruption crimes. The principle of asset recovery signifies a progressive transformation of conventional law enforcement models, shifting the focus toward stripping offenders of illicitly acquired gains as a strategy to undermine the financial underpinnings of criminal activity. The philosophical foundation underpinning this approach is encapsulated in the maxim: "*Naturae aequum est, neminem cum alterius detrimento et injuria fieri locupletiolem,*" meaning "it is by the law of nature, fair and just, that no one should enrich themselves at the expense and suffering of another." The principle is recognized as the origin of the unjust enrichment doctrine, which has, over time, developed into the contemporary legal doctrine of "crime does not pay." As highlighted by Julio Alberto Diaz (2007), the doctrine of "crime does not pay" reinforces the notion that perpetrators must not be allowed to benefit from their unlawful conduct. Accordingly, the enforcement of asset recovery measures in corruption cases is not only a legal necessity but also a manifestation of this philosophical principle, ensuring that the offender is divested of illicit gains, and the state's financial losses are restored.

Legal actions aimed at recovering assets derived from corruption are **juridically mandated measures** designed to protect the state's financial interests through the application of **legal instruments and procedural enforcement mechanisms**. Asset recovery efforts in corruption cases are implemented from the outset of the investigation and continue through the prosecution phase, involving systematic efforts to **identify, inventory, and secure evidence of assets allegedly acquired through corrupt practices**. These efforts include **asset tracing, identification, and confiscation**, which are critical steps in preventing the dissipation of illicit gains. The success of asset recovery in corruption cases is largely contingent upon the **availability, adequacy, and quality of supporting evidence** gathered by investigators. The successful confiscation of assets necessitates exact alignment with evidentiary processes aimed at proving the constituent elements of corruption crimes. Thus, asset recovery actions are inherently intertwined with the evidentiary process of establishing the criminal conduct itself, ensuring that asset confiscation aligns with legal procedures and respects the rights of all parties involved while prioritizing the **restoration of state financial losses**.

In its 2013 publication *Impact Study on Civil Forfeiture*, the Council of Europe delineates principal theoretical paradigms employed across diverse jurisdictions in implementing asset forfeiture through criminal justice mechanisms, with particular reference to post-conviction forfeiture. These approaches are broadly categorized into three systems:

1. Property-Based Confiscation System (Property-Based System)
2. Value-Based Confiscation System (Value-Based System)
3. A Combination of Both Systems

The **Property-Based Confiscation System** targets **specific assets under the control of the perpetrator**, which are suspected to be the direct proceeds of criminal activity. This approach focuses on seizing the **tangible and identifiable property** linked to the crime. In contrast, the **Value-Based Confiscation System** allows for the confiscation of assets equivalent to the **value or profit gained from the criminal act**, even

if the original assets are no longer traceable. This system also encompasses the **benefits derived from the use of illicit assets**, including any **increase in their value over time**, thereby ensuring that offenders do not retain economic advantages from their criminal conduct.

In the context of **Indonesia's legal practice**, asset recovery efforts through confiscation in corruption cases predominantly apply the **Property-Based Confiscation System**. This approach is directed towards seizing the **maximum tangible value obtained from acts of corruption**, focusing on assets directly connected to the crime. However, to enhance the effectiveness of asset recovery, Indonesia may benefit from adopting a **hybrid approach**, combining both property-based and value-based confiscation methods, to address complex financial crimes where proceeds may have been laundered, converted, or dispersed.

One of the most formidable challenges in recovering state losses through asset confiscation in cases involving corruption is the evidentiary burden of proving that the assets in question are legally owned by the accused and are reasonably suspected to originate from corrupt practices—a burden further compounded by the stringent standard of proof in criminal proceedings, namely, beyond a reasonable doubt. Indonesia, like most civil law jurisdictions, adheres to the **negative theory of evidence (negativiteit van de bewijstheorie)**, which mandates that judges must be fully convinced of the accused's guilt based on lawful evidence explicitly enumerated in procedural law. The inherent characteristics of corruption crimes—typically committed by **well-educated individuals**, often executed **collaboratively (in concert)**, and deliberately **concealed through sophisticated methods**—pose significant obstacles in gathering sufficient and concrete evidence. The clandestine nature of such offenses, coupled with the complexity of financial transactions designed to obscure the origin and ownership of illicit assets, renders the process of asset tracing and evidence collection exceedingly difficult. These challenges necessitate the development of more robust **legal mechanisms and investigative strategies** to ensure that law enforcement can effectively prove the nexus between assets and corrupt conduct, thereby safeguarding the success of **asset recovery efforts**.

Legal efforts aimed at **restoring the state's interests to their original condition through asset recovery in corruption cases** frequently encounter significant practical challenges. One of the primary obstacles is the **scarcity of information and evidence concerning assets obtained by corruptors from their illicit activities**. The limited availability of concrete and traceable evidence poses substantial difficulties for investigators and public prosecutors in their efforts to **identify, trace, and secure sufficient evidence of illicit assets for the purpose of confiscation**. As a result, law enforcement actions in corruption cases tend to focus predominantly on **proving the formal elements of the criminal offense**, while the objective of restoring state losses is often pursued through the imposition of **replacement money (uang pengganti)** sanctions as stipulated in criminal verdicts. However, this approach faces its own limitations, as **the enforcement of replacement money orders depends heavily on the convict's willingness or ability to comply**, and is frequently hampered by the **difficulty of locating hidden or laundered assets**.

A considerable interval often elapses between the commission of a corruption offense (*tempus delicti*) and the commencement of law enforcement proceedings. This delay affords offenders substantial opportunity to obscure, transfer, or deplete illicit assets, thereby impeding recovery efforts. Such temporal gaps underscore the pressing necessity for enhanced asset-tracing systems, the expeditious initiation of investigations, and a reinforced focus on preventive legal measures to bolster the efficacy of asset recovery in combating corruption.

2. Additional Sentences Replacement Money

Corruption is a distinct category of **economic crime**, characterized by the perpetrator's **mens rea (criminal intent)**, which is driven by the desire to obtain **economic benefits**, either for personal gain or for the benefit of others. As an economic crime, corruption results in financial harm that can, in principle, be **restored to its original state through appropriate legal mechanisms**. The restoration of the state's interests to their original condition can be achieved through **asset recovery processes within the framework of law enforcement proceedings**. This involves not only the prosecution and conviction of offenders but also the implementation of legal instruments aimed at **recovering state losses**, such as the imposition of **replacement money (uang pengganti)** sanctions and the **confiscation of assets derived from corruption**. Therefore, asset recovery serves as a crucial mechanism to ensure that the detrimental economic consequences of corruption are reversed, reinforcing the principle that **economic crimes must not result in illicit enrichment for the perpetrators**.

To illustrate the implementation of **legal actions in corruption cases that cause financial losses to the state**, the following court verdicts are presented as **material for analysis and discussion**. These cases

advance through consecutive levels of the judiciary, starting with courts of first instance (Pengadilan Negeri), moving to appellate courts (Pengadilan Tinggi), and culminating at the Supreme Court (Mahkamah Agung), which functions as the ultimate cassation authority. The selected cases demonstrate how courts impose **imprisonment**, **replacement money (uang pengganti)**, and **substitute imprisonment (pidana pengganti)** when replacement money is not paid.

Table 4. Court Verdicts on Corruption Crimes Detrimental to State Finances

No.	Case Number	Imprisonment	Replacement Money	Substitute Prison
1	130/PID.SUS/TPK/2017/PN.JKT.PST	15 Years	USD 7,300,000	2 Years
2	6/PID.SUS.TPK/2019/PT SMG	11 Years	Rp 1,262,268,248	2 Years
3	166K/PID.SUS/2013	12 Years	Rp 12,580,000,000 USD 2,350,000	5 Years
4	430K/PID.SUS/2013	15 Years	USD 500,000 Rp 1,000,000,000	5 Years

Court decisions in corruption-related cases generally impose two penalties: a principal sentence of imprisonment, fines and an additional penalty of restitution (uang pengganti). By law, the restitution amount must be paid within one (1) month after the judgment attains permanent legal force (inkracht van gewijsde), failing which the offender's assets are subject to confiscation and auction. If the proceeds are insufficient, the remaining balance is converted into substitute imprisonment as determined by the court. In practice, enforcement is often hindered by difficulties in locating and seizing assets due to insufficient evidence, concealment, or sophisticated laundering schemes. As a result, substitute imprisonment is frequently applied, which in many cases fails to match the scale of the state's losses, thereby compromising the goal of fully restoring state interests

A legal instrument attains true effectiveness only when it transcends mere normative provisions and can be operationalized in practice, with its sanctions enforced effectively in cases of violation. In the sphere of combating corruption offenses that cause losses to state finances, the imposition of criminal sanctions must embody this effectiveness by fulfilling both punitive objectives imprisoning offenders and restorative objectives-recovering state losses. In reality, however, enforcement often reflects a disproportionate focus on imprisonment, while the implementation of additional sanctions in the form of restitution (uang pengganti) remains markedly ineffective. This disparity between the legal framework and its practical enforcement raises concerns regarding the substantive realization of justice and the genuine restoration of the state's financial interests.

Accordingly, assessing the application of criminal sanctions in corruption cases must go beyond measuring conviction rates to critically evaluate the efficacy of asset recovery mechanisms, the enforcement of restitution (uang pengganti) penalties, and the extent to which law enforcement efforts restore the state's financial losses. Without reinforcing these dimensions, anti-corruption law enforcement risks failing to realize the law's fundamental objectives of justice, utility, and legal certainty. The following table presents data on the implementation of additional criminal sanctions in the form of restitution payments imposed on convicted offenders. In practice, the proportion of restitution actually paid amounts to only about 2.48% of the total ordered.

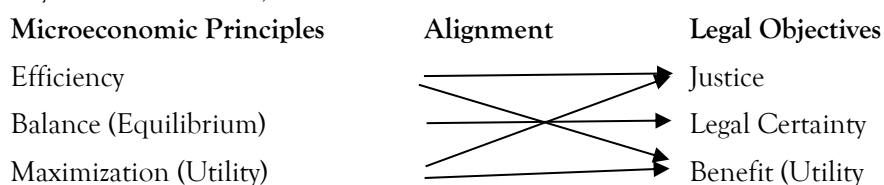
Table 5. Implementation of Replacement Money Sanctions in Corruption Cases

Executor	Total Replacement Money Imposed (Rp)	Replacement Money Paid (Rp)	Percentage (%)
KPK	1,476,344,184,768.00	290,300,708,137.00	19.66%
Prosecutor's Office	27,010,226,937,862.00	416,627,037,233.00	1.54%
Total	28,486,571,122,630.00	706,927,745,370.00	2.48%

An examination of corruption case judgments that have attained final and binding status (inkracht van gewijsde) reveals that, in substance, these decisions often fall short of reflecting Richard A. Posner's theory of judicial decision-making, which conceptualizes judges as rational actors seeking to maximize "utility. Posner asserts that judges, in rendering decisions, should employ **economic reasoning and rational analysis** to achieve outcomes that balance complex societal interests, thus ensuring that judicial rulings contribute to broader social and economic efficiency. Simultaneously, the **legal philosophy of Roscoe Pound**, who is renowned for his theory of "**law as a tool of social engineering**," emphasizes that law should serve as an instrument to shape and reform society by balancing competing interests. In the context

of corruption cases that harm state finances, these philosophical frameworks offer a critical foundation for constructing **judicial arguments and legal reasoning** that extend beyond formalistic punishment.

The **application of law in combating corruption offenses** and the **execution of court decisions** can be evaluated through the framework of **Gustav Radbruch’s theory of legal objectives**. Under this conceptual framework, all law enforcement activities are directed toward three fundamental aims—justice (Gerechtigkeit), legal certainty (Rechtssicherheit), and utility or expediency (Zweckmäßigkeit)—which collectively serve as the normative foundation of the legal order. These three principles are interrelated and complementary in shaping an **ideal legal system**. According to **Cooter and Ulen**, the objectives of law, which encompass **justice, certainty, and utility**, can be harmonized with the **basic principles of microeconomics**, such as **utility maximization, market equilibrium, and resource allocation efficiency**. This synergy allows the law to be understood not only from a normative perspective but also from the standpoint of **economic rationality**. The alignment of legal objectives with microeconomic principles, as proposed by **Cooter and Ulen**, can be illustrated as follows:



Efforts to combat corruption, particularly those prioritizing the recovery of state financial losses, demand coordinated engagement among law enforcement authorities, financial institutions, regulatory agencies, and the judiciary within a multidisciplinary framework. The integration of legal, economic, and financial perspectives facilitates the more efficient and transparent implementation of asset recovery and restitution, thereby safeguarding public assets and strengthening public confidence in the justice system. However, as evidenced by the referenced court verdict, the prevailing punitive paradigm continues to focus predominantly on imprisonment as retribution. This prompts an inquiry into the extent to which the binding authority of judicial decisions affects a convicted individual’s commitment to restoring the state’s legal interests. As Friedman (2017) observes, human behavior is shaped not by instinctive reactions but by responses to threats, promises, and other inducements.

In the enforcement of anti-corruption laws, particularly in cases involving financial losses to the state, the restoration of state interests is principally undertaken through asset confiscation and the imposition of substitute payments on convicted offenders. These two legal measures—**asset confiscation and substitute payment orders are not separate or isolated sanctions but rather form an integrated mechanism aimed at restoring the state’s financial position**. The process involves identifying and confiscating assets obtained through or associated with corrupt activities. The **value of these confiscated assets is then credited towards the total substitute payment obligation imposed on the convict**. This approach ensures that the state's financial losses are systematically recovered, while also upholding the principle of proportionality in sentencing. In practice, the substitute payment functions as a financial liability borne by the perpetrator to compensate for any remaining shortfall in recovered assets, thereby aligning with both the legal objectives of restitution and the economic principle of resource reallocation. This integrated approach reflects a convergence between normative legal imperatives and economic rationality, ensuring that enforcement is not only punitive but also restorative in nature.

The dominant approach to punishment, as evidenced in judicial rulings, continues to emphasize imprisonment as the primary means of retribution for the offender's misconduct. Nevertheless, it is crucial to examine how the court’s authority and the substance of its decisions shape the conduct of convicted individuals, particularly concerning their responsibility to restore the state's legal and financial interests following acts of corruption. Human responses are not automatic or instinctive; rather, they are shaped by external factors such as threats, incentives, and enforcement measures. In corruption cases, the enforcement of criminal sanctions through a judicial verdict triggers a reaction from the convicted individual. The design and execution of these sanctions through judicial mechanisms are instrumental in influencing whether the offender is compelled to meet their financial obligations to the state or opts to accept imprisonment as an alternative form of punishment.

The convicted individual’s response to a criminal conviction, as stipulated in a court verdict, will influence their behavior in complying with the law, thereby affecting which legal consequences they ultimately choose to serve. The orientation of sentencing whether it emphasizes financial restitution or

punitive imprisonment plays a decisive role in shaping the offender's choices. From a microeconomic standpoint, as outlined by Gary Becker, the operation of criminal law encompasses several essential components:

- 1) maintaining a balance between the certainty and the severity of punishment;
- 2) evaluating the economic trade-offs between monetary penalties and imprisonment;
- 3) considering the economic dimensions of law enforcement and procedural mechanisms; and
- 4) assessing the deterrent and preventive impacts of incarceration.

In corruption cases that inflict financial harm upon the state, a sentencing model centered predominantly on imprisonment as a retributive measure often diminishes offenders' willingness to fulfill their obligation to reimburse state losses. Consequently, the effectiveness of the state's asset recovery efforts and the restoration of its financial interests through criminal sanctions is reduced, yielding only limited benefits. Therefore, a restructuring of sentencing priorities is imperative to ensure that legal enforcement not only punishes misconduct but also fulfills a restorative role that maximizes public benefit.

Law enforcement serves as a concrete expression of judicial authority, implemented through the justice system, with the primary objective of delivering justice that yields tangible benefits for society, the nation, and the state. In practice, law enforcement typically employs normative judgments of right and wrong, guided by ex-ante legal evaluations. On the other hand, economic analysis assesses actions by weighing associated risks (costs) against potential benefits (utilities). By merging these two approaches legal reasoning and economic evaluation a more holistic framework can be established to measure the effectiveness of law enforcement in achieving justice. The discourse on law enforcement that is beneficial inherently revolves around the necessity for enforcement processes that are not only legally sound but also efficient and effective, thereby ensuring that judicial actions lead to optimal outcomes that serve the broader public interest.

CONCLUSIONS

Criminal legal actions designed to restore the state's interests in corruption cases that result in financial harm to the country are carried out through the confiscation of assets and the imposition of substitute payments (replacement money). These remedial measures are enforced simultaneously based on judicial rulings. The success of asset recovery efforts significantly hinges on the enforceability of these court decisions, which will directly influence the conduct of convicted offenders—whether they comply by paying the substitute amount or opt to serve substitute imprisonment as an alternative sanction.

Despite these mechanisms, the current criminal justice approach to corruption cases that damage state finances remains largely centered on imprisonment as the primary mode of punishment. However, inconsistencies often arise in court judgments regarding the proportional balance between imprisonment terms and financial penalties, including substitute payments or imprisonment-in-lieu-of-payment. When there is a disproportion between the burden of substitute payments and the severity of substitute imprisonment, it unintentionally encourages convicts to favor imprisonment over financial restitution. This imbalance weakens the intended objective of recovering state losses and underscores the urgent need to reform sentencing practices to ensure that judicial outcomes effectively support the goal of asset recovery.

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