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Optimization of the criminal legal system: A reconstruction of additional sentences as substitute for replacement money for corruption in Indonesia

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Abstract: This is a normative study with the main objective of reconstructing the regulation of prison sentences as an additional penalty in the Eradication of Crime of Corruption Act (ECCA). It focused on achieving objective law through certainty, justice, and expediency. The findings of the study identify several problems related to the regulations in prison sentences as a replacement for additional sentences. For the payment of replacement money, a fine is neither normative nor practical. This nonconformity with the objectives of law, including certainty, justice, and expediency, highlights the necessity for the reconstruction of existing regulations. The reconstruction approach involves a comprehensive analysis of various aspects of existing problems in regulations and their implementation in prison sentences as a substitute for the additional penalty of replacement money. As a result, some additional regulations are proposed to overcome the obscurity of prison sentences as a substitute for the additional penalty of unpaid replacement money as regulated in the ECCA that prevails at this moment.

Keywords: *Additional crimes, Legal objectives, Reconstruction.*

1. Introduction

The crime of corruption is a global challenge faced by all countries, including Indonesia. S. Djoko Sumaryanto identifies corruption as one of the "white collar crimes" with complex consequences and is becoming a focus of attention for the international public. Indeed, there are countries that are free from corruption. However, the difference lies in the level of corruption that exists in those various countries [1]. The effectiveness of system control in a country has a direct influence on the level of corruption. Conclusive evidence of corruption as a global problem is reflected in the publication of various law instruments internationally, such as the United Nations Convention Against Corruption (UNCAC) 2003 and the United Nations Convention Against Transnational Organized Crime 2000. Indonesia has ratified these agreements through Law No. 7 of 2006 and Law No. 5 of 2009, respectively, showing commitment to overcome corruption in an international level [2].

According to studies by sociologists such as [3] and Alatas [4] corruption in the modern era is associated with syndication, making the crime classified as organized crime [3]. Chamblis takes note that corruption involves various parties, called "cabal" or networking corruption, which consists of businessmen, enforcers, and politicians who are complicit in corruption. This is difficult to reveal because it involves elite powers, including the executive, elites of party politics, high-ranking officials, institutions, the judiciary, and business circles. Corruption becomes a serious threat because it is part of the intrinsic system [3]. Eradicating corruption isn't an easy task. This is especially true because enforcement apparatus is often stuck in dilemmas. Not only collusion between businessmen, politicians, and officials, but also law enforcement, makes the network of corruption difficult to penetrate from within and/or outside. Corruption in Indonesia also tends to be severe, with a high ranking index of corruption if compared to other big countries in the world [5].

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Transparency International released the 2020 Corruption Perception Index (CPI), which showed a decline; Indonesia's score was 37/100, placing it in 102nd place out of 180 countries surveyed. Although the score has decreased from the previous year, this ranking continues to reflect a high level of corruption. Corruption does not only harm the state's finances, but it also has a significant impact on the growth of an economy or nation. The 1999 Act on Eradication of Corruption confirmed that corruption harms state finances and hinders national development and demanded a serious effort to eradicate it. This is to establish public fairness and prosperity in accordance with Pancasila and the 1945 Constitution [6].

In handling corruption cases, Indonesian law enforcement is not only focused on sentences for criminals, like imprisonment, but also on efforts to recover state's losses and assets. Acts of corruption, which are detrimental to state finances, gave rights to the state to demand for a change, including make a loss to perpetrators and parties related. On the contrary, the perpetrator of corruption also does not have quite enough answers to the law to make change and cause a loss to the country. Recovery of state finances are not only something that must be logical as a consequence of acts that are detrimental to the state but also constitute the implementation of the principle "No one has the right to enjoy profit from the crime he committed." This principle is in line with the principle of law, which generally states that every detrimental act that brings an obligation to pay change makes a loss to the suffering party [5].

Things to be conducted in the asset recovery of state finances must still be in accordance with the principle of the rule of law-based concept of the Indonesian state. The state's right to demand the loss of state finances must obey the principles of the rule of law. The Act on Eradication of Corruption No. 31 of 1999 regulates criminal addition as an effort to recover and return the state's losses. Article 17 states that a defendant, besides being a criminal, can be charged with additional penalty in accordance with Article 18 [7].

Types of additional sentences are arranged in Article 18 of the Eradication of the Crime of Corruption Act (ECCA). In detail, additional sentences involves the seizure of moving or non-moving assets related to corruption. The payment of compensation for a number of treasured objects obtained from corruption, cover-up companies, and revocation rights or deletions of certain things given by the government to convicts.[6] Although additional sentences payment of replacement money comparable to lost state assets is an innovation from previous law, it is not known in the Criminal Code. This is still a criminal addition to Article 10 letter (b). This covers retraction rights and certain seizures of assets [8].

Regulations about the payment of replacement money in corruption cases have been known since Prp. No. 24 of 1960. This law regulates that those who are found guilty can be required to pay the substitute sentences. The same is true of acquired assets from corruption. However, the law does not provide details about the implications if the convict does not pay the substitute sentences. Regulations about the additional sentences and payment of substitute sentences. It was then adopted back into Law No. 3 of 1971. Article 34 of the Law of Criminal Corruption No. 3 of 1971 regulates the seizure of tangible goods, including companies, and the payment of substitute penalty as much as possible in accordance with objects obtained from corruption [9].

Thus, payment of additional sentences and substitute sentences of the state's lost finances is an important law in handling corruption in Indonesia, which is directed at asset recovery as well as enforcement principles of the rule of law. In the context of Indonesian law, additional sentences of substitute sentences is regulated by the ECCA [8]. Article 18 of the ECCA outlines the time limit for the payment of replacement money and state finances, which are determined within one month. If the convicted fails to pay within the time limit, the law gives authority to the prosecutor to seize the convict's assets. The worst scenario is if there are assets that can be obtained, confiscated, and convicted, faced with a crime prison as a subsidiary [10].

In ECCA No. 31 of 1999, there are provisions about the payment of substitute sentences for state finances. If the convicted are not capable of paying replacement money, stages of foreclosure are carried out by the prosecutor for auction to cover the required amount paid. If the assets are enough, the

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convicts can be sentenced to criminal prison in accordance with Article 18 paragraphs (2) and (3) of the law. Imprisonment varies in terms of its characteristics. Imprisonment is addressed for restrictions on the freedom of the convicts inside a correctional institution; temporary criminal detention only applies to adults; and restrictions on freedom to move are lighter. Article 12 of the Criminal Code states that imprisonment can take place throughout their lifetime or during a certain period of time. Article 18 of the Criminal Code states that criminal detention has a limit of one day and a maximum of one year [11].

It is important to note that the application of imprisonment as a substitution for criminal detention in the context of the payment of substitute sentences shows the government's commitment to strengthen law-related issues in corruption and the recovery of state assets. It is a difficult task to straighten up fairness and effectiveness in sentences in corruption cases. There are a number of inherent problems with the provisions of imprisonment as a subsidiary of additional sentences payment of replacement money in Article 18 of the ECCA [12].

First, enforcement of imprisonment as subsidiary criminal replacements based on norm Article 18 paragraph (4) of the ECCA can result in a surpassed limit of dropping criminal prison for 20 years in Article 12 paragraph (4) of the Criminal Code. This is caused by the accumulation of imprisonment in primary criminal sentences and the addition of jail time as a subsidiary of replacement money. This is contradictory to the sentences system in Indonesian criminal law. The ECCA is not, in a way, special; anticipating dropping criminals beyond the maximum criminal prison limit in Article 12 paragraph 4 of the Criminal Code results in a different interpretation [13].

The first opinion is that prison sentences as a subsidiary to the payment of replacement money must be subject to Article 12 paragraph (4) of the Criminal Code. That means deep-dropping criminal prison as a subsidiary payment of compensation money; the judge must forever consider imprisonment as the primary sentences. On the other hand, another view states that dropping criminal prison from 20 years as accumulation of imprisonment time with criminal prison as subsidiary criminal addition payment of replacement money is not contradictory with Article 12 paragraph 4 of the Criminal Code, arguing that the chapter is the only regulation about primary sentences [10].

If the second viewpoint is accepted, there will be legal and practical consequences. First, the contradictory views of the drafters of the Criminal Code and developments in international thoughts about imprisonment. As an example, Jan Remmelink emphasizes the need to limit absolute criminal prison to no more than 20 years, even if there is another reason to burdensome criminals. This view highlights the difference between thinking traditionally about criminal prisons and international trends that are looking for another alternative to overcome crime.

Enforcement of imprisonment is not a subsidiary of additional sentences, nor is the payment of replacement money in line with the objective of sentences, that is, to teach a lesson or provide rehabilitation. Philosophically, the existence of criminal prisons in this context is faced with ambivalence between security objectives and the rehabilitation of prisoners. Besides, that's the view. This creates a practical problem related to dehumanization perpetrators who conduct crime and impacts loss for prisoners who stay in institutions for too long, which limits their ability to live their lives in a productive way in public.

The second problem is that the implication from that view is reducing Article 12 paragraph (4) of the Criminal Code. It makes the time limit for a perpetrator of corruption uncertain. For example, if somebody is caught in a corruption case based on Article 2 paragraph (1) or Article 3 of the ECCA, the maximum sentences that can be dropped as accumulation primary punishment and subsidiary of additional payment of replacement money is 40 years. However, if the defendant tried in two cases of corruption, the maximum criminal prison time is 60 years. In this situation, there is no clear limitation on the primary sentences that can be dropped on a corruptor.

Another example is when corruption, like bad credit at Bank NTT Surabaya Branch involving Stephen Sulayman and Yohanes Ronald Sulayman, results in a sentence of criminal prison beyond 20 years as accumulation from the primary sentences and subsidiary criminal addition payment of replacement money. In his charges against Stephen Sulayman, the prosecutor demands criminal prison

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for 18 years and 6 months, minus the defendant being detained, with a total penalty of 32 years and 6 months. The judge's decision later sentenced the criminal for 33 years, exceeding the maximum limit of 20 years as arranged in Article 12 paragraph (4) of the Criminal Code.

In the charges against Yohanes Ronald Sulayman, the prosecutor demanded criminal prison for 16 years, and the judge sentenced 10 years of imprisonment, with a total penalty of 26 years, which also exceeded the maximum limit of 20 years. This problem shows that this view can create uncertainty in the sentence of corruptors. This implicates a criminal prison that can exceed the time limit stipulated by Article 12 paragraph (4) of the Criminal Code. This matter brings up a difference in opinion between the conviction from the prosecutor and the judge's decision regarding lifetime primary sentences for the perpetrator of corruption. This gives rise to ambiguity and potential injustice in the criminal justice system.

The third problem highlights a number of offenses in the ECCA. This includes threats to lifetime sentences, like Article 2 paragraph (1) and Article 3 of the ECCA, and threats to a death sentence, like Article 2 paragraph (2) of ECCA. In a situation where a defendant is sentenced for life or death sentence and at the same time sentenced to imprisonment as a subsidiary additional sentences for replacement money payment, there is obscurity about the implementation of imprisonment as a subsidiary sentences for replacement money. This happened in the case of company corruption by Jiwasraya (Persero), with Benny Tjokrosaputro as the defendant. In the indictment, the defendant was sentenced to a life sentence and a fine as a primary sentences. Besides, the defendant was also charged with paying sufficient replacement money. However, according to the judge's decision, no imprisonment was included as a subsidiary of replacement money. The panel of judges only considers the criminal's life sentence and commands the defendant to pay replacement money to the state.

In the same verdict, defendant Heru Hidayat, in the same case about Jiwasraya Insurance (Persero) corruption, was also sentenced to life and required to pay a significant amount of compensation. Although the defendant demands imprisonment as a subsidiary sentences for the replacement money submitted by the prosecutor, the judge in the decision did not include the prison as a subsidiary. Basically, the verdict is considered rational because a life sentence already has a maximum sentences and provides a threat to imprisonment as a subsidiary payment of replacement money. This is possible but not meaningful and cannot be held in a practical way. Thus, the third problem is that this shows nonconformity between demands for imprisonment as a subsidiary sentences and replacement money. The main thing is that it has already reached the maximum level, and the judge's decision is rational in not giving a threat to criminal prison as a subsidiary.

In a corruption case involving the PT Armed Forces Social Insurance Republic of Indonesia (Asabri) (Persero), problems that arise relate to the payment of additional sentences and criminal compensation for the additional seizure of the convict's assets. In this context, the defendant was proven guilty of corruption, and despite being previously charged with a dead sentence, the judge decided with a nil verdict. The defendant is still sentenced to additional sentences for the payment of replacement money amounting to IDR 12.643 trillion without imprisonment as a subsidiary if he is incapable of paying it.

Then, problems arise related to the implementation of two types of additional sentences, i.e., seizure of the convict's assets and payment of compensation, whether applied in a cumulative or alternative way. Additional sentences for asset seizure is regulated in Article 18 paragraph (1) letter (a) of the ECCA, while payment of replacement money is regulated in Article 18 paragraph (1) letter b. These two types of additional sentences are correlated because in implementation, assets owned by convicts can be confiscated to cover the payment of replacement money. Problems that arise are second-type additional sentences. This is applied in an accumulative or alternative way. A number of implications arise from the cumulative application of additional sentences, seizure of assets, and payment of replacement money, including:

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1. Excess Assets Confiscated: convict's assets that are confiscated as an enforcement of additional sentences can be higher in value than the amount of wealth enjoyed from corruption. This can result in a situation in which the convict loses assets that are not directly related to the crime.
2. Imprisonment as a Subsidiary: A convict can be sentenced to prison as a subsidiary of the payment of restitution, even if the assets are confiscated. This is already comparable with state finances. This matter can cause disproportionality between the penalty and the value loss, which must be restored.
3. Different Treatment: In a number of cases, assets confiscated were not calculated or considered to pay off the replacement money. This can result in different treatment for additional sentences for seizure of assets and restitution payments, though both of them have the same goal, i.e., the state's asset recovery.

Unlike the additional sentences payment of compensation, the ECCA does not regulate how to determine the prison sentence as subsidiary sentences in case the convict's assets are not sufficient to pay the replacement money. This gives rise to obscurity in the implementation of prison sentences as a subsidiary in the context of the convict's asset seizure.

This is an issue that has arisen in the practice of the judiciary, particularly in terms of the effectiveness of additional sentences. Several empirical studies show a trend that is convincing. Convicts would rather choose a prison sentence. In fact, some convicts do not own that many assets or intentionally hide them, making it difficult for the prosecutor to seize the assets owned by the convict. Collected data from prosecutors throughout Indonesia, as gathered by Mungki Hadipratikto, shows that there are arrears in the payment of replacement money in corruption cases, with significant figures, i.e., around IDR 5 trillion. Even the Audit Board of Finance (BPK) in 2009 noted up to IDR 8.15 trillion. The Attorney General of the Republic of Indonesia, however, has not shown significant action.

This reality was depicted in the 2020 Indonesian Corruption Watch (ICW) report, noting that only around 12–13 percent of the total state losses resulting from corruption are successfully recovered. Research by Ade Paul Lukas and Barlingmascakeb highlights the ineffectiveness of the additional sentences of replacement money at the Purwokerto District Court. The research shows that only two of the convicts sentenced were successful in paying replacement money. However, the complexity is more clearly revealed in the decision of the Purwokerto District Court related to the additional sentence of replacement money. Several convicts stated that they were unable to pay due to a lack of assets. However, there are also decisions that do not sentence criminals. The same thing happened in the NTT District Prosecutor's Office, where data shows an increase in arrears.

Overall, the background above highlights the serious problem in the system of additional sentence replacement money in Indonesia. Obstacles include limited time for possible payments, which are deemed to be too short. Another problem is the ineffectiveness of recovering the state's assets and the diversity of handling cases at various levels of justice. More attention is needed to increase fairness, efficiency, and effectiveness to overcome the problems.

2. Theoretical Framework

2.1. Theory of the Rule of Law

The concept of the rule of law, known as *"Rechtsstaat"* in Continental European countries, originated from the influence of Immanuel Kant, a German philosopher famous during the Enlightenment. Immanuel Kant defines the rule of law as a formal state that places "right" (law) above "staat" (state). This initially aims to ensure order and security in society, describing the state as a guard that night didn't mix hands with well-being people. This is known as the concept of a liberal state, which emphasizes principles of freedom ("liberty") [14].

Immanuel Kant's thinking influenced Friedrich Julius Stahl, a politician in conservative Germany, who developed elements of the *Rechtsstaat*, including protection of basic human rights, division of power, a government based on legislation, and justice administration. The development further replaces the

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concept of a formal legal state with legal state material, which emphasizes governance based on law [15].

The concept of the prosperity state (*welvaarstaat*) is a later development that marks a shift from a legal state material. This plays an important role in justice. The concept of the *Rechtsstaat* developed from a classical to a modern concept. The classical, known as "*classic liberale en democratische rechtsstaat,*" which has a liberal and democratic nature, refers to the thoughts of Locke, Montesquieu, Kant, and Rousseau. Temporary modern concepts are known as *"societal rechtsstaat"* or *"sozial demokratische rechtsstaat,"* which emphasizes a liberal and democratic nature with the principle of freedom and equality as the main pillar [16].

2.2. Theoretical Basis of Legal Objectives

Gustav Radbruch proposes principle priority from three marks as the basis. Legal justice, legal benefits, and legal certainty become priorities [17]. By putting justice forward, the system of law can avoid internal conflict. Gustav Radbruch initially put certainty in the highest position but then changed his view after seeing abuse of power by the Nazi regime. Justice is finally placed above objective law. According to Meuwissen, freedom is chosen as the foundation and aspiration of the law. The freedom in question has no arbitrariness but rather the ability to desire what is right. Contrary to Radbruch, Meuwissen prioritizes freedom as the primary law [18].

Justice, according to Radbruch, becomes a matter of whether there is a legal system. Justice has its own characteristic normative and constitutive law. Aristotle and John Rawls provide a big contribution to understanding justice [17]. Aristotle divided justice into distributive and commutative, which are related to allocation based on achievement and equality in exchange. Meanwhile, Rawls develops principles of justice by introducing "position original" and "sheath ignorance." [19]. This emphasizes equality, freedom, and rationality to reach a just society. A number of principles of justice from classical and contemporary philosophy are included when drafting laws that protect everyone's rights, maintain a balance of equality and justice, and avoid harming others. Aristotle is regarded as the first thinker to develop a draft of continued justice, which has been debated in philosophy and law until today [20].

3. Research Methods

The type of study in study law includes normative or doctrinal law study Soekanto [21]. Studying law normatively will explain characteristics of law from facet structure conceptual, doctrinal law, theory law, and relationships between rules, principles, concepts, and values held to be interpreted in a way that is implicit or explicit [22]. Materials are then arranged in a systematic way, analyzed, and conclusions drawn in relation to the problem being studied [23]. In this study, the author employs several approaches: legislation (statute approach), historical approach, comparative approach, and conceptual approach [24].

4. Discussion

4.1. Renewal of Criminal Law in Overcoming Criminal Acts of Corruption

Before discussing the prison sentence as a replacement for the additional sentence of replacement money in Article 18 of the ECCA, it is necessary to understand the effort of the criminal renewal law in countermeasures to criminal corruption. Criminal law, as part of the law public, is a strength in countermeasures of crime but also vulnerable to change in society and technology. The crime of corruption always adapts to the development of knowledge and technology. This encourages the renewal of criminal law. This expectation can, in a way, effectively prevent and overcome the crime of corruption. The long journey to renew criminal law and criminal-related countermeasures against corruption has started since Indonesian independence [9].

The eradication of corruption has started with the Criminal Code (KUHP), especially for offenses. However, at the initial stage, the type of detrimental corruption in state finances is not known. Threats

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to criminals in phase are listed in Article 10 of the Criminal Code and include primary sentences/sentences and addition. However, obligations to pay replacement money haven't been regulated as additional sentences. Regulations on prison sentences as additional sentences for replacement money in the Crime of Corruption Act of 1999 became the final stage of criminal law amendment [11]. This phase involves the formation of more regulations that are effective as countermeasures to corruption, including the introduction of the term corruption in a way that is official and the obligatory payment of replacement money as additional sentences. This became a sustainable response to the demands of time and effort. To respond to change and development, the crime of corruption [2].

4.2. Renewal of Substitute Prison Sentences in the Context of Corruption

In Article 18, Paragraph 3, of the ECCA, prison sentences as replacement are formulated as a tool to force convicts to pay replacement money for state finances. But in reality, it shows that criminal prison as a means of coercion is not effective enough in pushing convicts to pay replacement money. Studies in East Nusa Tenggara found that convicts tend to choose to undergo criminal prison as a replacement rather than paying compensation, as observed in the case of corruption in 2021 [25]. This was strengthened by the findings of the studies, which previously also noted the ineffectiveness of criminal payment of replacement money as an effort to recover state finances. A number of studies prove that prison as a substitute for additional sentence of replacement money, as arranged in Article 18 of the Criminal Corruption Law, is not effective in reducing the loss of state finances.

This ineffectiveness can be seen from various research studies, including one by Hadipratikto, where he took note of the arrears of restitution in corruption cases throughout Indonesia, reaching IDR 5 trillion. Audit Board Report Finance (BPK) in the first semester of 2009 recorded the arrears of restitution from corruption convicts amounting to IDR 8.15 trillion. Furthermore, the Indonesian Corruption Watch (ICW) noted only around 12–13 percent of the state's money is recovered from the total loss caused by corruption in 2020 [12].

More research, as done by Ade Paul Lukas and Barlingmascakeb, shows that payment of restitution often does not succeed in an effective way, such as what happened in the Purwokerto District Court [7]. Only a few capable convicts will pay restitution. Meanwhile, convicts often state that they are not capable of paying and thus choose to undergo prison sentences as an alternative. The decision of the Purwokerto District Court in a number of cases involving corruption demonstrates variation, with not all convicts sentenced to additional sentences to pay restitution. With this, updates to prison sentence replacement in Article 18 paragraph (3) of the ECCA need to be considered to increase its effectiveness in overcoming the problem. Disobedient convicts must pay the restitution and make sure recovery-loss of state finances can be optimally achieved [7].

4.3. Prison Sentence as an Alternative to Substitute Additional Sentence of Replacement Money for Corruption

Gustav Radbruch developed the theory of the three basic ideas of law, which are generally interpreted as objective laws: justice, expediency, and certainty of law. Radbruch realizes that in practice, the third objective often collides, so he teaches the draft principle of priority, giving priority first to justice, followed by expediency, and finally certainty of law [18]. This teaching is known as the teaching priority standard. Initially, teaching priority standards were considered more progressive compared to teachings that were more extreme, like ethical, utility, and dogmatic-legalistic. However, along with the complexity of life for humans in the modern era, choice priorities already standardized sometimes give rise to contradictions between the need for laws and certain cases. In a number of cases, justice can take priority over the usefulness and certainty of laws; in other cases, expediency or certainty of laws become more appropriate to be prioritized. This is what gives birth to the theory of casuistic priorities [20].

According to researchers, a formulation of the Constitution should align three dimensions of objective law: certainty, expediency, and justice. In a legal state, the goal is to walk together without

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each other denying it. Certainty of law must reflect justice and expediency law, and vice versa. All three have no purpose and are integral, each with its own parameters without negating each other. This form derives its essence from law alone, and without the presence of any aspect, a provisional law can be implemented; however, it is not a true law.

Related to the pattern of criminal law, prison substituting additional sentences in ECCA reflects legislative efforts to increase effectiveness in the prevention and eradication of corruption. As an innovation in Indonesian legislation, this approach needs careful research to evaluate its success, especially in context expediency, as expressed by Bentham, who emphasized the contribution of a system of law to the happiness of the public through giving livelihood, security, and equality.

Prison sentences as an alternative for convicts who do not pay restitution to recover the state's finances are fueled by the ineffectiveness of legal instruments and lawsuits, which consider civil law not enough force. The success of the ECCA in regulating the state's asset recovery is seen in the indicator of arrears payments for restitution. There is a weakness in regulations that causes convicts or ex-convicts to face sanctions. If not, pay replacement money, and the system.This is a no-nothing subsidiary. Threat-intentioned psychology for increased return state losses through criminal prison as replacement, no expected results. The data shows that a lot of convicts choose prison as a substitution, which gives rise to a burden on significant state finances. Efforts to rescue state finances through criminal prison as an option for substitution turn out to be ineffective, as proven from various research and empirical data [12].

Studies by Hadipratikto, Audit Board Audit Finance (BPK), and Indonesian Corruption Watch (ICW) revealed that the amount of replacement money returned to the country is far less than the total loss resulting from corruption. This matter underlines the inability of prisons as a replacement for state losses.

The consideration of economy becomes crucial in evaluating the expediency of sentences in prison sentences as a substitution. Financing for life convicts, especially the cost of food and health, forms a burden on state finances and is not comparable with the effectiveness of the system. The simulation is: living cost per convict per year, highlighting the weakness of the economy and potential possible losses for the state. The conclusion that can be drawn is that the regulation of prison sentences as replacement money is not only financially detrimental for the country but also in conflict with fundamental principles of law, such as proportionality and subsidiarity [13]. Thus, more solutions are needed, and the system of law needs to be evaluated and adjusted accordingly to give effective and simultaneous justice and not give rise to unnecessary financial losses.

4.4. Ideal Reconstruction of the Implementation of Prison Criminal as a Replacement of Money

This study highlights the classical view that puts dogmatic law as the main element in knowledge law, especially in context assessment law, which has a positive effect. Dogmatic law, which is dynamic and harmonious with application law in society, is considered an integral element in evaluating and developing the law. Dogmatic law confirms that the development of law in public is a crucial aspect that cannot be ignored. In fact, the law as a positive representation law often has difficulty following the development of society. The formulation of written law with various words, sentences, or symbols is not always capable of overcoming the complex problems that appear in modern society today [3].

This phenomenon is no exception in context law in Indonesia, where the law often prohibits, disables, obstructs, and limits its abilities to accommodate problems in public. Especially, setting prison sentences as replacements for restitution, as regulated in Article 18 of the ECCA No. 31 of 1999 and *juncto* Law No. 20 of 2001, shows disabled jurisdiction that can give rise to an imbalance in reaching the objective of the law [10]. Studies related to prison sentences as replacements for restitution bring understanding to deep-related problems and emerging jurisdictions in the application provision. Findings of the study show there is nonconformity between provisions in prison sentences as replacement money and the objective of law, especially in contexts of legal certainty, justice, and expediency.

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This implicates both juridical and practical aspects. Thus, it necessitates a reconstruction law to provide prison sentences as a replacement for restitution. This requires process and effort to build return or create more provision models in accordance with the objectives of law, that is, to reach legal certainty, justice, and expediency. Referring to the definition of reconstruction from the Black Law Dictionary and the Thesaurus, reconstruction law in context study is interpreted as a building process to return or create a model of provisions that can accommodate various problems in line with aspects of certainty of law, justice, and expediency law. In part, seven issues of law are mainly related to the provision of prison sentences as substitution of restitution payments becomes the main focus in the reconstruction proposed by the researcher [26]. The discussion in Chapter V highlights that seventh-issue law. This is the basis for the researchers to provide an opinion on prison sentences as replacements for restitution payments. No one fulfills objective law, that is, certainty, law, justice, and expediency, as proposed by Friedmann [27].

Article 18 of the ECCA constructs imprisonment as a substitute for additional payment of restitution with certain details. However, the study's findings indicate that the problem is related to the setup and implementation of the provision. Therefore, the researcher proposes a more reconstructive model in accordance with the principles of legal certainty, justice, and expediency. The reconstruction proposed by researchers covers concrete steps, among others: emit paragraph (2) and paragraph (3) of Article 18 and insert them in a separate chapter, which includes additional sentences about the payment of replacement money. Then, researchers add new chapters on Special Regulation on Additional Sentences, which include Articles 18–20 of the ECCA [12].

Proposal researcher covers formulation chapters new, like Article 18 A and Article 18 B, which regulate payment of replacement money, limit time, treasure object results follow criminal, and aspects other. Reconstruction This was considered a comprehensive solution to the issues identified in the study previously. Besides that, researchers propose changes to Article 38C of the ECCA. To avoid duplication, use instruments criminal and civil in foreclosure of goods owned by convicts. Reconstruction Article 38 C covers governing provisions of civil law lawsuits by the prosecutor on country name against the convict and or expert his heir related treasure things that haven't yet been confiscated and auctioned. Reconstruction proposed by researchers is expected to provide a comprehensive solution to all identified issues. With the new model, this is considered a step in proceeding to system more laws to fulfill principles of justice and certainty in law.

5. Conclusion

This study results in a comprehensive analysis of prison sentences as a replacement for restitution under the Crime of Corruption Act, demonstrates that there are a number of problems with the law. The obscurity about limit time sentencing prison as substitution gives rise to multiple interpretations of practice, judiciary, and temporary substance. Regulation Supreme Court No. 5 of 2014 is contradictory to the authority of the Supreme Court and international standards of sentences. Other issues include the relationship between additional sentence payments and the seizure of assets owned by convicts. At least rule-related time payments and limitations in regulating a civil lawsuit to acquire the convict's assets. The fact that convicts tend not to pay restitution shows the failure of the system, especially after Law No. 31 of 1999. Therefore, a solution is suggested. For reconstructing the provision of prison sentence as substitute for restitution, it should be made into a new chapter; emit paragraphs (2) and (3) of Article 18, and also put new material in a separate chapter. This reconstruction aims to increase certainty of law, justice, and expediency in law. However, there is still a problem with the regulations on additional sentences at the moment.

Transparency:

The authors confirm that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

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