

Decree on the Payment of Restitution to Deceased Perpetrators of Corruption

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Article history:

Received 2024-10-20

Revised 2024-11-14

Accepted 2024-12-01

Keywords:

Conviction; Restitution; Corruption.

DOI:

doi.org/10.26905/idjch.v15i3.15158.

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Abstract: This research is based on a case related to the recovery of financial losses suffered by the state due to a criminal act of corruption in the legal regulations. However, some problems lead to the implementation of the law being hampered when the defendant in the trial is proven to have committed a criminal act of corruption and is proven to have received the proceeds of corruption. This becomes a problem of what status and to whom the restitution is charged if the perpetrator of a corruption crime, who is strongly indicated to have received the proceeds of corruption, has died before being convicted. The research method in this journal is the normative legal method. The result is that this legal vacuum causes sharp differences in judges' views and is still not by the provisions of the law governing the issue. The prosecutor does not have a clear legal umbrella to file a civil suit against the heirs of the offender who has died. In the future, problems will arise when similar cases occur, so there is no guarantee of legal certainty. The principle of legal certainty must be prioritized as a state of law that prioritizes the basis of legislation, decency, and justice in every policy of state administrations.

1. Introduction

Corruption practices are increasingly widespread and even reach all aspects of life at Indonesia's central and regional levels. Corruption is called a crime against humanity because it has caused poverty and misery for the people. Mien Rukmini said that corruption is an extraordinary crime and is also a crime that is difficult to find perpetrators for because corruption is an area that is very difficult to penetrate. Why is corruption considered an invisible crime that is very difficult to obtain procedural evidence for, where the modus operandi is a systematic and collective activity? Corruption law should arrange for the replacement of the convicted criminal money to be paid to the state. If the convicted person cannot reimburse the state, it will be replaced with imprisonment. Substitute criminal restitution imposed is not proportional to the amount of money the convict obtains from the state. In addition, there is a wide disparity in restitution between convicts.¹

¹ F. Munzil, Wr., I. R., & A. Sukendar, "Kesebandingan Pidana Uang Pengganti dan Pengganti Pidana Uang Pengganti dalam Rangka Melindungi Hak Ekonomis Negara dan Kepastian Hukum." *Jurnal Hukum IUS QUIA IUSTUM*, 22(1), (2016): 25-53. DOI: <https://doi.org/10.20885/iustum.vol22.iss1.art2>.

In the effort to eradicate corruption, we all agree that persistent and severe efforts must be made by law enforcers, both in terms of prevention and enforcement. Enforcement: at the prosecution stage in court, the public prosecutor faces a stringent burden of proof so that his charges can be proven and convince the panel of judges. All elements in the public prosecutor's indictment are analyzed and proven one by one to become trial facts and legal facts that convince the judge to sentence the defendant to corruption.

The elements, especially in Article 2 paragraph (1) and Article 3 of the Corruption Law, are that the public prosecutor must be observant and detailed in proving the elements of state financial loss or economy. One way to restore the lost state corruption is to impose additional punishment through restitution payments. This effort provides results in the form of income to the state treasury from the payment of restitution.² How much, who received and enjoyed it, and how much each perpetrator/defendant received in the corruption case being handled. This is closely related to efforts to restore state finances by compensating the perpetrators/defendants of corruption. In case Number 11/Pid.sus-TPK/2023/PN Bdg at the Corruption Court at the Bandung District Court, namely regarding the alleged corruption in the distribution of revolving funds/loans by the Cooperative, Micro, Small and Medium Enterprises Revolving Fund Management Institution (LPDB-KUMKM) in 2012-2013 to the MSMEs fostered by the Panca Bhakti West Java Street Vendor Cooperative (Kopanti Jabar), the public prosecutor in his indictment stated that the state losses were as follows:

Furthermore, of the total state loss of Rp. Rp. 116,823,508,700,- (one hundred sixteen billion eight hundred twenty-three million five hundred eight thousand seven hundred rupiahs) The Public Prosecutor detailed each defendant who received the money, namely KMS DANIEL alias KEMAS DANIAL was charged with receiving Rp. 13,807,000,000,- (thirteen billion eight hundred seven million rupiah), STEVANUS KUSNADI was charged with receiving Rp. 84,276,553,000,- (eighty-four billion two hundred seventy-six million five hundred fifty-three thousand rupiah), DODI KURNIADI Rp. 100,000,000 (one hundred million rupiah), and defendant DEDEN WAHYUDIN Rp. 150,000,000 (one hundred fifty million rupiah), ANDRA A LUDIN (deceased) received Rp. 18,489,955,700,- (eighteen billion four hundred eighty-nine million nine hundred fifty-five thousand seven hundred rupiah)

The Panel of Judges considered the public prosecutor able to prove his charges, and then the Panel of Corruption Judges at the Bandung District Court through Decision Number 11/Pid.sus-TPK/2023/PN Bdg decided that the defendant KMS Daniel alias Kemas Danial had violated Article 2 paragraph 1 of the Corruption Law, together with other defendants, namely Stevanus Kusnadi, Dodi Kurniadi, and Deden Wahyudin, had caused state losses of Rp. 116,823,508,700,-.

The problem in this matter is determining the status and imposition of Replacement Money, where the public prosecutor demanded Replacement Money for KMS Daniel alias Kemas Danial to be Rp—32,296,955,700,- (thirty-two billion two hundred ninety-six million nine hundred fifty-five thousand seven hundred rupiah). The indictment and during the trial process stated that the defendant, KMS Daniel alias Kemas Danial, only received Rp—13,807,000,000,- (thirteen billion

² Renghat Sinaga, & H Abdul Razak Nasution. "Application Of Additional Criminal Sanctions In The Form Of Restitution In Corruption Offences In Indonesia." *International Journal of Law, Crime and Justice*, 1(3), (2024): 50-62. DOI: <https://doi.org/10.62951/ijlcj.v1i3.130>.

eight hundred and seven million rupiah). The Public Prosecutor also charged KMS Daniel alias Kemas Danial with the money that Andra A Ludin had received in Rp. Rp. 18,489,955,700,- (eighteen billion four hundred eighty-nine million nine hundred and fifty-five thousand seven hundred rupiah), because Andra A Ludin had died before becoming a suspect/defendant and had not been subjected to an investigation/examination in court. The Corruption Law does not regulate this because what is regulated in Articles 33 and 34 of the Corruption Law is that if a person who is strongly suspected of causing state losses dies after becoming a suspect or defendant and an investigation/examination has been carried out in court, then the State Attorney or the State Attorney is handed over to the injured agency to file a civil lawsuit against his heirs.

The panel of judges agreed with the public prosecutor and through Decision Number 11/Pid.sus-TPK/2023/PN Bdg dated June 12, 2023, stated that Defendant KMS Daniel alias Kemas Danial was proven to have received money amounting to Rp. 13,807,000,000 (thirteen billion eight hundred and seven million rupiah). However, in the decision Number 11/Pid.sus-TPK/2023/PN Bdg, regarding the replacement money, it is stated as follows: The burden of the replacement money on the Defendant is Rp. 32,296,955,700,- (thirty-two billion two hundred ninety-six million nine hundred and fifty-five thousand seven hundred rupiah), because there is one perpetrator who is considered intensely involved, namely Andra A. Ludin, who died before the investigation process and is strongly indicated to have received money amounting to Rp. 18,489,955,700,- (eighteen billion four hundred and eighty-nine million nine hundred and fifty-five thousand seven hundred rupiah). Therefore, because he died before the investigation process, a replacement fee of Rp. Rp. 18,489,955,700,- (eighteen billion four hundred eighty-nine million nine hundred fifty-five thousand seven hundred rupiah) was also charged to Defendant KMS Daniel alias Kemas Danial.

The above decision was taken by considering Article 5 of the Regulation of the Supreme Court (PERMA) of the Republic of Indonesia No. 5 of 2014 concerning Additional Criminal Compensation for Corruption Crimes, which, in essence, confirms that Replacement Fees can be charged to the Defendant if there are assets obtained from corruption crimes that have been transferred to another party, where the other party cannot be prosecuted. However, the Bandung High Court, through No. 22 / Pid.sus-TPK / 2023 / PT Bdg dated August 22, 2023, the District Court Decision annulled the District Court Decision regarding the amount of the replacement fee, which is Rp. 13,807,000,000 (thirteen billion eight hundred and seven million rupiah). This becomes a problem regarding the status of the replacement money, whether it must still be decided that there is replacement money if a person who is strongly indicated to have received money from corruption has died before an investigation/examination and before an investigation/examination in court, and if there is still, to whom the replacement money is charged.

On the one hand, the public prosecutor who is obliged to be able to recover state finances needs a definite legal umbrella to be able to legally 'seize' the proceeds of corruption received from a person who is strongly indicated in court to have been involved in corruption, but has died before becoming a suspect/defendant, and has not been investigated/examined in court. The spirit of restoring state finances remains the most important.³ However, on the side of the burden on

³ Famati Gulo, "Implementasi Penyidik Dan Hakim Mengenai Frasa Unsur Yang Dapat Merugikan Keuangan Negara Dalam Perkara Tindak Pidana Korupsi (Studi Putusan Nomor 65/Pid.Sus-Tpk/2022/Pn Mdn)." *Rio Law Jurnal*, Vol 5, No 2 (2024). DOI: <https://doi.org/10.36355/rj.v5i2.1472>.

other defendants who did not receive and enjoy the money also does not fulfill the sense of justice. Based on the description of the background of the problem above, the problem is formulated related to the status and to whom the Replacement Money is charged if the Corruption Crime Perpetrator who is strongly indicated to have received money from corruption has died before being named a suspect/defendant. Efforts are needed, so the calculation results state that financial losses come from the Audit Board. So that the investigator's method of finding the truth of state financial losses runs On Track so that the data for calculating state financial losses is fair and impartial. The Judge of corruption crimes is equipped with unique expertise in calculating state financial losses so that they do not depend on or focus on the results of the state financial loss report from the perspective of Public Accountants and can be objective and selective in assessing every person accused of causing state financial losses, not necessarily having made a mistake which is then held criminally accountable.

2. Method

The research method in this journal is the normative legal method. It involves examining library materials or secondary data as basic materials and searching for regulations and literature related to the problems being studied.⁴ The research specifications used in this study are analytical and descriptive. The research results will attempt to provide a comprehensive, systematic, and in-depth picture of the research situation.⁵ The data analysis technique used is qualitative analysis. Namely, the data obtained is then collected systematically, and qualitative analysis is carried out to obtain conclusions on the problems studied. The author examines positive legal provisions to find legal rules, principles, and doctrines to answer the legal issues faced.

3. Replacement Money as Additional Punishment to Restore State Finances

The criminal penalty of payment of replacement money was first regulated in Government Regulation instead of Law (Perppu) Number 24 of 1960 concerning Investigation, Prosecution and Examination of Corruption Crimes (Tipikor). This instrument was then continued in Law Number 3 of 1971 (Law 3/1971) and Law Number 31 of 1999 (Law 31/1999) concerning the Eradication of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law 31/1999 (Law 20/2001) which states that the criminal penalty of payment of replacement money is one of the additional penalties in corruption cases in addition to the additional penalties as referred to in the Criminal Code (KUHP) (Article 18 paragraph (1) letter b Law 31 of 1999 in conjunction with Law 20/2001). The payment of replacement money as an additional penalty decided against the perpetrator of the crime of corruption is essentially an effort to restore state financial losses caused by the act of corruption.⁶

⁴ Kornelius Benuf, & Muhamad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, no. 1 (2020): 20-33. DOI: <https://doi.org/10.14710/gk.2020.7504>.

⁵ Mohammad Choirul Anam, Asa Barno Happy Ramadhani, Bagas Sukmo Anggoro, Maya Ariska Sri Dewi, Raynaldo Adwisa Pradita, Ganesya Wahyu Aji Aryasatyani, and Sigit Supto Nugroho. 2020. "Hukum Konservasi Sumber Daya Alam: Studi Konsep Desa Konservasi Berbasis Kearifan Lokal". *Yustisia Merdeka : Jurnal Ilmiah Hukum* 6 (1). DOI: <https://doi.org/10.33319/yume.v6i1.50>.

⁶ Arhjayati Rahim & Noor Asma. "Analisis Substansi Pidana Uang Pengganti Dalam Kasus Tindak Pidana Korupsi." *Gorontalo Law Review*, Volume 3 No. 1 April (2020): 93-105. DOI: <https://doi.org/10.32662/golrev.v3i1.910>.

The return of the lost state losses is carried out by giving additional punishment in the form of payment of replacement money. Replacement money as an additional punishment in corruption cases must be understood as part of the criminalization efforts against those who commit corruption because the additional punishment of replacement money is a premium medium. The punishment of payment of replacement money is a consequence of corruption that harms state finances or the state economy. Legal means are needed to address the loss, specifically by paying replacement money.⁷

Payment of substitute money is regulated in Article 18, paragraph 1, letter b of Law Number 20 of 2001 Jo. Law Number 31 of 1999 concerning the Eradication of Corruption, which, in essence, states that substitute money can be imposed on corruption defendants as much as the assets obtained from the corruption crime. The governments' responses in Malaysia, the Philippines, India, and Japan reflect their weak political will in combating corruption and lack of accountability for corrupt offenders. By contrast, the strong political will of the governments in Singapore and Macau is reflected in the investigation and punishment of corrupt offenders without any cover-up of the scandals. Originality/value: The findings would interest scholars, policymakers, anti-corruption practitioners, and activists.

Substitute money is formulated as an additional punishment; its nature is optional and only adds to the central criminal sanctions. The imposition of substitute money depends on the judge's discretion in assessing the evidence that appears in the trial. The judge has the freedom to impose compensation on the convict or not. However, if, in the process of providing evidence, the Public Prosecutor can show that there is a real and definite state loss due to the crime of corruption, then the principal optional penalty can be imposed.⁸ Implementing substitute financial punishment in corruption cases creates complicated dynamics because it clashes with normative regulations that provide loopholes for convicts to undergo subsidiary punishment.

Barda Nawawi Arief,⁹ said that the strategy of criminal policy in new-dimensional crimes must pay attention to the nature of the problem. If the nature of the problem is closer to problems in economic law, then fines or the like are prioritized. The determination of criminal sanctions should be carried out through a rational approach. Based on this rational concept, the policy of determining criminal sanctions cannot be separated from the determination of the objectives achieved by the overall criminal policy, namely community protection. The dynamics of substitute money and subsidiary punishment are often found when comparing one decision with another; there appears to be a lack of uniformity and disproportion between the amount of substitute money and the length of the subsidiary punishment. This condition reflects a sense of injustice for the state, the perpetrators, and the community. The ideal criminal system to overcome the dynamics of substitute money and subsidiary punishment is to create a criminal guideline in the form of classifying the range/class of substitute money with subsidiary punishment that must be served; the idea is that the greater the substitute money that must be paid, the heavier the substitute prison sentence.

⁷ Mulyadi Alrianto Tajuddin. "Penerapan Pidana Tambahan Uang Pengganti Sebagai Premium Remedium Dalam Rangka Pengembalian Kerugian Negara". *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 2 (2), 2015: 53-64. DOI: <https://doi.org/10.24252/jurisprudentie.v2i2.6848>.

⁸ A. Mahmud, "Dinamika pembayaran uang pengganti dalam tindak pidana korupsi." *Jurnal Hukum Mimbar Justitia*, 3(2), (2017): 137-156. DOI: <https://doi.org/10.35194/jhmj.v3i2.216>.

⁹ Ade Mahmud. "Dinamika Disparitas Pidana Uang Pengganti Dengan Pidana Subsider Dan Implikasinya Terhadap Pengembalian Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi". *Pamulang Law Review* 6 (1) 2023:22-38. DOI: <https://doi.org/10.32493/palrev.v6i1.33375>.

4. Status and to Whom the Replacement Money is Subject to Based on Analysis of the Bandung High Court

In essence, the public Prosecutor's indictment in case Number 11/Pid.sus-TPK/2023/PN Bdg of the Corruption Court at the Bandung District Court with the defendant KMS Daniel alias Kemas Danial, stated that there was an alleged criminal act of corruption in the distribution of revolving funds/loans by the Cooperative, Micro, Small and Medium Enterprises Revolving Fund Management Institution (LPDB-KUMKM) in 2012-2013 to MSMEs fostered by the Panca Bhakti West Java Street Vendor Cooperative (Kopanti Jabar). LPDB-KUMKM, a Public Service Agency under the Ministry of Cooperatives and SMEs, has distributed revolving funds to 507 MSMEs fostered by Kopanti Jabar as investment funds for MSME actors to buy kiosks at Bandung Timur Plaza. The President Director of LPDB-KUMKM at that time was KMS Daniel alias Kemas Danial, the owner of Bandung Timur Plaza at that time was Stevanus Kusnadi, and the Chairman of Kopanti Jabar at that time was Andra A Ludin, the Treasurer of Kopanti Jabar Dodi Kurniadi, Secretary Deden Wahyudin. Based on this, the Public Prosecutor stated that the funds that the UMKM actors should have received to buy kiosks in Bandung Timur Plaza, in fact, actually went into the personal pockets of KMS Daniel alias Kemas Danial, Stevanus Kusnadi, Andra A Ludin, Deden Wahyudin, and Dodi Kurniadi, and the kiosks that were to be purchased did not become the property of the UMKM actors. The public Prosecutor, in his indictment, concluded that there was a state loss as follows) ".....the actions of the Defendants KMS Daniel alias Kemas Danial and Stevanus Kusnadi, which were carried out together with Dodi Kurniadi, Deden Wahyudin, and Andra A Ludin (deceased) in connection with the misuse of the LPDB-KUMKM revolving fund in 2012 and 2013 to finance the purchase of kiosks have resulted in a state loss of Rp. 116,823,508,700 or at least the amount as reported in the State Financial Loss Calculation Audit Results (PKKN) report by the Central Financial and Development Supervisory Agency (BPKP) on Alleged Corruption in the Distribution of Loans by LPDB-KUMKM in 2012-2013 to Kopanti Jabar Number PEE 03/SR-668/D5/01/2022 dated August 29, 2022.

So that the element of "can harm state finances or the state economy" prohibited in this article has been fulfilled." Furthermore, from the total state loss of Rp. Rp. 116,823,508,700, - the Public Prosecutor detailed each defendant who received money: "KMS DANIEL alias KEMAS DANIAL was charged with receiving Rp. 13,807,000,000 - STEVANUS KUSNADI was charged with receiving Rp. 84,276,553,000,- DODI KURNIADI in the amount of Rp. 100,000,000,- and defendant DEDEN WAHYUDIN Rp. 150,000,000,-, ANDRA A LUDIN (deceased) received Rp. 18,489,955,700- After going through the trial process, the demands of the Public Prosecutor, in essence asked the Panel of Judges to declare that the Defendant KMS Daniel alias Kemas Danial had been proven guilty legally and convincingly according to the law of "committing a criminal act of corruption together" as in the First Charge of violating Article 2 paragraph (1) Juncto Article 18 of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law of the Republic of Indonesia No. 20 of 2001 concerning Amendments to Law Number 31 of 1999 Juncto Article 55 paragraph (1) of the Criminal Code, and sentenced the Defendant KMS Daniel alias Kemas Danial to 12 (twelve) years and 6 months in prison.

About the replacement money, the Public Prosecutor demanded the following: "Sentencing the Defendant KMS Daniel alias Kemas Danial to pay replacement money to the State in the amount of Rp. Rp. 32,296,955,700,- no later than 1 (one) month after the court decision becomes

final. If, within that period the defendant does not pay the replacement money, his assets will be confiscated by the Prosecutor and auctioned to cover the replacement money. If the convict does not have sufficient assets to pay the replacement money, he will be sentenced to 6 (six) years in prison”.

The demand for Replacement Money by the public Prosecutor is Rp. 32,296,955,700- Meanwhile, in the indictment of Defendant KMS Daniel alias Kemas Daniel, it is stated that he only received Rp. 13,807,000,000- The Public Prosecutor also charged KMS Daniel alias Kemas Danial with the money Andra A Ludin had received in Rp. 18,489,955,700- because Andra A Ludin had died before becoming a suspect/defendant and had not yet been subjected to an investigation/examination process in court. This is not regulated in the Corruption Law. In Law No. 31 of 1999, as amended by Law No. 20 of 2001, it is stated that steps can be taken if the accused dies, as in articles 33 and 34.

Articles 33 and 34 stipulate that there are already suspects and defendants and that investigations and examinations have been carried out in court. Meanwhile, in case Number 11/Pid.sus-TPK/2023/PN Bdg in the Bandung Court, one of the people who was considered to have received the money, namely Andra A Ludin, did not yet have the status of a suspect, let alone a defendant, and had not been investigated, let alone examined in court when he died. The Prosecutor considered that articles 33 and 34 of the Corruption Law could not be applied in this case. However, the status of replacement money remains, and it can be charged to Defendant KMS Daniel, alias Kemas Danil, as the party who is the most responsible official in the quo case.

Decision and Considerations of the Panel of Judges Number 11/Pid.sus-TPK/2023/PN Bdg dated June 12, 2023, through the trial process, the Panel of Judges considered that the public Prosecutor could prove his charges. The Corruption Court Panel of Judges of the Bandung District Court through Decision Number 11/Pid.sus-TPK/2023/PN Bdg decided that the Defendant KMS Daniel alias Kemas Danial had essentially stated that the Defendant KMS Daniel alias Kemas Danial had violated Article 2 paragraph 1 of the Corruption Law, together with other defendants, namely Stevanus Kusnadi, Dodi Kurniadi, and Deden Wahyudin, had caused state financial losses of Rp. 116,823,508,700, - and sentenced Defendant KMS Daniel alias Kemas Danial to 9 years in prison. The panel of judges also stated that Defendant KMS Daniel alias Kemas Danial was proven to have received money amounting to Rp. 13,807,000 - However, in verdict Number 11/Pid.sus-TPK/2023/PN Bdg,

Regarding the replacement money in the Bandung High Court decision, it is stated: “Sentencing the Defendant KMS Daniel alias Kemas Danial to pay replacement money to the state in the amount of Rp. 32,296,955,700- (thirty-two billion two hundred ninety-six million nine hundred fifty-five thousand seven hundred rupiah), no later than one month after the court decision becomes final. If within that period the Defendant does not pay the replacement money, his/her property will be confiscated by the Prosecutor and auctioned to cover the replacement money. If the convict does not have sufficient property to pay the replacement money, he/she will be imprisoned for 4 (four) years each.”

In its considerations, the Panel of Judges agreed with the reasons stated in the demands of the public Prosecutor so that Articles 33 and 34 of the Corruption Law in the quo case cannot be applied. In the circumstances described above, the Panel of Judges considered it impossible to prosecute Andra A Ludin (deceased). However, in the context of restoring state finances, the Supreme Court of the Republic of Indonesia has provided guidelines as described in Article 5 of

PERMA RI No. 5 of 2014 concerning Additional Criminal Penalties in Corruption Crimes, namely in the case of assets obtained from corruption crimes not being enjoyed by the Defendant and have been transferred to another party, replacement money can still be imposed on the Defendant as long as no prosecution is carried out against the other party, either in corruption crimes or other crimes, such as money laundering. Therefore, replacement money can be imposed on heirs. Based on Article 5 of PERMA No. 5 of 2014, the Panel of Judges stated that the payment of replacement money that should have been charged to Andra A. Ludin (deceased) could be transferred to the Defendant KMS Daniel alias Kemas Danial in the quo case so that the replacement money charged to the Defendant KMS Daniel alias Kemas Daniel is Rp – 32,296,955,700,- (thirty-two billion two hundred ninety-six million nine hundred fifty-five thousand seven hundred rupiah). The Defendant, KMS Daniel alias Kemas Danial, is the party most responsible in the a quo case because, as a state official (President Director of LPDB-KUMKM), he is the one who most determines whether or not the LPDB-KUMKM revolving funds that MSME actors should receive can flow.

The Bandung High Court through Decision No. 22/Pid.sus-TPK/2023/PT Bdg dated August 22, 2023, upheld Decision No. 11/Pid.Sus-Tpk/2023/PN Bdg. The Defendant's prison sentence, KMS Daniel, alias Kemas Danial, was even increased to 10 (10) years. However, in terms of the amount of compensation, the Bandung High Court annulled it, namely changing it to Rp. 13,807,000,000 (thirteen billion eight hundred and seven million rupiahs), with the verdict reading: "Sentencing the Defendant KMS DANIEL alias KEMAS DANIAL to pay compensation in the amount of Rp. 13,807,000,000,- with the provision that if the Defendant cannot pay the replacement money within 1 (one) month after the verdict has permanent legal force, then his property can be confiscated and auctioned by the Prosecutor and if the Defendant does not have sufficient property to pay the replacement money, it will be replaced with imprisonment for 4 (four) years." The Panel of Judges of the Bandung High Court assessed that in the first instance trial and all case files, there was not a single piece of evidence and fact revealed that the money of Rp. 18,489,955,700,- had been received and then transferred by the Defendant KMS Daniel alias Kemas Daniel to ANDRA A LUDIN, so that the application of Article 5 of PERMA RI N0. 5 of 2014 concerning Additional Criminal Compensation in Corruption Crimes cannot be applied to the Appellant/Defendant.

Furthermore, the Panel of Appellate Judges opined that as stipulated in Article 33 and Article 34 of the Corruption Law, in order to return the state finances, a civil lawsuit must be filed against the heirs of the late ANDRA A. LUDIN by the State Attorney and cannot be charged to the Defendant KMS DANIEL alias KEMAS, therefore the Defendant can only be charged with compensation of Rp. 13,807,000,000 (thirteen billion eight hundred and seven million rupiah) as the amount of money obtained and enjoyed by Defendant. Analysis of the Decision in Case No. 11/Pid.Sus-Tpk/2023/PN Bdg of the Corruption Court at the Bandung District Court, and Decision No. 22/Pid.Sus-Tpk/2023/PT Bdg of the Bandung High Court, looking at the two decisions regarding the status of compensation, whether it still exists and is imposed if a perpetrator who receives corruption money but has died before becoming a suspect/defendant and has not been investigated/examined in court. The panel of judges at the Corruption Court at the Bandung District Court considered that the replacement money remains as an effort to restore state finances.

The Panel of Judges at the Bandung High Court considered that as an effort to restore state finances, the Prosecutor and lawyer, by Articles 33 and 34 of the Corruption Law, filed a civil lawsuit against Andra A Ludin's heirs. Then there is another problem in terms of the application of the status of the replacement money and to whom the replacement money is charged, as well as which

rules are the basis for consideration if there is a perpetrator of corruption who is proven to have received money from corruption in court but has died before becoming a suspect/defendant and has not been investigated/examined in court.

The Panel of Judges at the Corruption Court at the Bandung District Court considered that Articles 33 and 34 of the Corruption Law cannot be applied in this case. The replacement money for Andra A Ludin (deceased) was charged to Defendant KMS Daniel alias Kemas Danial using Article 5 of the 2014 PERMA RI as its legal basis. While the Bandung High Court considered that Article 5 of PERMA RI of 2014 could not be applied in this case, then according to Articles 33 and 34 of the Corruption Law, to return the state finances, a civil lawsuit must be filed against the heirs of the late ANDRA A. LUDIN by the State Attorney. It cannot be charged to Defendant KMS DANIEL alias KEMAS.

The author agrees more with the Bandung High Court Decision because it provides a sense of justice to a Defendant/Convict so that he is not burdened with what he has not received and enjoyed. This is by Article 18 paragraph (1) letter b of the Corruption Law, which reads: "payment of replacement money in an amount that is as much as possible equal to the assets obtained from the criminal act of corruption," and Article 1 of PERMA RI No. 5 of 2014 which reads: "In determining the amount of replacement money payment in a criminal act of corruption, it is as much as possible equal to the assets obtained from the criminal act of corruption and not merely the amount of state financial losses caused." However, using Articles 33 and 34 of the Corruption Law by the Bandung High Court Judge as a step to return state finances has not provided a strong legal umbrella for prosecutors. Because it is written in Articles 33 and 34 of the Corruption Law, a civil lawsuit against the perpetrator's heirs can only be carried out against perpetrators who have become suspects/defendants and have undergone an investigation/examination process in court. Until now, the state attorney has not taken steps to file a civil lawsuit against Andra A Ludin's heirs.

Future problems will still arise if similar cases occur, so legal certainty is not guaranteed. Legal certainty is a principle in a state of law that prioritizes the basis of laws and regulations, propriety, and justice in every policy of state administrators. The principle of legal certainty requires consistency in the implementation of law. Legal certainty in the life of the nation, state, and society is the goal of a state of law. Therefore, the law aims to realize certainty in human relations by ensuring predictability and preventing the dominance of the rights of the strongest party. The element of legal certainty in law enforcement is protection for the just for one person's actions against another because the law is considered the last reference for resolving conflicts that occur in society.

By Budiono Kusuhamidjojo,¹⁰ inconsistent legal implementation will not make society want to rely on it as a set of rules that regulates life together. Consistency in the implementation of law is what is called legal certainty. Consistency is needed as a reference for everyday human behavior in dealing with other humans. Arief Sidharta,¹¹ The principle of legal certainty implies that citizens must be free from unpredictable and arbitrary actions of the government and its officials. The government and its officials must be bound and subject to the rules of positive law. All actions of

¹⁰ Abdul Latif. "Jaminan UUD 1945 Dalam Proses Hukum Yang Adil". Jurnal Konstitusi 7 (1) 2016: 049-066. DOI: <https://doi.org/10.31078/jk714>.

¹¹ Genova Damanik, and Kristwan. "Antara Uang Pengganti Dan Kerugian Negara Dalam Tindak Pidana Korupsi." Masalah-Masalah Hukum 45, no. 1 (2016): 1-10. DOI: <https://doi.org/10.14710/mmh.45.1.2016.1-10>.

the government and its officials must always be based on the rules of positive law as their legal basis. Therefore, the decision must implement the Supreme Court regulations by determining the criminal compensation penalty for heirs by considering social justice. Compensation is money paid by the defendant in the amount of property that is “obtained or enjoyed” from the crime of corruption, not in the amount of state losses.

Applying the law to state losses as compensation that the defendant must pay without being based on evidence is detrimental to the principles of legal certainty, justice, and human rights and is an error in the application of the law. By Mochtar Kusumaatmadja,¹² Legal certainty must be implemented and upheld in national, state, and social life. From the perspective of constitutional law, that message then becomes a goal in organizing the state. Then, it is organized into a political structure, as the procedures in the administration of the state are used to reach its goal. The meaning of a more democratic state administration based on law as a goal in the amendment of the 1945 Constitution was to provide a constitutional basis. Implementing the principle of legal certainty requires that several conditions be met, including that laws and regulations only bind citizens after they are enacted and do not have retroactive effects.¹³ By implementing the principle of legal certainty, one of the objectives of law has been accommodated in the life of a state based on law.

Provides a vivid narrative of prosecutorial misconduct and the consequent psychological anguish of a survivor, as informed and articulated by participant observers. We hope that by doing so, we can facilitate an understanding of and empathy with the trials and tribulations of victims of color who have suffered tremendously from police corruption and wrongful convictions.¹⁴ Law enforcers recover state losses due to corruption by maximizing the return of state losses by confiscating and tracing the assets of the defendant or convict, making the convict pay restitution, seeking public support for the eradication of corruption, equipping facilities and infrastructure for the eradication of corruption, regulating the authority of corruption eradication commission prosecutors and public prosecutors who are appointed and dismissed by the corruption eradication commission must be regulated strictly / based on the applicable law.¹⁵ Law enforcers recover state losses due to corruption by maximizing the return of state losses by confiscating and tracing the assets of the defendant or convict, making the convict pay restitution, seeking public support for the eradication of corruption, equipping facilities and infrastructure for the eradication of corruption, regulating the authority of corruption eradication commission prosecutors and public prosecutors who are appointed and dismissed by the corruption eradication commission must be regulated strictly / based on the applicable law.

The prosecutor files a charge to forfeit property during the indictment reading, and the decision on such a charge is decided along with the verdict on the crime. Based on the elaboration above, there is a good chance of imposing confiscation of assets or property as punishment in a

¹² Anna Triningsih. “Politik Hukum Pengujian Peraturan Perundang-Undangan Dalam Penyelenggaraan Negara”. *Jurnal Konstitusi* 13 (1) 2016: 124-44. DOI: <https://doi.org/10.31078/jk1316>.

¹³ Ikhbal Gusri, “Implementasi Prinsip Non-Retroaktif Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materil Ditinjau Dari Aspek Keadilan, Kemanfaatan Dan Kepastian Hukum”. *Jurnal Hukum Peratun* 6 (1) 2023: 1-34. DOI: <https://doi.org/10.25216/peratun.612023.1-34>.

¹⁴ Paul R. Abramson, and Sienna Bland-Abramson. “Racial Animus, Police Corruption, and a Wrongful Conviction of Murder: Complex PTSD and the Vestiges of Anguish”. *The Wrongful Conviction Law Review* 2 (2) (2021): 103-20. DOI: <https://doi.org/10.29173/wclawr55>.

¹⁵ Rahmayanti, “The Restitution Of State Financial Losses In Law Enforcement Against Corruption Crime.” *Jurnal Pembaharuan Hukum*, Vol 10, No 2 (2023): 280-290. DOI: <http://dx.doi.org/10.26532/jph.v10i2.32753>.

corruption case.¹⁶ The forfeiture can be proposed in three different mechanisms as follows: a) Upon the asset and property obtained by or used in the commission of the crime of corruption, regardless of it being confiscated or not during the proceeding; b) Upon the asset and property belonging to an accused that died during the proceeding, and there exists substantial evidence that the accused had committed the crime of corruption; and c) Upon the asset on property belonging to an accused, which has yet to be charged and presumed to be obtained from the commission of a crime of corruption. The chance is good; this measure's success depends on the investigators' and prosecutors' seriousness and professionalism in tracking the accused's assets during the investigation and proving the guilt of the accused with all evidence adduced before the court.

5. Conclusion

The Corruption Law and the Supreme Court Regulation of the Republic of Indonesia No. 5 of 2014 concerning Additional Criminal Penalties in Corruption Crimes have not covered and regulated what happens if a corruptor who is proven or strongly indicated to have received money from corruption has died before becoming a suspect/defendant and has not been investigated/examined in court. This legal vacuum creates legal uncertainty in determining the status and to whom the replacement money is charged, as happened in the case at the Corruption Court at the Bandung District Court No. 11/Pid.Sus-Tpk/2023/Pn Bdg Juncto Bandung High Court No. 22/Pid.Sus-Tpk/2023/Pt Bdg. This legal vacuum causes sharp differences in the judges' views. It is still not in accordance with the provisions stipulated in the Corruption Law and the Supreme Court Regulation on Replacement Money. The state prosecutor also does not have a clear legal umbrella to file a civil lawsuit against the heirs of the deceased perpetrator. As a suggestion for this, to fill the legal vacuum in the short term, the Supreme Court should revise/add provisions to PERMA No. 5 of 2014, which regulates how to apply for replacement money and what steps to take if a corruptor who is proven or strongly indicated to have received money from corruption has died before becoming a suspect/defendant and has not been investigated/examined in court. Meanwhile, long-term suggestions certainly require a revision to the Corruption Law. This is so that there is legal certainty and a just law is created.

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¹⁶ E. Danil, & I. Kurniawan, "Optimizing Confiscation of Assets in Accelerating the Eradication of Corruption." *Hasanuddin Law Review*, 3(1), 2017: 67-76. DOI: <http://dx.doi.org/10.20956/halrev.v3i1.717>.

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