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Legitimacy of Criminal Law in Lieu of Fines in Corruption

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Abstract: This study aims to analyze the criminal regulation of confinement in lieu of fines in criminal law in Indonesia, as well as to examine whether the application of imprisonment is a substitute for fines in corruption by law enforcement in Indonesia. This type of research in writing this proposal is a normative juridical research method. The approach used in this study is statutory. The results show that law enforcement refers to the provisions of criminal confinement, which are contained in Article 10 of the Criminal Code, which then substitutes for imprisonment in Article 30 and Article 31 of the Criminal Code.

Keywords: Criminal; Replacement; Corruption;

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1. Introduction

Corruption in Indonesia has spread widely in society. Its development continues to increase from year to year, both in the number of cases that occur and in terms of the quality of criminal acts carried out systematically and their scope has entered all aspects of people's lives.

Based on this, the criminal act of corruption is a "serious crime", a serious crime that greatly disrupts the economy and social rights of the community and the state on a large scale, so the handling must be carried out through "extraordinary treatment" and the proof requires serious professional and professional steps. independent. The criminal act of corruption itself is a threat to the principles of democracy, which upholds transparency, accountability, and integrity, as well as the security and stability of the Indonesian nation.[1]

The government's efforts in the context of eradicating corruption within a juridical framework are manifested by the issuance of Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (UU TIPIKOR). According to the Corruption Act that:

> "Any person who unlawfully commits an act of self-employment or another person or a corporation that can harm the state's finances or the state's economy and or any person who intends to benefit himself or another person or a corporation blames the authority, opportunity, or existing means. him because of a position or position that can harm state finances or the state economy."

Concerning criminal acts of corruption, the government has made great efforts to eradicate and prevent corruption, including the application of cumulative punishment, namely imprisonment and fines as criminal sanctions so that this is expected to fulfill the purpose of punishment. One of them is regulated in Article 2 of the Anti-Corruption Law which reads:

> "Any person who unlawfully commits an act of enriching himself or another person in a corporation that can harm the state's finances or the state's economy shall be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years. years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah)"

In criminal law, a fine is a form of punishment that can be imposed on the perpetrator. In the Indonesian Criminal Code, the types of crimes that are threatened against perpetrators of criminal acts are regulated in Article 10 of the Criminal Code, namely

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[1] Mohamad Hidayat Muhtar, "*Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum*", Volume 1 Issue 01 January 2019, hlm. 70

the main crime consisting of the death penalty, imprisonment, confinement, fines, and additional penalties consisting of:: revocation of certain rights, confiscation of certain goods and announcement of judge's decision. Then based on Law no. 20 of 1946, the principal punishment was added to the criminal cover.[2]

Article 30 paragraph (2) of the Criminal Code explains that if the fine is not paid, it will be replaced with imprisonment. The duration of the substitute imprisonment as regulated in Article 30 paragraph (3) of the Criminal Code, is a minimum of 1 (one) day and a maximum of 6 (six) months. Article 30 paragraph (5) explains that if there is an increase in the criminal fine due to concurrent or repetition, or because of the provisions of Article 52, the substitute imprisonment is a maximum of 8 (eight) months.

The provisions of Articles 30 and 31 of the Criminal Code indicate that if the convict does not want to (either because he does not want to or for other reasons) then the fine is replaced with confinement, the name is substitute confinement. This substitute confinement is a way to force the convict to pay a fine because people generally prefer to lose money over freedom. That's the assumption. In some cases, of course, there will be people who would prefer to be locked up than pay a fine, even if they could afford it. There are always exceptions to many things for sure.[3]

Based on the provisions of Article 30 of the Criminal Code, it is stated that: (1) The minimum fine is twenty-five cents, (2) If the fine is not paid, then it is replaced with imprisonment, (3) The replacement period of imprisonment is a minimum of one day and a maximum of six months, (4) In the judge's decision, the length of the substitute imprisonment is determined as follows: if the fine is fifty cents or less, it is counted as one day; if it is more than fifty cents, every fifty cents is calculated for a maximum of one day, as well as the remaining fifty cents, (5) If there is an increase in the fine, due to concurrent or repetition, or because of the provisions of Articles 52 and 52a, then the maximum imprisonment instead of a fine can be eight months, (6) The substitute confinement at times may not exceed eight months.

In this regard, the above figures are no longer following contemporary developments, which are complemented by Circular Letters of the Supreme Court and Regulations of the Supreme Court to facilitate the administration of the judiciary which is often hampered by the absence or incomplete regulation of procedural law contained in the law. .1 On 27 February 2012 the Supreme Court enacted Supreme Court Regulation (Perma) Number 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Number of Fines in the Criminal Code. In Perma Number 2 of 2012 Article 1, it is explained that the words "two hundred and fifty rupiahs," in Articles 364, 373, 379,

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[2] Niniek Suparni, *Eksistensi Pidana Denda Dalam Sistem Pidana dan Pemidanaan*, Tanpa Tempat, Sinar Grafika, Tanpa Tahun, hal 6

[3] Mulia Agung Pradipta dan Pujiyono, "*Reformulasi Pidana Pengganti Denda dalam Tindak Pidana Pencucian Uang di Indonesia*", Pandecta. Volume 13. Number 2. December 2018, hlm. 99

384, 407, and 482 of the Criminal Code are read as IDR 2,500,000,000.00 or two million five hundred thousand rupiah.[4]

Then, in Article 2 paragraph (2), and paragraph (3) it is explained, that if the value of the goods or money is not more than two million five hundred thousand rupiahs, the Head of the Court immediately assigns a Sole Judge to examine, hear and decide the case with an Examination Procedure. This regulation also determines the amount and amount of money in the Criminal Code which was last made in 1960, the adjustment was made based on the range of gold prices in that year so that if it is imposed at this time all the amount of money listed in the Criminal Code must be read and multiplied by 10,000.[5]

Article 18 of the Corruption Law itself states:[6]

1) In addition to additional penalties as referred to in the Criminal Code, additional penalties are:
   a. confiscation of tangible or intangible movable property or immovable property used for or obtained from a criminal act;
   b. corruption, including the company owned by the convict where the crime of corruption was committed, as well as from the goods that replace the goods; b. payment of replacement money in the maximum amount equal to the assets obtained from the criminal act of corruption;
   c. closure of all or part of the company for a maximum period of 1 (one) year;

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[4] Zumiyati Sanu Ibrahim, "*Penyelesaian Tindak Pidana Ringan Oleh Kepolisian Daerah Gorontalo: Respon terhadap Peraturan Mahkamah Agung Nomor 2 Tahun 2012*", Jurnal Al-Mizan Vol. 13 No. 1, 2017, hlm. 42

[5] *Ibid*

[6] Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2014 (selanjutnya disebut PERMA-PUP) yang selengkapnya dikutip sebagai berikut:
1) Apabila dalam jangka waktu 1 (satu) bulan setelah putusan berkekuatan hukum tetap, terpidana tidak melunasi pembayaran uang pengganti, jaksa wajib melakukan penyitaan terhadap harta benda yang dimiliki terpidana.
2) Jika setelah dilakukan penyitaan sebagaimana dimaksud ayat (1) terpidana tetap tidak melunasi pembayaran uang pengganti, Jaksa wajib melelang harta benda tersebut dengan berpedoman pada Pasal 273 ayat (3) KUHAP.
3) Pelaksanaan lelang dilakukan selambat-lambatnya 3 bulan setelah dilakukan penyitaan;
4) Sepanjang terpidana belum selesai menjalani pidana penjara pokok, Jaksa masih dapat melakukan penyitaan dan pelelangan terhadap harta milik terpidana yang ditemukan.
Ketentuan dalam PERMA-PUP tersebut di atas mengundang beberapa konsekuensi yuridis, yakni (1) merupakan penegasan dan pengaturan lebih lanjut dari ketentuan Pasal 18 UU Tipikor, khusus berkaitan dengan eksekusi pidana PUP. Di dalam ketentuan PERMA-PUP ditetapkan secara tegas Jaksa adala esekutor pidana PUP sekaligus membebankan kewajiban kepada jaksa untuk melakukan penyitaan dan pelelangan terhadap harta benda milik terpidana, manakala terpidana tidak dapat melunasi PUP dengan tetap berpedoman pada Pasal 273 ayat (3) KUHAP. Lihat, Basir Rohrohmana, "*Pidana Pembayaran Uang Pengganti Sebagai Pidana Tambahan Dalam Tindak Pidana Korupsi*", Jurnal Hukum PRIORIS Vol. 6 No. 1 Tahun 2017, hlm. 51

d. revocation of all or part of certain rights or the abolition of all or part of certain benefits, which have been or may be granted by the Government to the convict.

2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b at the latest within 1 (one) month after the court's decision which has obtained permanent legal force, his assets can be confiscated by the prosecutor and auctioned to cover the replacement money.
3) If the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he shall be sentenced to imprisonment for a length of time that does not exceed the maximum threat of the principal sentence following the provisions of this Law and the length of the sentence. This has been determined in the court's decision.

The absence of rules regarding confinement in lieu of fines in the Corruption Law makes judges in making decisions refer to Articles 30 and 31 of the Criminal Code, namely applying confinement for a certain period as a substitute if the convict is unable or unwilling to pay the fine imposed by the judge. Article 103 of the Criminal Code is often referred to or termed as a bridge article for regulations or laws that regulate criminal law outside the Criminal Code, meaning, if there are matters relating to criminal law that are not regulated in laws outside the Criminal Code, they can refer in the provisions contained in the Criminal Code.

Referring to the provisions stipulated in Article 30 of the Criminal Code, when determining the confinement in lieu of a fine, the length of the confinement determined does not seem to be proportional to the amount of the fine imposed, namely the length of the confinement is much lighter than the amount of the fine, where the penalty for fines is stipulated in the Criminal Act. The maximum or maximum corruption is 1 billion rupiah. This shows that the provisions regarding imprisonment as a substitute for fines regulated in the Criminal Code are not sufficient for fines for corruption.

Concerning additional punishment in the form of replacement money, Article 18 paragraph (1) letter b of the Anti-Corruption Law states that the amount of compensation is equal to the property obtained from the corruption crime committed. Replacement money is declared as an additional crime because the replacement money follows the main crime, whereby being proven to have committed an act that is detrimental to the state, all assets obtained from a criminal act of corruption are withdrawn as replacement money with the aim that what has been enjoyed, is returned to the state. as the injured subject. The calculation of state money losses must be calculated in detail by considering the period until the state money can be returned by the corruption convict.[7]

[7] Diding Rahmat, "*Uang Pengganti dalam Rangka Melindungi Hak Ekonomis Negara dan Kepastian Hukum*", Jurnal Hukum IUS QUIA IUSTUM, Vol. 22, No.1, Januari 2015, hlm. 32

Criminal fines in criminal acts of corruption are deemed too small in threat, ranging from a minimum fine of Rp. 200,000,000 (two hundred million rupiah) to a maximum fine of Rp. 1,000,000,000 (one billion rupiah). Fines are also only a possible alternative punishment if the perpetrators of corruption are unable to pay the fines, they are only subject to imprisonment for a maximum of 6 (six) or 8 (eight) months. Then, the fine is the only crime that can be paid or borne by someone other than the convict.[8]

In this case, Nawawi Arief stated that the system of implementing fines in the Criminal Code contains various weaknesses, namely:[9]

1. There is no provision regarding other actions to guarantee the implementation of a criminal fine, for example by confiscation or confiscation of property or assets, except with substitute imprisonment;
2. The maximum replacement imprisonment is only 6 months which can become 8 months if there is a weighting of fines, even though the fines threatened or imposed by judges are quite high up to tens of millions;
3. There are no guidelines or criteria for imposing fines, both in general and for special matters (eg for fines imposed on children who are not yet adults, who have not worked, or are still under the care of their parents;

Wouldn't it be that corruptors can freely commit criminal acts of corruption because they feel that the responsibility will be borne by others and the proceeds of corruption can still be enjoyed without worrying that their property or wealth will be confiscated or confiscated? Although the judge can also impose additional penalties, what can be confiscated are only goods that are suspected to have been obtained from the proceeds of a crime or are intentionally used to commit a crime.[10]

According to R.A Duff fan D Garland, in determining and imposing a fine, the principle of proportionality theory must be applied. This principle means that the sanctions imposed must be following the severity of the violation that has been committed. This is one of the efforts to achieve complete law enforcement. The phenomenon of punishment for the verdict of a criminal act of corruption above is a simple description of the problems of criminal penalties in lieu of fines in Indonesia. This in principle affects law enforcement, especially in corruption, although it cannot be the basis for generalizing this problem, further thinking is needed to improve existing conditions and actually, the impact of different sentencing will threaten law enforcement efforts itself.[11]

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[8] Wahyuningsih, "*Ketentuan Pidana Denda Dalam Kejahatan Korupsi Di Tingkat Extraordinary Crime*", alJinâyah: Jurnal Hukum Pidana Islam Volume 1, Nomor1 ,Juni 2015,hlm.105

[9] Indung Wijayanto," *Kebijakan Pidana denda di KUHP dalam Sistem Pemidanaan Indonesia*", Jurnal Pandecta, Volume 10 Nomor 2 Desember 2015, hlm.249

[10] *Ibid*

[11] Lihat Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia, Melihat pada Kejahatan dan Penegakan Hukum dalam Batas-batasToleransi*, Pidato Pengukuhan Penerimaan Jabatan Guru Besar Tetap dalam Ilmu Hukum pada Fakultas Hukum Universitas Indonesia, Jakarta,1993 hlm. 1

The lack of regulation regarding imprisonment as a substitute for fines ultimately raises several problems in its application. For this to be carried out properly, law enforcement officers must act quickly, professionally, and carefully, especially in calculating the number of losses incurred in a corruption case.

This is the concern of the authors to examine how the regulation of imprisonment in lieu of fines in criminal law in Indonesia, as well as to examine whether the application of confinement as a substitute for fines in criminal acts of corruption is following law enforcement in Indonesia.

2. Method

The type of research in writing this proposal is a normative juridical research method, another name is doctrinal legal research which is also referred to as library research or document study because this research is carried out or is aimed only at written regulations or other legal materials. The approaches used by researchers in compiling this research are, among others: the Legislative Approach (Statue Approach) and; the Case approach. Data collection was carried out through library research, meaning that the technique of collecting data and information from several books and readings and legislation related to the problem under study. This literature study was conducted in the library. The legal materials used in this study were obtained from searches through literature studies, namely collecting various legal materials, both in the form of legislation, literature, scientific works, results of previous research, documents, opinions of legal practitioners, journals, and various relevant books that related to this thesis.

3. The Criminal Procedure of Confinement in Lieu of Fines in Indonesian Criminal Law

In the context of punishment, principles are defined as basic conceptions, ethical norms, and legal principles that guide the formation of criminal law norms through the making of criminal legislation. In other words, legal principles are basic conceptions, ethical norms, and basic principles of using criminal law as a means of crime prevention.[12]Meanwhile, Sudirman himself emphasized that the use of criminal law must also take into account the cost and benefit principle.[13]

If it is associated with the application of criminal sanctions in corruption, several aspects or interests must be considered, firstly paying attention to the perpetrator's aspect, secondly paying attention to the victim's aspect, and thirdly the community aspect, that the interests of the community are not fulfilled due to corruption.

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[12] Roeslan Saleh, "*KebijakanKriminalisasi Dan Dekriminalisasi: Apa Yang Dibicarakan Sosiologi Hukum DalamPembaruan Hukum Pidana Indonesia*", disampaikan dalam Seminar Kriminalisasi dan Dekriminalisasi dalam Pebaruan Hukum Pidana Indonesia, Fakultas Hukum UII, Yogyakarta, 15 Juli 1993, hlm. 38-39.

[13] Salman Luthan, "*Asas Dan Kriteria Kriminalisasi*", Jurnal Hukum No. 1 Vol. 16 Januari 2009, hlm. 11

Confinement is a form of criminal deprivation of liberty, but this confinement is in some respects lighter than imprisonment. These provisions are as follows:[14]

a. Convicts in confinement have gun rights, which means they have the right or opportunity to take care of their food and bedding at their own expense (Article 23 of the Criminal Code).

b. The convicts do the work that is required, but it is lighter than the prison convicts (Article 19 of the Criminal Code).

c. Although the punishment for imprisonment is one (1) year. This maximum may be up to 1 year and 4 months in the event of a criminal offense, due to concurrent cases, or due to the provisions of Article 52 or Article 52 (Article 18 of the Criminal Code).

d. If the convict in prison and the convict in confinement serve their respective sentences in a correctional facility, then the convict must be in separate places. (Article 28 of the Criminal Code).

e. Confinement is usually carried out in the convict's area / usually not outside the area concerned.

Pasal 18 UU Tipikorsendirimenyebutkan:[15]

1) In addition to additional penalties as referred to in the Criminal Code, additional penalties are:
   a. confiscation of tangible or intangible movable property or immovable property used for or obtained from a criminal act;

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[14] TeguhPrasetyo, *Op.Cit.*, hlm. 121-122

[15] Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2014 (selanjutnya disebut PERMA-PUP) yang selengkapnya dikutip sebagai berikut:
1) Apabila dalam jangkawaktu 1 (satu) bulan setelah putusan berkekuatan hukum tetap, terpidana tidak melunasi pembayaran uang pengganti, jaksa wawajib melakukan penyitaan terhadap harta benda yang dimiliki terpidana.
2) Jika setelah dilakukan penyitaan sebagaimana dimaksud ayat (1) terpidana tetap tidak melunasi pembayaran uang pengganti, Jaksa wajib melelang harta benda tersebutdenganberpedoman pada Pasal 273 ayat (3) KUHAP.
3) Pelaksanaan lelang dilakukan selambat-lambatnya 3 bulan seelah dilakukan penyitaan;
4) Sepanjang terpidana belum selesai menjalani pidana penjara pokok, Jaksa masih dapat melakukan penyitaan dan pelelangan terhadap harta milik terpidana yang ditemukan.
Ketentuan dalam PERMA-PUP tersebut di atas mengundang beberapa konsekuensi yuridis, yakni (1) merupakan penegasan dan pengaturan lebih lanjut dari ketentuan Pasal 18 UU Tipikor, khusus berkaitan dengan eksekusi pidana PUP. Di dalam ketentuan PERMA-PUP ditetapkan secara tegas Jaksa adala esekutor pidana PUP sekaligus membebankan kewajiban kepada jaksa untuk melakukan penyitaan dan pelelangan terhadap harta benda milik terpidana, manakala terpidana tidak dapat melunasi PUP dengan tetap berpedoman pada Pasal 273 ayat (3) KUHAP. Lihat, Basir Rohrohmana, "*Pidana Pembayaran Uang Pengganti Sebagai Pidana Tambahan Dalam Tindak Pidana Korupsi*", Jurnal Hukum PRIORIS Vol. 6 No. 1 Tahun 2017, hlm. 51

b. corruption, including the company owned by the convict where the crime of corruption was committed, as well as from the goods that replace the goods; b. payment of replacement money in the maximum amount equal to the assets obtained from the criminal act of corruption;
c. closure of all or part of the company for a maximum period of 1 (one) year;
d. revocation of all or part of certain rights or the abolition of all or part of certain benefits, which have been or may be granted by the Government to the convict.

2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b at the latest within 1 (one) month after the court's decision which has obtained permanent legal force, his assets can be confiscated by the prosecutor and auctioned to cover the replacement money.

With regard to additional punishment in the form of replacement money, the judge is guided by Article 18 paragraph (1) letter b of the Anti-Corruption Law, where the amount of compensation is equal to the property obtained from the corruption crime he committed. Replacement money is declared as an additional crime because the substitute money follows the main crime, where if it is proven that he has committed an act that is detrimental to the state, all assets obtained from a criminal act of corruption are withdrawn as replacement money with the aim that what he has enjoyed is returned to the state. as the injured subject.

According to FontianMunzil, the calculation of state money losses must be calculated in detail by considering the period until the state money can be returned by the corruption convic[16]According to FontianMunzil, the calculation of state money losses must be calculated in detail by considering the period until the state money can be returned by the corruption convict.

In Article 10 of the Criminal Code (KUHP). In addition, Jan Remmelink in his book entitled "Criminal Law" states that: for criminal acts of violation, imprisonment is the only form of corporal punishment that is possible. However, imprisonment is not limited to violations but also to several forms of crime, namely those committed without intention (Articles 114, 188, 191, 193, 195, 197, 199, 201, 359, 360, 481 of the Criminal Code), all of which are threatened with imprisonment. imprisonment and imprisonment.[17]

In practice, in addition to being the main crime, imprisonment is often applied as a substitute for fines. Substitute imprisonment is a substitute for fines that are not paid by the convict. Can also be sentenced to substitute imprisonment, if the convict does not pay the estimated price determined from the spoils that are not delivered by the convict. In the development of the imposition of fines and the obligation to pay the price of the interpretation of the spoils that are not submitted by the convict or the

[16] Fontian Munzil, "*Uang Pengganti dalam Rangka Melindungi Hak Ekonomis Negara dan Kepastian Hukum*", Jurnal Hukum IUS QUIA IUSTUM, Vol. 22, No.1, Januari 2015, hlm. 32.

[17] *Jan Remmelink*, *Hukum Pidana*, Jakarta, PT. Gramedia Pustaka Utama, *2003,* hlm. 476

obligation of compensation by the convict, generally, the convicts are not imposed with substitute imprisonment. Even if the convict is detained, it is not substituted confinement, but a means of coercion so that the convict fulfills his obligations. Even in the context of discovering this obligation, it can be carried out like a bailiff procedure in a criminal sentence.[18]

Article 30 paragraph (2) of the Criminal Code explains that if the fine is not paid, it will be replaced with imprisonment. The duration of the substitute imprisonment as regulated in Article 30 paragraph (3) of the Criminal Code, is a minimum of 1 (one) day and a maximum of 6 (six) months. Article 30 paragraph (5) explains that if there is an increase in fines due to concurrent or repetition, or because of the provisions of Article 52, the substitute imprisonment is a maximum of 8 (eight) months. For some criminal law laws, the provisions in Article 30 paragraph 2 of the Criminal Code are not applied. This is mainly determined for the settlement of criminal acts where the emphasis of the settlement is expected to be on the smooth filling of the state treasury.

In this case, according to AruanSakidjo and Bambang Poernomo, a fine can be interpreted as an obligation to pay a certain amount of money, as has been determined in the judge's decision which is charged to the convict for the violation or crime he has committed.[19]As a principal crime, fines are threatened for almost all violations stipulated in book III of the Criminal Code, and some crimes stipulated in book II of the Criminal Code.

If the convict does not pay a fine, the fine can be replaced with imprisonment. The length of imprisonment in lieu of a fine is stated in Article 30 paragraph (3), for a minimum of one day and a maximum of six months.[20]In the event of a weighting due to concurrent criminal acts and repetition of criminal acts or due to the provisions of Articles 52 and 52a of the Criminal Code, the substitute imprisonment can be made a maximum of 8 months but provided that the length of imprisonment in lieu of a fine exceeds 8 (eight) months. confinement.

Based on this, as a response to the infrequently imposed fines, the Supreme Court

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[18] Teguh Prasetyo, *Op.Cit.*, hlm. 122

[19] Muhammad Iftar Aryaputra, Ani Triwati, dan Subaidah Ratna Juita, "*Kebijakan Aplikatif Penjatuhan Pidana Denda Pasca Keluarnya Perma No. 2 Tahun*", Jurnal Dinamika Sosial Budaya, Volume 19, Nomor 1, Juni 2017, hlm. 59

[20] Pasal 30 KUHP
a. Pidana denda paling sedikit tiga rupiah tujuh puluh lima sen.
b. Jika pidana denda tidak dibayar, ia diganti dengan pidana kurungan.
c. Lamanya pidana kurungan pengganti paling sedikit satu hari dan paling lama enambulan.
d. Dalam putusan hakim, lamanya pidana kurungan pengganti ditetapkan demikian; jika pidana dendanya tujuh rupiah lima puluh dua sen atau kurungan, di hitung satu hari; jika lebih dari lima rupiah lima puluhsen, tiap-tiap tujuh rupiah lima puluh sen di hitung paling banyak satu hari demikian pula sisanya yang tidak cukup tujuh rupiah lima puluh sen.
e. Jika ada pemberatan pidana denda disebabkan karena perbarengan atau pengulangan, atau karena ketentuan pasal 52, maka pidana kurungan pengganti paling lama delapan bulan.
f. Pidana kurungan pengganti sekali-kali tidak boleh lebih dari delapan bulan

issued Supreme Court Regulation No. 2 of 2012 concerning Adjusting the Limits of Minor Crimes and the Number of Fines in the Criminal Code. From the consideration of the perma, we can conclude that the main ratio of the emergence of perma is as a form of response/criticism to the nominal/amount of fines in the Criminal Code. The Supreme Court stated that the value of money in the Criminal Code is no longer following current conditions. Based on Perma's preamble, it can be concluded that the nominal fines in the Criminal Code are the main problem for judges in imposing fines.

In this regard, the problem lies not only in these reasons, but also prisons are still the prima donna. In the purpose of retributive punishment, the punishment is imposed solely because someone has committed a crime or criminal act. Crime is an absolute consequence that must exist as revenge for people who have done evil.[21]The emergence of Perma No. 2 of 2012 should be appreciated. The researcher views that the Perma is essentially a constructive criticism of the Criminal Code by adjusting the nominal amount to the current situation to provide legal certainty. This is due to a legal vacuum in the imprisonment for a fine because if it is still guided by the Criminal Code, this will be confused with currency values that are no longer appropriate.

In the event of confusion in the law, there must be a legal rule that can be a solution. As for imprisonment as a substitute for fines against corrupt convicts, there is indeed no legal legitimacy based on the corruption law, but based on the ius curia novit principle, judges can provide jurisprudence as the legitimacy of imprisonment as a substitute for fines.

Every concept of the state must have a basis of legitimacy as a constitutional basis (remembering the Constitution is the basic law). So that its basis cannot be separated from the rule of law principle. because the rule of law is a reflection of the desire of the community as a whole to submit themselves to a rule that will bind and apply without exception to each of its members. The constitution states that the State of Indonesia is a state of law (rechtssaat), not a state of power (maachtssaat). In the understanding of the rule of law, the law holds the highest command in the administration of the state. What leads to the administration of the state is the law itself under the principle of the rule of law, and not of man, which is in line with the notion of democracy, namely, power is exercised by law. The rule of law in a material sense aims to protect citizens against arbitrary actions from the authorities to enable humans to gain their dignity as human beings. Therefore, the essence of the rule of law in a material sense is the existence of guarantees for community members to obtain social justice, namely a condition that is felt by members of the community with reasonable respect from other groups; while each group does not feel disadvantaged by the activities of other groups. Some characteristics of the rule of law according to A.V Dicey calls the rule of law, namely; the supremacy of law; equality

[21] Ridwan, *Kebijakan Formulasi Hukum Pidana dalam Penanggulangan Tindak Pidana Korupsi*, Kanun Jurnal Ilmu Hukum. 15(2), 2013, hlm. 201

before the law; and due process of law.[22]

4. Law Enforcement for Implementing Confinement as a Penalty Substitute for Fines in Corruption Crimes in Indonesia

Criminal sanctions against perpetrators of criminal acts of corruption have been formulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Article 2 threatens the perpetrators of corruption with life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and or a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah). In Article 3 it can be seen that the threat for perpetrators of corruption is life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years in prison and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).[23]

The formulation of Articles 2 and 3 shows that perpetrators of corruption are threatened with imprisonment for life, imprisonment for a relatively long period, and quite heavy fines. Even though they have been threatened with relatively heavy penalties, in reality, the behavior of corruptors and the number of corruption cases cannot be suppressed and even tends to increase. Payment of fines is one of the demands of the Public Prosecutor in addition to returning money from corruption to the State.

About fines, based on the provisions of Articles 2 and 3, shows that the threat of fines is set in a cumulative-alternative form, meaning that judges may choose more than one type of punishment. So, from Article 2 and Article 3 it can be seen that the perpetrators of corruption are threatened with imprisonment, life imprisonment, imprisonment for a relatively long period, and a fairly heavy fine.

The provisions for sanctions in the Corruption Crime Law do not mention the provision of imprisonment as a substitute for fines. However, in practice, in cases of corruption, the judge in his decision always provides an alternative to imprisonment as a substitute if the defendant does not pay the fine. In this case, the judge refers to the provisions contained in the Criminal Code.

The legal rules regarding fines in general are as stated in Article 30 and Article 31 of the Criminal Code.

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[22] Lisnawaty W. Badu dan Ahmad, 2021, *Purifikasi Pemberian Amnesti dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang-Undang Dasar 1945*, JurnalIus Civile Vol. 5 No. 2, (Aceh: Universitas Teuku Umar), hlm. 104-105

[23] Melani, "*Disparitas Putusan Terkait Penafsiran Pasal 2 Dan 3 Uu Pemberantasan Tindak Pidana Korupsi (Kajian terhadap 13 Putusan Pengadilan Tipikor Bandung Tahun 2011-2012)*", jurnal agustusisi.indd, Vol 3, No 2, 2014, hlm. 105

Article 30 of the Criminal Code:

(1) A fine of at least three rupiahs and seventy-five cents.
(2) If the penalty is not paid, it is replaced with imprisonment.
(3) The duration of the substitute imprisonment is a minimum of one day and a maximum of six months.
(4) In the judge's decision, the length of the substitute imprisonment is determined as such; if the penalty is seven rupiahs and fifty-two cents or imprisonment, it is counted as one day; if it is more than five rupiahs and fifty cents, every seven rupiahs and fifty cents is calculated for a maximum of one day as well as the remaining which is not enough seven rupiahs and fifty cents.
(5) If there is an increase in the fine due to concurrent or repetition, or because of the provisions of Article 52, the substitute imprisonment is a maximum of eight months.
(6) The substitute imprisonment may not exceed eight months.

Article 31:

(1) The convict may serve substitute confinement without waiting for the deadline for payment of the fine.
(2) He is always authorized to free himself from the substitute confinement by paying the fine.
(3) Payment of part of the penalty, both before and after starting to serve the imprisonment which is equal to the part paid.

Taking into account the provisions of the fine rules in the Criminal Code, the following legal constructions are obtained:[24]

1. If the fine is not paid, it is replaced with imprisonment. With this construction, if the replacement money is not paid by the convict, it will be replaced with imprisonment and if the convict has served the convict, further consequences, the replacement money will be canceled.
2. The convict has the authority to free himself from the substitute confinement by paying the fine.

Articles 30 and 31 of the Criminal Code also regulate the calculation of the conversion of fines into confinement, namely the amount of the fine that must be paid minus the period of confinement he has served, where per day the confinement period is equal to a certain amount of money. The imprisonment as a substitute for a fine which refers to Articles 30 and 31 of the Criminal Code is based on Article 103 of the Criminal Code which reads:

"The provisions in Chapters I to VIII of this book also apply to acts which are punishable by other statutory provisions, unless the law provides otherwise."

[24] Mulyadi, Lilik, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi*, Bandung: Alumni, 2013, hlm. 44

Article 103 of the Criminal Code is often referred to or termed as a bridge article for regulations or laws that regulate criminal law outside the Criminal Code. That is, if there are matters relating to criminal law that are not regulated in laws outside the Criminal Code, then they can refer to the arrangements contained in the Criminal Code.

The problem of converting the criminal value itself in imposing fines as an alternative to the short-term criminal deprivation of liberty which is the type of principal crime that is rarely imposed by judges, especially in judicial practice in Indonesia. Courts rarely impose fines on criminal cases. This is because the threat of a fine will no longer be in harmony with the prevailing currency value, the maximum threat of a fine is in the range of Rp. 900,- up to Rp.150,000, except for the threat of a fine as regulated in the Special Criminal Law. Besides that, the judge's attitude towards the assessment of the threat of fines tends to be used only for minor crimes, so imprisonment remains the main one. So in the matter of converting the amount of money to a penalty in lieu of a fine, it is not a problem because it has been regulated in the Special Law, namely the Anti-Corruption Law.

The formulation of a criminal act of corruption like this shows the main forms of criminal acts, including the abuse of power and the use of state funds that are not correct and not by their designation and are detrimental to the country's finances and economy. The formulation of criminal sanctions for criminal acts of corruption should be an antidote and cure for abuse of power and state losses as well as recovering losses incurred for some people who should receive the state's financial allocation and the achievement of national goals and national development goals.[25]

The regulation regarding sanctions according to the provisions of the Anti-Corruption Law is aimed at preventing corruption itself. Therefore, the Anti-Corruption Law regulates the application of cumulative sanctions and the existence of sanctions in the form of fines. The Anti-Corruption Law does not contain rules regarding imprisonment as a substitute for fines. This confirms the purpose of the establishment of the Anti-Corruption Law as an effort to prevent corruption. The Anti-Corruption Law mentions the criminal fines with the intention that the fines are implemented or applied by law enforcers, both Public Prosecutors and Judges.[26]

Unfortunately, the absence of rules regarding confinement in lieu of fines in the Corruption Crime Law makes judges in making decisions refer to Articles 30 and 31 of the Criminal Code, namely applying confinement for a certain period as a substitute if the convict is unable or unwilling to pay the fine imposed. by the judge.[27]

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[25] Selfina Susim, "*Pidana Denda Dalam Pemidanaan Serta Prospek Perumusannya Dalam Rancangan KUHP*", Lex Crimen Vol. IV/No. 1/Jan-Mar/2015, hlm, 227

[26] *Ibid*, hlm. 228

[27] Lisnawaty W. Badu dan Apripari, 2019, *Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer dalam Perkara Pidana*, Legalitas Vol. 14 No. 1, (Gorontalo: Universitas Negeri Gorontalo), hlm. 68

The process of determining imprisonment in lieu of fines in corruption is carried out by two interrelated parties. The public prosecutor in determining imprisonment in lieu of a fine will see the guidelines in the Attorney General's Circular Letter Number SE003/A/JA/02/2010 which states that the determination of imprisonment in lieu of a fine is a minimum of 3 (three) months while for imprisonment in lieu of additional punishment. in the form of payment of replacement, money is a minimum of (half) of the principal criminal charge. Another consideration by the public prosecutor is to pay attention to state losses resulting from criminal acts of corruption committed by the defendant, besides that it will also be seen from the ability of the defendant to pay the criminal fine after receiving a verdict.[28]

5. Conclusion

Cases of criminal acts of corruption always provide an alternative to imprisonment as a substitute if the defendant does not pay the fine. In this case, law enforcers refer to the provisions of the criminal confinement, which is contained in Article 10 of the Criminal Code, then the substitute for imprisonment is in Article 30 and Article 31 of the Criminal Code.

The application of imprisonment as a substitute for fines in corruption crimes where judges and prosecutors refer to the Criminal Code, namely Articles 30 and 31 which are based on Article 103 of the Criminal Code because the Corruption Crime Act does not regulate imprisonment as a substitute for fines. But on the other hand, the absence of clear and standard provisions as a benchmark regarding the conversion of confinement to a fine has resulted in a tendency for court decisions to be varied and different from one another so that they are prone to polemics.

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[28] Suhariyono, *Pembaruan Pidana Denda Di Indonesia Pidana Denda Sebagai Sanksi Alternatif*, Papas Sinar Sinanti, Jakarta, 2012, hlm. 73

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