

IMPLEMENTATION OF ADDITIONAL CRIMINAL SANCTIONS IN THE FORM OF PAYMENT OF MONEY IN CRIME OF CORRUPTION IN INDONESIA (CRITICAL REVIEW OF THE PRINCIPLE OF LEGAL CERTAINTY IN DECISION NUMBER 5035 K/Pid.Sus/2022)

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Abstract

Additional criminal sanctions in the form of payment of replacement money to perpetrators of corruption are seen as strategic in the context of recovering state financial losses. The sanctions are regulated in Article 18 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Law concerning Eradication of Corruption Crimes. In the application of the law, there is an imbalance regarding how additional punishment in the form of payment of replacement money should be applied to perpetrators of corruption. This results in the creation of legal uncertainty. For this reason, in order to overcome this, it is necessary to conduct a critical study regarding the application of additional criminal sanctions in the form of replacement money in Decision Number: 5035 K/Pid.Sus/2022. By conducting a critical review, it is hoped that the existence of additional criminal sanctions in the form of payment of reimbursement money can be applied consistently so as to provide legal certainty guarantees for perpetrators of corruption.

Keywords: *Additional Punishment, Replacement Money, Legal Certainty.*

Abstrak

Sanksi pidana tambahan berupa pembayaran uang pengganti terhadap pelaku tindak pidana korupsi dipandang strategis dalam rangka pengembalian kerugian keuangan Negara. Sanksi tersebut diatur dalam Pasal 18 ayat (1) Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi Jo. Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 Tahun 1999 Undang-Undang tentang Pemberantasan Tindak Pidana Korupsi. Dalam penerapan hukumnya terdapat ketimpangan terkait bagaimana seharusnya pidana tambahan berupa pembayaran uang pengganti diterapkan terhadap pelaku tindak pidana korupsi. Hal ini berakibat pada terciptanya ketidakpastian hukum. Untuk itu guna mengatasinya perlu dilakukan telaah secara kritis terkait penerapan sanksi pidana tambahan berupa uang pengganti dalam Putusan Nomor: 5035 K/Pid.Sus/2022. Dengan dilakukan telaah secara kritis diharapkan eksistensi sanksi pidana tambahan berupa pembayaran uang pengganti dapat diterapkan secara konsekwen sehingga dapat memberikan jaminan kepastian hukum bagi pelaku tindak pidana korupsi.

Kata Kunci: Pidana Tambahan, Uang Pengganti, Kepastian Hukum.

Introduction

The criminal act of corruption (tipikor) is an extraordinary crime, for this reason the state is making every effort to tackle the crime in question, the form of countermeasures is carried out by taking steps to prevent and eradicate it by maximizing the application of the relevant laws and regulations. by preventing and eradicating criminal acts of corruption, namely Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Law concerning Eradication of Corruption Crimes (hereinafter referred to as the Corruption Law).

The Corruption Law is a special provision, because the legal arrangements have specificities both in terms of actions and legal sanctions that are different from the provisions in the Criminal Code (KUHP). One of the specificities contained in the Corruption Law is the existence of additional criminal sanctions in the form of replacement money which are not included in the types of sanctions as regulated in Article 10 of the Criminal Code¹. Material criminal law as special material criminal law, of course there are special things that are different from the general rules of criminal law in book I of the Criminal Code. For example, regarding the criminal sentencing system²

Compensation money punishment is a type of additional crime against the defendant in the form of having to pay replacement money to the State in the amount of property obtained and or enjoyed from the proceeds of corruption based on a Judge's Decision. The existence of additional crimes in the form of replacement money can be found in Article 18 paragraph (1) letter b of the Corruption Law which reads as follows: "besides additional crimes as referred to in the Criminal Code, additional crimes are³:

- 1) Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as the price of goods that replace these goods.
- 2) Payment of compensation money in an amount equal as much as possible to the property obtained from the criminal act of corruption.
- 3) Closure of all or part of the company for a maximum period of 1 (one) year.
- 4) Revocation of all or part of certain rights or removal of all or part of certain finances that have been or can be provided by the government to convicts.

The existence of additional criminal sanctions in the Corruption Law above is the spearhead for the State to make efforts to return the State finances that have been enjoyed by perpetrators of criminal acts of corruption. Apart from the Corruption Law, to make additional criminal sanctions more effective, the Supreme Court issued Regulation Number 5 of 2014 concerning Additional Criminal Replacement Money for Corruption Crimes. The existence of provisions in this Perma is to maximize the existence of additional criminal sanctions in the form of replacement money in the Corruption Law.

Article 1 of Perma Number 5 of 2014 confirms that "in determining the amount of payment of compensation for a criminal act of corruption, it is as much as possible equal to the property obtained from the criminal act of corruption and not merely the amount of state financial losses caused." The sound of the provision in question implies the meaning that the determination of payment of compensation money is as much as possible equal to the assets obtained from criminal acts of corruption and not merely the amount of State financial losses caused. This means that the State financial losses that occur as a result do not necessarily become the basis for determining the payment of replacement money, but rather are based on how much the

¹ Based on Article 10 of the Criminal Code, the main punishment consists of the death penalty, imprisonment, imprisonment, fines and criminal penalties. The main criminal sequences are based on the severity of the criminal sanctions imposed. Eddy O. S. Hiariej, *Prinsip-Prinsip Hukum Pidana*, Revisi, 2016.

² Adami Chazawi, *Hukum Pembuktian Tindak Pidana Korupsi*, Revisi (Malang: Media Nusa Creative, 2018).

³ R. Wiyono, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*, II (Jakarta: Sinar Grafika, 2008).

perpetrator of the criminal act of corruption enjoyed the State's financial results resulting from his actions.

In law enforcement practice, there is an imbalance in the judge's consideration in decisions to determine how much a defendant will receive additional criminal sanctions in the form of compensation for criminal acts of corruption. This inequality can be seen in the Supreme Court Decision Number 5035 K/Pid.Sus/2022, in whose decision the Panel of Judges at the cassation level handed down a decision to pay compensation for the defendant Andreas Tara Panjang to pay compensation amounting to Rp. 3,050,697,300.00 (three billion fifty million six hundred ninety-seven thousand three hundred rupiah) provided that if within 1 (one) month after the decision becomes legally binding the convict does not pay the replacement money, his assets may be confiscated by the Prosecutor and auctioned to pay the replacement money, in the event that the convict does not have sufficient assets to pay the replacement money, the convict will be sentenced to prison for 4 (four) years.

The basis for consideration by the Panel of Judges at the cassation level in imposing the additional penalty in the form of replacement money as mentioned above is not based on considering how much of the proceeds of the criminal act of corruption the defendant has obtained or enjoyed, but is based on the aspect of the burden for all defendants who have participated in the case by taking into account the amount of state financial losses caused. This clearly indicates that there is a problem of legal uncertainty which can then give rise to injustice in the context of applying additional criminal sanctions in the form of compensation money to perpetrators of criminal acts of corruption. Juridically, criminal imposition cannot be separated from legal certainty and justice⁴. Both are absolute requirements for determining whether someone is worthy or not worthy of being sentenced to a crime. For this reason, in the context of implementing criminal sanctions, including additional criminal sanctions in the form of compensation money, the aspect of legal certainty must be taken into account

RESEARCH METHODE

Related to the type of research, the author uses the type of normative juridical research, which in essence examines the law which is conceptualized as a norm or rule that applies in society, and becomes a reference for everyone's behavior. According to Soerjono Soekanto and Sri Mamudji, defining normative legal research is legal research conducted by examining literature or secondary datas. Normative legal research examines and examines library materials, or secondary data, so normative legal research is also called library legal research, theoretical/dogmatic legal research. This study uses a statutory approach, a conceptual approach and a case approach. There are 3 (three) types of secondary data collection methods for collecting legal materials in normative legal research, namely: (a) literature study, (b) documents, (c) archive studies⁶, associated with this research, so this research uses the data collection method. secondary using library research. The data analysis used in this research uses qualitative analysis, namely data analysis by describing the data in a quality manner in the form of sentences that are orderly, coherent, logical, non-overlapping and effective, making it easier to interpret the data and understand the results of the analysis. In other words, qualitative analysis is a way of analyzing data sourced from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions or the views of the researchers themselves⁷.

DISCUSSION

1. Judge's considerations in determining additional criminal sanctions in the form of replacement money (Supreme Court Decision Number 5035 K/Pid.Sus/2022)

In this article the author focuses on the judge's considerations in Decision Number 5035 K/Pid.Sus/2022 with the defendant Andreas Tara Panjang (now convicted). Referring to the

⁴ Muhammad Ainul Syamsu, *Penjatuhan Pidana & Dua Prinsip Dasar Hukum Pidana* (Jakarta: Prenadamedia Group, 2018).

⁵ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normative: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2001).

⁶ Abdulkadir Muhammad, *Penulisan Hukum Dan Penelitian Hukum* (Bandung: cvxz*-Aditya Bakti, 2004).

⁷ Ishak, *Metode Penelitian Hukum Dan Penulisan* (Alfabeta).

judge's considerations, we can see a general description of the legal events carried out by the convict who is an Assistant Expenditure Treasurer at the East Sumba Regency Education, Youth and Sports Service, who in 2019 received a budget for the payment of salaries and allowances for State Civil Apparatus (ASN and Teachers). and Non-Teachers amounting to Rp. 131,335,196,393.00,- (one hundred thirty-one billion three hundred thirty-five million one hundred ninety-six thousand three hundred ninety-three thousand rupiah).

The convict together with Witness Made Markus Marion Dju and Witness Yohanes Reku Paji Meha as well as witness Hina Pekambani and witness Yusuf Waluwanja have learned that there is ASN data that should not be input into the Regional Management System (SIMDA) application data. died, retired, transferred, but the defendant and his friends continued to propose salary payments and after the salaries of the ASN who were not entitled were disbursed, the defendant together with witness Made Markus Marion Djo, witness Yohanes Reku Paji Meha and witness Hina Pekambani kept the money without the knowledge of his superior, witness Yusuf Waluwanja, and did not immediately deposit the excess salary back. State financial losses due to the defendant's actions reached Rp. 6,593,394,900.00,- (six billion five hundred ninety three million three hundred ninety four nine hundred rupiah).

In its legal considerations, the Panel of Judges was of the opinion that the material actions of the defendant in such a way fulfilled the elements of a criminal offense in Article 3 in conjunction with Article 18 of the Corruption Crime Law in conjunction with Article 55 paragraph 1 to 1 of the Criminal Code as contained in the subsidiary indictment.

Furthermore, the Panel of Judges was of the opinion that, however, the *Judex Factie* Decision at the Corruption Crime Court at the Kupang High Court sentenced the defendant to prison for 9 (nine) years and a fine of IDR 400,000.00 (four hundred million rupiah) with the provisions If the fine is not paid, it will be replaced by imprisonment for 6 (six) months, without imposing a penalty. Payment of replacement money by the defendant needs to be corrected because of the State's financial losses amounting to Rp. 6,593,394,900.00 (six billion five hundred ninety three million three hundred Ninety-four thousand nine hundred rupiah), some of which has been charged to other perpetrators, including in the decision of the splitting case (separate prosecution) in the name of the defendant Made Markus Marion Dju who has been charged with compensation money of Rp. 2,009,404,000.00,- (two billion nine million four hundred and four thousand rupiah), on behalf of the defendant Yohanis Reku Paji Meha, compensation money of Rp. 1,533,293,600.00 (one billion five hundred thirty three million two hundred ninety three thousand six hundred rupiah), then it is appropriate if the remaining shortfall in replacement money charged to the convict is Rp. 3,050,697,300.00 (three billion fifty million six hundred ninety-seven thousand three hundred rupiah) so that overall the total financial loss to the State was Rp. 6,593,394,900.00 (six billion five hundred ninety-three million three hundred ninety-four thousand nine hundred rupiah) has been charged to all perpetrators of criminal acts.

Referring to the considerations of the Supreme Court above, according to the judge at the cassation level it is necessary to correct the decision at the appeal level, namely by improving the criminal sanction in the form of compensation money for the convict Andreas Tara Panjang. The Supreme Court considers it necessary to correct the Decision at the appeal level Number: 3/Pid.Sus-Tpk/2022/PT.Kpg dated 28 April 2022 which corrects the Decision of the Corruption Crime Court at the Kupang District Court Number: 63/Pid.Sus-Tpk/2021/PN.Kpg dated 09 February 2022, especially in the section on replacement money sanctions.

Previously, in the First Level Decision, the Convict was sentenced to compensation money amounting to Rp. 1,648,348,725,- (one billion six hundred forty-eight million three hundred forty-eight thousand seven hundred and twenty-five rupiah) with the condition that the replacement money was not paid in a maximum period of 1 (one) month after the court decision becomes legally binding, then the prosecutor's property can be confiscated and sold at auction to pay the replacement money and if the defendant does not have sufficient assets,

he will be sentenced to prison for 4 (four) years. Meanwhile, at the Appeal Level, the Panel of Judges did not impose compensation for the convict.

According to the appellate court judge, in the case in question the Public Prosecutor could not clearly prove how much property the defendant/convict obtained from the criminal act of corruption in the case, therefore the High Court was of the opinion that based on article 18 paragraph (1) letter b of the Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Law concerning the Eradication of Corruption Crimes, the convict is not sentenced to additional punishment in the form of replacement money.

2. Analysis of the judge's decision (Supreme Court Decision Number 5035 K/Pid.Sus/2022) with the position of additional criminal sanctions in the form of replacement money.

Observing the contents of the Supreme Court (MA) Decision above, the consideration of why the convict was burdened with such a large amount of replacement money was apparently based on the consideration that "... due to state losses of Rp. 6,593,394,900.00 (six billion five hundred ninety three million three hundred) Ninety-four thousand nine hundred rupiah), some of which have been charged to other actors, including in the decision on the splitzing case on behalf of the defendant Made Markus Marion Dju, who has been charged with replacement money of Rp. 2,009,404,000.00,- (two billion nine million four hundred and four thousand rupiah), on behalf of the defendant Yohanis Reku Paji Meha was charged with a replacement fee of Rp. 1,533,293,600.00 (one billion five hundred thirty three million two hundred ninety three thousand and six hundred rupiah), then it is appropriate if the remaining shortage of replacement money is charged to the convict, namely Rp. 3,050,697,300.00 (three billion fifty million six hundred ninety-seven thousand three hundred rupiah) so that in total the total state financial loss is Rp.6,593,394,900.00 (six billion five hundred ninety-three million three hundred ninety-four thousand nine hundred rupiah)";

The judge's considerations at the cassation level above related to determining the amount of replacement money charged to the convict is not in accordance with the juridical aspect of the existence of replacement money as an additional criminal sanction in corruption. Additional punishment in the form of Substitute Money is regulated in Article 18 paragraph (1) letter b of Law Number 31 of 1999 Law on the Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 the Law on the Eradication of Criminal Acts of Corruption which states: "payment of replacement money in the maximum amount possible with property obtained from criminal acts of corruption"; The phrase contained in 18 paragraph (1) letter b of the Anti-Corruption Law is intended to confirm that: First, the amount of compensation money paid is only as much as possible equal to the assets obtained from the criminal act of corruption. Second, the amount of replacement money charged must have a real correlation with how much property the convict obtained in the criminal act of corruption. Third, there needs to be proof of the amount of property that the convict obtained as a result of the corruption he committed.

The provisions of Article 18 paragraph (1) letter b of the Corruption Law referred to above are imperative, which means they must be obeyed, are binding and coercive, meaning that in determining the amount of additional punishment in the form of compensation money for the convict, you must know exactly how much property the convict obtained from the crime. the corruption he committed. There must be a real correlation between state financial losses and assets obtained from the proceeds of corruption. For this reason, before the judge at the cassation level determines the amount of replacement money that must be charged to the convict in the amount of Rp. 3,050,697,300.00 must first consider how much property the convict obtained from the proceeds of a criminal act of corruption, is it true that the assets obtained by the convict from the proceeds of a criminal act of corruption amounted to Rp.

3,050,697,300.00? Looking at the overall considerations of the Judge at the cassation level in his decision, it turns out that there was no consideration regarding the property obtained by the convict in the criminal act of corruption with the amount of compensation money that must be charged to the convict amounting to Rp. 3,050,697,300.00.

The judge's considerations at the cassation level in determining the amount of compensation money for the convict were based on considerations because the defendant (now convict) Made Markus Marion Dju had been charged replacement money of Rp. 2,009,404,000.00,- (two billion nine million four hundred and four thousand rupiah), on behalf of the defendant (now convicted) Yohanis Reku Paji Meha was charged replacement money of Rp. 1,533,293,600.00 (one billion five hundred thirty three million two hundred ninety three thousand six hundred rupiah), then the remaining shortfall in replacement money charged to the convict is Rp. 3,050,697,300.00 (three billion fifty million six hundred ninety-seven thousand three hundred rupiah) so that overall the total financial loss to the State is Rp. to the convict.

The judge at the cassation level "only" made a comparison of the payment of compensation money to the other Defendants (now convicted), namely Made Markus Marion Dju and Yohanis Reku Paji Meha without basing it on a description of the judicial considerations regarding the amount of the convict Andreas Tara Panjang's assets obtained from the proceeds of criminal acts. corruption. Judex Juris' legal considerations in charging compensation money to Convict Andreas Tarapanjang are unfounded, thereby creating uncertainty and injustice for the Convict. Juridically, in determining the amount of replacement money, it is obligatory to consider the defendant's assets obtained in a criminal act of corruption. In this case the Judge in his decision in terms of determining the additional criminal amount for the convict was only based on the loss of state finances in the amount of Rp. 6,593,394,900.00 after being divided with other convicts, namely Made Markus Marion Dju and Yohanis Reku Paji Meha. The judge's consideration is not in accordance with the position of additional criminal sanctions in the form of replacement money. According to Salman Mariadi, replacement money is money that must be paid by people who enjoy it and its nature is only compensation for what he has done, so there is no known term "range" in payment of replacement money.

Related to the existence of additional criminal sanctions in the form of replacement money as stipulated in Article 18 paragraph (1) letter b of the Corruption Law, the Supreme Court also emphasized in Supreme Court Regulation Number 5 of 2014 concerning Additional Crime of Compensation Money in Corruption Crimes. Article 1 of the provisions in the said Perma states "In terms of determining the amount of compensation payments in acts of corruption, it is as much as possible the same as the assets obtained from the criminal act of corruption and not merely the amount of resulting state financial losses. The provisions of Article 1 of the Supreme Court Regulation Number 5 of 2014 concerning Additional Crime of Substitute Money in Corruption Crimes referred to above emphasize additional criminal sanctions in the form of replacement money as stipulated in Article 18 paragraph (1) letter b of the Corruption Law by adding the phrase "...not solely on the amount of state financial losses caused", this phrase emphasizes that the determination of compensation in acts of corruption should not only be based on the losses caused to state finances but must be as much as possible equal to the assets obtained from criminal acts of corruption. This means that in this case, the state financial loss of Rp. 6,593,394,900.00 may not be used as a judge's reference in determining the amount of replacement money charged to the defendant but must base it on how much property the defendant obtained from the criminal act of corruption he committed.

Referring to the provisions in Article 18 paragraph (1) letter b of the Corruption Law and Article 1 Perma Number 5 of 2014 referred to above, it is clear that the Judge at the cassation level in determining the amount of compensation payment for the convict Andreas Ttarapanjang is Rp.3,050,697,300.00 (three billion fifty million six hundred ninety-seven

thousand three hundred rupiah) does not base it on the amount of assets obtained from criminal acts of corruption so this is contrary to the provisions of Article 18 paragraph (1) letter b of the Corruption Law and Supreme Court Regulation Number 5 of 2014 concerning Additional Compensation Money Crimes in Corruption Crimes which states "In terms of determining the amount of replacement money payments in acts of corruption, it is as much as possible equal to the property obtained from criminal acts of corruption and not merely the amount of state financial losses incurred caused. This has given legal uncertainty and injustice to convicts. According to Komariah Emong Supardjaja, replacement money is money that the defendant really enjoys as a result of the corruption he committed and the amount must be clear. Meanwhile Iskandar Kamil is of the opinion that replacement money cannot be taken together because joint responsibility is a clause in civil law, while criminal responsibility is an individual responsibility, so if the replacement money cannot be calculated/proved clearly the amount cannot be punished.

Regarding the application of additional punishment in the form of replacement money in this case, the author agrees with the consideration of the Panel of Judges at the appellate level (Kupang High Court) in its decision which has expressly corrected the first level court decision (Kupang Corruption Court) by eliminating additional punishment for the convict because in fact the trial, the public prosecutor was unable to prove how much property the defendant obtained from the criminal act of corruption he committed. In its considerations *Judex Factie* at the appellate level has considered that: The Panel of Judges of First Instance has wrongly applied the law regarding additional crimes in the form of replacement money by dividing state losses equally (the result of the accumulation between PPO I and PPO II) without knowing exactly how much property was acquired the defendant from the criminal act of corruption, this is contrary to the provisions of Article 18 paragraph (1) letter b mentioned above which are imperative. According to *Judex Factie* at the appellate level, in the case in question the Public Prosecutor could not clearly prove how much property the defendant/convict obtained from the criminal act of corruption in the case, therefore the High Court was of the opinion that based on article 18 paragraph (1) letter b of the Law Number 31 of 1999 Law on the Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Law on the Eradication of Corruption Crimes, the convict is not sentenced to additional punishment in the form of replacement money.

Regarding the *Judex Factie* consideration at the appeal level regarding the Public Prosecutor's failure to clearly prove how much property the defendant or convict obtained from the criminal act of corruption in this case has legal grounds to be accepted because from there it can be seen the amount of additional criminal compensation that must be charged to convict. Article 2 of Perma Number 5 of 2014 concerning Additional Criminal Replacement Money in Corruption Crimes firmly states that the proceeds of corruption that have been previously confiscated by investigators must be taken into account in determining the amount of replacement money that must be paid by the convict. In the facts of the trial, the Public Prosecutor did not confiscate any of the convict's belongings which were suspected to be the proceeds of a corruption crime committed by the convict.

Proving clearly and definitively regarding the amount of property obtained by the convict from a criminal act of corruption in a corruption case is important because only on this basis can it be used as a reference in determining the amount of additional criminal sanctions in the form of replacement money for the convict, without any proof related to this matter. So the application of the law regarding the amount of replacement money made by *Judex Juris* to the convict is contrary to Article 18 paragraph (1) letter b of the Corruption Law and Supreme Court Regulation Number 5 of 2014 concerning Additional Criminal Replacement Money in Corruption Crimes.

3. Examining the principle of legal certainty in the Supreme Court Decision Number 5035 K/Pid.Sus/2022

Judges in deciding a case, casuistically, are always faced with these three principles, namely the principle of legal certainty, the principle of justice, and the principle of expediency. As according to Sudikno Mertokusumo, these three principles must be implemented in a compromise, namely by applying all three in a balanced or proportional manner.⁸

The explanation above outlines that apart from the principles of justice and expediency, the principle of legal certainty is an important thing that judges must consider when making a decision. Legal certainty refers to the principle of legality which confirms that no action is a criminal act unless it is first regulated in written regulations. The written rules that contain these prohibitions are based on general societal standards regarding certain actions. The social dimension contained in legal certainty is static because the dynamics of criminal regulations depend on criminalization, change or decriminalization. However, as long as no decriminalization is carried out, the judge will still make the penal code the first requirement in trying the accused. The emphasis on the principle of legal certainty is more inclined to maintain written legal norms than existing positive law. Laws must be enforced for the sake of legal certainty.

Legal certainty requires that the law must be implemented and strictly enforced for every concrete event and there must be no deviation (*fiat justitia et pereat mundus*/the law must be upheld even though the sky is falling). Legal certainty provides protection even though the sky will fall). Legal certainty provides protection for the judiciary from arbitrary actions of other parties, and this is related to efforts for order in society. In the context of legal certainty, the application of the law in concrete cases faced by law enforcers must be based on legal rules and there must be no deviation.⁹

In connection with the Supreme Court Decision Number 5035 K/Pid.Sus/2022, it appears that the judge's consideration at the cassation level as described above in determining the amount of replacement money charged to the convicted convict Andreas Tara Panjang was not in accordance with the juridical aspect of the existence of replacement money as additional criminal sanctions in acts of corruption. Additional punishment in the form of Replacement Money is regulated in Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Law concerning the Eradication of Corruption Crimes which states that it basically emphasizes the payment of compensation money in the maximum amount possible with assets obtained from criminal acts of corruption. For this reason, in the context of legal certainty, judges should comply with the norms of payment of replacement money. Legal certainty wants the law to be implemented and strictly enforced for every concrete event and there should be no deviations.

The judge at the cassation level in determining the amount of compensation money paid to convict Andreas Ttarapanjang amounting to IDR 3,050,697,300.00 (three billion fifty million six hundred ninety-seven thousand three hundred rupiah) did not base it on the amount of property obtained from criminal acts of corruption so this is contrary to the provisions of Article 18 paragraph (1) letter b of the Corruption Law and Supreme Court Regulation Number 5 of 2014 concerning Additional Criminal Replacement Money in Corruption Crimes which states "In terms of determining the amount of compensation money paid in corruption crimes, it is as much as -the amount is the same as the property obtained from criminal acts of corruption and not merely the amount of state financial losses caused. This has created legal uncertainty, causing injustice to convicts. According to Komariah Emong Supardjaja, replacement money is money that the defendant actually enjoyed from the proceeds of the

⁸ Kristwan Genova Damanik, 'Antara Uang Pengganti Dan Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi', *Jurnal Masalah Hukum*, 45.1 (2001), 5.

⁹ Damanik. *Ibid.* p 5

criminal act of corruption he committed and the amount must be clear¹⁰. Meanwhile, Iskandar Kamil is of the opinion that replacement money cannot be shared because joint liability is a clause in civil law, while criminal responsibility is individual responsibility, so that if the amount of replacement money cannot be clearly calculated/proved, then it cannot be punished.

Judges as one of the law enforcement officers have the task of being one of the determinants of a case decision for the parties to a dispute.¹¹ In order to resolve the problem or dispute for which a decision is requested, in the process of making a decision the judge must be independent and free from the influence of any party. Judges in making decisions are only bound by relevant events or facts and legal rules which are or are used as a juridical basis. Juridical principles which are the basis for the judge's consideration in the context of granting additional criminal sanctions in the form of compensation money in the Corruption Crime Law should be the main basis for creating legal certainty for the defendant.

CONCLUSION

Based on the description in the discussion above, it can be concluded as follows:

- 1) The judge's consideration at the cassation level in case Number: 5035 K/Pid.Sus/2022 related to determining the amount of replacement money charged to the convict was not in accordance with the juridical aspect of the existence of replacement money as an additional criminal sanction in criminal acts of corruption. Additional punishment in the form of Replacement Money is regulated in Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Law concerning the Eradication of Corruption Crimes which essentially emphasizes the payment of compensation money in the maximum amount possible with assets obtained from criminal acts of corruption.
- 2) The application of law in the context of the principle of legal certainty must be implemented and strictly enforced for every concrete event and there must be no deviation (*fiat justitia et pereat mundus*/the law must be upheld even though the sky is falling). Legal certainty provides protection even though the sky will fall). In the context of applying additional criminal sanctions in the form of replacement money, the basis of reference is the Corruption Crime Law and there must be no deviation from the norms that have expressly regulated it.

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¹⁰ Damanik.p. 132

¹¹ Syamsu. *Ibid.* p. 167