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Legal Formulation of Substitute Money Charges in Corruption Cases in the Perspective of State Financial Recovery

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Abstract: The responsibility for corruption lies with the perpetrator, and the state is only responsible for execution without bearing the shortfall, meaning that losses may not be fully recovered. Consequently, further elucidation is requisite on Article 18 paragraph 1 letter b of the Corruption Eradication Law with regard to the imposition of restitution. The present study aims to examine the mechanism for recovering state financial losses, including the limitations in recovering losses that are not enjoyed by the perpetrators of corruption crimes and the legal construction of restitution in corruption cases from the perspective of restoring state finances. The research method employed is a normative research method through a statutory approach and an analytical approach. The results obtained demonstrate that the mechanism for recovering state losses due to corruption offences still faces obstacles. The provisions of Article 18 paragraph (1) letter b of the Corruption Eradication Law do not provide adequate legal certainty regarding the imposition of restitution in the perspective of state financial recovery. It is therefore recommended that a reformation of legal provisions, especially those pertaining to the imposition of restitution, is initiated with a view to clarifying the limits of the perpetrator's responsibility and thereby enhancing the effectiveness of state financial recovery in cases of corruption offences.

Keyword: Substitute Money Charges, Corruption Cases, State Financial Recovery

Abstrak: Tindak pidana korupsi merupakan tanggung jawab pelaku, sedangkan negara hanya bertanggung jawab mengeksekusi tanpa menanggung kekurangannya, sehingga kerugian tidak dapat dikembalikan sepenuhnya. Oleh karena itu, perlu dijelaskan lebih lanjut tentang Pasal 18 ayat (1) huruf b UU Tipikor terkait pengenaan restitusi. Penelitian ini bertujuan untuk mengkaji mekanisme pengembalian kerugian keuangan negara, meliputi batasan-batasan pengembalian kerugian yang tidak dinikmati oleh pelaku tindak pidana korupsi dan konstruksi hukum restitusi dalam perkara korupsi dari perspektif pengembalian keuangan negara. Metode penelitian yang digunakan adalah metode penelitian normatif melalui pendekatan perundang-undangan dan pendekatan analitis. Hasil penelitian menunjukkan bahwa mekanisme pengembalian kerugian negara akibat tindak pidana korupsi masih menghadapi kendala. Ketentuan Pasal 18 ayat (1) huruf b UU Tipikor belum memberikan

kepastian hukum yang memadai terkait pengenaan restitusi dalam perspektif pengembalian keuangan negara. Oleh karena itu, direkomendasikan agar dilakukan pembenahan ketentuan perundang-undangan, khususnya yang berkaitan dengan pengenaan restitusi, dengan tujuan untuk memperjelas batasan tanggung jawab pelaku tindak pidana korupsi dan dengan demikian meningkatkan efektivitas pemulihan keuangan negara dalam kasus tindak pidana korupsi.

Kata Kunci: Dakwaan Uang Pengganti, Kasus Tindak Pidana Korupsi, Pemulihan Keuangan Negara

INTRODUCTION

The term 'state finances' is understood to encompass all assets held by the state in various forms, both separated and non-separated. This includes all constituent parts of these assets, in addition to the associated rights and obligations. It has been demonstrated that all objects which should belong to the state – especially state assets which can be valued in money or goods – are capable of experiencing deterioration, depreciation, reduction, or loss of state money due to certain conditions. Such actions have the potential to adversely impact state finances, a phenomenon that includes illegal activities such as corruption.

The pervasive nature of corruption has been demonstrated to inflict considerable financial losses on the state, whilst concomitantly infringing upon the broader social and economic rights of the public. Consequently, it should be regarded as an extraordinary crime requiring comprehensive and rigorous countermeasures. In Indonesia, corruption has become deeply entrenched, akin to a virus infecting the entire governmental system.

In the context of an assessment of corruption offences, the primary elements to be considered are state losses or the state economy. In addition to its function as a law enforcement instrument, the Corruption Eradication Law also seeks to uphold social and economic justice by ensuring that state losses incurred can be recovered within a reasonable timeframe. As elucidated by Syaiful Bakhri, while the prevention of corruption necessitates extraordinary measures, the legal process remains the primary guiding factor at each stage.

The present study aims to undertake a comprehensive examination of the legal mechanisms available for the recovery of state financial losses arising from acts of corruption. In particular, it seeks to explore the inherent limitations faced in recovering financial losses that were not directly enjoyed or appropriated by the perpetrators of corruption offences. Furthermore, this research endeavours to analyse the legal construction and application of restitution within the context of corruption cases, with a particular emphasis on its role in facilitating the restoration of state assets and safeguarding the integrity of public finances

METHOD

This study employs a normative legal research methodology, which is concerned with the systematic analysis of legal norms, principles, and rules as articulated in statutory provisions and judicial decisions, with the objective of ascertaining what the law ought to be. The research is conducted through a statutory approach, which entails the interpretation and examination of legislation enacted by competent legislative authorities, and an analytical approach, which involves critical evaluation of the internal coherence, consistency, and normative implications of legal rules through structured reasoning.

RESULT AND DISCUSSION

The Mechanism for Recovering State Financial Losses Including The Limitations in Recovering Losses That Are Not Enjoyed By The Perpetrators of Corruption Crimes

The statutory backbone of Indonesia's asset-recovery regime is Article 18 (1)(b) of Law No. 31/1999 on the Eradication of Criminal Acts of Corruption, as amended by Law No. 20/2001. It authorises courts to order a convicted person to "pay substitute money equal to the assets obtained from the crime within one month after the judgment becomes final; failing payment, the assets are confiscated and, if still insufficient, replaced by subsidiary imprisonment." The rule places the burden of restitution squarely on the offender and at least on paper allows the treasury to be made whole even when physical assets have been dissipated. In 2014 the Supreme Court issued Regulation (Perma) No. 5/2014 to harmonise sentencing practice: judges may impose a substitute-money order in any corruption case, but the amount "shall not exceed the value actually enjoyed by the defendant unless joint liability is proven." This textual link between benefit enjoyed and sum payable has become the pivotal doctrinal constraint in Indonesia's search for full financial redress.

From the first investigative steps, recovery is designed as a five-stage pipeline: (i) asset tracing, (ii) audit-based loss valuation, (iii) prosecutorial pleading, (iv) sentencing, and (v) execution. Investigation teams of the Corruption Eradication Commission (KPK), police, and prosecutors employ "follow-the-money" methods to reconstruct flows of value; however, field research shows that tracing is often limited to bank accounts and titled property already linked to the suspect, while complex webs of third-party transfers remain uncharted. When the Audit Board (BPK) certifies the monetary loss, it does so at the macro level frequently aggregating mark-ups, fictitious deliveries, and unnecessary expenditures. Because those totals are rarely broken down to the fraction appropriated by each conspirator, a valuation gap emerges between what the State lost and what the prosecution can demonstrate the defendant personally took.

Once the dossier is complete, the public prosecutor must plead two figures: the certified loss and the amount enjoyed (nilai yang dinikmati). Courts routinely refuse to impose a substitute-money order that exceeds the latter, arguing that ordering repayment of sums never enjoyed would contravene both Article 18 and Perma 5/2014. The problem is well illustrated in Sujono et al.'s survey of 100 KPK verdicts (2007-2011): although the certified loss exceeded IDR 2.8 trillion, only 25.6 % was covered by substitute-money orders because judges insisted on proof of personal enrichment. Subsequent studies confirm that this pattern has persisted: Setiawan found that in 2024 only one in three corruption cases involving proven state losses resulted in any substitute-money sanction, and the median order equalled a mere 41 % of the loss proven at trial.

The benefit-enjoyed doctrine creates acute difficulties in procurement-overpricing schemes or budget-mark-up conspiracies in which inflated payments are spread across vendors, brokers, or political patrons. Because those third parties are often indicted in separate dockets or not indicted at all the trial court sitting over the principal defendant lacks jurisdictional reach over the missing funds. Empirical mapping by Gunakaya and Januarsyah shows that, between 2015 and 2019, mark-up cases accounted for 38 % of total certified losses, yet delivered barely 12 % of recovered value through substitute-money enforcement. The gap reflects a structural failure: the legal fiction that the quantum of loss should mirror the quantum of personal gain.

Even when judges do order substitute money, execution falters. The convict is given 30 days to pay; if she defaults, the prosecution lists, seizes, and auctions assets. Where auction proceeds remain inadequate, subsidiary imprisonment capped at one-third of the main custodial sentence substitutes for the unpaid balance. Because the extra prison term is often lighter than the loss to be repaid, many convicts elect jail time over payment, a perverse

incentive already flagged by Supardi's analysis of third-party confiscation obstacles. The Attorney General's Office has experimented with civil-law recovery registering the judgment debt as a state receivable and filing bankruptcy petitions but results remain marginal. A 2023 AGO press release reported IDR 74 trillion saved for the treasury, yet acknowledged that most figures reflected prevented losses, not actual collection of substitute money.

Public-interest groups echo the enforcement crisis. Indonesia Corruption Watch (ICW) calculated that, of roughly IDR 83 trillion in substitute-money claims filed by prosecutors between 2020 and 2023, only a fraction translated into enforceable court orders and an even smaller fraction into payments, with arrears exceeding IDR 18 trillion. The watchdog attributes the deficit to three factors: (a) limited investigative tracing, (b) judicial insistence on individual enrichment, and (c) weak cross-border recovery tools.

International standards point to a broader arsenal. UNCAC Chapter V treats restitution as a fundamental principle and explicitly endorses value-based confiscation, allowing courts to order payment of a sum equivalent to illicit benefit irrespective of the continued existence of specific assets. UNODC commentators emphasise that States may also adopt non-conviction-based forfeiture (NCBF) to pursue assets when criminal conviction is impossible owing to death, fugitive status, or procedural default. Indonesia, however, still lacks an NCBF statute; recovery must piggy-back on criminal conviction or separate civil litigation, both of which demand a higher evidentiary threshold than most tracing dossiers can presently meet.

The joint-and-several liability tool, familiar in many civil-law jurisdictions, is likewise under-utilised. In theory, Article 1(3) of Perma 5/2014 permits collective orders when co-defendants jointly enjoy the proceeds. In practice, judges seldom apply the rule unless each conspirator's enrichment can be quantified; otherwise they apportion liability pro rata, leaving residual loss uncovered. Setiawan's 2024 dataset confirms that less than 10 % of multi-defendant verdicts imposed a collective order for the full loss, despite clear findings that the State's shortfall exceeded individual gains.

Capacity shortfalls further hinder execution. Asset-tracing teams lack seamless, real-time access to land registries, securities depositories, or beneficial-ownership databases; manual requests can take months, by which time nominees have shifted holdings abroad. The UN's Stolen Asset Recovery (StAR) Initiative estimates that developing countries lose USD 20–40 billion annually to corruption, much of it stashed in offshore centres that require complex mutual-legal-assistance (MLA) proceedings to penetrate. Indonesia's MLA network remains thin; only a handful of requests have resulted in actual repatriation since 2018, and none have been linked to substitute-money judgments.

Another practical choke-point is asset valuation. Audit reports frequently use aggregate or indicative figures, whereas courts demand precise loss attribution. When valuation methodologies differ e.g., the replacement-cost model used by BPK versus the market-value model urged by the defence judges often default to the lower figure to avoid reversible error, further eroding the restitution base. Comparative analysis by Rahman shows that Saudi courts, which rely on pecuniary-advantage metrics rather than state-loss metrics, recover a higher percentage of illegal gains despite similar evidentiary constraints.

Taken together, these bottlenecks explain why Indonesia's substitute-money mechanism, although conceptually sound, under-delivers in scenarios where (a) the loss was channelled through intermediaries, (b) the defendant's benefit is smaller than the certified loss, or (c) the convict's declared estate is insufficient for execution. In such cases, the benefit-enjoyed doctrine interacts with limited tracing capacity and lenient subsidiary imprisonment to leave a persistent stock of unrecovered public funds.

Yet the pathway to improvement is visible. Scholars and practitioners converge on three near-term correctives: (1) decouple the restitution ceiling from the amount enjoyed by

allowing courts to peg orders to the certified loss, offset by ability-to-pay discounts at the execution stage; (2) codify joint-and-several liability so that any co-conspirator, or even third-party beneficiary, can be pursued for the entire shortfall; and (3) introduce NCBF procedures to confiscate assets civilly where criminal conviction or individual enrichment proof is lacking, in line with UNCAC art. 54(1)(c). Each reform would narrow the gap between the State's certified loss and the amount practically recovered turning substitute-money orders from a symbolic penalty into a robust fiscal remedy.

The Legal Construction of Restitution in Corruption Cases from The Perspective of Restoring State Finances

The constitutional duty of the Indonesian state to safeguard public assets flows from Articles 23 and 33 of the 1945 Constitution, which require transparent management of state finances in pursuit of the public welfare. Corruption undermines that duty; consequently, the Corruption Eradication Law treats financial restitution not as an optional add-on, but as a core objective of criminal justice. Article 18 (1)(b) empowers the court to impose a substitute-money order equal to "the assets obtained from the crime" and authorises confiscation or subsidiary imprisonment if the order is not paid within 30 days. Perma No. 5/2014 refines that mandate by directing judges to quantify the order strictly on the basis of benefit actually enjoyed unless joint liability is proven thereby embedding a restitution model that is benefit-based rather than loss-based.

Doctrinal commentary highlights two opposing constructions. Cahyani & Salmah argue that the statute embodies a restitutio in the integrum principle, so that courts should feel free to order payment up to the certified state loss whenever direct confiscation is impossible. Conversely, Damanik contends that restitution is limited to enrichment alone and must never exceed what the defendant personally appropriated, because enlarging liability would violate the legality principle and due-process guarantees. Empirically, trial panels tend to follow the restrictive view, which, according to a 2024 justice-value study, leaves a "wide disparity between audited state losses and amounts ultimately ordered".

From a public-finance angle, the restitution device sits at the intersection of criminal and civil law. Once the substitute-money order is final, it is entered as a state receivable; if unpaid, prosecutors may seize assets or file bankruptcy petitions, and the liability survives the convict's death as a claim against his estate. The KPK reports that these receivables contributed roughly IDR 2.5 trillion to the treasury in 2020-2024, yet also concedes that unpaid judgments remain substantial because subsidiary imprisonment is often cheaper for convicts than payment in full. Scholars point out that the conversion of unpaid sums into short prison terms dilutes the financial-restoration goal and creates moral hazard.

International norms reinforce the primacy of asset return. UNCAC Chapter V declares that restitution is a fundamental principle and endorses value-based confiscation when direct asset recovery is impracticable, while the UNODC ASEAN factsheet and the StAR Asset Recovery Handbook encourage States to legislate non-conviction-based forfeiture to close evidentiary gaps. The G-20 High-Level Principles go further, urging mechanisms for equivalent-value freezing and seizure, plus cross-border enforcement of foreign value orders. Although Indonesia has ratified UNCAC, it has yet to enact a stand-alone non-conviction-based confiscation statute, leaving criminal conviction (and proof of personal benefit) as the sole gateway to restitution.

Comparative jurisprudence illustrates alternative constructions. Under 18 U.S.C. §3664, American courts may impose restitution for the full victim loss and even declare co-defendants jointly and severally liable, shifting recovery risk away from the state. Recent UN-COSP expert meetings likewise recommend explicit joint-liability clauses and burden-shifting presumptions to accelerate value-based recovery. Indonesian judges occasionally

invoke joint liability, but only after auditors disaggregate each conspirator's enrichment an evidentiary hurdle that often proves insurmountable.

Doctrinal analysts propose recalibrating the legal construction along three axes. First, redefine substitute-money as loss-based rather than benefit-based, allowing orders up to the audited shortfall with an ability-to-pay inquiry reserved for execution phases. Second, codify joint and several liability so that any conspirator or even a third-party beneficiary can satisfy the full amount, enabling the treasury to target the deepest pocket first. Third, introduce a civil-forfeiture track that does not depend on criminal conviction, in line with UNCAC art. 54(1)(c) and G-20 Principle I, thereby overcoming cases where assets are held abroad or the offender has absconded.

The construction must integrate asset-management safeguards to preserve value after recovery. The KPK now channels many seized assets to ministries and local governments via penetapan status penggunaan (PSP), a step applauded as fiscally prudent. Yet legal academics warn that without a single treasury-managed recovery fund akin to those recommended in the StAR Handbook Indonesia risks fragmented accounting and reduced public trust. Aligning restitution law with transparent asset-disposal protocols will therefore be essential to fulfilling the constitutional promise of restoring state finances.

A crucial down-stream element in Indonesia's restitution chain is the administrative disposition of assets that have been confiscated or surrendered in lieu of substitute-money debts. Under Minister of Finance Regulation PMK 145/PMK.06/2021 the Directorate-General of State Assets (DJKN) must decide, within 30 days of transfer, whether the property will be auctioned, handed over for public use (penetapan status penggunaan), or otherwise written off to avoid depreciation. The DJKN guidance emphasises transparency ("3 T": tertib hukum, tertib administrasi, tertib fisik) and requires every rupiah realised at auction to be credited to the State Treasury, thereby closing the fiscal loop between court order and actual cash inflow.

To professionalise this post-judgment stewardship, the Office of the Attorney-General inaugurated the Badan Pemulihan Aset (BPA) in February 2024. The BPA, headed by a career prosecutor and supported by forensic accountants, now acts as the central authority for tracing, freezing, managing, and liquidating criminal assets including enforcing outstanding substitute-money orders. Its creation signals a doctrinal move from ad-hoc prosecutorial collection to a specialised, portfolio-management model of restitution.

On the legislative front, the Asset-Forfeiture Bill (RUU Perampasan Aset) publicly endorsed by the President in May 2025 would transplant value-based confiscation into a stand-alone statute. Draft Article 27 empowers courts to order forfeiture "up to the full certified state loss, irrespective of the quantum personally enjoyed," and makes every conspirator jointly and severally liable; it also introduces non-conviction-based forfeiture for fugitives or deceased suspects. If enacted, the Bill would resolve the present benefit-vs-loss dilemma and align Indonesian practice with UNCAC art. 54(1)(c).

Effective restitution nevertheless hinges on financial intelligence integration. The Indonesian FIU (PPATK) reports that enhanced real-time data-matching between tax, customs, and land registries rolled out in its 2023–2024 work-plan is intended to accelerate asset tracking and support larger substitute-money claims in corruption cases. Without such intelligence feeds, prosecutors cannot populate BPA's recovery pipeline or satisfy the evidentiary thresholds for joint-liability orders.

Finally, cross-border recovery remains the toughest frontier. A 2023 comparative study of the Indonesia–Switzerland Mutual Legal Assistance Treaty shows that, despite the treaty's enactment in Law 5/2020, only limited funds have been repatriated because Swiss courts require parallel value-based confiscation orders that Indonesian judges rarely issue under the current Article 18 construction. The study concludes that adopting loss-based

substitute-money orders and empowering BPA to file civil forfeiture actions abroad would dramatically improve Indonesia's leverage in MLA negotiations and thereby fulfil the constitutional mandate to restore state finances.

CONCLUSION

Indonesia already possesses a full procedural chain for returning public funds lost to corruption—from "follow-the-money" investigation, audit-based valuation, substitute-money sentencing, to post-judgment execution. In practice, however, the process recovers only a fraction of certified losses. The principal doctrinal obstacle is the benefit-enjoyed ceiling in Article 18 and Perma 5/2014, which limits restitution to the quantum personally pocketed by each defendant; whenever illicit proceeds are scattered through vendors, brokers, or foreign accounts, large gaps arise between audited loss and amounts ordered. Operational bottlenecks compound the problem: asset tracing remains fragmented, subsidiary imprisonment is cheaper than payment, and administrative disposal of recovered property is slow, so that fiscal restitution rarely matches the State's paper receivables.

To transform restitution into a genuine fiscal remedy, Indonesia should amend Article 18 so that substitute-money orders are loss-based and—where appropriate—joint and several across all conspirators. Enact the Asset-Forfeiture Bill to introduce non-conviction-based, value-based confiscation, thus aligning domestic law with UNCAC art. 54(1)(c). Empower the newly formed Badan Pemulihan Aset to serve as a single, intelligence-rich hub for tracing, seizing, liquidating, and repatriating assets, with seamless data feeds from DJKN, PPATK, and international partners. Embed transparent, performance-tracked management of confiscated property so that every rupiah realised is swiftly credited to the Treasury. Together, these measures would close the gap between judicial ambition and fiscal reality, fulfilling the constitutional mandate to restore state finances harmed by corruption.

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