Overuse Of The Country In An Effort To Execute The CompesationLaw On Corruption

H. ADLY, SH., MH.

Abstract— Money has become a substitute for the most frightening specter for the criminals who have been senctenced by a criminal court is not corruption, variety of methods are used by the criminals in order to avoid payment of compensation which has been established by court decisions and one of the safest ways according to the corrupt is to replace it with an extra serving as a substitute when not have enough wealth, or by making arrangements with the executor / prosecutor, with a promise to repay the payment of compensation, and if it does not fulfill the agreements, then it is considered as a civil agreement between the criminals with state / prosecutor. And if successful wear these efforts, by the corrupt considered legal action will be done through a civil suit to the court which will take a long time, great expense or by the State / Attorney will spend an extra 2 (two) times, giving rise to the expense budget waste state. Though Money Substitutes are clearly in the realm of criminal law in a court decision that corruption should no longer required to carry out a legal action execution.

.

Keyword : Indonesia, Overase, Execute, CompesationLaw, Corruption

1 INTRODUCTION

The words "Corruption" is no stranger to the people of Indonesia both parents, adults and children, men and women. Corruption has become arguably the hereditary disease which until now has not found the most potent drug to stop it. Or maybe just the cure has been found but the fact that drugs are found is not able to stop the corruption disease itself, so it continues to grow until the present time, even to the endemic villages, this can be seen by the fact that there are village head or village secretary who is on trial in the Corruption Court for allegedly committing corruption.

Corruption, according to Law No. 31 Year 1999 on Eradication of Corruption mentions as a kind of offenses are very detrimental to the state finances or economy of the state and hamper national development. [1]

.

In Act No. 20 of 2001 on the Amendment of Act No. 31 of 1999, not mentioned Corruption Corruption has been widespread, not only financial harm the country, but also has been a violation of the rights of social and economic widely, so that corruption needs to be classified as a crime that eradication should be done in an extraordinary way. [2]

While corruption itself can mean all sorts, which can be seen Eksiklopedia Understanding Corruption in Indonesia called "Corruption" (from the Latin: corruptio = bribery; corruptore = damage) symptoms where officials, state agencies abuse their authority with the occurrence of bribery, forgery and other irregularities.

The literal meaning of corruption can be:

a) crime, decay, can be bribed, immoral immorality, and dishonesty (S. Wojowasito-WJS Poerwadarminta, English-Indonesian Dictionary, Iindonesia-English, Publisher: Hasta, Bandung)

b) bad acts such as embezzlement, receiving bribes, and so on. (WJS Poerwadarminta, General Dictionary Indonesian, Publisher: Balai Pustaka, 1976).

c) 1. Corrupt (rotten; prefer to receive cash bribes / kickbacks; taking power for its own sake, and so on);

2. Corruption (such foul deeds embezzlement, receiving bribes, and so on);

3. Corrupt (the corrupt).(Muhammad Ali, Modern Indonesian Dictionary, Bibliography Publisher Amani, Jakarta). [3]

Corruption not only hinder the country's development process toward a better, namely to increase the people's welfare and poverty alleviation. The powerlessness of the strong man before the law, plus the lack of commitment of the governing elite into the causes of why corruption still thrives in Indonesia, because the law is not the same as justice, the law came from the ruler of the human brain, whereas justice comes from the hearts of the people. [4]

[1]Considerations weigh a letter, Law No.31 of 1999 on Eradication of Corruption, Library Mahardika, p.52.

[2]Preamble of Act No.20 of 2001 on the Amendment of the Law No.31 of 1999 on Eradication of Corruption.

[3]Evi Hartanti, *Corruption*, *Graphic Rays*, Jakarta, 2005, p.8.

[4]See Amin Rahayu, *History of Corruption in Indonesia*, 2005.

Various attempts have been made to eradicate corruption, but the result is still far from expectations. People realize it is an effort to eradicate corruption is not as easy as turning the palm of the hand. Many ways have been done by the government of Indonesia, even the anti-corruption efforts have done much since the independence of the Republic of Indonesia.

There are two (2) provisions of legislation that specifically regulates the corruption generated in the period from 1960 to 1998, namely:

1. The Law No. 24/Prp/1960 on Investigation, Prosecution and Investigation of Corruption;

2. Law No. 3 of 1971 on Eradication of Corruption. In addition to the legislation, to combat corruption have also been issued TAP MPR No. XI/MPR/1998 on State Implementation The Clean and Free from Corruption, Collusion and Nepotism. Given the MPR, the mandate has been given by the state to the state offiials to eradicate corruption.

And since the decree of the Assembly, House of Representatives (DPR) has set Act eradication of corruption, and legal institutions to judge that:

1. The Law No. 31 Year 1999 on Eradication of Corruption;

2. Act No. 20 of 2001 on Amendment of Law Number 31 Year 1999 on Eradication of Corruption.

3. Law No. 46 Year 2009 on the Corruption Court. As an addition to the defendant in a criminal corruption case sentenced to pay money in lieu of.
Determination of payment of money in lieu of a refund form state losses caused by acts of corruption committed by the defendant.

But until now loading money as a substitute for a criminal defendant in addition to imprisonment not in accordance with what is expected and coveted by the makers of the Act No. 31 Year 1999 on Eradication of Corruption, as amended by Act No. 20 of 2001 on Amendment Act No. 31 of 1999 on Eradication of Corruption. Substitute discussion about money is never completely covered up to this present moment. Even worsened by the presence of the efforts made by the Attorney as a party to carry out the execution (executor) to file a civil lawsuittocourt.
That legal theory has been defined as follows: "The theory of law is an interrelated whole statement with respect to the conceptual system of legal rules and legal decisions, and the system for the most important in positifkan". [5]

From the above definition that the term Theory of Law has a double meaning, namely: legal theory in the broad sense and legal theory in the narrow sense.

Legal Theory shows that in a broad sense consists of any part is a difficult problem, because each division its own authors propose using definitions-definitions accordingly. What the authors of the so-called Theory of Law, on the other authors can be called Legal Studies. Philosophy of Law at the writers who are outside the Law, but to be in Legal Theory, in others it is beyond both. [6]

Therefore, in the writing of this paper will be discussed further on the Execution of Money Substitutes.

B.Problem Formulation.

1. Was doing Civil Lawsuit to Court to convict charged to pay money in lieu of the corruption as a remedy peculation?

CHAPTER II
DISCUSSION

To run the judicial power in the Republic of Indonesia has been set as the provisions of Article 24 paragraph (1), paragraph (2) and paragraph (3) of the Act of 1945, states:

Paragraph (1) The judicial power is the power of freedom to organize judiciary to uphold law and justice.

Paragraph (2) The judicial power exercised by a Supreme Court and judicial bodies that are below the public courts, religious courts, military courts, administrative courts, and by a Constitutional Court.

Paragraph (3) Other agencies whose functions relate to the judicial power is set by law.

Setting the Supreme Court as a principal judicial power in Indonesia can be seen in the provisions of Article 1 paragraph 2 of Law of the Republic of Indonesia Number 48 of 2009 on the judicial power, which determines: "The Supreme Court is the perpetrator of judicial power as defined in the Constitution of the Republic of Indonesia Year 1945 ".

While the General Court which is intended ketentukan court specified in Article 1 paragraph 1 of Law of the Republic of Indonesia Number 49 of 2009 concerning the second amendment of Law No. 2 of 1986 on public courts that specifies:

"Courts are courts and high courts in the general court ".

Court in Indonesia is the general court

[5]Mr.JJ. H. Bruggink, Arief B. Sidhartha interpreter, *Reflection on Basic Notions of Law in Legal Theory*, PT. Citra Aditya Bakti, Bandung, 2011, pg.160.

[6]*Ibid*

whose existence is subject to the provisions of Law No. 46 Year 2009 on the Corruption Court.

Corruption Court as an institution established specifically to prosecute corruption cases is an institution that society as a most appropriate institution to adjudicate matters of corruption.

From the history of the formation corruption court can not be separated from the implications konstusi Court Decision No. 012-016-019/PPU-IV/2006 states:

Article 53 of the Law of the Republic of Indonesia Number 30 Year 2002 on Corruption Eradication Commission (KPK) (official gazette of the Republic of Indonesia Year 2002 Number 137, Supplement to State Gazette of the Republic of Indonesia Number 4250) contrary to the Constitution of the Republic of Indonesia Year 1945; To declare that Article 53 of Law No. 30 Year 2002 on Corruption Eradication Commission (Indonesian republic sheet of 2002 No. 137, Supplement to State Gazette of the Republic of Indonesia Number 4250) continue to have binding legal force until the amendment no later than three (3) years from the This verdict is pronounced. [7]

On October 30, 2009 the government of the Republic of Indonesia has enacted Law No. 46 Year 2009 on the Corruption Court (official gazette of the Republic of Indonesia Year 2009 Number 155, Supplement to State Gazette of the Republic of Indonesia Number 5074), means ± 1 (one) month prior to the expiration of the time limit specified in the decision of the Constitutional Court, so that the existence of Law Number 46 Year 2009 on the Corruption Court declared valid and enforceable.

To achieve the goal of better and more effective in order to prevent and combat corruption, the law No. 31 of 1999 on Corruption Eradication contains criminal provisions that differ from legislation governing the issue of corruption earlier (Act No. 3 of 1971), namely:

2. Higher criminal penalties;

3. Threat of capital punishment is a criminal weighting. [8]

Formulation of criminal threats in the statutory provisions governing the eradication of corruption, namely Law No. 31 Year 1999 on Eradication of Corruption and Law No. 20 of 2001 on the Amendment of the Law No. 31 Year 1999 on Eradication Corruption adopts the maximum and minimum punishment special (mixed system). [9]

Besides equipped with the principal penalty of imprisonment and fines with specific minimum and maximum, Law No. 31 of 1999 is also equipped with an additional punishment as stipulated in Article 17 and Article 18 of Law No. 31 Year 1999 on Eradication of Corruption, as amended by Act No. 20 of 2001 on the Amendment of the Law No. 31 Year 1999 on Eradication of Corruption which states that in addition to the principal defendant sentenced in a corruption case sentenced to an additional, one form is the payment of compensation.

[7]Ermansjah Djaja, *redesign the Corruption Court, Constitutional Court Decision No. implications 012-016-019/PPU-IV/2006, Graphic Rays*, Jakarta, 2010, hlm.479

1. Determine the minimum penalty of special;

[8]General Explanation of the Law No.31 of 1999 on Eradication of Corruption.

[9]See, Guse Prayudi, *Criminal Payments in Lieu*, a review of the provisions of Article 18, item 1, letter b of Law No.31 of 1999.

A. Money Substitutes In Corruption Case.

Replacement Housing Payment is a consequence of the result of corruption that could harm the state finances or economy of the state, so in an effort to restore the loss of the country required that the juridical means in the form of payment of compensation.

While Finance is a general description of the state in the Law No. 31 Year 1999 on Eradication of State Finance is mentioned throughout the nation's wealth in any form is separated or not separated which includes all parts of the country's wealth and all rights and obligations arise because:

a. located in the control, management, and accountability of state agency officials, both at the central and regional levels;
b. located in the control, management, and accountability of State-Owned Enterprises / provincial enterprises, foundations, and corporate legal entity that includes the state capital, or capital of the company which includes a third party under an agreement with the state. [10]

While the definition of the economic life of the country's economy is developed as a joint effort by the principle of kinship or community businesses independently based on government policy, both at the central and areas in accordance with the provisions of the applicable legislation aimed at providing benefits, prosperity, and welfare of the whole life of the people. [11]

Substitute money is a form of punishment (criminal) additional in corruption cases, In essence, either in law or doctrine, the judge is not obliged always to impose additional criminal. However, especially for cases of corruption it is very necessary to be a concern, because corruption is an act that is contrary to the law of adverse or detrimental to the financial state, so the loss of the country to be restored. And one of the ways that can be used to recover the loss of the state is to punish the defendant legally and convincingly proven guilty of corruption has to return to the country of corruption results in the form of money substitute. So that money is simply a substitute for additional criminal, but it is very wise to let the defendant does not pay compensation as a way to recover losses to the state.

For the defendant corruption cases that have been proven legally and convincingly guilty of committing corruption and has been sentenced to be freed from the obligation to pay compensation if the compensation has been dikonpensasikan the defendant property is declared confiscated to the state or the defendant did not take advantage of the money, or have no other defendant sentenced to pay the replacement, or loss of state can still be billed from other parties.

[10] R.Wiyono, *discussion Corruption Eradication Law*, Second Edition, Graphic Rays, Jakarta, 2009, p.41.
[11] Ibid.

fendant or by enriching the defendant or any other person or corporation, or because certain causality, so that the defendant is responsible for all losses of the country.

As the legal basis of the determination of the compensation payments can take a look at the contents of the provisions of Article 17 and Article 18 paragraph (1) letter b, subsection (2 and paragraph (3) of the Constitution of the Republic of Indonesia Number 31 Year 1999 on Eradication of Corruption as amended and supplemented by Law No. 20 of 2001 on the Amendment of the Law No. 31 Year 1999 on Eradication of Corruption, which determines Article 17:

"It can be sentenced to punishment as provided in Article 2, Article 3, Article 5 to Article 14, the defendant can be sentenced to an additional as referred to in Article 18".

While the provisions of Article 18 determines, subsection (1) In addition to the additional criminal Kitap as defined in the Criminal Justice Act, the Criminal addition is:

a. forfeiture of goods moving tangible or intangible or immovable property used for or derived from acts of corruption, including company-owned convict where corruption is done, so is the price of goods that replace these items;
b. Replacement payment amount equal to as much as property derived from criminal acts of corruption;
c. Closure of all or part of the company for a period of 1 (one) year;
d. Repeal all or part of certain rights or removal of all or part of certain advantages, which have been or may be provided by the government to convict.

Paragraph (2) If the convicted person does not pay the compensation referred to in paragraph (1) letter b in 1 (one) month after the court decision binding, then his property may be seized by prosecutors and auctioned to cover the money the replacement. Paragraph (3) In the case of the convicted person does not have enough wealth to pay the compensation as referred to in paragraph (1) letter b, then it shall be imprisoned for the duration does not exceed the maximum threat of criminal substantially in accordance with the provisions of this law and The length specified in the criminal court judgment.

In Article 18 paragraph (1) letter b of Law No. 31 Year 1999 on Eradication of Corruption as amended and supplemented by Law No. 20 of 2001 on Amendment of Law Number 31 Year 1999 on Eradication of Corruption has put special emphasis on how much money can be charged to substitute the defendant as much the same as property derived from corruption. Where legally this should mean a loss that can be charged to the defendant is that the magnitude of the loss state clearly and definitely in number as a result of an unlawful act that has been proven legally and convincingly performed by

the defendant or as a result of the defendant.

Supreme Court as a principal judicial power as contemplated in the Constitution of the Republic of Indonesia Year 1945 shall be held judicial useful to enforce the law and justice based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, for the implementation of the State Law of the Republic of Indonesia.

There are several theories that we can pedomani that verdict be not in vain (illusioner) and so can be implemented:

> Strength executorial a judge's decision must be a benchmark of legal problems in the execution of the restitution money. For that there are several decision-making theory is very relevant to the task of the judge in making a decision in court. In the general theory of decision-making in the criminal case are based on the theory of decision-making that includes descriptive theory of probability, algebra theory, and the theory of story models (cognitive).
>
> Probability theory in decision making criminal case based on Bayesian probability theory. The basic assumption of the Bayesian theory is a basic dimension of thinking, which states that making the decision is subjective probabilities. This means that all information relevant to decision-making will be conceptualized by an individual as a force belief (subjective probability). [12]

The views Hastie (in Rahayu, 2005) as cited M.Syamsudin, the stages in the process of subjective probability is as follows:

First, the judge must have a probability, that is the initial degree of confidence in the case at hand. The initial probability can be seen from the size of the mental. Initial probability beliefs are formed by observation will judge the work of police, prosecutors, and advocates as well as individual attitudes toward criminal justice or law.

Second, after the judge has initial probability, the next task of the judge is to identify and understand the information one by one. Information that will update his belief level. Bayesian probability theory does not discuss the evidence which can renew confidence level.

Third, when the evidence is identified, the judge began the process of updating probabilities. Initial probability will be combined with new evidence to update the belief (degrees guilt of the accused) will be considered. The new probabilities with new evidence indicated by changes in the value of mental measures. If there is new evidence, the update process will be further back so that the probability will change with probability hereinafter. The process will continue until there is no new evidence, and the judge was asked to take a decision. If judges are required to take a decision, the judge entered the final stage probability comparing with punishing criteria. [13]

The latter is a usability evaluation phase of the decision that was made a judge. Usability evaluation includes consideration of possible error cost of every decision. Although the subjective probability to punish concluded, the judge can acquit the defendant because it has a high cost of error considerations punish (ie punishing the innocent). [14]

Bayesian probability theory can also be applied by the judge in making a decision on additional punishment in the form of compensation, where the imposition of the compensation required the presence of a real and definite loss, therefore the amount of losses that will be borne by the defendant must be real and definite and who caused the loss, so that the defendant would only be punished for the actions he did that could cause financial loss state or country's economy, it is to avoid resistance-resistance or other attempts at this stage of the execution of the compensation charged to the defendant not arise in the future or memjadi legal issues again at the time of execution.

[12] M.Syamsudin, *Culture-Based Progressive Law Judges Law, the Golden Prenada Media Group*, Jakarta, 2012, hal.88.

Handling criminal cases in the courts, especially the case in the court of corruption always begins with induction reasoning steps, where the legal conclusion of the general to

the particular, it is seen from the first step in the examination of the trial with the formulation of the legal facts. With the formulation of the move "the trial court judge is judex facti, the induction step is limited by the rules of evidence". [15]

The judge before sentencing on money substitutes should also consider whether the money will substitute for the sentence imposed has been paid by the defendant at the defendant or not before the verdict was read, as if it has been paid or deposited, then the defendant should not be any punishment 2 (two) times the money that has been paid to the replacement punished again for paying the compensation to the decision to be handed down. Likewise, if already paid by the defendant before judgment pronounced, the body a prison sentence to be imposed is not too high or may be considered, so that if there is an appreciation of the defendant who has been restoring the financial losses that have left the country or currency, with the defendant that not restore the state's financial loss at all, it is as a form of state financial loss recovery effort without having the effort and the way the country will be able to spend money for his execution.

In the statutory provisions concerning corruption itself there is a difference between the Law No. 3 of 1971 by Act No. 31 of 1999 on Eradication of Corruption as amended and supplemented by Law No. 20 of 2001 on the Amendment Law No. 31 Year 1999 on Eradication of Corruption. The difference can be seen where the Law No. 3 of 1971 Money Substitutes not be automatically deposited into the state treasury, but should be preceded by the prosecutor to convict a civil sue. And if not sued the prosecutor just recorded. While in Law No. 31 of 1999 can execute asset Attorney convicted, considering there is a maximum limit of depositing money replacement in 1 (one) month after the verdict and bindi

[15] See, Sukamto Satoto, teaching materials, *Theory of Law*, dated 30 Nov 2013.

B. Execution of Payment of Substitutes in criminal Corruption

To implement the court decision in corruption cases that already have permanent legal force one to khususan in Combating Corruption. If the court had ruled on the payment of compensation, the convict was given a grace period of 1 (one) month after the final and binding court decision to pay / repay. If the specified time has expired, then the state attorney as executor may seize and auction off property of the accused.

Regarding this property is against any property owned by the convict existing and sufficient for paying the compensation has been determined by a court of corruption, may be the property has been seized prior to trial conducted or property of the defendant who has not been implemented penyitaannya , so it does not have the property that had been confiscated before proceeding conducted.

Attorney [16] as executor [17] of the state can not extend the deadline for paying the compensation as criminal penalties provided for in Article 273 paragraph (2) Kitap Law Criminal Law (Criminal Code). Criminal payment of compensation and criminal penalties have different properties it can be seen that the criminal restitution money is an additional criminal fine of a criminal while the principal. Although prosecutors can not extend the grace period for compensation, but given the formulation of the provision contained in Article 18 paragraph (2) uses the phrase "within a period of 1 (one) month", then the prosecutor can still determine the stages of payment of compensation , but on condition that these stages can not exceed the grace period of 1 (one) month. [18]

If within a period of 1 (one) month has passed, but not yet convicted person pay compensation judges who have decided, then follow-up is applicable to the defendant the provisions of Article 18 paragraph (2), namely: If the convicted person does not pay the compensation as referred to in paragraph (1) letter b in 1 (one) month after the court decision binding, then his property may be seized by prosecutors and auctioned to cover the replacement money.

[16] Article 1 item 6 letter a of Law No. 8 of 1981 concerning Kitap Law Criminal Procedure.

[17] Ibid. Article 270.

[18] See R.Wiyono, *Discussion Law on Corruption Eradication*, Second Edition, Jakarta, 2009, p.145.

Of the provisions of Article 18 paragraph (2) of Law No. 31 Year 1999 on Eradication of Corruption as amended and supplemented by Law No. 20 of 2001 on the Amendment of Act No. 31 of 1999 on Eradication of Corruption, then the prosecutor can not file a civil lawsuit to court. Is a step back-

ward and wasteful spending of state money in the handling of corruption cases if prosecutors file a civil lawsuit to court, despite the fact that this is the case also in Jambi District Court.
For example, in a civil case in the proposed number 32/Pdt.G/2013/PN.JBI its civil lawsuit by the State Attorney Bulian Muara Jambi in this case acts as the State Attorney as Party Plaintiff against Rulfaini MS. As Defendants and Siti Hasnawati as Co-defendant, who notabenenya Rulfaini MS. Corruption is convicted while his wife and Siti Hasnawati is the legal basis is the act of filing a lawsuit against the Law, because Rulfaini MS. have been sentenced over corruption court putudsan force of the law and sentenced to pay money in lieu of.

In the process of a civil litigant in state court in this case represented by the State Attorney of the State Attorney Bulian Estuary would cost starting from the cost of registration of Power of Attorney, Registration lawsuit, Sita warranty costs, the cost of legalization of evidence, court costs Local Examination (PS), and transportation from the State Attorney Bulian Muara Jambi City, as well as other costs. [19]

Not able to provide effective law in order to enforce the law itself, because of court decisions in criminal cases of corruption that should be executed fact filed a civil lawsuit by the state prosecutor as executor of the (state) law so desirable / aspired (das sollen) different with reality (das Sein), in which the law is supposed to be able to play the role, because "the law is the law of dialectics desirable outcome (das sollen) with a legal reality (das sein)". [20]

Das sollen is everything that requires us to think and act, das sollen are rules and norms and normative reality as to what should be done. While Das Sein is everything that is the implementation of all the things that happened governed by Das sollen, so it can be understood that das sein is a concrete event that occurred. [21]

Where should the executor as the Attorney representing the state did not file a civil suit to court over the decision in the case of corruption, but can carry out the execution directly to the inmate, so the law was aspired (das sollen) can correspond to reality (das sein).

With the civil suit filed by the prosecutor as executor representing the country to meet the additional punishment in the form of payment of compensation to convict corrupt, then what is aspired by the Law No. 31 Year 1999 on Eradication of Corruption as it has been added and amended by Act No. 20 of 2001 on Amendment of Law Number 31 Year 1999 on Eradication of Corruption encountered a step back and there has been a waste of state money to fund the lawsuit in court, so it is not in accordance with the spirit of what is in aspired by the law on the eradication of Corruption Act itself, particularly Article 18 paragraph (1) letter b, subsection (2) and paragraph (3).

[19] See: Civil Lawsuit Number 32/Pdt.G/2013/PN.JBI.
[20] Andre Ata Uja, Defending Justice Building Law Philosophy of Law, Yogyakarta, 2009, p.46..
[21] Website http://www. das das sollen and sein.com., accessed on 2 December 2013.

the State Attorney (executor) that represent the country there has been a heresy to think that deviate from the decision that has been legally binding persists in corruption cases, where the decision should be immediately carried out his execution, without filing a law-

[19] See: Civil Lawsuit Number 32/Pdt.G/2013/PN.JBI.

suit civil court.

To avoid error, it is necessary to formulate a special knowledge that the principles should be kept or fulfilled in every thought. The principles that must be satisfied the scientific logic that helped give birth to the logic nature. Scientific logic is a means that can be used to sharpen thinking and reason, with the help of the scientific logic of the human mind will work more precise, easier, more accurate, more complete and more secure. Thus the perversity can be avoided or reduced. [22]

Indonesian Supreme Court has opinionated, execution does not require a money substitute its own lawsuit. Criminal Money Substitute is an integral part of criminal decisions handed down by the judges. Authority to execute any criminal verdict is on the executor as the Attorney representing the state, including criminal restitution money. If the execution of the compensation it will use its own lawsuit against the principle of punishment execution.

Money Substitutes not debt defendant (convicted). There is no civil relationship between the defendant (convicted) that has cost the country so that the country needs to be sued in civil either on the basis of breach of contract or tort. Criminal money is a substitute for the judge's decision that must necessarily be carried out by the prosecutor. Each property can be controlled by the state defendants to pay compensation.

If the attorney as executor (state) difficulty in implementing (execution), then the executor should the prosecutor in the case against property confiscated defendant (convicted) should follow foreclosure procedures set forth in the application execution Fatwa payment of compensation by the Supreme Court of the Republic of Indonesia Number: 37/T4/88/66/Pid dated January 12, 1988, among others:

1. Goods seized convict remaining to be sold by auction to meet the criminal liability for compensation.
2. Foreclosure should be exempted on goods used as a buffer for a living prisoners and their families.
3. Foreclosure foreclosure should avoid the mistakes of the goods do not belong to convict them from happening resistance from a third party.

Confiscation of property belonging to the defendant does not need to first ask permission of the Chairman of the local District Court or after the seizure immediately report to the Chairman of the local District Court for approval, because the foreclosure is done within the framework of the investigation, but in the context of execution of court decisions. [23]

[22] Bahder Johan Nasution and Sri Warjiyati, Indonesian Law, Citra Aditya Bakti, second printing (Revised edition), London, 2001,

[23] See Fatwa Supreme Court No.37/T4/88/66/Pid, tgl.12 January 1988,
Efforts to achieve financial returns state of the convict, the prosecutor can convict and the subsequent confiscation of property shall be auctioned.
Circular of the Attorney General of the Republic of Indonesia Number B-779/F/Fjp/Ft/10/2005 dated October 11, 2005, at the rate 2.4 explicitly states:

In case the verdict against the compensation is based on article

18 of Law No. 31 of 1999, which expressly included in its decision that if the compensation is not paid within one month or within a certain time, in order that his property may be seized by the Attorney for subsequent auction conducted in accordance with applicable law, to cover the payment of compensation.

If terpidananya not have property or his property is not sufficient in order to do the execution of the law judge's ruling body suit, so it does not become a delinquent over executions pay compensation.
In the event that the escape terpidananya assets that have to be done immediately seized auctions in accordance with applicable regulations and auction proceeds deposited into the state to be taken into account as the payment of compensation. [24]

Criminal additional form of payment of compensation is a criminal policy which can not be separated from the broader policy, namely social policy (social policy) that consists of policies to achieve the welfare of society (social walfare) and policies for the protection of society (social defense) therefore criminal for compensation must be withdrawn from convicted of corruption in order to achieve the welfare of the community.

It would not be wise as the executor did Attorney Civil Lawsuit on the basis of the criminal verdict in a criminal act against corruption convict, indeed a very sad reality, who knows how long the civil suit will be able to resolve his case, which if counted by naked eye for civil litigants at the level of court will take up to ± 6 (six) months, if one of the litigants does not receive or simply to gain time to appeal to a higher court that the High Court and Appeal level also will take ± 6 (six) months, and if one or both parties do Cassation, then do not know how much longer length of time to decide civil cases in the Supreme Court of the Republic of Indonesia could be with 1, 2, 3 or 4 Years, or perhaps with an unknown time when it will break, not to mention the efforts of the civil execution, and it is impossible Civil Lawsuit is granted by the Court, because of the litigation in the court's decision would open all opportunities, whether granted? or rejected? Unacceptable or otherwise (Niet Onvankelijke verklaard) or (NO).

Rights of the accused demanded to be killed if the person who demanded death as the provisions of Article 77 of the Criminal Code. And if the corruption cases may be filed a civil action against the heirs of the court (Article 33 and Article 34 of Law No.31 of 1999 on Eradication of corruption in connection with Act No. 20 of 2001). However, if the person is still alive, his possessions there and sufficient, then the position for the payment of compensation by using the civil legal action be covered / veiled.

Law enforcement is always correlated with moral integrity and mental quality of law enforcement for law and justice to the implementation of the law that required continuous control mechanism juridical, institutional and social behavior to the law (legal behavior) law enforcement. To realize the beauty temperament law enforcement intelligence as reflected in the moral, emotional and mental in carrying out the law mandates

[24] See: Attorney General Circular R.I. Number B-779/F/Fjp/Ft/10/2005 dated October 11, 2005.

the achievement of justice and law. This relates also to the ideology that law enforcement option values (axiological preference) that is used by law enforcement in enforcing the law in achieving justice law. [25]

According to Prof. Dr. H. Bagir Manan, SH., MCL.Civil contempt in India not only because it does not execute a court order (order of court). Civil contempt extends to not comply or does not execute court decisions, court decree, court instructions or other process in court, or to deliberately impede the judicial process. [26]

State Attorney should be able to legally justify the measures proposed by the Civil Lawsuit filed in court against a court decision which has gained strength hukun fixed for payment of compensation, why file a civil suit?, Why not carry out the execution of the decision has gained legal force fixed? How legal certainty to decisions that have permanent legal power? why must seek a civil judgment again when it was no decision can be executed? How law attorney look it like? decision not already have permanent legal force it is legal? and many other questions, it is to answer the question in order to avoid straying (fallacy) law.

Perversity in the reasoning could occur because of the misguided it, for some reason, does not seem unreasonable. If someone suggests a misguided reasoning and he himself did not see their error, reasoning that called paralogis. If it is false reasoning deliberately used to mislead others, then this is called sophistry. Reasoning can go astray because the form is not valid (not invalid), it happens because of a violation of the rules of logic. [27]

With a civil action filed in court against the court decision binding (inkracht van gewijsde) in corruption cases is an attempt postscript criminal law, then connected with Legal Theory described by ET Feteris about three layers of a rational legal argument on the third layer: Layer Procedural (procedurele niveau) in the structure, dispute resolution program. The procedure not only set the debate, but the debate also specify the procedure. A dialogue should be based on the rules of the rules that have been defined by the terms of rational procedures and dispute resolution requirements clear. Thus there is a mutual attraction between the layers and layers of procedural dialectic. [28]

[25] See Artidjo Alkostar, Protection of Dignity Judge, Justice Varia, 2006, p.28.

[26] See Bagir Manan, Contempt of Court vs. Freedoom of Press, 336 TahunXXIX Justice Varia November 2013, p.8.

[27] Philip M. Hadjon, Tatiek Sri Djatmiati, Legal argument, Gadjah Mada University Press, Yogyakarta, 2011.

[28] Ibid

T
h
that it can be accepted by the logic and legal arguments, not by creating a new case with a civil legal action, especially against terpidananya there, his possessions there and sufficient.

From a legal perspective, we can see the state administration authority possessed by the State Attorney as Attorney filed a civil action in court is under the authority received under legislation called the authority attribution. It can be seen from the provisions of Article 32 paragraph (1) of Law No. 31 Year 1999

on Eradication of Corruption, as amended by Act No. 20 of 2001 on the Amendment of the Law No. 31 Year 1999 on Eradication of Corruption , specify:

Paragraph (1): In the case investigators discovered and found one or more elements of corruption there is not enough evidence, while there has been a financial loss to the state, the investigator shall submit the results of the investigation case file to the State Attorney to do civil lawsuit or submitted to the agency aggrieved to file a lawsuit.

From these provisions we can see that the State Attorney is authorized to bring a civil action in court if there is not enough evidence to proceed to a prosecution in the criminal courts, so that the State Attorney investigation stage has been given the authority to bring a civil action in court.

Likewise, if there is a suspect who died on stage of an ongoing investigation as the provisions of Article 33 of Law No. 31 Year 1999 on Eradication of Corruption, as amended by Act No. 20 of 2001 on the Amendment of the Law No. 31 Year 1999 on Eradication is decisive:

In the event that the suspect died at the time of the investigation, while there has been a loss of state finances, the investigator shall submit the results of the investigation case file to the prosecutor or the state attorney submitted to the agency carried the injured to the civil suit against the heirs.

And obtained authority for the State Attorney filed a civil suit in court against the defendant at the examination stage of the hearing as specified in Article 34 of Law No. 31 Year 1999 on Eradication of Corruption, as amended by Act No. 20 of 2001 on Amendment to Law No. 31 Year 1999 on Eradication of Corruption, which determines:

In the case of the accused died during examination in court, while there has been a financial loss to the state, the public prosecutor shall submit a copy of the trial dossiers to the State Attorney or submitted to the agency carried the injured to the civil suit against the heirs

While the cases that have been decided by the courts and has obtained permanent legal force (van inkracht gewijsde) State Attorney is not authorized by the Act to file a civil action in court against the defendant or to his heir, so the State Attorney does not have authority to file a civil action in court against the convict or his heirs to decisions that have permanent legal force (van inkracht gewijsde), right effort and right on the point of view of logic and legal arguments made by the prosecutor is supposed to implement a court decision that has gained legally enforceable (inkracht van gewijsde) the execution of processes in which the verdict has been legally binding equipment.

To be respected by the legal community, it is necessary to reform the Law, for the reform of the law should be touching the three components presented by Lawrence Meir Friedman include:

1. Structure of law, in the sense that the legal structure is a legal order that sustains the legal system itself, which consists of the shape of law, legal institutions, legal instruments, and processes as well as their performance.

2. Substance Law, which is the content of the law itself, meaning that the contents of the law needs to be something that aims to create justice and can be applied in the community.

3. Cultural Law, it is associated with the professionalism of law enforcement in their duties, and of course obey the law in the public consciousness itself. [29]

Delegation is defined as the transfer of power (to make "Besluit") by government officials to the other party and the authority is the responsibility of the other party. Which gives / delegated authority called delegans and the receiving authority called delegataris (JBJM ten Berge, p. 89). [30]

The terms of such delegation pointed out that Philip M. Hadjon in law Administration and Corruption Act, stating:

a. Delegates must be definitive, meaning delegans can no longer use its own authority has been delegated it.
b. Delegates must be based on the provisions of the legislation, meaning that the delegation is only possible if there is a provision for it in the legislation.
c. Delegation not to subordinates, meaning that the hierarchical relations personnel are not allowed to the delegates.
d. Obligation to give information (description), meaning delegans authorities to seek clarification on the implementation of the authority.
e. The existence of regulatory policies (beleidsregel) to give instructions (instructions) about the use of that authority. (J.B.J.M. ten Berge, p. 89-90). [31]

and the other two go to hell, who knows the truth and judges deciding cases based on truth, then he go to heaven; judges who know the truth, but decided the case was not based on truth, then he entered the country; judges who do not know the truth, and he decided the case without the truth, then he is going to hell. [34]

Decisions can be executed is the court decision and binding and judgment sentencing the load, as stipulated Kitap Law Criminal Procedure, Article 197 paragraph (1), (2) and (3) that specifies:

Paragraph (1) letter of sentencing verdict includes:

a. Head that reads the verdict reads: "FOR THE SAKE OF JUSTICE UNDER ONE ALMIGHTY GOD";

b. Full name, place of birth, age or date of birth, gender, nationality, place of residence, religion, and occupation of the defendant;
c. The charges, as contained in the indictment;
d. Compiled in brief consideration of the facts and circumstances as well as the tools of evidence obtained from the examination in the trial on which the determination of guilt of the accused;
e. Criminal charges, as contained in the warrant;
f. Article legislation that became the basis of criminal prosecution or action and legislation article is the legal basis of the decision, accompanied by aggravating circumstances and mitigating the defendant;
g. Day and date of the holding of meetings of the judges except the case examined by a single judge; (In the case of a single judge of corruption is not possible);
h. The statement accused the error, the statement has met all of the elements in the formulation of a criminal act accompanied by qualifications and punishment imposed or action;
i. Provisions to whom the court fees charged by mentioning the exact figure and the provision of evidence;
j. Sta[illegible] terfeit or falsity of th[illegible]ere is an authentic le[illegible]
k. A requirement that the defendant be detained or kept in custody or released;
l. Day and date of the judgment, the name of the public prosecutor, the judge's name and the name of the clerk's cut.

Paragraph (2): Non-compliance with the provisions of paragraph (1) letter a, b, c, d, e, f, g, h, i, j, k and l of this Article resulted in the decision null and void.

Paragraph (3): Decision implemented immediately according to the provisions of this law. [35]

[29]Website http://www.com/artikel-2/ *wajah hukum indonesia*, dilihat Desember 2013.
[30] *Ibid*.
[31] *Ibid*.
[32]M.Syamsudin, *Op.Cit*. hal. 208.
[33] *Ibid*.
[34] *Ibid*.

[illegible]ey as
[illegible]ristic
[illegible] formulation of the law, not daring to look for other grounds that more can provide a sense of justice". [32]

The law should always be found, as stated by Paul Scholten, 1942 "Laws that there is a law that is going on ... hence the law must always be found ... people can only be called if he trained jurists in the legal discovery legal ... are destined not only can perfectly embodied in a struggle ... justice must be sought in the law and in the end depend on the decision-conscience mind ". [33]

There are three classes of judges, a group to go to heaven

Under the provisions of Article 197 of Law No. 8 of 1981 on Kitap Law on Criminal Procedure, the decision can be implemented only execution that satisfies the provisions of Article 197 paragraph (1), and if it does not comply with the provisions of Article 197, the decision can not be executed this case the provisions of Article 197 paragraph (2) "that determines the decision null and void.

When a judge's decision meets the requirements of Article 197 Kitap Law on Criminal Procedure, the State Attorney has no authority to file a civil lawsuit to the courts, but efforts should be made by the Attorney is follow the decision that has binding with in the execution of the criminal defendants, including the presence of an additional form of cash instead.

Ideally before a judge before imposing additional punishment in the form of money substitute in corruption cases should be careful and observant considering everything that was revealed at the trial as the law including the fact that the state's interest in the corruption of money that has been returned to the state treasury or county. Consideration of the people who engage in corruption, what is the background of corruption, who's counting the number of state loss, amount of loss is real and definite state alleged the defendant, considering the value of property belonging to the defendant and sufficient for paying the compensation and that the decision handed down can be executed after having permanent legal force (van inkracht gewijsde) and against such decision is no longer legal remedy other than in execution.

[35] Pasal 197 ayat(1), (2) dan (3) Undang-undang Number 8 Years 1981 About *Kitap Undang-undang Hukum Acara Pidana*, Aneka Ilmu, Semarang, 1984, pg.87.

CLOSING

Conclusion

Civil lawsuit filed against the verdict to the Court that the Court does have permanent legal force (van inkracht gewijsde) in a corruption case verdict is peculation and remedies 2 (two) times the convict, criminal law and efforts to remedy civil .