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Exploring with Dignified Justice Theory Substitute Imprisonment Fines for Corruption Convicts

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Abstract

General provisions on criminal fines and their subsidiarity are contained in Article 30 of the Criminal Code. Article 30 paragraph (2) of the Criminal Code contains the possibility of substituting a fine with imprisonment. If the fine is not paid by the convict, this generally includes those convicted of corruption. The principle of imprisonment in lieu of a fine in Article 30 paragraph (2) is not found in Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Corruption Law) . However, so far judges have used Article 30 paragraph (2) of the Criminal Code as the basis for deciding on imprisonment in lieu of a fine for those convicted of corruption. The problem is that the equivalence formula for one day of imprisonment is the same as a fine of seven rupiah 52 cents for those convicted of corruption in Article 30 paragraph (2) is outdated when compared to the current rupiah value. This equivalence formula is difficult to achieve the minimum fine for those convicted of corruption in the Corruption Law. For example, if the minimum fine is 50 million rupiah. If to achieve the equivalence of the fine one has to multiply seven rupiah 52 cents by the number of days in the eight months of maximum imprisonment, then it will not be possible to achieve equivalence according to Article 30 paragraph (6) of the Criminal Code. This study finds the principle of judicial independence in the Indonesian constitutional state as a solution to the unclear meaning of Article 30 paragraph (2) of the Criminal Code while waiting for the article to be abolished by the National Criminal Code.

Keywords: *Criminal, Fine, Imprisonment, Theory of Dignified Justice*

INTRODUCTION

Corruption is a type of crime that is regulated by its own law. The regulation of corruption as a crime is regulated outside the general criminal law regulations (*lex generali*). This method of regulation has been going on for a long time . The name of the separate regulation (*lex specialist*) is Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption or the Tipikor Law.

Consideration Considering letter (a) of the Corruption Law contains a formulation of legal provisions that classify criminal acts of corruption as extraordinary crimes, in addition to the regulation of corruption eradication with a separate law. Such classification is based on the consideration that the crime of corruption occurs widely. Therefore, its eradication must be carried out in extraordinary ways. Eradication of criminal acts of corruption as an extraordinary crime must be carried out in extraordinary ways.

The extraordinary nature of corruption as a crime is synonymous with the concept of *extraordinary crime I* (Mulyadi, 2007*)*. The extraordinary nature of corruption is also marked by the consequences arising from the crime. The consequence of corruption is state financial loss. In addition, the extraordinary character of corruption is also seen from the fact that corruption which is specifically regulated in the Corruption Law is a manifestation of violation of the social and economic rights of society at large.

Another prominent aspect of the separate regulation on corruption crimes that have the nature or character of extraordinary crimes *is* the aspect of the regulation of criminal sanctions that do not seem to recognize imprisonment as a substitute for fines for perpetrators of corruption. The prominent nature of the threat of

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punishment for perpetrators of corruption as an extraordinary crime adds to the quality of the Corruption Law as a *lex specialist* and is the focus of this research study.

extraordinary) eradication of corruption, including criminal sanctions for perpetrators of the crime is not only implicit, but also as stated above, is stated explicitly in the Corruption Law. Explicit statements and implicit indicators of the extraordinary nature of the crime of corruption and its eradication distinguish the tools or means of eradicating the crime of corruption in the Corruption Law as *lex specialist* and are outside the general criminal law regulations or the Criminal Code (KUHP) as *lex generalis*.

extraordinary crimes or criminal acts of corruption in the Corruption Law which is implicitly seen from the form of the minimum criminal threat in the Corruption Law. In the context of this study, the uniqueness of the regulation of criminal threats as part of the means of eradicating *extraordinary* corruption crimes is implicitly seen, among others, in the form of the minimum threat of a fine in the Corruption Law.

The regulation in the Corruption Law in the context of eradicating criminal acts that are extraordinary crimes is not only seen from the threat of criminal fines. However, the formulation of the regulation on the threat of criminal fines in the Corruption Law also contributes to forming the *extraordinary character* of eradicating corruption. The threat of criminal fines for perpetrators of corruption is made in the form of a minimum criminal fine.

The threat of criminal fines regulated in *an extraordinary manner* in the Corruption Law is in the range of 50 million rupiah to 200 million rupiah. There is no formulation of such criminal fines in the Criminal Code. The problem is that the regulation of criminal fines in the form of minimum criminal fines that also form the *extraordinary character* of eradicating corruption crimes is not followed by a formulation of regulations that firmly prohibit substitute punishment for minimum criminal fines in the Corruption Law as *lex specialis* .

In this regard, the Latin maxim *e xpressio unis est exlusio alterius* seems to justify the assumption that considering that it is not expressly stated in the Corruption Law which is *extraordinary in nature* , that because the minimum fine imposed on perpetrators of corruption is not followed by a clear formulation regarding the minimum substitute for the fine in the Corruption Law, then this means that the minimum fine expressly regulated in the Corruption Law has excluded the possibility of a substitute sentence. This is in line with the maxim *the express mention of one is to the exclusion of the other. So, when a list is included, other things not listed are excluded.*

However, this study found that the practice (Auliya & Setiyono, 2021) of eradicating corruption is not the same or, it seems, is different from the special character in the Corruption Law. It turns out that the principle in the Latin maxim *e xpressio unis est exlusio alterius* above does not seem to be followed.

So many court decisions that have been presented as the results of research that has been conducted before this research, have shown evidence of not following the Latin maxim *e xpressio unis est exlusio alterius* . Therefore, by presenting evidence of not following the Latin maxim above, people seem to be convinced that the assumption that the nature of eradicating corruption as an extraordinary crime according to the Corruption Law has "faded" is correct.

A number of court decisions that have permanent legal force as stated as findings from previously conducted research, also show a legal problem or legal issue. In the Corruption Law above, which is understood as a regulation for eradicating extraordinary corruption crimes, *it* does not explicitly acknowledge the possibility of a substitute sentence for the minimum fine.

However, in reality, through legal discovery (*rechtsvinding*) (Sinaga, 2024) by judges as seen in the decisions presented as findings from previous research, it has been clearly formulated that imprisonment as a substitute for a fine or as a substitute for a minimum fine. Such judges' decisions have continued to be followed in judges' decisions in corruption cases up to now.

Based on the background description above, the formulation of the problem of this research is: what if it is explored using legal theory, in this case the theory of Dignified Justice, imprisonment as a substitute for fines for perpetrators of corruption?

RESEARCH METHODS

Each science has its own identity (Soekanto & Mamudji, 2018). It is absurd to say that because something is called science, it must always be the same as other sciences. There are factors that mark the identity of each science. Among others, the methodology factor (Mertokusumo, 2007) from each science that is always adjusted to the demands of the science that is its parent. Legal research is sui generis, unique and therefore called a legal research method (Teguh Prasetyo, 2019). Legal research is generally also referred to as normative legal research, when the term rechtsonderzoek always has a normative meaning "(Marzuki, 2017).

The objects of research used in the research and writing of this research article include: research on legal principles, including research on legal rules (Soekanto & Mamudji 2018). Among other things, the legislative, conceptual, and case approaches are used. The legal materials collected and studied are primary and secondary legal materials. The analysis is qualitative, descriptive and deductive.

RESULTS AND DISCUSSION

Regulation of Criminal Threats of Fines in the Corruption Law

Criminal fines, or more specifically the minimum and maximum criminal fines for perpetrators of corruption are regulated in Articles 2, 3, 5 to Article 14 of the Corruption Law. As an illustration of the results or findings of the study, below are presented in full, and in sequence the rules or regulations in the Corruption Law regarding the types of criminal fines for corruption convicts.

The formulation of the criminal threat for anyone who unlawfully commits an act of enriching themselves or another person or a corporation is regulated in Article 2 paragraph (1) of the Corruption Law. The act in question is detrimental to state finances or the state economy. In addition to the threat of life imprisonment, the threat of imprisonment of at least 4 years and a maximum of 20 years is also regulated. The formulation of the threat of a fine in Article 2 paragraph (1) of the Corruption Law for perpetrators of corruption who are the focus of this research study is at least 200 million and a maximum of 1 billion rupiah.

Although it is less relevant to be stated here, especially in relation to the focus of the study as seen from the title and formulation of the research problem which only explores the substitute imprisonment for fines for perpetrators of corruption; in Article 2 paragraph (2) of the Corruption Law, an interesting thing is also formulated. When the crime of corruption in Article 2 paragraph (1) of the Corruption Law is carried out under certain circumstances, this becomes a reason for increasing the sentence. The death penalty (*capital punishment*) is threatened if the perpetrator commits a crime of corruption under certain circumstances (Umanailo & Setiyono, 2023).

The specific circumstances are clearly detailed, namely corruption of funds for dealing with emergencies, national natural disasters, dealing with the effects of widespread social unrest, dealing with economic and monetary crises, and dealing with the crime of corruption itself. As is known, the death penalty threatened against perpetrators of corruption in Article 2 paragraph (2) of the Corruption Law is included in the category of principal crimes in Article 10 of the Criminal Code.

The minimum criminal fine threatened to perpetrators of corruption according to Article 3 of the Corruption Law is 50 million rupiah and a maximum of 1 billion rupiah (Pakpahan et al., 2022). The threat of a fine is aimed at those who, with the aim of benefiting themselves or others or a corporation, abuse the authority, opportunities or means available to them because of their position or position that is detrimental to state finances or the state economy.

Article 2 paragraph (1) of the Corruption Law above uses a criminal threat in the form of a minimum fine of 200 million rupiah. Meanwhile, Article 3 of the Corruption Law contains a minimum criminal penalty in the form of a fine of only 50 million rupiah. While the maximum criminal fine in Article 3 of the Corruption Law is one 1 rupiah.

The formulation of the provisions in the Corruption Law which further contains legal principles regarding criminal fines is Article 5 paragraph (1) of the Corruption Law. The threat of criminal fines in Article 5

paragraph (1) of the Corruption Law is at least 50 million rupiah and at most 250 million rupiah. The threat of fines is aimed at anyone who gives or promises something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his position, which is contrary to his obligations.

The same criminal threat of a fine is also aimed at those who give something to civil servants or state administrators because of or in connection with something that is contrary to their obligations, whether or not done in their position (Huda, 2023). In paragraph (2) of Article 5 of the Corruption Law, the same criminal threat of a fine is also threatened to civil servants or state administrators who receive gifts or promises as stated above.

It is important to state here, formulated in Article 12 paragraph (1) of the Corruption Law, that the threat of criminal fines in Article 5 of the Corruption Law above does not apply to corruption crimes with a value of less than 5 million rupiah. The threat of criminal fines for perpetrators of corruption crimes with a value of less than 5 million rupiah is only the maximum fine, which is 50 million rupiah.

Article 6 paragraph (1) of the Corruption Law contains a criminal fine of at least 150 million rupiah and a maximum of 750 million rupiah. In Article 6 paragraph (1) of the Corruption Law, this criminal penalty is imposed on anyone who gives/promises something to a judge with the intention of influencing the decision on a case submitted to him for trial. The same penalty is also imposed on those who give or promise something to someone who according to the provisions of the laws and regulations is determined to be an advocate to attend a court hearing with the intention of influencing the advice or opinion that will be given in connection with a case submitted to the court for trial. On the other hand, in paragraph (2) the same penalty is imposed on a judge who receives the above gift or promise or an advocate who receives the gift or promise also referred to above.

Formulated in Article 12 paragraph (1) of the Corruption Law, that the same as the regulation on the exception to the threat of criminal fines regulated in Article 5, the exception also applies to criminal fines threatened for perpetrators of criminal acts who violate Article 6 of the Corruption Law, if the value of the corruption is less than 5 million rupiah. The fine for perpetrators of criminal acts of corruption with a value of less than 5 million rupiah is a maximum of 50 million rupiah.

Minimum and maximum criminal fines are also threatened in Article 7 of the Corruption Law. It is regulated that a criminal fine of at least 100 million rupiah and a maximum of 350 million rupiah will be imposed on contractors, building experts who, when constructing a building, or sellers of building materials who, when delivering building materials, commit fraudulent acts that can endanger the security of people or goods, or the safety of the state in a state of war. The same threat of fines is also intended for anyone who is tasked with supervising construction or the delivery of building materials, who intentionally allows the above fraudulent acts.

Meanwhile, in letter c of Article 7 paragraph (1) of the Corruption Law, the above fine is also threatened to anyone who, when handing over goods needed by the Indonesian National Army (TNI) and/or the Republic of Indonesia National Police (Polri), commits fraudulent acts that could endanger the safety of the state in a state of war. The same fine will be imposed on or anyone tasked with supervising the handover of goods needed by the TNI and/or Polri who intentionally allows fraudulent acts as referred to above. Article 7 paragraph (2) of the Corruption Law contains provisions for the same criminal fines that are threatened to anyone who receives the handover of building materials or anyone who receives the handover of goods needed by the TNI and/or Polri and allows fraudulent acts as referred to above.

Article 12 paragraph (1) of the Corruption Law also excludes the threat of criminal fines in Article 7 above. It is formulated in Article 12 paragraph (1) of the Corruption Law that if the value of the corruption is less than 5 million rupiah, then the fine for perpetrators of such criminal acts of corruption is a maximum fine of 50 million rupiah.

The criminal threat of a fine of at least 150 million rupiah and a maximum of 750 million rupiah is regulated in Article 8 of the Corruption Law. The threat is directed at civil servants or people other than civil servants who

are assigned to carry out a public office continuously or temporarily, intentionally embezzling money or securities that are kept because of their position, or allowing the money or securities to be taken or embezzled by others, or assisting in carrying out such acts.

The lowest criminal penalty of a fine, which is at least 50 million rupiah and at most 250 million rupiah, can also be found in Article 9 of the Corruption Law. This threat is not only directed at civil servants, but also at people other than civil servants. Both civil servants and people other than civil servants are those who are given the task of carrying out a public office continuously or temporarily. Civil servants or people other than civil servants intentionally falsify books or lists specifically for administrative examinations.

Article 10 contains a criminal penalty of a fine of at least 10 million rupiah and a maximum of 350 million rupiah for civil servants or people other than civil servants who are given the task of carrying out a public office continuously or temporarily, if they are proven legally and convincingly to have intentionally committed a number of prohibited acts. These prohibited acts are embezzling, destroying, damaging, or making unusable goods, deeds, letters, or lists that are used to convince or prove before an authorized official, which are controlled because of their position. Or, the act of allowing another person to remove, destroy, damage, or make unusable the goods, deeds, letters, or lists mentioned above. Or, helping another person remove, destroy, damage, or make unusable the goods, deeds, letters, or lists mentioned above.

A fine of at least 50 million rupiah and a maximum of 250 million rupiah is also threatened in Article 11 of the Corruption Law. The threat of a fine is aimed at civil servants or state administrators. The threat of a fine in Article 11 of the Corruption Law will be imposed if a civil servant or state administrator is proven legally and convincingly to have received a gift or promise even though it is known or reasonably suspected that the gift or promise was given because of the power or authority related to his position, or which in the mind of the person giving the gift or promise is related to his position.

Civil servants or state administrators who receive gifts or promises, even though it is known or reasonably suspected that the gifts or promises were given to encourage them to do or not do something in their position, which is contrary to their obligations, are also threatened with a fine as regulated in Article 12 of the Corruption Law. The fines threatened are a minimum of 200 million and a maximum of 1 billion rupiah.

Likewise, civil servants or state administrators who receive gifts, even though it is known or reasonably suspected that the gift was given as a result or due to having done or not done something in their position that is contrary to their obligations. They can be subject to the same criminal fine in Article 12 of the Corruption Law.

The same applies to judges who accept gifts or promises, even though it is known or reasonably suspected that the gifts or promises were given to influence the verdict of a case submitted to them for trial. The same criminal fine, as regulated in Article 12 of the Corruption Law, may be imposed.

Meanwhile, a person who according to the provisions of the legislation is determined to be an advocate to attend a court hearing, receives a gift or promise, even though it is known or reasonably suspected that the gift or promise is to influence the advice or opinion to be given, in connection with a case submitted to the court for trial. Can also be sentenced to a fine in Article 12 of the Corruption Law.

Civil servants or state administrators who with the intention of benefiting themselves or others unlawfully, or by abusing their power, force someone to give something, pay, or receive payment with deductions, or to do something for themselves. Included in the category of parties threatened with criminal fines in Article 12 of the Corruption Law.

Furthermore, civil servants or state administrators who, when carrying out their duties, request, receive, or deduct payments to other civil servants or state administrators or to the general treasury, as if the civil servant or other state administrator or the general treasury has a debt to him, even though it is known that this is not a debt. Such actions can also be recognized as a criminal fine in Article 12 of the Corruption Law.

The threat of criminal fines in Article 12 of the Corruption Law is also aimed at civil servants or state administrators who, when carrying out their duties, request or accept work, or hand over goods, as if it were a

debt to them, even though it is known that it is not a debt. The same threat is also aimed at civil servants or state administrators who, when carrying out their duties, have used state land on which there is a right of use, as if in accordance with laws and regulations, have harmed the entitled person, even though they know that the act is contrary to laws and regulations.

The criminal fines stipulated in Article 12 of the Corruption Eradication Law may also be imposed on civil servants or state administrators who, directly or indirectly, intentionally participate in contracting, procurement or leasing, who at the time the act was committed, were wholly or partly assigned to manage or supervise it.

Article 12 A paragraph (1) of the Corruption Law contains the determination of exceptions to the threat of criminal fines in Articles 8, 9, 10, 11 and 12 of the Corruption Law above. It is formulated in Article 12 paragraph (1) of the Corruption Law that if the value of corruption in these articles is less than five million rupiah, then the fine for perpetrators of such criminal acts of corruption is a maximum fine of 50 million rupiah.

Criminal fines are also threatened in Article 12 B of the Corruption Law against any gratification to civil servants or state administrators considered bribery. In this case, if the bribe is related to his position and is contrary to his obligations or duties. If the value of the bribe is 10 million rupiah or more, the proof that the gratification is not a bribe is carried out by the recipient of the gratification. While if the value of the bribe is less than 10 million rupiah, the proof that the gratification is a bribe is carried out by the public prosecutor. The criminal threat for civil servants or state administrators who are proven to have received gratification that is a bribe is a minimum fine of 200 million rupiah and a maximum of 1 billion rupiah.

Meanwhile, Article 12 C of the Corruption Eradication Law stipulates that the formulation of Article 12 B paragraph (1) does not apply if the recipient reports the gratification received to the Corruption Eradication Commission (KPK). The report submitted to the KPK must be made by the recipient of the gratification no later than 30 working days from the date the gratification was received. Within a maximum of thirty working days from the date of receipt of the report, the KPK must determine whether the gratification can belong to the recipient or to the state. Provisions regarding the procedure for submitting reports and determining the status of gratification are regulated in the Law on the KPK.

If it is proven legally and convincingly, every person in a court decision with permanent legal force gives gifts or promises to civil servants, then the criminal fine threatened is regulated in Article 13 of the Corruption Law. The criminal fine is threatened by remembering that the provision of the gift or promise in question is related to the power or authority attached to the position or position of the civil servant, or by the giver of the gift or promise is considered attached to the position or position. The threat of criminal fines in Article 13 of the Corruption Law does not recognize a minimum criminal fine. Article 13 of the Corruption Law only contains the maximum threat of a fine, which is 150 million rupiah.

Another interesting finding can be presented here, seen in the formulation of Article 14 of the Corruption Law. This article reaffirms the special nature of the Corruption Law as the only law that regulates the eradication of corruption as an extraordinary crime. Article 14 of the Corruption Law states that anyone who violates the provisions of any law, including Law No. 1 of 2023 which will later come into effect and has been stated above, if the law in question explicitly states that violation of the provisions of the law constitutes a criminal act of corruption, then the provisions that apply are, in particular the object of this research is the criminal fine regulated in the Corruption Law.

Discussion of Criminal Imprisonment in Lieu of Fines

Focus of this research, as stated above, is imprisonment as a substitute for fines for perpetrators of corruption. The regulation on this matter has been described in detail in the sub-title of the research results above.

As a topic of discussion, according to the authors, a complete description of the regulation in the form of a threat of criminal fines for perpetrators of corruption above does not recognize imprisonment as a substitute for minimum and maximum fines in the Corruption Law as an extraordinary law. However, it has also been stated above that there is a legal practice that continues to this day, namely the use of imprisonment as a substitute for fines.

It should be stated here as the main topic of discussion regarding the research findings that have been presented above, that the analysis conducted here combines all threats of criminal fines, or minimum criminal fines for corruption convicts in the Corruption Law as stated above.

According to the authors, all types of criminal fines regulated in the Corruption Law as described in the findings above are included in the category of principal criminal penalties. This is the result of a theoretical study, in this case after being explored according to the theory of Dignified Justice (Teguh Prasetyo, 2015). As is commonly understood, the theory of Dignified Justice postulates that the law, including the law governing the issues in this study, can only be found in the soul of the Indonesian nation (*volkgeist*), so the law regarding criminal fines in the Corruption Law as described in the research results above is imposed because the penalty is a logical consequence solely of the crime committed. Just a comparison of theories, in the perspective of Western criminal philosophy or Kantian criminal philosophy, the same thing is generally known as the concept of *categorical imperative*.

It is said to be a *categorical imperative*, because the perpetrator of the crime already knows, and consciously chooses to accept the consequences of the act prohibited in a provision of criminal law regulations that apply as an extraordinary crime. The choice is a *categorical imperative*, or a choice that must be implemented as a basic right. So the fine as stated above, which is threatened and imposed must be seen as a rational human choice or one that has been chosen by the corruptor rationally in his life together with society.

The rationalization of *the categorical imperative* is in line with the perspective of the theory of Dignified Justice. In the theory of Dignified Justice, it is said that what constitutes the law is what has been formulated as human rationality in society, a sign of human efforts in that society to humanize humans (*nguwongke uwong*).

Explored in the perspective of the Dignified Justice theory as stated above, it can be said that imprisonment as a substitute for a fine for perpetrators of corruption is in line with philosophical thinking in the Dignified Justice theory. It is said so because imprisonment as a substitute for a fine is still valid, in this case it is a manifestation of the spirit of the nation formulated in Article 30 of the Criminal Code. In the perspective of the Dignified Justice theory, the formulation of Article 30 of the Criminal Code which is still valid must be seen as a legal spirituality derived from Pancasila as the source of all sources of law (Teguh Prasetyo, 2016).

Differences between Criminal Fines and Criminal Payment of Replacement Money

Continuing the theoretical exploration in the perspective of the theory of Dignified Justice that has been put forward above, that criminal penalties, including fines and imprisonment as a substitute for fines can be equated with *categorical imperatives*, are generally understood as an unavoidable consequence (inevitability) of the existence of a convicted person's actions. Thus, fines, as the main punishment, as regulated in the Corruption Law which has been described as the result of the research above, seem to be far from the intention of the legislators to replace money that has been proven to have been stolen by the perpetrator from the state treasury, or embezzled from the public's pocket.

As a comparative discussion or analysis, it is necessary to state here, the difference between a fine and a substitute payment as an additional penalty according to the formulation of the provisions in Article 18 of the Corruption Law. The substitute payment penalty in Article 18 of the Corruption Law, which needs to be stated here, is actually not the focus of this research and writing. However, it is felt necessary to state it in order to gain a better understanding if the fine and substitute payment penalties are compared.

The authors argue that the criminal fine in the Corruption Law, as well as other articles in the Corruption Law, namely Articles 2 to 14, which in practice can be replaced with imprisonment based on Article 30 paragraph (2) of the Criminal Code. This is different from the penalty of paying replacement money. It can be seen in the formulation of the provisions on the penalty of paying replacement money, that the penalty of paying replacement money is part of the additional penalty. While the penalty of fines, also imprisonment as a substitute for the penalty of fines, are the main penalties.

As an additional punishment, the penalty of paying replacement money is regulated separately in the same law, namely in Article 18 of the Corruption Law. In addition to references to additional punishments formulated in

Article 10 of the Criminal Code. This is formulated explicitly in Article 17 of the Corruption Law. It is stated that in addition to being subject to the punishments already regulated in Article 2, Article 3, Article 5 to Article 14 of the Corruption Law, the defendant can be subject to additional punishments as referred to in Article 18 of the Corruption Law.

The difference between, in addition to the penalty of a fine as the main penalty and the penalty of paying a substitute money as an additional penalty also lies in the following. That the penalty of paying a substitute money has a utilitarian dimension. In the sense that the formulation of the penalty of paying a substitute money in Article 18 of the Corruption Law was indeed specifically intended by the lawmakers, who are generally elected by the people and act on behalf of the people (public) represented by them, in representative deliberations to make the additional criminal provisions as a means for the replacement of money, compensation for losses that occur. While the penalty of a fine, according to the logic of the Corruption Law, should not be replaced as the main penalty.

Replacement of money, in criminal cases, the payment of replacement money must occur, according to utilitarian reasoning because it has been truly proven legally and convincingly through a legitimate court process, that there is public money that has been lost because it was stolen by the perpetrator of the crime from public pockets. Subsidiarity to the criminal acts that have been regulated in the articles above is regulated in Article 18 paragraph (1) of the Corruption Eradication Law.

It is formulated in Article 18 of the Corruption Law that in addition to additional penalties as referred to in the Criminal Code (KUHP), other types of additional penalties are also regulated. In this case, it should be stated that there are 4 types of additional penalties in addition to those stated in Article 10 of the Criminal Code and are regulated in detail in Article 18 paragraph (1) of the Corruption Law.

The first additional penalty is the confiscation of tangible or intangible movable goods or immovable goods. All of these goods are confiscated if they are used for or obtained from corruption. Included in the category of goods that can be confiscated and become part of the additional penalty according to the Corruption Law are companies owned by convicts. The reason for the formulation of such provisions is because the company owned by the convict is a place or means for the corruption crime to be carried out, as well as the goods that replace these goods.

The second additional penalty according to the formulation of Article 18 paragraph (1) of the Corruption Law is the payment of replacement money, or replacement money for state losses. The amount of replacement money is as much as possible equal to the assets obtained by the corruption convict from the corruption crime that he has committed. It should be stated here that the concept of replacement money in the formulation of Article 18 of the Corruption Law is not the same as the meaning of the concept of a fine. As an additional penalty, the amount of replacement money is as much as possible equal to the assets obtained from the corruption crime.

Imprisonment as a substitute for a fine that is the focus of the study in this research is not an additional punishment, but a principal punishment. This is formulated in Article 10 of the Criminal Code. It is common knowledge that Article 10 of the Criminal Code stipulates that punishment consists of: a. Principal punishment consisting of the death penalty, imprisonment, imprisonment, fines, and closure; b. Additional punishment consisting of revocation of certain rights, confiscation of certain goods, and announcement of the judge's decision. If a principal punishment must be replaced, then the substitute punishment should be a punishment of the same type or included in the category of principal punishment.

The regulation on imprisonment in lieu of a fine as regulated in Article 30 paragraph (2) of the Criminal Code and has been described as a result of the research above shows that the substitute punishment has the same quality, namely as the main punishment. As seen in the description of the types of punishment as regulated in Article 10 of the Criminal Code above, the fine is a punishment that is included in the category of main punishment. The fine is in fourth place of the types of punishment that are included in the category of main punishment.

Likewise, imprisonment, which Article 30 paragraph (2) of the Criminal Code allows to be used as a substitute for a fine, is also a type of punishment that is included in the category of principal punishment as described in Article 10 of the Criminal Code above. Imprisonment is a type of punishment that is ranked third among the types of punishment that are included as principal punishment according to the provisions of Article 10 of the Criminal Code as stated above.

Observing the order or structure of the types of criminal penalties as regulated in Article 10 of the Criminal Code above, it can be stated here that a type of criminal penalty that can be used to replace other criminal penalties should be a type of criminal penalty that is in the same group or category of criminal penalties. This means that only principal penalties can replace principal penalties. Even then, the order of principal penalties that can be used to replace principal penalties should have a higher position.

This means that the punishment that will be the substitute punishment should be in a higher order than the main punishment that will be replaced. A fine that can be replaced by a prison sentence in lieu of a fine, for example, and which is the focus of this research, has a position, or at least is in a position after a prison sentence. The degree of the fine is below, or perhaps it can be said that its quality is one level lower when compared to a prison sentence.

The third additional penalty according to the formulation of Article 18 of the Corruption Law is the closure of all or part of the company, in this case of course the company owned by the convict. The closure can be carried out for a maximum period of one year. The fourth additional penalty as formulated in Article 18 of the Corruption Law is the revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or may be given by the Government to the convict.

In addition to the contents of Article 18 paragraph (1) of the Corruption Law as stated above, Article 18 paragraph (2) of the Corruption Law also formulates provisions or rules or regulations (Mertokusumo, 2007) that if the convict does not pay the replacement money as referred to in Article 18 paragraph (1) letter b of the Corruption Law no later than one month after the court decision has obtained permanent legal force, then the assets of the corruption convict can be confiscated.

Confiscation is the authority of the prosecutor. The assets of a corruption convict that can be confiscated to replace the replacement money, of course after the assets of the corruption convict have been in the form of money. In the sense, after the assets of the corruption convict are auctioned to cover the replacement money.

Observing or after conducting research on the two formulations of the verses in the provisions of Article 18 of the Corruption Law above, the authors did not find any formulation of material criminal law principles that allow for substitute punishment for fines that have been imposed on corruption convicts. Article 18 paragraph (2) of the Corruption Law only regulates the possibility of imposing substitute punishment for additional punishment in the form of a penalty of paying a substitute fee. This means that the type of substitute punishment for the penalty of paying a substitute fee is included in the category of additional punishment.

Considering the legal arguments as stated above, that a punishment that can be used as a substitute punishment, namely that the substitute punishment: (1). is in the same group or category as the punishment to be replaced; (2). Has a quality that is one level higher, because at least it is in the order before the punishment to be replaced, then all types of additional punishment formulated in Article 18 of the Corruption Law cannot be used to replace fines which are included as types of punishment in the main category of punishment according to the formulation of Article 10 of the Criminal Code above.

This is the legal reason or rationalization found by the author in this study, after conducting an exploration using the theory of Dignified Justice in understanding the regulation of imprisonment as a substitute for a fine as the main punishment which is different from the substitute for money and its subsidiarity which is an additional punishment as a manifestation of the soul of the nation, namely in this case the Criminal Code and the Corruption Law.

As is known, in contrast to the regulation of criminal fines as the main punishment, especially according to the general provisions or general regulations on criminal penalties, in this case according to the Criminal Code, there is no minimum punishment. Meanwhile, if compared internally *transposition*, according to the Corruption

Law which as the author has stated above is categorized as a form of legal regulation for overcoming extraordinary crimes*,* the type of criminal fine in the Corruption Law, all of which have been described in detail above, is a type of punishment in the category with minimum and maximum punishment.

If the formulation of Article 18 of the Corruption Law as stated above is examined in more depth, then it is not possible to find in the Article any formulation of legal provisions that specifically regulate substitute punishment in the form of imprisonment, in this case imprisonment as a substitute for a fine as formulated in Article 30 paragraph (2) of the Criminal Code above. However, as described in court decisions that have permanent legal force that have been studied previously, these decisions contain the imposition of imprisonment as a substitute for a fine that cannot be paid by the convict in a corruption case.

It is very unfortunate, except for the principle of the independence of the judicial power held by the judges, no arguments or reasoning (*ratio decidendi*) can be found put forward by the judge or panel of judges in various court decisions with permanent legal force that have been studied by previous researchers, why they (the judges) use the types of criminal acts regulated in the Criminal Code which in fact only regulates ordinary crimes, which is different from the Corruption Law as a form of legal regulation (law) made to eradicate corruption as an extraordinary crime.

The legal basis for criminal law that regulates the replacement of fines with imprisonment in lieu of fines for corruption convicts who have been proven legally and convincingly to have committed corruption, in general according to the authors, is based on the scientific legal assumption, namely the principle that if it is not regulated in a special regulation, then the legal provisions in general regulations can be referred to (Manan, 2004) to resolve the problem, in this case Article 30 paragraph (2) of the Criminal Code. It is formulated in Article 30 paragraph (2) of the Criminal Code that: "If the fine is not paid, it is replaced with imprisonment". In relation to that, Article 30 paragraph (3) of the Criminal Code also regulates that: "The length of the replacement imprisonment is at least one day and at most six months".

Article 30 paragraph (4) of the Criminal Code also contains a method for calculating the length of imprisonment in lieu of a fine that can be decided by a judge. Article 30 paragraph (4) of the Criminal Code regulates the length of imprisonment that can be imposed to replace a fine. It is stated in paragraph (4) that if the amount of the fine imposed by the judge is seven rupiah fifty-two cents or imprisonment, then the equivalent of the monetary value of seven rupiah fifty cents is that the convict is sentenced to one day in prison. Less than seven rupiah fifty cents. Likewise, a one-day imprisonment sentence can be imposed by the judge if the fine imposed is only five rupiah fifty cents to seven rupiah fifty cents.

In addition to the formulation of the provisions above, Article 30 paragraph (5) of the Criminal Code stipulates that if there is an increase in the fine due to concurrent or repeated acts, or due to the provisions of Article 52 of the Criminal Code, then the prison sentence in lieu of a fine is set at a maximum of 8 months. Then it is emphasized in Article 30 paragraph (6) of the Criminal Code that the prison sentence in lieu of a fine may never be more than eight months.

The problem is that the one-day prison equivalency formula is equal to seven rupiah 52 cents in fines for corruption convicts in Article 30 paragraph (2) is outdated when compared to the current rupiah value. The equivalency formula is difficult to achieve the minimum criminal fine for corruption convicts in the Corruption Law. For example, if the minimum fine is 50 million rupiah. If to achieve the equivalency of the fine, one must multiply seven rupiah 52 cents by the number of days in the 8-month maximum prison sentence, then it will not be possible to achieve the equivalency according to Article 30 paragraph (6) of the Criminal Code.

A number of laws and regulations that are lower than the law have been enacted in adjusting the rupiah value in Article 30 of the Criminal Code above. However, if used, then the effort will not be possible to achieve the equivalence of the minimum fine which is *extraordinary in nature to eradicate corruption* . However, considering the theory of Dignified Justice, in order to provide theoretical justification for the formula for imprisonment in lieu of a fine, in this study the authors argue that the principle of judicial independence in the Indonesian constitutional state can be seen as a solution to the problem of using Article 30 paragraph (2) of the Criminal Code while waiting for the article to be abolished by the National Criminal Code.

The use of Article 30 paragraph (2) of the Criminal Code also continues to pay attention to Article 31 of the Criminal Code which also stipulates that: "Paragraph (1) convicts can serve a prison sentence in lieu of a fine without waiting for the time limit for payment of the fine". Meanwhile, Article 31 paragraph (3) stipulates that convicts who are sentenced to a prison sentence in lieu of a fine always have the authority to free themselves from a prison sentence in lieu of a fine by paying the fine that has been decided by the judge or panel of judges.

Article 31 paragraph (3) of the Criminal Code contains provisions that payment of criminal fines can be made in part. Partial payment of criminal fines can be made by the convict before the convict serves a prison sentence in lieu of a fine. Partial payment of criminal fines can also be made by the convict after he has served a prison sentence in lieu of a fine that is equal to or the remainder of the criminal fine that he must pay. If the convict has paid part of the criminal fine, and there is still a remaining part of the criminal fine that he has not paid, he can pay it off during the prison sentence in lieu of a fine.

CONCLUSION

After being explored using legal theory, in this case the theory of Dignified Justice, the substitute imprisonment for a fine for perpetrators of corruption must still be seen as a law in eradicating corruption as an extraordinary crime.

Imprisonment as a substitute for a fine for perpetrators of corruption can be used as a substitute punishment, considering the freedom of judicial power in deciding that the substitute punishment is still in the same group or category as the punishment to be replaced. In fact, this study found that the substitute punishment has a higher level of quality, because at least it is in the order before the punishment to be replaced. Meanwhile, all types of additional punishments formulated in Article 18 of the Corruption Law cannot be used to replace fines which are included as the main type of punishment according to the formulation of Article 10 of the Criminal Code. Such is the legal rationalization found by the authors of this study after exploring imprisonment as a substitute for fines from the perspective of the theory of Dignified Justice.

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