

Juridical Implications of the Imposition of Substitute Imprisonment under the Attorney General Guideline

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ABSTRACT

Corruption as an extraordinary crime causes state financial losses that have not been optimally recovered, particularly because convicted persons tend to choose substitute imprisonment rather than paying compensation. Although this mechanism has been regulated under Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, its implementation has resulted in a significant accumulation of unrecovered state losses. The issuance of Attorney General Guideline Number 1 of 2019 was intended to serve as a technical guideline for prosecution; however, it continues to raise juridical issues. This study aims to analyze the juridical implications of the implementation of the guideline and to formulate an ideal regulatory framework. The research employs a normative juridical method using statutory, conceptual, and comparative approaches, which are analyzed prescriptively. The findings indicate the existence of legal uncertainty due to the absence of clear parameters for determining substitute imprisonment, low effectiveness resulting from its alternative nature, weak coercive force, and inconsistency in prosecutorial discretion. Therefore, a reformulation of the regulation is necessary by positioning compensation payment as a mandatory and cumulative sanction in order to optimize the recovery of state financial losses and strengthen legal certainty and consistency in prosecution.

Keywords: Corruption Crimes; Compensation Payment Penalty; Substitute Imprisonment Penalty.

1. INTRODUCTION

Corruption constitutes a form of criminal offense that has long been regarded as a serious threat to democratic principles. This crime significantly obstructs the realization of transparency and accountability in state governance and possesses a systemic character with broad and often invisible impacts on sustainable development. Awareness of these dangers encouraged Indonesia to reform its legal framework through Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The enactment of this law was based on the view that criminal law remained the most strategic and effective instrument for combating corruption (Ismansyah, 2007).

The strong anti-corruption spirit at that time even positioned criminal law no longer as an *ultimum remedium*, but rather as the primary instrument of enforcement. This is reflected in the legislative policy that continued to prioritize criminal proceedings even when state financial losses had already been recovered. During the legislative process, the then Minister of Justice, Muladi, emphasized that the reform was necessary because Law Number 3 of 1971 concerning the Eradication of Corruption Crimes was no longer relevant to contemporary developments and public demands for more effective and transparent law enforcement. Although the previous

regulation had already recognized the concept of compensation payment, the absence of a substitute imprisonment mechanism weakened its coercive force (Badriyah, 2011).

The continuously increasing accumulation of unpaid compensation raises questions regarding the effectiveness of the existing regulatory design. This phenomenon demonstrates the need for critical reflection among law enforcement authorities to identify the root causes of the problem, including the possibility of misinterpretation concerning the function of substitute imprisonment (Laia, 2024). Law enforcement cannot rely solely on normative logic, but also requires interpretation oriented toward the meaning and objectives intended by the lawmakers. The law enforcement stage constitutes a crucial phase because it is at this stage that legal theories are translated into concrete actions, highly dependent upon the quality of interpretation exercised by law enforcement officials.

From a philosophical perspective, legal interpretation essentially represents an effort to discover the intention of the lawmakers (*historia legis*). Therefore, the implementation of Law Number 31 of 1999 as a *lex specialis* regulation requires a profound interpretative approach in order to ensure the optimal recovery of state financial losses. Without a philosophical understanding of the essence of compensation payment, its application risks deviating from its original legislative purpose (Hiariej, 2009).

Throughout more than two decades of implementation, the persistent accumulation of unpaid compensation demonstrates failures of implementation at both micro and sporadic levels across various regions of Indonesia. Recognizing this condition, the Attorney General's Office of the Republic of Indonesia issued Attorney General Guideline Number 1 of 2019 concerning Prosecution Guidelines for Corruption Cases as a technical guideline for prosecutors in formulating criminal charges, including the duration of imprisonment, the amount of fines, and substitute imprisonment in cases where compensation is not paid.

Although the guideline has provided a regulatory framework, certain aspects remain less than optimal, particularly regarding substitute imprisonment provisions. On page 24, point VI, the guideline stipulates that: "The demand for substitute imprisonment as a substitute for the additional penalty of compensation payment for individual defendants shall be at least one-half ($\frac{1}{2}$) of the principal imprisonment demanded and shall not exceed the maximum imprisonment penalty under the article proven in court."

Normatively, this provision appears appropriate; however, in practice, it grants prosecutors broad discretion in determining the duration of substitute imprisonment. This condition has created a tendency in practice to demand substitute imprisonment at the minimum threshold, namely one-



half of the principal imprisonment sentence, unlike the regulation of principal imprisonment, which is more specifically determined based on the amount of state financial loss.

This issue can be observed, for instance, in a corruption court decision at the Surabaya District Court, where the convicted person, Rudhy Dwi Chrysnaputra, refused to pay compensation as stipulated in the judgment. This refusal was evidenced by the signing of a declaration of inability to pay compensation and fines. Such a decision subsequently created legal implementation problems, particularly regarding how the state would bear the financial losses caused by the corruption offense, amounting to IDR 75,714,394,798. As a result, although the convicted person had enjoyed the proceeds of the crime in that amount, there was absolutely no meaningful recovery of state financial losses, effectively leaving the state recovery value at IDR 0.

The substitute imprisonment imposed, namely four years of imprisonment, was in fact lighter than the nine-year imprisonment demanded by the Public Prosecutor at the Malang District Attorney's Office. Nevertheless, neither the prosecutor's demand nor the court's judgment exceeded the principal imprisonment penalty. The imposition of substitute imprisonment that never exceeds the principal punishment creates no psychological deterrent effect for defendants, thereby discouraging them from paying compensation because they perceive no practical benefit in doing so, given that imprisonment will still be served regardless of payment.

Furthermore, in 2024, based on the Attorney General's Office electronic receivables recapitulation data, prosecutorial institutions throughout Indonesia—including the Attorney General's Office, High Prosecutor's Offices, District Prosecutor's Offices, and Branch Prosecutor's Offices, recorded outstanding compensation payments amounting to IDR 46,504,736,569,019 and USD 191,889,688. Such an extraordinary amount constitutes an unresolved backlog with no certainty as to when it may be settled. Moreover, it is conceivable how many members of society could benefit if those funds were successfully restored to the state through the recovery of state financial losses.

Based on these considerations, it is necessary to reform Attorney General Guideline Number 1 of 2019 concerning Prosecution Guidelines for Corruption Crimes in order to ensure that the primary objectives of the amendments introduced by Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes can be achieved optimally. This reform aims to reaffirm a new orientation in anti-corruption enforcement, which currently emphasizes the recovery and restitution of state financial losses as a concrete manifestation of law enforcement and legal accountability.

2. RESEARCH METHOD

The typology of research employed in this study is normative legal research. Conceptually, normative legal research has been described by many scholars as doctrinal legal research, which is characteristically directed toward evaluating positive law and contains prescriptive elements or a norm-formulating dimension. In line with this perspective, the analysis of the issues examined in this study is based on primary legal materials derived from statutory regulations and secondary legal materials obtained from legal literature and scholarly references. The approaches applied in this research include the statutory approach and the conceptual approach (Marzuki, 2010).

3. RESULTS AND DISCUSSION

Juridical Implications of Attorney General Guideline Number 1 of 2019 concerning Prosecution Guidelines for Corruption Cases

a. Existing Regulation of Compensation Payment in Corruption Crimes in Indonesia

The implementation of compensation payment in corruption offenses constitutes an important legal mechanism in enforcing justice and restoring state financial losses resulting from corrupt practices. The concept of compensation payment differs from criminal fines, as its primary focus is not merely punitive sanctions, but also the recovery of state losses caused by criminal conduct. In Indonesia, the principal legal basis governing compensation payment is derived from Article 18 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001).

This regulatory framework was subsequently reinforced and clarified through Supreme Court Regulation (Perma) Number 5 of 2014 concerning Additional Penalties of Compensation Payment in Corruption Crimes, which provides more detailed guidance for judges in determining the amount, procedures, and mechanisms for compensation payment. The provisions concerning the amount of compensation payment in corruption cases are essential to ensure the recovery of state finances resulting from unlawful acts committed by corruption offenders, as normatively stipulated in Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001, which provides as follows: *“The payment of compensation shall be in an amount not exceeding the value of assets obtained from the corruption offense.”*

The determination of compensation payment is also regulated in Article 1 of Supreme Court Regulation Number 5 of 2014, which states: *“In determining the amount of compensation payment in corruption crimes, the amount shall not exceed the value of assets obtained from the*



corruption offense and shall not merely be equivalent to the amount of state financial loss caused.”

The provisions contained in Article 18 paragraph (1) of the Anti-Corruption Law (Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001) as well as Article 1 of Supreme Court Regulation Number 5 of 2014 fundamentally establish a strong normative construction concerning the principle of comprehensive financial accountability of corruption offenders.

This principle is not solely directed toward the recovery of state financial losses in a narrow sense, but also encompasses the entirety of economic benefits unlawfully enjoyed by offenders as a consequence of their criminal acts. Accordingly, the approach adopted by the legislators and the Supreme Court has shifted from a merely compensatory paradigm toward a broader paradigm of total recovery of all criminal proceeds (Pratama dkk., 2024). Consequently, the state is positioned not only as the injured party, but also as an entity entitled to recover all assets unlawfully transferred into the possession of offenders.

From an analytical perspective, this normative construction indicates that the additional penalty of compensation payment possesses a multidimensional function. First, as a compensatory instrument, compensation payment serves to cover state financial losses arising from corruption offenses. However, this function does not stand alone, because within a broader framework, compensation payment also serves as a restitutive instrument aimed at restoring conditions to their original state (*restitutio in integrum*), insofar as possible. In this context, recovery is not merely understood as the nominal amount of state losses that can be calculated in accounting terms, but also includes all economic profits or benefits obtained by offenders, whether still existing in their original form or transformed into other forms of assets (Rambey, 2016).

Furthermore, the preventive dimension of this regulation constitutes another equally important aspect. By stipulating that the amount of compensation payment must correspond, at maximum, to the entirety of assets obtained from corruption offenses, the lawmakers implicitly sought to emphasize that no unlawful benefit should remain in the possession of offenders (Chazawi, 2005). This principle is widely recognized in modern criminal law doctrine as the principle that “crime should not pay,” meaning that criminal conduct must not generate economic advantages for perpetrators. If offenders are still able to retain part of the proceeds of crime, the legal system indirectly fails to create an optimal deterrent effect and may even encourage recidivism because offenders continue to perceive economic incentives from such conduct (Romli Atmasasmita, 2017).

Therefore, the provisions contained in Article 18 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 and



Article 1 of Supreme Court Regulation Number 5 of 2014 systematically seek to close such loopholes by positioning compensation payment as both a repressive and preventive instrument (Hafizi, 2025). On the one hand, this sanction is repressive because it imposes an obligation upon offenders to return all proceeds of crime they have unlawfully enjoyed. On the other hand, its preventive nature is reflected in the effort to eliminate the economic motives underlying corruption offenses, thereby reducing the likelihood of similar crimes in the future.

The regulation concerning responsibility for compensation payment in jointly committed corruption offenses is explained in Article 4 of Supreme Court Regulation Number 5 of 2014, which provides that:

- (1) In cases where corruption offenses are committed jointly and adjudicated simultaneously, the additional penalty of compensation payment may not be imposed jointly and severally.
- (2) Where the exact amount of assets obtained by each defendant cannot be precisely determined, compensation payment may be imposed proportionally and objectively according to each defendant's role in the corruption offense committed.

This regulation reflects the principles of justice and proportionality, as each defendant is held responsible only in accordance with their respective contribution to the offense. It also provides flexibility for judges to determine compensation objectively where the amount of unlawfully obtained assets cannot be accurately identified, thereby ensuring that the recovery of state losses may still be carried out fairly and realistically. Moreover, provisions regarding situations in which proceeds of corruption have been transferred to third parties are regulated under Article 5 of Supreme Court Regulation Number 5 of 2014, which states:

“Where assets obtained from corruption offenses are not enjoyed by the defendant and have been transferred to another party, compensation payment may still be imposed upon the defendant insofar as such third party is not prosecuted, whether for corruption offenses or other criminal offenses, such as money laundering.”

The above provision affirms that liability for compensation payment may still be imposed upon defendants even where assets obtained through corruption have been transferred to third parties, provided that such recipients are not subject to criminal prosecution (Makawimbang, 2014). This regulation demonstrates the principle of accountability by emphasizing that offenders remain responsible for the unlawful benefits derived from their crimes, notwithstanding the transfer of such assets. It further strengthens the restitutive function of compensation payment as an instrument ensuring effective recovery of state losses while preventing offenders from evading responsibility through the transfer or concealment of corruption proceeds.



In practice, however, the implementation of compensation payment under Article 5 of Supreme Court Regulation Number 5 of 2014 frequently encounters challenges when corruption proceeds have been transferred or disguised through third parties. Corruption offenders often transfer assets to family members, business associates, or third parties in order to avoid their obligation to pay compensation. Although legal responsibility formally remains attached to offenders, evidentiary proof in court requires extensive investigation, including the tracing of financial transactions and coordination with relevant institutions. This demonstrates that the effectiveness of compensation payment provisions largely depends upon the ability of law enforcement authorities to trace assets and ensure offender accountability (Syamza & Faniyah, 2025).

The implementation of compensation payment also faces challenges in proportionally determining liability among jointly involved defendants, particularly in assessing each defendant's contribution and the benefits individually obtained. Although Supreme Court Regulation Number 5 of 2014 provides guidance, judicial interpretation in practice often differs, thereby affecting the amount of compensation imposed and the effectiveness of state financial recovery (Juliana dkk., 2024). Actual cases demonstrate that judicial decisions based upon accurate evidence concerning asset flows and defendants' respective roles are crucial to the successful application of these provisions, while simultaneously underscoring the need for active coordination among investigators, prosecutors, and auditing institutions in order to uphold the principles of justice, proportionality, and accountability in practice.

In order to complement the regulatory framework, the Attorney General's Office of the Republic of Indonesia issued Attorney General Guideline Number 1 of 2019 concerning Prosecution Guidelines for Corruption Cases. This guideline was intended to serve as a reference for public prosecutors in formulating criminal charges in a proportional and measurable manner. Nevertheless, in practice, the guideline has generated new legal issues, particularly regarding the flexibility afforded in determining substitute imprisonment penalties, which consequently affects the effectiveness of recovering state financial losses. Against this background, it becomes essential to examine the juridical implications arising from the implementation of Attorney General Guideline Number 1 of 2019.

b. Attorney General Guideline Number 1 of 2019

The regulatory framework contained in Attorney General Guideline Number 1 of 2019 is fundamentally intended to function as a normative instrument for establishing consistency, proportionality, and rationality in the formulation of criminal charges in corruption cases. From the perspective of normative legal research, the primary focus does not lie in how the norm is



implemented in practice, but rather in how the norm is formulated, structured, and whether its construction fulfills the principles of legal certainty (*lex certa*), justice, and legal utility. In this context, the guideline has indeed provided a basic framework for public prosecutors in determining the relationship between principal penalties and additional penalties, particularly compensation payment penalties. Nevertheless, from a normative standpoint, there remain regulatory gaps and ambiguities that create excessively broad room for interpretation (Suryosumpeno, 2020).

Particularly concerning the construction of substitute imprisonment provisions, the regulation set forth on page 24 point VI of the guideline stipulates that substitute imprisonment shall be imposed for a minimum of one-half ($\frac{1}{2}$) of the demanded principal imprisonment and for a maximum not exceeding the statutory maximum imprisonment provided under the proven article. At the textual level, this formulation appears to establish quantitative limitations intended to maintain consistency and proportionality in prosecutorial practice. However, when analyzed more deeply through a normative approach, the provision reveals a fundamental weakness in its normative construction, especially because it uses prosecutorial demands as the basis for calculating substitute imprisonment.

Within the criminal justice system, prosecutorial demands are essentially discretionary products that are casuistic and subjective in nature, and therefore do not possess the status of general and binding norms. Consequently, the use of prosecutorial demands as the benchmark for determining substitute imprisonment creates the potential for legal uncertainty, since the applicable standards are not uniform and are highly dependent upon the individual assessment of prosecutors in each particular case (Wardhani & Ningsih, 2024).

Furthermore, the phrase “at least one-half ($\frac{1}{2}$)” within the provision is not accompanied by any clear and operational calculation method, thereby creating room for multiple interpretations in its implementation. This ambiguity reflects a failure to fully satisfy the principle of *lex certa*, because the norm does not provide explicit parameters regarding how such minimum limits should be applied, whether in single-charge cases or cases involving cumulative indictments. On the other hand, although the determination of the maximum limit by reference to statutory imprisonment provisions formally aligns with the principle of legality, it does not automatically resolve issues of proportionality in sentencing. In practice, without more detailed guidelines governing the relationship between principal penalties, additional penalties, and substitute imprisonment, there is a significant possibility of imbalance that may ultimately obscure the rationality of sentencing itself.

c. Juridical Implications of Attorney General Guideline Number 1 of 2019

Terminologically, the term implication may be understood as a consequence, effect, or conclusion arising from a particular action or policy. Implications do not merely concern immediate outcomes, but also encompass subsequent effects that may emerge in the future as a result of an action or decision. Meanwhile, the term juridical refers to all matters relating to law, whether in the form of legal norms, principles, or their application within law enforcement practices. Accordingly, juridical implications may simply be understood as all legal consequences arising from an action or policy when viewed from a legal perspective. In a more specific sense, juridical implications are often equated with legal consequences, namely the effects arising from the application of a legal norm to a legal event or legal act committed by a subject of law. Such legal consequences may include the emergence of rights and obligations, changes in legal status, or the creation of particular forms of legal responsibility (Qadri dkk., 2025).

Based on this understanding, the implementation of Attorney General Guideline Number 1 of 2019 cannot merely be viewed as a technical policy in prosecutorial practice, but also as a legal act giving rise to various juridical consequences. These consequences affect not only the law enforcement process in corruption cases, but also the achievement of the objectives of criminal law itself, particularly with regard to legal certainty, the effectiveness of state financial recovery, and the orientation of punishment within the Indonesian legal system (Cahyono dkk., 2025). Therefore, an analysis of its juridical implications becomes essential in assessing the extent to which the guideline aligns with its intended objectives, while simultaneously identifying normative weaknesses that may hinder the optimal eradication of corruption crimes.

From the perspective of legal certainty, Attorney General Guideline Number 1 of 2019 was fundamentally designed to create uniformity in prosecutorial practices concerning corruption cases. Nevertheless, its implementation has instead generated normative problems, particularly regarding the regulation of substitute imprisonment for the non-payment of compensation. The provision merely establishes a minimum limit of one-half of the principal sentence without providing clear parameters, such as the amount of state financial loss, the benefits obtained by the offender, or the degree of culpability. As a result, the norm becomes open to multiple interpretations. This condition creates excessively broad discretion for public prosecutors and gives rise to disparities in prosecutorial demands, even in cases with similar characteristics. Consequently, the principle of legal certainty and the principle of equality before the law are not fully realized, while the predictive function of law becomes weakened (Cahyono dkk., 2025).

Furthermore, this condition also weakens the coercive force of law and the deterrent effect of punishment. Relatively lenient substitute imprisonment penalties no longer provide sufficient



pressure upon offenders to restore state financial losses. Instead, such penalties are often perceived as a more advantageous alternative. As a result, punishment loses its utilitarian function as an instrument of prevention, both in terms of general deterrence and special deterrence. In addition, ambiguity in the sentencing structure creates inconsistency within the criminal justice system, ranging from the prosecution stage to the execution of judgments, thereby resulting in the suboptimal recovery of state financial losses (Putra & Adhari, 2023).

Another equally significant implication concerns the exercise of prosecutorial discretion by public prosecutors as *dominus litis*. The absence of clear normative parameters within the guideline causes prosecutorial discretion to become unfocused and heavily dependent upon the subjective interpretation of individual prosecutors. This situation leads to fragmentation in prosecutorial practice and increases disparities between cases. Moreover, the orientation of prosecution tends to shift away from optimizing the recovery of state losses toward a more formalistic and administrative approach. Under such conditions, public prosecutors no longer function optimally as strategic actors in realizing the objectives of punishment, but instead act merely as procedural executors.

Overall, it may be asserted that Attorney General Guideline Number 1 of 2019 has not yet fulfilled the demands of modern criminal law, which simultaneously emphasize legal certainty, utility, and justice. The absence of objective parameters in determining substitute imprisonment not only creates legal uncertainty, but also weakens the effectiveness of recovering state financial losses, reduces the coercive force of law, and causes distortions in the exercise of prosecutorial discretion (Nugraha, 2022). Ultimately, this condition results in a systemic failure to achieve the primary objective of corruption eradication, namely the optimal and equitable recovery of state financial losses.

The Ideal Regulation of Attorney General Guidelines on Prosecution Standards for Corruption Cases in Recovering State Financial Losses

a. Formulation of an Ideal Regulatory Framework for the Recovery of State Financial Losses

The provision concerning compensation payment as an additional penalty in corruption offenses, from the perspective of legal certainty, requires reformulation because the current regulatory framework does not yet provide clarity, consistency, and predictability in its implementation. Such legal uncertainty is reflected in disparities in the imposition of compensation payments, the shift in orientation from the recovery of state financial losses toward imprisonment, and the weak effectiveness of enforcement mechanisms, which ultimately results in the failure to recover assets derived from corruption. Based on these conditions, future regulatory construction



should position compensation payment no longer as an additional penalty, but rather as a principal punishment, thereby making the recovery of state assets the primary objective rather than merely a supplementary consequence (Cahyani, 2023).

This legal construction may be realized through normative reformulation within the Criminal Code, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001, and Attorney General Regulation Number 1 of 2019 concerning Guidelines for the Prosecution of Corruption Cases, so that the legal status of compensation payment obtains an explicit, comprehensive, and unambiguous legal basis. More specifically, the ideal future construction of compensation payment in corruption offenses may be formulated as follows:

1) Formulation of Compensation Payment as a Principal Punishment in the National Criminal Code

The enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code (Criminal Code 2023) has reestablished the sentencing structure by reaffirming the classification of principal punishments as stipulated under Article 65, as follows:

(1) Principal punishments as referred to in Article 64 letter a consist of:

- a. imprisonment;
- b. confinement;
- c. supervision;
- d. fines; and
- e. community service.

This regulation demonstrates a restructuring of the national sentencing system by positioning these forms of punishment as the principal instruments of criminal law enforcement. In the context of compensation payment construction, it is important to examine whether such a mechanism may or should be positioned as part of principal punishment, considering that the Criminal Code 2023 does not explicitly classify it as such. Therefore, an analysis of the normative structure of Article 65 of the Criminal Code 2023 becomes the basis for understanding the possibility of reconstructing compensation payment as a principal punishment, particularly in relation to the need for sentencing policies that are more oriented toward the recovery of state financial losses and the effectiveness of combating specific crimes, such as corruption (Indahsari & Hafrida, 2020).

The construction of compensation payment as a principal punishment in the national criminal law system originates from the necessity to shift the orientation of punishment from merely penalizing offenders toward prioritizing the recovery of state financial losses. From the



perspective of legal certainty, positioning compensation payment as an additional punishment creates ambiguity because its status depends upon judicial discretion and its execution only occurs after a judgment has obtained permanent legal force. Consequently, the effectiveness of asset recovery remains low and creates opportunities for offenders to transfer, conceal, or exploit the legal process to dissipate criminal proceeds (Margono dkk., 2024). By positioning compensation payment as a principal punishment, it acquires normative status equal to imprisonment, thereby becoming a primary obligation attached to offenders from the prosecution stage through execution, while simultaneously strengthening legal certainty in its formulation.

The establishment of compensation payment as a principal punishment would create a sentencing system more responsive to the characteristics of corruption as an economic and profit-driven crime. Thus far, imprisonment has failed to sever offenders' access to the benefits derived from corruption, while the state continues to bear financial losses. This new construction would allow sentencing to prioritize the recovery of state assets, even before custodial punishment is imposed. Under this model, criminal law becomes more adaptive to restitutive objectives, consistent with modern doctrines that position recovery of losses as a proportional form of accountability. It would also create a stronger deterrent effect, because offenders would not only lose their liberty, but also the economic benefits obtained through their criminal conduct (Effendi, 2022).

The following constitutes an ideal formulation for the construction of compensation payment in corruption offenses through the reformulation of Articles 65 and 66 of the Criminal Code 2023, as an effort to strengthen the orientation of punishment from mere penalization toward equitable recovery, to position the state as the principal victim of corruption crimes, and to realize a criminal justice system founded upon justice. This reformulation is necessary to eliminate the character of compensation payment as an optional additional punishment dependent upon judicial assessment, and to transform it into a mandatory principal punishment for every corruption offender who obtains economic benefits from such criminal acts.



Table 1. Ideal Formulation of Compensation Payment Regulation in the National Criminal Code

Current Formulation of the 2023 Criminal Code	Proposed Formulation of the Constructive Framework
<p>Article 65 of the 2023 Criminal Code: (1) Principal punishments as referred to in Article 64 letter a consist of: a. imprisonment; b. confinement; c. supervisory punishment; d. fines; e. community service.</p>	<p>Article 65 (Proposed Reformulation): (1) Principal punishments as referred to in Article 64 letter a consist of: a. imprisonment; b. confinement; c. supervisory punishment; d. fines; e. compensation payment punishment; and f. community service.</p>
<p>Article 66 (1) Additional punishments as referred to in Article 64 letter b consist of: a. revocation of certain rights; b. confiscation of certain goods and/or claims; c. publication of the court judgment; d. payment of compensation; e. revocation of certain licenses; and f. fulfillment of customary obligations under local customary law.</p>	<p>Article 66 (1) Additional punishments as referred to in Article 64 letter b consist of: a. revocation of certain rights; b. confiscation of certain goods and/or claims; c. publication of the court judgment; d. revocation of certain licenses; and e. fulfillment of customary obligations under local customary law.</p>

Source: Legal Materials Processed by the Researcher

Based on the table above, it can be observed that the proposed reformulation is not merely a textual adjustment, but rather establishes a new legal construction within the national sentencing system. By shifting compensation payment from its position as an additional punishment to one of the forms of principal punishment under Article 65, the sentencing paradigm moves from a retributive-deterrent model toward a sentencing model oriented toward the recovery of state financial losses. This new construction emphasizes that compensation payment is no longer treated as a supplementary instrument dependent upon judicial discretion, but instead constitutes a mandatory juridical consequence whenever economic benefits derived from corruption offenses are proven (Silitonga dkk., 2021).

Accordingly, this reformulation eliminates inconsistencies in judicial decisions, closes opportunities for substitution through imprisonment, and strengthens the principle of legal certainty because the norm becomes clear, measurable, and predictable in its application. This change reflects a repositioning of the objectives of punishment toward a more rational and constitutional approach, namely prioritizing the recovery of state financial losses rather than merely imposing symbolic punishment upon offenders.



2) Formulation of an Ideal Future Attorney General Guideline on Prosecution Standards for Corruption Cases

To address the structural weaknesses contained in page 24 point VI of Attorney General Guideline Number 1 of 2019, it is necessary to reaffirm the regulation through a more directed, systematic, and state-loss-recovery-oriented normative guideline. In this regard, the regulation should no longer merely establish limitations on the duration of substitute imprisonment, but must instead construct a framework that positions compensation payment as the principal instrument in prosecuting corruption offenses. Therefore, the prosecutorial guideline should be formulated by affirming that:

“Claims for compensation payment in corruption cases must be positioned as the principal prosecutorial demand reflecting the recovery of state financial losses. Public Prosecutors shall determine the amount of compensation proportionally based upon the amount of state financial losses and/or all benefits obtained by the Defendant from the corruption offense committed. In the event that the Defendant fails to pay the compensation, the Public Prosecutor shall prioritize the seizure and auction of the Defendant’s assets in order to satisfy such obligation.”

“Imprisonment shall not be positioned as a substitute for compensation payment, but may only be cumulatively demanded where there are indications of bad faith on the part of the Defendant in attempting to evade the obligation to pay compensation, without extinguishing such obligation.”

“Where the Defendant’s assets are insufficient, the remaining compensation obligation shall continue to constitute the Defendant’s responsibility and may be enforced through legal mechanisms in accordance with the prevailing laws and regulations.”

This formulation explicitly emphasizes a shift in the orientation of criminal law policy from the substitution model, which has thus far tended to position compensation payment as an alternative sanction replaceable by imprisonment, toward a cumulative and continuous model that places the obligation to restore state financial losses as an inseparable component of the entire sentencing system in corruption offenses. This shift is not merely terminological in nature, but also reflects a more fundamental paradigm change in understanding the objectives of punishment, particularly in relation to economically motivated crimes that harm state finances.

Within this framework, the recovery of state financial losses is no longer positioned as a secondary supplementary consequence, but rather as the primary objective that must be pursued



optimally through structured, systematic, and continuous prosecutorial mechanisms. The cumulative model affirms that principal punishments and additional penalties in the form of compensation payment must operate simultaneously, without any dichotomy that would enable offenders to evade financial responsibility. Meanwhile, the continuous nature of the model demonstrates that recovery efforts do not end merely at the stage of judicial judgment, but continue through all available legal instruments until the state's financial losses are fully restored.

4. CONCLUSIONS

Attorney General Guideline Number 1 of 2019, which was intended to function as an instrument for standardizing the prosecution of corruption cases, has in practice generated problematic juridical implications. From the perspective of legal certainty, the absence of clear parameters in determining substitute imprisonment creates broad discretionary powers and has the potential to produce disparities in prosecutorial demands, thereby failing to fulfill the principle of *lex certa* and the predictive function of criminal law. From the perspective of effectiveness, the alternative nature of substitute imprisonment renders the obligation to pay compensation non-imperative, resulting in the suboptimal recovery of state financial losses. From the perspective of coercive force and deterrence effect, such construction instead weakens the function of punishment as an instrument of compulsion and prevention. Furthermore, from the perspective of prosecutorial discretion as *dominus litis*, the absence of clear normative standards causes the exercise of discretion to become uncontrolled and excessively subjective. Accordingly, this guideline has not yet aligned with the objectives of corruption eradication and therefore requires a reformulation of norms that is more explicit, measurable, and oriented toward the recovery of state financial losses.

The ideal regulation of Attorney General Guidelines in corruption cases must be reformulated in an integrated manner with the Criminal Code 2023. Furthermore, the Attorney General Guideline should explicitly affirm that claims for compensation payment are mandatory, proportional, and incapable of being substituted by imprisonment, but instead cumulative in nature. Consequently, there would be a paradigm shift from a substitution model toward a cumulative model emphasizing the recovery of state financial losses, in order to realize legal certainty, consistency in prosecution, and the effective recovery of state assets.

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