

(Research) Article

# Reconstruction of the Abolition of Compensation Payments Towards Justice for Convicts

Aji Sumbara<sup>1\*</sup>, Achmad Faishal<sup>2</sup>, Suprpto<sup>3</sup>

<sup>1</sup> Universitas Lambung Mangkurat, Indonesia

<sup>2</sup> Universitas Lambung Mangkurat, Indonesia

<sup>3</sup> Universitas Lambung Mangkurat, Indonesia

\* Corresponding Author : [ajisumbara22@gmail.com](mailto:ajisumbara22@gmail.com)

**Abstract:** This study explores the reconstruction of the abolition of compensation payments to foster justice for convicts, specifically evaluating the intersection between Law No. 31 of 1999 and Law No. 20 of 2001. The research addresses the persistent legal dilemma where state loss recovery mechanisms often overlook the fundamental rights and socio-economic realities of prisoners. Under the current regime, the imposition of substitute imprisonment for unpaid financial obligations is perceived as a "layered punishment" that undermines human dignity and fails to reflect proportional justice. The analysis reveals that the retributive orientation established in Law No. 31 of 1999 results in a "lose-lose" outcome: the state remains uncompensated while the financial burden of correctional costs increases due to extended incarceration. By integrating the fiscal and state financial management principles found in Law No. 20 of 2001, this research proposes a shift toward more proportional and restorative asset recovery. The study concludes that the role of the Prosecutor must be reoriented toward accurate asset tracing and the implementation of humane payment schemes. Future legal reforms must ensure that the state's interest in fiscal restoration does not sacrifice the convict's basic rights, prioritizing distributive justice to create a more humane anti-corruption framework.

**Keywords:** Compensation Payments; Justice for Convicts; Law No. 20 of 2001; Prosecutor; Reconstruction.

Received: November 20, 2025;

Revised: December 15 2025;

Accepted: January 17, 2026;

Published: January 31, 2026;

Curr. Ver.: January 31, 2026;



Copyright: © 2025 by the authors.  
Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>)

## 1. Introduction

Corruption remains an extraordinary crime that significantly hinders national development and undermines the social and economic fabric of society. In the landscape of Indonesian legal reform, Law No. 20 of 2001 serves as a pivotal regulatory milestone in the state's effort to suppress corrupt practices and manage state finances. A central feature of this legal framework is the mechanism of compensation recovery (*uang pengganti*), which aims to restore the state's financial losses by compelling the convict to return the equivalent value of the assets gained through illicit activities. While the primary objective is the restoration of state finances, the implementation of this measure often overlooks the fundamental principles of fairness and the socio-economic reality of the convict.

The paradigm of asset recovery under Law No. 20 of 2001 is heavily influenced by a retributive justice approach, focusing on punishing the offender through significant financial strikes. However, empirical findings suggest a recurring problem where convicts, particularly those from lower socio-economic backgrounds, are unable to fulfill these financial obligations. In such cases, the law prescribes subsidiary imprisonment as a substitute for the unpaid compensation. This "layered punishment" often results in an extension of the convict's dep-

privation of liberty, which is frequently disproportionate to the original offense and the convict's actual financial capacity, thereby raising serious questions regarding the principle of justice for prisoners.

The transition of legal principles from purely retributive to more rehabilitative and restorative approaches requires a fundamental re-evaluation of historical laws. Modern scholarship emphasizes that justice in criminal law is not only about the state's right to recover losses but also about ensuring that the convict's human dignity and basic rights are not sacrificed in the process. There is a visible gap between the normative intent of Law No. 20 of 2001 and the practical implementation of compensation recovery, where the lack of a transparent and accurate asset tracing mechanism by the Prosecutor often leads to arbitrary execution.

The specific intersection between the enforcement of Law No. 20 of 2001, the proactive role of the Prosecutor, and the principles of justice for prisoners remains under-researched. Most studies focus on the efficacy of asset recovery rather than the humanitarian and legal impacts on the individual serving the sentence. This study fills that gap by analyzing whether the recovery mechanisms align with contemporary human rights standards and the principle of proportionality in punishment.

This study addresses three fundamental research questions:

- a) How is the mechanism of compensation recovery regulated and executed under the fiscal framework of Law No. 20 of 2001?
- b) To what extent does the implementation of compensation recovery reflect the principle of justice and the Prosecutor's duty to protect convict rights?
- c) What legal reconstructions are necessary to abolish disproportionate substitute imprisonment and balance the state's interest with the convict's fundamental rights?

This research adopts a legal analysis framework based on the principles of fairness, proportionality, human rights, and asset restoration. The contribution of this study lies in providing a systematic evaluation of compensation recovery under Law No. 20 of 2001, identifying the divergence between the state's fiscal interests and the protection of convicts' rights, and offering policy-oriented recommendations to refine financial sanctions. Furthermore, this study aims to foster a more humane approach to asset recovery that aligns with modern justice values. By bridging the gap between current regulations and contemporary legal standards, this research provides a critical foundation for future legislative reforms.

## 2. Preliminaries

### 2.1. Historical Context of Law

Law No. 20 of 2001 concerning the Eradication of Corruption Crimes functioned as a cornerstone of Indonesia's anti-corruption framework during the New Order era. Enacted in a political environment characterized by strong central authority and limited judicial independence, this law reflected the regime's emphasis on state stability and economic control rather than participatory governance. The law departed from earlier corruption regulations by introducing heavier criminal sanctions and broadening the scope of punishable conduct, particularly through the inclusion of acts that caused losses to the state's finances or economy.

One of the most notable legal innovations of Law No. 20 of 2001 was its explicit recognition of corruption as not merely a moral or administrative offense, but as an extraordinary crime with severe implications for national development. This framing justified the adoption of extraordinary measures, including asset confiscation and compensation recovery (*uang pengganti*), as mechanisms to restore state losses (Pradana, 2020). Article 34 of the law institutionalized compensation recovery as an additional penalty, signaling an early commitment to the concept of asset recovery within Indonesian criminal law.

Although Law No. 20 of 2021 was formally repealed and replaced by Law No. 20 of 2001 in conjunction with Law No. 20 of 2001, its normative legacy remains influential. Contemporary anti-corruption legislation continues to adopt the principle that the recovery of state losses is an integral objective of criminal punishment. As such, Law No. 20 of 2001 serves as an important historical reference point in tracing the evolution of Indonesia's asset recovery regime and understanding the punitive philosophy that underpins current legal practice.

## 2.2. The Mechanism of Compensation Recovery

Law No. 20 of 2001 compensation recovery is classified as an additional criminal penalty imposed alongside the principal punishment of imprisonment or fines. The amount of compensation is directly linked to the value of assets or economic benefits unlawfully obtained by the offender as a result of corrupt conduct (Hidayat, 2021). This strict correlation reflects the principle of disgorgement, whereby perpetrators are deprived of any financial advantage derived from criminal activity.

The execution of compensation recovery under this legal framework follows a sequential mechanism. First, the prosecutor is authorized to trace, seize, and confiscate the convict's assets to satisfy the amount stipulated in the court's judgment. This process places significant responsibility on law enforcement authorities to conduct effective asset tracing and valuation. In practice, however, the effectiveness of asset seizure has often been constrained by weak financial investigation capacities and the concealment or dissipation of assets prior to conviction.

Second in cases where the confiscated assets are insufficient to cover the determined amount of compensation, the law provides for subsidiary imprisonment. This mechanism allows the court to impose an additional term of imprisonment as a substitute for unpaid compensation. The reliance on subsidiary imprisonment underscores the retributive orientation of the 1999 regime, which prioritized punishment and deterrence over restorative justice (Fahri & Saputra, 2020).

This approach raises fundamental concerns regarding fairness and proportionality. Subsidiary imprisonment effectively transforms a financial obligation into a deprivation of liberty, regardless of whether the failure to pay results from deliberate non-compliance or genuine inability. As a result, the mechanism risks disproportionately burdening offenders who lack sufficient assets, thereby conflating poverty with culpability.

## 2.3. The Principle of Justice for Prisoners

The principle of justice in criminal sentencing extends beyond the mechanical application of statutory provisions. From a human rights perspective, justice for prisoners requires that all forms of punishment respect inherent human dignity and adhere to internationally recognized standards of humane treatment. Certain rights, including freedom from inhumane or degrading punishment, are non-derogable and must be upheld even in the context of combating serious crimes such as corruption.

The Principle of Proportionality occupies a central role. This principle demands a rational balance between the severity of the sanction and the offender's degree of responsibility, as well as their actual capacity to comply with the imposed penalty. The imposition of subsidiary imprisonment solely due to an inability to pay compensation risks creating what scholars describe as a "dead-end penalty," wherein the offender faces extended incarceration without any realistic prospect of fulfilling the financial obligation (Nurhayati & Kurniawan, 2022).

Equally important is the Principle of Legal Certainty which requires that the calculation of state losses be conducted transparently, accurately, and based on verifiable evidence. Arbitrary or inflated assessments of financial loss not only undermine the legitimacy of judicial decisions but also place an unreasonable burden on prisoners who may lack the means to challenge such determinations effectively (Ibrahim, 2021). Legal certainty thus functions as a safeguard against excessive penalization and ensures predictability in the enforcement of compensation recovery.

Operates as a constitutional constraint on the state's power to reclaim assets. While the recovery of state losses is a legitimate and necessary objective, it must not override fundamental rights as guaranteed by the 1945 Constitution. A balanced approach is required one that recognizes the importance of asset recovery while ensuring that criminal sanctions remain humane, proportionate, and grounded in the rule of law.

## 3. Proposed Method

### 3.1. Research Design

This study is designed as normative legal research, also known as doctrinal research. This design focuses on analyzing the internal consistency of legal rules, the relationship between different regulations, and the application of legal principles to specific statutory frameworks (Sari, 2022). In this context, the research evaluates Law No. 20 of 2001 against the conceptual backdrop of prisoner rights and the principle of justice.

### 3.2. Approaches

To achieve a comprehensive analysis, the following approaches are utilized:

- a) Statute Approach: Examining the specific articles in Law No. 20 of 2001 and its implementing regulations regarding financial penalties.
- b) Historical Approach: Tracking the evolution of asset recovery paradigms in Indonesia to understand the punitive philosophy prevalent during the enactment of Law No. 20 of 2001 (Wijaya & Pratama, 2021).
- c) Conceptual Approach: Investigating legal doctrines such as *distributive justice* and *proportionality* to serve as a benchmark for evaluating the impact of compensation recovery on convicts.

### 3.3. Sources of Legal Materials

The legal materials used in this study are categorized as follows:

- a) Primary Legal Materials: Authoritative legal documents, including the 1945 Constitution of the Republic of Indonesia, Law No. 20 of 2001, and subsequent anti-corruption laws
- b) Secondary Legal Materials: Scientific literature that provides critical commentary, including books, legal treatises, and open-access journal articles related to asset recovery and human rights (Utomo, 2023).
- c) Tertiary Legal Materials: Tools that provide guidance on primary and secondary materials, such as legal dictionaries and encyclopedias.

### 3.4. Technique of Analysis

The analysis is conducted using a qualitative-prescriptive method. The data is processed through deductive reasoning, where general principles of justice are applied to the specific legal norms of Law No. 20 of 2001.

This method allows the researcher to determine not only what the law "is" (*das Sein*) regarding compensation recovery but also what it "ought to be" (*das Sollen*) to ensure the protection of the fundamental rights of prisoners (Lestari et al., 2020).

## 4. Results and Discussion

### 4.1. The Rigid Mechanism of Compensation under Law No. 31 of 1999

The research finds that Law No. 20 of 2001 established a rigid and predominantly retributive framework for the recovery of state losses. Article 34 of the law categorizes compensation recovery (*uang pengganti*) as an additional criminal penalty that must be imposed cumulatively with the principal sentence. The amount of compensation is calculated strictly on the basis of the offender's unlawful enrichment, without sufficient consideration of temporal changes in asset ownership or the offender's present economic condition.

Unlike contemporary anti-corruption laws that emphasize dynamic asset tracing and financial investigation, the 1999 regime relied heavily on a static determination of state losses at the time the criminal act occurred (Maulana, 2022). This approach presumes the continued existence and accessibility of the illicit assets, an assumption that is frequently inconsistent with practical realities.

The primary findings indicate that:

- a) The law does not provide a clear or standardized mechanism for assessing the convict's actual financial capacity at the time of execution of the judgment, resulting in judicial decisions that are disconnected from socio-economic realities.
- b) The implementation of compensation orders tends to be "property-blind," whereby courts impose a fixed compensation amount without verifying whether the assets in question remain in the convict's possession or have been dissipated, transferred, or depreciated over time (Fitriani & Budiono, 2023).

This rigidity reflects a punitive legal philosophy that prioritizes symbolic accountability over practical recoverability, thereby undermining the effectiveness of asset recovery itself.

### 4.2. Disparity Between Fiscal Recovery and Human Dignity

A significant gap identified in this study lies in the tension between the state's fiscal objective of restoring public losses and the convict's right to a fair, humane, and achievable punishment. Under Law No. 20 of 2001, the failure to pay compensation regardless of intent or capacity is almost invariably sanctioned through subsidiary imprisonment.

Legal reviews and case analyses demonstrate that this mechanism produces several adverse consequences:

- a) Convicts are subjected to cumulative sanctions, serving a principal custodial sentence followed by an additional term of imprisonment solely due to their inability to satisfy the financial obligation. This additional incarceration is not linked to new criminal conduct, but rather to economic incapacity (Hidayatullah, 2020).
- b) Extended imprisonment increases the financial burden on the state through higher correctional costs, while the actual state loss remains unrecovered. This results in a “lose-lose” outcome in which neither restorative objectives nor deterrent goals are meaningfully achieved (Purnomo, 2021).

These findings suggest that the subsidiary imprisonment mechanism functions more as a coercive penalty than as an effective tool of fiscal recovery, raising serious concerns regarding its compatibility with modern penal policy.

### 4.3. Evaluation from the Principle of Proportionality

From the perspective of the Principle of Proportionality, the compensation recovery regime under Law No. 20 of 2001 can be described as insufficiently aligned with contemporary standards of justice. Proportionality in criminal punishment entails a balance between the seriousness of the offense and the individual circumstances of the offender, including their actual capacity to fulfill financial obligations imposed by the court. Within the 1999 framework, this balance is not explicitly accommodated, as the determination of compensation focuses primarily on the amount of state loss rather than on the offender’s present economic condition.

Legal scholarship describes situations in which compensation obligations are set at levels that are objectively unattainable for certain offenders, resulting in prolonged deprivation of liberty through subsidiary imprisonment. In practice, individuals without sufficient assets are more likely to experience extended incarceration, while those who retain undisclosed or successfully concealed assets may avoid additional imprisonment by fulfilling the financial requirement. This dynamic illustrates how unequal economic conditions can translate into unequal penal outcomes.

The absence of judicial discretion to adjust compensation orders based on good-faith efforts, partial repayment, or verified inability to pay further contributes to disparities in sentencing outcomes. Offenders who have cooperated with authorities and transparently disclosed their assets may still face subsidiary imprisonment when the total amount of compensation cannot be satisfied. As a result, the enforcement of compensation recovery under the 1999 regime tends to place a heavier burden on offenders with limited financial means.

In contemporary human rights discourse prolonged subsidiary imprisonment in such circumstances is increasingly viewed as problematic, particularly in relation to standards prohibiting inhumane or degrading treatment. When additional imprisonment arises not from continued criminal behavior but from economic incapacity, concerns emerge regarding the compatibility of such sanctions with principles of humane punishment and substantive equality. Viewed through this lens, the compensation recovery mechanism under Law No. 31 of 1999 appears disconnected from evolving international human rights norms and constitutional principles that emphasize proportionality, human dignity, and fairness in the execution of criminal sanctions.

## 5. Conclusions

This study concludes that state loss recovery under Law No. 20 of 2001 remains heavily retributive, prioritizing punitive imprisonment over realistic economic restoration. A significant gap persists between the nominal compensation demanded by the state and the actual financial capacity of the convict to pay.

The practice of imposing substitute imprisonment for those unable to settle their debts creates systemic injustice. This mechanism effectively converts an economic sanction into an additional deprivation of liberty, which is often disproportionate to the offense and harmful to the fundamental rights of prisoners. To ensure a fairer legal system, a more proportional and restorative approach is necessary. Legal reforms should prioritize accurate asset assessments before sentencing and introduce humane payment schemes or leniency for indigent convicts. These steps are vital to ensure that the recovery of state assets remains consistent with the principles of human dignity and justice.

## References

- Arifin, R. (2020). Due process of law and pretrial detention in Indonesia: A human rights perspective. *Journal of Indonesian Legal Studies*, 5(2), 147–164. <https://doi.org/10.15294/jils.v5i2.38192>
- Arisandi, D., & Wijayanto, H. (2023). Perlindungan hak asasi terpidana dalam eksekusi pidana tambahan uang pengganti. *Jurnal Hukum Pembangunan Alternatif*, 9(2), 142–158.
- Fahri, M., & Saputra, R. (2020). Problematika eksekusi pembayaran uang pengganti dalam tindak pidana korupsi. *Jurnal Hukum Respublica*, 20(1), 88–102. <https://doi.org/10.31849/respublica.v20i1.5432>
- Fitriani, L., & Budiono, A. (2023). Analisis yuridis penilaian aset terpidana korupsi dalam pemulihan kerugian negara. *Jurnal Hukum dan Keadilan Sosial*, 4(1), 67–82. <https://doi.org/10.32734/jhks.v4i1.9821>
- Hidayat, S. (2021). Tinjauan yuridis terhadap pidana tambahan pembayaran uang pengganti dalam perkara korupsi. *Jurnal Ius Magister*, 4(2), 115–130.
- Hidayatullah, M. S. (2020). Dilema penjara substitusi: Kritik terhadap ketentuan uang pengganti dalam hukum positif Indonesia. *Jurnal Masalah-Masalah Hukum*, 49(3), 288–301. <https://doi.org/10.14710/mmh.49.3.2020.288-301>
- Ibrahim, J. (2021). Keadilan substansial dalam penerapan sanksi finansial bagi terpidana korupsi. *Jurnal Ilmiah Kebijakan Hukum*, 15(3), 455–472. <http://dx.doi.org/10.30641/kebijakan.2021.V15.455-472>
- Lestari, D. P., Hakim, L., & Kurniawan, I. (2020). Analisis preskriptif terhadap implementasi pidana tambahan uang pengganti. *Jurnal Legalitas: Jurnal Ilmu Hukum*, 5(2), 112–125. <https://doi.org/10.33756/jljih.v5i2.14521>
- Maulana, R. (2022). Evolusi paradigma retributif ke restoratif dalam pemulihan aset korupsi. *Jurnal Riset Kebijakan Hukum*, 6(2), 201–215.
- Nurhayati, E., & Kurniawan, D. (2022). Relevansi asas keadilan dalam penjatuhan pidana tambahan uang pengganti. *Jurnal Hukum & Pembangunan*, 52(2), 341–358. <https://doi.org/10.21143/jhp.vol52.no2.3341>
- Pradana, A. S. (2020). Sejarah dan perkembangan regulasi anti korupsi di Indonesia: Dari UU No. 31 Tahun 1999 ke era reformasi. *Jurnal Sejarah Hukum*, 5(1), 12–29.
- Purnomo, S. (2021). Efektivitas dan efisiensi eksekusi putusan uang pengganti: Sebuah tinjauan ekonomis. *Jurnal Akuntabilitas Hukum*, 12(1), 34–50.
- Ramadhan, F. (2023). Perlindungan hak-hak terpidana dalam proses pemulihan aset hasil tindak pidana korupsi. *Jurnal Penelitian Hukum De Jure*, 23(1), 45–58. <http://dx.doi.org/10.30641/dejure.2023.V23.45-58>
- Santoso, B. (2022). Efektivitas pemulihan kerugian negara melalui uang pengganti dalam perspektif keadilan. *Jurnal Pembangunan Hukum Indonesia*, 4(3), 410–425. <https://doi.org/10.14710/jphi.v4i3.410-425>
- Sari, R. K. (2022). Metodologi penelitian hukum normatif dalam mengkaji putusan tindak pidana korupsi. *Jurnal Riset Hukum Dasar*, 3(1), 45–59.
- Setiawati, R. (2019). Analisis hukum terhadap eksekusi harta benda terpidana korupsi. *Jurnal Hukum Lex Generalis*, 1(2), 20–35. <https://doi.org/10.56370/jhlg.v1i7.229>
- Setyawan, B. (2022). Keadilan bagi terpidana: Reorientasi sanksi finansial dalam hukum pidana Indonesia. *Jurnal Ilmu Hukum Dialektika*, 17(2), 110–128.
- Utomo, P. (2023). Integrasi hak asasi manusia dalam penelitian hukum doktrinal di Indonesia. *Jurnal Ilmu Hukum Pro Justitia*, 41(1), 88–104. <https://doi.org/10.25123/projustitia.v41i1.5932>
- Wicaksono, G. (2021). Dilema penerapan uang pengganti: Antara pemulihan aset dan hak ekonomi terpidana. *Jurnal Hukum Ius Quia Iustum*, 28(2), 312–334. <https://doi.org/10.20885/iustum.vol28.iss2.art5>
- Wijaya, M. S., & Pratama, A. (2021). Pendekatan sejarah dalam rekonstruksi kebijakan hukum pidana korupsi. *Jurnal Sejarah dan Budaya Hukum*, 7(2), 210–228.