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**REVIEW OF THE PUNISHMENT OF SUBSTITUTE MONEY AND ITS  
CONSEQUENCES IN THE CRIMINAL ACT OF CORRUPTION (STUDY OF  
DECISION NUMBER 51 / PID. SUS-TPK/2020/PN. SMG)**

**Romli Mukayatsyah<sup>1\*</sup>, Natangsa Surbakti<sup>2</sup>, Muchamad Iksan<sup>3</sup>**

Universitas Muhammadiyah Surakarta, Indonesia

Email: romlimukayatsyah@gmail.com<sup>1</sup>, natangasurbakti@gmail.com<sup>2</sup>,  
mi214@gmail.com<sup>3</sup>

\*Correspondence

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**ABSTRACT**

**Keywords:** corruption; Payment of substitute money is an additional crime imposed by the panel of judges to recover state financial losses, as in Decision Number 51/Pid.Sus-TPK/2020/PN. Smg. The verdict is interesting to examine, what is the result of the panel of judges imposing additional penalties in the payment of substitute money by the purpose of the law, as well as how the view according to Islam. The study aims to analyze the consequences of the panel of judges imposing an additional criminal judgment on the payment of substitute money in Decision Number 51/Pid. Sus- TPK/2020/PN. Smg and his views according to Islam. The research is normative legal research, with a statutory approach and a conceptual approach, legal materials in the form of primary, secondary, and non-legal, the object of research is Decision Number 51 / Pid.Sus-TPK / 2020 / PN. Smg. Techniques for collecting legal materials with literature studies, with deductive analysis methods. The results of the study, as a result of which the judge's consideration did not clearly outline the calculation of state money used by the convict, imperfect defects, and non-achievement of legal objectives. Additional penalties for payment of substitute money according to Islam can be imposed on the convict because the property of Allah SWT is a mandate that must be accounted for its use.



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**Introduction**

The criminal act of corruption is a deviant behavior and is contrary to the values of truth, morals, and ethics (Setiawan & Jesaja, 2022), as well as acts that are hated and prohibited by any religion (Sakinah, 2014). In the context of Islam, corruption is an act that is contrary to the principles of justice (al-" is), accountability (al-amanah), and responsibility (Fazzan, 2015). One of the legal sources of the prohibition of corruption in Islam is contained in the Word of Allah SWT, namely QS. Al-Baqarah verse 188, translation: "And let not some of you eat the property of others among you in a vanity way and (do not) you bring (the business of) the treasure to the judge so that you can eat part of the property of others by sin, even though you know". Meanwhile, according to state law, corruption is regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Although it is clear that both religion and the state have prohibited corruption, corruption cases in Indonesia continue to increase. (Arifin, 2015).

The criminal act of corruption shakes the joints of the life of the nation and state (Sinaga, 2017), therefore the criminal act of corruption is considered an extraordinary crime. The rise of corruption due to deviant behavior is very troubling to the State and society, so it is necessary to punish the perpetrators of corruption crimes (Mahmud, 2020).

Penalties are sanctions imposed on someone who has committed an act that violates applicable rules (Anak Agung Gede Budhi Warmana Putra, Nahak, & Sugiarta, 2020). The punishment of perpetrators of corruption crimes is currently being developed for poverty because prison sentences are considered ineffective (Syihab & Hatta, 2023), so perpetrators of corruption crimes in addition to being sentenced to the main crime are also sentenced to additional crimes.

Additional penalties are regulated in Article 18 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Additional penalties for payment of substitute money are imposed on corruptors to recover state financial losses due to corruption. Decision Number 51/Pid.Sus-TPK/2020/PN. SMG is one of the corruption convictions that imposes a criminal payment of substitute money. The verdict was related to a corruption case using village cash land compensation money used for toll road construction not by its designation, namely Rp 1,328,837,280 (one billion three hundred twenty-eight million eight hundred thirty-seven thousand two hundred and eighty rupiah) carried out by JOKO SARJONO BIN SUDARMAN GITODIHARJO as the Head of Tanjungsari Village.

The verdict is very interesting to examine, with the provision of a substitute criminal verdict in Decision Number 51/Pid.Sus-TPK/2020/PN. What are the consequences, and what is the Islamic view of the additional criminal substitute money, considering that a decision must meet the objectives of the law both justice, expediency, and legal certainty? The purpose of this study is to determine and analyze the consequences of the panel of judges imposing additional criminal sentences instead of money in Decision Number 51/Pid.Sus-TPK/2020/PN. Smg, as well as how the view according to Islam. The problem will be studied using the theory of legal objectives, as well as corruption in the Islamic view.

## **Research Methods**

Method is a tool used to find answers to problems. This research is legal. The research approach is in the form of a statute approach, and conceptual (Marzuki, Prayogo, & Wahyudi, 2016). Legal materials are: primary legal materials; secondary legal materials (Marzuki, 2016); and non-legal materials. The object of research is what is the point of attention of a study. The object of research is in the form of Decision Number 51 / Pid.Sus-TPK / 2020 / PN. Smg. Techniques for collecting legal materials with literature studies (Document Studies). This research uses deductive analysis techniques that depart from general things, forming prepositions in certain syllogisms. This research was conducted by qualitative analysis.

## **Results and Discussion**

**1. As a result of the imposition of additional criminal judgments for payment of substitute money in decision number 51/Pid.Sus-TPK/2020/PN. Smg.**

Every judge's decision must be considered correct, as in the principle of *Res Judicata Pro Veritate Habetur*, which is that the judge's decision is considered correct until another judge's decision corrects it, or every judge's or court's decision is valid unless overturned by a higher court (Ramadhani, 2017). The judge in his decision indirectly pays attention to three basic legal values to create harmonization that can ultimately protect humans both actively and passively (U, 2021).

Gustav mentioned three terminologies within the scope of justice, namely justice, legal certainty, and expediency (Varun & Siddhartha, 2010). Decision Number 51/Pid.Sus-TPK/2020/PN. SMG applied an additional penalty of payment of substitute money of IDR 1,253,837,280,-, although the judges' consideration was not too broad in outlining the ratio decidendi imposed on the additional crime. According to the researcher, although the principal criminal verdict is higher than the Public Prosecutor's demand, the panel of judges can still use other facts in handing down additional criminal sentences. So that in the end whether the additional criminal conviction meets the three basic values of justice, legal certainty, or expediency, the researcher describes as follows:

a) Legal Justice

As a central point in law, justice can advance the good in human life according to Gustav's view (Said & Nurhayati, 2021). If the decision number 51/Pid.Sus-TPK/2020/PN. Smg is associated with Gustav's opinion, that the Majleis judge should place justice in its decisions for the good of humans, both humans in the sense of the State, society, and the convict.

Joko Sarjono Bin Sudarman Gitodiharjo has been named as a criminal perpetrator of corruption against the Boyolali toll road replacement fund. According to researchers, the panel of judges has found the truth through the trial of additional criminal payment of substitute money imposed on Joko Sarjono Bin Gitodiharjo. The truth found is the fulfillment of the five elements as alleged by the Public Prosecutor. According to researchers, the truth behind the imposition of additional criminal payments of substitute money, as stated in the consideration of the 4th element of the special judgment, namely elements that can harm state finances or the state economy.

The panel of judges considered expert testimony that stated the state loss due to unlawful acts from the convicted amounted to Rp. 1,328,837,280,-, so that the panel of judges considered that the convict had harmed state finances amounting to Rp. 1,328,837,280,-, but witness TRI RAHAYU had entrusted funds of Rp. 75,000,000 to the Prosecutor's Office so that the state loss amounted to Rp. 1,253,837,280,-. According to researchers, the panel of judges used expert testimony to obtain conditions for the occurrence of state financial losses. This truth is part of the truth of the trial that creates good conditions for the country.

Hernold in his research found differences in the panel of judges in imposing substitute money (Makawimbang, 2014, pp. 233- 234). Arnold said that if the replacement money is greater or commensurate with state financial losses, then the

decision is to meet the principle of justice and uphold the principles of independence and impartiality of the judiciary.

In Gustav's view, regarding the judge's decision that brings good to humans which is associated with the amount of state financial losses committed by convicts, researchers have a different analysis. The different analysis is based on the description of the consideration of the panel of examining judges in case number 51/Pid.Sus-TPK/2020/PN. Smg, related to the amount of state financial losses based on expert information. Expert testimony determined that there was a state financial loss of Rp. 1,328,837,280,-, while the panel of judges has also outlined considerations on the irresponsible use of toll money.

The researchers' different analyses focused on the incomplete description of the amount of state losses contained in the 4th element, namely elements that can harm state finances or the country's economy. According to researchers, the description of the consideration of state financial losses based only on expert testimony is very detrimental to the convict. The non-elaboration of the details of state financial losses used by the convict in the 4th element, of course, is very contrary to the principle of the verdict, namely that the verdict must contain a clear and detailed basis for reasoning. Thus, the judge's description of judgment that only mentions state financial losses based on expert opinion and does not fully elaborate on the details of state losses makes additional criminal convictions insufficient consideration.

According to researchers, all descriptions of unlawful fights committed by convicts show that some money cannot be accounted for, unable to show the same amount of calculations as expert calculations. Researchers who make the verdict the object of research, of course, only base on what is written in the verdict. In addition, the panel of judges also did not consider the economic value of the 12 replacement plots of land that had been purchased by the convict. According to researchers, the replacement of village cash land assets that have been successfully purchased by convicts, when measured from an economic point of view, the value of land that will continue to increase from year to year will provide economic benefits for village assets. According to the researcher's analysis, the panel of judges has missed the condition that 12 plots of land have been recognized instead of village coffers, which still allows for a name reversal process.

The researcher's analysis is that the convict should not be sentenced to payment of substitute money of Rp. 1,253,837,280,-, but the amount should be reduced by the nominal money spent on each piece of replacement land. In addition, it did not elaborate in detail the amount of state money used or could not be accounted for either by the accused or Tri Rahayu and other witnesses. So if the panel of judges only bases the follow-the-money approach or the flow of money to determine the amount of state financial losses, there will be an imbalance between violations and punishments.

The description of the discussion above leads researchers to the analysis of equality justice, corrective justice, and distributive justice. Additional criminal punishment for the payment of substitute money to the convict there is a difference in kindness experienced both by the state and the convict. The brief explanation is that the state benefits greatly from the additional criminal payment of substitute money, while for the convicted it is

very disadvantaged because there is an incorrect calculation of the loss figure which ultimately creates a sense of injustice. Kadi Sukarna mentions justice in his book *The Rule of Law and Political System* (Sukarna, 2016, p. 24):

"a constant and persistent willingness to give everyone what should be received"

Against this opinion, the constant willingness to give everyone what should be accepted has been realized by the panel of judges according to their portion.

The difference in perception of the additional criminal verdict for the payment of substitute money when related to equality justice, then what is to be achieved is numerical similarity and proportional similarity. Numerical similarity, Aristotle understood it with numerical similarity where every human being is equated in one unit, for example, everyone is equal before the law (Valentinus Claudio Kurniawan Putra, 2022). According to researchers, the panel of examining judges has placed convicts in the same position, and in applying the law is also the same. The enactment of additional criminal payments instead of money is by applicable legal norms. In addition to numerical similarity, proportional similarity must also be achieved. Proportional equality gives everyone what is rightfully his/her according to his abilities and achievements. According to the researchers, there was no proportional similarity in the additional criminal punishment of payment of substitute money for convicts. The non-consideration of replacement land assets that have been recognized and controlled by the Village Government as assets that increase every year, until in the end the replacement land can cover state financial losses. The factor of availability of replacement land should be able to reduce the amount of state financial losses which in turn can reduce the amount of substitute money for convicts.

SKM in the Boyolali District Inspectorate Report Number: 750/892/11/2019 dated December 16, 2019, concerning Audit of State Loss Calculation on Village Cash Land Compensation Money Management used for the construction of Toll Road in Tanjungsari Village, Banyudono District in 2016-2019 as village government assets can be interpreted that services performed by convicts are also not taken into account. The non-accounting for services performed by the convict causes proportional conditions not to be created. This condition is very detrimental to convicts who have provided replacement land for the village government even though administratively it cannot be accounted for. The panel of judges sought improvements due to the occurrence of criminal acts of corruption. However, what happens is a law that repairs or provides compensation for the occurrence of state financial losses. Thus corrective justice has been fulfilled through such criminal convictions, but distributive justice is far from expected.

#### b) Finality or Legal Expediency

The nature of finality or expediency is relative, motivated by the goal of justice in the content of the law that fosters good values for humans (moral values in law). The value of goodness in question is related to individuals, collectivity, and culture (Mangesti & Tanya, 2014). Moral values can continue to develop along with changes in society and philosophical views. Legal morality is in the form of ethical principles that emphasize human rights, justice, and propriety (Abdulnabi Ali, Golbert, Reksa, Kretzer, & Schweiger, 2023). Law will be of value when it can contribute maximally to the order of

people's lives. Similarly, the judge's decision, when the judge thinks of benefits or benefits to everyone, the decision reflects expediency. So the judge's decision number 51/Pid.Sus-TPK/2020/PN. SMG, especially regarding additional criminal penalties, payment of substitute money can be beneficial for everyone.

State benefits can be interpreted as benefits for everyone or all citizens (Barama, 2011). The judge's ruling regarding the additional criminal payment of substitute money has a value of benefit to the state because the additional criminal payment of substitute money for the convicted is expected to restore state financial losses.

Given the judges' consideration for the calculation of the number of state losses due to corruption committed by the convicts is still counted jointly and the criminal punishment for the payment of substitute money of IDR 1,253,837,280 is only imposed on the convicts, so according to researchers, the additional criminal punishment should be borne jointly as stated in the judges' decision, namely "CORRUPTION CRIMES JOINTLY AND CONTINUOUSLY" as in Primair's indictment. The additional criminal punishment for the payment of substitute money becomes useless because the amount of money used by the convict is not as much as the state loss so if the convict bears a larger amount, it is feared that the convict will not be able to pay the substitute money that has been charged to the convict.

According to researchers, the enactment of the Regulation of the Minister of Finance of the Republic of Indonesia Number 163/PMK.06/2020 concerning the Management of State Receivables at State Ministries/Institutions, State General Treasurers, and Simple Management by the State Receivables Affairs Committee, makes the payment of substitute money to the State as State Receivables that must be collected. Article 8 of the Minister of Finance states that court decisions are one of the sources of state receivables so that all additional criminal convictions for the payment of substitute money can be said to be state receivables. The amount of Rp 1,253,837,280, - which becomes a substitute money automatically becomes state receivable, therefore the public prosecutor must be able to execute the verdict. State receivables from substitute money for state financial losses if they cannot be collected certainly cause the country's financial status to become uncollectible state receivables. According to the researcher's analysis, although the finance minister's regulation is known as a step to eliminate state receivables, state receivables must still be executed so that efforts to save lost state finances through the punishment of substitute money can be useful.

The penalty of payment of substitute money to the convict will be useless when the purpose of the sentence is not achieved. The substance of the law that loosens convicts to be able to pay or replace them with imprisonment is the cause the purpose of making substitute money payments to restore state finances is not carried out (Rahim & Asma, 2020). The tendency of corrupt convicts to choose to replace prison sentences rather than pay compensation, in addition to legal substance issues also because the assets of the convicted are insufficient to pay state losses.

The panel of judges in case number 51/Pid.Sus-TPK/2020/PN. Smg said that the Convicted had enriched himself as evidenced by a luxurious lifestyle in daily life, besides

that the Panel of Judges also considered if the Convicted Person's wealth increased, but the judges' considerations regarding the actions that enriched the Convicted were not perfect. The imperfection of the judges' consideration is that the criminal act of corruption does not clearly describe the increase in assets or personal wealth owned by the convict. According to the researcher, it is very important that the panel of judges also consider the assets owned by the convict during the trial in his capacity as a justice seeker, so that the criminal verdict on payment of substitute money can be executed and not become an uncollectible state receivable. The finality or expediency aspect of the criminal punishment of payment of substitute money in decision number 51/Pid.Sus-TPK/2020/PN. Smg becomes invisible. The criminal act of corruption is seen as an extraordinary crime because it can damage the country's economy and social relations (Witono, 2021), so if you consider decision number 51/Pid.Sus-TPK/2020/PN. SMG has found imperfections, automatically resulting in no efforts to recover state financial losses and the state again incurs losses.

c) Legal Certainty

Indonesia as a State of Law must prioritize the creation of legal certainty (Priyatno, 2012). The implication is consistent law enforcement (Herdjiono & Damanik, 2016). Gustav said the consequence is that positive laws should not change easily (W, 2015). The law can only change if the law is felt to be out of step with the times (McGreal, 2021).

Positive laws related to the payment of substitute money in corruption have been known since 1960 with Perpu Number 24 of 1960 concerning the Prosecution, Prosecution, and Examination of Corruption Crimes. Article 16 paragraph (3) of the Perpu stipulates that the convicted person may also be obliged to pay a substitute amount equal to the property obtained from corruption. Law Number 03 of 1971 replaced Perpu Number 24 of 1960, the provisions for substitute money are still regulated in Article 34 paragraph (3), as well as the current Corruption Eradication Law, the provisions for substitute money are specifically regulated in Article 18 paragraph (1) point b. The regulation does not clearly explain the meaning of substitute money but only mentions the relationship between substitute money and property "obtained" from corruption.

Referring to criminal decision number 51/Pid.Sus-TPK/2020/PN. Smg, according to the researcher, the substitute money is interpreted by the panel of judges by Article 18 paragraph (1) b, so that the criminal sanction of substitute money is equated with the amount of state financial losses. Researchers disagree with the judge's consideration of the substitute money imposed on the convict because the panel of judges did not describe in full the amount of money used by convict Joko Sarjono Bin Sudarman Gitodiharjo. Researchers believe that the calculation of the money used by convict Joko Sarjono Bin Sudarman Gitodiharjo is not as large as the replacement money charged to him. Researchers found that the calculation of figures was partly used on behalf of other witnesses and that the panel of judges did not elaborate in detail on the expert opinion contained in the inspectorate's report on state financial losses, which according to researchers could rob the value of legal certainty.

The convicts were convicted of corruption jointly and continuously. The panel of judges in its consideration considered that the replacement money for land affected by tolls was used together with Tri Rahayu and Setiadi, even though there were activities that had not been budgeted in the APBDES and could not be accounted for. The concept of payment of substitute money in corruption crimes does not recognize any reimbursement by directing, therefore the total state loss money is charged to Convicted Joko Sarjono Bin Sudarman Gitodiharjo. Researchers agree with Iskandar Kamil who argues that substitute money cannot be rented because criminal responsibility is individual, if the substitute money cannot be calculated or proven, it cannot be punished (Herdjiono & Damanik, 2016).

The opinion expressed by Iskandar Kamil is in line with that conveyed by Sudikno Mertokusumo, namely legal certainty as a real strength for justice seekers against arbitrary acts to get something expected. According to the researcher, the convict as a justice seeker should get legal protection for the sentencing efforts carried out by the panel of judges by not clearly outlining the considerations in the verdict, the verdict on the occurrence of corruption crimes together in which the punishment of payment of substitute money is only borne by the convict. So it is increasingly clear that there should be a clearer description in the judge's consideration of the amount of money used by Joko Sarjono Bin Sudarman Gitodiharjo, Tri Rahayu, and other parties.

The researcher did not agree with the judge's consideration of using Article 5 of PERMA No. 05 of 2014 concerning Substitute Money as the basis for imposing payment of substitute money because according to the researcher, article 5 of the PERMA seemed to justify the panel of judges to convict substitute money by not clearly describing the amount of money used by the convict. The phrase of the article: has been transferred to another party the substitute money can still be imposed on the accused as long as the other party is not prosecuted either in the criminal act of corruption, or other criminal acts such as money laundering, very contrary to the phrase of Article 18 paragraph (1) point b the payment of substitute money can be made as much as the same as the property obtained from the criminal act of corruption. According to the Researcher, the State has tried to provide legal certainty from Article 18 paragraph (1) point b through the phrase mentioned above, requiring substitute money that is "equal to" all profits from corruption. The word equal can be interpreted as the situation of a balanced calculation with the amount of state financial losses. So when the judges' deliberations only contain concurrence but do not clearly describe the property obtained from the criminal act of corruption committed, then the punishment of payment of substitute money cannot be carried out.

## **2. Islamic religious views on the additional criminal payment of substitute money in decision number 51/Pid.Sus-TPK/2020/PN. Smg.**

Corruption is wrong and every religion forbids it. In Islam, corruption can be categorized as theft or taking of other people's property. In addition to QS. Al Baqarah Verse 188, the prohibition of corruption is also in QS. Al Maidah Verse 38, QS. Ali Imron Verse 161, QS. An Nisa Ayar 29.



The proceeds of corruption are haram, as the Prophet (peace and blessings of Allaah be upon him) once advised Ka'ab's companions:

يَا كَعْبُ بْنُ عُجْرَةَ إِنَّهُ لَا يَزْبُو لَحْمٌ نَبَتَ مِنْ سُحْتٍ إِلَّا كَانَتْ النَّارُ أَوْلَىٰ بِهِ

Meaning: O Ka'ab bin Ujroh, surely no flesh (limb) grows out of something unclean unless it is more entitled to be burned in hellfire. (HR. Tirmidhi, no. 614. Al-Hafizh Abu Thahir says that the sanad of this hadith is hasan).

From Jabir ibn Abdillah (may Allah be pleased with him), the Prophet (peace and blessings of Allaah be upon him) said, meaning: O mankind, fear Allah, and take a good path in seeking sustenance, for surely no servant shall die until he has truly received all his sustenance, even if it is too late. So fear Allah, and take a good path in seeking sustenance. Take the streets in search of halal sustenance and leave the haram. (HR. Ibn Majah No. 2144, said to be shahih by Shaykh Al Albani).

According to *ijma'* (opinion of fiqh scholars), corruption is haram because it is contrary to the *maqashid* principles of sharia. The haram seen in terms of corruption is a fraudulent and fraudulent act that has the potential to harm state finances and public interests (society) which is condemned by Allah SWT with appropriate punishment in the hereafter (Utomo, 2003).

Based on the severity of the sentence, Islamic criminal law recognizes three types of offenses, namely *hudud*; *Qisas* & *Diyat*; and *ta'zir*. (Ruslan, 2012). Regarding the law applied in Indonesia in the criminal act of corruption, it is included in the category of *ta'zir*, namely the sanction for corruption crimes is handed over to the head of the judiciary. Existing legal sanctions can be more severe than *Hudud* sanctions because it depends on the judge's *ijtihad* in seeing the losses of corruption. The results of *ijtihad* judges can also be unfair, so the key to a *ta'zir* is the ability of *ijtihad* judges (Zainuddin, 2012). So in criminal case Number 51/Pid.Sus-TPK/2020/PN. Smg, the judge has the authority to decide the case with *ijtihad*. The judge's *ijtihad* includes the imposition of additional criminal payments instead of money, looking at state financial losses due to corruption. The judge in handing down the verdict must also provide justice, both fair to the defendant and fair to the state (as a victim).

Justice in determining the law is said by Allah SWT in QS. An Nisa verse 58:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۗ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا﴾

Meaning: Truly, God commands you to deliver commissions to those who deserve them, and when you establish laws among men you should establish them justly. Truly, it is God who best teaches you. Truly, Allah is All-Hearing, All-Seeing.

In line with QS. In Nisa Verse 58, Ibn Taymiyah defines justice as the act of giving the rights of every member of society fairly and voluntarily and maintaining a balance between rights and obligations. The purpose of upholding justice is not only considered

as the fulfillment of expectations for humans but also related to the implementation of God's commands in the Quran (Nasution, 2019). So in short, justice according to Ibn Taymiyyah is not to give tyranny to others. Justice must be able to prevent acts of harming or harming others (Khafaie & Rahim, 2020). So if it is related to decision Number 51 / Pid.Sus-TPK / 2020 / PN. Smg, justice will be seen if the sentence imposed on the convict does not punish the convict, but also continues to carry out the commands of Allah SWT in the Quran.

The sentence imposed by the judge on the convict in Decision Number 51/Pid.Sus-TPK/2020/PN, according to the author, has been fair to the state, especially in the criminal imposition of substitute money because state financial losses can be covered by the criminal payment of substitute money. However, it has not been fair to the convict, considering that the panel of judges did not consider the economic value of the 12 replacement lands that have been recognized as belonging to the Tanjungsari Village Government which came from compensation money for the construction of the Toll Road in Tanjungsari Village, Banyudono, as well as the money enjoyed by the convict.

Property obtained unreasonably while serving in government (proceeds of corruption) had to be handed over to the state, this was also applied during the time of Caliph Omar ibn al-Khaththab (ra):

"It was Abu Hurairah (ra). Appointed guardian (governor). He saved a lot of wealth from halal sources. Getting information about it, Caliph Omar ibn al-Khaththab (ra) summoned the governor to the caliph's state capital, Medina. Arriving in the city of Medina, Caliph Umar ibn al-Khaththab (ra) said to the governor: "O enemy of Allah and enemy of His Book! Have you not stolen God's treasure?" Governor Abu Hurairah (ra). replied, "Amir al-Mukminin, I am neither an enemy of Allah nor an enemy of His Book. I am the enemy of anyone hostile to both. I am not the one who stole the treasure of Allah", Caliph Umar ibn al-Khaththab (may Allah be pleased with him) asked him, "Then where did you collect the treasure of 10,000 dinars?" Abu Hurairah (ra). answered, "From a rapidly growing uptake and from several successive gifts to come". Caliph Umar ibn al-Khaththab (may Allah be pleased with him) said, "Hand over your treasure to the Baitul Mal of the Muslims!" Abu Hurairah (ra). immediately gave it to Caliph Umar ibn al-Khaththab (ra). He then raised his hands to heaven and said softly, "O Allah, forgive the Amir al-Mukminin." (Thoha, 2004, p. 253)."

The narration explains that state treasures are the treasures of Allah SWT which are mandated to officials to be guarded and cannot be used inappropriately, so they are involved in stealing the treasures of Allah SWT to assert their haram. Officials who take the treasure of Allah SWT are enemies of Allah and His Book because they ignore the prohibitions of Allah SWT. If it is related to Decision Number 51 / Pid.Sus-TPK / 2020 / PN, the Convicted as a state official is obliged to return the property obtained improperly during office (the result of corruption) to the state because the property belongs to Allah SWT which is mandated to be used properly and for the welfare of the community. So for additional criminal payments, the substitute money imposed by the panel of judges to

the convict should also consider the property owned by the convict, so that justice, expediency, and legal certainty are realized.

### **Conclusion**

As a result of the judge's legal considerations, decision number 51/Pid.Sus-TPK/2020/PN. SMG, which does not clearly describe the calculation of state money used by convicts, can be said to be imperfectly flawed and does not achieve the objectives of the law, namely justice, expediency, and legal certainty. Additional penalties for payment of substitute money according to Islam can be imposed on the convict in Decision Number 51/Pid. Sus- TPK/2020/PN. Smg, because the convict is a government official who is entrusted with the property of Allah SWT to be used properly. However, the amount of the additional penalty for payment of substitute money should be based on the calculation of the convict's property that is improperly owned.

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