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Law Enforcement of Corruption Crimes Through the Restoration of State Finances Based on the Principles of Restorative Justice

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Abstracts. State financial losses due to corruption arising from corruption crimes must be returned immediately. The application of the concept of restorative justice in the settlement of corruption crimes was again carried out by the Indonesian Prosecutor's Office with the issuance of SE Jampidsus Number: B765/F/Fd.1/04/2018 dated April 20, 2018 regarding Technical Guidelines for Handling Corruption Cases at the Investigation Stage, which in essence the investigation is not only limited to finding the event of Corruption in the form of unlawful acts, but also must try to find the amount of State Financial Losses. This research aims to analyze how the application of the concept of restorative justice in the law of corruption eradication in order to strengthen the goal of restoring state losses by the perpetrators of corruption crimes, which has recently increased, to find out whether the concept of restorative justice in corruption crimes can be applied in Indonesian law. The type of research used is normative legal research or library legal research, which is legal research conducted by examining library materials (library research), with a regulatory approach, concept approach and analytical approach. The results showed that the application of the concept of restorative justice in corruption crimes in order to strengthen the goal of restoring state losses by perpetrators of corruption crimes can be seen through the Circular Letter of the Deputy Attorney General for Special Crimes Number: B113/F/Fd.1/05/2010 dated May 18, 2010 and the Chief of Police Letter No. Pol. B/3022/XII/2009/sdeops on the concept of Alternative Dispute Resolution (ADR) terroristically and juridically about law enforcement and the concept of restorative justice in corruption crimes can be applied in Indonesian law.

Keywords: **Return of State Finances, Restorative Justice, Corruption Crime**

Introduction

Crime in Indonesia has developed systematically. Some illegal behaviors are seen as minor violations of the law, while others are seen as merely habitual. Because the criminals involved are already at a high economic and bureaucratic level, corruption is often considered a behavior that is outside the law (high level bureaucracy). The process of proving acts of corruption involving the government will certainly be very complex. The goal of eradicating corruption clashes with the interests of the authorities, which mainly involve bureaucrats, giving rise to the statement that corruption is an act that is outside the law and untouched by the law.[1]

The uncontrolled rise of corruption will cause misery not only in the national economy, but also in the life of the nation as a whole. The rampant growth of corruption in Indonesia has blurred the lines between who, why and how. Corruption is no longer limited to office holders and special interests, but has become an issue in both the public and commercial sectors.[2]

According to data from Transparency International Indonesia (TII), Indonesia's Corruption Perception Index (CPI) in 2020 was at a score of 37, down three points from the previous year. Indonesia is ranked 102 out of 180 countries involved. According to the global corruption index monitoring organization, Transparency International released a report entitled 'Global Corruption Barometer-Asia' and Indonesia is the third most corrupt country in Asia. The first position is occupied by India followed by Cambodia in second place while at the ASEAN level, Indonesia is ranked fifth.[3]

Based on data from the anti-corruption non-governmental organization Indonesia Corruption Watch (ICW) released the Corruption Case Prosecution Trend Report for Semester 1 of 2021. Through the data collected by ICW, the number of prosecutions of corruption cases during the first six months of 2021

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[1] Indriyanto Seno Adji. 2012. *Korupsi Dan Permasalahannya*. 2012: Diadit Media Press. hlm. 27.

[2] Departemen Hukum dan HAM Republik Indonesia, 2008. *Penelitian Hukum tentang Aspek Hukum Pemberantasan Korupsi di Indonesia*, Jakarta: PT. Grasindo.

[3] Transparency Internasional, 2020, Indeks Persepsi Korupsi 2020, Korupsi, Respon Covid-19 dan Kemunduran Demokrasi https://ti.or.id/indeks- persepsi-korupsi-2020-korupsi-respons-covid-19-dan-kemunduran- demokrasi/, 10 September 2021.

reached 209 cases. The number of cases increased compared to the same period in the previous year, which was 169 cases.[4]

ICW also stated that the value of state losses due to corruption continues to increase. In the first semester of 2020, the value of state losses from corruption cases was IDR 18.173 trillion, then in the first semester of 2021 the value rose to IDR 26.83 trillion. If calculated as a percentage, there was an increase in the value of state losses due to corruption of 47.6 percent. In the last four years, the value of state losses has always shown an increasing trend, while the number of prosecution of corruption cases tends to fluctuate.

Corruption cases that continue to increase and are systematic are certainly very detrimental to state finances. Some of the biggest corruption cases in Indonesia that are very detrimental to state finances First, the BLBI case with total state losses in the Bank Indonesia Liquidity Assistance (BLBI) case reaching more than Rp109 trillion. Second, the Asabri case, which based on data from BPK Indonesia suffered a loss of around 22.78 trillion. Third, the Jiwasraya case, which was wrapped in investment in cooperation with a number of banks as selling agents. Based on BPK data, as a result of this case Indonesia suffered a loss of around 16.8 trillion.[5]

State financial losses due to corruption arising from corruption must be recovered immediately. State finances play an important role in the administration of state administration, including the administration and service of society. Optimizing the return of state financial losses is also the basis for the formulation of punishment for perpetrators of corruption, but in its implementation there are obstacles in the form of substance, structure and culture in efforts to recover state financial losses through the punishment of

[4] ICW, 2021, Kasus Korupsi Sepanjang Tahun 2021, https://www.tindak pidana korupsi.org/id/search/node?keys=KASUS+KORUPSI ,dilihat 10 Oktober 2021.

[5] Detha Arya Tifada, 2021, Deretan Kasus Korupsi Yang Sebabkan Kerugian Negara Terbesarhttps://voi.id/bernas/56857/deretan-kasus-korupsi-yang- sebabkan-kerugian-negara-terbesar, dilihat 9 September 2021.

perpetrators of corruption.[6] Therefore, any state losses must be corrected immediately so as not to disrupt state operations.

State losses can be recovered through administrative mechanisms, such as offender compensation, civil action mechanisms, or criminal action mechanisms (Indonesia (1) Law Number 1 of 2004 concerning State Treasury, State Gazette of the Republic of Indonesia (LNRI) 2004 Number 5, and State Gazette (TLN) Number 4355, Article 59 paragraph (1), which regulates any state/local losses caused by an unlawful act or negligence of a person).[7] The crime of corruption is one of the criminal acts and unlawful acts committed by a person or corporation with the aim of benefiting oneself or a corporation, by abusing the authority, opportunity or means attached to his position and having an impact on state financial losses.[8]

State losses based on the perspective of criminal law in accordance with the provisions of Article 2 and Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 on the Eradication of Corruption (UUPTPK) is an act that deviates from the use and management of state finances so that it can be qualified as an act of harming the state or can harm the state as a criminal act of corruption, with the fulfillment of the elements: first, the act is an unlawful act or abuse of authority, opportunity or means available to him, and second, the parties are enriched and benefited, either the perpetrator himself, another person or corporation. The meaning of harming the state is that the budget that has been determined is not used in accordance with its allocation or there are irregularities.

According to the provisions of Article 2 paragraph (1) of the UUPTPK, it is known that: "Every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine

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[6] Budi Suhariyanto, 2016. *Restorative Justice dalam Pemidanaan Korporasi Pelaku Korupsi demi Optimalisasi Pengembalian Kerugian Keuangan Negara*. Jakarta, Kemenkumham, Volume 5, Nomor 3, Desember 2016, 423.

[7] Agus Rusianto, 2015. *Tindak Pidana & Pertanggungjawaban Pidana: Tinjauan Kritis Melalui Konsistensi antara Asas, Teori, dan Penerapannya*. Jakarta: Kencana.

[8] Yayan Indriana, "Pengembalian Ganti Rugi Keuangan Negara Pada Perkara Tindak Pidana Korupsi," *Cepalo* 2, no. 2 (September 12, 2019): 123, https://doi.org/10.25041/cepalo.v2no2.1769.

of at least Rp.200,000,000.00 (two hundred million rupiah) and a maximum of Rp.1,000,000,000.00 (one billion rupiah)." Based on the definition of corruption in Article 2 paragraph (1) of the UUPTPK above, it is known that there are three elements of the crime of corruption, namely unlawfully enriching oneself or others or a corporation that can harm the state or the state economy.

The element against the law is an act that is contrary to the laws and regulations that can be done by everyone, abuse of authority is an act that is contrary to the laws and regulations, can only be done by someone who has certain authority and capacity related to his position related to procedural matters **(Halim, 2004).** Efforts to enforce the law must be carried out correctly, fairly, without arbitrariness, and without abuse of power. There are several principles that must always appear in every law enforcement, namely the principle of impartiality, the principle of honesty in examining and deciding (fairness), the principle of procedural due process, the principle of applying the law correctly which guarantees and protects the substantive rights of justice seekers and social interests (environment), the principle of guaranteeing freedom from all pressure and violence in the judicial process.

Misusing the authority, opportunity, or means available to him in relation to his position as a state administrator or civil servant in the institution, can be referred to as "misbruik van gesag or van bevoeg", misusing the authority, opportunity, or means available to him because of his position or position and the authority is used not in accordance with the position **(Syed Husein Alatas, 1983).** Perpetrators of corruption must go through a judicial process to obtain a legally binding decision. Therefore, a new concept or approach is needed in tackling criminal acts of corruption, because the amount of state losses caused is very large. In developed countries such as the United States, in dealing with criminal acts committed by corporations, the United States Department of Justice uses a legal approach model known as the Deferred Prosecution Agreement (DPA) and Non-Prosecution Agreement (NPA).

In principle, the Deferred Prosecution Agreement (DPA) is the authority of the Prosecutor to prosecute corporate and business crimes, but agrees to postpone or not prosecute as long as the perpetrator of corruption is willing to fulfill the terms and conditions agreed between the Prosecutor and the perpetrator of

corruption, the agreement is written into an agreement so that it is referred to as a Deferred Prosecution Agreement (DPA) or an agreement not to be prosecuted Non-Prosecution Agreement (NPA).

Deferred Prosecution Agreement (DPA) or Non-Prosecution Agreement (NPA) has many similarities with the concept of restorative justice approach in Indonesia, restorative justice approach focuses on restoring back to its original form and does not focus on imposing punishment on the perpetrator.[9] In Indonesia, restorative justice is applied only to resolve minor criminal cases, but through the ratification of UNCAC, criminal law reform by applying the concept of restorative justice to corruption cases as an extraordinary crime (extra ordinary) perpetrators who commit corruption crimes effectively, wisely and efficiently will be able to optimize the return of state losses due to acts of corruption. Criminal law reform is needed to adjust the needs of the times at this time.

The need for penal reform in Indonesia is in line with the results of the 1976 UN Congress on crime prevention and treatment of criminals. In the congress, it was stated that the existing criminal law in various countries, which is often derived from foreign laws from the colonial era, is generally foreign and unfair (obsolete and unjustice) as well as outdated and not in accordance with reality (outmoded and unreal) because it is not rooted in cultural values and there is even discrepancy with the aspirations of the community and is not responsive to current social needs.[10] The Anti-Corruption Convention was signed by the Indonesian government at the United Nations Headquarters in New York on December 28, 2003, and has been approved by the Indonesian government in Law Number 7 of 2006 concerning Ratification of UNCAC 2003. Based on the ratification of UNCAC, the Government of Indonesia in its efforts to prove that it is serious in dealing with the problem of corruption. The ratification of UNCAC was responded to through a Circular Letter issued by the Attorney General's Office for Special Crimes Number: B113/F/Fd.1/05/2010 regarding priorities and achievements in handling corruption cases dated May 18, 2010. This Circular Letter emphasizes that for people who commit corruption crimes

[9] Halim, Pemberantasan Korupsi, Rajawali Press, 2004, Jakarta, 47.
[10] Barda Nawawi Arief

with small losses (under Rp. 100,000,000) and have returned the losses, the concept of restorative justice can be used.

The application of the concept of restorative justice in the settlement of corruption crimes was again carried out by the Indonesian Attorney General's Office with the issuance of SE Jampidsus Number: B765/F/Fd.1/04/2018 dated April 20, 2018 regarding Technical Guidelines for Handling Corruption Cases at the Investigation Stage, which in essence the investigation is not only limited to finding the event of Corruption in the form of unlawful acts, but also must seek to find the amount of State Financial Losses. Related to the ratification of the United Nations Convention Against Corruption (UNCAC) in Law Number 7 of 2006 on the topic of returning state assets, several corruption cases have been resolved using restorative justice through a special circular letter of the attorney general (Jampidsus).[11] However, there are still many high prosecutors who refuse to apply this circular letter because the concept of restorative justice is usually used in resolving minor criminal cases, besides that the current circular letter of the young attorney general for special crimes does not have binding legal force so that many high prosecutors still apply the concept of retributive justice. Based on the existing background, and to find out how the system of applying the principles of restorative justice in corruption crimes in order to save state finances in overcoming state losses, the author wants to conduct research with the title "Law Enforcement of Corruption Crimes Through Restoration of State Finances Based on Restorative Justice Principles".

Research methods

The method used in this research is the normative juridical method, namely the approach and literature study by reading, quoting and analyzing legal theories and laws and regulations related to the problems in the research being carried out. The scope of this research is criminal law, with a study of law enforcement against corruption crimes in order to recover state financial losses by applying the principle of restorative justice. The scope of the research location is the jurisdiction of the Corruption Court at the Tanjung Karang District Court, with

[11] Budi Suhariyanto, (2016) *Restorative Justice dalam Pemidanaan Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara*, Jurnal Rechtsvinding, Volume 5, Nomor 3

the research time in 2022. The purpose of this research is to find out the law enforcement of corruption crimes through the return of state financial losses in restorative justice efforts and to find out how the application of the concept of restorative justice in the law of eradicating corruption crimes in order to strengthen the goal of returning state losses by the perpetrators of corruption crimes.

Discussion

1. Law Enforcement Against Corruption through the Return of State Losses in Restorative Justice Efforts

a. Restorative Justice in Corruption Crime

Restorative Justice emerged as a reaction to the concept of retributive justice which focuses more on retaliation against a criminal act committed by the perpetrator of the crime. The retaliation is realized in the form of punishment against the perpetrator of the crime. In Satjipto Rahardjo's opinion, a case settlement through the judicial system that leads to a court verdict is a law enforcement towards the slow track.[12] Thus, restorative justice is seen as a better and more efficient way to resolve a case compared to retributive justice. Luhut MP Pangaribuan stated that in its development, the settlement of a criminal case is no longer through imprisonment because it is a manifestation of revenge and at the same time a burden to the state, but rather restores the relationship between the perpetrator, victim and society.[13]

Restorative Justice is a court that emphasizes the repair of losses caused or related to criminal acts.[14] The Restorative Justice Model was proposed by abolitionists who rejected coercive means in the form of penal means and replaced them with reparative means.[15] In the context of the criminal sanctions system, the values

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[12] Henny Saida Flora, (2018), *Keadilan Restoratif Sebagai Alternatif dalam Penyelesaian Tindak Pidana dan Pengaruhnya dalam Sistem Peradilan Indonesia*, UBELAJ Jurnal, Volume 3, Issue 2, hlm. 2.

[13] Luhut MP Pangaribuan, (2009), *Lay Judges & Hakim Ad Hoc: Suatu Studi Teoritis Mengenai Sistem Peradilan Pidana Indonesia*, Jakarta: Fakultas Hukum Universitas Indonesia, 257.

[14] M Taufik Makaro, (2013), *Pengkajian Hukum Tentang Penerapan Restorative Justice dalam Tindak Pidana yang Dilakukan Oleh Anak-Anak*, Jakarta: BPHN Kementerian Hukum dan HAM, 27.

[15] Romli Atmasasmita, (1996) *Sistem Peradilan Pidana Perspektif Eksistensialisme dan Abolisionisme,* Bandung: BinaCipta, 15.

underlying abolitionism still make sense to find alternative sanctions that are more feasible and effective than institutions such as prisons.[16] Restorative Justice is carried out through a cooperative process involving all parties (stake holders).[17] Restorative justice is a process in which all parties involved in a particular offense come together to resolve collectively how to deal with the consequences of the offense and its implications for the future.[18] Restorative justice can be described as a response to criminal behavior to restore the harm suffered by victims of crime to facilitate peace between conflicting parties. The basic principles of restorative justice are 3, namely:

1) Restoration occurs to those who have suffered harm as a result of the crime
2) The offender has the opportunity to be involved in the restoration of the situation
3) The court's role is to maintain public order and the community's role is to preserve a just peace.

The forms of settlement through restorative justice are as follows:[19]

1) Mediation
2) Victim-offender mediation
3) Reparations
4) Family group meeting
5) Victim-offender groups; and
6) Victim vigilance.

The main goal of Law of The Republic of Indonesia No. 20 of 2001 Concerning The Amendment to Law No. 31 of 1999 Concerning The Eradication of Criminal Acts of Corruption is the recovery of State financial losses. Law enforcement officials are expected to identify corruption cases that are considered detrimental

[16] ibid

[17] M. Taufik Makaro, Loc.Cit.

[18] Kevin I. Mirror dan J.T. Morrison, (1996), *A Theoritical Study and Critique of Restorative Justice,* in Burt Galaway and Joe Hudson, eds., *Restorative Justice International Perspective*, (Monsey, New York Criminal Justice-Press and Krueger Publications, 117.

[19] I. Tajudin dan Nella Sumika Putri, (2015), *Penyelesaian Tindak Pidana Lalu Lintas Melalui Pendekatan Restorative Justice Sebagai Dasar Penghentian Penyidikan dan Perwujudan Asas Keadilan dalam Penjatuhan Putusan*, PADJAJARAN Jurnal, Volume 2, Nomor 1, 151.

to state finances so that they can be resolved through out of court settlement, by calculating the ratio of the value of operational funds for handling cases to the value of state financial losses. Out of court settlement is a concept of restorative justice. The application of restorative justice needs to be accommodated to evaluate the weaknesses of the retributive justice approach as it has existed and is applicable.[20] Restorative justice can be used in corruption crimes, unlike restorative justice in general crimes which must involve the involvement of victims, perpetrators and the community, related to corruption issues focus on the return of State losses. If all the proceeds of corruption are returned by the suspect or defendant, it can essentially be used as a factor that erases the nature of the criminal law, namely the crime of corruption so that the suspect or defendant does not need to be convicted.

There are 3 (three) elements or conditions that cause the loss of the unlawful nature of an act of corruption, namely:

1) the suspect or defendant does not benefit
2) the state is not disadvantaged
3) the public is served

Based on this explanation, it can be examined that if the perpetrator of corruption has returned all the proceeds of corruption along with all the benefits obtained from the proceeds of corruption by the perpetrator of corruption, then basically the perpetrator does not benefit, the state does not suffer financial losses and the community can be served by returning all the proceeds of corruption along with all the benefits. The meaning of the community being served is that the state can carry out the construction of facilities that are useful for the wider community with the return of all proceeds of corruption and all profits.

If the perpetrator of a corruption crime only returns part of the proceeds from the crime of corruption, the perpetrator still benefits from the corruption he committed and the state is still disadvantaged and the community is not served. Therefore, the partial return of the proceeds of corruption cannot eliminate the unlawfulness. The return of the proceeds of corruption must be returned by the

[20] Budi Suhariyanto, (2016) *Restorative Justice dalam Pemidanaan Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara*, Jurnal Rechtsvinding, Volume 5, Nomor 3, 432.

perpetrator of the crime of corruption entirely in order to remove the unlawfulness of the perpetrator. The return of all proceeds of corruption along with the benefits obtained by the suspect or defendant has consequences:

1) does not cause victims and/or losses, in which case there is no loss to the state
2) there are other means that are more effective and with less loss in tackling acts that are considered reprehensible, in this case the state does not need to spend more money to process, convict, and feed and water convicted corruptors.

Therefore, the application of restorative justice in corruption crimes in the form of returning all proceeds of corruption crimes by the perpetrators of corruption crimes can be said to be more beneficial to the state. With the application of restorative justice, the state is not burdened financially to process and feed the perpetrators of corruption who are detained or convicted, and if the retributive justice model is applied, it is feared that the perpetrators of corruption will tend to choose to undergo substitute punishment in the form of imprisonment rather than paying losses to the state. This is certainly increasingly detrimental to the state.

The application of restorative justice in the form of returning all proceeds of corruption can be done at the time:

1) before the investigation
2) during the investigation
3) during the investigation; and
4) during the examination before the court.

The return of all proceeds of corruption obtained by the perpetrator can eliminate the element of mens rea or malicious intent in the perpetrator, so that if the perpetrator returns all the proceeds of corruption at the investigation level, the investigator can declare that the case cannot be upgraded to the investigation stage, while at the investigation level the investigator can issue an Order to Terminate Investigation (SP3). One of the reasons for issuing SP3 based on Article 109 of the Criminal Procedure Code is that it is not a criminal offense. The return of all proceeds of corruption by the perpetrator has the consequence

of the loss of the unlawful nature of the perpetrator of the crime of corruption and thus it can be said that the case is not a corruption crime case.

Furthermore, at the trial stage, that the return of all proceeds of corruption along with all benefits obtained by the defendant at the time of examination in court, this can become a court decision to release the defendant from all legal charges or onslag van recht vervolging. This is in accordance with the provisions of Article 191 paragraph (2) of the Criminal Procedure Code, with the return of all proceeds of corruption by the perpetrator resulting in the consequence of the loss of the unlawful nature of the perpetrator of the crime of corruption, then what is charged by the public prosecutor is indeed proven, but because the unlawful nature of the perpetrator is lost, the case is not a crime of corruption, so the court decision is in the form of release from all legal charges or onslag van recht vervolging, not vrijspraak. Thus, the application of restorative justice in corruption crimes in the form of returning all proceeds of corruption can be carried out at the stage before the investigation, during the investigation and investigation, even during the examination in court.

Through the use of restorative justice in the context of corruption crimes in the form of returning all proceeds of corruption crimes by the perpetrators of corruption crimes, it can be said that it is more beneficial for the state. With the application of restorative justice, the state is not burdened financially to process and feed the perpetrators of corruption crimes who are detained or convicted, and if the retributive justice model is applied, it is feared that the perpetrators of corruption crimes will tend to choose to undergo substitute punishment in the form of imprisonment rather than paying losses to the state, which is certainly more detrimental to the state.

Through the explanation presented, it can be seen that the concept of applying restorative justice in corruption eradication law to strengthen the goal of restoring state losses by perpetrators of corruption in Indonesia makes restitution of state losses the main punishment, because if restitution of state losses is still applied as a punishment by making restitution of state losses the main punishment and confiscating all assets arising from corruption, the concept of restorative justice indirectly impoverishes the perpetrators of corruption and the state benefits.

b. Application of Restorative Justice in Corruption Crime in Indonesia

Based on the national working meeting in 2011 held by the Supreme Court, it resulted in an important decision that later became a jurisprudence in Supreme Court decisions, which was based on Decision No.1600 K/Pid/2009.[21] On the consideration of restorative justice (hereinafter referred to as the case of Decision No.1600 of 2009). In principle, the jurisprudence can be said to be the seed of the birth of restorative justice, because according to the Supreme Court, one of the objectives of criminal law is to restore the balance that occurs because of a criminal offense. One of the objectives of "Restoration of balance" in corruption crimes is to recover state financial losses in the interests of many people and anticipate crises in various fields of state development.[22] Basically, restorative justice is recognized by the international world, namely in 2000 held by the United Nation (United Nations), Basic principles on the use of restorative justice programmes in criminal matters about a number of fundamental principles for the use of restorative justice approaches.[23]

Chapter 9 of the United Nation Convention on Restorative Justice has been implemented in a number of countries in the world, such as the United Kingdom, Austria, Finland, Germany, the United States, Canada, Australia, South Africa, Gambia, Jamaica, and Colombia. According to the former Chief Justice of the Supreme Court of Indonesia, Artidjo Alkostar, there are many cases of minor criminal cases that can actually be processed with the principles of fast, low cost and simple justice. For example, a person who steals a banana because he is

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[21] Keputusan Mahkamah Agung Indonesia Nomor:096/KMA/SK/VII/2011 tentang Tim Penerbitan Yurisprudensi Mahkamah Agung Republik Indonesia Mengenai Rumusan Kaidah Hukum dalam Putusan Penting pada tanggal 1 Juli 2011

[22] Agus Rusianto, (2015), *Tindak Pidana & Pertanggungjawaban Pidana: Tinjauan Kritis Melalui Konsistensi antara Asas, Teori, dan Penerapannya*, Jakarta: Kencana, 252.

[23] *United Nation*, *Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000),* https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-use-of-restorative-justice-programmes-in-criminal-matters/, diakses pada 5 Juni 2019

hungry, and the owner of the banana can forgive, then the ethical consequences do not need to be decided in court, but resolved through penal mediation.[24]

In general, the basic principles of other examples of restorative justice through mediation specify some prerequisites for restorative justice, such as domestic violence or sexual abuse, namely:

1) the victim of the crime must consent,
2) the violence must stop,
3) the perpetrator of the crime must take responsibility,
4) only the perpetrator of the crime should be blamed and not the victim,
5) he mediation process can only take place with the consent of the victim. Restorative justice is currently not specifically regulated in corruption legislation in Indonesia, but based on the case of Decision No.1600 of 2009, due to Article 10 paragraph (1) of Law Number 48 of 2009 concerning

Judicial Power (hereinafter referred to as the Judicial Power Law) states that judges cannot refuse to examine, hear and decide a case on the grounds that the law is absent or unclear. The reason that there is no law or it is unclear in principle in Article 5 paragraph (1) of the Judicial Power Law is that the judge has the means to find it or in other words to make legal discoveries, so the judge is obliged to continue to examine and try it. Therefore, Restorative Justice in principle can reduce the socio-economic burden on the state and the energy of law enforcement in providing justice for the community. For this reason, the existence of restorative justice institutions needs to be included in the criminal justice system. In corruption crimes, it has actually been enforced by Circular Letters in several law enforcement agencies including, but has not been established through legislation:

1) Letter of the National Police Chief No. B/3022/XII/2009/sdeops on the concept of Alternative Dispute Resolution (ADR), in the first point it is written that the handling of criminal cases that have small material losses, the settlement can be directed through the concept of ADR which actually has similarities with Restorative Justice which emphasizes deliberation between the parties involved;

[24] Artidjo Alkostar, *Keadilan Restoratif, https://nasional.kompas.com/read/2011/04/04/04534930/twitter.com?page=all,* diakses pada 19 Juni 2019

2) Circular Letter of the Deputy Attorney General for Special Crimes Number: B113/F/Fd.1/05/2010 dated May 18, 2010, one of the points in its content is to instruct all High Prosecutors which contains an appeal that in cases of suspected corruption, people who have consciously returned State losses need to be considered not to be followed up on the principle of restorative justice.

In the crime of corruption, it has actually also been applied in terms of the implementation of abuse of authority in government administration from Article 17 of the Law of the Republic of Indonesia No. 30 of 2014 concerning Government Administration that abuse of Authority which is emphasized in Article 34 of Government Regulation of the Republic of Indonesia No. 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials to Government Officials can be made to return losses to the state / regional treasury. This means that if from a supervision result of the Government Internal Supervisory Apparatus (APIP) even though there is an administrative error that causes a loss of state money, a refund of state financial losses is made no later than 10 (ten) working days from the time the supervision result is decided and issued.

At the law enforcement stage, the return of all proceeds of corruption along with all the benefits obtained by the defendant during the examination in court, then this can be a court decision to release the defendant from all legal charges or onslag van recht vervolging. This is in accordance with the provisions of Article 191 paragraph (2) of the Criminal Procedure Code, with the return of all proceeds of corruption by the perpetrator resulting in the consequence of the loss of the unlawful nature of the perpetrator of the crime of corruption, then what is charged by the public prosecutor is indeed proven, but because the unlawful nature of the perpetrator is lost, the case is not a crime of corruption, so the court decision is in the form of release from all legal charges or onslag van recht vervolging, not vrijspraak. Thus, the application of restorative justice in corruption crimes in the form of returning all proceeds of corruption can be done at the stage before the investigation, during the investigation and investigation, even during the examination in court.

In the crime of corruption, it has actually also been applied in terms of the implementation of abuse of authority in government administration from Article

17 of the Law of the Republic of Indonesia No. 30 of 2014 concerning Government Administration that abuse of Authority which is emphasized in Article 34 of Government Regulation of the Republic of Indonesia No. 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials to Government Officials can be made to return losses to the state / regional treasury. This means that if from a supervision result of the Government Internal Supervisory Apparatus (APIP) even though there is an administrative error that causes a loss of state money, then a refund of state financial losses is made no later than 10 (ten) working days from the decision and issuance of the supervision results.

Through the use of restorative justice in the context of corruption crimes in the form of returning all proceeds of corruption crimes by the perpetrators of corruption crimes can be said to be more beneficial to the state. With the application of restorative justice, the state is not burdened financially to process and feed the perpetrators of corruption crimes who are detained or convicted, and if the retributive justice model is applied, it is feared that the perpetrators of corruption crimes will tend to choose to undergo substitute punishment in the form of imprisonment rather than paying losses to the state, which is certainly more detrimental to the state.

Through the explanation presented, it can be seen that the concept of applying restorative justice in corruption eradication law to strengthen the goal of restoring state losses by perpetrators of corruption in Indonesia makes restitution of state losses the main punishment, because if restitution of state losses is still applied as an additional punishment, the judge has the option to impose additional punishment or substitute confinement if the convicted person is unable to compensate.[25] By making restitution of state losses the main punishment and confiscating all assets arising from corruption, the concept of restorative justice indirectly impoverishes the perpetrators of corruption and the state benefits.

[25] Yusona Piadi dan Rida Ista Sitepu, 2019, *Implementasi Restorative Justice Dalam Pemidanaan Pelaku Tindak Pidana Korupsi*, JURNAL RECHTEN : RISET HUKUM DAN HAK ASASI MANUSIA, V o l . 1 | 2 0 1 9, 1.

2. Application of Restorative Justice Concept in Corruption Eradication Law to Strengthen the Purpose of Returning State Losses by Corruption Offenders

Each state party now has the opportunity to solve the problem of corruption through restorative justice, namely asset recovery in an effort to recover state financial losses caused by corruption. Through the United Nations Convention Against Corruption (UNCAC), which was signed by 133 countries, member states of the United Nations must respond as quickly as possible to the existence of this convention, especially in the context of asset recovery.

Basically, restorative justice is recognized by the international world, namely in 2000 held by the United Nation (United Nations), Basic principles on the use of restorative justice programmes in criminal matters about a number of fundamental principles for the use of restorative justice approaches (United Nation, Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2at35(2000). In Chapter 9 of the United Nations Convention on Justice Restorative Justice has been attempted to be implemented in a number of countries around the world.

The consideration for the birth of the concept of restorative justice in corruption crimes is that rather than depriving the perpetrators of corruption crimes of their freedom by imprisoning them, it is better for the state to concentrate on recovering state losses by the perpetrators of corruption. Furthermore, the government should find ways to reemploy corrupt officials in the fields they have, which the government will employ for a certain period of time. Strengthening this concept can not only immediately recover the losses caused by criminal acts, but also realize other objectives of punishment, namely providing a deterrent effect and improving the attitude of the perpetrator. Along with the ratification of the Anti-Corruption Convention through Law No. 7/2006, international criminal law has also adopted the restorative approach as follows:

a. The recently approved Rome Statute of the International Criminal Court contains a number of restorative provisions, including establishing a victim and witness unit, authorizing the Court to conduct hearings and to consider the personal interests of victims where appropriate, a mandate to establish

principles relating to restitution and reparation to victims, and a mandate to establish a trust fund to benefit victims of crime.

b. The 2003 United Nations Convention Against Corruption (UNCAC). The UNCAC Convention takes a restorative strategy, which is regulated in one of its provisions, Article 37, which regulates cooperation with law enforcement officials. Article 37 paragraph (1) of the 2003 UNCAC Convention obliges each state party to take appropriate measures to encourage them to participate in criminal acts specified in the convention (corruption), and to provide information useful in investigations and evidence, as well as for certain purposes. According to the provisions of paragraph (2) of Article 37 of the UNCAC, a state party to the UNCAC convention shall, in appropriate cases, consider the possibility of reducing the sentence of an alleged offender who provides material cooperation in the investigation or prosecution of a corruption case. UNCAC mandates that each member state should consider granting the possibility of extending immunity from prosecution to a person who provides material cooperation for the purposes of investigation and prosecution of corruption offenses in Article 37 paragraph (3). It must be ensured that the core principles of the national laws of the participating countries are complied with. Meanwhile, Article 37 paragraph (4) stipulates that the protection of the perpetrators mentioned above must be in accordance with the provisions of Article 32 of the UNCAC Convention, as well as all its amendments.

Through international law, the concept of restorative justice was born from UNCAC which has been implemented in a number of countries in the world, such as the United Kingdom, Austria, Finland, Germany, the United States, Canada, Australia, South Africa, Gambia, Jamaica and Colombia. The United Nations Convention Against Corruption (UNCAC) is a United Nations Anti-Corruption Convention held on December 9 to 11, 2003, which states that there is a worldwide commitment to the crime of corruption. The United Nations General Assembly has formally recognized this convention through Resolution No. 57/169.

Ratification of the UNCAC aims to impose binding obligations on participating countries. The ACC 2003 has succeeded in building a comprehensive grand strategy (grand design) for the fight against corruption, which is detailed into 8 (eight) Chapters and 71 (seventy-one) Articles. ACC 2003 prepared 3 (three) strategies that are interdependent with each other. The three strategies are first criminalization, second asset recovery, and third international cooperation. ACC

2003 is specifically aimed at and is very important in the process of asset recovery considering that, first, assets resulting from corruption are the property of the "state's victim" (state of origin), and these assets must be returned immediately to help the state concerned improve the welfare of its people. Secondly, for this purpose, international cooperation between states parties to the ACC 2003 (ratifying states) is required.[26]

The UN Convention against Corruption (UNCAC) was signed on December 9 and 11, 2003. By resolution 57/169, the United Nations General Assembly has formally recognized this convention. Criminalization, Asset Recovery, and International Cooperation are the three main aspects of the content of this convention, the content of UNCAC is complementary. Indonesia has signed the convention on December 18, 2003, to realize a corruption-free country, and Indonesia has ratified on April 18, 2006 in Law No. 7 of 2006 as a follow-up to the UNCAC agreement (Kulsum Ummi, 2008: 18). By ratifying UNCAC Indonesia has a number of obligations to carry out international standardization so that UNCAC can have the power to be applied in Indonesia. In addition, Indonesia can utilize UNCAC to solve the problem of corruption that has crossed borders. UNCAC (United Nations Convention Against Corruption) is the first global anti-corruption convention that takes a comprehensive approach to addressing the problem of corruption on a global scale. The general objectives of the 2003 ACC are:

a. To promote and take firm measures to prevent and combat corruption more efficiently and effectively (to promote and strengthen measures to prevent and combat corruption more efficiently and effectively).
b. Promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery (to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery).

[26] Kulsum Ummi, 2008, *"Kebijakan Indonesia Meratifikasi United Nations Convention Againts Corruption (UNCAC)*", Diakses 11 Februari.

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Conclusion

Based on the description of the research results and discussion above, it can be concluded as follows the form of restorative justice in corruption crimes is the return of all proceeds of corruption crimes along with all forms of profit if there are profits obtained by the perpetrators of corruption crimes. The return can be made at the stage before the investigation, during the investigation, during the investigation until the examination stage in court. The application of restorative justice in corruption crimes has a positive impact on the state. The state is not burdened to spend the state budget to process and maintain perpetrators of corruption crimes who are detained or convicted by feeding and drinking the perpetrators of corruption crimes. At this time, the application of the restorative justice model has not been specifically regulated in corruption legislation in Indonesia, but circular letters have been issued in several law enforcement agencies, namely the Chief of Police Letter No. B/3022 / XII / 2009 / Sdeops on the Concept of Alternative Dispute Resolution and Circular Letter of the Deputy Attorney General for Special Crimes Number B113 / F / Fd.1 / 05/2010 dated May 18, 2010 which regulates the application of restorative justice in corruption crimes which prioritizes deliberation to return all proceeds of corruption. Theoretically and juridically, the concept of restorative justice in corruption crimes can be applied in Indonesian law. The change in concept from retributive justice to restorative justice does not hinder the application of this concept as long as it does not challenge existing regulations. The application of the concept of restorative justice in corruption crimes to strengthen the goal of restoring state losses by perpetrators of corruption crimes can be seen through the Circular Letter of the Deputy Attorney General for Special Crimes Number: B113/F/Fd.1/05/2010 dated May 18, 2010 and the Chief of Police Letter No. Pol. B/3022/XII/2009/sdeops on the concept of Alternative Dispute Resolution (ADR). Restorative justice in corruption crimes emphasizes repairing the harm caused. The concept of restorative justice in the punishment of perpetrators of corruption can be applied in the form of strengthening the rules for restoring state losses from additional punishment to main punishment, through this concept there is a change from follow the suspect to follow the money and follow the assets which will indirectly impoverish the perpetrators of corruption and the state will benefit.

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