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RESTORATIVE JUSTICE IS THE ULTIMUM REMEDIUM FOR CORRUPTION CRIMES TO RECOVER STATE FINANCIAL LOSSES

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Abstract

The restorative justice approach is a relatively new policy and is still sectoral. However, this policy has set in several legal regulations starting from the Decree of the Director General of the General Courts Agency Number: 1698/DJU/ SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts, Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Prosecution Based on Restorative Justice, Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. The current handling of corruption crimes prioritizes retributive Justice by applying retributive Justice to perpetrators of corruption crimes in some instances, such as minor corruption crimes, which will further harm the state because the state finances that have corruption cannot be full recovered. The judicial process takes too long, and the state must spend more money to finance convicted corruption cases in correctional institutions. It certainly adds to the burden on the form. This research uses normative legal analysis, which answers all questions and problem formulations by helping to help explain the discussion of research results briefly. This research demonstrates that Indonesian legislation has not regulated the restorative justice approach to corruption crimes. Determining the characteristics of corruption crimes that can be restorative Justice will provide legal certainty. Restorative Justice in corruption crimes is the return of all proceeds and all forms of profit if the perpetrators of corruption crimes obtain benefits. Returns can be made ahead of the investigation, in the inquiry, and during the study until the examination stage in court. The application of restorative Justice in corruption crimes positively impacts the state. The state would not need to spend the state budget to process and maintain the perpetrators of corruption crimes detained or convicted by feeding and drinking the perpetrators of corruption crimes.

Keywords: Corruption, Restorative Justice, Ultimum Remedium State Losses

1. INTRODUCTION

Corruption in Indonesia has mushroomed from all groups, in the government and private sectors, both those committed by state officials and those committed by specific individuals with positions in private companies. In addition, corruption cases in Indonesia are explicitly handled. This specificity also became the forerunner of establishing the Corruption Eradication Commission. Selecting the Corruption Eradication Commission shows Indonesia's seriousness in eradicating all acts of corruption. Corruption can also be considered an economic crime because sin is generally related to something that brings benefits in monetary value (money/assets) and even in the form of positions. They all have one goal: to benefit themselves or groups by violating the Law. The crime of corruption significantly impacts all sectors, especially the country's economy. Due to the losses caused by corrosion to state finances, the state in running the wheels of government is hampered and not maximized.

Corruption is regulated explicitly in Law Number 31 of 1999 Jo Law Number 20 of 2001

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concerning the Eradication of Corruption. In handling every corruption case, public prosecutors often apply Article 2, Article 3, and Article 4 of Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning the Eradication of Corruption. These articles are the ultimate articles by the public prosecutor to be able to trap the perpetrators of corruption to be accountable for their actions. Based on this Article, there are various considerations of judges in deciding each corruption case. The diversity of judges' deliberations is related to the interpretation of Article 4 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. In the provisions of Article 4 of Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning the Eradication of the Crime of Corruption, which determines that the return of losses to state finances or the state economy does not eliminate the punishment of the perpetrators of criminal acts as referred to in Article 2 and Article 3. The application of Article 4 of Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning the Eradication of the Crime of Corruption in Corruption cases often invites controversy; this is because, until now, it is still a problematic / issue that is often debated both in academia and legal practitioners regarding the return of state losses does not eliminate criminal charges against perpetrators of corruption.

Efforts to eradicate corruption are not only to punish those found guilty with severest punishment but also so that all state losses caused by the perpetrators of criminal acts can be recovered quickly. In Law No. 20 of 2001, if examined more deeply, the target to be achieved by the legislators is how law enforcement officials work optimally to restore losses to the state so that they can resolve through the form of out-of-court settlement by calculating the ratio of the value of operational funds for handling cases to the value of state financial losses so that the handling of corruption crimes is also an (ultimatum medium). The out-of-court settlement itself is a concept of the principle of restorative Justice. The study of Law is distinguished in several views, including that in addition to legal sociology studies, there are normative and philosophical studies. Suppose legal sociology views Law as a social reality, culture, and other practical things in empirical studies. In that case, normative studies view the Law as a reality, including social reality, culture, and other valuable things. Normative studies view the Law as a rule determining what one can and should not do. Crime is a term that contains a basic understanding of legal science as a term formed with awareness of giving specific characteristics to criminal law events. Criminal acts have abstract knowledge of concrete events in criminal Law, so they must be given a scientific meaning and found clearly to separate them from the terms used daily in community life (Ilyas & Nursal, 1980). In this case, corruption is considered an act that can result in punishment as regulated in the legislation.

In Indonesian criminal Law, the restorative justice approach is a relatively new policy and is still sectoral. However, this policy has regulated in several legal regulations starting from the Decree of the Director General of the General Courts Agency Number: 1698/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts, Regulation of the Public Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Prosecution Based on Restorative Justice, Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. In the Regulation of the Prosecutor's Office of the Republic of

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Indonesia, Number 15 of 2020, Article 5 letter (c) explains that criminal offenses with the value of evidence or losses incurred due to criminal acts of no more than Rp. 2,500,000.00 (two million five hundred thousand rupiahs) can resolve by restorative Justice. However, the loss value above does not apply effectively to perpetrators of corruption crimes whose losses are more significant in optimizing the return of state losses due to corruption crimes. However, in this case, law enforcement efforts from law enforcement officials with the issuance of Circular Letter of the Deputy Attorney General for Special Crimes Number: B-113/F/Fd.1/05/2010 dated May 18, 2010, one of the critical points in its content is instructing all High Prosecutors, which contains an appeal that in cases of alleged corruption crimes, people with awareness have returned state losses, it is necessary to consider not being followed up on the principle of restorative Justice (Pangaribuan, 2009).

An example of a tipi or case that uses restorative justice instruments is the alleged misappropriation of village funds in Central Lampung in 2015 by Widodo Kakam, which cost the state Rp.109,000,000 by returning all the proceeds of corruption to the form so that it not subject to criminal sanctions. In the following case, Suweno was legally and convincingly proven guilty of committing the crime of corruption in Rp.10,000,000 and returned the money he received to the public prosecutor, and the case was continued to court. The panel of judges chaired by Suhartono found Suweno legally and convincingly guilty and continued the case to court. The above example can illustrate that, in practice, law enforcers apply the restorative justice approach and those who do not use the beneficial justice approach in corruption cases. Meanwhile, the costs incurred by the government for investigating corruption cases are pretty draining state itself; each law enforcement institution has different standards on the part of the Police, the Corruption Eradication Commission, and the Attorney General's Office. The police investigation level can cost Rp.208,000,000 per case, not to mention the prosecution level until the trial process.

The handling of corruption crimes at this time prioritizes retributive Justice by applying retributive Justice to perpetrators of corruption crimes in some instances, such as minor corruption crimes, which will further harm the state because the state finances that have been corrupted cannot be fully returned. The judicial process takes too long, and the state must spend more money to finance convicted corruption cases in correctional institutions. This certainly adds to the burden on the form. The application of restorative Justice is a popular alternative in various parts of the world for handling unlawful acts (against the Law in the formal sense) because it offers a comprehensive and effective solution; restorative Justice exists to answer the failure of the purpose of punishment with retribution/judgment. So far, the application of retributive Justice in corruption crimes has not fulfilled the legislator's objectives, namely, not optimizing the return of state financial losses (Haley, 2011). However, the policy of implementing restorative Justice is in accordance and in line with the United Nations declaration held in 2000, which contained the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. The Eleventh United Nations Congress on Crime Prevention and Criminal Justice in Bangkok in 2005 reaffirmed the restorative justice approach.

This research critically explains the legal implications of applying restorative Justice to

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optimize the return of state losses from corruption crimes. Through restorative Justice, it is expected that perpetrators of corruption crimes will be able to compensate for losses without facing prosecution in court. Appreciation of the application of restorative Justice has compensation for the return or elimination of criminal liability. Consideration of depenalization is supported by rational reasons related to national economic stability, implications for social impacts due to corruption convictions that are even higher, and real consequences that can trigger the emergence of crises in various fields.

METHOD

This writing uses normative legal research, which answers all questions and problem formulations by helping to help explain the discussion of research results briefly (Nasution Bahder Johan, 2008). Legal science research with a normative approach focuses on studying legal issues on the issue of norms. This approach will focus on examining legal reality from the perspective of the governing legal substance. The collection of legal materials in this research will be carried out through literature studies. Namely, primary, secondary, and tertiary legal materials will be collected. These legal materials can be in the form of official documents, reports, and publications in print and electronic form.

RESULT AND DISCUSSION

A. The Nature of Restorative Justice as an Implementation of Ultimum Remedium towards the Return of State Financial Losses in Corruption Crimes.

1. Philosophy of Restorative Justice for Corruption Crime

Dispute resolution involving the affected parties and the community has been widely practiced in the archipelago and Indonesia. Even dispute resolution outside the formal judicial process has been carried out long before the formation of the Indonesian state. This is because most of the Indonesian population does not come from urban areas and is not secular, so the prioritized social values tend to emphasize personal relationships with characteristics of tolerance, communal solidarity, and avoidance of disputes (Lev, 1990). Restorative Justice is a justice that emphasizes the repair of harm caused or related to criminal acts. The Restorative Justice Model was proposed by abolitionists who rejected coercive means in the form of penal means and replaced them with reparative standards (Atmasasmita Romli, 2010). In the criminal sanction system context, the values underlying abolitionism still make sense to find alternative sanctions more feasible and practical than institutions such as prisons. In the author's opinion, the concept of restorative Justice in the crime of corruption does not eliminate criminal sanctions. Instead, it prioritizes sanctions that emphasize efforts to restore the consequences of crime, especially the return of state financial losses in the crime of corruption.

The essence of Law Number 20 of 2001 concerning the Eradication of Corruption is the return of State financial losses. Law enforcement officials are expected to identify corruption cases that are considered detrimental to state finances so that they can be resolved through court settlement by calculating the ratio of the value of operational funds for handling cases to the

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value of state financial losses. An out-of-court payment is the concept of Restorative Justice. The application of beneficial Justice needs to be accommodated to evaluate the weaknesses of the retributive justice approach as it has existed and applies (Suhariyanto, 2016). Efforts to overcome crime by using the institution of criminal Law and physical punishment of criminals is the most traditional way, even said to be as old as the civilization of humanity. In philosophy, discipline and punishment are called the "older philosophy of crime control." Later, the punishment policy was widely questioned, considering that in the historical context, punishment or criminal sanctions were full of images of treatment considered cruel and beyond limits by today's standards. Smith and Hogan even call it "a relic of barbarism." (Hogan & Ormerod's, 2021)

Indonesian corruption eradication law still adheres to the retributive justice paradigm in punishing corruption perpetrators. Therefore, the sentence of corruption offenders releases from any purpose other than one purpose, namely retaliation. Retribution arises because criminal Law is built on the premise of indeterminism, which views humans as having free will to act. It is this free will that underlies the birth of crime. Therefore, the indeterminism view considers that human free will must be rewarded with criminal sanctions. This retributive justice paradigm is certainly not in line with the big goal of eradicating corruption, which hampers efforts to recover state assets through the recovery of state financial losses in corruption crimes in Indonesia. The obstacles occur both at the procedural level and at the technical level. At the procedural level, the existing legal norms are unable to keep up with the modus operandi of corruption crimes, where the proceeds of the criminal act are not only enjoyed by the defendant but also received or enjoyed by third parties who are not defendants, making it challenging to recover state losses.

Along with the development of human life and civilization, it turns out that implementing the criminal sanction of deprivation of liberty contains more negative than positive aspects. The negative aspects arising from the imposition of criminal sanctions or lack of freedom are dehumanization, privatization, and stigmatization. In addition, another negative aspect is the exhaustion of energy of law enforcers and the state budget to focus on efforts to physically punish criminals rather than restoring the consequences of crimes committed. In many criminal cases, the harm or adverse effects caused by a crime are more important to repair than depriving a criminal of their freedom. In the context of corruption crimes, it seems that the philosophy and theory of punishment, which the school of retributive Justice heavily influences, is no longer relevant to the big goal of corruption eradication law in Indonesia, which focuses on protecting state assets or wealth. The legal interest to be protected is state finances. The coherence of 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 focuses on restoring state losses; in this case, the state is the victim and is represented by the prosecutor as the state attorney.

2. State loss offense

According to the legal perspective, the definition of corruption is clearly explained in 13 articles in Law No. 20 of 2001 concerning the Eradication of Corruption. Based on these

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articles, corruption is formulated in 30 forms/types of corruption crimes; these articles explain in detail the actions that can be subject to criminal sanctions for corruption. The 30 forms/types of corruption offenses can be grouped as follows: (1) State financial losses; (2) Bribery; (3) Embezzlement in office; (4) Extortion; (5) Fraudulent acts; (6) Conflict of interest in procurement; (7) Gratification. The seven types of corruption are described in great detail in the Law as a formulation of offense (criminal offense), which is an act that the Law threatens with punishment, contrary to the Law, committed by someone who is guilty and that person is considered responsible for his actions.

However, of the many provisions governing the corruption crime in the Anti-Corruption Law, the conditions managing "harming State finances" are only found in Articles 2 and 3. The other criminal acts categorized as corruption do not require the calculation of state financial losses. Several articles do not link crime with state finances, such as bribery. An official who accepts a bribe from someone cannot be said to have harmed state finances. Although only two articles, these are often used or become a favorite of law enforcement officials to ensnare corruption perpetrators suspected of causing state losses (Waluyadi, 1999).

B. Characteristics of Corruption Crimes That Can Be Resolved Through Restorative Justice.

Black Law Dictionary, the word "characterization" means 1. Conflict of lows, the classification, qualification, and interpretation of laws that apply to the case.-also termed capability, type, performance; 2. Family law. It classifies property spouses accumulate as separate or marital property (or common property). Meanwhile, the meaning of the word "qualification" is "the description of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty of function (voter qualification requires one to meet eligibility, age, and registration requirements); characterization." (Garner, 2009). Furthermore, in the sizeable Indonesian dictionary, the word "characteristic" (noun) means psychological, moral or character traits that distinguish a person from others, personality or character.

1. Return of state financial losses of their own accord.

Article 4 of the Anti-Corruption Law states, 'the return of losses to state finances or the state economy does not eliminate the criminalization of the perpetrators of criminal acts as referred to in Articles 2 and 3. The offense in this Article is addressed explicitly to corruption offenses that require state financial losses. According to the explanation of the Article, it is stated that if the perpetrators of the criminal acts of corruption referred to in Article 2 and Article 3 have fulfilled the elements of the Article, it is said that if the perpetrators of the criminal acts of crime referred to in Article 2 and Article 3 have fulfilled the details of the Article in question, the return of losses to state finances or the state economy does not eliminate the punishment of the perpetrators of these criminal acts. So, even though the perpetrator of a corruption crime has returned the state losses, the legal process against him has continued, and the return is only used as one of the reasons that mitigate the punishment.

It should be remembered that the basic idea for the emergence of such legal norms was that

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when the Anti-Corruption Law was established, Indonesia was experiencing a transition period after the overthrow of Soeharto from 32 years of authoritarian rule. One of the common ways is to strengthen law enforcement instruments in all fields to ensure legal certainty better, avoid diversity of legal interpretation, and provide protection for the social and economic rights of the community. In the context of Article 4, it also aims to provide a deterrent effect for perpetrators of corruption. Even if the state's financial loss has been returned, the perpetrator has fulfilled the elements of the offense and is still punished. This means that the return of money does not have a significant enough effect on him, so the perpetrator thinks twice about committing corruption.

Law enforcement follows two ways of interpreting Article 4 of the Anti-Corruption Law. First, suppose the perpetrator of a corruption crime returns the loss to the state before the investigation stage. In that case, it is used as a basis by the investigator not to continue the legal process against him. This method is adequate despite the range of criminal conspiracies between law enforcers and perpetrators of corruption. The norm in Article 4 contradicts the spirit contained in the United Nations Convention against Corruptions 2003 (UNCAC), which Indonesia has ratified with Law Number 7 of 2006. One of the essential things prioritized in eradicating corruption is the return of corruption proceeds. UNCAC places the law enforcement process as secondary, while the primary is the return of state financial losses that the perpetrator has corrupted. The purpose of this effort is on two counts, namely, so that the benefits obtained by the perpetrator can be used to develop the country and alleviate crime. Why restore state losses if the perpetrator will still be punished? Using asset forfeiture mechanisms to recover these losses requires a lot of money and time and has not been entirely successful. In other words, the provisions in the Article hamper efforts to recover state financial losses abroad. Since corruption has been declared a cancerous crime, implementing the criminal justice system also needs to calculate the costs that the state has incurred. Handling criminal offenses, including corruption offenses, currently emphasizes the retributive justice approach. The punitive justice approach, which emphasizes criminal sanctions (premium medium), has failed in preventing and combating corruption. Then what is the solution so that the return of state financial losses is effective and efficient? Based on the explanation above, several efforts can be made. First, if the perpetrator of a corruption crime has voluntarily returned state losses before the investigation or investigation process against him, the legal process against him must be considered complete. Second, suppose the investigation process against the perpetrator of a corruption crime has been initiated and has cost much money. The perpetrator voluntarily returns the state's financial losses. In that case, the legal process must also be terminated, provided that the perpetrator is also burdened with the obligation to reimburse the cost of law enforcement that the state has incurred. Meanwhile, the cost of criminal law enforcement includes the cost of prevention, disclosure, arrest, and imposition of criminal sanctions. So far, the fee for handling cases has been charged entirely to the state. In the future, for law enforcement of corruption crimes to run optimally and efficiently, the costs of handling cases incurred by the state, starting from the investigation, investigation, prosecution, trial, to execution, will be entirely borne by the perpetrators of criminal acts. Third, the trial of a corruption case has been held, and the defendant has been convicted. The defendant must return

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the state losses along with all issue handling costs, return twice the number of state losses due to corruption crimes, and still be sentenced as a deterrent to the perpetrators of corruption crimes.

2. Return of State Financial Losses at the Investigation, Investigation, and Prosecution Stages

Restorative Justice emerged as a reaction to the concept of retributive Justice, which focuses more on retaliation for a criminal act committed by the perpetrator. The payback is realized as 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 law enforcement towards the slow lane. (Henny Saida Flora, 2018) Thus, restorative Justice is seen as a better and more efficient way to resolve a case than 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 on the state, but rather restores the relationship between the perpetrator, victim, and society (Pangaribuan, 2009).

In 2016, the Constitutional Court issued Decision Number 25/PUU-XIV/2016, which changed the formal offense in Article 2 paragraph (1) and Article 3 of Law Number 20 Year 2001 on the Eradication of Corruption to a material offense. A material offense is an offense whose formulation focuses on the consequences that are prohibited and threatened with punishment by Law. In contrast, a formal offense is an offense whose formulation focuses on acts that are not permitted and threatened with punishment by Law (Kansil & Kansil, 2004). By changing the formal offense to the material offense, it means that the element of harming state finances is no longer understood as an estimate (potential loss) but must be understood to have occurred or real (actual loss) in the crime of corruption. Thus, it can be examined that a person can be said to have committed a criminal act of sin and can be subject to criminal sanctions if the person's actions have caused actual losses to state finances or the state economy. The main goal of Law Number 20 Year 2001 is the recovery of State financial losses. Law enforcement officials are expected to identify corruption cases that are considered detrimental 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. An out-of-court payment 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 applies. Marwan argues that restorative Justice can be used in corruption crimes, unlike in general crimes, involving the involvement of victims, perpetrators, and the community related to corruption issues focusing on restoring state losses (Suhariyanto, 2016). Suppose the suspect or defendant returns all the proceeds of corruption. In that case, it can be used as a factor that erases the nature of the criminal Law, namely the crime of sin, 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 a corruption crime, namely: 1) the suspect or defendant does not benefit; 2) the state is not harmed; 3) the public is served. Based on this explanation, it can be examined that if the perpetrator of a corruption crime has returned all the proceeds of the crime of corruption along with all the profits obtained from the proceeds of the

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crime of bribery by the perpetrator of the crime of sin, then basically the perpetrator does not benefit, the state does not suffer financial losses and the public can be served by returning all the proceeds of the crime of corruption along with all the profits. The meaning of the community being served is that the state can construct helpful facilities for the broader community by returning all proceeds of corruption and all profits (Flora, 2018).

Suppose the perpetrator of a corruption crime only returns part of the proceeds from the crime of corruption. In that case, the perpetrator still benefits from the corruption he committed, 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 proceeds of corruption must be returned by the perpetrator of the crime of corruption entirely to remove the perpetrator's unlawfulness. The return of all proceeds of corruption along with the benefits obtained by the suspect or defendant has the following consequences: 1) it does not cause victims and 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 objectionable, in which case the state does not need to spend more money to process, convict, and feed and water corruption convicts (Purwoleksono, 2019).

Therefore, the application of restorative Justice in corruption crimes in the form of returning all proceeds of corruption crimes by the perpetrators 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. If the disciplinary justice model is applied, it is feared that the perpetrators of the crime will choose to undergo substitute punishment in the form of imprisonment rather than paying losses to the state. This is undoubtedly increasingly detrimental to the state. Didik Endro Purwoleksono argues that the application of Restorative Justice in the form of returning all proceeds of corruption can be made 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 men's rea or malicious intent in the perpetrator so that if the perpetrator returns all the proceeds of crime at the investigation level, the investigator can declare that the case cannot be upgraded to the investigation stage. In contrast, the investigator can issue an Order to Terminate the Investigation (SP3) at the investigation level. One of the reasons for giving 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, and thus, it can be said that the case is not a corruption case. Furthermore, at the trial stage, Didik Endro Purwoleksono argues that the return of all proceeds of corruption, along with all benefits obtained by the defendant at the time of examination in court, then can be a court decision to release the defendant from all legal charges or slag van recht vervolging. This is by 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 sin. What is charged by the public prosecutor is indeed proven. Still, because the illegal nature of the perpetrator is lost, the case is not a crime of corruption, so the court decision is in the form of

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release from all legal charges or slag 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 made at the stage before the investigation, in the inquiry and research, and even during the examination in court (Watch, 2014).

In the crime of corruption, it has 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 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. In the author's opinion, corruption cases should be carried out through restorative Justice first, based on the results, if the money from corruption has been returned along with the profits. The issue is

a) at the investigation level, the party suspected of corruption, through penal mediation, as a form of restorative Justice, is asked to return the money from the crime immediately. If replaced, then the case is not upgraded to investigation.

b) at the investigation level, the investigation is stopped (sp3)

c) at the prosecution level, the prosecution is stopped d. in court; the defendant is acquitted (not released)

d) based on restorative Justice, if the proceeds of corruption are returned only in part, then the investigation, prosecution, and later in court, there is a reduction in punishment (clementine).

e) When there is no return of state finances, the prosecution is still carried out in the court process until the verdict, and the punishment will function as the ultimum remedium.

CONCLUSION

Indonesian legislation has not regulated the restorative justice approach to corruption crimes. Determining the characteristics of corruption crimes that can be restorative Justice will provide legal certainty. Restorative Justice in corruption crimes is the return of all proceeds and all forms of profit if the perpetrators of corruption crimes obtain benefits. The return can be done before the investigation, in the inquiry, during the study, and until the examination stage in court. The application of restorative Justice in corruption crimes positively impacts the state. The state is not burdened with spending 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 present, the application of the therapeutic justice model has not been regulated explicitly in corruption legislation in Indonesia. Still, circular letters have been issued

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in several law enforcement agencies, namely Chief of Police Letter No. B/3022/XII/2009/stops 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. Furthermore, related to the characteristics of corruption crimes that can be restored in restorative Justice in producing state losses of their own accord and at the investigation, investigation, and prosecution stages with the characteristics that have been determined will provide legal certainty to the perpetrators of corruption crimes to return state losses.

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