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Restorative Justice Approach in Resolving Corruption Cases Based on State Financial Loss Recovery in Indonesia

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Abstract

Efforts to recover state losses due to corruption are carried out through additional criminal payments as stipulated in Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001. These efforts have not succeeded and have given rise to other problems in law enforcement, namely arrears in substitute money, budget inefficiencies, and overcapacity in prisons. Therefore, other methods are needed as alternatives in dealing with corruption. This research study is about optimizing the recovery of state financial losses due to corruption crimes carried out with a restorative justice approach and the existence of restorative justice in corruption crimes based on state financial recovery. The specification of this study is descriptive analytical, with a normative juridical approach supported by an empirical juridical approach. Based on the results of the study, restorative justice is optimal in recovering state financial losses and community losses, because recovery of state financial losses or community losses is a condition for solving corruption crimes with a restorative justice approach. This optimization causes the resolution of corruption crimes using a restorative justice approach to be more effective in preventing arrears of new substitute money than if cases were resolved through the courts, effective in overcoming the problem of budget inefficiencies in handling corruption cases with small losses, and effective in preventing the addition of new prisoners / prisoners in prisons that are already overcapacity. The existence of restorative justice in corruption crimes based on the recovery of state financial losses is only limited to policies that are at the stage before the investigation or pre-investigation. The settlement is in the form of a decision whether an investigation is carried out on a corruption report or not. The decision to be taken depends on the factor whether loss recovery has been made or not. If the loss has been recovered then the report is not continued to the investigation, otherwise if the loss is not recovered then an investigation is carried out (ultimum remedium).

INTRODUCTION

The general explanation of Law Number 31 of 1999 concerning the Eradication of Corruption states that National Development has the aim of realizing the whole Indonesian people and the Indonesian society as a whole that is just and prosperous, prosperous, and orderly based on Pancasila and the 1945 Constitution. In order to realize this, it is necessary to increase efforts to prevent and eradicate crime, especially corruption.

Corruption as an extraordinary crime because of its effects, began to be campaigned globally in the 1990s. The emergence of *Transparency International* (TI) in 1993 and the change in the attitude *of the World Bank* (WB) towards corruption became the starting point for attention to corruption on a global scale. WB's focus/focus lies in the implications of the anti-corruption vision for development assistance programs around the world. With that, the

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anti-corruption vision also began to incarnate on the plains of state policy. In this process soon joined other world organizations such as the International Monetary Fund (IMF), the United Nations (*United Nations*), the European Union (*European Union*), and others including also international donor agencies.[1]

In 1996 the UN came up with a declaration against bribery and corruption in international trade transactions. The UN views corruption as no longer a local problem but has become a transnational symptom that affects all societies and economies, the UN also established a legally binding treaty signed by 140 countries in December 2003, gradually ratified and effective since December 14, 2005, namely the Convention Against Corruption (UNCAC). This international anti-corruption law focuses on 5 things: corruption prevention, anti-corruption law enforcement, return of state assets, the joint role of global states, and technical assistance and information exchange.[2] UNCAC was then ratified by Indonesia through Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003.

Corruption that has been happening widely, not only harms state finances, but also violates the social and economic rights of the wider community, so corruption must be classified as a crime that must be carried out in an extraordinary way to eradicate it.[3]

Based on the reasons mentioned above, the recovery of state financial losses becomes the objective of handling corruption cases. One of the efforts that has been carried out so far is through the application of additional criminal payments to pay substitute money (UP) as stipulated in Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption which has been amended by Law Number 20 of 2001. Even this effort still cannot be said to have fully recovered the losses incurred due to corruption.

In practice, the criminal application of paying UP to convicts in addition to successfully recovering part of state financial losses, also creates new problems for the Prosecutor's Office as the executor institution, which is related to the arrears of UP execution which every year is always a finding in financial audits conducted by BPK R.I. as Uncollected Non-Tax State Revenue (PNBP), both problematic and not. The amount of UP arrears that have not been collected by the Prosecutor's Office throughout Indonesia reaches 10 (ten) trillion rupiah. This figure was conveyed by the Head of the Directorate of Extraordinary Legal Efforts, Execution and Examination (UHLBEE) to the Junior Attorney General for Special Crimes (Jampidsus) in the Technical Working Meeting for Special Crimes of the Prosecutor's Office in 2021. For 2021 alone until June 30, 2021, there are additional arrears in new cases of more than Rp. 759 billion.

The problem of overcapacity in prisons is a problem that has been happening for a long time. According to data from the Director General of PAS of the Ministry of Law and Human Rights as of September 12, 2021, the prison quota in 33 Regional Offices (Kanwil) is for 134,835 people, but the occupancy rate reaches 271,007 people. This means that there is an excess capacity of 136,173 prison residents or double the total (101%).[4] The Attorney General in the Working Meeting forum with Commission III of the House of Representatives of the Republic of Indonesia on January 27, 2022 said that corruption cases with state financial losses below Rp. 50 million can be resolved by returning state financial losses as an

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[1] B. Herry Priyono, *CORRUPTION, Tracking Meaning, Listening to Implications*, PT. Gramedia Pustaka Utama, Jakarta, 2018, p. 309.

[2] *Ibid*, p. 310.

[3] Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, considering letter a.

[4] Viva Budy Kusnandar, *"Almost All Prisons in Indonesia Are Overcapacity"*, 2021, https://databoks.katadata.co.id/datapublish/2021/09/13/hampir-semua-lapas-di-indonesia-kelebihan-kapasitas, https://databoks.katadata.co.id/datapublish/2021/09/13/hampir-semua-lapas-di-indonesia-kelebihan-kapasitas [08/06/2022].

effort to realize a fast, simple and low-cost legal process.[5] The Attorney General's statement immediately reaped pros and cons.

This research will use restrictions on the use of restorative justice in certain corruption crimes, namely by following the idea of the Attorney General, namely only for corruption cases with state financial losses of fifty million rupiah and below.

METHODS

The specification of this study is descriptive analytical. The approach used in this study is normative juridical, by conducting research on legal rules related to corruption and restorative justice. Supported by an empirical juridical approach by conducting research to see the working of these legal rules in practice, the Settlement of Corruption Criminal Cases Based on the Recovery of State Financial Losses in Indonesia.

RESULT AND DISCUSSION

Optimization of Recovery of State Financial Losses Due to Corruption Crimes Resolved With a Restorative Justice Approach

The completion of the handling of alleged criminal acts of corruption based on the Report: LSS/008/III/2021 dated March 2, 2021 regarding Alleged Acts of Corruption in Paritokan Village, Dolok Merawan District, Serdang Bedagai Regency at the Serdang Bedagai State Prosecutor's Office was carried out by the Intelligence Section. The duties of the Intelligence Section of the Type B State Prosecutor's Office are contained in Article 993 of the Attorney General's Regulation Number: 006/A/JA/07/2017 concerning the Organization and Work Procedures of the Attorney General of the Republic of Indonesia.

The Intelligence Section has the task of carrying out the preparation of the formulation of work plans and programs and reports on their implementation, planning, review, implementation, administration, control, assessment and reporting of technical policies, intelligence activities, intelligence operations, government and development escort and security, intelligence administration, and providing intelligence technical support to other fields, planning, management and reporting of information technology, planning, Implementation, administration and reporting of activities in the field of legal information, preparation, presentation, administration, distribution, and archiving of periodic reports, incidental reports, estimates of the state of intelligence, results of the implementation of work plans and work programs, intelligence activities and intelligence operations, government escort and security and strategic project development, planning, management and reporting of intelligence data banks and information security, control implementation of intelligence administration, maintenance of intelligence equipment, planning and implementation of coordination and/or cooperation with local governments, Regional-Owned Enterprises, agencies, and organizations, providing guidance and technical guidance on intelligence and intelligence administration, and preparing functional performance evaluation materials related to ideology, politics, defense, security, social, cultural, social, social, economic, financial, strategic development security, intelligence technology, intelligence production, and legal enlightenment.

Based on the description in the provisions of Article 993 mentioned above, there is no job description of the Intelligence Section to handle reports of public complaints and their follow-up such as investigations, investigations and so on. This task is precisely owned by the Special Criminal Section as mentioned in Article 1001 below. The Special Crime Section has the task of managing public reports and complaints, investigations, investigations, asset

[5] Liputan6.com, *"The Attorney General's Proposal on Corruption Below Rp. 50 Million Does Not Need to Be Punished Can Cause a Domino Effect"*, 2022, https://m.liputan6.com/news/read/4872389/usul-jaksa-agung-soal-korupsi-di-bawah-rp-50-juta-tak-perlu-dihukum-bisa-timbulkan-efek-domino. [06/08/2022]

tracking and evidence management, pre-prosecution, additional examinations, pretrial, prosecution and trial, resistance, legal remedies, implementation of judges' determinations and court decisions that have permanent legal force, supervision of the implementation of conditional sentences, supervisory criminal decisions, conditional release decisions and internal examinations handling special criminal cases in the jurisdiction of the District Attorney's Office.

In the settlement of alleged criminal acts of corruption based on the Report: LSS/008/III/2021 dated March 2, 2021 at the Serdang Bedagai State Attorney's Office, the procedures carried out are as follows:

1. Receipt of report letters through One-Stop Integrated Services (PTSP);
2. PTSP forwarded the report letter to Kajari (Chief District Attorney);
3. Kajari forwarded the letter to the Intelligence Section with a disposition to coordinate with APIP;
4. The Intelligence Section coordinates with APIP to audit the contents of reports/complaints;
5. APIP conducts audits and reports the results in the form of LHP to the Serdang Bedagai District Attorney's Office;
6. The Intelligence Section followed up the LHP by recording it in the register book as a completion of the report;
7. The Intelligence Section notifies the whistleblower of the follow-up results of his report/complaint.

The discussion on the settlement mechanism for the Report of Alleged Illegal Levies dated August 20, 2021 on behalf of the Jambi City CPNS 2021 by the Jambi State Prosecutor's Office will continue to use the PKS. This same standard is used to obtain equivalent data when compared (*apple to apple*) with the completion of the Report: LSS/008/III/2021 dated March 2, 2021 conducted by the Serdang Bedagai District Attorney's Office.

1. Regarding the receipt of reports or complaints

Judging from the identity of the whistleblower who is unclear and only on behalf of a certain group (CPNS Jambi City 2021) and without accompanying the address and proof of the reporter's identity, the Report of Alleged Illegal Levies dated August 20, 2021 from on behalf of CPNS Jambi City 2021 is not yet eligible to be accepted as a report or complaint (Article 5 PKS). Although it does not meet the criteria as a report/complaint according to PKS, it is not an obstacle for the Jambi State Prosecutor's Office to follow up on the report, because anyone who becomes the Jambi City CPNS 2021 can be traced from personnel data in the Jambi City Government.

In addition, although there is no clear identity, due to the activities that are the object of corruption, namely illegal levies on the implementation of the Jambi City CPNS Training and Training (Basic Education and Training) in 2021, the people who will be asked for clarification will be found. The actions of the Jambi State Prosecutor's Office that continue to handle reports even though they do not qualify to be accepted as a report should be appreciated. And it is fitting that APH acts, formal provisions should not be an obstacle in seeking material truth in order to obtain substantive justice for justice-seeking communities.

2. Regarding the person who is the subject of the report/complaint

The parties reported in the Report on Alleged Illegal Levies dated August 20, 2021 from on behalf of the Jambi City CPNS 2021 are included in the category in the PKS, namely local government civil servants. The reported person referred to in the report is

Robby Iskandar, SP who is still an active civil servant and serves as Head of Apparatus Competency Development at the Jambi City Regional Human Resources Development Agency.

3. About Investigative Examinations

The Jambi State Prosecutor's Office has conducted an examination of the Report of Alleged Illegal Levies dated August 20, 2021 from on behalf of the Jambi City CPNS 2021 based on the Task Order Number: SP. TUG-10/L.5.10/Dec.3/02/2021 dated August 30, 2021. The results of the examination are contained in the Task Implementation Results Report (Laphastug) Number: R-LAPHASTUG/L.5.10/09/2021. In the Laphastug in the Conclusion section, it basically states that from the results of the implementation of duties evidence has been found that leads to unlawful acts against legal provisions, namely Article 12 e of the Law. This action is in the form of illegal levies on 6 (six) participants of the Jambi City CPNS Training Training in 2021 exposed to Covid-19 totaling Rp. 12 million.

Based on the contents of the Laphastug, what was found by the Intelligence Section of the Jambi State Prosecutor's Office in the examination was not an administrative error but a corruption offense, namely a civil servant who committed extortion as referred to in Article 12 letter e of the UUTPK. Therefore, the next step that should be taken by the Intelligence Section is to hand over the handling of cases to the Special Crime Section for investigation (Article 2 paragraph (1) letter d of the Special Crime SOP). If the case will not be forwarded to investigation by the Special Crime Section, the provisions of Article 389 paragraph (3) point c number 2 of the Special Crime SOP can be used, namely for other reasons. Another reason here is as mentioned in the Laphastug that the loss is small and a return has been made.

The mechanism mentioned above is not carried out by the Jambi State Attorney's Office. In Laphastug suggested the case be handed over to the Jambi City Inspectorate on the grounds that the loss had been returned. The suggestion was approved by the Jambi State Chief Prosecutor who decided not to continue handling the case because the amount of losses was small and had been returned. The reason for the return of losses is justice for the victims of illegal levies and the reason for small losses (when compared to the costs of handling cases) is the principle of expediency [Article 389 paragraph (3) letter c number 2 SOP Pidsus].

The action of Kejari Jambi to hand over the handling of corruption reports to the Jambi City Inspectorate even though based on the results of the inspection found not to be administrative errors is a deviation from the provisions of Article 7 paragraph (4) PKS (discretion). However, in an investigative examination conducted by the Jambi City Inspectorate, new facts were found, namely the illegal levies of CPNS Training Participants Batch I, Batch II and Batch III of the 2020 Jambi City Appointment in the amount of Rp. 11,500,000, - which had also been returned to the victims. The results of the inspection by the Inspectorate also lead to the imposition of personnel discipline penalties on perpetrators, which can be a deterrent effect.

4. About the Follow-up Mechanism

The follow-up mechanism is regulated in Article 8 of the PKS which regulates the Parties (APIP, Prosecutor's Office, Police) to follow up on reports or public complaints according to each party's SOP. The follow-up mechanisms that can be implemented are:

a. For reports or complaints directly received by APIP, if the results of the investigative examination conducted by APIP are found to have administrative errors, they are resolved according to the applicable SOP in APIP's internal;

b. For reports or complaints directly received by APIP, if the results of the investigative examination conducted by APIP are found to suspect criminal acts of corruption, APIP submits it to the Prosecutor's Office or Police for investigation in accordance with the SOP applicable in the internal Prosecutor's Office or Police;
c. For reports or complaints received by the Prosecutor's Office or the Police, if the results of the examination of the Prosecutor's Office or the Police are found to suspect criminal acts of corruption, they are handled by the Prosecutor's Office or the Police for investigation in accordance with the SOP applicable in the internal Prosecutor's Office or Police;
d. For reports or complaints received by the Prosecutor's Office or the Police, if the results of the Prosecutor's or Police's examination found an administrative error, the Prosecutor's Office or Police submits it to APIP for follow-up in accordance with the applicable SOP in APIP's internal.

In handling the Report of Alleged Illegal Levies dated August 20, 2021 on behalf of the Jambi City CPNS 2021, the follow-up mechanism carried out by the Jambi State Prosecutor's Office is not in accordance with the provisions mentioned above. Because even though the examination conducted by the Intelligence Section found criminal acts of corruption but were not followed up with investigations, they were still handed over to the Jambi City Inspectorate as APIP even though the findings of the examination were not administrative errors (discretion).

Based on the description above, the mechanism for completing the Report on Alleged Illegal Levies dated August 20, 2021 from on behalf of the Jambi City CPNS 2021 carried out by the Jambi State Prosecutor's Office is as follows:

1. The task of managing reports or complaints of criminal acts of corruption is owned by the Special Crime Section.
2. Regarding the Report of Alleged Illegal Levies dated August 20, 2021 from on behalf of the Jambi City CPNS 2021, the handling was carried out by the Intelligence Section.
3. The handling of reports by the Intelligence Section has followed the SOP as stipulated in the Attorney General's Regulation Number: PER-037/A/JA/09/2011 concerning Standard Operating Procedures for Intelligence of the Attorney General of the Republic of Indonesia, namely intelligence review has been made and examination tasks have been carried out for data collection and information materials.
4. The procedure carried out by the Intelligence Section in handling reports is to conduct an initial examination based on a Duty Warrant;
5. Although the results of the initial inspection found that the allegations of corruption were not administrative errors, the handling of subsequent reports was handed over to the Jambi City Inspectorate as APIP.
6. Coordination with the Jambi City Inspectorate as APIP is a collaboration carried out based on Article 385 of Law Number 23 of 2014 concerning Regional Government and Article 25 paragraph (5) of Government Regulation Number 12 of 2017 concerning Development and Supervision of Local Government Implementation, which is the master regulation of PKS APIP-APH.
7. The coordination mechanism carried out is not in accordance with the provisions in the APIP-APH PKS.
8. In the inspection process by the Jambi City Inspectorate, it was found that there were illegal levies committed by the perpetrators against the Jambi City CPNS Training Training Participants in 2021 totaling Rp. 23,500,000, - and had been returned entirely by the perpetrators to the victims, and the perpetrators had been sentenced to personnel discipline.

Based on the description of the discussion above, the comparison of solving corruption reports using a restorative justice approach in Kejari Sergai and Kejari Jambi is:

1. Both in Kejari Sergai and in Kejari Jambi, the section that has the task of managing reports or complaints of corruption is the Pidsus Section;
2. In its implementation, the management of corruption reports both in Kejari Sergai and in Kejari Jambi is carried out by the Intelligence section. However, for Kejari Sergai Intelligence SOPs are not used while in Kejari Jambi Intelligence SOPs are used;
3. In Kejari Sergai there was no preliminary examination of the report, while in Kejari Jambi a preliminary examination was carried out;
4. The completion of reports on Kejari Sergai and Kejari Jambi is both carried out in coordination with the Inspectorate as APIP;
5. Kejari Sergai coordinates with APIP based on PKS APH-APIP, while Kejari Jambi is based on Article 385 of the Local Government Law and Article 25 paragraph (5) of the Government Regulation on Development and Supervision of Local Government Administration;
6. In coordinating with APIP, both Kejari Sergai and Kejari Jambi do not follow all mechanisms as stipulated in the APH-APIP PKS;
7. From the results of coordination with APIP, Kejari Sergai found potential state losses of Rp. 9,570,500 and have been recovered, while in Kejari Jambi found community losses of Rp. 23,500,000 and have been recovered;
8. For the follow-up results of coordination with APIP in Kejari Sergai, a written reprimand was given to the perpetrator, while in Kejari Jambi, personnel discipline was given to the perpetrator;
9. Neither Kejari Sergai nor Kejari Jambi have SOPs governing the resolution of corruption reports through APIP as a mechanism for restorative justice approach.

Based on the mechanism for resolving corruption reports carried out by Kejari Sergai and Kejari Jambi mentioned above, it can be concluded that:

1. The Prosecutor's Office does not have SOPs governing the handling of corruption reports that are resolved using a restorative justice approach;
2. Corruption reports resolved using a restorative justice approach are carried out based on the policy of the Chief District Attorney in coordination with APIP;
3. There is discretion, namely in terms of:
   a. The management of reports is handed over to the Intelligence Section not to the Special Crime Section which has the task of managing reports of criminal acts of corruption;
   b. Not conducting investigations even though state losses / community losses were found as a strong indication of corruption.
4. The completion of corruption reports through a restorative justice approach carried out by the Prosecutor's Office has succeeded in recovering state/community losses.

The existence of discretion shows the pattern of handling reports of corruption crimes, including responsive law. Discretion in responsive law is an attempt to break away from the rigidity of procedural law to obtain substantive justice. Substantive justice means that the legal process carried out has succeeded in achieving its objectives, which in corruption cases in the form of state losses have been recovered or losses to the victimized community.

These attempts to seek responsive law have become routine activities of modern legal theory. As Jerome Frank argued, the ultimate goal of legal realism is to make law "more responsive to social needs." To achieve this purpose they encouraged a wider range of "fields related to law," in such a way that legal logic could include knowledge in the social aspect and have an influence on the formal actions of the apparatus. Pound's theory of social interests sought more explicitly to develop a responsive method of law. In this view, good law should offer more than just procedural fairness. A good law must be both capable and

just; Such laws should be able to know the aspirations of the public and have a commitment to the achievement of substantive justice.[6]

Responsive institutions value social pressures as a source of knowledge and an opportunity for self-correction. In order to find a figure like this, the figure of the institution needs guidance in the direction of the goal. The goal of setting standards for critiquing established practices is to open up opportunities for change. At no different time, if actually used, the purpose can control administrative discretion, so as to reduce the possibility of institutional disengagement. Conversely, the absence of purpose will lead to rigidity and opportunism. In fact, these unfavorable circumstances are related to each other and side by side. An official institution, bound by rules, is an institution that does not have a supportive instrument in dealing with problems with its environment. This institution adapts opportunistically because it is not competent to logically rebuild the rules that have been left behind by changing times. Only when an institution truly has a purpose can there be an interaction between integrity and openness, rules and policies (discretion). Thus, responsive law views that objectives need to be made objectively and authoritatively to control adaptive rulemaking.[7]

This adaptive regulation is needed to overcome problems that occur in law enforcement. It is important to restore the function of law as a tool to serve human needs. The above solutions have been presented that can be used by the Prosecutor's Office to resolve reports of corruption crimes with a restorative justice approach for SOP preparation materials as adaptive regulations.

Regarding social urges as a source of knowledge and an opportunity for self-correction, from the judiciary there are still complaints about corruption cases with small state losses being transferred to the courts. This complaint is based on the disproportion between the length of time to try corruption cases (longer than the trial of general criminal cases) and the costs incurred, with the quality of cases which when viewed from the value of losses incurred due to the actions of perpetrators is relatively small. So it is fitting that the complaint becomes a momentum for the Prosecutor's Office to improve the pattern of handling corruption crimes with small losses (Fifty million rupiah and below) which are resolved with a restorative justice approach, but while still considering the quality of cases not only based on the value of losses but also the classification of perpetrators' actions and consequences caused to ensure the achievement of legal objectives for justice, expediency and certainty.

In the previous chapter it has been mentioned that the specificity or characteristics of responsive law are:

1) Legal legitimacy is based on substantive justice not procedural justice;
2) The rule of law is subject to principles and public policy;
3) Reasoning aims at expanding cognitive competence;
4) Discretion is expanded, but for justifiable purposes;
5) Morality includes the morality of the people and the morality of cooperation;
6) Unified political laws and expectations; mixing of power;
7) Participation and access are expanded as well as the integration of law and defense of the community.

Some of these characteristics are found in the mechanism for handling corruption which is resolved with a restorative justice approach both at the Serdang Bedagai State Attorney and the Jambi State Attorney's Office. Then, in order to find out how to optimize the recovery of state financial losses against the pattern of solving corruption crimes with a restorative justice approach as a responsive law, it must be analyzed based on problems that

[6] Philippe Nonet, Philip Selznick, *Op. Cit*. hlm. 83.
[7] *Ibid*, p. 87.

occur in the eradication of corruption, namely those related to budget inefficiencies, UP arrears, and *prison* overcapacity.

UP's arrears in corruption cases at the Prosecutor's Office consist of UP's arrears stemming from corruption cases decided under Law Number 3 of 1971 concerning the Eradication of Corruption Criminal Acts (old UUTPK) and corruption cases decided under Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts Corruption (UUTPK). The data on UP's arrears at the Serdang Bedagai State Prosecutor's Office as of July 2022 was Rp. 1,802,634,175.00, while at the Jambi State Attorney's Office as of July 2022 it was Rp. 60,626,986,222.00.

In the mechanism for handling Reports: LSS/008/III/2021 dated March 2, 2021 by the Serdang Bedagai State Prosecutor's Office and Reports on Alleged Illegal Levies dated August 20, 2021 from on behalf of the Jambi City CPNS 2021 by the Jambi State Attorney's Office, potential state losses and community losses have been recovered. However, this will not be able to resolve existing UP arrears because it turns out that there is another problem in the UP arrears, namely UP arrears originating from other corruption cases, which have separate rules for the settlement mechanism. The completion of corruption reports with a restorative justice approach by the Serdang Bedagai State Prosecutor's Office and the Jambi State Attorney's Office is effective in preventing the potential for new UP arrears if the case is resolved through the court.

Next regarding budget inefficiencies. The cost of handling corruption cases at the District Attorney level for one case is Rp. 186,800,000,-. The costs consist of investigation costs of Rp. 26,772,000,-, investigation costs of Rp. 104,500,000,-, pre-prosecution and prosecution costs (since research, trial and legal remedies) of Rp. 52,528,000, - and execution costs or execution of court decisions of Rp. 3,000,000,-. These costs do not include costs incurred by courts and prisons in the event that cases are proven and convicts serve time in prison. All of these costs do not need to be incurred by the state when the Prosecutor does not prosecute a case of criminal corruption, but the state and society still receive benefits from the recovery of losses made by the perpetrators. With this situation, it can be said that the results of handling the Report: LSS/008/III/2021 dated March 2, 2021 and the Report on Alleged Illegal Levies dated August 20, 2021 are effective in overcoming the problem of budget inefficiencies in handling corruption with not large losses.

Then regarding the overcapacity of prisons, data at the Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkumham) recorded the number of prison residents (Lapas) with special crimes (drugs, corruption, terrorists, illegal logging, trafficking, money laundering) at 151,303 people as of August 2021. Of these, 145,413 people or 96% are drug convicts. The remaining 4,671 were convicted of corruption, 371 were convicted of terrorism, 325 were trafficking, 349 were logging, 174 were money laundering.[8] From this data, the percentage of corruption convicts compared to other special crime convicts is only 3.08%. This number will certainly be even smaller if the comparison data used includes the number of general prisoners.

The Serdang Bedagai State Prosecutor's Office entrusted prisoners and executed corruption convicts in Class IIB Prison Tebing Tinggi North Sumatra, this is because Serdang Bedagai Regency does not yet have its own prison. Data regarding the residents of Tebing Tinggi Class IIB Prison as of November 4, 2022 is a capacity of 576 people, filled with 1682 people consisting of: corruption cases 15 people, narcotics cases 1,245 people, other special criminal cases 69 people and general criminal type cases 422 people. Based on these data, it

[8] Vika Azkiya Dihni, *Drug Case Inmate Dominates in Indonesian Prison*, Databoks online media, 2021. https://databoks.katadata.co.id/datapublish/2021/09/17/narapidana-kasus-narkoba-mendominasi-di-lapas-indonesia [01/11/22]

can be seen that there is an excess capacity in Tebing Tinggi Class IIB Prison, which reaches 292%. Of the total number, the majority of prison residents came from narcotics cases which reached 74%, while those from corruption cases only 0.9%, the rest were prisoners and prisoners from other special criminal cases and general crimes. Judging from this comparison, the problem of overcapacity of prison residents comes from narcotics cases. The handling of corruption cases that are resolved using a restorative justice approach is effective only not to increase excess capacity in prisons but will not be able to solve them because the number of prison residents from corruption cases is only small.

Furthermore, the number of prisoners and prisoners at the Jambi Class IIA Penitentiary (Lapas) is a capacity of 417 people, filled with 1,327 people consisting of 61 corruption cases, 766 narcotics cases, 56 other special criminal cases and 449 general crimes. There was an overcapacity in Jambi Class IIA Prison reaching 318%. Of the total number, the majority of Jambi Class IIA prisoners come from narcotics cases which reach 58%. Meanwhile, those from corruption cases are only 4.6%. The conditions are the same as in Tebing Tinggi Class IIB Prison, the problem of overcapacity in Jambi Class IIA Prison comes from narcotics cases. The handling of corruption cases resolved using a restorative justice approach is effective only not to increase overcapacity in Lapas.

The problem of prison overcapacity is dominated by narcotics cases. Therefore, to effectively overcome the problem of prison overcapacity is to prioritize solving drug cases using a restorative justice approach. Meanwhile, corruption cases that are resolved with a restorative justice approach can be helpful but not significant because the number of prisoners and prisoners for corruption cases in prisons is not more than 5%.

Moving on from the descriptions above, it can be concluded that the restorative justice approach used to complete the Report: LSS/008/III/2021 dated March 2, 2021 by the Serdang Bedagai State Prosecutor's Office and the Report on Alleged Illegal Levies dated August 20, 2021 from on behalf of the Jambi City CPNS 2021 by the Jambi State Attorney's Office:

1. Effective to prevent the potential for arrears of new substitute money compared to if the case is resolved through the court.
2. Effective in overcoming the problem of budget inefficiency in handling certain corruption cases (with small losses).
3. Effective to prevent the addition of new prisoners/prisoners.

The restorative justice approach used to resolve corruption crimes in addition to being optimal in recovering state losses or community losses when compared to conventional case handling patterns, is also able to respond to problems that occur in handling corruption cases resolved through the judiciary related to arrears of substitute money, budget inefficiencies and prison overcapacity. Thus, the use of a restorative justice approach is very feasible to be one of the alternatives in dealing with corruption.

The Existence of Restorative Justice in Corruption Crimes Based on the Recovery of State Financial Losses

In this study, corruption cases that are resolved using a restorative justice approach are only certain corruption cases, namely cases with small losses. This is due to the background of the research are factors of budget inefficiencies, UP arrears and overcapacity in Lapas. The provision of criteria for corruption cases as a limitation is the same as certain general criminal cases that are resolved with a restorative justice approach, namely minor crimes with a loss value of not more than two million five hundred thousand rupiah (Article 1 of Supreme Court Regulation Number 02 of 2012 concerning Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Code).

In the previous discussion, it was known that a restorative justice approach based on loss recovery to resolve corruption cases had been carried out by APH, especially in handling

Reports: LSS/008/III/2021 dated March 2, 2021 and Reports on Alleged Illegal Levies dated August 20, 2021 from on behalf of CPNS Jambi City 2021. It's just that the settlement mechanism carried out by APH has not been called a restorative justice because there is no regulation governing it. This is because until now the resolution of corruption cases using a restorative justice approach (RJ Tipikor) is still reaping debate. There are still parties who voice their disapproval of RJ Tipikor so that its implementation in new regulations is limited to discourse. Stakeholders are accused of new policy makers daring to throw discourse but have not dared to take a policy to issue RJ Tipikor's legal umbrella because of this conflict, even though the problem regarding the urgency of RJ Tipikor is strongly felt and has even been carried out using the principle of *ultimum remedium*.

The presence and absence of regulation is a fundamental difference in the use of restorative justice approaches in the handling of certain general criminal cases (RJ Pidum) and in RJ Tipikor. RJ Pidum who already has the rule of law is carried out at the law enforcement stage based on the Criminal Procedure Code. The legal process by APH starts from the investigation stage (Chapter IV of the Code of Criminal Procedure) until the implementation of the court decision (Chapter XIX of the Code of Criminal Procedure). It is within the range of legal proceedings that RJ Pidum is carried out by APH in certain agencies in accordance with its authority. If run by a general criminal investigator, RJ Pidum takes the form of stopping the investigation and stopping the investigation (Perkap Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice). If carried out by the public prosecutor, RJ Pidum takes the form of termination of prosecution (Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice). As for the judiciary, although it already has provisions that regulate it, namely the Letter of the Director General of the General Court Agency Number: 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Application of *Restorative Justice* in the General Court Environment, but until now it has not been implemented (postponed its enactment) waiting for the Supreme Court regulation to be made regarding this matter.

Criminal justice has a system known as the Criminal Justice System which contains *due process of law cases* ranging from the police, prosecutors, courts and prisons. Restorative justice should be used as a means to close cases at every level of justice. The court should also be immediately authorized to close the case when the parties have settled the case out of court. Therefore, we must get used to the new legal culture that justice does not have to be obtained through court proceedings but in other rooms (*justice in many rooms*).[9]

The implementation of RJ Pidum is different from RJ Tipikor which does not yet have a rule of law. RJ Tipikor (as carried out by the Serdang Bedagai State Prosecutor's Office and the Jambi State Attorney's Office) is carried out before the law enforcement process in the Criminal Procedure Code, namely at the stage before the investigation or pre-investigation. In addition to the Attorney General, the KPK has also launched a discourse about RJ Tipikor even though it is only limited to studies. KPK Deputy Chairman Nurul Ghufron said that until now his institution is still discussing the application of restorative justice in corruption cases. The discussion became one of the efforts to resolve the eradication of corruption.[10] This means that in addition to the Prosecutor's Office, the KPK as one of the institutions that has the authority to eradicate corruption, also feels the same symptoms as felt by the Prosecutor's Office related to the application of restorative justice as an alternative solution in overcoming problems that occur in handling corruption.

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[9] Suteki, *Op. cit. Cit.*, hlm. p. 218.

[10] M. Hanafi Aryan, *Nurul Ghufron: KPK Still Reviewing Restorative Justice in Corruption Cases*, detiknews, 2022. https://news.detik.com/berita/d-6375401/nurul-ghufron-kpk-masih-kaji-soal-restorative-justice-di-kasus-korupsi [03-11-22]

On the other hand, those who contradict the discourse on the application of restorative justice in corruption cases submit Article 4 of the Law as a reason for rejection. The KPK said it was reviewing the issue of restorative justice in corruption cases. The Indonesian Anti-Corruption Society (MAKI) said that based on the anti-corruption article, the party who made the return of state losses would not eliminate the crime.[11] Article 4 regulates the norm for the return of state financial losses does not eliminate the conviction of criminal offenders as referred to in Article 2 and Article 3. In the explanation of Article 4, it is stated that if the perpetrators of corruption crimes as referred to in Article 2 and Article 3 have fulfilled the elements of the article, then the return of state financial losses or the state economy does not eliminate the crime against the perpetrators of these crimes. The return of financial losses of the state or the country's economy is only one of the mitigating factors. Furthermore, with regard to the norms stipulated in Article 4, in the explanation of Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts, it is stated that in this law, corruption is expressly formulated as a formal crime. This is very important for proof, with the formal formulation adopted in this law, that the proceeds of corruption have been returned to the state, perpetrators of corruption crimes are still brought to court and still convicted.

There is another case of Nurhayati who was made a suspect in alleged APBDes corruption by the Cirebon Regional Police, even though Nurhayati was the whistleblower in the case. The Cirebon District Attorney's Office then stopped the prosecution on the grounds that there was insufficient evidence.[12] This case attracted the attention of the government so that coordination was carried out between the Coordinating Minister for Polhukam, the Prosecutor's Office and the Police to resolve it. From a legal point of view, the reason for stopping the prosecution of Nurhayati's case because there was insufficient evidence is peculiar, because previously the case had been declared complete (P-21) by the Public Prosecutor, which means that it had met the formal and material requirements for prosecution but then it was stopped on the grounds of insufficient evidence. The state of insufficient evidence was forced as a reason to stop the legal process of the case. The actual situation is that the handling of the case, although it meets the formal and material requirements for prosecution, is stopped due to considerations of a sense of justice. This indicates that if there were rules for certain corruption crimes as well as in the case of certain general crimes, then Nurhayati's case would be resolved faster.

The absence of rules regarding the termination of investigations, investigations, prosecutions in cases of criminal acts of corruption on the grounds that losses have been recovered (as a restorative justice approach to cases with small losses) causes APH to be selective before deciding to conduct an investigation of corruption cases, and this is what gives birth to the settlement of corruption cases on the condition that the return of state/community losses as an approach to justice Restorative. Selective is a precautionary attitude lest the state does not receive benefits from law enforcement carried out because it has to incur costs that are far greater than the value of the losses recovered, of course, by also considering other reasons based on justice and certainty. Thus, it can be said that the restorative justice approach used to solve corruption cases has been implemented even though there is no rule of law. The absence of legal provisions governing this matter has given birth to APH policy in determining the need for an investigation into criminal acts of corruption. The policy is a progressive step to overcome problems that occur in handling corruption.

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[11] Azhar Bagas Ramadhan, *MAKI Criticizes Restorative Justice Corruption: Balikin Duit Does Not Remove Crime*, detiknews, 2022. https://news.com/berita/d-6376612/maki-kritik-restorative-justice-korupsi-balikin-duit-tak-hapus-pidana [03-11-22]

[12] Dony Indra Ramadhan, *Nurhayati Cirebon Case Officially Stopped*, detikJabar, 2022. https://www.detik.com/jabar/hukum-dan-kriminal/d-5964430/kasus-nurhayati-cirebon-resmi-disetop [16-11-22]

The year 2006 was a sacred year for progressive legal enthusiasts. Because in that year, a book entitled "Dissecting Progressive Law" was released by Satjipto Rahardjo's students. I Gede A.B. Wiranata, Joni Emirzon, and Firman Muntaqo were his students while studying the Doctor of Law Program at Diponegoro University, Semarang. Satjipto Rahardjo himself gave a foreword in the book. The book, which consists of his articles in the daily Kompas and three papers of his students, is the beginning of the story of progressive legal ideas. Initially, the word "progressive law" was rarely used by Satjipto Rahardjo.[13]

If simplified, the progressive law includes three things. Namely the way of law that is conscientious, the slogan of law for humans, and finally is progressive actors and actions. It would indeed be very complex if we defined progressive law. There are thousands of Satjipto Rahardjo articles from the 1970s to 2010. Then it will be very complicated to observe the details. This conscientious way of law is related to Satjipto Rahardjo's view that administering the law does not only focus on articles, but also relates to the broader system.[14] The law for humans will adjust to the needs of the community. It is not stuck to technical procedures and rules alone. What he saw was the sense of justice of his people.[15] Progressive actors and actions are needed in formulating progressive laws. No matter how good a legal system is, if law enforcement is bad, then the results will still be bad. Conversely, even if the law is bad, if the apparatus is good, then the results will still be good. Progressive actors are actors who have courage, energy, imagination and creativity. Law enforcers dare to dive deeper, find justice. Satjipto Rahardjo mentioned several progressive figures including Bismar Siregar, Adi Andjojo Soetjipto, and Benyamin Mangkudilaga.[16]

The purpose of law is to achieve justice in addition to certainty and expediency of law in society. Justice, certainty and legal expediency are the benchmarks for the success of the state in writing in the constitution that Indonesia is actually a state of law. The state is said to be successful in implementing the law if the law has been able to bring enormous benefits to the community in obtaining justice.[17]

By the time a case is completed, at that time the objectives of the law should have also been achieved, namely justice, expediency and certainty. Of the three goals, justice is the main goal of law enforcement. The measure of justice that can be used is that the results of the settlement of the case are acceptable to the community and there is no legal conflict anymore. Due to the case of Bibit S. Rianto-Chandra M. Hamzah, as well as the completion of the Report: LSS/008/III/2021 dated March 2, 2021 and the Report on Alleged Illegal Levies dated August 20, 2021 from on behalf of the Jambi City CPNS 2021 which were all settled outside the court, until now there have been no parties who have legally sued the settlement of these cases, it can be said that justice has been found in the settlement of these cases, That is, substantive justice is not procedural justice, because precisely in the settlement of cases in question it is carried out unprocedurally (outside the applicable legal system), and this is the main characteristic of progressive law.

The policy or discretion carried out, both by the Serdang Bedagai State Prosecutor's Office and the Jambi State Attorney's Office in completing reports of corruption crimes with a restorative justice approach, is at the point when it must decide whether the handling of the report is investigated or not (pre-investigation). The decision to be taken depends on the factor whether loss recovery has been made or not. If the loss has been recovered then the report is not proceeded to the investigation, otherwise if the loss is not recovered then an

[13] Awaludin Marwan, *Progressive Legal Theory 4.0, Today's Digital Law and Technology*, Thafa Media, Yogyakarta, 2022, p. 7.
[14] *Ibid*, p. 37.
[15] *Ibid*, p. 39.
[16] *Ibid*, p. 41.
[17] *Ibid*, p. 4.

investigation is carried out. With this choice, it can be said that the restorative justice approach used to resolve corruption cases on condition that state/community losses are recovered by the Serdang Bedagai State Attorney and Jambi State Attorney is an implementation of the *ultimate remedium* in corruption offenses.

Based on the discussion above, it can be concluded that the existence of restorative justice in corruption crimes based on the recovery of state financial losses (or community losses) is a policy of resolving cases outside the court, which is carried out at the stage before the investigation or pre-investigation based on the principle of *ultimum remedium.*

CONSULUSIONS

Optimization of recovery of state financial losses due to corruption crimes resolved with a restorative justice approach is optimal in recovering state financial losses and community losses, because recovery of state financial losses or community losses is a requirement for the resolution of corruption crimes with a restorative justice approach. This optimization has led to the resolution of corruption crimes using an effective restorative justice approach to prevent arrears of new substitute money compared to if cases were resolved through the courts, effective in overcoming the problem of budget inefficiencies in handling corruption cases with small losses, and effective in preventing the addition of new prisoners/prisoners in prisons that are already overcapacity.

The existence of restorative justice in corruption crimes based on the recovery of state financial losses is only limited to policies that are at the stage before the investigation or pre-investigation. The settlement is in the form of a decision whether an investigation is carried out on a corruption report or not. The decision to be taken depends on the factor whether loss recovery has been made or not. If the loss has been recovered then the report is not continued to the investigation, otherwise if the loss is not recovered then an investigation is carried out (*ultimum remedium).*

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