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Legal Policy On Convicting Corruption Offenders Who Have Returned State Financial Losses From The Perspective Of Justice

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Article Info

Article History:
Received : 30-10-2022
Revised : 20-11-2022
Accepted : 25-12-2022
Published : 30-12-2022

Keywords:
Legal Policy
Punishment
Corruption
Justice Perspective

Abstract

The criminal law policy based on Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes regulates the return of state financial losses does not eliminate criminals, but the implementation of the provisions of Article 4 has not been implemented as appropriate. In practice there are irregularities in which the return of relatively small amounts of state losses can be stopped from investigation and eliminate the criminals of corruption. Moreover, the return of state financial losses was not a consideration for the Judge to commute the sentence to be imposed on the defendant. Therefore, in this study, it is necessary to study to evaluate the Legal Policy on punishment of perpetrators of corruption crimes who have returned state financial losses based on the provisions of Article 4 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes and analyze the Renewal of the Law on the punishment of perpetrators of corruption crimes that have returned state financial losses from a justice perspective. The purpose of this study is to find out the appropriate Criminal Law Policy against perpetrators of corruption crimes that return state financial losses from the perspective of justice for the future. This type of research method is legal research with a normative juridical approach that focuses on synchronizing laws, principles and legal doctrines. The data studied are library materials or secondary data, and tertiary legal materials, then discussed and presented descriptively.

INTRODUCTION

The number of corruption cases is increasing every year, even though law enforcement has been carried out continuously by law enforcement officers. From data collected by the anti-corruption non-governmental organization Indonesia Corruption Watch (ICW),[1] the number of prosecutions of corruption cases during the first six months of 2021

[1] https://data.tempo.co/data/1208/icw-angka-penindakan-kasus-korupsi-semester-1-2021-naik-jika dibandingkan-tahun-sebelumnya, diakses tanggal 9 April 2022 pukul 22.31

reached 209 (two hundred and nine) cases. From the previous year's period, the number increased by 169 (one hundred and sixty-nine) cases. Likewise, the value of state losses due to corruption has also increased.

The data on the increase in corruption cases and the increase in state losses due to corruption in semester 1 can be described in the following table:

Tabel I.1 Figures for Enforcement of Corruption Cases and Value of State Losses

Year	Number of Cases	Value of State Losses (Trillion Rupiah)
1st Semester of 2017	266	1,8
1st Semester of 2018	139	1,079
1st Semester of 2019	122	6,925
1st Semester of 2020	169	18,173
1st Semester of 2021	209	26,83

Source: Indonesia Corruption Watch (ICW)

The legal policy regarding the return of state financial losses is regulated in the provisions of Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes namely "Refund losses to state finances or the country's economy do not eliminate the punishment of perpetrators of criminal acts as referred to in Article 2 and Article 3". Furthermore, in the elucidation of Article 4 it reads "If the perpetrators of the criminal act of corruption as referred to in Article 2 and Article 3 have fulfilled the elements of the article referred to, then the return of state financial losses or the country's economy, does not erase the crime against the perpetrators of the crime.

The strategy of preventing and returning assets resulting from corruption as stipulated in Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is contrary to the objectives of returning corruption assets and prevention strategies because no suspect will intend to return state money while surrendering himself to prosecuted and tried. The consequence of this provision is that corrupt fugitives flee to other countries with the proceeds of their crimes.[2]

[2] Romli Atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan*, (Jakarta: PT. Gramedia Utama, 2017), 135.

In enforcing the law on corruption, law enforcers have made breakthroughs in seeking to recover state financial losses. For example, the Prosecutor's Office has issued a policy in the form of a Circular Letter by the Deputy Attorney General for Special Crimes with Number: B-1113/F/Fd.1/05/2010 concerning Priorities and Achievements in Handling Corruption Crime Cases, where the contents are in the form of an appeal regarding priority for handling cases that fall into the big fish category and orders to seek to recover state losses using a restorative justice approach for corruption crimes with small-scale state losses. Attorney General Burhanuddin conveyed the same thing in a working meeting with Commission III of the DPR RI as quoted by Detik.com media on Thursday (27/1/2022) who said[3] "Settlement of the legal process of corruption cases with losses of under Rp. 50 million with this mechanism is considered fast and simple." "As an effort to carry out the legal process in a fast, simple, and low-cost way." So according to the author, if the perpetrators of corruption have returned state financial losses with several losses of up to Rp. 50,000,000, - both at the investigation and investigation stages, then the legal process can be terminated.

Returning state financial losses is not a consideration for the judge in imposing a sentence on the defendant, instead, the Panel of Judges increases the sentence from the demands of the Public Prosecutor. This can be seen from the author's research of one example of Decisions that have permanent legal force (*In Kracht*) both District Court Decisions and Decisions of the Supreme Court of the Republic of Indonesia. From the results of a comparison of the samples of 3 (three) Decisions on Corruption Cases that have permanent legal force (*In Kracht*) above, the following data is obtained:

Tabel I.2 State Financial Losses, Recovering State Financial Losses, and Imprisonment

Num.	Name	Years	State Financial Losses	Recovery of State Financial Losses	Imprisonment	Criminal Fines
1.	Ir. Ramlan, MBA., M.M	2016	Rp4.347.721.446,-	Rp4.347.721.446,-	6 Years	Rp 200.000.000,-
2.	Darmawan	2017	Rp492.781.650,-	Rp492.781.650,-	4 Years	Rp 200.000.000,-
3.	H. Syamsuri,	2020	Rp 892.875.000,-	Rp837.875.000,-	2 Years	Rp 50.000.000,-

[3] https://news.detik.com/berita/d-5916956/jaksa-agung-sebut-koruptor-di-bawah-rp-50-juta-cukup-balikin-kerugian-negara diakses tanggal 2 Juli 2022 pukul 23.20 wib

	S.Sos Als. Syam Als. Suri Bin Achmad,				2 Month	

Source : *Direktori Putusan Mahkamah Agung R.I. dan SIPP Pengadilan Tipikor Pekanbaru*

Based on the table above, it can be seen that the Panel of Judges increased the prison sentence imposed from the demands of the public prosecutor without considering the good faith of the perpetrators of corruption who had returned state financial losses which resulted in other corruption criminals not wanting to return state financial losses, as stated by Romli Atmasasmita quoted by Siti Nurhalimah who stated that "the provisions of Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes make corruptors not have the good faith to return state financial losses because the punishment for him still ends in imprisonment".[4]

Punishment by the panel of judges refers to the retributive view as explained by Herbert L. Packer the retributive view presupposes sentencing as a negative reward for deviant behavior committed by members of the public so this view sees punishment only as retaliation for mistakes made based on moral responsibility. each. This view is said to be *backward-looking*.

Equal treatment before the law for perpetrators of corruption who have returned state financial losses is the right of everyone that must be given by the government. This statement is under the view of justice distributive according to to Aristotle that refers to the distribution of goods and services to every one according to their position in society, and equal treatment of equality before the law.[5] The same behavior before the law is guaranteed by the Basic Law, namely the provisions of Article 28 D paragraph (1) of the 1945 Basic Law which read: "*Everyone has the right to fair recognition, guarantee, protection, and legal certainty and equal treatment before the law*".

[4] Siti Nurhalimah, "Penghapusan Pidana Korupsi Melalui Pengembalian Kerugian Negara*", Buletin Hukum & Keadilan "ADALAH"* 1, no. 11 (2017): 105.

[5] Muhammad Helmi, "Konsep Keadilan Dalam Filsafat Hukum Dan Filsafat Hukum Islam", *Jurnal Pemikiran Hukum Islam, Mazahib* 14, no. 2 (2015): 137. yang dikutip dari buku E. Sumaryono, *Etika dan Hukum: Relevansi Teori Hukum Kodrat Thomas Aquinas*, Yogyakarta, Kanisius, 2002

LEGAL POLICIES FOR PUNISHMENT AGAINST CORRUPTION CRIME ACTORS WHO HAVE RETURNED STATE FINANCIAL LOSSES BASED ON THE PROVISIONS OF ARTICLE 4 OF LAW NO. 31 OF 1999 CONCERNING THE ERADICATION OF CORRUPTION CRIMES

Interpretation of the provisions of Article 4 of the Corruption Act which reads "Recovery of state financial losses or the country's economy does not eliminate the punishment of perpetrators of criminal acts as referred to in Article 2 and Article 3" is clear enough to state that restitution of state losses does not eliminate crime. However, in reality, there are legal policies that violate the provisions of Article 4, in which the Attorney General's Office with its authority in the form of discretion issues a circular Letter by the Deputy Attorney General for Special Crimes with Number: B-1113/F/Fd.1/05/2010 concerning Priorities and Achievements in Handling Corruption Crime Cases, the contents of which are in the form of an appeal regarding the priority of handling cases that fall into the big fish category and an order to seek to recover state losses using a restorative justice approach for corruption crimes with small-scale state losses.

Not all acts of corruption can be categorized as extraordinary crimes**.** To assess whether a crime is included in an extraordinary crime, then what must be seen is the total consequences of suffering, loss, or damage arising from the crime.[6] Under the explanation above, investigations into corruption cases where losses are below IDR 50 million are not included in the category of extraordinary crime so can use the restorative justice mechanism on condition that there is a return on state financial losses.

The elucidation of Article 4 states emphatically that the recovery of state losses is only one of the mitigating factors. This means that the return on state financial losses is one of the factors that mitigate punishment for the defendant, but in reality, the return on state losses is not considered by the Panel of Judges and still imposes prison sentences and fines on the defendant as retaliation for the mistakes that have been committed by the defendant. This can be seen in examples of District Court Decisions and Supreme Court Decisions of the Republic of Indonesia, which the author examined, including:

[6] Ahmad Hajar Zunaidi, *Asas Kelayakan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Ringan*, (Jakarta: KENCANA, 2022), 6.

a. The decision of Corruption Court of Pekanbaru Number: 28/Pid.Sus-TPK/2020/PN.Pbr dated 13 November 2020 on behalf of the defendant H. Syamsuri, S.Sos Als. Syam Als. Suri Bin Achmad sentenced the defendant to imprisonment for 2 (two) years and 2 (two) months and a fine of Rp. 50,000,000, - provided that if the fine is not paid it will be replaced with imprisonment for 3 (three) months even though it has paid the state financial losses by 94% namely Rp 837,875,000.- (eight hundred thirty-seven million eight hundred and seventy-five thousand rupiahs from a state loss of Rp. 892,875,000.- (eight hundred ninety-two million eight hundred and seventy-five thousand rupiah). The state loss has restitution of state losses.

b. Decision of the Supreme Court of R.I. Number: 463 K/PID.SUS/2017 dated 6 September 2017 on behalf of Defendant Darmawa imposed a prison sentence of 4 (four) years and a fine of Rp. 200,000,000.00 (two hundred million rupiahs), provided that the fine is not paid then replaced with imprisonment for 6 (six) months" even though it has returned state losses of 100% off Rp. 492,781,650.- (four hundred ninety-two million seven hundred eighty-one thousand six hundred fifty rupiahs).

c. Decision of the Supreme Court of R.I. Number: 2182 K/PID.SUS/2016 dated 7 December 2016 on behalf of the defendant Ir. Ramlan, MBA., M.M. who imposed a prison sentence of 6 (six) years and a fine of Rp. 200,000,000.00 (two hundred million rupiahs) with the stipulation that if the fine is not paid it is replaced with imprisonment for 6 (six) months even though it has been returned state financial losses of IDR 4,347,721,446.00 (four billion three hundred forty-seven million seven hundred twenty-one thousand four hundred and forty-six rupiahs).

Of the three decisions mentioned above, the Panel of Judges in imposing a sentence was guided by the condition of the defendant at the time of trial including the return of state financial losses and the different roles of each defendant which could lighten the sentence imposed on the defendant.

The view of the panel of judges in imposing sentences in the three decisions is retributive. According to Herbert L. Packer, the view is the retributive view which presupposes punishment as a negative reward for deviant behavior committed by members of the community so this view sees punishment only as retaliation for mistakes made based on their respective moral responsibilities.

In the three decisions that the author examined, the defendants were sentenced to imprisonment and fines by the judge because of the imperative formulation of criminal threats in Article 2 paragraph (1) which reads "Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state finances or the state economy, shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred

million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs), so the judge automatically imposes a prison sentence simultaneously with a fine. Whereas in Article 3 an alternative cumulative criminal threat is formulated which reads "Any person who intending to benefit himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the state's finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 twenty) years and or a fine of a minimum of Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiahs)", however, the judge cannot impose a fine against the defendant because there is no regulation yet to convert fines by reducing the detention period that the defendant has already served at the stages of investigation, prosecution, and trial.

The consequence of the implementation of Article 4 of the Corruption Law which states that the recovery of state financial losses does not erase crimes requires that all cases of corruption be resolved through court proceedings regardless of the size of the state financial losses.

The impacts that will arise if minor acts of corruption are still processed by an extraordinary criminal procedural law mechanism include:[7]

a. Criminal law is overused (*excessive)* and has a stigmatizing effect.
b. Criminal law is getting sharper downwards but duller upwards.
c. Criminal law is less able to carry out the function of prevention.
d. The farther the law enforcement process is from the principle of a fast, simple, and low-cost trial.

However, legal policies related to the settlement of criminal acts of corruption using restorative justice mechanisms must be stipulated in the Corruption Law so that they have legal force.

RENEWAL OF CRIMINAL LAW AGAINST CORRUPTION OFFENDERS WHO HAVE RETURNED STATE FINANCIAL LOSSES FROM A JUSTICE PERSPECTIVE

Legal reform in dealing with criminal acts of corruption is urgently needed. This is in line with efforts to develop alternatives to crimes of deprivation of liberty in the form of fines,

[7] Ahmad Hajar Zunaidi, *Op.Cit,* hal. 24

conditional sentences (supervision punishments) and the existence of convict coaching programs outside institutions (the institutionalization of corrections) contained in The Standard Minimum Rules for The Treatment of Prisoners, Which adopted at the UN Congress I concerning Crime Prevention and Development of Perpetrators in 1955 with its amendments.

Initially, the implementation of prison sentences provided a deterrent effect through harsh and inhumane treatment so that inmates regretted their actions and did not commit their crimes again. However, currently, the deterrent effect given to convicts is more humane with the aim that convicts can be accepted in society (social reintegration):[8]

a) prevent the commission of criminal acts by upholding legal norms for the protection and protection of society;
b) Socializing convicts by providing coaching and mentoring so that they become good and useful people;
c) resolve conflicts caused by criminal acts, restore balance and bring about a sense of security and peace in society; and
d) foster a sense of remorse and release guilt in convicts.

In the Corruption Crime Law, the formulation of criminal threats adheres to the combined punishment theory, in which in this theory there is an element of retaliation to provide a deterrent effect and also as an effort to prevent the same crime. The concept of punishment in this theory is called Double Track System. Double Track System is a concept of punishment through two channels, namely criminal sanctions aimed at giving retaliation and a deterrent effect to the perpetrators of criminal acts and sanctions in the form of providing assistance to the perpetrators so that they can change and prevent other people from committing the same crime.[9] An example of the application of the combined theory in Law no. 31 of 1999 jo. UU no. 20 of 2001 namely imprisonment and fines.

Referring to Aristotle's theory of justice what differentiates between:[10] “distributive” justice with “corrective” or “remedial” justice which is the basis for all theoretical discussion of the subject matter. Distributive justice refers to the distribution of goods and services to every one according to their position in society, and equal treatment of equality before the law (equality before the law). This means that justice must be proportional or balanced. Under the

[8] *Lihat* Kitab Undang-Undang Hukum Pidana Tahun 2022
[9] Anak Agung Gede Budhi Warmana Putra, Simon Nahak, I Nyoman Gede, Sugiartha, “Pemidanaan Terhadap Pelaku Tindak Pidana Korupsi Melalui Double Track System”, *Jurnal Preferensi Hukum* 1, no. 2 (2020): 198.
[10] Muhammad Helmi.*Op.cit*

clear interpretation contained in Article 4 of the Corruption Crime Law, according to the author, the treatment of perpetrators of corruption who return state financial losses should still be processed equally in court because the recovery of state financial losses does not erase the crime, only then will the sentence be distinguished. according to the circumstances at the time of trial. This is what is called the equal treatment of equality before the law (equality before the law) proportionally. This is also by Aristotle's expression which states “justice consists in treating equals equally and unequally, in proportion to their inequality.” Things that are the same are treated equally, and those that are not the same are also treated unequally, proportionally.[11]

The implementation of the criminal law policies contained in Article 4 of the Corruption Crime Law has not been able to tackle corruption crimes and optimize the recovery of state financial losses. Therefore, the criminal law policy in Article 4 needs to be reviewed, and changes to legal policies that satisfy a sense of justice and are beneficial not only to the state or society but also to perpetrators of corruption in the current situation. This is in line with the opinion of Prof. Sudarto, that carrying out "criminal law politics" means holding elections to achieve the best results of criminal legislation in the sense of fulfilling the requirements of justice and efficiency.

As for the form of criminal law reform that can be applied to perpetrators of corruption that have returned state financial losses in the future from a justice perspective, among others:

a. Formulation of Alternatives to Imprisonment

1) Criminal Fines

Criminal fines by the cumulative-alternative formulation can be imposed by judges both cumulatively between imprisonment and fines or independently against perpetrators of corruption which fulfill the elements of Article 3 which read "Anyone whom to benefit himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the state's finances or the country's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 twenty) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

[11] *Ibid.*

In practice, judges have never handed down Criminal Fines independently of perpetrators of corruption who have returned 100% of state financial losses because the Corruption Crime Law has not regulated the period for paying fines. According to the provisions of Article 273 paragraph (1) of the Criminal Procedure Code, “if a court decision imposes Criminal Fines, the convict is given a period of one month to pay the fine except in the decision of the express examination program which must be paid immediately”.[12] This period can be extended for a maximum of 1 month. However, the penalty for substitution (conversion) of fines, if not paid, has not been regulated in the Corruption Crime Law.

The provisions of Article 2 read "Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum 20 (twenty) years and a fine of at least IDR 200,000,000.00 (two hundred million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs)”. The formulation of imprisonment and Criminal Fines is formulated in a cumulative imperative so that Criminal Fines cannot be imposed independently. The formulation of criminal threats to corruption should be carried out by reforming the law by changing the substance of the formulation of Article 2, which was originally formulated in a cumulative imperative into a cumulative-alternative formulation.

To the explanation above, according to the author, reforming criminal acts of corruption against the formulation of a range of categories of Criminal Fines is needed to determine the number of Criminal Fines to be imposed on perpetrators of corruption to make it easier for judges to impose Criminal Fines on perpetrators of criminal acts of corruption who have returned financial losses by adjusting the amount of return on state financial losses in each case. This is in line with Barda Nawawi Arief's opinion as quoted by Kurnia Siwi Hastuti that it is necessary to think through a legislative policy that covers the entire system of Criminal Fines sanctions. It is necessary to consider the system for determining the amount of Criminal Fines, the time limit for paying fines, coercive measures which are expected to guarantee the payment of fines if the convict cannot pay

[12] https://badilum.mahkamahagung.go.id diakses tanggal 23 Desember 2022

within the stipulated time limit, implementation of Criminal Fines in certain cases, and guidelines or criteria in imposing Criminal Fines.[13]

2) Community Service Order

One form of penal law reform that is by the values that exist in society is a community service order. This idea is not intended as "revenge", but rather a form of coaching corruptors, as well as restoring balance in society due to corrupt acts that hurt people's sense of justice.[14]

The implementation of community service orders can be directly seen by the public so that it will foster a sense of shame in the convict and will influence the convict not to repeat his actions. As an alternative to imprisonment, a community service order will eliminate the negative impacts of life in prison and social work will directly benefit society. Community service orders are given according to the convict's profession, expertise, and skills.[15] The places where community service orders are implemented include: hospitals, orphanages, homes for the elderly, Islamic boarding schools, schools, or other social institutions.

According to the author, ideally, the mechanism for implementing a community service order is that the prosecutor as executor coordinates with the Penitentiary Agency and submits a copy of a court decision that has permanent legal force, then the prosecutor coordinates with an agency or foundation where the convict will undergo a community service order by the verdict, the convict is subject to a mandatory report while undergoing a community service order and the Bapas conducts community research (Litmas) on convicts who undergo a community service order then the results of the Litmas are reported to prosecutors and judges to further evaluate whether the community service order has been carried out as it should.

b. Sentence Guidelines

The judge before making a decision must have guidelines for imposing a sentence such as aggravating and mitigating factors. According to Lilik Mulyadi, sentencing policies

[13] Kurnia Siwi Hastuti.Pembaharuan Hukum Pedoman Pemidanaan terhadap Disparitas Putusan Pengembalian Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi, *Indonesian Journal of Criminal Law and Criminology (IJCLC) Vol. 2, No. 2, Juli 2021*, hal. 100

[14] Zuraidah, *Op.Cit*, hal-41

[15] *Ibid.*hal-109

need to be formulated in material criminal law, among other things:[16] First, wherever possible it is hoped that there will be relatively less disparity in sentencing for similar cases or cases, almost identical and the provisions of the criminal offenses that were violated are relatively the same. Second, sentencing guidelines provide room for movement, dimension, and actualization to judges in terms of explaining laws as legislative policies by the nuances desired by the legislators. Third, the sentencing guidelines provide and function as a catalyst to become a "safety valve" for judges in imposing crimes on defendants so that judges can make decisions more fairly, wisely, humanely, and relatively adequately against the mistakes that have been committed by the defendant.

Currently, judges have guidelines for imposing specific crimes against Article 2 and Article 3 of the Corruption Crime Law which are contained in Perma Number 1 of 2020. But in Perma No. 1 of 2020 for the sentences imposed, the judge determines the range of sentences imposed in the formulation of cumulative threats even though Article 3 is proven in court where the formulation of punishments is cumulative-alternative as stated in the matrix of ranges of sentences in Appendix I Perma No. 1 of 2020 so that these sentencing guidelines do not provide space for the defendant to obtain the defendant's rights which return state financial losses.

Referring to the sentencing guidelines stipulated in Article 53 of the new Criminal Code in trying a criminal case, the judge is obliged to uphold law and justice. If in upholding law and justice there is a conflict between legal certainty and justice, the judge must prioritize justice. Article 54 states that sentencing must be considered:

a. the form of the offender's guilt;
b. motive and purpose of committing a crime;
c. the inner attitude of the criminal offender;
d. Criminal acts are committed either planned or unplanned;
e. how to commit a crime;
f. the attitude and actions of the perpetrator after committing a crime;
g. curriculum vitae, social circumstances, and economic conditions of the offender;
h. criminal influence on the future perpetrators of criminal acts;
i. the influence of the Crime on the Victim or the Victim's family;

[16] Lilik Mulyadi, *Membangun Model Ideal Pemidanaan Korporasi Pelaku Tindak Pidana Korupsi Berbasis Keadilan*, (Jakarta: Kencana, 2021), 202-203.

j. forgiveness from the Victim and/or the Victim's family; and/or

k. values of law and justice that live in a society.

In addition to the reference to sentencing guidelines stipulated in the new Criminal Code described above, according to the author, the renewal of the law on corruption can be in the form of adding indicators of sentencing guidelines based on the impact of state losses incurred and the percentage of returns on state financial losses.

c. The Concept of Plea Bargaining for Justice for All Parties

The Attorney General's Office is the only prosecution institution that has a strategic position in determining whether or not a case can be examined in court. The role of the Attorney in screening incoming cases before being examined in court is one of the barometers of a fast, simple, and low-cost criminal justice process. One way to realize a fast, simple, and low-cost judicial process in tackling crimes of criminal nature extraordinary crimes or extraordinary crimes such as corruption, is necessary to reform both material criminal law and formal criminal law, especially regarding the mechanism for resolving corruption cases by using the concept Plea Bargaining which prioritizes returning state financial losses so as not to burden the state.

Draft Plea Bargaining known in the criminal justice system since the signing of the United Nations Convention against Corruption (United Nations Convention Against Corruption) of 2003, in which Article 37 paragraph (2) of the UNCAC "stated the obligation for signatory states to consider the possibility, in certain cases, of reducing the sentence of a defendant who provides important cooperation in the investigation or prosecution of corruption crimes".[17] Cooperation between perpetrators and law enforcers in investigating and prosecuting corruption is commonly referred to as "Justice Collaborator which can be done with mechanisms Plea Bargainings like criminal justice practice in the United States and the United Kingdom Plea Bargaining where the suspect/defendant who admits his guilt can be given leniency.

[17] Febby Mutiara Nelson, *Plea Bargaining & Deferred Prosecution Agreement Dalam Tindak Pidana Korupsi*, (Jakarta: Sinar Grafika, 2020), 24.

In the formulation of the RKUHAP concept, the term Plea bargaining is not found in the draft, but in the RKUHAP it is found that the term Special Track.[18] The special path in the RKUHAP is regulated in Article 199 which reads as follows:

(1)When the public prosecutor reads out the indictment, the defendant admits all the acts he was charged with and admits he is guilty of committing a crime with a criminal penalty of not more than 7 (seven) years, the public prosecutor can transfer the case to a brief examination procedure hearing.

(2) The defendant's confession was stated in the minutes signed by the defendant and the public prosecutor.

(3) The judge is obliged: a. notify the defendant regarding the rights he has relinquished by giving a confession as referred to in paragraph (2); b. notify the defendant regarding the duration of the sentence that may be imposed, and c. ask whether the recognition as referred to in paragraph (2) is given voluntarily.

(4) The judge can reject the confession as referred to in paragraph (2) if the judge has doubts about the veracity of the defendant's confession.

(5) Excluded from Article 198 paragraph (5), the sentence imposed on the defendant as referred to in paragraph (1) may not exceed 2/3 of the maximum sentence for the crime charged.

Implementation*plea bargaining* It is more appropriate to do so after the case file is declared complete (P-21) by the public prosecutor and when the suspect and evidence are handed over to the Attorney General's Office.*Restorative Justice* at the Attorney General's Office by the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice because investigators of corruption are not only prosecutors but can also be police investigators or KPK investigators.

Bargaining or negotiations between the public prosecutor and the legal advisers of the accused/defendant regarding the articles to be charged, negotiating legal facts, and negotiating the sentence that will be given to the accused is very necessary to determine

[18] https://media.neliti.com/media/publications/72913-ID-penguatan-kejaksaan-dalam-penanganan-per.pdf

whether this case can be examined in court briefly or ordinarily. In addition, the suspect's ability to return state financial losses and pay fines if the Criminal Fines are to be imposed must be proven by the ownership of the suspect's assets which are then inventoried by the prosecutor to request for confiscation status to the District Court if the investigator has not confiscated them. If the suspect does not want to cooperate with the prosecutor in uncovering a corruption case and is unable to recover state financial losses or pay a fine, the public prosecutor shall transfer the suspect's case dossier to the Court in the usual manner.

In the formulation of the RKUHAP, the criminal imposition of a defendant with a special route, namely the criminal imposition of a defendant may not exceed 2/3 of the maximum criminal offense charged. Taking into account Article 2 and Article 3 of the Law of the Republic of Indonesia Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, each of which has a minimum penalty threat, in this case, the imposition of a criminal act of corruption is in the process plea bargaining which is similar to the special pathway does not use the formula as stipulated in Article 199 paragraph (5) of the Criminal Procedure Code Bill. A criminal conviction in corruption is still guided by the Corruption Crime Eradication Law and the length of sentence to be imposed should be left entirely to the Panel of Judges taking into account the aggravating and mitigating circumstances that exist in the Defendant and paying attention to the return of state losses and the role of the Defendant in uncovering other acts of corruption.[19] This is an exception in dealing with criminal acts of corruption as an extraordinary crime.

According to the authors of the plea bargaining mechanism that can be applied in the criminal justice system in Indonesia namely:

a. First, a process of inquiry and investigation, an audit of state financial losses to the determination of suspects is carried out.

b. After the documents are declared complete (P-21), the suspect and evidence are handed over to the public prosecutor, and after examining the suspect and evidence, the public prosecutor conducts plea bargaining. with negotiating with the defendant and the defendant's legal counsel.

[19] Ziyad, "Konsep Plea Bargaining Terhadap Pelaku Tindak Pidana Korupsi Yang Merugikan Keuangan Negara", *Badamai Law Journal* 3, no. 1 (2018): 95.

c. Matters that were negotiated between the public prosecutor and the defendant's legal counsel included: Articles to be charged, legal facts of the involvement of other actors, the defendant's ability to return state financial losses, willingness to pay a fine and the amount of the fine to be paid by the defendant, the defendant's willingness to be punished that will be imposed on the defendant and the consequences of the defendant if the defendant does not carry out the agreement agreed upon by the defendant.

d. If the defendant states that he is ready to pay the state financial losses and fines, then the report on the state financial losses will be immediately made up and deposited into the state treasury. If the defendant cannot immediately recover state financial losses and fines, the public prosecutor records the defendant's assets to see whether the defendant's assets are sufficient to pay for state financial losses and fines, then the public prosecutor submits a request for confiscation to the Court to confiscate the defendant's assets.

e. After the public prosecutor and the defendant's legal advisers agree on the results of the negotiations then outlined in the minutes of the agreement, then the public prosecutor reports to his superiors (to the District Attorney's Office to the Head of State Prosecutor's Office, to the High Court to the High Chief Prosecutor's Office).

f. After the agreement between the public prosecutor, the legal adviser, and the defendant is approved by the leadership at the Attorney General's Office, then the defendant's detention is suspended if the defendant is detained and the defendant's detention is not converted if social work or criminal fines are to be imposed on the defendant.

g. The public prosecutor submits the case file to the Court by making a brief record of the defendant's actions and including the article.

h. he is charged with The public prosecutor proved the guilt of the defendant using evidence related to the defendant's guilty plea and proved the defendant's ability to return state financial losses and the defendant's willingness to pay a fine by showing evidence of returning state financial losses or proof of ownership of the defendant's assets at trial.

i. The judge can reject the defendant's confession and order the public prosecutor to transfer the case to the usual procedure.

Corruption as extraordinary crime is an extraordinary crime so the resolution of the case must be in extraordinary ways such as the use of concepts of plea bargaining. But the

application of the concept of plea bargaining Of course, there are still many weaknesses because this concept was adopted from the common law legal system, which has different procedural law from the civil law system, such as Indonesia. Implementation plea bargaining by public prosecutors supervised by superiors in stages is expected to minimize the occurrence of new fields of corruption in the criminal justice system in Indonesia. The purpose of applying the concept of plea bargaining in the criminal justice system in Indonesia is to uncover organized corruption cases and optimize the recovery of state financial losses which are the main objectives of eradicating criminal acts of corruption.

CONCLUSION

The policy of sentencing perpetrators of corruption that have returned state financial losses is based on the provisions of Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as The interpretation of the provisions of Article 4 of the Corruption Crime Law which states that restitution for state losses does not eliminate crimes has not been properly implemented. There is a legal policy that deviates from the provisions of Article 4 where the recovery of state losses eliminates crime. In addition, the recovery of state financial losses is not a consideration for judges in imposing sentences because the formulation of criminal threats is a cumulative imperative to prevent judges from imposing sentences. according to the circumstances of the accused at trial. In the settlement of criminal acts of corruption as extraordinary crime or extraordinary crime, it is necessary to renew the criminal law on the perpetrators of corruption which have returned state financial losses including: looking for alternatives to punishment other than imprisonment, establishing sentencing guidelines, applying the concept of plea bargaining and application Restorative Justice on corruption in the form of Culpa or negligence.

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