

The Acceleration Model of Returning State Financial Losses Due to Corruption in Indonesia



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ABSTRACT: Recovery of state financial losses due to corruption is still an issue in Indonesia. Currently, this problem is resolved only through a conventional criminal justice process oriented towards punishment so that the recovery of state financial losses does not achieve maximum results. This study aims to analyze the appropriate model for accelerating the recovery of state losses due to corruption. This research is a juridical-philosophical research based on secondary data in the form of primary, secondary, and tertiary legal materials, using a statutory, philosophical, and conceptual approach. The data collection technique utilized a literature study and then analyzed qualitatively. This study concludes that a solution is needed as an alternative settlement of corruption cases through agreements based on the dual track system model of restorative justice, but constitutionally justified, according to legal theory, especially criminal law, and philosophically according to the theory of restorative justice. The solution is to accelerate the return of corrupt state finances through agreements with the restorative justice approach of the dual track system model, which is an effort based on democratic values, justice, benefit, fair legal certainty, and respect for the constitutional rights of the Indonesian people, aiming at people's welfare so that constitutionally not contrary to Article 1 paragraph (3) of the 1945 Constitution.

KEYWORDS: Corruption, state loss, justice, and acceleration.

1. INTRODUCTION

The loss of state finances in Indonesia due to corruption is so significant, reaching hundreds of trillions of rupiah, undermining the cost of national economic development in the framework of people's welfare, which has now been used as a benchmark for the progress of a nation (Sitorus & Zulyadi, 2020). These losses occur with a variety of modus operandi, including abuse of power and authority, the determination of the state budget or regional budget as a cover for legality so that corrupt acts are not judged against the law, bribery, gratification, do not tender in the procurement of goods and services, mark up, reduce the quality of goods predetermined. Transparency International Indonesia noted that the State Budget and Regional Budget were corrupted by around 30-40 percent and 70 percent of government officials' procurement of goods and services (Candra & Arfin, 2018). This can be proven from the 2014-2018 total of regents or mayors and their deputies and governors. Members of the House of Representatives or Regional House of Representatives caught corruption cases reaching 101 people (Indriana, 2018).

The following are losses of state finances due to corruption from 2015 to 2019. In 2015 losses amounted to 203.9 trillion rupiahs or 13.6 billion USD, not only in the form of state losses that were corrupted but also in the form of social costs of corruption reaching 2.5 times the amount of state financial losses, namely 509,75 trillion rupiahs or 34 billion USD (Fadhil, 2016). 2016 during the first semester, it reached 883.8 billion rupiahs or 5.9 billion USD. In the second semester, it reached 12.59 trillion rupiahs or 839.3 million USD (Gabrillin, 2016). In 2017, a loss of 2.3 trillion rupiahs, or 153.3 million USD was related to the corruption of the e-identity card, and in 2018 a total of 531.5 billion rupiahs or 3.5 billion USD (Hairunnisa, 2019). This year there was also a loss of 1.1 trillion rupiahs or 73.3 million USD (Jayani, 2019), and from the performance of corruption measures, it was known that the state lost 5.6 trillion rupiahs or 373.3 million USD. The Corruption Eradication Commission said the Governor of Southeast Sulawesi alone carried out the total value of the loss of state finances at 4.3 trillion rupiahs or 286.6 million USD. That figure is higher than the value of the state financial loss in the case of corruption of the e-Card Identity Project worth 2.3 trillion rupiahs or 153.3 million USD (Rachman, 2019). While the National Police revealed a state loss of 2.9 trillion rupiahs or 193.3 million USD (Briantika, 2020).

In 2019 losses, according to the Financial Supervisory Agency, amounted to 10.35 trillion rupiahs or 690 million USD, not including various problems of irregularities, such as administrative irregularities, weaknesses in the institution's internal control system, non-compliance with laws, inefficiency, and ineffectiveness, losses all worth 676.81 billion rupiahs or 45.2 million USD (Sukmana, 2019). The National Police Chief revealed in 2019 that the state's financial losses from oil and gas crime would amount to 1.803 trillion rupiahs or 120.2 billion USD. Based on the Jiwasraya Insurance Company Corruption Crime

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investigation, the Attorney General's Office stated that the state loss reached 17 trillion rupiahs or 1.13 billion USD (Yunianto, 2020).

According to the Corruption Eradication Commission in 2019, it is estimated that there is still much corruption originating from the state budget, worth more than 2.165 trillion rupiahs or 144.3 billion USD. If it is corrupted by 10%, the value of the state loss is around 200 trillion rupiahs or 13.3 billion USD in one year. The 2019 state budget rose to 2,461 trillion rupiahs or 164 billion USD. Data says a leak of 500 trillion rupiahs or 33.3 billion USD is equivalent to 25% of the budget (Rahmayanti & Pohan, 2022).

Regarding the rescue of state financial losses, President Joko Widodo's address on August 16, 2019, before the House of Representatives and the Regional Representative Council members is worth appreciating. The contents of his speech emphasized law enforcement officials' in eradicating corruption, 'not only measured by how many cases were resolved or how many people were imprisoned but also measured how much state losses could be saved. Jokowi's speech, in addition to criticizing the performance of law enforcement officers, precisely the criminal justice apparatus, also actually contained a solution that had to be realized 'How can the corrupt state financial losses be recovered or saved as soon as possible? Jokowi's criticism is very reasonable, considering that the recovery of state financial losses has not been made into a cardinal address because it prioritizes the criminal prosecution of corruption.

The recovery of state financial losses is only a secondary target, carried out normatively through conventional criminal justice, so the achievements are not optimal and optimal. In fact, in eradicating the crime of corruption, his spirit accelerates the rescue and restoration of state financial losses. The solution is intended as well as an effort to speed up the recovery of state financial losses, carried out through an agreement using a restorative justice approach dual track system model for corruption, but constitutionally justified according to the Indonesian law state based on Pancasila 'and theoretically according to' legal theory, especially criminal law, and restorative justice theory.

2. METHOD

The specification of this research is descriptive to describe and analyze the problem of efforts to accelerate the recovery of state financial losses that were corrupted through an agreement using the Restorative Justice approach dual track system model with corruption. This type of research is philosophical juridical, based on secondary data in the form of primary, secondary, and tertiary legal materials, using the method of legislation and philosophical and conceptual approaches. A literature study employed data collection techniques and then analyzed qualitatively.

3. RESULT AND DISCUSSIONS

3.1 Inhibiting Factors in Returning State Financial Losses to Corruption in Indonesia

Law enforcement has a significant role in organizing the life of the nation and state to guarantee the interests of the majority of the community or citizens, ensure legal certainty, justice, and truth, and respect human rights so that various criminal acts and arbitrary actions carried out by members of society against other community members will be avoided. Consistent law enforcement can realize people's expectations with certainty and legal provisions based on justice and truth.

Efforts to recover compensation for state finances as a risk of criminal acts of corruption cannot be separated from the factors that influence it; as stated by Soerjono Soekanto, law enforcement is not merely applying the provisions of statutory regulations, but some factors influence it, namely as follows: a) Legislation factors (legal substance); b) Law enforcement factors; c) Facilities and facilities factor; d) Community factors; e) Cultural Factors (Dasaatmaja, 2019).

According to Herman et al. (2022), the investigative process, which is not optimal, gives the most significant contribution if the implementation of recovering state financial losses encounters obstacles because one of the authorities possessed by investigators, as stipulated in Article 5 paragraph (1) of the Criminal Procedure Code is to seek information and evidence, At this stage investigators must be able to search and find assets belonging to the perpetrators of corruption as much as possible, so that when the case is upgraded to the investigation stage, investigators can immediately confiscate existing assets to avoid transferring assets by the suspect to someone else.

The confiscation of the assets belonging to the suspect is related to additional punishment in the form of confiscation, which can be determined simultaneously with the imposition of the principal sentence by the judge so that this can make it easier for the executing attorney to recover state losses. However, what often happens is that investigators prioritize the calculation of state losses and the fulfillment of criminal elements with the aim that the results of the calculation of state financial losses can be requested for a return through payment of replacement money to the state.

Elements that result in state financial losses in the Corruption Crime Act must be fulfilled to return state monetary compensation. Considering that acts of corruption are often carried out by people who have positions and are highly educated, of course, every corrupt actor will take systematic and structured actions to hide the results obtained from acts of corruption so that it can make it difficult for investigators to confiscate assets acquired from acts of corruption. It cannot be denied that the difficulties of confiscating property experienced by investigators often have an impact on the actions of investigators who focus on seizing letters or written documents that are used to determine the amount of state financial losses incurred; of course, this can only be used

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to prove wrongdoing. Perpetrators who aim to impose prison sentences while implementing confiscation, auctions, and payment of replacement money as an additional punishment are hampered (Andri et al., 2019).

The difficulty for investigators to carry out confiscation is also based on the existence of limitations regarding objects as stipulated in Article 39 paragraph (1) of the Criminal Procedure Code, which defines that what can be subject to confiscation are: a) The assets or claims of the suspect or the defendant all or part of which are allegedly obtained from criminal acts or as a result of a criminal act; b) Objects that have been used directly to commit a crime or to prepare it; c) Objects used to obstruct the investigation of criminal acts; d) Objects specifically made or intended to commit criminal acts; e) Other objects that have a direct relationship with the criminal act committed.

According to Wahyuadi et al. (2023), bound by criminal imposition in the form of payment of compensation money which can be used as a basis for returning state financial losses, there are several obstacles so that the decision seems pointless, including a) There is a long period between the occurrence of acts of corruption with the trial process creates difficulties in tracing the money or proceeds of corruption; b) Money or income from criminal acts of corruption has been used up or has been carried out in other forms that are difficult to reach by law; c) The convict's inability to pay replacement money.

According to Amiruddin et al. (2019), the failure to carry out the confiscation and auction of the convict's property was caused by the difficulty of the prosecutor in finding the convict's property, even though the prosecutor as executor of the court decision could execute a prison sentence as a substitute for non-payment of replacement money by the convict. Article 32, Article 33, Article 34, and Article 38C of the Law on Corruption Eradication also provide a legal basis for State Law Enforcement Prosecutors and institutions that have been harmed to make efforts to recover state losses using civil lawsuit orders.

According to Mustawa et al. (2022), the same is true with efforts to recover state losses through criminal instruments related to filing civil lawsuits. The obstacles experienced by State Law Enforcement Prosecutors and injured institutions are based on the difficulty in finding the convict's property. In addition, aside from the trial examination process, which takes a long time, another obstacle related to filing a civil lawsuit is the limited budget available for filing a civil lawsuit to pay fees consisting of a) Registration of power of attorney, b) Registration of lawsuits; c) Calling witnesses; d) Collateral confiscation; e) Confiscation execution; f) Auction execution; g) Local inspection.

According to the author, the inhibiting factors in efforts to return compensation for state funds due to criminal acts of corruption can be described as follows:

- a. Regulatory factors. Juridically, the provisions of Article 17, Article 18, Article 32, Article 33, Article 34, and Article 38C of the Corruption Eradication Law do not provide a loophole for any perpetrator of criminal acts of corruption to escape criminal responsibility or avoid confiscation, confiscation, as well as payment of replacement money. Concerning confiscation, the Criminal Procedure Code, as the mainstay of the implementation of criminal procedural law, has provided a limit that the assets that can be confiscated are only objects that are the result of criminal acts of corruption or things that were used at the time the crime of corruption was committed or objects that were on the part of the parties. Third, but must have a relationship or connection with the criminal act of corruption. Given that acts of corruption are included in extraordinary crimes with perpetrators who have a higher educational background, subject to the handling of corruption cases against the Criminal Procedure Code, it can provide an opportunity for each perpetrator to make efforts that have the potential to prevent investigators from confiscating property. Belonging to the perpetrator. It is known that the implementation of the confiscation of the perpetrator's property will determine the success of the confiscation, auction, and payment of compensation money as a return for state financial compensation;
- b. Law enforcement factor. The low success of investigators in confiscating the property of the perpetrators of corruption cannot be separated from the point of view that returning state losses is a subsidiary crime, while the primary crime is imprisonment. Even though the law on the Eradication of Criminal Acts of Corruption provides options regarding the prosecution of corruption cases which consist of imposing criminal charges and reimbursing state losses through additional criminal and civil lawsuits, considering the impact caused by criminal acts of corruption affecting state finances, it is fitting that Law enforcement officers prioritize efforts to recover state losses compared to imposing prison sentences;
- c. Facility and infrastructure factors. Concerning recovering state losses through the mechanism for filing civil lawsuits, it is known that there are obstacles in the form of the unavailability of an adequate budget to pay for the costs of registration of attorneys, registration of lawsuits, summons of witnesses, confiscation of collateral, confiscation of executions, execution of auctions, and local inspections;
- d. Community factor. Problems that often arise in a society that can affect the return of state financial compensation due to criminal acts of corruption are Low public awareness to report to law enforcement officials if they know of corruption, The low carrying capacity of the people who become witnesses in the trial process is based on a sense of worry and fear that the information given at the trial will have an impact on the personal interests of the community because most of the perpetrators of criminal acts of corruption are people who have high positions, positions, and knowledge;
- e. Cultural factors. Cultural factors correlate with factors of law enforcement officials; based on the example of the decision used in this study, it is known that the executing prosecutor has not been able to make efforts to recover state losses based on the

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judge's decision. It is feared that delays and protracted handling may become a habit among executor prosecutors so that it can hinder the process of returning state financial compensation due to criminal acts of corruption.

For example, criminal acts of corruption in corporations in Indonesia. It has been 17 (seventeen) years that corporations have been made legal subjects of corruption and a criminal punishment system has been formulated, but so far only one corporation case as a perpetrator of corruption has been successfully sentenced to permanent legal force, namely the Giri Jaladhi Wana Company (GJW) case in Banjarmasin. The Banjarmasin High Court is carrying out the prosecution process. Meanwhile, law enforcement officials from the Attorney General's Office and the Police, both at the central and other regional levels, have not yet carried out criminal proceedings against corporations that have committed corruption. In fact, in several corruption cases handled by law enforcement institutions, it is clear, both in the facts of the trial and in the description of the judge's decision considerations against corporate administrators, that the corporation is involved so it has led to corporate crime.

Even at the level of the Corruption Eradication Commission (KPK), which has several special powers in eradicating corruption, so far it has never conducted investigations and prosecutions of corporate law subjects. Particularly with regard to bribery, the KPK only conducts investigations and prosecutions in cases where bribery is caught red-handed. Even if you look at the cases handled by the KPK, there are corporations that took part in the bribery crime. Both in the conventional criminal justice system and the criminal justice system for corruption, there are still problems in prosecuting corporations as legal subjects. In this context, placing the corporation as the subject of a crime is solely without regulation regarding when it is said that a corporation has committed a crime and in terms of how the corporation can be held criminally accountable, theoretically and practically in law enforcement it cannot be implemented. So efforts to deal with criminal law cannot run well. For example, there are weaknesses in legislative policies regarding corporate criminal sanctions, namely the absence of specific provisions regarding criminal sanctions for corporations for offenses that only carry a prison sentence, and the absence of rules regarding substitute punishment if fines are not paid by the corporation. These weaknesses in the context of criminal law reform must be renewed.

The process of law enforcement against criminal acts committed by corporations will be faced with two main problems, namely: 1) the problem of criminal liability from the institution as a corporation; and 2) the criminal system against institutions as corporations. Both of these issues have not been regulated explicitly in legislation, but because a corporation's activities are represented by one or several corporate executives, theoretically if a corporation commits criminal activities it is a manifestation of its executives. Likewise the criminal system, it is difficult to determine the appropriate criminal sanctions for corporations.

Corporate crime is very complex, in addition to its character as a crime by the powerful so law enforcers must have extra abilities and be mentally tough. Obstacles identified in the investigation and prosecution process include the following: a) The perpetrator has both financial and political power; b) The quantity and quality of law enforcement professionalism/specialization, including Civil Servant Investigators, is weak, so it is necessary to think about a special task force; c) Victims are less sensitive and passive (corporate crime is an untold story or quiet act); d) The complexity of the evidentiary system; e) Inter-agency coordination is weak; and f) Inadequate community participation (eg Neighborhood Watch Committee to monitor Corporate Crime).

It is very ironic, based on the general constraints faced in the criminalization of corporate crimes above, that many criminal processes stop at the management and there is no follow-up to ensnare and carry out criminal proceedings against the corporation. In this way, corporations can be free from punishment so that they can enjoy the benefits of state financial losses resulting from efforts to assist corruption. Obstacles in enforcing corporate corruption criminal law in this country must be addressed immediately and solutions sought. The main thing is that through comprehensive regulatory reform, it will strengthen the legal procedural and technical basis for criminalizing corporate corruption actors so that it can become a panacea for eliminating law enforcers' nervousness in carrying out investigations and prosecutions in court as well as being useful for judges when deciding whether to punish corporate corruption offenders.

3.2 A Solution in Accelerating the Process of Recovering State Financial Losses Due to Corruption

Efforts to accelerate the return of state financial losses based on the above solution align with the objectives of the Indonesian rule of law based on Pancasila, which requires the welfare of the people. The basic idea is to accelerate the return of state financial losses due to corruption so that it can be used to finance national development. Thus, the idea referred to constitutionally does not conflict with the goal of the rule of law according to Article 1 paragraph (3) of the 1945 Constitution, which also requires people's welfare, theoretically known as the theory of the secular law state (Sitepu & Piadi, 2019). The realization is always based on justice, expediency, legal certainty, and respect for the people's constitutional rights. This is following the rule of law of Indonesia, whose basic norms are taken from the philosophy of the Pancasila nation, which also substitutes the best elements of the rule of law in the sense of *rechtsstat* and the rule of law so that it is called the prismatic Pancasila law state (Suta et al., 2021).

According to Sukatmini et al. (2022), the Pancasila state law is prismatically characterized by: 1. Family law state; 2. The rule of law is confident and just; 3. Religious nations state; and 4. They are integrating law as a tool for changing society and as a mirror of community culture. If applied as a philosophical basis to strengthen the solution referred to, these four characteristics can be determined in legislation (Law) and applied in law enforcement in corruption. Exploration is as follows:

1. Family country. Legal actions accelerate the return of state finances corrupted by the Restorative Justice approach through such an agreement following the family state. The characteristics of the family law state mandate that only some legal problems must

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be resolved legally according to the provisions of the legislation in force. Moreover, using criminal law, which is repressive and punitive, is often considered as not solving the problem correctly. Therefore, the settlement must first be done by deliberation and consensus in the interests of the family while still recognizing the rights and obligations of individuals or human rights by prioritizing national interests (shared interests) above individual interests. If the perpetrators of corruption in a family-like manner are not met, they will be subject to severe criminal sanctions through the conventional criminal justice process (conventional). Applying the resolution of legal problems like that, on the one hand, is in line with the socio-cultural values of Indonesian society. That community, on the other hand, is also in line with the development of Indonesian society toward modern society. Thus, in the Pancasila legal state, an endeavor to create harmony and balance between individual interests and the interests of the state (community) by giving the state the possibility to intervene as long as necessary for the creation of national and state life arrangements following the principles of Pancasila;

2. The rule of law is specific and just. By its colorful nature, in the Pancasila rule of law, every legal activity, including the legal actions referred to above, is a convergence between the principle of legal certainty with the principle of justice, which are the best elements of the concept of the rule of law Rechtsstaat and the Rule of Law. As a result, a precondition will be created that legal certainty must be upheld to uphold justice in a society following the principles of Pancasila;
3. Religious Nation State. The Pancasila state law is a godly state, in the sense of national and state life, based on belief in a Godhead. The logical consequence of this prismatic relates to applying the above efforts, then the agreement made by both imperative parties contains the words "Based on Godhead."
4. It integrates law as a tool for societal change and as a mirror of community culture. By combining the two concepts associated with the efforts above, the basic idea is to maintain and reflect the values that live in the community (living law) and positive living law to encourage and direct the community towards progress following the principles of Pancasila.

The solution, which will later be outlined as an effort to accelerate the return of state financial losses due to corruption, has the advantage because it has gained the basis of strengthening the primitive rule of law based on Pancasila, philosophically justified according to the theory of Restorative Justice, made based on democratic agreements as outlined in the form of letters agreement so that it has legal certainty. Therefore can be realized immediately. The agreement referred to basically contains, first, an offer to the perpetrators of corruption that the settlement of the case will be carried out by not investigating, prosecuting, and convicting with all the state's financial losses by the corruptors must be fully returned, and 'all assets resulting from corruption are ready to be confiscated unless they can be proven otherwise (Kristanto et al., 2022). The Law Enforcement Officials promised not to carry out investigations, prosecutions, and crimes if the perpetrators of corruption met the contents of the agreement that had been agreed. Second, if the perpetrators do not fulfill the agreed agreement, the case will be processed through criminal justice as usual, and specific legal actions will be taken. Even the contract can be used to aggravate the criminal conviction. Herein lies the democratic dual-track system model referred to above. Using the Restorative Justice approach with this model means that the first imperative is placed in the primary position, while the criminal justice process is placed in the second. Such a method is justified according to the principle of *ultimum remedium* in the dogmatic of Criminal Law, especially in settling corruption cases prioritized to recover state financial losses. Nevertheless, if the perpetrators do not fulfill the agreement, the *primum medium* principle is inevitably enacted.

This solution follows the ideas in the Corruption Act as a positive law to recover state financial losses as quickly as possible, even though the legal norms need to be more clearly and formulated. However, the legal theory says the law contains an idea or concept. Therefore the law can be classified as an abstract idea. Arguments about justice, legal certainty, and social benefit can also be classified in this abstract group. Thus, talking about enforcement will essentially talk about realizing abstract ideas or concepts (Rambey, 2016). Moreover, the law must be understood as a process that moves dynamically or is "law in the making," meaning that the law is not a status quo, not just maintaining existing community conditions, but also continues to be in the process of searching (in searching) and finding (inventing) answers regarding the efficiency and effectiveness of the operation of law in society to achieve the three classical objectives of the law (Kristanto et al., 2022). Based on this theory, corruption law enforcement should not be formally legalistically fixed against the Corruption Act but must be interpreted as a process that moves dynamically or is law in the making. This means that law enforcement officers are no longer diagnosed as merely maintaining the condition of law enforcement of corruption which has been running so far, that is, only convicting perpetrators of crime. Through implicitly contained ideas, law enforcement officials should be capable of realizing this and continue to be in the process of finding and finding answers about the efficiency and effectiveness of the operation of the Corruption Act so that as soon as possible, the state's financial losses due to corruption can be returned.

Applying this solution is also highly justified because, in reality, the perpetrators of corruption have violated laws that have been valid, formally valid, or have substantial justice. These things should be realized as a reality reflecting essential human morality. Therefore it is natural and universal for all humanity (Faharuddin & Hakim, 2023). Indeed, the criminal act of corruption is an act that is very contrary to things of such nature that exist as principles of truth originating from God Almighty, which are derived from human morals as His creatures, and paradigmatically become "the highest norms of order" or as a universal higher order in human life. Therefore, it is unethical if the principles are violated first by corrupt acts. Likewise, law enforcement officials also commit

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evil actions and violate the regulations referred to if they do not immediately take legal action to accelerate the return of corrupt state finances.

Starting from such a mindset, the principle of truth and justice should exist or be functionalized as a fundamental conception, ethical norms, and meta-rules and the main foundation that can guide rational thoughts in applying criminal rules (Corruption Law) as an effort to speed up the return of corrupted state financial losses so that the public will genuinely feel fair, valuable and confident. These principles are very compatible with Criminal Law which also contains values that can function as a means to realize the harmonization of all legal interests to direct the achievement of the objectives of Criminal Law in particular and the purpose of law in general. It is not Criminal Law as the rule of law also contains the values of "moral" truth (right, *Recht*) as opposed to immoral (wrong, *slecht*, *onrecht*), both theological and philosophical nature (Mauro, 1997).

Furthermore, philosophically, the solution above follows the restorative justice theory. Therefore it can be used as a theoretical basis to justify criminal sanctions by taking a victim-oriented approach that emphasizes restitution (compensation) for victims and not focusing their attention on the punishment of perpetrators of crime, promoting the recovery of victims and creating constructive roles for victims in the criminal justice process. This restorative justice exists as a response or reaction to a crime that focuses on the recovery of the losses suffered by the victim and requires that the perpetrators of the crime be held responsible for the loss or damage caused by the crime they committed. The aim is to create peace and prosperity in society. This theory is used as an approach and or as an alternative to settling corruption cases with the agreement not to conduct investigations, prosecutions, and convictions.

According to Tony Marshall (Faharuddin & Hakim, 2023), restorative justice is a process whereby all parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the crime and its implications for the future. Referring to the limitations of Restorative Justice, if related to the idea being discussed, the elements can be stated as follows:

First, the elements of all parties interested in the act of crime are the victims and perpetrators of corruption. The state party is the victim of the crime of bribery. Government officials such as relevant law enforcement officers represent his legal standing. At the same time, the perpetrators of corruption can include his family or other community members who directly feel affected by the corrupt acts of the perpetrators or those who might be able to help prevent the recurrence of his crime.

Second, the element of meeting each other is a series of meetings between parties adapted to the complexity of the problem and other practical settlement processes. The conference is needed to make joint decisions as outlined in an agreement and ensure that the deal is adhered to and fulfilled by all parties. The meeting process is ensured to run safely and in a civilized manner. It can guide the perpetrators and their families and encourage them to fully and creatively participate in the process.

Third, elements looking for solutions to how to deal with events after the onset of crime include actions to ensure welfare or material satisfaction for the state as a victim, reaffirming that perpetrators of corruption will not be blamed, attention to the needs of victims, resolution of any conflict between victims and perpetrators of crime, solving disputes that occur between the parties, solving difficulties between the perpetrator and his family and other friends as a result of corruption, as well as providing an opportunity to free guilt through apologies by returning state financial losses and or compensation.

Fourth, elements of future implications, including actions to overcome the causes of corruption carried out, making rehabilitation plans, agreements between perpetrators and family members with victims (the state) as well as representatives of the people present on a system of support for corruptors to ensure that they were able to obey the things that have been promised.

Whereas in terms of expediency, using the Restorative Justice approach because it is considered to be able to improve the traditional criminal justice system, both in terms of investigation, prosecution and punishment, namely: 1) In the Restorative Justice approach, looking at Corruption Crimes more thoroughly and recognizing Restorative Justice perpetrators can harm themselves, the community or the state as victims, therefore the Corruption Crimes must be seen as not merely a violation of law; 2) The settlement process that is taken, involves more parties and includes victims (community or state) and does not only give a role to the government or corruption and corruptors only; 3) Measuring success differently, i.e. measuring how much the optimization or maximization of state financial losses has been returned, rather than measuring how heavy the criminal will be imposed; 4) Recognizing the importance of community involvement and their initiatives in dealing with and reducing corruption crimes, rather than leaving the problem of corruption only to the role of the government; and 5) Restoring the original situation when the corruption crime had not yet occurred (Sukatmini et al., 2022).

Referring to the explanation above, the application stage must change the retributive paradigm of justice-punishing justice to the restorative justice paradigm by continually referring to maximization, efficiency, and balance (Taryanto & Prasajo, 2022). This means, at the application stage, the aim is not to prioritize detention again through the punishment of corruptors. By doing this through an agreement, the intended expectations will be able to restore a problematic situation or experience an imbalance to become non-problematic or achieve harmonization and benefit the community, nation, and state with the return of state financial losses as quickly as possible. This restorative-rehabilitative corruption case resolution model in the Indonesian Criminal Law system can be adopted, and the norms can be formulated in the Corruption Act because, dogmatically, the judiciary does not conflict with the Criminal Code, which contains the main rules and as the core or principal regulations of the Criminal Law. However, suppose a law outside the Criminal Code determines otherwise, based on the principle of *lex specialis derogate legi general* (vide Article 103 of

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the Criminal Code / VW's). In that case, the main rules in the Criminal Code can be applied. Nevertheless, between the Criminal Code and the regulations outside it, there is a close relationship, that is, such as the mother and her children, meaning that the system used in the Criminal Code also applies to the rules outside the regulation, unless clearly stated otherwise (Munafri et al., 2021).

In addition, the Criminal Law model above philosophically follows the philosophy of life of Pancasila, which has long been growing, living, and developing into customary law on Indonesian soil. In its realization, the maximum use of the Corruption Law must be directed to achieve legal goals in the form of expediency (utility), not only for suspects, defendants, and convicted but also for the surrounding community (state). Using such cellphones borrowed the terms Louis Rayar and Stafford Wadsworth to enter the "low profile of justice" stage, which was not merely punitive but had given extensive discretion to investigators, public prosecutors, and judges not to carry out investigations, prosecutions, and crimes with certain preconditions. As the perpetrator has returned the corrupt state's financial losses and provided compensation to the state as a victim of corruption, the perpetrator has submitted a request that the case not be continued at the investigation, prosecution, and trial hearings. Requests written through the agreement letter by law enforcement officials must be accepted if all administrative and financial requirements have been fulfilled. The model adopted in the 1996 Dutch Penal Code shows that the politics of criminal law in the Netherlands has shifted from being aimed initially at retributive justice to restorative justice (Wibowo, 2018).

As an alternative to settling corruption cases, such a modern criminal law political model is acceptable and, as it is said, does not contradict the Indonesian Criminal Law system, even following the principles of truth and justice and the system of moral values of the Indonesian nation's culture. Christiansen said, "The conception of the problem of crime and punishment is an essential part of the culture of any society." Likewise, according to W. Clifford, "the very foundation of any criminal justice system consists of the philosophy behind a given country" (Rustam, 2017). Especially for Indonesia, based on the Pancasila rule of law, its national development policy line aims to shape the Indonesian people. A humanitarian approach must be considered if Criminal Law is used to achieve that goal. This is important not only because crime is a human problem but also because it contains an element of suffering that can attack the interests or values most valuable to human life (Gunakaya, 2019).

Considering the significance of the above objectives and to be able to strengthen and realize them in the criminal justice process in Indonesia, Atmasasmita (Wibowo, 2018) requires a change in the principle of classical criminal law, that is, the principle of legality, from the beginning "the principle of no criminal without error" was changed to the principle of "no criminal without error, there is no mistake without expediency." Thus, in the Indonesian criminal system, "Criminal law that is based on the existence and absence of error (schuld) of an act (daad) which is used as a means of determining whether or not criminal sanctions are not the only measure of success (output), but must test the extent to which the threat of criminal wrongdoing in the act has a constructive and positive impact on both the perpetrator and the victim and the community as a whole (outcome)."

Procedures that can be applied for returning or recovering state losses or returning the proceeds of criminal acts in the form of assets can be carried out through criminal, civil, administrative, or political channels. Efforts can be implemented when returning state losses resulting from acts of corruption. Several steps in returning and recovering state losses due to corruption are as follows:

1. Recovery of state losses through criminal proceedings, consisting of a) Tracing of Assets; b) Confiscation of Assets/Assets; c) Demand for Payment of Replacement Money; d) Execute/Implement Court Decisions Regarding Recovery of State Financial Losses;
2. Return of state losses through civil lanes, financial losses and returns to the State caused by criminal acts of corruption with civil lanes. If the investigator believes and obtains reasons that there is insufficient evidence for more than one element of the criminal act of corruption, but there has been a loss of state finances, then the dossier is submitted by the investigator to the institution that is detrimental to filing a lawsuit;
3. Restitution of State losses with State administrative law, consisting of a) compensation claims. This occurs due to committing unlawful acts either intentionally or negligently, causing state losses that are not in the form of a treasury shortfall, and the competence to charge lies with the ministry or head of the institution concerned; b) Treasury demands. This claim is imposed on the treasurer due to an unlawful act, either intentionally or negligently, resulting in a treasury shortage. The competence to charge compensation lies with the Supreme Audit Agency (BPK).

Furthermore, one of the efforts that can be carried out by law enforcers in recovering state losses due to corruption is as follows: 1) Maximizing the return of state losses by confiscating and tracing the assets of the accused or convict; 2) Convincing the convict to pay replacement money; 3) Encouraging the public to support the eradication of corruption; 3) Complete facilities and infrastructure for eradicating corruption; the authority of KPK prosecutors (Corruption Eradication Commission) and Public Prosecutors who are appointed and dismissed by the KPK (Corruption Eradication Commission) must be strictly regulated/based on applicable laws.

4. CONCLUSIONS

The solution accelerates the return of corrupt state finances through agreements with the Restorative Justice approach dual track system model, an effort based on democratic values, justice, expediency, fair legal certainty, and respecting the constitutional rights of the Indonesian people, aiming at people's welfare so that the constitution does not contradict Article 1 paragraph (3) of the 1945

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Constitution. Theoretically, this idea is justified according to a legal theory that holds that the law contains abstract concepts related to the idea of justice, legal certainty, and social benefits as well as a reality of essential human morality, is natural and applies universally to all human beings which must be realized in law enforcement. This effort can be used as an alternative to solving corruption cases in the criminal justice process by applying the theory of Restorative Justice, which justifies criminal sanctions oriented to victims of crime corruption, emphasizing restitution (compensation) for the state as a victim and not focusing its orientation on the criminal prosecution of perpetrators, promoting recovery and creating a role - the constructive role for victims. Viewed from the perspective of Criminal Law, the use of Criminal Law (corruption law) as an instrument is maximally directed to achieve the goal of benefiting not only suspects, defendants, and convicts but also society and the state. The criminal law function prioritized is not retributive justice but restorative justice.

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