



Optimization of the Corruption Court in Minimizing State Losses Due to Corruption

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Abstract. The research aims to answer: (i) the arguments of the judiciary for corruption have not been able to minimize state losses due to corruption, and (ii) ideal efforts to optimize the judiciary for criminal acts of corruption to minimize state losses due to corruption. Penalties for perpetrators of corruption in Indonesia are dominated by imprisonment. This is less effective, especially in terms of recovering state assets and state financial losses due to corruption. The state is very disadvantaged, in addition to financial losses, the state must spend a lot of money on investigating corruption cases. It is necessary to optimize the judiciary for criminal acts of corruption to minimize state losses due to corruption as an effective effort to restore state financial losses and the overall costs incurred by the state in eradicating corruption. This article is normative using primary and secondary legal materials and is analyzed deductively with a legal, case, and conceptual approach. The results show: (i) the arguments of the judiciary for corruption have not been able to minimize state losses due to corruption, namely: legal substance is dominated by imprisonment and fines, limited legal options and facilities, traditional criminal-oriented community legal culture and political intervention in law enforcement for criminal acts of corruption; (ii) the ideal effort to optimize the judiciary for criminal acts of corruption to minimize state losses due to corruption is carried out by prioritizing restoration of state losses based on *restorative justice* and calculating the social costs of corruption.

Keywords: financial · corruption · restorative

1 Introduction

Traditional crimes are the main choice for resolving corruption crimes which in practice give rise to new problems, such as the overcapacity of prisons and controversial parole policies, and so on [1]. Country due to corruption. Prioritization of imprisonment in eradicating corruption has many weaknesses, one of which is the ability of the judiciary to restore state losses due to corruption. Traditional crimes also include fines, replacement money, and court fees that have not been able to cover state losses [2]. State losses include (i) real losses due to criminal acts of corruption in the form of lost money, wealth, and state assets; (ii) ongoing losses due to the impact of corruption; and (iii) the loss of the state's burden of financing the prevention, handling and justice of corruption [3]. The inability

of traditional criminals is driven by the development of the corruption regime [4] which is not only understood in the context of office and the public environment but *attention is being paid to the shadow cast by corruption in the private sector* [5]. So, it is necessary to pay attention to the variety of cases and the consequences of these corruption crimes [6]. Sampson, for example, has a hypothesis that corruption is widespread in industrial areas [7]. Therefore, the role of the law must also be expanded in the face of these changes. Thus, it is necessary to think about the impact of corruption on economic and political stability [8]. Such a situation requires the preparation of an appropriate legal framework, [9] one of which is by changing the pattern of criminal penalties [10]. Saving state financial losses is important considering that eradicating corruption can only save 10 percent of total state losses. One of the instruments of criminal law that allows saving state money from acts of corruption is a financial crime based on *restorative justice* to recover state losses [11].

The Corruption Court whose basis for its formation is stipulated in Article 53 of Law no. 30 of 2002. The legal basis for the establishment of the Corruption Court with Law no. 30 of 2002, based on the Decision of Constitutional Court No. 12–16-19. UU no. 46 of 2009 concerning the Corruption Court is the new legal basis for the establishment of the Corruption Court. The Corruption Court is a special court located within the General Courts and is domiciled in every district/city capital whose jurisdiction covers the jurisdiction of the relevant district court [12].

Changes in criminal arrangements are also part of efforts to eradicate corruption. The Anti-Corruption Law stipulates a specific minimum penalty and a higher fine. Article 2 of the Anti-Corruption Law threatens to be fined a minimum of Rp. 200,000,000 and a maximum of Rp. 1,000,000,000 for every person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the country's finances or the country's economy. The Anti-Corruption Law also regulates additional penalties in the form of payment of compensation for state losses. The penalty for paying replacement money is a consequence of the consequences of criminal acts of corruption that "*can harm the state's finances or the state's economy*", so to recover the losses, a juridical facility is needed in the form of payment of state compensation money. If it is not replaced, the corruptor's property will be confiscated and auctioned [13]. In practice, this phrase has become a gap for interested parties.

The problem of recovering state losses remains a big problem [14]. Returning state financial losses is only one of the mitigating factors so that perpetrators do not return state losses to the maximum [15]. The implementation of this article is an *argumentum a contrario* of the goal of eradicating corruption in the Anti-Corruption Law [16]. This also encourages the elimination of criminal acts for perpetrators of corruption who return state financial losses as a *restorative* from the losses incurred. This is also a *ratio* for the birth of several laws and regulations that do not position state losses as a factor in the imposition of corporate penalties. The mechanism for returning assets also needs to be formulated because there are many obstacles in carrying out efforts to recover state losses. The majority of court decisions on corruption cases are to impose a basic criminal decision plus a fine with the option of being replaced with subsidiary imprisonment for a maximum of 6 months, and compensation for state losses which if not replaced, the corruptor's assets will be confiscated and auctioned. Prosecutor Public can be defended

and returned completely to victims of crime, including the state [17]. Corruption places the state as the most disadvantaged party because, in addition to the corrupted state assets, the state also incurs significant costs in the whole process of handling corruption.

The return of state assets or state losses arising from criminal acts of corruption is a breakthrough in the criminal justice system in Indonesia. The convict who is suspected or reasonably suspected to have originated from a corruption crime that has not been subject to confiscation for the state as referred to in Article 38B paragraph (2), the state may file a civil lawsuit against the convict and/or his heirs. The above emphasizes that the return of state losses due to corruption aims to restore the situation as a result of losses due to corruption [18]. Thus, there is a dimension of justice in the relationship between the state and citizens as well as protection of the wider public interest. Thus, it is relevant to be realized *restorative justice*. Restorative *justice* is a criticism of the implementation of the criminal justice system with the majority being sentenced to prison sentences that have not been effective in resolving social conflicts. Thus, the law must be changed so that it can function properly in society. So far, the law has been trapped in internal affairs, such as certainty, systems, and regulatory logic, and has not been able to respond well to new social problems [19]. To control, overcome and resolve problems that arise as a result of crime, it can not only be pursued by penal efforts through the criminal justice system but can also be carried out by non-penal means social. The main purpose of non-penal efforts is to improve certain social conditions [20]. The restorative paradigm views crime as not only breaking the law but also as an act that causes harm to the victim (victimization) [21]. Several propositions characterize restorative justice, among others: (i) crime is a conflict between individuals that results in harm to the victim and society; (ii) the objective to be achieved from the criminal justice process is to reconcile the parties while repairing the harm caused by the crime; (iii) the criminal justice process must be able to facilitate the active participation of the community, victims and offenders. Thus, criminal justice should not be dominated by the state to the exclusion of other law enforcement efforts. Therefore, the role of the judiciary in corruption is mentioned in terms of its ability to minimize state losses due to corruption. Therefore, an ideal effort is needed to optimize the judiciary for criminal acts of corruption to minimize state losses due to corruption. In this case, the author formulates an ideal effort through optimizing the criminal justice system for corruption to minimize state losses due to corruption.

2 Problem Formulation

1. Why has the court for criminal acts of corruption not been able to minimize state losses due to corruption?
2. What is the ideal effort to optimize the judiciary for criminal acts of corruption to minimize state losses due to corruption?

3 Method

This research is normative, using primary and secondary legal materials. Furthermore, it is analyzed deductively with a legal, case, and conceptual approach. The nature of the

research is descriptive, analytical, and diagnostic of the problems of judicial corruption that have not been able to minimize state losses due to corruption and then formulated an ideal effort to optimize the judiciary for corruption to minimize state losses due to corruption.

4 Discussion

4.1 The Court's Argument for the Crime of Corruption Has Not Been Able to Minimize State Losses Due to Corruption

The factors that have become the arguments for the judiciary for the criminal act of corruption have not been able to minimize state losses due to corruption can be classified from the aspect of substance, implementation, and community reciprocity. The classification is described in more depth as follows.

- a. Legal Substance is Dominated by Imprisonment and Fines.
Criminal sanctions in Indonesia still prioritize the basic crimes regulated in the Criminal Code which are dominated by capital punishment, imprisonment, and fines. This is included in the Anti-Corruption Law, where the sanctions variables include the death penalty, life imprisonment (either for life or for a certain time), and fines. Imprisonment and fines need to be re-examined for their effectiveness, especially in recovering state losses. The relationship between the effectiveness of the law and the punishment of perpetrators of corruption is seen from the suitability of the legal substance with its implementation: (i) the substance of the regulation contains many weaknesses; (ii) the apparatus that is unable to implement the substance of the regulation; or (iii) both the substance of the rules and the apparatus do not receive legitimacy from the public, resulting in a crisis and *chaos*. Detaining corruptors with financial resources and political influence is not an easy matter. Of the number of corruptors only 1.8% of the total prisoners in Indonesia influence prison management [22]. The Sukamiskin Prison, for example, proved the strong influence of corruptors with the KPK detaining two suspects from prison officials on charges of accepting bribes [23]. Corrupt convicts can request additional facilities and services, such as luxury prison cells, and cell phone access through bribes. This indicates that corrupt convicts can still take advantage of the results obtained from corruption as an influence. The legal substance that still prioritizes imprisonment results in the ineffectiveness of eradicating corruption. Therefore, the breakthrough is formulated in addition to suppressing corruption cases, it can also restore state financial losses due to corruption. The formulation certainly leads to the role of the judiciary for corruption as a step in optimizing the return of state losses due to corruption.
- b. Limitations of Legal Options and Means of Law
Doctrine notes that in fact, punishment is the last tool used, as is the application of the *ultimum remedium*. Thus, *ultimum remedium* is the last tool [24]. The case of judicial review of the death penalty in the Narcotics Law from In the Minutes of the Constitutional Court Session on Case Number 2/PUU-V/2007 and Case Number 3/PUU-V/2007, there is an expert opinion that criminal sanctions are *noodrecht* in the framework of criminal law thinking as a legal means of *ultimum remedium*,

not *primum remedium*. In practice, the implementation of the law against corruption directly prioritizes criminal sanctions with the application of the *premium remedium*. However, these facilities have not been effective, especially in recovering state financial losses due to corruption and other costs incurred as a result of the entire process of handling corruption. It is necessary to think about other models of eradicating corruption that is effective in recovering state financial losses.

The goal is to expand the scope of judges with the existence of other legal means such as financial crimes based on *restorative justice*. Concepts such as *the Deferred Prosecution Agreement* or *the Non-Prosecution Agreement* serve as comparative references when it comes to their effectiveness in recovering state losses. Although, in this case, the two legal instruments are familiar in the United States, where the *common law* is different in terms of legal concepts and punishment in Indonesia, they may be the right tools amid demands for improved facilities and legal options in the law enforcement process against criminal acts. Corruption.

c. Traditional Criminal Oriented Community Legal Culture Community

Legal culture considers imprisonment as the best step by the *prime remidium*. This public perception, if left unchecked, can create social power and even legal legitimacy in society. Social forces continue to move the law with various realities according to the dynamics of changes that occur in society. Legal culture is a representation of society that plays an important role in the legal system because it acts as a driving force. Whether or not the regulations are enforced will depend on the elements of social attitudes and values that exist in society. However, legal culture does not directly drive the legal system [25]. Models, of *restorative justice* especially against corruption, face obstacles. Corruption has been considered as an act that is detrimental to the interests of the state and the people, including according to the sociological feelings of the community so it positions criminal sanctions as the main choice (*premium remedium*). *Premium remedium*, in the context of punishment, is no longer the last remedy, but rather the first remedy to deter people who commit crimes. The community is faced with the *mindset* that if the convict of corruption has been imprisoned, his business is finished. The fact is that behind this there are state losses that cannot be returned by existing legal mechanisms. The state continues to lose money and its assets do not return, even if it costs a lot to investigate corruption cases. So it is also necessary to provide an understanding to change the mindset of the community if imprisonment for perpetrators of corruption has not been able to create suffering and a deterrent effect and does not contribute to the return of state financial losses.

d. Political Intervention in Law Enforcement on Corruption Crimes Legal

Positions always go hand in hand with politics with relationships that influence each other. In general, corruption is defined as the abuse of power or trust used for personal gain. The definition of corruption also includes the behavior of public sector officials, politicians, and civil servants who enrich themselves with their authority or people who have close relationships with bureaucratic officials. The life of corruption in the context of public services is an act of 'administrative corruption' with a focus on the actions of individuals who hold control in their positions as public officials, as policymakers, or as employees of the government bureaucracy, over various activities and decisions. Corruption occurs because of monopolistic power practices,

with the opportunity to carry out discretionary actions that are quite large, but there is no adequate supervision through the performance of the accountability system or (*Corruption = (Monopoly + Discretion) - Accountability*) [26]. So, if there is power, who exercise authority in a monopolistic manner accompanied by a large enough space to take action on their initiative due to the uncertainty of the regulation in the granting of authority, and at the same time not accompanied by strong demands for accountability, it is certain that corruption will emerge there [27]. Corruption also called *white-collar crime* is carried out by people who have positions, respectable and high social status [28]. The impact of policy corruption is felt by future generations. The political determination that is not good plays a role in influencing the shift in policy functions, from a means for the welfare of society to becoming dredging personal or group gains that are detrimental to state finances and the economy. *White collar crime is an illegal act or service of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, to obtain business or personal or personal advantage*" [29]. The opportunities for corruption are as numerous as the number of roles one can play in government. Corruption can occur in the distribution of export licenses, decisions to conduct criminal case investigations, efforts to obtain reports on a court case, acceptance of prospective students at a university, selection of candidates for government positions and contract approval, and the implementation of everything in the contract [30]. Corruption with government involvement is a fact that corruption is not only understood as a fraud in governance, [31] but structurally it also involves political issues [32]. This means that the political policy factor which involves the law and law enforcement institutions has lost its integrity [33]. Thus, political intervention is one of the arguments for the judiciary for corruption that has not been able to minimize state losses due to corruption in Indonesia.

4.2 Ideal Efforts to Optimize Corruption Courts to Minimize State Losses Due to Corruption

The ideal efforts that can be made in the context of optimizing the corruption courts are to minimize state losses due to corruption with the following two patterns.

a. Based Restorative Justice

Restorative Justice is characterized by a change in the principle of eradicating corruption from *primum remedium* to *ultimum remedium*. The means of criminal sanctions are used after other sanctions in the form of administrative or civil are not able to effectively and efficiently tackle corruption and recover state financial losses resulting from it [34]. Depenalization is needed in *restorative justice* for corruption, triggered by the consequences of state losses and the capacity of corruption as an extraordinary crime. *Restorative justice* is a criminal system thinking that not only focuses on imposing penalties on perpetrators, but also pays attention to and involves victims and communities who are excluded from the current criminal justice system mechanism [35]. *Restorative justice* has become an international legal instrument and a solution to the weaknesses of *retributive justice*. In terms of corruption by corporations, the international community has prioritized *restorative justice* as a solution.

This cannot be applied directly in Indonesia, where the theory of punishment is still strongly based on the principle of legality.

In this case, *restorative justice* must accommodate the interests of the state by creating a means of returning state losses by convicts of corruption. This facility is realized by *asset recovery*. Mechanism *restorative justice*. The return of state assets is related to the proceeds of economic crimes which include corruption, tax crimes, banking crimes, narcotics, and illegal drug trafficking as well as corruption crimes and money laundering crimes [36]. It aims to take inventory *asset recovery* as a means of implementing *restorative justice* to restore state financial losses. Each country has its model that is believed to be effective in recovering state financial losses due to corruption. China, for example, has implemented repressive and subversive law enforcement measures against corruptors by extending criminal sanctions that are threatened to perpetrators [37]. *First*, impoverishing convicts of corruption with confiscation efforts, confiscation of the corruptor's assets until the state's financial losses can be returned in full, and the convict's condition is in a very sorry state because it is possible to confiscate the corruptor's assets [38]. *Second*, *asset recovery* by returning corrupted state assets, especially those placed abroad. However, the eradication of corruption in Indonesia can be projected by prioritizing the restoration of state losses based on *restorative justice*.

b. Calculating the Social Costs of Corruption

The author formulates the calculation of the social costs of corruption in the formulation of *restorative justice* for perpetrators of corruption as an effort to recover state losses. The social costs of corruption are a continuation of the thinking of Sam Brand and Richard Price in their book *The Economic Costs of Crime* [39]. The social costs of corruption are divided into two. *First*, explicit costs which are real costs that come out as anticipated costs, reaction costs, and costs resulting from a crime of corruption, can be calculated directly. Explicit costs in this calculation are limited to costs that come out of the APBN, although there may be costs that come out of the State Budget. Implicit costs are costs that are not directly visible, such as economic costs (*opportunity costs*), costs of *damage* or consequences whose impact through the market, and costs of consequences (*damage*) whose impact does not pass through the market. Implicit costs are calculated at this time by taking the lowest estimate of an incident or activity of corruption. The explicit costs of corruption include: (i) the costs of anticipating corruption, including the costs of socializing corruption as a latent danger, bureaucratic reform to reduce corruption desires and various activities in the context of preventing corruption issued by the KPK; (ii) the cost of corruption reactions, including the costs of the case handling process starting from complaints, investigations, and investigations (Police, Attorney, KPK, PPATK, BPKP, and others), court fees (registrar, prosecutors, judges, and others), costs of the confiscation process assets outside and within the country as well as the cost of detention and correctional institutions, the cost of collecting fines; and (iii) costs due to corruption (which are classified as explicit), namely the value of money that is corrupted, whether it is enjoyed alone or together with others which are translated as state financial losses. *Second*, the implicit costs of corruption, namely the opportunity costs of acts of corruption, are divided into financial costs (for example, how much money is stolen by corruptors or in a more general language referred to

as state losses), and economic costs, namely when as a result of acts of corruption, resources are diverted. From productive to unproductive activities. The implicit costs of corruption are more difficult to estimate than the explicit costs of corruption. In the environmental economics literature, for example, an economic instrument in the form of a *pigovian tax* billed to an industry that pollutes the environment (waste) because it harms other parties, which is called the *polluter pays principle* (PPP). Pollution is an example of an externality condition that occurs if one party harms another without the party causing the loss or providing financial compensation to both the injured party and the other party (not paying even though taking benefits). The implicit costs of corruption take into account: (i) *opportunity costs* due to corruption, including future interest payments incurred as a result of past corruption; and (ii) the difference in the economic multiplier between the condition without corruption and the condition when there is corruption. The costs of implicit corruption can be modeled and calculated simply in calculating the social costs of corruption. However, more specific estimates related to corruption in certain sectors require collaboration with relevant experts so that models and calculations of cost estimates can be carried out more precisely.

5 Closing

5.1 Conclusion

The arguments of the judiciary on corruption crimes have not been able to minimize state losses due to corruption, namely: the legal substance is dominated by imprisonment and fines, limited legal options and facilities, traditional criminal-oriented community legal culture, and political intervention in law enforcement for corruption.

The ideal effort to optimize the judiciary for criminal acts of corruption to minimize state losses due to corruption is carried out by prioritizing restoration of state losses based on *restorative justice* and calculating the social costs of corruption.

5.2 Suggestions The

Recommendations in this study are aimed at *stakeholders* of the law enforcement apparatus in the judiciary of criminal acts of corruption in Indonesia to implement the ideal efforts to optimize the judiciary for criminal acts of corruption to minimize state losses caused by criminal acts of corruption.

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