

RESTORATIVE JUSTICE AS AN ALTERNATIVE FOR THE SETTLEMENT OF CORRUPTION CRIMES THAT ADVERSE STATE FINANCES IN THE PERSPECTIVE OF THE PURPOSE OF CONVICTION¹

Sahuri Lasmadi

Universitas Jambi

E-mail: slasmadi@gmail.com

Elly Sudarti

Universitas Jambi

E-mail: elly_sudarti@unja.ac.id

Abstract

This research was motivated by the rampant corruption crimes committed by state officials. The problem is that the restoration of the state's financial losses due to the corruption crimes with the current system has not met a profitable solution. This research was doctrinal with a normative legal research method, which was a legal research method based on the statutory and conceptual approaches using analytical descriptive analysis. Settlement of corruption crimes concerning state financial losses is currently carried out through a criminal justice system that priorities a retributive justice approach so that it does not achieve the objective of punishment of an optimal returns to state financial losses. Therefore, a new settlement concept is needed. The concept of restorative justice focuses more on the settlement of criminal cases by emphasizing restoration to its original state, not retaliation. Restorative justice also fulfills the value of justice and legal benefits in order to meet the value of legal certainty. In the future, it is necessary to formulate specific regulations regarding the concept of restorative justice in resolving corruption crimes concerning losses on state finances.

Keywords: Restorative Justice; Corruption; Purpose of Conviction

INTRODUCTION

Corruption is highly detrimental to state finances and hinders national development². Therefore, the objectives to be followed by the legislators are how law enforcement officials involved in law enforcement of corruption crimes starting from the investigation process to prosecution, including Police, Attorney, and the Corruption Eradication Commission (KPK) work optimally to return the loss to the state. For this reason, reverse evidence needs to be added to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as a provision that is “premium remidium” and at the same time contains special preventive properties against civil servants, as referred to in Article 1 number 2 or against state officials as referred to in Article 1 paragraph (2). Referred to

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² Basis for Consideration of Law Number 19 Year 1999 concerning Eradication of Corruption Crimes

in Article 2 of Law Number 28 of 1999 concerning State Administrators that are Clean and Free from Corruption, Collusion, and Nepotism, to not be able to commit criminal acts of corruption.

The primary target for the formation of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is the return of assets that have been corrupted so that state losses caused by corruption crimes can be returned. The return of these assets can utilize the means of criminal law and civil law. However, the handling of corruption crimes is currently prioritizing the retributive justice approach, which is an approach that prioritizes criminal sanctions as a means of law enforcement. The Criminal Justice System which prioritizes the retributive justice approach cannot achieve the primary objectives and targets of the formation of the corruption crimes of unoptimal returns on state financial losses.

Restorative justice is an effort to find solutions to corruption crimes that have been done, particularly those that have caused losses to state finances. It is known that the state financial losses reached 9.29 trillion rupiah, while those that could be returned were very low, only 31.38%. The system applied so far has not been able to produce results in accordance with the expected objectives of the punishment. Prevention of corruption must be able to change the new approach and paradigm from the original objective that was oriented towards retaliation to one that has benefits and justice while maintaining legal certainty³. The prevention of corruption is currently prioritizing prosecution rather than prevention, although repressive is prevention in a broad sense. Yet, repressive efforts have failed to recover state financial losses. Restorative justice requires repressive efforts to be taken as a last resort when other efforts (civil and administrative) cannot be achieved⁴. The point is that the means of criminal sanctions are used when administrative or civil sanctions are unable to effectively and efficiently tackle corruption and recover the incurred state financial losses. The criminal process or criminal law enforcement itself is only an exception to cover state losses that occur. The postulate of *remedium* must be viewed not merely as a means to remedy the violation of the law committed or as a substitute for losses, but as a means of calming the riots that arise in society, because if the violation of the law is left unchecked, arbitrary actions will occur. Therefore, the use of criminal law must be used as a last resort (*ultimum remedium*) and its use must be limited.

The restorative justice approach has also been utilized as a settlement model as regulated in the international anti-corruption convention in 2003. Indonesia is one of the countries that has ratified the Anti-Corruption Convention since 2006. Therefore, Indonesia should adopt this regulation into the corruption law and begin thinking that the accountability for corruption crimes does not have to be sanctioned in the form of deprivation of freedom, but is directed following the objectives of corruption crimes related to the economic sector, which is how to recover state financial losses by prioritizing restorative justice in resolving corruption crimes⁵.

Restorative justice settlement commonly involves parties including perpetrators, victims, and mediators. The perpetrator is the perpetrator of corruption crimes, the

³ Eva Achjani Zulfa, 2011, *Pergeseran Paradigma Pemidanaan*, Lubuk Agung, Bandung, pg. 65.

⁴ Budi Suhariyanto, *Restorative Justice Dalam Pemidanaan Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara*. Jurnal Rechtsvinding Media Pembinaan Hukum Nasional Volume 5, Number 3, December 2016, pg. 421-438.

⁵ *Ibid*, pg. 423.

victim of corruption is the state that is impacted on state financial losses, and the mediator is the one that will bridge the two parties, which is the Police whose agency is the main gate in the criminal justice sub-system. M. Taufik categorized the basic principles of Restorative Justice into three as follows:

1. There is restoration for those who have suffered losses caused by the crimes;
2. The perpetrator has the opportunity to be involved in the restoration of the condition;
3. Courts play a role in maintaining public order while society plays a role in preserving a just peace⁶.

In the restorative justice approach, the victim is the party who experiences suffering both material and immaterial loss⁷. To abolish or reduce the suffering of victims of corruption, the form of protection that can be provided is an effort to recover losses suffered by them⁸. The existence of legal protection is deemed necessary and desired or expected by victims of criminal acts as a logical consequence of the suffering and losses they have experienced. In the corruption crimes, besides the state being the direct victim, the community is also an indirect victim so that they are also obliged to be given protection⁹.

If there are corruption crimes in Indonesia, a judiciary will be used, which in concept will create legal certainty, but in reality, is not easy to achieve. It is because the result to be achieved by the process of overcoming corruption through judiciary is the win-lose solution, where there will be winners and losers. Besides, criminal justice with the principles of fast, simple, and light cost is not in accordance with reality. Detention and detention extension alone takes a great deal of time. The duration from the investigation to the Supreme Court requires up to 400 days. If added with the exception in Article 29 of the Criminal Procedure Code, then the detention reaches 700 days. What a very tiring trial and uses a lot of money and time¹⁰. The restorative approach can better fulfill these principles which can guarantee justice and legal certainty. With current legal developments, the Restorative Justice Method is highly suitable to be used as an approach in cases of criminal acts of corruption with state losses because it prioritizes enhancement to the recovery of state losses.

Returning state financial losses in corruption, cannot be separated from the existence of Article 4 of the Corruption Crime Act as the basis for enforcing corruption crimes which states that returning state financial losses does not eliminate the conviction of perpetrators of corruption crimes harming state finances as regulated in Article 4 and the explanation "Returning state financial losses or the state's economy does not eliminate the punishment of the perpetrators of criminal acts as referred to in Article 2 and Article 3." The author argues that "the return of state losses on corruption must be related to the time. This means that if the return of state losses is carried out before the investigation begins, it can be interpreted as having erased the actions of the perpetrators of corruption because they have not yet been determined as suspects. In another case, if it is carried out after the investigation has begun, the return of state losses does not

⁶ M. Taufik Makarao, 2013, *Pengkajian Hukum Tentang Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak*, Final Report of Child Restorative Justice Assessment by the National Law Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia. pg. 34.

⁷ Wessy Trisna and Ridho Mubarak, *Kedudukan Korban Dalam Kasus Tindak Pidana Korupsi*. Jurnal Administrasi Publik Volume 7, Edition febuari 2017, No. 2, pg. 117-126.

⁸ *Ibid.*, pg. 124.

⁹ *Ibid.*, pg. 122.

¹⁰ Henny Saida Flora, *Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia*. Jurnal UBELAJ, Volume 3 Number 2 edition 2018, pg. 142-158.

eliminate the criminal act of the perpetrator which means that it has been against the law.

If the settlement of corruption through a restorative justice approach is associated with the objective of conviction of the corruption crimes, then in the context of the criminal law of corruption in Indonesia, the problems are, first, how to settle criminal acts of corruption that adverse current state finances and what philosophy underlies it and what is the urgency in the purpose of conviction? Second, can Restorative Justice be an alternative solution to criminal acts of corruption which adverse state finances in achieving justice, benefit, and legal certainty?

The study of the settlement of corruption crimes that adverse state finances through the restorative justice approach in this article were conducted using the normative legal research method. The research approaches used were statutory, conceptual, and case. The legal materials used included primary legal materials in the form of statutory regulations, and other legal documents related to the restorative justice approach; secondary legal material in the form of references on the settlement of corruption crimes that adverse state finances through a restorative justice approach; and tertiary legal materials. The analysis was conducted through the stages of systemizing legal norms, interpreting unclear legal norms, then interpreting the law.

DISCUSSION

Settlement of Corruption Crimes that Adverse Current State Finances and the Philosophy Underlying it and Its Urgency with the Purpose of Conviction

Corruption concerning state financial losses is one of the seven categories of corruption crimes¹¹. Corruption as referred to in Article 2 must fulfill the following elements: enrich oneself or another person or a corporation; by breaking the law; can adverse the state finances or state economy. If the corruption crimes are committed in particular circumstances, such as: a state of danger, a national natural disaster, countermeasures as the consequences of widespread social unrest, countermeasures of the economic and monetary crisis, and repetition of criminal acts of corruption, then the perpetrator may be subject to the death penalty¹². The corruption crimes in Article 2 refer to those that are committed against the law and in certain circumstances.

Corruption crimes that are detrimental to state finances as referred to in Article 3 must fulfill the following elements: anyone; to enrich oneself or another person or a corporation; abuses the authority, related to post or position; can adverse the state finance or the state economy¹³. The corruption crimes in Article 3 regulate the corruption crimes by abusing authority because of post or position, thus these corruption crimes are related to state organizers in Article 2 of Law Number 28 of 1999 concerning State Organizer who is Clean and Free from Corruption, Collusion, and Nepotism.

Corruption concerning state financial losses as referred to in Article 2 and Article 3 is corruption crimes that directly adverse state finances. The difference in the formulation of these two articles lies in the elements of the act and the threat of punishment. Until

¹¹ KPK, 2006, *Memahami Untuk Membasmi Buku Saku Untuk Memahami Tindak Pidana Korupsi*, KPK publisher, Jakarta. pg. 19.

¹² See Article 2 paragraph (1) and (2) Law Number 31 of 1999.

¹³ See Article 3 of Law Number 31 of 1999.

today, Article 2 and Article 3 are among the ones most frequently applied by judges in criminal imposition against corruptors.

The settlement of corruption crimes concerning state financial losses is currently performed through criminal law means operationally through the formulation of criminal law system norms and subsequently operationally working through a system called the Criminal Justice System¹⁴. As seen from the workflow of the criminal justice system, the series of processes begins from the stipulation of regulations by legislators, investigations by the police, prosecution by the attorney, and finally to the criminal imposition by the court and execution of criminal penalty by the correctional institution in the event of imprisonment.

The conviction system mechanism is regulated cumulatively-alternatively in detail in the form of life imprisonment or imprisonment for a minimum of four years and a maximum of twenty years and a fine of a minimum of two hundred million rupiah and a maximum of one billion rupiah for corruption crimes that violate Article 2, as well as life imprisonment or imprisonment for a minimum of one year and a maximum of twenty years and or a fine of a minimum of fifty million rupiahs and a maximum of one billion rupiah for corruption crimes that violate Article 3. The formulation of sanctions for corruption crimes concerning state financial losses in writing, as seen from the legality principle, has met the value of legal certainty. Therefore, there is no opportunity for the judge to conduct an assessment in the application of criminal sanctions deemed most suitable for the act committed by the accused¹⁵ as it has been formulated with clarity so as to avoid confusion in interpretation.

The conviction system for corruption crimes concerning state financial losses is not in accordance with the goal of punishment and the main objective of criminal sanctions of corruption crimes. Although juridically the purpose of punishment has not been stated in the Criminal Code in Indonesia, it has been formulated in the draft Law on Criminal Code. The objectives of punishment as stated in the draft Law on Criminal Code are: (a) To prevent criminal acts from being committed by enforcing legal norms for the protection of society; (b) To correct the convict by providing coaching and guidance; (c) To settle conflicts arising from criminal acts, restoring balance, and establishing a sense of security and peace in society, and; (d) To develop feelings of remorse and relieve the guilt of the convict.

The objectives of punishment are not achieved because instead of realizing the return of state finances, the imprisonment in lieu of fines caused an increase in state losses as the state should bear the burden of financing the convict who served the imprisonment. Handling corruption crimes concerning state financial losses at this time emphasizes the retributive justice approach, namely an approach that prioritizes criminal sanctions as a means of law enforcement. The Criminal Justice System which prioritizes the retributive justice approach cannot achieve the primary objectives and targets of the formation of law of the corruption crimes, which is upoptimal returns on state financial losses. It becomes appealing to discuss considering that the nature of criminal law is *ultimum remedium*, indicating that the last resort is taken when there are no other attempts to

¹⁴ Muladi, 1995, *Kapita Selekta Sistem Peradilan Pidana*. Badan Penerbit Universitas Diponegoro, Semarang, pg. 7.

¹⁵ Lilik Mulyadi, 1995, *Kapita Selekta Hukum Pidana*, Kriminologi dan Victimologi, Djambatan Jakarta, pg. 23.

settle the case. However, in its development, criminal law is utilized as a first attempt to settle a problem between one person and another¹⁶.

Regarding this matter, the settlement of corruption crimes concerning state financial losses through the criminal justice system is law enforcement in a slow direction. It is because the process of settling corruption crimes has to go through a long process through various levels ranging from the police, prosecutors, district courts, high courts to even the Supreme Court. Ultimately, it results in a high number of cases in court¹⁷. The slow judicial process can also result in damage to evidence or a decreased value of the evidence, not to mention if the cost of storing these items becomes too high. Therefore, it is impractical to keep them until the court's decision on the case in question is legally binding. Therefore, it can be seen that the settlement of corruption crimes concerning state financial losses through the criminal justice system does not necessarily reflect a sense of justice, requires high costs, and takes a long time in the process. Therefore, a new format is needed in the settlement of corruption crimes concerning state financial losses so that the optimization of returns to state losses can be achieved.

If it is interpreted philosophically that Article 4 of the TIPIKOR Law formulates; The return of state financial losses or the state's economy does not eliminate the punishment of the perpetrators of criminal acts as referred to in Article 2 and Article 3. This formulation clearly provides space for law enforcement to seek a new format regarding the time limit for returning state losses that can eliminate the perpetrator's actions. Since the corruption case has entered the realm of investigation

The Concept of Appropriate Settlement in the Settlement of Corruption Crimes that Adverse State Finances in Achieving Justice, Benefit, and Legal Certainty

The conviction mechanism in the settlement of corruption crimes concerning state financial losses through the criminal justice system has caused dissatisfaction. The objective of punishment has not been achieved, which is to recover state financial losses that do not reflect the value of justice in association with victims of corruption, which is the state. The primary objectives of eradication of corruption crimes include the return of state financial losses and the recovery of assets to be used as the capital by the Government to improve national development. Saving state assets through the recovery of state financial losses has a contribution to improving the welfare of the community, and is aimed at realizing economic stability and anticipating crises in various fields¹⁸.

Legal rules are formed to determine actions that should be prevented from occurring in society. According to Barda Nawawi Arief, it is closely related to establishing community welfare. Therefore, efforts to combat criminal acts are essentially an integral part of efforts of community protection to achieve social welfare¹⁹. It has prompted some ideas to seek a novel concept through various alternative efforts in settling corruption crimes concerning state financial losses to optimize the return of state losses. For this reason, one of the alternatives to address the barriers to optimizing the return of state losses is the restorative justice approach. The principle of *primum remedium* is evaluated to be

¹⁶ Henny Saida Flora, *Op. Cit.*, pg. 144.

¹⁷ Kristian and Christine Tanuwijaya, *Penyelesaian Perkara Pidana Dengan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Terpadu Di Indonesia*. Jurnal Mimbar Justitia Vol. I No. 02 edition 2017, pg. 592-607.

¹⁸ Budi Suhariyanto, *Op. Cit.*, pg. 436.

¹⁹ Barda Nawawi Arief, 2008, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru.*, Prenada Media Group, Jakarta, pg. 4.

ultimum remedium and the convict is expected to cooperate in recovering state financial losses which was disrupted by using non-criminal sanctions and not processing criminal justice²⁰.

In Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as a provision that is “premium remedium” and at the same time contains special preventive properties against civil servants as referred to in Article 1 number 2 or against State administrators as referred to in Article 2 of Law Number 28 of 1999 concerning State Administrators that are Clean and Free from Corruption, Collusion, and Nepotism, not to commit criminal acts of corruption. It is clearly implied here that the special efforts for civil servants are sought to be resolved by administrative law by means of real state losses.

For Indonesia, indeed, the restorative justice approach in criminal cases has started to be accommodated. Paradigmatically, there has been a shift from criminal law enforcement which is based on retributive justice to restorative justice. However, this paradigmatic shift does not apply to all types of criminal cases. The restorative justice system is only adopted and put forward in juvenile criminal cases. Meanwhile, corruption cases still refer to the stipulation that returning state losses due to corruption cannot abolish the punishment²¹.

Restorative justice can be formulated as a thought responding to the development of the criminal justice system. In restorative justice, the parties involved include mediators, communities, and the victim, which is the state. Besides, restorative justice can be used as a framework of thinking that can be used by law enforcers to respond to crimes²². This is where restorative justice has something special to offer, which is to identify liabilities that arise, settle together in the best way to repair the damage, and prevent it from recurring. These are matters of the utmost importance to the individuals involved, and to the victim that is harmed, and to society as a whole²³.

The concept of restorative justice is a new approach to settling corruption crimes concerning state financial losses. Unlike the criminal justice system, the restorative justice concept approach focuses more on the settlement of criminal cases with direct participation involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek an equitable solution by emphasizing restoration to original condition, not retaliation²⁴.

The mechanism for the settlement of criminal acts based on restorative justice is according to deliberation to reach a consensus where the parties are asked to compromise to reach an agreement. Each individual is asked to comply and place the interests of society above personal interests to maintain mutual harmony²⁵. The concept of case settlement through the approach or concept of restorative justice does indeed indicate suitability to the existing characteristics in the Indonesian culture which still prioritizes

²⁰ Budi Suhariyanto, *Op. Cit.*, pg. 436.

²¹ Herwan Budiah, Dudu Duswara Macmudin, and Joko T. Suruso, *Restorative Justice In Corruption Criminal Actions Related To The Return Of State Financial Losses*. Jurnal Iustitia Omnibus. Volume 1, Nomor 1 edition 2019, p. 1-17.

²² Randy Pradityo, *Restorative Justice In Juvenile Justice System*. Jurnal Hukum dan Peradilan. Volume 5 Number 3 Edition 2016, pg. 319-330.

²³ Dewi Setyowati, *Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan*. Jurnal Pandecta, Volume 15. Number 1 edition 2015, pg. 121-141.

²⁴ Muladi, *Implementasi Pendekatan Restorative Justice Dalam Sistem Peradilan Pidana Anak*. Jurnal Pembaharuan Hukum Pidana. Vol. 2, No. 2, September 2019, pg. 58.

²⁵ Henny Saida Flora, *Op. Cit.*, pg. 145.

the principle of deliberation in solving various issues²⁶. Its primary objectives are fixing the disadvantage caused by the perpetrator's actions, and conciliation and reconciliation among victims, perpetrators, and society. Restorative justice also aims to restore society's welfare through a means of holding actors accountable for their behavior. Victims are allowed to participate in the process²⁷.

Furthermore, the Law on Judicial Power of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, specifically Article 5 clearly states that judges are obliged to explore the values that live in a society (the living law or local wisdom). Therefore, judges are essentially obliged to apply the concept of restorative justice in a case settlement because the approach or concept of restorative justice is in line with the spirit of the Indonesian nation of Pancasila, the values of customary law, and religious values²⁸.

According to Gustav Radbruch, there are 3 (three) basic values of law, including justice, benefit, and legal certainty. In deciding a case, judges must apply the three principles in a balanced and proportionate manner²⁹. However, in judicial practice, it is particularly challenging for a judge to accommodate the three principles in one decision. Therefore, a priority principle is applied for the three principles, in which the first priority is always justice³⁰, followed by benefit, and finally legal certainty. Justice is a priority as it is an inseparable part of the law and law is basically justice³¹. Regarding three basic values, if they are associated with the settlement of corruption crimes concerning state financial losses, they can be applied through a restorative justice approach or concept.

The concept of justice is quite diverse, although there are at least two formulations of justice, including the first perspective that justice is the harmony between the use of rights and the implementation of obligations. The second perspective is the perspective of legal experts who essentially formulate that justice is the harmony between legal certainty and legal equivalence³².

Aristotle saw the issue of justice in terms of equality, which requires the principles of equality to members of society or the state. In this case, the relationship between one person and another is a balance between what is given and received³³. The concept of restorative justice can be said to have fulfilled the values of justice if it meets the sense of equality, including numerical and proportional equality. It is as all citizens are equal before the law. Likewise, in the concept of restorative justice, if a crime is committed, restorative justice seeks to provide adequate compensation for the losing party. If a crime has been committed, appropriate punishment needs to be given to the perpetrator. Related to the settlement of corruption crimes concerning state financial losses through a restorative justice approach, what is prioritized is the recovery of state financial losses. Restoration of a situation resulting from corruption crimes is imposed on the corruptor who is responsible for fixing the losses caused by the corruptor's mistakes.

²⁶ Kristian and Christine Tanuwijaya, *Op. Cit.*, pg. 600.

²⁷ Nur Rochaeti and Rahmi Dwi Sutanti, *Kontribusi Peradilan Adat Dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana Di Indonesia*. Jurnal Masalah-Masalah Hukum. Vol. 47 No.3 edition 2018, pg. 198-214.

²⁸ Kristian and Christine Tanuwijaya, *Op. Cit.*, pg. 602.

²⁹ Ahmad Rifai, *Op. Cit.*, pg. 132.

³⁰ Usman and Andi Najemi, *Op. Cit.*, pg. 70.

³¹ Margono, *Op. Cit.*, pg. 108.

³² Bahder Johan Nasution, *Kajian Filosofis tentang Hukum dan Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern*. AL-IHKAM Jurnal Hukum & Pranata Sosial. Vol. 11 No. 2 edition 2016, pg. 247-274.

³³ Margono, *Op. Cit.*, pg. 106.

The benefit of the law is aimed at its use in society because the real essence of the law exists to serve existing humans and non-humans for the law³⁴. The restorative justice concept approach differs from the criminal justice system model. The implementation of the restorative justice approach makes the perpetrator responsible for fixing the disadvantage caused by his or her mistake. This process explicitly provides greater benefits than if it was completed through a court that ended in conviction. Legal interests (*recht Belang*) in criminal law are all interests needed in various aspects of human life, both as individuals, members of society, and members of a country, which must be guarded and defended so that they are not violated/raped by human actions. All of this is aimed at implementing and ensuring order in all areas of life.

In detail, the benefits can be observed, first from the side of conflict settlement. The settlement carried out through penal mediation provides a decision that is acceptable to the parties so that the losses resulting from the conflict can be overcome, and the perpetrator and victim can reach an agreement. Different from criminal justice, the perpetrator and the victim often have resentment. Second, penalties in the form of compensation and other costs are amenable to losses caused by the perpetrator's mistakes. It is obviously more beneficial for the victim than simply imposing criminal sanctions on the perpetrator, compared to the punishment which only makes the perpetrator suffer. Meanwhile, the victim as the aggrieved party does not receive restitution or compensation. Third, the involvement of related parties such as the community, the penal mediation will bring harmony in the community. Therefore, seen from a broader viewpoint of benefits, the settlement of criminal cases through penal mediation can reflect the values of benefit³⁵.

Regarding legal certainty, essentially, the law must be enforced and implemented. The aspect that must apply is "how the law is", which in practice should not deviate from "*fiat justitia et perereat mundus*" (law must be upheld although the world is about to collapse)³⁶. Four aspects are related to the meaning of legal certainty, including: first, the law is positive, meaning that the law is a form in legislation. Second, this law is based on facts (*tatsachen*), not a formulation of an assessment that will be performed by the judge. Third, the facts must be formulated clearly to avoid confusion in meaning, as well as being easy to implement. Fourth, the positive law must not be modified frequently³⁷.

Based on these thoughts, related to the restorative justice approach, particularly in Indonesia, till date, the regulations that specifically regulate restorative justice are still limited to particular fields, such as in the form of diversion, which is the diversion from the criminal justice process to juvenile justice outside the formal process to be addressed by deliberation, as stipulated in Law Number 11 of 2012 concerning the Child Criminal Court System. Meanwhile, the concept of restorative justice outside juvenile justice has not explicitly regulated the possibility of a mediation settlement between the perpetrator and the victim, particularly regarding the provision of retribution or compensation. Therefore, we need a regulation that specifically regulates restorative justice, particularly in the settlement of corruption crimes causing losses on state finances so that optimization of recovery of state financial losses can be met and the objectives of punishment can be realized.

³⁴ Ahmad Rifai, *Op. Cit.*, pg. 134.

³⁵ Usman dan Andi Najemi, *Op.Cit*, pg. 79.

³⁶ Margono, *Op. Cit.*, pg. 113.

³⁷ Usman and Andi Najemi, *Op.Cit*, pg. 79.

CONCLUSION

The settlement of corruption crimes concerning state financial losses is currently carried out through the criminal justice system. The series of processes beginning from investigations by investigators, prosecution by public prosecutors, ending with the imposition of crimes by judges, and execution of criminal sanctions by the correctional institution in the event of imprisonment. Seen from the legality principle, it has met the value of legal certainty. The Criminal Justice System which prioritizes the retributive justice approach cannot achieve the primary objectives and targets of the formation of the corruption crimes of unoptimal returns on state financial losses. The settlement of corruption crimes concerning state financial losses through the criminal justice system does not necessarily reflect a sense of justice, requires high costs, and takes a long time in its process.

The concept of restorative justice is a new approach to settling corruption crimes concerning state financial losses. Unlike the criminal justice system, the restorative justice concept approach focuses more on the settlement of criminal cases with direct participation involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek an equitable solution by emphasizing restoration to original condition, not retaliation. The settlement mechanism is based on deliberation and consensus where the parties are asked to compromise to reach an agreement. Besides, restorative justice also fulfills the value of justice and legal benefits, but there are no regulations that specifically regulate restorative justice, particularly in the settlement of corruption crimes causing losses on state finances so that it does not fulfill the value of legal certainty.

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