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Petty Corruption Handling That Unconformity The Elements Of Restorative Justice Approach

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Petty Corruption Handling That Unconformity The Elements Of Restorative Justice

Approach

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Abstract

This research focuses on handling petty corruption which does not meet the elements of using a restorative justice approach. Petty's various corruption crimes have been detrimental to state finances. The limitation on state losses that can be categorized as petty corruption is below 100 million rupiah, while the costs that will be incurred to complete the formal legal process can reach 100 million rupiah or more. An alternative for handling petty corruption cases is by applying a restorative justice approach model to reduce state losses. The research was carried out using normative research methods with conceptual approach and a statutory approach. The research results show that the restorative justice approach cannot be used as an alternative to resolve petty corruption because corruption regulations require criminal punishment for perpetrators corruption even though they have repaid state losses. The restorative justice approach is not used in order to provide deterrent effect for perpetrators of corruption and prevent the recurrence of criminal acts of corruption as well as a precedent for perpetrators who have potential to commit subsequent criminal of corruption. An alternative punishment that can be used is to increase the fines for corruptors, so that the government can cover state losses that occur while case files are being processed in court.

Keywords: petty corruption, restorative justice and punishment

Introduction

The handling of corruption cases is increasing everyday. Indonesia is one of the countries that is facing a large increase in the number of corruption cases. The increasing number of corruption cases is a serious problem that will threaten the country in terms of economic stability. Corruption that occurs in a country will clearly harm all aspects and will hinder the process of sustainable development.¹ Corruption is also called extraordinary crime, so the handling should also use unusual handling.

Corruption is one of the most common crimes committed by government officials. Corruption is also defined the abuse of one's authority for personal gain. The impact of this corruption will also harm the personal rights of the small community. Therefore, the government should require restitution because corruption has taken away the rights of small communities and even resources that should belong to small communities.² Regulations related to handling corruption cases in Indonesia have actually been contained in several laws and regulations that have been made by the government as much as possible as a form of government preventive efforts from corruption cases. Government regulations governing corruption include Law Number 31 of 1999 which has been amended by Law 20 of 2001 concerning the Eradication of Corruption, as well as Law Number 15 of 2002 which has been amended by Law Number 25 of 2003 concerning the Crime of Money Laundering. However, if reviewed further, there is no government regulation that is in line with the goal of corruption, namely recovering state assets that have been lost.

The government should optimize the handling of corruption cases with a more professional approach in order to achieve the main goal of eradicating corruption, namely restoring state loss. State losses caused by acts of

¹ Jon Vrushy, "Global Corruption in Barometer Asia 2020 Indonesia", Jakarta: Transparency International Indonesia. 2020, hlm. 7

² Ury Ayu Masitoh, et al, "An Analytical Study of Article 35 of UNCAC: Providing Restitution for Victims of Corruption Crimes" South Tapanuli Institute of Education: Journal of Education and Development, Vol. 9 No. 3, 2021, pp. 183, <https://media.neliti.com/media/publications/562220-kajian-analisis-pasal-35-uncac-pemberian-59fc92ae.pdf>

The crime of *corruption* varies from small scale or commonly referred to as *Petty corruption* to large scale or commonly referred to as *big fish*. *Petty corruption* is an act of *corruption* with a small amount and the perpetrators are officials who are in a government institution because of their needs, so this *corruption* is also known as *corruption by need*.³ From this understanding, the author takes the limitation of *petty corruption* to corruption on a scale below 100 million.

The concept of corruption that has been used by the government to punish perpetrators of corruption crimes is no longer in line with the main objective of handling corruption Indonesia. The main goal of eradicating corruption Indonesia to restore state finances that have been lost. Meanwhile, when referring to the existing regulatory provisions in Indonesia, the government is still using the concept of retributive justice or the government's focus in effort for eradicate corruption is still in the form of retaliation against the perpetrators in corruption, not focusing on restoring lost state finances. The main focus in this research is the effort to recover state losses that have been lost in the crime of petty corruption without eliminating the deterrent effect of the perpetrators of corruption. ¹⁵ Based on the Circular Letter by Attorney General for Special Crimes Number: B-1113/F/Fd.1/05/2010 concern Priority & Achievements for Handling Corruption Case explain the priority of handling cases that are big fish and prioritize a sense of justice, especially for people who consciously return state loss, especially related to corruption cases that have a relatively small value of financial losses, it is necessary to give consideration not to be followed up because the costs incurred for the purposes of law enforcement is against corruption cases with a small amount of state loss and in handling them take more time and costs than the value of state loss arising from the corruption case. ³⁷ This circular letter is sufficient to explain that petty corruption cases, if elevated to court proceedings, will indeed incur more budget than before. However, alternative case resolution ³

³ | Made Agus et al, "Settlement of Corruption with Small Losses", Indramayu: Adab, 2023

The crime of petty corruption offered by this circular letter, namely restorative justice, will clearly eliminate the deterrent effect for perpetrators of corruption and will make the potential for this crime to recur greater. Departing from this problem, the author made a research entitled "*Petty Corruption Handling That Unconformity The Elements Of Restorative Justice Approach*".

Methodology

¹⁹ This research is *normative legal research*. This research ²⁵ process to find coherence truth or legal rules, legal doctrines & principles for answer legal issues faced (*know-how*), namely related to petty corruption with a restorative justice *approach* using a *statute approach* and *conceptual approach*.

Results and Discussion

The Character of Corruption as a Special Crime

Crime of corruption is one of types crimes in addition to have certain characteristics that ¹¹ different from criminal law in general, such as the existence of procedural the law deviations and when view from material regulated. Therefore, corruption crimes are indirectly & directly ²⁷ intended to minimize occurrence of leak & irregularities in state finances & economy.⁴ Therefore, the government should increase efforts to prevent corruption crimes, both preventive and repressive efforts, with the intention ³² the wheels of economy & development can be carried out properly if corruption crimes can be eradicated. The eradication of corruption will eventually lead to an increase in development and the welfare of society in general.

⁴ Lilik Mulyadi, "Corruption Crime in Indonesia", PT Alumnus, Bandung, 2007, hlm. 2.

One of the characteristic of corruption that corruption is classified as a *crime* that always correlated with money & power.⁵ This is contained in Article 3 of Law Number 20 of 2001 concern Amendmen to Law 31 of 1999 concerning Eradication of *Corruption*, which states that Corruption is an act with aim of benef one selfbr another person, abusing the authority, opportunity or means available due to position or position that can harm the state or the state economy. From Article 3, it can be concluded that the perpetrators of corruption usually have the power, be it politic, economic, bureaucratic, legal & other powers. Because they have a power, the perpetrators are usually people known for the public.⁶ Corruption is also a part or subsystem of organized crime.

Organized crime has a link to organized corruption, where the acceptance of small bribes, which is a less serious offense, can develop into more serious areas, namely crime.⁷ Small-scale corruption or what is referred to in this research as petty corruption is what, if not followed up firmly, will develop into organized crime. Organized corruption does not have massive activities used by a single person, but organized corruption is born from the bureaucracy and overturns the existing organizational structure.

Along with the development of petty corruption, which has the potential to become an organized crime that willn't only harm state finance but also violate the social & economic right of community, it is only natural that corruption is classified in extraordinary crime. With the benchmark that corruption is a extraordinary crime (extra ordinary crimes) because it's systematic, endemic & has a very wide impact (systematic& widespread) didn't only harms state financ but violate the social & economic rights of the wider community so that its prosecution needs efforts.

⁵ Rohim, Modus Operandi of Corruption, Pena Multi Media. Jakarta. 2008. Page. 3.

⁶ Yudi Kristiana. Investigation Techniques and Corruption Criminal Investigation. Thafa Media, Yogyakarta. 2018. Page. 1.

⁷ Edlin H. M. Mandak, "Government Efforts in the Process of Proof of Corruption", Journal of Legal Sciences, Sam Ratulangi University, Vol. IX/No. 1/Jan-Mar/2020.

comprehensive of ²² extra ordinary measures so have a many regulations, institutions & commissions are formed by government to deal.⁸

Petty Corruption in the Crime of Corruption

⁹ In the Circular Letter by Attorney General for Special Crime No: B-1113/F/Fd.1/05/2010 on Priority & Achievement described in the background of the research problem. If analyzed further, there are several weaknesses in this circular letter, one of which is that it does not specify the limits of corruption crimes with small losses. Of course, with the typology of the Indonesian territory, it is rather difficult to determine the limits of petty corruption and also the problem is that the binding force of this circular is only on the prosecutor's office and does not bind other judicial institutions. This is the point of study whether it is still necessary to regulate *petty* corruption in a binding legislation as a whole. In the discussion on the limitation of the amount of losses in petty corruption, as reported by several media, the prosecutor's office implicitly proposed a limit of 50 million rupiah, which was discussed together with the KPK and the Police. Meanwhile, the Indonesia Police through the Head Police Criminal Investigation Agency, Commissioner Genera Mr Arif Dono, proposed a limit of 100 million rupiah,method. Therefore, the object of study of *petty corruption* in this study is the limit below 100million.

The existence of this circular raises many questions regarding law enforcement for corruption that is of small value & doesn't cause financial loss to the State. This circular letter builds the perception that law enforcement prioritizes prosecuting corruption with large amounts of State financial losses, so that law enforcement officials view *petty corruption* as a waste of time and money for the State.⁹

So far, corruption crimes that have a loss value below 100 million are still widely tolerated by variously parties than eradicating them. Even corruption crimes that have a small loss value are still included in the crime of corruption.

⁸ Ifrani, "Corruption as an Extraordinary Crime", *Junral Ilmu Hukum*, University Lambung Mangkurat/Vol. IX/No. 3/December/2017

⁹ Anggi Dewinta Chairani, "Efforts to Eradicate Petty Corruption or Illegal Collection in Public Services", *Journal of Legal Science*, Vol. 4, No. 2, Faculty of Law, Mpu Tantular University, Jakarta: 2020,

in crimes ²¹ that can touch various interest concern with human rights, state ideology, economic, finances, national morals and so many more.¹⁰

⁴ Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of the Crime of Corruption in the preamble has considered that corruption has been widespread. This means that it is ¹⁷ not only detrimental to the state but has violated the social & economic right of the community at large so corruption need to ³⁶ classified as crime whose eradication must carried out in an extraordinary crime even though the corruption committed has a value of state losses below 100 million, it is still said to be a special crime because it has the same characteristics as corruption in general. As stated in Article 3 ¹⁴ of Law No. 20 of 2001 on the Amamdement toLaw No. 31 of 1999 on the Eradication Corruption, the perpetrator corruption is usually always someone who has the authority, opportunity, means, position or position that has the potential to be misused as a way of petty corruption. That means the perpetrators of corruption not low-level people who deserve the mercy of being released. However, the government should take a firm stance to stop this *petty corruption* case so that it does not happen again and again in the future.

⁶ **Requirements for a Restorative Justice Approach in Resolving Petty Corruption**

Restorative justice is one of the appropriate approaches to overcome various settlements in criminal offenses using this method. Restorative justice approach in solving criminal cases or commonly referred to as penal is consider as a new method. In fact, the patterns use mostly root in local wisdom value of primitive society.¹¹

¹⁰ Evi Hartati, Corruption Crime. Sinar Grafika. Jakarta. 2009. Page. 2.

¹¹ Andi Eva Kurniaty, Restorative Justice in the Juvenile Justice System, (Makaassr: Kretakupa Print Makassar, 2018), p. 6.

The mechanism criminal procedure and justice that focus on punishment is changed into process of dialogue & mediation to create agreement on fairer and more balance settlement criminal case for victim & perpetrators. Meanwhile, according to Jusup Jacobus Setyabudhi, victims of corruption consist of two types. First, direct victims, namely victims who are expressly determined in Law No.31 of 1999 concern the Crime of Corruption, namely the State. And the second indirect victim consists of indirect victims in sich, namely the community or the people because the loss of state finance or state economy will indirectly harm the interests of the community or the people. Second, the victims of the news about the allegation that someone has committed an act of corruption, namely the person being reported, the public, and the journalist who reported it.¹² From this statement, it can concluded the main victim of the perpetrators of corruption crimes is the community itself. Therefore, referring to the opinion of Willis & Hoyle above that the *restorative justice* process must bring together the perpetrators and victims involved, it will be impossible if *petty corruption*, which is the object of study of this research, is resolved through a *restorative justice* approach model. Because to determine the people who are victims in *petty* corruption, further analysis must be carried out so that the government can know the people involved in petty corruption and the people who are not involved. It is clear that it will take more time and money for the government to conduct further studies in order to determine the people who deserve to be called victims of *petty corruption*. Therefore, this is clearly inefficient to do because instead of recovering state finances that have been lost, it will actually increase state losses even more later.

However, along with the development positive legal regulations at Indonesia, the government has regulated in *restorative justice* approach model specifically in several crimes that can be resolved with a *restorative justice*. In the Appendix to the Decree of Director General of General Courts Agency Number 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020 concerning Guidelin for Application of Restorative Justice in General Courts Environmen , several types of cases that can resolved through Restorative Justice mechanisms are described:

1. Types of Minor Criminal Cases
2. Types of Juvenile Offenses

¹² Asriana Issa Sofia, Independent Research, Communities as Victims as well as Actors in Corruption in the Public Service Sector, Paramadina University, Jakarta: 2020

3. Types of Women Against the Law Cases

4. Type of Narcotics Case.

The model for application of a Restorative Justice in number 2 letter A related to the application of approaches that can be resolved with *restorative justice* is minor criminal case with criminal threats as stipulated in article 364, 373, 379, 384, 407 and article 482 the Criminal Code with loss value not more than Rp 2,500,000. So with the entry into force of this article, if we refer to the limitation of *petty corruption*, which is the object of this research, which is not more than 50,000,000, it means that the settlement of *petty corruption* with *restorative justice* cannot meet the requirements of this article because the limitation of losses allowed to use restorative justice settlements in this article is only under 2,500,000, not under 50,000,000.

Alternative Settlement of *Petty Corruption* in the Focus of Returning State Losses

The purpose of eradicating corruption Indonesia can be seen in the weighing points of letters a & b of Law Number 31 of 1999 concern Eradication of Corruption (Corruption Eradication Law) which state that the eradication of corruption carried to restore the State's finance and economy. One to restore the state's finance & economy is by recovering state financial losses as stated in Article 4 Jo. Article 18 (1) letter b of Law No. 31 of 1999 Jo. Law No. 20 of 2001. However, in the provisions of Article 4 of the Anti-Corruption Eradication Law which states that the return of State financial loss. This means that even perpetrator of crime the corruption returned the state finance that have been corrupted before the court decision handed down, legal process continue because the criminal act has occurred.

If the government wants to eradicate corruption line with the weighing points of letters a and b of Law No. 31 of 1999 concern Eradication of Corruption, the government should increase fines relate to settlement of petty corruption instead of restorative justice, which have not been regulated in Indonesian regulations. With the increase in fines in petty corruption cases, the government does not need to worry about the costs in the investigation process which will later come out more. Increasing the punishment model Fines in petty corruption can be used to cover state losses as well as to pay for the process of the petty corruption file being tried in court.¹³ Government regulations governing corruption include Law Number 31 of 1999, which has been amended by Law Number 20 of 2001 concerning the Eradication of Corruption, and Law Number 15 of 2002, which has been

amended by Law 25 of 2003 concerning the Crime of Money Laundering.⁴² However, until now there have been no regulations governing efforts to recover state losses that have been lost as a result of *petty corruption* that can suppress state losses from increasing.

In the above laws and regulations, there is no regulation that regulates that corruption crimes with small losses can be applied to the *restorative justice* approach model. Article 603 of the Criminal Code states that "minimum of 2 years and a maximum of 20 years."⁴³ From this article, it can be concluded that everyone who commits corruption is subject to punishment in the form of fines and criminal proceedings regardless of the size or size of the state losses that have been calculated.⁴⁰

The fines that will be imposed on perpetrators of corruption crimes also vary in amount based on the amount of state losses arising from the corruption cases that have been committed. This is regulated in Article 12 of Law Number 20 of 2001 concerning Corruption (Anti-Corruption Law).²⁴ This fine will be applied based on the calculation of state losses that have been made by the perpetrators of corruption.¹⁸ This is regulated in such a way because the state losses caused by corruption crimes vary in value. Starting from a small scale or what is commonly referred to as *Petty corruption* to a large scale or what is commonly referred to as *big fish*.

¹³ Siti Nurhaliman, Elimination of Corruption Crimes through the Return of State Losses, Vol. 1, No. 11, Center for Constitutional Studies and National Legislation, Faculty of Sharia and Law UIN Hidayatullah Jakarta, 2017

By looking at the current regulatory provisions, the provision of a punishment model in the form of *retributive justice* is the main choice because only this punishment can create a sense of deterrent effect on the *perpetrators* of corruption. The sense of deterrent effect that will arise in *retributive justice* will function for the perpetrators so as not to repeat or prevent perpetrators of corruption crimes who have the potential to repeat themselves in the future if the perpetrators are not given punishment in the form of punishment, only required to return existing state losses. The shortcomings of the *retributive justice* approach model have not able to recovery the loss & suffering experience by victims. Even the perpetrator have been found guilty & sentence, the victim condition can't return to normal.

Conclusion

The goal of eradicating corruption offenses is to recover the state losses that have been lost. Including the crime of petty corruption, the main focus of eradication is the recovery of state losses. However, if petty corruption is brought to trial, it will incur a larger budget. Therefore, the prosecutor's office suggested a restorative justice approach for petty corruption. However, Restorative Justice if applied continuously to perpetrators of corruption will eliminate the deterrent effect. The effort that should be taken is to increase the fines for perpetrator of the corruption to restore the state loss that has been lost while still not eliminating the criminal penalties.

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