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Settlement of Corruption Crimes on the Basis of Restorative Justice in SE Attorney General Young Special Criminal Number B-1113/F/FD.1/05/2010 Contrary to Article 4 of the PTPK Law

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Abstract

Corruption is an act that can directly or indirectly cause state losses. Current developments, both the quality level of crime and the quantity level of cases are increasing continuously every year. In order to reduce the swelling in the cost of resolving criminal acts in Indonesia, the Indonesian Attorney General's Office issued SE Jampidsus Number B-1113/F/FD.1/05/2010 which discusses Restorative Justice in resolving corruption crimes with relatively small losses prioritized not to be followed up when the perpetrator has returned state financial losses. However, this is contrary to Article 4 of Law No. 31 of 2019 concerning the Eradication of Corruption, which states that the return of state financial losses made by the perpetrator still does not climinate the criminalization of the perpetrator of the crime of corruption. The objective to be achieved is whether the settlement using restorative justice is contrary to Article 4 of the Anti-Corruption Law. This type of research uses normative research using a statutory approach and a conceptual approach. The results of this study use the concept of restorative justice in Resolving corruption using restorative justice is contrary to Article 4 of the PTPK Law because restorative justice only fulfills the element of benefit and does not fulfill the elements of justice and legal certainty.

INTRODUCTION

A crime is an act in which the elements include subjective elements and objective elements, this can be seen from the formulation of the criminal act committed by the perpetrator. Subjective elements are all elements about the inner state in the body of the person. While this objective element is about the consequences of 17 action of the person. From these elements, it can be concluded that a criminal offense is an unlawful act committed by a person, corporation and the act is punishable where the punishment for the offense is regulated by law. People who commit a criminal act are obliged to be responsible for the act with punishment (Hamzah 2001) if it has been

proven to commit a criminal act. Basically, any criminal act must consist of several elements; actions that contain the consequences of the behavior caused by it.

Criminal Acts can be divided into two, namely Criminal Acts. Special and General Crimes. A general crime is a behavior that is regulated in the Criminal Code, while a special crime is a criminal act whose rules are outside the Criminal Code. Corruption is one of several forms of special criminal acts.

In order to be considered a behavior of Corruption, the elements must first be fulfilled. These elements are contained in laws and regulations such as in Law Article 4 of Law No. 31 of 1999 concerning the Eradication of Corruption, which is then called the PTPK Law, to be precise Article 3 Paragraph (1) which reads:

> "Every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position that may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiahs)."

Based on the provisions of the Article above, it can be concluded that the first is Every person is a person who commits a criminal act of corruption, the second element is to gain an advantage for oneself or others, the third element is to misuse the authority, the opportunity available to him, the fourth element is that his actions cause losses to state finances or the state economy. If the perpetrator has committed the crime of corruption, the above elements must be proven and fulfilled first.

Corruption Crime is an act which can cause state losses directly or indirectly. Current developments, both the quality level of crime and the quantity level of cases are increasing continuously every year. In the history of several countries, it has been proven that almost every country is always faced with various corruption cases. Therefore, the definition of corruption always changes and varies according to the changing times. The mention of corruption originates from the Latin sentence Corruptio meaning damage (Deni RM 1994). In the KBBI, corruption is interpreted as the misappropriation of a country's finances for the sake of personal or other people's benefits (companies, organizations, foundations, and so on).

In Indonesia, the criminal act of corruption increases every year. This can disrupt and have a negative impact on every aspect of the nation's life because corruption is contrary to the norms of life and the noble values held by the Indonesian people. Based on data from Transparency international or abbreviated (TI) Indonesia in 2020 Indonesia's Corruption perception index score or abbreviated (CPI) is at 37/100 and is ranked 102 out of 180 countries this score is down 3 points from 2019 which was at a score of 40/10. which in 2020 is the highest achievement in scoring over the past 26 years. The assessment of the CPI is based on a score. The score is 0 which means very

corrupt and 100 is very clean, so the lower the score, the higher the act of corruption in the country and vice versa. (Transparency International Indonesia 2020). Corruption has become a crime that is considered to damage the foundation or joints in the life, nation and state. The impact of corruption cases is considered to slow down the country's economic growth, reduce investment, and increase poverty. State losses caused by corruption crimes are classified as dangerous. The practice of corruption in Indonesia is an urgent or emergency problem that is being faced by the Indonesian people from time to time in a relatively very long period of time. Corruption can also reduce the happiness of the community, for example, the latest case is the case of natural disaster social assistance which was originally intended for people who were hit by the disaster and ended up not on target.

Corruption is also a systematic and complex problem because corruption is also a transnational crime that can no longer be classified as ordinary crimes, and its eradication efforts cannot be done easily or normally. The crime of corruption is categorized as an extraordinary crime which requires a state through its law enforcement apparatus to participate in being responsible for recovering state financial losses arising from corruption which is based on social justice (Mahmud 2018).

Corruption can be said to be one type of crime that is increasingly difficult to reach by the rule of law, because corruption has a very neat pattern of actions. Therefore, the development and change of law is a breakthrough or several ways to overcome this corruption (Amrullah 2015). In order to eradicate criminal acts of corruption in Indonesia, the Government has issued several regulations to complete one of its goals, namely the eradication of corruption. One of them is "Law Number 31 of 1999 concerning the eradication of criminal acts of corruption as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption.

The most common corruption offense is the offense of harming state finances contained in Article 2 and Article 3 of the Anti-Corruption Law. Provisions regarding criminal sanctions for corruption crimes. One of the elements is harming the state in terms of the economy or state finances caused by the perpetrator's behavior. This is stated in "Article 2 Paragraph (1) of the Anti-Corruption Law".

In principle, the meaning of harm is to lose, reduce, shrink or deteriorate state finances. Efforts to eradicate corruption are focused on eradicating, preventing and returning assets resulting from corruption. In its implementation, using the method of revealing and putting the perpetrators in prison is in fact not effective in reducing the level of crime if it is not accompanied by the return of stolen state assets (Fasini 2018) . So that the perpetrator cannot use or enjoy the stolen proceeds of corruption that he did. This is reflected in the provisions of Article 39 of the Criminal Code and Article 18 Paragraph (1) of the PTPK Law.

Furthermore, Article 18 Paragraph 2 mentions the deadline for payment, which is no later than one month after the court's decision if he cannot return it, his property will be confiscated by the prosecutor and auctioned to cover the losses incurred. Return of state losses can be made if there is a court decision that is final and binding. However, according to article.4 of the PTPK Law.

> "The return of losses to state finances or the state economy does not eliminate the criminalization of the perpetrators of criminal acts as referred to in Article 2 and Article 3."

The meaning of the article above is that even though state finances have been returned, it cannot and will not eliminate the investigation, investigation and judicial processes that the perpetrators of corruption must go through.

Strictly speaking, the PTPK Law, especially Article 4 of the PTPK Law, does not appear to provide a loophole for corruption perpetrators to dismiss their cases on the grounds that state finances have been returned. However, the Indonesian Attorney General's Office issued "Circular Letter of the Deputy Attorney General for Special Crimes No: B-1113/F/Fd.l/05/2010" on May 8, 2010, which contains information on priorities and achievements in handling corruption cases. The most noticeable point in the Circular is about priorities and achievements in handling corruption cases. The salient points of the Circular are

> "The handling of corruption cases is prioritized on the disclosure of cases that are big fish (large scale, seen from the perpetrators and / or the value of state financial losses) and still going on (corruption crimes committed continuously or continuously)", and "so that in law enforcement prioritize a sense of public justice, especially for people who with their awareness have returned state financial losses (restorative justice), especially related to corruption cases with relatively small state financial losses should be considered not to be followed up, except for those that are still going on."

The issuance of the "Circular Letter of the Deputy Attorney General for Special Crimes of the Indonesian Attorney General's Office" is motivated by the fact that the amount of state financial losses is not proportional to the cost of handling corruption cases.

There are several cases of criminal acts of corruption that were finally stopped when the perpetrators have returned the state's losses. This act will definitely be considered an unfair act by the wider community, especially in efforts to eradicate criminal acts of corruption. For example, in the case of alleged corruption of the special financial assistance fund (BKK) in 2016 in the province of Bali in banjar village, Buleleng, where this case was stopped on the grounds that the suspect had returned state financial losses. The termination of the case was in line with the Circular Letter of the Deputy Attorney General for Special Crimes (Jampidsus) Number: B1113/F/Fd.1/05/2010.

The issuance of "Circular Letter of the Deputy Attorney General for Special Crimes No. B-1113/F/Fd.1/05/2010": B-1113/F/Fd.l/05/2010" raises a lot of debate, in the Circular Letter it is stated that the handling of criminal acts of corruption is prioritized on the disclosure of cases that are still going on and are big fish, which there is no further regulation on how to determine whether a case is big fish, still going on, and relatively small in the Circular Letter of the Deputy Antonerry General Number B-1113/F/Fd.l/05/2010. The PTPK Law does not explain the parameters of state losses committed by perpetrators of corruption, even in Article 4 of the PTPK Law, the application of Restorative Justice cannot eliminate corruption crimes, so the use of the concept of Restorative Justice in eradicating corruption crimes in this article does not apply. In the Criminal Code, there is no explanation regarding the determination of the parameters of a corruption crime, and the Criminal Procedure Code also does not explain this matter.

The regulation contained in the SE of the Deputy Attorney General for Special Crimes Number B-1113/F/Fd.l/05/2010 is considered to have eliminated the deterrent effect of corruption perpetrators who have caused small state losses. If done continuously, there will be many cases of corruption with small losses that will occur more and more. This is because the leniency that is given only requires him to return the state losses that have been confiscated without any deterrent effect and punishment. The purpose of giving deterrence or punishment to corrupt actors here is to retaliate for their actions so that the perpetrators feel deterred so that they do not repeat their actions again. However, the SE Jampidsus does not mention further about how the parameters of the loss committed by the perpetrator so that the case can be said to be a large loss.

The purpose of the study is to analyze whether the settlement of corruption crimes through the Restorative Justice approach in SE Jampidsus number: B1113/F/FD.1/05/2010 is contrary to Article 4 of the GCPL Law.

METHOD

The type of research used in this study is normative juridical research. This research is a document study or legal research. Legal research is research that uses legal sources of regulations, legal principles, legal doctrines related to the problems to be discussed (Arsyad 2020).

The research approach used in this journal is to use a statutory approach, and a conceptual approach related to corruption crimes, and restorative justice.

The legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials.

1. Primary legal materials use legal materials consisting of legislation, records, and other state documents that support this research (Marzuki 2005) Primary legal materials include:
   a. Law No. 1 of 1946 concerning the Criminal Code;

b. Law No. 8 of 1998 on the Criminal Procedure Code;
c. Law on the Eradication of Corruption;
c. Law No.15 of 2006 concerning the Financial Audit Agency;
e. Supreme Court Regulation No. 1 of 2020;
e. Circular Letter of the Deputy Attorney General for Special Crimes Number: B1113/F/Fd.1/.05/2010 on the Prioritization and Achievement of Corruption Case Handling;
g. Circular Letter of the Deputy Attorney General for Special Crimes Number: B945/F/Fjp/05/2018 on Technical Guidelines for Quality Special Crimes Case Handling Patterns.

2. Secondary Legal Materials
Secondary legal material is legal material that supports primary legal material in analyzing, understanding, and providing explanations of primary legal material. This material is not an official state document. This material comes from the works and views of legal experts (Soerjono 2007) . Primary legal materials include:
a. Articles on Criminal Law.
b. Books on Criminal Law
c. Criminal Law Research Results

3. Tertiary Legal Materials
Tertiary legal materials are supporting legal materials that provide additional guidance and explanation or completion of primary and secondary legal materials. Tertiary legal materials include:
a. Legal Dictionary
b. Big Indonesian Dictionary
c. Legal Encyclopedia

Legal Material Collection Technique. This research uses techniques in collecting legal materials, namely by means of:

1. Literature Study.
Namely an assessment of written legal materials derived from widely published sources. Legal materials in this study include primary, secondary and tertiary legal materials.
2. Internet.
This study was conducted by accessing websites and online journals related to legal issues, legal materials which were then examined, analyzed, and revised and developed into an interconnected discussion system with research concepts and problem formulation in this study.

Legal Material Analysis Technique. Namely activities carried out in research, starting from the collection of legal materials. In this study the author uses a grammatical interpretation analysis technique, by interpreting legal texts which include laws, circular letters, court decision policies, the author interprets the text which aims to determine the meaning of the words of an article in the law or other texts (Ochtorina Susanti and Efendi 2019).

RESULTS AND DISCUSSION

The resolution of corruption crimes in Indonesia is still a polemic in society. The sentencing of corruptors is often different from the applicable rules. At present, the eradication of corruption in Indonesia and several Asian African countries focuses on repressive measures, while prevention strategies and asset recovery strategies through international cooperation are still very small in intensity despite efforts in this direction (R.Wiyono 2005).

As a result of this, there is a term disorientation which has fatal consequences due to the absence of balance, this balance includes the four strategies to eradicate corruption between one another. In the practice of eradicating corruption so far, it has been prioritized in the direction of punishing the perpetrators, which aims to provide a lesson or shock therapy to the public or state officials so as not to commit illegal acts, namely corruption (Habib 2020) .

According to Prof. Romli Atmasasmita, Indonesia has adhered to the Kantianism law enforcement perspective for more than 50 (fifty) years, which has the characteristic of prioritizing a sense of retributivism, which makes the state's involvement more dominant in determining the effectiveness or ineffectiveness of law enforcement, whose success is marked by throwing as many defendants as possible into prison. Imprisonment itself in Indonesia is the main punishment as stipulated in Article 10 of the Criminal Code that the main punishment consists of death penalty, imprisonment, confinement, fine, closure.

The short definition of corruption is abuse of power, abuse of trust in order to gain an advantage. Slamet maryoto divides the definition of corruption into 4 elements:

1. Whoever or every person
2. Who has a goal to benefit himself or others.
3. Who abuses the authority of opportunity or means due to having an office or position.
4. Which can harm the state economy in the form of financial or other losses.

The definition of State Finance is a quantitative activity that will be carried out for the future (Tjandra 2006). The definition of State Finance is the first time in the PTPK Law. The definition of State Finance in the PTPK Law is

"All state assets in any form that cannot be separated or can be separated, and which includes all parts of state assets, rights and obligations arising from:

1. Being in the management, control, accountability of state institution officials both at the central and regional levels;
2. Being in the management, control, and accountability of BUMN/BUMD, legal entities, foundations, and companies that have included third party capital based on agreements with the state."

According to Article 1 Paragraph (1) of Law No.17 Year 2003 on State Finance

"State finances are all state rights and obligations that can be valued in money, or everything in the form of money or in the form of goods that can be used as state property related to the implementation of these rights and obligations."

The approach used to formulate a stipulative definition of state finances in terms of subject, object, process and purpose. Furthermore, according to Arifin Soeria Atmadja, he describes state finances from the accountability of the government, the finances accounted for by the government are state finances whose origin is from the APBN. He also describes the dualism of the understanding of state finances in a narrow sense. if in a broad sense it comes from the APBN, APBD, BUMN Finance and all related to all state assets (Soeria atmaja 1986).

Then based on the provisions stipulated in the PTPK Law, corruption crimes in Indonesia can be divided into two classifications, namely corruption crimes that require state financial losses and corruption crimes that do not require state losses.

a. Corruption Crime Requires State Financial Loss.

Corruption offenses that require state losses are listed in Articles 2 and 3 of the GCPL Law. The elements of the criminal offense in Article 2 of the PTPK Law are:

1. Unlawfully
2. Enriching oneself, another person or corporation
3. Harming the state economy or state finances (R.Wiyono 2005)

Whereas in Article 3 of the Anti-Corruption Law the elements are

1. With the aim of benefiting oneself or others
2. abuse of authority, opportunity or means available to him because of position or position
3. Harming state finances or the state economy.

In the Elucidation of the Anti-Corruption Law, unlawful acts include material and formal acts, even though there are no rules in the legislation, but these acts are considered reprehensible because they do not reflect a sense of justice for the norms of social life, so these actions can be subject to punishment.

b. Corruption Crime Does Not Require State Financial Losses.

The second type of corruption crime does not require state financial loss. In this classification, the elements that do not require state financial losses. Criminal offenses that do not require state financial losses are in the articles in the PTPK Law:

1) Articles 8, 9, and Article 10 letters a, b, and c (Embezzlement in a Position) Article 1 letter I (Conflict of Interest in a Procurement);
2) Article 12 letter e, letter g, and Article 12 letter h (Extortion);
3) Article 12B and 12C (Gratification);

4) Article 5 paragraph (1) letters a and b, Article 5 paragraph (2), Article 6 paragraph (1) letters a and b, Article 6 paragraph (2), Article 11, Article 12 letters a and b, Article 12 letters c and d, and Article 13 (Bribery);
5) Article 7 paragraph (1) letters a, b, c and d, Article 7 paragraph (2), and Article 12 letter h (Fraudulent Acts).

Apart from the 2 classifications of corruption crimes above, the Anti-Corruption Law regulates the procedural process regarding any person who obstructs the investigation of corruption crimes. Article 21 of the GCPL Law regulates anyone who deliberately prevents, or thwarts a criminal offense at the stage of investigation, prosecution, and examination in court.

Therefore, Chapter II of the PTPK Law explains the various provisions of the penalties that corruptors must receive with the total losses incurred with prison sentences. However, at present the facts in the field from throwing as many corruptors as possible in prison or correctional institutions, do not have a deterrent effect on society.

In response to this, the Prosecutor's Office as a law enforcement officer authorized by the Law in Article 35 Letter (a) Number 16 of 2004 concerning the Prosecutor's Office that:

"Establish and control the policy of law enforcement and justice within the scope of the duties and authority of the prosecutor's office."

Based on this authority, the Attorney General's Office issued a policy in the form of a Circular Letter by the Deputy Attorney General for Special Crimes Number 113/F/Fd.1/05/2010 concerning Priorities and Achievements in Handling Corruption Cases, which contains an appeal regarding the priority of handling cases that fall into the big fish category. The Circular Letter also urges the government to seek restitution of state losses using the restorative justice approach for corruption offenses with small-scale state losses.

A Circular Letter is a legal product that contains materially universal entrapment but is not a statutory regulation. Circular letters are also an internal government instrument. Circular letters are also part of the policies of state institutions, for example, such as judicial institutions, prosecutors and even local governments (Hanum 2020).

The position of circular letters in the legal system in Indonesia is included in policy regulations that must comply with the principles of the formation of good laws and regulations and the principles of making good policy regulations. If the policy regulation is not subject to the principles, it will cause problems if the making is not subject to these principles. The Position of Ministerial Regulations, Ministerial Decrees, Circular Letters, and Presidential Instructions in the Legal System of the Unitary State of the Republic of Indonesia. Point 15 Legal products in the form of "Circular Letters" both before and after the enactment of Law No. 10/2004 on the

Formation of Laws and Regulations which has been replaced by Law No. 12/2011 on the Formation of Laws and Regulations are not categorized as laws and regulations, because Circular Letters are not in the position of laws and regulations, thus their existence is not at all bound by the provisions of Law No. 12/2011.

A Circular Letter is also an order from a certain official to his subordinates/people under his guidance. Circular Letters are often made in the form of Ministerial Circular Letters, Circular Letters do not have outward binding force because the officials who issue them do not have a legal basis for issuing circular letters. The issuing official of a Circular Letter does not need a legal basis because a Circular Letter is a policy regulation issued solely based on free authority but it is necessary to pay attention to several factors as a basis for consideration of its issuance: (Choirul Anam 2015).

a. Only issued due to urgency;
b. There are unclear related regulations that need to be interpreted;
c. The substance does not conflict with the laws and regulations;
d. Can be morally accountable with the principles of good governance.

The characteristics of policy regulations are:

1. The regulation is based on the provisions of the law;
2. The regulations are not written and do not occur due to independent government decisions in the context of state administration.
3. the regulation aims to provide general guidance (Hanum 2020).

The word Justice Theory comes from the word Fair which in KBBI is impartial, not biased and not arbitrary. Fairness mainly means making decisions and actions based on objective norms. Justice is basically a relative concept, where everyone has an unequal view so fair for us is not necessarily fair for others. Every place has a certain scale of justice that varies. Therefore, when someone asserts that if he does a fair act, the act must be in accordance and not contrary to a certain public order to be recognized (Santoso 2014).

In Indonesia, this justice is contained in one of the precepts in Pancasila, which is the basis of the state, to be precise, the fifth precept reads "social justice for all Indonesian people". The precepts contain values that are goals in the life of the nation. Justice in the fifth principle is imbued with the essence of humanitarian justice, namely justice in relation to other humans, nations and countries, as well as humans and their God.

Philosopher John Rawls formulated the principles of justice into two. The first principle is the principle of equal freedom which consists of freedom to play a role, freedom of politics, freedom of speech, freedom of work, freedom of belief, freedom to be oneself, and the right to defend private property. While the second principle is grouped into two, namely the principle of difference, which starts from the principle of inequality that can be justified through controlled discretion as long

as weak groups of society benefit, and the principle of fair equality of opportunity, which requires the principle of the quality of ability and there must also be a basic need and willingness of these qualities (Damanhuri 2013).

John Rawls states that if the principles are confronted and cause conflict with one another, the first principle must be prioritized over the second principle, and the second principle b must take precedence over the second principle a. With the aim of realizing a just society, he tried to put freedom of basic human rights as the highest value and then followed by a guarantee of equal opportunity for all individuals in society (Pan Muhammad Faiz). 2009).

The restorative justice approach itself is an alternative to case settlement by prioritizing the integration approach of the perpetrator on the one hand and the victim on the other as a unit to find a corrective solution. Restorative justice is a justice that emphasizes the repair of losses caused or related to criminal acts by involving all parties (Kuat Puji Prayitno 2012).

It has been described above that the concept of restorative justice in the punishment of corruption offenders prioritizes sanctions that emphasize efforts to restore the consequences of crime. Based on Law No. 31 of 1999 concerning Eradication of Corruption, corruption is a criminal offense that is very detrimental to the state or the state economy and hampers national development as well as hampers the growth and continuity of national development. This is contrary to the provisions in Article 4 of the Anti-Corruption Law that:

> "the return of losses to state finances or the state economy does not eliminate the criminalization of the perpetrators of criminal acts as referred to in Article 2 and Article 3".

The article explains that the return of state losses does not eliminate criminalization. The return of state losses made by the perpetrator at the investigation stage will only be one of the factors that mitigate the punishment for the perpetrator in the consideration of the prosecutor's indictment and in the consideration of the punishment decision by the Panel of Judges.

Article 4 of the GCPL Law does not provide identification and definition of state losses in the form of phrases formulated in legal regulations. However, the SE issued by the Deputy Attorney General for Special Crimes states that the settlement of corruption cases of small value can be resolved using restorative justice. Meanwhile, in Article 4 there is the phrase "restitution does not eliminate the crime". In this case, resolving corruption using restorative justice is not possible in Indonesia.

The concept of Restorative Justice or commonly called Restorative Justice is a legal term about a stage in the criminal justice system that has existed and been known in Indonesia since the 1960s. The concept of Restorative Justice has similarities to the process of resolving a case made by indigenous peoples in

Indonesia as a method of resolving cases that occur among indigenous peoples and there is no interference from the state apparatus. In developed countries in the world, including America, the Netherlands, Australia and other European countries, the concept of Restorative justice has been used in the conventional criminal justice process, starting from the investigation stage to the execution of the decision (Wahid 2009) . The UN definition of Restorative Justice is a settlement of a criminal case by restoring harmony between the perpetrator and the victim of the crime.

According to M.Natsir Restorative Justice is a method of resolving criminal acts which involves victims, perpetrators, or their families and all parties related to the same incident with the aim of finding a fair solution by emphasizing compensation or restoration back to normal and not a punishment or retaliation (Nasir Djamil 2012).

Meanwhile, according to the United Nations Office on Drugs and Crime, restorative justice is a process of solving criminal cases by focusing on determining the perpetrator to be responsible for his actions by repairing losses or compensation, and involving the community in the process of resolving the conflict that is happening.

The concept of restorative justice is an alternative that is quite popular in various parts of the world for handling illegal acts, because it offers a comprehensive and effective solution (D S and Fatahillah 2011) . According to the expert opinion of Burt Galaway and Joe Hudson, the concept of justice from Restorative Justice has several main underlying elements. The first is that crime is seen as a conflict between individuals that has an impact on society or victims and has an impact on the perpetrators of the crime themselves. Secondly, the goal of the punishment process should be to create peace in society by repairing the harm caused by the conflict. Finally, the process must involve victims, perpetrators, and the community to find a solution to the conflict (Galaway and Hudson 1990).

From the above opinion, it can be concluded that Restorative Justice is an approach used to resolve a problem or case through out-of-court channels, be it through the process of mediation, deliberation and so on which in the end can restore the situation as it was before the criminal case.

Based on the description above, the author's opinion in this case is that he disagrees with the settlement of corruption cases using restorative justice. In this case, the return of state losses will only relieve the perpetrator in the investigation process and the judge's verdict. Handling corruption crimes with small state losses has several benefits. By using the concept of restorative justice, efforts to handle criminal cases that require considerable time, cost, and energy can be minimized, especially for the amount of handling that is not commensurate with the losses incurred,

The settlement of relatively small corruption crimes, in this case law enforcement officials can focus on solving corruption cases that are classified as big fish or on going. But in this case it also has a negative impact which will make protection for corruptors and become a means of a new defense system for corruptors. Every person tends to dare to commit corruption because the sanctions given are only the return of the losses incurred. The rescue of state losses is deemed necessary to be the main orientation, but criminal liability is deemed to be maintained in order to create a sense of deterrence for the perpetrators and the wider community (Amrani, Elvani, and Yasinta 2017) .

Restorative justice is considered contrary to Article 4 of the Corruption Law because in this case the concept of restorative justice is mitigating but there is no element of justice and certainty. According to L.J Van Apeldoorn, legal justice should not be seen as the same as equalization, justice does not mean that everyone gets the same share. In this case the case must be weighed on its own meaning that it is fair for one person but not necessarily fair for another (Wijayanta 2014) . While the element of legal certainty is a guarantee that the law is carried out, that those entitled according to the law can obtain their rights and that the decision can be implemented. Law without the value of legal certainty will lose its meaning because it can no longer be used as a guide to behavior for all (Wijayanta 2014) .

Based on the description above, the author's opinion on the element of justice and the element of certainty has not been fulfilled to resolve corruption cases using restorative justice and is contrary to Article 4 of the PTPK Law. This can be seen in the element of justice where restorative justice will be fair to the perpetrator but unfair to the community. This is because the public is harmed by corruption crimes that harm the state. As well as in the element of certainty previously described that restorative justice does not have legal certainty regarding corruption so that restorative justice to resolve corruption cases is contrary to Law Number 31 of 1999 concerning Eradication of Corruption.

CONCLUSION

The results of the research and discussion that the author has described can be concluded as follows: Circular Letter Number 1113/F/Fd.1/05/2010 is one of the powers of the Attorney General's Office as regulated by law. The content of the Circular Letter of the Deputy Attorney General for Special Crimes is in the form of an appeal regarding the priority of handling small corruption crimes using the restorative justice approach. It is hoped that with this breakthrough, the Attorney General's Office will focus on resolving corruption cases that are big fish or still going on. Restorative justice is an alternative concept in case settlement by emphasizing the repair of the harm caused by a person. Restorative justice in the settlement of criminal cases contradicts Article 4 of the PTPK Law. Article 4 of the PTPK Law clearly explains

that the return of state losses does not remove the punishment. but Article 4 does not provide identification and definition of state losses in the form of phrases. Restorative justice in resolving corruption cases also does not fulfill the elements of justice and certainty. Where the resolution of corruption cases is fair to the perpetrators of crime but unfair to the people who have been harmed by corruption. And in the element of certainty itself, restorative justice does not have legal certainty, therefore the settlement of corruption crimes using restorative justice is very contrary to Law Number 31 of 1999, especially in Article 4.

Suggestion

The author's suggestion for the resolution of this case would be better if the prosecutor first assesses whether the corruption is categorized as minor, moderate or severe. Settlement of corruption of small value can be done using the value of expediency, which first looks at the amount of loss and the value of the process. If Indonesia is going to use the concept of restorative justice in an effort to eradicate corruption, then there must be a law that clearly regulates the application of this concept. With a clear legal umbrella, there will be a common perception between law enforcers in Indonesia.

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