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by

Submission date: 18-Oct-2021 11:16AM (UTC+0800)

Submission ID: 1676662873

File name: 6._Reform_of.pdf (587.35K)

Word count: 6663

Character count: 36919



Reform of Criminal Law through Restorative Justice in Returning State Losses from Corporation as the Perpetrator of Corruption

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<http://dx.doi.org/10.18415/ijmmu.v6i6.1252>

Abstract

The development of an increasingly complex country raises a variety of new problems involving corporation, one of which is a criminal act of corruption involving corporation. Based on Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption and Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporation, criminal liability for corruption involving corporations can already be requested from the management, corporation, and the management and corporation. The concept of law enforcement that continues to develop raises an approach or method of problem solving that focuses on recovery and coaching in the application of sanctions, the approach is known as restorative justice. However, the concept has not been fully applied in Indonesian laws and regulations, especially for corporations. The restorative justice approach has many similarities with the method of resolving criminal acts involving corporations in the United States, the method is known as the Deferred Prosecution Agreement (DPA) and Non-Prosecution Agreements (NPA). DPA or NPA in principle is a solution to the problem of corporate crime to agree to postpone or not prosecute provided unless the corporation meets the conditions and requirements set. In addition, it is stated in writing in the form of agreements called Deferred Prosecution Agreements or Non-Prosecution Agreements.

Keywords: Criminal Law; Restorative Justice; Corporation; Corruption

Introduction

Corruption continues to grow from time to time. Corruption is one of the causes of the economic downturn in Indonesia. It was carried out systemically and extensively so that it not only harmed the country's financial condition or the country's economy but also violated the social and economic rights of the people at large.¹ Therefore, corruption is allegedly one of the causes of the unfulfilled national goals

¹ Ministry of Law and Human Rights of the Republic of Indonesia, *Legal Research on the Legal Aspects of Corruption Eradication in Indonesia*, Jakarta, 2008, page 1.

of the Indonesian nation in creating a prosperous, peaceful, just and prosperous society. Corruption can mean decay, deterioration and depravity.

Corruption is a fraudulent act committed by misusing or embezzling state finances aimed at enriching oneself or someone who can harm. Generally, corruption is carried out in secret and involves elements of mutual obligations and benefits. These obligations and benefits are not always in the form of money.² Initially, criminal acts of corruption were only carried out by individuals or groups, along with the times, it led to the emergence of a number of new problems relating to criminal acts of corruption involving corporations in Indonesia.

During 2017-2018, there were 5 corporations that were suspected of corruption cases which included PT Duta Grahara Indah, which had changed its name to PT Nusa Construction Engineering, PT Nindya Karya, PT Buah Sejati, PT Putra Ramadhan or PT Tharda, and PT Merial Esa.³ Corporation, according to Muladi and Dwidja Priyanto, comes from the word corporate, a body that has a group of members and these members have their own rights and obligations separate from the rights and obligations of each member.⁴

According to Andrew Borkowski, corruption committed by corporations is different from corruption committed by individuals. Corruption by a corporation is carried out in a coordinated manner by several members of the corporation for the benefit of the corporation itself.⁵ Supreme Court Regulation of the Republic of Indonesia No. 13 of 2016 Article 1 paragraph (8) concerning Procedures for Handling Criminal Cases by Corporations states that a criminal offense by a corporation is a criminal offense whose criminal liability may be requested from the corporation in accordance with the Law governing the corporation. Therefore, criminal acts of corruption committed by corporations will refer to Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Eradication of Corruption Crime Article 20 paragraph (1) and paragraph (2) that a criminal act of corruption committed by a corporation is if the crime is committed by people based on work relationships or based on other relationships acting within the corporate environment alone or together.

However, the conventional criminal justice system tends to spend a lot of time and money for both parties, namely the state represented by prosecutors and corporations that will incur large costs to resolve the issue. On the other hand, there is no guarantee that state losses can be returned to the maximum. It is based on the example of the case of PT Duta Graha Indah or PT Nusa Construction Engineering whose settlement has reached the appeal stage based on the decision of the Jakarta High Court Number:3/Pid.Sus-TPK/2018/PT.DKI.⁶ Regarding the handling of corruption in Indonesia that employs a conventional criminal justice system, especially in terms of recovering state losses, the settlement still faces many obstacles with a large cost and a long process. Therefore, a new concept or approach is needed in overcoming criminal acts of corruption, especially corruption committed by a corporation due to a very large amount of state loss.

The renewal of criminal law, which applies the concept of restorative justice to corporations that commit criminal acts of corruption, which is carried out effectively, wisely and efficiently, will optimize the return of state losses due to corruption. The criminal law reform basically means an effort to conduct a review and reassessment in accordance with the central socio-political, socio-philosophical and socio-

² Aziz Syamsuddin, *Special Crimes*, Sinar Grafika, Jakarta, 2014, page 15.

³ <https://news.okezone.com/read/2019/03/01/337/2024676/senjata-baru-kpk-sudah-menjerat-5-korporasi> accessed on Sunday 24 February 2019 at 20:00 West Indonesia Time.

⁴ Muladi and Dwidja Priyanto, *Corporate Criminal Liability in Criminal Law*, STIH, Bandung, 1991, page 19.

⁵ Andrew Borkowski, *Text Book on Roman Law*, Blackstone Press Limited, London, 2001, page 84 in Nani Mulyati's article, Op. cit., page 184.

⁶ <https://putusan.mahkamahagung.go.id/putusan/e2c18fe0088f026c37488c69a4b9ae5a> accessed on Sunday 25 February 2018 at 10:00 West Indonesia Time.

cultural values of Indonesian society which underlie social policies, criminal policies and law enforcement policies in Indonesia.⁷ There are two main functions in criminal law reform. The first is to tackle crime and to ensure that the authorities or the government really carry out their duties in tackling crime in accordance with what has been outlined by criminal law. Thus, the formation of criminal law will not be separated from the review of the effectiveness of law enforcement. The restorative justice approach is a fair approach by giving emphasis to the restoration of a situation as before.

Research Method

To answer this research problem, a normative research design is employed. It is a study with a concept on secondary data and with a focus on research activities.⁸ Normative research is also defined as legal research or research on the concept of the Law (statute approach), case concept (case approach), historical concept (historical approach), comparative concept (comparative approach), and conceptual concept (conceptual approach).⁹ Sources of data in this study were obtained through library research. This research focuses on the study of literature based on secondary data.¹⁰ Secondary data were obtained from books and documents. Legal data is closely related to primary legal material. It is materials that help to analyze, understand, and explain primary legal materials include research results, papers from legal experts, as well as theories put forward by scholars relating to this research.

Analysis and Discussion

Restorative Justice in Criminal Law in Indonesia

The implementation of the restorative justice approach does not recognize the method of retaliation but rather the concept of recovery. The restorative justice approach recognizes 3 concepts in providing criminal sanctions consisting of:¹¹ restitution (loss compensation), social work program, compensation for victims. The concept of granting compensation funds to victims, known as payment for victims, is a part of the process of resolving criminal acts and at the same time creating better conditions for victims as well as for the perpetrators and their environment. It is carried out by the government or other parties which are not related to the violation. Basically, compensation is compensation given by the state to victims of crime. It is carried out when the perpetrators of crime could not provide compensation to the victim. This compensation uses the social welfare approach as a responsibility and sense of humanity from the state to the victims.

The concept of restorative justice is not only seen as a mere conception of the law but it has been practiced in criminal justice processes which are carried out starting from the level of investigation, prosecution, and justice. As stated by Abbey J. Porter, the restorative justice approach has been accepted at the world level by the United Nations. This progress has given the power to the United Nations to form its member states to develop restorative practices through the national justice system.¹²

⁷ Barda Nawawi Arief, *Collection of Criminal Law Policies, Second Print*, PT Kencana Prenada Media Group, Jakarta, 2010, page 30.

⁸ Soejono Soekanto and Sri Mamudji, *Normative Legal Research*, Rajawali Pers, Jakarta, 2011, page 22.

⁹ Peter Mahmud Marzuki, *Legal Research, Kencana Prenada Media Grup*, Jakarta, 2007, page 93.

¹⁰ Bambang Sunggono, *Legal Research Methods (An Introduction)*, PT Raja Grafindo Persada, Jakarta, page 195-196.

¹¹ Rufinus Hotmaulana Hutaauruk, *Op. cit.*, page 182

¹² M. Ali Zaidan, *Heading to Criminal Law Reform*, Sinar Grafari, Jakarta, 2015, page 245.

Diversion as an Embodiment of the Concept of Restorative Justice in Indonesian Criminal Law

The concept of the restorative justice approach in the criminal justice system in Indonesia has now been realized in a process called diversion and regulated in Law No. 11 of 2012 concerning the Child Criminal Justice System in Chapter II Article 6 to Article 15. Diversion is the granting of authority to law enforcement officials to take policy actions in handling or resolving problems of child abuse by not taking formal measures, including stopping or not continue/ release from the criminal justice process or return/ hand it over to the public and other forms of social service activities.¹³

In Indonesia, the term diversion was first raised in the formulation of the results of the national juvenile justice seminar held by the Faculty of Law, Padjadjaran University, Bandung on October 5, 1996. The matters agreed upon in the formulation of the results of the seminar included the possibility of a judge to stop or divert/ discontinue the examination cases and examinations of children during the examination process in advance of the trial.¹⁴

Diversion aims to prevent the detention of children, to avoid being labeled as a criminal, protecting the child's psychology, and avoiding children from repeating criminal acts. Diversion provides a better alternative to the official proceedings in court. As perpetrators of crime, children will be involved in directed and interacted activities in groups intended to increase understanding and change their perspective of the system and positive law enforcement, increase self-confidence, teach them ways to communicate/ interact with the social environment better and improve their ability to make decisions.¹⁵

In essence, diversion can be carried out at every stage of the trial where it must first obtain the consent of the victim or the family. This is stated in Article 9 paragraph (2) of Law No. 11 of 2012 concerning the Criminal Justice System for Children. The victim's willingness to agree to diversion is a general principle of restorative justice in which the victim plays an important role in determining the resolution of the problem. The main objective is to recover the damage suffered by the victim due to the perpetrator's actions. The diversion agreement that has been agreed by the parties will be submitted to the court to get the diversion agreement stipulated from the court. In the event that the diversion agreement is not carried out in accordance with what has been agreed upon, it will be followed up to the stages of the criminal justice process by giving a letter to the court that the diversion agreement is not implemented.

Diversion Process

Diversion is carried out through consultation involving children and parents/ guardians, victims and/or parents/ guardians, Community Guidance, and Professional Social Workers based on a restorative justice approach. In addition to being carried out through deliberation, the diversion process must also pay attention to the interests of victims, the welfare and responsibility of children, avoidance of negative stigma, avoidance of immersion, community harmony, and propriety, decency, and public order. In the process of enforcing child criminal law, the authorities, including investigators, public prosecutors, and judges, must consider the categories of criminal acts, the age of the child, the results of community research from the Penitentiary, the support of the family and community environment in diversion. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has not clearly stipulated the procedures

¹³ Angger Sigit Pramukti & Fuady Primaharsyah, 2015, *Criminal Justice System for Children*, Pustaka Yustisia, Yogyakarta, 2015, page 68.

¹⁴ *Ibid*, page 68.

¹⁵ Setya Wahyudi, *Implementation of Diversion Ideas in Reforming the Indonesian Criminal Justice System for Child*, Genta Publishing, Yogyakarta, 2011, page 58.

and stages of the diversion process, the procedures for implementing the diversion are regulated in Government Regulation No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Guidelines for Handling Children Below 12 (Twelve) Years and in the Republic of Indonesia Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Criminal Justice System for Children.

The diversion process can be implemented at every level which includes the level of investigators, public prosecutors, and the judiciary. In Law No. 11 of 2012 concerning the Criminal Justice System for Children, the process of the outcome of the agreement on diversion is regulated in Article 12. The process of diversion must be directed at the achievement of all the objectives of the diversion that cannot be separated from the interests of the child, protection and guidance of the child, or in the best interest of the child (the best interest of child).

This principle, besides being adopted in national law, is also a principle of international law contained in the United Nations Convention on the Rights of the Child (UNCRC) which has been adopted by many UN member states, including Indonesia. Therefore, it is obligatory to adopt it in Indonesian national legislation.¹⁶ Diversion as a form of resolving cases outside the court will clearly involve various related parties, suspects, victims and other community members involved. Article 6 of Law No. 11 of 2012 concerning the Juvenile Justice System states and explains explicitly that one of the objectives of diversion is to encourage community participation which is also the goal of community policing efforts.¹⁷

Restorative Justice in Returning State Losses from Corporations as Perpetrator of Corruption in Indonesia

The restorative justice approach is a model that is observed by experts and criminal law experts as a paradigm shift from the classical paradigm to the new paradigm that puts forward the restorative-rehabilitative approach.¹⁸ The restorative justice approach, which emphasizes recovery from the consequences of criminal charges, can be a solution for corporations that are held to account for criminal liability, especially in criminal acts of corruption involving corporations. By maximizing the restorative justice approach to corporations involved in corruption, it will maximize state losses. Handling corruption cases is not enough just to punish the perpetrators but returning state losses due to acts of corruption is also very important. A modern country must have three important pillars that constantly interact with one another, namely society, economic growth, and the rule of law. Economic growth and national development, as an effort to prosper the community, will be stronger if it is supported by law.¹⁹ The maximum return of state losses can help national development and prosper the community. According to the authors, between corporations that commit corruption and settlement using a restorative justice approach is very relevant. It is because corporations that are held liable for basic crimes can only be fined and additional crimes can be in the form of cash compensation, restitution compensation, full or partial closure and revocation of licenses from the corporation. According to the authors, the corporation would prefer to solve the problem by paying or recovering losses caused by the corporation rather than experiencing disruption in corporate activities due to temporary closure or revocation of corporate licenses. Corporate closure will have a major impact on all parties including the country which will also suffer the consequences of workers who lose their jobs. The settlement of corporate criminal acts must be carried out carefully and wisely. In developed countries, the completion of corruption by corporations places more emphasis on returning state losses in handling corruption cases.

¹⁶ Yoserwan, *Handling of Child Crimes by the Police through Diversion as Protection of Children's Rights*, Nagari Law Review, Volume 2 Number 2, April 2019, page 207

¹⁷ *Ibid*, page 209

¹⁸ Romli Atmasasmita, *Op. cit.*, page 94

¹⁹ Asep N. Mulyana, *Op. cit.*, page 198

The author concludes that there are 4 important points in the restorative justice approach that are the same as the Deferred Prosecution Agreement (DPA) or Non-Prosecution Agreement (NPA) method, as follows:

1. A guilty plea from a corporation and voluntarily resolves problems with the Deferred Prosecution Agreement (DPA) or Non-Prosecution Agreement (NPA) method.
2. Agreement between the perpetrator and the victim to resolve the issue by not continuing to the next stage of the trial.
3. The main objective is to repair or restore the corporation and victims to their original state by jointly, finding solutions to these problems, willing to work with law enforcement officials, and provide information to determine the parties or individuals who really must be responsible, make improvements to corporate management through a compliance program and not prioritizing punishment in its resolution.
4. Corporations are required to pay fines as recovery from losses suffered or resulting from violations of the law committed by the corporation.

According to the authors, the restorative justice approach is the same principle as the Deferred Prosecution Agreement (DPA) or Non-Prosecution Agreements (NPA) whose main purpose is not punishment but recovery and involving all interested parties to jointly resolve the problem. This was also confirmed by the Special Assistant to the Attorney General of Indonesia, Asep N. Mulyana, who stated that, DPA is in principle a diversion where corporations can negotiate specifically. Prosecutor's willingness to approve negotiations can actually benefit the company by reducing some of the corporate and employee exposure from criminal prosecution and civil lawsuits.²⁰ In Indonesia, diversion is an embodiment of the restorative justice approach in the juvenile justice system. DPA and NPA were initially used individually by prosecutors in the case of children and street criminals. It is the same as the version of the Juvenile Criminal Justice System which is now in force in Indonesia. Considering the many benefits of DPA and NPA, prosecutors in the United States have adopted the DPA and NPA methods in resolving criminal acts of corruption involving corporations.

The main conditions for DPA and NPA are the guilty plea of the corporation and willingness to carry out criminal settlement through the DPA or NPA and the willingness of the corporation to pay a fine or restitution for the recovery of the victim. In addition, the factors for implementing a DPA or NPA contained in the Memorandum Holder and Thomson memorandum are as follows:²¹

- 1) The kind and seriousness of the violations by the corporation
- 2) Widespread errors in the corporation
- 3) The history of the same behavior by corporations
- 4) Voluntary and timely disclosure of guilt by a corporation
- 5) The corporation's willingness to cooperate in investigating its agents, including if necessary, disregarding client rights with company lawyers
- 6) Corporate compliance program
- 7) Corporate improvement

²⁰ Asep N. Mulyana, *Op. cit.*, page 246

²¹ Matt Senko, *Loc. cit.*, page 4

- 8) The consequences of collateral, including disproportionate losses to shareholders and employees that are not personally proven can be blamed.
- 9) Adequacy of non-criminal recovery.
- 10) Considering to respect voluntary company cooperation.²²

In DPA or NPA, when a corporation agrees to settle criminal cases through DPA or NPA, during the process, the corporation can still conduct business relations with partners or carry out production activities or providing services to customers who need goods or services from the company. In addition, while working on projects such as housing or residential homes, the corporation can still continue to develop the project during the DPA process, so that the corporation continues to pay attention to the fate and survival of the workforce. Moreover, public funds that have paid a down payment and bought shelter will be maintained and banks will continue to support project financing without worrying about criminal legal processes.²³ In addition to returning maximum state losses, corporations also benefit from improvements to corporations which during the DPA or NPA process the corporation can still conduct business activities to avoid bankruptcy.

In the case of corruption, the victim is the state. As Muladi mentioned before, in a corruption act, what is meant by a crime victim does not have to be an individual human but it can also be a collectivity like the state and so forth (collective victim).²⁴ The state, as a victim, will be represented by a prosecutor because it is in accordance with the principle of *dominus litis* or the prosecutor as the ruler of the case.²⁵ Thus, according to the author, the prosecutor is the most appropriate to represent the country as a victim in the resolution of corruption involving corporations using a restorative justice approach. It is the same as the application of DPA and NPA in the United States where the prosecutor represents the state and the prosecutor will make an agreement or deal with the corporation involved in corruption.

In Indonesia and the United States, the institution that has the authority to conduct prosecutions is the Prosecutor's Office. However, in Indonesia, the prosecutor's office is an institution separate from the Ministry of Law and Human Rights. Meanwhile, in the United States, the prosecutor's office is under the Department of Justice (DoJ), which is led by the attorney general (United States Attorney General). The Department of Justice is equivalent to the Ministry of Law and Human Rights in Indonesia. However, the prosecution institution in Indonesia is not under the Ministry of Law and Human Rights. Regarding the Non-Prosecution Agreement, the Prosecutor in the United States of America adheres to the Principle of Prosecutorial Discretion. This allows public prosecutors to pick and choose between possible defendants, in order to maximize their efficiency.²⁶ Through the implementation of the restorative justice approach, by referring to the DPA or NPA, corporations will save more on the costs they incur and make an optimal return on state losses. As we know in some cases, Volkswagen paid a fine of US \$ 2.8 billion and Mosanto Company paid a fine of US \$ 1.5 million.²⁷ There is corporate cooperation in helping the investigation to determine which individuals within the corporation should be responsible. For corporations, it requires internal improvements to avoid negative records that can erase the trust of the public or shareholders. The loss of public trust and shareholders will lead to the destruction of a corporation and an increase in unemployment as the author explained earlier.

²²U. S.ATTY'S BULL., supra note 12, at 5; Federal Prosecutions of Business Organizations (the Thompson Memo), Memorandum from Deputy Att'y Gen., Larry D. Thompson to the United States Att'ys' Offices, January 20, 2003, on file with the Department in Matt Senko, Loc. cit., page 4

²³ Asep N. Mulyana, Loc. cit., page 237

²⁴ Rufinus Hotmaulana Hutauruk, Op. cit., page 266

²⁵ https://www.kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=35&idke=0&hal=1&id=3398&bc= accessed on Wednesday 27 November 2019

²⁶ George P. Fletcher, Basic Concepts of Legal Thought, New York-Oxford, Oxford University Press, 1996, page 17-18 in Rufinus Hotmaulana Op. cit., page 239.

²⁷ Asep N. Mulyana, Op. cit., page 258

In Indonesia, accountability for corruption involving a corporation can only be imposed on the corporation, the management, the corporation and its management. In the DPA, if the corporation and its management are held accountable, the management continues to carry out settlement through the judicial and corporate processes through the DPA. It can be seen in the case of the Volkswagen bribery scandal which the authors have explained previously. For the resolution of criminal offenses committed by its administrators or individuals, the United States Department of Justice charged six Volkswagen executives and their employees for their respective roles while the Volkswagen corporation made settlements through DPA.²⁸

In applying the restorative justice approach, accountability for corrupt acts involving corporations and their management can also separate. Through a restorative justice approach, criminal acts by corporations are resolved outside the judicial process. In addition, settlement through a restorative justice approach must contain a guilty plea from the corporation. With a guilty plea from the corporation, the process of proving guilty or not of the corporation in court is no longer needed. The next process is the resolution of the problem through restorative provisions with an agreement between the prosecutor and the corporation. Therefore, in resolving criminal acts, the corporation can be represented by other management using a restorative justice approach. Administrators who are held accountable will still go through the trial stage.

Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning Eradication of Corruption Crime Article 20 paragraph (3) makes it clear that in the case of criminal charges being made against a corporation, the corporation is represented by the management. In paragraph (4), the management representing the corporation referred to in paragraph (3) may be represented by another person. Based on Supreme Court Regulation No.13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations Article 15 paragraph (1), in the case of a corporation being filed as a suspect or defendant in the same case as the management, the management representing the corporation is the management which becomes the suspect or defendant. Paragraph (2) states that other managers who do not become suspects or defendants can represent the corporation in the case as referred to in paragraph (1). Article 19 paragraph (1) states that the examination at the investigation and prosecution stage of the corporation and/or management can be carried out individually or together.

Considering the provisions in the Corruption Eradication Act and the Supreme Court Regulations concerning Procedures for Handling Criminal Acts by Corporations which the authors explain above, in the accountability of management and corporation, other management who are not suspects can represent the corporation in the settlement of corporate criminal acts and also the examination of the corporation and its management can be carried out individually. Therefore, the separation of the settlement of corporate criminal acts using the restorative justice approach can be separated from the resolution of the criminal offenses of its management.

However, the current laws and regulations in Indonesia do not yet regulate how a restorative justice approach can be applied or be a solution in solving problems relating to corporations, especially in criminal acts of corruption involving corporations. Considering the provisions of laws and regulations governing criminal acts of corruption, Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crimes Article 4 states that returning money resulting from criminal acts of corruption does not eliminate or erase crimes committed by perpetrators of corruption. The elucidation of Article 4 illustrates that the nature of criminal law in the Act is *primum remedium*, namely criminal sanctions as a first attempt to punish the perpetrators. The Government of Indonesia has ratified the 2003 UNCAC (United Nations Convention Against Corruption) Convention through Law No. 7 of 2006 concerning the United Nations Convention Against Corruption. After the signing of the

²⁸ *Ibid*

convention has an impact on the strategy of preventing and eradicating corruption in Indonesia which has so far focused on a repressive approach and lacks consideration of a preventive and restorative (recovery) approach. Law No. 31 of 1999 concerning Eradication of Criminal Acts of Corruption emphasizes a repressive approach.²⁹ The law does not use a rehabilitative or restorative approach. The 2003 UNCAC (United Nations Convention Against Corruption) Convention uses a preventive, repressive, and restorative approach.³⁰

In connection with Article 4, according to the author, for corporations that are held accountable and agree to settle cases through the restorative justice approach, the provisions in Article 4 may be set aside for corporations subject to or agree to settle cases through the restorative justice approach. The exception is aimed at maximizing the return on state losses with a more cooperative corporation in the resolution of corruption. It refers to sanctions that can be imposed on corporations for basic criminal sanctions are fines and additional criminal sanctions that can be in the form of compensation money, restitution compensation, full or partial closure and revocation of licenses from the corporation. Sanctions for the corporation can be directly included in the agreement when the corporation agrees to resolve it through a restorative justice approach. These sanctions can be seen in Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning Eradication of Corruption Crime Article 18 paragraph (1) letter C for additional crimes and Article 20 paragraph (7) for principal crimes. In the Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Crimes by Corporations Article 25 and in the Draft Law of the Criminal Code 2019 Article 118, Article 119, Article 120.

For closure or revocation of licenses from a corporation must be carried out very carefully, bearing in mind that the effects caused are very large and will be detrimental to many parties such as corporate workers, shareholders, other corporations that work with the corporation. In fact, the state will also feel the negative effects of corporal punishment. The 2003 UNCAC (United Nations Convention Against Corruption) Convention was ratified by Indonesia through Law No. 7 of 2006 concerning the United Nations Convention Against Corruption. Article 26 in paragraph (4) also states that the state must endeavor that the legal entity responsible is subject to effective, proportionate and prohibited criminal or non-criminal sanctions, including financial sanctions.

The settlement of corruption that involves corporations by using a restorative justice approach is not only intended to provide a deterrent effect but rather to make improvements or maximum recovery efforts in recovering state losses. Even though the deterrence effect for the corporation is achieved, the corporation is not cooperative and prefers to hide the corrupt assets. Considering the current provisions, even though the corporation returns state losses, the corporation also continues the trial and is convicted. It does not rule out the possibility that the corporation will get additional penalties such as temporary closure or revocation of corporate licenses. It will be further simplified through a restorative justice approach. In addition, the authors believe that corporations will prefer to settle their cases using the restorative justice approach because it costs and benefits saves more costs and also provides improvements to the corporation by making improvements to structural management. In addition, it implements a compliance program as implemented in DPA and NPA agreements that require companies to work together to help determine the individuals responsible, fire offenders and implement a strict compliance program. It is important to remember that in applying the restorative justice approach, the corporation must provide optimal state losses or the corporation must provide all the benefits derived from the corruption crime to the state, and want to assist in conducting investigations to determine who the individuals within the corporation are must be held responsible.

Corporations that agree to settle cases through the restorative justice approach must comply with all the requirements or agreements made between the corporation and the prosecutor, especially in terms

²⁹ Romli Atmasasmita, *Op. cit.*, page 108

³⁰ *Ibid*

of payment and the number of fines that must be paid in accordance with state losses so that the return of state losses can be optimal. In its application in solving corruption problems involving corporations, the restorative justice approach can be guided by the Deferred Prosecution Agreement (DPA) or Non-Prosecution Agreement (NPA). Settlement through DPA or NPA is carried out within a certain period. Prosecutors and corporations can communicate and meet periodically to discuss the implementation of corporate internal improvements, and all agreements that have been agreed must be obeyed by the corporation. Improvement of perpetrators and victims is a priority. Thus, it should not provide negative sanctions such as closure or revocation of corporate licenses but sanctions that are improvements that will later be applied to the corporation.

Conclusions

1. The concept of the restorative justice approach in the criminal justice system in Indonesia has now been realized in a process called diversion and regulated in Law No. 11 of 2012 concerning the Juvenile Criminal System in CHAPTER II Article 6 through Article 15. Article 1 paragraph 7 explains that diversion is a diversion of the settlement of the case of children from criminal justice processes to the processes outside of criminal justice. The concept of a restorative justice approach can also be found in the 2003 UNCAC (United Nations Convention Against Corruption) Convention as ratified by Indonesia through Law No. 7 of 2006 concerning the United Nations Convention Against Corruption. The concept of restorative can be found in Article 26 and Article 37. In the restorative justice approach, the settlement process involves all interested parties who jointly agree on or determine how effective remedies for victims and perpetrators. In addition, it chooses sanctions by prioritizing recovery for victims.
2. Related to the concept of restorative justice in recovering state losses from corporations as perpetrators of corruption in Indonesia, there are no rules governing how to apply the restorative justice approach to the corporation. The restorative justice approach has many similarities with the method of resolving criminal acts involving corporations in the United States, the method is known as the Deferred Prosecution Agreement (DPA) and Non-Prosecution Agreements (NPA). In principle, DPA or NPA is a solution to the problem of corporate crime to agree to postpone or not prosecute provided that the corporation meets the conditions and requirements set forth and stated in the form of an agreement called the Deferred Prosecution Agreement or Non-Prosecution Agreement. In Indonesian laws and regulations, sanctions for the closure of all or part and revocation of licenses from corporations must be carried out with extreme caution because their effects are very broad. Therefore, the application of the restorative justice approach is very relevant to be applied in resolving corruption acts involving corporations with the main objective of optimizing the return of state losses from corporations as perpetrators of corruption in Indonesia.

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