The Settlement of Corruption Case Using Restorative Justice in Indonesia's Criminal Law

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***Abstract*— The settlement of corruption can be done using the restorative justice approach as assigned in the legislation. Corruption is called a crime that has caused damage in various aspects of the life of the people, nation, and state. The Constitutional Court (Mahkamah Konstitusi or "MK") in its decision referred to corruption as an "extraordinary crime," as recognized by the international community. The UN Secretary-General, when adopting the results of the United Nations Convention against Corruption (UNCAC), stated that corruption has various corrosive effects on society, undermining democracy and the rule of law. Causing human rights violations, distorting markets, eroding quality of life, enabling organized crime, terrorism, and other threats to human security.**

***Keywords:*Corruption, Restorative Justice, Indonesia's Criminal Law**

I. INTRODUCTION

Until now, there is still a tendency that all problems can only be resolved by law, even though the new law is meaningful if it is implemented and enforced in practice [1]. If the application of laws is not carried out integrally and is not followed by other systemic efforts, especially prosecution, then actions that are an integral part of legal development will be reduced in the efforts to eradicate corruption.

Therefore, it should be noted that the opinion of Barda Nawawi Arief, who said that the strategy in eradicating corruption. Not in eradicating corruption itself, but eradicating "causes and conditions that lead to corruption," eradicating corruption through enforcement of criminal law is only a symptomatic eradication while eradicating causality and the conditions that give rise to corruption are causative eradication [2].

Referring to the results of the United Nations Congress on Prevention of Crime and Criminal Justice, since the 5th Congress of 1975 in Geneva to the 11th Congress in Bangkok 18-25 April 2005, recommended that overcoming corruption must be taken with an integrated approach (comprehensive), both preventive, repressive and educative.

The more vigorous the perpetrators of criminal acts of corruption are presented to the court, the more widespread corruption is also appearing in various sectors of life. As the proverb says, grow, disappear and change, thus giving rise to the phrase "Corruption: it is easy to talk, but it is not easy to eradicate." Based on the conditions such an objective, it is necessary to think that the future response to corruption is not merely to prioritize criminal instruments, but also to empower other instruments, cross-sectorally, especially related to supervision and regulation, in addition to improving all sectors which have stimulated the occurrence of corruption. Structural and functional supervision must be carried out in an effective, efficient, and structured manner so that it does not provide opportunities for corruption. At the same time, regulations related to legislation hamper repressive action space and also provide space for multiple interpretations, so that it becomes an obstacle and can be utilized in legalizing the occurrence corruption, as well as the factors that have been stimulating corruption, have to be prioritized.

To deal with corruption in the future, which must be considered by the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or "**KPK**")is to settle out of court as stated by LilikMulyadi as a Judge at the Supreme Court [3]and RofinusHutauruk [4]in her dissertation, stating that corruption is an extraordinary crime as stipulated in the Rome Statute 1998 can be settled out of court. From the opinion of the 2 (two) legal experts, the researcher is in line with what was stated by them, considering that the best way is restorative justice. Settlement utilizing restorative justice is more profitable from the operational angle of the judicial process. If we see the case as carried out by Gayus Tambunan, impoverishment efforts by the Supreme Court through the Supreme Court ArtijoAlkostar are not proven, and the person concerned always goes in and out of the Correctional Facility by giving bribe to the correctional officers.

In Corruption, prevention is a priority by the KPK. If there are many corruption cases with decisions that are not following their actions (light sentences), then the best way is to resolve them by restorative means (Article 37 of Law No.7 of 2006).

Several factors cause the Indonesian justice system to become a champion (adjudicate the most cases of corruption). Namely the low morality of law enforcement officials, corrupt political culture, community apathy, criteria and recruitment process for law enforcement officials that are not yet fully transparent, and the low political will of the State in eradicating the judicial mafia.

Efforts to eradicate corruption when viewed from the perspective of legal instruments are quite sufficient. The parameters can be measured by the existence of Law Number 20 of 2001 in conjunction with Law Number 31 of 1999 concerning Corruption Crimes, and Law Number 30 of 2002 concerning Corruption Eradication Commission. However, corruption is still innumerable, so what must be considered in

the future in efforts to tackle corruption is to resolve using a restorative as mandated by Law Number 7 of 2006.

Settlement of state losses in the context of Law Number 31 of 1999 amended by Law Number 20 of 2001 has been used as an element of corruption in ex Article 2 and Article 3, strengthened with Article 4 so that it does not provide legal loopholes for settlement through restorative justice. Namely refunds worth money which is detrimental to the state should be interpreted as an entry point for the recovery of state losses (victims) by corruptors so that the perpetrators of corruption are sufficiently subject to conditional penalties. The attainment of restorative justice has been embraced in the Foreign Corrupt Practices Act (FCPA) 1997.Where corporations involved in bribery (such as the Monsanto and Innospec cases) under the FCPA are sufficiently subjected to administrative fines determined by the US Department of Justice and the US Capital Market Supervisory Agency (Securities Exchange Commission) and does not need to be sentenced to prison, this process is known as "injunction."

Integral and systemic steps in eradicating corruption, both repressive and preventive, need to be synergized. Considering that repressive measures alone in dealing with the characteristics and dimensions of corruption have not been tested for effectiveness, because criminal law is not an effective means in tackling corruption due to the scope of criminal law has limitations. Although according to Prof. Sudarto, giving sharp criminal sanctions can have the effect of general prevention. That is, the public will try to obey the law for fear of criminal sanctions in addition to the deterrent effect for convicted persons not to commit criminal acts again (special prevention) [5].

The policy to eradicate corruption is carried out with an integral-systemic policy, with the aim that there is integration between the crime prevention policy and the overall system development policy, not only the "treatment of offenders" by giving criminal sanctions against violators. But there must also be a treatment of society, is such treatment to the community by establishing a condition that can alienate criminal factors, which are factors that can make a person to do corruption by looking for the root of the problem and then try to eliminate it.[6].

II. METHODS

The method used in this research is the normative legal research method / descriptive analysis approach. Descriptive analytical means are describing and depicting something that is the object of research critically through qualitative analysis. Because what is intended to be studied is within the scope of jurisprudence, the normative approach includes legal principles, synchronization of laws and regulations, including efforts to find legal *inconcreto* [7].In this study, researchers focused on several cases concerning the settlement of corruption cases using restorative justice in Indonesian criminal law.

In normative juridical research, the use of the statute approach is mandatory. It is said for sure because logically, normative legal research is based on research conducted on existing legal materials. Although, for example, the research was conducted because it saw a legal vacuum, the legal vacuum can be known because there are legal norms that require further regulation in positive law.[8].

III. RESULTS AND DISCUSSION

The increase in uncontrolled criminal acts of corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. Widespread and systematic criminal acts of corruption are also violations of social rights and the economic rights of the community. Therefore, all corruption cases can no longer be classified as ordinary crimes, but have instead become extraordinary crimes. Likewise, in eradicating, it can no longer be done normally but requires extraordinary ways, So that law enforcement must be specific (*lexspecialis*) from general criminal acts.

It is difficult to deny, according to the legal system force Indonesia, judges are bound by what the prosecutor has charged. However, this does not mean that judges are shackled by matters prosecuted by prosecutors or, in other words, judges have no discretion in making decisions.

On the contrary, a judge can make a decision which, in consideration of the decision, contains the substance of specific legislation relating to his case that is not mentioned in the prosecutor's indictment without being deemed to "deviate" from the prosecutor's indictment. Thus, in making a decision, it is not merely to think of a narrow legalistic basis by basing the decision on just one legal provision. However, it is possible to use other legal provisions, for example, specific laws.

In Indonesia, combating corruption has also become a top priority of the government. Therefore, related to these efforts, the judiciary has a vital role. The judge needs his role in resolving corruption cases in court, not the other way around. Instead, the judge is taking counter-productive actions to eradicate corruption.

Broad implications such as the economic, social, political, and international stability caused by corruption crimes should be taken into consideration by judges before deciding on a corruption case. Judges must be sensitive and responsive to efforts to prevent and eradicate corruption. The perpetrators who are proven guilty must be severely punished to cause a deterrent effect, not otherwise given a mild law/ minimum, even released.

Mild/ minimal verdict in corruption cases is still found in judges' decisions. For example, in one case of corruption, the sentence handed down in the form of imprisonment for 4 (four) years and a fine of Rp200,000,000, subsidiary three months confinement. It is a minimum crime because the maximum is 20 years, even life-long, let alone conviction

accompanied by an order the defendant is detained. The prosecutor's demands were imprisonment for five years with an order that the defendant is detained and a fine of Rp200,000,000, six months subsidiary. Such actions should be punished severely. This proves that the judge is not sensitive to efforts to prevent and eradicate corruption because the criminal sentence imposed will not have a deterrent effect.

In another analysis, the decisions of judges which undermine the efforts to prevent and eradicate corruption, as mentioned above, are also indirectly conducive to efforts to increase the respect and fulfillment of human rights, especially in Indonesia.

Handling corruption cases requires judges to work extra hard and observant in order to produce an appropriate and fair decision. Once again, in the case of corruption the judge was emphasized not merely to be legalistic, but also to consider other aspects outside the law, for example, the essence of defendant's action, the effects they caused, whether or not a logical action, the principle of propriety, and others.

This research found that in a corruption case, for example, it was found that judges were too legalistic without considering the essence of the actions of the defendants. Did not also consider the consequences caused by the defendants. This is because judges are not sensitive to the country's efforts to eradicate corruption. It was found that if the actions of the defendants were based on Regional Regulations (Peraturan Daerah or "**Perda**"), the judge considered the act to be legal and not problematic. This means that the actions of the defendants are listed in the Perda. The problem is that the budget items in the Perda are prepared and approved by the defendants. The judge should consider logical or not budget lines and the amount of the proposed budget.

The situation is that PP No. 110 of 2000 is declared invalid while the new regulation is PP. 24 of 2004 also not yet valid. This shows that there has been a legal vacuum. The problem is when judges actually "go along" take advantage of this legal vacuum. Judges should use the principle of propriety to assess the actions of the defendants. Indeed, if the judge is solely based on the law without regard to the principles of propriety and considers the real actions and consequences, the defendants are acquitted.

Corruption is called a crime that has caused damage in various aspects of the life of the people, nation, and state. The Constitutional Court, in its decision, referred to corruption as "extraordinary freedom," as proposed by the international community. The UN Secretary-General, compiling the results of the UN Convention Against Corruption (UNCAC), states that corruption has many corrosive effects on society. Undermining democracy and legislation, causing human rights violations, distorting markets, eroding quality of life, can question the quality of life, can consider organized, terrorism, and other security against human security. The evil phenomenon is found in all countries, large and small, rich, and poor. The most dangerous effects are found in developing countries. Corruption disadvantages the poor disproportionately, because corruption diverts funds intended for development, undermines the government's ability to provide essential services, creates inequality and injustice, and diminishes the meaning of foreign aid and investment. Furthermore, corruption is referred to as the main obstacle in poverty alleviation and development.

In this study, researchers focused on handling corruption using the Legal System Theory. This is possible because in Friedman's theory, one of the elements is legal culture. For the people of Indonesia, settlement in this way is a cultural tradition of the eastern people by promoting peace (not by retaliation against perpetrators).

Mediation of penal/restorative justice is one way that can be taken by the government to be able to save state finances lost due to corrupt behavior. This provision is seen from the role of the Indonesian government in ratifying the 2003 Anti-Corruption Convention with Law Number 7 of 2006 stated in article 37 paragraph (1), paragraph (2), and paragraph (3) can be applied in Indonesia.

When observing at the verdicts of corruption cases that are the researchers' accreditation, it can be said that there is a "disparity" between one decision and another. This can also be used as a reference in this study concerning the decision of the Central Jakarta Corruption Court in the case of the Golkar Party Secretary-General IdrusMarham, who was only sentenced to 3 (three) years. Seeing these different decisions, the best way is by Restorative Justice, where the government does not feel burdened with the treatment of prisoners while in prison. This way should be applied by the Corruption Eradication Commission (KPK), given the many disparities in the decisions of corruption cases.

IV. Conclusions

Judges' decisions, in many cases, have not been based on accurate and appropriate material legal considerations. Judges' decisions are not obtained from a fair and transparent trial process in accordance with applicable formal legal rules. Judges' decisions, in general, have not used doctrines as a source of law or legal considerations. Although the use of doctrine has been found, it has not been used correctly and reasoned. The judge's decision does not yet reflect the respect for the protection and enforcement of the human rights of the perpetrators, victims, and the community.

In the process of resolving criminal acts through a restorative justice approach, violators are required to pay back the loss for the victim that can be reached through services or in the form of compensation money.

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