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Plea Bargaining Policy by the Prosecutor's Office in Order to Accelerate the Settlement of Corruption Crimes

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Abstract. *This research aims to*aims to find out, review and analyze the pleabargaining policy implemented by the Prosecutor's Office in handling corruption cases. Based on the study, it was concluded that the plea bargaining policy implemented by the Prosecutor's Office in handling corruption cases can be implemented if there is an agreement between the Public Prosecutor and the defendant or his legal counsel which results in an admission of guilt by the defendant, then the defendant has returned the state's financial losses and then the public prosecutor carries out a light prosecution / special minimum criminal threat and the judge decides the case as the lightest criminal threat / special minimum criminal threat. The impact of the implementation of the plea bargaining policy by the Prosecutor's Office in handling corruption cases is that it has a positive and effective impact in accelerating the return of state financial losses, in the trial process it can also be done quickly, the judge no longer conducts examinations in court (trial) and can immediately impose a sentence, so that plea bargaining is considered cost effective and reduces the burden on the Prosecutor's Office and the Court (cheap and fast). Thus, the Prosecutor's Office must create regulations or Attorney General's Regulations (PERJA) regarding the procedures for implementing plea bargaining, considering that the implementation of plea bargaining has not been regulated in Law Number 16 of 2004 in conjunction with Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia or in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

Keywords: *Corruption; Policy; Prosecutor's.*

1. Introduction

Indonesia is a state based on law (rechtsstaat), according to the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.[1]In addition to the term rechtsstaat is also known by another term is the rule of law. At this time Indonesia can be classified as a modern legal state or a legal state in a broad or material sense (materiele rechtsstaat) or another term as a welfare state (welfarestaat, verzorgingsstaat, sosiale rechtsstaat).[2]The law in Indonesia is basically aimed at realizing an orderly, peaceful and prosperous community life, as mandated in the preamble to the 1945 Constitution of the Republic of Indonesia.[3]One of the problems in Indonesia that is currently rampant and requires special solutions is Corruption. Corruption is one of the social diseases, the same as other types of crimes such as fraud, embezzlement, theft or other criminal acts that have existed since humans have been living in society on this earth. The main problem faced is the increase in corruption along with the progress of prosperity and technology, the more advanced the development of a nation, the more the need to encourage people to commit corruption in order to meet all the necessities of life that exist. The origins of the culture of corruption in Indonesia have essentially existed since long ago, when the regions of the Archipelago still recognized the feudal government system (absolute oligarchy), in simple terms, the government when the regions in the Archipelago still consisted of kingdoms led by the nobility, which was marked by three historical phases, namely the kingdom era, the colonial era, and the modern era as it is today.[4]

Legislation on the eradication of criminal acts of corruption is a justiciary means or vehicle that essentially cannot be separated from other steps or actions that are preventive and administrative in nature. The resolution of cases in a justiciary manner quickly and efficiently, which is based on legislation, is interrelated and cannot be separated from preventive/administrative steps in dealing with the eradication of criminal acts of corruption.[5]The Prosecutor's Office is one of the Law Enforcement Apparatus that can take legal action, as stated in Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office, which in the section considering explains that Indonesia's national goal is law enforcement and justice and as one of the bodies whose functions are related to the composition of the prosecutor's office according to Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number. 16 of 2004 concerning the

[1]The 1945 Constitution of the Republic of Indonesia.
[2]O. Notohanidjojo, The Meaning of the Legal State, Publishing Agency, Jakarta, 1970, p. 27.
[3]Sri Endah Wahyuningsih, The Urgency of Reforming Indonesian Material Criminal Law Based on the Values of Belief in the Almighty God, Journal of Legal Reform, VO 1 No. 1 January -April 2014, p. 17.
[4]Muhammad Yamin, 2012, Special Criminal Acts, Pustaka Setia, Bandung, pp. 193-194.
[5]Sri Sumarwani, 2012, History of Corruption Eradication Legislation, UPTD Undip Press, Semarang, p. 2.

Prosecutor's Office of the Republic of Indonesia consists of the Attorney General's Office, the High Prosecutor's Office, and the District Prosecutor's Office. Specifically, the Prosecutor's Office can conduct investigations, inquiries and prosecutions of corruption crimes, this is stated in Article 30 paragraph (1) letter d of the Republic of Indonesia Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, which states: The duties and authorities of the Prosecutor are to "conduct investigations into certain criminal acts based on the law".

As one of the state law enforcement institutions, in 2024 the Attorney General's Office investigated and uncovered various major corruption cases in the country. Most recently, the Attorney General's Office investigated alleged corruption in the tin trade system at PT Timah Tbk which caused the state to lose Rp271 trillion.[6]The Investigation Team of the Deputy Attorney General's Investigation Directorate for Special Crimes or Jampidsus of the AGO has named five new suspects in the alleged tin corruption case. The five suspects include HL as the Beneficial Owner of PT TIN or PO PT TIN, FL as marketing of PT TIN, SW as the Head of the ESDM Office of the Bangka Belitung Islands Province for the 2015-March 2019 period, PN as the Acting Head of the ESDM Office of the Bangka Belitung Province for the March 2019 period, and AS as the Acting Head of the ESDM Office of the Bangka Belitung Islands. The role of suspects SW, BN, and AS as the Head of the ESDM Office of the Bangka Belitung Islands Province has intentionally issued and approved the Work Plan and Budget (RKAB) of the smelter companies PT RBT, PT SBS, PT SIP, PT TIN, and CV VIP. Previously, the AGO had named 16 suspects in the PT Timah corruption case. Two of the suspects include the husband of actress Sandra Dewi, Harvey Moeis, and Helena Lim. Therefore, as of Friday, April 26, 2024, the Attorney General's Office has named 21 suspects in this case. In addition to the above cases, the Attorney General's Office has also handled the BTS corruption case by Kominfo which is estimated to have cost the state around IDR 8 trillion from the IDR 10 trillion budget. This case has also involved 5 suspects including the Minister of Communication and Information. So far, the BTS 4G case has dragged 16 suspects in corruption and money laundering cases. The BTS project corruption case dragged former Minister of Communication and Information Johnny G. Plate and Bakti President Director Anang Latif. Of the total suspects, several have entered the prosecution stage with the threat of sentences ranging from 6 to 18 years in prison. The construction of the BTS 4G infrastructure which was planned to be completed in 2020-2021 with a target of 4,200 tower units, only 958 units were realized after an initial investigation was carried out in 2022.[7]

[6]https://metro.tempo.co/read/1871834/5-kasus-korupsi-kelas-kakap-yang-pernah-ditangani-kejaksaan-agung, accessed on September 22, 2024.
[7]https://www.cnbcindonesia.com/research/20240319061435-128-523069/daftar-korupsi-ditangani-kejagung-kerugian-negara-puluhan-triliun, accessed on November 20, 2024, at 13.00 WB.

If we look at the cases handled by the Attorney General's Office, the state financial losses incurred are fantastic, if they can be returned to the state, the losses can be used for development and/or people's welfare. So far, the Attorney General's Office in winning corruption cases still prioritizes legal certainty over legal benefits, so that only criminalization is considered to be able to create a deterrent effect for perpetrators of corruption. In addition to enforcing the law to achieve legal certainty, other approaches can be taken, so that state financial losses can be returned and then perpetrators of corruption can also be charged with criminalization. One approach that has begun to be applied in handling corruption cases is plea bargaining, which is an agreement between the public prosecutor and the defendant to reduce the sentence in exchange for an admission of guilt or cooperation in providing information. Plea bargaining is expected to speed up the trial process and reduce the burden of cases both in the Prosecutor's Office and in the Court, where cases are piling up. In the context of criminal law in Indonesia, plea bargaining is regulated in Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia and Attorney General Regulation No. 15 of 2020 concerning Handling of Corruption Cases. However, the implementation of this policy still faces various challenges, including resistance from the public and legal circles who are concerned that plea bargaining can reduce the deterrent effect for perpetrators of corruption.

Based on the description above, this study aims to determine, review and analyze the pleabargaining policy implemented by the Prosecutor's Office in handling corruption cases and to determine, review and analyze the impact of the implementation of the plea bargaining policy implemented by the Prosecutor's Office on the return of state financial losses in corruption cases.

2. Research Methods

The research method consists of: the approach method, namely using the normative legal research method, the author's research specifications use descriptive analytical research, the data collection method uses primary data and secondary data supported by primary legal materials; secondary legal materials; and tertiary legal materials, and the data analysis method uses qualitative analysis.

3. Results and Discussion

3.1. Plea Bargaining Policy Implemented by the Prosecutor's Office in Handling Corruption Cases

Given that corruption has unique characteristics and dimensions, its resolution must also use a special method. Efforts to overcome corruption that occurs have indeed been carried out, both by using a criminal law enforcement approach, namely by prioritizing the imposition of severe criminal sanctions, as well as by prioritizing an administrative approach, namely various supervisions in each agency scope. However, it cannot be denied that this approach has not been able

to resolve and/or complete corruption.[8]In order to achieve a more effective goal of preventing and eradicating criminal acts of corruption, this Law contains criminal provisions that are different from the previous Law, namely determining the threat of a special minimum sentence, a higher fine, and the threat of the death penalty which is an aggravation of the sentence.

In addition, this law also contains prison sentences for perpetrators of corruption who cannot pay additional penalties in the form of compensation for state losses.[9]The handling of corruption cases carried out by public prosecutors has so far focused on criminalization or legal certainty, but over time it has begun to shift to recovering losses caused by the Defendant or on benefits. The Attorney General's Office in order to accelerate the return of state financial losses has issued PERJA Number 19 of 2020 concerning the settlement of replacement money decided by the court based on Law Number 3 of 1971 concerning the eradication of corruption, in addition there is also the Regulation of the Attorney General of the Republic of Indonesia which regulates the guidelines for the prosecution of Article 2 and Article 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the eradication of corruption, but this is still not effective in terms of returning state financial losses.

Several regulations on efforts to overcome corruption crimes have not yet succeeded, therefore the public prosecutor in terms of accelerating the handling of corruption crimes, especially to return state financial losses, uses Plea Bargaining. Plea bargaining is an agreement between the Public Prosecutor and the defendant or his Legal Counsel which results in an admission of guilt by the defendant. The Public Prosecutor agrees to give a lighter charge (to get a lighter sentence) compared to taking a trial mechanism that may be detrimental to the defendant because of the possibility of getting a heavier sentence. Plea bargaining is interpreted as a negotiation process in which the Public Prosecutor offers the defendant some leniency to get a guilty plea.[10]The plea bargaining process carried out by the public prosecutor related to the handling of non-corruption cases, especially the return of state financial losses, can be started at the time of the second stage of transfer from the investigator to the public prosecutor, or during the trial process, this is proven by the return of state financial losses, before the return of state financial losses is carried out, the defendant/defendant's family/legal counsel with the public prosecutor have made an agreement, whether the case will continue to the court, or if the case has been entered into the court, then the defendant will be charged with what article or charge? (is it the lightest or how?), after there is an agreement, it is then notified to the panel of judges

[8]Romli Atmasasmita, Criminal Justice System, Perspective of Existentialism and Abolitionism, Binacipta, Bandung, 2016, p. 17

[9]Elias Zadrack Leasa, The Existence of the Death Penalty Threat in Corruption Crimes During the Covid-19 Pandemic, Jurnal Belo, Vol. 6 No. 1 August 2020, accessed on December 8, 2024, pp. 73-88

[10]Law Number 11 of 2021 concerning Judges' Considerations in Criminal Decisions

handling the corruption case, so that in the process of proof there is no need for a long trial, because the defendant has admitted his actions and the defendant has returned the state financial losses.

The concept of plea bargaining is also almost similar to the termination of prosecution based on restorative justice as regulated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the termination of prosecution based on restorative justice, but the regulation cannot be used as a basis for the implementation of plea bargaining. If plea bargaining is successful, it can reduce the number of pending cases, appeal cases and help speed up the resolution of criminal cases. This benefits the Prosecutor because the Prosecutor can withhold charges and sentences against the defendant. At the same time, this benefits the defendant by not being sentenced to a heavy sentence. However, the Court must be fair between the interests of the wider community and the interests of the defendant. The sentence imposed, although lower than the threat of punishment stated in the Criminal Code, the Court must pay attention to the principle of proportionality in sentencing the defendant.[11]

In the implementation of plea bargaining, there have been advantages and disadvantages, the disadvantages include the absence of definite regulations for public prosecutors to apply plea bargaining in the return of state financial losses in corruption cases, the potential for incorrect information to emerge, thus creating a stigma that this concept favors the accused, preventing victims from giving testimony and raising concerns that confessions are more credible if the evidence of the crime is very minimal. The advantages include saving state finances, saving time and trial costs because it allows for a quick trial.

3.2. The Impact of the Implementation of the Plea Bargaining Policy Implemented by the Prosecutor's Office on the Return of State Financial Losses in Corruption Cases

The effort to eradicate corruption in Indonesia has undergone a long journey and is inseparable from the dynamics of developments around it. Along with the demands of the community who want a clean state life, political needs, demands of the business world, and even international pressure, as well as various other interests.[12]Moreover, in the era of globalization, the forms of crime have changed. Crime is no longer simple in form and does not stand alone. Crime now tends to be more in the form of several crimes committed at once at the same time and place. Like corruption, which is even done openly, even if it has become a national issue, there is no movement in handling it and it seems to be just ignored.[13]As crimes committed by highly educated people, the cunning and greedy nature of

[11]Ibid.

[12]Agus Wibowo, et al., Basic Knowledge of Anti-Corruption and Integrity, Media Sains Indonesia, Bandung, 2022, p. 21.

[13]Baharuddin Lopa, Corruption Crimes and Law Enforcement, Kompas, Jakarta, 2002, p. 7.

money is always a temptation for people with weak faith. People will not realize that the crime was committed by people with high social status. Society sees people with high social status, will never steal or embezzle money because they will not be short of money, and it turns out that such an assumption is very wrong. Like corruption committed by people with high social status, and this crime is called white collar crime (white collar crime) which by Hazel Croall in his book White Collar Crime (page 19), formulated White Collar Crime is defined as the abuse of a legitimate occupational role which is regulated by law. Furthermore, it is said: the term white collar crime with fraud, embezzlement and other offenses associates with high status employees.[14] Corruption has indeed become ingrained in the culture of Indonesian society, which was originally only a small-scale corruption, has occurred in all areas of governance, be it executive, legislative, or judiciary, which is widely known as bureaucratic corruption, namely corruption carried out by people who are holding state institutional power, be it executive, legislative or judiciary, and even educational institutions have been infected with this corruption virus.

The negative impact or effect of corruption is the occurrence of state financial losses. The allocation of state finances which was originally to improve the welfare of the people, because of corruption is only enjoyed by a handful of people. According to Law Number 17 of 2003 concerning State Finance, what is meant by state finances is: "All rights and obligations of the state that can be valued in money including policies in the fields of fiscal, monetary, state management, and other bodies in the framework of state administration. In addition, something in the form of goods or money that can be owned by the state in connection with the implementation of its rights and obligations". Part of economics that studies government activities in the economic field, especially regarding its revenues and expenditures in the economic field. State finance is a study of the influence of the state revenue and expenditure budget on the economy, especially its effects on achieving economic activity goals, such as economic growth, price stability, more equitable distribution of income and also increased efficiency and creation of job opportunities.

State finances are all activities carried out by the government to collect sources of funds for the benefit of the state, the use of funds collected from various levies and taxes originating from the people, and used to achieve goals, namely the welfare and prosperity of the people. Harming state finances is an element of the crime of corruption and unlawful acts that result in a shortage of state assets, either in the form of money, securities, or goods. Of course, because of the loss of state finances, it has hampered the state from improving the welfare of its people. The welfare of this state can be seen from the number of corruption cases in a country. The lower the cases of corruption in the country, the more prosperous the country's potential is because development in the country is carried out

[14]Hazel Croall in Baharuddin Lopa, op.cit., p. 35.

effectively and efficiently. Basically, state financial losses can occur in two stages, namely at the stage where funds will enter the state treasury and at the stage where funds will leave the state treasury. At the stage where funds will enter the state treasury, losses can occur through tax conspiracies, fine conspiracies, conspiracies to return state losses and smuggling, while at the stage where funds will leave the state treasury, losses occur due to mark-ups, corruption, implementation of activities that are not in accordance with the program, and others. Actions that can harm the country's economy are criminal violations of regulations issued by the government in its area of authority. This completely reprehensible practice, in the current portrait of Indonesia, even until the issuance of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, is not decreasing or diminishing, but rather continues to exist, even increasingly varied and growing towards a presence of significant increase, both measured in terms of quantity and quality. Corruption today has almost certainly become a cosmopolitan lifestyle choice, without shame, this is clearly very terrible and will certainly threaten the existence of the nation and state.

In fact, both when the eradication of corruption still uses the evidentiary system as regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) and uses a limited and balanced reverse evidentiary system as regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, it turns out to be ineffective because the process takes a long time, is complicated, and its level of success is difficult to predict.As is known, the main consequence of corruption is state financial loss. It is clear that state money that is corrupted by corruptors is people's money, which should be used for the benefit of the people, but is only enjoyed by a handful of corrupt people, their families and cronies. The theory of restitution of state financial losses is a legal theory that explains the legal system for restitution of state financial losses based on the principles of social justice that provide the ability, duties and responsibilities to state institutions and legal institutions to provide protection and opportunities to individuals in society in achieving prosperity. This theory is based on the basic principle of "give to the state what is the state's right". The state's rights contain state obligations which are the rights of individual members of society, so that this principle is equal and in line with the principle of "give to the people what is the people's right".

The implementation of the plea bargaining policy by the Prosecutor's Office in handling corruption cases has several weaknesses, including in terms of legal substance: there are no provisions regarding the plea bargaining system in special legislation; in terms of legal structure: prosecutors tend to use a positivistic paradigm in resolving corruption cases, lack of integrity of Prosecutor's Office personnel, lack of coordination with other law enforcers, and in terms of legal culture: lack of public awareness to participate in eradicating criminal acts as reporters or witnesses. Although there is a criminal instrument in the form of payment of replacement money, it is still an additional penalty. It is stated in

Article 18 paragraph (1) letter b of Law Number 31 of 1999 as amended by Law Number 20 of 2001, that: "In addition to additional penalties as referred to in Criminal Law, additional penalties are payments of replacement money in an amount that is at most equal to the assets obtained from corruption". However, the Public Prosecutor is not obliged to prosecute and the Judge is not obliged to decide on a penalty of payment of replacement penalties to the perpetrator of corruption. In its implementation, efforts to recover state losses as expected by Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning criminal acts of corruption through criminal law instruments are actually influenced by 3 (three) factors, namely:

1) The existence of substitute punishments listed in the judge's decision then becomes a loophole for corruption convicts to escape payment of substitute money;

2) The limitations of the executing prosecutor in carrying out the execution because the convict prefers to replace it with imprisonment;

3) The inability of investigators to trace the whereabouts of the convict's assets which are strongly suspected to be the result of criminal acts of corruption.

Replacement money is basically intended to replace the proceeds of corruption that may have been enjoyed by corruptors, either all or part. The money that can be saved will then be used for the welfare of the people. Looking at the legal products that have been formed, namely Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001 concerning the eradication of corruption, it has clearly regulated the existence of replacement money, but in fact, its enforcement has not been optimal or ineffective. Even judges handling corruption cases do not impose replacement money in their decisions. The imposition of imprisonment, fines and additional replacement money against perpetrators of corruption in the form of bribery and gratification is correct, and in accordance with the purpose of punishment, namely to withdraw money from corruption, but in its implementation or in its law enforcement it cannot be said to be effective. The use of civil instruments to recover state financial losses is also not easy and cannot be said to be effective, including a long time and considerable costs, so it can be said that civil lawsuits against suspects, defendants or convicts referred to in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning corruption crimes are standard or even conventional efforts, and are not at all "extraordinary ways" or "special ways" to resolve compensation payments in corruption cases. Given the difficult civil process, it can be estimated that efforts to recover state financial losses are difficult to achieve success. If this failure occurs frequently, it will lead to a wrong assessment, especially against the State Attorney because it is considered to have failed to carry out the order of the law. With standard or conventional criminal and civil law instruments as regulated by Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Corruption, efforts to return state financial losses will not be effective, because

they encounter many obstacles, so that for types of extra ordinary crime cases such as corruption cases, new instruments or breakthroughs are needed to return state financial losses due to corruption committed by the Suspect/Defendant, one of which is by implementing plea bargaining.

That basically plea bargaining has actually been practiced by public prosecutors, one example of a mega corruption case where the money was returned was in the corruption case of providing 4G Base Transceiver Station (BTS) infrastructure, AQ handed over a bribe of USD 2,021,000 to the Prosecutor's Office and the money was handed over through the lawyers of the two suspects on November 16, 2023.[15]And because he had returned the state's financial losses, the judge sentenced him to 2.5 years in prison.[16]In the Draft Law on Criminal Procedure, it has been regulated about a kind of plea bargaining regulated in Article 199 of the RUUKUHAP, the procedural law is when the public prosecutor reads the indictment, then the defendant admits all the actions charged and pleads guilty to committing a crime with a criminal threat of no more than 7 (seven) years, the public prosecutor can refer the case to a short examination trial. However, the judge can also reject the defendant's confession if the judge doubts the truth of the defendant's confession. With the presence of the Special Path mechanism in the RUUKUHAP, the trial process which takes a long time and is long-winded will take place quickly, so that it becomes effective and efficient.

4. Conclusion

The plea bargaining policy implemented by the Prosecutor's Office in handling corruption cases can be implemented if there is an agreement between the Public Prosecutor and the defendant or his legal counsel which results in an admission of guilt by the defendant, then the defendant has returned the state's financial losses and then the public prosecutor carries out a light prosecution/special minimum criminal threat and the judge decides the case as the lightest criminal threat/special minimum criminal threat.

The impact of the implementation of the plea bargaining policy by the Prosecutor's Office in handling corruption cases has a positive and effective impact in the context of accelerating the return of state financial losses, in the trial process it can also be carried out quickly, judges no longer conduct examinations in court (trial) and can immediately impose sentences, so that plea bargaining is considered cost effective and reduces the burden on the Prosecutor's Office and the Court (cheap and fast).

Thus, the hope for the future is for the Prosecutor's Office to create regulations or Attorney General's Regulations (PERJA) regarding the procedures for

[15]https://www.google.com/search?client=firefoxbd&q=example+of+mega+corruption+cases+whose+money+was+returned, accessed on December 1, 2024, at 19.30 WIB.
[16]https://news.detik.com/berita/d-7400736/vonis-ringan-eks-member-bpk-sebab-belikin-rp-40-m-dan-sopan.

implementing plea bargaining, considering that the implementation of plea bargaining has not been regulated in Law Number 16 of 2004 in conjunction with Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia or in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. It is necessary to hold special training for prosecutors regarding the implementation of effective and ethical plea bargaining, so that they can consider all legal and moral aspects in every agreement made. As well as conducting socialization about Plea bargaining to the entire community with the aim that the community participates in carrying out strict supervision and can help ensure that this Plea bargaining policy is not misused and remains focused on the main objective, namely eradicating corruption.

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