

## Minimum Criminal Prosecution Specifically in Cases of Corruption by the Prosecutor's Office

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**Abstract.** *This research aims to aims to find out and analyze the implementation of special minimum criminal prosecution in corruption cases by the Prosecutor's Office, to find out and analyze the obstacles and solutions to the implementation of special minimum criminal prosecution in corruption cases by the Prosecutor's Office. Based on the study, it was concluded that the special minimum criminal prosecution in corruption cases at the Hulu Sungai Selatan District Attorney's Office was carried out based on the Attorney General's Guidelines Number 1 of 2019, with the condition that the suspect/defendant returns 100% of the state's financial losses. However, the obstacle faced is that many defendants are unable to return the losses, so that special minimum criminal prosecution cannot be carried out. Although the return of losses allows for minimal criminal charges, the case title procedure at the High Prosecutor's Office is still required in some cases. However, with the change in policy through the latest Circular, a case title at the High Prosecutor's Office is no longer required, so that special minimum criminal prosecution can be implemented without any obstacles.*

**Keywords:** *Corruption; Crime; Prosecution.*

### 1. Introduction

Indonesia is a state of law (*rechtsstaat*), according to the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In addition to the term *rechtsstaat*, it is also known by another term, namely the rule of law. At this time, Indonesia can be classified as a modern state of law or a state of law in a broad or material sense (*materiele rechtsstaat*) or another term as a welfare state (*welfarestaat*, *verzorgingsstaat*, *sosiale rechtsstaat*). In addition to the provisions above, in the opening of the 1945 Constitution of the Republic of Indonesia, paragraph IV contains the objectives of the Indonesian state, namely (a) protecting all Indonesian people, (2) protecting all Indonesian blood, (3)

advancing general welfare, (4) improving the life of the nation, and (5) implementing world order based on independence, eternal peace and social justice. Corruption in Indonesia has been widespread, not only causing losses to state finances, but has also been a violation of the social and economic rights of society at large, so that corruption needs to be classified as an extraordinary crime.<sup>1</sup>Regulations regarding criminal acts of corruption are contained in Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the eradication of criminal acts of corruption.<sup>2</sup>while the procedural law still refers to the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP).<sup>3</sup>Law enforcement officers who can take action related to corruption cases are the Indonesian National Police as stipulated in Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police, the Corruption Eradication Commission (KPK) as regulated in Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission and the Attorney General's Office of the Republic of Indonesia as regulated in Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

For example, the prosecutor conducted an investigation, inquiry and prosecution in a case of alleged corruption in the tin trade system at PT Timah Tbk which caused the state to suffer losses amounting to Rp 271 trillion.<sup>4</sup>The Asabri corruption case that has dragged in a number of big names in the capital market. The alleged corruption scandal case that allegedly cost the state up to Rp 22 trillion.<sup>5</sup>In addition to that, in the trial of alleged corruption at PT Asuransi Jiwasraya (Persero), the former Finance Director of Jiwasraya, Hary Prasetyo, was sentenced to life imprisonment by the Public Prosecutor (JPU).<sup>6</sup>However, there are also minimum demands, including the alleged corruption case regarding the procurement of Information Technology equipment in 2022, which was

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<sup>1</sup>Arianus Harefa, Problems of Enforcing the Death Penalty in Corruption Crimes from the Perspective of Human Rights Protection, *Jurnal Panah Keadilan*, Vol. 1, Number 2, August 2022, p. 99-117

<sup>2</sup>Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning criminal acts of corruption.

<sup>3</sup>Law No. 8 of 1981 concerning the Criminal Procedure Code.

<sup>4</sup> <https://www.tempo.co/Hukum/5-case-kokerja-besar-kakap-yang-pernah-ditangani-kejaksaan-agung-55810>, accessed on Monday, December 8, 2024, at 20.00 WIB.

<sup>5</sup> <https://www.cnbcindonesia.com/research/20240319061435-128-523069/register-kokerja-ditangani-keagang-kerugian-negara-puluhan-triliun>, accessed on Monday, December 8, 2024, at 20.30 WIB.

<sup>6</sup> [https://www.warna.com/bisnis/2020/09/24/130637/tersangka-kas-jiwasraya-dituntut-penjara-seumur-live-netizen-bereaksi#goog\\_rewarded](https://www.warna.com/bisnis/2020/09/24/130637/tersangka-kas-jiwasraya-dituntut-penjara-seumur-live-netizen-bereaksi#goog_rewarded), accessed on Monday, December 8, 2024, at 20.45 WIB,

demanded by the Karanganyar prosecutor to be sentenced to 1 year and 6 months in prison.<sup>7</sup>

The implementation of prosecution in corruption cases does vary and often causes problems for both the defendant, the defendant's family or the community who see the case, and why there is a difference in prosecution/disparity in sentencing in corruption cases. Based on this background, in this case the author intends to conduct research in order to compile a thesis entitled "Minimum Sentencing Prosecution Specifically in Corruption Cases by the Prosecutor's Office"

Based on the description above, this study aims to determine and analyze the implementation of special minimum criminal prosecution in corruption cases by the Prosecutor's Office, to determine and analyze the obstacles and solutions to the implementation of special minimum criminal prosecution in corruption cases by the Prosecutor's Office.

## **2. Research Methods**

The research method consists of: the approach method, namely using the sociological 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. Regulations on the Implementation of Minimum Special Sentences in Corruption Cases**

Prosecution of corruption crimes is carried out by two institutions, namely the Prosecutor's Office and the Corruption Eradication Commission. The Prosecutor's Office is basically a prosecution institution established by law to carry out state authority in the field of prosecution of all general crimes or special crimes regulated in laws and regulations.<sup>8</sup>The authority of the Prosecutor's Office in carrying out prosecutions is generally guided by criminal procedural law as regulated in the Criminal Procedure Code. However, there are special rules regulated in laws and regulations as additional provisions in the Criminal Procedure Code, for example in Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

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<sup>7</sup> <https://soloraya.solopos.com/kas-kokerja-tik-pegawai-disdikbud-karanganyar-dituntut-15-tahun-penjara-1745474>, accessed on Monday, December 8, 2024, at 20.50 WIB,

<sup>8</sup>Indonesia, Law on the Prosecutor's Office of the Republic of Indonesia, Law No. 16, LN No. 67, 2004, Supplement to LN No. 4401, Article 2 paragraph (1)

The process of prosecuting corruption crimes in the District Attorney's Office is basically the same as general crimes because the reference is criminal procedure law. Basically, the examination of corruption crimes in court is the same as the examination of general crimes, but in the examination of corruption crimes there are slight deviations, especially in terms of evidence. In the general explanation of Law Number 20 of 2001, it is stated that this law adopts a reverse burden of proof which is limited or balanced. Article 37 of Law Number 20 of 2001 stipulates:

- 1) The accused has the right to prove that he did not commit a criminal act of corruption.
- 2) If the accused can prove that he did not commit a crime of corruption, then the court will use this evidence as a basis for declaring that the charges are not proven.

This provision is a deviation from the Criminal Procedure Code which stipulates that the prosecutor is obliged to prove that a crime has been committed, not the defendant. The prosecutor as public prosecutor is still obliged to prove his charges. This provision is a limited reverse proof because the prosecutor is still obliged to prove his charges. Article 37A of Law Number 20 of 2001 stipulates:

- 1) The accused is obliged to provide information about all his assets and the assets of his wife or husband, children and the assets of any person or corporation suspected of having a connection with the case being charged.
- 2) If the accused cannot prove that his wealth is not in balance with his income or the source of the increase in his wealth, then the information as referred to in paragraph (1) is used to strengthen the existing evidence that the accused has committed a criminal act of corruption.

If the defendant cannot prove that the wealth is balanced with his income or the source of additional wealth, then the information is used to strengthen the existing evidence that the defendant has committed a criminal act of corruption. Corruption cases according to Article 29 of Law Number 46 of 2009 concerning the Corruption Court must be examined, tried, and decided by the first-level Corruption Court within a maximum of 120 (one hundred and twenty) working days from the date the case was transferred to the Corruption Court. The process of determining the punishment for a defendant must go through the stages that have been determined in the Criminal Procedure Code (KUHP) by fulfilling all the elements of the crime that have been determined.<sup>9</sup>

A special minimum sentence is the shortest criminal sanction that can be imposed by a judge on a defendant, which is regulated by a special law (a law

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<sup>9</sup>Ibid

outside the Criminal Code).<sup>10</sup>This tendency towards special minimum criminal sanctions is more due to the reality that many judges' decisions are still not commensurate with the threat of special maximum criminal sanctions that have been stipulated in a particular crime formulation.<sup>11</sup>The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to also containing benefits for the parties concerned so that the judge's consideration must be addressed carefully, properly and precisely.

In its implementation, the prosecution of corruption cases at the Hulu Sungai Selatan District Attorney's Office is guided by the Attorney General's Guidelines Number 1 of 2019 concerning Criminal Prosecutions in Corruption Cases. Special Minimum Sentencing Prosecution can be carried out if the suspect/defendant returns all/100% (one hundred percent) of the State Financial Losses, based on the Attorney General's Guidelines Number 1 of 2019 concerning Criminal Prosecutions in Corruption Cases, then submits a plan of prosecution to the Head of the Hulu Sungai Selatan District Attorney's Office by including reasons and mitigating factors. For example, if you want to carry out a Special Minimum Criminal Prosecution with Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, a minimum sentence of 1 (one) year, then a special minimum demand can be submitted, namely for 1 (one) year. A special minimum demand has been carried out at the Hulu Sungai Selatan District Attorney's Office, in a corruption case on behalf of the defendant M. Zakir Maulidi and the defendant Eko Hendra Wijaya, at the time of the case where the defendant made a return of State Financial Losses of 100% (one hundred percent).<sup>12</sup>However, the majority cannot be given a special minimum demand because the majority of suspects/defendants cannot return the State Financial Losses.

In the explanation by the respondent that the Hulu Sungai Selatan District Attorney's Office has implemented a special minimum demand, in the case of a corruption case on behalf of the defendant M. Zakir Maulidi and the defendant Eko Hendra Wijaya, at the time of the case where the defendant made a return of 100% (one hundred percent) of the State Financial Loss, we wish to file a criminal charge that proves the subsidiary Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law

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<sup>10</sup> Denny Latumaerissa, APPLICATION OF MINIMUM SPECIAL CRIMINAL SANCTIONS FOR NARCOTIC CRIMES (Study of Decision Number 111/Pid.Sus/2017/PN Sag), article: Jurnal Belo Volume V No. 1 August 2019-January 2020, accessed on January 9, 2025, p. 69.

<sup>11</sup> M. Sholehuddin, Special Minimum Criminal Sanctions in the Theory and Practice of Legislation, Jurnal Judiciary Volume 5 Edition 1 January 2013, p. 20.

<sup>12</sup> Interview Results by Widodo Hadi Pratama, SH, MH, as Assistant Prosecutor at the Hulu Sungai Selatan District Attorney's Office.

Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, with a minimum sentence of 1 (one) year, at that time the provisions based on the Letter of the Director of Prosecution Number: B-567/F.3/Ft.1/03/2012 dated March 19, 2012 were still in effect which in essence indicated that if evidence was to be provided on the subsidiary article, a case title was needed at Local High Prosecutor's Office. When the Hulu Sungai Selatan District Attorney's Office conducted a case title in the Corruption Crime case on behalf of the Defendant M. Zakir Maulidi and the Defendant Eko Hendra Wijaya at the South Kalimantan High Prosecutor's Office, a lawsuit was filed under Article 3 of 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, with a minimum sentence of 1 (one) year, however, the leader in this case the Head of the High Prosecutor's Office gave directions to make a lawsuit for 1.5 years. Currently, if you want to file a criminal complaint that proves subsidiary charges, then it is no longer necessary to hold a case title at the local High Prosecutor's Office, this is because since the issuance of Circular Letter Number B4016 / F.3 / Ft.1 / 11/2023 concerning Control of Case Handling which in essence enforces the Circular Letter of the Attorney General of the Republic of Indonesia Number: SE - 001 / A / JA / 02/2019 concerning Control of Control of Handling of Corruption Crime Cases in letter E which stipulates: a) The District Prosecutor's Office handles corruption cases whose resolution is the responsibility of the head of the district prosecutor's office; b) The high prosecutor's office handles corruption cases whose resolution is the responsibility of the head of the high prosecutor's office, and the provisions of the Letter of the Director of Prosecution Number: B-568 / F.3 / Ft.1 / 03/2012 dated March 19, 2012 no longer apply.<sup>13</sup>

### **3.2. Obstacles and Solutions to the Implementation of Minimum Sentence Prosecution Specifically in Corruption Cases**

In the effort to resolve corruption cases, the prosecutor's office often faces obstacles both from within and outside the prosecutor's office. These obstacles exist in line with the situation and conditions of the prosecutor's office in eradicating corruption cases in each region. In handling investigation cases, the investigating prosecutor often faces obstacles during the process of investigating corruption cases. These obstacles arise because the investigation of corruption cases in the regions is not resolved in the usual way but externally. That the handling of corruption cases is one of those that is difficult to prove so that in handling it, investigators are often required to carry out *pro yustisi* activities or collect more evidence than handling ordinary crimes, in this case including:

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<sup>13</sup>Interview Results by Muhammad Jaka Trisnadi, SH, as the Primary Prosecutor at the Hulu Sungai Selatan District Attorney's Office.

- 1) The witness was uncooperative in his willingness to attend even though he had been properly and officially summoned, and gave convoluted information.
- 2) Searching for expert witnesses Where often more than one expert is needed in one investigative activity and it is important to know that sometimes for qualified experts it often costs more, whereas this is very important considering that most suspects/defendants in corruption cases are wealthy people who are clearly able to pay qualified experts to refute allegations/accusations.
- 3) The need for Investigating Prosecutors to obtain evidence often requires Investigating Prosecutors to travel outside the city or even outside the province, which in itself requires more funding than the current costs.

Some of these obstacles, theoretically can be analyzed that the problem of obstacles in handling and resolving corruption cases touches on the stages in law enforcement, namely the formulative stage where there are technical regulations and limit the movement of prosecutors in maximizing their function in the process of handling and resolving corruption cases and legal regulations related to SOPs that sometimes do not match the conditions in the field. Likewise in law enforcement at the application stage, where the function of implementing the law is still low because supervision of the embryos of corruption crimes is often detected too late, this is the result of the weak function of supervision in various sectors that have the potential for corruption. The final stage which is part of law enforcement is the execution stage, namely the stage of implementing criminal law concretely by criminal enforcement officers, this is closely related to the still weak human resources of the prosecutors themselves which must be improved, both in terms of improving existing personnel and improving human resource standards in the initial recruitment of prospective prosecutors.

The obstacles that occur in handling corruption cases to eradicate corruption as described above can also be studied further. Where the obstacles that occur at the investigation stage include 2 (two) factors that are things that also influence the emergence of legal problems in law enforcement, namely the law enforcement party. Where the number of personnel is not balanced with the high workload in the sense that the cases that must be handled are not small, because the Prosecutor's Office does not only handle corruption cases but also has to handle other criminal cases. Although corruption is a case that must be prioritized so that additional personnel are needed who meet the capacity and professionalism in handling corruption cases, especially with the hope of being able to work with good performance. In addition to factors from within the Prosecutor's Office itself, still in the investigation stage there are also obstacles from outside the agency, namely the lack of community participation that supports the eradication of corruption, both in terms of the behavior patterns of the Community itself and in the response and form of cooperation and



participation with law enforcement officers in this case between the ranks of the Prosecutor's Office and the local community. Even in certain cases we see that the Community itself supports the occurrence of Corruption as a medium to facilitate achieving certain goals. In addition, the need for data is accompanied by a lack of transparency from related parties so that the investigation process is sometimes not achieved in accordance with applicable regulations.

However, during the investigation, there were no significant obstacles while he was on duty. If from the internal side, there are usually differences of opinion between prosecutors whether a case is worthy of being raised or not. Meanwhile, the obstacles that occur outside the prosecutor's office are where there are parties who defend the suspect which sometimes ends in a bit of chaos because of differences of opinion. As the public prosecutor, the Prosecutor's Office has no obstacles, even if there are obstacles such as the prosecutor being reported for not being in accordance with the SOP or violating the human rights of the defendant, the prosecutor can answer as long as his party has carried out his duties in accordance with applicable law, in accordance with applicable operational standards, not making things up and really conducting an investigation based on the applicable legal basis, namely the Criminal Procedure Code, then the Prosecutor has not made a mistake and his behavior can be accounted for by law.

Thus, the Prosecutor's Efforts in finding a Solution to overcome obstacles in the process of prosecuting corruption crimes during the trial between witness statements and evidence must be in accordance with each other, but sometimes there are incidents where witnesses withdraw their statements in court. To overcome this, when the corruption trial takes place, the Prosecutor must really understand the regulations violated by the defendant and then calculate the state's losses correctly for the actions taken by the defendant. Usually for corruption trials, the Prosecutor's Office also always presents expert criminal witnesses from academics and expert witnesses from the Audit Board of Indonesia (BPK) or BPKP to calculate the state losses experienced. The Prosecutor must also really understand the case files and before the trial must have prepared the evidence that will be brought to trial. The Prosecutor is also required to re-read the indictment that was previously made because what will be proven must not deviate from the indictment. So that in a corruption trial, the level of evidence in the trial needs to be prepared more thoroughly and is more difficult because the interlocutor from the Prosecutor's side is an academic and the defendant is always accompanied by a lawyer so that the demands given must be strong and based on and in accordance with the indictment.

Corruption itself is a structured crime so that the Prosecutor's Office must be observant in providing evidence and not let what has been charged be wrong or mistaken. During the investigation, caution is also needed in determining the



suspect candidate because the perpetrator is sometimes a government official. In the Implementation of Prosecution in Corruption Cases, the obstacles encountered are usually many suspects/defendants who cannot return all State Financial Losses. The solution that we are trying is that at the investigation stage we advise the suspect/defendant to be able to return the State Financial Losses, if the suspect/defendant does not have enough money to return the entire State Financial Losses, then if they still have assets, it is recommended that they can sell their assets to cover the State Financial Losses for the criminal acts committed by the suspect/defendant.<sup>14</sup>

According to the statement of Mr. Muhammad Jaka Trisnadi as the First Prosecutor at the Hulu Sungai Selatan District Attorney's Office, the obstacles to the implementation of the Special Minimum Sentence Prosecution in Corruption Crime Cases at the Hulu Sungai Selatan District Attorney's Office that have been experienced are as follows:

1) The majority of defendants were unable to return the State Financial Losses so that Special Minimum Sentence Prosecution could not be carried out.

2) A Special Minimum Sentence Prosecution was once carried out because the defendant made a return of 100% (one hundred percent) of the State Financial Loss, we intend to file a criminal complaint proving the subsidiary Article 3 of 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, with a minimum sentence of 1 (one) year, but the provisions based on the Letter of the Director of Prosecution Number: B567/F.3/Ft.1/03/2012 dated March 19, 2012 still apply, which in essence indicates that if evidence is to be carried out on the subsidiary article, a case title must be held at the local High Prosecutor's Office. When the Hulu Sungai Selatan District Attorney's Office conducted a case title in the Corruption Crime case on behalf of the Defendant M. Zakir Maulidi and the Defendant Eko Hendra Wijaya at the South Kalimantan High Prosecutor's Office, a lawsuit was filed under Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, with a minimum sentence of 1 (one) year, however, the leader, in this case the Head of the High Prosecutor's Office, gave directions to make a lawsuit for 1.5 years.

Thus, according to him, the Hulu Sungai Selatan District Attorney's Office has provided efforts in the form of solutions for implementing Special Minimum Sentence Prosecutions in Corruption Crime Cases as follows:

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<sup>14</sup>Interview Results by Widodo Hadi Pratama, SH, MH, as Assistant Prosecutor at the Hulu Sungai Selatan District Attorney's Office.

1) While still in the investigation stage, we recommend that the suspect return the State Financial Loss, if the person concerned does not have the amount of money for the loss, then if he still has assets, it is recommended that he sell his assets to maximize the reimbursement of the State Financial Loss for the criminal act committed by the suspect/defendant.

2) For the current solution, if you want to file a criminal complaint that proves subsidiary charges, then there is no need to hold a case title at the local High Prosecutor's Office, this is because since the issuance of Circular Letter Number B-4016 / F.3 / Ft.1 / 11/2023 concerning Control of Case Handling which in essence enforces the Circular Letter of the Attorney General of the Republic of Indonesia Number: SE - 001 / A / JA / 02/2019 concerning Control of Control of Handling of Corruption Crime Cases in letter E which stipulates: a) The District Prosecutor's Office handles corruption cases whose resolution is the responsibility of the head of the district prosecutor's office; b) The High Prosecutor's Office handles corruption cases whose resolution is the responsibility of the Head of the High Prosecutor's Office, and the provisions of the Letter of the Director of Prosecution Number: B-568/F.3/Ft.1/03/2012 dated March 19, 2012 are no longer in effect. So that in the future, Special Minimum Criminal Prosecution can be applied without any obstacles with the need for a case title at the local High Prosecutor's Office.

#### **4. Conclusion**

That the special minimum criminal prosecution in corruption cases at the Hulu Sungai Selatan District Attorney's Office is carried out based on the Attorney General's Guidelines Number 1 of 2019, with the condition that the suspect/defendant returns 100% of the state's financial losses. However, the obstacle faced is that many defendants are unable to return the losses, so that special minimum criminal prosecution cannot be carried out. Although the return of losses allows for minimal criminal charges, the case title procedure at the High Prosecutor's Office is still required in some cases. However, with the change in policy through the latest Circular, a case title at the High Prosecutor's Office is no longer required, so that special minimum criminal prosecution can be implemented without constraints. That in handling corruption crimes, prosecutors and judges must be more careful and wise, ensuring that the punishment imposed is in accordance with the level of crime and can provide a deterrent effect and achieve the goal of fair punishment. However, in an effort to overcome corruption crimes, the death penalty should be applied considering the crimes that have a major impact, but in reality until now, no judge has imposed the death penalty in corruption cases, even though the death penalty has been applied in other special crimes, such as terrorism and narcotics.

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