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Reformulation of Termination of Investigation of Corruption Cases with Restitution of Small State Losses Based on Benefit

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Abstract. *This study aims to determine and analyze the regulation of termination of investigation of corruption cases with the return of state losses in the small category. To determine and analyze the weaknesses of the current termination of investigation of corruption cases. To determine and analyze the formulation of termination of investigation of corruption cases with small state losses based on utility. This study is a normative juridical type, the method of legislative approach, case approach, the research specifications are descriptive analysis, the data sources used are secondary data taken from primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through literature studies and analysis techniques using qualitative. The results of the study indicate that the regulation of termination of investigation of corruption cases with state financial losses below 50 million rupiah which is a small corruption, then the application of the Attorney General's Circular Letter will be more appropriate and appropriate. When viewed from the perspective of legal utility, the nature of the Circular Letter also has legal force that can be implemented, which is based on benefits for the state and society. Specifically, in handling corruption crimes under 50 million rupiah, the benefits obtained include the recovery of state financial losses and a greater focus on law enforcement officers in handling corruption cases that involve greater state losses. There are weaknesses in the legal structure, legal substance, and weaknesses in the legal culture. Reformulation of regulations to terminate investigations into corruption cases with losses under 50 million rupiah, which are considered minor corruption, and the application of restorative justice is a relevant and appropriate legal remedy for perpetrators of corruption. This is in line with the theory of utility, which states that the state should not suffer greater losses in handling corruption cases.*

Keywords: *Corruption; Losses; Reformulation; State.*

1. Introduction

The crime of corruption is a very serious problem, because the crime of corruption can endanger the stability and security of the state and society, endanger social and economic development, the people's politics and can even damage democratic values and morality because over time this crime has become a culture and a threat to the ideals of a just and prosperous society.[1]

Transparency International released *its Corruption Perceptions Index* (CPI) for 2025. Indonesia scored 34 out of 100, ranking 109th out of 182 countries. Compared to its previous score and position, Indonesia's score dropped from 37 to 99th in 2024.[2]

Provisions regarding criminal acts of corruption are regulated in 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 (hereinafter referred to as the Corruption Law).[3]

The phenomenon of recovering state losses has recently become *a trend* in corruption eradication circles. Several cases have been characterized by the recovery of state losses. For example, the Kedaung Bridge construction case in Tangerang City. The Serang District Attorney's Office (Kejari) returned approximately Rp3 billion in state losses from the corruption case of the Kedaung Bridge construction in Tangerang City to the Banten Provincial Government. The funds were the proceeds of the return of the convicted MK Director of PT. AJB, who was sentenced to 5 years in prison by the Corruption Court Panel of Judges. The total state loss amounted to Rp12 billion from a total fund of Rp23.4 billion.[4]

Another case occurred in Lebak. In the cocoa seed corruption case, suspects KA and IEK repaid 200 million rupiah to the Lebak District Attorney's Office. Previously, they had repaid 125 million and 12 million rupiah, respectively. This brings the total restitution to 337 million rupiah out of the 537,789 million rupiah.[5]

In addition, the return of state losses was also carried out by the Labuan tsunami *shelter corruptor*, TAM, who returned the money he embezzled amounting to Rp

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[1]Ermansjah Djaja, *Eradicating Corruption with the Corruption Eradication Committee* , Jakarta: Sinar Grafika, 2008 , p. 2.
[2]https://antikorupsi.org/id/skor-cpi-indonesia-jeblok-di-tahun-2025-icw-ekosistem-pemberantasan-korupsi-dirusak-total-oleh h accessed on March 30, 2026
[3]Nurjana, *The Criminal Law System and the Latent Danger of Corruption* , Yogyakarta: IGM, 2010 , p. 72
[4]https://daerah.sindonews.com/read/1272192/174/kejari-serang-balikkan-uang-kerugian-negara-rp3-miliar-dari-korupsi-jembatan-kedaung-1515485047 accessed May 13, 2026
[5]http://faktabanten.co.id/2kejari-lebak-balik-terima-rp-200-juta-pengembalian-uang-hasil-korupsi-bibit-kakao/ accessed May 13, 2026

4.678 billion in *cash* to the Serang District Attorney's Office (Kejari) to be returned to the state treasury. In addition to TAM, there were two other convicts, namely AG from the Ministry of Public Works and Public Housing and WJ from PT. TS as *project manager,* who were sentenced to 1 year and 3 months each. The defendants were sentenced by the Corruption Court panel of judges at the Serang District Court. Takwin was sentenced to 1 year and 3 months and a fine of Rp 50 million, subsidiary to 2 months in prison. In addition, he was sentenced to an additional fine of Rp 4.716 billion. Meanwhile, AG and WJ were sentenced to 1 year and 3 months and a fine of Rp 50 million, subsidiary to three months in prison.[6]

Another case, which occurred in Lebak, involved corruption in the construction of Gajrug Market, valued at 20 billion Rupiah. The market's stalled condition indicated corruption, resulting in state losses of 700 million Rupiah. During the investigation, the winning bidder returned the state losses to the Lebak District Attorney's Office to be transferred to the state treasury (the Department of Industry and Trade). The case was not pursued due to insufficient evidence, and the recovered state losses no longer constituted a state loss.[7]

In some of the cases discussed above, there were differences in the timing of restitution of state losses. This will impact the legal consequences for the perpetrators. Some were committed during the investigation process, during the examination, and after the verdict was rendered.

Differences in the timing of restitution of state losses result in different legal consequences. Restitution of state losses during an investigation will result in the process being halted, as the state losses are no longer proven (because they have been recovered). Restitution during the trial will be considered by the judge as a mitigating factor, and once the verdict has been rendered, it will be considered by the judge as an aggravating factor and will result in the imposition of a monetary penalty.

It is interesting to examine the nature of the restitution of state losses. Is it intended as punishment for the perpetrator or as restitution for the victim? The handling of corruption crimes, based on the Attorney General's Circular Letter Number B-1113/F/Fd.1/05/2010 concerning Priorities for Achievement in Handling Corruption Cases, is certainly in stark contrast to Article 4 of the Corruption Law. This has led to differing opinions between legal experts and the Attorney General's Office. Attorney General ST Burhanudin stated that corruption crimes with small state losses can be resolved through restorative justice to recoup state financial losses.

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[6]https://news.detik.com/berita/4396392/jejak-korupsi-shelter-tsunami-banten-hingga-uang-segunung-dibalikin accessed May 13, 2026
[7]Interview with Joko Sutanto, Prosecutor at the Lebak District Attorney's Office, October 7, 2019.

In the Joint Working Meeting of Commission III of the House of Representatives at the Parliament Complex, Senayan, Jakarta on November 13, 2024, the Attorney General of the Republic of Indonesia ST Burhanuddin argued that handling corruption cases with relatively small losses, namely under 50 million rupiah, is considered a state loss that was carried out legally.[8]

However, the Attorney General's Office is trying to apply restorative justice *to* corruption cases that cause state financial losses of less than 50 million rupiah.[9] Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice was announced on July 22, 2020. This regulation is the opening regulation under the Law that applies the principle of restorative justice.

By carefully considering and calculating the budget, law enforcement can focus more on handling major corruption cases that require significant operational costs. For state financial corruption cases involving less than 50 million rupiah, legal action will be taken to recover state financial losses.[10]

Based on the description above, the author will explain the problem formulation: first, the regulation for terminating investigations into corruption cases with the return of small state losses; second, the weaknesses of terminating investigations into corruption cases; and third, the reformulation of regulations for terminating investigations into corruption cases with small state losses based on expediency.

2. Research Methods

This research is a normative juridical type using the statutory approach method and case studies, the research specifications are descriptive analysis, data sources are obtained from secondary data taken through primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through literature studies, and analysis techniques using qualitative.

3. Results and Discussion

3.1 Analysis of Regulations on Termination of Investigations into Corruption Crimes with Return of Small State Losses.

The legal definition of corruption, both its types and elements, has been expressly regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001

[8]M Taufan Renggania, Working Meeting of Commission III of the House of Representatives with the Attorney General, Tempo, November 13, 2024, at 3:00 PM WIB, accessed from https://www.tempo.co/foto/arsip/rapat-kerja-komisi-iii-dpr-dengan-jaksa-agung-1167627, on Sunday, December 22, 2024, at 3:00 PM WIB.
[9]Rena Yulia , The Essence of Restitution of State Losses: Punishment for the Perpetrator or Reparation for the Victim?, Lex *Lata, Scientific Journal of Legal Studies,* Vol. 7 No. 3 (2025) , p. 176
[10]Romli Atasasmita, *Legal Analysis and Evaluation of Investigations and Prosecutions of Corruption Crimes* , National Legal Development Agency, 2005, pp. 32-33.

concerning the Eradication of Criminal Acts of Corruption. In this law, criminal acts of corruption are grouped into several types of crimes, including [11]:

a. Groups of crimes that can harm state finances or the state economy;

b. The group of bribery crimes, both *active omkomping* (those who bribe) and *passive omkomping* (those who are bribed), includes gratuities;

c. Group of crimes of extortion in office;

d. Group of crimes of extortion in office (*knevelarij, extortion)*;

e. Group of crimes related to contracting, *suppliers* and partners.

Law Number 1 of 2023 seeks to reform the national criminal code, which previously relied on the colonial legal system. In the context of corruption, the 2023 Criminal Code regulates a number of official crimes that have substantial similarities to the provisions of the Corruption Eradication Law.

Some relevant articles include:

a. Article 603: regulates enriching oneself, another person or a corporation which is detrimental to state finances;

b. Article 604: regulates other forms of abuse of office;

c. Article 605: regulates the acceptance of gifts or promises by public officials;

The existence of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Regulation of Corruption Crimes remains the primary basis for eradicating corruption due to its specific nature. Therefore, the 2023 Criminal Code complements, not replaces, existing specific laws.

In this article will be discussed the group of crimes that are detrimental to state finances. The normative definition of state finances can be seen from various laws, such as Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. In its explanation, it formulates State finances as all state assets in any form, which are separated, including all parts of state assets and all rights and obligations arising from being in the control, management and accountability of state institution officials, both at the central and regional levels; then also being in the control, management and accountability of BUMN/BUMD, foundations, Legal Entities, and companies that include state capital, or companies that include third party capital based on agreements with the state.

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[11]Widyo Pramono, *Eradication of Corruption and Other Crimes (A Prosecutor's and Professor's Perspective)* , Jakarta: Kompas, 2017, p. 43.

In enforcing the law on corruption crimes that harm state finances or the national economy, not only criminal penalties are imposed on the perpetrators, but also consideration is given to restitution of state losses, namely through the process of restitution of state losses. Restitution of state losses is achieved through asset recovery.

Asset recovery is the process of handling assets resulting from crime, carried out in an integrated manner at every stage of law enforcement, ensuring that the assets' value is maintained and returned in full to the victims of crime, including the state. Asset recovery also encompasses all preventive measures to ensure the assets' value is not diminished.[12]

The phenomenon of recovering state losses has recently become *a trend* in corruption eradication circles. Several cases have been characterized by the recovery of state losses. For example, the Kedaung Bridge construction case in Tangerang City. The Serang District Attorney's Office (Kejari) returned approximately Rp3 billion in state losses from the corruption case of the Kedaung Bridge construction in Tangerang City to the Banten Provincial Government. The funds were the proceeds of the return of the convicted MK Director of PT. AJB, who was sentenced to 5 years in prison by the Corruption Court Panel of Judges. The total state loss amounted to Rp12 billion from a total fund of Rp23.4 billion.[13]

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In addition, the return of state losses was also carried out by the Labuan tsunami *shelter corruptor,* TAM, who returned the money he embezzled amounting to Rp 4.678 billion in *cash* to the Serang District Attorney's Office (Kejari) to be returned to the state treasury. In addition to TAM, there were two other convicts, namely AG from the Ministry of Public Works and Public Housing and WJ from PT. TS as *project manager,* who were sentenced to 1 year and 3 months each. The defendants were sentenced by the Corruption Court panel of judges at the Serang District Court. Takwin was sentenced to 1 year and 3 months and a fine of Rp 50 million, subsidiary to 2 months in prison. In addition, he was sentenced to an

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[12]Widyo Pramono, “The Role of the Prosecutor's Office in Recovering Assets in Corruption Cases”, *Criminal Law and Criminology Training “Principles of Criminal Law and Criminology and Their Current Developments”* , Collaboration between MAHUPIKI and Gadjah Mada University, Yogyakarta, 23-27 February 2014, p. 4.

[13]https://daerah.sindonews.com/read/1272192/174/kejari-serang-balikkan-uang-kerugian-negara-rp3-miliar-dari-korupsi-jembatan-kedaung-1515485047 accessed May 13, 2026

[14]http://faktabanten.co.id/2kejari-lebak-balik-terima-rp-200-juta-pengembalian-uang-hasil-korupsi-bibit-kakao/ accessed May 13, 2026

additional fine of Rp 4.716 billion. Meanwhile, AG and WJ were sentenced to 1 year and 3 months and a fine of Rp 50 million, subsidiary to three months in prison.[15]

Then there was the case in Lebak, the corruption case surrounding the construction of Gajrug Market, worth 20 billion Rupiah. The market's stalled condition indicated corruption, resulting in state losses of 700 million Rupiah. During the investigation, the winning bidder returned the state losses to the Lebak District Attorney's Office to be transferred to the state treasury (the Department of Industry and Trade). The case was not pursued due to insufficient evidence, and the recovered state losses no longer constituted a state loss.[16]

In the several cases described above, there are differences in the timing of restitution of state losses. This will impact the legal consequences for the perpetrators. Some cases occurred during the investigation process, during the examination, and after the verdict was rendered.

Differences in the timing of restitution of state losses result in different legal consequences. Restitution of state losses during an investigation will result in the process being halted, as the state losses are no longer proven (because they have been recovered). Restitution during the trial will be considered by the judge as a mitigating factor, and once the verdict has been rendered, it will be considered by the judge as an aggravating factor and will result in the imposition of a monetary penalty.

In practice, the case above occurred at Gajrug Market in Lebak, Banten. The winning bidder returned the Rp 700 million state loss to the Lebak Industry and Trade Agency through the Lebak District Attorney's Office. The case was dropped and no prosecution was pursued.

In this regard, the Attorney General's Office has issued Letter Number: B-765/F/Fd.1/04/2018 concerning Technical Guidelines for Handling Corruption Cases at the Investigation Stage. In order to optimize the recovery of state financial losses in handling corruption cases at the investigation stage, there are several things that must be considered, namely:

1) Investigations must be carried out more optimally, namely not only limited to finding incidents of corruption in the form of unlawful acts, but efforts must also be made to find the extent of state financial losses.

2) To find the extent of state financial losses, you can do this by calculating it yourself or by collaborating with the government's internal supervisory apparatus.

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[15] https://news.detik.com/berita/4396392/jejak-korupsi-shelter-tsunami-banten-hingga-uang-segunung-dibalikin accessed May 13, 2026

[16] Interview with Joko Sutanto, Prosecutor at the Lebak District Attorney's Office, October 7, 2019.

3) In order to save the state from financial losses due to criminal acts of corruption, data on the assets of the parties involved in criminal acts of corruption must be collected immediately.

4) If the parties involved are proactive and have returned all state financial losses, then consideration can be given to continuing the legal process by taking into account the interests of the stability of the local regional government and the smooth running of national development.

The above letter serves as a guideline for prosecutors in handling corruption cases. Starting from the investigation stage, prosecutors must determine the extent of state losses and take action to recover the embezzled state assets. Even if state losses are recovered during the investigation stage, prosecutors may consider discontinuing the process. Recovering state losses is considered to have redressed the victim's losses, and continuing the legal process is considered to disrupt the stability of the local economy, government, and the smooth running of national development.

Thus, if the restitution of state losses is carried out during the investigation stage, the legal process for the corruption case will not proceed. The case is dismissed because it is deemed not to meet the elements of state losses, given that the state losses have already been repaid. Given this, the purpose of restitution of state losses is to redress the victim's losses, as once the victim has been repaid, there is no need for further processing.

Furthermore, in the context of resolving corruption cases, the theory of expediency demands that the state focus not only on punishment but also on effectively and efficiently recovering state losses. In this regard, an administrative or non-litigative approach to corruption cases with small state financial losses is a rational choice. The 2023 Memorandum of Understanding (MoU) between the Ministry of Home Affairs, the Indonesian Attorney General's Office, and the Indonesian National Police (Polri) is a concrete implementation of this principle. The memorandum provides space for administrative resolution of violations committed without malice, provided that the state financial losses are fully repaid. The primary objective of this policy is to avoid the criminalization of administrative violations and to encourage faster resolution without further burdening the state budget or regional budgets.

Normatively, the theory of expediency also does not conflict with the objectives of punishment in the national legal system. Neither the Criminal Code (KUHP) nor sectoral laws related to corruption explicitly preclude restorative or administrative approaches to resolving certain crimes, as long as they respect the principles of justice. Therefore, it is crucial for law enforcement to avoid being trapped by the spirit of punishment alone, but also to consider the efficient use of state resources, restitution of losses, and social stability.

In line with this, there is a thought related to the application of progressive law. in corruption crimes. Through progressive law, it is hoped that perpetrators will cooperate in reimbursing state financial losses from their corruption without having to face prosecution in court. The application of progressive law is appreciated for its compensation in the form of diversion or elimination of criminal liability. The consideration of depenalization is supported by rational reasons. Regarding national economic stability, the implications for the fate of corporate workers are actually higher and more fundamental, and the consequences could trigger crises in various sectors.[17]

The Attorney General's Office's Special Crimes Office Letter Number: B-765/F/Fd.1/04/2018 concerning Technical Instructions for Handling Corruption Crime Cases at the Investigation Stage has basic principles that are in line with progressive law, in the sense that if the victim's (state's) losses have been recovered, then punishment of the perpetrator is deemed unnecessary.

Based on the view that law is for humankind, law enforcers should not apply the law strictly according to its wording, as they are not the mouthpiece of the law. Progressive law emphasizes that law enforcers should uphold the values of justice inherent in positive legal regulations by thinking and acting creatively in the name of social justice and rejecting the status quo that does not respond to societal demands [18].

Satjipto Rahardjo's progressive legal discourse strives to achieve the justice the people long for and encourages law enforcement to move away from conventional, conventional methods that don't benefit society. It's time for law enforcement, as the front line in the fight against corruption, to employ creative, rule-breaking *methods* deemed unjust.

3.2 Weaknesses of the Current Termination of Investigations into Corruption Crimes.

a. Weaknesses of Legal Structure

1) Limited budget

Corruption crimes, besides those that are large-scale or fall into the *big fish category,* also have relatively small state financial losses. The limited budget or operational funds that must still be shared with other sections cause prosecutors investigating corruption cases, namely prosecutors in the special crimes section, to be careful and efficient in using the operational budget in investigating

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[17]Budi Suhariyanto, “Restorative Justice in the Criminalization of Corrupt Corporations for the Sake of Optimizing the Restitution of State Losses”, *Jurnal Rechvinding* , Volume 5, Number 3, December 2016, p. 422.
[18]Hartono. *Criminal Investigation and Law Enforcement Through a Progressive Legal Approach.* Sinar Grafika. Jakarta, 2010

corruption cases. The operational funds for the Prosecutor's Office, per year for handling corruption cases, the budget provided is approximately IDR 250,000,000.00 (two hundred and fifty million rupiah) with a target of prosecuting one to two cases of alleged corruption. This nominal is divided again for each stage of handling corruption cases, namely: IDR 50,000,000.00 to carry out investigations, IDR 100,000,000.00 for investigations, IDR 100,000,000.00 for prosecution stages, and IDR 15,000,000.00 for execution, examination, and/or legal efforts.

2) Weak Inter-Institutional Cooperation

The institutions, agencies, or parties that can collaborate with the Prosecutor's Office in assisting with investigations are very diverse. In each sector where corruption may occur, cooperation with different parties will be required. Parties that can collaborate with the Prosecutor's Office include the Supreme Audit Agency, Bank Indonesia, the Government Internal Supervisory Apparatus, the Inspectorate General of Ministries, academics, experts in various fields, and so on. This collaboration can essentially occur with many different parties depending on which sector is related to the corruption case and what things are needed by the Prosecutor in the process of investigating the case. Such cooperation, although beneficial and necessary, is also relatively time-consuming. The longer it takes to obtain the necessary data, the more it will be hampered in the implementation of the investigation and determining the form of follow-up in the corruption case investigation process.

3) Limited Human Resources.

Prosecutors in the special crimes section who must handle special crimes cases also still have the burden of handling general crimes cases that come to the Prosecutor's Office, this is due to the large number of general crimes cases that need to be handled by the Prosecutor's Office, so that in addition to the general crimes section, the special crimes section and other sections must also handle general crimes. In addition to adding to the workload, this situation can also affect the focus of the special crimes section prosecutors in handling corruption cases that require high focus. The level of complexity, limited budget and human resources, and the divided focus of investigating prosecutors when handling corruption cases are obstacles or constraints for investigating prosecutors in determining whether or not to continue investigations of corruption cases.

b. Weaknesses of Legal Substance

1) Legal Inconsistencies in the Regulations for the Return of Corruption Proceeds

One form of inconsistency occurs in the interpretation of "returning state funds" and "paying compensation." In principle, restitution of state financial losses should be a priority, because the primary goal, besides punishing the perpetrator, is to recover state losses. However, in a number of court decisions, such restitution does not always eliminate the additional criminal charge of compensation. In fact, there are cases where even though the perpetrator has returned all the proceeds of corruption, he is still subject to additional penalties in the form of a fine or compensation, thus creating uncertainty: whether the restitution is voluntary (voluntary) before the verdict can be mitigated, or whether it is still considered insignificant in terms of the sentence.

There is also a dualism between administrative and criminal approaches to recovering state losses. In some cases, the restitution of corrupt funds is carried out through the Treasury Claim and Compensation Claim (TP-TGR) mechanism under the supervision of the Supreme Audit Agency (BPK) or the inspectorate, which is administrative in nature. On the other hand, the criminal process places the restitution of corrupt funds as part of a court sentence. This lack of synchronization between the two approaches often leads to clashes of authority between institutions and confusion at the implementation level.

This inconsistency creates legal uncertainty, especially for law enforcement officials and defendants. Legal certainty *is* a fundamental principle in a state governed by the rule of law, ensuring that laws are clear, consistent, and predictable. When legal norms and practices conflict, the substantive justice sought in eradicating corruption is distorted. Furthermore, the public becomes skeptical about the effectiveness of the legal system in recovering embezzled state assets.

2) The Corruption Crime Law only focuses on punishment rather than recovery of state losses.

The articles in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Corruption demonstrate a greater focus on punishment than on recovering state losses, thus neglecting the approach to recovering state financial losses. Yet, one of the primary goals of eradicating corruption is to ensure that state losses are promptly recovered. Without clear incentives to encourage recovery, perpetrators may not see the benefit of returning lost assets.

3) The Corruption Crime Law Norms Do Not Consider the Level of Fault

Article 4 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Corruption Crimes does not allow for distinctions based on the degree of culpability or intent behind a criminal act of corruption. This creates a uniform approach to perpetrators without regard for the circumstances underlying their actions. As a result, perpetrators who genuinely demonstrate good faith in correcting their mistakes are treated the same as those who are uncooperative.

This approach can give the impression that the legal system is inflexible in handling different cases. Perpetrators who have repaid state losses in good faith should receive recognition for their efforts, for example through a significant reduction in their sentences. This can provide a more proportionate sense of justice tailored to the circumstances of each case.

By considering the degree of culpability, the legal system can better reflect the principles of justice. Differentiating treatment based on the degree of culpability can increase the effectiveness of corruption eradication. Furthermore, this approach can encourage other perpetrators to follow suit by recovering state losses.

c. Weaknesses of Legal Culture

1) limited public openness

Limited public transparency is also a significant inhibiting factor. The public is often unwilling to provide accurate and in-depth information due to fear of pressure, intimidation, or personal involvement in reported cases. Yet, information from the public is a key source in the early stages of corruption investigations.

2) Permissive (Tolerant) Culture Towards Petty Corruption

Society tends to be permissive of "petty corruption," *such* as bribes to expedite processing of documents, paying "peace money" to police, or extortion in public services. This behavior is considered normal and has become a daily habit.

3) Pragmatism and Instant Culture

People's desire for quick results (e.g., driver's licenses, ID cards, permits) drives them to resort to bribery rather than honest, official procedures. This pragmatic attitude allows corruption to flourish.

4) The Weakness of the Culture of Shame and Social Sanctions

Corruptors often don't face severe social sanctions. Instead, corruptors are still perceived as having high social status. The lack of a "culture of shame" as a social fact means that deviant acts are not considered shameful.

5) Normalization of Corrupt Behavior (Cultural Heritage)

Corruption is often seen as a hereditary or "normal" practice within the bureaucracy, like tribute or bribery. This hinders anti-corruption awareness because the public feels accustomed to a corrupt system.

6) Low Integrity and Honesty Values

Societal legal culture often prioritizes kinship or connections over compliance with the law. Nepotism and bribery are seen as "helping each other" or the quickest way to achieve goals, rather than as crimes that harm many.

3.3 Reformulation of the Regulation on Termination of Investigations into Corruption Crimes with Small State Losses Based on Benefit.

Handling corruption crimes is costly. This substantial cost has given rise to differing views among legal practitioners, suggesting that legal proceedings should be discontinued for alleged corruption cases involving state losses of less than 50 million rupiah.

Furthermore, the direction of criminal justice in Indonesia has shifted from retributive justice, meaning punishment commensurate with the offense, to restorative justice, meaning restoration rather than retribution. In handling corruption cases involving state losses of less than 50 million rupiah, restorative justice is prioritized, in accordance with the theory of *economic analysis of law.*

In handling criminal acts of corruption with state financial losses of under 50 million rupiah, there are 2 (two) possible legal applications that can be carried out even though there has been a return/recovery of the value of state financial losses, namely retributive justice and restorative justice.

Retributive justice is a legal concept that prioritizes sanctions that are appropriate or proportionate to the offense. The main principle of retributive justice is "an eye for an eye," meaning that a person who commits a crime should receive a punishment commensurate with the offense.[19]

The application of retributive justice to corruption crimes under 50 million rupiah is due to two main factors: the failure to return the proceeds of corruption and/or the uncooperative attitude of the perpetrator. The legal basis used for handling this is Article 2, Article 3, and Article 4 of the Corruption Law.

Uncooperative behavior, which can include providing information or testimony that accuses one another, and lengthy investigations into alleged corruption, are also reasons for continuing corruption cases under 50 million rupiah to the courts even though state losses have been recovered. Furthermore, retributive justice is also applied when the corruption is not a first-time offense.

If during the judicial process the perpetrator of corruption then makes a return of the state's financial losses, then there is a possibility that the perpetrator's sentence will be reduced because the perpetrator of corruption is then deemed to have good intentions to return the value of the state's financial losses.

In addition to handling with retributive justice, corruption crimes under 50 million are currently often used restorative justice. Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption

[19]https://fahum.umsu.ac.id/info/apa-itu-keadilan-dalam-hukum/#:~:text=Retributive%20justice%20focuses%20on%20punishment,with%20the%20mistakes%20they%20commit, on April 2 4 , 202 6

were changed to material crimes through Constitutional Court Decision Number 25/PUUXIV/2016. According to CST Kansil, elements that cause state financial losses are no longer considered formal crimes, because material crimes focus on results that are prohibited and threatened by law. [20]Therefore, a person can be considered to have committed a criminal act of corruption and can be punished if his actions clearly result in financial or economic losses to the state.

The use of Restorative Justice in handling criminal acts of corruption has been clearly explained in the Letter of the Chief of Police and the Circular Letter of the Deputy Attorney General with the following explanation:

1) The letter of the Chief of Police No. Pol. B/3022/XII/2009/sdeops regarding the concept of Alternative Dispute Resolution (ADR), in the first point it is written that the handling of criminal cases that have small material losses, the resolution can be directed through the concept of ADR, namely the concept of alternative dispute resolution, which aims to resolve disputes outside the court in a cooperative manner and produce an agreement that is beneficial for both parties which actually has similarities with *Restorative Justice* which prioritizes deliberation between the parties involved;

2) Circular Letter of the Deputy Attorney General for Special Crimes Number: B113/F/Fd.1/05/2010 dated May 18, 2010, one of the points in its contents is instructing all High Prosecutors whose contents are an appeal that in cases of alleged corruption, people who have consciously returned state losses need to be considered not to be followed up on the application of the principle of restorative justice. Circular Letter of the Deputy Attorney General regarding Technical Instructions for Handling Corruption Cases at the Investigation Stage, issued by the Indonesian Attorney General on April 20, 2018 Number SE Jampidsus Number: B765/F/Fd.1/04/2018, enhances the concept of restorative justice in corruption crimes. Basically, investigations must not only find whether the corruption incident is a violation of the law, but must also try to find out how much the value of the state's financial losses.

Not all forms of corruption can be punished through the restorative justice system. This is because the types of corruption that can be resolved are those that do not fall under the criminal categories and limitations. This is regulated by Law of the Republic of Indonesia Number 20 of 2001 concerning amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which takes into account the value of the loss and the form of

[20]CST Kansil and Chritine ST Kansil, *Principles of Criminal Law: Criminal Law for Everyone,* Jakarta: Pradnya Paramita, 2007, p. 40.

the corruption, namely corruption under Rp. 300,000,000.00 (three hundred million rupiah).[21]

The implementation of restorative justice in the form of returning all proceeds of criminal acts of corruption can be carried out at the following times [22]:

1) Before the investigation;

2) During the investigation;

3) Before the investigation;

4) During the investigation;

5) During the trial examination.

Returning all proceeds of corruption can eliminate the element *of mens rea,* or malicious intent, on the part of the perpetrator. Therefore, if the perpetrator returns all proceeds of corruption during the investigation phase, the investigator can declare the case unable to proceed to the next stage, and the investigator at the investigation stage can issue an SP3 to terminate the investigation.

The return of all proceeds of corruption by the perpetrator eliminates the unlawful nature of the perpetrator of corruption, so that the case is no longer considered corruption. In the investigation stage, if the investigator cannot prove the state financial losses in accordance with the elements in Article 2 and Article 3 of the Corruption Law, even though the value of the state financial losses has been recovered with good faith and restitution, then the Prosecutor's Office has the authority to continue to court or not, because the Prosecutor's Office is not only a Law Enforcement Officer who handles corruption cases, but must also be able to improve the existing system with the recovery of state financial losses as its main goal.

The concept of restorative justice as a form of termination of investigation against a suspect is evaluated based on the categories required to apply the concept of restorative justice in corruption cases, which include:

1) The suspect is a perpetrator who has committed a crime for the first time.

2) There has been a recovery to the original condition.

3) The losses incurred are relatively small.

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[21]Hestaria, Helena, Made Sugi Hartono, and Muhamad Jodi Setianto, "A Legal Review of the Application of Restorative Justice Principles to Corruption Crimes in the Context of Saving State Finances," *Jurnal Komunitas Yustisia* Vol. 5 No. 3, 2022, pp. 112-128

[22]Soerjono Soekanto, *Introduction to Legal Research* , 3rd ed., UI Press: Jakarta, 1986, p. 132.

4) Mediation has been carried out between the victim and the suspect (in this context, the state acts as the victim and is represented by the authorized law enforcement agency).

5) There is no ongoing loss resulting from the crime.

The legal provisions applied in the process of terminating an investigation that will continue to the investigation process refer to two packages of laws that function as *the Principle of Lex Specialis Derogat Legi Generali* [23], where more specific regulations override more general ones, as well as *the Principle of Lex Posterior Derogat Legi Priori* [24], where new regulations override older regulations by taking into account the provisions of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The two packages of laws are:

Article 35 paragraph (1) of Law No. 17 of 2003 concerning State Finance states that:

"Every state official or civil servant who is not a treasurer and commits a violation of the law or neglects his duties, either directly or indirectly, which has a negative impact on state finances, is obliged to bear the losses."

Article 59 paragraph (2) of Law Number 1 of 2004 concerning State Treasury stipulates that:

"Treasurers, civil servants who are not treasurers, or other officials who, through their actions, have violated the law or neglected the responsibilities expected of them, thereby causing losses to state finances, must compensate for the losses incurred."

Therefore, once the losses suffered by the state have been recovered during the investigation phase, any evidence or instruments are automatically lost. From a criminal law perspective, the case can be closed because there is no longer a criminal element, namely financial loss to the state.

4. Conclusion

The regulation of the termination of investigations into corruption cases legally has been regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption. However, in handling corruption crimes with state financial losses below 50 million rupiah, which is considered petty corruption, the application of the Attorney General's Circular Letter will be

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[23]https://www.hukumonline.com/berita/a/mengenal-asas-lex-specialis-derogat-legi-generali-lt631f21adec18c/, on April 24 , 2026

[24]https://id.wikipedia.org/wiki/Lex_posterior_derogat_legi_priori#:~:text=Lex%20posterior%20derogat%20legi%20priori%20adalah%20dasar%20penatifsiran%20hukum%20yang,dalam%20hukum%20nasional%20danupun%20internasional ., pada 25 April 202 6 .

more appropriate and appropriate. Although hierarchically, if reviewed from the laws and regulations in Indonesia, regulated in Law No. 12 of 2011 concerning the Formation of Legislation in Article 7 paragraph 1, the Circular Letter issued by the Attorney General does not have a position in the legal order in Indonesia. However, if viewed from the perspective of legal usefulness, the nature of the Circular Letter also has legal force that can be implemented, which is based on the benefits for the state and society. Specifically in handling corruption crimes under 50 million rupiah, the benefits obtained are the recovery of state financial losses and also greater focus of law enforcement officers in handling corruption cases that have a greater value of state losses.

The weaknesses in the current process of terminating investigations into corruption cases include legal structural weaknesses, including limited budgets, weak inter-agency cooperation, and limited human resources. There are weaknesses in the legal substance, including inconsistent legal regulations governing the return of corrupt proceeds. The Corruption Crime Law focuses only on punishment rather than recovery of state losses and does not consider the level of culpability. Third, weaknesses in the legal culture include limited public openness, a permissive (tolerant) culture towards petty corruption, pragmatism and a culture of instant gratification, a weak culture of shame and social sanctions, the normalization of corrupt behavior, and low integrity and honesty.

Reformulating regulations for terminating investigations into corruption cases involving losses under 50 million rupiah, which constitute petty corruption, requires the application of restorative justice as a relevant and appropriate legal remedy for perpetrators of corruption. This aligns with the theory of expediency, which states that the state should not suffer greater losses in handling corruption cases.

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