

Efforts To Prevent Criminal Acts Of Corruption By The Republic Of Indonesia Prosecutor Office Trough The Return Of State Financial Losess Reviewed From The Value Of Justice

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Abstract

Corruption is a global challenge that crosses national borders and various sectors of development. This act of corruption is not only a threat to economic stability, but also becomes an obstacle in achieving sustainable development. The state has a responsibility to fulfill the rights to basic community needs in the context of public services. The Indonesian government, as mandated by the Constitution of the Republic of Indonesia regarding public services, has an obligation to build public trust in accordance with the demands and expectations of the community. This article discusses the problem of how the Prosecutor's Office attempts to recover state financial losses by perpetrators of criminal acts of corruption and the concept of recovering state financial losses based on the values of welfare and justice. The method used in this writing is a normative



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research method. The results of this research are the efforts that can be taken by the Prosecutor's Office of the Republic of Indonesia to recover state financial losses caused by criminal acts of corruption, which can be started at the investigation stage. So that the implementation of a punishment based on the values of welfare and justice will provide benefits to the state structure and improve the welfare of the Indonesian nation.

KEYWORDS *Return, Loss, Finance, Country, Corruption.*

I. Introduction

Corruption is a global challenge that crosses national borders and various sectors of development. This act of corruption is not only a threat to economic stability, but also becomes an obstacle in achieving sustainable development. This criminal act of corruption is part of a special criminal law. Corruption itself etymologically comes from the Latin word “corruption” which means dishonest acts that are related to finance. Meanwhile, in Black's Law Dictionary, corruption is an act carried out with the aim of obtaining benefits from rights derived from other parties illegally by using one's position to obtain benefits either for oneself or for others.¹ Apart from that, Robert Klitgard, based on a state administration perspective, provides the opinion that corruption is behavior that deviates from the official duties of his position in the state which is carried out in order to gain monetary gain or status aimed either at oneself or at others.² Action included in the criminal act of corruption must be based on the following elements:

¹ Alfarrizy Alfarrizy, Bambang Hartono, dan Zainudin Hasan, “Implementasi Pertanggung Jawaban Pelaku Tindak Pidana Korupsi Dalam Penyalah Gunaan Anggaran Pendahuluan Dan Belanja Kampung (Apbk) Yang Dilakukan Oleh Oknum Mantan Kepala Kampung Menanga Jaya (Studi Kasus Nomor:13/Pid.Sus-Tpk/2020/Pn.Tjk),” *Iblam Law Review* 1, no. 3 (2021): 2, <https://doi.org/10.52249/ilr.v1i3.24>.

² Edy Herry Pryhatoro, *Korupsi dalam Perspektif Teori Sosial Kontemporer* (Jakarta: Spasi Media, 2016).

- a. Actions of legal entities or individuals that are against the law;
- b. Actions carried out with the aim of enriching other or itself;
- c. Done by abusing authority;
- d. Providing a promise of something to a state administrator with the aim that the state administrator will do or not do something related to the position held;
- e. Providing a promise of something to a judge with the aim of providing a decision on a case that is being handled for trial;
- f. Providing a promise of something to an advocate to be present at the trial with the aim of being able to influence the opinion expressed in the case that being handled for trial;
- g. There is an act of fraud or deliberate action in the occurrence of fraud;
- h. A person other than a civil servant himself who holds a position intentionally embezzles securities or money under the control of his position;
- i. Gratification.

Problems related to corruption are quite worrying problems that have many negative impacts on the country, namely posing a threat to the country's economic growth, and also posing a threat to the security and stability of the country. Apart from these threats, corruption also has the impact of destroying the moral and democratic values of a country because it makes it seem as if corruption is a culture in the country. Based on these threats, criminal acts of corruption in Indonesia are included in the category of extraordinary crimes or what are known as extraordinary crimes.³ The 1998 Rome Statute is a provision that classifies corruption as the most serious crime, where corruption is a crime equivalent to war crimes, crimes of aggression, genocide and crimes against humanity.

³ Diky Anandya Kharystya Putra dan Vidya Prahassacitta, "Tinjauan Atas Kriminalisasi Illicit Enrichment dalam Tindak Pidana Korupsi di Indonesia: Studi Perbandingan dengan Australia," *Indonesia Criminal Law Review* 1, no. 1 (2021): 43, <https://scholarhub.ui.ac.id/iclr/>.

Corruption itself in Indonesia is included in the category of extraordinary crimes, this is because corruption is a crime that has far-reaching consequences, is carried out in a structured manner and also results in significant losses for the country. Artidjo Alkostar, who is a former Supreme Court Judge, stated that this criminal act of corruption has entered the scope of government in Indonesia, namely within the legislative, executive and judicial powers. Due to this, many officials or office holders commit corruption, causing losses to state finances. This corruption has several factors so that it is included in the category of extraordinary crimes, including:⁴

- a) Corruption has a connection with power;
- b) Corruption are carried out using neat and difficult *modus operandi* to make it difficult for being proved;
- c) Implemented in an organized and structured manner; and
- d) It's related to state finances which prevents the welfare of the community from being achieved.

The state has a responsibility to fulfill the rights to basic community needs in the context of public services. The Indonesian government, as mandated by the Constitution of the Republic of Indonesia regarding public services, has an obligation to build public trust in accordance with the demands and expectations of the community. Where this corruption often occurs in state finances. State finance itself is a collection of written rules that regulate the obligations and rights of the state relating to money, which includes goods and money that are under the control of the state in the implementation of its obligations and rights.⁵ The laws and regulations governing state finances also provide a scope regarding matters included in state finances. In these laws and regulations, the scope of state finance

⁴ Eddy O.S. Hiarij, *Pembuktian Terbalik dalam Pengembalian Aset Kejahatan Korupsi* (Yogyakarta: Universitas Gajah Mada, 2012).

⁵ M. Harris Sofian Hasibuan et al., "Penerapan Undang-Undang Tindak Pidana Korupsi Terhadap Kejahatan Manipulasi Data Agunan Dalam Pengajuan Kredit Pada Bank BUMD," *Locus Journal of Academic Literature Review* 1, no. 1 (2022): 62, <https://doi.org/10.56128/ljoalr.v1i1.52>.

covers very broad matters and is not only limited to the State or Regional Revenue and Expenditure Budget, but also includes assets that are separated from both regional and state companies.

The stages in the management of state finances themselves are regulated in Law Number 17 of 2003 concerning State Finances which consist of planning, implementation, administration, reporting, accountability and supervision. The state's own finances include several things, namely:⁶

- a) Revenue from regions and countries;
- b) Expenditures from regions and countries;
- c) Obligations from the state to carrying out public service duties of the state government and paying bills originating from third parties;
- d) The state's right to levy taxes, circulate and issue money and make loans;
- e) Wealth from other parties obtained by using government facilities;
- f) Wealth of other parties which is under the control of the government in the context of implementing public interests and/or government duties;
- g) Regional-owned assets or state-owned assets whose management is carried out by other parties or alone in the form of receivables, goods, money, other rights and securities whose value can be calculated in money, which includes assets that are separated by regional companies or state companies.

Article 3 of the laws and regulations governing state finances provides an explanation that when managing state finances it must be carried out in compliance with applicable laws and regulations, be economical, transparent, accountable, effective, orderly, efficient and

⁶ Paulina Y Amtiran, "Amtiran and Molidya/ JOURNAL OF MANAGEMENT (SME's) Vol. 12, No.2, 2020, p203-214" 12, no. 2 (2020): 204.

responsible while also paying attention to propriety and a sense of justice. However, regarding the implementation of state financial management, the reality is that there are still many acts of abuse of authority or corruption in state financial management activities which hinder the achievement of state goals because they cause losses to state finances. The loss of state finances caused by criminal acts of corruption certainly has the impact of a crisis in all areas of state life. Problems that often arise after law enforcement against criminal acts of corruption are carried out, namely:

- a) Putting the burden on the state to finance convicts of criminal acts of corruption while they are being detained in correctional institutions
- b) State development is increasingly hampered due to the large amount of state money being misused by perpetrators of criminal acts of corruption so that it cannot be used as intended;
- c) Obstruction of the country's progress;
- d) The lack of awareness of perpetrators of criminal acts of corruption in terms of recovering state financial losses that arise, where this is also motivated by several factors, namely:
 - 1) Perpetrators of criminal acts of corruption are more concerned with the future of their families than taking responsibility for their actions;
 - 2) The unfulfilled hopes of the perpetrator of a criminal act of corruption regarding his case will be terminated if he recovers the state's financial losses in full;
 - 3) The criminal system, especially for imposing criminal penalties, is not yet optimal, which does not provide a deterrent effect and cannot be used as an effort to prevent criminal acts of corruption.

The pattern of punishment or criminal threats in Indonesia includes formulation models in cumulative, alternative and mixed criminal threats. However, even though the concept or pattern of

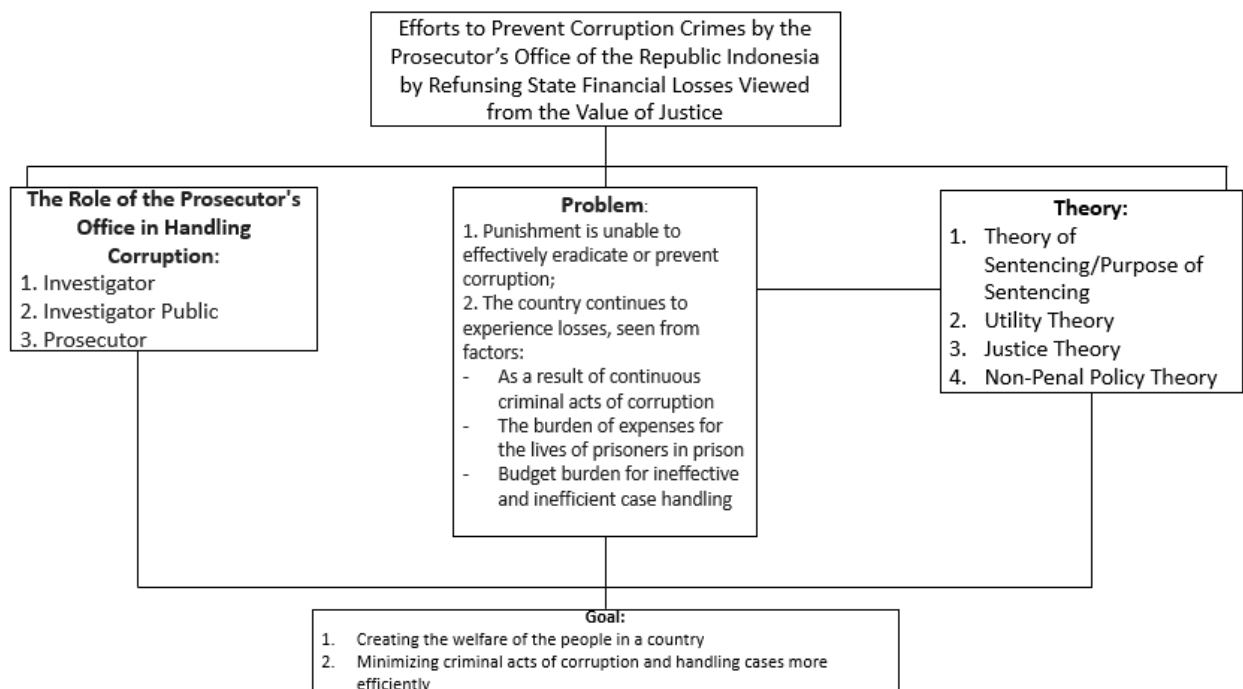
punishment for criminal acts of corruption has such regulations in Indonesian positive law, in its implementation it still has gaps or weaknesses. This is indicated by the lack of deterrent effect for perpetrators of criminal acts of corruption who only receive corporal punishment in the form of imprisonment even though they have caused significant losses to state finances.⁷ The handling of criminal acts of corruption becomes less effective where the goal of returning or recovering state finances is not achieved and becomes a burden for the state in handling cases that use state finances, so concrete steps or efforts are needed in handling them. In this case, the Prosecutor's Office needs to take serious or concrete steps in handling criminal acts of corruption which focus on the aim of recovering state finances by perpetrators of criminal acts of corruption. These steps or efforts aim to achieve the principle of simple, fast and low-cost justice, which then also achieves the goal of restoring state finances.

The theories that used in analyzing the writing of this research were criminal policy theory which has a close relationship with efforts to combat crime. This criminal policy is related to policies that focus on human behavior as a crime and as a science regarding crime prevention. Hoefnagel stated that crime prevention is carried out in several ways, namely by influencing the public's view of punishment and crime, then there is prevention without crime and the application of criminal law.⁸ Then there is the non-penal theory, where this theory aims to uphold order in society and to tackle crime completely. In principle, this theory states that in law enforcement, punishment is not the only way to resolve a crime completely. This is because crime itself is something that continues to move and change along with developments that continue to grow in society. Thus, there needs to be an effort other than criminal law to resolve

⁷ Juliari Batubara, "Wabah Korupsi di kala Pandemi : Pemidanaan Tindak Pidana Korupsi Selama Pandemi sebagai Refleksi Pemberantasan Korupsi di Indonesia," *Jurnal Anti Korupsi* 3, no. 1 (2021): 123, <https://doi.org/10.19184/jak.v3i1.27135>.

⁸ Harimana Satria, "Kebijakan kriminal pencegahan korupsi publik," *Jurnal Antikorupsi* 6, no. 2 (2022): 171–72, <https://doi.org/10.32697/integritas.v6i2.660>.

crimes completely, namely using a non-penal theory.⁹ General prevention is an effort to prevent the wider community from the possibility of committing a crime. Meanwhile, special prevention is an effort to prevent convicts from having the opportunity to repeat crimes in the future. All of these efforts are a step in creating and maintaining life in a law and order society.¹⁰ Then the writing of this research also uses legal system theory, which according to Lawrence M. Friedman, law is a system that can only work if the components in it synergize well with each other. The components referred to in this theory are legal structure, legal substance and legal culture.¹¹ The purpose of writing this research is to discuss the



Prosecutor's efforts in recovering state financial losses by perpetrators of financial losses is based on the values of welfare and justice.

⁹ Ifrani Ifrani dan M. Yasir Said, "Kebijakan Kriminal Non-Penal OJK dalam Mengatasi Kejatan Cyber Melalui Sistem PEER to PEER Lending" 12, no. 1 (2020): 67, <https://doi.org/http://dx.doi.org/10.31602/al-adl.v12i1.2607>.

¹⁰ Muhammad Taufik Makaro, *Pembaharuan Hukum Pidana: Studi Tentang Bentuk-Bentuk Pidana Khususnya Pidana Cambuk Sebagai Suatu Bentuk Pemidanaan* (Yogyakarta: Kreasi Wacana, 2005).

¹¹ Syaruddin dkk Kalo, "Analisis Yuridis Penentuan Kedudukan Saksi Pelaku Sebagai Justice Collaborators Dalam Tindak Pidana Narkotika di Pengadilan Negeri Pematang Siantar (Studi Putusan No: 231/Pid.Sus/2015/Pn)," *USU Law Journal* 5, no. 3 (2017): 108–17.

Research related to efforts to restore state finances as a result of criminal acts of corruption was also carried out by Helena et al., where the research conducted discussed the application of the concept of restorative justice in corruption eradication law in order to strengthen the aim of returning state financial losses by perpetrators of criminal acts of corruption and whether the concept of restorative justice in criminal acts of corruption can be applied in Indonesia.¹² Then, research was conducted by Rosita Miladmahesi, where the research conducted discussed policies and mechanisms for confiscation of assets owned by Indonesia and legal construction that could be a solution for confiscation and recovery of assets in Indonesia.¹³ Apart from that, Heri Joko Saputro in his research discusses efforts to recover state financial losses resulting from corruption and the strategies used to recover state financial losses.¹⁴ As well as research conducted by Andi Purnomo which discusses the restorative justice approach in criminal acts of corruption as an effort to recover state losses and save state assets and setting the concept of restorative justice in Indonesia.¹⁵ Based on several studies that have been carried out previously, the author feels that it is necessary to maximize the function of restoring state finances without imposing costs on the state in the criminalization process, so the author is interested in conducting research on efforts to prevent corruption crimes by the Prosecutor's Office of the Republic of

¹² Helena Hestaria, Made Sugi Hartono, dan Muhamad Jodi Setianto, "Tinjauan Yuridis Penerapan Prinsip Restorative Justice Terhadap Tindak Pidana Korupsi Dalam Rangka Penyelamatan Keuangan Negara," *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 112, <https://doi.org/10.23887/jatayu.v5i3.51892>.

¹³ Rosita Miladmahesi, "Dinamika Baru Dalam Pemulihan Aset Akibat Korupsi di Indonesia," *Journal of Judicial Review* 22, no. 01 (2020): 149, <https://doi.org/10.37253/jjr.v22i1.720>.

¹⁴ Heri Joko Saputro dan Tofik Yanuar Chandra, "Urgensi Pemulihan Kerugian Keuangan Negara Melalui Tindakan Pemblokiran Dan Perampasan Asset Sebagai Strategi Penegakan Hukum Korupsi," *Mizan: Journal of Islamic Law* 5, no. 2 (2021): 273, <https://doi.org/10.32507/mizan.v5i2.1033>.

¹⁵ Andi Purnomo, "Pendekatan Restorative Justice Dalam Menyelesaikan Tindak Pidana Korupsi Di Indonesia Dalam Hal Pemulihan Keuangan Negara," *Justicia Sains: Jurnal Ilmu Hukum* 8, no. 2 (2023): 532, <https://doi.org/10.24967/jcs.v8i2.2662>.

Indonesia through the recovery of state financial losses in terms of the value of justice.

The research carried out by this author uses normative research methods, where this normative research method has the characteristics of library research.¹⁶ Researchers use normative research methods because the research carried out by this researcher is related to legal rules, legal theories and doctrines, legal principles and principles from legal experts. Research carried out using normative research methods was then carried out by the author using a conceptual approach which was carried out by discussing problems based on legal philosophy, legal theory, legal principles and legal doctrine put forward by experts and using a statutory approach. Where the data analysis carried out by the author uses qualitative data analysis where the results obtained will be explained descriptively.

II. Prosecutor's Efforts To Recover State Finances By Perpetrators Of Corruption Crimes In Indonesia

Soerjono Soekanto defines role as a dynamic aspect where if a person carries out their rights and obligations then that person is carrying out a role. In an organization, each individual has various characteristics in carrying out the obligations or tasks that have been given by the institution or organization.¹⁷ Apart from that, Riyadi also expressed his opinion regarding the definition of role, namely as an orientation and concept of the part played by a party in a social opposition. With the existence of something called a role, individuals in an environment can behave in accordance with the demands given to them. Where the role itself is a

¹⁶ Yati Nurhayati, Ifrani Ifrani, dan M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 4, <https://doi.org/10.51749/jphi.v2i1.14>.

¹⁷ Soejono Soekanto, *Teori Peranan* (Jakarta: Bumi Aksara, 2002).

behavior that contains norms and obligations that must be carried out by a person in an environment.¹⁸ As well as individual prosecutors, who are an institution in terms of law enforcement, also have a role in carrying out their duties as a law enforcement institution. One of the roles of the Prosecutor's Office in carrying out its duties as a law enforcement agency is its role in efforts to prevent criminal acts of corruption.

Based on Law Number 8 of 1981 concerning Criminal Procedure Law, the definition of Prosecutor and Public Prosecutor is explained where the Prosecutor is an official who is given the authority by law to act as a public prosecutor to carry out court decisions that have permanent legal force. Meanwhile, the Public Prosecutor is a prosecutor who is given the authority by law to carry out prosecutions and carry out decisions given by the judge. In Article 17 of Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, it is explained that the investigation process based on special provisions of criminal procedure as intended in Article 284 paragraph 2 of the Criminal Procedure Code is carried out by investigators, prosecutors and investigating officials who have other authority based on statutory regulations.¹⁹ Then specifically in Article 26 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, it is explained that investigations, prosecutions and examinations at trials in court in cases of criminal acts of corruption are carried out based on the applicable criminal procedural law, unless otherwise provided in this law. This indicates that the role of the Prosecutor's Office is as an investigator and investigator in corruption cases and as a public prosecutor in corruption cases at trial. So normatively

¹⁸ Riyadi, *Perencanaan Pembangunan Daerah Strategi Mengendalikan Potensi Dalam Mewujudkan Otonomi Daerah* (Jakarta: Gramedia, 2002).

¹⁹ Abvianto Syaifulloh, "Peran Kejaksaan Dalam Pengembalian Kerugian Keuangan Negara Pada Perkara Tindak Pidana Korupsi," *Indonesian Journal of Criminal Law* 1, no. 1 (2019): 59, <https://doi.org/10.31960/ijocl.v1i1.147>.

the Prosecutor's Office has a role and authority in matters of criminal acts of corruption.

The duties and authorities of the Prosecutor's Office in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, specifically regulated in Article 30 paragraphs (1), (2), (3) which then in Law Number 11 of 2021, between Articles 30 and 31, 3 (three) additional articles were inserted which regulate the authority of the Prosecutor's Office. Regarding the form of preventing criminal acts of corruption, the regulations are contained in Article 30B which discusses the authority in the field of intelligence in law enforcement, namely:

- 1) Carry out investigative, security and mobilization functions for law enforcement purposes;
- 2) Create safe and supportive conditions for implementing development;
- 3) Carrying out law enforcement intelligence cooperation with intelligence agencies and/or other state intelligence providers both at home and abroad;
- 4) Prevent corruption, collusion and nepotism; as well as
- 5) Carry out multimedia supervision.

The prosecutor's office as a state institution in carrying out its authority must be based on existing regulations which are based on the principle of *lex posterior derogat legi priori*, namely that new legal rules make old legal rules invalid²⁰. So, the application of regulations must be based on the latest regulations, where in carrying out their authority the prosecutor's office as a state institution must be independent and not influenced by various parties.²¹ Corruption itself has caused poverty among

²⁰ Irfani Nurfaqih, "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 312.

²¹ Marwan Effendy, *Kejaksaan RI Posisi dan Fungsinya Dari Perspektif Hukum* (Jakarta: Gramedia Pustaka Utama, 2005).

people in a country, where this is because criminal acts of corruption cause losses to state finances which also become an obstacle in carrying out national development. Indonesia itself is a legal state as mandated by the 1945 Constitution of the Republic of Indonesia, which in principle is the policy pursued by the state towards the life of the state and nation. The problem of corruption at this time focuses on eradicating criminal acts of corruption. Efforts to prevent and eradicate criminal acts of corruption have a main focus on eradicating, preventing and recovering losses to state finances.²²

State finances in Indonesia are regulated in statutory regulations, where state finances themselves cover all state obligations and rights whose value can be measured in money. This state finance includes activities and policies in the fiscal sector, management of separated state assets as well as in the monetary sector and also all matters related to or in the form of money or goods that can be made property of the state in the implementation of the state's obligations and rights.²³ Corruption is an action that either directly or indirectly causes losses to state finances which also has an impact on the community within it. Regarding losses to the state's own finances, the laws and regulations governing criminal acts of corruption do not yet have a specific definition. The definition of losses to state finances is in Law Number 15 of 2006 concerning the Financial Audit Agency and Law Number 1 of 2004 concerning the State Treasury. Based on these two regulations, a definition is obtained related to state financial loss, which is an act that causes measurable losses to state finances due to unlawful acts carried out either intentionally or unintentionally. Apart from that, in the Law which regulates Corruption Crimes, especially

²² Visilia Kumakauw, Butje Tampi, dan Refly Umbas, "KAJIAN HUKUM MENGENAI PENGEMBALIAN KERUGIAN KEUANGAN NEGARA DALAM TINDAK PIDANA KORUPSI 1 Oleh: Visilia Kumakauw 2 Butje Tampi 3 Refly Umbas 4" X, no. 13 (2021): 147.

²³ Wessy Trisna Ridho Mubarak, "Determination Of State Financial Loss Due To Abuse Of The Authority Of Government Officers (Penentuan Kerugian Keuangan Negara Akibat Penyalahgunaan Kewenangan Pejabat Pemerintah)," *Jurnal Ilmiah Penegakan Hukum* 8, no. 2 (2021): 178.

in the explanation of Article 32 paragraph (1), there is a view related to the fulfillment or validity of the elements in state financial losses, namely:²⁴

- 1) The calculation of state financial losses must be carried out by a designated public accountant or an authorized agency in their field;
- 2) The amount of losses to state finances must be calculated.

The authority of the Prosecutor's Office in terms of efforts to prevent criminal acts of corruption has been returned to Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Based on the theory of legal certainty put forward by Jan Michiel Otto, legal certainty is more directed to the juridical side where there are several limitations, namely:²⁵

- 1) There are definite, easy to obtain and consistent legal rules;
- 2) State institutions implement legal rules consistently and submit and obey these legal rules;
- 3) People obey and adjust their behavior in accordance with applicable legal regulations;
- 4) A judicial system that is impartial and independent in implementing the legal rules consistently when resolving legal problems.

The Prosecutor's Office as a state institution which is also a law enforcement agency in carrying out its duties and authority must be based on applicable legal regulations and implement them consistently. In terms of efforts to prevent criminal acts of corruption, especially in village funds, the authority of the Prosecutor's Office is clearly regulated in Article 30 B of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Apart from the authority in the field of intelligence in preventing criminal

²⁴ Robert Klitgaard, "Tindak Pidana Korupsi Pengertian Tindak Pidana Korupsi," *Legislatif* 4, no. 2 (2021): 171.

²⁵ Shidarta, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir* (Bandung: PT. Revika Aditama, 2006).

acts of corruption, the Prosecutor's Office of the Republic of Indonesia also has a role in the criminal field, which authority is regulated in Law Number 16 of 2024 concerning the Prosecutor's Office of the Republic of Indonesia in Article 30, which in full has the authority in:

- 1) Carrying out prosecution;
- 2) Carry out decisions from judges and court decisions that have obtained permanent legal force or *inkracht*;
- 3) Carry out supervision over the implementation of conditional criminal decisions, supervised criminal decisions and conditional release decisions;
- 4) Carrying out investigations into certain criminal acts based on law;
- 5) Carrying out activities in completing files for certain cases and being able to carry out additional examinations before the case files are submitted to court, the implementation of which coordinates with investigators.

The Prosecutor's Office of the Republic of Indonesia, in its efforts to take action against criminal acts, especially in criminal acts of corruption, the prosecutor's office also has the authority to recover losses to state finances which is carried out by tracing, confiscating and returning state funds obtained from criminal acts which are then returned to the victim, the state or those entitled to the assets. However, the process of returning losses to state finances still faces obstacles in its implementation, where the facts on the ground are that often the results of corruption from state finances do not only stop with the perpetrators of criminal acts of corruption but also involve third parties who are not perpetrators of criminal acts of corruption. Apart from that, what is also an obstacle in implementing the recovery of state financial losses is the large number of methods for calculating state financial losses or the absence of a standard calculation method. In this regard, it is necessary to make efforts, especially at the Prosecutor's Office, to carry out legal processes aimed at recovering

or reversing losses to state finances originating from criminal acts of corruption.

A separate policy in handling criminal acts of corruption which can be used as a solution by the Prosecutor's Office of the Republic of Indonesia in recovering state financial losses caused by criminal acts of corruption can be started at the investigation stage. At this stage of the investigation, it is necessary to provide provisions to provide opportunities for perpetrators of criminal acts of corruption to compensate for losses to state finances caused by their actions. Where perpetrators of this criminal act of corruption are required to return state financial losses amounting to three times the calculated state financial losses that have been determined. The return of losses to state finances is returned in the form of money, but this concept is carried out with the awareness of the perpetrator of the criminal act of corruption. By returning state financial losses by the perpetrator of the criminal act of corruption, the case being investigated can be terminated even though a potential suspect has been named or a suspect has been named. The return of financial losses to the prosecutor's office is carried out through the Asset Recovery Agency as its authority is regulated in the Republic of Indonesia Prosecutor's Regulation Number 3 of 2024 concerning the Fourth Amendment to the Attorney General's Regulation Number PER-006/A/JA/07/2017 concerning the Organization and Working Procedures of the Republic of Indonesia Prosecutor's Office. Then, upon the recovery of the state financial losses, a report will be made to the Attorney General and then a recommendation to terminate the case will be issued, however this concept of terminating the case cannot be applied to repeat or recidivist perpetrators. Furthermore, if it has entered the prosecution stage at trial, the perpetrator who has the status of a defendant will make restitution for losses to state finances of twice the total losses to state finances without coercion, then the charges which will then be given based on the consideration of the

Attorney General can be under the minimum provisions as stipulated in the Corruption Crime Law.

Judging from the non-penal theory which is based on Muladi's thoughts, criminal law enforcement is not the only way out in overcoming or resolving a crime as a whole.²⁶ The problem of corruption that occurs in Indonesia, if we pay attention to it, always leads to criminal punishment, which is considered to be less effective in preventing future criminal acts of corruption. Where the impact that occurs due to the many criminal acts of corruption that occur is losses to state finances which erode the value of justice, especially for all Indonesian people who feel the impact of criminal acts of corruption, namely the obstruction of national development. Efforts that should be made first in handling criminal acts of corruption are viewed from the non-penal theory, namely how to restore or restore state finances that previously experienced losses as a result of criminal acts of corruption. In handling cases of criminal acts of corruption that have so far been carried out only focusing on the length of corporal punishment given to the perpetrators, the handling of state financial losses is still not effective where the percentage of recovery of state financial losses is relatively low as in the following data.

²⁶ Muladi, *Kapita Selektta Sistim Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995), 7.



Source: Indonesia Corruption Watch

Based on the data presented above, it can be seen that the state financial losses resulting from criminal acts of corruption are quite large, but the returns are still far from the total value of losses. This indicates that handling or enforcing the law through penal theory is still not effective in terms of recovering state financial losses. Handling or enforcing the law, especially criminal acts of corruption which cause financial losses of quite a large value, using the penal theory cannot be a preventive measure in preventing criminal acts of corruption and does not provide a deterrent effect. So that the Prosecutor's Office of the Republic of Indonesia in terms of handling and preventing criminal acts of corruption, according to its duties and functions, handles cases using a non-penal theory which prioritizes recovering state financial losses which is felt to be more effective in terms of preventing and providing a deterrent effect for perpetrators of criminal acts of corruption. In this way, state financial losses arising from criminal acts of corruption can be fully recovered and the handling of criminal acts of corruption becomes more effective and efficient and is not in line with the handling of cases that are fast, simple and low cost.

III. Concept Of Recovery Od State Financial Losses Viewed From Justice Values

Until now, criminal acts of corruption are still a phenomenon that requires special attention and handling because criminal acts of corruption are still widely committed in various levels of society. This criminal act of corruption often results in losses to state finances, where losses to state finances are a shortage of securities, goods and money in definite and real amounts caused by unlawful acts whether intentionally or unintentionally or negligently. The results of criminal acts of corruption that cause losses to state finances must be recovered, this is because they are related to the state's economy which aims to improve people's welfare.²⁷ The selection of state financial losses is focused on the assets of perpetrators of criminal acts of corruption, where the assets themselves are based on the Republic of Indonesia Prosecutor's Regulation Number 7 of 2020 concerning the Second Amendment to the Attorney General's Regulation Number PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery, namely all objects in material or immaterial form, immovable or moveable, having no form or form, as well as documents or legal instruments that have economic value.

Indonesia as a welfare state means that the government has an obligation to carry out development functions in realizing welfare for society equally. One indicator of equal distribution of prosperity is the absence of acts of corruption in state administration.²⁸ In realizing a prosperous country, it is necessary to make efforts to save or restore state

²⁷ Rima Mangheskhar Syakila dan Mohammad Saleh, "Perampasan Aset Terpidana Tindak Pidana Korupsi Sebagai Pemulihan Keuangan Negara," *Jurnal Ilmu Hukum, Humaniora dan Politik* 4, no. 4 (2024): 764–65, <https://doi.org/10.38035/jihhp.v4i4.2070>.

²⁸ Kurnia Siwi Hastuti, "Pembaharuan Hukum Pedoman Pemidanaan terhadap Disparitas Putusan Pengembalian Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 2 (2021): 93, <https://doi.org/10.18196/ijclc.v2i2.12294>.

financial losses, which is the main focus. Efforts to save or restore losses to state finances require an approach that leads to progressiveness as a form of justice for society.²⁹ In relation to welfare and justice for society, the 4th paragraph of the Preamble to the 1945 Constitution contains a statement that one of the objectives of the Unitary State of the Republic of Indonesia is to advance general welfare. Then, the achievement of a country's goals also has a connection with state finances. Apart from that, state finances have a goal in the prosperity of the people as written in Article 23 paragraph (1) of the 1945 Constitution.³⁰

Recovery of state financial losses needs to be implemented in law enforcement in Indonesia, which is a progressive law. Bernard L. Tanya expressed an opinion regarding the concept of progressive law, namely a law that is on the side of justice and the people. This shows that in enforcing the law, law enforcement officers have an obligation to prioritize empathy and concern for the community. This progressive law is part of a continuous process of searching for the truth.³¹ This progressive law is a law that follows humans, which means that the law moves dynamically following changes in human life. As time goes by, of course the trend of crime is also growing, which is also influenced by the values in people's lives. If the law cannot be a means or tool in accommodating society, then automatically the crime rate will be difficult to reduce. This means that order in society cannot be achieved optimally. Changes in this era place demands on the law, apart from providing a deterrent effect, the law is also

²⁹ Sebastian Sindarto, "Kebijakan Penyelamatan Keuangan Negara Dari Tindak Pidana Korupsi Berdasarkan Perspektif Hukum Progresif," *Reformasi Hukum* 25, no. 2 (2021): 191, <https://doi.org/10.46257/jrh.v25i2.321>.

³⁰ Fajri Kurniawan, Muhammad Syammakh Daffa Alghazali, dan Afdhal Fadhila, "Determinasi Upaya Pemulihan Kerugian Keuangan Negara Melalui Peran Kejaksaan terhadap Perampasan Aset Tindak Pidana Korupsi," *Jurnal Hukum Lex Generalis* 3, no. 7 (2022): 566, <https://doi.org/10.56370/jhlg.v3i7.279>.

³¹ Rizky Julranda, Michael Geremia Siagian, dan Michael Ariel Perdana Zalukhu, "Pembangunan Hukum Nasional Dalam Rancangan Undang-Undang Masyarakat Hukum Adat," *Jurnal Crepido* 04, no. 02 (2022): 173.

expected to provide support to the nation in all fields such as social, economic and security.³²

In relation to this problem, it is necessary to make efforts by the prosecutor's office to recover losses to state finances caused by the peak of criminal acts of corruption in Indonesia. Lawrence M. Friedman in his theory states that legal system theory has three elements of a legal system, namely legal structure, legal substance and legal culture. Legal substance includes rules and procedures for behavior, then legal structure includes the framework of the law itself and legal culture includes social attitudes and values in society related to applicable laws.³³ Regarding the Prosecutor's Office in terms of efforts to recover state financial losses by perpetrators of criminal acts of corruption, if studied based on legal system theory according to Lawrence M. Friedman, the legal structure related to this problem is that the role of the Prosecutor's Office is based on Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, then Article 30 B of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

This regulation explains the authority of the Prosecutor's Office in preventing corruption, collusion and nepotism as well as the authority in the field of recovering state finances resulting from criminal acts, which is specifically the main task of the Prosecutor's Office of the Republic of Indonesia. Then regarding the legal substance which includes rules and procedures for behavior in institutions or agencies, the main duties and functions of the Republic of Indonesia Prosecutor's Office are regulated in the Republic of Indonesia Prosecutor's Regulation Number 3 of 2024 concerning the Fourth Amendment to the Attorney General's Regulation

³² Neysa Tania, Jason Novienco, dan Dixon Sanjaya, "Kajian Teori Hukum Progresif Terhadap Implementasi Produk Tabungan Perumahan Rakyat," *Perspektif* 26, no. 2 (2021): 76, <https://doi.org/10.30742/perspektif.v26i2.800>.

³³ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975).

Number PER-006/A/JA/07/2017 concerning the Organization and Work Procedures of the Republic of Indonesia Prosecutor's Office relating to asset recovery carried out by the Republic of Indonesia Prosecutor's Office Asset Recovery Agency. The Attorney General's Regulation contains the rules and procedures as well as the main duties and functions of the Prosecutor's Office in carrying out all its authority which also includes efforts to prevent criminal acts of corruption and restore state finances. Then, legal culture, which includes social attitudes and values that apply in society, needs to be improved by providing knowledge regarding efforts to prevent criminal acts of corruption to the public. Apart from that, it is also necessary to instill progressive legal concepts in law enforcement officers in carrying out law enforcement in Indonesia. This needs to be done in order to instill knowledge about criminal acts of corruption and the punishment that will be received if a criminal act of corruption occurs, then apart from that, legal handling can optimize the recovery of state financial losses which aims at welfare and justice for the people of Indonesia so that national development can be realized.

Indonesia is a pluralistic country that has a history and ideology that is different from other countries. The aim of developing the Indonesian state is a prosperous and just society based on Pancasila which is the basis of the state which is also stated in the 1945 Constitution of the Republic of Indonesia. Pancasila within the scope of welfare is a principle that regulates the social, political and economic order of the Indonesian Nation. Pancasila for the Indonesian nation is not only limited to values but is a legal basis or basis that provides regulation of people's lives.³⁴ Pancasila and welfare are things that cannot be separated because the five principles contained in Pancasila contain a reflection of the principles that support welfare, where in the concept of welfare values there is a certainty in the more equitable and equitable distribution of wealth. Apart from

³⁴ Lukas Pattipeilohy et al., "Pancasila Sebagai Dasar Sistem Kesejahteraan Masyarakat Indonesia," *Jurnal Ilmiah Multidisiplin* 1, no. 10 (2023): 356, <https://doi.org/10.5281/zenodo.10137903>.

that, the principles in Pancasila also contain the value of justice, where the values of prosperity and justice are a strong basis for realizing the goals of the Indonesian nation. The five precepts contained in Pancasila are interconnected in the realization of social welfare.

Justice is a broad basic concept, where justice is not only in the form of moral demands but also something that describes the law factually. The concept of justice according to Prof. Barda Nawawi, namely settlement, namely resolving cases outside the court where the concept of settlement outside the court can be carried out at every stage of the criminal law enforcement process, starting from the investigation process to the examination in court.³⁵ The concept of justice according to Barda Nawawi consists of several principles, namely process orientation which aims to provide awareness to the perpetrator of his actions, then in the process it is carried out with the view that the parties are not placed as objects but are placed as subjects who have personal responsibility and have the power and ability to act or act.³⁶ By realizing the handling of cases based on the value of justice, then a benefit is achieved which is one of the goals of law where benefit and justice create order and provide protection in the lives of people in a country. Utility in law itself is something that is aimed at accommodating the values that exist in society, where sometimes legal regulations have loopholes that do not accommodate and do not provide benefits to society in their implementation. So the law must contain benefits which then go hand in hand with justice and create legal order and certainty in society as stated by Jeremy Bentham's theory of benefits.³⁷ The concept of state financial recovery implemented by the Attorney

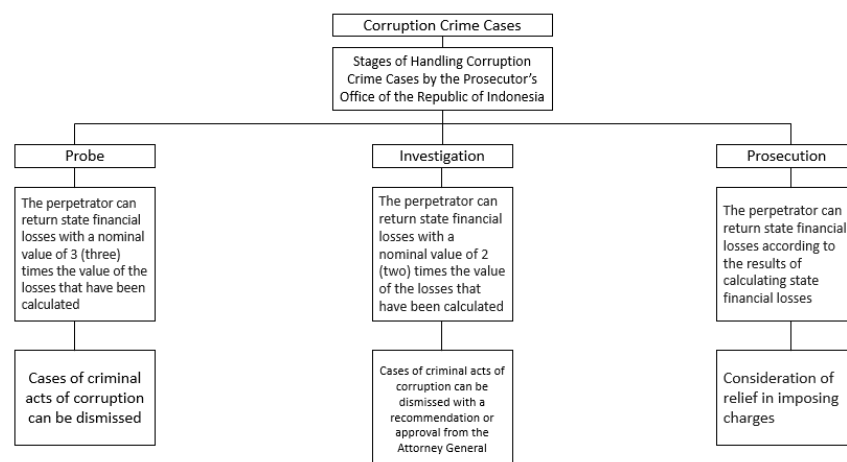
³⁵ Muhammad Fatahillah Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Masalah-Masalah Hukum* 51, no. 2 (2022): 204, <https://doi.org/10.14710/mmh.51.2.2022.199-208>.

³⁶ Barda Nawawi Arief, *Mediasi Penal Penyelesaian Perkara di Luar Pengadilan* (Semarang: Pustaka Magister, 2012), 4–5.

³⁷ Dino Rizka Afdhali dan Taufiqurrohman Syahuri, "Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum," *Collegium Studiosum Journal* 6, no. 2 (2023): 559, <https://doi.org/10.56301/csj.v6i2.1078>.

General's Office can be carried out from the investigation stage, where during the investigation stage of suspected criminal acts of corruption the case can be stopped with the requirement that the perpetrator recover state financial losses with a nominal value of 3 (three) times the value of the losses that have been calculated. Furthermore, the investigation stage of the alleged criminal act of corruption can be stopped if the perpetrator returns state financial losses with a nominal value of 2 (two) times the value of the losses incurred and calculated, however, the termination of this investigation stage must be with the approval or recommendation of the Attorney General. Then, at the prosecution stage, the perpetrator can obtain relief in imposing charges if he returns state financial losses according to the nominal amount of losses incurred.

Based on the explanation of the concepts and schemes for efforts to recover state financial losses above, it can be seen that the concept implemented by the Prosecutor's Office of the Republic of Indonesia is based on the concept of justice put forward by Barda Nawawi and is also based on the theory of benefit where the concept of resolving a criminal case of corruption carried out by the Prosecutor's Office of the Republic



Scheme 1. Concept of Recovery of State Financial Losses

of Indonesia which causes state financial losses is an effort to provide a deterrent effect on the perpetrators and seek maximum return of state

finances in order to restore the country's economy and provide benefits to the Indonesian people. Then in the theory of criminal objectives there are several things that must be achieved, namely:³⁸

- a. Create a deterrent effect for someone who commits an unlawful act or crime;
- b. Creating fear for every individual who intends to commit a crime;
- c. Raising awareness among perpetrators of the mistakes or crimes they have committed.

Apart from that, the aim of this punishment also includes protection for society against criminal acts, which includes a sense of security in society, efforts to restore balance in society, creating order and peace and prevention of crime.³⁹ The concept of recovering state financial losses resulting from criminal acts of corruption which is carried out by the Prosecutor's Office of the Republic of Indonesia aims to provide a deterrent effect on perpetrators of criminal acts of corruption by directing perpetrators to reimburse state financial losses with a fairly large amount. This aims to make the perpetrators aware of their actions which, apart from causing material losses to the state, also create an imbalance in people's lives. So that the concept of returning state financial losses can be a form of effort to prevent criminal acts of corruption and become a turning point in handling criminal acts of corruption so that they become more effective and efficient.

Handling criminal acts of corruption with the concept of returning state financial losses is also adopted by the Dutch state where in the Dutch legal system there is an institution known as *transactiestelsel* or transaction institution. The concept of handling criminal acts of corruption in the Netherlands is to increase the role of the prosecutor's office in terms of

³⁸ Tolib Setiady, *Pokok-Pokok Hukum Penitensier Indonesia* (Bandung: Alfabeta, 2010), 31.

³⁹ Barda Nawawi Arief, *Tujuan dan Pedoman Pemidanaan* (Semarang: Badan Penerbit Universitas Diponegoro, 2009), 34.

returning assets resulting from criminal acts of corruption, where this concept does not completely eliminate criminal sanctions on perpetrators of criminal acts of corruption but focuses more on providing punishments that can restore the consequences of committing criminal acts of corruption.⁴⁰ The Netherlands has a more transparent and systematic system in terms of eradicating and preventing criminal acts of corruption. In terms of reducing the number of criminal acts of corruption, the Netherlands applies fairly strict controls to state officials and implements transparency in all public policies.⁴¹ The judicial system in the Netherlands which prioritizes the resolution of criminal cases through non-penal channels or restorative justice shows that the resolution of criminal acts, especially corruption crimes, becomes more effective and becomes an effort to prevent corruption crimes, this is indicated by the Netherlands being ranked 8th out of 176 countries in the Corruption Perception Index assessment. So it can be a comparison for Indonesia regarding the concept of handling and preventing criminal acts of corruption which focuses on accountability and the principles of justice.

In connection with this welfare goal, the state should carry out law enforcement efforts that are in line with the values contained in Pancasila, not the opposite which causes the state to experience losses and becomes an obstacle in the implementation of national development. Referring to the philosophy of the 5th principle of Pancasila, namely "Social Justice for All Indonesian People", in this case there needs to be justice both in terms of law, social, economic and other aspects in implementing law enforcement. On the one hand, law has demands in eradicating crime, but on the other hand, law must also be fair in terms of fulfilling the welfare

⁴⁰ Ikhlusal Amal Imaduddin dan Ali Muhammad, "Upaya Restorative Justice dalam Penanganan Kasus Tindak Pidana Korupsi," *Journal Sains Student Research* 1, no. 1 (2023): 342, <https://doi.org/10.61722/jssr.v1i1.106>.

⁴¹ Chici Savitri et al., "TINJAUAN YURIDIS TERHADAP PERBANDINGAN SISTEM HUKUM INDONESIA DAN BELANDA DALAM PENANGANAN TINDAK PIDANA KORUPSI," *JURNAL INOVASI HUKUM* 6, no. 2 (2025): 188, <https://ejournals.com/ojs/index.php/jih/article/view/1711/2066>.

of the Indonesian people. Therefore, the concept that every perpetrator must receive a prison sentence should be changed to the concept of progressive law, this is due to the need to prioritize the principle that the law is the ultimum remedium, no longer a premium remedium. In the case of corruption which causes state financial losses, in addition to physical punishment or imprisonment, efforts are needed to recover state financial losses that occur as a result of criminal acts of corruption. Punishment of perpetrators of criminal acts of corruption is not only limited to physical punishment or imprisonment, but restitution of state financial losses can be a more effective form of punishment, especially in cases of criminal acts of corruption in realizing prosperity and justice for the Indonesian nation. In this way, efforts to recover state financial losses by perpetrators of criminal acts of corruption can provide a deterrent effect which will enable the achievement of the goal of punishment based on the values of welfare and justice. So that the implementation of a punishment based on the values of welfare and justice will provide benefits to the state structure and improve the welfare of the Indonesian nation.

IV. Conclusion

Based on the explanation that has been explained by the author, it can be concluded that the efforts that can be taken by the Prosecutor's Office of the Republic of Indonesia to recover state financial losses caused by criminal acts of corruption can be started at the investigation stage. The return of losses to state finances is returned in the form of money, but this concept is carried out with the awareness of the perpetrator of the criminal act of corruption. Therefore, the concept of every perpetrator having to receive a prison sentence should be changed to the concept of progressive law as well as the concept of justice which has been described by Barda Nawawi Arief, this is due to the need to prioritize the principle that the law is the ultimum remedium and no longer the premium remedium. And

it can be a comparison of the concept of handling criminal acts of corruption in the Netherlands which is more effective and efficient which provides real evidence in terms of handling and preventing criminal acts of corruption. So that the implementation of a punishment based on the values of welfare and justice will provide benefits to the state structure and improve the welfare of the Indonesian nation.

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ECLARATION OF CONFLICTING INTERESTS

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