Reconstruction of the Termination of Prosecution of Corruption Offences Public Prosecutor's Discretion

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Abstract

Corruption cases that result in small state financial losses continue to end up in the Corruption Court without alternative solutions that are faster, simpler and cheaper, even though the Corruption Court is located in the provincial capital and the corruption trial process requires a lot of money. So that it is not commensurate between the costs of law enforcement incurred with the state financial losses incurred due to corruption. The method of this research approach is juridical sociological because the problems studied concern the relationship between juridical factors and sociological factors. The urgency of discontinuing the prosecution of corruption crimes with small state financial losses is that the prosecution of corruption crimes with small state financial losses is inefficient and the Discontinuation of Prosecution of corruption crimes with small state financial losses does not have a legal umbrella This is because there are weaknesses in legal substance, legal structure and legal culture. The reconstruction model for the termination of prosecution of corruption crimes with small state financial losses based on Prosecutorial Discretion by the Public Prosecutor in a Progressive Legal Perspective is the Reconstruction of Legal Substance, namely adding Prosecutorial Discretion by the Public Prosecutor as a manifestation of the Dominus Litis Principle can stop the prosecution of corruption crimes with small state financial losses where this has not been regulated in Article 140 paragraph (2) of the Criminal Procedure Code, Reconstruction of legal structure, namely the delegation of authority from the Attorney General of the Republic of Indonesia to the Head of the High Prosecutor's Office as the controller of the termination of prosecution of corruption crimes with small state financial losses, Reconstruction of legal culture, namely changing the patterns of thought of public prosecutors from positivistic to progressive in exercising their authority. The recommendations in this study encourage the reform of the Criminal Procedure Code (KUHAP) related to the authority to discontinue prosecution by the Public Prosecutor and the need to make a regulation of the Attorney General related to the Discontinuation of Prosecution based on the Discretion of the Public Prosecutor.

Keywords: Corruption, Termination of Prosecution, State Financial Losses, Prosecutorial Discretion.

T Conceptually, the rule of law in Article 1 paragraph (3) of the 1945 Constitution is the latest conception of the rule of law. Certainty regarding the conception (principle) of the welfare state law adopted by the Indonesian constitutional system is known from the clause of the Fourth Paragraph of the preamble of the 1945 Constitution relating to the objectives of

the Republic of Indonesia, namely 'to promote public welfare'. If starting from the Fourth Paragraph of the Preamble of the 1945 Constitution, it can be ascertained that the purpose of the Republic of Indonesia is to organise the welfare of the entire Indonesian nation (general welfare).

Satjipto Rahardjo as his opinion quoted by Nyoman Sarikat Putra Jaya said, that the law enforcement process also reaches the stage of lawmakers / laws. The formulation of the mind of the legislator as outlined in the legislation will also determine how law enforcement will be carried out. Law enforcement in a broad sense includes activities to implement and apply the law and take legal action against any violations or deviations from the law committed by legal subjects, either through judicial procedures or through arbitration procedures and other dispute resolution mechanisms (Alternative dispute or conflict resolution). Even in a broad sense, law enforcement activities include all activities intended to make the law as a set of normative rules that regulate and bind legal subjects in all aspects of the life of society and the state really - really obeyed and really - really run as it should. In a narrow sense, law enforcement involves taking action against any violations or deviations from laws and regulations, especially those that are narrower through the criminal justice process involving the role of police officers, prosecutors, advocates or lawyers and judicial bodies.

Ideal law enforcement must be able to fulfil the three basic values of law, namely the values of justice, legal certainty and usefulness. Both at a theoretical and practical level, these three basic values are not easy to realise harmoniously. The fulfilment of the value of legal certainty, sometimes must sacrifice the value of justice and expediency, as well as the fulfilment of the value of justice and expediency on the one hand, on this side will result in the sacrifice of the value of legal certainty.

Criminal law enforcement through a system approach is known as the criminal justice system. In general, the criminal justice system can be interpreted as a process of working of several law enforcement agencies through a mechanism that includes gradual activities starting from investigation, prosecution, examination in court, and implementation of judges' decisions carried out by correctional institutions. The process works sequentially, meaning that one stage cannot skip another. The whole process works in a system, so that each institution is a subsystem that is interconnected and influences one another. In the criminal justice system, there are functional components, each of which must relate and work together.

Indonesia adopts an integrated criminal justice system, which is the legal spirit of the Criminal Procedure Code. This integration is philosophically an instrument to realise the national goal of the Indonesian nation which has been formulated by the Founding Father in the 1945 Constitution, namely 'Protecting the community (social defence) in order to achieve social welfare'. The criminal justice system is closely related to the term 'System of Administration of Criminal Justice'. The word 'administration' is an Indonesianisation of administration. 'Administration' refers to the activities of certain institutions to carry out or move what is the duty and obligation (function) of the institution, according to a procedure or procedure based on applicable provisions, in achieving certain goals.

The Criminal Justice System has the following objectives:

a) Prevent the public from becoming victims of crime

b) Resolving crimes that occur so that the public is satisfied that justice has been served and the guilty have been punished

c) To endeavour to prevent those who have committed crimes from reoffending.

Based on the provisions stipulated in the Criminal Procedure Code, the Indonesian Criminal Justice system is run by 4 (four) components, namely the Police as investigators, the Prosecutor's Office as the Public Prosecuting Agency, the Court in charge of trying and

deciding cases and the correctional institution to provide guidance to prisoners. Law enforcement of corruption in Indonesia is currently carried out by 3 (three) institutions, namely the Attorney General's Office of the Republic of Indonesia, the Indonesian National Police and the Corruption Eradication Commission of the Republic of Indonesia (KPK RI). Of the three law enforcement agencies, the one that has a central position is the Prosecutor's Office of the Republic of Indonesia. According to Article 1 paragraph (1) of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated that 'the Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government agency whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on law'. Based on this article, the Public Prosecutor's Office is the only institution authorised to carry out the prosecution of criminal offences (both general and special criminal offences), whoever the investigator is (either from the Police or the KPK), the prosecutor is from the Public Prosecutor's Office. As in the Corruption Eradication Commission, although it also has the authority to prosecute corruption offences, the prosecutors are from the Public Prosecutor's Office of the Republic of Indonesia (with the status of being employed at the Corruption Eradication Commission).

The PublicProsecution Service of the Republic of Indonesia is an institution mandated to exercise state power in the field ofprosecution carried out by the Public Prosecutor, which when interpreted etymologically comes from the word'prosecution' which comes from the Latin word prosecutus, which consists of the words 'pro' (before) and 'sequi' (following). Referring to the etymological meaning of the word 'Public Prosecutor' and associated with the role of the Public Prosecutor's Office in a criminal justice system, the Public Prosecutor's Office should be seen as Dominus Litis (procuruer die de procesvoering vastselat), namely the controller of the case process from the initial stages of investigation to the execution of a decision. This Dominus Litis principle is universal as contained in Article 11 of the Guidelines on the Role of Prosecutors which was also adopted by the Eighth United Nations Congress on the Prevention of Crime in Havana in 1990 and in Indonesia has also been explicitly recognised in Constitutional Court Decision Number 55/PUU-X11/2013.

Based on Article 1 letter 6.b Jo Article 13 of the Criminal Procedure Code (KUHAP), it is stated that 'Public prosecutors are prosecutors who are authorised by this law to conduct prosecutions and implement judges' decisions'. Furthermore, based on Article 1 paragraph (3) of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated that 'Public Prosecutors are prosecutors who are authorised by this Law to conduct prosecutions and carry out judges' decisions and other powers based on the Law'. Based on Article 14 of the Criminal Procedure Code, the public prosecutor has the following powers:

a) Receive and examine investigation case files from investigators or assistant investigators;

b) Holding pre-prosecution if there are shortcomings in the investigation with due regard to Article 110 paragraph (3) and paragraph (4), by providing instructions in the context of improving the investigation from the investigator.

c) Grant an extension of detention, conduct detention or further detention and or change the status of detention after the case has been handed over by the investigator.

d) Draw up an indictment.

e) Submitting the case to the court

f) Notify the defendant of the date and time of the trial, accompanied by a summons, both to the defendant and to witnesses to appear at the scheduled hearing.

g) Conducting prosecution.

h) Closing the case in the public interest.

i) Taking other actions within the scope of duties and responsibilities as a public prosecutor under this law.

j) Carry out the judge's decision.

Relation to the authority to conduct prosecution, Article 1 letter 7 of KUHAP states 'Prosecution is the action of the public prosecutor to submit a criminal case to the competent district court in the case and in the manner provided for in this law with a request that it be examined and decided by a judge at a court session'. Specifically, the submission of corruption cases is carried out by the public prosecutor at the Corruption Court at the District Court in the capital city / city whose jurisdiction covers the jurisdiction of the district court concerned, as stated in Article 3 of Law No.46 of 2009 concerning the Corruption Court, namely 'The Corruption Court is located in each capital city / city whose jurisdiction covers the jurisdiction of the district court concerned'.

The handling of corruption crimes that is most often carried out by law enforcers (both the Police, the Prosecutor's Office and the Corruption Eradication Commission as investigators) is an unlawful act or abuse of authority to enrich themselves or others which results in state financial losses, as stated in Article 2 paragraph (1) of Law No.31 of 1999 concerning Eradication of Corruption Crimes Jo Law No.20 of 2001 concerning Amendments to Law No.20 of 2001 concerning the Eradication of Corruption Crimes. Year 2001 on the Amendment to Law No. 31 Year 1999 on the Eradication of the Criminal Act of Corruption states 'Every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm the state finances or the state economy, shall be sentenced to imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp.200.000.000,00 (two thousand, 000.000.00). .000.000,00 (two hundred million rupiah) and a maximum of Rp.1.000.000.000,- (one billion rupiah), then in Article 3 it is stated 'Every person with the aim of benefiting himself or herself or another person or a corporation, abusing the authority, opportunity or means available to him or her because of his or her position or position that can harm the state finances or the state economy, shall be punished with life imprisonment or a minimum sentence of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp.50.000.000,- (five billion rupiah). 000,000, - (fifty million rupiah) and a maximum of Rp.1,000,000,000, - (one billion rupiah).

Based on Law No.1 of 2004 Article 1 point 22 concerning State Treasury, it is stated that 'State / regional losses are shortages of money, securities and goods, which are real and certain in amount as a result of unlawful acts either intentionally or negligently'. The issuance of Constitutional Court Decision Number 25/PUU-XIV/2016 which states that the phrase 'may' in Article 2 paragraph (1) and Article 3 of Law Number 31/1999 on the Eradication of Corruption has resulted in efforts to prosecute corruption offences can only be carried out after state financial losses arise. The decision of the Constitutional Court indirectly requires that in order to be said to be corruption, there must be a state loss that can be determined (real loss), or in other words, the decision of the Constitutional Court can be interpreted that corruption does not recognise attempts or conspiracies to commit corruption, because the qualifications for attempts and conspiracies to commit corruption have not yet been determined by the amount of state financial losses.

Based on the provisions of Article 2 paragraph (1) and Article 3 of Law No.31 of 1999 on the Eradication of Corruption Jo Law No.20 of 2001 on the Amendment to Law No.31 of 1999 on the Eradication of Corruption, there is no explicit mention of the amount of state financial losses so that if it is related to Article 1 paragraph 22 of Law No.1 of 2004 on State Treasury, even small state financial losses can be included in the elements of state financial losses as in Article 2 paragraph (1) and Article 3 of Law

No.31 of 1999 on the Eradication of Corruption. Year 1999 on the Eradication of Corruption Jo Law No.20 Year 2001 on the Amendment to Law No.31 Year 1999 on the Eradication of Corruption.

With the absence of a nominal limit on state financial losses that can be included in the elements of state financial losses as stated in Article 2 paragraph (1) and Article 3, it results in law enforcers in handling corruption cases that result in state losses regardless of the size of the state financial losses incurred. So that corruption cases that result in small state financial losses still end up in the Corruption Court without any alternative solutions that are faster, simpler and cheaper, even though the Corruption Court is located in the provincial capital and the corruption trial process requires a lot of money. So, according to the author, this is not commensurate between the cost of law enforcement incurred and the state financial losses incurred as a result of corruption and is counterproductive to the spirit of fast, simple and low-cost law enforcement.

Based on the author's experience (as an Investigator, Investigator and Public Prosecutor for Corruption at the Jambi Bangko District Prosecutor's Office), he has handled a corruption case in 2014 with a State Financial Loss of Rp.75,000,000 (Seventy-five million rupiah), where at the Investigation stage, the State Financial Loss was returned by the suspect but the case continued to the prosecution stage until execution. Actually, according to the author, it is very ineffective and inefficient to continue the case to the prosecution stage due to the high operational costs of handling the case (at that time approximately Rp.200,000,000 (Two hundred million rupiah), the energy and time required for the trial (the location of the tipikor court is in Jambi Province by travelling approximately 6 hours from the author's office). The return of the State's financial losses was used as a mitigating circumstance in the criminal charges against the defendant.

The legal system for the eradication of criminal acts of corruption enforced by law enforcement officials is currently still fixated on repressive measures in the offences of Article 2 and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001. In punishing perpetrators of corruption, corruption laws in Indonesia still adhere to the paradigm of retributive justice.

Looking back at the Working Meeting between Commission III of the House of Representatives with the Attorney General on 17 January 2022 and 27 January 2022, Member of Commission III of the House of Representatives Mr. Benny K. Harman conveyed to the Attorney General of the Republic of Indonesia that in essence, 'Corruption cases under 1 million should not be processed. But until now we have data that many corruption cases under 1 million are still being processed. This is what is then said that our law is blunt to the top sharp to the bottom. It would be nice if the Attorney General makes a policy so that corruption cases of 1 million and below are not processed. Itis better to process big cases than small cases'.

Furthermore, DPR member Mr Supriansa also conveyed to the Attorney General of the Republic of Indonesia, 'There are not a few cases of village funds with low values, let's say a difference of 7 million, a difference of 5 million, but because they enter the court there must be charges and finally they are sentenced for so many years. If you think about the small value like that, I hope Jampidsus will make a breakthrough in returning the money rather than putting this person in prison. He eats more inside than what we are pursuing. After all, this nation also has limitations regarding the availability of prisons that are already over capacity. It is extraordinary if we force them in even though the value is low. Is there a solution or do we have to imprison people even though the value is quite small'.

To this question, the Attorney General of the Republic of Indonesia at the Working

Meeting with the House of Representatives on 27 January 2022 provided an explanation that for Village Fund cases where the loss is not too large and the action is not carried out continuously (keep going), it is recommended to be resolved administratively by returning the state financial losses and the perpetrator is given guidance through the inspectorate not to repeat his actions. The Attorney General of the Republic of Indonesia also appealed to his staff for corruption crimes whose state financial losses are below Rp.50,000,000, - (fifty million rupiah) to be resolved by returning state financial losses as an effort to implement legal processes quickly, simply and at low cost. In addition, law enforcement of corruption crimes must also prioritise the value of substantive justice in addition to legal benefits and legal certainty." However, based on the Attorney General's explanation, there are some parties who disagree if cases with a state financial loss value below Rp.50,000,000, - (fifty million rupiah) are not processed to court because it will worsen the image of law enforcement.

According to the author, the Attorney General's explanation is correct because the Attorney General has the duty and authority based on Article 35 letter a which states 'to determine and control the policy of law enforcement and justice within the scope of the duties and authority of the Attorney General's Office' and letter b which states 'to streamline law enforcement provided by law'. So that what the Attorney General said is based on the authority possessed and has the aim of balancing justice and benefit and legal certainty.

According to Soerjono Soekanto, whether a law is effective or not is determined by 5 (five) factors:

1) The legal factor itself (Law)
2) Law enforcement factors, namely the parties who form and apply the law
3) Factors of facilities or facilities that support law enforcement
4) Community factors, namely the environment where the law applies or is applied
5) Cultural factors, namely as a result of work, copyright and taste based on human nature in the association of life.

The five factors are closely interrelated, because they are the essence of law enforcement, as well as a measure of the effectiveness of law enforcement. The issue related to the handling of corruption cases prioritised on the disclosure of cases that are big fish (large scale, seen from the perpetrators and / or the value of state financial losses) and still going on (corruption is carried out continuously or continuously) is not new, this has actually been the direction of the President of the Republic of Indonesia at the opening of the Coordination Meeting of MAHKUMJAPOL and discussed in a working meeting between the Attorney General of the Republic of Indonesia and Commission III of the House of Representatives on 5 May 2010.

Based on the direction of the President of the Republic of Indonesia and the results of the working meeting with Commission III of the House of Representatives, the Deputy Attorney General for Special Crimes Marwan Effendy, SH issued Letter Number B-1113/F/Fd.1/05/2010 dated 18 May 2010, Regarding Priorities and Achievements in the Handling of Corruption Cases, addressed to the Heads of High Prosecutors throughout Indonesia, which basically contains the following:

1. The handling of corruption cases is prioritised on the disclosure of cases that are big fish (large scale, in terms of the perpetrators and/or the value of state financial losses) and still going on (corruption crimes committed continuously or continuously).
2. In order for law enforcement to prioritise a sense of public justice, especially for people who with their awareness have returned state financial losses (restorative justice), especially related to corruption cases with relatively small state financial losses, it is necessary to consider not following up, except for those that are still going on.

3. The handling of corruption cases should not only create a deterrent effect, but also prioritise efforts to save state finances.

According to the author, the rapid response made by the Deputy Attorney General for Special Crimes to the existing problems by issuing a letter to the Chief Prosecutors throughout Indonesia regarding Priorities and Achievements in Handling corruption cases is still hampered by the applicable Corruption Eradication Law. So that law enforcement of corruption crimes still uses 'horse glasses' in handling corruption crimes, this is because normatively law enforcement of corruption crimes is carried out as the main effort (Primum Remidium) not the last resort (Ultimum Remidium), reflected in Article 4 of Law No. 31 of 1999 concerning Eradication of Corruption Crimes as amended and added to Law No. 20 of 2001 concerning Amendments to Law on Eradication of Corruption Crimes. 20/2001 on the Amendment to the Law on the Eradication of the Criminal Acts of Corruption states 'The return of state financial or economic losses does not eliminate the punishment of the perpetrators of criminal acts as referred to in Article 2 and Article 3' Furthermore, the Explanation of Article 4 states 'In the event that the perpetrators of corruption as referred to in Article 2 and Article 3 have fulfilled the elements of the article in question, then the return of state financial or economic losses does not eliminate the punishment against the perpetrators of the criminal act. Thereturn of state financial losses or the state economy is only one of the mitigating factors'.

On this basis, normatively, the handling of corruption offences regardless of the value of the loss is still a criminal offence and there is no reason to remove the punishment even though the perpetrator has returned the state financial losses. With the normative clash between Article 4 of the Corruption Law and the Letter of the Deputy Attorney General for Special Crimes mentioned above, what happens in the field in law enforcement of corruption is that not all Heads of High Prosecutors, Heads of District Prosecutors and Branch Heads of District Prosecutors are guided by the letter from the Deputy Attorney General for Special Crimes Regarding Priorities and Achievements in Handling Corruption Cases.

That later in 2018 issues related to the handling of corruption cases were prioritised on disclosing cases that were big fish / large-scale and focused on recovering state financial losses. This is reflected in the Letter of the Deputy Attorney General for Special Crimes M.Adi Toegarisman Number B-260/F/Fd.1/02/2018 Regarding Improving Performance and Quality in Case Handling, addressed to the Heads of High Prosecutors throughout Indonesia, which basically at point 3 regarding support for the implementation of corruption prevention and eradication actions as follows:

1. That the handling of Corruption cases is prioritised on the disclosure of bigfish / large-scale cases and focuses on recovering State Financial Losses.
2. That at the investigation stage if there is a return of state financial losses, it can be taken into consideration for the continuation of the legal process by taking into account the expediency of the handling process and the smooth running of national development.
3. In the handling of Corruption cases, the aim is not only to create a deterrent effect, but also to prioritise the total recovery of state financial losses, if necessary so that there is no hesitation in applying Money Laundering Crime (TPPU).

The letter of the Deputy Attorney General for Special Crimes mentioned above is different from the letter of the Deputy Attorney General for Special Crimes in 2010, although in principle it is the same, namely that the handling of Corruption cases is prioritised on the disclosure of big fish/large-scale cases and focuses on the recovery of State Financial Losses. The difference is that it explicitly states that if in the investigation stage there is a return of state financial losses, it can be taken into

consideration for the continuation of the legal process by taking into account the expediency of the handling process and the smooth development.

Furthermore, to reinforce the letter above, the Deputy Attorney General for Special Crimes M. Adi Toegarisman issued Letter Number B-765/F/Fd.1/04/2018 dated 20 April 2018, regarding technical guidelines for handling corruption cases at the investigation stage, addressed to the Heads of High Prosecutors throughout Indonesia, basically as follows:

1. Investigations should be carried out more optimally, which is not only limited to finding the event of a Corruption Crime in the form of unlawful acts but must also strive to find the amount of State Financial Losses.
2. To find the amount of State Financial Losses, it can be done by its own calculation or can cooperate with the Government Internal Supervisory Apparatus (APIP)/BPK/BPKP/Public Accountant.
3. In order to save the State Financial Losses due to Corruption Crime, the collection of property data belonging to the parties involved in the Corruption Crime should be carried out immediately.
4. If the parties involved are proactive and have returned all State Financial Losses, then the continuation of the legal process can be considered by taking into account the interests of the stability of the local government and the smoothness of national development.
5. The return of all proceeds of State Financial Losses in the Investigation Stage is a benchmark for your performance assessment.
6. To ensure that the investigation is carried out in a professional and proportional manner and to ensure that there are no irregularities in the form of misconduct or corruption.

That the technical guidelines reinforce the previous letter where the investigation of corruption does not only find unlawful acts but must also strive to find the amount of state financial losses and the most important point according to the author is 'If the parties involved are proactive and have returned all state financial losses, then it can be considered for the continuation of the legal process by taking into account the interests of the stability of the wheels of local government and the smooth running of national development and there is no nominal amount of state financial losses incurred, meaning that whether large or small state financial losses have been returned at the investigation stage, the continuation of the legal process can be considered'. With a note that the investigation is carried out professionally and proportionally, in its implementation there are no irregularities or misconduct with elements of corruption by corruption investigators.

According to the author, the re-discussion of issues related to priorities in handling corruption cases mentioned above in the working meeting between Commission III of the House of Representatives and the Attorney General indicates that there are problems that have not been resolved or resolved, namely the handling of corruption cases that do not have priorities in handling them or it can be said that corruption law enforcement uses 'horse glasses', which do not consider the size of the case handled, the value of the losses incurred and also the perpetrators of corruption. With the use of 'horse's eye glass' in law enforcement of corruption offences, according to the author, law enforcement of corruption offences cannot provide benefits to the state.

If we refer to Article 140 paragraph (2) letter a of the Criminal Procedure Code which states 'In the event that the public prosecutor decides to discontinue the prosecution because there is insufficient evidence or the event turns out not to be a criminal offence or the case is closed by law, the public prosecutor shall state this in a decree'. The aforementioned article is the normative basis used by public prosecutors in terminating a prosecution. However, this article normatively cannot accommodate the termination of prosecution of corruption offences with a small

value of state financial losses, because technically it does not fall under the criteria for termination of prosecution as referred to in Article 140 paragraph (2) letter a of the Criminal Procedure Code.

Therefore, in this paper the author will elaborate on the urgency of the Termination of Prosecution of Corruption Crimes with Small State Financial Losses in Indonesia and the Reconstruction of Termination of Prosecution of Corruption Crimes with Small State Financial Losses Based on Prosecutorial Discretion by Public Prosecutors.

Research Methods

This research is a juridical sociological or socio-legal research. The juridical sociological approach method is because the problems studied concern the relationship between juridical factors and sociological factors. Juridical means that the research is based on legal theories, especially those related to the Termination of Prosecution of Corruption Crimes with Small State Financial Losses Based on Prosecutorial Discretion by Public Prosecutors in the Perspective of Progressive Law. The basics contained in the legislation are used to analyse the problem. Sociological means research that is directly related to society, can be done through observation (observation), interviews. So, it can be concluded that the juridical sociological approach is a legal research approach based on applicable legal rules and carried out by observation, interviews. In this study, the object is a sociological juridical review of the Termination of Prosecution of Corruption Crimes with Small State Financial Losses Based on Prosecutorial Discretion by Public Prosecutors in the Perspective of Progressive Law.

Discussion

1) The Urgency of Discontinuing Prosecution of Corruption Offences with Small State Financial Losses

The development of corruption in Indonesia is still relatively high, while its eradication is still very slow, Romli Atmasasmita, stated that, Corruption in Indonesia is already a flu virus that spreads throughout the government and the steps to eradicate it are still faltering until now. He further said that corruption is also related to power because with that power the ruler can abuse his power for the benefit of himself, his family and his cronies.

The wordcorruption comes from the Latin ‘corruptio, “corruption” (English) and “corruptie” (Dutch), the literal meaning of which refers to corrupt, rotten and dishonest acts associated with finance. In Black's Law Dictionary, corruption is an act committed with the intent to confer an unauthorised advantage on the rights of another party by wrongfully using his office or character to obtain an advantage for himself or another person contrary to his obligations and the rights of the other party.

The scope of corruption also exists in the 2003 United Nation Convention Against Corruption (UNCAC), which was ratified by the Indonesian state through Law number 7 of 2006 concerning the Ratification of the United Nation Convention Against Corruption, namely:

a. Bribery of national public officials
b. Briberyof foreign public officials and officials of public international organisations
c. Embezzlement, misappropriation or other diversion of property by a publicofficial
d. Tradingof influence
e. Abuse of office or authority (abuse of power)
f. Unlawfulself-enrichment (illicit enrichment)
g. Bribery in theprivate sector
h. Bribery in the private sector (embezzlement of property in the private sector).

In contrast to UNCAC 2003, the Law on the Crime of Corruption in Indonesia includes the element of ‘harm to state finances’ contained in Article 2 and Article 3 of the Law on the Eradication of the Crime of Corruption No.31 of 1999 Jo Law No.20 of 2001 and also in Indonesia

has not ratified the crime of bribery in the private sector. The elements of the crime of corruption as referred to in Article 2 paragraph (1) and Article 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of the Crime of Corruption are as follows:

1. Committing an act of enriching oneself or another person or a corporation;
2. Acts against the law;
3. Harm to State finances or the economy;
4. Abusing the power, opportunity or means available to him because of his position and position with the aim of benefiting himself or others.

In Article 1 paragraph (22) of Law No. 1 of 2004 concerning State Treasury, which states that State losses are the reduction of money, securities, and goods that are real and certain in amount as a result of unlawful acts either intentionally or negligently. This definition shows that state losses contain a broad meaning so that it is easy to understand and enforce if there is a violation in the management of state finances. In addition, it should not be estimated as desired but must be ascertained how much loss is experienced by the state at that time. This is intended so that there is a legal certainty for state finances that experience shortages so that those who cause state losses are held responsible.

Law enforcement of corruption crimes in Indonesia is currently carried out by 3 (three) institutions, namely the Attorney General's Office of the Republic of Indonesia, the Indonesian National Police and the Corruption Eradication Commission of the Republic of Indonesia (KPK RI). Of the three law enforcement agencies, the one that has a central position is the Prosecutor's Office of the Republic of Indonesia. According to Article 1 paragraph (1) of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated that 'the Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government agency whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on law'. Based on this article, the Public Prosecutor's Office is the only institution authorised to carry out the prosecution of criminal offences (both general and special criminal offences), whoever the investigator is (either from the Police or the KPK), the prosecutor is from the Public Prosecutor's Office. As in the Corruption Eradication Commission, although it also has the authority to prosecute corruption crimes, but the prosecutor is a public prosecutor from the Attorney General's Office of the Republic of Indonesia (with the status of being employed at the Corruption Eradication Commission).

Based on the provisions of Article 2 paragraph (1) and Article 3 of Law No.31 of 1999 on the Eradication of the Crime of Corruption Jo Law No.20 of 2001 on the Amendment to Law No.31 of 1999 on the Eradication of the Crime of Corruption, there is no explicit mention of the amount and size of state financial losses, so that if it is related to Article 1 point 22 of Law No.1 of 2004 on State Treasury, even small state financial losses can be included in the elements of state financial losses as in Article 2 paragraph (1) and Article 3 of Law No.31 of 1999 on the Eradication of the Crime of Corruption. Year 1999 on the Eradication of Corruption Jo Law No.20 Year 2001 on the Amendment to Law No.31 Year 1999 on the Eradication of Corruption.

With the absence of a nominal limit on state financial losses that can be included in the elements of state financial losses as stated in Article 2 paragraph (1) and Article 3, it results in law enforcers in handling corruption cases that result in state losses regardless of the size of the state financial losses incurred. So that corruption cases that result in small state financial losses still end up in the Corruption Court without any alternative solutions that are faster, simpler and cheaper, even though the Corruption Court is located in the provincial capital and the corruption trial process requires a lot of money.

So, according to the author, this is not commensurate between the cost of law enforcement incurred and the state financial losses incurred as a result of corruption and is counterproductive to the spirit of fast, simple and low-cost law enforcement.

According to Romli Atmasasmita and Kodrat Wibowo, both Article 2 and Article 3 of the Corruption Eradication Law are not in line with the principles of maximisation, balance and efficiency as described below:

1) That the perpetrator of corruption is seen as an 'arational actor-an im-moral person', so that the slightest violation that can or has caused state financial losses has been calculated/calculated 'benefits and risks'.

2) The formulation of the provisions of the two articles is abstract because it does not determine the value of state financial losses in a definite and measurable manner so that even the lowest value of state financial losses can still be prosecuted as a corruption crime. The pattern of formulation of this provision is contrary to distributive justice which requires sanctions in accordance with actions.

3) It causes inefficiency and is not optimal because the amount of state financial losses is evidence of the seriousness of the corruption offence and can be used as a parameter to determine the sentence and the amount of state financial losses that must be returned by the defendant.

4) The provisions of the two articles still use a causal relationship between the unlawful act (Law) and the state financial loss so that a logical reasoning pattern is formed that there is a causal relationship and there should be sufficient evidence to determine the guilt and responsibility of the perpetrator. With the formulation of Article 2 and Article 3, the fulfilment of the elements mentioned above must still be proven again whether there is a result of state financial losses from the fulfilment of the elements mentioned above. The formulation of the two provisions is detrimental from the point of view of maximisation and efficiency and does not determine the exact state financial losses, which can lead to an imbalance between the act and its consequences.

5) The formulation of the two articles, although different and inefficient, because the goal is to recover state financial losses and create a deterrent effect, two ways must be formulated to achieve this goal, namely article 2 and article 3. It would be efficient if they were formulated in just one article because in practice, the differences in the meaning and purpose of the two articles were not considered by the panel of judges. This is evident in the fact that the panel of judges justified the prosecution's claim that a person who is not a state official is charged with violating article 3 and conversely, a state official is charged with violating article 2.

Based on the author's experience (as an Investigator, Investigator and Public Prosecutor for Corruption at the Jambi Bangko District Prosecutor's Office), he has handled a corruption case in 2014 with a State Financial Loss of Rp.75,000,000 (Seventy-five million rupiah), where at the Investigation stage, the State Financial Loss was returned by the suspect but the case continued to the prosecution stage until execution. Actually, according to the author, it is very ineffective and inefficient to continue the case to the prosecution stage due to the high operational costs of handling the case (at that time approximately Rp.200,000,000 (Two hundred million rupiah), the energy and time required for the trial (the location of the tipikor court is in Jambi Province by travelling approximately 6 hours from the author's office). The return of the State's financial losses was used as a mitigating circumstance in the criminal charges against the defendant.

According to Bambang Suparyanto, Head of the Special Crimes Section of the Buleleng District Attorney's Office, the Buleleng District Attorney's Office once tried a corruption case with a small state financial loss (approximately Rp 21,450,000 (twenty-one million four hundred and fifty thousand rupiah)), namely a corruption case of misuse or embezzlement of village

apparatus funds/salaries committed by the defendant I MADE YASA with the article charged as Article 2 or Article 3 or Article 8 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, the case originated from the Buleleng Police Investigation. According to the source, in practice there is no differentiation in the handling of corruption cases that cause small or large state financial losses, as long as they meet the formal and material requirements of the elements of the crime, the case will be submitted to the court even though the costs incurred for prosecution to trial are greater than the state financial losses incurred.

Based on Article 1 point 1 of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Public Prosecutor's Office, it is stated that 'the Public Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Public Prosecutor's Office, is a government agency whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on law. In the general explanation of Law Number 11 of 2021, in exercising state power in the field of prosecution, the prosecutor's authority to be able to determine whether or not a case can be submitted to the court has an important meaning in balancing the applicable rules (rechmatigheid) and interpretations that rely on the objectives or principles of expediency (doelmatigheid) in the criminal justice process.

As a prosecuting agency, based on Article 139 of the Criminal Procedure Code, the prosecutor's office is expected not to simply submit the case resulting from the investigation to the court, but must be full of wisdom and must look at the factors of justice and legal expediency without overriding legal certainty. This means that the public prosecutor must be able to see the circumstances and situation in which the criminal offence occurred, and in this case it is necessary to think about the sense of justice that lives in the community so as not to harm the sense of justice that exists in the community.

According to the author, the article above is a reflection of the dominus litis principle owned by the Public Prosecutor as the controller of the case. The same thing was expressed by Hari Sasongko, the dominus litis principle confirms that no other body has the right to carry out prosecution other than the public prosecutor which is absolute and monopolistic, because the public prosecutor is the only institution that has and monopolises the prosecution and settlement of criminal cases, even judges cannot request that criminal cases that occur be submitted to him, judges in their settlement are only passive and wait for the demands of the public prosecutor.

Broadly speaking, the authority of the public prosecutor according to KUHAP can be inventoried as follows:

a) receive notification from the investigator in the event that the investigator has begun investigating an event that constitutes a criminal offence (Article 109 paragraph (1) of the Criminal Procedure Code) and notification from both the investigator and the civil servant investigator referred to in Article 6 paragraph (1) letter b of the Criminal Procedure Code regarding the investigation being terminated for the sake of law;

b) receiving case files from investigators in the first and second stages as referred to in Article 8 paragraph (3) letters a and b of the Criminal Procedure Code. In the case of a summary examination, the case file shall be received directly from the assistant investigator (Article 12 of the Criminal Procedure Code);

c) conduct pre-prosecution (Article 14 letter b of KUHAP) with due observance of the material provisions of Article 110 paragraphs (3), (4) of KUHAP and Article 138 paragraphs (1) and (2) of KUHAP;

d) grant an extension of detention (Article 24 paragraph (2) of the Criminal Procedure Code), conduct detention and continued detention (Article 20 paragraph (2) of the Criminal Procedure Code Article 21 paragraph (2) of the Criminal Procedure Code, Article 25 of the Criminal Procedure Code Article 29 of the

Criminal Procedure Code); conduct home detention (Article 22 paragraph (2) of the Criminal Procedure Code); city detention (Article 22 paragraph (3) of the Criminal Procedure Code), and transfer the type of detention (Article 23 of the Criminal Procedure Code);

e) at the request of the suspect or defendant, suspend the detention and may revoke the suspension of detention in the event that the suspect or defendant violates the specified conditions (Article 131 KUHAP);

f) to conduct an auction sale of confiscated objects that are quickly damaged or endangered because it is impossible to keep them until the court decision on the case has permanent legal force, or to secure them witnessed by the suspect or his attorney (Article 45 paragraph (1) of KUHAP);

g) prohibit or reduce the freedom of the relationship between the legal advisor and the suspect as a result of abuse of his/her rights (Article 70 paragraph (4) of KUHAP); supervise the relationship between the legal advisor and the suspect without hearing the contents of the conversation (Article 71 paragraph (1) of KUHAP) and in the case of crimes against state security may hear the contents of the conversation (Article 71 paragraph (2) of KUHAP). The reduction of the freedom of the relationship between the legal counsel and the suspect is prohibited if the case has been submitted by the public prosecutor to the district court for trial (Article 74 of KUHAP);

h) requesting a pre-trial to the Chief of the District Court to examine whether or not a stoppage of investigation by the investigator is valid (Article 80 KUHAP). The purpose of Article 80 is to uphold the law, justice and truth through the means of horizontal supervision.

i) In cases of conspiracy, because the criminal case must be attended by a court within the general judicial environment, the public prosecutor receives the submission of the case from the military prosecutor and then uses it as a basis for submitting the case to the competent court (Article 91 paragraph (1) of the Criminal Procedure Code);

j) Determine whether or not the case file has met the requirements to be submitted to the court (Article 139 KUHAP).

k) Perform other actions within the scope of duties and responsibilities as a public prosecutor (Article 14 letter f of KUHAP).

l) If the public prosecutor is of the opinion that the results of the investigation can be prosecuted, he/she shall immediately prepare an indictment (Article 140 paragraph (1) of the Criminal Procedure Code).

m) Make a letter of determination on the termination of prosecution (Article 140 paragraph (2) letter a KUHAP) due to insufficient evidence, does not constitute a criminal offence and the case is closed by law.

n) To continue the prosecution of a suspect whose prosecution has been terminated due to a new reason (Article 140 (2) letter d of KUHAP).

o) To enforce the merging of cases and the preparation of one indictment (Article 141 of KUHAP).

p) Conducting a splitting of prosecution of one case file that comprises several criminal offences committed by several suspects (Article 143 (1) of the Criminal Procedure Code).

q) Submitting the case to the court along with an indictment (Article 143 (1) of the Criminal Procedure Code)

r) Making an indictment (Article 143 (1) of the Criminal Procedure Code)

s) Completing or not completing the prosecution, public prosecutor and amending the indictment before the court sets the day of the hearing or no later than seven days before the hearing begins (Article 144 KUHAP).

The principle of legality (legalitieitsbeginsel) and the principle ofopportuniteitsbeginsel (opportuniteitsbeginsel) are two important principles in the prosecution discourse. The principle of legality requires the public prosecutor to prosecute a person who violates criminal law regulations. This principle is a

manifestation of the principle of equality before the law. Meanwhile, the principle of opportunity is a principle that authorises the public prosecutor not to prosecute a person who violates criminal law regulations by setting aside a case that has been clearly proven (algement belang).

In addition to being based on the Law on the Eradication of Corruption and the Criminal Procedure Code in law enforcement of corruption crimes, in practice the Attorney General's Office issued a policy in resolving corruption cases that caused small state financial losses or the state financial losses have been returned by prioritising the rescue and recovery of state financial losses as seen in several letters issued by the Deputy Attorney General for Special Crimes as follows:

1) Letter Number B-1113/F/Fd.1/05/2010 dated 18 May 2010, Regarding Priorities and Achievements in the Handling of Corruption Cases, addressed to the Heads of High Prosecutors throughout Indonesia, which basically contains the following:

a. The handling of corruption cases is prioritised on the disclosure of cases that are big fish (large scale, in terms of the perpetrators and/or the value of state financial losses) and still going on (corruption crimes committed continuously or continuously).

b. In order for law enforcement to prioritise a sense of public justice, especially for people who with their awareness have returned state financial losses (restorative justice), especially related to corruption cases with relatively small state financial losses, it is necessary to consider not following up, except for those that are still going on.

c. The handling of corruption cases should not only create a deterrent effect, but also prioritise efforts to save state finances.

2) Letter number B-260/F/Fd.1/02/2018 Regarding Improving Performance and Quality in Case Handling, addressed to the Heads of High Prosecutors throughout Indonesia, basically at point 3 regarding support for the implementation of corruption prevention and eradication actions as follows:

a. That the handling of Corruption cases is prioritised on the disclosure of bigfish / large-scale cases and focuses on recovering State Financial Losses.

b. That at the investigation stage if there is a return of state financial losses, it can be taken into consideration for the continuation of the legal process by taking into account the expediency of the handling process and the smooth running of national development.

c. In the handling of Corruption cases, the aim is not only to create a deterrent effect but also to prioritise the total recovery of state financial losses, if necessary, do not hesitate to apply Money Laundering Crime (TPPU).

3) Letter Number B-765/F/Fd.1/04/2018 dated 20 April 2018, regarding technical guidelines for handling corruption cases at the investigation stage, addressed to the Heads of High Prosecutors throughout Indonesia, basically as follows:

a. Investigations should be carried out more optimally, which is not only limited to finding the event of a Corruption Crime in the form of unlawful acts but must also strive to find the amount of State Financial Losses.

b. To find the amount of State Financial Losses, it can be done by its own calculation or can cooperate with the Government Internal Supervisory Apparatus (APIP)/BPK/BPKP/Public Accountant.

c. In order to save the State Financial Losses due to Corruption Crime, the collection of property data belonging to the parties involved in the Corruption Crime should be carried out immediately.

d. If the parties involved are proactive and have returned all State Financial Losses, then the continuation of the legal process can be considered by taking into account the interests of the stability of the local government and the smoothness of national development.

e. The return of all proceeds of State Financial Losses in the Investigation Stage is a benchmark for your performance assessment.

f. That the Investigation be carried out in a Professional and Proportional manner and ensure that in its implementation there are no irregularities in the form of either misconduct or elements of corruption.

In practice, the letter issued by the Deputy Attorney General for Special Crimes mentioned above regarding the policy of handling corruption cases that result in small state financial losses or those that have been returned to the state financial losses not to continue the legal process is not guided by all Heads of High Prosecutors and Heads of State Prosecutors. The prosecutor's office actually aims to streamline the settlement of corruption cases that cause small state financial losses or state financial losses that have been returned, but in practice it is not easy, this is due to the obstacles faced by law enforcement officials, namely:

1) Juridical obstacles

- Conflict with the Law on Corruption Crime Article 4

- The absence of a legal umbrella in the settlement of corruption cases at the investigation and prosecution stages that cause small state financial losses and those whose state financial losses have been returned.

- Not included in the criteria for termination of prosecution as stated in Article 140 paragraph 2 of the Criminal Procedure Code.

- There is no alternative to resolving corruption cases that cause small state financial losses.

2) Non-juridical constraints

- There is a target for handling corruption cases

- Public understanding that still wants corporal punishment without considering the benefits that will be received by the state.

- There are still law enforcement officials who are transactional in stopping the handling of corruption cases with reported / suspects / defendants.

According to Rudi Pradisetia Sudirja, Currently, Indonesia adheres to the principle of opportunity in a negative sense, meaning that the implementation of this principle is limited, discretionary authority: setting aside cases only on the grounds of public interest (seponering) there is no reason to set aside cases for certain reasons. In addition, the authority to set aside a case is only the authority of the Attorney General (Article 32 paragraph 1 point C of Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia), there is no attribution of authority to the public prosecutor. KUHAP only gives the authority to stop prosecution to the public prosecutor through a Decree of Termination of Prosecution/SKPP (Article 140 paragraph (2) KUHAP).

In line with Rudi Pradisetia Sudirja's statement, according to Nurhimawan, Section Head of Region III of the Directorate of Prosecution of the Deputy Attorney General for Special Crimes, to date there has never been a termination of prosecution of corruption offences based on certain reasons such as small state financial losses or state financial losses that have been returned to the state treasury. All corruption cases that have met the formal and material requirements are then submitted to the Corruption Court. With the amendment of the Prosecutor's Office Law No.16 of 2004, namely Law Number 11 of 2021, there is an article that can be used as a basis for termination of prosecution for certain reasons, namely Article 34A which reads 'In the interests of law enforcement, Prosecutors and / or Public Prosecutors in carrying out their duties and authorities may act according to their judgement by taking into account the provisions of laws and regulations and codes of ethics'. According to him, the philosophical basis of this article is Article 139 of KUHAP and Article 144 of KUHAP.

The authority to discontinue prosecution can be exercised by the Public

Prosecutor is contained in Article 140 paragraph (2) of Law Number 8 Year 1981 on Criminal Procedure, which confirms that the public prosecutor may discontinue prosecution in a criminal case. The contents of the Article are:

a. In the event that the Public Prosecutor decides to discontinue the prosecution because there is insufficient evidence or the event turns out not to be a criminal offence or the case is closed by law, the Public Prosecutor shall state this in a decree.

b. The contents of the decree shall be notified to the suspect and if he is detained, he shall be immediately released.

c. A copy of the decree shall be delivered to the suspect or his/her family or legal counsel, the officer of the state detention centre, the investigator and the judge.

d. If it later turns out that there is a new reason, the Public Prosecutor may prosecute the suspect.

The termination of prosecution regulated by KUHAP Article 140 paragraph (2) so far has been carried out by public prosecutors based on technical reasons so that it does not reach cases that are juridically complete formally and materially but because according to the public prosecutor the case is not worthy of trial because of small state financial losses or state financial losses have been returned so that the prosecution carried out by the public prosecutor will be counterproductive again. Therefore, a breakthrough is needed by the public prosecutor in terminating the prosecution of corruption offences with small losses.

Reconstruction of the Discontinuation of Prosecution of Corruption Offences with Small State Financial Losses through the Discretion of the Public Prosecutor

In the provisions of Article 1 point 7 of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), it is explained that 'prosecution is a public prosecutor's action to submit a criminal case to the competent district court in the case according to the method regulated in this law with a request to be examined and decided in court. The act of prosecution is carried out by a public prosecutor, which in Article 1 point 6 letter b of the Criminal Procedure Code states that 'a public prosecutor is a prosecutor authorised by the law to conduct prosecutions and execute judicial decisions'.

As a prosecuting agency, based on Article 139 of the Criminal Procedure Code, the Public Prosecutor's Office is expected not to immediately submit cases resulting from investigations to the court, but must be full of wisdom and must look at the factors of justice and legal benefits without having to override legal certainty. This means that the public prosecutor must look at the circumstances and situation of the criminal offence, and in this case a thought towards the vision of a sense of justice that lives in the community and provides benefits for the state. The prosecutor's office is the dominus litis (controller of the case process) has a central position in law enforcement, because normatively (Article 139 of the Criminal Procedure Code) and in judicial practice only the prosecutor's office can determine whether or not a case can be submitted to the court based on valid evidence as according to criminal procedure law.

With the authority of dominus litis (case controller) as stipulated in Article 139 of the Criminal Procedure Code, it is a means to determine whether or not a case can be submitted to the court. This situation can certainly affect the development of laws that live in society, as well as seen from the factors of justice and legal expediency, so that even though the case file is declared complete (formally and materially the case file) can be stopped by issuing a Decree on Termination of Prosecution (SKPP / SKP2).The authority of the Prosecutor as dominus litis based on Article 139 of the Criminal Procedure Code is an entry point towards a progressive and useful prosecution process so that the prosecution does not merely have to submit the case to the court. The submission of cases to the court is the last resort (ultimum remidium) and not the main effort (primum remidium).

The amendment of Law 16 of 2004 concerning the Prosecutor's Office to Law 11 of 2021 concerning Amendments to Law 16 of 2004 concerning the Prosecutor's Office further strengthens the dominus litis position of the Prosecutor's Office as a case controller. One of the articles that strengthens the authority of the Prosecutor as dominus litis (case controller) is Article 34A which states 'In the interests of law enforcement, the Prosecutor and / or Public Prosecutor in carrying out their duties and authorities may act according to their judgement by taking into account the provisions of laws and regulations and codes of ethics'. With the following explanation 'The principle of discretion regulated in Article 139 of Law No.8 of 1981 concerning Criminal Procedure Law is "After the Public Prosecutor receives back the complete results of the investigation from the investigator, he immediately determines whether the case file meets the requirements to be submitted or not submitted to the court". The regulation of this authority is carried out without ignoring the principles of law enforcement objectives which include achieving legal certainty, a sense of justice and benefits in accordance with the principles of restorative justice and diversion that encourage the development of criminal law in Indonesia. This is in line with the doctrine ofprosecutorial discretion andleniency policy.

Along with the times and the demands for fair and beneficial law enforcement, the progressive law enforcement model is one of the law enforcement to achieve the aspired justice. According to Satjipto Rahardjo, 'Thinking progressively means daring to step out of legal absolutism, after which the law is placed in a relative position. In this situation, the law must be placed in the totality of human problems, leading to a progressive way of law is a willingness and willingness to break away from legal-positivism. The inspiration for self-liberation is closely related to the psychological aspects found in law enforcers, namely courage. This aspect of courage expands the way of law, which is not only prioritising the regulatory aspect (rule), but also thebehavioural aspect.

For Satjipto Rahardjo, the power of progressive law does not dismiss or reject the presence of positive law in the legal field, but is always anxious to ask 'What can I do with this law to provide justice to the people'. In short, it can be said that in the progressive legal paradigm, the law is not only a prisoner of the system and laws, but the happiness of the people is above the law. The Prosecutor's Office as the (dominus litis) controller of criminal cases in exercising its authority in the field of prosecution must think progressively because progressive law works to resolve all forms of disorder including conflict resolution through the utilisation of state and non-state institutions. The emphasis is on choosing to be a liberating force. An important characteristic of the concept of progressive law enforcement is to reject the status quo, when it creates a corrupt atmosphere and harms the people. Progressive law enforcement implies the importance of all components of the nation to be sensitive to changes that occur in society both locally, nationally and internationally. So that in the context of law enforcement, it should not be trapped in conventional law enforcement (positivistic), on conscience that voices truth and justice and expediency.

The consideration of the Public Prosecutor in terminating the prosecution of corruption crimes with a small value of state financial losses is not only juridically where the case must have been declared complete formally and materially by the public prosecutor but also economic considerations related to the efficiency of the case handling budget where in handling corruption cases the costs incurred are greater than the state financial losses incurred by the suspect/defendant and the acceleration of the return of state financial losses.

According to the author, not all corruption offences must be handled as extra ordinary crimes. The assessment and enforcement of the law is the discretionary authority of the

prosecutor in prosecution as a manifestation of dominus litis. Moreover, the Prosecutor's Office has attributive authority in law enforcement where the Public Prosecutor in carrying out his duties and authorities can act according to his judgement by taking into account the provisions of laws and regulations and the code of ethics as formulated in Article 34A of Law No.11 of 2021 concerning Amendments to Law No.16 of 2004 concerning Prosecutors. According to Ratih Andrawina, Head of Sub-Division of Legal and Foreign Relations at the Deputy Attorney General's Office, in this prosecutorial discretion, the role of the public prosecutor is required to be able to recover State Financial Losses and in the implementation of this discretion the public prosecutor must pay attention to:

a) alternative criminal case resolution;

b) qualification of criminal offences;

c) the level of offence;

d) the seriousness of the offence, the personal circumstances of the perpetrator, or the circumstances at the time the offence was committed as well as those that occurred later, taking into account the aspects of justice and humanity;

e) prosecution will cause great suffering to the family of the suspect;

f) victim's forgiveness;

g) the interests and fulfilment of the Victim's rights; and/or the interests and compensation of state finances or the state economy.

In the practice of law enforcement by law enforcement officials, such discretion must be covered by the provisions of laws and regulations of state institutions so as not to be trapped in underlegislation conditions. For this reason, it is necessary to reconstruct the termination of prosecution of corruption crimes with small state financial losses based on the dominus litis of the prosecutor's office which is useful within the framework of the Criminal Justice System. The author in carrying out this reconstruction uses the theory of Lawrence M.Friedman, as follows:

1) Reconstruction of Legal Substance

Based on the results of the research, the substance of the termination of prosecution is in Article 140 paragraph (2) of the Criminal Procedure Code, which in this article does not regulate the termination of prosecution based on the considerations / judgments of the public prosecutor (prosecutorial discretion) as a manifestation of the dominus litis of the prosecutor's office as a case controller regulated in Article 34A of Law No.11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office. For this reason, it is necessary to reconstruct this article as follows:

Article 140 Paragraph (2) KUHAP	Weaknesses	Reconstruction
In the event that the public prosecutor decides to discontinue the prosecution due to insufficient evidence or the event turns out not to be a criminal offence there is insufficient evidence or the event is found not to be a criminal offence or the case is closed by law, the public prosecutor shall state this in a letter or the case is closed for the sake of law, the public prosecutor shall state this in a decree. The contents of the decree shall be notified to the suspect and if he is detained, he shall be immediately released; A copy of the decree shall be delivered to the suspect or his family or legal counsel, the official of the state detention centre, the investigator and the judge. If it later turns out that there are new reasons, the public prosecutor can prosecute the suspect.	Article 140 paragraph (2) of KUHAP does not yet regulate the authority to terminate prosecution with prosecutorial discretion. Where prosecutorial discretion is one of the solutions in accelerating the completion of handling corruption cases with small state financial losses, budget efficiency for case handling, accelerating the return of state financial losses, realising fast, simple and low cost justice.	It is necessary to add in the construction of the termination of prosecution the discretion of the public prosecutor. So it reads: In the event that the public prosecutor decides to discontinue the prosecution because there is insufficient evidence, the event turns out not to be a criminal offence, the case is closed by law, the discretion of the Public Prosecutor, the public prosecutor states this in a decree.

The addition of the discretion of the public prosecutor as one of the authorities that can stop the prosecution of corruption offences with a small value of state financial losses is expected to streamline the resolution of corruption offences, save case handling costs, and accelerate the recovery of state financial losses.

2) Reconstruction of Legal Structure

Based on the results of the research, the Prosecutor's Office as a prosecutorial institution, in terms of terminating prosecution by the public prosecutor, cannot independently based on its assessment or consideration not to prosecute, this is because it must obtain approval from the Attorney General as the holder of the principle of opportunity. With the procedural termination of prosecution with a long level up to the Attorney General, the termination of prosecution of corruption crimes with small state financial losses is counterproductive, because it will take a long time and there is no legal certainty over the case proposed to be terminated. For this reason, it is necessary to reconstruct the legal structure in the termination of prosecution, where for cases with a small nominal control only up to the Head of the High Prosecutor's Office where the public prosecutor is in charge. So that it can accelerate the process of terminating the prosecution of corruption crimes with a small value of state financial losses.

3) Reconstructing Legal Culture

That based on the results of the research, the public prosecutor is not optimal in positioning as dominus litis (case controller), the Prosecutor's Office as one of the elements in the Criminal Justice System has the duty and authority to conduct prosecutions. The Prosecutor's Office in conducting prosecutions is based on the criminal procedural law which is limitative, which is carried out to realise the principle of legal certainty. Starting from the procedural law procedure, the public prosecutor in filing criminal charges is based on 2 (two) valid evidence to find the defendant guilty and convince the judge. Therefore, the way of thinking of the public prosecutor is positivistic.

In the case of termination of prosecution of corruption offences with small state financial losses, public prosecutors are needed who have a progressive mindset, not positivistic. This is because the public prosecutor is the central point in an integrated justice system, so to be able to harmonise between legal certainty, justice and expediency, the public prosecutor must dare to get out of the conventional pattern of law enforcement which focuses on the legal culture of positivism, so that with a breakthrough made by progressive law-based public prosecutors, all corruption case files with small state financial losses 'must' be submitted to the Corruption Court on procedural grounds. However, the public prosecutor needs to see whether or not the case is worthy of being submitted to the court as a manifestation of dominus litis (case control) based on useful justice.

Conclusion

Based on the results of the research, it is known that the Urgency of Termination of Prosecution of Corruption Crimes with Small State Financial Losses, including: a. Inefficient Law Enforcement of Corruption Crimes at the moment; b. There is no legal umbrella in the termination of prosecution of corruption crimes with small state financial losses. Then the form of Reconstruction of Termination of Prosecution of Corruption Crime with Small State Financial Loss Value Based on General Discretion, is carried out as follows: a. Reconstruction of Legal Substance, where it is necessary to add to the construction of Article 140 paragraph (2) of the Criminal Procedure Code regarding the termination of prosecution, namely the discretion of the public prosecutor as well as the authority in Article 34A of Law No.11 of 2021 Concerning the Amendment to Law No.11 of 2021 Concerning the Termination of Prosecution. b. Reconstruction of Legal Structure, for the effectiveness of case settlement, the termination of prosecution of corruption crimes with small state financial

losses is controlled by the Chief Prosecutor; c. Reconstruction of Legal Culture, a change in the legal culture of positivism to a progressive legal culture in conducting termination of prosecution of corruption crimes with small state financial losses.

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