

## Bargaining for Punishment in Corruption Crime: Toward Justice from a Victimology Perspective

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**Abstrak:** Corruption is an extraordinary crime that causes significant losses to the state, both materially and immaterially, which has a broad impact on the economic, social and political stability of a country. As the main victim in corruption crimes, the state bears the burden of recovering the losses incurred. The concept of bargaining for punishment offers an alternative approach in corruption law enforcement by allowing the perpetrator to reduce the sentence through the return of state losses. This research aims to analyze the application of the concept of bargaining for punishment in the context of Indonesian criminal law, especially in realizing justice and benefits for the state as a victim. The method used is Normative Juridical legal research, this research discusses the relevance of bargaining for punishment in bridging the interests of the state for the recovery of losses with the principles of criminal justice. The results show that the application of this concept can accelerate the case settlement process, reduce the burden on the justice system, and maximize the return of lost state assets. However, the application of bargaining for punishment must be closely monitored so as not to harm the principle of justice, especially in dealing with perpetrators with a significant level of guilt. Bargaining for punishment has the potential to become a strategic mechanism in eradicating corruption in Indonesia, provided that it is applied proportionally by considering aspects of justice, expediency, and legal certainty. This research recommends strengthening regulations and guidelines for the implementation of bargaining for punishment to ensure optimal recovery for the state as victims of corruption crimes.

**Keywords :** Bargaining for Punishment; Corruption;, State as a Victim

## INTRODUCTION

Corruption is a form of extraordinary crime that damages various aspects of a country's life, including economic, social and political stability. From an economic perspective, corruption significantly harms state finances. According to Transparency International, developing countries lose around 10-15% of their GDP every year due to corrupt practices.<sup>1</sup> Socially, corruption lowers the level of public trust in government institutions, which has an impact on decreasing public participation in development. Meanwhile, the

<sup>1</sup> Susdarwono, E. T. (2023). PATHWAY ANALYSIS OF CORRUPTION, HUMAN DEVELOPMENT, AND HUMAN RIGHTS AND THE RULE OF LAW ON DEFENSE BUDGET ALLOCATION THROUGH DEMOCRACY AS INTERVENING VARIABLES. *Ekonomi Pertahanan*, 9(2), 1-27.

political impact can be seen from the worsening power inequality and the deterioration of governance. In this case, the state becomes the main victim, bearing losses in the form of material loss of state assets, as well as immaterial losses in the form of decreased legitimacy in the eyes of the people. As a result of the rampant corruption that still occurs frequently in Indonesia, it affects Indonesia's position in the Indonesian Corruption Perception Index (CPI) which globally Indonesia's position is still in 90th place, but according to Transparency International Indonesia (TII), Indonesia's Corruption Perception index increased by 37 from the highest number of 100.<sup>2</sup> Therefore, eradicating corruption is not only an urgent legal need, but also an important step to maintain the sustainability of the state's role as a protector of public interests.

Corruption places the state as the main victim, both in the form of material and immaterial losses. As a manager of public resources, the state is responsible for protecting the interests of the people and ensuring the use of public funds for the common welfare. However, acts of corruption often damage these resources, causing huge losses. According to data released by *Indonesia Corruption Watch* (ICW), state losses due to corruption cases reached Rp. 238.14 trillion during 2013 to 2022. In 2023, the potential state losses are estimated to reach Rp. 28.4 trillion.<sup>3</sup> This loss is not only in the form of loss of state assets, but also hinders development, damages public services, and lowers public trust in the government. Therefore, the recovery of state losses is a top priority in law enforcement related to corruption.

To deal with the far-reaching impact of corruption, an effective legal approach is needed, both in eradicating these crimes and in recovering state losses. This approach must combine aspects of justice, legal certainty, and utility. One way that can be done is to maximize the recovery of state assets through *an asset recovery strategy* and the application of the concept of *bargaining for punishment*.<sup>4</sup> Through this mechanism, corrupt perpetrators can obtain a reduction in punishment on the condition of returning the losses caused to the state. Thus, the state can recover most of the lost assets and speed up the settlement of cases. This approach is not only beneficial to the state as a victim, but also strengthens the state's function in protecting the rights and welfare of the community. Although approaches such as *bargaining for punishment can help recover lost assets and speed up the resolution of cases, its application is still faced with various challenges and obstacles in the existing justice system, such as law enforcement obstacles in handling corruption*.

Law enforcement in corruption cases often faces obstacles due to the complexity of legal procedures that take a long time and are costly. The process from investigation to trial in corruption cases often takes years, while the burden borne by the already congested justice system makes case resolution slow.<sup>5</sup> In addition, the limitations of the existing legal system in managing and recovering state losses also exacerbate this condition. Although perpetrators can be punished, the recovery of lost state assets is often suboptimal, and legal processes are often hampered by a lack of evidence or difficulties in tracing misused assets. This is contrary to the provisions of article 4 of the Law on the Eradication of Corruption which affirms that "the return of state or state economic losses to criminal acts as referred to in articles 2 and 3". Based on this explanation, even though the state losses have been returned, the criminal punishment process is still

<sup>2</sup>BBC News. *Indeks Persepsi Korupsi Indonesia disebut 'membaik' tapi lamban*: <https://www.bbc.com/indonesia/indonesia-38734494>, diakses tanggal 10 Desember 2024.

<sup>3</sup>Tempo.co, Kerugian Negara Ratusan Triliun Rupiah, Perlu Pendekatan Sistemik Mengatasi Korupsi, <https://www.tempo.co/ekonomi/kerugian-negara-ratusan-triliun-rupiah-perlu-pendekatan-sistemik-mengatasi-korupsi-16339>, diakses tanggal 10 Desember 2024.

<sup>4</sup> Nelson, Febby Mutiara. *Plea Bargaining Dan Deferred Prosecution Agreement Dalam Tindak Pidana Korupsi*. Sinar Grafika, 2019. hal.228

<sup>5</sup> Santos, R., & Firmansyah, H. (2021). Prosedur pelaksanaan mutual legal assistance terhadap pemulihan aset hasil korupsi yang dilarikan ke luar negeri. *Jurnal Hukum Lex Generalis*, 2(1), 40-56.

ongoing. For this reason, alternative approaches such as *bargaining for punishment* are needed that can speed up the legal process while being more effective in ensuring the return of state losses. The *bargaining for punishment approach referred to here does not eliminate criminal punishment for the perpetrator*.

To overcome various obstacles in corruption law enforcement, the concept of *bargaining for punishment* is present as an alternative that can speed up the process of resolving corruption cases. This approach provides an opportunity for perpetrators of corruption crimes to get a reduction in punishment on the condition that they return part or all of the losses caused to the state.<sup>6</sup> Thus, legal proceedings can be completed faster, reduce the burden on the already full justice system, and maximize the return of lost state assets. Data from the KPK shows that despite great efforts in eradicating corruption, the legal process is still often constrained by a lack of evidence and the length of time it takes to resolve cases.<sup>7</sup> Therefore, the implementation of *bargaining for punishment* is expected to accelerate the recovery of state losses and ease the burden on the already depressed justice system. This approach has the potential to provide two main benefits, namely speeding up the resolution of cases and increasing public trust in efforts to eradicate corruption.

Although the concept of *bargaining for punishment* is very relevant in the Indonesian criminal law system, especially in the eradication of corruption, its application faces various challenges. On the one hand, this approach has the potential to speed up the legal process and recover state losses more efficiently. However, the main challenge arises from the possibility of abuse, where criminal offenders can take advantage of the negotiation process to get lighter sentences without actually compensating for the losses incurred. In addition, there is a risk of injustice if the application of this concept is not carried out with full transparency and accountability, which can damage public trust in the justice system. Although *bargaining for punishment* offers a solution to the problem of corruption law enforcement, its implementation needs to be equipped with a strict monitoring mechanism and enforcement of justice principles so as not to cause negative consequences in the future

## METHODOLOGY

The normative legal research method is used in the writing of this journal. This research method can also be called doctrinal research.<sup>8</sup> This study examines the application of *the concept of bargaining for punishment in law enforcement of corruption crimes in Indonesia and its impact on the recovery of state losses*. Furthermore, *this research is also carried out using a statute approach* that examines laws and regulations with various legal entities, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Secondary legal material is in the form of legal material that is given additional explanation regarding primary legal material

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<sup>6</sup> SH, Kurniawan Tri Wibowo. *Plea Bargaining Sebagai Pembaharuan Hukum Dalam Sistem Peradilan Pidana Indonesia*. Pustaka Aksara, 2021. hal. 80

<sup>7</sup> Suntoro, A. (2020). Penyadapan dan Keberadaan Dewan Pengawas Komisi Pemberantasan Korupsi. *Jurnal Perundang-undangan Indonesia* ,17 (1), 25-37.

<sup>8</sup> Suyanto, S. H. *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan*. Unigres Press, 2023. hal.12

## RESULTS AND DISCUSSION

### A. Application Of The Concept Of Bargaining For Punishment In Creasing Justice For The State As A Victim In Accordance With The Principles Regulated In The Law On The Eradication Of Corruption

The concept of *bargaining for punishment* was introduced in the criminal law system as an alternative to speed up the legal process and reduce pressure on the judicial system which is often hampered by the length of trial time and the number of cases that must be resolved. The concept began to develop in the late 20th century, especially in countries with an adversarial legal system such as the United States, where *plea bargaining* was applied to give the defendant in a particular case the opportunity to obtain a reduced sentence on the condition that he admitted guilt or provided information that could be helpful in the resolution of other cases.<sup>9</sup> In the context of corruption crimes, the application of this concept aims to accelerate the resolution of cases and enable the recovery of state losses more efficiently, considering the high volume of cases involving state assets. By including *bargaining for punishment* in corruption law enforcement, it is hoped that a balance can be reached between providing fair punishment and recovering state losses more effectively. The concept of *bargaining for punishment* in corruption criminal law refers to a negotiation mechanism between the perpetrator of corruption and law enforcement officials, which allows the perpetrator to obtain a reduction in punishment on the condition of returning part or all of the state losses incurred as a result of the crime.<sup>10</sup> Historically, this concept has developed as an alternative to speeding up the legal process, given the complexity and length of the investigation and judicial process in corruption cases. The main goal of the implementation of *bargaining for punishment* is to increase the efficiency of resolving corruption cases, by focusing on recovering state losses faster and optimally.

In the case of corruption crimes, the state is the main victim who bears losses both materially and immaterially.<sup>11</sup> Material losses are reflected in the loss of state assets, while immaterial losses involve a decrease in public trust in government institutions. The Law on the Eradication of Corruption Crimes (Corruption Law) emphasizes the importance of recovering state losses, as stated in Article 4 which stipulates that the return of state losses or the state economy is part of law enforcement against corruption, especially in Articles 2 and 3. The principle of justice in the Corruption Law aims to provide appropriate punishment for corrupt perpetrators, while ensuring that the state can recover the losses incurred. In this case, the concept of *bargaining for punishment* can be an effective solution to achieve balanced justice, by giving perpetrators the opportunity to get a reduction in punishment provided they return state losses. This approach allows for faster and more efficient recovery of state assets, while ensuring perpetrators receive fair punishment, which in turn supports the achievement of justice that not only punishes, but also recovers state losses.

The concept of *bargaining for punishment* can be applied in line with the basic principles in the Corruption Law, without violating the values of legal certainty, justice, and transparency. The application of this concept provides an opportunity for corrupt perpetrators to get a reduction in punishment on the condition

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<sup>9</sup> Kadir, Z. K. (2024). Dari Dualisme ke Monisme: Transformasi Konsep Mens Rea dalam Kodifikasi KUHP di Negara-Negara Poskolonial. *Jurnal Litigasi Amsir*, 142-155.

<sup>10</sup> Setiadi, H. Edi, and MH SH. *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum di Indonesia*. Prenada Media, 2017. hal. 40

<sup>11</sup> Irawan, D., Bawole, H., & Rorie, R. (2022). Tinjauan Hukum Atas Keadilan Restoratif Sebagai Perlindungan Hukum Bagi Korban Tindak Pidana Di Indonesia. *Lex Administratum*, 10(5).

of returning state losses, in accordance with Article 4 of the Corruption Law which emphasizes the importance of returning state losses as part of law enforcement against corruption crimes.<sup>12</sup> Legal certainty is maintained because this *bargaining process* is based on a clear legal basis. This concept also ensures justice by giving perpetrators the opportunity to take responsibility and recover state losses, while receiving appropriate punishment. On the other hand, transparency is an important factor in the implementation of *bargaining for punishment*, where the process of negotiation and asset return must be closely monitored to avoid potential abuse. Thus, this concept can be applied in accordance with the provisions of the Corruption Law, which supports the recovery of state assets in a more efficient way, without ignoring applicable legal principles

## **B. The impact of the application of the concept of bargaining for punishment on the recovery of state losses arising from corruption crimes refers to the provisions of the Law on the Eradication of Corruption Crimes**

The application of the concept of *bargaining for punishment* can accelerate the recovery of state losses by providing incentives to corrupt actors to return misused assets, in exchange for a reduction in punishment. This approach is in accordance with the principle of recovering state losses regulated in Article 4 of the Law on the Eradication of Corruption Crimes (Corruption Law). In this case, perpetrators of corruption crimes who are willing to return illegally obtained assets can get leniency as part of the agreement. This step improves the efficiency of the legal process, accelerates the return of lost state assets, and contributes to the country's economic recovery. Based on data from the Corruption Eradication Commission (KPK), in 2023 the KPK will recover state assets of Rp. 525 billion.<sup>13</sup> Despite efforts to speed up the recovery process, often the legal process takes a long time and the return of assets is not optimal due to the difficulty of tracking down assets that have been misused.

The implementation of *bargaining for punishment* can also reduce the burden on the judicial system which has been hampered by many corruption cases. Long legal processes and high costs are major obstacles in eradicating corruption.<sup>14</sup> With the implementation of this mechanism, legal proceedings can be completed faster, and the costs required can be reduced. This is in line with the provisions in Articles 2 and 3 of the Corruption Law which regulate the return of state losses arising from corruption crimes. The data shows that the increasing number of corruption cases is further burdening the justice system, where many cases are hampered due to time and evidence constraints. Therefore, this approach offers solutions to accelerate the settlement of cases and maximize the recovery of state losses, creating more efficient and faster justice for the state as a victim.

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<sup>12</sup> Gultom, P. (2022). Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat Diterapkannya Restorative Justice Dalam Perkara Tindak Pidana Korupsi Di Indonesia (Sociological Analysis of Law on the Possibility of Implementing Restorative Justice in Corruption Crime Cases in Indonesia). *Jurnal Hukum dan Kemasyarakatan Al-Hikmah*, 3(1).

<sup>13</sup> Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi, "Selama 2023, KPK Pulihkan Aset Negara Sebesar Rp. 525 Miliar", <https://www.menpan.go.id/site/berita-terkini/berita-daerah/selama-2023-kpk-pulihkan-aset-negara-sebesar-rp525-miliar>, diakses tanggal 10 Desember 2024

<sup>14</sup> Prameswari, A. A., Mangara, G., & Rudi, R. Deferred Prosecution Agreement: Corporate Criminal Liability Mechanism for Environmental Damage Through the Restorative Justice Paradigm. *Jurnal Hukum Lex Generalis*, 2(12), 1200-1222.

The application of the concept of *bargaining for punishment* can increase the level of transparency in the legal process by allowing for stricter supervision of the return of state assets that have been misused.<sup>15</sup> In this system, law enforcement officials are responsible for ensuring that corrupt actors who are willing to return state assets follow the rules that have been set. With stricter oversight and transparency during sentencing negotiations, the public can observe how the judicial process handles corruption cases and seeks to recover state losses.

In addition, the concept of *bargaining for punishment* also builds a restorative justice model that provides opportunities for the state to recover losses arising from corruption crimes. In this model, the perpetrator of the crime has the opportunity to reduce the punishment on the condition of returning the misused assets. This approach is in line with the purpose of the Corruption Law which not only emphasizes punishment for perpetrators, but also on recovering state losses.<sup>16</sup> Thus, the recovery of state losses is the main focus, creating a balance between the interests of the state as victims and the perpetrators who are punished according to the deeds committed. However, to ensure that this process is in accordance with Article 4 of the Corruption Law, strict supervision is needed to prevent abuse. Without proper supervision, the application of *bargaining for punishment* risks being abused and potentially harming the state further.

## CONCLUSION

The application of the concept of *bargaining for punishment* in law enforcement of corruption crimes can be an effective solution to achieve justice for the state as a victim. By providing incentives in the form of reduced penalties for perpetrators who are willing to return misused assets, this concept supports the recovery of state losses more efficiently, while accelerating legal processes that are often hampered by the length of trials and limited evidence. Nonetheless, its implementation must be accompanied by strict oversight to ensure transparency and prevent abuse. By following the provisions of the Corruption Law, especially Article 4 which emphasizes the return of state losses, this concept can create a balance between justice for the state and appropriate punishment for corrupt perpetrators, as well as provide faster and more efficient solutions in resolving corruption cases

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