
| RESEARCH ARTICLE

Implementation of Restorative Justice with Obligation of Reversal Burden of Proof as an Attempt to Restitute State Losses for Justice in the Crime of Money Laundering with Predicate Crime of Corruption

Adek Junjunan Syaid

Faculty of Law, As-Syafi'iyah, Jakarta City, Indonesia.

Corresponding Author: Adek Junjunan Syaid, **E-mail:** junjunanadek@rocketmail.com

| ABSTRACT

Restitution of state losses in the Prevention of the Crime of Money Laundering (TPPU) should be an important concern in law enforcement in Indonesia. This study aims to examine the Restorative Justice Mechanism with the obligation of restitution burden of proof in order to justify state losses in the crime of money laundering with corruption crime in accordance with the concept of Indonesia as a legal state. The author also identifies why it is necessary for Indonesia. In addition, the steps of the implementation of Restorative Justice are also analyzed. In this study, Juridical Normative is employed to analyze the data by focusing on library research. The author described a circumstance, condition, and legal events in Indonesia related to the Restitution of state losses in the Crime of money laundering with the predicate crime of corruption. As a result, Restorative should be implemented in Indonesia for it can provide appropriate punishment for money laundering perpetrators for criminal origin in corruption. Restorative Justice is expected to be means of community renewal (*Law as a tool/ instrument of social engineering*) to achieve people's welfare. Restorative Justice Mechanisms in the loss of the state towards money laundering offences with the predicate corruption must be implemented fairly.

| KEYWORDS

Restitution of State Losses, Reversal of the Load of Proof, Restorative Justice, Retributive Justice.

| ARTICLE DOI: [10.32996/bjahs.2022.2.1.8](https://doi.org/10.32996/bjahs.2022.2.1.8)

1. Introduction

Indonesia is a constitutional state whose legal system is universal by nature, yet it has distinct characteristics in terms of implementation. Due to historical influences, the notion of the legal state can be found in various models, such as the legal state according to the Qur'an and Sunnah or Islamic Nomocracy, the rule of law in Continental Europe (*Rechtsstaat*), and the rule of law based on Anglo Saxon (*Rule of Law*). The concept of legal state was embryonically introduced by Plato, which then reappeared explicitly in the 19th century in the form of *rechtsstaat* concept by Frederik Julius Stahl, which was adopted by Immanuel Kant. According to Stahl in Bakhri (2018), the elements of legal of state (*rechtsstaat*) are Protection of Human rights, separation or division of authorization to ensure the rights; Government based on legislative regulations and, Administrative Courts in disputes.

The concept of Indonesian legal state is stated in the Preamble to the 1945 Constitution, which was enacted by the Preparatory Committee for Indonesian Independence (PPKI) on August 18, 1945, which contains a passage that states: "*The Indonesian state is based on the law (Rechtsstaat), not based on mere power (Machstaat)*" (Kusuma, 2004). Hence, it is clear that the concept of a state of law that becomes the founding fathers' ideals is a legal state (*rechtsstaat*), not a state of power (*machstaat*). The concept of the legal state itself is clearly stated in article 1 section (3) of the Constitution 1945, which states, "*The state of Indonesia is a legal state*".

The concept of legal state in Indonesia must be in line with the objectives of the foundation of Indonesia as in accordance with the 1945 Constitution, particularly in the fourth section, i.e., 1. To protect the whole nation of Indonesia 2. To promote public welfare 3. To enrich the life of a nation 4. To participate in the implementation of a global system founded on freedom, eternal

peace, and justice (Kusuma, 2004). Thus, the shape of the legal state in Indonesia is a Welfare state; therefore, the law that is formed must serve as a tool to achieve the welfare of the Indonesian people.

Law enforcement against money laundering is crucial since it is classified as an organized crime committed by a professional perpetrator or white-collar crime, which has the potential to cause economic disruptions and the enforcement against the person in charge is still based on Criminal Code Procedure (KUHAP) which is *retributive justice*. Normatively, a case takes a long time of at least ±400 days to have permanent legal force (*inkracht van gewijsde*). The concept of retributive justice, which leads to imprisonment, is counterproductive since it requires the state to fund convicts while the jail is over capacity and unable to perform its functions adequately.

Money laundering in Indonesia until 2020 tends to experience a significant increase, especially after the enactment of the Money Laundering Law. While the case for corruption crimes that are prosecuted to the court is still quite small, according to the Indonesia Corruption Watch (ICW), there were at least 1,218 corruption cases in 2020, including 1,298 defendants. However, just 1.5 percent of the defendants in corruption cases, or about 20 people, only two people were charged with money laundering. Subarkah (2021) mentions that both are former President Director of PT Mugi Rekso Abadi Soetikno and former President Director PT Garuda Indonesia Emirsyah Satar.

The statement of realization of the State Budget per 2020 fiscal year was divided into Realization of State Revenue and Grants, which amounted to Rp.1.647.78 trillion or 96.93 percent. Meanwhile, State Expenditures were realized at the tune Rp.2.595.48 trillion, accounting for 94.75 percent of the state budget. The overall realization of State Expenditures consist of the realization of Central Government Expenditures amounted to Rp.1.832.95 trillion or 92.80 percent and Rp.762.53 trillion or 99.82 percent in the realization of Transfer to Region and Village. Based on the realization of State Revenues and Grants and the realization of State Expenditures, there is a budget deficit in total Rp.947.69 trillion whilst the total amount of Net Financing arrived at Rp.1,193.29 trillion or 114.83 percent of the total state budget. Thus, the remaining budget financing (*SILPA*) measured Rp.245.59 trillion. [4] Based on such reasons previously mentioned, Indonesia was experiencing a budget deficit and the concept of Retributive Justice, which leads to imprisonment and state losses.

Criminal imprisonment becomes ineffective and inefficient if the implementation is absolute, including all perpetrators, particularly those with criminal origins of corruption. Basically, apart from being punished in the original crime of corruption, money launderers also tend to have an economic motive in committing their crimes. The perpetrators of money laundering are people who have positions; Hence they are actually not criminals who harm other people while socializing.

Punishment and philosophy are inextricably linked. Philosophy refines the goals to be attained in the goals of punishment in order to achieve mankind's glory. So far, the philosophical approach has not been employed for accomplishment in criminal law, particularly justification for punishment; instead, it continues to revolve around retaliation in maintaining norm and order in society. Because the struggle to bring the philosophical way of thinking closer to the noble goal of criminal law in facing the ideal punishment must be achieved by means of intrinsic and deep thinking.

Based on the explanations aforementioned, it can be concluded that *Retributive justice* in line with the money laundering law approach was not successful yet. Henceforth, a new method or legal innovation is required to make the Restitution of State Losses more optimal, effective, and efficient. In money laundering with Criminal of Corruption, Restorative Justice should be one of the alternative choices for law enforcement to restore fair state losses.

2. Research Questions

1. Is the application of Restorative Justice Mechanism with the obligation of restitution the burden of evidence in order to justify state losses in the crime of money laundering with corruption crime in accordance with the concept of Indonesia as a state of law?
2. Why is it necessary for Indonesia to implement Restorative Justice with the necessity of Restitution the burden of evidence as a means of reimbursing state losses in the crime of money laundering and with the predicate of the crime of corruption?
3. How are the steps to implement Restorative Justice with the obligation of reimbursing the burden of evidence in order to reclaim state losses injustice in the crime of money laundering and in the crime of corruption?

3. Methodology

The method employed in this research was the juridical normative method by focusing on library research which is defined as research undertaken by examining library materials that serve as basic data in a study classified as secondary data.

According to Nordiansyah (2021), a juridical normative approach was used because library research through the document will be regarded to be crucial in formulating theoretical frameworks and concepts. The answer to the dissertation's problem was obtained through examining library materials in the form of primary data such as laws that are directly related to the problem and secondary data in the form of the court decision, expert opinions, doctrine and other data that support the primary data,

It relied on the descriptive analysis method, a type of research that describes or explain a condition, situation, and legal event that has occurred for further analysis. The method was employed in order to make it a research object.

The author described a circumstance, condition, and legal events in Indonesia related to the Restitution of state losses in the Crime of money laundering with the predicate crime of corruption. Henceforward, based on the background study, the author conducted a topic under the title "The Application of Restorative Justice with Reversal Burden of Proof as the Justice State's Loss Repayment in the Criminal Act of Money Laundering with Corruption Origin Regulation."

4. Results and Discussion

4.1 Restorative Justice

4.1.1 History and Development of Restorative Justice in Indonesia

The term Restorative Justice was first introduced by Albert Eglash, which stated that restorative justice is an alternative restitutive approach towards retributive justice and rehabilitative justice. Restorative Justice is a development of human thoughts based on the justice traditions from the civilization of Ancient Arabic, Greece, and Roman to solve problems, including criminal acts. This also happened because of dissatisfaction factors by reason of not involving the conflict parties in order to cope with the problem. This is in accordance with the statement:

"In many countries, dissatisfaction and frustration with the formal justice system or a resurging interest in preserving and strengthening customary law and traditional justice practices have led to calls for alternative responses to crime and social disorder. Many of these alternatives provide the parties involved and often also the surrounding community an opportunity to resolve conflict and address its consequences. Restorative justice programmes are based on the belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences; they are also based, in some instances, on a will to return to local decision-making and community building. These approaches are also seen as means to encourage the peaceful expression of conflict, to promote tolerance and inclusiveness, build respect for diversity and promote responsible community practise" (United Nations Office on Drugs and Crime, 2006).

Restorative Justice was born in Indonesia, where it has thrived, expanded, and been implemented through customary law. Several societies in Indonesia, for instance, Papua, Bali, Toraja, Minangkabau, and the other traditional communities, still maintain customary law. Therefore, if a person commits a criminal act, the dispute will be solved internally in the indigenous community without involving the state apparatus.

After the fall of Romans, the development of Restorative Justice was greatly influenced by the German state's system of public representatives, which spread throughout Europe. Besides, it is also affected by the justice system of the Indian community that resides nearby the Hindus River. Similar to Vedic civilization, it is a system for problem-solving by giving sanctions to the conflicted parties to refuse sins, lose compensation, or pay the debt. By these, the conflicted person can be forgiven. This was also affected by Buddhism, Taoism, and Confucianism, which have been blended with western culture that nowadays could be found in Northern Asia.

In the last twenty-five years lately, Restorative Justice has evolved into a global legal concept in criminal justice. More than 80 countries employ restorative justice systems to address criminal issues. Restorative Justice has become an essential approach to crime and justice in many countries. It offers the best solution for resolving criminal cases since it prioritizes the crime's primary problem. Things that must be concerned is to mend the damage or loss caused by the occurrence.

The solution mechanism of Restorative Justice in Italia is used to solve several criminal acts, for example, accidentally injuring other people, insulting, defamation, assault, and several unheavy problems. In Norway, all the crimes could be solved through the mediation mechanism as thievery, items destruction, and so on. In Australia, the violation that could be diverted into Restorative Justice is several crimes that happened quite seriously, such as murder crime, attempted murder, alcohol consumption, and also road safety that should be handled by the district court. Other violations are decided by the police on a case-by-case basis (Walgrave, 2003).

Restorative Justice that is developing in the United States and Europe is a form of Victim Offender Mediation (VOM) that uses a professional mediator to bring perpetrators and victims to gather in order to answer the question posed. The VOM concept was originally used for minor crimes, yet jurisdictions nowadays also provide the same option for serious cases. Zehr (2008) states that thousands of similar programs exist throughout North America, Europe, and other places.

Restorative Justice was used by the Austrian government for criminals, but it was later extended to adults in the form of VOM. According to article 90g of the Austrian Criminal Procedure Code, the public prosecutor may divert a criminal case from being threatened with less than 5 years in prison or 10 years for a case if the defendant admits his actions and provides compensations. Furthermore, in Germany in 1990, OVA (Offender Victim Arrangement) was included in the general criminal law of children and

affirmed as “a means of diversion”. The sentence could be lowered or even can be freed if the defendant is facing a maximum of one year or 360 units of daily fine in condition if the perpetrator provided the victim full or partial compensation.

Based on data from the Indonesian Supreme Court’s Business ease of Business Working Group on a study on Comparative Alternative Dispute Resolution in the Asia Pacific (2012), Singapore developed the concept of Restorative Justice by establishing a Community Mediation Center (CMC) to cope with society’s issues. Parliaments directly go to the field to examine potential conflicts and the solution under the CMC implementation. As a result, 72% of community issues are resolved through mediation (CMC); this serves as motivation for Indonesia to keep developing the concept of Restorative Justice (Pembaruan Peradilan, 2012).

4.1.2 Restorative Justice in the Criminal Law in Indonesia

The concept of Restorative Justice is a paradigm shift in thinking from the traditional mechanism in the form of retaliation with punishment toward deliberation to find solutions to achieve community justice this concept developed since punishment causes harm or suffering to many parties. This shift in thinking is also in line with an expert named Satjipto Rahardjo (2007), who argues that efforts to solve cases through the judicial system lead to court decisions. It is due to the fact that law enforcement has progressed through several stages such as the Police Department, the Attorney General’s Office, the District Court, and even the Supreme Court, which causes a large number of lawsuits that are filed in the court.

Restorative justice is expected to be a useful approach in improving social order by repairing and restoring a situation to its original state.

4.1.3 Restorative Justice in Islamic Teachings

Basically, Restorative Justice has in accordance with Islamic teachings and in line with Al-Qur’an as the sacred book of Muslims long before western scholars thought about the concept of deliberation to solve a problem.

Al-Qur’an Al-Maidah verse 8 states as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوِّمِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا
يَجْرِمَنَّكُمْ شَتَانُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا أَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ
وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ ﴿٨﴾

Meaning: “O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is [fully] aware of what you do.”

The notion of deliberation or “Syura” is in accordance with *Al’quran*, which is also a principle that the prophet Muhammad thoroughly implemented and practised as stated in the hadith.

عن أبي هريرة ر.ع قال: ما رأيت أحدا أكثر مشورة من رسول الله صلى الله
عليه وسلم

Abu Hurairah r.a stated: “I have never seen anyone who frequently consults other than the Messenger of Allah, Prophet Muhammad SAW” (Al-Tirmidziy et al., 1962).

In Islamic law, this form of Restorative Justice can be in several forms such as Compensation (Diyat), Conciliation (*Sulh*), and forgiveness (*Al’afwu*). This is intended so that the perpetrator can be responsible for the harm he has caused to the victim and the community (Qafisheh, 2012).

4.1.4 Restorative Justice in Customary Law in Indonesia

Customary law is typical of the Indonesian folk law system based on values that live and grow in community association (*the living law*). Customary law is necessary for the regulation of social life, as in line with Cicero that: “*Ibi Societas ibi ius*”, which mean there is society, there is the law. The formation of customary law is based on the personal interaction of community members, which then continue to become reciprocal relationships among individuals and form social contacts; then, it becomes a habit that is agreed to be obeyed until it becomes “customary law.”

In customary laws in Indonesia, particularly the indigenous people of Papua, Aceh, Bali, West Sumatra and Lampung, restorative justice has already been well-known and has become a tradition in solving social problems. According to Mulyadi (2013), Restorative Justice is a method of resolving social problems through a deliberation process that results in a peace accord that is beneficial to all parties (*win-win solution*). There are several terms for this method such as in Papua, it is known as “budaya bakar

batu"; in Aceh *peusijuek*; in Bali, through the traditional village of *Pakraman* it's called as *awig-awig*; in Nusa Tenggara Barat, it is known as *begundem*; in Baduy tribe known as *silih ngahampura*; and in the community Lamaholot, Flores, Nusa Tenggara Timur it is known as *mela sareka*.

The Restorative Justice mechanism has been recognized and implemented as the applicable law in Indonesia. This is reflected in several rulings of the Supreme Court of the Republic of Indonesia, which state that a Defendant cannot be re-punished since customary law has been passed down and adopted by the disputing parties. The Supreme Court of the Republic of Indonesia's Decision No. 666 K/Pid/1984, February 23rd, 1985, and the Supreme Court of the Republic of Indonesia's Decision No. 1644 K/Pid/1988, May 15th, 1991, are two examples of these decisions.

4.2 Money Laundering

Money laundering aims to disguise the proceeds of crime in the order it will not be detected and appear to be legally obtained funds. Money laundering, according to Law No. 8 of 2010 concerning Money Laundering Article 3 defined as "Every person who places, transfers, pays, grants, entrust, takes abroad, changes form, exchanges currency or securities, acts other Assets which the person knows or reasonably suspects are the proceeds of a criminal act as referred to in Article 2 paragraph (1) with the intent of concealing or disguising the origin of the Assets..."

Predicate crime is a term that is used to gain the proceeds of illegal activities in the form of assets either directly or indirectly. Predicate crime is regulated in Article 2 paragraph (1) of Law no. 8 of 2010 concerning money laundering.

Decree of head Financial Transaction Reports and Analysis Centre (PPATK) no.2/1/Kep.PPATK/2003 concerning Guidelines for the Prevention and Eradication of Money Laundering (TPPU) Money Laundering is divided into three stages, including Placement, Layering, and Integration.

4.3 Reversal Burden of Proof

Proof in the context of universally applicable criminal cases in the world is the obligation of the public prosecutor (JPU) as in line with the principle of functional differentiation in the criminal process, which delegates the function of investigation, prosecution, and trial to the competent authorities, viz. police, prosecutors, courts, and, social agency. Article 66 of the Criminal Code states, "The suspect of the defendant is not saddled with the obligation of proof". This is in accordance with the presumption of innocence, right to remain silent, and also as concrete criticism towards the principles of not blaming oneself (non-self-incrimination), and the presumption of innocence, which states that a person cannot be presumed guilty or punished as a guilty party before being proven in court and having permanent legal force beyond reasonable right which proves that the suspect is legally guilty (Fuady, M & Laura, S., 2015).

Furthermore, in the development of criminal law, the defendant can be burdened with the obligation of proof to prove his innocence or known as *Omkering van het Bewijslast* Reversal burden of proof.

Related to reversal burden of proof, Indriyanto Seno Adji stated: "Even in the Anglo-Saxon countries, the system of reversal burden of proof is borne by the Public Prosecutor, not by the defendant. Further, the universal principle still requires the presumption of innocence as acceptability principle; thus, the defendant has a right as Non-Self Incrimination and the Right to Remain Silent. These rights are part of the principle of protecting and respecting human rights which cannot be diminished in any way and for any reason (Non-Derogable Right)" (Adji, 2009).

The system of reversal burden of proof is clearly regulated in Article 77 and Article 78 of the Money Laundering Law as follows:

(1) Article 77

Article 77 related to Money Laundering states that: "The defendant is obliged to prove that his assets are not the result of a criminal act for the purposes of examination in court."

(2) Article 78

- (1) During the court examination referred to Article 77, the judge orders the defendant to prove that the assets are not related to criminal act as in line with Article 2 paragraph (1).
- (2) The defendant must prove that his wealth is purely his belongings as in accordance with the article mentioned by submitting sufficient evidence.

4.4 Restitution of State Losses

Law No. 1 of 2004 concerning State Treasurer Article No 1 point 22 and The Audit Board of the Republic of Indonesia (BPK)'s Regulation No. 2007 on Procedures for Settlement of State Compensation Against the Treasurer Article 3 Point 3. State Losses, in essence, are shortages of money, securities, and goods, which are real and definite in amount as a consequence of criminal conduct, either intentionally or negligently.

There are several mechanisms for reimbursing state financial losses caused by Money Laundering, including:

a. Restitution of State Losses through the Criminal Law Mechanism

Restitution of State Losses through criminal law mechanism is carried out in accordance with the requirements of the Criminal Procedure Code, with the following stages a. asset tracing b. asset freezing, c. asset confiscation and d. Asset of crime

b. Restitution of Assets or Wealth Proceeds of Crime through the Civil Code Mechanism

Restitution of Criminal's Assets or Wealth Proceeds the Civil Code mechanism is carried out by submitting a request to the court authorized to confiscate proceeds of crime.

c. Restitution of Asset Forfeiture without Penalty

Restitution of assets through non-conviction based or in rem confiscation is an alternative to recover state losses. NCB can be a tool to restore the balance of the state's losses without punishing or illegal activities that the defendant did. The NCB asset forfeiture mechanism classifies assets derived crimes as legal subjects or parties, with countries represented by money laundering offences investigators as applicants of prosecutor against assets suspected crime or means of criminal acts as the respondent. This mechanism allows for assets confiscation without the need for a criminal conviction.

NCB (*Non-Conviction Based*) confiscation *in rem* has been regulated in Indonesian legal provisions, and those are Constitution No. 8 2010 concerning Money Laundering, particularly in article 67, article 79 paragraph (4), article 79 paragraph (5), article 79 paragraph (6). Subsequently, the other provision that could reflect the NCB concept is Supreme Court regulation No.1, 2013 about Procedure for Completion of Applications for Assets' Handling on Money Laundering Criminal Act or another crime specifically in article 1 and article 3. The procedural law for NCB Forfeiture Asset could refer to SEMA No.3, 2013 about the Instructions for Handling Cases on Settlement's Procedures of Property Applications on Money Laundering Criminal Act or another crime. The NBC is also contained in the assets confiscation bill, particularly in Article 1, point 8.

4.5 The Implementation of Restorative Justice with the Obligation of Reversal Burden of Proof as a State Restitution for Justice in the Crime of Money Laundering with Predicate Crime of Corruption

Material Law Country or Modern is the country of prosperity (welfare state) which made societies' well-being be the supreme law and set a place for the law as the highest commander in civilization, nation and state to reach the welfare of people as the priority in purpose for establishing the state. The concept of welfare of the people in a state has long been proposed by Marcus Tullius Cicero (106 - 43 BC), with his expression stating "*Salus populi suprema lex esto*", which means that the welfare of the people should be in the highest law.

As a legal country, Indonesia is supposed to have the concept of the welfare state law since it was born in the modern era. The Welfare State nation has become the purpose of Indonesia's founding fathers since the first place. This case reflected on The 1945 Constitution, precisely on the opening of the Fourth paragraph, which has been written in Republic of Indonesia's aim, i.e. protect the Indonesian nation and all of Indonesia's bloodshed, promote the general welfare, enrich the life of the nation, and participate in carrying out the world order which based on independence and everlasting peace as well in Alinea II which is essentially the state in shape to deliver the Indonesian people to the gate of independence of the State of Indonesia, which is independent, united, sovereign, righteous and prosperous".

Indonesia as a welfare state is also reflected in Five Principles of the Indonesian State (Pancasila) as the basis or philosophy of the state (*fiilosofische grondslag*) Indonesia, especially with the values of Pancasila (*subscriber of Pancasila values*) that are godly, humane, united, insistent, and socially just. The value of Pancasila is the basis of the attitude, behavior, and actions of the Indonesian nation. The concept of Justice is clearly stated in the fifth precept, which states: "Social justice for all the peoples of Indonesia".

As the highest commander of societies' life in Indonesia, law should be conducted for the aim of society's welfare or to earn lots of happiness and joyous for the largest number of people. This is in line with Roscoe Pound (1870-1964) through theory "*law as a tool of social engineering.*" Satjipto Rahardjo (2007) further developed this concept through progressive legal theory, which essentially argues that the law made is to serve humans, not vice versa. Therefore humans become determinants and points of legal orientation. Furthermore, Muchtar Kusuma Atmadja also developed the Roscoe Pound concept by law as an instrument of social engineering.

Policies for the establishment and enforcement of law should address three primary issues: (1) Justice (*gerechtigheit*); (2) legal certainty (*rechtssichrheit*); and (3) legal benefits (*zweckmassigkeit*). Laws or political policy acquired by the country administrator, in line with parliament or legislative, must be a product that parallels (ideal) with people's aspirations; otherwise, the product will become the common enemy by the public as outlined by Wahid (2012). This viewpoint is in line with W. Friedman in Khopiatuziadah (2013), who essentially states that there is a balance between the desire to form the renewal of the law through legislation and the awareness of the reality of life in society. These facts are touted as "*living law and just law*", which is the "*inner order*" of society

that reflects the values of living in it. Hence, in the process of conducting the Constitution in order can be applied effectively, then in its formation, the government must pay attention to the Living Law in the midst of society, for the ideal law's source is the sense of law that exist in society itself.

In general, the Law Enforcement concept in Indonesia still adheres to the Retributive Justice concept that leads to imprisonment as regulated in the Criminal Procedure Code. In Money Laundering Criminal Act's Law Enforcement with the corruption origin, law enforcement tends to use the Retributive Justice approach and is oriented to follow the suspect. Unfortunately, this concept is proved ineffective both in terms of suppressing or minimizing the increase in the Money Laundering Criminal Act nor the improvement to optimize the state loss recovery process. This case happened because other than the state loss recovery process takes a quite long time, at least 400 days (*Criminal Justice System*), the recovery process can be made after the criminal verdict have the permanent legal force (*post-conviction forfeiture*). Based on that point, a fast and optimal law enforcement mechanism needs to be created and oriented to pursue the proceeds of crime since money laundering with the criminal origin of corruption involves a lot of money that can disrupt the country's economy as a whole.

The concept of Restorative Justice can be an option for Money Laundering law enforcement with the predicate of the crime of corruption. Restorative Justice can be a replacement for Retributive Justice which has been used and proved less effective and efficient for the Money Laundering Law Enforcement with the corruption origin. Restorative Justice Concept is a settlement concept that has been grown in Indonesia's society and has been used for a long time to solve the Indonesian societies' problems. This concept is in line with customary law, Islamic law, The 1945 Constitution and The Five Principles of the Indonesian State, and western law as the source of national law.

Restorative Justice Concept expected to be optimized the state loss recovery process in Money Laundering, specifically with the corruption origin rapidly and optimally, while reducing the burden on the state to finance the Money Laundering's convicts. The Optimization of State Loss' Recovery Process expected can be used quickly to recover the damage caused by the Money Laundering convicts and could be used for the public interest with the aim to create prosperity in Indonesia.

The Use of Restorative Justice in Money Laundering Criminal Act with the corruption origin must concern these three elements of the legal system to make it effective and efficient. These elements should be well-adjusted, or else they will impact the legal system—the components of the legal system according to Soerjono Soekanto (2019).

Those three components by Lawrence Milton Friedman (as cited in Ali, 2012) are as follows: Legal structure, which includes the institutions and apparatus, including the police and the members, attorney and the members, the court with the judges, and so forth. Moreover, legal substance, which sets the whole norm and the principles of law, whether written or not; and legal culture, i.e. beliefs, habits, and acts of the Law Enforcement and societies about law and all the phenomena that related with law.

The Application of Restorative Justice in Money Laundering Criminal Act with the corruption origin, in the future, should be done by all the agencies and Law Enforcement Institution in Indonesia, whether it is in Constabulary, Judiciary, Commission of Corruption Eradication, and the Supreme Court. These are Indonesia's mechanisms of Restorative Justice Application in Law Enforcement institutions in the future. Those are as follow:

a. The application of Restorative Justice through Reversal Burden of Proof in Money Laundering Criminal Act with the Corruption Origin in Institution / Constabulary.

1) Legal Basis

- a) The 1945 Constitution of the Republic of Indonesia
- b) Code of Criminal Procedure
- c) Law No. 2 of 2002 concerning the Indonesian National Police
- d) Police Chief Regulations of Indonesian National Police No. 6 in 2019 concerning Criminal Investigation
- e) Circular letter No: SE/2/11/2021 related to Awareness of Ethical Culture to Create a Clean, Healthy, and Productive Indonesian Digital Space
- f) Police Chief Regulations of Indonesian National Police No. 8 2021 concerning Utilizing Restorative Justice In Facing Crimes

2) Mechanism of the Implementation of Restorative Justice

a) Pre Restorative Justice

- (1) The Constabulary of Republic Indonesia has the authorized to stop the Money Laundering Criminal Act with the corruption origin at the investigative level through the Mechanism of Restorative Justice.

- (2) The Implementation of Restorative Justice can only be implemented with the condition: This is the first time the suspect committed the Money Laundering Criminal Act and has served the criminal sentence based on the regulation of permanent legal force.
- (3) Discontinuation of investigation to Money Laundering Criminal Act with the corruption origin through the mechanism of Restorative Justice implemented based on the Principle of Justice, Public Interest, and Proportionality, fast, unassuming, and low cost. and Criminal as a last resort in a sentence (*ultimum remedium*)
- (4) Discontinuation of investigation to Money Laundering Criminal Act with the corruption origin through the mechanism of Restorative Justice done with observing the interests of the state as the victim and the principle of law that should be protected; avoidance of negative stigma, community response and harmony, and propriety, decency, and public order.
- (5) The suspect submits a request for settlement as the settlement of Money Laundering Criminal Act with the corruption origin to the Chief of Police of the Republic Indonesia, accompanied by data, information, and proofs (reversing the burden of proof) related to the money as the outcome of Money Laundering Criminal Act and the willingness to return the money to the country.

b) The Process of Restorative Justice

- (1) The Chief of Police of The Republic Indonesia formed the Restorative Justice team to represent the country as the Money Laundering Criminal Act victim with the corruption origin in order to investigate the suspect's application related to settling the Money Laundering Criminal Act that has caused by the suspect's actions.
- (2) The Restorative Justice process is done voluntarily, by deliberation, without pressure, coercion, or intimidation.
- (3) The process of Restorative Justice has been implemented in Headquarters of Republic Indonesia's Police or another place that have been set with consideration or some reasons, for instance, safety reasons, health, or geographic condition,
- (4) The Constabulary of Restorative Justice Command the investigator, suspect, also the other party to come to the Headquarters of Republic Indonesia's Police to be investigated, confirmed and clarified related to the data, information, and description to determine the number of state losses that should be returned by the suspect.
- (5) Restorative Justice's Process started with the implementation of reversing the burden of proof to prove that the asset/money confiscated by the investigator is not a cash flow from the Money Laundering Criminal Act.
- (6) The assets that cannot be proved as the money that legitimate and not the outcome from Money Laundering Criminal Act by the investigator as the money that should be returned to the country, hence the investigators build up the news and as the symbol of peace to return the state loss.
- (7) Based on the data, evidence, and description that have been collected by the Restorative Justice team, the constabulary considers the suspect's application to settle the problem through the Restorative Justice mechanism.

c) Post Restorative Justice

- (1) If the Restorative Justice Application has been approved, the Restorative Justice team makes the deal on the record of peaceful settlement and signed by all parties.
- (2) The Chief of the Indonesian National Police, after receiving the record of peaceful settlement from the restorative justice team, instructs the suspect to immediately carry out the process of returning state losses, and after that, the Chief of the Indonesian National Police signs the record of peaceful settlement and instructs investigators to stop the case from proceeding to the prosecution stage and submit an application for Court Determination on the basis of the record of peaceful statement.
- (3) If the reconciliation endeavour fails, the restorative justice team records it in the Minutes of the Peace Proclamation and refers the case to the Attorney general for prosecution.

b. Implementation of Restorative Justice at Prosecutors' Institutions by Reversal Burden of Evidence in the Crime of Money Laundering with the Predicate Crime of Corruption

1) Legal Basis

- a) The 1945 Constitution of the Republic of Indonesia
- b) Code of Criminal Procedure
- c) Law No 15/1961 concerning the main provisions of the Prosecutor's Office of the Republic of Indonesia
- d) Law No 5/1961 concerning Prosecutor's Office of the Republic of Indonesia
- e) Law no 15/2004 concerning Prosecutor's Office of the Republic of Indonesia
- f) Prosecutor's Office of the Republic of Indonesia Regulation No. 15 of 2020 on Prosecution Discontinuation Based on Restorative Justice

2) The mechanism for the Implementation of Restorative Justice at the Prosecutor's Office

a) Pre Restorative Justice

- (1) The Attorney General of the Republic Indonesia, in accordance with the provisions of the act, has the authority to utilize the Restorative Justice mechanism to rule the process of ML with predicate crimes of corruption at the investigation level, provided that the defendant committed the act for the first time and has been proven as well as has served a sentence according to the court's decision.
- (2) The discontinuation of investigation/prosecution in money laundering with the criminal origin of corruption through Restorative Justice is carried out on the basis of the principle of Justice, Public Interest, Proportionality, Fast, simple, and low costs and significance, of the state as victims and other protected legal interests, avoidance of negative stigma, response and harmony of society and propriety, decency, and public order.
- (3) The suspect submitted an application for the settlement of money laundering with the criminal origin of corruption through the Restorative Justice mechanism to the Attorney General of the Republic of Indonesia provided by data, information and evidence (Reversal burden of proof) related to the property/money as an outcome of money laundering and the Suspect's readiness to return the assets to the State.

b) The Implementation of Restorative Justice's Process

- (1) Attorney General of the Republic of Indonesia (KEJAGUNG) formed a Restorative Justice team to represent the state as a victim of the crime of ML with the predicate crime of corruption in order to investigate on the defendant's request.
- (2) The process of settlement of cases through the mechanism of restorative justice is carried out voluntarily by means of mutual consent, without pressure, coercion, or intimidation.
- (3) The restorative justice process is implemented in the office or other place determined by consideration or due to reasons such as security, health, or geographical conditions.
- (4) The Prosecutor's Restorative Justice Team summoned Investigators, Suspects and other interested parties to examine, confirm and clarify evidence and other evidence in order to determine the amount and mechanisms of state compensation.
- (5) The process of restoration of justice begins with the implementation of the obligation to reversal the burden of proof to prove that the property of the suspect seized by the investigator is not the property of money laundering.
- (6) Property that cannot be proven as legitimate property or not the outcome of crime is considered by the investigator as the property of money laundering that must be returned to the state, for that the investigator makes news of the event and asks for the approval (signature) of the Suspect as a symbol of peace (*restorative justice*).
- (7) Based on the evidence and information collected by the Team of Restorative Justice Attorney General of the Republic of Indonesia, the request for a settlement of the case through a restorative justice mechanism is considered.

c) Post Restorative Justice

- (1) Once an agreement has been reached on the settlement of the matter through the Restorative Justice mechanism, the agreement is thrown out in the Record of Peaceful Settlement and submitted to the Attorney General of the Republic of Indonesia.
- (2) After receiving the Record of Peaceful Settlement from the Restorative Justice Team, the Prosecutor's Office ordered the suspect to immediately process the restitution of the State Loss.
- (3) After the State Loss Repayment Procedure was enforced, the Attorney General of the Republic of Indonesia signed the Record of Peaceful Settlement and ordered the Suspect to process the State Loss Repayment Procedure and asked the Investigator to stop or remove the case, and submitted a Peace Order application to the Court on the basis of the Record of Peaceful Settlement.
- (4) If the mechanism of Restorative Justice is not achieved, the Team of Restorative Justice will put it into the Record of Peaceful Settlement and proceed to the stage of Prosecution in the Court.

c. The Implementation of Restorative Justice Through Reversal Burden of Proof in the Crime of Money Laundering with the Predicate Crime of Corruption in the Corruption Eradication Commission (KPK)

1) Legal Basis

- a) The 1945 Constitution of the Republic of Indonesia
- b) Law No. 8 of 1981 concerning Criminal Procedure Code (KUHP)

2) Restorative Justice Implementation Mechanism

a) Pre Restorative Justice

- (1) The Corruption Eradication Commission (KPK) has the authority to stop the money laundering case with the criminal origin of corruption to the investigation/prosecution's level through the Restorative Justice mechanism.

- (2) Implementation of the mechanism of restorative justice towards money laundering with the criminal origin of corruption can be executed on the condition that it was the first time the suspect performed money laundering and has passed the sentence of imprisonment of the criminal origin of corruption based on the court decision.
- (3) The discontinuation of the investigation/prosecution against the money laundering with the criminal origin of corruption through restorative justice and accomplished on the basis of Justice, Public Interest, Proportionality, Fast, Simple, and Low Cost also as the last attempt in *ultimum remedium*.
- (4) The discontinuation of the investigation/prosecution of the money laundering with the criminal origin of corruption through the mechanism of restorative justice and performed with consideration, the interests of the state as a victim and other legal interests protected, the avoidance of negative stigma, the response and harmony of society and compliance, compassion, and public order.
- (5) The suspect submits to the Chairman of the Corruption Eradication Commission a request for settlement of money laundering with the predicate crime of corruption, along with data, information and evidence related to the asset proceeds from the crime of money laundering and the availability to return the assets to the State.

b) Restorative Justice Implementation Process

- (1) The chairman of the Corruption Eradication Commission is a member of the restorative justice team of the Corruption Eradication Commission to represent the country as a victim of money laundering offences with criminal origins of corruption in order to submit a request for a suspect to resolve a money laundering offence case involving a crime of corruption origin through a restorative justice mechanism
- (2) The restorative justice process is carried out voluntarily by means of deliberation for consensus, without pressure, coercion, and intimidation.
- (3) The restorative justice takes place at the Corruption Eradication Commission (KPK) or other locations as specified by consideration such as security, health, or geographical factors.
- (4) Investigators and suspects are requested to the office or other designated places by the Corruption Eradication Commission's Restorative Justice Team for examination of information, data, evidence in order to determine the amount and method of recovering state losses.
- (5) The restorative justice process begins with the implementation of the obligation to reverse the burden of proof to prove that the suspect's assets confiscated by investigators are not the proceeds of money laundering crimes.
- (6) In the event that the suspect cannot prove his clean-handed, the investigators consider the defendant's assets are the proceeds of money laundering that must be returned. Hence, the investigators prepare an official report and request suspect's approval (signature).

c) Post Restorative Justice

- (1) The Restorative Justice team will include the agreement in the record of peaceful settlement signed by all parties if the settlement procedure has been agreed upon.
- (2) After receiving a record of peaceful settlement from the Restorative Justice Team, the Corruption Eradication Commission's Chairman ordered the suspect to immediately retribute the state losses.
- (3) Further, the Chairperson of the Corruption Eradication Commission instructs the Investigator to end the investigation and/or not continue the case to the Prosecution stage in order to seek a Court Decision based on the record of a peaceful settlement.
- (4) The Chairperson of the Corruption Eradication Commission (KPK) and Restorative Justice team will record peaceful settlements and take the case to court if peace attempts fail.

d. The Implementation of Restorative Justice through Reversal Burden of Proof in the Crime of Money Laundering with the Predicate Crime of Corruption in Court Institution. (Supreme Court)

1) Legal Basis

- a. The 1945 Constitution of the Republic of Indonesia,
- b. Code of Criminal Procedure,
- c. Memorandum of Understanding with the Chairman of Supreme Court of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the Indonesian National Police No. 131/KMA/SKB/X/2012, No M.HH-07. HM. 03.02 Tahun 2012, No. KEP-06/E/EJP/10/2012, No. B/39/X/2012, October 17th, 2012, concerning the Adjustment on the Limitation of Minor Crimes and the Amount of Fines, Quick Examination Procedures, and Restorative Justice Implementation,
- d. Guidelines for the Implementation of Restorative Justice in General Courts Decree of the Director-General of General Courts No. 1691/DJU/SK/PS.00/12/ 2020 dated 22nd December 2020 regarding Guidelines for the Implementation of Restorative Justice in the General Courts,

- e. Decree of the Director-General of the General Court of Justice of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 regarding The Application of Restorative Justice's Implementation.

2) Restorative Justice Implementation Mechanism

a) Pre Restorative Justice

- (1) Settlement of the Crime of Money Laundering with the Predicate Crime of Corruption through the Restorative Justice mechanism is applied in every District Court.
- (2) It is the first time the defendant has been charged with ML in conjunction with a predicate offence of corruption that has been proven in court and has resulted in a final and binding judgement (*Incracht van gewijsde*)
- (3) The Money Laundering Criminal Act with corruption origin's Completion through the Restorative Justice mechanism in the district court held based on the Principle of Justice, Public Interest, Proportionality, fast, straightforward, and low cost, and also do a placement for Criminal Law as the last way to solve the law problem (*ultimum rimedium*).
- (4) The Money Laundering Criminal Act with corruption origin's completion through the Restorative Justice mechanism in the district court is carried out while taking into account the interest of the state as the victim and other protected legal interest, avoidance of negative stigma, community response and harmony, and propriety, decency, and public order.
- (5) Defendant submitted the settlement of money laundering with a crime of origin of corruption to the district as well as information, data, and evidence (Reversal Burden of Proof) related to the money laundering's proceed and willingness to return the assets.
- (6) The Head of the District Court coordinates with the State Prosecutor and the Head of the Resort Police regarding the defendant's application to address charges of money laundering offenses through Restorative Justice Mechanism.

b) Process of Restorative Justice

- (1) The District Court's chief judge selects a single judge to investigate, adjudicate, and rule on matters of money laundering involving corruption.
- (2) The defendant, public prosecutor, and other related parties in the alleged money laundering offense with the predicate offense of corruption are summoned by the court on the day and date of the trial of the alleged money laundering offense.
- (3) The judge begins the trial by reading the indictment, next reviews the evidence and considers the value or quantity of the defendant's proposed reimbursement of state losses.
- (4) The judge inquired the defendant and the Public Prosecutor's opinion, then offered the public prosecutor and the defendant a peaceful solution.

c) Post Restorative Justice

- (1) If the defendant, the Public Prosecutor, and other parties agree on the reconciliation effort, the Judge prepares a record of peaceful settlement and submits it to the Head of the District Court, commanding the parties to promptly return the state losses while simultaneously setting aside or stopping the investigation towards money laundering offense case with the predicate crime of corruption.
- (2) The Court delivers a Court Decree based on the record of peaceful settlement if the parties have fulfilled all of their obligations and/or acknowledged their rights.
- (3) If the reconciliation effort is not agreed upon, the Judge will record it in the record of peaceful settlement and proceed with the ML case investigation.

5. Conclusions

Based on the study rationale, hence the conclusions are as follows:

- i. The current provisions of the law governing the return of state losses in money laundering offenses involving predicate crimes of corruption continue to employ the concept of retributive justice, which tends to follow the suspect and leads to imprisonment. This concept is clear and has been shown to be inefficient in terms of recouping state losses; in fact, the state may be burdened because it must pay for the prisoners. The concept of Restorative Justice can be an alternative option in the enforcement of the law in Indonesia, in particular in the money laundering with the criminal origin of corruption; thus, return of the country's losses is optimal, and the goal of the country for the well-being of its people can be achieved.
- ii. Restorative should be implemented in Indonesia for it can provide appropriate punishment for money laundering perpetrators for criminal origin in corruption, as well as an effort to maximize the restitution of state losses in order to enhance state

budget's deficits and lower the financial towards prisoner's living costs. Restorative Justice is expected to be means of community renewal (*Law as a tool/ instrument of social engineering*) to achieve people's welfare.

- iii. Restorative Justice Mechanisms in the loss of the state towards money laundering offenses with the predicate corruption must be implemented fairly. All parties involved in the crime, both the community as the party affected by money laundering, the state as the victim and also the perpetrators of the crime.

Funding: This research received no external funding

Acknowledgements: I acknowledge the anonymous reviewers for their valuable and relevant comments.

Conflicts of Interest: The author declares no conflict of interest.

References

- [1] Adji, I. S. (2009). *Korupsi dan Penegakan Hukum [Corruption and law Enforcement]*. Jakarta: Diadit Media.
- [2] Al-Tirmidziy, (1962). *Jami Al-Shalih – Sunan Al-Tirmidziy*, IV, t.t.: Mustafa Al-Babi Al-Halabi.
- [3] Ali, A. (2012). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana Prenada Media Group.
- [4] Bakhri, S. (2018). *Dinamika Hukum Pembuktian: Dalam Capaian Keadilan [Dynamics of the Law of Evidence: In Achieving Justice]*. Depok: Rajawali Pers.
- [5] Fuady, M & Laura, S. (2015). *Hak Asasi Tersangka Pidana [Human Rights of Criminal Suspect]*. Jakarta: Kencana.
- [6] Khopiatuziadah. (2013). Partisipasi Publik dalam Pembentukan Undang-Undang: Pijakan Berpikir Sosiologis Sebagai Landasan Pemikiran dalam Penyusunan Naskah Akademik [*Society's Participation in the Arrangement of Constitution: Politics of Sociological Thinking as a Fundament of Thought in the Preparation of Academic Scriptures*]. *Jurnal Legislasi Indonesia*, 10(1).
- [7] Kusuma, RM A.B. (2004). *Lahirnya Undang-Undang Dasar 1945 [The birth of the 1945 Constitution]*. Fakultas Hukum Universitas Indonesia, Jakarta,
- [8] Mulyadi, L. (2013). Mediasi Penal dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori dan Praktek [Penal Mediation in the Indonesian Criminal Justice System: Study of Principles, Norms, Theory and Practice]. *Yustisia*, 2(1).
- [9] Nordiansyah, E. (2021, June 22). *Audit BPK Temukan Defisit APBN 2020 Mencapai Rp947,7 Triliun*. Retrieved January 3, 2022, from <https://www.medcom.id/ekonomi/makro/0kporxWb-audit-bpk-temukan-defisit-apbn-2020-mencapai-rp947-7-triliun>
- [10] Pembaruan Peradilan. (2012, October 5). Retrieved February 16, 2014, from <http://www.pembaruanperadilan.net/v2/2012/10/komparasi-penyelesaian-sengketa-alternatif-di-asia-pacific/>
- [11] Qafisheh, M. M. (2012). *Restorative Justice in the Islamic Penal Law: A Contribution to the Global*. Retrieved January 16, 2022, from <http://www.sascv.org/ijcjs/pdfs/mutazaicjs2012istissue.pdf>
- [12] Rahardjo, S. (2007). *Konsep dan Karakter Hukum Progresif [Concept and Characteristics of Progressive Law]*. Makalah Seminar Nasional I Hukum Progresif, Kerjasama Fakultas Hukum Undip, Program Doktor Ilmu Hukum Undip dan Fakultas Hukum Universitas Trisakti, Semarang, Desember.
- [13] Soekanto, S. (2019). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum [Influential Factors towards Law Enforcement]*. Jakarta: Raja Grafindo.
- [14] United Nations Office on Drugs and Crime. (2006). *Handbook on Restorative Justice Programmes*. United Nation, New York.
- [15] Wahid, A. (2012). Politik Legislasi Menentukan Demokrasi (Analisis Putusan Nomor 15/PUU-IX/2011)" [*Legislative Politics Determine Democracy (Analysis of Decision No 15/PUU-IX/2011)*]. *Jurnal Konstitusi* 9(1).
- [16] Walgrave, L. (2003). *Repositioning Restorative Justice*. Willan Publishing First edition, UK.
- [17] Zehr, h. (2008). Doing Justice Healing Trauma: The Role of Restorative Justice in Peacebuilding. *South Asian Journal of Peacebuilding*, 1(1). 2.