



## The Relevance of Supreme Court Regulation No. 1 of 2020 in Efforts of State Losses Refund through Restorative Justice

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*Submitted: Oct 18, 2021; Reviewed: Nov 2, 2021; Accepted: Dec 6, 2021*

### Article's Information

#### **keywords:**

*Corruption; Supreme Court Regulation; Restorative Justice.*

#### **DOI :**

<https://doi.org/10.25041/corruptio.v2i2.2434>

### Abstract

*The government has moved quickly to find a legal breakthrough related to reducing corruption in Indonesia. One of the efforts made by the government is through the Supreme Court to eradicate corruption is the enactment of Supreme Court Regulation No. 1 of 2020 concerning Guidelines for the Criminalization of Articles 2 and 3 of the Law on the Eradication of Corruption Crimes. The consideration is that the imposition of a crime must be carried out with due regard for the certainty and proportionality of punishment to realize justice based on Pancasila and the Republic of Indonesia's 1945 Constitution. The objectives of the Supreme Court Regulation prioritize victim's losses to be recovered. Moreover, the regulation proportional benefits in imposing penalties on criminal cases is compatible with the Restorative Justice approach. The restorative justice process is expected to be a legal breakthrough in restoring state finances, with dealing with Criminal Corruption Cases focusing on efforts to restore state finances as a whole rather than just prosecuting the perpetrators. Thus, the purpose of this research is to determine how relevant Supreme Court Regulation No. 1 of 2020 are to efforts to recover state losses through restorative justice. This research*



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*employs both a normative and an empirical legal approach. Data were gathered through literature reviews and field studies and analyzed qualitatively. The present study confirmed the author's thoughts about the relevancies of Supreme Court Regulation No. 1 of 2020 to recover state losses through restorative justice as Supreme Court Regulation No. 1 of 2020 play a role as a law enforcement's main element as a legal substance.*

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## A. Introduction

Corruption is an extraordinary crime that harms state finances and hinders national development, so it must be eradicated extraordinarily to create a just and prosperous society based on Pancasila and the 1945 Constitution.<sup>1</sup> The perpetrator of corruption is a person or corporation who commits a criminal act intending to benefit himself or the corporation by abusing the authority, opportunity or means attached to his position and impacting state financial losses.<sup>2</sup> The impact of uncontrolled corruption can bring disaster to the life of the national economy and the nation and state in general.<sup>3</sup> Corruption is insidious, pervasive, and rapidly spreading, and may negatively affect every country in the world. Corruption reduces economic output. Thus, there is a strong negative association between corruption and income. In the nutshell, corruption reduces or hinders a country's economic growth through the channels of lower shares of private investment, the level of human capital, and political instability.<sup>4</sup> The widespread and systematic crime of corruption is also a violation of the social and economic rights of the community; therefore, corruption can no longer be classified as an ordinary crime but has become an extraordinary crime, so extraordinary and comprehensive law enforcement is needed.<sup>5</sup>

Recognizing the complexities of the corruption problem in the context of a multifaceted crisis and the real threat, namely the impact of this crime. As an extraordinary crime, the eradication of corruption necessitates the government's seriousness. The Indonesian government's seriousness in combating corruption can be seen in issuing policies.<sup>6</sup> Those are

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<sup>1</sup> Halim, *Pemberantasan Korupsi* (Jakarta: Rajawali Press, 2004): 47.

<sup>2</sup> Adam Chazawi, *Hukum Pembuktian Tindak Pidana Korupsi* (Bandung: Alumi, 2006): 32.

<sup>3</sup> Syed Husein Alatas, *Sosiologi Korupsi, Sebuah Penjelajahan Dengan Data Kontemporer* (Jakarta: LP3ES, 1983): 19.

<sup>4</sup> Tajul Ariffin Masron and Yogeewari Subramaniam, "The Environmental Kuznets Curve in the Presence of Corruption in Developing Countries," *Environmental Science and Pollution Research* 25, no. 13 (2018): 12491–506, <https://doi.org/10.1007/s11356-018-1473-9>.

<sup>5</sup> Arifin P. Soeria Atmadja, *Keuangan Publik Dalam Perspektif Hukum Teori, Praktik Dan Kritik*, (Jakarta: Fakultas Hukum Universitas Indonesia, 2007): 65.

<sup>6</sup> Namely: TAP MPR No. XI / MPR / 1998 on the Implementation of a Clean, Corruption, Collusion and Nepotism State; Law No. 28 the Year 1999 on Administration of a Clean, Corruption-Free, Collusion and Nepotism State; Law No. 31 of 1999 Jo Law No. 20 of 2001 on Eradication of Corruption; Law No. 30/2002 on the Corruption Eradication Commission; Law No. 7 of 2006 on the Ratification of the United Nations Convention Against Corruption 2003; Presidential Decree No. 11/2005 on the Formation of the Corruption Eradication Coordination Team (Tastipikor Team); Presidential Instruction No. 5/2004 on the Acceleration of Corruption Eradication. In addition, regulations which are not directly issued but remain in the context of eradicating criminal acts of corruption, such as Law No. 15 of 2002 on Money Laundering as amended by Law No. 25 of 2003 on Amendments to Law No. 15 of 2002; and the Reciprocal Assistance Act.

directly related to the fight against corruption.<sup>7</sup> The elements of a criminal act of corruption include violating the law to benefit oneself or another person or a corporation, abusing the authority, opportunity or facilities available to him because of his position or position that can harm state finances or the state economy. State financial losses based on the perspective of criminal law following the provisions of Article 2 and Article 3 of the Corruption Law<sup>8</sup> are the result of acts that deviate from the use and management of state finances so that they can be qualified as acts that harm the state with the fulfilment of the following elements: first, the act is against the law or an abuse of authority, opportunities or facilities available to it, and secondly, some parties are enriched and benefited, either the perpetrator himself, another person or a corporation. The purpose of harming the state's budget is to miss use or deviation from its authentic use.

The element against the law is an act contrary to the laws and regulations that everyone can do. At the same time, the abuse of authority is also an act contrary to the laws and regulations, which can only be done by someone who has specific authority and capacity related to their position related to procedural. Misusing the authority, opportunity, or existing facilities related to his position as a state administrator or civil servant in the institution wrongly can be referred to as abusing the authority, opportunity, or facilities available to him because the position or position and authority used is not following the duties of his position.

One of the efforts taken by the Supreme Court to eradicate corruption is by enacting Supreme Court Regulation No. 1 of 2020 concerning Guidelines for the Criminalization of Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes. The consideration is the imposition of a crime must be carried out with due regard to the certainty and proportionality of punishment to realize justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

This Supreme Court regulation was created to address the issues with corruption courts, which frequently have disparities in sentences, resulting in light sentences. According to ICW, the average sentence for corruption offenders in 2019 was only two years and seven months in prison. According to Supreme Court Regulation Number 1/2020, defendants in corruption cases involving state finances worth more than Rp. One hundred billion can be sentenced to life in prison. Also, the most severe category of criminal penalties includes imprisonment for 16 to 20 years/life and a fine of Rp. Eight hundred million to Rp. 1 billion for high levels of error, impact, and profit. Then, with moderate errors, impacts, and benefits, the most severe category of criminal penalties can be sentenced to 13 to 16 years in prison and a fine of Rp. Six hundred and fifty million to Rp. Eight hundred million. Errors, impacts, and low-level profits, as well as the most severe category of criminal penalties, can result in a sentence of 10 years to 13 years in prison and a fine of Rp. Five hundred million to Rp. Six hundred and fifty million.<sup>9</sup> The punishment's aims are as follow:

- a. Facilitate judges in adjudicating criminal cases of Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes;
- b. Preventing differences in the range of criminal penalties for cases of criminal acts Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes which have

<sup>7</sup> Saragih Yasmirah Mandasari, "Criminal Sanctions for the Abuse of Authority in Corruption Cases Based on the Values of Justice and Dignity: A Comparative Study of the Fight against Corruption in Indonesia and Japan," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 6 (2021): 1–13, <https://www.abacademies.org/articles/criminal-sanctions-for-the-abuse-of-authority-in-corruption-cases-based-on-the-values-of-justice-and-dignity-a-comparative-study-o-11443.html>.

<sup>8</sup> Law No. 31 of 1999 Concerning Eradication of Corruption

<sup>9</sup> Khomarul Susanto, Vendy Yhulia Hidayat, "MA Terbitkan Perma 1/2020, ICW: Hakim Yang Tidak Mengikuti Harus Ada Sanksi," *Kontan.co.id*, 2020, <https://nasional.kontan.co.id/news/ma-terbitkan-perma-12020-icw-hakim-yang-tidak-mengikuti-harus-ada-sanksi>.

- similar characteristics without adequate consideration without reducing the authority and independence of Judges;
- c. Require the judge to determine the crime's severity against the criminal offences of Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption;
  - d. Realizing legal certainty, justice, and proportional benefit in imposing penalties on criminal cases of Article 2 and 3 of the Law on the Eradication of Criminal Acts of Corruption.

The government has moved quickly to find a legal breakthrough related to reducing corruption in Indonesia. The current approach to corruption focuses on putting as many perpetrators in prison as possible cannot be eliminated while corruption remains. The deterrent effect is no longer felt by corrupt convicts when their prison sentences and the overflowing No. of prison inmates are no longer sufficient. Based on Article 30 paragraph (2) of the Republic of Indonesia Law No. 16 of 2004 concerning the Indonesian Attorney General's Office, has issued SE *Jampidsus* No.: B-765/ F/Fd.1/04/2018 dated April 20, 2018, regarding Technical Instructions for Handling Cases of Criminal Acts of Corruption in the Investigation Stage, the Indonesian Prosecutor's Office has the authority to investigate corruption crimes. Therefore, the prosecution office's investigation stage is oriented to finding criminal acts of corruption in unlawful acts and must find the amount of state financial loss for national development.

Suppose there is a cooperative attitude from the parties involved to recover state financial losses. In that case, the amount of state financial losses calculated by self-calculation or in collaboration with the Government Internal Supervisory Apparatus (APIP)/BPK/BPKP/Public Accountants can be considered discontinuing the legal process, which of course still pays attention to certain limitations. The process of eradicating the rights of the perpetrator's assets from the state as the victim through confiscation, freezing, and confiscation in local, regional, and international competencies so that that wealth can be returned to the legitimate state is known as the return of state financial compensation resulting from the proceeds of corruption (victim). This policy is expected to be a legal breakthrough in restoring state finances, with the form of handling Criminal Corruption Cases focusing on efforts to restore state finances as a whole rather than just the form of prosecution.<sup>10</sup>

The author considers the Restorative Justice method is in accordance with the objectives of the Supreme Court Regulation to prioritize further the purpose of restoring the losses suffered by the victim to be recovered as before and in realizing proportional benefits in imposing penalties on criminal cases of Articles 2 and 3 of the Law Corruption Eradication. Restorative justice was categorized and operationalized as an alternative to the system, but without removing the existing frameworks, rather than advancing a nexus of personal autonomy or freedom to cover all possible areas of justice-seeking.<sup>11</sup> The Restorative Justice approach is characterized by a change in eradicating corruption from *Premium Remidium* to *Ultimum Remidium*. The means of criminal sanctions are used after other sanctions in the form of administrative or civil are not able to effectively and efficiently tackle corporate crimes and recover state financial losses that result from them.<sup>12</sup>

The purpose of this study is to determine how relevant Supreme Court Regulation No. 1 of 2020 concerning Guidelines for the Criminalization of Articles 2 and 3 of the Corruption

<sup>10</sup> Ali Habib, "Application of Restorative Justice in Corruption Crime Cases as an Effort to Repay State Losses," *Corruptio* 1, no. 1 (2020): 1, <https://doi.org/10.25041/corruptio.v1i1.2069>.

<sup>11</sup> Thalia González and Annalise J. Buth, "Restorative Justice at the Crossroads: Politics, Power, and Language," *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice* 22, no. 3 (2019): 242–56, <https://doi.org/10.1080/10282580.2019.1644172>.

<sup>12</sup> Budi Suhariyanto, "Restorative Justice Dalam Pemidanaan Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara," *Rechtsviinding* 5, no. 3 (2016): 422.

Eradication Law are to efforts to recover state losses through restorative justice. This study employs both a normative and an empirical legal approach. Data were gathered through literature reviews and field studies and analyzed qualitatively.

## **B. Discussions**

### **1. Supreme Court Regulation No. 1 of 2020 and Restorative Justice Approach**

The Supreme Court (Mahkamah Agung/ MA) has issued Supreme Court Regulation No. 1 of 2020, which can guide judges in imposing sentences against corruptors. One of the goals of this regulation is to reduce the disparity in punishment for corruptors. The level or weight of punishment categorization is regulated in the regulation. The most severe is determining the number of state losses of more than One hundred billion rupiahs with a life sentence. According to *Liona Nanang Supriatna*, Supreme Court Regulation No. 1 of 2020, in addition to reducing the disparity (difference) in punishment in corruption cases, it is also expected to provide a deterrent and preventive effect for corruptors.<sup>13</sup>

The Supreme Court Regulation No. 1 of 2020 concerning Guidelines for the Criminalization of Articles 2 and 3 of the Law on the Eradication of Criminal Acts of Corruption is built on the belief that every criminal conviction must be carried out under the certainty and proportionality of sentencing to achieve justice following Pancasila and the 1945 Constitution of the Republic of Indonesia. In addition, as an effort by the Supreme Court to avoid disparities in judges' decisions in criminal acts of corruption that have a similar character, punishment guidelines are enacted for judges who handle corruption cases..

Judges in imposing criminal cases against criminal acts Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes is based on the independence of the judge's principle. These principles are professionalism, transparency, accountability, proportionality, justice benefit, and legal certainty (Article 2 of Supreme Court Regulation No. 1 of 2020). In determining the severity of the crime, the judge must consider sequentially the stages of the category of state financial losses or the state economy, namely, error rate, impact, profit, regarding criminal imposition; aggravating and mitigating circumstances; criminal convictions; and other provisions relating to criminal imposition.

According to the provisions of the regulation, the judge must prioritize the category of state financial losses or the state economy as the paramount consideration when determining the severity of the crime against the perpetrators of criminal acts of corruption. Article 6 of Supreme Court Regulation No. 1 of 2020 governs the category of state financial losses or the state economy. Furthermore, Article 7 of the Supreme Court Regulation No. 1 of 2020 divides the error, impact, and profit into 3 (three) categories, namely high, medium, and low; Article 8 of the Supreme Court Regulation No. 1 of 2020 states that in the case of adjudicating cases of Article 2 and Article 3 of the Corruption Eradication Law, the error rate, impact, and high profit as referred to in Article 7 letter a; Article 9 of the Supreme Court Regulation No. 1 of 2020 states that in terms of adjudicating cases, Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption, the level of error, impact, and moderate profit as referred to in Article 7 letter b.

According to the provisions of the articles above, the Supreme Court Regulation No. 1 of 2020 must be followed by the Panel of Judges dealing with criminal acts of corruption under Articles 2 and 3 of the Law on the Eradication of Criminal Acts of Corruption and in imposing a criminal act. This is done in the hopes of achieving the most equitable justice for all parties involved.

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<sup>13</sup> Yeremia Sukoyo, "Perma No 1 Tahun 2020 Untuk Perkecil Disparitas Hukuman Koruptor," BeritaSatu.com, 2020, <https://www.beritasatu.com/nasional/662239/perma-no-1-tahun-2020-untuk-perkecil-disparitas-hukuman-koruptor>.

Law enforcement has become an inseparable part of the rule of law, which demands that every action against the law must be sanctioned. Gustav Radbruch in *idee des Recht* states that law enforcement must meet the principle of legal certainty (*rechtssicherheit*), the principle of justice (*gerechtigkeit*) and the principle of usefulness (*zweckmasigkeit*). Although, in practice, the three principles above are always debated in every legal decision, the development of current law enforcement practices leads to more significant benefits than law enforcement alone. Article 4 Law No. 31 of 1999 concerning Eradication of Corruption states, "Recovering the financial losses of the state or the country's economy does not eliminate the criminal offenses referred to in Article 2 and Article 3". Regarding the discretion issued by several law enforcement agencies. Corruption cases can be stopped only at the investigation stage regarding justice, usefulness and legal certainty.

The act of enforcing the law is frequently defined as a form of criminal punishment or sanction. Law enforcement is also based on the regulations made, in addition to the application of procedural law. According to *Bagir Manan*, Indonesian law enforcement has "*communis opinio doctorum*", which means that law enforcement has failed to achieve the act's stated goals. As a result, an alternative law enforcement system is chosen, namely, the Restorative Justice System, in which a socio-cultural approach rather than a normative approach is used.<sup>14</sup> In dealing with corruption offences, restorative justice must recover state losses incurred by corruption because state losses made by corrupt criminals are significantly more helpful than punishing the culprits.

Restorative justice is a reaction against retributive justice, which emphasizes revenge for a criminal act performed by a criminal actor. Retaliation takes the shape of criminal convictions against the perpetrators of the crimes. A case settlement through the judicial system that culminates in a court judgement, according to *Satjipto Rahardjo's* statement, is law enforcement in slow motion. As a result, when compared to retributive justice, restorative justice might be considered a more effective and efficient manner of resolving a matter. It can be said that restorative justice's implementation of corruption crime through refunding the corrupted asset is more profitable for the state. This solution is preferred because the state is not burdened financially to process and feed perpetrators of corruption will tend to choose a substitute punishment in the form of imprisonment rather than paying losses to the country. Of course, this is more harmful to the state.<sup>15</sup>

The concept of restorative justice is not just a theoretical concept in the law; it has been put into practice in criminal justice processes that begin with an investigation, prosecution, and justice. According to Abbey J. Porter, the United Nations has accepted the restorative justice approach globally. As a result of this progress, the United Nations now has the authority to instruct its member states on developing restorative practices through their national justice systems.<sup>16</sup> The restorative justice approach recognizes three concepts in providing criminal sanctions: restitution (loss compensation), social work programs, and victim compensation. Payment for victims is a concept that involves providing compensation funds to victims as part of the process of resolving criminal acts while also improving conditions for victims, perpetrators, and their environment. It's done by the government or other parties who aren't involved in the violation. In its most basic form, compensation is monetary compensation provided by the government to victims of crime. When the

<sup>14</sup> Virginia Garcia, Hari Sutra Disemadi, and Barda Nawawi Arief, "The Enforcement of Restorative Justice in Indonesia Criminal Law," *Ilmiah Hukum* 28, no. 1 (2020): 24, <https://ejournal.umm.ac.id/index.php/legality/article/view/10680>.

<sup>15</sup> Vega Pratama, "Restorative Justice in Criminal Acts of Corruption," *Law and Justice* 6, no. 1 (2021): 34–45, <https://doi.org/10.23917/laj.v6i1.12541>.

<sup>16</sup> M. Ali Zaidan, *Heading to Criminal Law Reform* (Jakarta: Sinar Grafari, 2015): 245.

perpetrators of the crime are unable to compensate the victim, it is carried out. The social welfare approach is used in this compensation as a responsibility and sense of humanity to the victims.<sup>17</sup>

The primary goal of restorative justice is to change the entire violent situation. As a result, serious consideration was given to the harm, the act, the parties, the broken relationship, and the wounded community.<sup>18</sup> Restorative justice is no longer regarded as a 'foreign' or insignificant concept within criminal justice discourses. Indeed, alongside central concepts like retribution and rehabilitation, the term "restorative justice" has made its way into contemporary criminal justice jargon. Some of its proponents portrayed it as a revolutionary alternative to traditional crime-fighting methods.<sup>19</sup> According to the Indonesian Criminal Code, which is based on Dutch law, Restorative justice is used only for minor crimes/offences, such as a minor crime/offences report.<sup>20</sup> Restorative justice emerged in the 1970s and 1980s in different parts of the world as a new practice and theory of criminal justice, as well as a social movement, aiming to transform and/or replace the current criminal justice system of contemporary, western societies, based mainly on corrective and/or rehabilitative philosophies and goals.<sup>21</sup>

Correctional Institutions, because restorative justice will minimize imprisonment. The application of restorative justice will also reduce the stigmatization of criminals. With restorative justice, the stigmatization of corruption perpetrators will not bring further problems to the perpetrators of corruption and their families. In addition, restorative justice will also limit the number of cases to the Supreme Court to prevent overcapacity. Efforts to resolve using a therapeutic approach must be pro-people and pro-justice, meaning the law must side with the people, and justice is above the regulations. Law enforcers (KPK, Police, Prosecutors, and judges) must dare to break through the rigidity of the regulation's text if the regulation injures justice. The KPK is currently finalizing guidelines for corruption charges for all corruption articles to avoid disparities in criminal charges. Both articles dealt with financial losses to the government and bribery, and other forms of corruption.

The Restorative Justice approach can be carried out in revolutionary ways by ignoring the rigidity of the text of the legislation. In the context of corruption, it can be done by returning compensation to the state and paying fines or impoverishment for corruptors. Efforts are felt to provide more justice for the people because corruption is a crime that is very detrimental to the nation and suffers the people following the purpose of restorative justice, which is to bring people to prosperity. The need for restorative justice in handling corruption is based on the consideration that law enforcement officers can sort out the criminal application of criminal acts of corruption that result in large amounts of state financial losses and small state financial losses. This means that the handling of criminal acts of corruption must be adjusted to the state's financial losses, lest the cost of handling cases is greater than the amount of state financial losses caused by the crime of corruption.

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<sup>17</sup> Ridhollah Agung Erinsyah, Elwi Danil, and Yoserwan Yoserwan, "Reform of Criminal Law through Restorative Justice in Returning State Losses from Corporation as the Perpetrator of Corruption," *International Journal of Multicultural and Multireligious Understanding (IJMMU)* 6, no. 6 (2019): 497–508, <https://doi.org/10.18415/ijmmu.v6i6.1252>.

<sup>18</sup> Peter Genger, "Combating Corruption With African Restorative Justice," *African Journal of Criminology and Justice Studies* 11, no. 1 (2018): 20–40, <https://www.umes.edu/AJCJS/Pages/Vol--11--Issue-1--Spring-2018/>.

<sup>19</sup> Sarah Kinyanjui, "Definition Deadlock Or a Necessary Definition Gap? Towards Infusing the Criminal Justice System with Restorative Justice Values," *E. Afr. L.J.*, 2019, 149.

<sup>20</sup> Christina Maya Indah Susilowati, "Establishing Humanistic Tendencies Through Restorative Justice In The Law Enforcement Context," *Journal Of Legal, Ethical And Regulatory Issues* 22, no. 2 (2019): 1–6.

<sup>21</sup> Alejandra Díaz Gude, San Sebastián, and Iván Navarro, "Restorative Justice and Legal Culture," *Criminology & Criminal Justice* 20, no. 1 (2020): 57–75, <https://doi.org/10.1177/1748895818796549>.

## 2. The Relevance of Supreme Court Regulation No. 1 of 2020 with Restorative Justice Approach

The position of Supreme Court Regulation No. 1 of 2020 concerning Guidelines for the Criminalization of Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption in the legal system is as part of the legal substance. According to *Lawrence M. Friedman*, the legal system is composed of subsystems in the form of legal substance, legal structure, and legal culture. These three subsystems determine the passage of the law. Legal substance concerns aspects of legal arrangements or statutory regulations. The legal structure includes law enforcement officials and the legal infrastructure itself, while legal culture concerns the community's behaviour. Supreme Court Regulation No. 1 of 2020 is a component of legal substance in the Indonesian criminal justice system. As a legal factor or legal substance, Supreme Court Regulation No. 1 of 2020 is law enforcement's main element. Supreme Court Regulation can be the spearhead of returning state financial losses from the results of criminal acts of corruption through court instruments.<sup>22</sup>

Supreme Court Regulation No. 1 of 2020 only regulates cases of criminal acts of corruption that violate Article 2 and/or Article 3 of the Law on the Eradication of Criminal Acts of Corruption. The rest of the articles are not bound by the Supreme Court Regulation of this sentencing guideline. Under the principle of legality, this Supreme Court Regulation only binds Articles 2 and 3 cases after the Supreme Court Regulation is enacted. The principle of legality limits that no act can be punished unless a previous statutory provision stipulates that the act is a criminal act.

Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2020 concerning Guidelines for the Criminalization of Article 2 and Article 3 of the Law on the Eradication of Corruption Crime consists of 3 (three) preamble letters, 7 (seven) legal base numbers, and 23 (twenty-three) articles. This breakthrough regulation of the Supreme Court is composed of 27 (twenty-seven) pages, including its attachments. The Republic of Indonesia Supreme Court Regulation No. 1 of 2020 only regulates Article 2 and Article 3 because it is only a sentence guideline. It does not include determining the defendant's guilt, whether it fulfils the element of offence or not. The questioned guidelines are explained in Supreme Court Regulation No. 1 of 2020's appendix.

Supreme Court Regulation No. 1 of 2020 is a mandatory rule that judges must carry out in courts of corruption crimes in the decision consideration stage. However, it does not reduce the independence of judges. This guide makes it easier for judges to make decisions and be a limit so that there is no disparity in sentencing decisions. In line with the legal principle that judges are considered to know, the Supreme Court's efforts to fill the legal vacuum in terms of sentencing guidelines are a breakthrough and guidance for judges conducting trials to make adjustable decisions. Law is a tool of social engineering. By making the rule of law, we will be able to regulate society in a specific direction.

The target of Supreme Court Regulation No. 1 of 2020 is to prevent disparities in the punishment of corruption cases related to criminal orders and fines and replacement money concerning returning state financial losses. The same interpretation between judges and related law enforcers will be more effective in eradicating corruption in Indonesia. Efforts to return will be carried out more optimally. In the end, it will be able to realize the fifth principle of Pancasila, namely, social justice for all Indonesian people.

Supreme Court Regulation No. 1 of 2020 reviews and evaluates the differences in the imposition of imprisonment, fines, and compensation for corruption court decisions. The implementation of the decision on fines and replacement money as a tangible form of

<sup>22</sup> Kurnia Siwi Hastuti, "Pembaharuan Hukum Pedoman Pemidanaan Terhadap Disparitas Putusan Pengembalian Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 2 (2021): 92 – 102.



returning state financial losses resulting from criminal acts of corruption needs to consider the community's monetary and economic developments because their values are easy to change.

The legal reform's juridical analysis for sentencing guidelines' formation in the Supreme Court Regulation No. 1 of 2020 is to return state financial losses resulting from corruption. The Supreme Court Regulation has the position as a legal substance in the punishment of criminal acts of corruption, which is intended as a guideline for determining the size of the sentence imposed by considering the state's financial losses, error rate, impact, and profit. There are 6 (six) stages of sentencing guidelines in this Supreme Court Regulation. The size of the punishment has taken into account the economic aspects of the law. Judges, prosecutors and investigators, as well as related apparatus, should explore and support Supreme Court Regulation No. 1 of 2020 as a responsive effort to the development of corruption crimes so that the return of assets to the state treasury is maximized and disparity in decisions does not occur again.

### C. Conclusion

Based on the discussion, it can be concluded that the Supreme Court Regulation No. 1 of 2020 is relevant with the approach of recovering state losses through restorative justice as its include guidelines for judges in imposing crimes to avoid disparity in judges' decisions in cases of corruption that have a similar character so that punishment guidelines are enforced for judges who handle corruption cases. This policy considers that the return of state financial losses by perpetrators of corruption is much more beneficial than punishing the perpetrator.

According to this study, law enforcement officers charged with combating corruption should follow Supreme Court Regulation No. 1 of 2020 at all times. Law enforcement refers to the limits or provisions that have been regulated while still reflecting the community's sense of justice, legal certainty and benefits for society and the state. Law enforcement officers should implement extraordinary legal efforts to eradicate corruption, considering that corruption is included in the classification of extraordinary crimes. As a result, a regulation that regulates the specifics in efforts to eradicate corruption, such as incorporating restorative justice into the prevention of corruption, is possible.

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### B. Journal

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