

# CHAPTER I

## INTRODUCTION

### A. BACKGROUND OF STUDY

The crime of corruption has become a common enemy, because the impact of moral hazard causes prolonged social harm. Both government officials from the lowest level and the highest in making policies, none other than for the sake and on behalf of the welfare of the people, however, when corruptors commit acts of corruption by stealing people's rations, this goal will not be achieved, so that it will hurt and injure the community exponentially, which culminates in damaging public trust in the government (distrust), when this distrust arises, there will be potential for disobedience.

Any form of Crime in including corruption is a product of human civilization. Therefore, the crime of corruption will not be eradicated until it is completely exhausted from the social system. According to Muhammad Mustofa in his paper entitled Corruption Eradication A Criminology Perspective, *"what is the view of criminology that crime cannot be eradicated more rationally, criminology can only state that crime can only be controlled so that the incidence rate is not high. Therefore, corruption cannot be eradicated but can only be controlled"*.<sup>1</sup>

Corruption has had a negative impact on various aspects of people's lives, generations and nations. According to Sudarto, "corruption" refers to practices that are dishonest, corrupt, and damaging to money.<sup>2</sup> The word corruption comes from

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<sup>1</sup> Muhammad Mustofa, *Metodologi Penelitian Kriminologi*, Kencana, Jakarta, 2013, p. 1

<sup>2</sup> Sudarto, *Hukum Dan Hukum Pidana*, Edisi ke-1. Bandung: Alumni, 1983, p. 110.

the Latin word *corruptio*. From Latin, corruption developed into various European languages, including corruption and corruption in English, French and Dutch, before being incorporated into corruption in Indonesian.<sup>3</sup> Corruption continues to grow from time to time. Corruption is one of the causes of economic downturn in Indonesia. In general, corruption is carried out clandestinely and involves elements of mutual obligations and benefits. Corruption is a crime that causes significant harm to society and state.

The purpose of a state is actually the ideal of a state that the state wants to realize through systematic legal procedures or devices that exist in the country. According to Roger Soltau, the purpose of the state is to enable its people to develop and carry out their creativity freely. Meanwhile, according to Harold J. Laski, the purpose of the state is to create conditions where people can achieve maximum fulfilment of their desires.<sup>4</sup>

Furthermore, Indonesia emphasizes the state's goal of establishing the Unitary State of the Republic of Indonesia in its Constitution, specifically in the Preamble of the 1945 Constitution of the Republic of Indonesia (UUD 1945). In the Preamble of the 1945 Constitution, which is a Staatfundamentannorm, it is stated that the purpose of forming a Republican Unitary State is; (1) *protect the entire Indonesian nation and all of Indonesia's bloodshed*, (2) *promote public welfare*, (3) *educate the nation's life*, (4) *participate in carrying out world order based on*

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<sup>3</sup> Aziz Syamsuddin, *Tindak Pidana Khusus* Jakarta: Sinar Grafika, 2017, p. 55.

<sup>4</sup> Harold J.Laski, *The State in Theory and Practice*,The Viking Press, New York , 1947, p. 253.

*freedom, eternal peace, and social justice.*<sup>5</sup> With corruption itself also undermining the ideals of national development, the eradication of corruption is *das sollen*.

Reporting from the Corruption Eradication Commission (KPK), it was recorded that it had handled 1,194 corruption cases from 2004 to 2021. It was noted that the most common type of corruption case was bribery, namely 775 cases.<sup>6</sup> In line with this, Indonesia, since the first time the CPI was launched in 1995, has always been a country that has always been scrutinized. "Indonesia's CPI in 2021 is at a score of 38/100 and is ranked 96 out of 180 countries surveyed."<sup>7</sup> The rampant corruption that still occurs proves that the handling system has not become the main character. One of the causes of the difficulty of eradicating corruption is evidentiary obstacles, because the perpetrators of these crimes commit their crimes very neatly and are usually carried out together.

From the sentence mentioned above, it should be concluded that repressive enforcement patterns such as Hand Capture Operations are not sufficient to eradicate corruption as expected by the public. There needs to be an evaluation of the direction of punishment objectives in eradicating corruption so that the application of punitive sanctions can realize the goals to be achieved. Moreover, in law enforcement efforts, especially in criminal cases, it must be accompanied by

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<sup>5</sup> Preamble of the 1945 Constitution of the Republic of Indonesia, Fourth Paragraph.

<sup>6</sup> Cindy Mutia Annur, Databoks, *KPK Sudah Tangani 1.194 Kasus Korupsi, Mayoritas Penyuapan* accessed from [https://databoks.katadata.co.id/datapublish/2022/01/10/kpk-sudah-tangani-1194-kasuskorupsimayoritaspenyuapan#:~:text=Komisi%20Pemberantasan%20Korupsi%20\(KP%20tercatat,penyuapan%20yakni%20sebanyak%20775%20kasus](https://databoks.katadata.co.id/datapublish/2022/01/10/kpk-sudah-tangani-1194-kasuskorupsimayoritaspenyuapan#:~:text=Komisi%20Pemberantasan%20Korupsi%20(KP%20tercatat,penyuapan%20yakni%20sebanyak%20775%20kasus) On 12 Januari 2023

<sup>7</sup> Transparency International, *INDEKS PERSEPSI KORUPSI 2021: KORUPSI, HAK ASASI MANUSIA DAN DEMOKRASI* <https://ti.or.id/indeks-persepsi-korupsi-2021-korupsi-hak-asasi-manusia-dan-demokrasi/> accessed on 25 januari 2023

values that want to realize that its existence is to protect and promote the values upheld by society. Which in principle, the law is made to give confidence to the community towards one human being with another human being, even good relations between fellow humans, between humans and legal entities, and humans with natural ecosystems. Therefore, the stages in combating corruption must be carried out by covering 2 aspects, namely preventive prevention and repressive action. Both must be in line and go hand in hand, in connection with the fact that corruption in Indonesia has been said to be quite severe, it is more advisable to take firm action, so that there is a fear of committing corruption crimes. This preventive action needs to be carried out on the basis of a legal countermeasure or solution through legal politics so that the principle of benefit for the people of Indonesia can be fulfilled, because the use of criminal law and legal countermeasures through legal politics is also in accordance with the function of law as social control. In addition, making the state no longer lose is the best step to take action against perpetrators of corruption in Indonesia.

*Lex prospicit, non respicit* - the law must look forward, not backward.

According to Kant and Hegel, the view of law is directed to the past (backward looking), not to the future, as is characteristic of the theory of retributive justice.<sup>8</sup> However, contrary to this process, there are several legal conceptions (legal engineering) that were born to fill and fulfil the void in criminal law due to the demands of a dynamic and ever-evolving society. One of them is restorative justice,

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<sup>8</sup> Jan Remmelink, *Hukum Pidana, Komentar atas Pasal-Pasal Terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia*, Jakarta: PT. Gramedia Pustaka Utama, 1993, p. 600.

a criminal approach that is humane, concise and aims to fulfil a holistic sense of justice between perpetrators, victims, and society. This concept has become important since it has been harmonized and integrated within the body of the criminal justice system, starting from the Police, the State's Attorney, to the Courts.

On July 22, 2020, with the title "Regulation of the State Attorney of the Republic of Indonesia regarding Termination of Prosecution Based on Restorative Justice" this was followed by a statement by the Chief Attorney General ST Burhanuddin regarding corruption which is detrimental to small state finances of under IDR 50 million whether to be punished. or not. Because, according to him, the costs incurred by the state to handle the case could be greater than the amount of money corrupted<sup>9</sup>. Indeed, in handling a corruption case, the parameters used regarding the existence of corruption are losses to state finances and abuse of authority which can have a direct impact on causing losses to state finances or not. This is in line with the objective of the Corruption Eradication Law which prioritizes law enforcement in the context of preventing and overcoming losses of state funds. State finances are the object of law enforcement in the Corruption Eradication Law.

Indeed, the State's Attorney is a law enforcement agency that has responsibility to the executive (Government). Prosecutors are law enforcers who serve as public prosecutors and state lawyers. So that in its existence in society it is able to carry out both processes in law enforcement in Indonesia. In line with this,

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<sup>9</sup> Firda Cynthia Anggrainy, *Jaksa Agung Sebut Koruptor di Bawah Rp 50 Juta Cukup Balikin Kerugian Negara* <https://news.detik.com/berita/d-5916956/jaksa-agung-sebut-koruptor-di-bawah-rp-50-juta-cukup-balikin-kerugian-negara> accessed on 23 Oktober 2022

the authority of the Prosecutor in carrying out prosecutorial discretion (*Qroseantioial disqetionary or opportunititeit beginselen*) carried out by considering local wisdom and values of justice that live in the community has an important meaning in order to accommodate the development of legal needs and a sense of justice in society which demands a paradigm shift in law enforcement from solely realizing retributive justice (retaliation) to restorative justice. For this reason, the success of the State's Attorney in carrying out Prosecution is not only measured by the number of cases submitted to the court, but also the settlement of cases outside the court through penal mediation as an implementation of restorative justice that balances between fair legal certainty and expediency.<sup>10</sup>

Restorative justice, which pointing modernization theory of criminal saction. Which state by Ahmad Ali divides the grand theory of legal objectives into western theory (classical and modern theory), eastern theory and Islamic theory. The theory where legal objectives include justice, expediency, legal certainty in order of priority, proportionally according to the case at hand and want to be solved.<sup>11</sup> Restorative justice is a philosophy, process, idea, theory and intervention, which emphasizes the repair of harm caused or expressed by criminal behavior. Restorative justice rests on the basic philosophy of the four precepts of Pancasila, which prioritizes deliberation in decision-making. The goal of Victim Offender

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<sup>10</sup> Explanation of Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law number 16 of 2004 concerning the Attorney General of the Republic of Indonesia

<sup>11</sup> Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-undang (Legisprudence)*, Volume 1, Pemahaman Awal, Jakarta : Kencana Prenada Media Group, 2009, p. 203-204.

Mediation is to "humanize" the justice system, so that justice is able to address the true needs of victims, offenders and society.

Written from the 2022 Final Reflection, the number of cases that were successfully resolved with a restorative justice approach was 1,454 (one thousand four hundred and fifty four) cases. As a form of optimizing the application of restorative justice in handling or resolving cases, currently there are also: 2,621 (two thousand six hundred twenty-one) Restorative Justice Houses and 119 (one hundred nineteen) Rehabilitation Centers. Corruption cases handled by the Special Crimes Division throughout Indonesia based on the stage of case completion, with the following details: (1) Investigation: 1,847 (one thousand eight hundred forty seven) cases; (2) Investigation: 1,689 (one thousand six hundred eighty nine) cases; (3) Pre-Prosecution: 2,139 (two thousand one hundred thirty nine) cases; (4) Prosecution: 1,943 (one thousand nine hundred forty-three) cases; (5) Execution of Bodies (Persons): 1,669 (one thousand six hundred sixty nine) prisoners.<sup>12</sup>

This means that the application of restorative justice is being promoted by the State's Attorney, especially since this was marked by the issuance of the Prosecutor's Regulation (PERJA) 15 of 2020 concerning the termination of prosecution based on restorative justice as an internal prosecutorial rule in handling criminal acts. Even corruption crimes are included in the discourse. Seeing this problem, the author feels the need to examine the discourse, how corruption can get

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<sup>12</sup> Badiklat Kejaksaan Negeri RI, *Refleksi Akhir 2022, Jaksa Agung Apresiasi Kesuksesan Badiklat Gelar Diklat 10.092 Peserta*, <https://badiklat.kejaksaan.go.id/artikel/detail/823#> , accessed on 23 January 2023,

restorative justice. Where the contribution of the state attorney and the prosecutor's profession as the organizer and controller of the prosecution or as the dominus litis within the boundaries of state jurisdiction has an important role in the case handling process, in which the function of the prosecutor is the one who can determine whether a person can be prosecuted or not, even the prosecutor's office carries out the execution of the decision of the panel of judges for the defendants after the decision of the panel of judges at the trial, moreover this prosecutorial function essentially aims to build a democratic, aware and law-abiding life system, and uphold human rights.

## **B. Problem Formulation**

Based on the background that has been described, it is necessary to formulate a problem which is important in facilitating the author to conduct research. According to the author, the correct formulation of the problem is:

- 1) What urgency of the concept of restorative justice for criminal acts of corruption if apply by the State's Attorney ?
- 2) What are the advantages and disadvantages when the restorative justice

approach is applied by the State's Attorney in handling corruption cases?

## **C. Research Objectives**

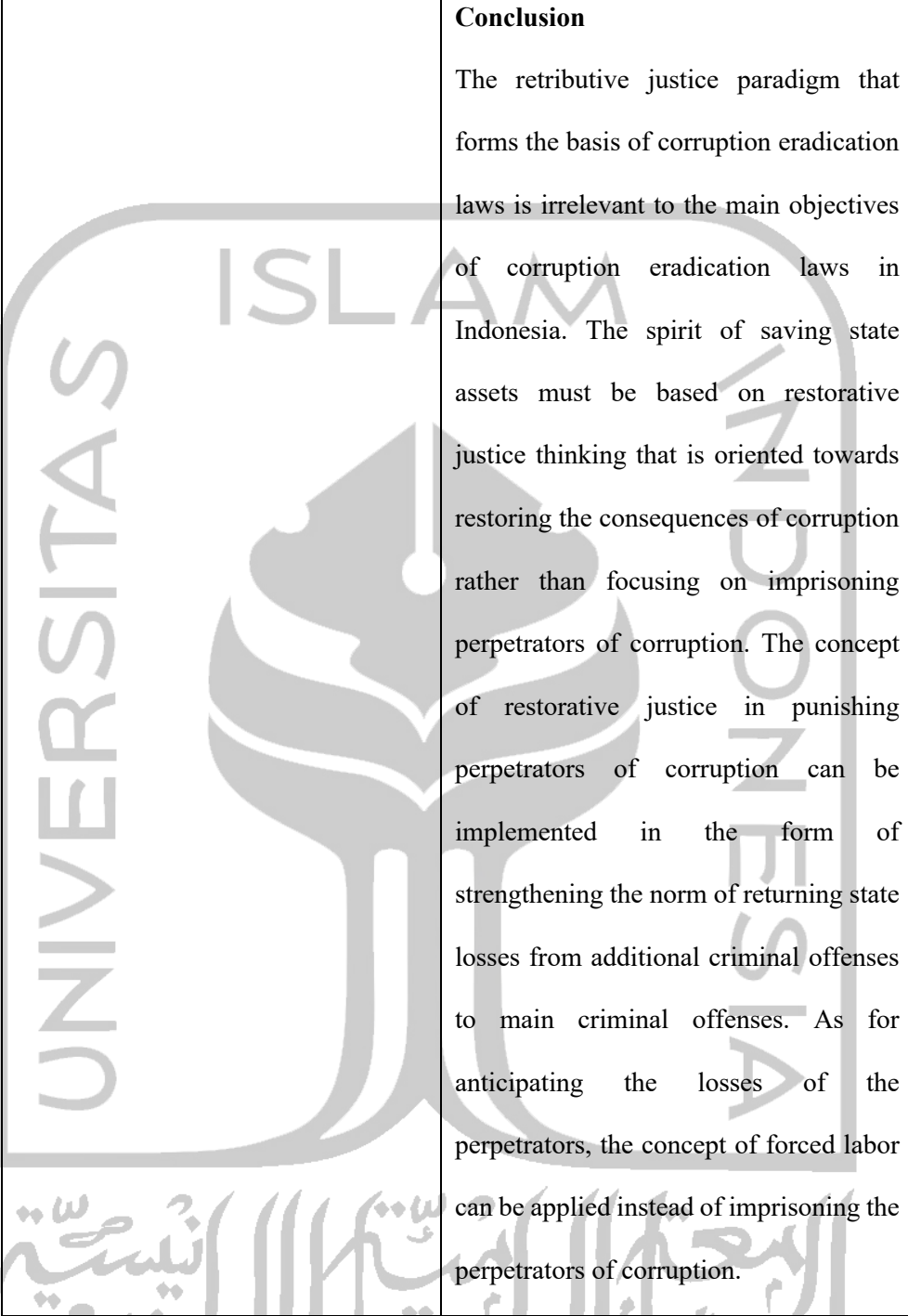
The goal to be achieved with this research based on the objectives above is to find :

- 1) Knowing the urgency of concept of restorative justice for criminal acts of corruption if applied by the State Attorney.
- 2) Knowing the advantages and disadvantages when the restorative justice approach is applied by the State's Attorney in handling corruption cases.

#### D. Originality of The Research

Source	Discussion
Yusona Piadi, SH., MH. , Rida Ista Sitepu, Implementasi Restoratif Justice dalam Pemidanaan Pelaku Tindak Pidana Korupsi, Universitas Surya Kencana, Universitas Nusa Putra <sup>13</sup>	<p><b>Problem Formulation</b></p> <p>The restorative justice approach in punishing corruption offenders is not impossible to implement in Indonesia. Several studies show that in addition to this concept focusing on restoring the consequences of criminal acts, the principle of restorative justice is actually the main characteristic of the Indonesian nation in solving legal problems in its society, which should be explored and implemented into Indonesian positive law.</p>

<sup>13</sup> Yusona Piadi, SH., MH. , Rida Ista Sitepu, *Implementasi Restoratif Justice dalam Pemidanaan Pelaku Tindak Pidana Korupsi*, Universitas Surya Kencana, Universitas Nusa Putra, Vol. 1, 2019.


	<p><b>Conclusion</b></p> <p>The retributive justice paradigm that forms the basis of corruption eradication laws is irrelevant to the main objectives of corruption eradication laws in Indonesia. The spirit of saving state assets must be based on restorative justice thinking that is oriented towards restoring the consequences of corruption rather than focusing on imprisoning perpetrators of corruption. The concept of restorative justice in punishing perpetrators of corruption can be implemented in the form of strengthening the norm of returning state losses from additional criminal offenses to main criminal offenses. As for anticipating the losses of the perpetrators, the concept of forced labor can be applied instead of imprisoning the perpetrators of corruption.</p>
<p>Salsabila, Slamet Tri Wahyudi, PERAN KEJAKSAAN DALAM PENYELESAIAN PERKARA TINDAK PIDANA KORUPSI</p>	<p><b>Problem Formulation</b></p> <p>The high cost of handling corruption often adds to the state's financial expenses, especially if the corruption</p>

<p>MENGGUNAKAN PENDEKATAN RESTORATIVE JUSTICE, Fakultas Hukum Universitas Pembangunan Nasional “Veteran” Jakarta <sup>14</sup></p>	<p>causes a lot of financial losses. Returning state losses is one of the goals of eradicating corruption, therefore the Attorney General's Office in addressing this issue has issued a policy of returning state losses for corruption with small state losses through a restorative justice approach.</p> <p><b>Conclusion</b></p> <p>The reason for the State’s Attorney to apply a restorative justice approach in the settlement of corruption cases that harm small state finances as stated in SE Jampidsus Number: B-1113/F/Fd.1/05/2010 is to reduce the amount of state financial losses that must arise as a result of criminal acts of small-scale corruption. Because if seen from the amount of state financial losses caused by small-scale corruption crimes and the high cost of handling corruption</p>
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<sup>14</sup> Salsabila, Slamet Tri Wahyudi, *PERAN KEJAKSAAN DALAM PENYELESAIAN PERKARA TINDAK PIDANA KORUPSI MENGGUNAKAN PENDEKATAN RESTORATIVE JUSTICE*, Fakultas Hukum Universitas Pembangunan Nasional “Veteran” Jakarta. Volume 51, Nomor 1, 2022

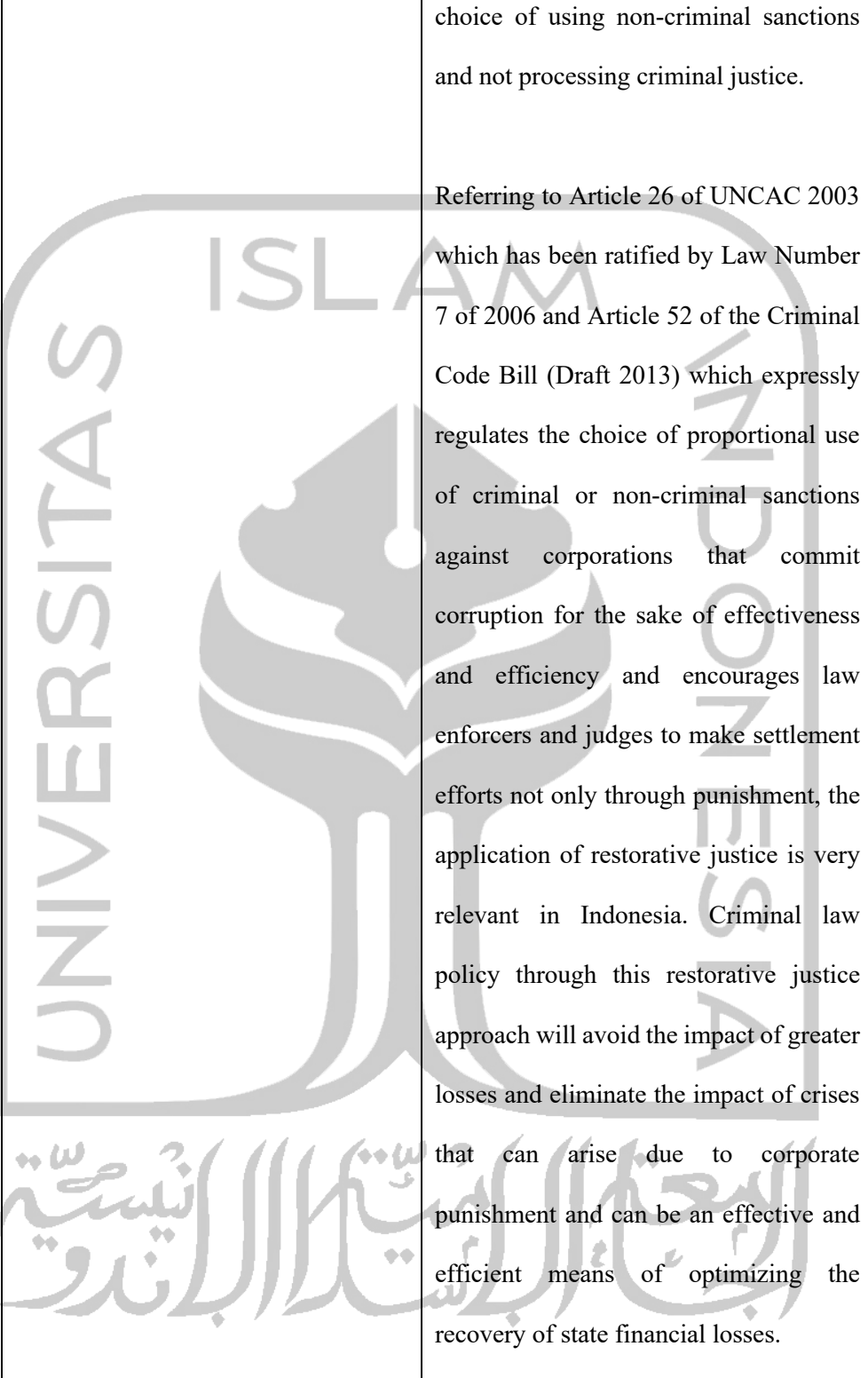
	<p>cases due to corruption that must be resolved in the tipikor court located in the provincial capital, the state can suffer significant losses. bigger. The restorative justice approach taken by the State's Attorney prioritizes the resolution of large-scale cases and seeks the recovery of state losses.</p>
<p>Kuat Puji Prayitno, Restorative Justice untuk peradilan di Indonesia (perspektif Yuridis Filosofis dalam penegakan hukum Concreto), fakultas hukum universitas jendral soedirman<sup>15</sup></p>	<p><b>Topic Discussion</b></p> <p>How are the characteristics of restorative justice related to national law enforcement guidelines, secondly, is it possible for restorative justice to be implemented in Indonesia?</p> <p><b>Conclusion</b></p> <p>A feature of restorative justice is the "Just Peace Principle" or justice based on peace between the perpetrator, victim and society, so that this court views crime as an act of the perpetrator against other people or society rather than against the state. Nationally, it is found</p>

<sup>15</sup> Kuat Puji Prayitno, *Restorative Justice untuk peradilan di Indonesia (perspektif Yuridis Filosofis dalam penegakan hukum Concreto)*, fakultas hukum universitas jendral soedirman, Vol. 12. No. 3

	<p>that constitutionally, restorative justice is based on the philosophy of the 4th principle of Pancasila, namely the principle of deliberation to solve problems. Restorative justice can be carried out in criminal law enforcement in concreto with the following programs: First, through the authority of the LPSK, or prosecutors and judges in court based on the provisions of Law No. 13 of 2006 and PP No. 44 of 2008, but from the beginning the approach used is a restorative justice process; second, by using secondary rules that authorize law enforcement officials (police, prosecutors and judges) not to create, eliminate, and change primary rules. Creation, extinction, or alteration is done with a restorative justice process.</p>
<p>Budi Suhariyanto, RESTORATIF JUSTICE DALAM PEMIDANAAN KORPORASI PELAKU KORUPSI DEMI OPTIMALISASI PENGEMBALIAN KERUGIAN NEGARA, Pusat Penelitian dan</p>	<p><b>Problem Formulation</b>  What is the existence of a criminal justice system for corporate corruption offenders in Indonesia? What are the obstacles in the practice of corporate corruption in Indonesia? and What are</p>

<p>Pengembangan Hukum dan Peradilan MA-RI <sup>16</sup></p>	<p>the considerations for the application of restorative justice in the criminalization of corporate corruption offenders as an effort to optimize the recovery of state financial losses in Indonesia?</p> <p><b>Conclusion</b></p> <p>In practice, there are obstacles in efforts to recover state financial losses through criminal prosecution of corporations that commit corruption crimes both from the aspects of substance, structure and legal culture. One solution and its application that is starting to be considered to overcome obstacles in the context of optimizing the return of state losses is the restorative justice approach. The principle of <i>primum remedium</i> is considered as the <i>ultimum remedium</i> and it is hoped that corporations can cooperate in returning state financial losses that have been corrupted by the</p>
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<sup>16</sup> Budi Suhariyanto *RESTORATIF JUSTICE DALAM PEMIDANAAN KORPORASI PELAKU KORUPSI DEMI OPTIMALISASI PENGEMBALIAN KERUGIAN NEGARA*, Pusat Penelitian dan Pengembangan Hukum dan Peradilan MA-RI, Vol. 5, No. 3. 2017


	<p>choice of using non-criminal sanctions and not processing criminal justice.</p> <p>Referring to Article 26 of UNCAC 2003 which has been ratified by Law Number 7 of 2006 and Article 52 of the Criminal Code Bill (Draft 2013) which expressly regulates the choice of proportional use of criminal or non-criminal sanctions against corporations that commit corruption for the sake of effectiveness and efficiency and encourages law enforcers and judges to make settlement efforts not only through punishment, the application of restorative justice is very relevant in Indonesia. Criminal law policy through this restorative justice approach will avoid the impact of greater losses and eliminate the impact of crises that can arise due to corporate punishment and can be an effective and efficient means of optimizing the recovery of state financial losses.</p>
<p>Sugeng Pujileksono, PEMAHAMAN KORUPSI DALAM TEORI</p>	<p><b>Topic Discussion</b></p>

<p>PILIHAN RASIONAL DAN HUBUNGAN PRINSIPAL-AGEN, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Wijaya Kusuma Surabaya<sup>17</sup></p>	<p>Corruption is a serious obstacle to Indonesia's development and combating corruption has become a top priority in the reform era. The Indonesian government supports various institutions tasked with fighting corruption, such as the Corruption Eradication Commission (KPK), national anti-corruption courts, prosecutors, police, and non-governmental organizations (NGOs) in the reform process to create various anti-corruption network actors.</p> <p>why is it still committed by public officials?</p> <p>What rationality underlies these actions?</p> <p>What is the relationship between perpetrators of corruption?</p>
<p>UNIVERSITAS ISLAM INDONESIA</p>	<p><b>Conclusion</b></p> <p>Corruption is the abuse of authority for personal gain. Such behavior is a threat to developing countries including</p>

<sup>17</sup> Sugeng Pujileksono, PEMAHAMAN KORUPSI DALAM TEORI PILIHAN RASIONAL DAN HUBUNGAN PRINSIPAL-AGEN, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Wijaya Kusuma Surabaya, Vol. 2, No. 2, 2022

	<p>Indonesia and can harm state finances.</p> <p>Although Indonesia has a Corruption Eradication Law, Corruption Courts, Special Corruption Prisons, and the involvement of NGOs in the anti-corruption movement, in fact corruption is still high. It is difficult to eradicate corruption because the perpetrators have rational considerations that can provide personal benefits. Corruptors calculate and strategize, and carefully weigh the costs and benefits of a particular action before committing it.</p>
<p>Rudi Iskandar, KEWENANGAN KEJAKSAAN DALAM PENYELESAIAN TINDAK PIDANA KORUPSI BERDASARKAN PENDEKATAN ASAS RESTORATIF, Universitas Pembangunan Nasional “Veteran” Jakarta, Indonesia</p>	<p><b>Topic Discussion</b></p> <p>The prosecution is given discretionary authority, but the exercise of discretion cannot be carried out arbitrarily, but is bound by conditional requirements. Without the presence of conditional requirements, the discretionary action is basically not allowed to be carried out and the government in this case is prohibited from doing something outside the purpose of the authority that has been given to it. Discretion or freedom of</p>

	<p>action basically means freedom to apply regulations in concrete situations, freedom to regulate these concrete situations and freedom to act even though there is no or no explicit regulation, but the consequences and legal consequences that will arise must be accounted for and discretion can be exercised as long as it does not violate the norms and provisions of applicable law.</p> <p><b>conclusion</b></p> <p>The State's Attorney in handling corruption crimes based on the restorative principle approach is actually quite appropriate to optimize law enforcement based on restorative principles because by taking an interest in the investigation, the State's Attorney can save the state budget quite a lot because we know that the prosecutor's authority and the investigation process until the issuance of a decision takes a long time and bureaucracy so it is clear</p>
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	<p>that the settlement of this crime is costly.</p> <p>The authority of the State's Attorney in enforcing discretionary law is considered a useful concrete step in resolving corruption crimes by making the perpetrators of criminal acts obedient to return state money cooperatively. The obstacles faced by the Attorney General's Office in applying discretionary authority to optimize the resolution of corruption crimes based on the principle of restorative justice are more or less still there and are still experienced by several prosecutorial officials. Discretionary legal efforts taken are sometimes underestimated by the general public, which creates a stigma that the perpetrators of corruption crimes are given privileges when they are criminals with extraordinary crimes, besides that obstacles related to the implementation of discretionary enforcement still exist because some State's Attorney officials do not implement the mandate of the Circular Letter of the Deputy Attorney</p>
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	<p>General because they think that the circular letter does not have a strong legal basis and is not a coercive directive.</p>
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## E. Literature Review

### 1. An Overview of Corruption

#### a) Definition of Corruption

The word corruption comes from the Latin *corruptio* or *corruptus*. *Corruptio* has various meanings, namely the act of corrupting or destroying. *Corruptio* is also defined as rottenness, ugliness, depravity, dishonesty, bribery, immorality, deviation from purity, insulting or slanderous words or speech. The word *corruptio* in English became the word *corruptio* or in Dutch became *corruptie*. The word *corruptie* in Dutch entered the Indonesian treasury as corruption. According to the Big Indonesian Dictionary (KBBI), corruption is the misappropriation or misuse of state money (companies, organizations, foundations, and so on) for personal gain or other people.<sup>18</sup>

Black's Law Dictionary defines Corruption as:

*"The act of doing something with the intention of conferring an advantage contrary to one's official duties and the rights of others; for example, an office to obtain an advantage either for oneself or for others, contrary to the rights of others."*<sup>19</sup>

<sup>18</sup> <https://kbbi.kemdikbud.go.id/entri/korupsi> accessed on 22 december 2022

<sup>19</sup> Bryan Garner, *Black Law Dictionary: Edisi 9*, St.Paul Minn: West Publishing, 2009, p. 397.

Another definition of corruption was put forward by the World Bank in 2000, namely "*corruption is the abuse of public power for private gain*". This World Bank definition has become the international standard in formulating corruption.

The Asian Development Bank (ADB) also provides a definition of corruption, which is an activity that involves improper and unlawful behavior of public and private sector employees to enrich themselves and those close to them. These individuals, ADB understands, also induce others to do so by misusing their positions.<sup>20</sup>

#### b) Form of Criminal Act of Corruption in Positive law

The definition of corruption, its forms and elements, as well as the penalties have been clearly explained in 13 articles in Law No. 31 Year 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption. Based on these articles, corruption is formulated into thirty forms/types of corruption. The articles describe in detail the acts that can be convicted of corruption.

Thirty forms of corruption, spread across thirteen articles. The thirty forms of corruption are regulated in Article 2, Article 3, Article 5 paragraph (1) letter a, Article 5 paragraph (1) letter b, Article 5 paragraph (2), Article 6 paragraph (1) letter a, Article 6 paragraph (1) letter b, Article 6 paragraph (2), Article 7 paragraph (1) letter a, Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter c, Article

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<sup>20</sup> Pusat Edukasi Antikorupsi <https://aclc.kpk.go.id/action-information/lorem-ipsum/20220411-null> accessed on 29 november 2022

7 paragraph (1) letter d, Article 7 paragraph (2), Article 8, Article 9, Article 10 Article 10 letter a, Article 10 letter b, Article 10 letter c, Article 11, Article 12 letter a, Article 12 letter b, Article 12 letter c, Article 12 letter d, Article 12 letter e, Article 12 letter f, Article 12 letter g, Article 12 letter h, Article 12 letter i, Article 12 B jo. Article 12 C, and Article 13.

The thirty forms of corruption can basically be classified into seven types, namely corruption, namely:

1. About state finances/state economy,
2. Bribery,
3. Embezzlement in the office,
4. Extortion,
5. Cheating,
6. Conflict of interest in procurement and
7. Corruption related to gratuities.

## **2. An overview of Restorative Justice**

In article 1 of the REGULATION OF THE PROSECUTOR OF THE REPUBLIC OF INDONESIA NUMBER 15 OF 2020 ON THE STOPPING OF PROSECUTION BASED ON RESTORATIVE JUSTICE states that:

*"Restorative Justice is the resolution of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties*

*to jointly find a fair solution by emphasizing restoration to the original state, and not retaliation".<sup>21</sup>*

The restorative justice movement is a global social movement with enormous internal diversity. Its primary goal is to change the way contemporary society views and responds to crime and related forms of distressing behavior. More specifically, it seeks to replace our highly professionalized system of punitive justice and control (and its analogs in other settings) with community-based reparative justice and moralized social control. Through such practices, it is claimed, we can not only control crime more effectively, we can also achieve a number of other desirable goals: meaningful experiences of justice for victims of crime and healing of the trauma they tend to suffer; genuine accountability for offenders and their reintegration into a law-abiding society; restoration of the social capital that tends to be lost when we leave our problems to professionals to solve; and significant fiscal savings, which can be redirected to more constructive projects, including crime prevention and community regeneration projects.<sup>22</sup>

### **3. An overview of State's Attorney**

Referring to Law of the Republic of Indonesia Number 11 of 2021 amending Law Number 16 of 2004 concerning the State Attorney of the

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<sup>21</sup> Article 1 PERATURAN KEJAKSAAN REPUBLIK INDONESIA NOMOR 15 TAHUN 2020 TENTANG PENGHENTIAN PENUNTUTAN PENUNTUTAN BERDASARKAN KEADILAN RESTORATIF

<sup>22</sup> Daniel Van Ness, Willan Publishing, *Handbook of Restorative Justice* edited by Gerry Johnstone, 2007 p. 5.

Republic of Indonesia, the State's Attorney as one of the law enforcement agencies is required to play a greater role in upholding the rule of law, protecting the public interest, upholding human rights, and eradicating Corruption, Collusion and Nepotism (KKN). In the new State Attorney Law, the State Attorney is a government institution whose functions are related to the judicial power that exercises State power in the field of prosecution and other powers based on independent laws, independent of the influence of government power and the influence of other powers. (Article 2 paragraph 1 of Law Number 11 of 2021)<sup>23</sup>

In addition, in carrying out its duties the State's Attorney organizes functions, namely:

1. Formulation of implementation policies and technical policies, providing guidance and coaching and licensing based on the provisions of laws and regulations and general policies set by the president;
2. Implementing the development of infrastructure and facilities, fostering management, administration, organization and management as well as management of state-owned assets that are their responsibility;
3. The implementation of law enforcement, both preventive and repressive, with the essence of justice in the criminal field, the implementation of judicial intelligence in the field of public order and

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<sup>23</sup> Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law number 16 of 2004 concerning the Attorney General of the Republic of Indonesia

tranquility, the provision of assistance, consideration, services and law enforcement in the civil and state administrative fields as well as other legal actions and tasks, to ensure legal certainty, uphold the authority of the government and save state assets, based on the provisions of laws and regulations and general policies set by the president;

4. Placement of a suspect or defendant in a hospital or mental care facility or other appropriate place based on a judge's determination due to his/her inability to stand on his/her own feet or due to matters that may endanger other people, the environment or himself/herself;
5. Providing legal considerations to institutions, government agencies at the central and regional levels, State-Owned Enterprises, Regional-Owned Enterprises in drafting laws and regulations and increasing public legal awareness; and
6. Implementation of coordination, guidance and technical instructions as well as supervision both within and with related agencies for the implementation of tasks based on the provisions of laws and regulations and policies stipulated by the President.<sup>24</sup>

## **F. Operational Definition**

The operational definition aims to avoid misunderstanding and differences in interpretation related to the terms in the title of the proposal.

According to the research title, namely “THE URGENCY OF APPLYING THE

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<sup>24</sup> <https://www.kejari-bandungkota.go.id/index.php/main/tupoksi>, accessed on 20 Desember 2022

CONCEPT OF RESTORATIVE JUSTICE BY THE STATE ATTORNEY IN  
CORRUPTION CRIMES” the operational definition that needs to be explained,  
namely :

### **1. Restorative Justice**

Restorative Justice is the resolution of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state, and not retaliation<sup>25</sup>

### **2. Urgency**

According to the Big Indonesian Dictionary (KBBI), Urgency is an urgent necessity; very important thing.<sup>26</sup> This urgency calls for something that drives us or requires us to finish something.

### **3. State Attorney**

State Attorney, is a government agency whose functions are related to judicial power which exercises state power in the field of prosecution and other authorities based on the Law.<sup>27</sup>

## **G. Research Method**

### **1. Type of research**

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<sup>25</sup> Article 1 paragraph 1 Regulation of the Attorney General of the Republic of Indonesia No.15 of 2020

<sup>26</sup> <https://kbbi.web.id/urgensi> accessed on 21 january 2023

<sup>27</sup> Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law number 16 of 2004 concerning the Attorney General of the Republic of Indonesia

This research was conducted using normative research methods. Normative legal research is legal research that is carried out by examining literature and/or secondary data so that it can answer the current legal issues. The research to be discussed is included in the category of normative research because this research discusses how the concept would be applied, the advantages and disadvantages of applying restorative justice for corruption in Indonesia from a law, doctrines that have developed in the science of law's point of view.

## **2. Research approaches**

The approach used in this study is a statutory approach and a conceptual approach. The statutory approach is an approach that focuses analysis on statutory regulations related to legal issues.<sup>28</sup> While the conceptual approach is an approach that departs from the views and doctrines that have developed in the science of law, in order to find ideas that give rise to relevant legal understandings, concepts and principles, as a basis for building a legal argument in solving legal issues which being faced.<sup>29</sup>

## **3. Research Legal Materials**

The data sources used in this research include data sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials:

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<sup>28</sup> I Made Pesek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, ctk. Kedua, Prenada Media Group, Jakarta, 2017, p. 159.

<sup>29</sup> Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*, Kencana Premada Media Group, Jakarta, 2013, p. 133.

#### a. **Primary Legal Materials**

Primary Legal Material are legal materials that use laws and regulations, jurisprudence, joint decisions, minutes of discussion of laws and regulations as a support and explanation of primary legal materials, both in the form of theories as basic principles and interpretations of legal opinions. Primary legal materials that the author uses in this study are:

1. Preamble to the 1945 Constitution of the Republic of Indonesia, Fourth Paragraph
2. Law Number 20 of 2001 dated November 21, 2001, concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption.
3. Law of the Republic of Indonesia Number 11 of 2021 amendment to Law Number 16 of 2004 concerning the State Attorney of the Republic of Indonesia
4. Regulation of Prosecutor of Republic of Indonesia Number 15 of 2020 Concerning Termination Of Prosecution Based On Restorative Justice
5. Law of United Nations Convention against Corruption

#### b. **Secondary legal material**

Secondary legal materials is obtained and collected directly and factually from the field which is the participant of this research who the actually practitioner. Based on this, therefore, the data source that will be used by the author in conducting research directly in the field. This

research is obtained from the participant of this research who the actually practitioner.

**c. Tertiary legal materials**

This legal material is material that provides guidance and explanation of primary legal materials and secondary legal materials, namely the Big Indonesian Dictionary, Big English Dictionary.

**4. Legal Material Collection Method**

The legal material collection method which used by author are:

- a. Primary Legal Material can be obtained by Library Studies, namely reviewing literature, law, books and legal research as well as related to the problems studied.
- b. Secondary Legal Material obtained from Interviews, namely in the form of questions and answers conducted to prosecutors, either carried out by free interviews or guided methods. Free interviews are interviews by asking questions related freely to research subjects in order to find the desired data. Interviews with the guided method are interviews by asking questions that have been prepared in advance to find the desired data.

**5. Data Analysis Method**

In processing and analysing data, the author use descriptive qualitative which describing the data obtained in the study described and arranged systematically in the form of sentence descriptions that are taken as statements and conclusions. . Conclusions based on clear factual data so obtained will provide

answers to research problems and describe and explain more deeply the application of the Preamble to the 1945 Constitution of the Republic of Indonesia, Fourth Paragraph, Law Number 20 of 2001 dated November 21, 2001, concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, Law of the Republic of Indonesia Number 11 of 2021 amendment to Law Number 16 of 2004 concerning the State Attorney of the Republic of Indonesia, Regulation of Prosecutor of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based On Restorative Justice.

## **H. Writing Systematics**

The title used in this study is “THE URGENCY OF APPLYING THE CONCEPT OF RESTORATIVE JUSTICE BY STATE ATTORNEY IN CORRUPTION CRIMES”. The thesis framework that will be used in this study consists of 4 (four) chapters. Each of these chapters consists of several sub-chapters. These chapters are as follows:

Chapter I is an Introduction, consisting of Background of Study, Problem Formulation, Research Objectives, Originality of Research, Operational Definition, Literature Review, Research Methodology, and Writing Structure.

Chapter II is Theoretical Review. This chapter will discuss in detail the theories related to the formulation of the problem in this research, including an overview of Corruption, Restorative Justice, State Attorney and Urgency.

Chapter III is Findings and Results. This chapter will explaining the answer of 2 (two) problem formulations in this study. First, what urgency the concept of restorative justice for criminal acts of corruption if applied by the State's Attorney?. What are the advantages and disadvantages when the restorative justice approach is applied by the State's Attorney in handling corruption cases?.

Chapter IV is Conclusion and Recommendation. This chapter will contains conclusions from discussions and suggestions on a criminal matter. Chapter IV Closing, contains conclusions which are the crystallization of the results of the research as a whole along with suggestions for the future after this research is expected to provide benefits to the wider community and the parties involved in this research

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